

**FEBRUARY 28, 2001**

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Transcriber's Office  
FLOOR DEBATE

February 28, 2001 LB 25, 25A, 46, 48, 51, 53, 129, 146, 155  
165, 166, 166A, 192, 193, 226, 245, 253, 257  
257A, 280, 299, 337, 375, 376, 387, 409, 418  
472  
LR 31, 33, 34, 35

PRESIDENT MAURSTAD PRESIDING

PRESIDENT MAURSTAD: Good morning. Welcome to the George W. Norris Legislative Chamber for the thirty-seventh day of the Ninety-Seventh Legislature, First Session. Our chaplain of the day is Pastor Mark Carlton from the Ogallala Berean Church in Ogallala, Nebraska, in Senator Erdman's district. Pastor Carlton.

PASTOR CARLTON: (Prayer offered.)

PRESIDENT MAURSTAD: Thank you. I call the Nebraska Unicameral Legislature to order. Member, please record your presence.

CLERK: I have a quorum present, Mr. President.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: Mr. President, I have no corrections this morning.

PRESIDENT MAURSTAD: Any messages, reports or announcements?

CLERK: Mr. President, the bills read on Final Reading yesterday were presented to the Governor at...at 1:20 p.m. (Re: LB 51, LB 53, LB 129, LB 146, LB 155, LB 165, LB 166, LB 166A, LB 192, LB 245, LB 257, LB 257A, LB 375, LB 376, LB 387, LB 418, LB 472, LB 25, LB 25A, LB 46, LB 48, LB 193, LB 226, LB 253, LB 280, LB 299, LB 337, LB 409.)

An appointment from the Governor to the Health and Human Services Partnership Council. And, Mr. President, LR 31, LR 33, LR 34, and LR 35 are ready for your signature. And that's all that I had, Mr. President. (Legislative Journal pages 835-836.)

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 31, LR 33, LR 34, and LR 35. Senator Landis, do you wish to be recognized?

SENATOR LANDIS: (Microphone malfunction) I'm just on the

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first...

PRESIDENT MAURSTAD: Mr. Clerk.

CLERK: Mr. President, the first order of business this morning is consideration of a confirmation report by the Government, Military and Veterans Affairs Committee. The report is found on page 793.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Schimek, you're recognized to open on the confirmation report from the Government Committee.

SENATOR SCHIMEK: Yes, thank you. Mr. President, members of the body, the Government Committee held a confirmation hearing last week on this. It is Brian Tessman who has been appointed to the State Personnel Board. We had a good hearing. He was a candidate who was really enthusiastic about his new position and did a good job of answering the questions of the committee, and I would recommend him for confirmation by this body. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. For debate on the confirmation report, Senator Aguilar.

SENATOR AGUILAR: Thank you, Mr. President. I'd just like to point out to the body that I've known Mr. Tessman for a number of years now and can speak very well of his...the quality of his character; is very community-oriented young man. Also made a run for...an unsuccessful run for the Legislature. Very much involved and a very worthy candidate for this position. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Aguilar. Senator Schimek, you're recognized to close. Senator Schimek waives closing. The question is the adoption of the confirmation report from the Government Committee found on Journal page 793. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: (Record vote, Legislative Journal pages 836-837.)  
33 ayes, 0 nays, Mr. President, on the adoption of the

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confirmation report.

PRESIDENT MAURSTAD: The report is adopted. Mr. Clerk, General File.

CLERK: Mr. President, LB 287, the first bill this morning, was originally introduced by Senator Thompson. (Read title.) Bill was introduced on January 5, referred to the Health Committee, considered yesterday on the floor. Mr. President, Senator Thompson had an amendment to the bill that was adopted yesterday. Senator, I don't...do you want to go right to your amendment, or would you rather...it's your...

SENATOR THOMPSON: I'll go to the amendment.

CLERK: Mr. President, Senator Thompson would move to amend her bill, AM0737. (Legislative Journal page 837.)

PRESIDENT MAURSTAD: Senator Thompson, you're recognized to open.

SENATOR THOMPSON: Yes, Mr. Lieutenant Governor, members of the body, the amendment was brought to me yesterday by the Health and Human Services Agency. They got over across the street and we'd already adopted the other amendment. What it does is add back in the language regarding the Department of Health and Human Services Services Department, since the employees of the program they want to attach it to are with that department. It gives them more leeway than the original amendment which was suggested by the Fiscal Office to put it with Finance and Support, which is where the program will be. So it's a technical amendment and I ask your support.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. Senator Landis.

SENATOR LANDIS: I rise to support the amendment. I actually rise to support the bill. LB 287 is the state's attempt to give a limited assistance in the area of transplants. We have another program for people in need of insurance coverage for their illnesses, and it's the CHIP program. What I want to tell

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you is that the CHIP program is not in the position to do this kind of work. It is strapped as it is and transplants are essentially beyond the means of the CHIP program to provide and, if this work is going to be done, you can't say that there's another program waiting to do this work; that this would be somehow duplication. It's not duplication. I also support it because I think it represents an appropriate way of handling a healthcare issue for the public as opposed to the mandated benefits idea that happens a lot in our committee where you try to use the insurance program by changing people's insurance policies. Seems to me that public health and assistance from the government to people in need is a legitimate thing to do. LB 287 is a legitimate thing to do. I rise to support it and I intend to vote first for this amendment and then for the bill. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Landis. Senator Thompson, you're recognized to close. Senator Thompson waives closing. The question is the adoption of AM0737 to LB 287. Those in favor vote aye; those opposed vote nay. Mr. Clerk, please record.

CLERK: 27 ayes, 1 nay, Mr. President, on the adoption of Senator Thompson's amendment.

PRESIDENT MAURSTAD: The amendment is adopted.

CLERK: I have nothing further on the bill, Mr. President.

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR THOMPSON: I was just going to recap where we are with the bill. It's a bill to set up a fund. It's capped at \$250,000 and its purpose is to be able to meet the public health issue that's probably been long overdue in the state. When we started the Nebraska renal program to help people with dialysis and transplants, it was set with a specific formulary. The formulary was never expanded to include the newer immunosuppressive drugs, nor was it expanded to cover additional transplant...transplanted organs. Essentially, what the bill does is allow it to be used for any transplanted organ, internal

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organ, and also to expand the formulary that the department would do on a periodic time-to-time basis to cover the transplant drugs. The drugs that were covered originally when the first legislation passed dealt with the types of transplants that didn't require as technical, I guess is best...the best word I can think of off the top of my head, type of drug because they were exact match, live donor. Now that we have the ability to transplant other organs as well as organs from cadavers, it's made it possible for more people to have their lives saved, but it comes with a cost and a substantial number of Nebraskans have tremendous financial difficulty in meeting the costs of those drugs, either as "copays" or as straight-up costs because their insurance doesn't cover it. This is a process that's used in other states. We're just catching up to what most of the Midwestern states are already doing and I ask your support of the bill.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. Further debate on LB 287, Senator Beutler.

SENATOR BEUTLER: Mr. Lieutenant Governor, members of the Legislature, Senator Thompson, I'd like to take the occasion of the first round of debate to get more information from you on how this all works and...and let me...let me start out just with some of the basics of how this all works. First of all, with respect to transplants themselves, who can get transplants and how does that work? I mean...

PRESIDENT MAURSTAD: Senator Thompson,...

SENATOR BEUTLER: ...if...

PRESIDENT MAURSTAD: ...would you yield?

SENATOR THOMPSON: The bill would cover...

SENATOR BEUTLER: ...if...

SENATOR THOMPSON: Oh, excuse me.

SENATOR BEUTLER: ...if I...if I don't have insurance, for

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example, can I get a transplant? If I do have insurance, do most insurance programs cover that, or do they not? If I'm...if I'm poor and can't afford to get a transplant, does Medicare or Medicaid pay for it? How does the transplant system work in the first place?

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR THOMPSON: Thank you. People, this bill deals with the issue of post-transplant. People, as part of the transplant counseling process, if there's time for that, sometimes people become extremely ill, go to the hospital and have to have a transplant within a matter of days. They go to the top of the waiting lists and have priority. What happens is, for example, if you're...have a condition where you know you need a transplant and you're going to have to go on a waiting list, people go through a counseling process, and this is where they first encounter the issue that this bill brings, and that is after the transplant, which is covered, they have costs to make sure that the organ doesn't...the body doesn't reject the organ, and part of that process they must have a meeting with both a financial aid counselor and a social worker, as well as maybe...or if they're just preliminarily considering it, if it's for a kidney, they would be sent to a transplant coordinator who would give them an overview. What the transplant coordinator, who's the first point in the process, does is tell them about...briefly about some of the issues of transplantation dealing with the cost of the drugs. And a transplant coordinator who did testify said one of the things she has been seeing in recent years is that once people go back, see what their "copay" is, see what the costs to them and their families will be for the transplant drugs, they don't call her back. Other people go through the whole process where they meet with a lot of people on a team, including the social worker and the finance coordinator, and we had a social worker and a finance coordinator testify and summaries of their testimony are attached to the blue sheet on your desk, and they are the ones that talked about specific cases. The finance coordinator is a person who works with them after the transplant. And sometimes their insurance changes. Sometimes they started out with a \$5 "copay" and now it's a \$25 "copay" and they get in a financial

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situation where some people get so depressed they actually become suicidal. And so that's the process they go through. The social worker, before the transplant, talks with them about this issue and works with them on the issue because they need to know the extremely high costs that they may have or that their circumstances may dictate; if they lose their job or change jobs what's going to happen in terms of paying for those. And I know that took a long time and I'll put my light on, but I don't know how to do it faster.

SENATOR BEUTLER: Senator, do all or most insurance policies cover the transplant themselves...itself?

SENATOR THOMPSON: I don't know. I assume they do.

SENATOR BEUTLER: Okay.

SENATOR THOMPSON: I assume they do.

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: I know bone marrow is an area that's controversial, but I don't know of any instance but, to be honest with you, I haven't worked on that aspect of things. Maybe somebody else in the body is aware of that.

SENATOR BEUTLER: Okay. If you...if you don't have insurance and you're not wealthy enough to get a transplant...

SENATOR THOMPSON: (Microphone malfunction) Medicaid.

SENATOR BEUTLER: ...can you still get a transplant?

SENATOR THOMPSON: Medicaid would cover it.

SENATOR BEUTLER: Then Medicaid would cover it?

SENATOR THOMPSON: And Medicaid...a person who's on Medicaid has coverage for...they're not under this bill because they do have coverage for the drugs.

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SENATOR BEUTLER: Okay. So if Medicaid covers it, I assume that there is both an income and an assets test in order for Medicaid to cover it. Would that be correct?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Yes, that is correct. Okay.

PRESIDENT MAURSTAD: Time. Thank you, Senator Beutler. (Visitors introduced.) On the advancement of LB 287, Senator Vrtiska.

SENATOR VRTISKA: Thank you, Mr. President, members of the body. Senator Thompson, could I ask you a couple questions?

PRESIDENT MAURSTAD: Senator Thompson, would you yield?

SENATOR THOMPSON: I will yield.

SENATOR VRTISKA: Senator Thompson, I was reviewing the bill and, as I...and correct me if I'm wrong, as I understand it, it's sort of a first come, first serve?

SENATOR THOMPSON: Yes. The department currently runs the renal program and, when it runs, it sets guidelines that try to fit within the amount of money that they have, and when they run out of money they run out of money. And so for this program they would also have to try to make it last and maybe it won't cover a hundred percent of what a person needs, but they could, through their rules and regulations, set it up so that it goes as far as it can.

SENATOR VRTISKA: I guess that's the part that I'm having difficulty understanding. You say they'd pay a part of it, but how do you know how much expenditures you're going to have throughout a year? In other words, if I go in at the first of the year with a heart transplant, I can get help, but if I go in in December of the year there may not be any money. And I'm trying to figure out how do you...how do you make it fair for everybody who's going to want to access these funds? I don't...that's the part I don't understand.

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SENATOR THOMPSON: I would say the department, through its rules and regulations, would take...and some of it is going to have to be through the history of the project. If we wanted to...I didn't feel I could pass this bill as an open-ended amount, as an entitlement, but I did feel we could say we are willing to commit this X number of dollars to helping people and they would have...throughout the year the department would manage the money to be able to serve people as best they could with that amount of money. So there are two ways to go: entitle everyone, and we don't know what that cost would be; I chose to cap it.

SENATOR VRTISKA: Well, I appreciate the cap because I don't think that probably it's practical to say that everybody...

SENATOR THOMPSON: Who qualifies...

SENATOR VRTISKA: ...I guess the problem that I have is when you talk about the first ones, say, in the first part of the year have transplants and they need help they'll get it, but later on in the year they won't get any unless there's some way of leveling out. And I don't understand how they do that when you don't know who's going to be eligible throughout the entire year for the amount of money that's available. That's the part I don't quite understand.

SENATOR THOMPSON: I...and, unfortunately, that's true in other programs and it's true in the dialysis program. When they're out of money for a year then people just can't apply, or if they have applied they don't get reimbursed. And the people who are in that program on a regular basis know that that's the case. So they can, month by month, submit and when they're out of money, they're out.

SENATOR VRTISKA: Well, let me ask you this. You don't have a set amount. For example, we all know that the postoperative costs on heart transplants, for example, are rather expensive because of the type of medication that's required...

SENATOR THOMPSON: Um-hum.

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SENATOR VRTISKA: ...for rejection and all that. How do you...is...is there a set amount you allow to an individual or you...you pay then? Those are parts that I'm not clear on.

SENATOR THOMPSON: Well, I set this up similar to other states that have an amount appropriated. Actually, I met a woman legislator from Indiana and visited with her a couple years ago about how they did it and it's...it's not the way I'd like to do it and I would hope that there will be a federal solution eventually to prescription drug issues and then we won't need this program. But, for the time being, the department will have to take a look and see how long they can make those funds last. So, instead of paying, let's say...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...you are paying 20 percent and you've got 17 "copays" and they're \$25. Maybe we'll be able to pay \$10 of each of those...

SENATOR VRTISKA: I mean...

SENATOR THOMPSON: ...rather than the full \$25.

SENATOR VRTISKA: ...is that a part of the bill? Is that the way it's...

SENATOR THOMPSON: No, that comes through rules and regs from the department.

SENATOR VRTISKA: Well, that's the part that bothers me. I don't know how they're going to set those rules up. I thought...and I don't know that you can do that, but I have a great concern about the unfairness of people who, later in the year, end up...and I...you say it happens under...under dialysis, but I guess what I'm looking at is the extremely high cost of some of this medication...

SENATOR THOMPSON: It's terrible.

SENATOR VRTISKA: ...that people take and how rapidly that money

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could be gone, and so in a few months there could be basically no help for somebody else that might be eligible, and yet...I understand it can't be open-ended and I agree with you that a federal program under...under...

PRESIDENT MAURSTAD: Time.

SENATOR VRTISKA: Thank you, Senator Thompson.

PRESIDENT MAURSTAD: Thank you, Senator Vrtiska. Senator Beutler, on the advancement of LB 287.

SENATOR BEUTLER: Senator Thompson, if you would yield, I'd like to continue the dialogue with you.

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR BEUTLER: I want to get back to the line of questioning that I was on earlier, but I did want to ask you quickly, in response to Senator Vrtiska, you indicated that there was a cap on this. I...I must have missed that. What cap are you referring to?

SENATOR THOMPSON: The monetary cap, \$250,000.

SENATOR BEUTLER: What...what monetary cap is that, or where is that in the bill?

SENATOR THOMPSON: We...it was in the bill and we were told it should have been in an A bill, so it will be in the following bill.

SENATOR BEUTLER: Okay, so you're, as I understand it, you're putting \$250,000 into an A bill, but that's not a cap.

SENATOR THOMPSON: Well...

SENATOR BEUTLER: The Legislature can well appropriate every year, depending on...

SENATOR THOMPSON: (Microphone malfunction) Right, the need.

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SENATOR BEUTLER: ...on the need, so there's still the question out there of what the need ultimately might be in terms of looking at the program expenses, right? There's no cap as such.

SENATOR THOMPSON: Yeah, I should correct that and say that when we wrote the bill with a fixed amount in it, that was the incorrect way to write the bill so it would be available for adjustment. If...if the body chose to adjust it up this year, I'm asking in this bill, if it passes, for \$250,000.

SENATOR BEUTLER: Okay. Going back to what we were talking about before, you had indicated that Medicaid will pay for transplants with respect to people who can't afford a transplant. Is that...is that correct?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Yes. And they get on a waiting list just like everybody else?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Okay. And is Medicare involved in this in any way at all, in the transplant or in the...or in the supplying of drugs,...

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: ...immunosuppressive drugs?

SENATOR THOMPSON: Yes, and that's...

SENATOR BEUTLER: Okay, could you...could you clarify the difference between when Medicaid is involved and when Medicare is involved?

SENATOR THOMPSON: Medicaid, a hundred percent of the immunosuppressive drugs will be paid for. Medicare is an 80/20.

SENATOR BEUTLER: Okay. So if I'm poor and I have a transplant,

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Medicaid pays for it if I'm under 65?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: And Medicare pays for it if I'm over 65?

SENATOR THOMPSON: If you...well, there's another...disabled persons under 65 would have Medicare also.

SENATOR BEUTLER: Pardon me?

SENATOR THOMPSON: Well, it isn't...Medicare isn't just over 65.

SENATOR BEUTLER: Okay. So Medicare is going to pick up both over 65 and disabled persons?

SENATOR THOMPSON: Under 65.

SENATOR BEUTLER: And disabled persons under 65. Medicaid pays for it for no one, is that right?

SENATOR THOMPSON: No, Medicaid, anyone who is eligible for Medicaid, which would be people whose resources are, and we've got that information, are very...

SENATOR BEUTLER: Okay.

SENATOR THOMPSON: ...low and...

SENATOR BEUTLER: So Medicaid...

SENATOR THOMPSON: ...and income, they are the...they are covered. They are not a problem in the state in terms of this issue of immunosuppressive drugs coverage. The issue occurs for two categories of people. The people who are on Medicare who have the 80/20 split, and Medicare only pays the immunosuppressive drug coverage for a set number of months and then people have to pay a hundred person. The other group besides Medicare are people with private insurance or people who are working who have some type of insurance that may or may not have prescription drug coverage or may have a high "copay" or a

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cap, and those are low and moderate income people who must come up with that after...out of their paycheck every month.

SENATOR BEUTLER: Okay. So with respect to low-income people or to people over 65, all of them have an 80/20 split for a set number of months. Is that correct?

SENATOR THOMPSON: Right, for the drugs.

SENATOR BEUTLER: For the drugs.

SENATOR THOMPSON: Right.

SENATOR BEUTLER: Okay. And what...what is the number of months?

SENATOR THOMPSON: It was 36 and it was extended under a proposal in December by President Clinton and I believe, and I'll have to check my notes, an additional...for people over 65, as long as their transplant was viable and...

PRESIDENT MAURSTAD: Time. Senator Wehrbein, on the advancement of LB 287.

SENATOR WEHRBEIN: Yes, thank you, Mr. Speaker, members. I'm going to continue along this line, Senator Thompson, that Senator Beutler is on. I just...I did not realize that there was any use of Medicare under age 65, but what you've said is true. I've confirmed it also. But if you have Medicare supplement, does that pay for these drugs if you would have a Medicare supplement payment, like most over 65 do get?

PRESIDENT MAURSTAD: Senator Thompson, respond.

SENATOR THOMPSON: (Microphone malfunction) and under the bill they...all of that has to be...we are the payee of last resort.

SENATOR WEHRBEIN: I understand, but not all Medicare supplement...supplemental insurance plans apparently cover these drugs in this case.

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SENATOR THOMPSON: I'm going to have to check on that.

SENATOR WEHRBEIN: I know you might not know every plan, but I...I'm trying to...I'm very uncomfortable with this bill because of its open-ended potential in the future, so you know. I want you...I want you to understand that. And I...I, as I sit here and listen to the \$250 being capped, I think that's really misleading in the fact that we, next year, easily could have (inaudible) back and say this has got to be more money and more money, I...depending on how the regs are, depending on if it was prorated, all those kind of things, I suppose much like we have the renal program at this time. But I...I...I'm trying to understand mostly about whether people that need this can foresee this need for themselves via a Medicare program. I don't know whether those under 65, eligible for Medicare, can buy a Medicare supplemental payment insurance plan. That may be a difficult question.

SENATOR THOMPSON: I'm going to go ahead and pass out the statutes from the other states in the Midwest that have this same program.

SENATOR WEHRBEIN: Okay. Well, I...I do...

SENATOR THOMPSON: And...and I guess to answer your question, that would just...that would depend. What happens is people get very sick sometimes waiting for a transplant and they become disabled because they can't work because of their illness. And, depending upon their ability to have insurance or what they've had or a spouse working or something like that, they may be able to supplement even a Medicare program. But this program is set up not for the people who haven't got a way to do that.

SENATOR WEHRBEIN: Yes.

SENATOR THOMPSON: It's set up...and it's...it's once you have this kind of a disabling illness, I guess I'm taking a long stab here, but I don't think it's someone that can easily get insurance, but I will...supplemental insurance, because they know right from the git-go that it's going to cost a lot every month for that and I don't know if most insurance companies

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would pick up someone with a preexisting condition of this sort, and so that's...but the people who have Medicaid who are under 65 are...they may have another disability and this is a second issue or this may be their disability. They may have a heart condition where they can't walk or exert themselves, but once they get the heart transplant people can go back to work. The problem that I heard from the social workers were that people have to...well, not pretend, but they have to stay sick to get the coverage. Otherwise, they can't...an employer may not choose to pick them up. They may not have adequate coverage. We heard stories from people who switched jobs, whose spouses moved from one state to the other and, all of a sudden, they're in a situation where they're having to pay for these...these costs that they didn't anticipate. Or, when they got counseling for the transplant, they thought they were going to be okay, but, like you and me, I mean five years ago our "copay" was five bucks and now it's twenty-five bucks. Well, if your take-home pay...well, if it's our...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...take-home pay obviously (laugh), if you had 17 prescriptions it would take, at 25 bucks, most of our legislators' pay, so...

SENATOR WEHRBEIN: One more. If I...I'm...it's an interpretation of the handout. If a person is paying \$2,000 a month for drugs and he has an 80/20, the way your numbers are presented here, the \$1,600 would be covered, the \$400 would be the...would...so I want to be clear. So when you say \$2,000 a month, which is enormous amount of money for drugs, but if you only have to do the 20 percent it is somewhat less.

SENATOR THOMPSON: Yes. And what the issue is, particularly for the disabled who are on Medicaid, in the interim study hearing they did present actual cases of a number of people and there was a young man, well, he's...to me he's young, thirty...in his late thirties, from the mid-part of the state who did have the \$450 "copay" but he is...he didn't make that much money and so his...

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PRESIDENT MAURSTAD: Time. Thank you, Senator Wehrbein. Senator Thompson, your light is on next.

SENATOR THOMPSON: I think I'll waive off for the moment.

PRESIDENT MAURSTAD: Senator Vrtiska.

SENATOR VRTISKA: Senator Thompson, it didn't do you any good. I want to talk to you. (Laugh)

PRESIDENT MAURSTAD: Senator Thompson, would you yield?

SENATOR THOMPSON: I was...I was trying to figure out how to do that, so I'll just go with your time I guess.

SENATOR VRTISKA: I want to try to get a couple answers that I'm still concerned about. You talked about a cap. Now, that's a cap on the total amount of money but not a cap on an individual. In other words,...

SENATOR THOMPSON: Right.

SENATOR VRTISKA: ...if I come in and need, as you were talking, \$2,000 a month for medicine, how much of that is...will be paid under this bill?

SENATOR THOMPSON: That would be determined by the Department of Health and Human Services through their rules and regulations.

SENATOR VRTISKA: Well, how do we know if those...(laugh)...I mean...

SENATOR THOMPSON: Well, it's the same...I would...I would say, from my discussions and how we've operated the renal program, which it is my understanding they would operate it with the same people, you can apply. The state agrees to pay a percentage of that, based on what they...how long they think the money can last, on your costs. In the renal program, I'm not sure if it's a hundred percent. Maybe the costs are lower. But they would have to determine that. I didn't make it...I guess, to be technically correct, it is still open-ended because I wrote the

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bill wrong and just tried to put a fixed amount in the bill, and now it will go. But...but I don't see this as one...on the renal program, when it's gone, it's gone.

SENATOR VRTISKA: Well, I understand that and I guess that's one of the things that really bothers me because you're really saying you better get sick earlier in the year if you expect to get any help. If you get sick later in the year there isn't going to be any money to help you. And I guess you can't help that, the same way...

SENATOR THOMPSON: No.

SENATOR VRTISKA: ...as you talked about the other program. The other thing that I'm concerned about, you talked about \$250,000 of the...or 250 percent of the poverty, federal poverty, level.

SENATOR THOMPSON: Yes.

SENATOR VRTISKA: What is that...where does that...I guess I'm trying to remember what the poverty level is.

SENATOR THOMPSON: I have a handout on that. I can...

SENATOR VRTISKA: Okay.

SENATOR THOMPSON: ...have it copied and sent to you.

SENATOR VRTISKA: All right. All right.

SENATOR THOMPSON: Or unless you want it on the record. For 250 percent of a family of four, the hourly income would be \$8.49. (Inaudible) on the right line, gross monthly income...oh, the gross yearly income is \$44,125.

SENATOR VRTISKA: And you'd be eligible.

SENATOR THOMPSON: Yes.

SENATOR VRTISKA: Okay. Well, I'm having...I'm having some real problems with parts of this bill because I don't understand it

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mostly. And, secondly, I guess what we're saying now is that this is what we're going to start out as a...as a first-year program. What happens...oh, let me ask you this. Did you...did you learn in your discussions that you had with your...with your interim study on this, have any idea of the number of people based on what you...what you've been visiting with Senator Beutler and Senator Wehrbein, how many people are on Medicaid or Medicare who wouldn't be eligible and how many would be left that they would...I guess just a big guess at how many would be, based on past history, would be eligible for this program? I think that's, to me, is the bottom line,...

SENATOR THOMPSON: Right.

SENATOR VRTISKA: ...is what percent we're going to be covering with the \$250,000.

SENATOR THOMPSON: The people who work in the program don't have exact statistics, but they estimate they believe probably around 40 percent of the Nebraskans with transplants are facing financial issues. Some of them may choose to come to the program; some may not. And they currently...their numbers show that between 530 and 550 living Nebraskans with transplants. Now, because some people are transplanted in other states and live here and go somewhere else for the transplant, that's their best guess. They can tell you how many...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...from each of their hospitals, the transplant hospitals in Lincoln and Omaha.

SENATOR VRTISKA: So how many of those people you just talked about would be eligible for assistance under this program and how many of them are already getting taken care of by Medicaid or partly by Medicare? That's...

SENATOR THOMPSON: Well, no one would be a hundred percent. These are just the people who need assistance with the 20 percent of Medicare or their insurance doesn't cover it, doesn't cover part of it, or the "copay". So maybe 200 out of the 550,

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and that's just a guess, 40 percent, 4...40 if you think the number is 550, and slightly less of their estimate. They said they're estimating 530 to 550 living Nebraskans with transplants.

SENATOR VRTISKA: Okay. Still have some unanswered questions, but thank you for your time.

PRESIDENT MAURSTAD: Thank you, Senator Vrtiska. Senator Hartnett, on advancement of LB 287.

SENATOR HARTNETT: Mr. President, members of the body, I'd like to give my time to Senator Beutler, if he would like it.

PRESIDENT MAURSTAD: Yield to Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Hartnett. Senator Thompson, I'd like to go back to the kind of fundamental conversation we were having about coverages and those kinds of things, because I think it's very hard to understand this issue unless everybody has straight in their mind the different categories, or at least it's hard for me, and I would like to say, by the by, that I very much appreciate the way you do your homework on the bills and all the information you have, not just on this bill but on...but on other bills, because it...if my questions could be as sophisticated as your answers it would be a faster and a lot more intelligent conversation. But I need to kind of plod through these things a little bit. But, all right, so we have Medicare taking care of people who are over 65 and people who are disabled, and we have an 80/20 split there, generally speaking, with a time limitation on...with respect to the drugs themselves, as to how long they will be provided. Now, under...I want to get clear, under Medicaid you still have some people that are covered there who are not disabled but who were simply poor, and is it an 80/20 split there also? Okay, what is the...what is the split under Medicaid? I'd yield to Senator Thompson.

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR THOMPSON: Under Medicaid, they're covered a hundred

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percent.

SENATOR BEUTLER: They're covered a hundred percent. And is there a time limit under Medicaid?

SENATOR THOMPSON: No.

SENATOR BEUTLER: There is no time limit. Okay. And then we have private insurance, and that's all over the place, I assume.

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Okay. Now, as far as the federal government is concerned, they're saying...they seem to be saying, with respect to people that are over 65 and disabled, to whom they supply the transplants, that you only need these drugs for a period of time--36 months, or you're saying maybe it's been extended a little bit for...for that category. So that gets me back to the fundamental question. How essential are these immunosuppressive drugs to transplants? Are they equally important to all different types of transplants, and are they a drug that medical...that the medical people say is necessary indefinitely into the future? If they do say that, why is the federal government limiting it in the case of Medicare, but in the case of Medicaid there's no limitation as to the time? Is that correct? Okay, I should have asked those to you one at a time, but if you can remember them...

SENATOR THOMPSON: I think I can remember them.

SENATOR BEUTLER: ...can you...can you enlighten us a little on those things.

SENATOR THOMPSON: Is it okay for me to go? Actually, that is the core of the issue. There are people who fall between the cracks in this arena and this is an issue that I came to, as a member of the Health and Human Services Committee. I also met a couple year...a year and a half ago with a group called the New Hearts and they are a group of transplant recipients. And individual people in the room shared some of their stories, but most of the people, you know, it's prairie pride or whatever,

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are kind of embarrassed to say that they've gone from, you know, an everyday normal life to this period of financial crisis. And because of the people who fall into this loophole category--the people who can't make the 20 percent or are going to have to reject the drug and get transplanted again, reject...if you don't take it and if you don't take the right amount, you risk the drug...or the organ being rejected. Some people do just like...we hear of stories of elderly people, don't take the right amount. They become sick and they may lose the transplant. They...also, another thing I heard is that when people die there's such a network of people who are facing these issues that they...and this isn't what they should do and it isn't condoned by anyone, but they'll take the medication that's left from the person who died and give it to another person to help them with their...spread out their medications and their costs. They...the people who work with these patients know that all this is going on and they see it as a terrible tragedy, but there...other states have dealt with this. One of them was telling me there was an older gentleman who wanted to move back to Nebraska.

PRESIDENT MAURSTAD: Time. Your light is one, Senator Beutler. You can continue please.

SENATOR BEUTLER: Please continue, Senator.

SENATOR THOMPSON: Wanted to move back to Nebraska to be close to his family, but our state doesn't have a way to assist with these costs so he's going to stay in Florida. So, you know, maybe that's a tragedy and maybe it isn't, but it's just another aspect of...of...by virtue of the fact that we aren't doing anything to help these people that are in these catch...little catchall situations that we have the sadness that's going on. And it's been building and other states have done it from day one through the renal program. We have never updated the drug formulary for the renal program.

SENATOR BEUTLER: I appreciate it. Thank you.

SENATOR THOMPSON: For...I'm sorry, I thought you were talking to me. We haven't updated the formulary. The intent of the

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Legislature when the original program passed was to cover these drugs, but when the newer drugs came on line they weren't added to the formulary, largely because, I know I'm using the word "capped" and that's not correct, but we put...the money has stayed the same for years in that program. Am I getting to your...answering your question?

SENATOR BEUTLER: Sure.

SENATOR THOMPSON: Okay.

SENATOR BEUTLER: Okay, let me go back and focus on the need for the drugs again so...so that that's clear to us. Do we need to distinguish between types of transplants with regard to the need for immunosuppressive drugs?

SENATOR THOMPSON: No, they all need the...

SENATOR BEUTLER: Okay.

SENATOR THOMPSON: ...drugs.

SENATOR BEUTLER: And is it...is it your understanding that these drugs are needed indefinitely into the future in every case?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: So that there's no point to having a big expensive transplant if you're not going to take the immunosuppressive drugs indefinitely into the future. Is that...

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: ...is that correct?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Then why would the federal government, under Medicare, limit it; pay for an expensive transplant and then

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limit the payments on...on the immunosuppressive drugs that are necessary to ensure the success of the transplant?

SENATOR THOMPSON: Well, that's the question that makes no sense to me. I have lots of articles with that challenge being made to the federal government and, as I've mentioned a couple...yesterday, when I first opened on this bill, I was going to not introduce this bill a year ago because I had seen so much discussion on it that I thought that something was going to happen, and it didn't. And what little happened only happened for people over 65. I suppose it's because of the cost. It is a policy that makes no sense as far as I'm concerned because what happens is they go back and they will pay for the transplant and they'll have to go back and be on the transplant list, and that happens. Obviously, only for a kidney, I mean, or if you're becoming ill, you could go back for another organ transplant, but I think it's more common with the kidney transplants, which there are more of.

SENATOR BEUTLER: Okay. So if the federal government should extend the...the 80/20 payment for Medicare, that still wouldn't take care of the entire problem from your point of view because of the 20 percent that they would still have to pay. Is that correct? Or is the federal government thinking of also addressing the...the 20 percent "copay" that currently exists?

SENATOR THOMPSON: I think the discussion, at least during the last presidential election, was dealing with that 20 percent on Medicare and prescription drug...greater prescription drug coverage, period. And then the other issue that was debated in Congress the end of last year dealt with the extension of the monies...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...but it didn't solve the whole problem. I'm hoping that will come back around. If that does happen, then this program then would only need to provide support for the people whose...have moderate and low incomes who can't afford...their own coverage is inadequate.

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SENATOR BEUTLER: Okay. So if that happened we wouldn't have to worry about Medicaid anymore.

SENATOR THOMPSON: We don't now.

SENATOR BEUTLER: We wouldn't have to worry about Medicare anymore, so all we'd have to worry about are the people who are neither over 65, not disabled, and not poor, and didn't have insurance, or had in...or had inadequate insurance in one respect or another.

SENATOR THOMPSON: Correct.

SENATOR BEUTLER: Okay. Under the bill, you indicate that if there is private insurance, getting over into that area, this program would not pay if the private insurance would pay.

PRESIDENT MAURSTAD: Time.

SENATOR BEUTLER: Right?

PRESIDENT MAURSTAD: Thank you, Senator Beutler. (Doctor of the day introduced.) Senator Thompson.

SENATOR THOMPSON: I'll yield my time to Senator Beutler.

PRESIDENT MAURSTAD: Senator Beutler.

SENATOR BEUTLER: Continuing our conversation, I wanted to get to that piece of the bill that says that this is the...that this program is a payer of last resort, which I assume you intend to mean that if the federal government pays we don't pay except what they may not pay, and if the federal government and/or private insurance pays we won't pay anything except what may be left over. Is that correct in terms of your intent?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Okay. What...what if the private insurance policy says we won't pay if anybody else will pay; that we're going to be a payer of last resort? How does that work in

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conjunction with this kind of provision? Who, in fact, is the payer of last resort? I mean, I suppose private insurance has a couple of possibilities. If we start a program, they may have a tendency to drop coverages, I suppose, on the one hand, or they may say...they may construct policies that say we'll only pay for these kinds of drugs if nobody else pays for them. Now, if they put...I can't remember what they call that kind of provision, but if they put that clause into the policy then does that negate the language you have in this bill that says we're going to pay last, since private insurance...I mean this is kind of a chicken and the egg thing and how does that...how does that work? Who, in fact, is the payer of last resort--the private insurer or us? I'd yield to Senator Thompson.

SENATOR THOMPSON: Okay.

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR THOMPSON: Thank you. The way it...

PRESIDENT MAURSTAD: It's her time.

SENATOR THOMPSON: ...works is...pardon me? Oh, okay.

PRESIDENT MAURSTAD: It was your time originally and you asked Senator Beutler a question,...

SENATOR THOMPSON: Oh, I'm sorry. I'm sorry, I'm all...

PRESIDENT MAURSTAD: ...so we just want to not be yielding back and forth here.

SENATOR THOMPSON: I've gotten all confused here with our time thing. This is regular insurance coverage for prescription drugs. It can come in two ways. One is you go in, you've got your prescription. If it's generic it's a \$10 "copay"; if it's a specific it's \$25. This is that "copay". So if the...the private health insurance would have to...in some fashion I guess it would bring me to the Insurance Committee if they started excluding immunosuppressive drugs, but currently they don't. And so it's just part of your regular coverage costs that you

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have in your policy and if you have a policy that caps the amount you can spend per year for prescriptions or something of that nature, and I've never had one of those so I don't know how they exactly operate, or in the case I gave yesterday of the farm couple who couldn't get insurance because the group that they were in was dissolved and the insurance they were able to obtain didn't have any prescription coverage, it's those areas. Now, I don't know, I may have to ask Senator Landis about that, but I don't see that as something...I've talked to a lot of transplanted persons and asked them specifically how their insurance coverage is going and, to be honest with you, it depends on the employer. I've asked state employees. They aren't having issues. I have a lot of military people in my community. I talked to one of those men who had his...he's a retiree and he has very good coverage. It depends on who your employer is and how they've negotiated the policy, but I don't know, I suppose that could happen, but I don't think we've put enough money in this to be able to make it so that that would be a good...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...negotiation. This is only for a percent. But I suppose...if that happens I'll be the first person to fight that, or the second or third maybe, but at least I'll be at the head of the line.

PRESIDENT MAURSTAD: Thank you, Senator Thompson. Senator Hartnett, your light is on next.

SENATOR HARTNETT: Mr. President, if I could give...if Senator Beutler would want more time, would like to yield my time to Senator Beutler.

PRESIDENT MAURSTAD: Senator Beutler.

SENATOR BEUTLER: Thank you again, Senator Hartnett. Senator Landis, maybe...maybe you could help us out in this conversation a little bit at this point in time because there are some things in this area that I...that I really am concerned about and I would like to know what the...some of the relationships are

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here. If I could ask you a couple of questions.

PRESIDENT MAURSTAD: Senator Landis, would you respond?

SENATOR LANDIS: I'd suggest that you ask the questions. I'll make some notes and I will respond, but I'm...it might take me a moment.

SENATOR BEUTLER: Yeah. No, I realize I'm catching you in a way that I would like not to be caught (laugh) with some perhaps complex questions that...that it wouldn't be fair to you to...I wouldn't expect you to know the answer off the top of your head. But here's what I'm trying to get at with Senator Thompson, for one thing. I want to know kind of what's going to be the effect of insurance...on insurance of our doing this, especially if we should expand it from a \$250,000 program to a considerably larger one as the...as the phenomena of transplants spreads and increases, which I imagine it will given the technologies that are evolving. You may remember the name of the clause that insurance insurers put into their policies that essentially try to ensure that they are a payer of last resort; that is that if the federal government or the state government or anybody else has a program that reimburses consumers for particular costs then...then it says their policy will not cover it. Senator Thompson is attempting to put into this bill a provision that says if anybody else pays for this we won't cover it. So my hang-up here is, who is really the payer of last resort if we pass this bill? Is it going to be the insurance company that has this sort of clause in their policy? And I'm...I'm assuming they will all have it if they don't have it already if the states are going to put in place programs like this because they will try to make the state pay first. And it seems to me that as this conversation evolves it's not Medicare and Medicaid that we're really going to be concerned with here in a few years. It's just going to be the private insurers. So it seems to me that perhaps the focus of the conversation should be the relationship of this program and what's going on to private insurance. So if you...if you have an opinion about the paradox, in my mind, of who is the insurer of last resort here if we pass this bill, I would be interested in that opinion, for openers. And I'd yield my time to Senator Landis.

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PRESIDENT MAURSTAD: Senator Landis.

SENATOR LANDIS: Yeah, I'm not sure of the answer. I'll give you what I know off the top of my head and I'll see if I can do better for you over time. The clause I'm most familiar with in insurance policies is not the clause that you cite and I...I've got to tell you that if it exists I'm not sure that I've seen it and I'll ask about it, see if it's common. The one that I do know that does exist is one which if there is another payer that there are insurance contracts and clauses that say you don't have to be paid twice; even though you can recover under our policy, if you're recovering some other place we are not promising you a second payment just because you're insured. Now that clause is relatively common.

PRESIDENT MAURSTAD: One minute.

SENATOR LANDIS: But that clause would, I think, serve to make the...I think we'd still be okay with Senator Thompson's bill because, if I understand Senator Thompson's bill, there are not going to be two payments. There's going to be one payment and that's only if insurance doesn't cover it. But with respect to the clause that you cited, I don't know the answer to that and I'll see if I can find out.

SENATOR BEUTLER: There's another question I would like to address to Senator Landis, which is broader in scope, but I think with one minute I'll leave off for the moment and use my time, if I have more time, Mr. Lieutenant Governor, at that time.

PRESIDENT MAURSTAD: Fifteen seconds. Thank you, Senator Beutler. Your...you've expended your three opportunities. Senator Thompson.

SENATOR THOMPSON: (Microphone malfunction) the body I passed out from the Department of Health their rules and regs on the Renal Center, just to...so you can see how it's done, and the third party payer issue is on page 10 and it says the department shall not pay for any patient care or treatment to the extent

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that assistance is available through other sources, public or private, or that third-party payers are required to provide the same. So that's kind of how we get to that, and I'd certainly be happy to work with Senator Beutler, if this bill moves to Select File, to address any concerns he may have with the structure of the bill to make sure that that's what we're doing. And...oh, there you are. Senator Beutler, I'll yield the rest of my time to you if you have more questions.

PRESIDENT MAURSTAD: Senator Beutler.

SENATOR BEUTLER: I...Senator Landis must have stepped out, so I'll move on to another area, Senator Thompson, and continue the dialogue with you, if that would be appropriate. And on page 2 of the bill, Section 3, and this is getting into an issue that was raised by Senator Vrtiska which was also an area of interest to me, but it says that you will reimburse the organ transplant recipient who's eligible for part of the costs, and that's all it says, is a part of the cost of the immunosuppressive drugs. Just thinking about it offhand, I could think of three ways you could probably do this. First of all, I assume that it's not entitlement and that whatever money we appropriate, that's the body of money that's available for allocation. That's...that's correct, right, to start with?

SENATOR THOMPSON: (Microphone malfunction) Yes.

SENATOR BEUTLER: I'd yield...

PRESIDENT MAURSTAD: Senator Thompson.

SENATOR BEUTLER: ...my time...

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Okay. Now, starting with that fact, you could do a couple of three things. First of all, you could just say first come, first serve, whatever amount of money they needed, or you could prorate based, I suppose, on some kind of determination at...towards the end of the year of how many applicants you've had and...and reimburse them through some sort

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of proration process. And I suppose a subcategory and third way of the proration process is to say that we will prorate in accordance with your particular individual costs. In other words, there may be some who have no insurance, no "copay". I mean it's...I suppose it's possible, although the number of cases out there hopefully would be small, I suppose it's possible that there's people out there who would be required to pay the entire cost of the drugs. Is that...that's conceivable in some cases I suppose.

SENATOR THOMPSON: Yes, in fact, at one of the meetings I had just before Christmastime there was a person who had switched jobs and was, as you do when you switch jobs, had several months before...

SENATOR BEUTLER: Right.

SENATOR THOMPSON: ...they could...she could come on insurance and hadn't anticipated...well, I guess she had anticipated but was under tremendous financial hardship to be able to go for six months before she could get on that just to make a career change.

SENATOR BEUTLER: Okay. So if it's...if it's...let's say you have two persons out there. One...

PRESIDENT MAURSTAD: One minute.

SENATOR BEUTLER: ...one has these \$2,000 costs they need to pay. Another, because of "copay" or whatever, has \$400. So if you...if you do first come, first serve, who knows which one would get paid and might not get paid? If you do proration based on the number of recipients, then the one who pays...has to pay \$2,000 isn't getting nearly as much help as the one who gets...who is paying \$400. If you do proration based on the cost to the individual, then the one who has to pay \$2,000 would get a lot more under that system. It seems to me that perhaps there ought to be some direction to the department as to which of these three systems should be used and I guess my question would be...

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PRESIDENT MAURSTAD: Time. Thank you, Senator Thompson, Senator Beutler. Mr. Clerk, I understand you have an item on the desk.

ASSISTANT CLERK: Mr. President, Senator Beutler would move to amend. (FA83, Legislative Journal page 837.)

PRESIDENT MAURSTAD: Senator Beutler, you're recognized to open on your amendment to LB 287.

SENATOR BEUTLER: Mr. Lieutenant Governor, the amendment applies to the intent section of the statutes and for the...for the moment I think I'll reserve an explanation of it and continue my dialogue with Senator Thompson, if I may.

PRESIDENT MAURSTAD: Senator Thompson, would you respond?

SENATOR THOMPSON: Yes. Do you want me to respond to what you said or...

SENATOR BEUTLER: Yeah. Well, backing up just a little bit, under...let me back up a little bit just to be sure we all have a correct understanding of what exists today. Apparently, there is a program today related to kidney dialysis and transplantation. Is that right?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Okay. I didn't see that you were repealing any statutes here, so am I to assume that that program is by rule and reg some place in the department, or federally funded, or what?

SENATOR THOMPSON: That's state funded and it's...I have a copy of the statute, but what this creates is another program. The department would run this program. They could choose to run it along with the other program, but it isn't commingled funds. And the...

SENATOR BEUTLER: Well, so...

SENATOR THOMPSON: ...the only drug, transplant drug,

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that's...the transplant drugs that were covered originally in the formulary are some that are used somewhat, but they are not the new version of the more effective drug, so they're...

SENATOR BEUTLER: Well, okay.

SENATOR THOMPSON: ...inexpensive and they may cover a little bit of that but, generally speaking, you could say that the lion's share of that goes for kidney dialysis.

SENATOR BEUTLER: Okay. Well...well, let me then back up a little bit more and ask you, the language of this bill apparently covers all immunosuppressive drugs and it covers everything related to the kidney specifically.

SENATOR THOMPSON: And heart, lung, liver.

SENATOR BEUTLER: Right. And so if we already have a kidney program, doesn't it make sense to be sure to integrate those two programs so we're not dealing with immunosuppressive drugs in two different programs?

SENATOR THOMPSON: It's my understanding the department will be doing that.

SENATOR BEUTLER: Is there...is there any logic or validity to being sure the department does that by addressing the statutes that now apply to the existing program?

SENATOR THOMPSON: I believe that that's an executive branch decision of management of personnel, and what it...in putting the bill together, we made, the group of people that did that, made the decision to create this as a program so that this money would be directed to post-organ transplant issues and wouldn't get into the issue of that money being used to be added to for dialysis. And, you know, as Senator Vrtiska says, we're...it's not enough for all things for all people, but this...purpose of this bill is to address this segment, period. And I don't...

SENATOR BEUTLER: Okay.

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SENATOR THOMPSON: ...know that the other is used very much because these are fairly inexpensive drugs in the formulary that are not the kinds of things that people need nowadays for the transplants that are cadaveric or "nonperfect" match transplants.

SENATOR BEUTLER: Well, let me ask you this.

SENATOR THOMPSON: But the language may be there...the formulary may have some of those still on it, but the...it's primarily or the lion's share, and I'd have to check and see if they're paying those at all for post-transplant, but it's going for the dialysis patients.

SENATOR BEUTLER: Okay. With respect to the language in this current bill, obviously, in that formulary they could pick up all of those immunosuppressive drugs that are currently being handled under the current program, right? I mean there's authority here to do that.

SENATOR THOMPSON: If the formulary were required to be updated. This...

SENATOR BEUTLER: Okay.

SENATOR THOMPSON: ...this bill...

SENATOR BEUTLER: And the answer to that is...

SENATOR THOMPSON: ...requires them to (inaudible)...

SENATOR BEUTLER: ...and the answer to that is yes, right?

SENATOR THOMPSON: But we'd have to change it and make it a program to cover other organs other than kidney.

SENATOR BEUTLER: Sure. Well, let me go back again a half a step here. Under the...under the current kidney dialysis and transplantation program, are there amounts of money that are currently set aside for dialysis and a separate amount of money set aside for immunosuppressive drugs under that bill...under

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that program?

SENATOR THOMPSON: No. It's by formulary, so if it's on the formulary, if you meet the requirement and they have the money available, you can apply for reimbursement.

SENATOR BEUTLER: Okay. So if we...

SENATOR THOMPSON: Or payment to your...or payment to your provider.

SENATOR BEUTLER: ...if we pass this program then if you're a kidney transplant patient you could legally apply for reimbursement both under that program and under this program. Is that...is that accurate?

SENATOR THOMPSON: Only for the drugs in the formulary of the other program.

SENATOR BEUTLER: The formulary of the existing program?

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: Okay.

SENATOR THOMPSON: Of which there is one, I think, but I...I can find that out for you.

SENATOR BEUTLER: The...the drugs that are included in the current program for the kidney transplants, will they be included in the new formulary of this bill?

SENATOR THOMPSON: Sorry. I'm sorry. I was trying to get the answer but I just didn't realize my aide can't use the phone in the...here.

SENATOR BEUTLER: Yeah. Well, the question was whether the kidney immunosuppressive drugs that are included in the current program, whether those will be listed and included in the updated formulary of this new bill.

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SENATOR THOMPSON: If they're used. It would be up to the department to establish the formulary and it's...

SENATOR BEUTLER: Okay. Well, I suppose that's one area...

SENATOR THOMPSON: ...I'm just trying to find (inaudible).

SENATOR BEUTLER: ...of the bill I'd like to talk about off the floor some time or between now...

SENATOR THOMPSON: Yeah, I...

SENATOR BEUTLER: ...and Select File, because I didn't...

SENATOR THOMPSON: The other program is not used for this purpose. It's primar...it's used for dialysis because...

SENATOR BEUTLER: No expenditures are being made for immunosuppressive drugs...

SENATOR THOMPSON: Well, some of those...

SENATOR BEUTLER: ...in that program?

SENATOR THOMPSON: It's a common drug. I'll have to...I'll have to...I...I am talking without knowledge at this point. (Laugh)

SENATOR BEUTLER: Okay. Well, let's...let's...

SENATOR THOMPSON: Well, I think I know, but I don't know for sure.

SENATOR BEUTLER: That's fine. Let's...let's move back to where I was trying to get to with this...with...in this area anyway, and we're back to whether we should give direction to the Department of Health and Human Services with regard to proration, first come, first serve, or a variation of proration relating to the cost of the individual customer or client or consumer. And under the existing program, the kidney program, what, with respect to the payment for immunosuppressive drugs, which of these systems do they use there? Is it first time,

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first serve, or proration, or some variation of proration? Do you know?

SENATOR THOMPSON: I think people submit their bills throughout the year and sometimes they have enough to cover the year and sometimes they don't, and when they don't then they don't cover those. They may try to carry them over to the next year. The person may have to wait a few months to be able to be reimbursed. Or they may not be able to take any more applications. And maybe what would be best, and I don't want to cut off your discussion here, but because I am...I don't have this information with me and I would like to be able to...to get that information for you specifically on the renal program so that you have that information, if...if you wouldn't mind...

SENATOR BEUTLER: That's...that's fine.

SENATOR THOMPSON: ...doing that before Select File.

SENATOR BEUTLER: That's fine.

SENATOR THOMPSON: And the other thing I will offer to do too that we didn't have time between yesterday and today is we will call the other states. We have their laws and you have a copy of those,...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...the way they're written, and, as you can see, they're very similar to what we wrote, but we can find out in practicality what they are covering and how they do it. Because their situations would certainly be similar to ours.

SENATOR BEUTLER: Okay. I'll wait till my...my next time here.

PRESIDENT MAURSTAD: Thank you, Senator Beutler. Senator Beutler just opened on the Beutler amendment to LB 287. Senator Janssen.

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. I have a particular interest in this piece of

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legislation for the simple fact that I may have to use it some day. The last 40 years I've been running around with one kidney and if that baby every quits working, why, I'm going to be shopping around for a replacement for that...for that kidney, and I can see where this would be...and I'm not sure what...what my insurance, how that would...how it would affect me. With that, I give the rest of my time to Senator Beutler.

PRESIDENT MAURSTAD: Senator Beutler.

SENATOR BEUTLER: Senator Janssen, thank you. Thank you very much. Senator Thompson, let me...let me get into and ask you a couple of questions related to a general...the general philosophic thrust of something like this, and this is underlying some of my apprehension about this type of bill, and I guess it is a kind of equity question of sorts. Catastrophic events in the life of a family, you know, we all shake our heads and hope it's never us and have enormous sympathy for those situations where families are reduced financially because of disease, whether it's a transplant need of some sort, whether it's cancer, whether it's a bolt of lightning, literally, out of the sky that...that takes away a person...disables a person, makes them incapable of supporting their family at the same level. Perhaps it's an automobile accident with a drunken driver. There are, unfortunately, a broad variety of catastrophic events that can reduce each one of us here on any particular day to the lower classes economically, even down to the Medicaid level. We're all, most of us, are only two or three paychecks away from that and I think we all understand and feel the need for some sort of safety net for those situations. But here's what troubles me. When I approach this whole thing philosophically I guess I try to start with the people who suffer the greatest catastrophe in terms of being completely reduced to a poverty level, and then I try to look at all of those different kinds of people regardless of the nature of their particular catastrophe equally. And then I ask myself, okay, in the...in terms of these transplants, we're reaching out and helping people because this event has been so catastrophic and it's difficult and financially disastrous, but how about the person who's been struck by a bolt of lightning or involved...or, more commonly, involved in a automobile accident

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that results in permanent disability, or is going through a long series of expensive cancer treatments? Tell me a little bit about why we should pick out this area...

PRESIDENT MAURSTAD: One minute.

SENATOR THOMPSON: ...and treat them differently and better than other areas of catastrophic disaster for families. And let me...let me preface that by saying one more thing. I mean, when I look at something like a federal prescription drug program which would apply to expensive drug treatments of all different kinds of situations, I feel a little more comfortable with that in terms of the equity of treatment of people than I do with something like this that says, basically, we're going to have a state prescription drug program for this one kind of drug--immunosuppressive drugs for transplant patients--and we're not going to have a state prescription drug program for other things that are equally catastrophic perhaps for the people involved.

PRESIDENT MAURSTAD: Time.

SENATOR BEUTLER: How...

PRESIDENT MAURSTAD: Thank you, Senator Beutler. Senator Vrtiska, on the Beutler amendment.

SENATOR VRTISKA: Thank you, Mr. President, members of the body, and some of the things that Senator Beutler has been talking about are some of the problems that I have. You know, it's really difficult to stand on the floor and talk negatively or against a program that certainly has a benefit to a great many people, but one of the problems we have is expressed by Senator Beutler insofar as where do we start and where do we stop; who do we think is more important than somebody else and how do we make that determination on these programs? I would like to ask Senator Thompson a question, if I might.

PRESIDENT MAURSTAD: Senator Thompson, would you respond to a question?

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SENATOR THOMPSON: I'm sorry, I was talking to Senator Beutler off the floor, so I have to ask you to repeat your question.

SENATOR VRTISKA: Well, I haven't asked the question yet. I just...

SENATOR THOMPSON: Oh.

SENATOR VRTISKA: ...wondered if I could ask you a question.

SENATOR THOMPSON: Oh, well, then I missed nothing. Pardon me.

SENATOR VRTISKA: My question is rather...I guess it...maybe it's not...maybe it's not very...even a very intelligent question. But the thought came to me as you...as we talk about this and we talk about the help that we are trying to provide people who have a certain type of disease, would it...would it seem practical or possible that maybe some people who could afford insurance might decide that they don't need to take it because, in fact, they can get help somewhere else? I mean, I'm trying to decide...there are, obviously, people who carry the kind of insurance they need, and then there are those people who can't afford it, and then those people who can't afford it, as I understand it, can get Medicaid and can, in fact, get some assistance. So where do we fit this program in between all those places? Do we take people who are wealthy enough, who decide to drop their insurance and maybe decide that this program will take care of them if they, in fact, feel that they will need at some time a transplant and somebody to help pay the costs?

SENATOR THOMPSON: This program only covers the costs of the immunosuppressive drugs. If they would drop their insurance they would have to pick up all their other costs of doctors appointments and other family, if it's a family, other family visits. So I don't see that...any advantage to dropping your insurance that might cover a surgery or some other disease you might contract.

SENATOR VRTISKA: Okay.

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SENATOR THOMPSON: There would be...I don't see an advantage to just being able to pick up part of a "copay" cost.

SENATOR VRTISKA: Okay. I understand and I expected that to be your answer, but I just wanted to let the record be clear. You made a statement that I thought was needed to be explored just a little bit when you said that I said will this...should this be...cover everybody.

SENATOR THOMPSON: Um-hum.

SENATOR VRTISKA: Instead of being capped at \$250,000, should it be \$1 million? Should it be \$2 million? And I think you answered it, part of that, by saying you actually wanted this to come in bigger than it was but you didn't think you could pass it at a higher rate. Is that correct?

SENATOR THOMPSON: Well, I have a number of things that I think we, as a Legislature, need to address and I discussed it with the people who helped write the bill and we felt this would be needed relief for a lot of Nebraskans. It's like everything else we do here. You can't...we can't be everything to all people necessarily, but we're one of the few states that isn't doing anything.

SENATOR VRTISKA: But, in fact, we're not going to be anything to some people the way the program is set up. Because those people...

SENATOR THOMPSON: What I'm going to do...

SENATOR VRTISKA: ...who come in too late are not going to be able...

SENATOR THOMPSON: Right.

SENATOR VRTISKA: ...to get any help at all.

SENATOR THOMPSON: I need to sit down between now and Select File, if we move this, and...and get the details of how the renal program is...

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...administered that would be similar and then I can answer your question a little better, but...

SENATOR VRTISKA: As I indicated earlier and when I started this, it's difficult to stand up and to be negative about a program that's going to help somebody who may need help, but right now, until I get some answers to some of those questions, I can't support this bill and I...that's kind of where I'm at. I'd like to have answers to some of these questions that I think are...are being left open right now and I don't know that you can do anything about it except that I would like to be able to have some answers to some of the questions Senator Beutler and Senator Wehrbein and myself have been asking, because I think it is important to know where the money is going to come from and how much it's ultimately going to cost if, in fact, we decide to go to a program that covers everybody with every expense they have in this...in this type of providing this kind of medication. So that's kind of where I'm at. Thank you.

SENATOR CUDABACK: Time, Senator Vrtiska. Thank you, Senator Vrtiska. Senator Beutler, on the Beutler amendment to LB 287.

SENATOR BEUTLER: Senator Thompson, if we could just pick up where we...where we left off before,...

SENATOR CUDABACK: Would you yield, Senator Thompson?

SENATOR BEUTLER: ...I'd...

SENATOR THOMPSON: Yes.

SENATOR BEUTLER: ...like to restate as briefly as I can the general conceptual question that I would be interested in your reply to, and that, again, is the question of why, in a world of a variety of catastrophic events, do we single out these particular victims for special help when we don't have enough

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money to help everybody, although over time we are making progress, I hope, in the direction of helping all who are caught in these sorts of family dilemmas. But why should we do this as opposed to, for example, instituting a general state prescription drug program which perhaps would deal with people in...involved in catastrophic events in a more equal sort of way, rather than picking and choosing some and even allowing those few to benefit notwithstanding the fact that they could conceivably be very wealthy under this bill? That would be my question.

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: Thank you. It was the intent of a previous Legislature to do this and, at that point in the history of transplantation, kidneys were what were transplanted. And at that time the antirejection drugs were listed and I just received information that there are two antirejection drugs covered but they are very old ones and they are used by very few people. So I would say that...that has...this isn't new. This is just bringing old legislative intent to the modern day and that it should have been done probably years ago. I don't want to get into a debate over...and I know Senator Beutler has a point here of, well, shall we do this, shall we do teacher salary, shall we take care of those people because they have financial need? I think the issue here is that this is a...a problem that has been brought to our attention. It isn't unique that we deal with this. We are not the first Legislature to deal with this. As you can see from the handout, a lot of legislatures have picked this up and seen this as an area where there is need. So, shall we copy everybody else? Is that a reason to do things? No. But here is what is happening, because people can't afford this coverage, they don't take enough of it, and some people actually are known to just choose to die, and that's because they don't want to impoverish their family; they are under tremendous stress and depression because of this particular illness and what it brought onto them. Why should we take this up? Because that's our responsibility as a Legislature. Our responsibility is to come together, to do things for people that have, through no harm of...harmful thing on their own, have come to this circumstance. And we do it for

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lots and lots of groups. And it may not be meted out equally everywhere, but it is a good public policy...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...position to do. We shouldn't tell our fellow Nebraskans that we aren't willing to take this amount of money to help make sure that families aren't under this kind of stress, that only the rich can afford to do it and only the poor can afford to do it. Our policy should be directed at everyone, and this goes to the middle class and the working poor. That's who has the financial problem because of this, and it's not fair. And I believe it's time as a Legislature we take this up. It's been the intent for a long time or of a previous Legislature, we're not going that far afield, we're just modernizing the language and putting in a formulary, the drugs that need to be there, so that transplantation can't be only an option to the rich and the very poor. This is to let the middle class people and people who are lower income working class people be able to consider transplantation.

SENATOR CUDABACK: Time.

SENATOR THOMPSON: And once they've been transplanted, to be able to...

SENATOR CUDABACK: Senator Thompson, your light is next, so you may continue, if you wish.

SENATOR THOMPSON: ...so that they are able to stay healthy and keep their transplant healthy. And can I just have one second here? They...we just talked to the renal program, to ask how they...and I don't know if Senator Vrtiska is on the floor, I know this is one of his questions, they cut back and spread it out and make the fund work, as best they can with the amount they have. And so not everyone would be covered for everything, but they make it as equitable as they can. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Beutler, there are no further lights on. Did you wish to close, or...

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SENATOR BEUTLER: Senator Cudaback, members of the Legislature, Senator Thompson, thank you for all the time and for all the answers. At least for me, it's made this bill much, much clearer, both in terms of what it actually does and its relationship to many other things that we try to do. I think there are aspects of this bill that could be improved. I have mixed feelings about the general philosophic approach to...that this represents, but I'm certainly willing to see what may evolve on this before Select File. And I hope the body will advance it to Select File. And, with that, I would withdraw the amendment which was offered only for the purpose of being sure there was plenty of time to discuss the issue. Thank you.

SENATOR CUDABACK: The amendment is withdrawn. Mr. Clerk, is there anything else on the bill?

CLERK: I have nothing further on the bill, Mr. President.

SENATOR CUDABACK: There are no lights on, Senator Thompson. Did you wish to close on the bill? There are no further lights...the motion...

SENATOR THOMPSON: I would just urge your support of the bill. I think it's a way to address a problem that occurs for people in the state who are moderate and low-income people, working people, people who want to work. They shouldn't be put in a position where they can't get some kind of assistance so that they can work, they can be healthy, and they can lead happier, healthy lives. This is a small way to help, but a good step in helping those folks. And certainly we'll work with Senator Beutler and Senator Vrtiska, before Select File, to see if there are ways that we can direct the funds more clearly. I'll work with the department on language that may be workable for them. And, with that, I would just urge you to move this to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. You've heard the closing on the advancement of LB 287. Senator Thompson, the question is before the body, shall LB 287 be advanced to E & R Initial? All in favor vote aye, opposed nay. We are voting on

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the advancement of LB 287 to E & R Initial. We are voting on the advancement of LB 287. Have you all voted who care to? Senator Thompson.

SENATOR THOMPSON: I would ask for a call of the house, please.

SENATOR CUDABACK: There's been a request for a call of the house. All in favor of the house going under call vote aye, opposed nay. Record, please, Mr. Clerk.

CLERK: 17 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor, and unexcused senators please report to the Chamber. The house is under call. Senator Foley, would you check in, please. Senator Bourne, Senator Bruning, the house is under call. Senator Maxwell. Senator Robak, would you please check in. Thank you. We're looking for Senator Redfield. Senator Suttle, would you please report to the Chamber; the house is under call. Senator Kremer. Senator Kremer. The house is under call. Would you please check in, Senator Kremer. Senator Thompson, all present or accounted for; how did you wish to proceed? Roll call vote has been requested. Mr. Clerk, call the roll.

CLERK: (Roll call vote taken, Legislative Journal pages 837-838.) 24 ayes, 13 nays, Mr. President, on the advancement.

SENATOR CUDABACK: The bill does not advance. Mr. Clerk, next agenda item. I do raise the call. Items for the record, Mr. Clerk?

CLERK: Thank you, Mr. President. Senator Brown would like to designate LB 113 as her priority bill; Senator Wehrbein, LB 523 as his priority bill for the session. Senator Cudaback offers LB 163A. (Read by title for the first time.) Senator Landis, an amendment to LB 55; Senator Kristensen, LB 170 to be printed. (Legislative Journal pages 838-843.)

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Mr. President, the next bill is LB 227 by Senator Thompson.

SENATOR CUDABACK: Senator Thompson, you're recognized to open on LB 227. I'm sorry.

CLERK: (Read title.) The bill was introduced on January 5, referred to the Health Committee, advanced to General File. I do have committee amendments. (AM0166, Legislative Journal page 525.)

SENATOR CUDABACK: Now, Senator Thompson, you're recognized to open on LB 277...LB 227, excuse me.

SENATOR THOMPSON: Thank you, thank you, Mr. President, members of the body. LB 227 is similar to the bill that was brought before you last year. It was introduced to you three years ago, the previous session. The difference between that bill and this bill, essentially, is two things. One is the previous bill had some language dealing with the Clean Indoor Air Act and updates from when it was originally passed in 1979, as well as the ban on smoking in restaurants. This bill is just the restaurant smoking ban. The other bill is coming up later. And last year I kind of had regrets that I hadn't split them, because I thought maybe it would be easier to get the other bill passed alone. So, rather than drag the issue or spread out the issue too far, I split the bill. The only other new aspect to this bill is that it has a clause that allows local ordinances in cities or counties, or actually cities to be able to...to be able to pass more restrictive law than what we do at the state level. So this is a basic level of law that would prohibit smoking in restaurants, unless the restaurant has a separate bar area where people could dine and smoke if the area is separated. Smoking remains permitted in bars, and bars itself more alcohol and receive more sales revenue from alcohol beverages. Alcoholic beverages and receipts from entertainment and dancing would be considered a bar by definition under this bill. And, well, it may still serve food, but it wouldn't be under this bill. If a restaurant has a private party room and wanted to have that party room designated possibly for smoking, they could do so, but that would be up to the owner whether they would allow people who rent the room to make that decision. And

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that's essentially the bill, and now I'll kind of get into the meat of why I brought this bill and why I think it's important. I came to this issue from a public health perspective. Looking at the fact that Nebraska's Clean Indoor Air Act was passed almost 20 years ago and was a great step forward at that time, we know so much more about environmental tobacco smoke today and we know about its impact on people. I've chosen to focus on restaurants, because restaurants are a very public place. It's one of the last places where the general public is exposed to smoke. I didn't include bars in the bill because in my view the bars are not as public a place, but that...I wanted to direct this effort toward places where families go. So this is directed toward family restaurants, and it's where the public goes. According to the Restaurant Association web site, almost half of all adults were restaurant patrons on a typical day during 1998. We also know that Americans are eating out more often, according to a study from the Department of Agriculture. We eat out twice as often as we did in the seventies. When I was growing up, we went out to eat on...maybe after church on Sunday and maybe for a birthday, but we weren't out every day like our new society is where we are part of the eating out generation. And families spend time together eating out, and they aren't able to protect themselves from environmental tobacco smoke as long as we allow smoking to be retained in restaurants. On the sheet that I've handed out to you, it's the bright pink one so you can find it on your desks today, I have excerpts from a number of fact sheets dealing with secondhand smoke. And I'm just going to cite one thing from each fact sheet because I believe one of the things we should not lose sight of is this bill comes to you because of a health issue. This is secondhand smoke, environmental tobacco smoke, referred to in both ways on these documents, but it does impact nonsmokers. From the fact sheet, from the U.S. Department of Health and Human Services, Public Health Service Center for Disease Control and Prevention, workers exposed to secondhand smoke on the job are 34 percent more likely to get lung cancer. Nonsmokers exposed to cigarette smoke have in the body fluids significant amounts of nicotine, carbon monoxide and other evidence of secondhand smoke. Excerpts from the American Lung Association facts sheet: Involuntary smoking has many nonfatal but important effects. Breathing secondhand smoke makes eyes

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and noses burn and could cause headaches and nausea in nonsmokers. From the excerpts from secondhand smoke, the American Cancer Society: Secondhand smoke increases the number of asthma attacks and the severity of asthma in about 20 percent of this countries 2 to 5 million asthmatic children. And Nebraska has a very high percentage of children with asthma, it's 10 percent. And I will also be passing out to you, as debate goes on with this bill, a discussion of asthma in Nebraska and the number of people I've heard from who can't go to a restaurant or can't take children to a restaurant because of a risk of an asthma attack or a response to secondhand smoke. From the American Heart Association "Heart and Stroke Guide": A January 1991 report published in circulation, an American Heart Association scientific journal cited a set of epidemiological studies linking heart disease with passive exposure to tobacco smoke. The report concluded that exposure to environmental tobacco smoking causes about ten times as many deaths from health and blood vessel diseases as it does from cancer. We know that environmental tobacco smoke impacts children. It causes runny noses and stomach upset and a number of other symptoms. So why do we continue to permit it in our very public places and our restaurants? Well, for one thing, as you have all heard in hour debate on this issue, it's a question of should the government be involved, should the government regulate, should the government tell a private business owner what he or she cannot do? These are the same arguments that were made in 1979 against the original Clean Indoor Air Act requiring a business to set aside a nonsmoking area. And so the arguments from 20 years ago and the arguments today, and the arguments we'll probably hear in this debate are going to come down to the same issues--what is appropriate for us as a government to do in promoting public health and in protecting the public and what isn't? I have one document I'd just like to show; I didn't Xerox, because you're going to get lots of material from me before we're done. But this is just the regulation on restaurants from the Department of Agriculture. And there are in this document over 80 pages, single-spaced, of regulations on restaurants. That isn't to say that we need to over regulate, but those are the decisions that we have already made in terms of regulation. This is a bill that I bring because I think it's better for families in Nebraska, it's

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better for people in Nebraska, it's healthier for people in Nebraska to not have to be impacted by environmental tobacco smoke. Environmental tobacco smoke, by definition, is the smoke exhaled by a smoker, but it's also the smoke that comes off the tip of the cigarette that's unfiltered and, as a result, has many toxins that are spread throughout the atmosphere that aren't necessarily inhaled by the smoker. And you can't necessarily see environment tobacco smoke; you can see smoke, but there are particulates and other aspects to environmental tobacco smoke...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...that spread throughout the atmosphere. And I'm going to just give you some information on environmental tobacco smoke, so that we all know what we're talking about when we discuss this bill. Secondhand smoke is the smoke from the burning end of a cigarette and the smoke exhaled by the person smoking. Secondhand smoke contains more cancer-causing chemicals than smoke inhaled directly by the smoker. These include twice as much tar, three times more nicotine, five times more carbon monoxide. Secondhand smoke is more toxic because it is not filtered through the unburned tobacco remaining in the cigarette or through the cigarette filter, if there is one. People who breathe secondhand smoke absorb these dangerous elements, just as people who do smoke. The amount absorbed depends on the length of exposure and the room's ventilation. Both the Environmental Protection Agency and the Surgeon General state that secondhand smoke causes the following health problems for people who do not smoke, and I know I'm running out of time,...

SENATOR CUDABACK: Time.

SENATOR THOMPSON: ...but I'll bring these up later. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. (Visitors introduced.) Senator Jensen, Chairman of Health and Human Services, you're recognized to open on the committee amendments to LB 227.

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SENATOR JENSEN: Thank you, Mr. President, members of the body. The committee amendment is simple. As Senator Thompson has already explained, LB 227 prohibits smoking in an enclosed, indoor area of a restaurant. One exception provided by that prohibition in the bill is a restaurant that has a Class C(1) or M liquor license and the full-service area of the restaurant designated as a smoking area is separate from the nonsmoking area of the restaurant. The committee amendment, AM0166, offered to the committee by Senator Thompson, tightens that exception up by requiring that the smoking area also has to be separately enclosed and ventilated. That includes...or that will conclude the opening on the committee amendment, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. For discussion on the committee amendments, Senator Smith.

SENATOR SMITH: Thank you, Mr. President, members. I...if Senator Jensen would yield to questions regarding the amendment.

SENATOR CUDABACK: Senator Jensen, would you yield, please?

SENATOR JENSEN: Yes.

SENATOR SMITH: Now, with the separately enclosed and ventilated facility, so how...how stringent would be separately enclosed? Must there be a door, must there be an entirely separate heating ventilation and cooling system? How...how would that be judged?

SENATOR JENSEN: In the amendment, the type of enclosure is not spelled out. I would assume that it would be either glass enclosed or a wall. But the whole purpose is to separately ventilate the area and not allow that smoke from the smoking area to penetrate the nonsmoking area.

SENATOR SMITH: Okay, thank you. I would rise, I guess, to support the amendment to further clarify the term "separate", as originally included in the bill; however, I would say that there is still some undefined terms here that we want to put into statute and, for that purpose, I would still raise questions. I think it's headed in the right direction, but I will reserve the

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rest of my comments and concerns for the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Thompson, the committee amendments to LB 227.

SENATOR THOMPSON: Thank you, Mr. Speaker. I just wanted to explain where this amendment came from. This is different from the bill last year. The last year's bill, version of the bill, would allow this decision and definition to basically come through the rules and regulations of the department. I'm passing out a list of coalition members who felt that we needed to tighten that up and make sure that...that these areas would have the type of ventilation that would make it more possible to ensure that the smoke wasn't leaking over to the other part of the establishment. And I'm just having passed out to you the...this group. It's the Smokeless Nebraska Prairie Action Coalition and who those members are that had concerns about not tightening up this definition so you would know why I brought the amendment, thank you, to the committee. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Jensen, there are no further lights. Did you wish to close on committee amendments? Senator Jensen waives closing on the committee amendments to LB 227. The question is, shall the committee amendments be adopted to LB 227? All in favor vote aye, opposed nay. We are voting on the committee amendments to LB 227. Have you all voted? Record, please, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of the committee amendments.

SENATOR CUDABACK: The committee amendments are adopted. We're now open for discussion on advancement of LB 227. Senator Smith.

SENATOR SMITH: Thank you, Mr. President, members. Would Senator Thompson yield to questions?

SENATOR CUDABACK: Senator Thompson, will you yield to a question, please?

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SENATOR THOMPSON: Yes.

SENATOR SMITH: Senator Thompson, on page 2 of the bill, it defines "bar", and I assume that that relates to page 3, subsection (2)(a) in terms of the liquor license. Is that correct?

SENATOR THOMPSON: Yes.

SENATOR SMITH: Now it says that the bar is devoted to...primarily to providing entertainment, dancing, and the sale of alcoholic beverages to the public and not devoted primarily to the service of food. And then it goes on, "The revenue generated from the sale of food shall be less than the revenue generated from the sale of alcoholic beverages plus the revenue generated from the provision of entertainment and dancing." So, basically, anything that is entertainment, dancing, the sale of alcoholic beverages, the majority of its revenue, would qualify it to be exempt from this bill. Is that correct?

SENATOR THOMPSON: Yes.

SENATOR SMITH: Can you tell me where a dinner theater would be considered in terms of this bill?

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: If the dinner theater's revenue came from the sale of the food and the entertainment, it would be not considered a restaurant under this bill if it had 50...more than revenue from the sale of the tickets to the play, that entertainment, and alcohol.

SENATOR SMITH: Okay. I mean a dinner theater, as I know it, while I don't frequent those types of places, there's...there's one ticket that's purchased and people would attend the function to...for entertainment purposes but they do eat there, so I...I'm struggling with how that might be considered.

SENATOR THOMPSON: Well, first of all, that, to me, wouldn't be a bar, but if...then they would be considered a restaurant and

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they would be smoke free. If they spend...they would have the option otherwise and they would have to provide a nonsmoking area. But if...this bill is devoted to restaurants and it would just depend on how their revenue broke out. At least the dinner theaters I've been to, we paid for the drinks separately, so they should be able to track their revenue from alcohol. The meal was part of the ticket, but I would think they would have to determine their revenue and work with the Department of Revenue on determining how they break out their receipts. I guess I would find it hard for that kind of an establishment to label itself a bar, but...

SENATOR SMITH: So would it need...

SENATOR THOMPSON: ...if they have a liquor license then they would be under...they would have to see what their receipts totaled.

SENATOR SMITH: Would they need to advertise themselves or hold themselves out to be a bar?

SENATOR THOMPSON: No.

SENATOR SMITH: Okay. Thank you, Senator Thompson. This kind of underscores my hesitation.

SENATOR CUDABACK: One minute.

SENATOR SMITH: While I can appreciate the objectives of the bill, my concern does go deeper than just the imposition on private property owners and how this would relate to the specifics. But I think that there are other issues that I will address in some subsequent remarks, but I do rise in opposition to the bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. (Visitors introduced.) On with discussion, advancement of LB 227, Senator Hudkins.

SENATOR HUDKINS: Thank you, Mr. President, members of the body. I'd like to ask Senator Thompson a question, if I may.

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SENATOR CUDABACK: Senator Thompson, will you yield, please?

SENATOR THOMPSON: Yes.

SENATOR HUDKINS: Senator Thompson, in talking about the keeping track of the receipts and if you have 51 percent of your receipts in...in alcohol then you could be classed as a bar and would be able to smoke, if you keep track of these on a month-by-month basis, what happens if maybe four months your alcohol receipts are higher and then maybe for a month or so your food receipts are higher? Are you going to have to switch back and forth in allowing smoking or not?

SENATOR THOMPSON: That would be part of the regulations as written by the Department of Health and Human Services. This was...amendment was discussed and written by a group of lobbyists previously who wanted a definition of "bar", and that's the definition that we adopted after debate two years ago or a year ago on this bill, and it's...it's a definition that's...that would be developed through the Department of Health and Human Services.

SENATOR HUDKINS: So if you began immediately after the regulation was adopted as being one or the other, then you never would be able to change, or you would have to change?

SENATOR THOMPSON: Well, you would...you would have to change if you...if you became a restaurant.

SENATOR HUDKINS: But then...

SENATOR THOMPSON: It wouldn't be fair to the restaurants for you to proclaim yourself a bar, then expand into a restaurant area and not have to change.

SENATOR HUDKINS: So if your receipts are different month to month, what happens?

SENATOR THOMPSON: That would be part of the rates...regulations as determined by the Department of Health and Human Services for

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enforcement.

SENATOR HUDKINS: All right. Thank you.

SENATOR CUDABACK: Thank you, Senator Hudkins. On with discussion, Senator Smith, followed by Senator Baker.

SENATOR SMITH: Thank you, Mr. President, members. I would like to raise some further concerns and...and, because of the wording of the bill, I raise these concerns. It's hard to define one's intent for going out to eat. Now, I don't smoke. I'm very anti-smoke in fact. That's why I go to Runza instead of other restaurants in my district that happen to allow smoking. So my habits dictate or my eating habits dictate where I go and my preferences for smoke or no smoke, and I really think that we're going to see behavior of restaurant owners, restaurants as we know them today that would be. They will start applying for licenses to try to get around this process, and nothing is accomplished. There's further restrictions placed on private property owners while there's further burden placed on state employees and the state budget due to enforcement issues. So I...I think that we need to look at the following. In terms of entertainment, does adding a piano and acquiring a liquor license consider yourself an entertainment establishment? Does adding keno determine the entertainment value of eating out? I know a lot of people who eat out just for entertainment purposes because they would rather do that than eat at home. And so I think this raises some issues that go beyond just the wording of the bill and, for that reason, I think that now is not the right time and certainly the...the terms of the bill are not appropriate. The keno situation concerns me a lot because I believe we have more than enough gambling in our state and to further encourage that is driving down the wrong road. And so I don't want to carry on here, but I really think that now is not the right time to advance LB 227. I would encourage a red light on this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. Senator Baker, followed by Senators Cunningham and Thompson. Senator Baker.

SENATOR BAKER: Thank you, Senator Cudaback. And I can barely

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talk this morning. I have a cough, but it's not from smoking. I've never smoked in my life. I do not appreciate people that smoke around me either, so you can't label me as a pro-smoking advocate. I had a question or two of Senator Thompson, if she could answer a question, please.

SENATOR CUDABACK: Senator Thompson, would you respond, please?

SENATOR THOMPSON: Yes.

SENATOR BAKER: The people who have contacted me on this are concession areas around lakes out in my area, and they're wondering where they sell a mixture of...they...they...one of them is...I guess maybe they're both on-sale establishments, but where they have a mixture of bait, tackle, food, they both have restaurants, sit-down restaurants and so on, what...how do we going to decide whether they are a bar or...they have a such a mix of merchandise. I know the bill says sale of food shall be less than the revenue generated from alcohol, but there's such a mix there.

SENATOR THOMPSON: Actually, I've just gotten some new information and I'm going to...I have an amendment to strike Section 4 because the Department of Health and Human Services has been working on a definition to address those situations and others that have been brought up around the state with or without this bill. Because smoking is permitted in bars but restaurants have to have a smoke-free area, they are already developing under their own regulations a definition, and so that won't need to be a part of our debate. I will...I have an amendment to strike all of Section 4. So, to answer, I can't answer that question, but the people who work in the area planned, by the end of this year, to have those definitions worked out because of the gray areas that have been raised, and that's...they were already doing that. I just received that information and so, therefore, your question can be posed to the department because they currently have to regulate both ways on those types of places. So they could contact the department and discuss it with them.

SENATOR BAKER: Okay, thank you. I guess that raises sort of an

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alarm with me here, here we go, more regulations and so on for these people, and I...I have sympathy for them because they're having a hard time keeping all their books separate anyway, I'm sure, whether it's bait, tackle, bar income, food. I think a lot of it is mixed together, the bar income and the food, and it's going to be a real hassle to separate this. I'm assuming this also would apply to "C-stores" and so on who have seating for people who eat, that serve food and so on, et cetera. So I...I am echoing some of Senator Smith's concerns here. I think it takes away from an individual owner's decision about what they want to do with their establishment. And I also, when I go to a motel or something, obviously, a nonsmoking room and I don't sit in the smoking section and so on, so I think those options are available to us now and I really do not think it would be wise to try and dictate to the small businessman just what it is he must do when it's actually the public that determines whether he is smoke free or not and so on, and his customers. So, with that, I will oppose the bill and would return the rest of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Baker. Madam Clerk, an item on the desk.

ASSISTANT CLERK: Mr. President, Senator Thompson would move to amend. (FA84, Legislative Journal page 843.)

SENATOR CUDABACK: Senator Thompson, to open on your FA84 to the bill.

SENATOR THOMPSON: Thank you. This is something that logically should have come into my mind before. I put the amendment on as a friendly amendment last session at the request of the clients of some of the lobby who felt there needed to be a definition. But, in thinking about it logically, all of the issues that have been brought up this morning--is a dinner theater a bar, is...is a concession area that has food and sells tackle and...or and bait and whatever a bar--all of those issues exist whether or not this bill passes. There are already regulations under the Department of Health and Human Services, have been for 20 years. They are working to clarify this. It's already the law and will, by the end of year, have developed some specific

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guidelines so that people know which part of...whether they're totally smoking or whether they have to have a smoking area. And, because of that, I don't see any reason to hang this bill up on this particular issue, since it's already...has to be done through the regulations of the department. The bill has plenty to hang itself up on without getting into this particular definition piece. So this...this amendment will strike Section 4, on page 2, which is the issue that Senator Smith, Senator Hudkins, and Senator Baker raised. All of those types of venues are under the current Clean Indoor Air Act. Whether they have to have a smoke...nonsmoking area or whether it can be in smoking in their entirety is under the current Clean Indoor Air Act and through the regulations, and the department is clarifying those regulations which will be completed by the end of this year. So you can take this definition out and that should help at least clarify that issue. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. You heard the opening on FA84. Open for discussion. There were several lights on. Senator Cunningham, did you wish to? Senator Cunningham, on the bill. Senator Thompson. And, Senator Smith, did you wish to address the amendment, Senator Smith? We're on the amendment. Did you wish to address the amendment or the bill?

SENATOR SMITH: Yes, Mr. President, thank you. I would rise with hesitation in this amendment. I appreciate Senator Thompson's desire to clarify it, but I don't think that it solves my concerns of answering those questions because...I mean, if there's still a restaurant that will seek to look like a bar, it will consequently probably act like a bar and I think that that destroys the purpose behind the bill of trying to maintain a family type of atmosphere with clean air. And I really think that the net gain of the bill or with this bill would be so minuscule that it certainly would not be good public policy. For that reason, I will have to vote no on the bill...or on the amendment because I don't think that it will accomplish the objective. Thank you.

SENATOR CUDABACK: Thank you, Senator Smith. There are no further lights on. Want to address the...Senator Thompson, do

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you wish to close on your amendment?

SENATOR THOMPSON: Yes, just to clarify. The amendment was brought, it wasn't a part of the original bill two years ago when I brought it. It's become clearer to me that we are...it is not necessary to define a bar because that's the obligation of the department under the current Clean Indoor Air Act for those gray area type questions that are being brought up, and that they're already working on new regulations and definitions to be able to clarify that, so it is unnecessary in this bill. Whether...they are currently under the Clean Indoor Air Act requiring them to have a separate area for nonsmokers is the same whether this bill passes or this bill does not pass. All those definitions are part of the current law. So, rather than get into a debate over all the nuances of that, those are already the purview of the department, they're already part of the law because we have a Clean Indoor Air Act in Nebraska and we have to know who's under various parts of it. And so those definitions are developed through departmental process so I would urge your striking of this section and that way any organization will have the opportunity to contact the department and work with the regulation process for...in terms of definition that they are already doing, that they already are required to do under the law.

SENATOR CUDABACK: Thank you, Senator Thompson. Senator Smith, that was the closing on the amendment, so the question before the body is, shall FA84 be adopted to LB 227? All in favor of the amendment vote aye, opposed nay. We are voting on FA84, amendment to LB 227. Have you all voted who care to? Senator Thompson.

SENATOR THOMPSON: Call of the house, please.

SENATOR CUDABACK: Senator Thompson has requested a call of the house. All in favor of the house going under call vote aye, opposed nay. Record, please, Mr. Clerk.

CLERK: 18 ayes, 0 nays, Mr. President, to place the house under call.

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SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators please report to the Chamber. The house is under call. Senator Bruning, Senator Preister, would you please check in. Senator Connealy and Senator Schrock, the house is under call.

CLERK: Senator Jensen voting yes, Senator. Senator Brown voting yes. Senator Schrock voting yes.

SENATOR CUDABACK: Call-in votes have been authorized. Senator Bruning and Senator Connealy, the house is under call. Senator Thompson has authorized call-in votes.

CLERK: Senator Cudaback voting yes. Senator Jones voting yes.

SENATOR CUDABACK: Record, please, Mr. Clerk.

CLERK: 25 ayes, 7 nays, Mr. President, on the adoption of Senator Thompson's amendment.

SENATOR CUDABACK: The amendment is adopted. Do raise the call.

CLERK: I have nothing on the bill...further on the bill at this time, Mr. President.

SENATOR CUDABACK: We're open for discussion of the bill advancement to E & R Initial. Senator Cunningham, on advancement.

SENATOR CUNNINGHAM: Senator Cudaback and members of the body, I would have to rise up in opposition to this bill. Although I am very sympathetic to the people that cannot tolerate smoking, I will tell you that my wife is one of those people. She gets very ill when we go into a restaurant and it's too smoky, or into a bar that is too smoky. But we've heard a lot of figures on how restaurants do not lose business when they pass a smoking ban, but what about the restaurants that are on a border within 50 miles of a border, and the people want to smoke? I can guarantee you those people are going to go over that border and they're going to do the restaurant business there. What about the community that has a restaurant and a bar, but the bar

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happens to serve food, and a lot of bars serve pretty good food? Well, that bar is going to gain business; the restaurant is going to lose business. So I don't buy the idea that restaurants will not lose business. You know, when an employee comes in to apply for a job in a restaurant, if it's too smoky in there they just plainly need to tell the owner, I'm not going to work here, it's too smoky. And I would tell them that I own a grocery store. I'm looking for help all of the time and I know a lot of grocery stores that are looking for help. So, you know, it isn't that you have to work in that restaurant or that bar. You do not have to work there. You have the choice. I believe the figures were, 10 years ago, that there were 25 nonsmoking restaurants in the state of Nebraska. I believe it's some...I'm not sure about this, but I believe it's somewhere around 700 now, and I think we need to let the free-market society work. We need to let that work, let people make their own decisions, let business make a decision on what's best for their business. And I do feel sympathetic for the people with asthma and other illnesses, but they do not have to go to those restaurants. Thank you.

SENATOR CUDABACK: Thank you, Senator Cunningham. (Visitors introduced.) Mr. Clerk, items for the record.

CLERK: Mr. President, thank you. Senator Chambers, an amendment to LB 154. The Agriculture Committee reports LB 523 to General File with amendments attached, and I have an explanation of vote from Senator McDonald (re: LB 46, LB 48, LB 193, LB 226, LB 253, LB 280, LB 299, LB 337, and LB 409). Mr. President, there will be an Executive Session of the Revenue Committee today at 1:30 in their hearing room, 1524. And a series of adds: Senators Pedersen and Engel to add their name to LB 503; Senator Aguilar to LB 685; Senator Vrtiska to LB 711. (Legislative Journal pages 844-850.)

Mr. President, I have a priority motion. Senator Thompson would move to adjourn until tomorrow morning at 9:00 a.m.

SENATOR CUDABACK: The motion is to adjourn until Thursday morning, March 1, at nine o'clock. All in favor of the motion. Opposed say nay. We are adjourned. (Gavel)

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