

**FEBRUARY 1, 2005**

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February 1, 2005 LB 52

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our acting chaplain this morning is Senator Langemeier from District 23. Senator Langemeier.

SENATOR LANGEMEIER: (Prayer offered.)

SENATOR CUDABACK: Thank you, Senator Langemeier, for doing that for us. We appreciate it. I call the eighteenth day of the Ninety-Ninth Legislature, First Session, to order. Senators, please check in. Record please, Mr. Clerk.

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

SENATOR CUDABACK: Any corrections for the Journal?

CLERK: I have no corrections.

SENATOR CUDABACK: Any messages, reports, or announcements?

CLERK: I have hearing notices, Mr. President, from the Banking, Commerce and Insurance Committee, all signed by Senator Mines; and the Retirement Systems Committee, those signed by Senator Stuhr. That's all that I have at this time. (Legislative Journal pages 405-406.)

SENATOR CUDABACK: Thank you, Mr. Clerk. The Chair has a couple of announcements. (Visitors and doctor of the day introduced.) On with General File, Madam Clerk, LB 52.

ASSISTANT CLERK: Mr. President, LB 52, introduced by Senator Kremer. (Read title.) The bill was read for the first time on January 6 and referred to the Agriculture Committee. That committee reports the bill back to General File with amendments, Mr. President. (AM0021, Legislative Journal page 322.)

SENATOR CUDABACK: Thank you, Madam Clerk. Senator Erdman, in the absence of Senator Kremer, you're authorized to handle LB 52. You may open.

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SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, LB 52 is a statutory cleanup bill, in its form in the green copy, and it is... "arised" out of a bill that was passed a couple of years ago, in LB 735, which dealt with the Grain Warehouse Act and made a number of provisions there, and it was passed two years ago. The provisions of LB 52 are as follows. The first area that it deals with is clarifying the calculation of the dealer security. It's based on the dealer's fiscal year, and that information is clarified in the bill to remove any concern about what is actually determined by the year in which that is taking place. The next area of provision that it deals with is it brings all areas of delivery under a similar statute. Currently, you have 30 days from the time you delivered the last load of grain to the warehouse to be able to demand a payment. Then you'll have 30 days from that in order to cash the check, and in the event that that check does not clear, then you'd have 30 days from that period to demand or to submit a claim with the Public Service Commission. So this simply clarifies some of those provisions that are already in law and brings them under similar areas. The third area that it deals with is, under LB 735, we had a provision that allowed for a financial review or a request of an audit to be used in order to submit information to the Public Service Commission. That continues in this current proposal. It just...there's a harmonization of that process to make sure that when you go to ask for that audit, it's in addition to someone that's already filed that financial review, and it further clarifies how that works as far as the original intent of LB 735. Finally, under LB 52 there is a provision that would allow the Public Service Commission to perform certifications of devices that measure both grain moisture and test weight, and as we have seen some of the new technology come available for measuring grain, the moisture and test weight is becoming more of a machine that can be regulated, and so this would give the Public Service Commission the authority to do that. That portion of the law would go into effect January of 2006. The remaining portions of the bill that I've outlined would go into effect with the effective date of the bill. And there are committee amendments, so I will close and wait for your approval to open on that, Mr. President.

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SENATOR CUDABACK: Thank you, Senator Erdman. Senator Erdman, you are recognized to open on the committee amendments, AM0021, to LB 52.

SENATOR ERDMAN: Thank you, Mr. President. The committee amendment to LB 52 is actually a bill that was introduced by Senator Fischer. It's LB 222. However, the committee did make some modifications to the original proposal. Under LB 222, as introduced, it would have removed the requirement that a first-time license applicant submit a criminal history record check with that application. This requirement was added under LB 735 two years ago. It was placed in the statute under recommendation of an industry task force which examined the adequacy of our grain laws following a string of financial failures for warehouses, including the failure of the Atlanta elevator. The owner and manager of that elevator was later discovered to have previous criminal...previous history of financial crimes. LB 735 specified procedures for obtaining a criminal history check through the State Patrol through submission of fingerprints, and LB 222 would have struck these provisions from law. What the committee chose to do, and that's actually what AM0021 is, is rather than to strike the criminal history background requirement, it recommended that we add two new sections with amendments to the pertinent sections allowing an alternate means for a criminal background check. So right now...so, under the committee amendment, it would provide that if a grain dealer or warehouse applicant has been licensed under many...under other laws that have a background check requirement as a condition of licensure, the Public Service Commission may, and that's the difference under the committee amendment versus the green copy, they still would have the discretion but they may waive the requirement for a separate background check to obtain a grain license. And the reason that the committee felt that that was important was to ensure that the information that was being presented to the Public Service Commission was timely. The Public Service Commission would have the discretion, would not be obligated to waive that requirement if the criminal history check performed for the other licenses that they have applied for and obtained are not current enough or the report doesn't cover the crimes looked for in the Public Service Commission's background check. The committee and I think the

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Legislature would expect the Public Service Commission will examine the background requirements for other laws and waive separate background checks only when licensure for other laws also meets the warehouse license agreements or requirements. The background check for a liquor control license is more thorough in a criminal history check for, which includes felony financial crimes among other things, and if a candidate meets the standards of a liquor license, they would also meet the standards of the warehouse license. Thus, if a new manager is taking over a co-op and operates both a warehouse and a liquor retail outlet, successfully obtaining a liquor license would be evidence that that applicant would also meet the warehouse licensure requirements as well. So, LB 52 is portions of LB 222 that actually, I believe, accomplishes the goal that Senator Fischer set out to accomplish, while still preserving the opportunity of the Public Service Commission to ensure that the individuals have current information presented to them to ensure that they are within the needs of the licensure requirement. I would encourage your support of amendment...of the committee amendment, AM0021, and also your support of LB 52 for advancement to General File. And I will do my best to answer any questions you may have on either the committee amendment, I believe Senator Fischer would be available as well, or on the underlying bill. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Erdman. You've heard the opening on the committee amendments to LB 52. Open for discussion on those amendments. Senator Fischer, you're recognized to speak.

SENATOR FISCHER: Mr. President, in regard to the committee amendment, AM0021, it is essentially attached as a modified version of LB 222, which I introduced and which was also heard in the Agriculture Committee. The amendment seeks to remove the requirement of fingerprinting criminal history checks for applicants seeking a grain warehouse or a grain dealers license under the Nebraska Grain Warehouse Act or Nebraska Grain Dealer Act. Prior to LB 735, which was passed in 2003, there was no requirement for a criminal history check for grain warehouse and grain dealer license applicants. As a result of LB 735, the grain warehouse and dealer owners and managers are required to

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be fingerprinted in order for the Federal Bureau of Investigation to conduct a criminal history check. In many instances, these same persons conduct businesses, including convenience store operations, where they were also required to be fingerprinted for the purpose of obtaining license from the Nebraska Liquor Control Commission. Therefore, many grain warehouse and grain dealers are being required to submit to two background checks, one from the Nebraska Liquor Control Commission and one from the Public Service Commission. I believe that this is a waste of time and resources. The amendment into LB 52 does not eliminate the criminal history requirement. It only allows the Public Service Commission to waive that requirement for submitting to a separate background check if the license applicant has already been subjected to a background check for other licensure requirements, such as that with the Liquor Control Commission. Other state agencies that require criminal history checks for licensing purposes have the statutory authority to waive the fingerprinting and criminal history check requirement if the applicant is licensed with the Nebraska Liquor Control Commission. Nebraska Revised Statutes 9-1,104 specifically grants this authority to the Department of Revenue when licensing gaming and lottery operators. In granting such licenses, the Department of Revenue would have the same interest in financial crimes as would the Public Service Commission in review application for grain warehouse or grain dealer licenses. The proposed amendment inserts new language into Section 75-903.02 and 88-528.01 that is similar to language governing other state agencies that require criminal history checks for licensing purposes. This will keep LB 222, as amended into LB 52, consistent with existing statutory law, and also provide a clear meaning as to the intent of the amendment. The current provisions of the law requiring grain house warehouses and grain dealer applicants to submit to dual fingerprinting and these criminal history checks should be provided the same waiver provisions under the same circumstances. Thank you.

SENATOR CUDABACK: Thank you, Senator Fischer. Further discussion on the committee amendment to LB 52? Senator Erdman, there are no further senators wishing to speak. You may close, if you care to, on the committee amendments.

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SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, I'd like to thank Senator Fischer for her explanation on the underlying bill which is the committee amendment, and I appreciate her bringing it. I think it clarifies the process. I think it makes it a little better process and I think it will also contribute to a more clean and fair process for the Public Service Commission to administer. So I appreciate her willingness to bring that to the committee. It actually is a provision that falls right under line with LB 735, and so we as a committee believe that it fits well within the underlying bill of LB 52, and I would encourage your support of the committee amendment.

SENATOR CUDABACK: Thank you, Senator Erdman. You've heard the closing on the committee amendments to LB 52. The question before the body is, shall they be adopted? All in favor vote aye; opposed, nay. The question before the body is adoption of the committee amendments to LB 52. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The motion was successful. The amendments have been adopted. Back to discussion of the advancement of LB 52, E & R Initial. Open for discussion. Senator Erdman, there are no lights on. You may close on the advancement of LB 52, if you care to.

SENATOR ERDMAN: Thank you, Mr. President. Members of the Legislature, briefly I'd just like to thank you for your attention this morning. I appreciate your support on the committee amendment. I appreciate your support on the underlying bill. The underlying bill is the result of a process that began with a group that worked together to pass LB 735 and now we're clarifying some of the things that need to be...to be further clarified. And the work of the research analyst for the committee, Rick Leonard, is well-noted in the proposal here, so I want to thank him for his work, and would encourage you to advance LB 52 to E & R.

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SENATOR CUDABACK: Thank you, Senator Erdman. You've heard the closing on advancement LB 52. The question before the body is, shall LB 52 advance to E & R Initial? All in favor vote aye; opposed, nay. The question is, shall LB 52 advance? Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the advancement of LB 52.

SENATOR CUDABACK: LB 52 does advance. Mr. Clerk, LB 61.

CLERK: LB 61, Mr. President, introduced by Senator Burling. (Read title.) Bill was introduced on January 6 of this year, at that time referred to the Health and Human Services Committee. The bill was advanced to General File.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Burling, you're recognized to open on LB 61.

SENATOR BURLING: Thank you, Mr. President and members of the body. LB 61 is a bill that makes technical corrections to an already state statute. In 2002, this body unanimously passed LB 962 (sic), which provides for release of certain adoption information for heirs of adoptees, and this LB 61 was introduced last year, came out committee last year, and died for lack of time. Provides clarification about sensitive information maintained in adoption records, and make a change to the fee for conducting searches for the heir of an adoptee. The problem was that we understood that the intent of LB 962 (sic) was...would be carried out the way it was worded and we understand now, since then, that there are three departments in the Health and Human Services Department that have access to these records and so they needed to each be named separately, and so that is what LB 61 does, is enabling legislation for LB 962 (sic) to be carried out. And I appreciate the help of Senator Jensen and the committee for expediting this, this year, so that this intended legislation can get underway. It also clarifies some restrictions to records that will be given out as per federal regulations under the HIPAA Act, and so that is the other part

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of this bill. And I do have a floor amendment that I'd like to introduce at this...whenever the time is right. So that's my introduction and I'll introduce the amendment whenever you're ready. Thank you.

SENATOR CUDABACK: Thank you, Senator Burling. You've heard the opening on LB 61. Mr. Clerk, motion on the desk?

CLERK: Mr. President, Senator Burling would move to amend with AM0045. (Legislative Journal page 407.)

SENATOR CUDABACK: Senator Burling, you're recognized to open on AM0045 to LB 61.

SENATOR BURLING: Thank you. Well, what this amendment does is it names all three departments. After the hearing this year, it was decided that maybe we should specifically name each department, and so anyplace in the bill where it talks about Health and Human Services and the various departments that we need to go to for this information, we insert "Health and Human Services Regulation and Licensure," in addition to "Health and Human Services Finance and Support," and "Health and Human Services Department." So what this does is adds the Health and Human Services Regulation and Licensure to the various departments then that are allowed to give out adoption information as spelled out in LB 962 (sic), and I ask for your adoption.

SENATOR CUDABACK: Thank you, Senator Burling. You've heard the opening on AM0045, which is an amendment to LB 61. Open for discussion on that amendment. Senator Burling, I do not see any senators wishing to speak. You may close on AM0045. He waives closing. The question before the body is, shall AM0045 be adopted? All in favor vote aye; opposed, nay. Voting on adoption of AM0045, which is an amendment to LB 61. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Burling's amendment.

SENATOR CUDABACK: The motion was successful. AM0045 has been

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adopted. Anything further on the bill, Mr. Clerk?

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

SENATOR CUDABACK: Back to discussion of the bill itself. Senator Schimek, you're recognized.

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman, Mr. President and members. I'd like to just ask Senator Burling a couple of questions, if I might.

SENATOR CUDABACK: Senator Burling, would you yield?

SENATOR SCHIMEK: Senator Burling, pardon me for not being up to speed on this. I just have...I have a question in my mind about why we wouldn't be releasing some of the information that is described in paragraph (2) on page 2: tests conducted for HIV, revocation of a license to practice medicine, child protective service reports or records, adult protective service reports, information from central register of child protection cases, et cetera. This is to the heirs. This is to people that are going to be years down the road, presumably, according to this bill. Could you tell me the reason that we want to protect those particular records?

SENATOR BURLING: Thank you, Senator Schimek. The answer that I received when I asked that same question was that that's what the Department of Health and Human Services and the committee felt had to be in there to comply with the federal HIPAA regulations, and I guess that's a matter of how you interpret those regulations. But to be safe, that's...was their recommendation this be in there.

SENATOR SCHIMEK: Even if this is a 100 years later?

SENATOR BURLING: I understand your concern that it doesn't really make sense, but some things don't. But that's...that was my...that was the answer that I got, so we need to look further if that's, you know, we can try without...we can try it without that, but...

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SENATOR SCHIMEK: Then maybe I'd like to ask a question of Senator Jensen.

SENATOR BURLING: Okay.

SENATOR SCHIMEK: Okay. Thank you. Senator Jensen,...

SENATOR CUDABACK: Senator Jensen, would you yield to a question?

SENATOR SCHIMEK: ...did you hear the question that I just asked?

SENATOR JENSEN: Yes, I did, and Senator Burling is right. Part of it is HIPAA, part of it is just confidentiality. You know, it's always a struggle trying to decide what do you reveal about your past and what should be open that other people can look at. And it was felt by the department that...and with those regulations in mind, that perhaps there should be some things that probably would never be revealed.

SENATOR SCHIMEK: As somebody who's interested in examining my family's past, these are the kinds of things I think that after a prolonged period of 100 years or so ought to be available. And I'm not sure, from your answer, if you're saying that it would be against HIPAA's regulations if we included some of these things, or...I think you're saying it's more of a concern of our state agencies.

SENATOR JENSEN: Well, that and where do we go, where do you stop, where do you draw the line,...

SENATOR SCHIMEK: Right.

SENATOR JENSEN: ...I think, more than anything? Certainly, you know, this whole adoption process used to be very closed,...

SENATOR SCHIMEK: Right.

SENATOR JENSEN: ...and we're making it more and more open, which I think is good.

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SENATOR SCHIMEK: I do, too.

SENATOR JENSEN: And people need to know about where they came from and what the past is, and then you started to get into some of the genetic situations, too, that I think should be available if there was something that could be passed on.

SENATOR SCHIMEK: Uh-huh.

SENATOR JENSEN: So we're caught in that balance of how much do you reveal and how much is held. I think there's always ways of getting back and finding some information, however, but do you open...do you open everything up to a public scrutiny?

SENATOR CUDABACK: One minute.

SENATOR SCHIMEK: Well, I'm not sure what the right thing to do is. I'm just raising the questions and would like to keep thinking about it as we progress through the different stages with this bill.

SENATOR JENSEN: Sure.

SENATOR SCHIMEK: Thank you.

SENATOR CUDABACK: Thank you, Senator Schimek. Speaker Brashear, did...I'll recognize you to speak.

SPEAKER BRASHEAR: Thank you, Mr. President. I apologize for interruption but I thought, based on the number of phone calls and requests which I am receiving, I thought that it important to act expediently to adjust the schedule for Friday in light of the presidential visit and those from the body who would like to participate. Accordingly, we will convene at 11:00 a.m. and we will adjourn at 12:00 p.m. noon on Friday in order that people can take in the presidential visit, and then return. I gave some thought to extending time over the noonhour, but I know that a number of you have commitments, so I've decided, once again, you know, this is the kinder, gentler approach, but we have to pay this price back at some point, so I know you'll all

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be equally anxious to do that. So thank you.

SENATOR CUDABACK: Thank you, Speaker Brashear. On with discussion. (Visitors introduced.) On with discussion of advancement of LB 61, Senator Synowiecki.

SENATOR SYNOWIECKI: Thank you, Senator Cudaback. I, too, have some questions relative to the exclusion of some of these provisions in section (2), but also, Senator Burling, would you yield to a question?

SENATOR CUDABACK: Senator Burling, would you yield?

SENATOR BURLING: Yes.

SENATOR SYNOWIECKI: Senator, as I understand it, there's public adoptions and then there's also private adoptions handled not by the state, as I understand it, and would this, would the provisions within LB 61, have any impact whatsoever on adoptions that are handled in the state of Nebraska on a private basis?

SENATOR BURLING: No, sir. We're...it wouldn't. We went through this, your question and many others like that, we went through that in 2002 when LB 952 was passed. LB 61 this morning simply clarifies where this information can be attained from, so it doesn't do anything...LB 61 changes nothing in the area that you're referring to.

SENATOR SYNOWIECKI: So I can, Senator Burling, I can be assured that relative to the provisions in this bill, they have no impact whatsoever on private adoptions.

SENATOR BURLING: No. No.

SENATOR SYNOWIECKI: Okay. Thank you, Senator Burling. I appreciate you yielding and I'll give the rest of my time back to the Chair. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Howard, you're recognized.

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SENATOR HOWARD: Sir, if I could speak to address Senator Burling's concerns.

SENATOR CUDABACK: Senator Burling.

SENATOR HOWARD: As a person that...thank you, sir...has recently come from doing adoptions and from that area, I would support Senator Burling in this bill. And the release of information, especially pertaining to health information, is critical to children as they become adults and as they engage in their own relationships. So I would support the honorable senator in putting through this bill. Thank you. Thank you, sir.

SENATOR CUDABACK: Thank you, Senator Howard. Further discussion on the advancement of LB 61? There are no lights on. Senator Burling, you're recognized to close.

SENATOR BURLING: Thank you, Mr. President, members. Appreciate the discussion. We had a considerable amount of discussion about this, of course, when LB 962 (sic) was passed. This is just a technical change to allow to happen what we intended to allow to happen a couple years ago. This bill, like I say, died last year as it ran out of time. And, again, I thank Senator Jensen and the committee for their help and ask you to advance it to Select File. Thank you.

SENATOR CUDABACK: Thank you, Senator Burling. You've heard the closing on the advancement of LB 61. The question before the body is, shall LB 61 advance? All in favor vote aye; opposed, nay. The question before the body is advancement of LB 61. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 32 ayes, 0 nays, Mr. President, on the advancement of LB 61.

SENATOR CUDABACK: The motion was successful. LB 61 advances. (Visitors introduced.) Mr. Clerk, items for the record?

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CLERK: Thank you, Mr. President. Your Committee on Education, chaired by Senator Raikes, reports LB 634 to General File. I have a series of notice of hearings from the Natural Resources Committee, signed by Senator Schrock; and a new A bill. (Read LB 72A by title for the first time.) That's all that I had, Mr. President. (Legislative Journal pages 407-408.)

SENATOR CUDABACK: Okay. Thank you, Mr. Clerk. Next agenda item, LB 89.

CLERK: LB 89 by Senator Byars. (Read title.) Introduced on January 6, referred to Health and Human Services, advanced to General File. At this time I have no amendments, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Byars, to open on LB 89.

SENATOR BYARS: Thank you, Senator Cudaback. LB...the language in LB 89 was brought to me by the Nebraska Dental Association to be able to conduct what is called a mission of mercy program, and I'll describe that program a little bit later. But, basically, LB 89 would authorize a temporary permit in Nebraska to a dentist from another state. The dentist has to be recommended by the board of examiners in the other state. The Nebraska Board of Dentistry has to grant temporary practice rights with the approval of the department. The period of the temporary permit cannot exceed 3 months in any 12-month period, and the language is nearly identical to the language in Nebraska Statute 71-1,103, which is authority for physicians and surgeons to obtain temporary practice rights. A mission of mercy program is a clinic in an underserved part of the state where there are not enough dental practitioners to adequately address the oral health needs of the area. Volunteer dentists staff the clinic, and these dentists include volunteers from other states. And in order to work at the events that are held, the out-of-state dentists need a temporary practice permit. There are other states who conduct the mission of mercy program. Virginia and Kansas are two. The Kansas Dental Foundation has agreed to loan the Nebraska Dental Association the portable chairs it owns for the purpose of conducting this mission, and they're planning on conducting their first MOM project in the state of Nebraska in

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North Platte on the weekend of October 22 of 2005. North Platte was chosen because it's an easily accessible location to a number of populations that are from underserved areas. Patient transportation, if needed, is to be arranged through community partnerships that will provide shuttles, and patients register for services and, after signing release forms, are treated on a first come, first served basis. The volunteer dentists provide screening, and then patients are directed to the cleaning, extraction, or restorative areas for their dental work. The Kansas Dental Association just completed their third MOM project on the campus of Pittsburgh State University. At that project, 140 dentists participated in a two-and-a-half day event, and they provided care to 2,158 patients with over \$900,000 in free dental care. And I would ask, Mr. President, that the body advance LB 89 to Select File.

SENATOR CUDABACK: Thank you, Senator Byars. You've heard the opening on advancement of LB 89. Open for discussion on that motion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'd like to ask Senator Byars a question or two about his bill.

SENATOR CUDABACK: Senator Byars, will you yield?

SENATOR BYARS: Certainly.

SENATOR CHAMBERS: Senator Byars, this period that you're talking about will be 3 months during any 12-month period?

SENATOR BYARS: That is correct.

SENATOR CHAMBERS: After the three months expires, what happens then?

SENATOR BYARS: I've just looked at that. I had that same question in my mind, Senator, and hadn't asked that question, so I'm not positive that I have the answer. Once again you have baffled me. I would presume they have to reapply. In the locum tenens section that we use for physicians and surgeons, then you need to reapply for an addition...an extension or an

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additional period of time, and I would presume that would be the same under this statute. It's identical to the physicians and surgeons statutes we have in effect right now.

SENATOR CHAMBERS: But, Senator Byars, if what was in the statutes relative to physicians would cover dentists, why are you putting this provision in the area of statute that deals with dentists? Isn't it obvious that what pertains to surgeons and physicians would not obtain with reference to dentists?

SENATOR BYARS: That is correct. I just referenced that this statutory language is the same as in those statutes. It's not in the same area.

SENATOR CHAMBERS: Is there anything in the statute for physicians and surgeons which declares what will happen at the end of the three-month period? No coaching.

SENATOR BYARS: I presume there is. I've not read the language, Senator.

SENATOR CHAMBERS: Senator Byars, it seems that a bill like this would raise those questions in anybody's mind, but I made a presumption which is invalid, and I may be the only one with any interest in this, but I'm not prepared to accept what you're offering here. First of all, there is nothing in your proposed legislation which talks about reciprocity in the terms that it usually does; namely, that the requirements in the sending state are substantially equal to or exceed the standards in Nebraska. Is there anything in your legislation which says that? All I see is that the people trying to get rid of them in his state will dump him on Nebraska, and Nebraska will take their word that this is a good person and accept him or her. You may not characterize it the way I just did, but is that all that's required? The sending state says this person is reputable and capable of doing what needs to be done for Nebraska citizens in the realm of dentistry. Is that all that's required?

SENATOR BYARS: There are two steps, Senator. No, that's not correct. The dentist has to be recommended by the board of examiners in the other state, which obviously would have access

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to all of his licensure records, everything pertaining to his practice, any complaints, anything filed against him in that state. And the Nebraska Board of Dentistry then reviews that and they have to grant temporary practice rights with the approval of the Department of Health and Human Services. So you have a three-step process: recommendation from the state that the dentist comes from, review by the Board of Dentistry in the state of Nebraska, and further review by the Department of Health and Human Services before the temporary license is granted.

SENATOR CHAMBERS: Where is there anything in the statute which talks about what the sending state must provide along with their recommendation?

SENATOR CUDABACK: One minute, Senator Chambers.

SENATOR CHAMBERS: One minute before what?

SENATOR BYARS: Senator, I'm going to have to look.

SENATOR CHAMBERS: One minute until what?

SENATOR CUDABACK: One minute until your time expires.

SENATOR CHAMBERS: I think Senator Byars is aware of that. (Laugh) Mr. President, I'm going to stop now and I'll put my light on again and he'll have an opportunity to search it out. Thank you.

SENATOR CUDABACK: Okay. Fine. Thank you, Senator Chambers. Senator Stuthman, followed by Senator Chambers. Senator Stuthman.

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. In this discussion this morning and the discussion that we had in committee, I have some concerns about this but I don't know whether my concerns are valid or not. The...receiving a dentist from another state, allowing him to come into the state for a three-month period under a license that is given by the...by the state association to an underserved area where

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there is not a dentist, I can see that part of it being very valuable. But the concern of mine is if there's an area that needs a dentist and it's an underserved area for low-income people, and he comes in for three months and leaves, what's going to happen after that? Is there going to be another dentist come in from another state, work for three months, and then after that's done another one? Or is there going to be a dentist that's going to be employed by the...in that underserved area? The concerns of mine are who is going to be liable, who's going to be responsible, you know, after this dentist leaves that area and goes back to his state? Is that individual going to be liable if there's been a dental practice that has not really been acceptable and the next three months there's a lot of toothaches, a lot of problems with what the dentist has done the prior three months? That's very much a concern of mine. Is the Dental Association going to be liable for this, or is the dentist going to be liable for this, or what is going to happen? Or is the community health department that has established these dentist chairs in their community, are they going to be liable for that? So I'm a little bit concerned with that. I do support the bill as far as providing dental service in an underserved area. That is not my concern, but my concern is, you know, these people coming in for three months and leaving, you know, maybe never coming back. You know, is there going to be any liability that's going to be upon the state or upon that dentist? So that is my concern. I'll return the balance of my time to the Chair. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuthman. Senator Chambers, on advancement of LB 89.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Arnie and Ernie are at it again. This man who sits in front of me must read my mind, or he's transmitting his thoughts into my mind. I was going to draft an amendment that would say any person who suffers harm or damage as a result of the activities of a person granted this temporary right to practice shall be able to recover from the state of Nebraska. And I'd like to ask Senator Byars a question or two.

SENATOR CUDABACK: Senator Byars, will you yield to a question

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from Senator Chambers?

SENATOR BYARS: Yes, I certainly will.

SENATOR CHAMBERS: Senator Byars, I had mentioned, while you were in conference, that I'm considering an amendment that would say any person who suffers harm or damage or...and we can find whether we ought to use the term "malpractice," at the hands of one of these individuals shall be able to recover from the state, damages from the state. Would you accept such an amendment?

SENATOR BYARS: No, I don't believe I would, Senator, and I'll give you my reason why.

SENATOR CHAMBERS: I would like you to do that on your time, because mine will run out. Well, you go ahead, because that's what we're discussing. And I will put the amendment up there and we can discuss it in more detail. But tell me why you wouldn't want that to be the case.

SENATOR BYARS: Senator, what the Nebraska Dental Association is attempting to do here is to provide services to people who aren't going to be able to get any kind of dental care in any other way.

SENATOR CHAMBERS: Okay. Let's stop there so I can ask you a question.

SENATOR BYARS: Okay.

SENATOR CHAMBERS: Are you familiar with the term, in the legal profession, pro bono?

SENATOR BYARS: Yes.

SENATOR CHAMBERS: And that means for the common good. That's the way it's interpreted.

SENATOR BYARS: Correct.

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SENATOR CHAMBERS: It's done free.

SENATOR BYARS: Correct.

SENATOR CHAMBERS: Are the dentists in the state of Nebraska telling us that there are substantial numbers of people who cannot afford dental care?

SENATOR BYARS: That is correct.

SENATOR CHAMBERS: Why do...well, let me ask it as a question. Do the dentists have a pro bono dental program?

SENATOR BYARS: This would be their attempt, I think, to do that in areas that don't have dentists to serve these individuals who are not receiving appropriate oral healthcare.

SENATOR CHAMBERS: No, no, I'm not making a contribution when I say Senator Byars is going to donate and that takes the place of mine. Nebraska dentists are not participating in this. They're bringing in people from other places. Why will not the Nebraska dentists donate some of their time to remedy this problem? Lawyers get condemned up and down, even by people who have lawyers; yet, they do have pro bono programs. Why will not the dentists do such a similar thing?

SENATOR BYARS: They do. They participate in the program also. But in order to serve the numbers of people that come to these clinics, they have found that in other experiences, and closest to us was in Kansas, they need a tremendous number of volunteers. So...

SENATOR CHAMBERS: All right. Let me ask you as we go along before I run out of time, because I want this to be coherent if anybody reads the transcript. You're telling me that dentists in Kansas have so little work to do that they can spare three months to come to Nebraska to volunteer to give service to these underserved people, but Nebraska dentists cannot do that. Is that what you're telling me?

SENATOR BYARS: That is not correct. They schedule these for a

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two- to three-day event. They don't schedule them for a three-month period of time. The three-month period of time is the length of time that Nebraska has established for temporary licensure. They come in two and three days at a time to do the event, and they go back home. The volunteer dentists from the other state come in for that period of time. Those volunteer dentists from the state from Nebraska Dental Association volunteer their time and, as I pointed out,...

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: One minute.

SENATOR BYARS: ...they bring in...one reason for collaboration with Kansas is they have portable chairs that can be transported into these locations. We don't have that equipment in the state of Nebraska, at least at the present time.

SENATOR CHAMBERS: Who will oversee these dentists while they're performing their operations or their activities on the poor, who have no choice?

SENATOR BYARS: They're licensed. They will be...they're appropriately responsible under their malpractice laws, just like anyone else would be.

SENATOR CHAMBERS: Under whose law...

SENATOR BYARS: Nobody oversees them.

SENATOR CHAMBERS: Under whose law would they be sued, Nebraska's or Kansas'?

SENATOR BYARS: Nebraska.

SENATOR CHAMBERS: Thank you, Mr. President.

SPEAKER BRASHEAR: Thank you, Senator Chambers. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 29, LR 30, LR 31, and LR 32. Thank you. Senator Byars.

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SENATOR BYARS: Thank you, Mr. Speaker. I think what's...and I certainly want to cooperate with Senator Chambers in any way that he has any type of concerns, and Senator Stuthman also. I don't think...anyone that knows this senator very well knows that I would not bring legislation that I think in any way would bring harm to any citizen of the state of Nebraska or would put them in any type of jeopardy. I brought this bill because of the fact that I thought the dentists of Nebraska are attempting to do what I feel would be a very noble thing. As we talk about pro bono and the questions that Senator Chambers had, I think dentists in this state do pro bono work on a constant basis. I think everybody in the medical profession does that. I'm not sure if there's any empirical statistics anywhere that shows exactly the dollar amount that's done. In hospitals, those records are kept. They're open for public viewing. In a private practice, I don't think, unless they share it with their association, that that is available. And my whole reason for bringing this legislation was to enable the corroboration, the collaboration, the cooperation, if you will, from the state of Kansas, who has established this program, who has the equipment, and the dentists of the state of Nebraska who say we understand that we have areas that we don't have professionals practicing in; we feel that it's our obligation, as our practice, as professionals, that we attempt, and we have found a way to be able to do this, to serve individuals in underserved areas. I hate to see this get bogged down in details, if you will, that would prevent this from taking place and prevent people who badly need oral healthcare from receiving that care. And I certainly, Senator Chambers, Senator Stuthman, understand concerns, but I have faith in the professionals in this state. I have put faith in our dentists. They have to have malpractice insurance. They have to be held accountable, as anyone else that practices a profession would. Those dentists who come across because they cross the state line does not avoid their obligation as far as their practice, their professional practice, is concerned. So I would ask, once again, that let's not throw up roadblocks to do public health and to do appropriate professional care for the underserved people of this state.

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SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Byars. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. This bill did come to, certainly, the Health and Human Services Committee, and it was one that was endorsed by all the committee. And there are a couple other things, that this coincides very closely with the Physicians Association and they have something called "locum tenens." I hope I'm saying that right, and Doctor...or, excuse me, Senator Johnson will...may add to that. But more than just even allowing for this event, we also have a situation where we have dentists in rural communities that are out there all alone and if they're not in the chair, nobody is receiving dental service. And so this also would allow a dentist from another state to come in and fill that on a temporary basis for that individual to have some respite, to get away, to go on a vacation with his family, whatever that might be, without totally shutting that dentist office down. So it's a very important issue to have this in our statutes and allow dentistry to continue. These...it's not on Kansas. It's done in Minnesota and some other states where they have had these events and they've allowed dentists from other states, other communities, to come in on a one-, two-, three-day event to provide services for underserved, that's what we're talking about here, underserved individuals. Now, right here in Nebraska, both Creighton and the Nebraska University have done some remarkable things and great things in allowing students from different communities, there was a busload that came down from Norfolk, some from, I believe, several of the other communities that they have brought in for a day at the dentistry. And if you go out here to the school of dentistry, you will see they're in hallways, they're everywhere waiting to receive care, cleaning, care to teeth that...and many of these kids have never been to a dentist before, had fear and in trepidation for going to a dentist. But it's been a great experience. I've been out there when this is happening. They have another one of those events coming up soon at the university and, if you ever have the opportunity, go out there and see the care that is being delivered, and also this provides that instruction and that experience in the clinic for those

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individuals. But to have a number of dentists all in the North Platte area treating individuals, again, that are underserved, is a tremendous asset to this state and I hope that we can allow this to happen. Also, it brings a comradery among adjoining states, and even some that will travel even further than that, and include maybe perhaps Nebraska in part of their vacation plans. I think this is a win-win situation. It is a bill that I think needs to be advanced and would encourage the body to do so. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Mr. Clerk, motion on the desk?

CLERK: Mr. President, Senator Chambers would move to amend the bill. (FA5, Legislative Journal pages 408-409.)

SENATOR CUDABACK: Senator Chambers, to open on FA5.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I want to make it clear at the outset that I'm not opposed to providing medical, dental, psychological, psychiatric care to whomever needs it, but especially to the poor who have no access to these services. But I'm not in favor of just anything being dumped on the poor because we are poor. I am poor. I have been poor all of my life. My friends are poor. Other members of my family have made...experienced some upward mobility in an economic sense, so they are not poor, but I remain virtually impoverished, not that any of that is said for sympathy, nor am I looking for handouts. I wear all the things of this world loosely. There is nothing I possess which, if deprived of, would lessen me in any degree. I do not like the idea of people saying, as an example of what I'm talking about, that the poor are hungry, they have nothing to eat, so the scraps from my table will be better for them than their starving. I do believe in the concept of human dignity. I do believe in the concept of human decency. And if people who feel that they are more fortunate than others have even a spark of human decency, they will respect the human dignity of every human being, no matter how impoverished, no matter what that person's circumstances. The fact that questions are asked about a proposal that comes before the Legislature does not mean that obstacles and barriers

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are being thrown up to prevent that program or that idea from succeeding. In fact, any proposal that cannot withstand questions is suspect immediately, from my position. This questioning that I do does not in any way disparage Senator Byars. I have not suggested that he would bring a bill with the purpose of harming anybody. That is a stretch. There are very well-intentioned things which result in great harm. I suspect that when black men were used as subjects for experimentation with syphilis in the South, some doctor or doctors had good intentions. They probably wanted to find out what kind of treatment could be produced for white people, what kind of preventative measures could be taken for white people, and it's clear that that's what their interest was because none of the subjects were white. They knew how devastating syphilis could be. Senator Byars, as a man who, as long as he's been in the Legislature, has had concern for those people who have mental illness, who are mentally retarded, who have any of the conditions that might come under the umbrella "mentally challenged," when we're trying to be as nice as we can be, but he knows that in orphanages, foundling homes, as they were called, and places where the crazy, the imbeciles, the idiots, and those were words in Nebraska statute, where they were warehoused, those people and children were fed radioactive material in their breakfast food and had it administered to them in other ways, not to treat a disease, but, quote, to see what would happen. It is always the voiceless, the powerless, the defenseless who are set upon by the powerful and made pawns and subjects of experimentation. So I am going to stand on this floor and raise questions anytime I think the interests of the poor are at stake. I respect dentists. I've gone to dentists. I've probably spent more money with dentists than anybody on this floor, or the majority of people on this floor. I read a lot, when I have the opportunity, of works on archeology and anthropology. I'm interested in knowing what people who study those things have to say about where human beings come from, how long human beings have been here, and then I read the poets, the novelists and the playwrights to get an idea of where the human family might be going. I have in my hand a contribution that I'm making to anthropologists; maybe it would be an archeologist in the future. This is a very hard substance, very; harder than my skull. Some people like a little paper-shell-thin skull,

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because they don't have much in there to protect, but I have a very hard, thick wall, because nature put a very precious treasure inside. Now, this is harder than my skull because, if it came crashing down on my skull, the bones on my skull would give way rather than this. Some of my teeth, which were extracted by a dentist, are embedded in this very hard, transparent substance. And I wrote an epitaph to my teeth, extracted March 14, 1997. And for this purpose, Senator Byars, meaning, Byars, your bill, was this done also. I looked down the line in 1997 and I said around 2005 there's going to be a bill when this will be appropriate: Au revoir, my loyal friends. Nevermore your likes I'll see. Though you chewed and chomped till the end, you never put the bite on me. Epitaph to my teeth. I would not like to see any person who receives treatment at the hands of any of these well-intentioned dentists winding up with an epitaph. Senator Byars, if one of these dentists who is recommended by the secretary of the board of the sending state should improperly perform a dental procedure...let's say that a root canal is to be performed, and you know that they dig down and scour out all of that soft tissue, and they grind and they dig. Sometimes they take something like those nails which, if you drive them in the wall, they'll go in, but they won't come out because they have ribs. Some dentists will stick one of those down in there and then use that to extract the soft tissue, but they have various methods, techniques, and tools of torture with which they carry out their ministrations. Let's say that not all of the soft tissue is removed, or that the dentist goes too far and kills a nerve, so you have nonliving material in the person's gum. Pain results; infection sets in. Are the dentists in Nebraska going to allow these people to come in and receive free corrective dental work? Is that a part of this program, Senator Byars?

SENATOR CUDABACK: Senator Byars, you respond?

SENATOR BYARS: Thank you, Senator Chambers. I would certainly think that that would be part of the pro bono work that they're doing...

SENATOR CUDABACK: One minute.

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SENATOR BYARS: ...at this time, and I can't imagine any of the dentists who would participate pro bono in this program that would turn down anyone who was experiencing that type of pain. And, boy, I'm feeling the pain, Senator. Your description is just hurting me.

SENATOR CHAMBERS: Well, it's graphic. It's intended to be.

SENATOR BYARS: Yes. And had you thought about eBay for that beautiful piece of...

SENATOR CHAMBERS: No way will eBay have anything to do with this that I present today.

SENATOR BYARS: And I'm on your time, so I won't respond anymore to the offering of your amendment. I'll do that on my time.

SENATOR CHAMBERS: Okay.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Johnson.

SENATOR JOHNSON: Mr. President, members of the body, I've enjoyed the discussion here this morning. Participated in working with locum tenens over the years, but really have never understood the ramifications, as Senator Chambers has brought out this morning. Senator Byars, if you're concerned about the graphic description, I must say that I, yesterday, made rather extensive time in the dentist chair and for something that I'm not looking forward to as well. So you made me tremble just a little bit as well. But I guess what we're talking about here this morning is this, and I think we don't want to get lost with what we're doing. Here is a very reputable organization, the Nebraska dentists, who have teamed up with other states and, in particular, Kansas, who in this instance is a couple of jumps ahead of us. What the dentists down in Kansas have done is banded together. They've purchased a couple of portable dental chairs that they are willing to bring with them up here to Nebraska, or other areas where they go as well, so that they can set up these clinics and they would be part of the staffing, but basically it's my understanding that most of the staffing would

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come from Nebraska dentists. However, to cover the dentists that would come from Kansas and other states, as I understand the program, they would go back through the same process as physicians and others go through in that they have to clearly demonstrate not only to their home state officials regarding these credentials and their ability to have insurance to cover the type of problems that have been alluded to here this morning, but that these would be acceptable and comparable to those here in Nebraska. So, in closing, I think one of the things that we want to do is let's keep an open mind about this of what the intent is. I certainly respect what Senator Chambers is talking about, is let's not create a nice charitable program and then have it as a means for a few that might sneak under the guise of a good program to decrease or destroy the quality of dentistry in this state. The one question I'd have, and if Senator Chambers would educate me on this, is that it would seem to me that, in suing the state, would you be suing the right person in this instance as opposed to suing the dentist?

SENATOR CUDABACK: Senator Chambers, would you respond?

SENATOR CHAMBERS: That is a very good and appropriate question. In putting the amendment up, I wanted to have the essence of it before the body, and I believe language can be crafted which would point out that, since the state is authorizing this program, the state is waiving its immunity. And if a person suffers harm, the state would be the one for that person to go to, to obtain redress. Yes, I believe the Legislature can authorize...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...suits against the state wherever it chooses to do so.

SENATOR JOHNSON: Okay.

SENATOR CHAMBERS: I meant within constitutional limits, of course.

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SENATOR JOHNSON: Okay. Thank you very much. And thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Johnson. On with discussion of FA5, offered by Senator Chambers to LB 89. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, on a bill such as this, I like to build what I call and the courts call a legislative history. Where does responsibility lie? And, Senator Johnson, Dr. Johnson, in this discussion, it's not just the dentist who might not be up to snuff who would come here and maybe recklessly harm somebody, but the dentists who mean well and are trying to do the best that they can but they blunder and somebody is hurt. I'm interested in making the person whole who has suffered, and I don't want to put an individual, who is poor in the first place, into a set of circumstances where he or she is left worse off than before the dentist performed his or her ministrations, and has to try to get a lawyer to bring a dentist back from Kansas to come here and rectify the harm or to face a lawsuit. No lawyer is going to take a case of that person. But if the state, which has deep pockets, is the one to be sued for damages, when the language is properly crafted I would allow for attorneys' fees. If these dentists are going to do as they're supposed to do, the supporters of this program should be happy that the state will be liable. But whether they're happy about that or not, the concern should first and foremost be with the patient and not the dentist, not the dental profession. And too many times when a poor person suffers a wrong or a harm, there is no redress whatsoever, and those who inflict the harm know it so they take advantage of the vulnerable status of the poor. There was a football player just a few days ago who had been charged with some felonious type of gambling, because he supposedly was running high-stakes card games in his home, and possession of a weapon, and there were several charges against him. But after the jury heard the prosecution's case, it took them maybe an hour or less to acquit him. And you know what that man said? I was innocent from the beginning. Everybody knew this was a frame-up, but I had the money to hire lawyers. What I wonder about...this is a football player, a professional football

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player talking...I wonder what becomes of all of those poor people who obviously are facing this, because if they'll come after me, I know what they'll do to the poor, who have no money to hire a good lawyer. How many of those people are in jail right now who should not be there? Too many times people such as myself come after the fact, after a person has been harmed, and I do not have the wherewithal to rescue everybody who has been unfairly or unjustly treated. When a program is created, as is the case here, I want to build into that program the protections and the safeguards that the supporters of the program ought not to object to if their intentions are as pure as they say. If I were practicing law, I'm held...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...to the same standard, whether I receive a fee or not, as is any lawyer practicing in that area of the law. The amount of the fee means nothing. It's presumed by the courts that I have ordinary competency when it comes to being a lawyer and representing a client. And if there's a client with a case beyond my ability, I either refuse that case or assure the client that I'm going to partner up with somebody who is able to advise me so that that client's interests will be properly served. I'm not going to let the dentists or anybody else get by with a lower standard or lesser standard than lawyers. We're dealing with the physical health and well-being of these poor people. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. On with discussion. Senator Aguilar.

SENATOR AGUILAR: Thank you, Mr. President, members. Senator Chambers is certainly making some excellent points this morning. I would like to go back to some of the discussion earlier when he asked the question, why don't dentists in Nebraska provide pro bono care? I'd like to assure him that they certainly do. In Grand Island, my wife is a director of a free clinic, and within that clinic they have at least seven or eight local dentists who do nothing but pro bono work for the clinic. They handle all the emergency cases that come into the clinic, and they do this at no charge, on their own time. We also have a

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young pediatric dentist from Hastings that comes to our town, Grand Island, a couple days a week and provides pro bono care for the underserved population of our town. We have a very high, young Latino population that doesn't have the wherewithal to get dental care, and she's able to come in and provide these services for free and just does a fantastic job. And my whole point is just to assure all of the body here that there is pro bono work by dentists all over the state of Nebraska going on, and without them our underserved population would be in sad shape today. I'd like to yield the rest of my time to Senator Byars, if he'd like it.

SENATOR CUDABACK: Senator Byars.

SENATOR BYARS: Thank you. Thank you for giving me some time, Senator Aguilar. I think these are the points that...and we appreciate that very much in your statements because, yes, and as the debate has gone on and I think more and more of the pro bono work that is done by dentists in the state of Nebraska. And the University of Nebraska Medical Center dental school, I think Dr. Johnson mentioned, and Senator Jensen, send buses out into communities. They bring a bus into my community of Beatrice, within 40 miles of the dental school, to transport individuals that don't have dental care available to them to the university to receive treatment. There is coverage. There is insurance coverage to protect the poor from anyone that would make a mistake, and I would say it would have to be a mistake. Senator, I can't imagine any dentist coming into the state of Nebraska from Kansas or anywhere else going through the process of getting a temporary license and wanting to practice shoddy dentistry. They are doing it because of their feeling and their compassion to really, truly wanting to help, and I believe this in my heart. I do. And they have malpractice insurance. They have to be covered in order to be able to practice. Now, can we argue about whether the legal system makes those civil opportunities available to every one of these poor people? We do have legal aid. We have areas that people can go for assistance but, yes, but I think that's another question. The point here is are we going to make this so difficult that dentists are going to say, hey, listen, if I have more restrictions than I would normally have under my practice, what

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I do in my day-to-day practice, why should I offer myself free? Why should I offer my time free when all I'm trying to do is help? Why should I put myself in jeopardy? And I don't want that to happen and I don't think, Senator Chambers, you do either. We have worked together for too many years. I know your compassion and your passion for people who don't have the means to be able to have some of the things that those of us, like you and myself, are more affluent and able to do. But this is very similar to the Doctors Without Borders program, and for dentists it's an opportunity to do more for people who are in need.

SENATOR CUDABACK: One minute.

SENATOR BYARS: You have...I have assured you that if there is some language that somehow can make you feel more comfortable, I will work with you between now and Select File. I am somewhat uncomfortable on what would be the end result of this bill with the language that you have in the amendment that you've offered, and I know you drafted it hastily, and I would work with you to make certain that the dentists that provide services are adequately insured to protect the people that they are providing services to. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Byars and Senator Aguilar. On with discussion of FA5, Senator Louden, followed by Senators Byars, Senator Don Pederson, Senator Chambers, and Senator Johnson. Senator Louden.

SENATOR LOUDEN: Thank you, Mr. President and members of the body. Alliance, out in my district, was the recipient for these students from the dental college and some of the dentists to come into that area last summer, and it was a high...very highly successful. They treated, I don't know, nearly...way over 100 different people I think they saw that day. These people weren't forced to come to...to have this dental work, but it was all done free gratis. Students from the dental college and dental hygienists were out there working on them, and there were some highly trained dental physicians there that did some very intricate dental work in the hospital, used the hospital for that purposes and that sort of thing. So this is something that

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the dental people in Nebraska are starting to promote. They're...the last...when I talked to some dental hygienists here awhile back one morning, they talked like they were going to be doing this again in this area and they were planning on going out in the other parts of the state through the summer. They have their bus. They have their equipment they bring along, portable equipment. They use equipment that's in place. Whenever they come into an area, usually the local dentists donate their offices and their entire space for those people for that particular...usually two days that they're there. So this is something that I think we have to encourage. This is people that are wanting to help people. As far as Senator Chambers' amendment, who you're going to sue, most of these doctors, I'm sure, have some type of insurance. First of all, they're practicing physicians. My observation from this bill is probably to allow so that dentists from neighboring states can come over and help with this project, and I'm sure there's going to be some reciprocation from the dentists from Nebraska; will go help dentists in other states. But this is a big drive by the dental people to improve the dental situation of everybody in the United States, and especially in our area of Nebraska. By improving dental work on younger people and all through there, we don't have the problems that we used to be faced years ago. And I'm sure all of you that were youngsters when I was, that when somebody was about 60 years old they were wearing false teeth. You don't see that anymore. There's different techniques that come along. People are living longer. People are in way better shape dental...with dental work than they ever were in the history of our country, and I would hate to see us introduce some legislation that would stifle or stymie any of that progress that's being made. I think it's a well-thought-out idea. If there is something that needs to be done to this bill, I'm sure it can be done in...as it's worked along through the process, and I would appreciate Senator Byars for bringing it forward and helping this process along. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Loudon. Senator Byars, on the Chambers amendment.

SENATOR BYARS: Thank you, Senator Cudaback. I would just like

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to reiterate some of the...some of the information that I shared with the body in my opening statement. The last mission of mercy project that was done in the state of Kansas on the Pittsburgh State University campus allowed 140 dentists, 140 dentists, to volunteer their time for a two-and-a-half day period, provided 2,158 patients with over \$900,000 in free dental care, over 2,000 individuals who were underserved. I think all of us, particularly those who work very closely in public health, have seen oral health as one of the biggest issues affecting the people of our country for some time. We have had a tendency to take it for granted in light of hearing about other things, such as heart, such as cancer, but oral health and what poor oral health leads to as far as deterioration of the rest of the body and have so many other effects that this is important. This is an important piece of legislation. This is not a piece of legislation that's brought lightly; that it's not a piece of legislation brought to benefit a group of people, i.e., the practicing dentists of this state or any other state that would come here to practice on a mission of mercy. This is legislation brought to change our licensure law to be exactly like that of physicians and surgeons who come to practice in this state, and allow dentists to come and help underserved people. I would yield, Senator Chambers, the remainder of my time to you so that you could comment, if you would like, on prior discussions.

SENATOR CUDABACK: Thank you, Senator Byars. Senator Chambers, about two and a half minutes.

SENATOR CHAMBERS: Thank you, Senator Byars. Thank you, Mr. President. I listened to Senator Loudon, and there's a point I have to make here for everybody who talks about what the dental colleges do, and their students. Those schools are located in the state of Nebraska. They're not going out of state. And I believe that when these students are operating, there are people overseeing and supervising what they do. They don't just turn these students loose. There is a program which allows senior law students to handle cases, but they must do it under the direct supervision of a licensed attorney. You don't just turn these people loose. So that would take care of what they're saying about the dental schools. I'm not disparaging

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any work that is beneficial, but a new program is being instituted here. Senator Byars says he doesn't think any...before I get to that, let me deal with what Senator Aguilar said. He mentioned some of this work being done in Grand Island and extrapolated from that to conclude that it's being done all over the state, and I'd venture to say that what is happening in Grand Island is not being replicated all over the state. And sometimes senators have a tendency to make too broad an application of an anecdotal situation that they're familiar with, and I'm not prepared to do that when we're changing the statute. When we put something in the statute, it's written in stone, in a manner of speaking, until we change it. But great...

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: ...harm can be done before we reach that point. Senator Beutler, I meant Senator Byars said he believes in his heart in the goodness of these dentists and their work and so forth. Well, he has the advantage over me. He has that which I do not have. I do not have a heart. It reminds me of a statement made by a man in a movie called Runaway Train. It was put on the screen after it was over: No beast is so savage but that it feels some compassion. I feel no compassion; therefore, I am not a beast. People need to think about that and see what it's saying. But anyway, my time is probably up. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Pederson.

SENATOR D. PEDERSON: Mr. Lieutenant Governor, members of the Legislature, I come from an area of the state that really does have underserved people. Now, part of the reason why we have underserved people is because of the Medicaid reimbursement program. It is simply inadequate to cover the costs of the operation of the dentists in the area. They could be inundated for half of their practice, treating cases where they can't even cover their costs of operation. So, I think this is a very good program that is being proposed, and I think...I think in two

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facets I'm concerned about Senator Chambers' proposal. The first is from the state standpoint. I'm concerned about the state taking on a potential obligation. I think that we are not in a position to do that, and I think that it's unnecessary in this case. Now, we do not underwrite, as a state, the treatment the dentists generally give to people in this state. They are...they have their own malpractice insurance. They have their own responsibility for the treatment that they perform on their patients. But I think we're missing the point of this by this discussion. This is called a mission of mercy. And the mercy is for the benefit of these underserved people who are now having to travel to Omaha or to Hastings in order to get medical attention for their teeth, because they can't get that attention in the local area. And I think this is just detrimental to the people. I think that we need to focus on the fact that these people do need the treatment. They can get treatment by this. And certainly, we do not need to impose an obligation upon the state of Nebraska for this. I think if we are concerned about liability, I think we could certainly make it as a condition of these dentists, that are volunteering to come here to help people in the state of Nebraska, that we require that they have evidence of their malpractice insurance. I don't think we need to take it on as an obligation of the state. I think we can have assurance that these people will be here, in their effort to try and help our people. And I don't think we need to impose ill motive in their being here. They're not coming here to prey upon our people. They're coming here in a mission of mercy, and I think we need to focus on that. And I think reasonable requirements, such as evidence of their own malpractice insurance, is certainly adequate under these circumstances. And for that reason, I would urge that we not approve of Senator Chambers' amendment. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Pederson. Senator Chambers.

SENATOR CHAMBERS: Thank you. I don't...is that the new Lieutenant Governor up there? I have glasses with which I can read, but if I put them on and try to see any great distance, then everything blurs. But if I put that penetrating gaze without my glasses up there and focus, they would burn like

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lasers right through the individual in the chair, and come out someplace in Kansas. So I thought it would be best for all concerned for me to ask. Welcome, Mr. Lieutenant Governor. Members of the Legislature, I'm not going to take that motion to a vote, that proposed amendment. I wanted some discussion. My time was running out. But I wanted to put the idea of liability on the table. I'd like to ask Senator Byars a question or two, nevertheless. Senator Byars, you keep using the term "mission of mercy." Is that a descriptor, or is that a name of an organization or program?

SENATOR BYARS: It is a descriptor. It's not a name of an organization, to the best of my knowledge, Senator.

SENATOR CHAMBERS: So you decided to dub what these people are doing a mission of mercy.

SENATOR BYARS: I think it was dubbed a mission of mercy before it got to me. This was not my description, Senator.

SENATOR CHAMBERS: Who calls...?

SENATOR BYARS: I could have been, I think, much more passionate in my description.

SENATOR CHAMBERS: Who decided to call what these dentists are doing a mission of mercy? First of all, we don't have people dying. We don't have dentists saying, I'm going to give a transfusion with my blood, I'm going to give a kidney, I'm going to give a lung, I'm going to give any organ for somebody. Mercy is something which I think can be diminished in its value if applied too loosely. So are the dentists the ones who called what they're doing a mission of mercy? Or you don't know where the term came from.

SENATOR BYARS: I really wish...I don't want to answer you inaccurately, Senator, because I just don't know.

SENATOR CHAMBERS: Thank you. Members of the Legislature, I'm not opposed to people receiving assistance who need it. I've spent all of my years in the Legislature trying to achieve that

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goal, which will never be achieved. Even Jesus, whom you all worship--and this is from the "Holly Bible"--said, the poor you will have with you always. Always there will be poor people. Poor people will always be subject to exploitation, to mishandling. And contrary to what Senator Don Pederson might think I'm getting at, I'm not opposed to any of this stuff that people are doing, and I think it has worth. But they wouldn't get sainted for it. They wouldn't be canonized for it. I've done things out of my pocket at greater inconvenience to myself than all these dentists put together. Because I want you all to understand another thing Jesus said. When this poor little widow came up and put her mite in the alms box, that was greater than all of the money these big shots were giving with the sounds of trumpet and their entourages and all the credit they got, because it diminished them less from the huge amount they had than giving up that mite diminished that poor widow. There is a notion of relativity, proportionality. And for Warren Buffett or Bill Gates to give \$1 million here or there is nothing to them. But if I give \$10,000, that is far more worthy and meritorious than a rich man giving a little bit of something that he won't even miss. So I'm not going to canonize these dentists.

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: Just like I didn't canonize people from the Peace Corps who went there because they're so much more morally superior to all these poor savages that they were going to educate in the ways of Western Christianity and Western culture. People cannot just come and say, I'm going to give you something, so be forever grateful to me. And they wonder why the poor are so ungrateful. That ungratefulness is the only spark of humanity they have left. It's bad enough to be poor. It's worse when people are going to come to you and give you a crust of bread and expect you to fall down and worship them and thank them forever what they gave you. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Johnson, you're recognized.

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SENATOR JOHNSON: Mr. Lieutenant Governor, members of the body, one of the things that I remembered in this discussion is, last year, we had before us the question of dental care being an option for being covered under Medicaid. And it was pointed out to us that without the dental care being included, that the amount of medical care that would be required would actually cost more to clean up the mess, so to speak, for not having the adequate dental care. So just a little thing to keep in mind here as well, is that we're talking about a lot of people that might be on Medicaid rolls, where this could possibly save some expense to the state, as well. But that's not really what we're talking about here this morning. One of the things is that free care still needs to be top quality. I don't think that we want to get into the situation where we authorize less than top quality. That applies to all areas of this state. We should constantly work for the betterment of all areas of medical and dental care. One little thing, Senator Chambers, and that's this. I think that we would both agree that well-intended care is not the same as good care. Good must stand on its own. I think we have all seen physicians, dentists, attorneys, whatever, that are well-intended. That's not the same as good. We must preserve what's good and make it better. I would hope, however, that after this discussion we can move on and resolve these differences, because they're certainly not insurmountable, so that we can cover Senator Chambers' concerns and yet provide the good dental and subsequent benefits medically, as well, to our citizens. Thank you.

PRESIDENT SHEEHY: Thank you, Senator Johnson. Anyone else wishing to speak? Senator Chambers, you're recognized to close.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, if it is not clear, I want to repeat it again. I'm not interested in torpedoing this program. I see great value that can come from it. Senator Johnson hit the nail on the head when he made the distinction between well-intentioned care and good or quality care. In Chicago, they found out there were people on death row who had lawyers, maybe they were well-intentioned, but they were totally inept and incompetent. Some, although they slept in the courtroom, were deemed by the sentencing judge to have provided adequate counsel for these

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men, and they were sentenced to die. A governor came in and said, oh, no, while I'm the governor, Illinois, which probably has killed innocent men, will not kill any more. And he cleaned out death row. And Illinois and the world are none the worse for it. People who join these professions and get licensed are the only ones authorized under the law to practice that profession without suffering any legal sanction. That's why you can put a standard on them and require them to meet it. They are the only ones allowed legally to pursue that profession, to practice it on the public. I'm never one who will relax standards and say, well, this person is going to do some good, so the care that he'd give Warren Buffett is the care we couldn't expect him to give to Mary Jones or John Smith, because they are poor. And you say, well, aren't they entitled to the same consideration that anybody in this country is entitled to? The response would be, well, yeah, that any poor person is entitled to. There is a line of demarcation in this country between those who have and those who have not, and anybody who would deny it is either lying or crazy. I know it is there. But legislatures will not address these issues. A program like this, which is to be created statutorily, will provide the opportunity to discuss some things that need to be discussed. I would think, with all the praying you all go through every morning, you'd be much more compassionate, sensitive, and understanding of your duties and responsibilities as moral beings. Obviously, your church is not enough to put it in you. The home training you got, if you got any, is not enough to put it in you. So you must have thought that sprinkling a little of the "goofle-dust" every morning in some kind of prayer here is going to put it in you. And I haven't noticed any improvement in your conduct, or in the legislation that comes forth, or in the amount of honesty, directness, and forthrightness that characterizes our dealings as members of the Legislature. It's pointless. And if there can be hypocrisy when you're dealing in the area that should mean the most to you...you say you've got a soul that can be lost.

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: If there's hypocrisy there, why should I expect there to be less than hypocrisy in any area which is not

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going to be of as much concern to you? I'm going to be a watchman when it comes to the interests of people who have no representation other than mine on this floor. Mr. President, I'm going to withdraw that proposed amendment.

PRESIDENT SHEEHY: It is withdrawn. Thank you, Senator Chambers. We'll now return to discussion of LB 89 itself. No lights are on. We'll recognize Senator Byars to close.

SENATOR BYARS: Thank you, Governor Sheehy, and welcome to the Unicameral Legislature. Senator Chambers, thank you for your challenges, and for the dialogue and discussion that we have had. I appreciate your concern. And certainly, as we...and I have had in side conversations, I think we've come close to agreeing to some language that will satisfy your needs and will still help us to move LB 89 to Final Reading and to signature by the Governor, and provide services to persons who truly need them, and those services provided by people who truly want to give them in all honorable ways. As I work in public health, and as with Senator Jensen and with other members of the Health Committee, that we've worked so hard to build a public health infrastructure, and we've worked, Senator Chambers, with the Office of Minority Health and with those individuals and minorities who so truly and badly need public health services, one thing that strikes me in this conversation about oral health is the tremendous effect that inadequate oral health has on moms who are pregnant, and what happens in giving birth to low-birth-weight babies because of inadequate oral health. A lot of people don't realize that, the adequate nutrition that young children need from the womb on, proper nutrition, that they can't have if their oral health is neglected, if it's not taken care of, and they can't chew, they hurt. And it is so, so important that we allow this project to go forward. And as I think of...as we talked about the term, the meaning of the word "mercy" and the "mission of mercy," I truly think, as we look at low-birth-weight babies, we look at proper nutrition in kids, we look at ability of adults who are less than effective in the workplace because they're hurting because they have inadequate oral healthcare, I think this is legislation that is so important to us to adopt in this state. And again, I wanted to thank Senator Chambers. I also want to thank Senator Thompson,

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who has been working with us on some appropriate language that I think will work, between now and Select File. And I know you, as all of our colleagues, want to see legislation that's going to affect positively the people of this state who can least afford it. And I would ask for you to advance LB 89 to E & R Initial.

PRESIDENT SHEEHY:    Thank you, Senator Byars.    The question before the body is, shall LB 89 advance? All in favor vote yea; and opposed, nay.    Record, Mr. Clerk.

CLERK:    33 ayes, 0 nays, Mr. President, on the advancement of LB 89.

PRESIDENT SHEEHY:    LB 89 advances.    Mr. Clerk, do you have items for the record?

CLERK:    I do, Mr. President.    Thank you.    Your Committee on Banking, Commerce and Insurance reports LB 450 to General File; LB 73, LB 149, LB 310, LB 315, LB 375, LB 491 as indefinitely postponed; those reports signed by Senator Mines. Transportation Committee reports LB 247 to General File, LB 516 to General File, LB 742 indefinitely postponed.    And, Mr. President, Natural Resources Committee selected its first priority bill, LB 162; that signed by Senator Schrock, as Chair. That's all that I had, Mr. President.    (Legislative Journal page 409.)

PRESIDENT SHEEHY:    Thank you, Mr. Clerk.    (Visitors introduced.) Mr. Clerk, next: LB 175.

CLERK:    Mr. President, LB 175, introduced by Senator Jensen. (Read title.) Bill was introduced on January 7, referred to the Health and Human Services Committee. The bill was advanced to General File. At this time, I have no amendments to the bill, Mr. President.

PRESIDENT SHEEHY:    Thank you, Mr. Clerk.    Senator Jensen, you're recognized to open.

SENATOR JENSEN:    Thank you, Mr. President, members of the

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Legislature. LB 175 was brought to me by the Nebraska Academy of Physician Assistants, and it deals with the authority of physician assistants--many of you refer to these as PAs--to prescribe drugs and devices pursuant to a scope of practice agreement with the supervising physician. Current law permits a physician to delegate authority to a physician assistant to prescribe all drugs and devices, with the exception that a physician assistant may only prescribe Schedule II controlled substances for a 72-hour period for the relief of pain, and the prescription may not be renewed by the physician assistant. LB 175 would remove that 72-hour restriction, and would clarify that any limitations placed on the prescribing authority of the physician assistant must be recorded on the scope of practice agreement with his or her supervising physician. Recognizing the delegated authority of the physician assistant to prescribe controlled substances for relief of pain, LB 175 also adds physician assistants to certain...to sections relating to prescribing, dispensing, or administration of excess dosage of controlled substance for treatment of pain. Current law permits such dosages, as long as the dosage is not prescribed, dispensed of...administered for the purpose of causing or assisting in causing death, and it conforms to the policies and guidelines for the treatment of pain adopted by the Board of Examiners of the Medical and Surgery. Section 71-2418, 71-2420 were originally adopted as part of LB 226 in 1999. The testimony that was brought forward by the physician assistants explained a little bit, and I will quote right from that testimony PAs work with oncology and hospice patients who require more than a mere three days of pain control. Patients with injuries or postsurgical pain require greater than 72 hours of pain control. Chronic conditions flare up and require treatment of narcotic pain control. Some medications come in patches only dispensed in a quantity greater than for 72 hours. Schedule II medications also include stimulants that are appropriate for Attention Deficit Hyperactivity Disorder, and the current statute prohibits supervising physicians...prohibits supervising physicians the authority to delegate that authority to his or her PA, and ability to appropriate medical care. Twenty-eight states allow Schedule II prescribing by PAs, including our surrounding states, and no state has ever rescinded their law. I think this is a very straightforward bill. It does...all it

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does, it removes that 72-hour, right now, restriction and allows the physician assistants, again, under that scope of practice agreement with a physician assistant, to extend that prescription. With that, I'd be glad to take any questions, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Jensen. The floor is open for discussion. There are no lights on. Senator Jensen, you're recognized to close.

SENATOR CHAMBERS: Oh, yes, there is.

PRESIDENT SHEEHY: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. And it's good that we had this little set-to right away. (Laugh) Senator Jensen, would you turn to page 3 of the green copy? This is existing language. I often use my bill book. You all are the gadget meisters and gadget mongers, but I still rely on the old faithful, red, bound book of bills. In line 15.

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: The line above talks about the substance not being administered for the purpose of causing death. The language I'm interested in begins with the word "or" in line 15: "or the purpose of assisting in causing, death for any reason and so long as it conforms to the policies" and so forth. What does this language mean, "or for the purpose of assisting in causing death"? That's for any purpose...for any reason. That is what is prohibited right now.

SENATOR JENSEN: Yes.

SENATOR CHAMBERS: No medication or substance can be administered for the purpose of assisting in causing death for any reason. Substances have been administered which resulted in death, isn't that true, even though the purpose was not to cause death?

SENATOR JENSEN: I suppose there is a possibility of a reaction

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of something that would be given to somebody that could cause death. That is correct.

SENATOR CHAMBERS: And in managing pain, larger dosages are allowed than would ordinarily be considered acceptable and appropriate care.

SENATOR JENSEN: True.

SENATOR CHAMBERS: Is it possible that a larger dosage could put too great a strain on a person's heart, and that person might die? Which, ...let me put it a different way. Is it possible that somebody might die after receiving one of these extra-heavy dosages, who would not have died had not that dosage been administered, even though they would have been in great pain without it?

SENATOR JENSEN: I imagine that is a possibility. I'm not a medical person myself, but I do know that there has been reactions or has been circumstances that perhaps that could happen.

SENATOR CHAMBERS: I don't see Dr. Johnson; otherwise I would have been asking him. Senator Jensen, the fact that a medication in a certain dosage has a specific effect on me does not mean that the same dosage, even if you have the same condition I have, would impact you the same way. Do you agree with that?

SENATOR JENSEN: I do agree with that.

SENATOR CHAMBERS: So a person who is a physician could administer a dosage which could be implicated in the death of a person after the fact, but prior to its administration nobody would have said that if this dosage is administered under these circumstances it's for the purpose of causing death or assisting in bringing about death. Would you agree with that statement?

SENATOR JENSEN: I would agree with that.

SENATOR CHAMBERS: Senator Jensen, how hard would you resist me

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if I want to strike the language beginning with "or" through "reason" on line 16?

SENATOR JENSEN: Fifteen and sixteen.

SENATOR CHAMBERS: This is the language I would strike: "or the purpose of assisting in causing, death for any reason."

PRESIDENT SHEEHY: One minute.

SENATOR JENSEN: Certainly, pending, maybe, a counsel with the legal counsel. To me, I don't think I would have a problem with that, pending any advice that I might receive other than that. But I think we could stop right there at the period of "causing."

SENATOR CHAMBERS: Is this on my time?

SENATOR JENSEN: Yes, I believe it is, Senator.

PRESIDENT SHEEHY: Yes. Yes, your time.

SENATOR CHAMBERS: Oh, thank you, Senator Jensen. Thank you, Mr. President.

PRESIDENT SHEEHY: Mr. Clerk.

CLERK: Mr. President, Business and Labor will meet underneath the north balcony at 11:00; Business and Labor, north balcony, 11:00.

PRESIDENT SHEEHY: Senator Chambers, you're recognized.

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, this area of medical activity is one that is discussed at great length. And there have been concerns, and probably still are in some places, that in managing pain, doctors have been unwilling to use the amount of painkiller necessary to give the person relief, because the dosage exceeded what might be legally allowable ordinarily. So legislatures have taken that into consideration and determined that

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appropriate treatment includes the alleviation of pain. There is nothing meritorious about a person suffering great pain when something can be done to alleviate that pain. Some people, such as myself, take it a step further. A person may, no matter what the law says, terminate his or her life whenever he or she pleases. There are people who will try to persuade a person, who, whether it's despair, discouragement, or just weariness with life, from ending his or her life. And they think, when they deal with such a person, they are performing a noble act. And sometimes they would say, if I were you, this is how I would behave. But the crucial fact is, they are not that person. Were they that person, they would do exactly what that person is doing. I think the bill, as it stands now, is a good bill. But while my time is running, I want to get an amendment drafted. I'm aware that my time is running.

PRESIDENT SHEEHY: You have just a little over two minutes, Senator Chambers.

SENATOR CHAMBERS: That will be sufficient. Thank you, Mr. President. Thank you, Mr. President.

PRESIDENT SHEEHY: Mr. Clerk, you're recognized for a motion from Senator Chambers.

CLERK: Mr. President, Senator Chambers would move to amend. (FA6, Legislative Journal page 409.)

SENATOR CHAMBERS: I need to correct that. The amendment as drafted says, "or the purpose of assisting..."

PRESIDENT SHEEHY: One minute.

SENATOR CHAMBERS: "...in causing." That's where it should end. I will come up there with the Clerk.

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on your amendment.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, in line 15 I would strike the words "or the purpose

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of assisting in causing." And this is what would be left, and this is in existing language: "such dosage is not administered for the purpose of causing death for any reason," and then you continue, "and so long as it conforms to policies and guidelines for the treatment of pain" and so forth. So I think the language I'm striking is surplusage. It brings...it raises an issue which does not have to be raised. If medication, a drug, or whatever the term is that would be applied, is administered for the purpose of causing death, that person who administered it is culpable, will be held liable. On the other hand, if the dosage is administered and death results, but it was not administered for the purpose of causing death, there is no criminal or other culpability. Purpose goes to knowledge and intent. You have to know that what you're doing is going to bring about a result, and you have to intend that it bring about that result. So it would not be enough to convict a person to say that this dosage was given, the individual receiving it died, and it can be shown that the dosage caused the death. That is not enough. You have to go into the mind of the person who administered the dosage and consider what was in that person's mind at the time the dosage was administered. This other language that I'm striking, "or the purpose of assisting in causing," I think that would be virtually impossible of proof. But it could create a gray area where a person who otherwise would not be held culpable could be. It doesn't say, as I read it, that a death results. So you have two steps. No death resulted, but somebody might say, well, I don't like that doctor. I have watched him treat...the way he treated my relative--by that I meant the medical treatment accorded--and it's clear that he or she couldn't care less about the welfare of my relative. So I think that this dosage was given in order to assist my relative in dying before he or she would. And therefore, I'm moving to strike the language. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Jensen.

SENATOR JENSEN: Thank you, Mr. President. And, Senator Chambers, in response to your amendment, I guess where I would like to have you think about a little bit, first of all, at this point in time, I don't have a problem with that. And we could

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certainly include this, and if I discover one, we could come back at Select File, or we could move the bill as is to Select File and add it at that time, either way. However, in criminal law, many times you will...and I'm not an attorney either, but you will hear the statement of committing an act or assisting in that act. And is this language similar to that: for the purpose of causing or assisting in causing? Is there a correlation here? Is this a policy that we would have, or that also is in criminal acts, as well as in this act? And I would ask that question to you, if you'd respond, Senator Chambers.

PRESIDENT SHEEHY: Senator Chambers, will you yield?

SENATOR CHAMBERS: Yes. Senator Jensen, this section is dealing with the practice of medicine, and it is not criminal law. I do not want to import into this section concepts or philosophies from the criminal law. I would offer the amendment. And if, when we get to Select File, we can be shown that it's inappropriate, then I will make the motion to withdraw it, or you can, and I'll support you in it. But I wouldn't want somebody, who calls himself or herself managing pain, saying, well, now, that person didn't die, but the relatives are upset with me, so maybe they're going to say my intent in giving a larger dosage than I've been giving was to assist in killing that person, even though no death occurred. I'm saying again, if death occurs, then you have a specific act which is determinable, and the only question then, if somebody raises one, what was the intent? Even in some areas of the criminal law, where they want to talk about assisting, aiding, or abetting, or conspiracy to do certain things, it is so fluid and indefinite that I think a lot of injustice does result. So that would be the way I'd answer the question.

SENATOR JENSEN: Well, Senator, I would...after your response...and this was a bill, I believe, or part of a bill, that Senator Hilgert introduced a couple of years ago, when we were talking about end of life care and also that of, perhaps, even assisted in suicide, and that...which was an issue a few years ago with Dr. Kevorkian. And so I think the language is very meaningful, and it should be correct. However, I could, with the statement that you made, that if we find that on Select

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File that this is...and further investigation, that this language should remain there, and with your commitment to do that, I would certainly allow your...not that I can "allow" anyway (laugh)...but I would certainly allow your amendment to move forward. I'm...that concludes my comments, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Jensen. Anyone else wishing to speak? Senator Chambers, you're recognized to close. Senator...Senator Foley.

SENATOR FOLEY: Thank you, Mr. Lieutenant Governor. I thought I pushed the light earlier, and apparently I didn't push it hard enough. Anyway, thank you for recognizing me. I don't serve on the Health Committee, so I was not aware of the substance of this bill until this morning. And I didn't serve with Senator Hilgert, I don't think I served with him, at the time that he offered a bill on this matter. He and I overlapped here for a couple of years, but I think that when he offered the bill, it might have been before I was here with him. But I'm very concerned about striking those words. And I think they were there for a very real purpose. And to now take them out without the benefit of a public hearing as to the purpose of those words and why they were put in, in the first place and why someone would want to take them out, I'm very reluctant to take those words out. I think this does relate very much to the whole question of assisted suicide, and I'm going to vote against this amendment. I think we would be very ill-advised at this point, just on the floor, to pull those words out, without the benefit of a public hearing as to what the import of those...of that phrase is. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Foley, Senator Chambers. Anyone else wishing to speak? Senator Chambers.

SENATOR CHAMBERS: Yes. Now, Mr. President, I think I need to speak. I'd like to ask Senator Foley a question.

PRESIDENT SHEEHY: Senator Foley, will you yield?

SENATOR FOLEY: Yes, I will.

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SENATOR CHAMBERS: Senator Foley, was the mention or invocation of Senator Hilgert's name what caused you to join in the discussion, when we've been talking about it for a while and you didn't see the need to say anything? Was that what drew you into it?

SENATOR FOLEY: No, not totally. That was certainly of interest to me, that Senator Hilgert had done some work in this area. I wasn't...

SENATOR CHAMBERS: Do you know...

SENATOR FOLEY: ...I wasn't...to be truthful, Senator, I was not aware of the work that Senator Hilgert had done on this question (inaudible).

SENATOR CHAMBERS: Do you know that Senator Hilgert is the one who asked that these words be put into the law? Do you know that?

SENATOR FOLEY: No, I did not know that.

SENATOR CHAMBERS: Do you know whether this law, this bill, was based on a model that existed in other states?

SENATOR FOLEY: I don't know that either, Senator.

SENATOR CHAMBERS: Have we stricken language from bills without there being public hearings when the matter comes before us on the floor?

SENATOR FOLEY: We certainly have.

SENATOR CHAMBERS: Okay. That's all I will ask you. Members of the Legislature, Senator Jensen and I have had our discussion. He has agreed to the striking of the words. I have agreed that if we are shown between now and when the bill comes up on Select File that there is a very real reason for the words being there, not just because they're there now, then I will cooperate in removing...I mean, in putting the words back. But I'm not going to be derailed just because Senator Foley, without being able to

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give a reason, saying, well, there must be a reason for the words. Well, there must be a reason for bills, laws that are on the books, that he might try to get off the books. So that is not an argument. I would ask that you adopt the amendment, with the understanding that Senator Jensen, whose bill it is, and I have arrived at. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Senator Chambers and Senator Foley. That was Senator Chambers' closing. The question before the body is, shall amendment FA6 be adopted to LB 175? All in favor vote yea; opposed, nay. Senator Chambers, you're recognized.

SENATOR CHAMBERS: I would ask for a call of the house.

PRESIDENT SHEEHY: The question before the house is, shall the house go under call? All in favor vote aye; opposed, nay. Record, Mr. Clerk.

CLERK: 23 ayes, 0 nays, Mr. President, to place the house under call.

PRESIDENT SHEEHY: The house is under call. All unexcused personnel please leave the floor. Unexcused persons please report to the Chamber. Mr. Clerk, Senator Chambers has indicated he will accept call-in votes.

CLERK: Senator Smith voting yes. Senator Preister voting yes. Senator McDonald voting yes. Senator Schimek voting yes. Senator Schrock voting yes. Senator Landis voting yes. Senator Brashear voting yes. Senator Johnson voting yes. Senator Engel voting yes. Senator Flood voting yes. Senator Smith changing from yes to no. Senator Kruse voting yes. Senator Friend voting no. Senator Erdman voting no. Senator Synowiecki voting yes. Senator Connealy voting yes. Senator...

PRESIDENT SHEEHY: Record, Mr. Clerk.

CLERK: 27 ayes, 4 nays, Mr. President, on the adoption of the amendment.

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PRESIDENT SHEEHY: FA6 is adopted. The call is raised. We'll move back to open discussion on LB 175. No lights on. Senator Jensen, do you wish to close?

SENATOR JENSEN: I'd just ask for the adoption and to move to Select File LB 175.

PRESIDENT SHEEHY: The question before the body, shall LB 175 advance? All those in favor vote yea; opposed vote nay. Please record, Mr. Clerk.

CLERK: 33 ayes, 0 nays, Mr. President, on the advancement of LB 175.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. LB 175 advances. Next bill, Mr. Clerk.

CLERK: Mr. President, LB 176, by Senator Jensen. (Read title.) Bill was introduced on January 7, referred to Health and Human Services, advanced to General File. At this time, I have no amendments to the bill, Mr. President.

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Mr. Jensen, you're recognized to open.

SENATOR JENSEN: Thank you, Mr. President. LB 176 is a reintroduction of LB 996, as amended by the Health and Human Services Committee and advanced to General File last year; one of those bills that didn't make it to the end. The bill relates to the use of automatic external defibrillators, referred to as AEDs. The bill was originally brought to me by the American Heart Association, for the purpose of expanding the availability of AEDs as much as possible. Current law permits only two classes of people to use an AED, and provides them with immunity from civil liability... (laugh) civil liability for such use. One is the credentialed health-care professionals; and two, persons who are appropriately trained in using AED and who maintain and test the AED according to manufacturer's guidelines. LB 176 permits anyone to use an AED to render emergency care or treatment, and exempts such persons from civil lib..liability--having trouble with that word today--if that

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care or treatment is rendered in good faith and the care or treatment is not rendered in a willful, wanton, or grossly negligent manner. The liability of certain health-care professionals is still limited as provided in the purpose of this change to make AEDs more widely available and usable for persons who need not have that experience. Secondly, instead of requiring every user of an AED to appropriately be trained in its use, and maintain...instead of requiring every user of an AED to be appropriately trained in its use, and to maintain and test the AED, the bill requires that anyone acquiring an AED, that is, the owner of the AED, the person or entity who purchased it, to ensure that the AED is maintained and tested according to the manufacturer's guidelines, that designated personnel are trained in its use according to the guidelines established by the Department of Health and Human Services Regulation and Licensure, and that local emergency medical service is notified of the existence, location, and type of the AED, and any change of its location. That section I just read there was actually introduced by me a year ago. This portion of the bill is not intended to add any new duties to the Health and Human Services Regulation and Licensure. The intent of this change is to require the owner of the AED to make sure that at least someone is familiar with it and how to use it. Current law requires users to receive appropriate training in its use, as established by the Department of Health and Human Services Regulation and Licensure. LB 176 would apply that training requirement only to the person or entity acquiring the AED. Those appeared in support were Randy Jones of the American Red Cross; Jerry Stilmock, who's Nebraska State Volunteer Firefighters Association; Steve Beal, the Nebraska AED Consortium; Joan Anderson, Lancaster County Medical Society and EMS; and Brian Krannawitter, American Heart Association. There was no opposition testimony. I might mention that here in the Legislature, we do have an AED. It is in the Clerk's Office. And certainly, if you haven't seen one of these, certainly be glad to get one for you to show you. They are...you open it up, it is self-explanatory, it talks to you. Really, it doesn't require any technical education whatsoever. But the whole purpose of these is to get as many as necessary out to the communities, to gymnasiums, wherever there is a gathering, so that anyone can...if there is a heart attack that someone has,

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that anyone can take one off the wall, open it up, use it. As you know, time is of essence anytime someone is suffering from a heart attack. So these are being distributed widely throughout Nebraska. They're in almost every school building that I know of. Certainly, every emergency vehicle has them. And I would hope, matter of fact, that even here in the Capitol--we have one on the Clerk's Office--I would hope that we'd have a second one downstairs, particularly when the Clerk's Office is not open. With that, that's all the bill does. It removes that requirement that you must have training in order to use one. And I would just ask for the advancement of LB 176.

PRESIDENT SHEEHY: Thank you, Senator Jensen. Senator Beutler, you're recognized.

SENATOR BEUTLER: Mr. Speaker, members of the Legislature, Senator Jensen, if I could, I would like to engage you in a conversation. I certainly have no problem whatsoever with the bill and what it does. I'm not sure I understand the interrelationship between a couple of provisions, and I think it's important that we're clear on the floor as to what your intent is. You've basically restructured the bill a little bit, as I understand it. And on page 3, line 4, and in that paragraph, you have dealt with those who deliver emergency care or treatment and you've basically made it clear that no person who delivers emergency care or treatment using an AED shall be liable in any civil action.

PRESIDENT SHEEHY: Senator Jensen, will you yield?

SENATOR BEUTLER: Then you go down to subsection (3), which begins on line 16, and in that paragraph there's a lot of new language, and that doesn't deal with people who deliver the service, but rather deals with a person who acquires an automated...an AED. And with respect to that person, they are obligated, under the statute, they shall ensure that the defibrillator is maintained and tested in accordance with guidelines, that's one thing; that designated personnel are trained in the use of the device; and (c), that local emergency medical services is notified in the manner that you described in your earlier testimony. With regard to those who deliver the

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service, it seems quite clear that they are not going to be liable for anything. And I don't know these devices. I appreciated your brief explanation of how easy they are to use. What I wanted to ask you primarily about is the liability of those acquiring the devices. You indicated, for example, that the Clerk of the Legislature had one of these in his office. Would that...would the Clerk of the Legislature be an example of a person who had acquired an AED?

PRESIDENT SHEEHY: Senator Jensen, would you yield?

SENATOR JENSEN: Thank you, Senator Beutler, for that question. And I believe the state actually acquired that. I don't know whether that was actually given to the state or we bought it. It was...when the bill was introduced, that's when we...anyway, it came into existence here. And the...Dr. Raymond of Health and Human Services really feels that that should be removed. I mean, if these devices--and they are--so self-explanatory, I don't know why the person acquiring it...yes, he needs to maintain it, I absolutely believe that. There are batteries that need to be maintained. But to require somebody to be trained in it kind of deletes what we're saying earlier. And so I would like to bring back an amendment--I don't have it prepared at this point in time--on Select File, to maybe remove that portion. Now, the American Heart Association feels that everyone who uses one of these should also be trained in CPR and some other things. But, my, these are being used all over the United States and the world today for the purpose of rendering aid and rendering it very, very quickly.

SENATOR BEUTLER: Yeah.

SENATOR JENSEN: And it doesn't require...

PRESIDENT SHEEHY: One minute.

SENATOR JENSEN: ...an education to do that.

SENATOR BEUTLER: Okay. Well, I think we're thinking along the same lines here. But the general, broader question...let's assume that the person acquiring can be the state, or a

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corporation, perhaps, or an individual in their proprietorship, a small business, or something like that, or a nonprofit in their facility. It could be a broad number of types of entities or persons, I assume. Would that be correct, basically?

SENATOR JENSEN: Yes. Yes, absolutely.

SENATOR BEUTLER: Okay. So they acquire this. And of these three obligations, the first one is to maintain and test it. Now, let's say we have a situation where one of us has a problem. You have a heart attack with one of my bills, maybe.

SENATOR JENSEN: (Laugh) Possible. Okay.

SENATOR BEUTLER: Patrick rushes out and he gets the defibrillator and, by golly, it doesn't work.

PRESIDENT SHEEHY: Time.

SENATOR BEUTLER: The battery is gone, or whatever. He hasn't checked the batteries.

PRESIDENT SHEEHY: Senator Johnson.

SENATOR JOHNSON: Senator, I would yield a little time to let him finish his question.

PRESIDENT SHEEHY: Senator Beutler.

SENATOR BEUTLER: Senator Johnson, thank you very much. I have a little time I'll yield back to you here in a minute. You follow the hypothetical so far? Patrick hasn't done his job, and it doesn't work. And one of...you...somebody volunteers and applies, or delivers, the emergency aid, but obviously it's not going to work, because the machine doesn't work. Is Patrick or the state liable for not having maintained that in its proper condition for use?

SENATOR JENSEN: There is no liability in that section that is there. Now,...

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SENATOR BEUTLER: Well, but there's a common law liability, and a duty, and some other things. Well, you're very familiar with all of that through other bills.

SENATOR JENSEN: Right. I would agree. I had a fire one time, reached for a fire extinguisher, it wasn't charged, didn't do any good to fight the fire at all. So I think anytime you have something that is supposed to be a life-saving device, and it doesn't operate, yes, I think you have a responsibility there.

SENATOR BEUTLER: Okay. So what you're saying, basically, is there is a duty on the part of the person who volunteers to...well, let me go back a step. Anybody that agrees to have a defibrillator in their facility is volunteering to do that. Is that right?

SENATOR JENSEN: I would certainly think so.

SENATOR BEUTLER: Okay. And why would we want to discourage them from volunteering to purchase that defibrillator, but...by having a liability attached to it, but not have a liability to the person who delivers it? I mean, if the incentive in the bill is to encourage people to deliver this emergency care, then they need both a person to deliver it, and a machine to deliver it. And I'm interested in why you would attach liability to one and not to the other.

SENATOR JENSEN: Well, anyone with a professional license or a professional background has a liability, I think, that they bring on themselves by their education and by their title and their name. But certainly, I don't want to impose liability on anyone who would purchase this, other than, why would you purchase something and not have it working?

SENATOR BEUTLER: So your amendment will encompass...

SENATOR JENSEN: Yes.

SENATOR BEUTLER: ...doing away with that liability?

SENATOR JENSEN: Yes, it would.

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SENATOR BEUTLER: Okay. And then, in terms of training, the obligation to train people, would they have an...I mean, I assume you would do away with the liability there also. But in addition to doing away with the liability, would you take away the duty to train people, or not?

SENATOR JENSEN: I think that that should be taken away in that amendment, yes, the obligation to train someone. Like I said, it's self-explanatory. It's just like opening up the instructions to a toy, almost. Well, much better than that.

SENATOR BEUTLER: Okay. Last question. Is there any downside to improperly applying or delivering emergency action by a defibrillator? In other words, if worse comes to worse and somebody uses it improperly, they don't do harm, except to the extent that time passes and proper emergency care does not occur? Is that accurate?

SENATOR JENSEN: That...

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR JENSEN: I certainly do believe that is accurate. And I would allow my seatmate here to comment on that, and he said that he would.

SENATOR BEUTLER: Good. Okay.

SENATOR JENSEN: So perhaps he could answer that. And I'll push my light and give it to him, or however way...

SENATOR BEUTLER: That's fine, Senator. And thank you for a great bill. I hope those items can get cleaned up a little bit.

SENATOR JENSEN: Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Johnson, you have about 20 seconds.

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SENATOR JOHNSON: (Laugh) Well, I'll put on my light again, then. Mr. President, should I go ahead with...we're down to zero seconds.

SENATOR CUDABACK: I'm sorry, but you're not the next speaker, Senator Johnson.

SENATOR JOHNSON: All right.

SENATOR CUDABACK: Senator Baker, you have five seconds if you wish to use them.

SENATOR JOHNSON: I yield...

SENATOR CUDABACK: Senator Baker.

SENATOR BAKER: Thank you, Mr. President and members. I don't know whether I'm the only one in the building or anyone on the floor that's certified defibrillator current...I am. We...as an EMT...we need our Lieutenant Governor back in here. He's a certified paramedic, and I'm sure his ambulances have defibrillators in them. I can answer a few questions. I...our ambulance service...I had to take training years ago when we started using defibrillators. There was external defibrillators, and then we went to automatics. Automatics is what we have over in the Clerk's Office. It's a compact little machine that has two leads on it, red and a white. Reds are standard. White, right; red, ribs. And it...you open up the cover on it, it will tell you where to put the electrodes. It will do a self-assessment of the machine, and then it will do assessment of the patient. And it will not...if there's a shockable rhythm on there, then it will say, stand back, and you press a button, and it shocks that person, and hopefully returns that rhythm to a...I want to say a normal rhythm. If it's a straight line, it won't allow you to shock. And if it's a...say, a fibrillation that's not a shockable rhythm, it will not allow you to shock that person. It's all automatic. It's all built in within the machine. And it's impossible, absolutely impossible, to shock someone who has a rhythm that is a...so-called, a workable heart, it's a working heart. So

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that's all taken out of the equation. You don't have to recognize it. The old defibrillators, you had to recognize the rhythm and make a judgment call whether that was a shockable rhythm or not; not so with the new ones. As an EMT, though, we have to certify our defibrillator every 30 days. We have a form in the ambulance. But that's a different set of circumstances. We're professionals licensed to provide these services, and if we would not have that certified, and the batteries are down or a lead is broken or something like that, or not have the pads available, then we'd be in trouble. But we certify our defibrillator within our ambulance each 30 days, sign a sheet says who did it, they ran it through the process. This one over here, yes, we should check and see...open it up and see that the batteries are good on it. They do expire. Those batteries have a date on them, and a lifetime of, I don't know, I think two years, something like that. So we need to look at that, and I'd be glad to look at it. We also have liability issues as an EMT. Because when we're running, we have a monitor on this person with a blood pressure cuff, monitor an EKG, and we've got the defibrillator attached. It's analyzing the patient. We're also providing oxygen through an ambu bag in case of a heart attack patient and so on. That's a different set of circumstances. But in the short of it, I support the bill. It's something we need to do. It allows the general public to do this. I...it's so self-explanatory, when you open up that cover, that anybody can do it. There are guidelines...or, there's safeguards built into the machine that will not allow us to...and I hope Doctor...Senator Johnson...I about called you Dr. Johnson. Which title are you wearing today? But it absolutely will not allow you to shock a person without a shockable heart rhythm, so pretty fail-safe. It is fail-safe. I shouldn't say...they are fail-safe. And I'd support the bill. And I'm not concerned about the liability, because the machine is engineered to take over that responsibility, you might say, of judgment. Don't have to make a judgment call. So, be glad to answer any questions if I could. I've used them before. They are very effective. We've brought people back with defibrillators. It's no question that they're effective. And certainly, the more people we get out in the public that have access to these and are willing to use them, the better. Thank you.

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SENATOR CUDABACK: Thank you, Senator Baker. Senator Beutler, followed by Senator Johnson.

SENATOR BEUTLER: Senator Cudaback, in light of your deplorable harassment of Senator Johnson, I'm going to yield him all of my time.

SENATOR CUDABACK: Senator Johnson, you have almost five minutes.

SENATOR JOHNSON: Thank you, Senator Byars (sic). Now, one of the things that I think that we need to understand and enter into the record here is just how good these machines are. Twenty to twenty-five years ago, there was a massive undertaking to teach people how to do CPR--cardiopulmonary resuscitation. When a person has a heart attack, so that they...or a heart condition called ventricular fibrillation, this is the last state that you have where the heart, rather than contracting as a unit, just...the muscles just all work independently. When you have that ventricular fibrillation, about the only thing that works is to use one of these devices. When we were teaching just cardiopulmonary resuscitation, our success rate was only 5 to 10 percent. With the use of one of these devices now, it's in excess of 80 percent that you will convert that rhythm, if...that is, if it's done early. So I don't mean to tell you that you're going to have an 80 percent success rate. But your chances of having the success go up very dramatically. As I said, it's only been 20 years to 25 years ago that a group over in Iowa of EMTs were authorized to use the first defibrillators in their unit. But the unit has to get to you. Now the technology is so good that basically you can't go wrong. You could have a group of fifth or sixth graders that could do this and be right virtually all the time. The other thing is that the machine is smart enough that if you're not, it is, and it will not do any harm. So it will only shock the individual when it has a rhythm that can be treated. Thank you.

SENATOR CUDABACK: Thank you, Senator Johnson. Senator Johnson, your light...did you wish that to be on?

SENATOR JOHNSON: (Microphone malfunction)...enough. Thank you.

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SENATOR CUDABACK: Thank you. Senator Beutler.

SENATOR BEUTLER: Senator Johnson, I appreciated the conversation and the enlightenment you've given us, and also Senator Baker. Let me ask you directly one more question, if I might.

SENATOR CUDABACK: Senator Johnson, would you yield?

SENATOR JOHNSON: Yes.

SENATOR BEUTLER: You referred to modern "fibrillators"--AEDs, that seems to be easier to say. And Senator Baker suggested that there has been some evolution in these machines. You refer to the fact that the most current version, anyway, with that, you can do no harm. Let me ask this question. Are there different technologies or different precision that are...a different degree of precision that's attendant to a different model? Or has there been an evolution in these machines? And are there machines still out there that could do harm? And do we need to say anything in the bill about what kind of machine, that's what I'm getting to ultimately, we're talking about?

SENATOR JOHNSON: I don't know...

SENATOR BEUTLER: I'd yield to Senator Johnson.

SENATOR JOHNSON: I don't know if there are still machines out there that are antiquated and could be used. But what we are talking about here is the automatic external defibrillators. So perhaps in that language itself, by calling it automatic, it is sufficient language. But all of the machines that are made now do have the ability to detect the rhythm that could be treated by using the defibrillator. So the ones that are available now, I don't think there's any problem at all. Are there ones that are still out there somewhere? Possibly. But this is looking to the future. And I might say that there's also been some conversations on the side that there is one automatic defibrillator which has been locked up around here. We have had conversations today to see that that is in a very accessible

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place, and perhaps getting a second one, so that there's one on each floor of the Capitol.

SENATOR BEUTLER: Senator, thank you. Let me switch to Senator Jensen. With regard...you heard, Senator, the questions I asked with regard to the types of...the possible types of machines out there. Let me ask you whether you think the word "automated" limits the nonliability in this bill to that kind of machine, and/or whether that description, "automated," is enough to ensure that we're dealing with the type of machine that we're all envisioning here?

SENATOR CUDABACK: Senator Jensen, would you yield?

SENATOR JENSEN: Yes, thank you. And, Senator Beutler, I do believe the word "automated" is enough information that we need to have. I think the whole thing is to get as many of these out as we can, and not to have people have fear of trying to use them. Like Senator Baker said, if they're not applied correctly, it just won't happen. You won't get the shock.

SENATOR BEUTLER: Okay.

SENATOR JENSEN: So I think, in that regard, I think the word "automated" is sufficient.

SENATOR BEUTLER: Okay. And then, so your intent with the bill would be, then, that if it were not an automated version that were the subject of the emergency treatment, or the vehicle of the emergency treatment, then it may be, under the common law, that liability would attach to the person who delivered the care. Would that be accurate?

SENATOR JENSEN: I think that's possible, yes.

SENATOR BEUTLER: Okay.

SENATOR CUDABACK: One minute.

SENATOR JENSEN: And like I said, I do intend to bring an amendment for Select File, and would be glad to run it by you

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before I do that.

SENATOR BEUTLER: Thank you, Senator Jensen. I appreciate that. Senator Cudaback, I would yield the rest of my time back.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Jensen, there are no further lights on. Do you wish to close on the advancement of your bill?

SENATOR JENSEN: Yes, thank you. I will close. And appreciate the conversation that has been had. These are very sophisticated machines that work extremely well. But they only work if people, one, in case of a heart attack, if they are used. But along with that, you need to know where they are. Now, we did pass a bill a year ago that we instructed all EMS personnel that they would know the location of these machines. I will say this, that I talked to a State Patrolman here in the Capitol, asked him where the AED was, and he said, I'll look it up. And he did look it up shortly, and come back with an answer. Also, I asked one of our Sergeant at Arms where one was, and they thought it was in the doctor's office. The key didn't work, and so Kitty had a key. But still, that...trying to find out where it is, who's got it, where...who's got the key are just the type of things that we want to avoid. I think everyone in this Capitol should know where the AED is, and how to get to it as quickly as possible. And if we need one on the first floor, I hope we do that. And all other institutions where there are gatherings of people, they should be available. They should be available, and in every school, and I hope every school in the state has one. With that, I will bring back an amendment on Select File to take a look at the instructions that kind of go along with the ownership of one of these, and training, that I don't think is necessary, because, like I said, it is self-explanatory. With that, I would just ask for the moving of LB 176 to Select File. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Engel, I'm sorry, but that was his closing. You've heard the closing on advancement of LB 176. The question before the body is, shall LB 176 advance to E & R Initial? All in favor vote aye; opposed, nay. The question before the body is advancement of

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LB 176 to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB 176.

SENATOR CUDABACK: LB 176 does advance. Mr. Clerk, LB 301.

CLERK: Mr. President, LB 301 was a bill introduced by the Health and Human Services Committee. (Read title.) Bill was introduced on January 11, referred to the Health Committee, advanced to General File. I do have committee amendments, Mr. President. (AM0005, Legislative Journal page 324.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Jensen, as Chairman of the Health and Human Services Committee, you're recognized to open on LB 301.

SENATOR JENSEN: Thank you, Mr. President. LB 301 is the annual cleanup bill requested by the Health and Human Services System. The bill contains an emergency clause, and makes the following changes. And by the way, if you want to follow this, if you look under the...on the statement on your machine, it will pretty well track everything that I'm about to say. Reporting requirements: The bill deletes or modifies various statutory reporting requirements related to the county public assistance employment programs. It relates to Medicaid eligibility, managed care, emergency medical services, public health, and the report of the system advocate for the Nebraska Health and Human Services System. The bill also clarifies the food stamp eligibility for persons having one or two felony convictions for possession or use of controlled substance. The bill also includes a felony conviction for intent to sell or distribute a controlled substance on grounds of food stamp eligibility, and applies the statutory eligibility provisions for drug-related convictions more uniformly, deleting a specific reference only to drug-related convictions obtained under Section 28-416. That food stamp bill was a bill that was brought by Senator Synowiecki a year ago, and he has also approved of these clarifications. Federal law references: The bill updates references to the federal Social Security Act, under the state

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Medicaid assistance program, the Medicaid program. A Homeless Shelter Assistance Trust Fund: The bill increases the allocation amount for administration of the Homeless Shelter Assistance Trust Fund from \$50,000 to \$75,000. The bill harmonizes definitions of transuranic waste under the Radiation Control Act and statutes relating to radioactive waste, that they be consistent with federal law. The bill names the Vital Statistics Act, updates references to the new act, provides for the use of electronic signatures for death and fetal death certificates, and provides for penalties or for misuse of such signatures. The bill eliminates temporary licenses to the practice of veterinary medicine and surgery. The bill provides an exemption from control...or from consent requirements for predictive genetic tests performed on infants born outside the state of Nebraska. The bill would not require written consent for tests ordered by physician to comply with the law of the state in which the infant was born. The bill transfers various public health functions from the Department of Health and Human Services to the Department of Health and Human Services Regulation and Licensure, included, but not limited to, the activities related to...and we did pass out a sheet for you that kind of tells where these various things happen within the Health and Human Services System. But those activities relating to AIDS, communicable diseases, metabolic diseases screening for infants and newborns, childhood immunizations and vaccinations, women's health, local public health departments, childcare programs, Office of Rural Health section...or, Rural Health, Rural Health Systems and Professional Incentive Act, Rural Health Advisory Commission, tobacco prevention and control, Native American Public Health. The bill adds new provisions relating to the transfer of employment positions in Sections 33, and property in Section 64, contracts in Section 65, and rules and regulations and lawsuits in Section 66 from, again, Health and Human Services System to Health and Human Services System Regulation and Licensure. Provisions related to the transfer of public health functions to HHS R & L may be operative on July 1, 2005, with an emergency clause. I'll stop there with the bill. And there is a committee amendment, Mr. President, I'd be glad to open on.

SENATOR CUDABACK: You may open on them, Senator.

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SENATOR JENSEN: Thank you, Senator Cudaback. The committee amendment, AM0005, transfers functions under the Infant Hearing Act, Nebraska Revised Statute Section 71-4734 to 71-4744, from the Department of Health and Human Services to, again, the Department of Health and Human Services Regulation and Licensure, to be consistent with other changes that were made in the bill. I would ask for your support of the committee amendment. That will conclude my remarks, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. You heard the opening on the committee amendments offered by the Health and Human Services Committee to LB 301. Open for discussion on those amendments. Senator Jensen, there are no lights on. He waives the closing. The question before the body is, shall AM0005, offered by the Health and Human Services, be adopted to LB 301? All in favor of the question vote aye; opposed, nay. We're voting adoption of the committee amendments to LB 301. Have you all voted on the question who care to, the committee amendments? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK: Committee amendments are adopted. Anything further on the bill, Mr. Clerk?

CLERK: Nothing further, Mr. President.

SENATOR CUDABACK: Open for discussion on advancement itself. Senator Beutler.

SENATOR BEUTLER: Senator Jensen, a quick question, again. I know you want to get this done before lunch, and I'm...and it will get done. But with respect to the bill, it eliminates a number of reports, as you know, including the outright repeal of a report related to the managed care system, and another report related to the welfare reform that we put in place a number of years ago. And you know, normally, before I got involved with the Performance Audit Committee, I'd be cheering for the elimination of all reports that take more time to prepare. And

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I'm sure, with regard to the executive branch, that they're particularly sensitive to reports that take time to prepare. But again, being on the Performance Audit Committee, I've become more sensitive to the value of certain reports as direct management tools within a department, and also as a kind of oversight tool that facilitates performance review from time to time in different departments. And in fact, I hate to report, but we have a small bill coming out asking the Health Department to keep track of certain reimbursement records, so we have a history of whether they're collecting Medicaid reimbursements on a regular basis, for example. And that report will be used, hopefully, you know, in the future, by Performance Audit, to kind of keep track a little bit of what's going on, and if we ever have to review it again, to facilitate that review. I don't know how to frame this question, or how you make a judgment on these things entirely, but let me just ask you this. The reports that we're eliminating, do we feel comfortable, or have you had an opportunity to look at them from the point of view of Performance Audit, or from the point of view of management tools that some future Legislature might want to grab a hold of, even though we don't use it for three or four years, and establish in a quicker fashion some intellectual relationship with what's going on, so that you can better make judgments about it and that sort of thing? Especially to a term-limited Legislature and legislators that are going to be short on experience, the quicker they can get information and the better the information, the better chance they'll have to deal with it intelligently. And I recognize this is kind of a nebulous question, in a way. But I would just be interested in your reaction to it, and whether you've had occasion to look at any of these reports, and whether they're...they truly are useless now.

SENATOR CUDABACK: Senator Jensen.

SENATOR JENSEN: Well, thank you, Senator Beutler. And, yes, and matter of fact, we went down each one of those reports, and I feel comfortable that they are no longer needed. Boy, we get so much information across our desk that we will check off and not read. But I do feel that the reports that they're asking to be removed or deleted are not significant enough that it will

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cause any problems for a senator or the body in future years. Now, I'd be glad to go over those with you between now and Select File, if you feel that same way, and we can take care of them then. But at this point in time, I do feel a comfort.

SENATOR CUDABACK: Thank you, Senator Jensen. Senator Beutler.

SENATOR BEUTLER: Thank you, Senator Jensen. Thank you, Senator Cudaback.

SENATOR CUDABACK: Senator Louden, your light is on. Did you wish to speak?

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I was looking over this bill. And some of the early explanations that Senator Jensen had, I perhaps missed. But on Section 11, in that part, how come veterinary medicine is in here? I was wondering if Senator Jensen would yield to questions?

SENATOR CUDABACK: Senator Jensen, would you yield?

SENATOR JENSEN: Yes. Veterinary medicine comes under the Health and Human Services Regulation and Licensure.

SENATOR LOUDEN: And how come they're striking out the holder of valid temporary veterinary license, I presume, issued by the board? Is that something that they don't do anymore? Is that something that we can't use? Or is that...where did the temporary license come in at for veterinarians?

SENATOR JENSEN: We don't have those anymore. There is not a temporary veterinary license.

SENATOR LOUDEN: They don't issue those anymore?

SENATOR JENSEN: In the past, temporary licenses allowed the veterinarian to practice after graduation and prior to receiving the results of licensure examination that was administered only two times each year. The license examination now is administered by a national organization, and is given prior to

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graduation. So there's no need for a temporary license that no longer exists.

SENATOR LOUDEN: Okay, thank you. I guess that's all the questions I have at the present time. I'll return my time to the Chair.

SENATOR CUDABACK: Thank you, Senator Louden. Any further discussion on the advancement? Seeing none, Senator Jensen, would you like to close? He waives opportunity to close. The question before the body is, shall LB 301 advance to E & R Initial? All in favor of the question vote aye; opposed, nay. The question before the body is advancement to E & R Initial. Have you all voted on the question before the body who care to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 301.

SENATOR CUDABACK: The motion was successful. LB 301 does advance. Mr. Clerk, items for the record?

CLERK: New A bill. (Read LB 211A by title for the first time.) An amendment to Senator...LB 20, by Senator Chambers. And Senator Landis, an amendment to LB 15. Transportation Committee reports LB 249 to General File with amendments attached, signed by Senator Baker, as Chair. Senator Raikes, as Chair of Education, selected LB 126 as a committee priority. Name adds, Mr. President: Senator Kruse to add his name to LB 542; Senator Dwite Pedersen, LB 654. (Legislative Journal pages 410-412.)

And I have a priority motion. Senator Preister would move to adjourn until 9:00, February 2.

SENATOR CUDABACK: You've heard the motion by Senator Preister to adjourn till February 2, 9:00 a.m. All in favor of the motion say aye. Opposed to the motion say nay. We are adjourned.

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