

FEBRUARY 22, 2005

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FLOOR DEBATE

February 22, 2005 LB 71, 106, 109, 126, 159, 252, 299, 324
353, 407, 465, 470, 582, 588

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Good morning. Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is the Reverend Richard Dimond, from River Valley Parish, Dakota and Dixon Counties. That's Senator Engel's district, District 17. Reverend.

REVEREND DIMOND: (Prayer offered.)

SENATOR CUDABACK: Thank you, Reverend Dimond, for being with us. We appreciate you being here. I call the thirty-first 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: No corrections, Mr. President.

SENATOR CUDABACK: Messages, reports, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 126 to Select File with Enrollment and Review amendments. Banking Committee reports LB 465 to General File with amendments, that signed by Senator Mines. Revenue Committee reports LB 299 to General File with amendments; LB 407, General File with amendments; LB 109, LB 159, LB 252, LB 324, LB 353, LB 582 indefinitely postponed; those signed by Senator Landis. Transportation Committee reports LB 106 to General File with amendments, that signed by Senator Baker. And the Executive Board reports LB 588 to General File with amendments, signed by Senator Engel. Hearing notice from Appropriations Committee, signed by Senator Pederson. Senator Stuhr has selected LB 71 as her personal priority bill for the session. I have an amendment to be printed by Senator Johnson to LB 470. And finally, Mr. President, a communication from the Douglas County board of county commissioners. That will be on file in the Clerk's Office. That's all that I had, Mr. President. (Legislative Journal pages 573-579.)

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SENATOR CUDABACK: Thank you, Mr. Clerk. We now go to the first agenda item, legislative confirmation reports. Mr. Clerk.

CLERK: Mr. President, Banking Committee, chaired by Senator Mines, reports on the appointment of John Munn as director of the Department of Banking and Finance. (Legislative Journal page 521.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Mines, Chairman of the Banking, Commerce and Insurance Committee, you're recognized to open on your report.

SENATOR MINES: Thank you, Mr. President. It's my pleasure this morning to support the appointment of John Munn, or to your approval of the appointment of John Munn, of Syracuse, who was appointed director of Banking and Finance by Governor Johanns. And he began his term January 18 of 2005. Mr. Munn is a native of Waverly, and a 1970 graduate of the Nebraska Wesleyan University, with a bachelor of arts degree in education. John's banking experience includes service at the Cattle National Bank in Seward, the National Bank of Commerce in Lincoln, and Cornerstone Bank in York. Prior to his appointment as director, he was president and CEO of First National Bank and Trust in Syracuse. A graduate of the Colorado School of Banking, John has been active in the Nebraska Bankers Association, and the Schools of Banking, Incorporated. He's also a member of the board of the Nebraska Educational Finance Authority. I would urge your approval of his appointment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. Members, I know it's early and it's the first working day of the week, but try to show your respect for the speaker. Thank you. Open for discussion on the confirmation report offered by the Banking, Commerce and Insurance Committee. There are no lights on, Senator Mines. He waives the opportunity to close. The question before the body is, shall the report offered by the Banking Committee be adopted? All in favor vote aye; opposed, nay. The question before the body is the confirmation report offered by the Banking, Commerce and Insurance Committee. Have

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you all voted on the issue who care to? Record please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 579.) 31 ayes, 0 nays, Mr. President, on the approval of the confirmation report.

SENATOR CUDABACK: The report has been adopted. Mr. Clerk, next report.

CLERK: Second report, Mr. President, by the Education Committee, involving the appointment of Stan Carpenter to the Nebraska Educational Telecommunications Commission. (Legislative Journal page 535.)

SENATOR CUDABACK: Senator Raikes, Chairman of the Education Committee, you're recognized to open on your report.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. The Education Committee recommends the confirmation of Stan Carpenter to the Nebraska Educational Telecommunications Commission. The commission is composed of 11 members, as follows: the Commissioner of Education; the president of the University of Nebraska; a representative of the state colleges, which Mr. Carpenter will fulfill that particular position; a representative of community colleges; a representative of private educational institutions; and six members of the general public. The members are appointed by the Governor with the approval of the Legislature, and serve terms of four years. Stan Carpenter is a reappointment to the commission. His term of service would be from January 9, 2005, through January 9, 2009. Statute calls for...as I mentioned, statute calls for the commission to be filled by a representative of the state colleges, and Mr. Carpenter, as executive director of the Nebraska State College System, is fulfilling that position. Mr. Carpenter has been the director of state colleges since 2000. He holds a law degree from Salmon P. Chase College of Law at Northern Kentucky University. He's also a master's of education, a bachelor of science degrees from the University of Cincinnati. I encourage your support for the confirmation of Stan Carpenter to the Nebraska Educational

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Telecommunications Commission. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening of the Education Committee report on the confirmation. Open for discussion. Seeing no lights on, Senator Raikes, ...he waives the opportunity to close. The question before the body is, shall the report offered by the Education Committee be adopted? All in favor vote aye; opposed, nay. The issue before the body is the confirmation report offered by the Education Committee. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 579-580.)
30 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR CUDABACK: The report was adopted. Next agenda item, Select File, 2005 committee priority bills. Mr. Clerk, LB 162.

CLERK: Mr. President, LB 162 on Select File. Senator Flood, I have Enrollment and Review amendments, first of all, Senator. (AM7016, Legislative Journal page 487.)

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendment to LB 162.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments to LB 162. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Senator Beutler would move to amend with AM0385.

SENATOR CUDABACK: Senator Beutler, you're recognized to open on AM0385 to LB 162.

SENATOR BEUTLER: Mr. Clerk, Senator Cudaback, the Game and Parks Commission and Senator Schrock have worked out an amendment that relates to this item, so I would just withdraw this and support Senator Schrock's amendment at the proper time.

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Thank you.

SENATOR CUDABACK: It is withdrawn. Mr. Clerk, next amendment.

CLERK: Mr. President, Senator Stuhr would move to amend, AM0509. (Legislative Journal pages 580-581.)

SENATOR CUDABACK: Senator Stuhr, to open on your amendment, AM0509, to LB 162. Senator Stuhr.

SENATOR STUHR: Thank you, Mr. President and members of the body. And, Senator Beutler, I'm carrying the amendment, and I'm...it is the amendment that we have worked out between Senator Beutler and Park and Games. And it has to do with Section 18 and striking that section. And I will just share that with you. The commission may issue auction or lottery permits for up to 5 permits each for antelope and elk, and up to 25 permits each for deer and wild turkey during the calendar year. And I believe in the bill, actually, it had a percentage, and so this is making a more specific amount. Included in that number are single-species and combination-species permits, and shared revenue permits that may be issued by the commission. The shared revenue permits may be issued under agreement with nonprofit conservation organizations, and may be issued by auction or lottery, with the commission receiving at least 80 percent of any profit realized. The commission shall, by rule and regulation, adopt limitations for any such permits that are issued. The auction or lottery shall be conducted according to the rules and regulations adopted and promulgated by the commission. I would give the rest of my time to Senator Beutler, and let him comment on that amendment. Senator Beutler.

SENATOR CUDABACK: Senator Beutler.

SENATOR STUHR: Mr. Chair.

SENATOR BEUTLER: Senator Cudaback, Senator Stuhr, thank you for the time. My basic concern, and I'll simply reiterate it, was that we don't go in any serious way in the direction of sending or requiring or allowing the highest bidder to take up all these permits. You know, generally speaking, we don't do that. The

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permit has a price and everybody has a chance to get a permit. So I didn't want to see us going in that direction. I thought the wording of the other amendment suggested that. It also didn't have some limitations that would seem to be helpful, considering what their purpose was. And so I'm very grateful to Senator Stuhr and Senator Schrock and Jody, or whoever else worked this out, because I think the whole concept is in much better shape now. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Stuhr. Are you finished, Senator Stuhr, on your opening?

SENATOR STUHR: If I could...

SENATOR CUDABACK: Okay.

SENATOR STUHR: ...if I have a few minutes left, I would say...I would just ask the support of the members of the body for this amendment. I believe that we are all in consensus here. Thank you.

SENATOR CUDABACK: Okay. You've heard the opening on the Stuhr amendment, AM0509. (Visitors introduced.) On with discussion of AM0509. Senator Schrock.

SENATOR SCHROCK: Mr. President, members of the Legislature, Senator Beutler and I have been talking with Game and Parks, and we're kind of going into uncharted waters here for the state of Nebraska, when it comes to Game and Parks issues. And this bill does allow them to auction or lottery off a certain number of permits. And the way it was in the original bill, it was kind of unwieldy. We never knew quite how many it was; it was a percentage number. This defines how many it would be. And I would say probably we mean it isn't quite as many as could have been if we'd have left the original language. And so Senator Beutler and I have been working with the Game and Parks officials, and Senator Stuhr has brought that amendment this morning. I would encourage you to vote for it. I think it's reasonable. And I think in a few years down the road, we'll get a clearer picture of if and how these permits will be used. I would be surprised if they would lottery or auction off the

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entire amount. But there will be occasions when it will be appropriate for them to do that, and they can do that. So I would support the amendment, and would encourage your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Schrock. On with discussion. Senator Janssen, followed by Senator Chambers. Senator Janssen.

SENATOR JANSSEN: Thank you, Senator Cudaback, members of the Legislature. Reading the amendment, I have a couple of questions to ask of Senator Stuhr, if she would respond, please. Senator Stuhr, I see where there will be 25 permits auctioned off for deer, to harvest deer. Is that correct?

SENATOR STUHR: Yes, I believe so.

SENATOR JANSSEN: Well, all right. And then how many of these...that would be for a single taking, then, of one animal, one of the species?

SENATOR STUHR: I believe it says up to 25 permits, yes, for deer and wild turkey. So I believe it's the combination of those.

SENATOR JANSSEN: How did you derive at the 25? Is that a reasonable number? Or is it for the fact that there are too many deer in a lot of areas now, and the possibility of enhancing that hunting would occur from this?

SENATOR STUHR: I'm not sure, but I can find out for you. I know the main thing was that we had a specified number, rather than a percentage, which was in the original bill.

SENATOR JANSSEN: Well, the reason I...thank you, Senator Stuhr. The reason I'm asking these questions, I know that the deer population in a lot of areas in this state is getting to the point of saturation. You can drive down the highways or county roads and see deer just about any time of the year being hit by automobiles, so on. At one time, there were very, very few deer in the state of Nebraska. And I believe the flood on the

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Missouri River in 1952 is what drove a lot of these deer out from that Missouri bottom, and they started going up the tributaries. As a young man, that was the first time I'd ever seen a deer in Dodge County. And now you have to be very careful, driving down any of the roads, that you don't hit some of the deer. I do believe that we need to do a little more harvesting of these animals to keep them away from diseases that they would catch, and inbreeding and so on. So anything we can do, I think this is a good program, and I will be in support of it. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I got a note this morning, and a copy of an amendment, saying that the amendment took care of Senator Beutler's concerns, which I shared. And I talked to Senator Beutler, and he said he agreed. Well, shortly thereafter, I got another note from a persona non grata. And the one who sent me the note on the amendment, as I tore up this first one, I wouldn't want that person from Game and Parks to think I was tearing up his note, discounting what he told me. I took seriously his note. But that other one, from that persona non grata, I tore it up. And by venting in that way, I will not tear up the person. I just wanted to make that clear, so that there's no misunderstanding with reference to the note relative to Senator Beutler's amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Further discussion on the Stuhr amendment, AM0509, LB 162? Seeing no lights on, Senator Stuhr, you're recognized to close on AM0509.

SENATOR STUHR: Thank you, Mr. President and members of the body. Again, this...the commission now may issue auction or lottery permits for up to 5 permits each for antelope and elk, and up to 25 permits each for deer and wild turkey during the calendar year. I think that's the main portion of the amendment. And I would ask for your support. Thank you.

SENATOR CUDABACK: Thank you, Senator Stuhr. You've heard the

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closing on AM0509. The question before the body is, shall that amendment be adopted? All in favor vote aye; opposed, nay. Have you all voted on the question who wish to? Record please, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of Senator Stuhr's amendment.

SENATOR CUDABACK: Senator Stuhr's amendment has been adopted.

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

SENATOR CUDABACK: Thank you, Mr. Clerk. We're back to advancing the bill itself. Any further discussion on the advancement of LB 162? Seeing no lights on, Senator Flood, you're recognized for a motion. Senator Flood.

SENATOR FLOOD: Mr. President, I move the advancement of LB 162 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 162 to E & R for engrossing. All in favor of the motion say aye. Opposed to the motion say nay. LB 162 is advanced. We now go to Select File. Mr. Clerk, LB 54.

CLERK: Senator Flood, first of all, I have Enrollment and Review amendments, Senator. (AM7012, Legislative Journal page 469.)

SENATOR CUDABACK: Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendment to LB 54.

SENATOR CUDABACK: You've heard the motion to adopt the E & R amendments. All in favor say aye. Opposed, nay. They are adopted.

CLERK: Mr. President, Senator Loudon has AM0433. Senator, I have a note you want to withdraw.

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SENATOR CUDABACK: Senator Louden, it is withdrawn.

CLERK: Mr. President, the next amendment I have is Senator Schimek, AM0428. (Legislative Journal page 536.)

SENATOR CUDABACK: Senator Schimek, you're recognized to open on AM0428 to LB 54.

SENATOR SCHIMEK: Yes, thank you. Mr. President and members, this amendment actually contains the provisions of LB 240, which was heard in Government Committee on February 4, and was passed from committee unanimously on a 6 to 0 vote, with 2 members absent. This amendment proposes to clean up two sections of statute. First, the bill clarifies the hiring preference for veterans seeking employment with the state of Nebraska. Currently, veterans who obtain passing scores on an exam have five points added to their passing score and ten points added if they are a disabled veteran. LB 240 changes the points to a percentage, to provide a more equitable means of preference, since the scoring is not based on a consistent statewide scale. The second change is to eliminate the Information Technology Retraining Program, which is no longer in use. The program is no longer functioning for several reasons, including the increased availability of information technology personnel, and agencies' inability to support the program financially. I think this bill was brought to us by DAS. And it really just changes, not the meaning of the five points, but just changes it to a percentage, which boils down to the same difference. So with that, I would ask for adoption of AM0428.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on AM0428. Open for discussion on that amendment. Senator Schimek, there are no senators wishing to speak. She waives the opportunity to close. The question before the body is, shall AM0428 be adopted to LB 54? All in favor vote aye; opposed, nay. The question before the body is, shall AM0428 be adopted? Have you all voted on the question who wish to? Record please, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Schimek's amendment.

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SENATOR CUDABACK: The motion was successful. The amendment has been adopted.

CLERK: Senator Schimek would move to amend with AM0304. (Legislative Journal page 536.)

SENATOR CUDABACK: Senator Schimek, you're recognized to open on AM0304 to LB 54.

SENATOR SCHIMEK: Thank you, Mr. President and members. LB...or AM0304 actually is a technical amendment, given to us by the Revisor's Office. They felt that these technical changes were better handled with a separate amendment, rather than being handled in that E & R amendment you just adopted a few minutes ago. The amendment clarifies eligibility requirements for the homestead exemptions, admission to veterans' homes, and state and county veterans' aid. And the amendment also clarifies language regarding county burials. And it just really kind of rennumbers and rewords things like "section" or "subsection" or whatever, "(a)" or "(b)," whatever. It is a very technical amendment, and is not a substantive change in any way. With that, Mr. President, I would yield the rest of my time back to the Chair.

SENATOR CUDABACK: Thank you, Senator Schimek. You've heard the opening on AM0304. Open for discussion on that motion. Senator Schimek, there are no...she waives the opportunity to close. The question before the body is, shall AM0304 be adopted to LB 54? All in favor vote aye; opposed, nay. Question before the body is the amendment offered by Senator Schimek to LB 54. Have you all voted who care to? Record please, Mr. Clerk.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of Senator Schimek's amendment.

SENATOR CUDABACK: The amendment has been adopted.

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

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SENATOR CUDABACK: Back to discussion itself, advancement of LB 54. Seeing no lights on, Senator Flood, for a motion, please.

SENATOR FLOOD: Mr. President, I move the advancement of LB 54 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 54 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. Mr. Clerk, LB 263.

CLERK: LB 263, Mr. President. Senator Flood, I do have Enrollment and Review amendments. (AM7009, Legislative Journal page 470.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendment to LB 263.

SENATOR CUDABACK: You've heard the motion to adopt E & R amendments to LB 263. All in favor say aye. Getting pretty weak there, but...thank you. Opposed? They are adopted.

CLERK: Senator Brown would move to amend, AM0450. (Legislative Journal page 535.)

SENATOR CUDABACK: Senator Brown, to open on your motion.

SENATOR BROWN: Mr. President, members of the Legislature, you might remember a couple years ago when we tried to deal with the valuation on tax credit finance low-income property that is available for rent or sale to individuals that meet certain kind of income requirements. At that point in time, we passed some legislation that we thought would solve the problems. Unfortunately, the...it didn't seem to meet all of the issues. And so the Revenue Committee advanced a bill that is essentially...this is essentially the Revenue Committee's amendment to LB 300, which did have a public hearing, and I am offering it as an amendment to this bill. It is germane, I believe, to this bill. And it requires that, for purposes of

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valuation, county assessors must at least conduct the income method to value. We cannot say...we don't feel that we can say to assessors that they must use that as the valuation, but they must at least conduct it. And so this is a reaffirmation of previous policy that we have adopted, and I would ask for your support of this amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Brown. You've heard the opening on AM0450, offered by Senator Brown. Open for discussion on that motion. Senator Brown, there are no senators wish...she waives the opportunity to close. The question before the body is, shall AM0450 be adopted? All in favor vote aye; opposed, nay. The question before the body is, shall AM0450 be adopted? Have you all voted on the question who care to? Voting on the Brown amendment, AM0450, to LB 263. Have you all voted on the issue who care to? Record please, Mr. Clerk.

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

SENATOR CUDABACK: The amendment has been adopted.

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

SENATOR CUDABACK: Open for discussion. No discussion? Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 263 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 263 to E & R for engrossing. All in favor say aye. Opposed, nay. It is advanced. Mr. Clerk, LB 283.

CLERK: LB 283. Senator Flood, I do have Enrollment and Review amendments. (AM7011, Legislative Journal page 470.)

SENATOR CUDABACK: Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the adoption of the E & R amendment to LB 283.

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SENATOR CUDABACK: The motion to adopt the E & R amendments to LB 283. All in favor of that motion say aye. Opposed, nay. They are adopted.

CLERK: Senator Raikes would move to amend with AM0473. (Legislative Journal page 558.)

SENATOR CUDABACK: Senator Raikes, to open on your amendment, AM0473.

SENATOR RAIKES: Thank you, Mr. President, members of the Legislature. AM0473 amends the language added to Section 77-1507 under the bill. As it currently is written, the change proposed in LB 283 is in conflict with that included in LB 263, a bill offered by Senator Landis that is on Select File. Because of this conflict, a situation results where if both these bills were to pass, the bill that would pass last would wipe out the changes included in the bill that will have passed first. This is my attempt at a flanking maneuver on Senator Landis. This amendment proposes the same change as included in LB 283, only in such a manner that the conflict with LB 263 could be avoided and both pieces of legislation could maintain their desired intent. I would be happy to answer questions, or try, but I urge your adoption of AM0473. Thank you.

SENATOR CUDABACK: Thank you, Senator Raikes. You've heard the opening on AM0473, offered by Senator Raikes. Open for discussion on that motion. Senator Raikes, there are no...he waives the opportunity to close. The question before the body is adoption of AM0473 to LB 283. All in favor of the question vote aye; those opposed, nay. The question before the body is the Raikes amendment, AM0473, to LB 283. Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Raikes' amendment.

SENATOR CUDABACK: The amendment has been adopted.

CLERK: Senator Flood, I have nothing further on the bill,

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Senator.

SENATOR CUDABACK: Seeing no discussion, Senator Flood, for a motion.

SENATOR FLOOD: Mr. President, I move the advancement of LB 283 to E & R for engrossing.

SENATOR CUDABACK: You've heard the motion to advance LB 283 to E & R for engrossing. All in favor say aye. Opposed to the motion say nay. LB 283 is advanced. Mr. Clerk, we now go to General File, 2005 committee priority bills. LB 570.

CLERK: LB 570, Mr. President, introduced by Senator Landis. (Read title.) The bill was introduced on January 18 of this year, at that time referred to the Banking, Commerce and Insurance Committee for public hearing. The bill was advanced to General File. I do have Banking, Commerce and Insurance Committee amendments pending, Mr. President. (AM0229, Legislative Journal page 448.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Landis, you're recognized to open on LB 570.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. John McCabe, of the Uniform State Law Commissioners, was in to describe for the Banking Committee the uniform state laws in process. Uniform state laws are not binding on states. They're not federal laws. They are acts drawn by lawyers and judges, practitioners, after an extensive exchange with the private sector, on updating and creating a body of policy that would be wise if it was border-to-border in this country. It would be wise because it would facilitate business understanding what the rules were across state lines, where people now hold estates across state lines, where people move very often. And it would be valuable to have commercial law essentially quite similar as you move across the country. Commercial law is basically state law, however. And the Uniform State Law Commissioners grew up in the fifties, pushing the idea of a Uniform Commercial Code, a body of essentially similar principles that states could pass that would then make state law

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essentially similar across the country. Nebraska did that in 1950, one of the early states to adopt the Uniform Commercial Code. It's the biggest volume of our Nebraska statutes. This is a revision of Article 1. And what that means is that once they create a law, they will go back and examine it for its application and to see whether or not it needs to be modernized. Nebraska has the Uniform Commercial Code, one of the first states to do so, but in 19...or in 2001 the Uniform State Law Commissioners promulgated a new Article 1, not significant changes of statute, but modernizing, clarifying definitions, for example, that needed clarifying, narrowing scopes, or seeing how it operated in the marketplace of ideas. Article 1 contains a number of changes. First, there's some modernization between 1985 and 2003. Most states have adopted some revisions and amendments, and it's time to bring this up to date. It has an intentionally narrower scope of the substantive rules in Article 1, to prevent them from being applied outside the UCC with unintended consequences. So this says this article is to be applied to the Uniform Commercial Code only. It also adds the course of performance as a tool with which to interpret a contract. In the absence of expressed terms of a contract, evidence of course of performance may be used in a court to interpret a contract. Now, that is specifically recited in Article 2 and 2A of the UCC. However, this is the default provision for definitions throughout the code, and by adopting that here, it essentially says that, unless otherwise altered by language, under the UCC, course of performance can be used to interpret an ambiguous term of a contract. It also deletes the statute of frauds from the general writing and signature requirements, to make way for the specific provision for electronic records and signatures that are contained in the substantive UCC articles. In other words, you will have to go to the specific UCC articles, to the specific statute of frauds, to use that. And the reason is, those have been updated for the use of electronic records and signatures, and so they're going to snip it out of Article 1. Gender-neutral terminology is used in this area of the code, under this revision. There is also an alteration with respect to the committee on what I originally brought because the commissioners did recommend that this default provision contain two standards when the term "good faith" was used. The default meaning of "good faith" would have

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been honesty in fact, and the meeting of reasonable commercial standards. Those are, together, aspects of the definition of "good faith" in several specific places throughout the code. This would have moved that idea into the default position of Article 1 definitions. However, the banking industry wanted to maintain the existing definition, one that they're familiar with, and that is honesty in fact. I believe the Banking Committee adopted that principle. I will live with their judgment. I can live with the existing rule, which is honesty in faith, as a default definition, means honesty in fact, because I think it will have very minor impact to make that adjustment. I will wait for Senator Mines to explain that, but I will tell you now that I support the committee amendment and accept its addition to the bill. Thank you, Senator Cudaback.

SENATOR CUDABACK: Thank you, Senator Landis. You've heard the opening on LB 570. (Visitors introduced.) Senator Mines, to open on the committee amendments from the Banking Committee to LB 570. Senator Mines.

SENATOR MINES: Thank you, Mr. President. And Senator Landis has done, as usual, an admirable and complete job of explaining LB 570. The Banking...or, excuse me...yeah, the Banking, Commerce and Insurance Committee amendment first of all simply combines the provisions of LB 570 to enact revised UCC Article 1, which covers general provisions, with the provisions of LB 171, also introduced by Senator Landis, to enact revised UCC Article 7, and that covers documents of title. The Uniform Law Commissioners approved revised Article 1 in 2001, and revised Article 7 in 2003. This would replace Nebraska's current UCC Articles 1 and 7, which were originally enacted in 1963. If both UCC revised Articles 1 and 7 are to be enacted in the same legislative session, it's a practical necessity that they be contained in the same legislative bill, in order to properly accommodate the conforming amendments and these revised articles must make in other UCC articles. It's especially important in the case of the conforming amendments revised UCC Article 7 must make in UCC Article 1. The Article 1 amendment, the committee amendment changes revised UCC Section 1-201(b)(20), Section 14 of the committee amendment, so as to retain in Nebraska the current UCC Article 1 definition of

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"good faith." And this is, as Senator Landis explained, is...the reason that the committee concluded it's best to leave it "good faith" is it is a maintenance of the current laws and standards, and it confirms "honesty in fact in the conduct or transaction concerned," rather than in a new definition of "honesty in fact and the observance of reasonable commercial standards of fair dealing." In Article 7, the revised UCC is one of the last of the articles of the Uniform Commercial Code to be revised by the National Conference of Commissioners on Uniform State Laws. The genesis for this project is twofold: one, to provide a framework of the further development of electronic documents of title; and two, to update the articles for modern times, in light of state, federal, and international developments. Each section has been reviewed by the NCCUSL to determine its suitability given modern practice, the need for medium and gender neutrality, and modern statutory drafting. To provide for electronic documents of title, several definitions of revised UCC Article 1 have been revised, including "bearer," "bill of lading," "deliver," "document of title," "holder," and "warehouse receipt." The concept of an electronic document of title allows for commercial practice to determine whether records issued by bailees are in course...in regular course of business or financing, and were treated as adequately evidencing that the person in possession of control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers. Revised UCC Section 1-201(b)(16), such records in electronic form or electronic documents of title in tangible form are tangible documents of title. Conforming amendments to other articles of the UCC are also necessary to fully integrate electronic documents of title into the UCC. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the opening on the Banking, Commerce and Insurance Committee. Open for discussion on those amendments. Senator Landis.

SENATOR LANDIS: I just wanted to spend a moment on the rest of the Banking Committee amendments that they adopted, because they do constitute, essentially, LB 171, the adoption of a new change in Article 7. I applaud, by the way, this idea of putting these two together to move them through the process. Article 7 is

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essentially documents of title, things like warehousemen's receipts and the like. This article has to do with the kind of situation where you and I buy and sell a good, but the good is held in a warehouse. And the problem is, when does the good actually become mine? Is it when I buy and sell at your business, or is it when I go out and pick up the good? Well, the law actually says it's when I get a document of title that would entitle me to that good, whether I pick it up or not. That's what this article is about. The difficulty with that old mechanism is that written documents of titles do not now work in the business of the twenty-first century and the superhighway of cyberspace. We have transactions that are going on now electronically. And the method for signatures, because every warehouse receipt was unique, is no longer true about electronic transactions. So this is the way we're going to do electronic documents of titles. We're going to have to change the statute of frauds, we're going to recognize electronic title, and we're going to establish a unique way of establishing the individuality of a document of title through an electronic token, a mechanism of encryption technology that will allow us to maintain, if you will, a document of title's reliability as evidence for the ownership of a good. The document of title will still be an important concept. It will also help us determine the risk of loss and when a good passes in title. But it will be available, in the twenty-first century, through the use of electronic document of titles, which have sprung up and are now being used in practice, but for which the law does not now have an adequate description. This does that, and I think it's a sound action by the Banking Committee. I applaud their work in this committee amendment, and intend to support it.

SENATOR CUDABACK: Thank you, Senator Landis. Further discussion on the committee amendments to LB 570? Senator Beutler.

SENATOR BEUTLER: Senator Landis, I'd like to explore, if I may, the concept of "good faith" with you a little bit.

SENATOR CUDABACK: Senator Landis, would you reply?

SENATOR LANDIS: Uh-huh.

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SENATOR BEUTLER: First of all, let me understand clearly how this is...how that concept is working in this bill. As I understand it, with the committee amendment, "good faith," as it's used throughout the various parts of the code, would mean honesty in fact, honesty in fact in the conduct or transaction concerned. So all you would look to is whether the person was honest in his or her perception of an event. Is that accurate so far?

SENATOR LANDIS: No, (laughter) but just slightly amiss. Okay. There...each individual article defines some terms for that article. And there are a number of articles.

SENATOR BEUTLER: Okay.

SENATOR LANDIS: There are a number of commercial areas, for example, Article 2 and 2A,...

SENATOR BEUTLER: Within this article?

SENATOR LANDIS: ...where "good faith" is defined for that article. And that article's definition will be, good faith and reasonable commercial standards. So when you say, will this become the definition for the code, I think the better description of the...that we're both trying to get at is it...this is the default definition. If there is a specific definition, as there are in a number of areas, that will take precedence. And in a number of articles, the definition that will take precedence includes good faith and reasonable commercial standards. However, this is the all-purpose definition, where if the term "good faith" gets used outside the context of one of those situations, this then would be the definition of "good faith" anyplace in the code which was not otherwise specifically listed. Just to conclude, the number of times that throughout the code "good faith" is specifically defined is relatively high, not low. The default impact of this definition will be relatively modest, because most other areas will be covered by an existing definition.

SENATOR BEUTLER: Okay. Does this revision of the code expand

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the use of the definition of "good faith" that includes observance of reasonable commercial standards?

SENATOR LANDIS: The Uniform State Law Commissioners recommended in this revision the expansion of "good faith" from its existing default definition of honesty in fact, to honesty in fact and reasonable commercial standards. That suggested definition was objected to by our banking industry. And knowing that that was the case, the Banking Committee moved us back to where we are now, which is, honesty in fact. And that is an amendment that I will accept, should it be successful here.

SENATOR BEUTLER: Okay. And that movement back to current law is a movement back to current law only in the area of the default definition?

SENATOR LANDIS: There, perfectly stated.

SENATOR BEUTLER: Is that correct? Okay.

SENATOR LANDIS: That's right.

SENATOR BEUTLER: Is there a particular area of concern to bankers where they don't want the default definition? They don't want the...well, let me back up one more step.

SENATOR LANDIS: Yeah.

SENATOR BEUTLER: Even with respect to the default provision, the commissioners, who are looking at this from presumably a very objective point of view, were recommending the new "good faith" definition even for the default provision. Is that accurate?

SENATOR LANDIS: That is accurate. I can...

SENATOR BEUTLER: Okay. And what...do you know what the specific instance or the specific application...

SENATOR CUDABACK: One minute.

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SENATOR BEUTLER: ...of the default provision would be that the bankers are not comfortable with?

SENATOR LANDIS: I was trying to review my files to see if I could come across that, and I don't see it here. I don't have an example to give you. I would generally say, if I had to characterize their argument, it would probably be something like this: Reasonable commercial standards are sensible to use when and where they commonly exist and we know them, they're a knowable standard, that they're commonly used. And in the UCC, those places are demarked in the code specifically. There are not always commercial standards, or there may not be commercial standards that are...that rise to the level of agreed upon practice. And what, my guess is, they would say: We don't want to be held to an emerging standard which we didn't guess should have applied, but some court then applies it to us...

SENATOR CUDABACK: Time.

SENATOR LANDIS: I'm going to guess that's their argument.

SENATOR CUDABACK: You may continue, Senator Beutler. Your light is next.

SENATOR BEUTLER: Were you finished, Senator?

SENATOR LANDIS: I think I had wrapped it up. In other words, I think they'd say, look, we agree to reasonable commercial standards where we know they exist; and they exist in the code in a number of places, and we have no objection there. In the default provision, we are unaware...we can't tell you where the standard will apply; and it may not always make much sense, because you may not have...you may have an emerging rule, but one that is not...that is quite arguably not reasonable. And we'll get trapped on the first time a court says, this has now risen to the level of a reasonable commercial standard.

SENATOR BEUTLER: Let me ask a question in a peculiar way, perhaps. Is...if you have just honesty in fact as your sole standard, does that mean I can do something really stupid as long as I was honest about it?

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SENATOR LANDIS: No, it doesn't. But your...the good faith, your good intentions, are covered by the fact that you were honest. That doesn't mean that you get to do an exploitive thing. You can do something that could be done in good faith because you were honest about it, but have it fall afoul of some other term and condition that isn't permitted to be done. Good faith is not...it doesn't wipe the slate clean. It is but one of any number of things that a seller must evince in their behaviors.

SENATOR BEUTLER: Okay. Senator, I'm going to extend this discussion a little bit, and I hope you're patient with me, but I'm very uncomfortable with the concept. And let me...in retaining the current version of the default provision. Let me ask you to look at an example on page 80 and 81 of the bill, starting at the bottom of page 80. And let me note immediately that that...

SENATOR LANDIS: Can you...?

SENATOR BEUTLER: ...section is in fact covered by a specific good faith definition that does include reasonable...

SENATOR LANDIS: What should I be looking at?

SENATOR BEUTLER: ...observance of reasonable commercial standards. So I know...

SENATOR LANDIS: What should I be looking at? The green copy of the bill?

SENATOR BEUTLER: No, the committee amendment,...

SENATOR LANDIS: Thank you.

SENATOR BEUTLER: ...page 80, line 25. And in that place, they're talking about blanks in a negotiable tangible warehouse receipt. You get a receipt. It has a blank in it. And it's...and the blank has been filled in by somebody without authority to fill it in. And it says, a good faith

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purchaser...and I assume that means they're honest about it, they didn't know the person didn't have authority to fill it in.

SENATOR LANDIS: When "good faith" is used there, it is part of a larger term. This would not be an example of the term "good faith." And the reason is, a "good faith purchaser for value" is all one idea. And a "good faith purchaser for value"...

SENATOR BEUTLER: Okay.

SENATOR LANDIS: ...it constitutes...there are several elements that go into creating a "good faith purchaser for value." I would doubt that the default definition in Article 1 would apply because the two words "good faith" appear in that term. It...

SENATOR BEUTLER: There's a separate definition for "good faith purchaser"?

SENATOR LANDIS: Yes. A "good faith purchaser for value" is a specific concept on its own. And you will find a working definition of a "good faith purchaser for value" someplace, because it certainly grew up in common law. You have to give money or value...

SENATOR CUDABACK: One minute. One minute. Thank you.

SENATOR LANDIS: Thank you. You have to...you cannot be aware of the theft of a...of what it is that you're buying. You can't be part of a combination in which this...you ultimately defrauded somebody and then got them...got it into the hands of somebody who was not the original defrauder, but was part of the course of conduct. That would...in other words, a "good faith purchaser for value" is itself a complete concept. I doubt if "good faith" in Article 1 applies to that.

SENATOR BEUTLER: Is there any material in the committee amendment or the bill to which the default provision of "good faith" would apply?

SENATOR CUDABACK: Time.

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SENATOR BEUTLER: I'd like to talk about this,...

SENATOR CUDABACK: You may continue, Senator Beutler.

SENATOR BEUTLER: ...in terms of some specific example, but maybe that's not possible to do today.

SENATOR LANDIS: You may like to hear...oh, wait a second. I do have the testimony of those who wanted to maintain the existing rule, if you'd like to see it or if you'd like me to read it.

SENATOR BEUTLER: For the example, or for the definition?

SENATOR LANDIS: You want some more time?

SENATOR BEUTLER: I'm sorry. Did I run out of time, Senator Cudaback?

SENATOR CUDABACK: It's your time. It's your time, Senator Beutler. And this is your third time.

SENATOR BEUTLER: Pardon me? Okay. I think my light was on again, Senator Landis, so please go on.

SENATOR LANDIS: Let me read you some of the thing...some of the material that was given to the committee. Transactions covered by Articles 2 and 2A involve individuals and nonmerchants. Revised Article 1 would apply the same good faith standard to merchants and nonmerchants, holding both merchants and others assumed to have knowledge of commercial reasonableness to a more expansive definition of "good faith" than it does nonmerchants and others assumed not to have knowledge of commercial reasonableness. We would argue that the conduct of such parties is not readily amenable to the establishment of reasonable commercial standards, because no well-defined customs and practices exist. For example, let's assume that I sign a contract to purchase a lawn mower from a local Lincoln merchant, and under the contract, I agree to make monthly payments, maintain the mower for the duration of the payment period, and to promptly notify the merchant of any nonroutine maintenance needs that arise for the duration of the expressed warranty that

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is part of the sales agreement. Under the proposed revised Article 1, not only must the local merchant observe reasonable commercial standards of fair dealing; so would I, the nonmerchant buyer, even though I may have no reason to know what constitutes reasonable commercial standards of fair dealing in the sale and servicing of lawn mowers. If reasonable commercial standards of fair dealing in the performance of a contract for the sale and servicing of a lawn mower require that I inspect the mower after each use, and if I go on vacation for two weeks while my neighbor uses the mower to cut my lawn but fails to inspect the mower after two mowings, when I return and start it up and it is not working as warranted, am I breaching my duty of good faith by insisting that the local merchant make good on its warranty? The proposed revised Article 1's reasonable person with knowledge of the trade standard suggests I am in breach. If I am in breach, my breach will not give the merchant independent grounds to recover from me, but it may well give the merchant a defense against liability for breach of warranty. The specific use of reasonable commercial standards is done throughout the code, article by article. This argument says you're importing it, as to the default position, for people and conditions that may not be aware of what those standards are. That's their argument.

SENATOR BEUTLER: Let me...I'm not sure if I understood everything you were saying. But you were saying that the default definition is better for unsophisticated people?

SENATOR LANDIS: It is worse...I think their argument is that it's worse; that it would take the unsophisticated person and assume that they understood reasonable commercial standards and were observing them.

SENATOR BEUTLER: Oh, I'm sorry. This is...

SENATOR LANDIS: While that might...

SENATOR BEUTLER: ...the commissioner's position? Whose position was that? I didn't hear the first part.

SENATOR LANDIS: The position is those who want the existing

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rule, the banking industry. This was their testimony before the committee, why they thought honesty in fact was the better default position. And their argument there was, look, for whatever purposes we have, understand that for the unsophisticate, they will now be assumed to have knowledge of reasonable commercial standards and be held to that. It will apply not only to merchants, but to nonmerchants as well.

SENATOR BEUTLER: So it's the banking industry...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...standing up for the little guy here. Is that what I'm given to understand?

SENATOR LANDIS: They're...the example that they gave would have been that example. My guess is they're doing it for themselves as well.

SENATOR BEUTLER: Did they give some...

SENATOR LANDIS: That's right.

SENATOR BEUTLER: ...examples where it would have been of benefit to the banking industry? I mean, I...perhaps they're looking out for the little guy, but I find it hard to believe that they came to testify on the bill because they were...

SENATOR LANDIS: Right.

SENATOR BEUTLER: ...fearful of what would happen to the little guy.

SENATOR LANDIS: Let me give you another paragraph or two, see if you can make any...find any value for it. In comparison, the broad definition of "good faith" is honesty in fact and the observance of reasonable commercial standards of fair dealing, which is concerned with the decency, fairness, and reasonableness of the party's conduct in the transaction, considering not only the actual belief of the party in question, but also the reasonableness of that belief. In addition to the

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subjective test, it layers an additional objective test for determining whether a party...

SENATOR CUDABACK: Time.

SENATOR LANDIS: ...acted in good faith. The standard requires an analysis of what persons with ordinary prudence would do...

SENATOR CUDABACK: Time, Senator Landis. I'm sorry.

SENATOR LANDIS: It's okay.

SENATOR CUDABACK: Senator Beutler, that was your last time, Senator Beutler.

SENATOR LANDIS: Well, I've got my light on, don't I?

SENATOR CUDABACK: Senator Chambers is next.

SENATOR LANDIS: Oh, okay.

SENATOR CUDABACK: Then you follow Senator Chambers, Senator Landis. Senator Chambers.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm listening to this discussion of the term "good faith." But I'm directing my attention to page 80 of the committee amendment, that Senator Beutler had touched on with Senator Landis, starting in line 25 and continuing through line 3 on page 81. Talking about the blank which would be filled in by an unauthorized person, it says, "If a blank"...talking about altered warehouse receipts..."If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor." I'd like to ask Senator Landis a question or two.

SENATOR CUDABACK: Senator Landis, would you yield to a

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question?

SENATOR CHAMBERS: Senator Landis, that first sentence that I read would go against the issuer, in the same way that the second sentence would apply to the issuer. Is that true? Where the blank is filled in, a good faith purchaser...

SENATOR LANDIS: The good faith...yeah.

SENATOR CHAMBERS: ...for value without notice could enforce it against the issuer with the unauthorized fill-in of the blank.

SENATOR LANDIS: That's right.

SENATOR CHAMBERS: Now when we get to an unauthorized alteration, that, apparently, goes to something other than the filling in of a blank. Correct? This would be on page 81, starting in line 1. "Any other unauthorized"...

SENATOR LANDIS: No, I think what that means is...oh, I see your point. Yes, that's right. I think that interpretation is accurate. It's not the identity of the person; it is the fact that it's an alteration. So there's a rule for the alteration for the good faith purchaser for value, but that rule is for the filling in of a blank. Other alterations wind up being enforceable against the issuer according to the original tenor.

SENATOR CHAMBERS: Now, if...

SENATOR LANDIS: And by the way, can I give an example of what that might be?

SENATOR CHAMBERS: Sure. Sure.

SENATOR LANDIS: What that means is, let's imagine the alteration is not filling in a bank (sic), but altering "10" to "110." That's an alteration. Now, the original agreement was for 10. It was not for 110, because that was the alteration. What the general rule for the Commercial Code is everywhere is that the original issuer is still on the hook for 10,...

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SENATOR CHAMBERS: Right.

SENATOR LANDIS: ...not on the hook for 110,...

SENATOR CHAMBERS: Right.

SENATOR LANDIS: ...and that...and this, I think, recites that rule, essentially.

SENATOR CHAMBERS: Okay. And that's easily understood.

SENATOR LANDIS: Right.

SENATOR CHAMBERS: I wanted to get that out of the way. Now, coming back to this blank, the fact that this language is underlined would suggest that it's new language. Is this language simply being transported from someplace else to this location? Or is this new language, the part about the blank being filled in without authorization?

SENATOR LANDIS: I can tell you it is new language. What I can't tell you is, is this an alteration of the existing rule? But, Senator Chambers, I will get an answer for that question for you.

SENATOR CHAMBERS: Okay. Then let us discuss it without regard to whether it's already law, because I don't know for sure.

SENATOR LANDIS: Fair enough.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: Now, when a blank is filled in, this receipt is going to go against the issuer. The issuer is going to be held to what was put into that blank. It could have been put in by Captain Kidd or Jack the Ripper. But if I purchase that receipt from you with value...for value, and I don't have notice that Jack the Ripper wrote it in, you're held to what was written into that blank by Jack the Ripper, as I read this language. Is that correct?

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SENATOR LANDIS: Actually, the sentence does not say that necessarily the issuer is responsible for the blank. But our...

SENATOR CUDABACK: I'm sorry. Time is up. I'm sorry.

SENATOR LANDIS: And my light is next, isn't it?

SENATOR CUDABACK: It is next. But before we go...

SENATOR LANDIS: In that case,...

SENATOR CUDABACK: You may continue. Go...

SENATOR LANDIS: Thank you. And I...let's continue with this exchange, Senator Chambers, and then, to the extent that we finish ours, we can go back to Senator Beutler as well. A good faith purchaser can go after...I'm going to guess, after the issuer for the face of the instrument. And then the issuer would go after the malefactor.

SENATOR CHAMBERS: If that person can be found. We don't even have to know the...

SENATOR LANDIS: That's right.

SENATOR CHAMBERS: ...identity of the one who put it in.

SENATOR LANDIS: That's right. And the reason is, between the issuer and the good faith purchaser, who was more in a position to stop this wrong from happening? And the answer is, the issuer was.

SENATOR CHAMBERS: Senator Landis, I can understand that in the commercial realm you want to have regularity, reliability, and stability in these processes. But if this is new language, I'm not sure that I'm in favor of its being adopted. If it's existing language, there will be court cases and other history behind the way this kind of language has been interpreted and applied, so that everybody in the commercial realm would have notice and knowledge of it. I will listen,...

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SENATOR LANDIS: Thank you.

SENATOR CHAMBERS: ...because I think you're going to give me something.

SENATOR LANDIS: I'd like to take my time back so that I can read to you the official comment on this section, if you would. The execution of tangible ware... "tangible," these are like, you know, these are these written documents. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser, the risks should clearly fall on the former, because they created the document and they left it blank. The purchaser must have purchased the tangible negotiable warehouse receipt in good faith and for value to be protected under the rule of the first sentence, which is a limited exception to the general rule in the second sentence, electronic documents whose title systems should have protection against unauthorized access and unauthorized changes. Thus, the protection for good faith purchasers found in the first sentence is not necessary in the context of electronic documents. So we're talking about tangible forms. And the rule which... the reason for the rule is that the issuer is better in a position to stop the error or the wrong than is the good faith purchaser. It's a dangerous business, and if it has... if the risk has to fall on somebody, let it fall on the person who created the opportunity for the danger, who is the issuer.

SENATOR CHAMBERS: In order not to take your time, my light is on. I'll make my comments then. I will maybe ask you a question or two. But I won't take all of your time for my narrative. Thank you, Senator Landis.

SENATOR LANDIS: Okay. I still have some time left. I'm going to...

SENATOR CUDABACK: You do. You have two minutes, Senator.

SENATOR LANDIS: ...inquire if Senator Beutler has... let me yield my time remaining to Senator Beutler, so that he may

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pursue his line of question.

SENATOR LANDIS: Senator Beutler, about two minutes.

SENATOR BEUTLER: Senator Cudaback, Senator Landis, I have to admit to a measure of confusion at this point as to specific situations to which this would...this default provision would apply, and who it benefits and who it doesn't benefit. But I do find it curious that the commissioners, who you would expect to have an interest in protecting the average consumer, felt comfortable with the new definition of "good faith," even in the default provision. I just find that something is not connecting for me here.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: Senator Beutler, I can tell you this. John McCabe, who was present at the committee, understood that the amendment was being offered; indicated, look, this is the way that we preferred it, but we can live with this; this is our existing rule. The opportunity for McCabe to have made the case to say, you know what, the existing rule...

SENATOR CUDABACK: One minute.

SENATOR LANDIS: ...is clearly wrong, really inconveniences people, leaves people hanging, and needs to be changed, and the banking industry, who I know is about to follow me, is completely wrong--did not take that opportunity. I will say that the difference, from their perspective, is relatively minor. And it was not a place where the Uniform Commissioners were prepared to make a fight.

SENATOR BEUTLER: Okay. Senator, thank you.

SENATOR CUDABACK: Are you through, Senator Landis? Thank you, Senator Landis. (Visitors introduced.) Mr. Clerk, items for the record?

CLERK: Thank you, Mr. President. A new A bill. (Read LB 40A by title for the first time.) Your Committee on General Affairs

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reports LB 599 as indefinitely postponed; offered by Senator Janssen, as Chair of the committee. Senator Chambers, amendment to be printed to LB 563. That's all that I had, Mr. President. (Legislative Journal page 582.)

SENATOR CUDABACK: Thank you, Mr. Clerk. We're discussing the Banking, Commerce and Insurance Committee amendments to LB 570. On with discussion. Senator Chambers.

SENATOR CHAMBERS: Mr. President, members of the Legislature, Senator Landis showed me that the essence of this provision that I'm discussing already is law. There is an additional bit added which even tightens it. What I was concerned about was whether new language such as this would be adopted and the people who are going to be affected by it would have no notice of it. By virtue of its having been in the law, this is not a new idea or concept for those who are going to be affected by it. So the concern that I had has evaporated. I would not even have been aware of this new language if Senator Beutler and Senator Landis had not engaged in their discussion. There are many, many pages to this committee amendment, over 100, over 120, maybe close to 150. Some of the changes, as you scan the amendment, would relate to what could be called technical changes. But there are some items of substance. I have not had the opportunity to review this bill. So I'm listening in order to learn. But the question that I had originally has been answered by the information Senator Landis gave me, so I will continue to listen, especially when we talk about the term "good faith." Senator Beutler showed me that on page 14, in line 9, there is a definition, along with other definitions, of "good faith." Not other definitions of "good faith," but it's listed among other definitions. I'd like to ask Senator Landis a question.

SENATOR CUDABACK: Senator Landis, would you yield to a question from Senator Chambers?

SENATOR CHAMBERS: Senator Landis, take my word for it that I'm reading what is actually in the amendment. On page 14, in line 9, it says, "'Good faith' means honesty in fact in the conduct or transaction concerned." On page 69, line 23, "'Good faith' means honesty in fact and the observance of reasonable

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commercial standards of fair dealing." The question I would ask Senator Landis is whether there is a definition anywhere in the code of "good faith purchaser for value without notice." You don't have to, you know,...

SENATOR LANDIS: Right.

SENATOR CHAMBERS: ...find it right now. Maybe the staff can determine that. But that was something that came to my mind as you and Senator Beutler discussed. And, Senator Cudaback, how much time do I have left?

SENATOR CUDABACK: About two minutes, Senator.

SENATOR CHAMBERS: I would give it to Senator Beutler, if he would like to make use of it.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: Senator Cudaback, I'm not sure there's anything useful...further that's useful at this point that can be done. I think I need to understand better how the default provision applies to certain areas. And since we're in a situation where the law doesn't get any worse, as I understand it, by virtue of this change, for the moment, it's not my intention to discuss this particular provision further.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Chambers, did you wish to use your remaining one minute? He waives his right to speak. Senator Landis, you may. And this will be your third time, outside of closing.

SENATOR LANDIS: Let me acknowledge in candor that on the floor of the Legislature, the Uniform State Law Commissioners probably don't have more votes than the banking industry, if I was to just say what I think is the situation. The rule is the default rule. It has limited application. We're continuing an existing definition, and we're making significant changes elsewhere. I can live with that. But there is an element of political reality. I certainly don't think that the banking industry wants the one definition because it's good for the little guy.

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I'm sure that they care that it applies to them as well. I have no doubt of that. I will say that...generally, that they oftentimes want the known rather than the new, because the known is usable and has built its way into their business practices, and to make a change is costly. Not that they would say it's a bad rule, but they...change is expensive to them. So that may be it. In the end, I as an introducer am faced with a cumulative decision as to how I want to proceed. I can live with this compromise. I accept the Banking Committee's work. I will accept this amendment. I introduced it along with the Uniform State Law Commissioners. It would be my preference, if I was acting on my own as an enlightened despot. Unfortunately, I'm not; only Senator Chambers gets to act as an enlightened despot. And because of that, I've accepted this amendment. I would ask for the adoption of the Banking Committee amendments, and the advancement of the bill.

SENATOR CUDABACK: Thank you, Senator Landis. There are no further lights on. Senator Mines, you're recognized to close on the Banking, Commerce and Insurance Committee amendments.

SENATOR MINES: Thank you, Mr. President. And if that...this wasn't an example against term limits, I don't know what is. This was a lesson in UCC law, and quite an informative lesson for me, anyway. The amendment as forwarded by the committee, I ask for your adoption. And want to thank both Senators Beutler and Landis and Chambers for interacting. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Mines. You've heard the closing on AM0229, offered by the Banking, Commerce and Insurance Committee to LB 570. The question before the body is, shall those amendments be adopted? All in favor vote aye; opposed, nay. We're voting on the adoption of the committee amendments to LB 570. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 36 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SENATOR CUDABACK: The motion was successful. The amendments

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have been adopted.

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

SENATOR CUDABACK: Excuse me. Discussion on the advancement of LB 570? Senator Beutler.

SENATOR BEUTLER: Senator Landis, again, just one more provision--page 71, lines 10 through 12. And I'm probably doing this just so I can whine a little more about the direction in which some things are going. But I think it's a very interesting lesson to us. This provision says, as you can see now: This article--with respect to what we're doing here today--this article is subject to any treaty of the United States or statute of the United States or regulatory statute of this state to the extent that the treaty, statute, or regulatory statute is applicable. What caught my eye about this provision is just the reference to treaties. And let me ask you a simple question. If a Nebraska farmer enters into an agreement that's governed by this law,...

SENATOR CUDABACK: Senator Landis, would you yield?

SENATOR BEUTLER: ...with an importer in China, and if, to make an exaggerated case out of it, our treaty with the country of China said the commercial law of China shall apply to all transactions between...to all commercial transactions between China and the United States, does that mean that everything in this code would go, and we're simply subject to whatever the federal negotiators put into treaties with regard to any of our commercial relationships?

SENATOR LANDIS: Yes. Treaties are part of the hierarchy of law. They are the very first notch under the federal constitution. Treaties trump all state law, and treaties trump federal law, congressional law, statutory law. It goes: constitution, treaty, federal law, state constitution, state law. And treaties trump everything, including federal law, below them.

SENATOR BEUTLER: And that relationship, if so solidly in law,

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why is it necessary to point out in this provision that the treaty trumps?

SENATOR LANDIS: My guess is that you probably don't have to be a constitutional scholar to understand that it's probably superfluous. However, notice it does say what does trump this. It says, a treaty; I think, what, a federal law; and then a state regulatory law. Oftentimes, because these are...this is the regulation of private transaction between some merchants and nonmerchants. But if a state wants to step in and regulate, that takes precedence over this general business code, if you will, in the Uniform Commercial Code. It would be superfluous, I suppose, because in any challenge, a court would rule consistent with this. If there's a place where there's anyplace where it particularly might be of value, it's in saying that the state regulatory law supersedes this law. But there can be no doubt.

SENATOR CUDABACK: One minute.

SENATOR LANDIS: We don't have to say it in this bill to make a treaty trump this code.

SENATOR BEUTLER: So what this illustrates, would it be fair to say, is that a treaty entered into by our federal representatives, the President of the United States, and affirmed by our federal representatives, could essentially wipe out, for purposes of any applicability outside the state, any of our commercial rules?

SENATOR LANDIS: Any of our commercial rules, any federal law. Understand, the only thing that trumps a treaty is the constitution, and that's it.

SENATOR BEUTLER: Okay.

SENATOR LANDIS: And every other form of law is secondary.

SENATOR BEUTLER: Thank you, Senator Landis.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator

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Chambers, followed by Senator Landis.

SENATOR CHAMBERS: Mr. President, I have to quote Ronald Reagan: Here we go again. Senator Landis, I looked at what Senator Beutler called our attention to, and I have a question or two. Going to page 71, lines 10 through 12, there is, in line 11, the referencing of "regulatory statute of this state." That would be a quote, "regulatory statute of this state." The Uniform Commercial Code that is being discussed in this bill would refer to that volume we have of the Nebraska statutes labeled Uniform Commercial Code, and it's not talking about an amorphous Uniform Commercial Code someplace else.

SENATOR LANDIS: Correct.

SENATOR CHAMBERS: Okay. Without this, the Legislature can amend any statute currently on the books, including anything in the Commercial Code.

SENATOR LANDIS: Right.

SENATOR CHAMBERS: Okay. What I'm wondering is the provision that talks about a statute of the United States, to the extent such statute is applicable.

SENATOR LANDIS: Right.

SENATOR CHAMBERS: It doesn't say that it conflicts, but just that it's applicable. What is the difference between that word "applicable" in line 12 and in line 26 the word "conflict," (emphasis on "con") or "conflict," (emphasis on "flict") because of the way they're using it, on page 71.

SENATOR LANDIS: Sure. Let's say, and I'm going to try to invent a transaction off the top of my head. Let's say that a federal program requires a farmer to do certain things to qualify for the federal program. Okay? Let's imagine that implicates a transaction that they have with a buyer or seller of their goods. The...to the extent that it's applicable, I think what you'd say is, look, if you have to order it, if you have to choose which of these is the binding rule, the more

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important rule will be the federal law when it's applicable.

SENATOR CHAMBERS: Then, Senator Landis, because that's what I thought it meant but I wanted you to say it, we then are delegating to the federal government the authority, by their changing legislation, to alter Nebraska's law. Is that the way this would operate?

SENATOR LANDIS: I think we're recognizing the reality of the situation and announcing it here as opposed to extending that principle. Senator Chambers, your distinguished days as a student at the Creighton Law School would have brought you in touch with Marbury v. Madison and any other number of cases that established the fact that federal law governs in a conflict over state law. Now, the word here is "applicable," I agree, but...

SENATOR CHAMBERS: What this is saying is that the federal government can legislate and, by its legislation, modify Nebraska law; not supersede, not preempt, but modify it. That's what I'm looking at. And we cannot, as a State Legis'ature, delegate to the federal government the authority to change Nebraska's law by legislating. The only body authorized under the Nebraska Constitution to legislate for this state is the Legislature. If there's a conflict between state law and federal law, we know that the state law takes second place, but we're not talking about that because we wouldn't...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...even have to state it. This seems, to me, to be saying that however the Congress legislates, that is automatically going to amend Nebraska law without the Legislature doing anything.

SENATOR LANDIS: I don't see it that way, Senator Chambers, and perhaps the word "applicable" is there because of the use of the word "treaty" as covering all of those. To the extent that we need to comply with a treaty, this body of law is going to be sublimated to that treaty.

SENATOR CHAMBERS: Right.

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SENATOR LANDIS: To the extent that we need to enforce the statutes of the United States government and the federal code, this, this law, will be sublimated to that. And it's also the case that this code will be sublimated to a regulatory statute of our state designed to essentially regulate these kinds of relationships or transactions. If, for example, there's a commercial code in here, but if we adopted a regulatory statute that allowed for a three-day cooling-off period, that would govern.

SENATOR CHAMBERS: Right.

SENATOR CUDABACK: Time.

SENATOR LANDIS: Exactly. Now, maybe it's the word "applicable." My light is on. I'll continue if I...is my light the next one?

SENATOR CUDABACK: You may. Your light is next, Senator.

SENATOR LANDIS: Thank you. Let's continue this exchange if we could, because I certainly don't want to cut Senator Chambers off. It may be in the word "applicable" that you find the problem, because if it was "conflict," you wouldn't have any problem with that because that would be stating textbook federalism.

SENATOR CHAMBERS: Right.

SENATOR LANDIS: And I wonder if the word "applicable" is there is because how you use the term "treaty." You may not...maybe that's the better verb.

SENATOR CHAMBERS: Why do we...

SENATOR LANDIS: However, if you'd like to consider the use of the verb "conflict" rather than "applicable," I would consider that between now and Select File.

SENATOR CHAMBERS: And I'm not going to offer an amendment. And

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when my light...when I get to my light, then I will just elaborate on my view, and then we can talk again before we get to Select File. I think it's your time now anyway, though.

SENATOR CUDABACK: This is your time, Senator Landis.

SENATOR LANDIS: You're right, and I'll yield it to Senator Beutler, who I think has been exhausted his chance to talk.

SENATOR CUDABACK: Senator Beutler.

SENATOR BEUTLER: You're exhausting us both, Senator, doing good work. Now, I was also interested in Senator Chambers' point, and I'm not sure if I understood it correctly but let me...let me restate it in terms that I better understand. But you talk about if our law is in conflict with federal law, it's not...is it necessarily that federal law prevails? I mean, if it's not a matter of interstate commerce, I don't think federal law would prevail.

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: You would have to be in a place where federal law does...should not have been passed, because it was beyond the authority of the federal government's enumerated powers, before you get to a place where a federal law would fail in conflict with a state law. The supremacy clause says federal law trumps. The only place where that wouldn't be the case is where you were essentially ultra vires, beyond the authority of the federal law, in which case you could have a case that perhaps would do that. I haven't found the federal government to be acting beyond their authority in constitutional law in 80 or 90 years. No Supreme Court has said, oh gosh, federal law doesn't cover that. We haven't just done it for almost a century.

SENATOR BEUTLER: Okay. Well, maybe it is the word "applicable" that's confusing. Thank you.

SENATOR CUDABACK: Thank you, Senator Beutler. Senator Landis, did you wish to use any more of your time? Senator Chambers,

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you are next to speak, if you care to.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I will give an example of a conflict between Nebraska law and federal law. Under Nebraska law, a person who is on parole, work release, in jail or prison, probation or any form of custody cannot be used by a state or local law enforcement agency as an undercover snitch. If the state does that, any evidence developed by or through that snitch is not admissible in any proceeding. The federal government in Nebraska has more drug cases than any other federal district in the country. They build these cases, primarily against young black men, through the use of snitches. They will have a lying snitch lodge the charge. Then they will have another lying snitch corroborate it. The word of a snitch is not enough. They have to have corroboration. So they create the corroboration through the use of other lying snitches. When these young black men get white attorneys in Omaha, they're usually told to plead. If you plead you'll get maybe 7 years; if you take it to trial and you lose you might get 20. They intimidate a lot of these young guys into pleading to things they didn't do. Some of them have started challenging these bogus charges. One day last week a young black man had a young black attorney who fought it, and the jury came back and acquitted because the snitches are totally lacking in credibility. Now, that puts into a broad context the use of snitches by the federal government. The federal agents can take a Nebraska parolee, a Nebraska inmate, a person on work release and use that person as an undercover snitch within Nebraska, and can use that evidence in a federal prosecution. Nebraska law cannot bind the federal government when it comes to the use of these snitches. There are other instances where the federal government may legislate on an issue, the state may legislate on that issue, and the two laws are diametrically opposed, but as long as Nebraska is enforcing its law within its boundaries and there is nothing in the federal law that says it preempts a state from legislating in this area, the state law is not automatically stricken down. If there's a collision and they're occupying the same territory, as in the example that I gave, then the federal law is going to prevail. What I'm looking at in the language that I'm talking about here is the appearance to

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me that any statute that Congress enacts, because the bill says statute, not rule, regulation or whatever, but statute, any statute that Congress enacts will automatically modify the law of Nebraska to conform to the requirements laid down in that enactment by Congress. So if Congress enacts something this term of Congress, it automatically modifies Nebraska's law to conform to what Congress has done. If Congress comes back next term,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...or even within the existing term, and repeals that provision, I don't know whether that means the Nebraska provision will be repealed also or if that reinstates the original form of the Nebraska statute as it existed prior to being modified by a congressional enactment. I think the area is not as clear-cut as Senator Landis is suggesting, unless he has decided that he agrees with my position. And I don't think that I'm dealing in semantics here. I'm reading the language of this proposed amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Beutler, on advancement of LB 570.

SENATOR BEUTLER: Senator Cudaback, Senator Landis, let me ask you about the third part of that provision, (laugh) as long as we're going to cover all of these, and I think it's also difficult to understand. It says this article is subject not only to a treaty or a statute of the United States or regulatory statute of this state. Let me ask you in the first instance what a regulatory statute is under the terminology of this bill. Are we talking about duly enacted regulations of the different bureaucracies?

SENATOR CUDABACK: Senator Landis.

SENATOR LANDIS: We're talking about a statute that regulates, a statute that regulates.

SENATOR BEUTLER: We're talking about the statutes of the state of Nebraska?

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SENATOR LANDIS: That's right, but not every statute regulates. If you said "statute," you'd be just fine; but, we're talking about a regulatory statute that...which is why that term is there. But we have statutes that create an advisory board. We create...we have statutes that don't affect or order behavior. But my guess...but my guess is that you could take "regulatory" out of there and just say statute if you wanted to. "Regulatory" I think is meant to say, look, it's those statutes that regulate behavior, the state regulation of behavior trumps this declaration of behavior, this ordering of behavior. Because, essentially, the Uniform Commercial Code is an ordering of private behavior, not public behavior.

SENATOR BEUTLER: So if you strike the word "regulatory," then this article is subject to the statutes of the state's...any other statute of the state that's applicable.

SENATOR LANDIS: Yeah, wouldn't it be?

SENATOR BEUTLER: If there's a conflict between the two statutes?

SENATOR LANDIS: Well, even as we see this, off the top of my head I can see that you can, for example, where there are conflicts, you can use later in time. You can also use specificity.

SENATOR BEUTLER: But it...but it doesn't say later in time. It says this article is subject to.

SENATOR LANDIS: Let me finish. Oh, I'm sorry. I guess we are on your time.

SENATOR CUDABACK: We are on Senator Beutler's time.

SENATOR LANDIS: Writing it this way it says whether the...whether the rule, the regulatory rule is more specific or less specific, whether the regulatory statute is sooner or later doesn't make a difference. If the state is regulating the field, it trumps the UCC. Now, if you didn't say that, it

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might...you might have a conflict of statutes. And what are our tools to evaluate when there's a conflict of statutes? One of them is first in time or last in time. Last in time generally governs. Specific versus general; specific has a tendency to be chosen by a court, rather than general. We have...when the state is there and we have conflicting laws, courts have tools to evaluate and decide which law speaks. This bill answers that and it says the UCC is there, but if the state regulates, the state regulatory act supersedes the UCC. First in time, last in time, the ordering by the state government of what should be the behavior in the marketplace trumps the general statement of how people in the marketplace should treat each other, which is what the UCC is.

SENATOR BEUTLER: Yeah. Well, normally when we make laws, we don't say this law shall be ahead of any other law it may conflict with. We almost never...

SENATOR LANDIS: Oh, gosh, we have lots of thing..."notwithstanding any other provision of law," you've seen that a zillion times and so have I. That's exactly an attempt to give an elevation to a section.

SENATOR BEUTLER: Not...well, let me back up a little bit. The...so is that what this provision is attempting to say,...

SENATOR CUDABACK: One minute.

SENATOR BEUTLER: ...notwithstanding any other provision of law, the other provision of law will prevail?

SENATOR LANDIS: (Laugh) Actually, I think that's a relative...that's pretty close. Here's the idea. The UCC says, look, we're going to tell private citizens when they're writing contracts what they need to do, but the fact that they write a contract between the two of them doesn't mean that the state, when it says you must have this kind of a provision, or that kind of a provision is illegal, when the state speaks in that tone, that tone governs. If the state were to say you will have a three-day cooling off period, the UCC says, you know whatever you had in your contract here, don't be looking at the UCC as a

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defense.

SENATOR CUDABACK: Time.

SENATOR LANDIS: The state law governs.

SENATOR CUDABACK: Thank you, Senator Beutler.

SENATOR BEUTLER: Okay.

SENATOR CUDABACK: Senator Chambers, and this will be your third time, Senator.

SENATOR CHAMBERS: Mr. President, members of the Legislature, I'm going to hold onto this that I'm talking about like a pit bull would hold on, a hungry pit bull, a famished pit bull would hold onto a porkchop. On page 71, lines 10 through 12, I'm going to read what I'm looking at, eliminating extraneous language: This article is subject to any statute of the United States to the extent such statute is applicable. "Applicable" means that it applies, that it touches on. So anything Congress enacts is going to modify what is in this Uniform Commercial Code which the state has adopted. Senator Landis mentioned that during my time at Creighton I probably came into contact with certain landmark Supreme Court, U.S. Supreme Court, decisions that articulated important points of law, some of which still obtain. He is correct. But it has been stated enumerable times, not only by the Nebraska Supreme Court but by the Supreme Courts of other states, that a Legislature cannot delegate its authority to legislate to any other entity, agency, body, or person. The Legislature cannot authorize the Governor to legislate, cannot authorize the courts to legislate. It can allow agencies to carry out the expressed will of the Legislature which is found in a statute if adequate guidance is given so that it's clear the agency is merely carrying out the Legislature's expressed wish and intent, rather than allowing that agency to legislate in the place of the Legislature. I think, as this language exists, it is an unconstitutional delegation of the Legislature's power to legislate, and it is delegating that authority to the U.S. Congress. It cannot do that. Congress legislates on matters that relate to federal

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issues and federal responsibilities. This is why there will be outlandish bills offered by Congress, offered in Congress by some of these zealots who hate abortion and will try to make abortion a matter of interstate commerce. And sometimes they will say, well, we'll say that if an adult transports a young woman or any woman, well, usually a young one who in a given state would have to get parental...give parental notice, transports that person across state line so that person can avoid giving that parental notice, that constitutes a federal crime and would allow the federal government to enforce these yahoos' arcane, unreasonable notions of ownership of a woman's reproductive system. These zealots that I'm talking about want to declare public ownership of a woman's ovaries, of everything pertaining...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...to her reproductive system. I do not believe the federal government, the state, the church, or anybody else has proprietary rights in a woman's body, not even a pimp who sells women, not even a slave...would-be slave owner who traffics in women. They don't own her, but there are attempts to draw the federal government into that question by fabricating some kind of impact on interstate commerce. If the federal government is being given authority under this language, as I think it is, to enact legislation which will modify Nebraska's law, I think it is an...

SENATOR CUDABACK: Time.

SENATOR CHAMBERS: ...unconstitutional delegation of legislative authority. I'm not going to offer an amendment. It's not my bill. And if it does...

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: ...constitute that, the courts will determine the impact. Thank you, Mr. President.

SENATOR CUDABACK: Thank you.

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SENATOR CHAMBERS: Was that my third time?

SENATOR CUDABACK: That was your third time. Senator Landis, you're...there are no further lights on. You're recognized to either speak or close.

SENATOR LANDIS: This is my closing. Let me give you what the commissioners say this language means, because I think it actually winds up being...puts us all back in the same spot. Referring to this very language, the commissioners say, in their official comments, which would be used by a court in interpreting the language, this would be the tool. Number one, purposes, number one: to make clear what would of course be true without the section, that applicable federal law is paramount. Now, to the extent that the language might be interpretable in some other way, understand that a court, if looking at that language and unable to fashion a clear understanding of it, would go to that comment to guide them into what that section meant. The comment says, to make clear what would of course be true without the section, that applicable federal law is paramount; not modifiable but paramount. Number two: to make clear also that regulatory state statutes, such as those fixing or authorizing a commission to fix rates and prescribe services, are not affected by the article and are controlling on the matters which they cover, unless preempted by federal law. The reference in one of the sections to tariffs and classifications and regulations filed or issued pursuant to regulatory state statutes has been deleted as inappropriate to the modern era of diminished regulation of characters (sic) and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or classification, that tariff or classification would be given effect via the state regulatory scheme that this article recognizes as controlling. So, if there is a state regulator telling people what they have to do for their titles or for their services or for their tariffs that they're to receive, that's controlling and the code is not meant to supplant that. It's supposed to place legislative authority with the regulation of behaviors in this state paramount to the operation of the code. That's what the comments make sense of. I can understand that as I read it. I think a court would be able to understand that as well. Differences may exist as to

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how it's to be interpreted. I'd ask you to advance it, knowing that this is the suggested language and the comment that would be handed over to a court in this state and others, and that I think it's within the realm of understandability. I think it's clear on its face, even though I understand Senator Chambers doesn't see it that way. I ask for the adoption...I'm sorry, I ask for the advancement of LB 570.

SENATOR CUDABACK: You've heard the closing on LB 570. The question before the body is, shall LB 570 advance to E & R Initial? All in favor of the motion vote aye; those opposed, nay. The question before the body is advancement of LB 570 to E & R Initial. Have you all voted on the question who care to? Record please, Mr. Clerk.

CLERK: 28 ayes, 0 nays, Mr. President, on the advancement of LB 570.

SENATOR CUDABACK: LB 570 advances. Mr. Clerk, items for the record?

CLERK: Mr. President, your Committee on Government reports LB 476 to General File; LB 501, General File; LB 762, General File; and LR 25CA indefinitely postponed; those reports signed by Senator Schimek. Confirmation reports from the Government Committee, two different reports, both signed by Senator Schimek, as Chair. Appointment letter from the Governor will be referred to Reference. A name add, Mr. President: Senator Redfield would like to add her name to LB 389. (Legislative Journal pages 583-584.)

And I do have a priority motion. Senator Janssen would move to adjourn until Wednesday morning, 9:00 a.m.

SENATOR CUDABACK: (Visitors introduced.) You've heard the motion to adjourn till February 23, 9:00 a.m. All in favor say aye. Opposed, nay. We are adjourned.

Proofed by: J. Hurlbut