

**APRIL 7, 2005**

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April 7, 2005            LB 548, 689, 689A, 709  
                             LR 2

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK:     Good morning.     Welcome to the George W. Norris Legislative Chamber. Our chaplain of the day is Senator Fischer from the 43rd District. Senator.

SENATOR FISCHER:     (Prayer offered.)

SENATOR CUDABACK:     Thank you, Senator Fischer, for doing that for us. We appreciate it. I call the fifty-eighth 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:     Thank you, Mr. Clerk. Any corrections for the Journal?

CLERK:     I have no corrections, Mr. President.

SENATOR CUDABACK:     Messages, reports or announcements?

CLERK:     Mr. President, your Committee on Enrollment and Review reports LR 2CA to Select File with E & R amendments; LB 709, LB 689, LB 689A, all to Select File, all having Enrollment and Review amendments. I have the lobby report, Mr. President, for this week to be inserted in the Journal, and that's all that I have. (Legislative Journal pages 1129-1135.)

SENATOR CUDABACK:     Thank you, Mr. Clerk. We now go to General File, 2005 senator priority bills, the Combs division. Mr. Clerk, LB 548.

CLERK:     LB 548, a bill by Senator Jensen. (Read title.) Introduced in January, referred to Health Committee. Senator Jensen presented the bill yesterday, Mr. President; also presented the committee amendments. (AM0735, Legislative Journal page 812.)

SENATOR CUDABACK:     Senator Jensen, would you like to take a few minutes and refresh the senators' minds on the contents of

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LB 548 and the committee amendments?

SENATOR JENSEN: Thank you, Senator Cudaback and members of the Legislature. LB 548 really deals with the Tobacco Settlement Trust Fund that was set up by this Legislature in 1998 where we have now released about \$50 million a year, all for healthcare. And what the bill does is, it does really essentially three things. The...it says that unexpended...unexpended funds cannot be tapped into as we have done the last few years, trying to take care of some budget items. And so we took some dollars away from the fund that would have been drawing interest, we took some of the principal away. This says that that cannot be done anymore. Then it also has a set-aside for a tobacco control and prevention program that used to be at \$2.5 million plus \$400,000, \$405,000 from General Funds. Rather than deal with that General Fund issue, we're taking now \$3 million a year which is an increase of really \$95,000 into that tobacco control and prevention fund. And then the third thing it does through the amendment is it increases the research dollars going to four entities--UNL, Boys Town, UNMC, and Creighton University--from \$10 million a year to \$12 million a year, which means that we're increasing the fund to \$52 million a year. We have run this through the Investment Office. They say that we can do that conservatively at this time. And so, that's really what the bill and the amendment does. I do have a correction to the amendment that was filed, LB 737 (sic), which is strictly a technical amendment and after these brief comments, I'd like to open on that amendment. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen. For further review, Mr. Clerk, a motion.

CLERK: Senator Jensen would move to amend the committee amendments with AM1121. (Legislative Journal page 1135.)

SENATOR CUDABACK: Senator Jensen, you're recognized to open on that amendment.

SENATOR JENSEN: Thank you, Mr. President. And this amendment strictly is technical. On page 1 of the amendment, beginning with the word "in" in line 4, we strike beginning with the word

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"in" on line 4 through the semicolon in line 5. In committee we were kind of working on another part of an amendment which we got part of that in here, and this just strikes that out of there. It was technical and I apologize for having to do that. But that's all the amendment does. I would ask for its adoption to the amendment. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the opening on AM1121 to the Health and Human Services Committee amendments. Open for discussion on that. Senator Byars.

SENATOR BYARS: Thank you, Senator Cudaback. Just wanted to reinforce what Senator Jensen and the Health Committee has done relative to this legislation. This is good legislation. It's follow-through with what has been a very deliberate planning process to appropriately use the resources that have been given to us through the tobacco settlement. And I don't want to belabor the point but want everyone to understand that years of work has gone into this process and these changes are needed and not taken lightly. And I want to commend the committee for its hard work in coming together and doing what's necessary to preserve this fund. And thank you, Senator Jensen, and thank you, colleagues.

SENATOR CUDABACK: Thank you, Senator Byars. Further discussion on the Jensen amendment to committee amendments? There are no lights on, Senator Jensen. You're recognized to close on AM1121.

SENATOR JENSEN: Thank you, Mr. President. This is a technical amendment. I would just ask for its adoption. Thank you.

SENATOR CUDABACK: Thank you, Senator Jensen. The question before the body is, shall AM1121 be adopted to the Health and Human Services Committee amendments? All in favor vote aye; opposed, nay. The question before the body is AM1121. Have you all voted on AM1121 who care to? Record please, Mr. Clerk.

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of Senator Jensen's amendment to the committee amendments.

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SENATOR CUDABACK:        The amendment has been adopted. Before we move on to the next amendment, the cookies being passed out, in honor of Senator Foley's April 5 birthday, and Senator Erdman's birthday, and Jacob's birthday. So let's give them all a hand here. Happy Birthday. Mr. Clerk, amendment.

CLERK: Mr. President, Senator Chambers would move to amend the committee amendments. (FA150, Legislative Journal page 1136.)

SENATOR CUDABACK:        Senator Chambers, to open.

SENATOR CHAMBERS: Mr. President, friends all, to demonstrate my mood this morning (singing), happy birthday, dear colleagues, happy birthday to you. Mr. President, members of the Legislature, this amendment that I'm offering is what I dubbed yesterday "the Chambers amendment." It won't take long to be brought up on your gadget, but I will tell you what it says: No entity receiving these funds shall discriminate against any person on the basis of sexual orientation. I want to give that a chance to soak in. I say again: "No recipient of funds shall discriminate against any person on the basis of sexual orientation." This amendment is appropriately placed here and I will tell you why. Public money is being sought and received by four entities: Creighton, Boys Town, the University of Nebraska, and the University Medical Center. This bill would put 2.5 million more dollars into the pot from which those four entities will draw. Not one of them should be in opposition to this amendment. In fact, there should be no opposition to this amendment at all. Public money should not subsidize any entity which is going to discriminate against people based on sexual orientation. This issue is not going away for the rest of the session. I have a bill languishing in the Judiciary Committee. That is the appropriate vehicle to discuss this issue, but it is not the only vehicle. Every time a bill comes out here which I think is appropriate for this amendment to be attached to, I'm going to attempt to attach it. Will there be repetition? Certainly. I listened this morning to the "Right Reverend Dr. Fischer" delivering the morning prayer, and she repeated the same types of things which those who preceded her have repeated. So, if in talking to the one who knows everything, the one who is omniscient, there is repetition, as though he forgot, she

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forgot, it or they forgot, whatever your preference in designating that superhuman, supernatural critter might be, I can certainly repeat when addressing my colleagues. Nobody in here is all-knowing. Sometimes people are inattentive, they forget. But one methodology of all levels of instruction is repetition, underscoring, and I'm going to repeat, and repeat, and repeat yet again. Do I feel strongly enough about this issue to repeat and repeat and repeat yet again? If all the senators would go to their offices and there would be as few on this floor listening to me as there are listening to the prayer in the morning, I would not be deterred at all because I know you're going to listen. And I have a little message for you this morning, and anybody who is interested, I'll hand it out to you. It's called, or titled, SPEAKING OF "CHRISTIAN CHARITY"... by Ernie Chambers: "As this Session grinds on, / You'll wish me deep in Hell; / Consider a suggestion, / Which may serve you well: / Offer up a kind word, / Not for Auld Lang Syne, / But rather for the fate, / Unkind, that you wish were mine. / So I fight your bill -- / Your anger is unfurled; / Good grief! Get a grip! / It's not the ending of the World. / Firmly hold your horses; / Keep your powder dry -- / Learn from my example: / Try and try and try. / Though you may eschew that, / Stop and 'mend some fences;' / Don't forget: IF NOT FOR ME, / YOU'D NOT BE PAID EXPENSES. / With that warm remembrance, / Notched deep in your mind, / It may prove less difficult / For all of you to find, / Wherewithal to moderate / Thoughts that make you 'mad;' / Substituting in their place: / 'Ernie's not so bad!' / Though we'll never form a choir, / Joining in a song, / Can't we -- for the common good -- / All, JUST GET ALONG? / 'NO!!!!' the irate chorus, / Wells from angry folk; / 'Ernie's not so bad -- he's WORSE! / Hell's fires, let him stoke!" Dramatic pause for effect--I give myself instructions here to guide me. "So much, then for Charity; / Here, it has no force. / We shall all do what we must --/ AND LET THINGS TAKE THEIR COURSE...." That, I think, indicates the way the rest of the session may proceed. I'm going to take all the time that I need on every issue that comes before us, to try to see that some justice is done for those people and those groups who need to receive justice. I was looking at something very unfortunate that happened in the Catholic Church in Omaha, Nebraska. There's a church named after St. Anthony, and that church is presided over

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by a priest who may also be a thief, but that remains to be seen. The archdiocese has decided to be mum; they're not talking about it. How could such a thing happen? One hundred fifty thousand dollars disappears. If the priest stole it, what will his excuse be? He'll raise his eyes to the skies, he'll clasp his hands before his breast and get a soulful look on his face and say, the devil made me do it. You know how it could happen? If the big guy's eye is on the sparrow, if the congregation's eyes are on the prize, who is keeping an eye on the money? Nobody. So the dish runs away with the spoon. The money takes legs and runs away. When you all bring religion in here, I'm going to bring it in here, too, and let you know that these people who are always pontificating and being judgmental about others and suggesting that you should discriminate against people because of their sexual orientation need to look at some of these people who wear backward collars and robes and spend all their time preaching and telling other people how to live their lives; who may get in a little box with a grillwork, and have you come in there and tell him the wrong things you've done,...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...and he's going to forgive you and he's a thief. What did Jesus say about gay and lesbian people? Nothing. Jesus didn't condemn gay and lesbian people and they existed and they have always existed. And Jesus came to bring you all a new way. And some people will say, well, Paul, the "Imposter," had some very negative things to say. You all don't believe in what Paul, the "Imposter," said. Paul said, slaves obey your master for this is right and pleasing in the sight of God. Your constitution goes contrary to what Paul said. You don't believe everything Paul said unless it's convenient. Paul said a bishop should be the husband of one wife. What does the Catholic Church say...say? Bishop can't marry anybody. They disregard it. But when it's convenient to attack a group of vulnerable people, they say, well, Paul didn't like it. There are a lot of things Paul didn't like. Paul is not even your God, I don't think.

SENATOR CUDABACK: Time, Senator Chambers.

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SENATOR CHAMBERS: Thank you, Mr. President.

SENATOR CUDABACK: You've heard the opening on FA150 to the Health and Human Services Committee amendments to LB 548. Open for discussion, Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President, members. Would Senator Jensen yield to a question or two?

SENATOR CUDABACK: Senator Jensen, would you yield?

SENATOR JENSEN: Yes.

SENATOR BOURNE: Thank you, Senator. We put this bill in, I believe it was LB 692. I think it was the very first year I was in the Legislature. And I'm absolutely supportive of what you and Senator Byars have done with this fund and over the years, and your protection of it, but would you mind taking a few minutes and kind of going through which entities and to whom the money, the...I think it's \$50 million a year that comes out of this LB 692 fund, for lack of a better word or phrase. Could you say where that money goes on an annual basis, just to kind of...it's been several years and especially in light of Senator Chambers' amendment, if you could just tell us who gets what and how much on an annual basis, if that's possible?

SENATOR JENSEN: Yes, Senator, I will. These are not exact, but approximate. We have to...going to behavioral health about \$19 million, \$18.9 million. That was for reimbursement and that's going annually into behavioral health really to start to set up community-based services. And a lot of that...community-based services and also for reimbursement. Developmental disabilities; we started out with \$3 million, now we're giving \$5 million a year. Public health; we started out at 85...or \$8,500,000; we have increased that to \$8,900,000. Respite care; \$1,060,000. Biomedical research; \$10 million. If we pass this a million, that will go to \$12 million. We had half million dollars into the Legislature here that the Health and Human Services Committee have done some funding with. Part of that funding is for the Behavioral Health Oversight

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Commission which, by the way, there's a meeting tomorrow, and we meet monthly now, to help cover those funds. Department of Justice; \$75,000 a year. And a few other incidental things that we have funded, but primarily those are the big ones that we've done. And again, of that public health, there's a minority health part of that that is also being funded.

SENATOR BOURNE: And within those broad categories then, like, I remember before we did this, we used to do, like, grants, if I remember right. And we kind of as a body thought they weren't effective because it wasn't an ongoing, long-term thing. So like under your category of public health, there's different programs within that that receive money that are ongoing, constant. Or are they grants as well?

SENATOR JENSEN: Yes, and you're exactly right. We were giving \$5 million a year in grants. We have stopped that now.

SENATOR BOURNE: Okay.

SENATOR JENSEN: And that's how we were able to increase the funding on a couple of those others.

SENATOR BOURNE: Okay.

SENATOR JENSEN: But in the original bill, also in LB 692, there was this increase from \$10 million after two years to \$12 million, two years after that to \$14 million. That all went away when we had the budget shortfall, and so this is kind of...this additional \$2 million into biomedical research is kind of going back to the original intent.

SENATOR BOURNE: The original guarantee or, lack of a better word, commitment.

SENATOR JENSEN: That is correct.

SENATOR BOURNE: Okay. Again, I want to commend you and Senator Byars and those involved--I know Dr. Johnson was involved in this to a certain extent--and for protecting this fund and doing the right thing with this money. I just kind of wanted a recap

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of where these funds were going and I appreciate your willingness to do that. Thank you.

SENATOR JENSEN: Thank you.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Don Pederson.

SENATOR D. PEDERSON: Mr. President, members of the Legislature, I'm opposed, and I think we all should be, to discrimination in any form, and it just should be as a part of our society. Now Senator Chambers has filed a specific motion on a matter that is of deep concern to him. I would like to clarify something as far as the University of Nebraska system is concerned. They have a policy that prohibits discrimination based upon personal characteristics which they would construe to include sexual orientation. So I think that's...I understand the concern that Senator Chambers has, but as far as this particular issue and as far as this particular situation is concerned, I think it is already taken care of by the policy of the university in that regard. So I concur that we do not, we should not in any way, countenance discrimination, not just on racial, ethnic or religious basis but also on sexual orientation. So I would concur in that respect but I don't think we necessarily need that as a part of this particular bill. Thank you.

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

SENATOR CHAMBERS: Mr. President, members of the Legislature, in the same way that I am distrustful of HHS, I'm distrustful of leaving the university to its own devices. I'm going to send around a copy of an article which will show you how information which would have demonstrated the inadequacy of UNL in seeking to bring about gender equity was omitted from a report they filed because their report could not have appeared to be so glowing. So for those who are not concerned about what really happens to a discriminated-against group, they will accept the representation provided by those who may do the discriminating. UNL may be the flagship university for this state. There may be some of the finest people in the world associated with that

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university. Despite my potshots at the Catholic Church, I believe there are some fine people in the laity who are Catholics. I believe there's some fine people who are priests. There are some fine people who are nuns. Now when you start getting into the bishop and archbishop area, I feel less confident in saying that. But I would hope there's some fine people among the bishops and the archbishops. When you come to the Baptist Church, especially the Southern Baptist Church which believes in relegating women to an inferior position, there may, nevertheless, be some fine people in the Southern Baptist Church. Look at ole Jerry Falwell who talks to God, had to go to the hospital and be resuscitated. But you know what he can say now to his congregation? That he is the reincarnation of Jesus because he actually was dead and was brought back to life. And that would be a statement of fact. He actually had lost all semblances of life but they resuscitated him. Nevertheless, there might be some fine people among the deluded of his flock. When I come to the university, in whom Senator Don Pederson is willing to repose confidence, I don't trust the ones who run that show. If they are going to be dishonest, disingenuous, misleading in presenting the "facts," and I put that word in quotes to show that there's a question about whether facts are being presented, you know what they will do in an area that relates to the welfare of gay and lesbian people when there is nobody other than myself, perhaps, in public life looking after their interests. If they mean that there's to be no discrimination, let them say so. I'm not going to let there be a catchall general statement which is supposed to cover those people about whom I have concerns. What does the Declaration of Independence say? We hold these truths to be self-evident, that all men are created equal, endowed by their God with certain inalienable rights, among these the right to life, liberty and the pursuit of happiness. And to achieve these ends, governments are instituted among men deriving their just powers from the consent...

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...of the governed. But there were slaves at the time white men were saying those things, and there was the slave trade. And they took words out of the original draft of

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the document that dealt with going upon the high seas and taking people and impressing them into slavery because it would have condemned the very thing America was doing, although America meant those words to be directed against England, because they would stop American ships and take white sailors off and put them in the British navy. But because it replicated what America was doing to my people, that was eliminated from the Declaration of Independence. You don't learn that in school because they don't teach you the whole truth, but I'm going to tell you some of it. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. Senator Chambers, your light is next. You may continue.

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, nobody has spoken directly against this amendment. Senator Don Pederson gave what he felt would be a reason to consider the amendment unnecessary with reference to UNL. I would like to ask Senator Don Pederson a question if he is still on the premises.

SENATOR CUDABACK: Senator Pederson, would you respond? Is Senator Pederson on the floor?

SENATOR CHAMBERS: Oh, I guess he's not, so I will...

SENATOR CUDABACK: He's coming, he's coming, Senator Chambers.

SENATOR CHAMBERS: Oh.

SENATOR CUDABACK: Senator Pederson, would you respond to a question from Senator Chambers?

SENATOR D. PEDERSON: I was safely in the Rotunda. Senator Chambers, would you repeat the question, please? I didn't hear it.

SENATOR CHAMBERS: Yes, I'm going to ask it. This...I hadn't asked it in your absence.

SENATOR D. PEDERSON: Oh, I see.

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SENATOR CHAMBERS: You have confidence, if I understood you correctly, in a general policy statement or position articulated by UNL that makes you think there would be no discrimination against gay and lesbian people tolerated by the university. Is that the sense of the statement you made earlier?

SENATOR D. PEDERSON: Well, I stated that they already have a policy concerning personal characteristics, which is a very broad scope, and I do have confidence in the fact that that is their policy. Now you may have a question about whether that policy is at all times carried out but then that's to be dealt with on an individual basis, I would think.

SENATOR CHAMBERS: Are you saying that to mean that you intend to vote against this amendment?

SENATOR D. PEDERSON: I think it's an unnecessary amendment so I'll either vote against it or not vote at all.

SENATOR CHAMBERS: H'm. Then this bill becomes more and more sinister, in my view. I'm going to have to try to handle the bill in a way to persuade my colleagues that if they want to get what they're after, they're going to give me some of what I'm after. Can you speak with the same degree of confidence, Senator Don Pederson, about the policies of Creighton?

SENATOR D. PEDERSON: I don't know the policy of Creighton. I haven't talked to them about that.

SENATOR CHAMBERS: Okay.

SENATOR D. PEDERSON: When I saw your amendment was the first time that I knew this issue was arising.

SENATOR CHAMBERS: Okay. We have one to one so far. You speak with authority about what you believe the university's position is. You can't speak about what Creighton's is. Can you tell me what you think the policy of Boys Town is with reference to this issue?

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SENATOR D. PEDERSON:    I don't know the policy of Boys Town. I...when I say university, it's not just UNL, it's the university system...

SENATOR CHAMBERS:    The system.    Okay.

SENATOR D. PEDERSON:    ...which would include Med Center.

SENATOR CHAMBERS:    I'll accept that.

SENATOR D. PEDERSON:    But I don't know the others.    I haven't talked to them.

SENATOR CHAMBERS:    I'll accept that.    So that's two out of three for whom you cannot speak.    You say that in your view the Med Center would be covered by this policy and there'd be no discrimination based on sexual orientation in the University of Nebraska Med Center.

SENATOR D. PEDERSON:    That's certainly my understanding.    And I think there are four entities.    The other one would be Boys Town, so there's Creighton, Boys Town, University Med Center and UNL.

SENATOR CHAMBERS:    And you can't speak to what Boys Town's position is either, can you?

SENATOR D. PEDERSON:    No, but I'm certain that I could find out in a few minutes.

SENATOR CHAMBERS:    So then how can you say that you're going to speak against this amendment or not vote for it when you don't know whether a majority of the entities would be compliant with what this amendment intends to achieve?

SENATOR D. PEDERSON:    I'm going to find out Creighton and I...as it would affect the university system, I would vote against it because I think it's unnecessary.    As to Creighton and Boys Town, I am certain that we can find out very shortly what their policy is.    Thank...

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SENATOR CHAMBERS: Then I'll tell you what I'll do to strike a deal. I will let the university get its share out of the pot and I'll move to strike Boys Town and Creighton from the bill. Would that be fair, Senator Don Pederson?

SENATOR CUDABACK: One minute.

SENATOR D. PEDERSON: I don't like to take a strong position on something that I don't know anything about, and we're asking about the policy of Creighton and Boys Town, and I will find that out. And when I find that out, I will take an appropriate position.

SENATOR CHAMBERS: Well stated, Senator Don Pederson, and I will accept that because that's reasonable. But no matter what these groups say, I want something explicit. The Declaration of Independence, I'm not going to tell you when it was signed. You can check that out. The Declaration of Independence declared that my ancestors were human beings, unlike the attitude of America toward the Native Americans before Standing Bear. Yet, with that general statement having been made, the ones making it owned my people while Thomas Jefferson was writing those glowing words. And by the way, he was just imitating words that were common throughout Europe.

SENATOR CUDABACK: Time, Senator.

SENATOR CHAMBERS: He didn't originate...what did you say?

SENATOR CUDABACK: I said, time.

SENATOR CHAMBERS: Okay. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers, and that was your third time, Senator. (Visitors introduced.) On with discussion of the Chambers amendment. Senator Jensen, followed by Senator Schimek.

SENATOR JENSEN: Thank you, Mr. Speaker, members of the Legislature. I just want to go through a couple things here on...that Senator Chambers had asked about yesterday on what

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minority health issues are being covered by this, and this is by no means exclusive, but it does have some of those. Minority health research grants; here is one, HPLE gene--I really don't know what that gene is--in Native Americans. There's another one, treatment for renal fibrosis. Another grant for Minority Health Research Initiative. Substance abuse and mental health among the Latino adolescents; there's a grant for that. Reducing minority health disparities through communication; a grant. Substance abuse and psychiatric comorbidity among Nebraskan Latino immigrants; a grant for that. Improving the health status of Afro-American women; that is in there. Here's one, Creighton University Center of Excellence in Women's Health; a minority health grant. A search for genes affecting bone mineral density in Afro-Americans. Cardiovascular risk screening and intervention in Afro-American adults. Prostate cancer in minority populations; there was a grant for that. Racial disparities in infant mortality. Another grant here for a minority health research group. Those are just some of those. And by the way, I did go out into the lobby where both the Med Center, Creighton and Boys Town were and I asked them, Senator Chambers, if this was a policy. And they said that's already in their policy. So I don't think that we really have a problem with any of the four recipients of this biomedical research grant. It's their policy, and if they...if it is their policy, do we need to then include it into this bill? And with that, I'll return...unless, Senator Chambers, you have a question for me of what I just said,...

SENATOR CUDABACK: Senator Chambers.

SENATOR JENSEN: Be glad to dialogue with you on that.

SENATOR CUDABACK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. President. Senator Jensen, did they say that their policy contains explicit language prohibiting discrimination against people based on sexual orientation?

SENATOR JENSEN: Senator, they have...they know what the amendment that you filed in, and they said, we...that's in our

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process of grants already.

SENATOR CHAMBERS:     Here's what I'm asking. My amendment says there shall be no discrimination against a person based on sexual orientation. Here's what I'm asking you. Do they have a written policy with that declaration in it, that there will be no discrimination based on sexual orientation?

SENATOR JENSEN:     It is my understanding, by what they told me, they do. Now I would...before I make an absolute statement on that, I would want to go back and check with them one more time. I think Senator Pederson is asking that same question out there right now. To my understanding, yes, they have this in their policy right now what you have on your amendment.

SENATOR CHAMBERS:     Stated explicitly?

SENATOR JENSEN:     Like I said, I need to confirm it.

SENATOR CHAMBERS:     Oh, you...you're going to find that out. I'll give you a chance to find that out.

SENATOR JENSEN:     To my understanding, yes. I would need to confirm that.

SENATOR CHAMBERS:     All right. But we know UNL doesn't have it explicit, don't we? We know they don't declare it explicitly because Senator Don Pederson told us that. They just have a generalized statement against discriminating based on personal characteristics, or individual, however he phrased it. That's not explicitly covering what I'm talking about, is it?

SENATOR JENSEN:     Well, like I said,...

SENATOR CUDABACK:     One minute, Senator Jensen.

SENATOR JENSEN:     ...I would need to confirm that.

SENATOR CHAMBERS:     Well, if that is the case and UNL doesn't have it explicit, and UNL and UNMC can be taken together, how about I cut them out of this money and let Creighton and Boys

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Town, if they have it explicitly stated, get the money?    Would that be fair?

SENATOR JENSEN:    Well, I...before I did anything, I would certainly want to confirm exactly what was told to me.    It was my impression that, on their grants, that this language is in there.

SENATOR CHAMBERS:    And I know the time is up.

SENATOR JENSEN:    And that's all four institutions.

SENATOR CHAMBERS:    And it's your time so I won't    I won't take the last bit of it.    Thank you, Senator Jensen.

SENATOR JENSEN:    Okay.    Thank you.

SENATOR CUDABACK:    Senator Jensen, are you completed?

SENATOR JENSEN:    Yes, thank you, Mr. President.

SENATOR CUDABACK:    Thank you.    Senator Schimek.

SENATOR SCHIMEK:    Yes, thank you, Mr. President and members.    I think this is an important issue that's being discussed.    I think the bill is an important bill.    I want Senator Chambers to have the opportunity to finish his thoughts on this bill so I would like to give my time to him, Mr. President.

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

SENATOR CHAMBERS:    Thank you, Senator Schimek.    Thank you, Mr. President, friends all.    If the information comes back that Creighton has an explicit declaration against discrimination based on sexual orientation, if Boys Town has such a declaration, then I'm going to wonder why Boys Town opposes my bill against discrimination in employment based on sexual orientation.    But if Boys Town can come in and show that when it comes to getting money they can lay aside their bigotry and adopt an explicit policy against such discrimination, Boys Town

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will slip under the radar, perhaps. UNL cannot slip under the radar because UNL not only has no explicit policy, but if you look at the article I gave you, UNL is disingenuous when they're addressing an issue that the Legislature based on a legislative position said they must be concerned about; namely, gender equity. But racial equity also, and the university doesn't even talk about that. Where is their report on that? Black people and others of color always get lost in the shuffle. It's a good thing those people in that Asia group are not going to take up residency in Nebraska and other parts of America because they would see the discrimination that is directed against Asians or those in the Pacific Rim or whatever term of euphemism is used. Every group is discriminated against in this country, and you all know it. That's why we have to specify vulnerable groups because, as Senator Kopplin knows as an educator, the Declaration of Independence was not sufficient to ensure fairness and justice to all human beings. The U.S. Constitution not only was incapable of doing that, but it protected slavery, the slave trade, and required the return to slavery of those brave individuals who risked life and limb to escape from slavery. That's in the constitution. So the Declaration of Independence couldn't do it. The constitution refused to do it until after war, amendments were added. But the amendments to the constitution have not been able to do it. Various civil rights bills passed by Congress, voting rights, various agencies set up to fight against discrimination, some presidential proclamations, and orders, executive orders, have not been sufficient to do it. Establishing the NEOC in this state and similar organizations all over the country have not been able to do it. And there's discrimination at the university and everywhere else, and I'm supposed to take some general statement that they're not going to discriminate and their practices right now are discriminatory, and I'm going to accept that? Not I, said the fly, speaking to the rabbi with a sty on his eye, who was a sailor.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: And he said to his captain, aye, aye. You said my time is up?

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SENATOR CUDABACK: No, one minute, Senator.

SENATOR CHAMBERS: Thank you. I'm going to stay on this issue and stay on this issue. But let's say those four entities have an explicit policy. I will then use that to buttress my argument as to why my bill ought to come out here and we ought to adopt a state policy that there will be no discrimination in employment based on sexual orientation. If they don't have such a policy, this bill is not going to move, and you all can get cloture on this. I'm sure you can get 33 people to vote for this. I'm sure you can. And at last we will have that showdown that especially some of the new senators are waiting with bated breath to observe so they can see what will happen, because there always will be a morning after. But my time having expired, the time, Senator Schimek, having expired, I will say thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers and Senator Schimek. Senator Byars.

SENATOR BYARS: Thank you, Senator Cudaback and colleagues. And I certainly am listening carefully to Senator Chambers' dialogue, as I always do, because I respect what he has to say on this subject, and certainly have been supportive and will continue to be supportive in the future. But I want to talk a little bit about...remind us of what we're doing today and what we have done with the, what we refer to as, the LB 692 funds. We should be extremely proud as a state. As I am active in the National Conference of State Legislatures, as some of you are, and as you travel to meetings around the country, I think it's important for us to understand what a high regard our colleagues and other organizations have of this Legislature for what we've done with our tobacco settlement money. I happened to be on a panel in Boise, Idaho, last year with three other legislators, and all of us to give some dialogue on what we had with our tobacco settlement money. And I went first, and as I started describing that we were dealing with individuals with mental health, with mental illness, with developmental disabilities, across the life span, people, whether they would be kids or folks with mental illness or Alzheimer's or other dementia that we're dealing with in our Lifespan Respite Program, as we were

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supporting our universities across the state in doing very vital research that would help all of the people of this country; and when I finished and I sat down, I looked at the other legislators who were trying to crawl under the desk because they had taken their money and they had spent it on roads and bridges and capital construction and other stuff, and the money was gone. And they're sitting there describing to an audience how valuable this money...that's supposed to describe how valuable this money was to them. Well, but for the instant, it was; for instant gratification. But, you know, we've built something that we're hopeful is going to live on forever. The whole construction of what we're doing with our tobacco settlement money will reach out in 20-plus years and we're going to have billions of dollars that will still be dedicated to providing healthcare in an appropriate way in the state of Nebraska. Remember when we started LB 692, we were literally dead last in our public health structure in the state of Nebraska. We have to be in the top five or ten now. I haven't seen the latest statistics, but we have every one of our 93 counties that are part of a public health department. As we've looked at bioterrorism, as we've looked at other food-borne illnesses, we look at the value of public health alone, the amount of money, a little over \$8 million that we have invested is just incredible. And I want you all to be so proud of yourselves. You know, people would like to beat us up a lot for what we don't do and be very critical but, you know, the members of past bodies and the members of this body are sensitive to the healthcare needs of the people of this state. And I think you need a pat on the back. I think you need to be commended for that, and I hope that we'll not lose sight of that and we'll continue to move forward in a very positive way. We don't have to be ashamed in this state. We can be proud of our accomplishments and we can build on those accomplishments. We're a true example of using our resources appropriately, using them to truly serve the people of this state that need services, and we all know,...

SENATOR CUDABACK: One minute.

SENATOR BYARS: ...we've constantly wrestled with huge geographical areas, 1,700,000 people, and we have taken to the max the way that we have used these dollars. So I want to

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commend you for that, and don't want you to lose sight of that, as I don't think anyone that is receiving funds, anyone that's a recipient of services, they remember. They know what we've done. So, members of the body, take a moment to pat yourselves on the back and look as you go out in years...the years of the future, what you can do to make absolutely certain that we protect and we preserve what we have done in this body with significant dollars. And I thank you all very, very much.

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

SENATOR FOLEY: Thank you, Mr. President and members. I rise in opposition to Senator Chambers' amendment. Although I...Senator Chambers has spoken with some degree of skepticism as to whether or not all of the institutions who receive funding through this program have an explicit written policy on sexual orientation and I think he's right, and maybe I'll be proven wrong and maybe he'll be proven wrong, but I think he's right that they do not have an explicit written policy giving protected class status on the basis of sexual orientation. That's a complex legal question, and a question that the Judiciary Committee has been struggling with and wrestling with for some time now, and have not reached a definitive conclusion, and that's why some of these bills that have been offered to the Judiciary Committee have not advanced, because it's not quite as simple as some would like us to believe it is. And I think that if those who advocate this amendment or other amendments like it that we'll likely see, have a burden, have a burden of proving that there's a problem that has to be addressed, that there's a practice of discrimination that must be remedied. And we haven't seen that proof in the Judiciary Committee. We've seen some paid advocates come in and express their views, but we've not seen the proof that there's a pattern of discrimination that's unfair, unjust, and in practice today, particularly with respect to the institutions that receive funding under this program. And that burden is not with me; it's with Senator Chambers. But again, I want to emphasize I think he is correct with respect to the existence of these explicit written policies. I don't think those institutions have that, and I don't think we ought to impose it on them through this amendment. Thank you,

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Mr. President.

SENATOR CUDABACK: Thank you, Senator Foley. Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President and members of the body. I'm getting the statements from all the institutions that are in this bill. I've talked to their representatives in the lobby. They tell me that they all have this in place. The first one I have actually gotten, I've asked them to e-mail it to me, is the nondiscrimination statement from the University of Nebraska-Lincoln, which is one of the recipients. And I will read it for the record: The University of Nebraska-Lincoln is a public university committed to providing a quality education to a diverse student body. It is the policy of the University of Nebraska-Lincoln not to discriminate based on gender, age, disability, race, color, religion, marital status, veteran's status, national or ethnic origin, or sexual orientation. This policy is applicable to all university-administered programs including educational programs, financial aid, admission policies and employment policies. This is the policy of the University of Nebraska-Lincoln. If...I would distribute it to the body, but I think that's kind of maybe a waste of paper here, but I will also...I'm also either being faxed or e-mailed the statements from the other institutions, and would be happy to share that. But that is the policy, and they have told me they don't have a problem, at least the people I've talked to, this amendment isn't a problem because it already is the policy. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Further discussion on FA150? Senator Chambers, I don't see no light. You're recognized to close on FA150.

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, with all due respect to my friend Senator Foley, he has taken a definitive position. I've been listening to him very carefully for all these years. He has not changed his vote or his position or his opposition, but he might feel a little discomfort now because he has had a chance to see the kind of people with whom he is in league. He has heard their hateful, intolerant, vicious remarks, and he's right there with them, and

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he doesn't feel comfortable. Nobody would. But you can't be too careful about the company that you happen to be with when you're on the side of discrimination. The discrimination itself is ugly. Do you think he can give you proof that a cellular structure smaller than the dot at the end of a sentence has been assaulted and, therefore, you ought to pass a law making such an assault a crime? Can he give you proof of that? Absolutely not. It's based on his religious dogma. That's all it is. And he's managed to get you all to put into the statute a piece of religious dogma that from the point of conception you have a human being, an unborn child. Preposterous. There are people I know who are afraid to stand up to the Catholic Church and these right-wing Christian zealots, but I'm not. Somebody needs to confront them head-on and point out the nonsensical things they're getting legislatures to do. So something which he'll have to admit, he cannot prove and nobody can prove. And prosecutors will tell him, there's no way this law he's asking for could be enforced when it comes to assaulting what he would call a human being smaller than a period. But he wants you to pass the law. And because you all are so fearful, you'll probably try to do it, and I'll try to stop you. But when it comes to human beings, all of a sudden, well, I don't know that there's a problem. He's got to establish it for me. He knows there's a problem. And if the Pope would come out and say, no more discrimination against gay and lesbian people, he'd be the first one in the head of the line advocating that, because somebody told him what position to take. And he's not the only one. When they take their position in the Legislature and bring those preposterous bills, I'm going to address them, unapologetically. I don't owe anything to his church. His church is not supporting me. I don't have a family too large for me to provide sustenance for, and I have to go running to his church saying, support me and my family and I'll carry water for you. I'm not doing that. Anybody who wants to be a beggar can be a beggar, although the "Bible" said they have never seen the righteous begging. I mean, that's the "Bible." The "Bible" is not my manual for day-to-day living. This amendment is not objected to by the entities involved, if the information I was given is correct. I'm going to watch the vote on this amendment. And if you vote it down, you know I'm not through with it and you know I'm not through with this bill. You don't

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like me to say things like that which sound as if I'm saying do this or else? You all do it all the time.

SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: But you're just not as explicit and forthright as I am. That's why people don't know exactly what manner of senator you are, because you hedge. You won't say yea or nay. And as I was getting ready to say the other day when I was talking to one of my colleagues, the hottest place in that bad place is reserved for those who are lukewarm, the ones that the "Bible" said, I will spew you out of my mouth because you are neither hot nor cold. You want to be right in the middle. And it won't work, because if you try to be in the middle, you're going to be on the griddle, the hottest part. Mr. President, I will ask for a call of the house, if you please.

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

CLERK: 21 ayes, 0 nays, Mr. President, to place the house under call.

SENATOR CUDABACK: The house is under call. All unauthorized personnel please leave the floor. Unexcused senators report to the Chamber. The house is under call. The house is under call. All unexcused senators please report to the Chamber as the house is under call. Senator Combs, Senator Heidemann, Senator Cornett, Senator Burling, Senator McDonald, Senator Mines, Senator Synowiecki. The house is under call. Senator Brashear, Senator Burling, Senator Mines. Senator Heidemann. Senator Chambers, how did you wish to proceed? There's been a request for a machine vote. The question before the body is adoption of FA150 to the Health and Human Services Committee's AM0735. All in favor vote aye; those opposed, nay. Voting on adoption of the Chambers amendment, FA150. Have you all voted who care to? Record please, Mr. Clerk.

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CLERK:        25 ayes, 9 nays, Mr. President, on the adoption of the amendment.

SENATOR CUDABACK:    The Chambers amendment has been adopted. I do raise the call. (Visitors introduced.) Mr. Clerk.

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

SENATOR CUDABACK:    Back to discussion of the AM0735 offered by the Health and Human Services Committee. Open for discussion. Seeing no lights on, Senator Jensen, you're recognized to close. He waives closing. The question before the body is adoption of the Health and Human Services Committee amendments, as amended, to LB 548. All in favor vote aye; those opposed, nay. Voting on the adoption of the committee amendments to LB 548, as amended. Have you all voted on the issue who care to? Record please, Mr. Clerk.

CLERK:        30 ayes, 5 nays, Mr. President, on adoption of committee amendments.

SENATOR CUDABACK:    The committee amendments have been adopted.

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

SENATOR CUDABACK:    Thank you, Mr. Clerk. Back to discussion of LB 548 to E & R Initial. Open for discussion. Seeing no lights on, Senator Jensen, you're recognized to close.

SENATOR JENSEN:        Thank you, Mr. President. I'll just take a minute. This is a very important measure. I appreciate your understanding on this. You know, the grants or the dollars that are going to those four institutions for biomedical research, the \$10 million that we have expended there, they have developed in grants over \$92 million for that. I mentioned that as seed money, and that's exactly what has happened. This is, I think, something that we can be very proud of and I would just ask the body's approval of and advancement of LB 548. Thank you, Mr. President.

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                          548, 570, 668, 675, 675A, 684, 684A

SENATOR CUDABACK: Thank you, Senator Jensen. You've heard the closing on advancement of LB 548. The question before the body is, shall LB 548 advance to E & R Initial? All in favor vote aye; those opposed, nay. Voting on advancement of LB 548. Have you all voted who care to? Record please, Mr. Clerk.

CLERK:        31 ayes, 5 nays, Mr. President, on the adoption of the motion to advance the bill, Mr. President.

SENATOR CUDABACK: LB 548 is advanced. Before we move on, Mr. Clerk, do you have any items for the record?

CLERK:        I do, Mr. President. A communication to the Clerk from the Governor: (Read re: LB 39, LB 121, LB 131, LB 144, LB 205, LB 217, LB 234, LB 242, LB 268, LB 299, LB 335, LB 352, LB 439, LB 485, LB 492, LB 516, LB 570, LB 668, LB 675, LB 675A, LB 684, LB 684A.) That's all that I have, Mr. President. (Legislative Journal page 1136.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.) Mr. Clerk, LB 480.

CLERK:        LB 480, by Senator Thompson and others. (Read title.) The bill was introduced on January 13 of this year, referred to Health and Human Services Committee. I do have committee amendments pending, Mr. President. (AM0802, Legislative Journal page 861.)

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Thompson, to open on LB 480.

SENATOR THOMPSON: Thank you so much, Mr. President, members of the body. LB 480 is a bill that's been before this Legislature in a similar fashion twice before. This is the third time it will be debated since I've been a member of the Legislature. Since that time, the number of states that have enacted smoke-free restaurant bans, and some have gone beyond that to smoke-free workplace bans, has about tripled. And we've added whole countries that have adopted these kinds of policies. And they're based on public health. And all public health work tends to be incremental. And there are people who think this

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bill doesn't go far enough and there are people who think this bill goes too far. But what we will have an opportunity to do is to debate the bill. What I believe the Health and Human Services Committee has proposed to you, which will come in the amendment, is about as far as we can go as a state that we can get consensus for at this point in time. What has been interesting about this debate over the years is that I looked back in 1979 to the legislative debate and the committee hearing on the first Clean Indoor Air Act which passed by one vote. All the arguments were exactly the same. And the first Clean Indoor Air Act said that restaurants should set aside a section for nonsmokers. It was extremely controversial. All the arguments about whether a private business should have public health standards came into effect. Worries that people were going to lose business came into the argument. Arguments about whether people who have health conditions should just stay home, which comes into this argument. And if you read the testimony and just blocked out the names, it would look very similar to what you have today. As I said, that passed by one vote and now many, many years later, you would look back and you'd say, isn't that incredible how controversial it was just to have a nonsmoking area in a restaurant? So today I'm asking you to be progressive, to take all the information which we'll be presenting to you that has to do with public health, to take into consideration the benefits to the workers, to children, to the adult population of our state to make this a place where you can breathe clean air. Restaurants have become public places. They always were, but they are attended. People go out to eat at a rate that they didn't 20, 30 years ago. It's a different place in that the public is there all the time. And the bill doesn't get to the thornier issue of bars which some people, quite frankly, when you carry reform efforts, you get shot at from both sides. And so, I'm kind of on the point of getting criticized for not doing that and not going far enough. But I think we can protect close to 80 to 90 percent of the population if we enact the bill as the Health and Human Services Committee has expanded it. And essentially, these are the elements of the bill. It expands smoke-free work sites to include all restaurants in Nebraska, which is approximately 80 percent of all employees and...8 percent of all employees in Nebraska work in restaurants. It allows smoking in bars that do not serve

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food other than packaged snacks, and it eliminates the exception for smoking at the State Fairgrounds, university and state college residential living units and private offices. This is the bill as presented, and I'm going to next, on this time, talk primarily about the public health information that we have. And since this bill was introduced the first time and debated a few years ago when it failed to pass by two votes, we even have more information on the hazards of secondhand smoke. A lot more research is out there and probably the thing since the start of this session that I found the most staggering was that researchers in California have linked, which was always a suspected link but now there's much solid evidence, that smoking...secondhand smoke is a cause of breast cancer. One of the handouts I gave you has excerpts from the American Lung Association, the American Cancer Society, the Centers for Disease Control and Prevention, and the American Heart Association. I'm not going to go over these because obviously you can read them, but I think they are things you already know about how dangerous it is to have to work in this atmosphere, how bad this is, not only for adults but for illnesses in children and aggravations to illnesses, and death, and death from secondhand smoke exposure. But you may have noticed on television the last year or so that Philip Morris has started advertising not to smoke. And the statement that they have that I passed out to you is from the industry, and this is a reversal of things that were said many years ago. This is from the industry on secondhand smoke, and it says, "Public health officials have concluded that secondhand smoke from cigarettes causes disease, including lung cancer and heart disease in nonsmoking adults, as well as causes conditions in children such as asthma, respiratory infections, cough, wheeze, middle ear infection and Sudden Infant Death Syndrome. In addition, public health officials have concluded that secondhand smoke can exacerbate adult asthma, cause eye, throat and nasal irritation. Secondhand smoke, also known as ETS, environmental tobacco smoke, is a combination of smoke coming from the end of the cigarette plus the smoke exhaled by a person smoking." What I want us to do, and I know we're going to spend quite a bit of time on this bill, because every person in Nebraska, unlike a lot of other things that we debate, has an opinion on this. Everyone has an opinion. I have not run into anyone who doesn't

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have an opinion on this. And that's because the public is traveling the country. They go to New York City, they go to California, they go to other states and they aren't exposed to secondhand smoke, and they like being able to breathe clean air. They like the atmosphere, they know the dangers of secondhand smoke to them. And they know the dangers to employees which in the restaurant industry is primarily teenagers. We need to protect the public from this danger, a danger that we know exists. We've already banned it in all of our state buildings except for the State Fairgrounds. We have, over the years, banned it in childcare centers. We have made some incremental public health approaches on this issue. But the last big place where people go and smoke and expose other people to secondhand smoke is restaurants. And you're going to hear that the sky will fall if we do this, that the restaurants are going to go broke, that we shouldn't tell private business what to do. But we've already done that. I can remember, because I'm one of the older people serving in the Legislature, when smoking happened on airplanes, when smoking was prohibited (sic) in all of our prisons. When the smoking was taken off airplanes, everybody said, well, you know, people aren't going to fly. They're going to flip out, there are going to be incidents, there are going to be problems. But you know what? You can fly anywhere and you don't have to worry about a cigarette smoker not making it to the next stop. And when we had smoking end in the prisons, there were no riots. When we've told people you can't smoke to somebody...next to somebody else sitting at a ball game, people respected the right of other people to breathe clean air. We tell private industry and private business what the standards are for health all the time. And I'm going to pass out to you some of the regulations that we already have in place. In fact, this Legislature, just a couple of years ago...

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: ...added more regulations to the restaurant industry for sanitation and public health. That is our responsibility. We set the standards for health. We have an opportunity with this bill to make Nebraska a healthier place, to ensure that workers work in a healthier environment, that families can take their children out to eat, that people with

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heart disease and other health conditions can go out to eat. We need to accommodate the public and not just the smoker. And I think smokers will adjust just as they have to every other smoking restriction that we have put in place. We're not asking a lot. We're asking an hour to not smoke while other people have the opportunity to eat and so our employees can be healthier and safer. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. We do have committee amendments. (Visitors introduced.) As stated by the Clerk, there are committee amendments. Senator Jensen, to open on AM0802.

SENATOR JENSEN: Thank you, Mr. President, members of the Legislature. The committee amendment replaces the bill as introduced. The amendment narrows the original scope of the bill and is patterned more after LB 546 introduced by Senator Thompson in 2003 and advanced by the Health and Human Services Committee at that time. The amendment prohibits the designation of smoking areas in enclosed indoor areas of restaurants. Only a bar, as defined in the amendment, may be designated as a smoking area in its entirety. The definition of bar and limited food service are retained from the bill as introduced. The amendment retains language permitting the establishment and enforcement of more stringent tobacco ordinances in counties, cities and villages. The amendment retains provisions of LB 480 as introduced that would no longer permit: (1) designated smoking areas in state-owned buildings at the Nebraska State Fairgrounds that possess a Class C, I, or M liquor license for the consumption of alcohol on the premises and (2) smoking in residential housing rooms and units owned or leased on campuses under the control of the University of Nebraska Board of Regents or Board of Trustees of the Nebraska State Colleges. That is a summary of the committee amendment and would just ask for its adoption. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Jensen, you've heard the opening on the committee amendments. Mr. Clerk, motion on the desk.

CLERK: Mr. President, I now have amendments to the committee

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amendments. The first is offered by Senator Thompson, AM0948. (Legislative Journal page 1078.)

SENATOR CUDABACK:        Senator Thompson, to open on AM0948 to the committee amendments.

SENATOR THOMPSON:        Thank you, Mr. President, members of the body. This amendment we've discussed with Senator Jensen and the counsel for the committee. It's what I consider a technical amendment. It's on page 2 and it says...it's new language which says, after "a place of work," "which is usually frequented by the general public." This is unnecessary language and just ask that the body adopt that. Thank you.

SENATOR CUDABACK:        Thank you, Senator Thompson. There were...there are six lights on. You can either speak or you can pass over and we'll keep your light on. Senator Bourne.

SENATOR BOURNE:        Thank you, Mr. President, members. I rise in opposition to the bill itself. And I heard Senator Thompson talk about the public health aspects of it. And I don't disagree with her. And to me, she's not going to make a case for the bill based on public health, because it's not about public health, in my mind; it's about, government should stay out of people's lives. And I think I've been consistent in this position in the years I've been in this Legislature, when I've campaigned, and how I have introduced legislation and voted on legislation. I don't believe that government should be involved in people's lives to the extent where we tell a private business owner how he or she can run their business, beyond certain reasonable means of...or methods, or modicums of clean food, things like that, that would truly harm somebody immediately. And let me tell you why. We...I introduced a bill, and you're going to see that bill soon in an amendment form on this measure, that said that the Clean Indoor Act that we currently have, that in my mind we haven't really enforced, so we really don't know if it really works--that's my opinion--is the law of the land, and that a city, municipality, county, cannot adopt a more stringent measure than that. Now, the amendment that I'm going to introduce has some language in there that responds to the citizens of Lincoln and their vote to ban smoking in their

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establishments, because I do believe that a vote is important, and if a city does that, if a community does that, that should be honored. So I believe in my amendment you'll see that that's been answered. But I had this bill. I think it was LB 730. It was introduced. We had a hearing in the Judiciary Committee. And we had individuals who are bar and restaurant owners who came in and talked about how they...Senator Combs, you are right, this is big government at its best. That will be the theme for this morning--big government. Anyway, we had a whole host of bar and restaurant owners come in to the Legislature, come in to the Judiciary Committee hearings. I want to say there was a dozen of 14 of them. These people have put their life savings into this establishment. And in their opinion, and I tend to agree with them, their way to make a living was basically taken away from them by the city council in Lincoln. And I'm going to get...I have some of the testimony from them that talked about how much money they've lost. We had one gentleman who bought a cigar bar a couple of years ago. And I can't tell you what the name of the cigar bar was, but the name of the establishment was "Bill's Cigar Bar." I've got the "Bill" part wrong, but it definitely said "Cigar Bar" in the name of this establishment. He came in and he said that he used every penny that he had to purchase this establishment. He paid a premium for it, because it had some highly technical air exchange devices. And he said that he paid a premium for it because of this. It was outfitted perfectly for a cigar bar. He says you can sit next to a cigar smoker and not smell anything. He indicated his revenues are down 52 percent, 52 percent. Now, I don't understand, and I'm not saying this bill does this. I've looked at it. I don't believe that it would touch a cigar bar unless he serves food there. I don't know if he does or not. But I think that that almost defies logic, for a city council to take away...basically take away this gentleman's business. I can't imagine someone would go into an establishment called a cigar bar unless they were a cigar smoker or perhaps a friend or a spouse of someone who was. I don't understand why we feel it's okay for government to get that involved in people's lives, that you essentially take their savings account away from them, that you essentially take away their ability to make a living. It defies...

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SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...it defies logic. I'm not going to argue about secondhand smoke. I'm not going to argue about the carcinogens present in it. I...to me, that doesn't matter. And I mean that in no disrespect. Any of you that know me know that I have a history of cancer in my family. And that, to me...it wouldn't change my thinking. Government should not be involved in the extent that the supporters of this bill are advocating. I think we all need to look at, what is the role of government? It's not there to solve all of our problems. If you don't want to smell cigarette or cigar smoke, go to a different establishment. I have a pamphlet from Health and Human Services. There are over 3,000 restaurants in this state that do not have smoking in their facilities. I think it's time that we stop responding to a vocal minority in adopting laws that pacify every...each and every concern that an individual may have. It is not appropriate, in my mind,...

SENATOR CUDABACK: Time, Senator Bourne.

SENATOR BOURNE: ...that government is involved to this extent.

SENATOR CUDABACK: Thank you, Senator Bourne. Senator Smith, followed by Senator Aguilar and five others.

SENATOR SMITH: Thank you, Mr. President and members. I struggle with this issue because a selfish part of me likes the outcome of the more stringent restrictions. The part of me that says that private property should have...private property owners should have certain rights, that also is out there. I also think about the local control issue. And what's interesting, and I think Senator Bourne brings some very valid concerns to this and I think some valid arguments, although I don't agree with all of them, in terms of his approach this year of that the local communities can be no stricter than the state standard. But I think I arrive at the fact that local control, as we currently have, is probably the best way to allow this to carry forward. The voters of Lincoln spoke. I can live with that. I have some concerns, though, when there are establishments, for competitive reasons, ahead of the smoking ban in Lincoln,

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decided that they would ban smoking, carve out a niche, perhaps, or the niche was already carved out but no one was filling that niche, so here's an establishment in northwest Lincoln that fills that niche, takes the risk, makes the investment, and all of a sudden the government takes it away. That niche was providing a smoke-free environment in a market that there wasn't a smoke-free environment. I think Senator Bourne very accurately points out, though, the investments that are made and the reasons that they're made. Folks want to make money. I think that's okay. We need people making money in our state because they're the ones who fund government. So I hope that we can arrive at the fact that local control is best. Let's leave it alone. The city of Lincoln wants to ban smoking. They've done it. Now I hear them whining about revenues in certain areas or of the fact that keno revenue out in Denton is increasing because they can smoke out there. It disturbs me a lot when a truck stop that was losing money because they lost a competitive edge and they happen to be in city limits. We need to keep in mind what the consequences are to decisions like this, and that's why I think that the status quo is probably okay. I have my reservations about it, but I've swallowed hard and said, okay, it's local control, that's okay. But now we've tried to...and I've worked on this issue a little bit trying to arrive at some middle ground, and I threw up my hands and walked away and decided that the free market is the best way to let this issue continue. But the preparation of food as being the standard or the test for whether or not smoking is banned and are we banning certain bars, then, from popping popcorn? Is that what we're going to get into? Is that government's place, is making sure that a drinking establishment doesn't pop popcorn?

SENATOR SCHIMEK PRESIDING

SENATOR SCHIMEK: One minute.

SENATOR SMITH: I think we have more important issues and I think that we can allow the cities themselves with a vote. Even though there are some negative consequences, in my opinion, I think that we can let those cities vote and determine the policy for their own jurisdiction. Thank you, Madam President.

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SENATOR SCHIMEK: Thank you, Senator Smith. The next speaker will be Senator Aguilar, followed by Senator Schrock, Preister, Thompson, Beutler, Redfield, Bourne, Janssen, and Price.

SENATOR AGUILAR: Wow! Thank you, Madam President. Members, first of all, let me start by saying thank you to Senator Thompson for having the perseverance to bring this important bill back to us. She's definitely concerned about the health of Nebraska and always has been. And I, like Senator Chambers, will never forgive her for leaving this body early. We need people of her caliber here in the Legislature to look out for people of Nebraska, even if she is considered big government at this point, big government, Senator Bourne. If you go into a restaurant and you serve tainted food, who do you expect to do something about that? I think it would be big government. We're very comfortable with that. Or if somebody contaminated a water supply, a private lake, who would we look to do something about that? It would be the government. And why is that? Because we have a right and we demand clean water. Why on earth shouldn't we demand and have the right to clean air? They spoke about the vocal minority. I disagree. I think the vocal minority are the smokers. If you do a survey of how many smokers there are in the state of Nebraska and how many nonsmokers, I can tell you who could win that one. They also smoke about...spoke about cigar bars and popping popcorn in bars, none of which applies to this bill. We need to stay focused on the legislation in front of us. None of that really matters. They're trying to make a case for big government. That doesn't apply here. That doesn't come into this legislation. Senator Bourne talked about 3,000 smoke-free bars or restaurants in Lincoln. Some of us nonsmokers could go to those. Number one, I don't think anybody should tell me where I can go or where I want to go. That would be big government. And what about the people that work in those bar...those restaurants? Do they matter? Probably mostly young women, and young women and secondhand smoke are 90 percent more likely to get breast cancer. Don't they matter for anything? Some would say, well, they could work somewhere else. That's not always necessarily the case. Some people work where they...close to home where they can get to, because maybe they don't have

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transportation. They can't drive to a different restaurant. They have to walk to one. They have to be there close. I think we need to be considerate of those kind of people. They also talked about the investments people put into their businesses. Well, again, that was a cigar bar. It doesn't apply to this. If you look at the studies coming out of New York, Massachusetts, California, where they're even more stricter, their revenues are up. More people that didn't go out to eat because they wouldn't want to be offended by smoke are going out to eat. That's what happens. One of the things we heard in testimony in the committee that Senator Bourne referred to or that some of the business owners were saying that this would be so much more fair if it were statewide. That's what this bill does. It is statewide. I think that's what we need to be concerned with. I'd give any more time that I have to Senator Thompson, if she wishes. Thank you.

SENATOR SCHIMEK:     Senator Thompson, would you wish to use Senator Aguilar's time? Has about one minute and (inaudible).

SENATOR THOMPSON:    Thank you very much. Thank...I will accept the time, and thank you, Senator Aguilar, for your excellent comments about this bill. I have passed out to you excerpts from the Nebraska Food Code and thought you might want to look at those. One of the interesting questions that Senator Jensen asked all the opponents of this bill was, what do you think the role of government is? And it was an interesting response because when it comes to health and it comes to public health, it's pretty difficult to say that government doesn't have a role. We set the standard. We are there to protect the public from bad health practices, and we do that in hundreds of ways. That is not big government. That is good government. That is taking care of the health of people, taking the scientific research, the information that we have and forming the best public policy to protect the public health. And so Senator Bourne says this is about big government.

SENATOR SCHIMEK:    Time.

SENATOR THOMPSON:    I say this is about public health, and we need to do something. Thank you.

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SENATOR SCHIMEK:        Thank you, Senators Thompson and Aguilar.  
Senator Schrock.

SENATOR SCHROCK:        Mister...Madam President and members of the  
Legislature, I wholeheartedly support this bill and I commend  
Senator Thompson and Senator Aguilar. Problem for me is it  
probably doesn't go far enough. I served in this legislative  
body when you could smoke cigars on the floor of the  
Legislature. Quite frankly, I appreciate the clean air we have  
in here now. One of the reasons I'm supporting this bill is  
because if we pass this bill more people will quit smoking, and  
the people that smoke will smoke less. The other reason I'm  
supporting this bill is because someday I'm probably going to  
have grandchildren that are either going to be waiters or  
waitresses in restaurants and, who knows, bars, whatever. I  
don't know what they're going to be doing, but they're going to  
be placed in environments where smoking may be a problem. I'd  
like to head it off at the pass. I was fortunate to be raised  
in a home where smoking was not an issue and I don't want my  
grandchildren to be exposed to the secondhand smoke that I've  
been exposed to in my lifetime. So far, I don't know that it's  
hurt me, but when I was in college it seemed like all my  
roommates smoked. I was one of the few that didn't. And so I  
think I would appreciate a smoke-free environment for my  
grandchildren and that's one of the reasons I'm supporting this.  
I probably won't speak on this issue again, just let it run its  
course, but I thank Senator Thompson, Senator Aguilar, and I am  
wholeheartedly supporting what you're doing. Probably, for me,  
it doesn't go far enough, but I think we need to send the  
message--people, quit smoking; throw them away. And  
stand...young children, teens, whatever, don't start. And I  
think we can send that message by doing this. And I think  
sending any other message is irresponsible on our part. Thank  
you.

SENATOR SCHIMEK:        Thank you, Senator Schrock. Senator Preister,  
your light is next.

SENATOR PREISTER:        Thank you, Honorable President, friends all.  
I rise in support of Senator Thompson's bill, I rise in support

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of the committee amendments, and I rise in support of Senator Thompson's pending amendment to the committee amendments. I was a little confused when Senator Bourne spoke because I wasn't sure if he was talking about big government on this bill, or if he was referring to big government on his bill that's coming up next, but we will get to that at a later time. The issue of providing clean air is one that I've worked on for a long time. Senator Schrock talked about being in the Legislature when cigar smoke was allowed here. When I first came into the Legislature, only as recently as 1993, smoking was allowed in this Chamber and Senator Lynch and I worked to get that changed that very first year. Smoking was still allowed out in the Rotunda. I continued to work to get smoking banned in all state buildings. We heard at that time, we can't do that, that's not going to work, just as Senator Thompson said. We couldn't possibly ban it in prisons. We would have riots. The prisoners would go crazy with their withdrawal symptoms. Amazingly enough, the prisoners did not riot when it was eventually banned, separate and apart, even though the legislation that I got through did not. It made that exception for the prisons. It made a number of exceptions, and eventually many of those came to pass. This is incremental. It still allows the bars to allow smoking in bars. I would prefer that we had workers exposed only to clean air and to healthy, clean working environments in bars as well as restaurants and in all other areas, but this is another increment and an increment that I think we should take. I've heard from a number of constituents saying the same thing. An e-mail that I recently got posed a couple of questions to me. One says: Secondhand smoke contains more than 4,000 chemicals, including at least 69 known to cause cancer. Shouldn't everyone be able to earn a living or enjoy dinner without being exposed to ammonia, arsenic, carbon monoxide and these other chemicals in secondhand smoke? My answer to that is certainly yes. Workers, as well as children, the elderly, and everyone else should be able to have that kind of smoke-free environment. A second question that she poses to me is stated: Studies show that children, the elderly, and people with respiratory illness are especially vulnerable to secondhand smoke. For example, children exposed to secondhand smoke are more susceptible to bronchitis, asthma, eye and ear problems, and other ailments. Everyone...shouldn't everyone be able to enjoy public places

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like restaurants without putting their health at risk? To that question I say also, yes, they have that right. And where people are not able to enforce their own rights, that is the legitimate role of government. That is the responsibility of government and that's why protecting the public health with a bill like this is so important. Another e-mail says smoking is the most...

SENATOR SCHIMEK: One minute.

SENATOR PREISTER: ...preventable cause of death in our society. Lung cancer is the leading cause of cancer deaths in the U.S., for both men and women. During 2005, more than 1,000 Nebraskans will be diagnosed with lung cancer, and approximately 950 will lose their lives to this disease. It is a disease. It is killing people. It is killing people and it could be prevented. People can individually make those lifestyle choices, but in cases where people's livelihood is dependent upon them working in some of these areas, we as a state have a responsibility to protect those workers, to protect the most vulnerable among us, and to prevent them from being exposed to what we and even the tobacco industry admits is a known carcinogen that kills people. This is a health...

SENATOR SCHIMEK: Time.

SENATOR PREISTER: ...issue. Thank you.

SENATOR SCHIMEK: Thank you, Senator Preister. Senator Thompson, you are recognized to speak.

SENATOR THOMPSON: Thank you, Madam President and members of the body. Senator Schrock reminded me of a conversation I had. My days and nights are running together, but was last night the night that we met with the women physicians? Two nights ago. Two nights ago. There was a woman at my table who had moved from California and she's doing research on pregnant women who smoke, and Senator Schrock's comment reminded me of her comment to me when he said that the standards that you set as a state for public health do play out into other areas. She said when she was doing the research in California she would ask her

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patients, who are pregnant women, whether they smoked, and she was attempting to get a large enough group to be able to do her research. She couldn't get it there. She moved to Nebraska. She said Nebraska women, 20 percent of women who are pregnant smoke, and she's had no trouble putting her study together here and it is the highest rate in the nation. When we talk about public health issues and the things we do as a Legislature, they do spill over into other areas. When you have a culture of public health in your state as many, many other states do, we can impact other health issues as well as the direct issue that we're discussing today. So any time you reduce the consumption, that you send the message, by having nonsmoking areas to the largest extent you can as a government, then you protect the public, but you also create a higher educational level of people knowing the dangers of smoking and secondhand smoke. Since I first introduced this bill a few years ago, these are the states that have passed smoke-free restaurant and some are smoke-free restaurant and bar legislation: California; Connecticut; Delaware; Florida; Georgia has passed it this year in both houses of its Legislature, it is...has not been signed by the Governor yet, but that just happened in recent days; Idaho; Maine; Maryland; Massachusetts; New York; Rhode Island; South Dakota; Utah; and Vermont. We need to be among the states that are protecting health of the public. We will get there. We will get there. It's going to happen. It will be like looking back to 1979 and saying how in the world was it so controversial to allow people a place in a restaurant that didn't have smoking? But it was. It was big government, Senator Bourne. What we're talking about here is public health and the responsibility of legislators with the scientific evidence, which you're hearing about as we go forward, the scientific evidence that this is a danger and we have to raise...we have to analyze how dangerous it is, the problems it's causing in our society, the particularly adverse effects that it has on children, and weigh that against a vocal minority of businesses who have fear about losing revenue. And I will be presenting to you, and since this is probably going to go on more than today, a lot of information. Because of the fact that all of these states have already passed it, there's been a ton of research on this by university-based, neutral parties that can...that the evidence is clear, your state is not going to lose money if you

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have smoke-free restaurants.        People will go out to eat.  
Smokers will go out to eat.

SENATOR SCHIMEK:    One minute.

SENATOR THOMPSON:    It's just an hour that they're asked not to smoke. The public will go out in greater numbers because they don't...they can go out. There are a lot of people, particularly in smaller towns, who can only go to a fast-food restaurant, if they have it, because there isn't a place for them to go out. They're being denied the ability to be with the public. We know that this is a public health issue and we need to weigh the public health advantages against the concern that we have about what the role of government is. We have in hundreds of areas bills that pass every year. We protect the public. That's what we're about and that's what this bill is about. And it's protecting the workers, the many people who work in these restaurants, particularly teenagers who work in this industry. We need to protect their health. We need to follow these states and actually whole countries. The country of Ireland,...

SENATOR SCHIMEK:    Time.

SENATOR THOMPSON:    ...the country of Italy, New Zealand, Norway, Sweden have all gone smoke free. Thank you.

SENATOR SCHIMEK:    Thank you, Senator Thompson. Senator Beutler, you are recognized to speak.

SENATOR BEUTLER:    Senator Schimek, members of the Legislature, I...the city of Lincoln has been mentioned in this debate and so I wanted to at least stand up and tell you exactly what they've done in the city of Lincoln so that you can make whatever judgment you want to make about it. The city council had a series of intensive debates on the smoking issue and they originally, although I don't know exactly the format of the ordinance when they originally settled upon a solution, but it was something similar to the compromises represented in Senator Thompson's bill. Then a period of a few weeks went by, there was some public input I think, and they turned around and banned

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smoking pretty much altogether in public places or places of employment. That, of course, was a fairly dramatic move. It was a less of a stepped approach and they simply decided to do it all of a sudden. Whether that was wise from a financial point of view or from the point of view of fairness with respect to certain industries, one can certainly argue about that. Personally, I probably would have been in favor of a more stepped approach, considering those items. But the fact of the matter is they took this approach and, as with any law that's made in the city of Lincoln, you have the right to, if you get a certain number of signatures, which are not that hard to get, you have a right to bring it up for a vote of the people through a referendum on the law. And they had such a referendum in Lincoln and 62 percent of the people voted to uphold the city council in their more or less total ban on smoking in public places and places of employment. So it wasn't just the city council or a part of the city council, but the people themselves have chosen that path and it makes it very difficult, obviously, for any of us in the city of Lincoln to be in support of anything here today that would take away the right of a local political subdivision to allow the people of that community to do as they please on this issue, and some of the amendments that are forthcoming would purport to do that and I guess we can talk about that more later. But here's the operative part of the Lincoln ordinance. It is very short and I'll just read it to you: It shall be unlawful for any proprietor of any place of employment, that includes bars, or any public place, which is almost any indoor space where people are invited all the time or even from time to time, it's unlawful for a proprietor to allow smoking in those circumstances, except as follows, and the only two exceptions they made were for guest rooms in hotels and motels, and they have certain rules that apply to that, and then research studies that are being conducted under state or federal law, they make an exception for that. But it's a fairly short ordinance in its operative provisions and it's an abrupt change, but that's what happened in Lincoln. Thank you.

SENATOR SCHIMEK: Thank you, Senator.

SENATOR BEUTLER: Oh, I might also say, by way of a peripheral comment, you may remember Senator Price's tree bill which was

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discussed the other day and I may point out to you that that same kind of right of remonstrance that pertained in Lincoln to the smoking bill would also pertain to...as a protection with respect to Senator Price's tree bill. So I just wanted to make you aware of that connection also. Thank you.

SENATOR SCHIMEK: One minute. Thank you, Senator Beutler. (Visitors introduced.) Mr. Clerk.

CLERK: Madam President, an announcement: Senator Baker would like an Executive Session of Transportation underneath the south balcony at 11:00; Transportation, south balcony, 11:00.

SENATOR SCHIMEK: Thank you, Mr. Clerk. Senator Redfield, you are recognized to speak.

SENATOR REDFIELD: Thank you, Madam President, members of the body. Senator Bourne, I have heard you say that a business ought to be able to control their own business, and I would agree with that in theory. But have you ever been to Winston-Salem, North Carolina, the home of R.J. Reynolds? You can't even go into a grocery store without walking the aisles of people with cigarettes in their hands. That's a private business making a decision as to what activity they allow. And when we have the discussions as to whether the public can choose to go to a restaurant or not, that's true, the consumer can choose, but when you carry that theory down the line you find that in some communities you couldn't even go to the grocery store to buy the food to cook at home, so you could avoid the restaurant, without being exposed to cigarette smoke. That's where the theory goes. Now, you'll find my name on the bill and you'll find that that's an unusual place for me to take a stance because I do believe in personal responsibility and I do believe in people having a great deal of freedom. After all, this is America. But I will tell you that government has already taken a stance. They have taken a stance nationally and certainly our state has advocated that position. There is not a workplace in the manufacturing field where we would allow the owner of the company to expose their workers to asbestos, to arsenic in the air, to other chemicals in the air that might harm them, that might harm their health. We protect workers. From my

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standpoint, this bill is not about consumers, because consumers do have a choice, but workers do not. Now you could say, well, yes, they could go work someplace else, and that's true, but that's also true for the person who works in the manufacturing plant, and government has not taken that position. We have said that there's an obligation on the part of the business owner to provide clean air for the worker to breathe, so I believe that's what this bill is about and that's why I'm going to support this bill. It is about protecting the workers from harm to their health. Senator Thompson also has an amendment to the committee amendment that I want to just address shortly, and that is one part of that I am troubled by. I am more comfortable with the committee amendment as it stands because they are talking about workplaces where the public generally may be present. Senator Thompson would take out that wording and in that list, in the language of the bill, you actually would see that an office would be included, and if you did...by taking out the language you could have an office where you ran your own business that you own and you were the only worker. Because it's an office you would not be able to allow smoking. If you're the only one there, if it's your office, that's your choice. You're the worker. You're also the owner. You're the boss. That I would not be so comfortable with. But I do wholeheartedly support the bill. I'm going to support the committee amendment. This is about a stance government decided long ago--protecting workers. Thank you.

SENATOR SCHIMEK:        Thank you, Senator Redfield.        (Visitors introduced.)        Senator Bourne, you are the next speaker.

SENATOR BOURNE:        Thank you, Madam President.        Members, I just want to respond to a couple things, and then I'm going to ask if Senator Thompson will yield. I want to nail down specifically as to what is in her bill. We've heard a lot of public health arguments and policy arguments, but I think we need to know exactly what we're banning and where. But Senator Preister compared this bill to the methamphetamine bill and I fail to see how limiting an input for a drug that has absolutely devastated our state compares to secondhand cigarette smoke. Now, I will acknowledge there's some health ramifications with secondhand cigarette smoke, but I don't think that you can compare a legal

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product, like cigarettes. And as an aside, if someone were to put an amendment on here to ban cigarettes in the state or make them illegal, I would probably support that. I don't know if somebody will or not, but I probably would support that. But we nibble around the periphery, as we so often do, feel good making things, you know, making it sound like we really want to do the right thing, and actually we're being hypocritical. I don't know how much money the state receives in cigarette tax revenue. We had a bill this morning where we give out \$52 million a year because of cigarette taxes. Pretty much all the cities and communities in this state receive cigarette tax revenues. I'm...I would imagine it's in the tens of millions of dollars, but we don't have the courage to ban it. It doesn't even make sense. I think that's kind of hypocritical. But I don't see how an input to methamphetamine is big government as it relates to a legal product. And Senator Redfield mentioned that we're trying to protect the workers. Well, if you look at Lincoln's ban, we had an individual who came in to the Judiciary Committee and he has a one-man welding shop. He can't smoke in his own garage, basically, where he welds, and he thought that was unfair and I tend to agree with him. Further, when you look at the unemployment rate in our state, I would think that pretty much anyone who has a job...anyone who wants a job has one, and if you are in a facility that allows smoking and you don't like it, you can go to one of the 3,000 other facilities in this state that don't have smoking and get a job. So I don't buy that argument at all. I don't buy the argument that someone has a right to go to a nice dinner and have a smoke-free environment. Similar to term limits, I think your remedy, when you talk about term limits, I think your remedy is at the ballot box. If you don't like what a candidate is doing or has done, the lazy way to get rid of them is to vote for term limits so you don't have to deal with it. The proper way, in my mind, is to go and actively campaign against them. So I just fail...I don't understand that. If I'm working at a place and I don't like the environment, I'm going to make the statement with my feet and I'm going to move on. Given the unemployment environment here, I think it's logical or reasonable to assume that people can find a job if they really want one. With that, would Senator Thompson yield to a question or two?

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SENATOR SCHIMEK: Senator Thompson, would you yield?

SENATOR THOMPSON: Yes.

SENATOR BOURNE: Senator Thompson, if you would, I assume that you were involved to a certain extent in the drafting of the committee amendment and, if you would be so kind, I'd like to ask you some questions as to what exactly it does.

SENATOR THOMPSON: All right.

SENATOR BOURNE: So now does it specifically...Senator Smith had talked about a bar that has...that sells popcorn or incidental food. Would that be ensnared or encompassed within your committee amendment?

SENATOR THOMPSON: Actually, that's already the law. The Clean Indoor Air Act law was passed many years ago. The department defines, for purposes of the law, through their regulatory process, a bar and a restaurant, and their...that is in rules and regs already so that isn't necessarily...that's not necessary for the...for the bill.

SENATOR BOURNE: Okay, so...

SENATOR SCHIMEK: One minute.

SENATOR BOURNE: ...specifically as it relates to the amendment, if I have a bar facility and I make popcorn, am I subject to this law? Assuming LB 480 passes, will I...can I...will I not be able to allow smoking in my facility?

SENATOR THOMPSON: You're not affected.

SENATOR BOURNE: I'm sorry?

SENATOR THOMPSON: No.

SENATOR BOURNE: I will not be able to allow smoking.

SENATOR THOMPSON: No,...

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SENATOR BOURNE:    So...

SENATOR THOMPSON:    ...you're not affected.    No, you're not affected.

SENATOR BOURNE:    Okay.    So if I make popcorn in my bar, I can still have smokers there.

SENATOR THOMPSON:    Correct.    The way the department regulations are, and I'll get you a copy of those,...

SENATOR BOURNE:    Well,...

SENATOR THOMPSON:    ...it deals with a grill and...I mean, not grill, but it's preparation.

SENATOR BOURNE:    What about...no, now you're talking about...

SENATOR THOMPSON:    That would already be under the law, to be honest with you, if that's the only thing.

SENATOR BOURNE:    You're talking about, though, a facility that's under a certain amount of square feet, aren't you?

SENATOR THOMPSON:    No, I'm talking about how you define...

SENATOR SCHIMEK:    Time.

SENATOR THOMPSON:    ...what a restaurant is for purposes of having a designated nonsmoking area, which is already the law.

SENATOR SCHIMEK:    Thank you, Senators Thompson and Bourne.    The next speaker is Senator Price.

SENATOR PRICE:    Senator Schimek and members of the body, I am offended by cigarette smoke.    I was at the grocery store last night, left my windows down so I could get some air in my car.    The gentleman next to me was smoking.    I could still smell it in my car this morning.    Did that endanger me?    No.    But there are a lot of dangers to secondhand smoke.    Is it hypocritical that

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in our schools we talk about the dangers of smoking and have phys ed, trying to work to good health; the children go home, go to a restaurant with their parents and are subjected to secondhand smoke or smoking parents when they're in the restaurants? This is a public health issue. I have had e-mails both ways, for this legislation, against this legislation. Should government get in the business of telling us what we're going to do in our own businesses where we have invested a lot of money? I say this every time smoking comes up that I was co-owner of the first totally nonsmoking restaurant in Nebraska, and this was a choice that we made for our customers and for our employees. And, sure, we had customers that said, hey, if I can't sit here and buy my meal and smoke, I'm going elsewhere, and they did. They may not have returned, but some did try elsewhere because they had other choices, and then they came back and were our customers again. If you've seen lungs or photos of lungs on television that have been even just infected with...or affected with secondhand smoke, it really is really something to think about. But I am going to support this bill and work hard to get its passage because this is good for the health of Nebraska. And I return the remainder of my time to Senator Thompson, if she would like to have it.

SENATOR SCHIMEK:    Senator Thompson, would you like the rest of Senator Price's time?

SENATOR THOMPSON:    Yes, thank you. Whenever we debate this bill, we get into some of the nuances of what already is the law, and so I'll just use my time to say what already is the law. If you are a restaurant in Nebraska and you're over, I'm going to say, 1,200, but I've got to double...1,200 or 1,500 square feet, you already have to have a nonsmoking area. That was the bill that passed in 1979. If you're wondering if you're a restaurant or a bar or who's affected by this law, it's the same as it is right now because the department has regulations whereby they say you are a restaurant or you are a bar. And they went through a process and it's been...had public hearings and it's established. We further refine the definition for the purposes of this bill. I think it's on page 5 if you want to see it. But currently, if you are a bar that serves food, you are under the Clean Indoor Air Act and must have a nonsmoking

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area. If you are a bar that has limited food service, packaged food, that sort of thing, you are not under the current Clean Indoor Air Act. This doesn't change any of that. That's already the law. That's already enforced by the department. What it does is say if you are a restaurant as already defined in state law, that you must be nonsmoking in your entirety. That's the difference here. So I'm going to say that one more time.

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: There already is, within Nebraska law, law governing bars and restaurants, and for purposes of the Clean Indoor Air Act, if you have food service you are a...under the restaurant section of the law already and must provide a nonsmoking area. If you are...have a limited food service, if you are serving packaged stuff, you're not under the current Clean Indoor Air Act. That...we do not change that in any way. That's just the way it already is. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson. Further discussion? Senator Kruse.

SENATOR KRUSE: Thank you, Mr. President and members. I stand in support of the bill and of the amendment. I am listening carefully to the debate and one piece of it really is amazing and that is that these are businesses free to operate in the way that they choose; that we're a free country and they can choose whether or not to have smoking, even as we grant that secondhand smoke is a serious health problem. Well, hello. These businesses, take a restaurant, cannot decide how hot their water is going to be on the washing of dishes. It certainly would save a restaurant a lot of money not to heat the water that's going to wash these dishes and, frankly, the customers that come there are never going to know the difference, never going to know the difference. And I don't see that it's a huge health problem, really. There are going to be a lot more people die from secondhand smoke than from cold water wash. However, that business doesn't have the choice of doing that. A business

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could save a lot of money, a restaurant could save a lot of money by having a different kind of refrigeration and by setting the temperature up and so on. Do they have a choice on that? No, they don't, because it's public health. Another point raised is the question about a cigar bar in Lincoln. The prohibition of that is ridiculous to me and that, of course, is not before us. Then I recognize, as we're talking here, that our anniversary is coming up this next week and I really would like to take my bride out to a nice restaurant. If I'm to follow Senator Bourne's advice, I have no place to go except a fast-food restaurant. There is nothing else on my district. I have no choices. I'd like to stay at home. And there's quite a few districts in this state that have no choice. I'm sure Ruth is going to be thrilled by going to this fast-food restaurant in order to get that kind of a service. Along with that, I would make this promise...I hope she's not on the air listening to this...that if this bill were to pass I would actually take her out to dinner more than once a year, but that would, of course, depend upon a place where we could eat in good health. I would recognize, as I hope we all recognize, that this is...also affects our budget. We spend a huge amount of money on Medicaid bills every year that directly relate to this. I see the smoking ban a reasonable type of a thing, needs to be reasonable...I'm not trying to be heavy on anybody...but as something that's coming. I see it as a help to our restaurants. We certainly would be eating out a lot more if we had any options to do that. I don't believe that we can allow this continuing compromise to our public health to continue, so sooner or later we've got to do it and I would prefer that we do it now. Thank you.

SENATOR CUDABACK: Thank you, Senator Kruse. On with discussion. Senator Aguilar, followed by Senator Johnson and others.

SENATOR AGUILAR: Thank you, Mr. President, members, friends some. (Laughter) Senator Bourne said he didn't know how much tax revenue we took in from cigarettes. I can tell him it's somewhere around a \$60 million figure. But I think I have to follow that up with how much it costs the state each year for smoking-related diseases and illnesses throughout the state. In

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2003, it was almost \$120 million. I can assure you that figure has gone up since then. I think that's an important factor that needs to be considered here when you talk about being hypocritical and big government. A couple days ago we listened to a day and a half of debate on the problem that we're having with Medicaid expenses and the spiraling costs there and how we can't get a handle on that, how it's out of control, and I agree it is and that was an excellent discussion on that. I thank Senator Erdman for bringing that up front. The thing that's important that we need to consider in that realm is we have a possibility right in front of us on how to control some of those costs. You vote green on LB 480. That will reduce the Medicaid costs considerably. That's an important part of this decision. I know a lot of people have kind of quit listening and stopped listening to the debate because they know all the answers. That's not the case. I think it's time we listen to this issue, realize what a health issue it is, stop listening to the lobby, and do what's right for the state of Nebraska. Thank you. I yield the rest of my time to Senator Thompson, if she chooses.

SENATOR CUDABACK: Senator Thompson.

SENATOR THOMPSON: (Microphone malfunction)...you, Senator Aguilar, and that was really cute. We all enjoyed your "friends some" remark. And I think our...as we do in a lot of debates, our coalitions shift around a little bit, and I have appreciated all the people who've been willing to get up on the mike and talk about the importance of public health and the importance of this bill. And we do have an opportunity this year to take this step forward and join the many other states that have done this, and done this with now research and evidence beyond what we are...what we have about secondhand smoke and its dangers, but also the impact that it's had on business, and I will be, the next time we debate this, passing out and going over in detail. We're currently just on an amendment to the original...or to the committee amendment, but when we get to the debate of the actual bill I want to spend some time on this, on the fiscal impact to states and to businesses and communities, because there's plenty of research on that now. There's plenty of research on that. The details of this bill are that we are...we are...those of you who are looking at it and have questions, this is the section of

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law that is the Clean Indoor Air Act. The current act stays the same. We aren't switching anything except for two aspects of it. One is the State Fair Park issue, which was a separate bill but it was also included in this bill, and that is the...smoking and what is happening at the State Fair, which we'll have an opportunity to talk about. The other is to say that restaurants, as currently defined, as currently under regulation by the Department of Health and Human Services, that currently have to have a nonsmoking area will become smoke free.

SENATOR CUDABACK: One minute.

SENATOR THOMPSON: That's what this is about. And I appreciate the concerns that other people have and hopefully we'll work through that, but that's all this is about. It isn't beyond that. All those nuances were debated when the original Clean Indoor Air Act passed. So I hope the body will support this, this time, and we will be able to make Nebraska a healthier place for our children, families, and the elderly, the children and the elderly, who are most impacted by this bill. Thank you.

SENATOR CUDABACK: Thank you, Senator Thompson and Senator Aguilar. (Visitors introduced.) On with discussion of AM0948, the Health and Human Services Committee amendments to LB 480. Senator Johnson, followed by Senator Friend and others.

SENATOR JOHNSON: Mr. President, members of the body, as I was observing the south balcony full of children here a half hour or so ago, something popped into my head. What it was is this. Is look up in the south balcony now. There are not kids, but there are two million kids in the United States that have significant asthma. One in five is going to be adversely affected by secondhand smoke. So pick out those people up there and figure out which ones you want to have an adverse effect by going to a smoke-filled restaurant. Any time you see a group of kids up there, that's what you're doing. Now, if you're not convinced of the health hazards of smoking and secondhand smoking, there's not a whole lot that I can say that's going to change your mind. I guess where I have come down on this bill is this. There are approximately 70,000 people that work in restaurants. At least this is the figure given to me by a restaurant owner. Now, if

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all of these people worked in a factory under one roof, would that factory be smoke free? Absolutely. Now what's the difference if they're under two or three thousand roofs? It's still 70,000 people who, as a matter of their ability to earn a living, have to endure secondhand smoke. Yes, those who patronize restaurants can theoretically go to a different place, but can a person who has made his life in the restaurant industry pack up and get another job? I doubt it. Now here's one other thing that I'd like you to think about. Can you think of any other instance where public policy is dictated by the addicts? This is the only place I know where public policy is dictated by those with the addiction. Doesn't that seem a little strange to you? It certainly does to me. Now people have talked a little bit about the discrimination in how we set up this and whether it should be local and so on. The best way to avoid the discrimination is to make it universal. If you don't, then you're going to have the problems that were alluded to here by previous speakers, and so I think it has to be universal. So with those things, I guess I would ask if Senator Thompson has anything more that she would like to say. But let me just repeat that one more time. Is there any other public policy where the addicts determine that policy? Thank you.

SPEAKER BRASHEAR PRESIDING

SPEAKER BRASHEAR: Thank you, Senator Johnson. Senator Thompson has indicated that she will not use the time. Members, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR 66. Thank you. Senator Friend.

SENATOR FRIEND: Thank you, Mr. Speaker. Members of the Legislature, Senator Chambers just mentioned to me that "Captain Lunch-hunter" is on his way. I don't think today "Captain Lunch-hunter" is involved in the equation. Actually, that's not true. He didn't say that. I just toss that in because that's usually when I get up and start talking. Senator Thompson had distributed, from Philip Morris...it's interesting. I thought about this for a long time before I was here. Mostly, I think it probably started in college. You come home with sweaters filled with cigarette smoke, and you think, I wonder what that's

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doing to my sinuses and my lungs. You have...I mean, just out of curiosity. I suppose...I would like to read this, because it kind of goes with what I've been thinking about this issue for quite a long time. Public health officials have concluded that secondhand smoke from cigarette causes disease, including lung cancer, heart disease in nonsmoking adults, as well as causes conditions in children such as asthma, respiratory infections, cough, wheeze, otitis media, which is a middle ear infection, and Sudden Infant Death Syndrome. Let's assume for a second--and I'm going to, I'm going to take it for what it's worth--that secondhand smoke, let alone firsthand smoke, kills us prematurely. I mean, there are a lot of things that do, but that's one of them. Let's assume that. The statistics are overwhelming, undisputable, if they are--and I'm assuming it, remember. Why is this a legal product? Why do we let people smoke? We legislate behavior all the time. People send us e-mails and say, don't legislate my life, don't tell me what to do. After the feeding tube fiasco that I created, or others did, I don't really want to name any names, I got people telling me, keep government out of my life. We do it all the time. This is a public health issue. I agree 100 percent with the people that have stood up, raised the point, said, this is a public health issue. Why is this product legal? It kill...marijuana is not legal. I don't have any documentation from anybody that says that this is causing Sudden Infant Death Syndrome. I think there's people smoking dope out there. It's illegal. We don't want them to do it. Cigarettes...we may have some interstate commerce issues here. If I were to try to ban smoking in this state, there could be some constitutional problems with that. I'm not really sure, but I think I'd like to double check. Here's my point. I think the time for incrementalism...and Senator Thompson was quite right, I think we have done good work in the encroachment, scope creep, incrementalism, as far as the public health is concerned on this issue. I think the time for incrementalism is over. Are we going to...shall we wait for California or New York or Maryland--and they're always first, you know they are, probably because they're the most liberal states, well, next to...oh, Senator Bourne...Senator Bourne flinched on that one. Here's the point. Let me step away from the political piece. All right? Are we going to wait for those states to be the most

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advanced, the most thoughtful? If this is killing people, let's ban it. And the hypocrisy is this, folks, in my opinion. We will not be able to stop the mother from putting her child...

SENATOR CUDABACK: One minute.

SENATOR FRIEND: ...in a restraining seat, smoking four cigarettes on her way to Oak View Mall, and injuring that child. You got to put them in the restraining seat. You've got to make sure that that child is nowhere close to the windows or the doors. But don't worry about it; go ahead and blaze up. Smoke away. That's the hypocrisy, you guys. That's what it is. And I'm not saying that...and specifically pointing to hypocrites. I...what I'm saying is, I'm as bad as everybody else. How do we solve this? Let's study the interstate commerce issues. Let's throw up a total ban on smoking in this state, and then watch CNN and the Wall Street Journal and everybody else say, you know what, maybe they aren't a bunch of hayseeds in the state of Nebraska. Well, either that or they're going to say, they're a bunch of Communists. We'll see. That's all I have. I'm hungry. Thank you, Mr. President. (Laughter)

SENATOR CUDABACK PRESIDING

SENATOR CUDABACK: Thank you, Senator Friend. Further discussion? Senator Erdman.

SENATOR ERDMAN: Mr. President, members of the Legislature, how do you follow that? I would yield more time to Senator Friend, if he needed to continue with his manifesto. It's very entertaining but, as usual, he has given us his perspective. As a member of the Health Committee, I've served on...we've heard this issue for the last five years and it's been very interesting. If you would have tape recorded or videotaped most of the testimony from the years past and then replayed it this year and every other year, it's the same story over and over again. Senator Johnson does bring up an interesting point. There are kids in the state of Nebraska and throughout the country that have issues with asthma and other health issues related to maybe irritants, such as smoke, but he didn't go the next step in saying it's irresponsible for the restaurant to

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have smoking and then leave out the fact that it's flat-out irresponsible for that parent, who knows that their children have asthma, to take them in there. It's a two-way street. Senator Thompson is bringing valuable public health issues. This is a public health issue. This is also a big government issue. This is a regulation issue. This is whatever issue you want it to be, flat-out. But at the same time when we're talking about what the public policy of the state of Nebraska is, Senator Friend is right, you have to have people who understand what it is that they're doing and are responsible for their own actions and how their actions affect others in order for public policy to be effective. So, Senator Johnson, if that individual takes their child into a restaurant that they know is smoke-filled, they should have some level of responsibility for what happens there, flat-out. Now, in the event that there is no smoking anywhere, then that alleviates the responsibility of the parent in that area and then we can focus their attention on making sure that when they're driving to the restaurant that they're not blazing the four cigarettes that Senator Friend was talking about. The other thing that's interesting is why this needs to be done on a statewide level. The city of Lincoln has done what they're going to do. And actually, Senator Bourne has an amendment that I think is a fair proposal, and I have an amendment to that, that would bring in another community in the state of Nebraska considering a similar idea. But we heard testimony in the Health Committee from a restaurant in Lincoln that said we went smoke free. We had all this information presented two years ago from our good friends at different advocacy organizations on this issue, or singular organization on this issue, that said if you voluntarily go smoke free your revenue will increase; people will flock to your store, flock to your business. That business lost 10 percent of their clientele the first year. So now it's also an economic issue, because it's not just a public health issue but now it's an economic issue, and I think that should be a part of the discussion. It flat-out is. You have bars in Lincoln that are losing their shorts. You got restaurants, according to this one, that was losing 10 percent when it was a voluntary decision, and yet all the estimates and all the research showed that they should be getting more money. The discussion should be open to whoever wants to bring whatever perspective they do, and Senator

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Thompson will have the opportunity to see if she can muster the votes to pass the bill. But the real question is, are we going to ban smoking for the reason of ensuring fair competition across all restaurants in the state? Some in Omaha would like to see that because if the city of Omaha passes a smoking ban, what happens to the communities around that if they don't have one? And how do you regulate that? And what type of an absolute nightmare does that become? So there's all kinds of factions on this thing. The question that Senator Johnson also asked is, where in state policy do we allow addicts to determine the policy? Anywhere we want them to? Anywhere we allow them to. I think there's this assumption that anybody who may be opposed to passing LB 480 seems to think that it's okay that you smoke, which flat-out to me it makes no sense to me why you would stick a burning item in your mouth and inhale the smoke from it. Doesn't make sense to me at all. But then again, at the same time the state of Nebraska collects millions of dollars that we in turn use to fund state government. So at the same point that Senator Friend is asking for a flat-out prohibition,...

SENATOR CUDABACK: One minute.

SENATOR ERDMAN: ...then he should also be asking for a flat-out repeal of the cigarette tax, because if it should be an illegal substance then the state of Nebraska and the Appropriations Committee should come up with the \$60 million or \$70 million annually to make up the difference, if we were being consistent. And we won't be. We flat-out will not be consistent because it's not politically acceptable, it's not politically expedient, and even though Senator Friend alludes of communist plots, that probably is the most consistent position to have. So, Senator Johnson, where we allow addicts to dictate the policy is probably where you allow addicts to dictate the policy. I am not an addict. I have never smoked in my life. I have seen the effects of smoking firsthand. I've watched my grandma die of lung cancer. It is a horrible, horrible situation. But as Senator Friend pointed out, it is a legal product. What is the responsible regulation? What is the responsible taxation?

SENATOR CUDABACK: Time. Time, Senator.

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SENATOR ERDMAN:        And how do we balance that with the known political will or lack of it within the state of Nebraska from its citizens? That's our question. Thank you, Mr. President.

SENATOR CUDABACK:        Thank you, Senator Erdman.        Senator Synowiecki.

SENATOR SYNOWIECKI:     Thank you, Senator Cudaback.        Senator Thompson, would you yield?

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

SENATOR THOMPSON:        Yes.

SENATOR SYNOWIECKI:     Senator Thompson, my question is relative to the definition of a bar within the committee amendment. For purposes of this section, a bar means an establishment that serves alcoholic beverages, may provide limited food service, and prohibits the presence of minors. In my district it is not entirely uncommon for local tavern owners, local bar owners to sponsor Little League youngster baseball teams, football teams, soccer teams, and given...and having a relationship with these organizations, these nonprofit organizations within south Omaha. And what they would do, Senator Thompson, is invite the boys down or the girls down, softball team it might be, to have some pop and some chips after a game or something like that. Under the provisions of this amendment, would that be prohibitive activity?

SENATOR THOMPSON:        Yes, unless they were a bar that serves food and they...and would be considered, as they are currently, under the Clean Indoor Air Act.

SENATOR SYNOWIECKI:     And, you know, again, just the only way I can relay this is to give you examples. Youngsters in my community oftentimes, riding their bikes during the summer, during summer vacation, want to go into a tavern and get a bottle of pop; quickly go in, get a can of pop, maybe a bag of chips. Would that activity be prohibited by law?

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SENATOR THOMPSON:     For the purposes of this, the Clean Indoor Air Act in this definition, yes.     One of the issues that's popped up, most people don't think children are permitted in bars in this state, and I think it's important that we make it clear that if there is smoking in their entirety and they...we are protecting children from that.     I mean, I've spent time in south Omaha.     There are a lot of little Kwik Shop things and other places that they can go in and get a bottle of water.     I think this is a way...this I feel is a very important statement that we're making as a Legislature and as the public...I mean, representing the public here, that if bars are going to be totally smoking that children should not be there.

SENATOR SYNOWIECKI:   I mean, do you...is it your position, then, that the health concerns relative to this outweigh the kind of examples I'm giving?     You know, it happens every day in my community.     I'm sure it happens in smaller communities throughout the state.     Kids are out.     They want to get a bottle of pop.     And actually, there are not a whole lot of Kwik Shops and them sort of venues in my district and, you know, the local bar is the only reservoir of activity with regards to getting a cold bottle of pop or something and a bag of chips.     Truly, within areas of my part of town, that's the only vendor available if you're on a bike.     And you truly think that the public health concerns outweighs these kind of isolated instances where a youngster will go into a tavern and buy a bottle of pop; that you want to prohibit that activity in the interests of public health?

SENATOR THOMPSON:     First...well, let me address a number of those.     There are lots of places to buy a bottle of pop.     I don't think we should be making it clear, either on the legislative debate or, you know, with the Liquor Control Commission that we're encouraging children to be in bars.     I don't think it's a healthy place for children to be.

SENATOR CUDABACK:     One minute.

SENATOR THOMPSON:     And they can stop at a gas station.     They can...I mean, there are plenty of places to get a bottle of pop.

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My...children...if bars have smoking then children shouldn't be there. There are probably a lot of other reasons they shouldn't be there, and I think if you'd ask the average person, till this came up, I didn't think children were permitted in bars in this state, but...because alcohol drinking age is 21. So I don't...this is a public health issue and that's what this is about and I think this is important to have in the bill. If you want to try to amend it out, you know, that's your call.

SENATOR SYNOWIECKI: I appreciate the comments, Senator Thompson. It's just from the practical perspective, everyday living in my district, south Omaha, you know, that I did these activities when I was younger. And I certainly don't want to disengage these small tavern entrepreneurs and the community benefit they provide in the terms of sponsoring these Little League Baseball teams, Little League Football teams.

SENATOR CUDABACK: Time, Senator.

SENATOR SYNOWIECKI: I would sure hate to have that be disengaged from my community. Thank you.

SENATOR CUDABACK: Thank you, Senator Synowiecki. Senator Schimek, followed by Senator Chambers and others.

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I rise just to state my position on the bill. I'll try to be brief. I think there's going to be more opportunities to speak on some of the later amendments. But I did not sign onto this bill, but it wasn't because I didn't support the basic concept of the bill, but at the time that the bill was being introduced, I didn't know how it conflicted with Lincoln's newly passed ordinance and I didn't want it to cause any problems on that front. I know now that it doesn't and I am supportive. I actually like the fact that this bill, as in opposed to the Lincoln ordinances, allows some discretion in the bar business, depending whether they are in the food business or not, and so I like that aspect of it. I think it's a little bit more moderate approach. Some would probably disagree with that. I am kind of interested in the discussion that just started between Senator Synowiecki and Senator Thompson, because when I had the

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cigarette vending machine bill years ago, when we were trying to outlaw them in the state, one of the...one of the arguments that did come up while we were discussing a compromise which would have allowed them, cigarette vending machines in bars, I believe, if they were within plain view of the person in charge. And at that time, the information came out that children were indeed bar frequenters, not necessarily on their own but with parents; that often in these very small communities these bars were community gathering places. Kids would go there after school. It was just the only place that was even open in town for a student to go get a Coke or anything. I was rather shocked and surprised at that. But, Senator Synowiecki, did you get to finish all that you wanted to ask or say with regard to that issue? If not, I would gladly give you the rest of my time.

SENATOR CUDABACK:        Senator Synowiecki, did you wish to use Senator Schimek's time?

SENATOR SYNOWIECKI:     Yes, thank you, and I appreciate that, Senator Schimek. And I guess I'd just add I just had a conversation off the mike with a member of the Legislature after I got done talking, and there are instances throughout this state where the only venue in town to get a bottle of pop or a bag of chips is a local bar. And then the local bar, within the definition of this committee amendment in terms of their ability to let their patrons have a cigarette while they're within the confines of the venue, youngsters would not be able to...particularly, I'm thinking during the summer, during summer vacation, they'll want to run in, get a bottle of pop, bag of chips, that would be against the law. We would be making that activity illegal. And likewise within my community, Senator Schimek, I'm sure there's tavern owners and bar owners within your district as well that are good community people in the sense that they sponsor these youngsters in Little League Soccer leagues. They sponsor them in Little League Football, Little League Baseball. And you know what they do? They invite them down to have a cold pop after a game and a bag of chips. I...you know, that would be illegal activity under the parameters of this committee amendment and I got serious reservations with regard to that. That's been part of my

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upbringing in south Omaha. I mean, I think I've got more taverns in my district proportionately to any other legislative district in the state, and then that's part of the fabric, that's part of growing up in south Omaha, is you have these kind of social outlets with youngsters...

SENATOR CUDABACK: One minute.

SENATOR SYNOWIECKI: ...where you go to the tavern with your folks after a ball game. I mean, that's part of living in south Omaha and this bill would put a dead end to them kind of, what I think are, healthy family activities in terms of a social life, in terms of family life, in terms of just being a part of the community. And I'd sure hate to put a stop to all that. Granted, the intents on the public health perspective of this I can see and I can agree on many, many levels and, in fact, I would support a statewide approach to this issue. With certain exemptions and with a preemptive clause, I would support it, a statewide approach. But I sure hate to see this bring down, really, a fabric within my community, the engagement of the community betterment that some of these entrepreneurs bring to our community and the relationship there with our youngsters in terms of Little League sports activities and them sort of...them sort of functions. Thank you, Senator Cudaback,...

SENATOR CUDABACK: Time, Senator.

SENATOR SYNOWIECKI: ...and thank you, Senator Schimek.

SENATOR CUDABACK: Thank you, Senator Synowiecki and Senator Schimek. Senator Chambers.

SENATOR CHAMBERS: Mr. President, friends all, today I'm going to speak as the dean of the Legislature, meaning I've been here longer than anybody else. There was a restaurant I used to go to at least once a week, usually about three times a week, and during the time that Omaha was considering a no-smoking ordinance I let the proprietor know that lately when I come in there I can smell the smoke, and I'm not going to come to the restaurant anymore. He said that apparently the city council, considering that ordinance, had raised the issue in the minds of

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a lot of people because he had heard others say the same thing. I said, then why don't you cut out the smoking in your establishment? He said, not only him but others had a problem with that. He didn't know what impact it might have on his business, but the best thing that the city or the state could do for him and other restaurateurs would be to ban smoking; then they don't have to appear that they are cutting off something that their patrons had done. He said he'd be in a position to say, at that time it was the city, has established that there cannot be smoking in the restaurant; that's why there is no smoking. All this person had was what might be referred to as a partition and it might have stood about four feet, six inches high in terms of the height of that partition from the floor. So it did not stop smoke from circulating in the establishment. It simply marked off the area where people could go and smoke openly. So I don't go there anymore. It's the Old Country Buffet. I don't go there anymore. In fact, I don't go to restaurants because of the smoke, and they may not miss my little amount of money. As far as what Senator Friend said about the state not being able to ban smoking, there are what are known as police powers. This means the states and the federal government have authority in certain areas to enact legislation that looks after the health and the welfare of the citizenry. With all of the evidence that is overwhelming, even found in the secret documents of tobacco companies, that the use of tobacco products is devastating to the health of individuals and society at large, do you think it took tons of scientific research to point out that secondhand smoke is harmful when there are people who would go into establishments where there is smoke hanging in the air, they would begin to cough, they would have difficulties breathing? It's known. But the tobacco industry is powerful, and you're listening and observing the power of the liquor industry here today. Their products are not helpful. They're not healthful, either. They have no redeeming qualities whatsoever. When Senator Synowiecki and Senator Bourne and others make their pitch, they're not talking about the citizens. They're talking about the purveyors who make a living dispensing unhealthy products. That's what this discussion is about--the liquor industry, the tobacco industry. I would not be proud to talk about children being taken into an adult...

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SENATOR CUDABACK: One minute.

SENATOR CHAMBERS: ...environment where alcohol is purveyed and then allow those purveyors to be excused by saying, well, they sponsor little kids' baseball leagues and so forth. They're also trying to develop a market and draw those kids' attention to these products. So, on the one hand, you say it is not good, you don't want the kids to do it. Then you let the purveyors have access to the children. For what purpose? They're not good people, as Senator Synowiecki says. They are people seeking money in any amount they can obtain from whoever they can get it from. I'm in favor of this bill and I will support it and I will fight against those nefarious amendments that certain of my misguided colleagues are going to offer. Thank you, Mr. President.

SENATOR CUDABACK: Thank you, Senator Chambers. (Visitors introduced.) Senator Bourne.

SENATOR BOURNE: Thank you, Mr. President and members and, today it appears, friends none. (Laughter) I just heard one of the most outrageous statements that I've witnessed in my six years in the Legislature. Senator Chambers referred to himself as the dean of this Legislature. Senator Chambers, I knew the dean, and you are not the dean. Would Senator Thompson continue our discussion that we had earlier?

SENATOR THOMPSON: Yes. I've sort of forgotten it, though, but I'll try to...

SENATOR BOURNE: We'll start. I want to...

SENATOR THOMPSON: ...try to keep up with you. (Laugh)

SENATOR BOURNE: ...actually, we had a lot of...we've had a lot of discussion about the policy...or, excuse me, no discussion about the policy. We've heard the emotional discussion of kids in bars and Little Leagues and that. We've talked about how the bill...how tobacco should be outlawed altogether, but we really don't know what's in either your amendment or the committee

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amendment, and I'd like to flesh that out. Previously, we discussed whether or not a bar that cooks popcorn or has, say, pizza in, you know, a pizza oven and distributes or sells pizza would be ensnared and, thus...ensnared by your bill and would not be allowed to have tobacco. Now, I've talked to a couple bar owners. They feel that if they serve popcorn or pizza out of a portable pizza oven that they would not be able to have smoking in their establishment. Have you gathered any clarity from the administration or the agency that administers this act as to whether or not those claims are valid?

SENATOR THOMPSON:     My staff attempted to reach the person who could...two people who could answer that question, and neither of them are in.

SENATOR BOURNE:     Okay, so we...

SENATOR THOMPSON:     But...

SENATOR BOURNE:     So the amendment is vague as to whether or not a bar owner, legitimately conducting business, after having put their life savings into this bar, can offer popcorn or pizza to their patrons.

SENATOR THOMPSON:     May I answer that?

SENATOR BOURNE:     Please.

SENATOR THOMPSON:     Because that had just a twang of emotion in it, also. The bill's intent is this. Currently, that bar owner is either under or not under the Clean Indoor Air Act. It's a definitional thing. If they are serving food, whether you pass this bill, whether we do anything with this bill, they currently are under the Clean Indoor Air Act. If they are under the definition by the department, they would have to have a nonsmoking area. So we don't have to plow new ground on this. It's already the law. If they serve food and they would need to...and we'd be happy to get, if you would give us the names of the bars that you are calling bars, we will find out if by definition they are really a restaurant, because they would also need to have a nonsmoking area if they're under a...

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SENATOR BOURNE: Well,...

SENATOR THOMPSON: ...certain square footage situation.

SENATOR BOURNE: Yeah, I'll be honest with you, Senator Thompson, they don't...I doubt they would want their names forwarded because of the tactics of some of the antismoking groups. But let's move on and I'm going to check that. But would you go to page 4 of the committee amendment where we have struck subsections (6) and (7). And could you explain exactly what this impact would be, if the committee amendment is adopted, to the State Fairgrounds?

SENATOR THOMPSON: Yes, and you got me kind of riled up now, because the enforcement of this act is the Department of Health and Human Services. They are acting on the law that has been passed by the Legislature, so that's where the law comes down on this. And if that's implying that the people, who are doing their jobs and enforcing the laws of the state,...

SENATOR BOURNE: Well,...

SENATOR THOMPSON: ...are inappropriate, then I take offense.

SENATOR BOURNE: Well, be that as it may, I mean, this is my time. Are you willing to answer the question as to what does this do to the State Fairgrounds if the amendment is to adopted...to be adopted?

SENATOR THOMPSON: And what page or...

SENATOR BOURNE: Page 4, lines 3 through 12. I think it's relevant or important that we know what's...

SENATOR CUDABACK: One minute.

SENATOR BOURNE: ...in the amendment.

SENATOR THOMPSON: Okay, page...okay, I'm there. The intent of this is to put...is to eliminate smoking at the State

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Fairgrounds.

SENATOR BOURNE:     So if this amendment is adopted, the State Fairgrounds no longer would be able to allow smoking.

SENATOR THOMPSON:   Correct.

SENATOR BOURNE:     Are the State Fairgrounds in the city limits of the city of Lincoln?

SENATOR THOMPSON:   My colleague from Lincoln says no.

SENATOR BOURNE:     Is there discussion by the city of Lincoln, they're discussing annexing this particular parcel of ground?

SENATOR THOMPSON:   I don't know about that. I don't...I heard something to that effect. I didn't read the news article. I...you'd have to ask someone...

SENATOR BOURNE:     I think it's...

SENATOR THOMPSON:   ...closer to it than me, because I...that isn't part of why I (inaudible).

SENATOR BOURNE:     Thank you. I think that...I think it's relevant in that Senator Schimek got up and indicated that this does not implicate or impact the city of Lincoln's decision as it relates to smoking, and yet they're talking about annexing this piece of ground and I'm curious about the interplay between...

SENATOR CUDABACK:   Time, Senator Bourne. Thank you, Senator Bourne. Senator Janssen, followed by Senator Thompson.

SENATOR JANSSEN:     Thank you, Senator Cudaback, members of the Legislature. Think anyone that has been around here any length of time will know my position on this and I would say that my district is probably fifty-fifty on this subject, so you're only going to make half of them mad at you, but I'm going to be here three more years. You know, there you go again--term limits. We're going to be out of here. You're not going to be

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accountable to anybody. Yeah, what gets me is nobody is telling you, you have to go into these areas. Nobody is dragging you in off the street to go into a smoking area. Just like nobody is telling you, you have to stand in front of an anhydrous tank and suck in anhydrous ammonia, which some of our young people do. Except you're Matt Connealy and you're a farmer, then sometimes you have to get a whiff of it now and then, you know. But I'd like to relate to a couple of establishments in my community. They both sell food. One of them has young people working in it and she's one of our pages, by the way. I just asked her a little bit ago what...if she ever had a problem in one of the restaurants, when she worked in there, with smoke? She said, no, we didn't have any smoke in there. They have an area where it is...smoking is allowed. It's separated by a door. Nobody has to breathe smoke when they're in the eating area. And very few people smoke anymore. We sell less cigarettes now, I would say 50 percent less cigarettes now, than we did five years ago, so people are changing their habits. I don't think we should go down the road of telling people what they can and cannot do. I don't go into a keno club in Fremont. I like to play keno, but it's too doggone smoky in there. I won't go in there. That's my choice. That's my choice. And when our kids were young, I used to smoke. They hacked around and, Dad, they said, you can't quit smoking those things. We were coming home from church. Went across the Elkhorn River and I rolled down the window and threw my pipe away; never smoked since. Almost died for two weeks from withdrawal, but I made it. So I'm going to, as I have in the past years, I'm going to oppose LB 480, the amendments and everything else, because I believe it's a choice that people in this state have to make. If you don't want your young people to...your children to be associated with smoke, don't take them in there. I don't think you can smoke in McDonald's. But that's their choice. To me, this bill is about choice and I'm not going to support it. Thank you.

SENATOR CUDABACK: Thank you, Senator Janssen. Mr. Clerk, items for the record?

CLERK: Mr. President, amendments to be printed: Senator Louden to LB 454; Senator Jensen, LB 382; Senator Jensen to LB 551; Senator Jensen, LB 551; Senator Louden, LB 673; Senator Jensen,

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LB 70;     Senator     Thompson,     LB 480;     Senator     Erdman,  
LB 480.     (Legislative Journal pages 1137-1141.)

Mr. President, I have a priority motion. Senator Erdman would move to adjourn until Monday morning, April 11, at 10:00 a.m.

SENATOR CUDABACK: You've heard the motion to adjourn till Monday morning, April 11, 10:00 a.m. All in favor of the motion say aye. Opposed, nay. We are adjourned. Members, have a nice weekend.

Proofed by: GSK, J. Hurlbut