

**FORTIETH DAY - MARCH 6, 2007****LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE  
FIRST SESSION****FORTIETH DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, March 6, 2007

**PRAYER**

The prayer was offered by Pastor Rick Snodgrass, Assembly of God Church, Wayne.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Langemeier presiding.

The roll was called and all members were present except Senators McGill Mines, and Pedersen who were excused; and Senators Chambers, Cornett, Dierks, Flood, Stuthman, and Synowiecki who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the thirty-ninth day was approved.

**NOTICE OF COMMITTEE HEARING**  
**Government, Military and Veterans Affairs**  
Room 1507

LB 694	Wednesday, March 14, 2007 (reschedule)	1:30 p.m.
LB 686	Wednesday, March 14, 2007 (reschedule)	1:30 p.m.
LB 646	Wednesday, March 14, 2007 (reschedule)	1:30 p.m.
LB 528	Wednesday, March 14, 2007 (reschedule)	1:30 p.m.
Wednesday, March 14, 2007 (reschedule)		1:30 p.m.
John E. Falgione - State Fire Marshal		

(Signed) Ray Aguilar, Chairperson

**ANNOUNCEMENTS**

Senator Pedersen designates LB 405 as his priority bill.

Senator Hudkins designates LB 663 as her priority bill.

### MESSAGE FROM THE GOVERNOR

March 5, 2007

Mr. President, Speaker Flood  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Flood and Senators:

This letter is to inform you that Joseph Caruso has resigned as a member of the Commission for the Deaf and Hard of Hearing effective February 1, 2007.

Please withdraw his name from the Legislative Confirmation process.

Sincerely,  
(Signed) Dave Heineman  
Governor

### MOTIONS - Approve Appointments

Senator Aguilar moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 698:

State Personnel Board  
Lucinda Glen

Voting in the affirmative, 31:

Adams	Erdman	Hudkins	McDonald	Wallman
Aguilar	Friend	Janssen	Nantkes	White
Avery	Fulton	Johnson	Pahls	Wightman
Burling	Gay	Kopplin	Pirsch	
Carlson	Hansen	Langemeier	Raikes	
Christensen	Harms	Lathrop	Rogert	
Engel	Heidemann	Louden	Schimek	

Voting in the negative, 0.

Present and not voting, 9:

Ashford	Fischer	Karpisek	Nelson	Preister
Dubas	Howard	Kruse	Pankonin	

Excused and not voting, 9:

Chambers	Dierks	McGill	Pedersen	Synowiecki
Cornett	Flood	Mines	Stuthman	

The appointment was confirmed with 31 ayes, 0 nays, 9 present and not voting, and 9 excused and not voting.

Senator Aguilar moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 698:

State Emergency Response Commission  
 Tim Hofbauer  
 Dana Miller

Voting in the affirmative, 31:

Adams	Erdman	Hudkins	Nelson	Synowiecki
Aguilar	Fischer	Janssen	Pahls	Wallman
Avery	Friend	Johnson	Pirsch	White
Burling	Fulton	Karpisek	Preister	
Carlson	Gay	Kopplin	Raikes	
Christensen	Hansen	Langemeier	Rogert	
Engel	Harms	Nantkes	Schimek	

Voting in the negative, 0.

Present and not voting, 10:

Ashford	Heidemann	Kruse	Louden	Pankonin
Dubas	Howard	Lathrop	McDonald	Wightman

Excused and not voting, 8:

Chambers	Dierks	McGill	Pedersen
Cornett	Flood	Mines	Stuthman

The appointments were confirmed with 31 ayes, 0 nays, 10 present and not voting, and 8 excused and not voting.

Senator Erdman moved the adoption of the Agriculture Committee report for the confirmation of the following appointment(s) found on page 698:

Nebraska State Fair Board  
 Linda Lovgren

Voting in the affirmative, 35:

Adams	Dubas	Hansen	Louden	Preister
Aguilar	Erdman	Heidemann	McDonald	Rogert
Ashford	Fischer	Hudkins	Nantkes	Schimek
Avery	Flood	Janssen	Nelson	Stuthman
Burling	Friend	Karpisek	Pahls	Synowiecki
Christensen	Fulton	Kruse	Pankonin	White
Cornett	Gay	Langemeier	Pirsch	Wightman

Voting in the negative, 0.

Present and not voting, 9:

Carlson	Harms	Johnson	Lathrop	Wallman
Engel	Howard	Kopplin	Raikes	

Excused and not voting, 5:

Chambers	Dierks	McGill	Mines	Pedersen
----------	--------	--------	-------	----------

The appointment was confirmed with 35 ayes, 0 nays, 9 present and not voting, and 5 excused and not voting.

Senator Erdman moved the adoption of the Agriculture Committee report for the confirmation of the following appointment(s) found on page 698:

Nebraska State Fair Board  
Sallie Atkins

Voting in the affirmative, 27:

Adams	Fischer	Heidemann	Louden	Rogert
Burling	Friend	Howard	McDonald	Synowiecki
Cornett	Fulton	Johnson	Nantkes	Wightman
Dubas	Gay	Karpisek	Nelson	
Engel	Hansen	Kopplin	Pahls	
Erdman	Harms	Langemeier	Pirsch	

Voting in the negative, 0.

Present and not voting, 17:

Aguilar	Christensen	Kruse	Raikes	White
Ashford	Flood	Lathrop	Schimek	
Avery	Hudkins	Pankonin	Stuthman	
Carlson	Janssen	Preister	Wallman	

Excused and not voting, 5:

Chambers	Dierks	McGill	Mines	Pedersen
----------	--------	--------	-------	----------

The appointment was confirmed with 27 ayes, 0 nays, 17 present and not voting, and 5 excused and not voting.

Senator Fischer moved the adoption of the Transportation and Telecommunications Committee report for the confirmation of the following appointment(s) found on page 699:

Nebraska Motor Vehicle Industry Licensing Board

Jack Henry  
Toby Miller  
Kelly Smith

Voting in the affirmative, 28:

Adams	Erdman	Harms	Kopplin	Rogert
Burling	Fischer	Heidemann	Langemeier	Schimek
Christensen	Friend	Howard	McDonald	Stuthman
Cornett	Fulton	Hudkins	Nantkes	Synowiecki
Dubas	Gay	Johnson	Nelson	
Engel	Hansen	Karpisek	Pirsch	

Voting in the negative, 0.

Present and not voting, 16:

Aguilar	Flood	Louden	Raikes
Ashford	Janssen	Pahls	Wallman
Avery	Kruse	Pankonin	White
Carlson	Lathrop	Preister	Wightman

Excused and not voting, 5:

Chambers	Dierks	McGill	Mines	Pedersen
----------	--------	--------	-------	----------

The appointments were confirmed with 28 ayes, 0 nays, 16 present and not voting, and 5 excused and not voting.

Senator Fischer moved the adoption of the Transportation and Telecommunications Committee report for the confirmation of the following appointment(s) found on page 699:

Nebraska Information Technology Commission

Linda Aerni  
Patrick Flanagan  
Lance Hedquist  
Daniel Hoelsing  
Harold Huggenberger  
Doug Kristensen

Voting in the affirmative, 33:

Adams	Dierks	Harms	Louden	Schimek
Aguilar	Engel	Heidemann	McDonald	Stuthman
Avery	Erdman	Howard	Nantkes	Synowiecki
Burling	Fischer	Hudkins	Nelson	Wallman
Carlson	Friend	Karpisek	Pirsch	Wightman
Christensen	Fulton	Kopplin	Preister	
Cornett	Hansen	Langemeier	Rogert	

Voting in the negative, 0.

Present and not voting, 12:

Ashford	Gay	Kruse	Pankonin
Dubas	Janssen	Lathrop	Raikes
Flood	Johnson	Pahls	White

Excused and not voting, 4:

Chambers	McGill	Mines	Pedersen
----------	--------	-------	----------

The appointments were confirmed with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

## GENERAL FILE

**LEGISLATIVE BILL 395.** The second committee amendment is as follows:

FA16

6 Sec. 19. A proprietor shall post a no-smoking sign or the  
7 international no-smoking symbol clearly and conspicuously at every  
8 entrance to a place of employment or public place where smoking is  
9 prohibited under the Nebraska Clean Indoor Air Act and shall take  
10 other necessary and appropriate steps to ensure compliance with the  
11 act at such place.

14 7. On page 9, line 1, strike the third "and"; and in line  
15 2 strike "reasonable".

16 8. Renumber the remaining sections and correct internal  
17 references accordingly.

Senator White offered the following amendment to the second committee amendment:

AM593

(Amendments to FA16)

1 1. Strike the amendments and insert the following new  
2 amendment:

3 1. Strike the original sections and all amendments  
4 thereto and insert the following new sections:

5 Section 1. Sections 1 to 25 of this act shall be known  
6 and may be cited as the Nebraska Clean Indoor Air Act.

7     Sec. 2. The Legislature declares it to be the public  
8 policy of this state to encourage smoke-free places of employment  
9 and public places to reduce the health and safety risks posed  
10 by smoking in such places. The purposes of the Nebraska Clean  
11 Indoor Air Act are to protect the public health and welfare and to  
12 recognize that the need to breathe smoke-free air has priority over  
13 the desire to smoke.

14     Sec. 3. For purposes of the Nebraska Clean Indoor Air  
15 Act, the definitions found in sections 4 to 15 of this act apply.

16     Sec. 4. Employed means hired, contracted, subcontracted,  
17 or otherwise engaged to furnish goods or services.

18     Sec. 5. Employee means a person who is employed by an  
19 employer in consideration for direct or indirect monetary wages,  
20 profit, or other remuneration.

21     Sec. 6. Employer means a person, nonprofit entity, sole  
22 proprietorship, partnership, joint venture, corporation, limited  
1 partnership, limited liability company, cooperative, firm, trust,  
2 association, organization, or other business entity formed for  
3 profit-making purposes, including retail establishments where goods  
4 or services are sold, who or which employs one or more employees.

5     Sec. 7. Guestroom or suite means sleeping rooms and  
6 directly associated private areas, such as bathrooms, living  
7 rooms, and kitchen areas, if any, rented to the public for  
8 their exclusive transient occupancy, including, but not limited to,  
9 guestrooms or suites in hotels, motels, inns, lodges, or other such  
10 establishments.

11     Sec. 8. Health director means (1) the Director of  
12 Regulation and Licensure or, if a chief medical officer is  
13 appointed pursuant to section 81-3201, the chief medical officer,  
14 (2) a health director of a local public health department as  
15 defined in section 71-1626 or the medical advisor to the board  
16 of health of a county, city, or village, and (3) an authorized  
17 representative of any of such officers.

18     Sec. 9. Indoor area means an area enclosed by a floor,  
19 a ceiling, and floor-to-ceiling walls on all sides that are  
20 continuous and solid except for closeable entry and exit doors and  
21 windows.

22     Sec. 10. International no-smoking symbol means a  
23 pictorial representation of a burning cigarette enclosed in a red  
24 circle with a red bar across it.

25     Sec. 11. Place of employment means an indoor area under  
26 the control of a proprietor that an employee accesses as part  
27 of the course of employment without regard to whether work is  
1 occurring at any given time. The indoor area includes, but is not  
2 limited to, any work area, employee breakroom, restroom, conference  
3 room, meeting room, classroom, employee cafeteria, and hallway.

4     Sec. 12. Proprietor means any employer, owner, operator,  
5 supervisor, manager, or any other person who controls, governs, or  
6 directs the activities in a place of employment or public place.

7     Sec. 13. Public place means an indoor area to which the  
8 public is invited or in which the public is permitted, whether or  
9 not the public is always invited or permitted.

10    Sec. 14. Smoke or smoking means the lighting of any  
11 cigarette, cigar, or pipe or the possession of any lighted  
12 cigarette, cigar, or pipe, regardless of its composition.

13    Sec. 15. Tobacco retail outlet means a retail store that  
14 sells only tobacco and related products and in which the sale of  
15 other products is only incidental.

16    Sec. 16. Except as otherwise permitted pursuant to  
17 sections 17 and 23 of this act, it is unlawful for any person  
18 to smoke in a place of employment or a public place.

19    Sec. 17. The following areas shall be exempt from the  
20 prohibition in section 16 of this act:

21     (1) Private residences;

22     (2) Guestrooms and suites that are rented to guests and  
23 are designated as smoking rooms, except that not more than twenty  
24 percent of rooms rented to guests in an establishment may be  
25 designated as smoking rooms. All smoking rooms on the same floor  
26 shall be contiguous and smoke from these rooms shall not infiltrate  
27 into areas where smoking is prohibited under the Nebraska Clean  
1 Indoor Air Act;

2     (3) Tobacco retail outlets; and

3     (4) Areas used as part of a research study on the  
4 health effects of smoking conducted in a scientific or analytical  
5 laboratory either governed by state or federal law or at a  
6 college or university approved by the Coordinating Commission for  
7 Postsecondary Education. The proprietor shall post a temporary sign  
8 on all entrances to the laboratory indicating that smoking is being  
9 allowed for research purposes.

10    Sec. 18. A proprietor shall post a no-smoking sign or the  
11 international no-smoking symbol clearly and conspicuously at every  
12 entrance to a place of employment or public place where smoking is  
13 prohibited under the Nebraska Clean Indoor Air Act and shall take  
14 other necessary and appropriate steps to ensure compliance with the  
15 act at such place.

16    Sec. 19. No person or employer shall discharge, refuse  
17 to hire, or in any manner retaliate against an employee, applicant  
18 for employment, or customer because that employee, applicant, or  
19 customer exercises any rights afforded by the Nebraska Clean Indoor  
20 Air Act or reports or attempts to prosecute a violation of the act.

21    Sec. 20. (1) A person who smokes in a place of employment  
22 or a public place in violation of the Nebraska Clean Indoor Air  
23 Act is guilty of a Class V misdemeanor for the first offense  
24 and a Class IV misdemeanor for the second and any subsequent  
25 offenses. For each offense, a person charged with such a violation  
26 may voluntarily enroll, at his or her own expense, in a smoking  
27 cessation program approved by the Department of Health and Human  
1 Services. Upon successful completion of the program, the charge

2 shall be dismissed.

3 (2) A proprietor who fails, neglects, or refuses to  
4 perform a duty under the Nebraska Clean Indoor Air Act is guilty  
5 of a Class V misdemeanor for the first offense and a Class IV  
6 misdemeanor for the second and any subsequent offenses.

7 (3) Each day that a violation continues to exist shall  
8 constitute a separate and distinct offense.

9 (4) Every act or omission constituting a violation of  
10 the Nebraska Clean Indoor Air Act by an employee or agent of a  
11 proprietor is deemed to be the act or omission of such proprietor,  
12 and such proprietor shall be subject to the same penalty as if the  
13 act or omission had been committed by such proprietor.

14 Sec. 21. (1) The Department of Health and Human Services  
15 Regulation and Licensure shall engage in an ongoing program to  
16 explain and clarify the purposes and requirements of the Nebraska  
17 Clean Indoor Air Act to persons affected by the act and to guide  
18 proprietors in complying with the act. The program may include  
19 publication of a brochure for affected persons explaining the  
20 provisions of the act.

21 (2) The department shall adopt and promulgate rules  
22 and regulations necessary to implement the Nebraska Clean Indoor  
23 Air Act. The department shall consult with interested persons  
24 and professional organizations before adopting such rules and  
25 regulations.

26 Sec. 22. The Director of Regulation and Licensure and  
27 local public health departments as defined in section 71-1626 shall  
1 administer and enforce the provisions of the Nebraska Clean Indoor  
2 Air Act unless otherwise provided pursuant to section 23 of this  
3 act.

4 Sec. 23. (1)(a) In any city or village which had an  
5 ordinance with respect to smoking regulation in effect on January  
6 1, 2007, the provisions of such ordinance shall supersede the  
7 provisions of the Nebraska Clean Indoor Air Act until June 1, 2009.  
8 Beginning June 1, 2009, in such a city or village, the ordinance  
9 shall continue in effect unless:

10 (i) The governing body of the city or village adopts an  
11 ordinance on smoking regulation as described in subdivision (b) of  
12 this subsection; or

13 (ii) The governing body of the city or village, or the  
14 voters of the city or village pursuant to sections 18-2501 to  
15 18-2537, submit the issue of smoking regulation to the voters at an  
16 election called for such purpose.

17 (b) The smoking regulation under subdivision (a)(i) or  
18 (ii) of this subsection may be as stringent as the provisions  
19 of the Nebraska Clean Indoor Air Act, more stringent than such  
20 provisions, or less stringent than such provisions, including  
21 exempting any part or all of the city or village from such  
22 provisions.

23 (2)(a) In any city or village which did not have an

24 ordinance with respect to smoking in effect on January 1, 2007:

25 (i) The governing body of the city or village may adopt  
 26 an ordinance on smoking regulation as described in subdivision (b)  
 27 of this subsection; or

1 (ii) The governing body of the city or village, or the  
 2 voters of the city or village pursuant to sections 18-2501 to  
 3 18-2537, may submit the issue of smoking regulation to the voters  
 4 at an election called for such purpose.

5 (b) The smoking regulation under subdivision (a)(i) or  
 6 (ii) of this subsection may be as stringent as the provisions  
 7 of the Nebraska Clean Indoor Air Act, more stringent than such  
 8 provisions, or less stringent than such provisions, including  
 9 exempting any part or all of the city or village from such  
 10 provisions.

11 (3)(a) In any area of a county outside the corporate  
 12 limits of a city or village:

13 (i) The county board may adopt a resolution regarding  
 14 smoking regulation as described in subdivision (b) of this  
 15 subsection for the area of the county outside the corporate  
 16 limits of a city or village; or

17 (ii) The county board or the voters of the area of  
 18 the county outside the corporate limits of a city or village may  
 19 submit the issue of smoking regulation to the voters of such area  
 20 at an election called for such purpose. The voters may have the  
 21 issue placed on the ballot by submitting a petition containing the  
 22 proposed smoking regulation to the county board signed by at least  
 23 five percent of the number of registered voters of the area in the  
 24 county outside the corporate limits of any city or village.

25 (b) The smoking regulation under subdivision (a)(i) or  
 26 (ii) of this subsection may be as stringent as the provisions  
 27 of the Nebraska Clean Indoor Air Act, more stringent than such  
 1 provisions, or less stringent than such provisions, including  
 2 exempting any part or all of the area of the county outside the  
 3 corporate limits of any city or village from such provisions.

4 Sec. 24. The Nebraska Clean Indoor Air Act shall not be  
 5 interpreted or construed to permit smoking where it is otherwise  
 6 restricted by other applicable law.

7 Sec. 25. The Nebraska Clean Indoor Air Act shall be  
 8 liberally construed to further its purposes.

9 Sec. 26. This act becomes operative on June 1, 2008.

10 Sec. 27. If any section in this act or any part of any  
 11 section is declared invalid or unconstitutional, the declaration  
 12 shall not affect the validity or constitutionality of the remaining  
 13 portions.

14 Sec. 28. The following sections are outright repealed:  
 15 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,  
 16 71-5709, 71-5710, 71-5711, 71-5712, and 71-5713, Reissue Revised  
 17 Statutes of Nebraska, and sections 71-5705 and 71-5707, Revised  
 18 Statutes Cumulative Supplement, 2006.

Senator Erdman moved the previous question. The question is, "Shall the debate now close?"

Senator Erdman moved for a call of the house. The motion prevailed with 32 ayes, 0 nays, and 17 not voting.

The motion to cease debate prevailed with 28 ayes, 6 nays, 12 present and not voting, and 3 excused and not voting.

The White amendment was adopted with 28 ayes, 4 nays, 14 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

The second committee amendment, as amended, was adopted with 31 ayes, 0 nays, 15 present and not voting, and 3 excused and not voting.

Senator Johnson withdrew his amendments, AM345 and FA14, found on page 570.

Senator Johnson asked unanimous consent to withdraw the balance of the committee amendment, AM276, found on page 511. No objections. So ordered.

Senator Johnson withdrew his amendment, AM321, found on page 561.

Senator Nantkes withdrew her amendment, AM340, found on page 571.

Senator Rogert withdrew his amendment, AM349, found on page 571.

Senator Erdman withdrew his amendment, FA22, found on page 571.

Advanced to E & R for review with 32 ayes, 6 nays, 8 present and not voting, and 3 excused and not voting.

### **COMMITTEE REPORTS** **Enrollment and Review**

**LEGISLATIVE BILL 497.** Placed on Select File - ER8040.  
ER8040

- 1 1. On page 1, line 2, after "Act" insert "; and to
- 2 declare an emergency".
- 3 2. On page 3, line 12, strike "days" and insert "days'".

### **Correctly Engrossed**

The following bills were correctly engrossed: LBs 239, 296, and 390.

(Signed) Amanda McGill, Chairperson

### ANNOUNCEMENTS

Senator Aguilar designates LB 564 as his priority bill.

The Natural Resources Committee designates LB 579 and LB 295 as its priority bills.

### NOTICE OF COMMITTEE HEARING

#### Appropriations

Room 1524

Tuesday, March 20, 2007 (reschedule)

1:30 p.m.

AGENCY 82 - Commission for the Deaf and Hard of Hearing

AGENCY 81 - Commission for the Blind and Visually Impaired

AGENCY 38 - Commission on the Status of Women

AGENCY 68 - Commission on Mexican-Americans

AGENCY 70 - State Foster Care Review Board

AGENCY 76 - Commission on Indian Affairs

(Signed) Lavon Heidemann, Chairperson

### ANNOUNCEMENT

Senator Hudkins announced the Rules Committee will hold a public hearing on March 20, 2007, at 12:00 p.m. in Room 1525.

### AMENDMENTS - Print in Journal

Senator Johnson filed the following amendment to LB 395:  
AM585

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Sections 1 to 20 of this act shall be known
- 4 and may be cited as the Nebraska Clean Indoor Air Act.
- 5 Sec. 2. The purpose of the Nebraska Clean Indoor Air Act
- 6 is to protect the public health and welfare by prohibiting smoking
- 7 in public places and places of employment. The act shall not be
- 8 construed to prohibit or otherwise restrict smoking in outdoor
- 9 areas. The act shall not be construed to permit smoking where it is
- 10 prohibited or otherwise restricted by other applicable law. The act
- 11 shall be liberally construed to further its purpose.
- 12 Sec. 3. For purposes of the Nebraska Clean Indoor Air
- 13 Act, the definitions found in sections 4 to 13 of this act apply.
- 14 Sec. 4. Employed means hired, contracted, subcontracted,
- 15 or otherwise engaged to furnish goods or services.
- 16 Sec. 5. Employee means a person who is employed by an
- 17 employer in consideration for direct or indirect monetary wages.

18 profit, or other remuneration.

19 Sec. 6. Employer means a person, nonprofit entity, sole  
20 proprietorship, partnership, joint venture, corporation, limited  
21 partnership, limited liability company, cooperative, firm, trust,  
22 association, organization, or other business entity, including  
23 retail establishments where goods or services are sold, who or  
1 which employs one or more employees.

2 Sec. 7. Guestroom or suite means a sleeping room and  
3 directly associated private areas, such as a bathroom, a living  
4 room, and a kitchen area, if any, rented to the public for their  
5 exclusive transient occupancy, including, but not limited to, a  
6 guestrooms or suite in a hotel, motel, inn, lodge, or other such  
7 establishment.

8 Sec. 8. Indoor area means an area enclosed by a floor,  
9 a ceiling, and walls on all sides that are continuous and solid  
10 except for closeable entry and exit doors and windows and in which  
11 less than twenty percent of the total wall area is permanently open  
12 to the outdoors. For walls in excess of eight feet in height, only  
13 the first eight feet shall be used in determining such percentage.

14 Sec. 9. Place of employment means an indoor area under  
15 the control of a proprietor that an employee accesses as part  
16 of his or her employment without regard to whether the employee  
17 is present or work is occurring at any given time. The indoor  
18 area includes, but is not limited to, any work area, employee  
19 breakroom, restroom, conference room, meeting room, classroom,  
20 employee cafeteria, and hallway. A private residence is a place of  
21 employment when such residence is being used as a licensed child  
22 care program and one or more children who are not occupants of such  
23 residence are present.

24 Sec. 10. Proprietor means any employer, owner, operator,  
25 supervisor, manager, or other person who controls, governs, or  
26 directs the activities in a place of employment or public place.

27 Sec. 11. Public place means an indoor area to which the  
1 public is invited or in which the public is permitted, whether or  
2 not the public is always invited or permitted. A private residence  
3 is not a public place.

4 Sec. 12. Smoke or smoking means the lighting of any  
5 cigarette, cigar, pipe, or other smoking material or the possession  
6 of any lighted cigarette, cigar, pipe, or other smoking material,  
7 regardless of its composition.

8 Sec. 13. Tobacco retail outlet means a retail store that  
9 sells only tobacco and related products and in which the sale of  
10 other products is only incidental.

11 Sec. 14. Except as otherwise provided in sections 15 and  
12 16 of this act, it is unlawful for any person to smoke in a place  
13 of employment or a public place.

14 Sec. 15. The following indoor areas are exempt from  
15 section 14 of this act:

16 (1) Guestrooms and suites that are rented to guests and

17 are designated as smoking rooms, except that not more than twenty  
 18 percent of rooms rented to guests in an establishment may be  
 19 designated as smoking rooms. All smoking rooms on the same floor  
 20 shall be contiguous, and smoke from such rooms shall not infiltrate  
 21 into areas where smoking is prohibited under the Nebraska Clean  
 22 Indoor Air Act;

23 (2) Indoor areas used in connection with a research  
 24 study on the health effects of smoking conducted in a scientific  
 25 or analytical laboratory under state or federal law or at a  
 26 college or university approved by the Coordinating Commission for  
 27 Postsecondary Education; and

1 (3) Tobacco retail outlets.

2 Sec. 16. On and after November 1, 2008, the voters of  
 3 any city or village may adopt an ordinance that is less stringent  
 4 or more stringent than the Nebraska Clean Indoor Air Act, except  
 5 that such ordinance shall not be less stringent than the Nebraska  
 6 Clean Indoor Air Act as such act existed immediately prior to the  
 7 effective date of this act. Such ordinance may be placed on the  
 8 ballot by a majority vote of the governing body of the city or  
 9 village or by initiative under sections 18-2501 to 18-2538. A copy  
 10 of such ordinance shall be provided to the Department of Health and  
 11 Human Services Regulation and Licensure.

12 Sec. 17. A proprietor shall post a no-smoking sign or the  
 13 international no-smoking symbol clearly and conspicuously at every  
 14 entrance to a place of employment or public place where smoking is  
 15 prohibited under the Nebraska Clean Indoor Air Act and shall take  
 16 other necessary and appropriate steps to ensure compliance with the  
 17 act at such place.

18 Sec. 18. (1) The Department of Health and Human Services  
 19 Regulation and Licensure or a local public health department as  
 20 defined in section 71-1626 may institute an action in any court  
 21 with jurisdiction to enjoin a violation of the Nebraska Clean  
 22 Indoor Air Act. Any interested party may report possible violations  
 23 of the act to such departments.

24 (2) No person or employer shall discharge, refuse to  
 25 hire, or in any manner retaliate against an employee, applicant  
 26 for employment, or customer because such employee, applicant, or  
 27 customer reports or attempts to report a violation of the act.

1 (3) The Department of Health and Human Services  
 2 Regulation and Licensure or a local public health department may  
 3 waive provisions of the Nebraska Clean Indoor Air Act upon good  
 4 cause shown and shall provide for appropriate protection of the  
 5 public health and safety in the granting of such waivers.

6 Sec. 19. (1) A person who smokes in a place of employment  
 7 or a public place in violation of the Nebraska Clean Indoor Air  
 8 Act is guilty of a Class V misdemeanor for the first offense and  
 9 a Class IV misdemeanor for the second and any subsequent offenses.  
 10 A person charged with such offense may voluntarily participate, at  
 11 his or her own expense, in a smoking cessation program approved

12 by the Department of Health and Human Services Regulation and  
 13 Licensure. The charge against such person shall be dismissed upon  
 14 successful completion of the program.

15 (2) A proprietor who fails, neglects, or refuses to  
 16 perform a duty under the Nebraska Clean Indoor Air Act is guilty  
 17 of a Class V misdemeanor for the first offense and a Class IV  
 18 misdemeanor for the second and any subsequent offenses.

19 (3) Each day that a violation continues to exist shall  
 20 constitute a separate and distinct violation.

21 (4) Every act or omission constituting a violation of  
 22 the Nebraska Clean Indoor Air Act by an employee or agent of a  
 23 proprietor is deemed to be the act or omission of such proprietor,  
 24 and such proprietor shall be subject to the same penalty as if the  
 25 act or omission had been committed by such proprietor.

26 Sec. 20. The Department of Health and Human Services  
 27 Regulation and Licensure shall adopt and promulgate rules and  
 1 regulations necessary to implement the Nebraska Clean Indoor  
 2 Air Act. The department shall consult with interested persons  
 3 and professional organizations before adopting such rules and  
 4 regulations.

5 Sec. 21. If any section in this act or any part of any  
 6 section is declared invalid or unconstitutional, the declaration  
 7 shall not affect the validity or constitutionality of the remaining  
 8 portions.

9 Sec. 22. The following sections are outright repealed:  
 10 Sections 71-5701, 71-5702, 71-5703, 71-5704, 71-5706, 71-5708,  
 11 71-5709, 71-5710, 71-5711, 71-5712, and 71-5713, Reissue Revised  
 12 Statutes of Nebraska, and sections 71-5705 and 71-5707, Revised  
 13 Statutes Cumulative Supplement, 2006.

Senator Hudkins filed the following amendment to LB 659:  
 AM580

1 1. Insert the following new section:  
 2 Section 1. (1) The Nebraska Supreme Court has enacted  
 3 rules relating to Official Court Reporters. Rule 13 adopted by  
 4 the court reads as follows: "All leave, including holiday leave,  
 5 vacation leave, sick leave, funeral leave, family leave, military  
 6 leave, civil leave, injury leave, and workers' compensation  
 7 disability leave, shall be taken as provided in the authorized  
 8 leave policies of the Nebraska Supreme Court Personnel Policies  
 9 and Procedures. Provided, however, that an official reporter shall  
 10 take vacation leave at the same time as or at the discretion of  
 11 the appointing judge. If the official reporter is permitted to  
 12 take vacation at a time other than when the appointing judge takes  
 13 vacation and the services of a substitute reporter are required by  
 14 such judge, it shall be the obligation of the official reporter  
 15 taking vacation to arrange for the services of a substitute  
 16 reporter at no cost to the State, unless otherwise determined by  
 17 the State Court Administrator. The substitute reporter must have

18 passed an examination at least as stringent as that described  
 19 in Rule 4B. The arrangement may not be implemented unless first  
 20 approved by the State Court Administrator."

21 (2) That portion of Rule 13 that reads as follows: "it  
 22 shall be the obligation of the official reporter taking vacation  
 23 to arrange for the services of a substitute reporter at no cost  
 1 to the State, unless otherwise determined by the State Court  
 2 Administrator" is contrary to good public policy.

3 2. Renumber the remaining sections accordingly.

Senator Fischer filed the following amendment to LB 395:

FA23

On page 2, in line 18, after "act" insert "The Legislature further declares that since tobacco smoke is so offensive, the state shall no longer accept special privilege tax on cigarettes after effective date of this act."

Senator Erdman filed the following amendment to LB 395:

AM366

1 1. Strike section 24 and insert the following section:

2 Sec. 24. The Nebraska Clean Indoor Air Act preempts and  
 3 supersedes any ordinance or resolution of a political subdivision  
 4 that prohibits or regulates smoking in a place of employment or a  
 5 public place.

6 2. On page 2, strike beginning with "Nothing" in line 15  
 7 through line 18.

## RESOLUTIONS

**LEGISLATIVE RESOLUTION 43.** Introduced by Stuthman, 22.

WHEREAS, the Howells High School Wrestling Team won the Class D State Wrestling Championship; and

WHEREAS, since 1994, the Howells High School Wrestling Team has had at least one wrestler in the state championship finals each year except 1998 and has also been a top ten team at state each year but one; and

WHEREAS, the Legislature should recognize the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRETH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Howells High School Wrestling Team be congratulated for their exemplary effort this season.

2. That a copy of this resolution be sent to Coach Lee Schroeder and the Howells High School Wrestling Team.

Laid over.

**LEGISLATIVE RESOLUTION 44.** Introduced by Stuthman, 22.

WHEREAS, the Humphrey St. Francis Flyers girls' basketball team won

the Class D-1 Girls' State High School Basketball Championship with a 77-27 win over Freeman; and

WHEREAS, this was Humphrey St. Francis' third straight state title and the largest margin of victory of any state tournament championship game; and

WHEREAS, Humphrey St. Francis ended its season 26-0 and extended its winning streak to 50 games; and

WHEREAS, the Legislature should recognize the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Humphrey St. Francis Flyers girls' basketball team be congratulated for their exemplary effort this season.

2. That a copy of this resolution be sent to Coach Bryan Reichmuth and the Humphrey St. Francis Flyers girls' basketball team.

Laid over.

**LEGISLATIVE RESOLUTION 45.** Introduced by Gay, 14.

WHEREAS, Technical Sergeant Kari Bealer has served in the United States Air Force for twenty years; and

WHEREAS, Technical Sergeant Kari Bealer has served since 2003 as the Noncommissioned Officer in Charge of Information Management for the University of Nebraska-Lincoln United States Air Force Reserve Officer Training Corps, Detachment 465; and

WHEREAS, during Technical Sergeant Kari Bealer's tenure at the University of Nebraska-Lincoln, Detachment 465 received an Excellent rating during the Inspector General's 2004 inspection, one of only two ROTC units to receive an Excellent rating; and

WHEREAS, Technical Sergeant Kari Bealer was instrumental in Detachment 465 receiving the 2005 Right of Line Award for being the best Air Force ROTC detachment in the nation; and

WHEREAS, Technical Sergeant Kari Bealer was instrumental in helping to commission over seventy new Air Force officers from all over Nebraska; and

WHEREAS, during Technical Sergeant Kari Bealer's service in the United States Air Force, she has been the recipient of several distinguished awards, including: The Joint Service Commendation Medal; the Air Force Commendation Medal with 2 Oak Leaf Clusters; the Air Force Achievement Medal; the Joint Meritorious Unit Award with 3 Oak Leaf Clusters; the Air Force Outstanding Unit Award; the Air Force Organizational Excellence Award with 2 Oak Leaf Clusters; the Air Force Good Conduct Medal with 5 Oak Leaf Clusters; the National Defense Service Medal with 1 Oak Leaf Cluster; the Global War on Terrorism Service Medal; the Korean Defense Service Medal; the Air Force Overseas Short Tour Service Ribbon; the Military Outstanding Volunteer Service Medal; the Air Force Longevity Service Award with 3 Oak Leaf Clusters; the Noncommissioned Officer

Professional Military Education Graduate Ribbon with 2 Oak Leaf Clusters; and the Air Force Training Ribbon.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Technical Sergeant Kari Bealer on her retirement from the United States Air Force and recognizes her for her outstanding service to the United States of America and to the State of Nebraska.

2. That a copy of this resolution be sent to Technical Sergeant Kari Bealer.

Laid over.

### BILL ON FIRST READING

The following bill was read for the first time by title:

**LEGISLATIVE BILL 370A.** Introduced by Erdman, 47.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 370, One Hundredth Legislature, First Session, 2007; and to declare an emergency.

### GENERAL FILE

**LEGISLATIVE BILL 57.** Title read. Considered.

Senator Erdman offered the following amendment:

FA35

On page 4 line 18 strike beginning with "together" through "costs" on line 19.

Pending.

### ANNOUNCEMENTS

Senator Carlson designates LB 458 as his priority bill.

The Urban Affairs Committee designates LB 597 and LB 160 as its priority bills.

### RESOLUTION

**LEGISLATIVE RESOLUTION 46.** Introduced by Louden, 49; Erdman, 47; Harms, 48; Karpisek, 32.

WHEREAS, the Alliance High School Women's Basketball team won its first Nebraska State Championship on March 3, 2007, defeating the Crete High School Women's Basketball team 55 to 40 in Lincoln for the Class B Title; and

WHEREAS, the Bulldogs' season record was 23 wins, 1 loss; and

WHEREAS, the Bulldogs' tournament victory was due in part to their magnificent performance at the free-throw line, where they hit 37 for 40 in their last six quarters, and 27 for 28 against the Cardinals, which is the second-longest streak in national high school history; and

WHEREAS, team members are Lindsey Briggs, Martie Burke, Jasmine Clarke, Kayla Friesen, Jordan Hooper, Brittany Lurz, Krista McDonald, Jessica Mills, Taylor Moller, Brooke Peters, Asha Van Tilburg, Audrey Van Tilburg, and Anna Wimmer; team managers are Devan Collins, Heather Farritor, and Erica Smith; assistant coaches are Nate Lanik and Heidi Manion, and the Head Coach is Dave Sautter.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates the team members, managers, and coaches of the Alliance High School Women's Basketball team, the Bulldogs, on their championship season and 2007 State Title in Class B Basketball.

2. That a copy of this resolution be provided to Coach Sautter.

Laid over.

#### AMENDMENT - Print in Journal

Senator Schimek filed the following amendment to LB 402:  
AM581

1 1. On page 9, after line 18, insert the following new  
2 subsection:  
3 "(3) If any of the redistricting bills with the  
4 amendments introduced under subsection (2) of this section fails  
5 to advance from General File, the Clerk of the Legislature shall  
6 inform the director that the redistricting plan was not advanced  
7 and the reasons why the redistricting plan was not advanced.  
8 The director shall prepare an amendment containing a third  
9 redistricting plan for such bills and shall take into account the  
10 reasons cited by the Clerk of the Legislature for the failure to  
11 advance the redistricting plan insofar as it is possible to do  
12 so within the requirements of section 6 of this act. If a third  
13 redistricting plan is required under this subsection, the director  
14 shall deliver the amendment to the Speaker of the Legislature no  
15 later than fourteen days after the date of the vote by which the  
16 Legislature failed to advance the bill from General File. If it  
17 is necessary to submit an amendment under this subsection, the  
18 bill shall be brought to a vote not less than seven days after  
19 the amendment is delivered to the Speaker of the Legislature. The  
20 same procedure shall be used for the third redistricting plan as  
21 prescribed for the first and second redistricting plans, but the  
22 amendment containing the third redistricting plan shall be subject  
23 to amendment in the same manner as other amendments to other  
1 legislative bills."

**VISITOR**

The Doctor of the Day was Dr. Paul Paulman from Omaha.

**ADJOURNMENT**

At 11:58 a.m., on a motion by Senator Burling, the Legislature adjourned until 9:00 a.m., Wednesday, March 7, 2007.

Patrick J. O'Donnell  
Clerk of the Legislature