

FIFTY-EIGHTH DAY - APRIL 4, 2007**LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE
FIRST SESSION****FIFTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska
Wednesday, April 4, 2007

PRAYER

The prayer was offered by Senator Kruse.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Flood presiding.

The roll was called and all members were present except Senators Ashford, Cornett, and White who were excused; and Senators Dierks, Engel, Erdman, Raikes, and Stuthman who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifty-seventh day was approved.

GENERAL FILE

LEGISLATIVE BILL 564. Committee AM879, found on page 1015 and considered on page 1058, was renewed.

Senator Chambers renewed his amendment, FA58, found on page 1059, to the committee amendment.

SENATOR LANGEMEIER PRESIDING

Senator Chambers withdrew his amendment.

Senator Chambers offered the following amendment to the committee amendment:

FA59

Amend AM879 P. 4, lines 6 and 7, strike "resulting from the inherent risk of the recreational activity".

SENATOR ERDMAN PRESIDING

SENATOR FISCHER PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 26 ayes, 0 nays, and 23 not voting.

The Chambers amendment lost with 0 ayes, 29 nays, 15 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:
Reconsider vote just taken on FA59.

SENATOR LANGEMEIER PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with 19 ayes, 0 nays, and 30 not voting.

The Chambers motion to reconsider failed with 2 ayes, 23 nays, 14 present and not voting, and 10 excused and not voting.

The Chair declared the call raised.

Pending.

COMMITTEE REPORTS
Health and Human Services

LEGISLATIVE BILL 427. Placed on General File - Com AM843.
AM843

- 1 1. Strike the original sections and insert the following
- 2 new sections:
- 3 Section 1. Section 71-193.15, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 71-193.15 ~~A-~~(1) Except as otherwise provided in this
- 6 section, a licensed dental hygienist shall perform the traditional
- 7 dental hygiene functions set forth listed in section 71-193.17
- 8 only when authorized to do so by a licensed dentist who shall be
- 9 responsible for the total oral health care of the patient.
- 10 (2) ~~The Department of Health and Human Services~~
- 11 ~~Regulation and Licensure in the conduct of public health related~~
- 12 ~~services department may authorize a licensed dental hygienist to~~
- 13 ~~conduct preliminary perform the following functions in the conduct~~
- 14 ~~of public health-related services in a public health setting or~~
- 15 ~~in a health care or related facility: Preliminary charting and~~
- 16 ~~screening examinations; provide oral health education, including~~
- 17 ~~workshops and inservice training sessions on dental health; and~~
- 18 ~~for patients including the teaching of appropriate plaque control~~
- 19 ~~techniques, and perform or provide all of the duties that any~~

20 dental assistant is authorized to perform.

21 (3)(a) The department may authorize a licensed dental
 22 hygienist with three thousand hours of clinical experience in
 23 at least four of the preceding five calendar years to perform
 1 the following functions in the conduct of public health-related
 2 services in a public health setting or in a health care or related
 3 facility: Oral prophylaxis to healthy children who do not require
 4 antibiotic premedication; pulp vitality testing; and preventive
 5 measures, including the application of fluorides, sealants, and
 6 other recognized topical agents for the prevention of oral disease.

7 (b) Authorization shall be granted by the department
 8 under this subsection upon (i) filing an application with the
 9 department, (ii) providing evidence of current licensure and
 10 professional liability insurance coverage, and (iii) providing
 11 evidence of clinical experience as required under subdivision (a)
 12 of this subsection. Authorization may be limited by the department
 13 as necessary to protect the public health and safety upon good
 14 cause shown and may be renewed in connection with renewal of the
 15 dental hygienist's license.

16 (c) A licensed dental hygienist performing dental hygiene
 17 functions as authorized under this subsection shall (i) report
 18 authorized functions performed by him or her to the department
 19 and (ii) advise the patient or recipient of services or his or
 20 her authorized representative that such services are preventive in
 21 nature and do not constitute a comprehensive dental diagnosis and
 22 care.

23 Sec. 2. Section 71-193.16, Reissue Revised Statutes of
 24 Nebraska, is amended to read:

25 71-193.16 For purposes of sections 71-183 to 71-193.20: ~~;~~

26 ~~(1) general~~

27 (1) General supervision means the directing of the
 1 authorized activities of a dental hygienist or dental assistant
 2 by a licensed dentist and shall not be construed to require the
 3 physical presence of the supervisor when directing such activities;
 4 ~~and (2) indirect~~

5 (2) Health care or related facility means a hospital,
 6 a nursing facility, an assisted-living facility, a correctional
 7 facility, a tribal clinic, or a school-based preventive health
 8 program;

9 (3) Indirect supervision means supervision when the
 10 licensed dentist authorizes the procedure to be performed by a
 11 dental hygienist or dental assistant and the licensed dentist is
 12 physically present on the premises when such procedure is being
 13 performed by the dental hygienist pursuant to section 71-193.18 or
 14 by the dental assistant; and -

15 (4) Public health setting means a federal, state, or
 16 local public health department or clinic, community health center,
 17 rural health clinic, or other similar program or agency that serves
 18 primarily public health care program recipients.

19 Sec. 3. Section 71-193.17, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 ~~71-193.17 When properly authorized by and under the~~
22 ~~general supervision of a licensed dentist, a licensed dental~~
23 ~~hygienist, under the general supervision of a licensed dentist,~~
24 may perform the following intra and extra oral procedures and
25 functions

26 (1) Oral prophylaxis, periodontal scaling, and root
27 planing which includes supragingival and subgingival debridement;
1 Sealing of teeth, including subgingival regions and root planing
2 with hand and ultrasonic instruments;

3 (2) Polish all exposed tooth surfaces, including
4 with motor driven and hand instruments in the oral prophylaxis
5 procedure, including polishing amalgam restorations;

6 (3) Conduct and assess preliminary charting, probing,
7 and screening examinations, and indexing of dental and periodontal
8 disease, with referral, when appropriate, for a dental diagnosis by
9 a licensed dentist

10 (4) Brush biopsies;

11 (5) Pulp vitality testing;

12 (4) ~~Periodontal probing and charting;~~

13 (5)-(6) ~~Gingival curettage;~~

14 (6) ~~Place and remove periodontal dressings;~~

15 (7) ~~Remove~~ Removal of sutures;

16 (8) ~~Provide preventive~~ Preventive measures, such as
17 including the application of fluorides, sealants, and other
18 recognized topical agents for the prevention of oral disease;

19 (9) ~~Provide impressions~~ Impressions for study casts;

20 (10) ~~Apply~~ Application of topical desensitizing and
21 subgingival agents;

22 (11) ~~Provide radiographic~~ Radiographic exposures;

23 (12) ~~Provide oral~~ Oral health education, including
24 conducting workshops and inservice training sessions on dental
25 health; for patients including the teaching of appropriate plaque
26 control techniques; and

27 (13) Application or administration of antimicrobial
1 rinses, fluorides, and other anticariogenic agents; and

2 (13) ~~Perform or provide all~~ (14) All of the duties that
3 any dental assistant is authorized to perform.

4 Sec. 4. Original sections 71-193.15, 71-193.16, and
5 71-193.17, Reissue Revised Statutes of Nebraska, are repealed.

LEGISLATIVE BILL 479. Placed on General File - Com AM783.
AM783

1 1. Strike original sections 3, 4, 6, 7, 8, 18, and 20 and
2 insert the following new sections:

3 Sec. 13. Section 71-4706, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 71-4706 (1) Application for a license under sections

6 71-4701 to 71-4719 shall be made to the department on forms
7 prescribed by the department and shall be accompanied by the fee
8 established as provided in section 71-162. If the applicant is an
9 individual, the application shall include the applicant's social
10 security number. The department shall, without discrimination,
11 issue a license to any person who passes an examination provided
12 for in section 71-4707. The department shall issue a license to an
13 audiologist who complies with subsection (4) of section 71-4707 and
14 pays the fee described in subdivision (2)(b) of section 71-162.05
15 in lieu of the fee established as provided in section 71-162.

16 The license shall be effective until December 31 of the next
17 even-numbered year.

18 (2) Whenever the board determines that another state
19 or jurisdiction has requirements equivalent to those in effect
20 pursuant to sections 71-4701 to 71-4719 and that such state
21 or jurisdiction has a program equivalent to the program for
22 determining whether applicants pursuant to such sections are
23 qualified to fit and sell hearing aids, the department may issue
1 licenses to applicants who hold current, unsuspended, and unrevoked
2 certificates or licenses to fit and sell hearing aids in such other
3 state or jurisdiction. No such applicants for licensure shall be
4 required to submit to or undergo a qualifying examination if his
5 or her certificate or license is based upon a written examination
6 equivalent to the Nebraska examination.

7 Sec. 14. Section 71-4707, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 71-4707 (1) Any person may obtain a license by
10 successfully passing a qualifying examination if the applicant:

- 11 (a) Is at least twenty-one years of age;
- 12 (b) Is of good moral character;
- 13 (c) Has an education equivalent to a four-year course in
14 an accredited high school; and
- 15 (d) Is free of contagious or infectious disease.

16 (2) Each applicant for license by examination shall
17 appear at a time and place and before such persons as the
18 department may designate to be examined by means of written and
19 practical tests in order to demonstrate that he or she is qualified
20 to practice the fitting and sale of hearing aids. The examination
21 shall not be conducted in such a manner that college training is
22 required in order to pass. Nothing in this examination shall imply
23 that the applicant is required to possess the degree of medical
24 competence normally expected of physicians.

25 (3) The department shall give examinations as determined
26 by the board, except that a minimum of two examinations shall be
27 offered each calendar year.

1 (4) An audiologist may obtain a license without
2 examination if he or she provides the board with a copy of a valid
3 Nebraska license to practice audiology and maintains a practice in
4 which hearing aids are regularly dispensed.

- 5 Sec. 16. Original sections 71-1,186, 71-1,187, 71-1,190,
 6 71-1,195.01, 71-1,195.02, 71-1,195.03, 71-1,195.04, 71-1,195.05,
 7 71-1,195.06, 71-1,195.07, 71-1,195.08, 71-1,195.09, 71-4706,
 8 71-4707, and 81-651, Reissue Revised Statutes of Nebraska, are
 9 repealed.
- 10 2. On page 3, line 5, after "program" insert "for
 11 purposes of obtaining a license under sections 71-4701 to 71-4719";
 12 and in lines 7 and 25 strike "life span" and insert "lifespan.
 13 Such practice does not include the practice of medical diagnosis,
 14 medical treatment, or surgery".
- 15 3. On page 5, line 24, strike "or" and show as stricken.
- 16 4. On page 6, line 6, strike the period, show as
 17 stricken, and insert "; or"; and after line 6 insert the following
 18 new subdivision:
 19 "(6) The utilization of a speech aide or other personnel
 20 employed by a public school, educational service unit, or other
 21 private or public educational institution working under the direct
 22 supervision of a credentialed speech-language pathologist".
- 23 5. On page 11, line 11, after "(c)" insert "describe
 24 the".
- 25 6. Renumber the remaining sections accordingly.

(Signed) Joel Johnson, Chairperson

Business and Labor

LEGISLATIVE BILL 31. Placed on General File - Com AM926. AM926

- 1 1. Strike section 1 and insert the following section:
 2 Section 1. Section 48-1203, Reissue Revised Statutes of
 3 Nebraska, is amended to read:
 4 48-1203 (1) Except as otherwise provided in this section
 5 and section 48-1203.01, every employer shall pay to each of his
 6 or her employees who are seventeen years of age or older a
 7 minimum wage that is the federal minimum wage in effect on the
 8 effective date of this act or the state-calculated minimum wage
 9 under subsection (2) of this act, whichever is greater.
- 10 (2) The state-calculated minimum wage shall be: wages at
 11 the minimum rate of four dollars and twenty five cents per hour
 12 through August 31, 1997, and five dollars and fifteen cents per
 13 hour on and after September 1, 1997.
- 14 (a) Five dollars and fifteen cents per hour through
 15 September 30, 2007;
- 16 (b) Five dollars and fifty-two cents per hour on and
 17 after October 1, 2007, through September 30, 2008;
- 18 (c) Five dollars and eighty-nine cents on and after
 19 October 1, 2008, through September 30, 2009;
- 20 (d) Six dollars and twenty-six cents on and after October
 21 1, 2009, through September 30, 2010; and

22 (e) As calculated by the Department of Labor for wages
 23 beginning on October 1, 2010, through September 30, 2013. The
 1 department shall have such minimum wage calculated by June 15,
 2 2010, and shall adjust the six dollars and twenty-six cents
 3 wage to reflect the changes in the Consumer Price Index for
 4 all-urban consumers published by the federal Department of Labor
 5 for 2007, 2008, and 2009 plus the first quarter of 2010. Every
 6 three years thereafter, the department shall make an adjustment of
 7 the state-calculated minimum wage to reflect the changes in such
 8 Consumer Price Index for the preceding three calendar years. For
 9 purposes of this section, calendar year begins on April 1 and ends
 10 on March 31 of the next year. The new state-calculated minimum wage
 11 shall be calculated by June 15 of the year that it will go into
 12 effect on October 1.

13 ~~(2)~~(3) For persons who are seventeen years of age or
 14 older compensated by way of gratuities such as waitresses, waiters,
 15 hotel bellhops, porters, and shoeshine persons, the employer shall
 16 pay wages at the minimum ~~rate of two dollars and thirteen cents per~~
 17 hour, ~~wage of fifty percent of the applicable minimum wage provided~~
 18 in subsection (1) of this section, plus all gratuities given
 19 to them for services rendered. The sum of wages and gratuities
 20 received by each person compensated by way of gratuities shall
 21 equal or exceed the minimum wage rate provided in subsection (1)
 22 of this section. In determining whether or not the individual is
 23 compensated by way of gratuities, the burden of proof shall be upon
 24 the employer.

25 ~~(3)~~(4) Any employer employing student-learners as part
 26 of a bona fide vocational training program shall pay such
 27 ~~student-learners'~~ student-learners who are seventeen years of age
 1 or older wages at a rate of at least seventy-five percent of the
 2 minimum wage rate which would otherwise be applicable.

3 2. On page 4, line 17, strike "2008" and insert "2010".

LEGISLATIVE BILL 265. Placed on General File - Com AM863.
 (Amendment is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 500. Placed on General File - Com AM809.
 (Amendment is printed separately and available in the Bill Room, Room 1104.)

(Signed) Abbie Cornett, Chairperson

AMENDMENTS - Print in Journal

Senator Janssen filed the following amendment to LB 367:
 AM934

(Amendments to Standing Committee amendments, AM911)

- 1 1. On page 1, line 16, strike "years after" and insert
- 2 "year".

Senator Janssen filed the following amendment to LB 367:
AM935

(Amendments to Standing Committee amendments, AM911)

- 1 1. On page 58, line 26, after "act" insert "for the new
- 2 zero-emission facility".

BILL ON FIRST READING

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

LEGISLATIVE BILL 603A. Introduced by Education Committee: Raikes, 25, Chairperson; Adams, 24; Ashford, 20; Avery, 28; Burling, 33; Howard, 9; Johnson, 37; Kopplin, 3.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 603, One Hundredth Legislature, First Session, 2007.

VISITORS

Visitors to the Chamber were Senator Kopplin's wife, daughter, and grandson, Mary Lou Kopplin and Janette and Erik Hughes from Gretna; Jeff and Annette Kasselmann, Jill Moline, and Jill Bauerle and their families from Imperial; 75 fourth-grade students and teachers from Trinity Christian School, Omaha; and 15 fourth-grade students from St. Bernard School, Omaha.

RECESS

At 11:54 a.m., on a motion by Senator McGill, the Legislature recessed until 2:00 p.m.

AFTER RECESS

The Legislature reconvened at 2:00 p.m., Senator Langemeier presiding.

ROLL CALL

The roll was called and all members were present except Senators Ashford, Cornett, and White who were excused; and Senators Carlson, Christensen, Dubas, Engel, Fischer, Fulton, Harms, Heidemann, Hudkins, Kopplin, Kruse, Loudon, McDonald, Nantkes, Nelson, Preister, Synowiecki, Wallman, and Wightman who were excused until they arrive.

ATTORNEY GENERAL'S OPINIONOpinion 07008

DATE: April 4, 2007

SUBJECT: Continued validity of Op. Att'y Gen. No. 93009 (February 19, 1993); Constitutionality of "fair share" payments by non-union employees under art. XV, § 13 of the Nebraska Constitution.

REQUESTED BY: Senator Mick Mines
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

In our Op. Att'y Gen. No. 93009 (February 19, 1993), we considered the constitutionality of LB 255, a bill which would have required non-union employees in a bargaining unit covered by a collective bargaining agreement to pay fees to the labor organization representing those non-union employees in collective bargaining. The amounts to be paid by non-union employees under LB 255 represented the "fair share" for those employees of the costs of union representation, and the "fair share" amounts at issue represented the proportionate share of the costs borne by the labor organization in representing non-members. If any non-union employee refused to pay the labor organization the "fair share" amount, LB 255 allowed the union to file suit against that employee for payment of the "fair share," attorneys fees and court costs. We ultimately concluded in Opinion No. 93009 that the "fair share" provisions of LB 255 were "constitutionally suspect under Article XV, Section 13 of the Nebraska Constitution." Opinion No. 93009 at 4. That constitutional provision is Nebraska's Right to Work law.

A bill currently under consideration by the Legislature, LB 57, is similar in many respects to LB 255 which we discussed in Opinion No. 93009. Therefore, you have asked us whether the analysis set out in Opinion No. 93009 "is still valid today."

We have reviewed Opinion No. 93009 and the various authorities cited therein. Our supplemental research indicates that the analysis set out in Opinion No. 93009 remains valid, and indeed, there is more recent case authority which supports that analysis. For example, in *American Federation of State, County and Municipal Employees, AFL-CIO v. City of Phoenix*, 213 Ariz. 358, 142 P.3d 234 (Ariz. Ct. App. 2006), Review Denied January 9, 2007, the Arizona Court of Appeals considered whether a union's proposed mandatory "fair share" contribution by non-union employees violated an Arizona state constitutional provision similar to art. XV, § 13 of the Nebraska Constitution. The court ultimately concluded that the "fair

share" provision violated the Arizona Constitution, and stated:

Further, we conclude that it is irrelevant whether the fee is for the full amount of union dues or a portion thereof; it is the imposition of a mandatory contribution, or "fair share" service fee, that is impermissible. In its September 2, 2004 minute entry, the superior court recognized that point, when it reasoned "that it is the compulsion and not the amount which is determinative." The clear intent of the electorate of Arizona in enacting Article 25 of the Arizona Constitution and Arizona's "right to work" laws was to ensure the freedom of workers to choose whether to join and participate in a union. Allowing the proposed "fair share" fee would be contrary to the intent voiced by Arizona citizens because it would essentially render meaningless the distinction between union membership and non-membership. Non-members would be forced to contribute to, and thus support, the Union, albeit in an amount slightly less than full union dues. Consequently, the proposed "fair share" fee would, in its practical effect to non-union employees, be little different than mandatory membership dues. Such a "fair share" fee is no less onerous to freedom of employment than a compulsory arrangement requiring the payment of full union dues. It is clear that the populace, through constitutional amendment and legislation, intended to forbid both management and labor from imposing, as a condition of employment, the requirement that any person participate in any form or design of union membership.

142 P.3d at 242, 243 (citations omitted) (emphasis in original). The purpose of Article 25 of the Arizona Constitution as described by the Arizona Court of Appeals appears quite similar to the purpose of art. XV, § 13 of the Nebraska Constitution, which we have described as "to prohibit compulsory unionism and to allow an individual employee to choose whether 'to join or affiliate' with a labor organization." 1979-80 Rep. Att'y Gen. 82, 83 (Opinion No. 55, dated March 13, 1979).

Therefore, we believe that the analysis set out in Opinion No. 93009 is still valid. To the extent that the provisions of LB 57 are the same as or similar to those of LB 255 from 1993, it appears to us that those provisions are constitutionally suspect for the reasons set out in Opinion No. 93009.

Sincerely,
JON BRUNING
Attorney General
(Signed) Dale A. Comer
Assistant Attorney General

cc. Patrick J. O'Donnell
Clerk of the Legislature
05-493-21

COMMITTEE REPORTS
Enrollment and Review

LEGISLATIVE BILL 658. Placed on Select File - ER8064.
 (Amendment is printed separately and available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 562. Placed on Select File - ER8065.
 ER8065

- 1 1. In the Standing Committee amendments, AM689:
- 2 a. On page 1, line 6, after "and" insert "may be";
- 3 b. On page 7, line 17, strike "insurance";
- 4 c. On page 16, line 10; and page 24, line 1, strike "a"
- 5 and insert "per";
- 6 d. On page 16, line 22, after "to" insert an underscored
- 7 comma;
- 8 e. On page 17, lines 7 and 8, strike "sections 18-2101 to
- 9 18-2144", show as stricken, and insert "the Community Development
- 10 Law";
- 11 f. On page 18, line 27, strike "sections 18-2101 to
- 12 18-2144," show as stricken, and insert "the Community Development
- 13 Law";
- 14 g. On page 19, line 24, strike "said", show as stricken,
- 15 and insert "the";
- 16 h. On page 20, line 14, after "acts" insert an
- 17 underscored comma;
- 18 i. On page 22, line 19, strike "act" and insert
- 19 "Community Development Law";
- 20 j. On page 25, line 24; and page 26, line 8, strike the
- 21 period and insert an underscored semicolon; and
- 22 k. On page 26, line 11, strike the period and insert ";
- 23 and".
- 1 2. On page 1, line 4, after "define" insert "and
- 2 redefine" and before "change" insert "provide powers and duties
- 3 and"; and in line 7 after the second semicolon insert "to provide
- 4 severability;".

LEGISLATIVE BILL 457. Placed on Select File.

LEGISLATIVE BILL 415. Placed on Select File - ER8063.
 ER8063

- 1 1. Strike the original sections and all amendments
- 2 thereto and insert the following new sections:
- 3 Section 1. Section 60-462, Revised Statutes Cumulative
- 4 Supplement, 2006, is amended to read:
- 5 60-462 Sections 60-462 to 60-4,188 and section 3 of this
- 6 act shall be known and may be cited as the Motor Vehicle Operator's
- 7 License Act.

8 Sec. 2. Section 60-463, Reissue Revised Statutes of
9 Nebraska, is amended to read:
10 60-463 For purposes of the Motor Vehicle Operator's
11 License Act, the definitions found in sections 60-463.01 to 60-478
12 and section 3 of this act shall be used.

13 Sec. 3. Interactive wireless communication device means
14 any wireless electronic communication device that provides for
15 voice or data communication between two or more parties, including,
16 but not limited to, a mobile or cellular telephone, a text
17 messaging device, a personal digital assistant that sends or
18 receives messages, an audio-video player that sends or receives
19 messages, or a laptop computer.

20 Sec. 4. Section 60-4,120.01, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 60-4,120.01 ~~(1)~~(1)(a) Any person who is at least sixteen
23 years of age but less than eighteen years of age may be issued a
1 provisional operator's permit by the Department of Motor Vehicles.
2 The provisional operator's permit shall expire on the applicant's
3 eighteenth birthday.

4 (b) No provisional operator's permit shall be issued to
5 any person unless such person:

6 (i) Has possessed a valid Nebraska LPD-learner's permit
7 for at least a six-month period beginning on the date of issuance
8 of such person's LPD-learner's permit; and

9 (ii) Has not accumulated three or more points pursuant to
10 section 60-4,182 during the six-month period immediately preceding
11 the date of the application for the provisional operator's permit.

12 (c) The requirements for the provisional operator's
13 permit prescribed in subdivisions (2)(a) and (b) of this section
14 may be completed prior to the applicant's sixteenth birthday. A
15 person may apply for a provisional operator's permit and take the
16 driving test and the written examination, if required, at any time
17 within sixty days prior to his or her sixteenth birthday upon proof
18 of age in the manner provided in section 60-484.

19 (2) In order to obtain a provisional operator's permit,
20 the applicant shall present to the examiner (a)(i) proof of
21 successful completion of a department-approved driver safety course
22 which includes behind-the-wheel driving specifically emphasizing
23 (A) the effects of the consumption of alcohol on a person
24 operating a motor vehicle, (B) occupant protection systems, (C)
25 risk assessment, and (D) railroad crossing safety and (ii) proof
26 of successful completion of a written examination and driving
27 test administered by a driver safety course instructor or (b)
1 a certificate in a form prescribed by the department, signed
2 by a parent, guardian, or licensed driver at least twenty-one
3 years of age, verifying that the applicant has completed fifty
4 hours of lawful motor vehicle operation including at least ten
5 hours of motor vehicle operation between sunset and sunrise,
6 under conditions that reflect department-approved driver safety

7 course curriculum, with a parent, guardian, or adult at least
8 twenty-one years of age, who has a current Nebraska operator's
9 license or who is licensed in another state. If the applicant
10 presents such a certificate, the applicant shall be required to
11 successfully complete a driving test administered by an examiner
12 of the department. The written examination shall be waived if the
13 applicant surrenders a Nebraska LPD-learner's permit or has been
14 issued a Nebraska LPE-learner's permit after January 1, 2006, and
15 such permit is valid or has expired no more than one year prior
16 to surrender. However, the department shall not waive the written
17 examination if the provisional operator's permit being applied for
18 contains a class or endorsement which is different from the class
19 or endorsement of the LPD-learner's or LPE-learner's permit. Upon
20 presentation to the examiner by the applicant of a form prescribed
21 by the department showing successful completion of the driver
22 safety course, the examiner shall waive the written examination and
23 driving test. Upon presentation to the examiner of the certificate,
24 the examiner shall waive the written examination but not the
25 driving test. The examiner shall waive the written examination and
26 the driving test if the applicant has been issued a school permit
27 and such permit is valid or has expired no more than one year prior
1 to application. The written examination shall not be waived if the
2 provisional operator's permit being applied for contains a class or
3 endorsement which is different from the class or endorsement of the
4 school permit.

5 ~~(3)~~(3)(a) The holder of a provisional operator's permit
6 shall only operate a motor vehicle on the highways of this state
7 during the period beginning at 6 a.m. and ending at 12 midnight
8 except when he or she is en route to or from his or her residence
9 to his or her place of employment or a school activity. The holder
10 of a provisional operator's permit may operate a motor vehicle on
11 the highways of this state at any hour of the day or night if
12 accompanied by a parent, guardian, or adult at least twenty-one
13 years of age, who has a current Nebraska operator's license or who
14 is licensed in another state.

15 (b) The holder of a provisional operator's permit shall
16 only operate a motor vehicle on the highways of this state during
17 the first six months of holding the permit with no more than one
18 passenger who is not an immediate family member and who is under
19 nineteen years of age.

20 (c) The holder of a provisional operator's permit shall
21 not use any type of interactive wireless communication device while
22 operating a motor vehicle on the highways of this state.

23 (4) The county treasurer shall collect the fee prescribed
24 in section 60-4,115 for the issuance of each provisional operator's
25 permit.

26 Sec. 5. Section 60-4,123, Revised Statutes Cumulative
27 Supplement, 2006, is amended to read:

1 60-4,123 (1) Any person who is at least fifteen years

2 of age may apply for an LPD-learner's permit from the Department
 3 of Motor Vehicles. In order to obtain an LPD-learner's permit,
 4 the applicant shall successfully complete a written examination. A
 5 person may take the written examination beginning sixty days prior
 6 to his or her fifteenth birthday but shall not be issued a permit
 7 until he or she is fifteen years of age. The written examination
 8 shall be waived for any person who has been issued an LPE-learner's
 9 permit after January 1, 2006.

10 (2) Upon successful completion of the written examination
 11 and the payment of a fee, the applicant shall be issued an
 12 LPD-learner's permit from the county treasurer. The permit shall be
 13 valid for twelve months.

14 ~~(3)~~(3)(a) The holder of an LPD-learner's permit shall
 15 only operate a motor vehicle on the highways of this state if he
 16 or she is accompanied at all times by a licensed operator who is
 17 at least twenty-one years of age and who has been licensed by this
 18 state or another state and if he or she is actually occupying the
 19 seat beside the licensed operator or, in the case of a motorcycle
 20 or moped, if he or she is within visual contact of and under the
 21 supervision of, in the case of a motorcycle, a licensed motorcycle
 22 operator or, in the case of a moped, a licensed motor vehicle
 23 operator.

24 (b) The holder of an LPD-learner's permit shall not
 25 use any type of interactive wireless communication device while
 26 operating a motor vehicle on the highways of this state.

27 (4) The county treasurer shall collect the fee prescribed
 1 in section 60-4,115 for the issuance of each LPD-learner's permit.

2 Sec. 6. Section 60-4,124, Revised Statutes Cumulative
 3 Supplement, 2006, is amended to read:

4 60-4,124 (1) A person who is younger than sixteen years
 5 and three months of age but is older than fourteen years and two
 6 months of age may be issued, by the county treasurer, a school
 7 permit if such person lives a distance of one and one-half miles or
 8 more from the school he or she attends and either resides outside
 9 a city of the metropolitan, primary, or first class or attends
 10 a school which is outside a city of the metropolitan, primary,
 11 or first class and if such person has held an LPE-learner's
 12 permit for two months. A school permit shall not be issued
 13 until such person has appeared before an examiner to demonstrate
 14 that he or she is capable of successfully operating a motor
 15 vehicle, moped, or motorcycle and has in his or her possession an
 16 examiner's certificate authorizing the county treasurer to issue a
 17 school permit. In order to obtain an examiner's certificate, the
 18 applicant shall present to the examiner (a) proof of successful
 19 completion of a department-approved driver safety course which
 20 includes behind-the-wheel driving specifically emphasizing (i) the
 21 effects of the consumption of alcohol on a person operating a motor
 22 vehicle, (ii) occupant protection systems, (iii) risk assessment,
 23 and (iv) railroad crossing safety and (b)(i) proof of successful

24 completion of a written examination and driving test administered
25 by a driver safety course instructor or (ii) a certificate in a
26 form prescribed by the department, signed by a parent, guardian, or
27 licensed driver at least twenty-one years of age, verifying that
1 the applicant has completed fifty hours of lawful motor vehicle
2 operation, under conditions that reflect department-approved driver
3 safety course curriculum, with a parent, guardian, or adult at
4 least twenty-one years of age, who has a then current Nebraska
5 operator's license or who is licensed in another state. The
6 Department of Motor Vehicles shall waive the written examination
7 if the applicant surrenders an LPE-learner's permit issued after
8 January 1, 2006, and if such permit is valid or has expired no more
9 than one year prior to application. The written examination shall
10 not be waived if the permit being applied for contains a class or
11 endorsement which is different from the class or endorsement of the
12 LPE-learner's permit.

13 (2) A person holding a school permit may operate a motor
14 vehicle, moped, or motorcycle:

15 (a) To and from where he or she attends school and
16 between schools of enrollment over the most direct and accessible
17 route by the nearest highway from his or her place of residence
18 to transport such person or any family member who resides with
19 such person to attend duly scheduled courses of instruction and
20 extracurricular or school-related activities at the school he or
21 she attends; or

22 (b) Under the personal supervision of a licensed
23 operator. Such licensed operator shall be at least twenty-one years
24 of age and licensed by this state or another state and shall
25 actually occupy the seat beside the permitholder or, in the case of
26 a motorcycle or moped, if the permitholder is within visual contact
27 of and under the supervision of, in the case of a motorcycle, a
1 licensed motorcycle operator or, in the case of a moped, a licensed
2 motor vehicle operator.

3 (3) The holder of a school permit shall not use any
4 type of interactive wireless communication device while operating a
5 motor vehicle on the highways of this state.

6 ~~(3)-(4)~~ A person who is younger than sixteen years of age
7 but is over fourteen years of age may be issued an LPE-learner's
8 permit from the county treasurer, which permit shall be valid for a
9 period of three months. An LPE-learner's permit shall not be issued
10 until such person successfully completes a written examination
11 prescribed by the department and demonstrates that he or she has
12 sufficient powers of eyesight to safely operate a motor vehicle,
13 moped, or motorcycle.

14 ~~(4)-(5)(a)~~ While holding the LPE-learner's permit, the
15 person may operate a motor vehicle on the highways of this state
16 if he or she has seated next to him or her a person who is a
17 licensed operator or, in the case of a motorcycle or moped, if he
18 or she is within visual contact of and is under the supervision of

19 a person who, in the case of a motorcycle, is a licensed motorcycle
 20 operator or, in the case of a moped, is a licensed motor vehicle
 21 operator. Such licensed motor vehicle or motorcycle operator shall
 22 be at least twenty-one years of age and licensed by this state or
 23 another state.

24 (b) The holder of an LPE-learner's permit shall not
 25 use any type of interactive wireless communication device while
 26 operating a motor vehicle on the highways of this state.

27 ~~(5)-(6)~~ The county treasurer shall collect the fee
 1 prescribed in section 60-4,115 from each successful applicant for a
 2 school or LPE-learner's permit. All school permits shall be subject
 3 to impoundment or revocation under the terms of section 60-496. Any
 4 person who violates the terms of a school permit shall be guilty
 5 of an infraction and shall not be eligible for another operator's
 6 license or school, farm, LPD-learner's, or LPE-learner's permit
 7 until he or she has attained the age of sixteen years.

8 Sec. 7. This act becomes operative on January 1, 2008.

9 Sec. 8. Original section 60-463, Reissue Revised Statutes
 10 of Nebraska, and sections 60-462, 60-4,120.01, 60-4,123, and
 11 60-4,124, Revised Statutes Cumulative Supplement, 2006, are
 12 repealed.

13 2. On page 1, lines 1 and 2, strike "sections 60-463 and
 14 60-4,118.05" and insert "section 60-463".

LEGISLATIVE BILL 415A. Placed on Select File.

LEGISLATIVE BILL 218. Placed on Select File.

(Signed) Amanda McGill, Chairperson

GENERAL FILE

LEGISLATIVE BILL 564. Senator Chambers offered the following
 amendment to the committee amendment:

FA60

Amend AM879 P. 4, line 7 after "activity" add "if safety rules have been
 formulated, posted prominently, and are enforced by the entity providing
 such recreational activity".

SENATOR ERDMAN PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with
 15 ayes, 0 nays, and 34 not voting.

The Chambers amendment lost with 6 ayes, 18 nays, 9 present and not
 voting, and 16 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:
 Reconsider vote on FA60.

Senator Chambers moved for a call of the house. The motion prevailed with 13 ayes, 0 nays, and 36 not voting.

Senator Chambers requested a roll call vote on his motion to reconsider.

Voting in the affirmative, 4:

Chambers	Dierks	Karpisek	Langemeier
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Voting in the negative, 21:

Adams	Friend	Johnson	Pankonin	Stuthman
Aguilar	Gay	Lathrop	Pirsch	
Avery	Hansen	McDonald	Raikes	
Burling	Howard	McGill	Rogert	
Erdman	Janssen	Mines	Schimek	

Excused and not voting, 24:

Ashford	Engel	Heidemann	Nantkes	Synowiecki
Carlson	Fischer	Hudkins	Nelson	Wallman
Christensen	Flood	Kopplin	Pahls	White
Cornett	Fulton	Kruse	Pedersen	Wightman
Dubas	Harms	Louden	Preister	

The Chambers motion to reconsider failed with 4 ayes, 21 nays, and 24 excused and not voting.

The Chair declared the call raised.

Committee AM879, found on page 1015 and considered on page 1058 and in this day's Journal, was renewed.

Senator Chambers asked unanimous consent to bracket LB 564 until May 15, 2007.

Senator Langemeier objected.

Senator Chambers offered the following motion:
 Bracket LB 564 until May 15, 2007.

SPEAKER FLOOD PRESIDING

Senator Friend offered the following motion:
 Invoke cloture on LB 564, pursuant to Rule 7, Sec. 10.

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

Senator Chambers requested a roll call vote on the Friend motion to invoke cloture.

Voting in the affirmative, 40:

Adams	Engel	Harms	Kruse	Nelson
Aguiar	Erdman	Heidemann	Langemeier	Pankonin
Avery	Fischer	Howard	Lathrop	Pirsch
Burling	Flood	Hudkins	Louden	Raikes
Carlson	Friend	Janssen	McDonald	Rogert
Christensen	Fulton	Johnson	McGill	Stuthman
Dierks	Gay	Karpisek	Mines	Synowiecki
Dubas	Hansen	Kopplin	Nantkes	Wightman

Voting in the negative, 1:

Chambers

Present and not voting, 2:

Schimek Wallman

Excused and not voting, 6:

Ashford	Pahls	Preister
Cornett	Pedersen	White

The Friend motion to invoke cloture prevailed with 40 ayes, 1 nay, 2 present and not voting, and 6 excused and not voting.

Senator Chambers requested a roll call vote on his motion to bracket.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 42:

Adams	Erdman	Howard	Louden	Rogert
Aguilar	Fischer	Hudkins	McDonald	Schimek
Avery	Flood	Janssen	McGill	Stuthman
Burling	Friend	Johnson	Mines	Synowiecki
Carlson	Fulton	Karpisek	Nantkes	Wallman
Christensen	Gay	Kopplin	Nelson	Wightman
Dierks	Hansen	Kruse	Pankonin	
Dubas	Harms	Langemeier	Pirsch	
Engel	Heidemann	Lathrop	Raikes	

Excused and not voting, 6:

Ashford	Pahls	Preister
Cornett	Pedersen	White

The Chambers motion to bracket failed with 1 aye, 42 nays, and 6 excused and not voting.

Senator Chambers requested a roll call vote on the committee amendment.

Voting in the affirmative, 42:

Adams	Erdman	Howard	Louden	Rogert
Aguilar	Fischer	Hudkins	McDonald	Schimek
Avery	Flood	Janssen	McGill	Stuthman
Burling	Friend	Johnson	Mines	Synowiecki
Carlson	Fulton	Karpisek	Nantkes	Wallman
Christensen	Gay	Kopplin	Nelson	Wightman
Dierks	Hansen	Kruse	Pankonin	
Dubas	Harms	Langemeier	Pirsch	
Engel	Heidemann	Lathrop	Raikes	

Voting in the negative, 0.

Present and not voting, 1:

Chambers

Excused and not voting, 6:

Ashford	Pahls	Preister
Cornett	Pedersen	White

The committee amendment was adopted with 42 ayes, 0 nays, 1 present and not voting, and 6 excused and not voting.

Senator Chambers requested a roll call vote on the advancement of the bill.

Senator Langemeier requested the roll call vote be taken in reverse order on

the advancement of the bill.

Voting in the affirmative, 42:

Adams	Erdman	Howard	Louden	Rogert
Aguilar	Fischer	Hudkins	McDonald	Schimek
Avery	Flood	Janssen	McGill	Stuthman
Burling	Friend	Johnson	Mines	Synowiecki
Carlson	Fulton	Karpisek	Nantkes	Wallman
Christensen	Gay	Kopplin	Nelson	Wightman
Dierks	Hansen	Kruse	Pankonin	
Dubas	Harms	Langemeier	Pirsch	
Engel	Heidemann	Lathrop	Raikes	

Voting in the negative, 1:

Chambers

Excused and not voting, 6:

Ashford	Pahls	Preister
Cornett	Pedersen	White

Advanced to E & R for review with 42 ayes, 1 nay, and 6 excused and not voting.

The Chair declared the call raised.

COMMITTEE REPORT **Natural Resources**

LEGISLATIVE BILL 701. Placed on General File - Com AM938.
(Amendment is printed separately and available in the Bill Room, Room 1104.)

(Signed) LeRoy Louden, Chairperson

BILL ON FIRST READING

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

LEGISLATIVE BILL 701A. Introduced by Louden, 49; Carlson, 38; Christensen, 44.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 701, One Hundredth Legislature, First Session, 2007; and to declare an emergency.

AMENDMENT - Print in Journal

Senator Harms filed the following amendment to LB 415:
AM901

(Amendments to E & R amendments, ER8063)

- 1 1. On page 4, after line 22, insert the following new
2 subdivision:
3 "(d) Enforcement of subdivisions (a), (b), and (c) of
4 this subsection shall be accomplished only as a secondary action
5 when the holder of the provisional operator's permit has been cited
6 or charged with a violation of some other offense.".
7 2. On page 5, line 26, after the period insert
8 "Enforcement of this subdivision shall be accomplished only as a
9 secondary action when the holder of the LPD-learner's permit has
10 been cited or charged with a violation of some other offense.".
11 3. On page 8, line 5, after the period insert
12 "Enforcement of this subsection shall be accomplished only as a
13 secondary action when the holder of the school permit has been
14 cited or charged with a violation of some other offense."; and in
15 line 26 after the period insert "Enforcement of this subdivision
16 shall be accomplished only as a secondary action when the holder of
17 the LPE-learner's permit has been cited or charged with a violation
18 of some other offense.".

MOTION - Print in Journal

Senator Chambers filed the following motion to LB 564:
Indefinitely postpone.

VISITORS

Visitors to the Chamber were Senator Chambers' brother and nephew, Eddie and Joseph Chambers, from Omaha; 32 fourth-grade students, teachers, and sponsors from Morton Elementary, Hastings; Michelle Haney from Oconto; 14 fourth-grade students from Pawnee City; 21 fourth-grade students from Homer; and Adam Harrison from Papillion.

The Doctor of the Day was Dr. Jeff Harrison from Papillion.

ADJOURNMENT

At 5:08 p.m., on a motion by Senator Heidemann, the Legislature adjourned until 9:00 a.m., Thursday, April 5, 2007.

Patrick J. O'Donnell
Clerk of the Legislature

