

**TWENTY-NINTH DAY - FEBRUARY 14, 2017**

**LEGISLATIVE JOURNAL**

**ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION**

**TWENTY-NINTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, February 14, 2017

**PRAYER**

The prayer was offered by Senator Quick.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Foley presiding.

The roll was called and all members were present except Senators Groene and Wayne who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the twenty-eighth day was approved.

**NOTICE OF COMMITTEE HEARING(S)**

Revenue

Room 1524

Wednesday, February 22, 2017 1:30 p.m.

LB322 (cancel)  
LB385 (cancel)  
LB555 (cancel)

Wednesday, February 22, 2017 1:30 p.m.

LB313  
LB312  
LB563

Wednesday, March 1, 2017 9:30 a.m.

LB322  
LB385  
LB555

Thursday, March 2, 2017 1:30 p.m.

LB326  
LB633  
LB400  
LB531

Friday, March 3, 2017 1:30 p.m.

LB272  
LB475  
LB528  
LB228

Wednesday, March 8, 2017 1:30 p.m.

LB443  
LB561  
LB557  
LB616

Thursday, March 9, 2017 1:30 p.m.

LB570  
LB572  
LB576  
LB599

(Signed) Jim Smith, Chairperson

**COMMITTEE REPORT(S)**

Judiciary

The Judiciary Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Jeffrey Davis - Crime Victim's Reparations Committee  
Joe P. Kelly - Crime Victim's Reparations Committee  
Rita G. Sanders - Crime Victim's Reparations Committee

Aye: 8 Baker, Chambers, Ebke, Halloran, Hansen, Krist, Morfeld,  
Pansing Brooks. Nay: 0. Absent: 0. Present and not voting: 0.

**LEGISLATIVE BILL 160.** Placed on General File.  
**LEGISLATIVE BILL 198.** Placed on General File.  
**LEGISLATIVE BILL 447.** Placed on General File.

**LEGISLATIVE BILL 39.** Placed on General File with amendment.

AM133

1 1. Strike the original sections and insert the following new

2 sections:

3 Section 1. Section 28-101, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 28-101 Sections 28-101 to 28-1357, 28-1418.01, 28-1429.03, and  
6 28-1601 to 28-1603 and section 2 of this act shall be known and may be  
7 cited as the Nebraska Criminal Code.

8 Sec. 2. (1) For purposes of this section, ivory means the tusk of  
9 any species of elephant or mammoth or any piece thereof, and the horn of  
10 any species of rhinoceros, or any piece thereof. The term ivory includes  
11 both raw ivory and worked ivory and includes any item containing or  
12 advertised as containing ivory.

13 (2) Except as provided in subsection (3) of this section, it is  
14 unlawful to purchase, sell, possess with intent to sell, offer for sale,  
15 trade, or barter ivory. Any person who violates this section shall be  
16 guilty of a Class II misdemeanor. Ivory used in violation of this section  
17 is contraband, shall be subject to seizure, and shall be disposed of  
18 pursuant to section 29-820.

19 (3) The prohibitions set forth in subsection (2) of this section  
20 shall not apply to:

21 (a) Any activity authorized by an exemption or permit under federal  
22 law or that is otherwise expressly authorized under federal law;

23 (b) Musical instruments containing ivory if:

24 (i) The ivory in such instrument is less than twenty percent of the  
25 volume of such instrument;

26 (ii) The ivory is a fixed or integral component or components of the  
27 instrument as a whole and the ivory does not, in its current form,  
1 account for more than twenty percent of the value of the instrument;

2 (iii) The instrument was manufactured or created before 1975; and

3 (iv) The owner or seller provides historical documentation  
4 demonstrating provenance and showing the instrument was manufactured or  
5 created before 1975;

6 (c) A bona fide antique containing ivory if:

7 (i) The antique is at least one hundred years old at the time of the  
8 transaction;

9 (ii) The owner or seller provides historical documentation  
10 demonstrating provenance and showing the item was manufactured or created  
11 at least one hundred years prior to such time;

12 (iii) The ivory component or components do not account for more than  
13 twenty percent of the volume of the antique; and

14 (iv) The ivory is a fixed or integral component or components of the  
15 antique as a whole and the ivory does not, in its current form, account  
16 for more than twenty percent of the value of the antique;

17 (d) Acquisition or distribution for educational or scientific  
18 purposes by a bona fide educational or scientific institution, including  
19 a museum;

20 (e) An employee or agent of federal, state, or local government

21 undertaking a law enforcement activity pursuant to federal or state law  
22 or a mandatory duty required by law; and

23 (f) Firearms, knives, or their component parts containing ivory.

24 Sec. 3. Section 29-820, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 29-820 (1) Unless other disposition is specifically provided by law,  
27 when property seized or held is no longer required as evidence, it shall  
28 be disposed of by the law enforcement agency on such showing as the law  
29 enforcement agency may deem adequate, as follows:

30 (a) Property stolen, embezzled, obtained by false pretenses, or  
31 otherwise obtained unlawfully from the rightful owner thereof shall be  
1 restored to the owner;

2 (b) Money shall be restored to the owner unless it was used in  
3 unlawful gambling or lotteries or it was used or intended to be used to  
4 facilitate a violation of Chapter 28, article 4, in which case the money  
5 shall be forfeited and disposed of as required by Article VII, section 7,  
6 of the Constitution of Nebraska;

7 (c) Property which is unclaimed or the ownership of which is unknown  
8 shall be sold at a public auction held by the officer having custody  
9 thereof and the net proceeds disposed of as provided in subdivision (b)  
10 of this subsection, as shall any money which is unclaimed or the  
11 ownership of which is unknown;

12 (d) Except as provided in subsections ~~subsection~~ (2) and (3) of this  
13 section, articles of contraband shall be destroyed;

14 (e) Firearms, ammunition, explosives, bombs, and like devices which  
15 have been used in the commission of crime shall be destroyed; and

16 (f) Firearms which have come into the law enforcement agency's  
17 possession through a seizure or otherwise and (i) have not been used in  
18 the commission of crime, (ii) have not been defaced or altered in any  
19 manner that violates any state or federal law, (iii) may have a lawful  
20 use and be lawfully possessed, and (iv) are not subject to section 29-440  
21 shall be restored to the owner.

22 (2) When the following property is seized or held and is no longer  
23 required as evidence, such property shall be disposed of on order of the  
24 court as the court may deem adequate:

25 Goods which are declared to be contraband but may reasonably be  
26 returned to a condition or state in which such goods may be lawfully  
27 used, possessed, or distributed by the public.

28 (3) Ivory used in violation of section 2 of this act which is seized  
29 or held and is no longer required as evidence may, by order of the court,  
30 be donated to a bona fide educational or scientific institution,

31 including a museum, for educational or research purposes or to raise  
1 awareness of the trafficking and threatened nature of endangered animals,  
2 unless otherwise prohibited under state and federal law. The recipient of  
3 such donation shall pay any costs associated with receiving such  
4 donation. If such donation is not feasible, such ivory shall be destroyed  
5 or placed in storage as the court may direct.

6 (4) (~~3~~) When any animal as defined by section 28-1008 is seized or  
7 held and is no longer required as evidence, such animal may be disposed

8 of in such manner as the court may direct. The court may consider  
 9 adoption alternatives through humane societies or comparable institutions  
 10 and the protection of such animal's welfare. For a humane society or  
 11 comparable institution to be considered as an adoption alternative under  
 12 this subsection, it must first be licensed by the Department of  
 13 Agriculture as having passed the inspection requirements in the  
 14 Commercial Dog and Cat Operator Inspection Act and paid the fee for  
 15 inspection under the act. The court may prohibit an adopting or  
 16 purchasing party from selling such animal for a period not to exceed one  
 17 year.  
 18 ~~(5)~~ (4) Unless otherwise provided by law, all other property shall  
 19 be disposed of in such manner as the court in its sound discretion shall  
 20 direct.  
 21 Sec. 4. Original sections 28-101 and 29-820, Reissue Revised  
 22 Statutes of Nebraska, are repealed.

**LEGISLATIVE BILL 122.** Placed on General File with amendment.  
 AM223

1 1. On page 2, line 2, strike "eighteen" and insert "nineteen"; in  
 2 line 8 strike "or" and after "sibling" insert ", aunt, uncle, niece,  
 3 nephew, cousin, or domestic partner"; in line 18 after "member" insert ",  
 4 unless such action is authorized by a nursing home administrator pursuant  
 5 to section 71-6021"; and strike lines 19 through 23 and insert the  
 6 following new subsection:  
 7 "(2) If a family member is being denied visitation with a resident,  
 8 the family member may petition the county court to compel visitation with  
 9 the resident. If the resident has been appointed a guardian under the  
 10 jurisdiction of a county court in Nebraska, the petition shall be filed  
 11 in the county court having such jurisdiction. If there is no such  
 12 guardianship, the petition shall be filed in the county court for the  
 13 county in which the resident resides. The court may not issue an order  
 14 compelling visitation if the court finds any of the following:".

(Signed) Laura Ebke, Chairperson

**RESOLUTION(S)**

Pursuant to Rule 4, Sec. 5(b), LR32 was adopted.

**PRESIDENT SIGNED**

While the Legislature was in session and capable of transacting business, the President signed the following: LR32.

**MOTION - Adopt Permanent Rules**

Senator Chambers withdrew his amendment, found on page 460 and considered on page 470, to the Larson proposed rule change, to Rule 7, Sec. 10.

Senator Larson asked unanimous consent to withdraw his proposed rule change, found on page 419 and considered on pages 436, 446, 460, and 470, to Rule 7, Sec. 10, as amended. No objections. So ordered.

Senator Brewer offered the following proposed rule change:

**Amend Rule 7, Sec. 1(b)**

Insert "Pledge of Allegiance" after "a. Prayer by the Chaplain"

Senator Brewer asked unanimous consent to withdraw his proposed rule change, found in this day's Journal, and replace it with the following substitute proposed rule change. No objections. So ordered.

**Amend Rule 7, Sec. 10.**

**Sec. 10. Cloture.** At any stage of consideration the principal introducer of the bill under consideration, a cointroducer with the consent of the principal introducer, or the chairperson of the committee, if the bill is introduced by that committee, may move for cloture to the presiding officer; however, the presiding officer may rule such motion for cloture out of order if, in the presiding officer's opinion, a full and fair debate has not been afforded. Such ruling by the presiding officer shall not be subject to challenge. Whenever a motion for cloture is offered, the presiding officer shall immediately recognize such introducer or chairperson and shall then order debate on the pending amendment or motion to cease. A vote on the cloture motion shall be taken immediately. A two-thirds majority of ~~the elected members~~ those members present and voting or a majority of the elected members, whichever is greater, shall be required for the cloture motion to be successful. The requirement for cloture needed for the majority of members present and voting is as follows:

<u>Members Present and Voting</u>	<u>Vote Required</u>
<u>49</u>	<u>33</u>
<u>48</u>	<u>32</u>
<u>47</u>	<u>31</u>
<u>46</u>	<u>31</u>
<u>45</u>	<u>30</u>
<u>44</u>	<u>29</u>
<u>43</u>	<u>29</u>
<u>42</u>	<u>28</u>
<u>41</u>	<u>27</u>
<u>40</u>	<u>27</u>
<u>39</u>	<u>26</u>
<u>38 and fewer</u>	<u>25</u>

A motion for cloture shall be in order except while a member is speaking, and a motion for cloture is not debatable. If the motion for cloture is successful, a vote on the pending matter shall be taken immediately, without debate. If the pending matter is an amendment to an amendment, following a vote on the amendment to the amendment, a vote shall be taken on the

original amendment. If the original amendment has been divided, then the vote shall be on the original undivided amendment being considered. Finally, a vote on the advancement of the bill shall be taken.

A motion for cloture shall have precedence over all other motions except a motion to recess or adjourn.

A motion for cloture which fails for lack of sufficient votes shall result in the debate on the bill ending for the day. When the Speaker chooses to resume debate on the bill, successive motions for cloture shall not be in order until two additional hours of debate on the bill has occurred. If the presiding officer rejects a motion for cloture on a bill due to lack of full and fair debate, successive motions for cloture on the bill may be offered at any time.

Senator Krist offered the following amendment to the Brewer proposed rule change:

**Amend Rule 7, Sec. 10.**

**Sec. 10. Cloture.** At any stage of consideration the principal introducer of the bill under consideration, a cointroducer with the consent of the principal introducer, or the chairperson of the committee, if the bill is introduced by that committee, may move for cloture to the presiding officer; however, the presiding officer may rule such motion for cloture out of order if, in the presiding officer's opinion, a full and fair debate has not been afforded. Such ruling by the presiding officer shall not be subject to challenge. Whenever a motion for cloture is offered, the presiding officer shall immediately recognize such introducer or chairperson and shall then order debate on the pending amendment or motion to cease. A vote on the cloture motion shall be taken immediately. A two-thirds majority of ~~the elected members~~ those members present and voting or a majority three-fifths vote of the elected members, whichever is greater, shall be required for the cloture motion to be successful. The requirement for cloture needed for the majority of members present and voting is as follows:

<u>Members Present and Voting</u>	<u>Vote Required</u>
<u>49</u>	<u>33</u>
<u>48</u>	<u>32</u>
<u>47</u>	<u>31</u>
<u>46</u>	<u>31</u>
<u>45</u>	<u>30</u>
<u>44</u>	<u>29 30</u>
<u>43</u>	<u>29 30</u>
<u>42</u>	<u>28 30</u>
<u>41</u>	<u>27 30</u>
<u>40</u>	<u>27 30</u>
<u>39</u>	<u>26 30</u>
<u>38 and fewer</u>	<u>25 30</u>

A motion for cloture shall be in order except while a member is speaking, and a motion for cloture is not debatable. If the motion for cloture is successful, a vote on the pending matter shall be taken immediately, without debate. If the pending matter is an amendment to an amendment, following a vote on the amendment to the amendment, a vote shall be taken on the original amendment. If the original amendment has been divided, then the vote shall be on the original undivided amendment being considered. Finally, a vote on the advancement of the bill shall be taken.

A motion for cloture shall have precedence over all other motions except a motion to recess or adjourn.

A motion for cloture which fails for lack of sufficient votes shall result in the debate on the bill ending for the day. When the Speaker chooses to resume debate on the bill, successive motions for cloture shall not be in order until two additional hours of debate on the bill has occurred. If the presiding officer rejects a motion for cloture on a bill due to lack of full and fair debate, successive motions for cloture on the bill may be offered at any time.

Pending.

#### **MOTION - Adopt Temporary Rules**

Senator Scheer moved that the rules, as now in our possession, be adopted until such time as the permanent rules are adopted pursuant to Rule 2, Section 1; provided that the temporary rules shall not continue after the thirty-first legislative day.

Senator Williams offered the following amendment to the temporary rules: Amend the Scheer motion to adopt the temporary rules by striking "thirty-first" and inserting "ninetieth".

Senator Krist moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 28 ayes, 6 nays, and 15 not voting.

Senator Williams moved for a call of the house. The motion prevailed with 40 ayes, 1 nay, and 8 not voting.

Senator Williams requested a roll call vote, in reverse order, on his amendment.

Voting in the affirmative, 23:



Baker	Hansen	Krist	Quick	Wayne
Blood	Hilkemann	McCollister	Schumacher	Williams
Bolz	Howard	McDonnell	Stinner	Wishart
Chambers	Kolowski	Morfeld	Vargas	
Crawford	Kolterman	Pansing Brooks	Walz	

Voting in the negative, 25:

Albrecht	Clements	Geist	Kuehn	Murante
Bostelman	Craighead	Groene	Larson	Riepe
Brasch	Ebke	Halloran	Lindstrom	Scheer
Brewer	Erdman	Hilgers	Linehan	Smith
Briese	Friesen	Hughes	Lowe	Watermeier

Present and not voting, 1:

Harr

The Williams amendment lost with 23 ayes, 25 nays, and 1 present and not voting.

The Chair declared the call raised.

Senator Scheer moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 31 ayes, 4 nays, and 14 not voting.

Senator Chambers requested a roll call vote on the Scheer motion to adopt temporary rules.

The Scheer motion to adopt temporary rules prevailed with 33 ayes, 8 nays, and 8 present and not voting.

**MOTION - Adopt Permanent Rules**

The Krist amendment, found in this day's Journal, to the Brewer proposed rule change, to Rule 7, Sec. 10, was renewed.

Pending.

**COMMITTEE REPORT(S)**  
Executive Board

**LEGISLATIVE BILL 539.** Placed on General File.

(Signed) Dan Watermeier, Chairperson

Health and Human Services

**LEGISLATIVE BILL 323.** Placed on General File.

(Signed) Merv Riepe, Chairperson

**NOTICE OF COMMITTEE HEARING(S)**  
Transportation and Telecommunications

Room 1113

Tuesday, February 21, 2017 2:00 p.m.

Dennis Schworer - Motor Vehicle Industry Licensing Board

(Signed) Curt Friesen, Chairperson

**UNANIMOUS CONSENT - Add Cointroducer(s)**

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

Senator Pansing Brooks name added to LB194.  
Senator Erdman name added to LB404.  
Senator Hilgers name added to LB506.  
Senator Hilkemann name added to LB506.  
Senator Lowe name added to LB639.**MOTION(S) - Recess**

Senator Chambers moved to recess until 3:00 p.m.

The motion failed.

**VISITOR(S)**

Visitors to the Chamber were members of Leadership Wayne; members of Leadership Sarpy; and members of Planned Parenthood of the Heartland.

**ADJOURNMENT**

At 11:58 a.m., on a motion by Speaker Scheer, the Legislature adjourned until 9:00 a.m., Wednesday, February 15, 2017.

Patrick J. O'Donnell  
Clerk of the Legislature