

TWENTY-NINTH DAY - FEBRUARY 22, 2002

LEGISLATIVE JOURNAL

**NINETY-SEVENTH LEGISLATURE
SECOND SESSION**

TWENTY-NINTH DAY

Legislative Chamber, Lincoln, Nebraska
Friday, February 22, 2002

PRAYER

The prayer was offered by Pastor Dennis Ritchey, Ponca Evangelical Free Church, Ponca, Nebraska.

ROLL CALL

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

The roll was called and all members were present except Senators Dierks and Landis who were excused; and Senators Kristensen and Raikes who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-eighth day was approved.

**STANDING COMMITTEE REPORT
General Affairs**

LEGISLATIVE BILL 1247. Placed on General File as amended.
(Standing Committee amendment, AM2839, may be found in the Bill Books. The amendment has been printed separately and is on file in the Bill Room - Room 1102.)

(Signed) Ray Janssen, Chairperson

ANNOUNCEMENTS

The Education Committee designates LB 1206 and LB 1226 as its priority bills.

The General Affairs Committee designates LB 1126 and LB 1247 as its priority bills.

REPORT OF REGISTERED LOBBYISTS

Following is a list of all lobbyists who have registered as of February 22, 2002, in accordance with Section 49-1481, Revised Statutes of Nebraska. Additional lobbyists who have registered will be filed weekly.

(Signed) Patrick J. O'Donnell
Clerk of the Legislature

Abboud, Chris, Public Affairs Group
Las Vegas Sands Inc.

Clark, Robin E.
First National Bank of Omaha

Jenkins, Thomas J.
Blue Cross & Blue Shield of Nebraska

Kissel/Erickson & Sederstrom Associates, L.L.C.
APS Healthcare

Rasmussen, Dennis
APS Healthcare

REPORTS

The following reports were received by the Legislature:

Retirement Systems, Public Employees
Compliance Audit Report
Rural Development Commission
2001 Annual Report

ATTORNEY GENERAL'S OPINIONOpinion #02006

DATE: February 21, 2002

SUBJECT: Services for developmentally disabled individuals who have graduated from high school but not reached age 21

REQUESTED BY: Senator Dennis M. Byars
Nebraska Legislature

WRITTEN BY: Don Stenberg, Attorney General
Charles E. Lowe, Assistant Attorney General

You have asked this office for its opinion as to whether the pending LB 1035 "is necessary to address a gap in services to developmentally disabled students who have graduated [from high school] and have not yet reached age 21." You indicate that, at the present time, the Department of Health and Human Services ("HHS") provides services under the Developmental Disabilities Services Act, Neb. Rev. Stat. §§ 83-1201 through 83-1226 (1999) (hereinafter sometimes referred to as "Act") only to developmentally disabled students who graduate from high school and have reached the age of 21 and that, therefore, there is a gap in services for those who have graduated but not yet turned 21. You note that Neb. Rev. Stat. § 83-1216(1) (1999) appears to cover this subject already. You, therefore, ask whether, in light of § 83-1216(1), there is a "gap" to be closed by legislation.

Review of § 83-1216(1)

Section 83-1216(1) provides as follows:

Beginning July 1, 1995, persons determined to be eligible for specialized services who on or after September 6, 1993, graduate from high school, reach the age of twenty-one years, or are currently receiving services shall receive services in accordance with the Developmental Disabilities Services Act. (Emphasis supplied.)

On its face it would appear that § 83-1216(1) provides three distinct situations in which a person deemed eligible for specialized services would be entitled to receive them. The use of the word "or" in the statute indicates that these situations are listed in the disjunctive - i.e., if any one of them applies, then services are to be provided. Thus, a person eligible for specialized services who graduates from high school or who reaches the age of 21 or who was receiving such services on July 1, 1995, "shall receive services in accordance with the Developmental Disabilities Services Act." Accordingly, it would appear from this perspective that there is no "gap" since an eligible person who graduates from high school at any age is to receive services under the Act.

Meaning of "graduate from high school"

There is, however, some ambiguity in the statute which makes such a simple analysis problematic. Specifically, in the context of individuals with developmental disabilities the meaning of the term "graduate from high school," as used in § 83-1216(1) is not clear. The term itself is not defined anywhere in the Act.

It is our understanding, based upon a letter dated April 25, 2001, from Ron Ross, Director of HHS, to Douglas D. Christensen, Commissioner of Education, that HHS has interpreted the term "graduate from high school" as requiring that the individual "pass the standard, required curriculum for all students and receive a high school degree or diploma." HHS believes that most persons with developmental disabilities who would also qualify for

specialized services under the Act, principally those with mental retardation, cannot "graduate from high school under the plain and ordinary definition of that word." HHS, which is charged with the implementation of the Act (Neb. Rev. Stat. § 83-1209), concludes that "graduation as used in Section 83-1216 would not include a 'Certificate of Attendance,' 'Certificate of Completion' or a lowered standard of graduation." HHS' interpretation of the term "graduate from high school," as found in § 83-1216(1), is not unreasonable and has considerable support.

In the absence of anything to the contrary, statutory language, of course, is to be given its plain and ordinary meaning. *Ameritas Life Insurance Corp. v. Balka*, 257 Neb. 878, 882, 601 N.W.2d 508, 511 (1999); *Bohm v. DMA Partnership*, 8 Neb.App. 1069, 1075-76, 607 N.W.2d 212, 217 (2000). In this connection, Webster's New Universal Unabridged Dictionary (2d ed. 1983) defines the word "graduate" as meaning "to receive a degree or diploma in recognition of the completion of a course of study at a school or college." If a student does not complete a "course of study" that constitutes a recognized curriculum for high school students, then he or she does not "graduate," according to this dictionary definition.

Under Art. VII, § 1 of the Nebraska Constitution the Legislature is directed to "provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." Moreover, the Special Education Act, Neb. Rev. Stat. §§ 79-1110 through 79-1178 (1996, Cum. Supp. 2000, and Supp. 2001) is applicable to all developmentally disabled individuals until they reach the age of 21. Neb. Rev. Stat. § 79-1126 (Cum. Supp. 2000). Thus, those individuals with developmental disabilities who do not "graduate from high school" and who have not turned 21 are still entitled to receive the services outlined in the Special Education Act from the schools.

The Nebraska Department of Education has issued rules and regulations to implement the Special Education Act. 92 NAC 51. In those rules and regulations the Department has interpreted the concept of "graduation from high school" in a manner which is consistent with HHS' interpretation of that term and with the plain and ordinary meaning of that term, as discussed above. In § 004.03 of 92 NAC 51 the rule states:

004.03A Students with disabilities who have graduated from high school with a regular high school diploma are not eligible to receive a FAPE (free appropriate public education).

004.03A1 The exception in Subsection 004.03A does not apply to students who have graduated but have not been awarded a regular high school diploma.

004.03A2 Graduation from high school with a regular diploma constitutes a change in placement, requiring written prior notice in accordance with Subsection 009.03 of this Chapter.

(Emphasis supplied.) "Free appropriate public education or FAPE" is defined in §003.20 of the Department of Education's rules and regulations as meaning:

[S]pecial education and related services which are provided at public expense, under public supervision and direction, at no cost to parents and in conformity with the individual education program or individualized family service plan with meets the requirements of Section 007, which meets the standards of the state, including the requirements of this rule and includes birth to age five, elementary or secondary school education.

Accordingly, the Department of Education has interpreted the Special Education Act as covering individuals with developmental disabilities until they are 21 years of age unless they have graduated from high school with a regular diploma. This interpretation, which is consistent with the plain and ordinary meaning of "graduate," dovetails with HHS' interpretation of § 83-1216(1) that services under the Developmental Disabilities Services Act will not be provided to those under 21 who have not graduated from high school with a regular diploma. These interpretations by the Department and HHS are also consistent with §§ 79-1125.01 and 79-1126 (both of which speak of providing services under the Special Education Act until an individual reaches the age of 21, although § 79-1125.01 does not apply directly to those who are placed in special education programs) and with the Legislature's intent, as expressed in § 83-1216(4), to utilize to the greatest extent possible funding sources within the Department of Education and, specifically, the Division of Rehabilitation Services to provide specialized services to developmentally disabled individuals.¹

In light of the foregoing, HHS' practice of not providing specialized services under that Developmental Disabilities Services Act to those

¹ After the Developmental Disabilities Services Act was initially enacted in 1991, the Department of Public Institutions promulgated rules and regulations for implementation of the Act, which rules and regulations have now been assumed by the Department of Health and Human Services (HHS). Section 011.06 of those rules and regulations, which are found at 205 NAC 2, states: "The Department authorizes funding for specialized supports and/or services to persons determined to be eligible who, on or after September 7, 1993, graduate from high school and reach the age of 21." (Emphasis supplied.) Clearly, the HHS rule requires both graduation from high school and reaching age 21 before services are provided.

While this two-prong test does not appear to be supported by the statutory language of § 83-1216(1), we infer from Director Ross' letter to Commissioner Cunningham that, in practice, HHS has provided and will provide services under the Act to eligible developmentally disabled individuals younger than 21 who graduate from high school with a regular high school diploma.

developmentally disabled individuals younger than 21 who have not graduated from high school with a regular diploma appears to be in conformity with existing law, the plain and ordinary meaning of the statutory term "graduate from high school," and the rules and regulations which have been promulgated by the Department of Education.

No "gap in services" based upon HHS' interpretation

Assuming that HHS does and will provide services under the Act to eligible developmentally disabled individuals younger than 21 who have graduated from high school with a regular diploma, it does not appear that there is a "gap" in coverage. If such an individual has not graduated from high school with a regular diploma, he or she will be covered under the Special Education Act until he or she turns 21, at which time he or she will receive services from HHS under the Developmental Disabilities Services Act. If such a developmentally disabled individual graduates from high school with a regular diploma before reaching the age of 21, he or she will then be covered by the Developmental Disabilities Services Act.

Changing the law

If the Legislature wishes to change the law so as to provide specialized services under the Developmental Disabilities Services Act to developmentally disabled individuals younger than 21 who have not graduated from high school with a regular diploma, it may want to accomplish this by providing a statutory definition of the term "graduate from high school," as found in § 83-1216(1), which would include receiving the types of degrees or certificates given to developmentally disabled individuals who do not or are unable to successfully complete the normal high school curriculum.

We do not believe that LB 1035, as introduced, accomplishes the stated goal of eliminating any perceived gap in services to individuals with developmental disabilities and, indeed, that it would only add confusion and uncertainty to the law. The proposed changes to § 83-1216(1) delete any reference to graduation from high school and simply require that specialized services under the Act be provided to those eligible persons who have reached the age of 21. The result of enactment of this change would be that services under the Act would not be provided, regardless of whether or not an individual has graduated from high school, until the age of 21.

While LB 1035, as introduced, would insert into § 83-1216(1) language regarding the "intent of the Legislature" to provide services under the Act to those who have graduated from high school until they reach 21, this "intent" language would conflict directly with LB 1035's proposed specific statutory language which states the law as being that such services are provided only to those who are 21 years old or older. It also would not resolve the issue of what is meant by the term "graduate from high school." Thus, this "intent" language would, at best, do nothing but add a great deal of ambiguity and

uncertainty to the law.

Conclusion

In conclusion, it is our opinion that, so long as HHS provides specialized services to developmentally disabled individuals younger than 21 who have graduated from high school with a regular high school diploma, there is no gap in services. Those developmentally disabled individuals younger than 21 who have not graduated from high school with a regular high school diploma continue to be covered by the Special Education Act.

If the Legislature wishes to provide services under the Developmental Disabilities Services Act to developmentally disabled individuals younger than 21 who are no longer in high school, but who have not graduated with a regular high school diploma, it could most easily accomplish this by providing a statutory definition of "graduate from high school" which would include developmentally disabled individuals who finish their secondary education, but do not receive a regular high school diploma.

LB 1035, as introduced, does nothing to close any perceived gap in services and, indeed, would simply add uncertainty and ambiguity to the law. In fact, it might only exacerbate any gap that does exist by ensuring that specialized services under the Developmental Disabilities Services Act are provided only to developmentally disabled individuals age 21 or older - even those who have graduated from high school with a regular high school diploma.

Sincerely,
DON STENBERG
Attorney General
(Signed) Charles E. Lowe
Assistant Attorney General

pc: Patrick O'Donnell
Clerk of the Legislature
17-666-18

AMENDMENT - Print in Journal

Senator Hudkins filed the following amendment to LB 661:
AM2854

- 1 1. On page 2, strike beginning with "Lincoln" in line 21
- 2 through "councils" in line 22 and insert "each of the cities of
- 3 Ashland, Gretna, Lincoln, Omaha, and Waverly as determined by the
- 4 respective city councils, a representative from the village of
- 5 Greenwood as determined by its board of trustees".

MOTION - Approve Appointment

Senator Vrtiska moved the adoption of the report of the Agriculture Committee for the following appointment found on page 659: Dry Bean Commission - Kenneth L. Rhoades.

Voting in the affirmative, 37:

Aguilar	Connealy	Jensen	Price	Synowiecki
Baker	Coordsen	Jones	Quandahl	Thompson
Bourne	Cunningham	Kremer	Redfield	Tyson
Brashear	Engel	Kruse	Robak	Vrtiska
Bromm	Erdman	Maxwell	Schimek	Wehrbein
Bruning	Foley	McDonald	Schrock	
Burling	Hartnett	Pedersen, Dw.	Smith	
Chambers	Janssen	Preister	Stuhr	

Voting in the negative, 0.

Present and not voting, 8:

Beutler	Byars	Hudkins	Suttle
Brown	Cudaback	Pederson, D.	Wickersham

Excused and not voting, 4:

Dierks	Kristensen	Landis	Raikes
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The appointment was confirmed with 37 ayes, 0 nays, 8 present and not voting, and 4 excused and not voting.

SPEAKER KRISTENSEN PRESIDING**MOTION - Return LB 93 to Select File**

Senator Jensen moved to return LB 93 to Select File for his specific pending amendment, AM2705, found on page 686.

The Jensen motion to return prevailed with 34 ayes, 2 nays, 11 present and not voting, and 2 excused and not voting.

Senator Brown asked unanimous consent to be excused until she returns. No objections. So ordered.

SELECT FILE

LEGISLATIVE BILL 93. The Jensen specific pending amendment, AM2705, found on page 686, was adopted with 27 ayes, 11 nays, and 8 present and not voting, and 3 excused and not voting.

Advanced to E & R for reengrossment.

BILLS ON FINAL READING

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 241 with 40 ayes, 2 nays, 4 present and not voting, and 3 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 241.

A BILL FOR AN ACT relating to the Nebraska Cosmetology Act; to amend sections 71-348, 71-357, 71-366, 71-367, 71-368, 71-369, 71-394, 71-397, 71-3,102, 71-3,103, 71-3,105, 71-3,107, 71-3,109, 71-3,117, 71-3,120, 71-3,136, 71-3,138, 71-3,139, 71-3,140, 71-3,141, 71-3,145, 71-3,147, 71-3,150, 71-3,151, 71-3,154, 71-3,155, and 71-3,159, Reissue Revised Statutes of Nebraska, sections 71-341, 71-342, 71-343, 71-351, 71-352, 71-362, 71-364, 71-371, 71-374, 71-377, 71-381, 71-382, 71-386, 71-387, 71-3,137, 71-3,169, 71-3,174, 71-3,177, and 71-3,179, Revised Statutes Supplement, 2000, and section 71-340, Revised Statutes Supplement, 2001; to provide for licensure for esthetics instructors and schools of esthetics; to change provisions relating to penalties; to change licensure requirements for cosmetology and electrology schools; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 43:

Aguilar	Chambers	Hudkins	Pedersen, Dw.	Smith
Baker	Connealy	Janssen	Pederson, D.	Stuhr
Beutler	Coordsen	Jensen	Preister	Suttle
Bourne	Cudaback	Jones	Price	Thompson
Brashear	Cunningham	Kremer	Quandahl	Tyson
Bromm	Engel	Kristensen	Raikes	Wehrbein
Bruning	Erdman	Kruse	Redfield	Wickersham
Burling	Foley	Maxwell	Robak	
Byars	Hartnett	McDonald	Schimek	

Voting in the negative, 0.

Present and not voting, 3:

Schrock	Synowiecki	Vrtiska
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Excused and not voting, 3:

Brown Dierks Landis

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

The following bills were read and put upon final passage:

LEGISLATIVE BILL 241A.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 241, Ninety-seventh Legislature, Second Session, 2002.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 41:

Aguilar	Cudaback	Jones	Price	Synowiecki
Baker	Cunningham	Kremer	Quandahl	Thompson
Beutler	Engel	Kristensen	Raikes	Tyson
Brashear	Erdman	Kruse	Redfield	Wehrbein
Bruning	Foley	Maxwell	Robak	Wickersham
Byars	Hartnett	McDonald	Schimek	
Chambers	Hudkins	Pedersen, Dw.	Schrock	
Connealy	Janssen	Pederson, D.	Smith	
Coordsen	Jensen	Preister	Stuhr	

Voting in the negative, 0.

Present and not voting, 5:

Bourne Bromm Burling Suttle Vrtiska

Excused and not voting, 3:

Brown Dierks Landis

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 259.

A BILL FOR AN ACT relating to counties; to amend sections 13-518 and 13-519, Revised Statutes Supplement, 2001; to authorize license and occupation taxes as prescribed; to harmonize budget provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 39:

Aguilar	Connealy	Hudkins	Pederson, D.	Smith
Baker	Coordsen	Janssen	Preister	Stuhr
Brashear	Cudaback	Jensen	Price	Suttle
Bromm	Cunningham	Jones	Raikes	Thompson
Bruning	Engel	Kremer	Redfield	Vrtiska
Burling	Erdman	Kristensen	Robak	Wehrbein
Byars	Foley	Kruse	Schimek	Wickersham
Chambers	Hartnett	Pedersen, Dw.	Schrock	

Voting in the negative, 0.

Present and not voting, 7:

Beutler	Maxwell	Quandahl	Tyson
Bourne	McDonald	Synowiecki	

Excused and not voting, 3:

Brown	Dierks	Landis
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

LEGISLATIVE BILL 406.

A BILL FOR AN ACT relating to state administrative departments; to amend section 81-1108, Revised Statutes Supplement, 2000; to repeal provisions relating to the employee buy-out program; to harmonize provisions; to repeal the original section; and to outright repeal section 81-1392, Reissue Revised Statutes of Nebraska.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 46:

Aguilar	Connealy	Jensen	Price	Synowiecki
Baker	Coordsen	Jones	Quandahl	Thompson
Beutler	Cudaback	Kremer	Raikes	Tyson
Bourne	Cunningham	Kristensen	Redfield	Vrtiska
Brashear	Engel	Kruse	Robak	Wehrbein
Bromm	Erdman	Maxwell	Schimek	Wickersham
Bruning	Foley	McDonald	Schrock	
Burling	Hartnett	Pedersen, Dw.	Smith	
Byars	Hudkins	Pederson, D.	Stuhr	
Chambers	Janssen	Preister	Suttle	

Voting in the negative, 0.

Excused and not voting, 3:

Brown Dierks Landis

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

MOTION - Return LB 417 to Select File

Senator Connealy moved to return LB 417 to Select File for the following specific amendment:

AM2867

(Amendments to Final Reading copy)

- 1 1. Insert the following new section:
- 2 "Section 1. Section 48-106, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 48-106. (1) The Nebraska Workers' Compensation Act shall
- 5 apply to the State of Nebraska and every governmental agency
- 6 created by it, and to every employer in this state, including
- 7 nonresident employers performing work in the State of Nebraska,
- 8 employing one or more employees, in the regular trade, business,
- 9 profession, or vocation of such employer, except railroad companies
- 10 engaged in interstate or foreign commerce.
- 11 (2) The following are declared not to be hazardous
- 12 occupations and not within the provisions of the Nebraska Workers'
- 13 Compensation Act: Employers of household domestic servants and
- 14 employers of farm or ranch laborers, An employer who is excluded
- 15 from the act under this subsection may elect to bring the employees
- 16 of such employer within the provisions of the act. Such election
- 17 is made by the employer obtaining a policy of workers' compensation
- 18 insurance covering such employees from a corporation, association,
- 19 or organization authorized and licensed to transact the business of
- 20 workers' compensation insurance in this state. If an employer who
- 21 is excluded from the act under this subsection has not elected to
- 22 bring the employees of such employer within the provisions of the
- 23 act by obtaining a policy of workers' compensation insurance as
- 1 provided in this subsection and any health, accident, or other
- 2 insurance policy covering such employees contains an exclusion of
- 3 coverage if the insured is otherwise entitled to workers'
- 4 compensation coverage, such exclusion shall be null and void as to
- 5 such employees. ; except as hereinafter provided, except that any
- 6 such employer may elect to provide and pay compensation for
- 7 accidental injuries sustained by any of his or her employees by
- 8 insuring and keeping insured his or her employees in some
- 9 corporation, association, or organization authorized and licensed
- 10 to transact the business of workers' compensation insurance in this
- 11 state.

12 (3) The procuring by any such employer of such a policy
 13 of insurance, referred to in subsection (2) of this section, which
 14 is in full force and effect at the time of an accident to any of
 15 his or her employees, shall be conclusive proof of such employer's
 16 and his or her employees' election to be bound by the Nebraska
 17 Workers' Compensation Act, to all intents and purposes as if they
 18 had not been specifically excluded by the terms of this section.
 19 Such employer of household domestic servants and such employer of
 20 farm or ranch laborers who has procured such a policy of insurance
 21 may elect to return to the status of being not within the
 22 provisions of the Nebraska Workers' Compensation Act by (a) no
 23 longer carrying a policy of workers' compensation insurance and (b)
 24 posting and thereafter keeping continuously posted for a period of
 25 at least one year in a conspicuous place about the place or places
 26 where his or her workers are employed a written or printed notice
 27 of election not to be bound by the provisions of such act."

1 2. On page 1, lines 1 and 2, strike "section 48-139" and
 2 insert "sections 48-106 and 48-139"; and in line 3 after the
 3 semicolon insert "to change provisions relating to coverage and
 4 exclusions;"

5 3. On page 9, line 25, strike beginning with "issued"
 6 through "1984,", show as stricken, and insert "covering such
 7 person".

8 4. On page 12, line 16, strike "1 and 4" and insert "2
 9 and 5"; in line 21 strike "section 48-139" and insert "sections
 10 48-106 and 48-139"; and in line 22, strike "is" and insert "are".

11 5. Renumber the remaining sections accordingly.

The Connealy motion to return prevailed with 37 ayes, 0 nays, 9 present and not voting, and 3 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 417. The Connealy specific amendment, AM2867, found in this day's Journal, was adopted with 38 ayes, 0 nays, 8 present and not voting, and 3 excused and not voting.

Advanced to E & R for reengrossment.

BILLS ON FINAL READING

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 436 with 39 ayes, 1 nay, 7 present and not voting, and 2 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 436.

A BILL FOR AN ACT relating to agriculture; to amend sections 2-2622 to 2-2625, 2-2629, 2-2632, 2-2636, 2-2637, 2-2639, 2-2640, 2-2642, 2-2643, 2-2645, 2-2646, 2-2649, 81-2,173, and 81-2,177.01, Reissue Revised Statutes of Nebraska, section 2-2626, Revised Statutes Supplement, 2000, and sections 2-2635, 2-2638, and 2-2641, Revised Statutes Supplement, 2001; to define and redefine terms; to change regulatory powers and duties under the Pesticide Act; to eliminate obsolete provisions; to change apiary inspection certificate and colony registration provisions; to harmonize provisions; to repeal the original sections; and to outright repeal sections 2-2644 and 2-2655, Reissue Revised Statutes of Nebraska.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 44:

Aguilar	Byars	Hartnett	Pedersen, Dw.	Smith
Baker	Chambers	Hudkins	Pederson, D.	Stuhr
Beutler	Connealy	Janssen	Price	Suttle
Bourne	Coordsen	Jensen	Quandahl	Thompson
Brashear	Cudaback	Jones	Raikes	Tyson
Bromm	Cunningham	Kremer	Redfield	Vrtiska
Brown	Engel	Kristensen	Robak	Wehrbein
Bruning	Erdman	Maxwell	Schimek	Wickersham
Burling	Foley	McDonald	Schrock	

Voting in the negative, 0.

Present and not voting, 3:

Kruse	Preister	Synowiecki
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Excused and not voting, 2:

Dierks	Landis
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

The following bill was read and put upon final passage:

LEGISLATIVE BILL 436A.

A BILL FOR AN ACT relating to appropriations; to reduce appropriations to aid in carrying out the provisions of Legislative Bill 436, Ninety-seventh Legislature, Second Session, 2002.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 44:

Aguilar	Byars	Hudkins	Pederson, D.	Stuhr
Baker	Chambers	Janssen	Price	Suttle
Beutler	Connealy	Jensen	Quandahl	Synowiecki
Bourne	Coordsen	Jones	Raikes	Thompson
Brashear	Cunningham	Kremer	Redfield	Tyson
Bromm	Engel	Kristensen	Robak	Vrtiska
Brown	Erdman	Maxwell	Schimek	Wehrbein
Bruning	Foley	McDonald	Schrock	Wickersham
Burling	Hartnett	Pedersen, Dw.	Smith	

Voting in the negative, 0.

Present and not voting, 3:

Cudaback	Kruse	Preister
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Excused and not voting, 2:

Dierks	Landis
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A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

WITHDRAW - Amendment to LB 446

Senator Smith withdrew his pending amendment, AM2743, found on page 621, to LB 446.

MOTION - Return LB 446 to Select File

Senator Bromm moved to return LB 446 to Select File for the following specific amendment:

AM2869

(Amendments to Final Reading copy)

- 1 1. Insert the following new sections:
- 2 "Section 1. Section 3-129, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4 3-129. Except as provided in section 3-130, it shall be
- 5 unlawful for any person to operate or cause or authorize to be
- 6 operated any civil aircraft within this state unless such aircraft
- 7 has an appropriate effective license, certificate, or permit issued
- 8 by the United States Government, ~~and it shall be unlawful for~~
- 9 ~~any person to engage in aeronautics as an airman in this state~~

10 unless he has, from the department, an effective certificate of
 11 registration of an appropriate effective airman's license,
 12 certificate or permit issued by the United States Government
 13 authorizing him to engage in the particular class of aeronautics in
 14 which he is engaged.

15 Sec. 2. Section 3-133, Reissue Revised Statutes of
 16 Nebraska, is amended to read:

17 3-133. ~~All~~ Any proposed ~~airports, airport or~~ restricted
 18 landing areas and other air navigation area shall be first licensed
 19 by the department before ~~they, or any of them, such airport or area~~
 20 shall be used or operated. Any municipality or person acquiring
 21 property for the purpose of constructing or establishing an airport
 22 or restricted landing area shall, prior to such acquisition, make
 23 application to the department for a certificate of approval of the
 1 site selected and the general purpose or purposes for which the
 2 property is to be acquired, to insure that the property and its use
 3 shall conform to minimum standards of safety and shall serve the
 4 public interest. It shall be unlawful for any municipality or
 5 officer or employee thereof, or for any person, to operate an
 6 airport; or restricted landing area; ~~or other air navigation~~
 7 facility for which ~~an annual~~ a license has not been issued by the
 8 department.

9 Sec. 3. Section 3-157, Reissue Revised Statutes of
 10 Nebraska, is amended to read:

11 3-157. The Department of Aeronautics may lease for a
 12 period not exceeding twelve years real property held by the
 13 department that has been offered for sale for two consecutive years
 14 and has not been sold. The lease shall provide for annual rental
 15 payments based on fair rental value. The rental payments shall be
 16 deposited in the Department of Aeronautics Cash Fund. The
 17 department shall cause reappraisals to be made of the land under
 18 lease when it deems it necessary due to changes in buildings or
 19 improvements, changes in the land, or for other reasons. ~~A~~
 20 ~~reappraisal shall be made at least once every five years.~~ The
 21 department may, after the expiration of any lease, offer such land
 22 for sale by public auction as set forth in section 3-155 or may
 23 enter into another lease."

24 2. On page 1, line 1, after "sections" insert "3-129,
 25 3-133, 3-157,"; in line 3 before "airport" insert "airports,
 26 landing areas,"; in line 4 after "projects" insert a comma; and in
 27 line 5 after "eliminate" insert "a reappraisal requirement and".

1 3. On page 6, line 17, after "sections" insert "3-129,
 2 3-133, 3-157,".

3 4. Renumber the remaining sections accordingly.

The Bromm motion to return prevailed with 34 ayes, 0 nays, 13 present and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 446. The Bromm specific amendment, AM2869, found in this day's Journal, was adopted with 41 ayes, 0 nays, 6 present and not voting, and 2 excused and not voting.

Advanced to E & R for reengrossment.

MOTION - Return LB 446 to Select File

Senator Hudkins moved to return LB 446 to Select File for the following specific amendment:
AM2870

(Amendments to Final Reading copy)

- 1 1. On page 3, strike line 28 and insert:
- 2 "(e) Primary airport means any airport which:
- 3 (i) Receives scheduled passenger air service;
- 4 (ii) Has at least ten thousand revenue passenger
- 5 enplanements or boardings, as officially recorded by the United
- 6 States, in at least one of the most recent five calendar years for
- 7 which official numbers are available; and
- 8 (iii) Does not receive any funds apportioned by the
- 9 United States for non-primary airports."
- 10 2. On page 4, strike lines 1 through 7.

The Hudkins motion to return prevailed with 36 ayes, 0 nays, 11 present and not voting, and 2 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 446. The Hudkins specific amendment, AM2870, found in this day's Journal, was adopted with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

Advanced to E & R for reengrossment.

BILLS ON FINAL READING

The following bills were read and put upon final passage:

LEGISLATIVE BILL 474. With Emergency.

A BILL FOR AN ACT relating to the Nebraska Wheat Development, Utilization, and Marketing Board; to amend sections 2-2304 and 2-2305, Reissue Revised Statutes of Nebraska; to change the membership of the board; to change terms of office; to repeal the original sections; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to

procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 46:

Aguilar	Connealy	Jensen	Price	Synowiecki
Baker	Coordsen	Jones	Quandahl	Thompson
Beutler	Cudaback	Kremer	Raikes	Tyson
Bourne	Cunningham	Kristensen	Redfield	Vrtiska
Brashear	Engel	Kruse	Robak	Wehrbein
Bromm	Erdman	Maxwell	Schimek	Wickersham
Brown	Foley	McDonald	Schrock	
Bruning	Hartnett	Pedersen, Dw.	Smith	
Burling	Hudkins	Pederson, D.	Stuhr	
Byars	Janssen	Preister	Suttle	

Voting in the negative, 0.

Present and not voting, 1:

Chambers

Excused and not voting, 2:

Dierks Landis

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

LEGISLATIVE BILL 482.

A BILL FOR AN ACT relating to the State Athletic Commissioner; to amend sections 81-8,130, 81-8,133, and 81-8,139, Reissue Revised Statutes of Nebraska, and sections 81-8,130.01 and 81-8,133.01, Revised Statutes Supplement, 2000; to authorize the commissioner to set fees as prescribed; to change provisions relating to licensure; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 45:

Aguilar	Byars	Hudkins	Pedersen, Dw.	Schrock
Baker	Chambers	Janssen	Pederson, D.	Smith
Beutler	Connealy	Jensen	Preister	Stuhr
Bourne	Coordsen	Jones	Price	Suttle
Brashear	Cudaback	Kremer	Quandahl	Synowiecki
Bromm	Cunningham	Kristensen	Raikes	Thompson
Brown	Engel	Kruse	Redfield	Tyson
Bruning	Erdman	Maxwell	Robak	Vrtiska
Burling	Foley	McDonald	Schimek	Wehrbein

Voting in the negative, 0.

Present and not voting, 2:

Hartnett Wickersham

Excused and not voting, 2:

Dierks Landis

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 500 with 34 ayes, 1 nay, 12 present and not voting, and 2 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 500.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-405, Revised Statutes Supplement, 2001; to change provisions relating to controlled substances; and to repeal the original section.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 45:

Aguilar	Chambers	Janssen	Pederson, D.	Smith
Baker	Connealy	Jensen	Preister	Stuhr
Bourne	Coordsen	Jones	Price	Suttle
Brashear	Cudaback	Kremer	Quandahl	Synowiecki
Bromm	Cunningham	Kristensen	Raikes	Thompson
Brown	Erdman	Kruse	Redfield	Tyson
Bruning	Foley	Maxwell	Robak	Vrtiska
Burling	Hartnett	McDonald	Schimek	Wehrbein
Byars	Hudkins	Pedersen, Dw.	Schrock	Wickersham

Voting in the negative, 0.

Present and not voting, 2:

Beutler Engel

Excused and not voting, 2:

Dierks Landis

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

Dispense With Reading at Large

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 568 with 36 ayes, 0 nays, 11 present and not voting, and 2 excused and not voting.

The following bill was put upon final passage:

LEGISLATIVE BILL 568. With Emergency.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 13-505, 19-2903, 19-2905, and 23-250, Reissue Revised Statutes of Nebraska, sections 13-504, 13-506, 13-508, and 84-304, Revised Statutes Supplement, 2000, and sections 13-511, 77-3442, and 79-10,110, Revised Statutes Supplement, 2001; to change budget and audit provisions; to eliminate a board that has terminated; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal section 13-504.01, Revised Statutes Supplement, 2000; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 46:

Aguilar	Chambers	Janssen	Preister	Synowiecki
Baker	Connealy	Jensen	Price	Thompson
Beutler	Coordsen	Jones	Quandahl	Tyson
Bourne	Cudaback	Kremer	Raikes	Vrtiska
Brashear	Cunningham	Kristensen	Redfield	Wehrbein
Bromm	Engel	Kruse	Robak	Wickersham
Brown	Erdman	Maxwell	Schimek	
Bruning	Foley	McDonald	Smith	
Burling	Hartnett	Pedersen, Dw.	Stuhr	
Byars	Hudkins	Pederson, D.	Suttle	

Voting in the negative, 0.

Present and not voting, 1:

Schrock

Excused and not voting, 2:

Dierks Landis

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

The following bill was read and put upon final passage:

LEGISLATIVE BILL 589.

A BILL FOR AN ACT relating to the Livestock Brand Act; to amend sections 54-193, 54-198, 54-199, 54-1,100, 54-1,102, 54-1,105, 54-1,108, and 54-1,110, Revised Statutes Supplement, 2000; to change provisions relating to publications, brands, and fees; to harmonize provisions; and to repeal the original sections.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass?' "

Voting in the affirmative, 44:

Aguilar	Connealy	Janssen	Pederson, D.	Stuhr
Baker	Coordsen	Jensen	Price	Suttle
Bourne	Cudaback	Jones	Quandahl	Synowiecki
Brashear	Cunningham	Kremer	Raikes	Thompson
Bromm	Engel	Kristensen	Redfield	Tyson
Brown	Erdman	Kruse	Robak	Vrtiska
Bruning	Foley	Maxwell	Schimek	Wehrbein
Burling	Hartnett	McDonald	Schrock	Wickersham
Byars	Hudkins	Pedersen, Dw.	Smith	

Voting in the negative, 0.

Present and not voting, 3:

Beutler Chambers Preister

Excused and not voting, 2:

Dierks Landis

A constitutional majority having voted in the affirmative, the bill was declared passed and the title agreed to.

MOTION - Return LB 824 to Select File

Senator Chambers moved to return LB 824 to Select File for the following specific amendment:
 FA862
 Strike enacting clause.

Senator Chambers withdrew his motion to return.

BILL ON FINAL READING

The following bill was read and put upon final passage:

LEGISLATIVE BILL 824. With Emergency.

A BILL FOR AN ACT relating to homicide; to amend section 28-101, Revised Statutes Supplement, 2000; to adopt the Homicide of the Unborn Child Act; to provide penalties; to harmonize provisions; to provide severability; to repeal the original section; and to declare an emergency.

Senator Chambers requested a roll call vote.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 42:

Aguilar	Byars	Hudkins	Pedersen, Dw.	Suttle
Baker	Connealy	Janssen	Pederson, D.	Synowiecki
Beutler	Coordsen	Jensen	Preister	Thompson
Bourne	Cudaback	Jones	Quandahl	Tyson
Brashear	Cunningham	Kremer	Redfield	Vrtiska
Bromm	Engel	Kristensen	Robak	Wehrbein
Brown	Erdman	Kruse	Schrock	
Bruning	Foley	Maxwell	Smith	
Burling	Hartnett	McDonald	Stuhr	

Voting in the negative, 5:

Chambers	Price	Raikes	Schimek	Wickersham
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Excused and not voting, 2:

Dierks	Landis
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A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

STANDING COMMITTEE REPORTS

Judiciary

LEGISLATIVE BILL 861. Placed on General File.

LEGISLATIVE BILL 343. Placed on General File as amended.
Standing Committee amendment to LB 343:

AM0590

- 1 1. On page 2, lines 1 and 11, strike "provided by law"
 2 and insert "agreed"; strike beginning with "and" in line 6 through
 3 "information" in line 7; strike lines 9 and 10 and insert "employer
 4 or the employer's designee knew or should have known that the
 5 communicated information was false and that it was not communicated
 6 in good faith."; in lines 14 and 15 strike "if the disclosure is
 7 limited to" and insert "to the extent the disclosure reveals"; and
 8 in line 22 after the semicolon insert "and".
- 9 2. On page 3, strike beginning with the semicolon in
 10 line 1 through "will" in line 2; and in line 3 after "(4)" insert
 11 "This section does not require any employer to disclose information
 12 about a current or former employee to a prospective employer.
 13 (5) This section does not abrogate any common-law or
 14 statutory privilege, immunity, or defense.
 15 (6)".

LEGISLATIVE BILL 784. Placed on General File as amended.
 Standing Committee amendment to LB 784:
 AM2296

- 1 1. On page 3, line 8, strike "subdivision", show as
 2 stricken, and insert "section"; strike lines 13 through 20 and
 3 insert:
 4 "(a) The court may place the minor child in joint legal
 5 custody only after conducting a hearing in open court and
 6 specifically finding that such joint custody is in the best
 7 interests of the minor child, regardless of any parental agreement
 8 or consent. If joint legal custody is ordered, each parent shall
 9 have the right to make decisions in the best interests of the minor
 10 child in accordance with the parenting plan developed under the
 11 Parenting Act. A decree ordering joint legal custody shall include
 12 a parenting plan which specifies each parent's separate or shared
 13 role and responsibility to make decisions regarding the minor
 14 child. If joint legal custody is not ordered, the court shall make
 15 specific findings of fact upon which the order for custody other
 16 than joint legal custody is based. The court need not consider
 17 joint legal custody if it finds credible evidence of abuse
 18 inflicted upon any family or household member."; and in line 26
 19 strike "shall" and insert "may".
- 20 2. On page 4, line 6, strike beginning with "in" through
 21 "of", show as stricken, and insert "with"; strike beginning with
 22 "pursuant" in line 6 through line 7, show as stricken, and insert
 23 an underscored period; in line 23 strike "one party to the other",
 24 show as stricken and insert "the obligor to the obligee"; in lines
 1 23 and 24 strike "party receiving such payment", show as stricken,
 2 and insert "obligee"; strike beginning with "party" in line 26
 3 through "child" in line 27, show as stricken, and insert "obligee";
 4 and in line 27 strike "party", show as stricken, and insert
 5 "obligee".

6 3. On page 8, line 18, strike "shall" and insert "may".

LEGISLATIVE BILL 870. Placed on General File as amended.

Standing Committee amendment to LB 870:

AM2601

1 1. On page 3, lines 7 and 8, strike "and/or the
2 expiration date".

LEGISLATIVE BILL 599. Indefinitely postponed.

LEGISLATIVE BILL 815. Indefinitely postponed.

LEGISLATIVE BILL 834. Indefinitely postponed.

LEGISLATIVE BILL 1196. Indefinitely postponed.

(Signed) Kermit A. Brashear, Chairperson

AMENDMENTS - Print in Journal

Senator Jensen filed the following amendment to LB 1089:

AM2695

1 1. On page 5, line 17, strike the new matter and
2 reinstate the stricken matter.

3 2. On page 7, line 9, strike "corporate limits of the
4 city", show as stricken, and insert "county"; strike beginning with
5 the comma in line 12 through "1996" in line 26, show the old matter The
6 as stricken, and insert "and within counties in this state which
7 adjoin such county"; and strike lines 27 and 28 and show the old
8 matter as stricken.

9 3. On page 8, strike lines 1 through 13 and show as
10 stricken.

Senator Bromm filed the following amendment to LB 830:

(Amendment, AM2860, may be found in the Bill Books. The amendment has been printed separately and is on file in the Bill Room - Room 1102.)

ANNOUNCEMENTS

The Urban Affairs Committee designates LB 811 and LB 729 as its priority bills.

The Business and Labor Committee designates LB 931 as its priority bill.

The Judiciary Committee designates LB 1279 and LB 1303 as its priority bills.

Senator Hartnett designates LB 1240 as his priority bill.

Senator Preister designates LB 1267 as his priority bill.

The Health and Human Services Committee designates LB 1021 as its priority bill.

MESSAGE FROM THE GOVERNOR

February 22, 2002

Patrick J. O'Donnell
Clerk of the Legislature
State Capitol, Room 2018
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bill 1101e was received in my office on February 21, 2002.

This bill was signed by me on February 22, 2002 and delivered to the Secretary of State.

Sincerely,
(Signed) Mike Johanns
Governor

MOTION - Print in Journal

Senator Brashear filed the following motion to LR 6CA:
Reconsider the vote to adopt the Beutler amendment, AM2819, to LR 6CA.

EXPLANATION OF VOTE

Had I been present, I would have voted "aye" on final passage of LB 824.

(Signed) David M. Landis

UNANIMOUS CONSENT - Add Cointroducers

Senator Preister asked unanimous consent to have his name added as cointroducer to LB 926. No objections. So ordered.

Senator Quandahl asked unanimous consent to have his name added as cointroducer to LB 426. No objections. So ordered.

SPEAKER SIGNED

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LBs 241, 241A, 259, 406, 436, 436A, 474, 482, 500, 568, 589, and 824.

VISITORS

Visitors to the Chamber were Ron and Elveda Elznic from Lincoln; Camilla and Matt Whitman and Caroline Ritchey from Grand Island; and Senator Kristensen's daughter, Morgan, from Minden.

The Doctor of the Day was Dr. Mike Myers from Lincoln.

ADJOURNMENT

At 11:45 a.m., on a motion by Senator Schimek, the Legislature adjourned until 9:00 a.m., Monday, February 25, 2002.

Patrick J. O'Donnell
Clerk of the Legislature