

**TWENTY-FIFTH DAY - FEBRUARY 13, 2003****LEGISLATIVE JOURNAL****NINETY-EIGHTH LEGISLATURE  
FIRST SESSION****TWENTY-FIFTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, February 13, 2003

**PRAYER**

The prayer was offered by Senator Kruse.

**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 Beutler, Brashear, Brown, Chambers, Cunningham, Engel, Erdman, Landis, Maxwell, Quandahl, and Raikes who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the twenty-fourth day was approved.

**STANDING COMMITTEE REPORTS  
Transportation and Telecommunications**

**LEGISLATIVE BILL 609.** Placed on General File.

**LEGISLATIVE BILL 740.** Placed on General File.

**LEGISLATIVE BILL 531.** Placed on General File as amended.

(Standing Committee amendment, AM0265, is printed separately and available in the Bill Room, Room 1104.)

(Signed) Tom Baker, Chairperson

**MOTION - Withdraw LB 723**

Senator Jensen renewed his pending motion, found on page 495, to withdraw LB 723.

The Jensen motion to withdraw prevailed with 28 ayes, 0 nays, 10 present and not voting, and 11 excused and not voting.

**SELECT FILE**

**LEGISLATIVE BILL 76.** E & R amendment, AM7005, found on page 309, was adopted.

Senator Hartnett renewed his pending amendment, AM0078, found on page 317.

The Hartnett amendment was adopted with 33 ayes, 0 nays, 8 present and not voting, and 8 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 30.** Senator Schrock offered the following amendment:

AM0365

- 1 1. Insert the following new section:
- 2 "Sec. 3. Since an emergency exists, this act takes
- 3 effect when passed and approved according to law."
- 4 2. On page 2, strike the new matter and all amendments
- 5 thereto and insert "(1) Any person who violates a cease and desist
- 6 order issued by a district pursuant to section 46-656.08 shall be
- 7 subject to a civil penalty of not less than one thousand dollars
- 8 and not more than five thousand dollars for each day an intentional
- 9 violation occurs. In assessing the amount of the civil penalty,
- 10 the court shall consider the degree and extent of the violation,
- 11 the size of the operation, whether the violator has been previously
- 12 convicted or subjected to a civil penalty under this section, and
- 13 any economic benefit derived from noncompliance. Any civil penalty
- 14 assessed and unpaid shall constitute a debt to the state which may
- 15 be collected in the manner of a lien foreclosure or sued for and
- 16 recovered in a proper form of action in the name of the state in
- 17 the district court of the county in which the violator resides or
- 18 owns property. The court shall, within thirty days after receipt,
- 19 remit the civil penalty to the State Treasurer for credit to the
- 20 permanent school fund.
- 21 (2)(a) Prior to issuing a cease and desist order against
- 22 a public water supplier as defined in section 46-638, the district
- 23 shall consult with the Attorney General. If the Attorney General
- 24 determines that the district does not have sufficient grounds to
- 1 issue a cease and desist order, the district shall abide by such
- 2 determination and shall not issue a cease and desist order. The
- 3 Attorney General shall have exclusive authority to enforce actions
- 4 under this subsection.
- 5 (b) Any determination as to whether a water well is
- 6 properly registered under sections 46-602 to 46-604 or whether a
- 7 water well is properly permitted under the Municipal and Rural
- 8 Domestic Ground Water Transfers Permit Act shall be made by the

9 Department of Natural Resources.  
 10 (3) When the Attorney General, a county attorney, or a  
 11 private attorney brings an action on behalf of a natural resources  
 12 district to recover a civil penalty under this section, the  
 13 district shall recover the costs of the action if a civil penalty  
 14 is awarded. Any recovered costs of the action shall be: (a)  
 15 Remitted to the State Treasurer for credit to the Department of  
 16 Justice Natural Resources Enforcement Fund if the action is brought  
 17 by the Attorney General; (b) credited to the applicable county fund  
 18 if the action is brought by the county attorney; and (c) remitted  
 19 to the natural resources district if the action is brought by the  
 20 district's private attorney.  
 21 (4) The Department of Justice Natural Resources  
 22 Enforcement Fund is created. The fund shall consist of money  
 23 credited pursuant to subsection (3) of this section. Money in the  
 24 fund shall be used to reimburse the office of the Attorney General  
 25 for the costs incurred in enforcing this section. Any money in the  
 26 fund available for investment shall be invested by the state  
 27 investment officer pursuant to the Nebraska Capital Expansion Act  
 1 and the Nebraska State Funds Investment Act."

The Schrock amendment was adopted with 33 ayes, 0 nays, 10 present and not voting, and 6 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 213.** Advanced to E & R for engrossment.

**LEGISLATIVE BILL 241.** E & R amendment, AM7014, found on page 408, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 31.** Advanced to E & R for engrossment.

**LEGISLATIVE BILL 305.** E & R amendment, AM7015, found on page 408, was adopted.

Senator Jensen offered the following amendment:

FA1158

On page 3, strike from "The" in line 4 through "prohibited" in line 6 and insert "No hunting permit shall be issued to any person who is known to have a significant physical or mental disability and who is unable to safely carry or use a firearm because of such disability".

The Jensen amendment was adopted with 29 ayes, 0 nays, 18 present and not voting, and 2 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 72.** E & R amendment, AM7016, found on page 431, was adopted.

Advanced to E & R for engrossment.

Senator Bourne asked unanimous consent to be excused until he returns. No objections. So ordered.

**LEGISLATIVE BILL 291.** E & R amendment, AM7018, found on page 432, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 292.** E & R amendment, AM7017, found on page 432, was adopted.

Senator Landis renewed his pending amendment, AM0288, found on page 461.

The Landis amendment was adopted with 29 ayes, 0 nays, 17 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

Senator Bromm asked unanimous consent to be excused until he returns. No objections. So ordered.

**LEGISLATIVE BILL 41.** E & R amendment, AM7019, found on page 437, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 84.** Advanced to E & R for engrossment.

**LEGISLATIVE BILL 90.** E & R amendment, AM7020, found on page 445, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 126.** Advanced to E & R for engrossment.

**LEGISLATIVE BILL 243.** Advanced to E & R for engrossment.

**LEGISLATIVE BILL 429.** E & R amendment, AM7021, found on page 445, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 238.** E & R amendment, AM7023, found on page 463, was adopted.

Senator Price renewed her pending amendment, AM0280, found on page 460.

The Price amendment was adopted with 26 ayes, 0 nays, 19 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 333.** E & R amendment, AM7022, found on page 463, was adopted.

Senator Burling offered the following amendment:  
AM0373

- 1 1. On page 3, line 2, strike "purchase or otherwise
- 2 acquire or".

The Burling amendment was adopted with 25 ayes, 0 nays, 20 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 333A.** Advanced to E & R for engrossment.

**LEGISLATIVE BILL 131.** E & R amendment, AM7026, found on page 470, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 217.** E & R amendment, AM7027, found on page 475, was adopted.

Senator Quandahl renewed his pending amendment, AM0316, found on page 503.

The Quandahl amendment was adopted with 33 ayes, 0 nays, 12 present and not voting, and 4 excused and not voting.

Senator Beutler offered the following amendment:  
AM0306

- 1 1. Strike original section 9.
- 2 2. In the E & R amendment, AM7027, strike amendment 5.
- 3 3. On page 65, line 17, strike "44" and insert "43".
- 4 4. On page 68, strike beginning with "10" in line 19

5 through "50" in line 20 and insert "11 to 30, 32 to 45, 48, and 6 49".

7 5. On page 69, line 1, strike "8-208,".

8 6. Renumber the remaining sections accordingly.

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

The Beutler amendment was adopted with 28 ayes, 0 nays, 18 present and not voting, and 3 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 85.** E & R amendment, AM7024, found on page 476, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 85A.** Advanced to E & R for engrossment.

Senator Landis asked unanimous consent to be excused until he returns. No objections. So ordered.

**LEGISLATIVE BILL 214.** E & R amendment, AM7025, found on page 476, was adopted.

Senator Quandahl renewed his pending amendment, AM0314, found on page 480.

The Quandahl amendment was adopted with 27 ayes, 0 nays, 18 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 216.** E & R amendment, AM7028, found on page 476, was adopted.

Senator Beutler offered the following amendment:  
AM0368

1 1. On page 44, line 22, after "that" insert "an insurer  
2 may at its option file policy forms and related rules of attachment  
3 in accordance with section 44-7513 and".

4 2. On page 45, line 24, after "section" insert "or that  
5 the insurer committed one or more egregious acts relating to the  
6 filing standards".

7 3. On page 46, line 4, strike the first "shall" and  
8 insert "may".

9 4. On page 49, line 25, strike "may" and insert "shall"

10 and strike "at any" and insert "within a reasonable".

11 5. On page 50, lines 7 and 16, strike ", within thirty  
 12 days after its receipt,"; in line 13 after "but" insert "with the  
 13 approval of the director"; and strike beginning with "thirty-day"  
 14 in line 18 through "director" in line 20 and insert "filer shall  
 15 furnish the requested information within ninety days".

Senator Aguilar asked unanimous consent to be excused until he returns. No objections. So ordered.

Senator Beutler withdrew his amendment.

Senator Beutler offered the following amendment:

FA1159

1. On page 44, line 22, after "that" insert "an insurer may at its option file policy forms and related rules of attachment in accordance with section 44-7513 and".
2. On page 45, line 24, after "section" insert "or that the insurer committed one or more egregious acts relating to the filing standards".
4. On page 49, line 25, strike "may" and insert "shall" and strike "at any" and insert "within a reasonable".

The Beutler amendment lost with 6 ayes, 9 nays, 30 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

### **BILL ON FIRST READING**

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

**LEGISLATIVE BILL 228A.** Introduced by Schimek, 27.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 228, Ninety-eighth Legislature, First Session, 2003.

### **NOTICE OF COMMITTEE HEARINGS**

#### **Appropriations**

Room 1524

LB 402	Monday, February 24, 2003	1:30 p.m.
LB 403	Monday, February 24, 2003	1:30 p.m.
LB 404	Monday, February 24, 2003	1:30 p.m.
LB 405	Monday, February 24, 2003	1:30 p.m.
LB 406	Monday, February 24, 2003	1:30 p.m.
LB 407	Monday, February 24, 2003	1:30 p.m.
LB 408	Monday, February 24, 2003	1:30 p.m.
LB 409	Monday, February 24, 2003	1:30 p.m.

Tuesday, February 25, 2003

1:30 p.m.

AGENCY 57 - Oil & Gas Commission  
AGENCY 39 - Brand Committee  
AGENCY 56 - Nebraska Wheat Board  
AGENCY 60 - Ethanol Board  
AGENCY 61 - NE Dairy Industry Dev. Board  
AGENCY 86 - Dry Bean Commission  
AGENCY 88 - Corn Board  
AGENCY 92 - Grain Sorghum Board  
AGENCY 29 - Dept. of Natural Resources  
AGENCY 52 - State Board of Agriculture

Room 1003

Wednesday, February 26, 2003

1:30 p.m.

AGENCY 59 - Geologists Board  
AGENCY 45 - Bd. of Barber Examiners  
AGENCY 30 - Electrical Board  
AGENCY 74 - Power Review Board  
AGENCY 41 - Real Estate Commission  
AGENCY 53 - Real Estate Appraiser Board  
AGENCY 63 - Bd. of Public Accountancy  
AGENCY 32 - Bd. of Educational Lands-Funds  
AGENCY 62 - Land Surveyors  
AGENCY 36 - Racing Commission  
AGENCY 58 - Engineers & Architects  
AGENCY 66 - Bd. of Examiners Abstracters  
AGENCY 73 - Landscape Architects

Thursday, February 27, 2003

1:30 p.m.

AGENCY 81 - Blind & Visually Impaired  
AGENCY 38 - Women's Commission  
AGENCY 67 - Equal Opportunity Comm.  
AGENCY 68 - Mexican American Comm.  
AGENCY 70 - Foster Care Review Board  
AGENCY 76 - Nebraska Indian Commission  
AGENCY 82 - Comm. Deaf & Hard of Hearing

Friday, February 28, 2003

1:30 p.m.

AGENCY 23 - Dept. of Labor  
AGENCY 18 - Dept. of Agriculture  
AGENCY 84 - Dept. of Environmental Quality

(Signed) Roger R. Wehrbein, Chairperson

**AMENDMENT - Print in Journal**

Senator Quandahl filed the following amendment to LB 218:  
AM0355

- 1 1. On page 16, line 16, strike "three" and insert "two".

**GENERAL FILE**

**LEGISLATIVE RESOLUTION 16CA.** Read. Considered.

Senators Beutler, Brashear, Engel, and Kremer asked unanimous consent to be excused. No objections. So ordered.

Senator McDonald asked unanimous consent to bracket LR 16CA to March 1, 2003. No objections. So ordered.

**LEGISLATIVE BILL 114.** Title read. Considered.

**SENATOR CUDABACK PRESIDING**

Advanced to E & R for review with 26 ayes, 0 nays, 19 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 257.** Title read. Considered.

Advanced to E & R for review with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

**AMENDMENT - Print in Journal**

Senator Beutler filed the following amendment to LB 186:  
AM0347

- 1 1. On page 3, line 17, strike "Department of Roads",
- 2 show as stricken, and insert "Travel and Tourism Division of the
- 3 Department of Economic Development".

**NOTICE OF COMMITTEE HEARINGS**

**Business and Labor**

Room 2102

LB 210	Monday, February 24, 2003	1:30 p.m.
LB 332	Monday, February 24, 2003	1:30 p.m.
LB 725	Monday, February 24, 2003	1:30 p.m.
LB 733	Monday, February 24, 2003	1:30 p.m.
LB 752	Monday, February 24, 2003	1:30 p.m.
LB 558	Monday, February 24, 2003	1:30 p.m.

(Signed) Floyd P. Vrtiska, Chairperson

**General Affairs**  
Room 1510

LB 266	Monday, February 24, 2003	1:30 p.m.
LB 533	Monday, February 24, 2003	1:30 p.m.
LB 606	Monday, February 24, 2003	1:30 p.m.
LB 787	Monday, February 24, 2003	1:30 p.m.

(Signed) Ray Janssen, Chairperson

**STANDING COMMITTEE REPORTS**  
**Natural Resources**

**LEGISLATIVE BILL 165.** Placed on General File.

(Signed) Ed Schrock, Chairperson

**Urban Affairs**

**LEGISLATIVE BILL 690.** Indefinitely postponed.

(Signed) D. Paul Hartnett, Chairperson

**SELECT COMMITTEE REPORTS**  
**Enrollment and Review**

**LEGISLATIVE BILL 282.** Placed on Select File as amended.

(E & R amendment, AM7034, is printed separately and available in the Bill Room, Room 1104.)

**LEGISLATIVE BILL 381.** Placed on Select File.

**LEGISLATIVE BILL 381A.** Placed on Select File.

**LEGISLATIVE BILL 222.** Placed on Select File as amended.

E & R amendment to LB 222:

AM7031

1 1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:  
3 "Section 1. Section 23-1721, Reissue Revised Statutes of  
4 Nebraska, is amended to read:  
5 23-1721. The ~~purpose of sections 23-1721 to 23-1737 is~~  
6 ~~purposes of sections 23-1721 to 23-1736 are~~ to guarantee to all  
7 citizens a fair and equal opportunity for public service in the  
8 office of the county sheriff in counties having a population of  
9 twenty-five thousand inhabitants or more, to establish and review  
10 conditions of service which will attract officers and employees of  
11 character and capacity, and to increase the efficiency of the  
12 county sheriff's office by the establishment of a merit system.

13 Sec. 2. Section 23-1723, Reissue Revised Statutes of  
14 Nebraska, is amended to read:  
15 23-1723. The sheriff's office merit commission in  
16 counties having a population of three hundred thousand inhabitants  
17 or more shall consist of five members. One member shall be a duly  
18 elected county official, appointed by the ~~board of county~~  
19 ~~commissioners county board~~. One member shall be a deputy sheriff,  
20 elected by the deputy sheriffs. Three members shall be selected by  
21 the presiding judge of the judicial district encompassing such  
22 county and shall be public representatives who are residents of the  
23 county. The terms of office of members initially appointed or  
24 elected shall expire on January 1 of the first, second, and third  
1 years following their appointment or election, as designated by the  
2 ~~board of county commissioners county board~~. As the terms of  
3 initial members expire, their successors shall be appointed or  
4 elected for three-year terms in the same manner as the initial  
5 members. The additional public representative provided for in this  
6 section shall serve until January 1, 1984, and thereafter his or  
7 her successors shall be appointed or elected for three-year terms.  
8 ~~The member of the division of corrections serving on the commission~~  
9 ~~on August 26, 1983, shall continue to serve on the commission until~~  
10 ~~the additional public representative member is appointed.~~ Any  
11 vacancy shall be filled by appointment or election in the same  
12 manner as appointment or election of initial members. The  
13 commission shall have the power to declare vacant the position of  
14 any member who no longer meets the qualifications for election or  
15 appointment set out in this section.

16 Sec. 3. Section 23-1723.01, Reissue Revised Statutes of  
17 Nebraska, is amended to read:  
18 23-1723.01. In counties having a population of not less  
19 than twenty-five thousand inhabitants ~~nor more and less~~ than three  
20 hundred thousand inhabitants, the sheriff's office merit commission  
21 shall consist of three members. One member shall be a duly elected  
22 county official, appointed by the ~~board of county commissioners~~  
23 ~~county board~~. One member shall be a deputy sheriff, elected by the  
24 deputy sheriffs. The third member shall be selected by the  
25 presiding judge of the judicial district encompassing such county  
26 and shall be a public representative who is a resident of the  
27 county and neither an official nor employee of the county. The  
1 terms of office of members initially appointed or elected before  
2 March 20, 1982, shall expire on January 1 of the years 1978, 1979,  
3 and 1980, as designated by the ~~board of county commissioners county~~  
4 ~~board~~. The terms of office of members initially appointed or  
5 elected after March 20, 1982, shall expire on January 1 of the  
6 years 1983, 1984, and 1985, as designated by the ~~board of county~~  
7 ~~commissioners county board~~. As the terms of initial members  
8 expire, their successors shall be appointed or elected for  
9 three-year terms in the same manner as the initial members. Any  
10 vacancy shall be filled by appointment or election in the same

11 manner as appointment or election of initial members. The  
 12 commission shall have the power to declare vacant the position of  
 13 any member who no longer meets the qualifications for election or  
 14 appointment set out in this section.

15 Sec. 4. Section 23-1725, Reissue Revised Statutes of  
 16 Nebraska, is amended to read:

17 23-1725. The sheriff's office merit commission shall  
 18 hold meetings regularly, at least once every three months, and  
 19 shall designate the time and place thereof. It shall adopt its own  
 20 rules of procedure and shall keep a record of its proceedings. All  
 21 meetings and records of the commission shall be public, except as  
 22 otherwise provided in sections 23-1721 to ~~23-1737~~ 23-1736.

23 Sec. 5. Section 23-1726, Reissue Revised Statutes of  
 24 Nebraska, is amended to read:

25 23-1726. For ~~the purpose of sections 23-1721 to 23-1737~~  
 26 ~~the term~~ purposes of sections 23-1721 to 23-1736, classified  
 27 service ~~shall include~~ includes all deputy sheriffs including the  
 1 jailer and matrons but ~~shall~~ does not include the civilian  
 2 employees of the office. ~~The~~ and the deputy sheriff designated  
 3 by the sheriff as chief deputy is specifically excluded from  
 4 sections 23-1721 to ~~23-1737~~ 23-1736.

5 Sec. 6. Section 23-1727, Reissue Revised Statutes of  
 6 Nebraska, is amended to read:

7 23-1727. The powers and duties of the sheriff's office  
 8 merit commission shall be as follows:

- 9 (1) To adopt rules not inconsistent with ~~the provisions~~  
 10 ~~of~~ sections 23-1721 to ~~23-1737~~, 23-1736 for the examination and  
 11 selection of persons to fill the offices and positions in the  
 12 classified service which are required to be filled by appointment,  
 13 and for the selection of such persons to be employed in the  
 14 classified service of the office of the sheriff;
- 15 (2) To supervise the administration of the merit system  
 16 rules, hold examinations ~~thereunder~~ from time to time; after giving  
 17 notice thereof, prepare and keep an eligibility list of persons  
 18 passing such examinations, and certify the names of persons thereon  
 19 to the sheriff;
- 20 (3) To investigate, by itself or otherwise, the  
 21 enforcement of ~~the provisions of~~ sections 23-1721 to ~~23-1737~~,  
 22 23-1736 and of its own rules and the action of appointees in the  
 23 classified service. In the course of such investigation, the  
 24 commission, or its authorized representative, shall have the power  
 25 to administer oaths, and the commission shall have power, by  
 26 subpoena, to secure both the attendance and testimony of witnesses  
 27 and the production of books and papers relevant to such  
 1 investigation;
- 2 (4) To provide, through the purchasing department of the  
 3 county, all needed supplies for the use of the commission;
- 4 (5) To classify deputy sheriffs and subdivide them into  
 5 groups according to rank and grade ~~which shall be~~ based upon the

6 duties and responsibilities of such positions. The commission  
7 shall recommend to the county board salaries which ~~shall be~~ are  
8 uniform for each group of the classified service and ~~shall be~~  
9 comparable to those of comparable counties in this section of the  
10 United States; and

11 (6) To perform such other duties as may be necessary to  
12 carry out ~~the provisions of~~ sections 23-1721 to ~~23-1737~~ 23-1736.

13 Sec. 7. Section 23-1729, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 23-1729. The sheriff of each county under sections  
16 23-1721 to ~~23-1737~~ 23-1736 shall be the personnel director of the  
17 merit system. The personnel director shall act as secretary of the  
18 sheriff's office merit commission; and shall advise the commission  
19 in all matters pertaining to the merit system established by  
20 sections 23-1721 to ~~23-1737~~ 23-1736.

21 Sec. 8. Section 23-1730, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 23-1730. For ~~the purposes of sections 23-1721 to 23-1737~~  
24 purposes of sections 23-1721 to 23-1736, all deputy sheriffs  
25 actually serving as such shall comprise the classified service.  
26 The chief deputy sheriff shall not be within the classified  
27 service, but a deputy sheriff serving with permanent rank under  
1 sections 23-1721 to ~~23-1737~~ 23-1736 may be designated chief deputy  
2 sheriff and retain such rank during the period of his or her  
3 service as chief deputy sheriff and shall upon termination of his  
4 or her duties as chief deputy sheriff revert to his or her  
5 permanent rank.

6 Sec. 9. Section 23-1731, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 23-1731. Whenever a position in the classified service  
9 is to be filled, the sheriff shall notify the sheriff's office  
10 merit commission of that fact, and the commission shall certify the  
11 names and addresses of the three candidates standing highest on the  
12 eligibility list for the class or grade for the position to be  
13 filled, and the sheriff shall forthwith appoint to such position  
14 one of the three persons so certified. Such appointment shall be  
15 for a probationary period to be fixed by the rules, but not to  
16 exceed one year. On or before the expiration of the probationary  
17 period, the sheriff may, by presenting specific reasons for such  
18 action in writing, discharge a probationary appointee, or, with the  
19 approval of the commission, transfer him or her to another  
20 department within the sheriff's office. If not discharged prior to  
21 the expiration of the period of probation; and if no complaint has  
22 been made about the service rendered, the appointment shall be  
23 deemed permanent. To prevent the stoppage of business or to meet  
24 extraordinary conditions or emergencies, the sheriff may, with the  
25 approval of the commission, make a temporary appointment to remain  
26 in force for not to exceed sixty days; and only until regular  
27 appointment can be made under ~~the provisions of~~ sections 23-1721 to

1 ~~23-1737~~ 23-1736.

2 Sec. 10. Section 23-1732, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 23-1732. (1) All deputy sheriffs in active employment on  
5 January 1, 1970, in counties of three hundred thousand inhabitants  
6 or more and on January 1, 1973, in counties having a population of  
7 more than one hundred fifty thousand but less than three hundred  
8 thousand inhabitants, and who ~~shall~~ have been such for more than  
9 two years immediately prior thereto, shall hold their positions  
10 without examinations until discharged, reduced, promoted, or  
11 transferred in accordance with ~~the provisions of~~ sections 23-1721  
12 to ~~23-1737~~ 23-1736.

13 (2) All deputy sheriffs in active employment on January  
14 1, 1975, in counties having a population of more than sixty  
15 thousand but not more than one hundred fifty thousand inhabitants,  
16 and who ~~shall~~ have been deputy sheriffs for more than two years  
17 immediately prior thereto, or who ~~shall~~ have been certified by the  
18 Nebraska Law Enforcement Training Center and who ~~shall~~ have  
19 received a certificate of completion shall hold their positions  
20 without examinations until discharged, reduced, promoted, or  
21 transferred in accordance with ~~the provisions of~~ sections 23-1721  
22 to ~~23-1737~~ 23-1736.

23 (3) All deputy sheriffs in active employment on January  
24 1, 1977, in counties having a population of more than forty  
25 thousand but not more than sixty thousand inhabitants, and who  
26 ~~shall~~ have been deputy sheriffs for more than two years immediately  
27 prior thereto, or who ~~shall~~ have been certified by the Nebraska Law  
1 Enforcement Training Center and who ~~shall~~ have received a  
2 certificate of completion shall hold their positions without  
3 examinations until discharged, reduced, promoted, or transferred in  
4 accordance with ~~the provisions of~~ sections 23-1721 to ~~23-1737~~  
5 23-1736.

6 (4) All deputy sheriffs in active employment on January  
7 1, 1982, in counties having a population of twenty-five thousand or  
8 more but not more than forty thousand inhabitants, and who ~~shall~~  
9 have been deputy sheriffs for more than two years immediately prior  
10 thereto, or who ~~shall~~ have been certified by the Nebraska Law  
11 Enforcement Training Center, and who ~~shall~~ have received a  
12 certificate of completion shall hold their positions without  
13 examinations until discharged, reduced, promoted, or transferred in  
14 accordance with ~~the provisions of~~ sections 23-1721 to ~~23-1737~~  
15 23-1736.

16 (5) All deputy sheriffs who ~~shall~~ have been so employed  
17 for more than six months and less than two years on such date,  
18 shall be required to take qualifying examinations, and all such  
19 deputy sheriffs who ~~shall~~ have been so employed for less than six  
20 months on such date, shall be required to take competitive  
21 examinations.

22 Sec. 11. Section 23-1734, Reissue Revised Statutes of

23 Nebraska, is amended to read:

24 23-1734. (1) Any deputy sheriff may be removed,  
 25 suspended, or reduced in either rank or grade or both rank and  
 26 grade by the sheriff, after appointment or promotion is complete,  
 27 by an order in writing, stating specifically the reasons therefor.

1 Such order shall be filed with the sheriff's office merit  
 2 commission and a copy thereof shall be furnished to the person so  
 3 removed, suspended, or reduced. Any person so removed, suspended,  
 4 or reduced in either rank or grade or both rank and grade may,  
 5 within ten days after presentation to him or her of the order of  
 6 removal, suspension, or reduction, appeal to the commission from  
 7 such order. The commission shall, within two weeks from the filing  
 8 of such appeal, hold a hearing thereon, and thereupon fully hear  
 9 and determine the matter, and either affirm, modify, or revoke such  
 10 order. The appellant shall be entitled to appear personally,  
 11 produce evidence, and ~~to~~ have counsel and a public hearing. The  
 12 finding and decision of the commission shall be certified to the  
 13 sheriff, and shall forthwith be enforced and followed, ~~by him,~~ but  
 14 under no condition shall the employee who has appealed to the  
 15 commission be permanently removed, suspended, or reduced in rank  
 16 until such finding and decision of the commission ~~shall be~~ is so  
 17 certified to the sheriff.

18 (2) Any deputy sheriff may grieve a violation of an  
 19 employment contract, a personnel rule, a state or local law, or a  
 20 written departmental policy or procedure to the commission. The  
 21 commission shall hear the grievance at the next regularly scheduled  
 22 meeting, or the commission may, at its discretion, set a special  
 23 meeting to hear the grievance. If the deputy sheriff is subject to  
 24 a labor agreement, all applicable procedures in the agreement shall  
 25 be followed prior to the matter being heard by the commission. In  
 26 all other cases, the matter shall be grieved, in writing, to the  
 27 commission within fifteen calendar days after the date the deputy  
 1 became aware of the occurrence giving rise to the grievance. After  
 2 hearing or reviewing the grievance, the commission shall issue a  
 3 written order either affirming or denying the grievance. Such  
 4 order shall be delivered to the parties to the grievance or their  
 5 counsel within seven calendar days after the date of the hearing or  
 6 the submission of the written grievance.

7 Sec. 12. Section 23-1736, Reissue Revised Statutes of  
 8 Nebraska, is amended to read:

9 23-1736. No person serving in the classified service  
 10 under sections 23-1721 to ~~23-1737~~ 23-1736 shall actively  
 11 participate in any campaign conducted by any candidate for public  
 12 office while on duty or while in uniform.

13 Sec. 13. Original sections 23-1721, 23-1723, 23-1723.01,  
 14 23-1725 to 23-1727, 23-1729 to 23-1732, 23-1734, and 23-1736,  
 15 Reissue Revised Statutes of Nebraska, are repealed.

16 Sec. 14. The following section is outright repealed:

17 Section 23-1737, Reissue Revised Statutes of Nebraska."

18 2. On page 1, line 3, strike "and 23-1734" and insert  
 19 "23-1734, and 23-1736"; in line 6 strike "eliminate" and insert  
 20 "change provisions relating to"; in line 7 strike "and" and insert  
 21 "; to eliminate"; and in lines 9 and 10 strike "sections 23-1736  
 22 and" and insert "section".

**LEGISLATIVE BILL 205.** Placed on Select File as amended.

E & R amendment to LB 205:

AM7029

1 1. Strike the original sections and all amendments  
 2 thereto and insert the following new sections:  
 3 "Section 1. Section 53-123.02, Reissue Revised Statutes  
 4 of Nebraska, is amended to read:  
 5 53-123.02. An alcoholic liquor wholesale license, except  
 6 beer, shall (1) allow the wholesale purchase, importation, and  
 7 storage of alcoholic liquor and sale of alcoholic liquor, except  
 8 beer, to licensees in this state and to persons outside the state  
 9 as may be permitted by law and (2) allow the sampling of tax-paid  
 10 alcoholic liquor, except beer, upon the premises of the licensed  
 11 wholesaler by a licensed retailer or allow ~~the sampling of tax-paid~~  
 12 ~~wine upon the premises of a licensed retailer as provided in~~  
 13 ~~subsection (2) of section 53-123.04 on the premises of any licensed~~  
 14 retailer, whether the license permits consumption on or off the  
 15 licensed premises, or both, or bottle club in the manner prescribed  
 16 by the commission. The sampling authorized under this section  
 17 shall be limited to persons licensed as wholesalers, ~~and~~ retailers,  
 18 bottle clubs, and their employees, ~~and agents~~.  
 19 Sec. 2. Section 53-123.03, Reissue Revised Statutes of  
 20 Nebraska, is amended to read:  
 21 53-123.03. A beer wholesale license shall (1) allow the  
 22 wholesale purchase, importation, and storage of beer and sale,  
 23 including delivery, of the brand or brands described in such  
 24 license to licensees in this state in the sales territory  
 1 prescribed in the license for each brand and to such persons  
 2 outside the state as may be permitted by law, ~~and~~ (2) allow the  
 3 licensed wholesaler to do all things incident to the carrying on of  
 4 the wholesale beer business, including the sampling of tax-paid  
 5 beer upon the premises of the licensed wholesaler by a licensed  
 6 retailer in the manner prescribed by the commission, ~~and~~ (3) allow  
 7 the sampling of tax-paid beer upon the premises of any retailer,  
 8 whether the license permits consumption on or off the licensed  
 9 premises, or both, or bottle club in a manner prescribed by the  
 10 commission.  
 11 The sampling authorized under subdivision (3) of this  
 12 section shall be limited to persons licensed as wholesalers,  
 13 retailers, or bottle clubs and their employees.  
 14 The license shall designate the territory within which  
 15 the licensed wholesaler may sell the designated product of any  
 16 brewer as agreed upon by the licensee and the brewer.

17 Sec. 3. Section 53-1,104, Revised Statutes Supplement,  
18 2002, is amended to read:

19 53-1,104. (1) Any licensee which sells or permits the  
20 sale of any alcoholic liquor not authorized under the terms of such  
21 license on the licensed premises or in connection with such  
22 licensee's business or otherwise shall be subject to suspension,  
23 cancellation, or revocation of such license by the commission.

24 (2) When an order suspending a ~~retail~~ license to sell  
25 alcoholic liquor becomes final, the licensee may elect to pay a  
26 cash penalty to the commission in lieu of suspending sales of  
27 alcoholic liquor for the designated period if such election is not  
1 prohibited by order of the commission. Except as otherwise  
2 provided in subsection (3) of this section, for the first such  
3 suspension for any licensee, the penalty shall be fifty dollars per  
4 day, and for a second or any subsequent suspension, the penalty  
5 shall be one hundred dollars per day.

6 (3)(a) For a second suspension for violation of section  
7 53-180 or 53-180.02 occurring within four years after the date of  
8 the first suspension, the commission, in its discretion, may order  
9 that the licensee be required to suspend sales of alcoholic liquor  
10 for a period of time not to exceed forty-eight hours and that the  
11 licensee may not elect to pay a cash penalty. The commission may  
12 use the required suspension of sales of alcoholic liquor penalty  
13 either alone or in conjunction with suspension periods for which  
14 the licensee may elect to pay a cash penalty. For purposes of this  
15 subsection, second suspension for violation of section 53-180 shall  
16 include suspension for a violation of section 53-180.02 following  
17 suspension for a violation of section 53-180 and second suspension  
18 for violation of section 53-180.02 shall include suspension for a  
19 violation of section 53-180 following suspension for a violation of  
20 section 53-180.02;

21 (b) For a third or subsequent suspension for violation of  
22 section 53-180 or 53-180.02 occurring within four years after the  
23 date of the first suspension, the commission, in its discretion,  
24 may order that the licensee be required to suspend sales of  
25 alcoholic liquor for a period of time not to exceed fifteen days  
26 and that the licensee may not elect to pay a cash penalty. The  
27 commission may use the required suspension of sales of alcoholic  
1 liquor penalty either alone or in conjunction with suspension  
2 periods for which the licensee may elect to pay a cash penalty.  
3 For purposes of this subsection, third or subsequent suspension for  
4 violation of section 53-180 shall include suspension for a  
5 violation of section 53-180.02 following suspension for a violation  
6 of section 53-180 and third or subsequent suspension for violation  
7 of section 53-180.02 shall include suspension for a violation of  
8 section 53-180 following suspension for a violation of section  
9 53-180.02; and

10 (c) For a first suspension based upon a finding that a  
11 licensee or an employee or agent of the licensee has been convicted

12 of possession of a gambling device on a licensee's premises in  
 13 violation of sections 28-1107 to 28-1111, the commission, in its  
 14 discretion, may order that the licensee be required to suspend  
 15 sales of alcoholic liquor for thirty days and that the licensee may  
 16 not elect to pay a cash penalty. For a second or subsequent  
 17 suspension for such a violation of sections 28-1107 to 28-1111  
 18 occurring within four years after the date of the first suspension,  
 19 the commission shall order that the license be canceled.

20 (4) For any licensee which has no violation for a period  
 21 of four years consecutively, any suspension shall be treated as a  
 22 new first suspension.

23 (5) The election provided for in subsection (2) of this  
 24 section shall be filed with the commission in writing one week  
 25 before the suspension is ordered to commence and shall be  
 26 accompanied by payment in full of the sum required by this section.  
 27 If such election has not been received by the commission by the  
 1 close of business one week before the day such suspension is  
 2 ordered to commence, it shall be conclusively presumed that the  
 3 licensee has elected to close for the period of the suspension and  
 4 any election received later shall be absolutely void and the  
 5 payment made shall be returned to the licensee. The election shall  
 6 be made on a form prescribed by the commission. All funds received  
 7 under this section shall be remitted to the State Treasurer for  
 8 credit to the temporary school fund.

9 Sec. 4. Original sections 53-123.02 and 53-123.03,  
 10 Reissue Revised Statutes of Nebraska, and section 53-1,104, Revised  
 11 Statutes Supplement, 2002, are repealed."

12 2. On page 1, strike lines 3 through 6 and insert  
 13 "section 53-1,104, Revised Statutes Supplement, 2002; to change  
 14 provisions relating to sampling; to change penalty provisions;"

**LEGISLATIVE BILL 66.** Placed on Select File.

**LEGISLATIVE BILL 66A.** Placed on Select File.

**LEGISLATIVE BILL 55.** Placed on Select File.

**LEGISLATIVE BILL 119.** Placed on Select File as amended.

E & R amendment to LB 119:

AM7032

1 1. On page 1, line 3, strike "to consent".

**LEGISLATIVE BILL 138.** Placed on Select File as amended.

E & R amendment to LB 138:

AM7030

1 1. On page 1, line 3, strike "revocation of" and insert

2 "eligibility and consent to make".

**LEGISLATIVE BILL 194.** Placed on Select File as amended.

E & R amendment to LB 194:

AM7033

1 1. On page 4, line 7, strike "(2)(c)(i)", show as  
2 stricken, and insert "(2)(e)(i)".

**LEGISLATIVE BILL 195.** Placed on Select File.

**LEGISLATIVE BILL 199.** Placed on Select File.

**LEGISLATIVE BILL 128.** Placed on Select File.

(Signed) Ray Mossey, Chairperson

### **UNANIMOUS CONSENT - Add Cointroducer**

Senator Dw. Pedersen asked unanimous consent to have his name added as cointroducer to LB 114. No objections. So ordered.

### **VISITORS**

Visitors to the Chamber were Cheryl Ahrens from Arapahoe; Ryan and Shelly Main from Lincoln; 8 participants in the Aurora Leadership Tomorrow Program; Outstanding Youth Volunteers with the Library Commission from across the state; Margaret Harding, Holly Baber, Judy Bepalec, Michelle VanDyke, and Janis Mitchell from Crete, and Shelley Smith from Friend; participants in the Leadership Tomorrow Program from Grand Island and Hastings; and Steve Fosselman, Sister Frances Ann Havel, and Luris de Calero from Grand Island.

### **ADJOURNMENT**

At 11:52 a.m., on a motion by Speaker Bromm, the Legislature adjourned until 9:00 a.m., Friday, February 14, 2003.

Patrick J. O'Donnell  
Clerk of the Legislature

