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FLOOR DEBATE

January 14, 2004 LB 270

Mr. President. (Legislative Journal pages 260-262.)

SENATOR CUDABACK: Thank you, Mr. Clerk. (Visitors introduced.)  
Mr. Clerk, next agenda item.

CLERK: Mr. President, LB 270 was a bill introduced by Senator Brashear. (Read title.) The bill was introduced on January 13 of this year...or excuse me, of last year, and at that time it was referred to the Judiciary Committee for public hearing. The bill was advanced to General File with Judiciary Committee amendments attached. Those amendments were considered on May 22 of last year. The committee amendments were adopted. I do have other amendments and motions pending, Mr. President.

SENATOR CUDABACK: Thank you, Mr. Clerk. Senator Brashear, you're recognized to open on LB 270.

SENATOR BRASHEAR: Thank you, Mr. President, members of the body. Last session, we discussed LB 270 on General File, and we adopted the committee amendment to the bill. As you may recall, the purpose of LB 270 is to bring Nebraska's hate crime statute into compliance with two recent Supreme...United States Supreme Court decisions, Apprendi v. New Jersey and Ring v. Arizona. You've heard those case titles before. These cases require that any fact that could increase the penalty for a crime beyond the statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. Nebraska's hate crime statute is constitutionally suspect at the present time, under both Apprendi and Ring, because our current law does not allow a jury to hear the facts regarding the defendant's discriminatory intent, which would be...which would form the basis for an enhanced penalty. LB 270 brings Nebraska's hate crime statute into compliance with these court decisions by requiring the jury, rather than the judge, to determine whether or not the underlying crime was committed because of the race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability of the victim. These facts must be presented during the state's case in chief, and found by the jury to exist beyond a reasonable doubt, under Apprendi and Ring. The committee amendment, adopted last session, clarified that it is the prosecuting attorney, instead