

THIRTY-FIRST DAY - FEBRUARY 22, 2005**LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE
FIRST SESSION****THIRTY-FIRST DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, February 22, 2005

PRAYER

The prayer was offered by Pastor Richard Dimond, River Valley Parish, Dakota and Dixon Counties.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., Senator Cudaback presiding.

The roll was called and all members were present except Senators Brashear, Jensen, and Thompson who were excused; and Senators Bourne, Hudkins, Dw. Pedersen, and Wehrbein who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirtieth day was approved.

**SELECT COMMITTEE REPORT
Enrollment and Review**

LEGISLATIVE BILL 126. Placed on Select File as amended.

E & R amendment to LB 126:

AM7018

- 1 1. In the Raikes amendment, AM0354, on page 2, line 1,
- 2 strike "2005" and insert "2006".
- 3 2. On page 1, line 3; and page 74, line 17, strike
- 4 "76-416" and insert "79-416".
- 5 3. On page 7, line 15, strike "of"; and in line 27 after
- 6 the first "or" insert "of which it is".
- 7 4. On page 14, line 23, reinstate the stricken matter;
- 8 and in line 24 strike the comma.
- 9 5. On page 49, line 20, reinstate the stricken comma and
- 10 strike "or sections", show as stricken, and insert "section"; in
- 11 lines 21 and 28 reinstate the stricken "or"; and in line 28 strike
- 12 the third comma and show as stricken.
- 13 6. On page 69, line 17, strike the last comma and show

14 as stricken.

(Signed) Michael Flood, Chairperson

STANDING COMMITTEE REPORTS
Banking, Commerce and Insurance

LEGISLATIVE BILL 465. Placed on General File as amended.

Standing Committee amendment to LB 465:

AM0446

- 1 1. Strike the original sections and insert the following
 2 new sections:
 3 "Section 1. Section 44-371, Reissue Revised Statutes of
 4 Nebraska, is amended to read:
 5 44-371. (1)(a) ~~All~~ Except as provided in subdivision
 6 (1)(b) of this section, all proceeds, cash values, and benefits
 7 accruing under any annuity contract, under any policy or
 8 certificate of life insurance payable upon the death of the insured
 9 to a beneficiary other than the estate of the insured, or under any
 10 accident or health insurance policy shall be exempt from
 11 attachment, garnishment, or other legal or equitable process and
 12 from all claims of creditors of the insured and of the beneficiary
 13 if related to the insured by blood or marriage, unless a written
 14 assignment to the contrary has been obtained by the claimant.
 15 (b) Subdivision (1)(a) of this section shall not apply
 16 to:
 17 (i) An individual's aggregate interests greater than one
 18 hundred thousand dollars in all loan values or cash values of all
 19 matured or unmatured life insurance contracts and in all proceeds,
 20 cash values, or benefits accruing under all annuity contracts owned
 21 by such individual; and
 22 (ii) An individual's interest in all loan values or cash
 23 values of all matured or unmatured life insurance contracts and in
 24 all proceeds, cash values, or benefits accruing under all annuity
 1 contracts owned by such individual, to the extent that the loan
 2 values or cash values of any matured or unmatured life insurance
 3 contract or the proceeds, cash values, or benefits accruing under
 4 any annuity contract were established or increased through
 5 contributions, premiums, or any other payments made within three
 6 years prior to bankruptcy or within three years prior to entry
 7 against the individual of a money judgment which thereafter becomes
 8 final.
 9 (c) An insurance company shall not be liable or
 10 responsible to any person to determine or ascertain the existence
 11 or identity of any such creditors prior to payment of any such loan
 12 values, cash values, proceeds, or benefits.
 13 (b) ~~This subsection shall not apply to an individual's~~
 14 ~~aggregate interests greater than ten thousand dollars on all loan~~
 15 ~~values or cash values of all matured or unmatured life insurance~~

16 contracts or to all proceeds, cash values, or benefits accruing
17 under all annuity contracts owned by such individual.
18 Notwithstanding anything in this subdivision to the contrary, the
19 aggregate exemptions any person may claim under this subdivision
20 and subdivision (2)(b) of section 44-1089 shall not exceed ten
21 thousand dollars.

22 (c) No insurance company shall be liable or responsible
23 to any person to determine or ascertain the aggregate total of life
24 insurance policy or annuity contract loan values, cash values,
25 proceeds, or benefits for any policyholder or annuitant.

26 (2) Notwithstanding subsection (1) of this section,
27 proceeds, cash values, and benefits accruing under any annuity
1 contract or under any policy or certificate of life insurance
2 payable upon the death of the insured to a beneficiary other than
3 the estate of the insured shall not be exempt from attachment,
4 garnishment, or other legal or equitable process by a judgment
5 creditor of the beneficiary if the judgment against the beneficiary
6 was based on, arose from, or was related to an act, transaction, or
7 course of conduct for which the beneficiary has been convicted by
8 any court of a crime punishable only by life imprisonment or death.
9 No insurance company shall be liable or responsible to any person
10 to determine or ascertain the existence or identity of any such
11 judgment creditor prior to payment of any such proceeds, cash
12 values, or benefits. This subsection shall apply to any judgment
13 rendered on or after January 1, 1995, irrespective of when the
14 criminal conviction is or was rendered and irrespective of whether
15 proceedings for attachment, garnishment, or other legal or
16 equitable process were pending on March 14, 1997.

17 Sec. 2. Section 44-1089, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-1089. (1) No noninsurance benefit, charity, relief,
20 or aid to be paid, provided, or rendered by any society shall be
21 liable to attachment, garnishment, or other process, or to be
22 seized, taken, appropriated, or applied by any legal or equitable
23 process or operation of law to pay any debt or liability of a
24 member or beneficiary, or any other person who may have a right
25 thereunder, either before or after payment by the society.

26 (2)(a) ~~All~~ Except as provided in subdivision (2)(b) of
27 this section, all proceeds, cash values, and benefits accruing
1 under any annuity contract, under any policy or certificate of life
2 insurance payable upon the death of the insured to a beneficiary
3 other than the estate of the insured, or under any accident or
4 health insurance policy shall be exempt from attachment,
5 garnishment, or other legal or equitable process and from all
6 claims of creditors of the insured and of the beneficiary if
7 related to the insured by blood or marriage, unless a written
8 assignment to the contrary has been obtained by the claimant.
9 (b) Subdivision (2)(a) of this section shall not apply
10 to:

11 (i) An individual's aggregate interests greater than one
 12 hundred thousand dollars in all loan values or cash values of all
 13 matured or unmatured life insurance contracts and in all proceeds,
 14 cash values, or benefits accruing under all annuity contracts owned
 15 by such individual; and

16 (ii) An individual's interest in all loan values or cash
 17 values of all matured or unmatured life insurance contracts and in
 18 all proceeds, cash values, or benefits accruing under all annuity
 19 contracts owned by such individual, to the extent that the loan
 20 values or cash values of any matured or unmatured life insurance
 21 contract or the proceeds, cash values, or benefits accruing under
 22 any annuity contract were established or increased through
 23 contributions, premiums, or any other payments made within three
 24 years prior to bankruptcy or within three years prior to entry
 25 against the individual of a money judgment which thereafter becomes
 26 final.

27 (c) A fraternal benefit society shall not be liable or
 1 responsible to any person to determine or ascertain the existence
 2 or identity of any such creditors prior to payment of any such loan
 3 values, cash values, proceeds, or benefits.

4 (b) This subsection shall not apply to an individual's
 5 aggregate interests greater than ten thousand dollars on all loan
 6 values or cash values of all matured or unmatured life insurance
 7 contracts or to all proceeds, cash values, or benefits accruing
 8 under all annuity contracts owned by such individual.
 9 Notwithstanding anything in this subdivision to the contrary, the
 10 aggregate exemptions any person may claim under subdivision (1)(b)
 11 of section 44-371 and this subdivision shall not exceed ten
 12 thousand dollars.

13 (c) No fraternal benefit society shall be liable or
 14 responsible to any person to determine or ascertain the aggregate
 15 total of policy or certificate of life insurance or annuity
 16 contract loan values, cash values, proceeds, or benefits for any
 17 policy or certificate owner or annuitant.

18 (3) Notwithstanding subsection (2) of this section,
 19 proceeds, cash values, and benefits accruing under any annuity
 20 contract or under any policy or certificate of life insurance
 21 payable upon the death of the insured to a beneficiary other than
 22 the estate of the insured shall not be exempt from attachment,
 23 garnishment, or other legal or equitable process by a judgment
 24 creditor of the beneficiary if the judgment against the beneficiary
 25 was based on, arose from, or was related to an act, transaction, or
 26 course of conduct for which the beneficiary has been convicted by
 27 any court of a crime punishable only by life imprisonment or death.

1 No fraternal benefit society shall be liable or responsible to any
 2 person to determine or ascertain the existence or identity of any
 3 such judgment creditor prior to payment of any such proceeds, cash
 4 values, or benefits. This subsection shall apply to any judgment
 5 rendered on or after January 1, 1995, irrespective of when the

6 criminal conviction is or was rendered and irrespective of whether
7 proceedings for attachment, garnishment, or other legal or
8 equitable process were pending on March 14, 1997.
9 Sec. 3. Original sections 44-371 and 44-1089, Reissue
10 Revised Statutes of Nebraska, are repealed."

(Signed) Mick Mines, Chairperson

Revenue

LEGISLATIVE BILL 299. Placed on General File as amended.
Standing Committee amendment to LB 299:
AM0500

- 1 1. On page 2, strike beginning with "if" in line 25
- 2 through "protest" in line 28.

LEGISLATIVE BILL 407. Placed on General File as amended.
(Standing Committee amendment, AM0501, is printed separately and
available in the Bill Room, Room 1104.)

LEGISLATIVE BILL 109. Indefinitely postponed.
LEGISLATIVE BILL 159. Indefinitely postponed.
LEGISLATIVE BILL 252. Indefinitely postponed.
LEGISLATIVE BILL 324. Indefinitely postponed.
LEGISLATIVE BILL 353. Indefinitely postponed.
LEGISLATIVE BILL 582. Indefinitely postponed.

(Signed) David Landis, Chairperson

Transportation and Telecommunications

LEGISLATIVE BILL 106. Placed on General File as amended.
Standing Committee amendment to LB 106:
AM0469

- 1 1. On page 3, lines 24 through 27, strike the new
- 2 matter.
- 3 2. On page 4, line 1, strike the new matter and
- 4 reinstate the stricken matter; and in line 3 strike the new matter
- 5 and reinstate the stricken "(13)".
- 6 3. On page 6, line 20, strike the new matter and
- 7 reinstate the stricken matter.
- 8 4. On page 8, line 8, reinstate the stricken
- 9 "twenty-five"; and in line 9 strike "one hundred".

(Signed) Tom Baker, Chairperson

**SPECIAL COMMITTEE REPORT
Executive Board**

LEGISLATIVE BILL 588. Placed on General File as amended.
Special Committee amendment to LB 588:

AM0472

- 1 1. On page 5, lines 9 through 12, reinstate the stricken
2 matter; and in lines 18, 22, 25, and 28 reinstate the stricken
3 matter and strike the new matter.
4 2. On page 6, line 4, reinstate the stricken matter and
5 strike the new matter; in line 11 strike "(13)" and insert "(14)";
6 in line 15 strike "(14)" and insert "(15)"; in line 22 after
7 "50-1213" insert "and subsections (10) through (13) of section
8 77-27,119"; and in line 25 strike "(15)" and insert "(16)".
9 3. On page 7, line 21, after the period insert "If
10 necessary for the conduct of the performance audit, the section may
11 discuss or share confidential information with the chairperson of
12 the committee.".
13 4. On page 8, line 1, after "speaker" insert "or
14 chairperson".

(Signed) L. Patrick Engel, Chairperson

**NOTICE OF COMMITTEE HEARING
Appropriations
Room 1003**

LB 539 Wednesday, March 2, 2005 1:30 p.m.

Wednesday, March 2, 2005 1:30 p.m.

AGENCY 21 - State Fire Marshal

AGENCY 35 - Liquor Control Commission

AGENCY 78 - Commission on Law Enforcement and Criminal Justice

AGENCY 94 - Commission on Public Advocacy

AGENCY 46 - Department of Correctional Services

(Signed) Don Pederson, Chairperson

ANNOUNCEMENT

Senator Stuhr designates LB 71 as her priority bill.

AMENDMENT - Print in Journal

Senator Johnson filed the following amendment to LB 470:
AM0485

- 1 1. On page 2, line 24, after "department" insert "and
2 the State Highway Commission".
3 2. On page 3, line 4, strike "total number of" and

4 insert "investment and"; in line 6 strike "and (f)" and insert "(f)
5 regional planning of the area, and (g)"; and in line 7 strike
6 "various" through "state" and insert "congressional districts".

COMMUNICATIONS

Received petitions from the Douglas County Board of Commissioners adopted on February 15, 2005.

MOTIONS - Approve Appointments

Senator Mines moved the adoption of the Banking, Commerce and Insurance Committee report for the confirmation of the following appointment(s) found on page 521:

Department of Banking and Finance
John Munn

Voting in the affirmative, 31:

Aguilar	Erdman	Janssen	Pahls	Smith
Baker	Fischer	Johnson	Pederson, D.	Stuhr
Burling	Flood	Kopplin	Price	Stuthman
Byars	Foley	Landis	Raikes	
Cornett	Friend	Langemeier	Redfield	
Cudaback	Heidemann	McDonald	Schimek	
Engel	Howard	Mines	Schrock	

Voting in the negative, 0.

Present and not voting, 11:

Beutler	Combs	Kremer	Preister
Brown	Connealy	Kruse	Synowiecki
Chambers	Cunningham	Louden	

Excused and not voting, 7:

Bourne	Hudkins	Pedersen, Dw.	Wehrbein
Brashear	Jensen	Thompson	

The appointment was confirmed with 31 ayes, 0 nays, 11 present and not voting, and 7 excused and not voting.

Senator Raikes moved the adoption of the Education Committee report for the confirmation of the following appointment(s) found on page 535:

Nebraska Educational Telecommunications Commission
Stan Carpenter

Voting in the affirmative, 30:

Aguilar	Cornett	Foley	Landis	Redfield
Baker	Cudaback	Heidemann	McDonald	Schimek
Beutler	Engel	Howard	Pahls	Schrock
Burling	Erdman	Janssen	Pederson, D.	Smith
Byars	Fischer	Johnson	Price	Stuhr
Connealy	Flood	Kopplin	Raikes	Stuthman

Voting in the negative, 0.

Present and not voting, 12:

Brown	Cunningham	Kruse	Mines
Chambers	Friend	Langemeier	Preister
Combs	Kremer	Louden	Synowiecki

Excused and not voting, 7:

Bourne	Hudkins	Pedersen, Dw.	Wehrbein
Brashear	Jensen	Thompson	

The appointment was confirmed with 30 ayes, 0 nays, 12 present and not voting, and 7 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 162. E & R amendment, AM7016, printed separately and referred to on page 487, was adopted.

Senator Beutler withdrew his pending amendment, AM0385, found on page 511.

Senator Stuhr offered the following amendment:
AM0509

(Amendments to E & R amendments, AM7016)

- 1 1. Strike original section 18 and insert the following
- 2 new section:
- 3 "Sec. 18. The commission may issue auction or lottery
- 4 permits for up to five permits each for antelope and elk and up to
- 5 twenty-five permits each for deer and wild turkey during the
- 6 calendar year. Included in that number are single species and
- 7 combination species permits and shared revenue permits that may be
- 8 issued by the commission. The shared revenue permits may be issued
- 9 under agreements with nonprofit conservation organizations and may
- 10 be issued by auction or lottery, with the commission receiving at
- 11 least eighty percent of any profit realized. The commission shall
- 12 by rule and regulation adopt limitations for any such permits that
- 13 are issued. The auction or lottery shall be conducted according to
- 14 rules and regulations adopted and promulgated by the commission.".

15 2. On page 20, lines 7 and 10, reinstate the stricken
16 matter.

The Stuhr 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 54. E & R amendment, AM7012, found on page 469, was adopted.

Senator Louden withdrew his pending amendment, AM0433, found on page 524.

Senator Schimek renewed her pending amendment, AM0428, found on page 536.

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

Senator Schimek renewed her pending amendment, AM0304, printed separately and referred to on page 536.

The Schimek 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 263. E & R amendment, AM7009, found on page 470, was adopted.

Senator Brown renewed her pending amendment, AM0450, found on page 535.

The Brown amendment was adopted with 29 ayes, 0 nays, 16 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

LEGISLATIVE BILL 283. E & R amendment, AM7011, found on page 470, was adopted.

Senator Raikes renewed his pending amendment, AM0473, found on page 558.

The Raikes amendment was adopted with 30 ayes, 0 nays, 15 present and not voting, and 4 excused and not voting.

Advanced to E & R for engrossment.

GENERAL FILE

LEGISLATIVE BILL 570. Title read. Considered.

The Standing Committee amendment, AM0229, printed separately and referred to on page 448, was considered.

Pending.

BILL ON FIRST READING

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

LEGISLATIVE BILL 40A. Introduced by Redfield, 12.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 40, Ninety-ninth Legislature, First Session, 2005.

STANDING COMMITTEE REPORT
General Affairs

LEGISLATIVE BILL 599. Indefinitely postponed.

(Signed) Ray Janssen, Chairperson

AMENDMENT - Print in Journal

Senator Chambers filed the following amendment to LB 563:
FA31

1. Page 2, in lines 21 and 22 reinstate the stricken matter and strike the new matter;
2. In line 11 after "gin," insert "flavored malt beverage";
3. Page 9, in line 7 strike "beer" and insert "beverage".

GENERAL FILE

LEGISLATIVE BILL 570. The Standing Committee amendment, AM0229, printed separately and referred to on page 448 and considered in this day's Journal, was renewed.

The Standing Committee amendment was adopted with 36 ayes, 0 nays, 8 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 28 ayes, 0 nays, 16 present and not voting, and 5 excused and not voting.

STANDING COMMITTEE REPORTS
Government, Military and Veterans Affairs

LEGISLATIVE BILL 476. Placed on General File.

LEGISLATIVE BILL 501. Placed on General File.

LEGISLATIVE BILL 762. Placed on General File.

LEGISLATIVE RESOLUTION 25CA. Indefinitely postponed.

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

Steven Danon - State Emergency Response Commission

Donald Eisenhower - State Emergency Response Commission

VOTE: Aye: Senators Brown, Burling, Fischer, Langemeier, Mines, Pahls, Schimek, Wehrbein. Nay: None. Absent: None.

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

Steve McCollister - Accountability and Disclosure Commission

VOTE: Aye: Senators Brown, Burling, Fischer, Langemeier, Mines, Pahls, Schimek, Wehrbein. Nay: None. Absent: None.

(Signed) DiAnna R. Schimek, Chairperson

MESSAGE FROM THE GOVERNOR

February 18, 2005

President, Speaker Brashear
and Members of the Legislature
State Capitol Building
Lincoln, NE 68509

Dear Mr. President, Speaker Brashear and Senators:

Contingent upon your approval, the following individual was appointed as Director of the Department of Corrections.

APPOINTEE:

Robert Houston, 4716 Lakeside Drive, Omaha NE 68135

The aforementioned name is respectfully submitted for your consideration.

Sincerely,
(Signed) Dave Heineman
Governor

web/
Enclosure

UNANIMOUS CONSENT - Add Cointroducer

Senator Redfield asked unanimous consent to have her name added as cointroducer to LB 389. No objections. So ordered.

VISITORS

Visitors to the Chamber were 12 eleventh- and twelfth-grade students and superintendent from Wymore Southern High School; Sarah Rogers, Darech Gaskill, Nate Skaggs, Taylor Seeman, and Brandon Matulka, members from Nebraska Future Business Leaders of America; 5 students and teacher from Hastings College; Geitner, Harry, and Lucy Simmons; 18 students and teacher from Emmanuel Lutheran School; and Mary Hossani from Lincoln.

ADJOURNMENT

At 11:58 a.m., on a motion by Senator Janssen, the Legislature adjourned until 9:00 a.m., Wednesday, February 23, 2005.

Patrick J. O'Donnell
Clerk of the Legislature