

**SIXTY-FOURTH DAY - APRIL 20, 2005****LEGISLATIVE JOURNAL****NINETY-NINTH LEGISLATURE  
FIRST SESSION****SIXTY-FOURTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, April 20, 2005

**PRAYER**

The prayer was offered by Senator Heidemann.

**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 Senator Bourne who was excused; and Senators Brashear, Brown, Landis, and Thompson who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the sixty-third day was approved.

**RESOLUTION**

**LEGISLATIVE RESOLUTION 80.** Introduced by Stuthman, 22.

WHEREAS, Stephen Wilke is a junior at Columbus High School; and

WHEREAS, Stephen achieved a perfect score of 36 on the ACT Assessment given in December, 2004; and

WHEREAS, Stephen was the only Nebraskan and one of 17 students nationwide to receive such a score on the December, 2004, test; and

WHEREAS, Stephen's career interests include the areas of physical science and the clergy. He would like to attend either Harvard University or MIT; and

WHEREAS, the Columbus Board of Education has also recognized Stephen's accomplishment.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Stephen Wilke on his perfect ACT Assessment score.

2. That a copy of this resolution be sent to Stephen Wilke.

Laid over.

### SELECT FILE

**LEGISLATIVE BILL 709.** E & R amendment, AM7080, found on page 1129, was adopted.

Senator Beutler withdrew his pending amendments, AM1079 and AM1191, found on pages 1159 and 1189.

Senator Erdman offered the following amendment:

AM1249

(Amendments to E & R amendments, AM7080)

- 1 1. On page 1, line 14, strike "has" and insert "may".
- 2 2. On page 2, line 27, strike "mitigate" and insert
- 3 "moderate".
- 4 3. On page 3, strike beginning with "without" in line 1
- 5 through "care" in line 2; in line 8 before "It" insert "(1)"; and
- 6 in line 11 after the period insert:
- 7 "(2) It is the intent of the Legislature that such plan
- 8 consider and address: (a) The needs of low-income, disabled, and
- 9 aged persons currently receiving medicaid services; (b) avoiding
- 10 the shifting of the primary costs of health care services to
- 11 providers of care; (c) the appropriate role of county government in
- 12 providing health care services; (d) the availability and
- 13 affordability of private health care insurance and long-term care
- 14 insurance; (e) the personal responsibility of persons, who are
- 15 able, to select and provide for all or a portion of the payment for
- 16 their health care services; and (f) the fiscal sustainability of
- 17 such plan."
- 18 4. On page 4, line 21, after "(3)" insert "The council
- 19 shall review the medicaid reform plan submitted under section 6 of
- 20 this act and shall provide recommendations relating to the plan to
- 21 the Governor and the Legislature on or before December 14, 2005.
- 22 (4)".

Senator Flood offered the following amendment to the Erdman pending amendment:

FA168

Amend AM1249

On page 1, line 16, strike "and"; in line 17 after the period insert the following: "and (g) alternatives to increase federal funding for services in order to reduce dependence on General Funds and maintain or increase the total amount of funding for such services, and the possible utilization of national consultants to assist in the consideration of such alternatives."

The Flood amendment was adopted with 34 ayes, 0 nays, 11 present and not voting, and 4 excused and not voting.

The Erdman amendment, as amended, was adopted with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

Senator Synowiecki offered the following amendment:  
AM1209

(Amendments to E & R amendments, AM7080)

- 1 1. Insert the following new sections:
- 2 "Sec. 14. Sections 14 to 18 of this act shall be known
- 3 and may be referred to as the Employer Public Health Services
- 4 Report Act.
- 5 Sec. 15. For purposes of the Employer Public Health
- 6 Services Report Act, public health program beneficiary means a
- 7 person who receives medical assistance under the medical assistance
- 8 program established under section 68-1018.
- 9 Sec. 16. A public health program beneficiary shall
- 10 identify his or her employer or employers at the time of applying
- 11 for benefits under the medical assistance program. If the public
- 12 health program beneficiary is not employed and is the spouse or
- 13 dependent of an employed individual, he or she shall identify the
- 14 employer or employers of his or her spouse or legal guardian.
- 15 Sec. 17. On or before February 1 each year, the
- 16 Department of Health and Human Services Finance and Support, in
- 17 collaboration with the Department of Labor, shall submit to the
- 18 Legislature a report identifying all employers who employ
- 19 twenty-five or more public health program beneficiaries. In
- 20 determining whether the twenty-five employee threshold is met, the
- 21 Department of Health and Human Services Finance and Support shall
- 22 include all public health program beneficiaries employed by the
- 23 employer and its subsidiaries at all locations within the state.
- 1 The report shall include:
  - 2 (1) The name and address of the employer;
  - 3 (2) The number of public health program beneficiaries who
  - 4 are employees of the employer;
  - 5 (3) The number of public health program beneficiaries who
  - 6 are spouses or dependents of employees of the employer; and
  - 7 (4) Whether the employer offers health benefits to its
  - 8 employees.
- 9 The report shall not include the names of any public
- 10 health access program beneficiaries and shall be subject to privacy
- 11 standards pursuant to the federal Health Insurance Portability and
- 12 Accountability Act of 1996, as the act existed on January 1, 2005.
- 13 Sec. 18. In addition to filing the report with the
- 14 Legislature, the Department of Health and Human Services Finance
- 15 and Support shall make the report under section 17 of this act
- 16 available to the public through the means it typically uses to
- 17 disseminate information publicly. Any person may request and
- 18 receive a copy of the report.".
- 19 2. Renumber the remaining section accordingly.

Senator Synowiecki withdrew his amendment.

Senator Chambers offered the following amendment:

AM1135

(Amendments to E & R amendments, AM7080)

- 1 1. Insert the following new section:
- 2 "Sec. 14. Notwithstanding any other provision of law,
- 3 the Director of Health and Human Services and the Tax Commissioner
- 4 shall annually prepare an employee health benefit report. The
- 5 report shall provide the following information for each business
- 6 which has signed an agreement to receive tax incentives under the
- 7 Employment and Investment Growth Act, the Employment Expansion and
- 8 Investment Incentive Act, including the Enterprise Zone Act, the
- 9 Invest Nebraska Act, or the Rural Economic Opportunities Act:
- 10 (1) The name and address of the business;
- 11 (2) The number of employees of the business;
- 12 (3) Whether the business offers health benefits to its
- 13 employees, and if so, the nature and scope of the health benefits;
- 14 and
- 15 (4) The number of employees and the number of spouses or
- 16 dependents of employees who are covered under health benefits
- 17 offered by the business and the nature and scope of such coverage.
- 18 The report shall be submitted annually on February 1 to
- 19 the Health and Human Services Committee of the Legislature and the
- 20 Revenue Committee of the Legislature.".
- 21 2. Renumber the remaining section accordingly.

Senator Chambers withdrew his amendment.

Senators Beutler and Mines offered the following amendment:

AM1256

(Amendments to E & R amendments, AM7080)

- 1 1. Insert the following new sections:
- 2 "Section 1. The Legislature finds that (1) the
- 3 Department of Health and Human Services and the Department of
- 4 Health and Human Services Finance and Support rely on health
- 5 insurance and claims information from private insurers to ensure
- 6 accuracy in processing state benefit program payments to providers
- 7 and in verifying individual recipients' eligibility, (2) delay or
- 8 refusal to provide such information causes unnecessary expenditures
- 9 of state funds, (3) disclosure of such information to the
- 10 Department of Health and Human Services and the Department of
- 11 Health and Human Services Finance and Support is permitted pursuant
- 12 to the federal Health Insurance Portability and Accountability
- 13 privacy rules under 45 C.F.R. part 164, and (4) for medical
- 14 assistance program recipients who also have other insurance
- 15 coverage, including coverage by licensed and self-funded insurers,
- 16 the Department of Health and Human Services Finance and Support is
- 17 required by 42 U.S.C. 1396a(a)(25) to assure that licensed and

18 self-funded insurers coordinate benefits with the program.  
19 Sec. 2. For purposes of sections 1 to 8 of this act:  
20 (1) Coordinate benefits means:  
21 (a) Provide to the Department of Health and Human  
22 Services or the Department of Health and Human Services Finance and  
23 Support information regarding the licensed insurer's or self-funded  
1 insurer's existing coverage for an individual who is eligible for a  
2 state benefit program; and  
3 (b) Meet payment obligations;  
4 (2) Coverage information means health information  
5 possessed by a licensed insurer or self-funded insurer that is  
6 limited to the following information about an individual:  
7 (a) Eligibility for coverage under a health plan;  
8 (b) Coverage of health care under the health plan; or  
9 (c) Benefits and payments associated with the health  
10 plan;  
11 (3) Health plan means any policy of insurance issued by a  
12 licensed insurer or any employee benefit plan offered by a  
13 self-funded insurer that provides for payment to or on behalf of an  
14 individual as a result of an illness, disability, or injury or  
15 change in a health condition;  
16 (4) Individual means a person covered by a state benefit  
17 program, including the medical assistance program established under  
18 sections 68-1018 to 68-1025, or a person applying for such  
19 coverage;  
20 (5) Licensed insurer means any insurer, except a  
21 self-funded insurer, including a fraternal benefit society,  
22 producer, or other person licensed or required to be licensed,  
23 authorized or required to be authorized, or registered or required  
24 to be registered pursuant to the insurance laws of the state; and  
25 (6) Self-funded insurer means any employer or union who  
26 provides a self-funded employee benefit plan.  
27 Sec. 3. (1) Except as provided in subsection (2) of this  
1 section, at the request of the Department of Health and Human  
2 Services or the Department of Health and Human Services Finance and  
3 Support, a licensed insurer or a self-funded insurer shall provide  
4 coverage information to the requesting department without an  
5 individual's authorization for purposes of:  
6 (a) Determining an individual's eligibility for state  
7 benefit programs, including the medical assistance program  
8 established under sections 68-1018 to 68-1025; or  
9 (b) Coordinating benefits with state benefit programs.  
10 Such information shall be provided within thirty days  
11 after the date of request unless good cause is shown. Requests for  
12 coverage information shall specify individual recipients for whom  
13 information is being requested.  
14 (2)(a) Coverage information requested pursuant to  
15 subsection (1) of this section regarding a limited benefit policy  
16 shall be limited to whether a specified individual has coverage

17 and, if so, a description of that coverage, and such information  
18 shall be used solely for the purposes of subdivision (1)(a) of this  
19 section.

20 (b) For purposes of this section, limited benefit policy  
21 means a policy of insurance issued by a licensed insurer that:

22 (i) Consists only of one or more, or any combination of  
23 the following:

24 (A) Coverage only for accident or disability income  
25 insurance, or any combination thereof;

26 (B) Coverage for specified disease or illness; or

27 (C) Hospital indemnity or other fixed indemnity

1 insurance; and

2 (ii) The benefits of which are payable only to a covered  
3 individual and not to a health care provider.

4 Sec. 4. Any violation of section 3 of this act by a

5 licensed insurer shall be subject to the Unfair Insurance Claims  
6 Settlement Practices Act.

7 Sec. 5. The Department of Health and Human Services

8 Finance and Support may impose and collect a civil penalty on a  
9 self-funded insurer who violates the requirements of section 3 of

10 this act if the department finds that the self-funded insurer:

11 (1) Committed the violation flagrantly and in conscious  
12 disregard of the requirements; or

13 (2) Has committed violations with such frequency as to

14 indicate a general business practice to engage in that type of  
15 conduct.

16 The civil penalty shall not be more than one thousand

17 dollars for each violation, not to exceed an aggregate penalty of

18 thirty thousand dollars, unless the violation by the self-funded

19 insurer was committed flagrantly and in conscious disregard of

20 section 3 of this act, in which case the penalty shall not be more

21 than fifteen thousand dollars for each violation, not to exceed an

22 aggregate penalty of one hundred fifty thousand dollars.

23 Sec. 6. The Department of Health and Human Services

24 Finance and Support is authorized to recover all amounts paid or to

25 be paid to state benefit programs as a result of failure to

26 coordinate benefits by a licensed insurer or a self-funded insurer.

27 If at the time the department pursues recovery, the licensed

1 insurer or self-funded insurer has already made any payment, the

2 department may pursue recovery of that payment only from the party

3 who received it. Any amount recovered shall be returned to the

4 fund of the program from which the expenditure was made.

5 Sec. 7. The Department of Health and Human Services

6 Finance and Support shall establish a process by rule and

7 regulation for resolving any violation by a self-funded insurer of

8 section 3 of this act and for assessing the financial penalties

9 contained in section 5 of this act. Any appeal of an action by the

10 department under such policies shall be in accordance with the

11 Administrative Procedure Act.

12 Sec. 8. All money collected as a civil penalty under  
13 section 4 or 5 of this act shall be remitted to the State Treasurer  
14 for distribution in accordance with Article VII, section 5, of the  
15 Constitution of Nebraska.

16 Sec. 9. Section 44-1540, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 44-1540. Any of the following acts or practices by an  
19 insurer, if committed in violation of section 44-1539, shall be an  
20 unfair claims settlement practice:

21 (1) Knowingly misrepresenting to claimants and insureds

22 relevant facts or policy provisions relating to coverages at issue;

23 (2) Failing to acknowledge with reasonable promptness

24 pertinent communications with respect to claims arising under its  
25 policies;

26 (3) Failing to adopt and implement reasonable standards

27 for the prompt investigation and settlement of claims arising under  
1 its policies;

2 (4) Not attempting in good faith to effectuate prompt,  
3 fair, and equitable settlement of claims submitted in which  
4 liability has become reasonably clear;

5 (5) Not attempting in good faith to effectuate prompt,

6 fair, and equitable settlement of property and casualty claims (a)

7 in which coverage and the amount of the loss are reasonably clear

8 and (b) for loss of tangible personal property within real property

9 which is insured by a policy subject to section 44-501.02 and which  
10 is wholly destroyed by fire, tornado, windstorm, lightning, or  
11 explosion;

12 (6) Compelling insureds or beneficiaries to institute

13 litigation to recover amounts due under its policies by offering

14 substantially less than the amounts ultimately recovered in

15 litigation brought by them;

16 (7) Refusing to pay claims without conducting a

17 reasonable investigation;

18 (8) Failing to affirm or deny coverage of a claim within

19 a reasonable time after having completed its investigation related  
20 to such claim;

21 (9) Attempting to settle a claim for less than the amount

22 to which a reasonable person would believe the insured or

23 beneficiary was entitled by reference to written or printed

24 advertising material accompanying or made part of an application;

25 (10) Attempting to settle claims on the basis of an

26 application which was materially altered without notice to or

27 knowledge or consent of the insured;

1 (11) Making a claims payment to an insured or beneficiary

2 without indicating the coverage under which each payment is being  
3 made;

4 (12) Unreasonably delaying the investigation or payment

5 of claims by requiring both a formal proof-of-loss form and

6 subsequent verification that would result in duplication of

7 information and verification appearing in the formal proof-of-loss  
8 form;

9 (13) Failing, in the case of the denial of a claim or the  
10 offer of a compromise settlement, to promptly provide a reasonable  
11 and accurate explanation of the basis for such action;

12 (14) Failing to provide forms necessary to present claims  
13 with reasonable explanations regarding their use within fifteen  
14 working days of a request;

15 (15) Failing to adopt and implement reasonable standards  
16 to assure that the repairs of a repairer owned by or affiliated  
17 with the insurer are performed in a skillful manner. For purposes  
18 of this subdivision, a repairer is affiliated with the insurer if  
19 there is a preexisting arrangement, understanding, agreement, or  
20 contract between the insurer and repairer for services in  
21 connection with claims on policies issued by the insurer; ~~and~~

22 (16) Requiring the insured or claimant to use a  
23 particular company or location for motor vehicle repair. Nothing  
24 in this subdivision shall prohibit an insurer from entering into  
25 discount agreements with companies and locations for motor vehicle  
26 repair or otherwise entering into any business arrangements or  
27 affiliations which reduce the cost of motor vehicle repair if the  
1 insured or claimant has the right to use a particular company or  
2 reasonably available location for motor vehicle repair. If the  
3 insured or claimant chooses to use a particular company or location  
4 other than the one providing the lowest estimate for like kind and  
5 quality motor vehicle repair, the insurer shall not be liable for  
6 any cost exceeding the lowest estimate. For purposes of this  
7 subdivision, motor vehicle repair shall include motor vehicle glass  
8 replacement and motor vehicle glass repair; and

9 (17) Failing to provide coverage information or  
10 coordinate benefits pursuant to section 3 of this act.

11 Sec. 23. Sections 1 to 9 and 25 of this act become  
12 operative three calendar months after adjournment of this  
13 legislative session. The other sections of this act become  
14 operative on their effective date.

15 Sec. 24. If any section in this act or any part of any  
16 section is declared invalid or unconstitutional, the declaration  
17 shall not affect the validity or constitutionality of the remaining  
18 portions.

19 Sec. 25. Original section 44-1540, Reissue Revised  
20 Statutes of Nebraska, is repealed."

21 2. Renumber the remaining sections and correct internal  
22 references accordingly.

Senator Beutler withdrew the Beutler-Mines amendment.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 689.** E & R amendment, AM7082, found on page

1133, was adopted.

Senator Beutler withdrew his pending amendment, AM1109, found on page 1159.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 689A.** E & R amendment, AM7083, found on page 1134, was adopted.

Advanced to E & R for engrossment.

**LEGISLATIVE BILL 38.** E & R amendment, AM7084, printed separately and referred to on page 1144, was adopted.

Senator Erdman requested a machine vote on the advancement of the bill.

Advanced to E & R for engrossment with 30 ayes, 8 nays, 8 present and not voting, and 3 excused and not voting.

**LEGISLATIVE BILL 682.** Considered.

Advanced to E & R for engrossment.

### **GENERAL FILE**

**LEGISLATIVE BILL 673.** The Standing Committee amendment, AM0867, printed separately and referred to on page 931 and considered on pages 1175 and 1190, as amended, was renewed.

Senator Chambers renewed his pending amendment, FA165, found on page 1195 and considered on page 1205, to the Standing Committee amendment.

### **SENATOR SCHIMEK PRESIDING**

Senator Chambers moved for a call of the house. The motion prevailed with 17 ayes, 0 nays, and 32 not voting.

### **SPEAKER BRASHEAR PRESIDING**

The Chambers amendment lost with 1 aye, 24 nays, 17 present and not voting, and 7 excused and not voting.

Senator Loudon offered the following motion:

Invoke cloture on LB 673, pursuant to Rule 7, Section 10.

Senator Chambers requested a record vote on the motion to invoke cloture.

Voting in the affirmative, 33:

Aguilar	Connealy	Friend	Kruse	Raikes
Baker	Cunningham	Heidemann	Landis	Schrock
Beutler	Engel	Hudkins	Langemeier	Smith
Brown	Erdman	Janssen	Louden	Stuhr
Burling	Fischer	Jensen	McDonald	Wehrbein
Byars	Flood	Kopplin	Mines	
Combs	Foley	Kremer	Pedersen, Dw.	

Voting in the negative, 2:

Chambers      Schimek

Present and not voting, 9:

Brashear	Cudaback	Pahls	Redfield	Synowiecki
Cornett	Johnson	Preister	Stuthman	

Excused and not voting, 5:

Bourne      Howard      Pederson, D.      Price      Thompson

The Louden motion to invoke cloture prevailed with 33 ayes, 2 nays, 9 present and not voting, and 5 excused and not voting.

The Standing Committee amendment, AM0867, as amended, was adopted with 37 ayes, 1 nay, 6 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 34 ayes, 3 nays, 7 present and not voting, and 5 excused and not voting.

The Chair declared the call raised.

## **SENATOR CUDABACK PRESIDING**

### **RESOLUTIONS**

**LEGISLATIVE RESOLUTION 81.** Introduced by Smith, 48.

WHEREAS, Kylie Carlson of Scottsbluff received a first-place award in the Nebraska Division of the International Aviation Art Contest in the Age 6-9 category in January 2005; and

WHEREAS, Ms. Carlson's entry won third place at the national level in Washington, D. C., and her entry will be forwarded for international judging this summer; and

WHEREAS, Ms. Carlson's entry was a poster for an air show at the Scottsbluff County Airport.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE

## NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Kylie Carlson.
2. That a copy of the resolution be sent to Kylie Carlson.

Laid over.

**LEGISLATIVE RESOLUTION 82.** Introduced by Smith, 48.

WHEREAS, Jonah Wright, 7, of Scottsbluff, won the Nebraska State Jaycees Super Shooters competition in Waverly on March 19th; and

WHEREAS, Wright qualified by winning the Jaycees competition in Scottsbluff in February; and

WHEREAS, in Waverly he competed against 25 other finalists from around the state in the 6 to 7 year old age group and won by shooting at different spots on the floor that had various point values; and

WHEREAS, competitors had 60 seconds to score as many points as possible, and they were given two 60-second periods in which the higher round counted.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Legislature congratulates Jonah Wright.
2. That a copy of this resolution be sent to Jonah Wright.

Laid over.

**STANDING COMMITTEE REPORT**  
**Urban Affairs**

**LEGISLATIVE RESOLUTION 18CA.** Placed on General File as amended.

Standing Committee amendment to LR 18CA:

AM1242

- 1 1. On page 1, strike lines 13 through 19.
- 2 2. On page 2, strike beginning with the first "of" in
- 3 line 1 through "invested" in line 7 and insert "other provision of
- 4 this Constitution, the Legislature may authorize the investment of
- 5 the public funds of cities, villages, school districts, public
- 6 power districts, and other governmental or political subdivisions
- 7 in such manner and in such investments as the governing body of
- 8 such city, village, school district, public power district, and
- 9 other governmental or political subdivision may determine but
- 10 subject to such limitations as the Legislature may by statute
- 11 provide"; and strike beginning with "provide" in line 11 through
- 12 "invested" in line 17 and insert "authorize the investment of the
- 13 public funds of cities, villages, school districts, public power
- 14 districts, and other governmental or political subdivisions in such
- 15 manner and in such investments as the governing body of such
- 16 governmental or political subdivision may determine subject to
- 17 limitations by the Legislature".

(Signed) Mike Friend, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 673A.** Title read. Considered.

Senator Kruse renewed the D. Pederson pending amendment, FA167, found on page 1223.

Senator Chambers offered the following motion:  
Bracket until May 17, 2005.

Senator Chambers moved for a call of the house. The motion prevailed with 22 ayes, 1 nay, and 26 not voting.

The Chambers motion to bracket failed with 3 ayes, 26 nays, 13 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Pending.

**AMENDMENTS - Print in Journal**

Senator Louden filed the following amendment to LB 673:  
AM1252

(Amendments to Standing Committee amendments, AM0867)

- 1 1. On page 1, line 8, after "dog" insert "(Cynomys
- 2 ludovicianus)".

Senators Mines, Baker, and Janssen filed the following amendment to LB 82:  
AM1246

(Amendments to Final Reading copy)

- 1 1. Insert the following new sections:
- 2 "Sec. 8. Section 9-317, Uniform Commercial Code, is
- 3 amended to read:
- 4 9-317. Interests that take priority over or take free of
- 5 security interest or agricultural lien.
- 6 (a) A security interest or agricultural lien is
- 7 subordinate to the rights of:
- 8 (1) a person entitled to priority under section 9-322;
- 9 and
- 10 (2) except as otherwise provided in subsection (e), a
- 11 person that becomes a lien creditor before the earlier of the time:
- 12 (A) the security interest or agricultural lien is
- 13 perfected; or
- 14 (B) one of the conditions specified in section

15 9-203(b)(3) is met and a financing statement covering the  
16 collateral is filed.

17 (b) Except as otherwise provided in subsection (e), a  
18 buyer, other than a secured party, of tangible chattel paper,  
19 documents, goods, instruments, or a security certificate takes free  
20 of a security interest or agricultural lien if the buyer gives  
21 value and receives delivery of the collateral without knowledge of  
22 the security interest or agricultural lien and before it is  
23 perfected.

1 (c) Except as otherwise provided in subsection (e), a  
2 lessee of goods takes free of a security interest or agricultural  
3 lien if the lessee gives value and receives delivery of the  
4 collateral without knowledge of the security interest or  
5 agricultural lien and before it is perfected.

6 (d) A licensee of a general intangible or a buyer, other  
7 than a secured party, of accounts, electronic chattel paper,  
8 general intangibles, or investment property other than a  
9 certificated security takes free of a security interest if the  
10 licensee or buyer gives value without knowledge of the security  
11 interest and before it is perfected.

12 (e) Except as otherwise provided in sections 9-320 and  
13 9-321, if a person files a financing statement with respect to a  
14 purchase-money security interest before or within ~~twenty~~ thirty  
15 days after the debtor receives delivery of the collateral, the  
16 security interest takes priority over the rights of a buyer,  
17 lessee, or lien creditor which arise between the time the security  
18 interest attaches and the time of filing.

19 Sec. 9. Section 9-324, Uniform Commercial Code, is  
20 amended to read:

21 9-324. Priority of purchase-money security interests.

22 (a) Except as otherwise provided in subsection (g), a  
23 perfected purchase-money security interest in goods other than  
24 inventory or livestock has priority over a conflicting security  
25 interest in the same goods, and, except as otherwise provided in  
26 section 9-327, a perfected security interest in its identifiable  
27 proceeds also has priority, if the purchase-money security interest  
1 is perfected when the debtor receives possession of the collateral  
2 or within ~~twenty~~ thirty days thereafter.

3 (b) Subject to subsection (c) and except as otherwise  
4 provided in subsection (g), a perfected purchase-money security  
5 interest in inventory has priority over a conflicting security  
6 interest in the same inventory, has priority over a conflicting  
7 security interest in chattel paper or an instrument constituting  
8 proceeds of the inventory and in proceeds of the chattel paper, if  
9 so provided in section 9-330, and, except as otherwise provided in  
10 section 9-327, also has priority in identifiable cash proceeds of  
11 the inventory to the extent the identifiable cash proceeds are  
12 received on or before the delivery of the inventory to a buyer, if:

13 (1) the purchase-money security interest is perfected

14 when the debtor receives possession of the inventory;  
15 (2) the purchase-money secured party sends an  
16 authenticated notification to the holder of the conflicting  
17 security interest;  
18 (3) the holder of the conflicting security interest  
19 receives the notification within five years before the debtor  
20 receives possession of the inventory; and  
21 (4) the notification states that the person sending the  
22 notification has or expects to acquire a purchase-money security  
23 interest in inventory of the debtor and describes the inventory.  
24 (c) Subdivisions (b)(2) through (4) apply only if the  
25 holder of the conflicting security interest had filed a financing  
26 statement covering the same types of inventory:  
27 (1) if the purchase-money security interest is perfected  
1 by filing, before the date of the filing; or  
2 (2) if the purchase-money security interest is  
3 temporarily perfected without filing or possession under section  
4 9-312(f), before the beginning of the twenty-day period thereunder.  
5 (d) Subject to subsection (e) and except as otherwise  
6 provided in subsection (g), a perfected purchase-money security  
7 interest in livestock that are farm products has priority over a  
8 conflicting security interest in the same livestock, and, except as  
9 otherwise provided in section 9-327, a perfected security interest  
10 in their identifiable proceeds and identifiable products in their  
11 unmanufactured states also has priority, if:  
12 (1) the purchase-money security interest is perfected  
13 when the debtor receives possession of the livestock;  
14 (2) the purchase-money secured party sends an  
15 authenticated notification to the holder of the conflicting  
16 security interest;  
17 (3) the holder of the conflicting security interest  
18 receives the notification within six months before the debtor  
19 receives possession of the livestock; and  
20 (4) the notification states that the person sending the  
21 notification has or expects to acquire a purchase-money security  
22 interest in livestock of the debtor and describes the livestock.  
23 (e) Subdivisions (d)(2) through (4) apply only if the  
24 holder of the conflicting security interest had filed a financing  
25 statement covering the same types of livestock:  
26 (1) if the purchase-money security interest is perfected  
27 by filing, before the date of the filing; or  
1 (2) if the purchase-money security interest is  
2 temporarily perfected without filing or possession under section  
3 9-312(f), before the beginning of the twenty-day period thereunder.  
4 (f) Except as otherwise provided in subsection (g), a  
5 perfected purchase-money security interest in software has priority  
6 over a conflicting security interest in the same collateral, and,  
7 except as otherwise provided in section 9-327, a perfected security  
8 interest in its identifiable proceeds also has priority, to the

9 extent that the purchase-money security interest in the goods in  
10 which the software was acquired for use has priority in the goods  
11 and proceeds of the goods under this section.

12 (g) If more than one security interest qualifies for  
13 priority in the same collateral under subsection (a), (b), (d), or  
14 (f):

15 (1) a security interest securing an obligation incurred  
16 as all or part of the price of the collateral has priority over a  
17 security interest securing an obligation incurred for value given  
18 to enable the debtor to acquire rights in or the use of collateral;  
19 and

20 (2) in all other cases, section 9-322(a) applies to the  
21 qualifying security interests.

22 Sec. 10. Sections 8, 9, and 11 of this act become  
23 operative on October 17, 2005. The other sections of this act  
24 become operative on their effective date.

25 Sec. 11. Original sections 9-317 and 9-324, Uniform  
26 Commercial Code, are repealed."

27 2. On page 1, line 3, after "Nebraska" insert ", and  
1 sections 9-317 and 9-324, Uniform Commercial Code"; in line 7,  
2 after the semicolon insert "to change provisions relating to  
3 purchase-money security interests; and in line 8 after the  
4 semicolon insert "to provide operative dates;".

5 4. Renumber the remaining section accordingly.

## VISITORS

Visitors to the Chamber were 26 fourth-grade students and teacher from Scribner-Snyder Elementary School, Scribner; 11 seventh-grade students and teacher from Shickley; 32 fourth-grade students and teacher from Doniphan-Trumbull School, Doniphan; 75 fourth-grade students and teachers from Field Club Elementary School, Omaha; Norman and Karen Wichman from Pender; Senator Engel's sister-in-law, Yvonne Engel, from Elkhorn and Dona Clauff from Omaha; and 47 fourth-grade students and teacher from Harrison Elementary School, Omaha.

## RECESS

At 11:56 a.m., on a motion by Senator Brown, the Legislature recessed until 1:30 p.m.

## AFTER RECESS

The Legislature reconvened at 1:30 p.m., Senator Cudaback presiding.

## ROLL CALL

The roll was called and all members were present except Senators Bourne, Howard, Kopplin, and D. Pederson who were excused; and Senators Brown,

Engel, Heidemann, Landis, Mines, and Synowiecki who were excused until they arrive.

### GENERAL FILE

**LEGISLATIVE BILL 673A.** Senator Chambers offered the following motion:

Reconsider the vote taken on the bracket motion.

Senator Chambers asked unanimous consent to withdraw his motion to reconsider. No objections. So ordered.

Senator Chambers offered the following amendment to the D. Pederson pending amendment:

FA174

On page 2 in line 2 strike beginning with the first appearance of "the" through "27" in line 4 and insert "the Rural Development Trust Fund".

Senator Chambers moved for a call of the house. The motion prevailed with 17 ayes, 0 nays, and 32 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 23:

Brashear	Flood	Kremer	Mines	Stuhr
Burling	Foley	Kruse	Pedersen, Dw.	Stuthman
Engel	Friend	Langemeier	Schimek	Wehrbein
Erdman	Hudkins	Louden	Schrock	
Fischer	Janssen	McDonald	Smith	

Present and not voting, 17:

Aguilar	Combs	Jensen	Price	Thompson
Beutler	Cornett	Johnson	Raikes	
Brown	Cudaback	Pahls	Redfield	
Byars	Cunningham	Preister	Synowiecki	

Excused and not voting, 8:

Baker	Connealy	Howard	Landis
Bourne	Heidemann	Kopplin	Pederson, D.

The Chambers amendment lost with 1 aye, 23 nays, 17 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

The D. Pederson pending amendment, FA167, found on page 1223 and considered in this day's Journal, was renewed.

The D. Pederson amendment was adopted with 30 ayes, 2 nays, 9 present and not voting, and 8 excused and not voting.

Advanced to E & R for review with 31 ayes, 3 nays, 7 present and not voting, and 8 excused and not voting.

### AMENDMENT - Print in Journal

Senator Janssen filed the following amendment to LB 573:  
AM1189

(Amendments to Standing Committee amendments, AM0091)

1 1. Strike section 4 and insert the following new  
2 section:  
3 "Sec. 4. Section 2-1213, Reissue Revised Statutes of  
4 Nebraska, is amended to read:  
5 2-1213. ~~(4)~~ (1)(a) No racing under sections 2-1201 to  
6 2-1218 shall be permitted on Sunday except when approved by a  
7 majority of the members of the State Racing Commission upon  
8 application for approval by any racetrack. Such approval shall be  
9 given after the commission has considered: ~~(a)~~ (i) Whether Sunday  
10 racing at the applicant track will tend to promote and encourage  
11 agriculture and horse breeding in Nebraska; ~~(b)~~ (ii) whether the  
12 applicant track operates under a license granted by the commission;  
13 ~~(c)~~ (iii) whether the applicant track is in compliance with all  
14 applicable health, safety, fire, and police rules and regulations  
15 or ordinances; ~~(d)~~ (iv) whether the denial of Sunday racing at the  
16 applicant track would impair such track's economic ability to  
17 continue to function under its license; and ~~(e)~~ (v) whether the  
18 record of the public hearing held on the issue of Sunday racing at  
19 the applicant track shows reasonable public support. Notice of  
20 such public hearing shall be given at least ten days prior thereto  
21 by publication in a newspaper having general circulation in the  
22 county in which the applicant track is operating, and the  
23 commission shall conduct a public hearing in such county. The  
1 commission may adopt, promulgate, and enforce rules and regulations  
2 governing the application and approval for Sunday racing in  
3 addition to its powers in section 2-1203. If the commission  
4 permits racing on Sunday, the voters may prohibit such racing in  
5 the manner prescribed in section 2-1213.01. If approval by the  
6 commission for Sunday racing at the applicant track is granted, no  
7 racing shall occur on Sunday until after 1 p.m.  
8 (b) No license shall be granted for racing on more than  
9 one racetrack in any one county, except that the commission may, in

10 its discretion, grant a license to any county agricultural society  
11 to conduct racing during its county fair notwithstanding a license  
12 may have been issued for racing on another track in such county.  
13 (c) Since the purpose of sections 2-1201 to 2-1218 is to  
14 encourage agriculture and horse breeding in Nebraska, every  
15 licensee shall hold at least one race on each racing day limited to  
16 Nebraska-bred horses, including thoroughbreds or quarter horses.  
17 Three percent of the first money of every purse won by a  
18 Nebraska-bred horse shall be paid to the breeder of such horse.  
19 Beginning September 1, 2005, through January 1, 2008, each licensee  
20 who holds a license for quarter horseracing shall, for each live  
21 racing day, give preference to Nebraska-bred quarter horses in at  
22 least one race in lieu of the requirements of this subdivision.

23 (2) For purposes of this section, Nebraska-bred horse  
24 shall mean a horse registered with the Nebraska Thoroughbred or  
25 Quarter Horse Registry and meeting the following requirements: (a)  
26 It shall have been foaled in Nebraska; (b) its dam shall have been  
27 registered, prior to foaling, with the Nebraska Thoroughbred or  
1 Quarter Horse Registry; and (c) its dam shall have been  
2 continuously in Nebraska for ninety days immediately prior to  
3 foaling, except that such ninety-day period may be reduced to  
4 thirty days in the case of a mare in foal which is purchased at a  
5 nationally recognized thoroughbred or quarter horse blood stock  
6 sale, the name and pedigree of the mare being listed in the sale  
7 catalog, and which is brought into this state and remains in this  
8 state for thirty days immediately prior to foaling.

9 The requirement that a dam shall be continuously in  
10 Nebraska for either ninety days or thirty days, as specified in  
11 subdivision (2)(c) of this section, shall not apply to a dam which  
12 is taken outside of Nebraska to be placed for sale at a nationally  
13 recognized thoroughbred or quarter horse blood stock sale, the name  
14 and pedigree of the mare being listed in the sale catalog, or for  
15 the treatment of an extreme sickness or injury, if written notice  
16 of such proposed sale or treatment is provided to the secretary of  
17 the commission within three days of the date such horse is taken  
18 out of the state.

19 The commission may designate official registrars for the  
20 purpose of registration and to certify the eligibility of  
21 Nebraska-bred horses. An official registrar shall perform such  
22 duties in accordance with policies and procedures adopted and  
23 promulgated by the commission in the current rules and regulations  
24 of the commission. The commission may authorize the official  
25 registrar to collect specific fees as would reasonably compensate  
26 the registrar for expenses incurred in connection with registration  
27 of Nebraska-bred horses. The amount of such fee or fees shall be  
1 established by the commission and shall not be changed without  
2 commission approval. Fees shall not exceed one hundred dollars per  
3 horse.

4 Any decision or action taken by the official registrar

5 shall be subject to review by the commission or may be taken up by 6 the commission on its own initiative.".

### GENERAL FILE

**LEGISLATIVE RESOLUTION 8CA.** Senator Chambers renewed his pending amendment, FA33, found on page 599.

Senator Chambers moved for a call of the house. The motion prevailed with 13 ayes, 0 nays, and 36 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 27:

Aguilar	Flood	Kruse	Raikes	Synowiecki
Brashear	Foley	Langemeier	Redfield	Thompson
Byars	Friend	Louden	Schrock	Wehrbein
Engel	Hudkins	McDonald	Smith	
Erdman	Janssen	Mines	Stuhr	
Fischer	Kremer	Pedersen, Dw.	Stuthman	

Present and not voting, 13:

Beutler	Combs	Cunningham	Pahls	Schimek
Brown	Cornett	Jensen	Preister	
Burling	Cudaback	Johnson	Price	

Excused and not voting, 8:

Baker	Connealy	Howard	Landis
Bourne	Heidemann	Kopplin	Pederson, D.

The Chambers amendment lost with 1 aye, 27 nays, 13 present and not voting, and 8 excused and not voting.

The Chair declared the call raised.

Senator Chambers renewed his pending amendment, FA34, found on page 599.

Senator Chambers moved for a call of the house. The motion prevailed with 14 ayes, 0 nays, and 35 not voting.

Senator Chambers requested a roll call vote on his amendment.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 26:

Brashear	Flood	Kruse	Redfield	Thompson
Byars	Foley	Langemeier	Schrock	Wehrbein
Cornett	Friend	Louden	Smith	
Cunningham	Heidemann	McDonald	Stuhr	
Erdman	Hudkins	Mines	Stuthman	
Fischer	Kremer	Raikes	Synowiecki	

Present and not voting, 12:

Aguilar	Burling	Jensen	Preister
Beutler	Combs	Johnson	Price
Brown	Cudaback	Pahls	Schimek

Excused and not voting, 10:

Baker	Connealy	Howard	Kopplin	Pedersen, Dw.
Bourne	Engel	Janssen	Landis	Pederson, D.

The Chambers amendment lost with 1 aye, 26 nays, 12 present and not voting, and 10 excused and not voting.

The Chair declared the call raised.

Pending.

### **AMENDMENT - Print in Journal**

Senator Redfield filed the following amendment to LB 40A:  
AM1259

- 1 1. Strike the original section and insert the following
- 2 new sections:
- 3 "Section 1. There is hereby appropriated (1) \$1,500,000
- 4 from the Affordable Housing Trust Fund for FY2005-06 and (2)
- 5 \$2,000,000 from the Affordable Housing Trust Fund for FY2006-07 to
- 6 the Department of Economic Development, for Program 601, to aid in
- 7 carrying out the provisions of Legislative Bill 40, Ninety-ninth
- 8 Legislature, First Session, 2005.
- 9 There is included in the appropriation to this program
- 10 for FY2005-06 \$1,500,000 Cash Funds for state aid, which shall only
- 11 be used for such purpose. There is included in the appropriation
- 12 to this program for FY2006-07 \$2,000,000 Cash Funds for state aid,
- 13 which shall only be used for such purpose.

14 No expenditures for permanent and temporary salaries and  
15 per diems for state employees shall be made from funds appropriated  
16 in this section.

17 Sec. 2. There is hereby appropriated (1) \$2,000,000 from  
18 the Behavioral Health Services Fund for FY2005-06 and (2)  
19 \$2,000,000 from the Behavioral Health Services Fund for FY2006-07  
20 to the Department of Health and Human Services Finance and Support,  
21 for Program 38, to aid in carrying out the provisions of  
22 Legislative Bill 40, Ninety-ninth Legislature, First Session, 2005.

23 No expenditures for permanent and temporary salaries and  
24 per diems for state employees shall be made from funds appropriated  
1 in this section.

2 There is included in the appropriation to this program  
3 for FY2005-06 \$2,000,000 Cash Funds for state aid, which shall only  
4 be used for such purpose. There is included in the appropriation  
5 to this program for FY2006-07 \$2,000,000 Cash Funds for state aid,  
6 which shall only be used for such purpose.

7 Sec. 3. There is hereby appropriated \$100,000 from the  
8 Behavioral Health Services Fund for FY2005-06 to the Department of  
9 Health and Human Services Finance and Support, for Program 38, to  
10 aid in carrying out the provisions of Legislative Bill 40,  
11 Ninety-ninth Legislature, First Session, 2005.

12 No expenditures for permanent and temporary salaries and  
13 per diems for state employees shall be made from funds appropriated  
14 in this section.

15 There is included in the appropriation to this program  
16 for FY2005-06 \$100,000 Cash Funds for state aid, which shall only  
17 be used for such purpose.

18 Funds appropriated in this section shall only be used for  
19 housing-related assistance for very low-income adults with serious  
20 mental illness. The Division of Behavioral Health Services of the  
21 Department of Health and Human Services shall manage and distribute  
22 such funds based upon a formula established by the division, in  
23 consultation with regional behavioral health authorities and the  
24 Department of Health and Human Services Finance and Support, in a  
25 manner consistent with and reasonably calculated to promote the  
26 purposes of the public behavioral health system provided in section  
27 71-803.

1 The Division of Behavioral Health Services of the  
2 Department of Health and Human Services shall contract with each  
3 regional behavioral health authority for the provision of such  
4 assistance. Each regional behavioral health authority may contract  
5 with qualifying public, private, or nonprofit entities for the  
6 provision of such assistance.

7 For purposes of this section (1) housing-related  
8 assistance means rental payments, utility payments, security and  
9 utility deposits, and other related costs and payments, (2) very  
10 low-income means a household income of fifty percent or less of the  
11 applicable median family income estimate as established by the

12 United States Department of Housing and Urban Development, and (3)  
13 adult with serious mental illness means a person eighteen years of  
14 age or older who has, or at any time during the immediately  
15 preceding twelve months has had, a diagnosable mental, behavioral,  
16 or emotional disorder of sufficient duration to meet diagnostic  
17 criteria identified in the most recent edition of the Diagnostic  
18 and Statistical Manual of Mental Disorders and which has resulted  
19 in functional impairment that substantially interferes with or  
20 limits one or more major life functions. Serious mental illness  
21 does not include DSM V codes, substance abuse disorders, or  
22 developmental disabilities unless such conditions exist  
23 concurrently with a diagnosable serious mental illness.

24 Sec. 4. There is hereby appropriated \$1,845,000 from the  
25 Behavioral Health Services Fund for FY2005-06 to the Department of  
26 Health and Human Services Finance and Support, for Program 38, to  
27 aid in carrying out the provisions of Legislative Bill 40,  
1 Ninety-ninth Legislature, First Session, 2005.

2 No expenditures for permanent and temporary salaries and  
3 per diems for state employees shall be made from funds appropriated  
4 in this section.

5 There is included in the appropriation to this program  
6 for FY2005-06 \$1,845,000 Cash Funds for state aid, which shall only  
7 be used for such purpose.

8 Funds appropriated in this section shall be distributed  
9 to each regional behavioral health authority on a per capita basis  
10 no later than thirty days after receipt of such funds and shall  
11 only be used for one-time funding for new construction,  
12 acquisition, or rehabilitation of housing to assist very low-income  
13 adults with serious mental illness.

14 Each regional behavioral health authority may contract  
15 with qualifying public, private, or nonprofit entities for the  
16 provision of such assistance.

17 For purposes of this section (1) very low-income means a  
18 household income of fifty percent or less of the applicable median  
19 family income estimate as established by the United States  
20 Department of Housing and Urban Development and (2) adult with  
21 serious mental illness means a person eighteen years of age or  
22 older who has, or at any time during the immediately preceding  
23 twelve months has had, a diagnosable mental, behavioral, or  
24 emotional disorder of sufficient duration to meet diagnostic  
25 criteria identified in the most recent edition of the Diagnostic  
26 and Statistical Manual of Mental Disorders and which has resulted  
27 in functional impairment that substantially interferes with or

1 limits one or more major life functions. Serious mental illness  
2 does not include DSM V codes, substance abuse disorders, or  
3 developmental disabilities unless such conditions exist  
4 concurrently with a diagnosable serious mental illness.

5 Sec. 5. Since an emergency exists, this act takes effect  
6 when passed and approved according to law."

**MESSAGES FROM THE GOVERNOR**

April 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 to the Coordinating Commission for Postsecondary Education.

**APPOINTEE:**

Timothy D. Hodges, 11420 S 199th Street, Gretna NE 68028

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

web/  
Enclosure

April 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 to the Commission for the Deaf and Hard of Hearing.

**APPOINTEE:**

Luana Duennerman, 4140 S 20th Street, Lincoln NE 68502

The aforementioned name is respectfully submitted for your consideration.

Sincerely,  
(Signed) Dave Heineman  
Governor

web/

Enclosure

April 19, 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 reappointed to the Commission of Industrial Relations.

APPOINTEE:

Jeffrey L. Orr, 1708 W 35th, Kearney NE 68847

The aforementioned name is respectfully submitted for your consideration.

(Signed) Sincerely,  
Dave Heineman  
Governor

web/  
Enclosure

April 19, 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 to the Boiler Safety Code Advisory Board.

APPOINTEE:

Charles Cole, 3651 F Road, Otoe NE 68417

The aforementioned name is respectfully submitted for your consideration.

(Signed) Sincerely,  
Dave Heineman  
Governor

web/  
Enclosure

**VISITORS**

Visitors to the Chamber were 94 fourth-grade students and teachers from Pawnee Elementary School, Omaha; Linda Olson from O'Neill; and 11 fourth-grade students and teacher from Howells Community Catholic School.

Upon adjournment the Speaker introduced a group from the Nebraska Association of Former State Legislators.

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

**ADJOURNMENT**

At 3:44 p.m., on a motion by Speaker Brashear, the Legislature adjourned until 9:00 a.m., Thursday, April 21, 2005.

Patrick J. O'Donnell  
Clerk of the Legislature

