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Floor Debate
March 05, 2007

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LB252 LB255 LB286 LB295 LB347 LB349 LB395 LB400 LB426 LB477 LB480 LB497
LB537 LB551 LB562 LB629 LB653 LB661 LR10 LR35 LR36 LR38 LR42]

SENATOR LANGEMEIER PRESIDING []

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for this, the thirty-ninth day of the One Hundredth Legislature, First Session. Our chaplain for the day is Pastor Rod Lyon, with the Conestoga Parish of the United Methodist Church, with three churches in Denton, Pleasant Dale, and Raymond, Nebraska, here as guest of Senator Hudkins. Please rise. []

PASTOR LYON: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you, Pastor Lyon. I call to order the thirty-ninth day of the One Hundredth Legislature, First Session. Senators, please record your presence. []

CLERK: I have a quorum present, Mr. President. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: Mr. President, your Committee on Enrollment and Review reports they've examined and engrossed LB83 and find the same correctly engrossed, LB124, LB145, LB231, LB248, LB347, all of those reported correctly engrossed. Your Committee on Health and Human Services, chaired by Senator Johnson, reports LB480 to General File; LB245, General File with amendments; LB400, General File with amendments; LB426, General File with amendments; and LR10 reported back to the Legislature for further consideration. Transportation Committee, chaired by Senator Fischer, reports LB661 to General File with amendments. Government, Military and Veterans Affairs Committee, chaired by Senator Aguilar, reports LB252 to General File, and LB477 as indefinitely postponed. I have confirmation hearing reports from the Government Committee, from Natural Resources Committee, two from the Natural Resources Committee. And that's all that I have, Mr. President. (Legislative Journal pages 729-733.) [LB83 LB124 LB145 LB231 LB248 LB347 LB480 LB245 LB400 LB426 LR10 LB661 LB252 LB477]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Any messages, reports, or announcements? Oh, got it. Thank you, Mr. Clerk. We'll now proceed to the first item on General File, LB497. [LB497]

CLERK: LB497, a bill by Senator White. (Read title.) Introduced on January 17 of this

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year, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM496, Legislative Journal page 696.) [LB497]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator White, you are recognized to open on LB497. [LB497]

SENATOR WHITE: Thank you, Mr. President. My fellow senators, this is a serious bill at a very serious time in our history. The United States, as you know, is at war. Increasingly, our families have been separated by the needs of that war. And it is not just husbands; it is now wives who are often called overseas to serve for extended periods of time. And this bill gives some measure of assistance to the families that are bearing a disproportionate share of the pain and the burden of the war that we're fighting. As you know now, increasingly the National Guards are being called upon, Reserves are being called upon, not just active-duty troops, to provide frontline support in combat areas. Families are being called up, husbands, wives are being called up, for a year or more to serve overseas. One of the effects that this has on the people that are left behind is it puts a huge burden, an enormous burden, on the men and women who must watch out for their families while their loved ones are in harm's way. This comes about in a number of ways. For example, if you have two children and you have a husband and a wife and one gets sick, you have two sets of vacation plans, because unfortunately, most of our families need two incomes to survive now. But you have two parents. Either one can stay home to take care of the sick child, and they can provide the day care necessary. But they lose their vacation time or they lose their sick leave time. So the families are finding themselves, the parents that stay behind, the spouse that stays behind, increasingly is finding themselves out of vacation or sick leave time but still has obligations to their family and their children. It may be as simple as a sick child. It may be the need to go to a school play or a basketball game. And then often they find that when their spouse comes home on leave, or at the return of their tour of duty comes home, they have no vacation or sick leave time to reestablish the relationship necessary to a healthy family. This adds enormous amounts of strain and pressure on families. One of the stories--and I believe it was Senator Cornett passed this on to me--was of a husband who was called up to active duty in Iraq when his child was four months old. He returned, and the child is 16 months old. The child no longer recognizes the father at all and is terrified that a stranger is in the house. Nevertheless, because the wife has no sick leave or vacation leave left because of the pressures of taking care of the child and other family pressures, she must go directly to work, leaving the child and her husband just returned from war to fend for themselves, and the child is in hysterics, being left with a stranger. These are the kinds of problems and insults that we can avoid. This is a simple bill. It provides that if you have employees of 15 or more, you will provide unpaid, unpaid leave of 15 days a year if, if the...one of...your employee or one of the members of their family, immediate family, have been called up for active duty. And they have to be called up for active duty for a period of 179 days or more. The

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reason that number is picked is, that is now one of the most popular call-up periods of the military. So if someone in your family is called up, then at that point in time you can use up to 15 days. If your employer is larger, 50 employees or more, then you can have up to 30 days unpaid leave. It makes it...protects the employee's job. They must, of course, suffer the loss of the salary, but at least they know they have a job to return to. This is, we think, a balanced approach. In many ways, it's the least we can do for those who are sacrificing so much to defend us. And I would return the rest of my time to the Chair, unless one or more members of the body have a question. [LB497]

SENATOR LANGEMEIER: Thank you, Mr. White. I would ask that we keep the visiting to a minimum. It was getting tough to hear. I appreciate that. As the Clerk has stated, there are amendments by the Military...Government, Military and Veterans Affairs. Senator Aguilar, you are recognized, as Chair of that committee, and recognized to open on the committee amendments. [LB497]

SENATOR AGUILAR: Thank you, Mr. President and members. I want to thank Senator White for bringing this bill forward. Our committee really liked it, as a matter of fact, liked it enough to give it one of our committee priority designations. The committee amendment makes several technical changes in the bill. First, the amendment expands the definition of "employer" to include limited liability companies, business trust, and legal representatives. With these changes, the definition of "employer" is similar to the definition in the Wage and Hour Act. The amendment removes language allowing independent contractors to be covered under the act. Since independent contractors often do not receive benefits such as vacation or sick leave, it appears they don't need to be included in the bill. Finally, the definition of "family military leave" is amended to provide that an employee who is the spouse or parent of a person called to military service lasting longer than 179 days with the state or United States is covered under the act. The original language required a deployment of 180 days. At the hearing, we heard from several testifiers that the deployments were often for 179 days. The committee felt that spouses and parents of persons deployed for 179 days deserve benefits provided in this bill. The bill advanced from committee on an 8-0 vote. There were no opponents at the hearing. And I urge your support of the committee amendment and LB497. Thank you. [LB497]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. You've heard the opening on LB497 and the opening on the committee amendments. The floor is now open for discussion on the committee amendments. Senator Johnson, you're recognized. [LB497]

SENATOR JOHNSON: Mr. President and members of the Chamber, as I look around the room, I think I'm the last one that went through what this bill does. I'm not sure that I can even talk about it. It is devastating to families. There is no question that we ask an awful lot of the men and women that we deploy. But we ask an equal amount of their

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families that stay at home. I can do nothing except ask you to support the amendments and the primary bill. Thank you very much. [LB497]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator White, you're recognized. [LB497]

SENATOR WHITE: Yes, Mr. President. We have a request in to the Bill Drafters, but in the event it's not here yet, I would like to make a floor amendment to ask that the E clause be added to this bill, if Senator Aguilar would so consent. And would you yield to a...and would you ask if he'd yield to a question? [LB497]

SENATOR LANGEMEIER: Senator White, would you please come forward and yield...will you please come forward. (Visitors introduced.) We're going to continue to discuss the committee amendment, AM496. And Senator White, did you want to finish your couple minutes? [LB497]

SENATOR WHITE: I accept the committee's amendment, and recommend the membership vote for them. Thank you, Mr. President. [LB497]

SENATOR LANGEMEIER: Thank you, Senator White. We're back to floor discussion on the committee amendment, AM496. Is there anyone that wishes to speak to that? Seeing no lights on, Senator Aguilar is recognized to close. He waives closing. The question before the body is, should the committee amendments be adopted to LB497? All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote have done so? Record, Mr. Clerk. [LB497]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB497]

SENATOR LANGEMEIER: The committee amendments are adopted. Mr. Clerk. [LB497]

CLERK: Mr. President, Senator White would move to amend the bill. (FA34, Legislative Journal page 733.) [LB497]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator White, you are recognized to open on your floor amendment. [LB497]

SENATOR WHITE: Thank you, Mr. President. This floor amendment is very simple. I ask that the emergency clause be added to this bill. A number of families testified before the committee, and I will ask Senator Aguilar to describe testimony, given current hardships that they are experiencing with the heavy deployment overseas. Accordingly, I ask the membership to vote for this, and I yield the remainder of my time to Senator

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Aguilar. [LB497]

SENATOR LANGEMEIER: Senator Aguilar, 9 minutes, 30 seconds. [LB497]

SENATOR AGUILAR: Thank you, Mr. President and members. Just as Senator White reflected to you, that's exactly the situation, and I strongly encourage everyone's support for this legislation, this amendment. [LB497]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Is there...Senator White, your light is on. Do you wish to...the floor is open for discussion on the floor amendment offered by Senator White. Is there anyone that wished to speak to the E clause? Seeing no lights on, Senator White, you're recognized to close on your amendment. Senator White waives closing. The question before the body is, shall Senator White's floor amendment be adopted to LB497? All those in favor vote yea; all those opposed vote nay. Have all those that wish to vote have done so? Record, Mr. Clerk. [LB497]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator White's amendment. [LB497]

SENATOR LANGEMEIER: Senator White's amendment is adopted. We now... [LB497]

CLERK: I have nothing further on the bill, Mr. President. [LB497]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We are back to discussion on the floor of LB497. Seeing no lights on, Senator White, you're recognized to close on LB497. [LB497]

SENATOR WHITE: Thank you, Mr. President. On behalf of all of the military families in the state of Nebraska, I ask the membership to stand behind them as they stand behind their loved ones in harm's way, and please vote for this bill. Help them as they seek to serve our country. Thank you. [LB497]

SENATOR LANGEMEIER: Thank you, Senator White. You have heard the closing on the advancement of LB497 to E&R Initial. All those in favor vote yea; all those opposed vote nay. Have all those that voted that wish to? Record, Mr. Clerk. [LB497]

CLERK: 42 ayes, 0 nays, Mr. President, on the advancement of LB497. [LB497]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. LB497 does advance. (Visitors introduced.) Mr. Clerk, next item on the agenda. [LB497]

CLERK: Mr. President, LB395 was a bill originally introduced by Senator Johnson. (Read title.) The bill was introduced on January 16, at that time was referred to the

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Health and Human Services Committee. The bill was advanced to General File. The bill has been discussed on the floor, Mr. President. Senator Johnson presented the committee amendments. There was a request for division. The committee amendments have been divided. When the Legislature left the issue, pending was the first component of the committee amendments, specifically, FA15. And pending to that was an amendment by Senator Johnson, FA21, as an amendment to FA15. (Legislative Journal page 568.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Johnson, it has been awhile since we had addressed this bill. I wish that you...recognize you to reopen on LB395. [LB395]

SENATOR JOHNSON: Mr. President and members of the Legislature, let me first recap where we're at on this for a minute or two, and then tell where we're going from now. What we have is, we introduced this bill. What it consists of is, basically it is a copy of the Lincoln city ordinance that made it so that we could...we call it the Clean Air Act, and that's exactly what it is. It's clean air in buildings where the public frequent. This applies...since public buildings are already covered, including this Chamber, which was approximately ten years ago, but now this is to extend it to bars and restaurants in particular. We are in agreement with the opponents that for businesses that are in the home, that this is very difficult to cover, and therefore, we are in agreement with those that this should be removed. And indeed, this is the floor amendment. Where we go from here, however, is still in question. And from that point, sir, I will go on from our point of view, as opposed to just reviewing. We asked that we have...we asked for a delay for a very specific reason. What we knew was going to happen is that there was going to be a poll conducted of our Nebraska citizenry. We had hoped that this poll would come out in our favor. One of the things that was done, so that there would be no question about the validity of this poll, is it is done by the very same company that the Governor of Nebraska uses when he samples public opinion. So if you want to question the numbers, then make sure you always question what the Governor says, as well. I'm not prepared to do that. Let's talk a little bit about what has been going on. First of all, what has the smoking industry done? Well, interestingly enough, whether it's in our state or any other state that is considering such a proposal, what they do is ask their people that support their point of view to do three things. They are: preach individual freedom, each person's own rights. The next thing they do is they distribute pseudoscience. That's why you got the Sears catalogue type of literature this last week. All they intend to do with this is confuse what it says. What it actually says is...you only need to remember two things. One is, the Surgeon General said that the evidence is massive and conclusive. That's what's at the front of the Surgeon General's report. The next is to rely on fear, tell the bar owners and the restaurants that they're going to be hurt. I can assure you, in the states that have passed similar legislation than this, there are still restaurants, and believe it or not, the bars are still open. Let's review just a little bit of history. Where do we come from with the tobacco industry? You'll recall a few

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years back they lost the largest lawsuit ever in the United States. Why did they lose? They lost for a very good reason. They themselves had discovered that their cigarettes were causing cancer and causing all kinds of health problems, and they hid their own evidence and allowed millions of people to die. They knew cigarettes were causing cancer. Now what do they do? They go back...they learned their lesson. They don't outright lie anymore. They go back and preach personal freedom, individual rights, this pseudoscience that we were talking about, and fear that you're going to go out of business and lose money. Let me remind you of one thing when we're talking about individual rights and what the kind of thing that Senator White was just talking about. Tobacco has killed more people in the last 50 years than all of the people that have died in every war that the United States has ever taken part in, and that includes both sides of the Civil War, where we lost 600,000. One other thing that our friends here in the Legislature have been talking about. Liberty, liberty, liberty. They keep quoting Thomas Jefferson. Actually, Thomas Jefferson said something else. He said, life, liberty, and the pursuit of happiness. Life comes first. We should protect our fellow citizens who are injured by this secondhand smoke. How can you have liberty when you don't protect life? And how are you going to have pursuit of happiness? Well, let's talk just about a couple of things. And I've had these passed out to you, and it's about the survey. If you look, you will see this is not a party issue. It's just about the same overwhelming numbers of Democrats as Republicans that favor this type of legislation. Let's go a little bit more specific as we look around this room and look at yourself. Where are you at on the chart that says, by gender and age? You will see that most of we adults...and look at women in particular, because if you had a birthday recently and it showed that you were between 18 and 54, 90 percent of this state disagree with you on this bill; 90 percent disagree with the opponents of this bill. Where is the constituency that we have that wants to block this legislation? [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR JOHNSON: It's nonexistent. Support is so low with this group, with a 4 to 5 percent error, this means it could be as low as 14 percent and as high as only 14 percent (sic). There is no constituency for our opponents, and it's about time they looked in the mirror and saw that that was the case. Let's protect our citizens, let them have the life, along with their liberty. Thank you very much. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Johnson, you are recognized. We're currently on FA21, offered by you to the first section of the divided committee amendment, FA15. You're recognized to open on your FA21. [LB395]

SENATOR JOHNSON: Thank you. What we're talking about here is this. And we had a discussion off the floor, as well as on the floor this last time around. And what we're talking about here is that the...how do you manage businesses at home? And what we found, and Senator Fischer pointed this out to us, is that in a ranch setting, for instance,

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that if you had ranch hands that you had for dinner, or, I would say this, if you were an insurance agent and had either a couple of employees or a couple of customers over late in the afternoon and you decided that we would have...you know, work into the evening, so we send out for a couple of pizzas, and you take these people into your home and then have the pizza, chances are you're going to talk a little business, as well, would this mean that your...you have broken the law if someone lit up a cigarette in this conversation that you're having? We did not think of this type of situation when we were putting this together. It makes sense to us that this be considered, and that is the reason that we have this particular amendment. It's not that we don't want to be reasonable about this. In fact, one of the things...and I must tell you that my son who is a physician in North Dakota said one other caution to me, and what it is, is that he said, is this, is, Dad, remember, we're talking about people who may be patients that come to see their healthcare professional because of the problems caused by this smoking and secondhand smoke, and treat them like patients. We very much want to do this. We realize that there is the addictive component to this, and we want to work with them to overcome their difficulties, as well. So that's why we are perfectly willing to consider issues like this. Having said that,...and how much time do I have left, sir? [LB395]

SENATOR LANGEMEIER: Six minutes. [LB395]

SENATOR JOHNSON: Having said that, let's talk as just...it does apply, but you are also going to get, in addition to the literature that we passed out about our polling numbers, is, just this morning we received information that applies to the University of Minnesota, because people in this room have questioned, you say this is very expensive; prove it to us. Who does it affect, and so on? We do not have the numbers for Nebraska, but we do have them for another Midwestern state of similar ethnic background, and so on, to Nebraska. And what you will see are these kind of numbers. And I think Minnesota, I think, has about three times the population that we do, perhaps a little bit more than that. But here's the numbers. Number of Minnesotans treated for conditions caused by secondhand smoke: 66,000, nearly 700. If you say our population is one-third, that's 22,000. Make it one-fifth or one-fourth, and you're still talking 15,000 to 20,000. And we talk in this body about wanting to save money. Our Medicaid budget is so high. Look at the numbers there: \$215 million for the state of Minnesota. Again, let's say that these numbers are off, let's say they're off by 50 percent. It's still over \$100 million every year. What would it be in Nebraska? Well, probably \$20 million if you use my formula of cutting it in half. So you know, we can talk all we want about liberties, and this is really why this amendment was put in there, is to...is this a legitimate concern about liberty? We thought that it was, that it was an invasion of the home, and we are perfectly willing to propose this amendment, because we don't want to be invasive. What we do want is, we want better health for our citizenry of Nebraska. And we can do it so cheaply that there is no cost whatsoever. Thank you very much. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Mr. Clerk. [LB395]

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CLERK: Mr. President, the Urban Affairs Committee will have an Executive Session at 11:00 underneath the south balcony; 11:00, Urban Affairs. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. (Visitors introduced.) You have heard the opening and the reopening of LB395 and a brief opening on FA21. The floor is now open for discussion. We have Mines, Stuthman, Aguilar, Wallman, and others. Senator Mines, you're recognized to discuss FA21. [LB395]

SENATOR MINES: Thank you, Mr. President, colleagues. Rather than discuss FA21, with your pleasure, I'd like to talk about the bill and what's going on a little bit within the body. I think we all know that in order to move this bill, Senator Johnson would need 35 votes. I think we all believe that those votes are not here--although close, not here. So Senator Johnson and a group of us have been working on a compromise that may or may not meet all of your approval. But I need to let you know that we're in the process, and I hope that we're very, very close. An amendment is being drafted now. Here's what we've been talking about, and all parties have been engaged, and I appreciate the dialogue. It's been very good. An amendment will be offered that will ban smoking everywhere in Nebraska, and that would become effective June 1 of 2008. And then cities and counties, as a thought, cities, counties, can opt out of the smoking ban. They could opt out either by a vote of the people, or by a vote of those elected officials, whether it's city or county. And city...voters could, through the initiative process, put this on the ballot. So, you know, everyone gets a chance at it. Additionally, the cities that currently have a smoking ban--and I think we all know Omaha and Lincoln does...or, do--those cities and their ordinances would be held harmless until a year after the effective date of the bill, June 1, 2009, which gives them some time to assimilate into the smoking ban, if you will. I think the important part, and what...oh, by the way, these are some suggestions, and I think quite good suggestions; Senator White brought these up. The penalty for violating the Clean...Nebraska Clean Air Act would be lessened, so that individuals, under the act, that are...that smoke in an area that they shouldn't, they would be able to...certainly, there's a fine and the fine escalates as the number of times that we have a repeat offender. However, the offender can, through a smoking cessation program that they pay for, they cannot...they can avoid those fines and penalties. I think that's a terrific one. Also, in Section 21, we remove any allowance for warrantless searches, and I think that was an unintended consequence in the original draft, and appreciate Senator Johnson's work on that. Members, what this boils down to, I think we're very, very close, and this is going to boil down to local control. Should a municipality or county be allowed to opt out of a smoking ban that becomes effective June 1, 2008? And I...we're very close on allowing that provision by a vote of the people. The other measure would be also to allow the opt-out provision by a vote of the local governing body. And let me also highlight that it's in whole or in part. So let's say the city of Holdrege could opt out in total, you could have smoking everywhere; or the city of Holdrege could opt out in part,... [LB395]

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SENATOR LANGEMEIER: One minute. [LB395]

SENATOR MINES: ...tobacco shops, for instance, or whatever. It's a local community decision. And that's where we're going on a compromise. You'll see an amendment just at the bottom of the list that will outline that. Bill Drafters has it right now. So I wanted to bring you up to date on, there's progress from all directions. I appreciate the work that Senator Johnson, Senator White, and many others have contributed to this. And I will have an amendment up here very soon. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Mines. Next, Senator Stuthman, you're recognized. [LB395]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. As I have mentioned in some of my prior discussion, debate on the floor on this issue, the thing that people bring to me a lot of times is the rights of the individual to smoke, their rights to do that, their rights to do what they want to do. The thing about it is, in my opinion, what about the rights of the people that don't want to breathe that secondhand smoke? Do these people have rights? Yes, they do have rights. They probably don't have to go in there, they don't have to patronize those places that have smoking. But are the people that have the right to not breathe that smoke, you know, do they have to discipline themselves as to where they can go, where they can, you know, eat, well, any establishment, you know, that has smoking at the present time? Those are the things that really concern me. And I truly respect the rights of the smokers. That I do. I really do. But the thing about it is, you know, if they exhale and pollute the air that I have to breathe, that is a concern to me, and that is a right, as a nonsmoker, that I realistically shouldn't have to put up with. The thing about it is, you know, in the debate that we have here in the Legislature, you know, what is one of the main big issues that are brought to us as an expense to the state? The healthcare cost. Anywhere you go, it's healthcare cost. Now we have one of these...one of the surveys that we have here, one of the examples is, you know, total health hazard: 83 percent feel that smoking is a health hazard. So if you take that 83 percent that feel that it is a health hazard, and the other concern is, we have got to do something about healthcare costs in the state of Nebraska, so what a better way that we could help, or at least start to help with the fact that maybe if we would eliminate this...it's not going to be totally eliminated. And I respect, as I had said before, I respect the people that do smoke and want to smoke. But I think the people that don't want to breathe that smoke realistically don't have to. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Aguilar, you're next, and you're recognized, followed by Wallman, Karpisek, and others. Senator Aguilar. [LB395]

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SENATOR AGUILAR: Thank you, Mr. President, members. As far as the amendment that Senator Mines is referring to, you know, I'm not crazy about any kind of an amendment like that. If I did support something like that, it would be by a vote of the people, not by a city council, and I'll tell you why, because if you look at the situation that's happening between Lincoln and Waverly right now, well, if the business owners in Waverly could convince their city council to opt out, then we'd be right back in the same boat we're in right now. I think they should be challenged. I think they should have to ask the people if they want to ask out. That's what we're talking about here. We're talking about individual rights. Isn't individuals the people? Shouldn't they be the ones that decide upon that? Now, as far as some of the opposition, which, by the way, I think, is being supported strongly by the racetrack in Omaha and different casino interests. They're very...they're pushing some of the information that you're hearing today. They're saying, limit your conversation to individual rights. Well, you know what it's all about. You know what it's all about. And it's not racetracks in general, let me tell you that, because I come from a city that has the only really operating racetrack in the state of Nebraska, and when I asked them their position on this, they flatly said, you know, we don't care if you don't smoke in our racetrack; we think it's a good thing. So you know, from that perspective, that argument, as far as I'm concerned, goes out the window. Another argument is, why can't cities do this now? Well, they can. They can do that now, there's no question about it. But cities can't protect themselves from other cities. Only we can do that. We're the only state group that has the ability to control it statewide, and that's one of the most important issues in this whole argument, as far as I'm concerned. And that argument is based on people saying, the loss of revenue, the business perspective. This isn't just a health issue. It's...the opposition says, well, we're going to lose money; it's a loss of revenue. Well, we're saying, the only way to prevent that is to do it on a statewide basis, and that's why we do it. Another question I would have for the members, especially some of the new members, you've seen the survey. Look at it. Read it. Study it. How can you support an issue when 70 to 80 percent of your constituency is on the other side of this issue? I really have a hard time understanding that. Thank you for listening, and I would yield the rest of my time to Senator Johnson, if he'd like to speak to the amendment. [LB395]

SENATOR LANGEMEIER: Senator Johnson, two minutes. [LB395]

SENATOR JOHNSON: Thank you. Mr. President, I think that we're getting closer to where we need to be. One of the things that we really have wanted to emphasize here this morning, of the fact that there is no constituency of any size that supports our opposition to this main bill. We are amenable to reasonable compromise. But reasonable compromise does not create a patchwork like we have in Omaha, where we do end up with business against business, or like Lincoln, where we have town against town. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

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SENATOR JOHNSON: We've had a couple of examples on this floor already, of senators getting up and defending the point of our opposition on this because their local town now has an ace in the hole against Lincoln. And so people can come out to our Waverly or other town, so we have the town against town. That's what we're trying to avoid. I think that we're all in relative agreement that secondhand smoke does cause injury to our neighbors. And not only it affects their health very adversely, but it affects the budget, which is dear to all of our hearts here. So this is where we're at. We think that by passing these amendments,... [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR JOHNSON: ...both the floor amendment and the other, that it serves this purpose. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson and Senator Aguilar. Senator Wallman, you are recognized. [LB395]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I guess what bothers me most about this is, we want local control, and what are we doing? State control. Are these things illegal to buy, if you're over a certain age? I think you can even smoke these at 14 or 15, legally. So we're taking away more local control. And doesn't that bother you people? I can put a "no smoking" sign in my house, which I have. And if you find secondhand smoke, I asked some physicians, and most of that secondhand smoke damage comes from the parents. They smoke in the house. You go into their houses and it's smoke, smoke, smoke. It's not from the restaurants and businesses. Maybe a few people that work there, but they choose to work there. But the children grow up in houses where both parents smoke, they do not have a choice. And I do not like parents that do that, either. And it causes asthma, as Dr. Johnson would say, emphysema. Little children cannot handle secondhand smoke. I think I can handle it. I've had it for a long time, and...but I haven't smoked for a long time. But I still don't...I don't mind secondhand smoke. My friends smoke, legion clubs, VFWs. Do I want to just say, out? They're pretty upset with the Legislature forcing issues, whether it be helmet law, seat belt law. You know, we think we know what's better for everybody? Are we God almighty in here? I don't think so. And that bothers me. I do not like secondhand smoke, I'll be the first to tell you. But I hate mandates. I hate them. And why? Because it erodes local authority, and you're dumping another problem onto the state, another enforcement problem, law enforcement people, local sheriffs. Hey, somebody is smoking in this restaurant; I'm going to call the cops. Do you like to do that? I wouldn't do that. But an outfit in Lincoln here put up a bus. People can smoke in that bus. And is that okay with me? It doesn't bother me. I don't go on the bus. And it doesn't bother me if they smoke in the restaurant. I do not have to go in that restaurant. They can put up their own sign, they can do whatever they want. But, you know, let's not take this away

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from our vets that are coming back. A lot of them smoke. They go to the VFWs, the legion clubs. These are good places to go for service people, and here we're going to ram something else down them as a mandate? I can support however which way this thing goes, but I just want you to know that restaurants do support this, some of them, and I asked in my restaurant at home--about 50-50. But my doctor said, most of the secondhand smoke problems are caused to little children. And what is that caused by? The parents. And it's not caused by the restaurants. It's not caused by the pool halls. Little kids don't go in there. And why don't they go in there? Because they got to be old enough. So that's where I'm coming from. And it's kind of an emotional issue, because it's a mandate, and I hate mandates, like I said. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Wallman. (Visitors introduced.) Return back to continued discussion on FA21. Senator Karpisek, Johnson, Erdman, and others. Senator Karpisek, you're recognized. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I rise again today to object to this bill. Senator Norman Wallman just said about everything that I wanted to say. I agree with what Norm has to say about the business owners. I am not trying to make this a smokers versus nonsmokers issue, as a lot of has been said already this morning. I want to make it a business owner personal property rights case. If I own a bar or my meat market, and my customers, I don't mind if they smoke, then I don't know why I can't let them smoke. I don't agree with mandates, as Senator Wallman said. I don't agree with this study that came out either. And if it takes questioning the Governor's surveys, then I will do that, too. I don't want to go there, but that was thrown out. Leading questions. I did take a little bit of marketing in college, and I can see that that is the most leading questions I've seen in a long time. Would you prefer clean air breathed by your employees or smokers' rights? Well, of course, I'd even...I agree, clean air is good. But if people don't want to come into the business because there's smoking, then they don't have to. I was thinking this weekend, what if somebody would invite you over to their house for supper, you know they smoke? Do you go, or do you not go? If you don't...or if you do go, maybe you should say, you can't smoke because I'm in your house; you invited me over, you opened the door for me. To me, that's the same as a business. I own it, I paid for it, and I've invited you in, whether it's to spend money or not. If you don't want to come in, don't come in. What is the next step here? Maybe people shouldn't be allowed to smoke in their homes then if they're going to invite people over. I don't know. I have also heard that there is absolutely no cost. To the state there's no cost, but I disagree with that, too, because business revenues will fall. Local control. If anyone here on this floor isn't going to talk about local control on this issue, they better not talk about it on any other issues, because it's the same thing. We're talking about smoke. I wish we weren't. I wish we were talking about anything else, but we're not. And I guess I can't come up with a good comparison. Last time I tried, I didn't do very well. We also say that there is no one against this. No one against it. I don't know, my e-mails and my letters sure say otherwise. Personal property

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rights. Nothing more, nothing less. If you don't like that there is smoke in the bar, and you go there once a month, buy the darn place. You can put a "no smoking" sign. If this was so great for everyone, everyone would be doing it already. Again, I don't want to belabor the point, but that is my point, that it is up to the business owner. We all agree that smoking isn't good, secondhand smoke isn't good. But if you go into it, then expect it. And I do believe that it's going to hurt small towns in Nebraska, small businesses. The bars are still going to be open? Well, yeah. As many? I doubt it. I think a lot will close. In places where there's one or two businesses in town, we can't afford that. We don't need state government sticking its nose any more into our personal rights. It's what I came here to do, it's what I'm going to keep trying to do. This morning, we're really being villainized for standing up and speaking for our rights just like the people who are in favor of this bill, and I don't appreciate that. I can stand up and talk about my feelings, and I will, and I'll do it again. And where does this stop? Where is this going to stop? Pretty soon it will be drinking. Drinking gives you all sorts of bad things. Your liver goes out. Does it hurt other people? Well, I'm sure they'll figure out a way that it does. I will talk again. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Johnson, followed by Senator Erdman, White, Avery, and others. Senator Johnson. [LB395]

SENATOR JOHNSON: Thank you, Mr. President. It is not our intent to make this a personal discussion, other than that we look at it in a personal way like this. I think that each one of us needs to look at what we would want for our family and friends. Our lady friends, our female friends, if you look at this poll--and my friends, you can't deny numbers like this. They're incredible. Talk about the few e-mails that you get from your friends, that you get e-mails from the tobacco industry. Let's have what we want for our family and friends. As a dad, as a mom, is this what you want for your younger children, to go into these smoke-filled areas when they have asthma and other problems like that? Sure, they can go somewhere else. But how about if mom or dad works in one of these places and is subjected to this smoke? And the numbers are there. It is the same as if you smoke roughly two packs a day if you are in a smoke-filled room with your employment. And you know, as you look around this Chamber, most of us are pretty well-off individuals. We can go to work wherever we want. We can change our jobs whenever we want. How about those that aren't so well-off monetarily as we are? I can remember, there was a time shortly after we were married, I was in Omaha and wanted to get a summer job. I had no qualms whatsoever about going down and applying for a job at the large meat packing plants that were in existence at that time. I had to. I didn't have any money. There are lots of people out there who are taking their paychecks home to feed their families. Aren't we concerned about these people and the environment that they live in? Are our rights so important that we can have all kinds of other things that we agree to, rules and regulations, and they're fine, but here we have a place where we hurt our families and our friends, and we think that's fine? Let's talk about some of these other things. We've talked about that the businesses are hurt. How

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about the businesses whose insurance goes up very, very high because of secondhand smoke? [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR JOHNSON: This causes loss of employment by their employers...or, by their employees having to go see their physicians or even be hospitalized. That's just another side expense to this. But what we're really seeing here today is just what our tobacco industry has sent out as their marching orders. My friends, it's a smokescreen. It's a smokescreen. If we're going to die on our sword for individual rights, how about a vote of the people rather than a bullied city council to get what we want? How about a vote of the people? Thank you very much. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Erdman, you're recognized. [LB395]

SENATOR ERDMAN: Question. [LB395]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? Do I see five hands? I do see five hands. Thank you. The question is, shall debate cease? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? The question is, shall debate cease? Have all those that voted...that wish to? Record, Mr. Clerk. [LB395]

CLERK: 28 ayes, 5 nays, Mr. President, to cease debate. [LB395]

SENATOR LANGEMEIER: Debate does cease. Senator Johnson, you are recognized to close on FA21. [LB395]

SENATOR JOHNSON: First of all, let's have a call of the house. And I won't wait for them to show up, and we'll just proceed. [LB395]

SENATOR LANGEMEIER: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Senator Johnson, it is your time, if you'd like to finish your closing. Sorry. Just a minute. Record, Mr. Clerk. [LB395]

CLERK: 32 ayes, 0 nays, Mr. President, to place the house under call. [LB395]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. All those senators outside the Chamber please return to the Chamber. All those unauthorized personnel please leave the floor. The house is under call. Senator Heidemann, Senator Dubas, Senator Chambers, Christensen, Burling, Avery, Raikes,

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the house is under call. Please return to the Chamber. Senator Johnson, I re-recognize you to finish your closing. You have 4, 45. [LB395]

SENATOR JOHNSON: Thank you, Mr. President. We've had a very good discussion here this morning, I think, about what are individual rights. We honor these individual rights, as well. The question is, where do you draw the line? This is a discussion that is different from all of the other individual rights that we talk about. We're not talking about alcohol and things like that this morning. There are laws about alcohol. If you drink and drive, you are going to get picked up. If you drink, drive, and injure someone, again, you're going to be charged. So there's no question about these side issues. Let's not talk about them. They are not the same thing. This is what the smoking industry wants to do to muddy the waters so we don't talk about what we want to talk about. What we have here this morning with this amendment...and Senator Fischer and I both agree with this. We had a discussion about this a few days back, and what it does, as we, too, believe that our homes are our castles, and with that in mind, we...what this amendment does is it makes it so that this is taken out of the mix, and that our private residences, which we, I think, all agree in this room believe should be our castles, are protected and excluded by this bill. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing to FA21. Senator Johnson, how do you wish to proceed? [LB395]

SENATOR JOHNSON: A regular vote. [LB395]

SENATOR LANGEMEIER: Senator Johnson asks for a regular vote. The question is, shall the amendment, FA21, to the committee amendment, first section, FA15 to LB395, be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB395]

CLERK: 49 ayes, 0 nays, Mr. President, on the adoption of Senator Johnson's amendment to the committee amendment. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. FA21 is adopted. Mr. Clerk. And that...I would raise the call. Thank you, Mr. Clerk. [LB395]

CLERK: Mr. President. Senator Erdman, I understand you would like to withdraw FA19? [LB395]

SENATOR ERDMAN: That is correct. [LB395]

SENATOR LANGEMEIER: It is withdrawn. Mr. Clerk. [LB395]

CLERK: Mr. President, I have nothing further pending to this component of the

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committee amendments. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We return to the discussion on the first piece of the divided committee amendment, FA15. We have a number of lights on. Senator White, Avery, Aguilar, and others. Senator White, you are recognized to discuss FA...excuse me, the first portion of the committee amendment, FA15. [LB395]

SENATOR WHITE: Thank you, Mr. President. I find it interesting that I'm accused of being contacted and speaking for the tobacco industry. No one from the industry has contacted me. I would never speak for them, though on occasion I've really hoped to sue them. I do not support the tobacco industry, I don't like the tobacco industry, I don't believe in the tobacco industry. But there are right ways and wrong ways to put public policy in place, particularly when we are dealing with a habit-forming addiction that has been utilized and practiced by large numbers of our citizens for hundreds of years. Is smoking evil? Unquestionably. Does it cause serious health risks? Without a doubt. Can we just pass a law and solve that problem? Absolutely, no. We have had decades of experience in trying to criminalize addictive behavior, and it hasn't worked. Now, there are better ways and worse ways to go about try to moving our fellow citizens to a healthier life. But criminalizing behavior and trying to force it down their throat is not one of them. I would submit, though this bill was offered and is offered in the best of intentions, that sometimes you can read overreaching into the stuff that was in here. We started with a bill that allowed warrantless searches anywhere there was one employee or more. Homes could be violated, farms could be violated. That tells you these are folks who truly believe in their mission but also have left their moorings behind and gone beyond what is considered, in my view, at least, responsible behavior in a democracy. Unfortunately, democracies regularly tolerate behavior that we think is ill-advised. As you may know, I've watched my fellow citizens vote for people I think were a terrible mistake. But we tolerate that. Football. We talk about saving people from themselves. Football injuries regularly cause devastating problems for people later in lives. How many of us have or know people with bad necks, bad backs, bad knees, because they engaged in sport that we love? Do we prohibit that? Do we prohibit a sport I love, which is riding horses, which regularly causes horrendous injuries? And if we're really about saving money by controlling mistakes that our fellow citizens made in health, the amount of money spent on tobacco, though devastating and horrible to our health system, is nothing compared to the problem of obesity that we're facing across the country. The problem of eating saturated fats, including red meat from cattle, cost us billions of dollars in heart problems every year. Are we going to make that illegal? And if so, are we honoring the traditions of this state? And we also talk about cost. Alcohol. Alcohol costs are enormous. Will we make that illegal? We tried it. It didn't work. Instead, it gave rise to a vast organized criminal conspiracy to import alcohol into the country. We created a professional criminal class. It didn't work. Now, we want to talk about injuries? Coal-fired plants and microparticulates probably cause more asthma right now than smoking and secondhand smoke combined. Are we going to block

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coal-fired plants? If we're going to be honest about the health consequences of all behavior and what they express, we should talk about them. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR WHITE: What we're really doing here is proposing a law that attacks a minority that are identifiable and at least temporarily out of political favor. But remember, the minority today that is not you will include you tomorrow. What I urge is a more moderate approach, as Senator Mines is proposing. I think we do need to do some stuff. Smoking is evil. We need to remain local control. We need to treat people not as criminals, but as addicts. We need to push, persuade, nudge; not compel, coerce, and jail. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Avery, you are recognized, followed by Aguilar, Erdman, Karpisek, and others. Senator Avery, you're recognized. [LB395]

SENATOR AVERY: Thank you, Mr. President. I want to address an argument that my colleague, Senator Karpisek raised, because it's been raised before, and I think it needs to be addressed, and that is that we're really talking about property rights. It might be put this way, that workers and customers who enter a private establishment or household that allows smoking are said to have implicitly consented to the rules set by the owner of the establishment. Let me just say that this principle does not hold up when you are talking about workers, because owners are legally required to maintain a reasonably safe working environment, and they can't even contract with workers to relax this standard. That is established law. I took a look at some Supreme Court cases just to provide a little bit more support for the legality of what we are proposing. In Roberts v. the United States Jaycees, the Supreme Court specifically ruled against the argument that smoking bans in public places are unconstitutional because they interfere with smokers' ability to assemble and associate with others while exercising their First Amendment rights. That's the Supreme Court speaking in favor of the right to ban smoking. In Barbier v. Connolly, the Supreme Court also took up the issue of the state infringing on an individual's right to perform an otherwise legal act as protected by the Fourteenth Amendment. The court supported the power of the state to prescribe, that is, to create regulations to promote the health, peace, morals, education, and good order of the people. I underline "health." That is specified in court cases before the Supreme Court. In Mugler v. Kansas, the U.S. Supreme Court reaffirmed the position held in Barbier v. Connolly. The state has the right to protect the community or to protect and promote the general well-being of the community. In the New Jersey Supreme Court, in a case entitled Shimp v. New Jersey Bell Telephone Company, this was the first case where a nonsmoker gained protection from harmful workplace secondhand smoke. The court ruling went this way, and I quote: I order and direct that insofar as this litigate before the court in that office in which she is now employed, that there shall not be the

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use of any type of cigarette or other tobacco which has been deemed to be by the Surgeon General deleterious to a person's health. I might just go a little bit farther back in time, if you will permit me. In doing a little research on this, I discovered that the first smoking ban actually occurred in 1590. Are you listening to that--1590 was the first smoking ban. And it was imposed by Pope Urban VII, where he threatened to excommunicate anyone who used tobacco inside the church or its porches. So there is a precedent here. Passive smoking is estimated to kill up to 30...or, to kill up to 53,000 nonsmokers per year, making it the third leading cause of preventable deaths. This is not merely an annoyance, it's not merely an irritant. It's a serious health risk to nonsmokers, as I said on this floor before. Smokers do not have the right to make unwilling smokers out of nonsmokers. States can expand rights... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR AVERY: ...beyond their specified...what is specified and implied by the constitution. What the states cannot do is reduce rights. States have the right to expand. Protection of the freedom of all may be seen as an abridgement of the freedom of some. Yes, this might require action by government to impose upon some citizens the positive obligation to act in ways that promote the positive public good, even when that obligation is something to which they do not consent. Let me speak briefly about a just society. A just society requires some citizens to surrender a portion of their personal liberty in order to create a benefit to the public good that otherwise would not be created. In a just society, rights are never...can never exist without some element of duty. Rights must always be matched with duties. If we grant the right of workers to be free of damaging passive smoke in the workplace, this requires the explicit... [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR AVERY: ...restriction on smokers. Thank you, Mr. Chair. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Aguilar, you are recognized, followed by Erdman, Karpisek, Mines, and others. Senator Aguilar. [LB395]

SENATOR AGUILAR: Thank you, Mr. President and members. I thought I was through speaking on this, and people keep standing up and talking and saying things that I just frankly don't agree with. Senator Wallman talk about some of his constituents were upset with the Legislature because of too much government. Well, I contend that those constituents are only 20 to 25 percent of his constituents on this issue. Senator Karpisek, you know that private homes are no longer part of this discussion. We just had an amendment to take that out. Local control? I've done my homework on that one, and I represent an area, basically Grand Island, but the surrounding communities, Hastings and Kearney, very large part of Nebraska's middle population. Every one of those city councils has sent a proclamation to me supporting this legislation that we

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have. And they do so for good reasons, because it needs to be done on the statewide level. Somebody talked about all the e-mails they got in opposition to this. I would submit to you those e-mails are probably from the tobacco industry. Someone also said that we can't keep asking state government to stick their nose in our business. Then why are we asking state government to stick their nose in and pay Medicaid costs caused by this smoking problem? I submit to you the Governor wants to see this legislation on his desk, and he wants to see it in the condition it's in right now. Senator Wallman also said that a person doesn't have to work in a smoking environment. Well, that may be true if you're well-to-do and you have the wherewithal, the education to work anywhere you choose. But there's people in this state that don't have that luxury, aren't afforded that luxury. They work where they're close to home, because maybe they don't have a car to drive further. They work as a waitress because maybe they don't have an education to get a better job. When are we going to start caring about some of those people? Senator White. Don't you love great lawyers? And he is one, no question. But great lawyers invented the smokescreen. Again, he's still talking about illegal search and seizures in homes, even after the last amendment passed. Maybe he wasn't listening. I apologize for that. He also talked about obesity. I submit that obese people aren't a threat to my health, aren't going to damage my lungs, don't threaten my health in any way, unless of course I become one of them, which could happen. Thank you, and I would yield any more time that I have to Senator Johnson, if he chooses. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Two minutes, Senator Johnson. A little under two minutes, Senator Johnson. [LB395]

SENATOR JOHNSON: Thank you. Thought maybe we might want to talk about what we're supposed to be talking about. And what this amendment is, is this, is it is about our tobacco retail outlets. And we had one gentlemen represent this group of private businessmen, and what the situation is, is this, is, is it reasonable that a business that deals in nothing but tobacco products be able to allow smoking within their facility? [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR JOHNSON: In other words, if we have a situation where a person comes in and wants to try out a new brand of cigar, it will allow him to do that, and then he will be able to buy the box of cigars knowing what he's getting. Basically, this is what this amendment is all about. I would be surprised if there is anyone to the contrary, and would actually urge that with a little bit more discussion on this, so we get different people's opinion, but at that time, I would urge that it be approved. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson and Senator Aguilar. Senator

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Erdman, you're recognized, followed by Karpisek, Johnson, Loudon, and others.
Senator Erdman. [LB395]

SENATOR ERDMAN: Mr. President, members of the Legislature, I was kind enough to call the question on Senator Johnson's previous amendment, because I believe it was better than the one that I had offered, and so I want to thank him for his amendment that clarified the language under this division. It has been an interesting discussion, and I think at some point there probably does need to be a connection of the dots, if you will, between this issue and other issues, because I think there is always, and always will be a certain diversion from what one person would take as a position on this issue versus another. In addition to the precursor that we got from Senator Mines on his amendment, if this is truly about leveling the playing field, I do have an amendment filed that would exactly do that and that would adopt the statewide standard for all cities, all municipalities across the state. As I understand the arguments for the bill--and I haven't visited with Senator Johnson as to whether he would be supportive of that--but as I understand, the impetus for the bill is that we have these different standards in different communities, and it potentially causes problems. Candidly, if you're not in favor of local control, as Senator Aguilar has stated, then we should have a statewide standard. There should be no more need for a local decision making process in this. And if the proponents are supportive of Senator Mines' amendment, you'd have one of two options--you'd have the state standard, or you'd have nothing. That, to me, is somewhat problematic for the proponents, but at least it would be a statewide standard, in the event that everybody who wanted to have this would have the same process, and they would have the same restrictions, they would have the same law, they would be subject to the same provisions, instead of having what we do now, and that is, Lincoln and Omaha have theirs; other communities don't want to do it because they don't want to be different. So let's talk about the issues. FA15, as I understand the language, would leave in place the exemption for tobacco retail outlets. And it also has now been amended by the Johnson amendment to take out the language that addresses your private residence. So, in respect to the Chairman of the Health Committee and the principle introducer of LB396, FA15, I believe, is a logical addition to the law, and I plan to support this division. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Karpisek, you're recognized, followed by Johnson, Loudon, and others. Senator Karpisek. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I also have not been contacted by anyone in the tobacco lobby. I know that is probably the thought, that everybody has been contacted by them, but I haven't. In fact, I talked to someone from Philip Morris at an event earlier in the session and I asked why they're not in the fight, and they just said, well, we're not going to get into that fight. So if anyone has been contacted by them, I would be surprised. What I have been contacted by are e-mails, especially streaming in this morning, that are obvious where they're coming from. So I

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think that there's more push on one side than the other, but again, we're being pushed into that. I am not standing up for the tobacco industry. I am standing up for the business owners' rights. Yes, the houses did get pulled out, Senator Aguilar, but that was later. I still don't know about that, if you only have one employee and you want to have a cigarette. I guess I voted for that because, again, as Senator Friend has said time and time again, try to make a bill better. I don't believe that this one can be made much better except for, leave it up to the local people to decide. Or if we want to go to a state vote, fine, so be it. But I don't feel comfortable with 49 of us in this room deciding the fate of that whole...of the whole state. Also, Senator Johnson said something about not leaving it up to a bullied city council. Why would we let them decide anything, then, if we're going to worry about that? I was the mayor for 12 years. I got bullied on a lot of different things, but...I've been bullied on this, too, but I'm not going to back down. That's fine. So I don't know how they're bullied. You get into that position and you listen to your constituents, make up your own mind. We keep talking about that this is an 80-20 split. That's true. I don't not believe those numbers. But I do think that that was a poorly done study, poorly written study. I bet if I did a study I could get it close to 60-40 or 50-50. But that is not my intention. I agree that only about 20 percent of the people smoke. How many smoke that go to bars? How many of those owners let them smoke? Hey, all you got to do is say, no smoking in my bar. All these people that say that they don't want to breathe smoke, they'll go there then. Well, then the free market should decide that, not the state telling them what they can and cannot do. I realize it's a very emotional issue on both sides. Again, I am not saying that smoke is not a bad thing. It is. I agree with Senator White. We need to have more education, all those sorts of things. I feel that it is really stepping on our rights as property owners. I realize that that isn't maybe a very popular stance today in the Legislature, but I am going to stand up and I'm going to say that. There's other issues, and I think it's a slippery slope. Although I really don't like that term, I'm going to use it, because... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR KARPISEK: ...precedents--I've heard many times here, too--precedents becomes a major issue. Well, they've done it before, all these other states have done it. Hawaii also put in a smoking ban, and there was a bill to remove it, that they're having so many problems with it. I can't tell you where that's at right now. But it's not just an easy thing to do. Remember, there is also a lot of money that goes along with these bars, and if the people aren't there smoking and eating and drinking, they might be at home smoking and eating and drinking. And if that's what you truly want, then fine, that's...if that's what you want, we'll do that. But I don't think it's good for our state, our economy, or our personal rights. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. We have Senator Johnson, Loudon, White, and others. Senator Johnson, you're recognized. [LB395]

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SENATOR JOHNSON: Thank you, Mr. President. First of all, I tried making it clear, and probably did not, at the first of this discussion, but there was a lot of talk and side talk going on at the time, so let me make one thing very clear right now, in no way would I mean to indicate that anyone in this body is in any way responsible--that might be right term--to the tobacco industry. What I did say is the tobacco industry's way of preserving their economic empire. They spend \$92 million, are the figures that we've seen, each year, to publicize the benefits of smoking in Nebraska. This Legislature voted to have \$3 million for our educational programs to discourage smoking. But I want this group to understand that I have the highest personal regard for everyone in this Legislature, and you were not bought in any way. What I am saying is that the industry, by all kinds of different means, have done their best to influence everyone in this Legislature, and using the tactics that I mentioned. One thing, and that I want to remind everyone in the Chamber, and that's this. It says "State Senator" in front of your name. State Senator. We are the only people in this state that make laws that affect everybody in the state. The Governor doesn't have that ability, the Chief Justice, the Supreme Court does not. It is only the 49 of us that do that. And we must do the best we can for the health and welfare of our citizenry. It's that simple. Now, back to the issue at hand, and that's about the tobacco shops themselves. I would urge that we do pass this amendment. It does make a better law. It does make sense to let people try out the wares in the smoke shop. And you know, whether you agree with the overall bill, one of the things that we all must do is make for the best bill we can, in case it passes, whether we like it or not. So on FA15,... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR JOHNSON: ...I would urge your support. Thank you very much, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Louden, you are recognized. [LB395]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. First, I want to reiterate that I am not a proponent of smoking. I have never smoked. And I've lost a sister, I've lost a sister-in-law to lung cancer from smoking, I've had family members that smoked. And like I always said before, I was 19 years old before I ever realized that smoke wasn't supposed to be blew in the house. So I know what smoking is all about. My dad died when he was 59 years old, and he was a heavy smoker, so I have no proponent for smoking. I have no problem with that. The problem I do have, though, is I think this is a citizens' rights deal. As I look through these people that testified at the hearings on this bill, you have some of your League of Municipalities, or some of...council members that have come there to testify. All of those people, if they wanted that smoking ban, could have it done in an instant. You don't have to go through the Nebraska Legislature to do this smoking ban. They...all that has to be done is some

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citizens put a petition to the city council or the village board in those areas and go ahead and ask for a...to be put on the ballot. You could have the smoking ban done anywhere you wanted to. It's a question where you're pushing it onto the Legislature to do this type of business. And I'm somewhat concerned about it, that I don't think we should pass laws just to be passing laws, when it can be done on a community level. As I've read before and I've said before, that if you leave people alone, they usually work problems out to the best advantage of everybody, without government intervention. And this is a case here where you have a problem and you're not using the local people to work it out to the best advantage for everyone concerned. There's...this can be taken care of. At the present time, usually your restaurants and places have your nonsmoking areas, since that...I think the federal government or someone probably brought that up several years ago about smoking in different places. Some of the corporations don't allow people to smoke in their pickups anymore, some of the electrical utility companies that I know of. But this is something that can be done on a local level. One thing I did hear during the testimony here, that I hope they weren't comparing eating red meat to smoking as far as shortening people's lives up. I think that's erroneous, and I think that should be mentioned right away, that that...for the record, that that isn't necessarily what gets people, is the amount of red meat they eat, because you want to remember, the West wasn't won by those that ate salad; it was won by the red meat eaters. So this is something that has been somewhat of a fallacy out there. And it isn't the meat; it's probably what they were cooking it in, their vegetable oils or their palm oils or something like that. So with that, I continue to listen to the debate. I'm hoping if there's some amendments to this thing it can be clarified so that it goes back onto the local communities decide for themselves whether or not they want to have a smoking ban. With that, thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Loudon. Senator White, you are recognized. [LB395]

SENATOR WHITE: Thank you, Mr. President. A couple of points. Senator Aguilar, obesity, does it affect you? That was offered in the context of your pocketbook, not your health. Obesity actually, on a dollar-for-dollar basis, is probably the single most critical health issue in this country right now. The combination of that, of weight, with diabetes and coronary artery disease is devastating our health policy. So the question is, to the extent we offer behavioral laws like antismoking laws to save money, I ask you, where do we stop? If it is a matter of health, then obesity...and cost of healthcare, then obesity certainly should be on the table if smoking will be. And Senator Avery, God loves a historian. Didn't work for Pope Urban, Senator. Didn't work. And I don't know why we should be encouraged, lo, these 400 years later, if that ban did not work. Nor did it work, by the way, for King James of England, who, despite the dependence of tobacco in the new colonies, hated smoking as well. What does work, what does work is bitter personal experience, education, and social pressures. What doesn't work is putting people in a box and leaving them no room to try to adjust themselves to new realities, to

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new understandings. I do accept the need for some action here. I look for a compromise, I hope, that allows the local communities to make the decision what will best fit their local situation, that will make accommodation for people who are addicts. And I would point out that, again, I understand we have now, out of the magnificence of public debate and the kind of just common sense that came to the proponents of this bill, kept the storm-booted health police from kicking the doors down of our homes, though that is an amendment that we had to fight for. Similarly, we are slowly crawling our way, I hope, towards an understanding that we should allow communities to best adjust their laws to fit their local needs. With that, Mr. President, I will yield the rest of my time to Senator Fischer, if she'd like to take the microphone and express her views on this matter. [LB395]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Fischer, do you yield from Senator White? You have 2 minutes and 19 seconds. [LB395]

SENATOR FISCHER: Thank you, Mr. President and members of the body. Once again, we've had a good discussion this morning on this issue, and I think a number of points have been brought out. Some of those that I'd like to reiterate would be, this is a state mandate. Our communities, our local communities, already can have a smoking ban in their communities if they so choose. The survey that Senator Johnson has been referring to shows that there is a majority of the people in this state that would like to have a smoking ban. I say to them, then do it. You have that power already at the local level. Your city council can vote to have a smoking ban in your community. As citizens, you can have a petition and put it on the ballot and vote to have a smoking ban in your local community. If that's the wishes of the people, then do it. What I am against... [LB395]

SPEAKER FLOOD PRESIDING [LB395]

SPEAKER FLOOD: One minute. [LB395]

SENATOR FISCHER: ...with this bill is that it is a state mandate. Why are you asking the state to pass a mandate that forces your local community to do something that possibly the majority of people in your community do not want? Lexington, Nebraska voted on a smoking ban. It did not pass. But now the 49 of us in here are saying, well, I'm sorry, Lexington, Nebraska, you are going to have a smoking ban, even though it did not pass in your community. I don't believe that's right. This is a local decision. It is not the place for the state to step in. The citizens in Nebraska in those communities have that option to have a smoking ban in their communities right now. We should support that, and I do support that. I cannot support a state mandate. Thank you, Mr. President. [LB395]

SPEAKER FLOOD: Thank you, Senator Fischer. While the Legislature is in session and

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capable of transacting business, I propose to sign and do hereby sign LR35, LR36, and LR38. The Chair now recognizes Senator Gay. [LB395 LR35 LR36 LR38]

SENATOR GAY: President, call the question. [LB395]

SENATOR LANGEMEIER PRESIDING [LB395]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on FA15, which is the first section of the committee amendments? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB395]

CLERK: 34 ayes, 0 nays, Mr. President, to cease debate. [LB395]

SENATOR LANGEMEIER: Debate does cease on FA15. Senator Johnson, you are recognized to close on FA15, which is the first chunk of the committee amendments. [LB395]

SENATOR JOHNSON: Again, thanks, everyone, this morning, for a very good discussion. We have considered lots of different options, and so on, and these should be brought up. As far as this particular item is concerned, it is to make what I consider a good bill better. For those who do not support that theory, it is still a bill that will be made better by a very reasonable exception of allowing tobacco-only shops, that their customers could try out their wares before they buy them. So I would urge its passage. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on the first component, FA15, of the committee amendments to LB395. The question before the body is, is FA15, the first component of the committee amendments, should it be adopted to LB395? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB395]

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of the first component of the committee amendments. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. First component is adopted. Speaker Flood, you are recognized. [LB395]

SPEAKER FLOOD: Thank you, Mr. President, members. Just a couple of notes as we move through our Monday morning. First of all, priority bill designation deadline is this Friday, March 9. Committee priorities, senator priorities, and requests for Speaker priority bills, you should have a copy of your letter to the Clerk and drop one by my office, as well. Senators requesting me to select a bill as a Speaker priority, remember

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that you need to have your request letter on this day, Friday, March 9, and those bills will be considered for priority designation only if I have received a request letter from the principal introducer of a bill. Also, with regard to our scheduling change last Thursday due to the winter weather in eastern Nebraska, Tuesday, March 20 will be the makeup date for the hearings canceled last Thursday due to the weather. Now, although Tuesday, March 20 is normally reserved for the Monday and Tuesday committees, it will be reserved on this day, March 20, for the Wednesday, Thursday, and Friday committees. I will send an e-mail out that is more specific in detail. If you have any questions, feel free to contact me. Finally, before we adjourn for the day--and I do plan to visit with members on either side of the last bill we just discussed with regard to when it will be scheduled again--we will be having a motion here in just a second to suspend the rules to allow for notice of hearing to go out for several appointments to the Judiciary Committee. Because of the time it was scheduled for this Friday, the committee did not have the opportunity to get out the seven-day notice. So Senator Ashford, Chairman of the Judiciary Committee, will be sharing more information with you on that. It's technical in nature. Thank you, Mr. President. []

SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk. []

CLERK: Mr. President, Senator Ashford would...has a suspension motion, Mr. President. []

SENATOR LANGEMEIER: Senator Ashford, you're recognized. []

SENATOR ASHFORD: Thank you, Mr. President, members. And as Speaker Flood mentioned, this is a technical amendment, necessitated by the storm last week. We'd ask the body to suspend the rules to allow us to send our notice on the appointments for this Friday that are scheduled for a hearing, to have the notice go out within the seven-day...short of the seven-day notice provision, due to the storm. So that's the nature of my motion. Thank you, Mr. President. []

SENATOR LANGEMEIER: Thank you, Senator Ashford. You've heard the motion to suspend the rules. Is there one...the floor is now open for discussion on that motion. Seeing no lights on, Senator Ashford, you're recognized to close. Senator Ashford waives closing. The question before the body is, shall the rules be suspended? All those in favor vote yea; all those opposed vote nay. Have all those wish...voted that wish to? Record, Mr. Clerk. []

CLERK: 39 ayes, 0 nays, Mr. President, to suspend the rule and permit hearings to be conducted this Friday. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The rules will be suspended. Mr. Clerk, items for the record? []

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CLERK: Mr. President, I have a hearing notice from Judiciary for confirmation hearings this Friday. Enrollment and Review reports LB286 to Select File, LB255, LB34, LB349, LB192, LB295, LB136, LB537 all to Select File, some of those having Enrollment and Review amendments. I have priority bill designations. Transportation Committee selected LB661 as one of the committee priorities; Senator Dierks selected LB629 as his personal priority; Performance Audit, LB653; Senator McDonald has selected LB143; Senator Adams, LB562. New resolution, LR42, by Senator Heidemann. That will be laid over. Some name adds: Senator Dwite Pedersen to add his name to LB20; Senator Howard to LB551; Senator Hudkins to withdraw from LB173. (Legislative Journal pages 735-740.) [LB286 LB255 LB34 LB349 LB192 LB295 LB136 LB537 LB661 LB629 LB653 LB143 LB562 LR42 LB20 LB551 LB173]

And Mr. President, a priority motion. Senator Cornett would move to adjourn until Tuesday morning, March 6, at 9:00 a.m. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The motion before the body is to adjourn until Tuesday, March 6, at 9:00 a.m. All those in favor say yea. All those opposed say nay. The ayes have it. We are adjourned. []