

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
May 18, 2007

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SPEAKER FLOOD: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the eighty-third day of the One Hundredth Legislature, First Session. Our chaplain for today is Senator Kruse. Please rise.

SENATOR KRUSE: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Kruse. I call to order the eighty-third day of the One Hundredth Legislature, First Session. Senators, please record your presence. Members, please check in. Mr. Clerk, please record.

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

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER FLOOD: Thank you. Are there any messages, reports, or announcements?

CLERK: Mr. President, two reports received will be on file in the Clerk's Office, and the lobby report for this week, to be inserted in the Journal. That's all that I have, Mr. President.

SPEAKER FLOOD: Thank you, Mr. Clerk. Members, please find your seats as we prepare for Final Reading. Members, please find your seats as we prepare for Final Reading. Members, please find your seats as we prepare for Final Reading. Members, the first section of Final Reading today, it's important to note that bills with a motion to return to Select for a specific amendment will be passed over. Mr. Clerk, I note that LB334E does have a motion to return for Select, therefore it will be passed over. We now proceed to LB339. Mr. Clerk. [LB339]

ASSISTANT CLERK: (Read LB339 on Final Reading.) [LB339]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB339 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who intend to? Mr. Clerk, please record. [LB339]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1668.) The vote is 41 ayes, 0 nays, 8 excused and not voting, Mr. President. [LB339]

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SPEAKER FLOOD: LB339 passes. Mr. Clerk, we now move to LB578. [LB339 LB578]

ASSISTANT CLERK: (Read LB578 on Final Reading.) [LB578]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB578 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who intend to? Mr. Clerk, please record. [LB578]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1669.) The vote is 40 ayes, 0 nays, 3 present and not voting, 6 excused and not voting, Mr. President. [LB578]

SPEAKER FLOOD: LB578 passes. Mr. Clerk, we now proceed to LB588, where the first vote is to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB578 LB588]

ASSISTANT CLERK: 36 ayes, 2 nays, to dispense with the at-large reading, Mr. President. [LB588]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB588]

ASSISTANT CLERK: (Read title of LB588.) [LB588]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB588 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB588]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1669-1670.) The vote is 43 ayes, 0 nays, 6 excused and not voting. [LB588]

SPEAKER FLOOD: LB588 passes. The next bill, Mr. Clerk, is LB588A. [LB588 LB588A]

ASSISTANT CLERK: (Read LB588A on Final Reading.) [LB588A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB588A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB588A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1670-1671.) The vote is 43 ayes, 0 nays, 6 excused and not voting, Mr. President. [LB588A]

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SPEAKER FLOOD: LB588A passes. Mr. Clerk, LB674. The first vote will be to dispense with the at-large reading. All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB588A LB674]

ASSISTANT CLERK: 33 ayes, 2 nays, to dispense with the at-large reading, Mr. President. [LB674]

SPEAKER FLOOD: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB674]

ASSISTANT CLERK: (Read title of LB674.) [LB674]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB674 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who intend to? Mr. Clerk, please record. [LB674]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1671.) The vote is 44 ayes, 0 nays, 5 excused and not voting, Mr. President. [LB674]

SPEAKER FLOOD: Thank you, Mr. Clerk. LB674 passes. Mr. Clerk, we now move to LB305. [LB674 LB305]

ASSISTANT CLERK: (Read LB305 on Final Reading.) [LB305]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB305 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who intend to? Mr. Clerk, please record. [LB305]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1672.) The vote is 40 ayes, 1 nay, 3 present and not voting, 5 excused and not voting, Mr. President. [LB305]

SPEAKER FLOOD: LB305 passes. Next bill, Mr. Clerk, LB305A [LB305 LB305A]

ASSISTANT CLERK: (Read LB305A on Final Reading.) [LB305A]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB305A pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB305A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1672-1673.) The vote is 41 ayes, 1 nay, 2 present and not voting, 5 excused and not voting, Mr. President. [LB305A]

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SPEAKER FLOOD: LB305A passes. Mr. Clerk, while the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB339, LB578, LB588, LB588A, LB674, LB305, and LB305A. Mr. Clerk. [LB305 LB305A LB339 LB578 LB588 LB588A LB674]

CLERK: Mr. President, LB221. Senator Lathrop would move to return the bill for a specific amendment, AM1326. (Legislative Journal page 1626.) [LB221]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on AM1326. [LB221]

SENATOR LATHROP: Thank you very much, Mr. President. Good morning, colleagues. LB221 was a very simple bill to start with. It came on the consent calendar. It would, or will, change the requirement in certain pleadings and notices to require that a person's year of birth be inserted in a petition or a pleading or into a notice, rather than their date of birth. This, again, is consistent with my attempts to provide a little bit of protection from identity theft. Unfortunately, LB221, as originally drafted, attempted to amend an interstate compact, which I learned we can't do. So we are bound by that language. The good news is that was merely a notice provision, so the information isn't public anyway. All we will do today with our amendment is to take from LB221 the provisions from an interstate compact and then change the preamble to read "petition" rather than "notice." Very technical change, not substantive, shouldn't be any controversy. I would appreciate your support in the return of this bill to Select. Thank you. [LB221]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. You have heard the opening on the motion to return to Select File for a specific amendment. The floor is now open for discussion. Seeing no lights on, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The motion before the body is, shall LB221 return to Select File for a specific amendment? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB221]

CLERK: 39 nays, 0 nays, on the motion to return, Mr. President. [LB221]

SENATOR LANGEMEIER: The motion to return is successful. Senator Lathrop, you are recognized to open on AM1326. [LB221]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, again, this is a very technical change to LB221. I've explained it previously. I'd appreciate your support on AM1326. Thank you. [LB221]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. You have heard the opening

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on AM1326. The floor is now open for discussion. Seeing no lights on, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is, shall AM1326 be adopted to LB221? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB221]

CLERK: 41 ayes, 0 nays, on adoption of the Select File amendment, Mr. President. [LB221]

SENATOR LANGEMEIER: AM1326 is adopted. Mr. Clerk. [LB221]

CLERK: I have nothing further. [LB221]

SENATOR LANGEMEIER: Senator McGill, for a motion. [LB221]

SENATOR MCGILL: Mr. President, I move LB221 to E&R for engrossing. [LB221]

SENATOR LANGEMEIER: Thank you. You have heard the motion. All those in favor say aye. All those opposed say nay. LB221 does advance. The cookies that are being passed around are in remembrance of Senator Engel's 75th birthday--it's today. Happy birthday. (Applause) Senator Engel, for what purpose do you rise? [LB221]

SENATOR ENGEL: I want to remind you I'm still here. Thank you. (Laughter) [LB221]

SENATOR LANGEMEIER: That is so noted. Mr. Clerk, we now return to General File, LB653. I'm a little ahead of myself. Back to Select File, LB247. [LB247]

CLERK: LB247, Mr. President. Senator McGill, I have Enrollment and Review amendments, first of all. [LB247]

SENATOR LANGEMEIER: Senator McGill. [LB247]

SENATOR MCGILL: Mr. President, I move the E&R amendments. [LB247]

SENATOR LANGEMEIER: You have heard the motion on the adoption of the E&R amendments to LB247. All those in favor say aye. All those opposed say nay. They are adopted. [LB247]

CLERK: Senator Johnson would move to amend with AM1221. (Legislative Journal page 1444.) [LB247]

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on your amendment, AM1221. [LB247]

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SENATOR JOHNSON: Mr. President, members of the body, LB247 is the Health Committee's second committee priority bill. It can rightly be called a cleanup legislation. On General File the Legislature adopted an amendment to put in the provisions of LB427 relating to dental hygienists. Today there are several amendments filed to this bill on Select File. I have two amendments that we will bring to you, and then two additional very technical amendments. Senator Schimek, Senator Nantkes, and Senator Stuthman also have filed amendments. AM1221 contains the provisions of two bills that were heard earlier this session by the Health and Human Services Committee. These bills were LB369, relating to licensed mental health practitioners, and LB479, relating to audiology and speech-language pathology. Both bills were advanced by the committee unanimously with all members present and voting. Both bills have no fiscal impact and both bills are now considered noncontroversial. I might say that there have been long negotiations between all of these parties in the best spirit of compromise, and that brings us to their noncontroversial nature. Both bills, as amended by the committee, were drafted to implement recommendations by the 407 review process under the Nebraska Regulation of Health Professions Act. Let me just tell you what these are about. LB369 relates to mental health practitioners. The amendment creates a new licensure category of independent mental health practice. Independent mental health practice includes diagnosing major mental illness or disorder using psychotherapy with individuals suspected of having major mental or emotional disorders, or using psychotherapy to treat the concomitants of the organic illness, with or without consultation with a qualified physician or licensed psychologist. To be licensed as an independent mental health practitioner, a person has to meet at least three requirements related to licensure, education, and experience, and these are important. First, he or she must be a licensed mental health practitioner or a provisional LMHP. Secondly, he or she has to either graduate from the accredited educational program or one of the equivalent in didactic content and supervised clinical experience to an accredited program, or graduate from a nonaccredited program that is not equivalent to the equivalent program. That sounds confusing but we'll get to it in just a second. Thirdly, if they graduate from an accredited or equivalent program, they have to complete at least 3,000 hours of experience in the period of two to five years, supervised by the licensed physician, a licensed psychologist, or a licensed mental health practitioner, and one-half of the hours have to be experience with clients diagnosed with these major mental illnesses. Graduates of the nonaccredited program and nonequivalent programs have to complete at least 7,000 hours of experience in a period of not less than ten years, and one-half of these hours have to have experience with clients diagnosed under the major mental illness or disorder category. You can see, then, that where there is a disparity, it is made up with major amounts of time, of clinical practice that is supervised. Next is the second bill, LB479. This bill, as amended by the committee, makes changes in the statutes regarding audiology and speech-language pathology. The bill updates and revises the definition of the practice of audiology and speech-language pathology. The bill changes the term "communication assistant" to "audiology and speech-language pathology assistant," and changes the statutory

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qualifications and duties of such assistants. The bill requires a master's or a doctoral degree for licensure as an audiologist. The bill includes the fitting and dispensing of hearing aids within the scope of practice of audiology. The bill requires licensed audiologists to maintain or intend to maintain a practice in which hearing aids are regularly dispensed, to also have a hearing aid dispensing license. In order to get the hearing aid dispensing license, the audiologist would have only to show proof of the audiology licensure and then pay the \$25 fee. No examination would be required. The bill clarifies that the practice of audiology and speech-language pathology does not include the practice of medical diagnosis, medical treatment, or surgery. The bill authorizes the utilization of a speech aide or other personnel employed by a public school educational service unit or other private or public educational institution working under the direct supervision of a credentialed speech-language pathologist. With that, I would ask for the adoption of this amendment, Mr. President. [LB247 LB369 LB427 LB479]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on AM1221. (Visitors introduced.) The floor is open for discussion on AM1221 offered by Senator Johnson. Senator Erdman, you are recognized. [LB247]

SENATOR ERDMAN: Mr. President, I rise in strong support of AM1221. This has been a long time coming. The provision that I specifically will talk about are the provisions that are contained in AM1221 deal with LB369. This bill has been in the process since the fall of 2004, and for those that are interested in the time line, is probably the polite way to call it, the negotiations--again, another polite term--of how we arrived here, I'd be happy to share that with you directly. I have all that information here. But simply put, with the adoption of AM1221, which contains the provisions of LB369, we will bring Nebraska in conformity with every other state that has licensed mental health practitioners in allowing them to practice independently. In our state we have a great need for mental health practitioners. This process has gone through the 407, which is our credentialing review process for scope of work issues. The issues specifically have been addressed. There have been negotiations in addition to those that have been successful with all of the licensed mental health practitioners. We have reached an accord. And I would hope that the body will adopt AM1221; it is the right public policy. Again, it has been advanced from the committee. I appreciate the work of the committee on this, not only this year, but over the past three years. Specifically, we have devoted a great deal of time and staff work, both in our office and former Senator Combs' office, as well as our legal counsel for the committee, Jeff Santema. A lot of work has been done. I'm grateful we've arrived at this point, and I hope that that will result in the adoption of AM1221 to LB247. Thank you, Mr. President. [LB247 LB369]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Pankonin, you are recognized. [LB247]

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SENATOR PANKONIN: Mr. President, members of the body, I also stand in support of AM1221. I just want to explain to members of my class, the new senators, how important the HHS Committee takes the responsibility of scope of practice issues, medical professionals, and the work that goes into these, the process that's involved between the 407 review and the committee working on this, not only during the legislative session, but in the interim, as well. And as Senator Erdman has said, this process has gone on, in some cases for years, and I appreciate the work that Senator Erdman has put into this, as well as Senator Johnson, the staff of HHS, and the committee, and urge your support of AM1221. Thank you. [LB247]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. There are no other lights on. Senator Johnson, you are recognized to close on AM1221. [LB247]

SENATOR JOHNSON: Mr. President, I just want to second what the other two speakers have talked about for the mental health practitioner ones. This has been a long journey and we're happy to present this to you this morning, so we ask your support of AM1221. [LB247]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on AM1221. The question is, shall AM1221 be adopted to LB247? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB247]

CLERK: 32 ayes, 0 nays, Mr. President, on the adoption of Senator Johnson's amendment. [LB247]

SENATOR LANGEMEIER: AM1221 is adopted. Mr. Clerk. [LB247]

CLERK: The next amendment, Senator Schimek has AM1304. I have a note, Senator, you want to withdraw and offer as a substitute thereto AM1345. (Legislative Journal page 1648.) [LB247]

SENATOR SCHIMEK: That is correct. [LB247]

SENATOR LANGEMEIER: Seeing no objections, it is done. [LB247]

CLERK: Senator Schimek, AM1345. [LB247]

SENATOR LANGEMEIER: Senator Schimek, you are recognized to open on AM1345. [LB247]

SENATOR SCHIMEK: Thank you, Mr. President and members of the body. The amendment that is placed before you was LB134, and it is a bill that mandates

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insurance coverage for screenings for colorectal cancer. And having been the author of several previous mandated coverage bills, I was pleasantly surprised and happy that the insurance companies were not opposed to this bill. It is my understanding that it now costs about \$125,000 a year to treat colorectal cancer, and the screenings themselves have made a tremendous difference in the numbers of deaths from cancer cases. I'd like to quote to you from the cancer update that came out in the spring of 2007. It said that there has been a recent drop, according to the National Center for Health Statistics, in cancer deaths for the second consecutive year. From 2003 to 2004, the most recent year that statistics are available, U.S. deaths dropped by 3,014. The year before, deaths dropped by 369. The largest decline was reflected in colon cancer deaths, which dropped by 5.7 percent. The American Cancer Society credits an increased awareness of colon cancer testing, as well as laws that require insurance coverage for those tests. So I think there has been a lot of experience with the screening tests and the mandated coverage, and I think that everybody is pretty much on board. The bill was actually brought to me by the American Cancer Society, and it is estimated that 1,100 new cases of colon cancer will be diagnosed in Nebraska this year among men and women. When colon cancer is found at the early stages of diagnosis, the five-year survival rate is more than 90 percent. Unfortunately, only about a third of colon cancers are found at an early stage. So the purpose of this bill is preventative; it is to be able to screen members of the public to prevent the cancer from even occurring in the first place. As I said, there was no controversy with this, and I would urge its adoption. Thank you, Mr. President. [LB134 LB247]

SENATOR LANGEMEIER: Thank you, Senator Schimek. You have heard the opening on AM1345. The floor is now open for discussion. Senator Johnson, you are recognized. [LB247]

SENATOR JOHNSON: Mr. President, members of the body, I just wanted to say that I agree with Senator Schimek's presentation. This is a place where it is good health policy, in that early detection really does make a difference, and you might note that even relatively young people...I think the President's press secretary recently got over an operation for colorectal cancer. So it makes sense from a health standpoint, but it also makes sense from a monetary standpoint. So I'd ask your support for this amendment. [LB247]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Pahls, you're recognized. [LB247]

SENATOR PAHLS: Mr. President and members of the body, this bill was brought in front of the Banking, Commerce and Insurance Committee, and I'm just going to point out that it was met with no resistance; very, very positive responses from everybody. So I urge you to vote for this amendment. Thank you. [LB247]

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SENATOR LANGEMEIER: Thank you, Senator Pahls. Seeing no other lights on, Senator Schimek, you're recognized to close. She waives closing. The question before the body is, shall AM1345 be adopted to LB247? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB247]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Schimek's amendment. [LB247]

SENATOR LANGEMEIER: AM1345 is adopted. Mr. Clerk. [LB247]

CLERK: Senator Nantkes would move to amend with AM1303. (Legislative Journal page 1581.) [LB247]

SENATOR LANGEMEIER: Senator Nantkes, you are recognized to open on AM1303. [LB247]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. Members, this amendment in essence is LB417, a bill currently on General File, that would require children attending licensed day care in Nebraska be immunized against invasive pneumococcal disease, or IPD. Infants and toddlers are at a higher risk for IPD because these diseases are easily passed among children through sneezing or hand-to-mouth contact. According to the Centers for Disease Control, children ages one through five in a day-care setting are two to three times more likely to get IPD. IPD is an infection which can cause serious illness and even death. The first four years of use of this vaccine saw over an 80 percent decline in IPD. In 2006, the U.S. Department of Health and Human Services established a performance measure for the CDC of immunizing 90 percent of children 19 to 30 months of age. It is estimated that approximately 80 percent of children in Nebraska are currently immunized for IPD. But one effective way that Nebraska can reach its goal of 90 percent immunization is to adopt a day-care requirement as contemplated by this amendment. There appears to be a strong correlation between state childcare immunization requirements and high immunization rates. This immunization also helps families in another way, however. One study has shown that when you immunize one child, you prevent the disease from spreading to two elderly residents, another at-risk group. Please note that LB417 was advanced out of the Health and Human Services Committee unanimously. I urge your support of this amendment and would be happy to answer any questions. [LB247 LB417]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. You have now heard the opening on AM1303, offered by Senator Nantkes. The floor is now open for discussion. Seeing no lights on, Senator Nantkes, you're recognized to close. She waives closing. The question before the body is, shall AM1303 be adopted to LB247? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB247]

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CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of Senator Nantkes' amendment. [LB247]

SENATOR LANGEMEIER: AM1303 is adopted. Mr. Clerk. [LB247]

CLERK: Senator Stuthman would offer AM1353. (Legislative Journal page 1654.) [LB247]

SENATOR LANGEMEIER: Senator Stuthman, you are recognized to open on AM1353. [LB247]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. This amendment, AM1353, I had put this on yesterday, I think it was. And what it is, it's LB351, and I have an intent to ask that this be removed at this time because LB351 is on the agenda a little bit later down for today, hopefully for today. But what this bill does, and I want to talk a little about it, is it makes it so that the Welfare Reform Act, we need to get into compliance with the federal government, and if this bill is not enacted, not put into place, it will cost the state of Nebraska \$2.9 million for not being in compliance with the federal regulations, as far as the Welfare Reform Act. So with that, I would respectfully ask that this be removed at this time. [LB247 LB351]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. AM1353 is withdrawn. Mr. Clerk. [LB247]

CLERK: Mr. President, Senator Johnson would move to amend with AM1352. (Legislative Journal page 1656.) [LB247]

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on AM1352. [LB247]

SENATOR JOHNSON: Thank you, Mr. President. AM1352 is simply a seven-page technical amendment--a seven-page technical amendment prepared by the Bill Drafters Office to harmonize provisions of AM1221 with LB463, the huge credentialing bill that we passed last week, and signed by Governor Heineman. This amendment has no substantive content, and this is one, I guess, that you'll have to trust me on. But I can assure you that it has no content other than harmonizing language. Thank you. [LB247 LB463]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on AM1352. The floor is now open for discussion. Seeing no lights on, Senator Johnson is recognized to close. He waives closing. The question before the body is, shall AM1352 be adopted to LB247? All those in favor vote yea; all those opposed vote nay.

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Have all those voted that wish to? Record, Mr. Clerk. [LB247]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Johnson's amendment. [LB247]

SENATOR LANGEMEIER: AM1352 is adopted. Mr. Clerk. [LB247]

CLERK: Mr. President, Senator Johnson would move to amend with AM1367. (Legislative Journal page 1659.) [LB247]

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on AM1367. [LB247]

SENATOR JOHNSON: Thank you, Mr. President, members of the body. This is an amendment similar to the last one, in that it was prepared by the Bill Drafters Office as a technical amendment to harmonize with the provisions of both LB247, our main bill here, and LB463 and LB236 that were passed and signed by the Governor this past week. The amendment is rather lengthy because of the number of sections involved and the complexity, but it is still a technical amendment, and again, I would think that we should thank the bill drafters for a very thorough and excellent work this past week to bring this about. With that, I'd ask your approval of this technical amendment. [LB236 LB247 LB463]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on AM1367. The floor is now open for discussion. Seeing no lights on, Senator Johnson, you are recognized to close on AM1367. He waives closing. The question before the body is, shall AM1367 be adopted to LB247? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB247]

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of Senator Johnson's amendment. [LB247]

SENATOR LANGEMEIER: AM1367 is adopted. Mr. Clerk. [LB247]

CLERK: Mr. President, Senator Johnson would move to amend with AM1391. (Legislative Journal page 1674.) [LB247]

SENATOR LANGEMEIER: Senator Johnson, you are recognized to open on AM1391. [LB247]

SENATOR JOHNSON: Mr. President, members of the body, we're back to something substantive. What this is, is AM1391 represents the provisions of LB478 that was referred to the Judiciary Committee earlier this session and advanced by the committee

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unanimously by those members present and voting, with committee amendments. There were no opponents to the bill. I believe that Senator Ashford supports the amendment, and I am bringing it with his consent, and I would ask for his comments here shortly. The bill relates to adoption procedures. The bill was introduced at the request by adoption agencies and attorneys in response to two recent Nebraska Supreme Court cases. They are the Jaden H. case and the Bohaboj case. Both cases were decided late last year. These cases have raised an urgent need for clarification in our adoption statutes. This bill seeks to provide that clarification. You should have received a brief review of the facts in these two cases and the issues they present. I want to emphasize that this is a very important issue and one that I believe we must address this session, and that's why this case from the Judiciary Committee is attached to LB247. Here's what the case is about. Both cases deal with children born out of wedlock and are addressing the rights of the biological fathers or possible biological fathers of such children. There are two main parts to our adoption statutes in this area. First is the biological father registry created by HHS. Secondly, there are several sections dealing with giving notice to birth fathers or possible birth fathers of children born out of wedlock. This amendment makes clarifying changes in both of those areas. There are two main issues that are addressed in these cases and in this amendment. First is the need to clarify the relationship between an adoption case and a paternity case--the difference between an adoption case and a paternity case, when an adoption case becomes a paternity case and in which court this jurisdiction takes place. Secondly is the special of possible birth fathers or persons who have been adjudicated by a court to be the biological father of a child born out of wedlock. I want to simply and briefly summarize the most important changes in the amendment to address these issues. First, dealing with jurisdiction in adoption and paternity cases, typically county courts and separate juvenile courts have jurisdiction in adoption cases. The district court has jurisdiction in paternity cases. Sections 7 and 17 of the amendment deals especially with this issue. Section 7 says that the county court or separate juvenile court has jurisdiction in adoption matters from the time notice is given to the possible birth father, until 30 days after the conclusion of the adoption proceedings concerning the child born out of wedlock. It explicitly provides when jurisdiction has been transferred to the district court for proceedings on matter of custody, child support, and visitation. Section 17 amends Section 43-1411 dealing with paternity actions. Current law says the alleged father of the child born out of wedlock has up to four years to file a paternity action. The amendment clarifies the exception to that four-year length of time. The second issue deals with possible birth fathers. The amendment says that statutes dealing with putative or possible fathers and the biological father registry don't apply to adjudicated birth fathers. The amendment also adds a new section relating specifically to the adjudicated birth fathers. It says that if an adjudicated birth father has been provided, either mailed or published notice, under the birth father notification statutes, and he has not executed a valid relinquishment and consent to adoption after the earlier of these notices, then the birth mother needs to file a motion in the court with jurisdiction of the custody of the child for a hearing to determine whether his consent to the adoption is

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required, and whether the court will give its consent to the adoption. The court has to schedule the hearing within 30 days of the father being served on this motion. The amendment is intended to remove unnecessary legal barriers to safe and permanent adoption, but at the same time, protect the rights of the adjudicated biological fathers of these children born out of wedlock. I would give the rest of my time to Senator Ashford. [LB247 LB478]

SENATOR LANGEMEIER: Senator Ashford, 2:45. [LB247]

SENATOR ASHFORD: Thank you, Mr. President and Senator Johnson. This is fresh off the press, Senator Johnson, but I did hear your explanation of this particular amendment, and in perusing it for the last 15 seconds, it appears to be accurate. We are dealing with adjudicated fathers here. These amendments clarify the existing law. This is an issue, and I appreciate Senator Johnson and your committee for dealing with this because I know even back years ago we had many of these issues before us in the Legislature, and as you normally do, Senator Johnson, you deal with a problem in a comprehensive way, and your committee should be really praised for their work. And I appreciate the work of the Judiciary Committee on this, as well. Again, as Senator Johnson suggests, this bill was advanced 7-0, and with no opponents testifying against it, and I know there have been some changes. But I would certainly wholeheartedly urge the adoption of AM1391 and appreciate the work of everybody. Thank you. [LB247]

SENATOR FRIEND PRESIDING

SENATOR FRIEND: Thank you, Senator Ashford. Members of the Legislature, you have heard the opening on AM1391. Senator Erdman, you are recognized. [LB247]

SENATOR ERDMAN: Mr. President, would Senator Johnson yield to a question or two? [LB247]

SENATOR FRIEND: Senator Johnson, will you yield to a question or two? [LB247]

SENATOR JOHNSON: I'll try to, sir. [LB247]

SENATOR ERDMAN: Senator Johnson, this is...the provision in this amendment is LB478 as advanced by the Judiciary Committee with the committee amendments? [LB247]

SENATOR JOHNSON: Correct. [LB247]

SENATOR ERDMAN: And so then the comment...I'm just trying to catch up here...we're responding to the court cases, and that's all that we're doing. We're trying to reflect what the court has interpreted the current law to be, and what we would intend the law to be,

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and so we're trying to match that to what we had originally intended, based on the new interpretation? [LB247]

SENATOR JOHNSON: Yes, sir. What happened was this, is there were these two court cases that caused the difficulty in the interpretation. The two leading firms that handle most of the adoptions in Nebraska came to me jointly with this language that they felt would solve the problems that those court cases created. There was other supporting testimony that this would clear up the legal language, as well. So not being an attorney, I have to take their word for it, but I think we had the best sources. [LB247]

SENATOR ERDMAN: As do I. Okay, thank you, Senator Johnson. [LB247]

SENATOR FRIEND: Thank you, Senator Erdman and Senator Johnson. Senator Wallman, you are recognized. [LB247]

SENATOR WALLMAN: Thank you, Mr. President, I too would like to ask Senator Johnson a question, if I may. [LB247]

SENATOR FRIEND: Senator Johnson, will you yield to a question from Senator Wallman? [LB247]

SENATOR JOHNSON: Again, I'll try. [LB247]

SENATOR WALLMAN: Thank you. I appreciate this kind of legislation. As you know, in the TV news this can get pretty messy. Does this pertain to state lines, say like Sioux City in Iowa, Omaha, Council Bluffs? Is this legal in both states or surrounding states, do you know? [LB247]

SENATOR JOHNSON: Not to my knowledge that that is particularly addressed in this case. I don't think that was part of the problem with those two decisions. It was more what courts they went to, but also to try and rather specifically give the rights of the father, but at the same time expedite the adoptions as could be. But it's meant to protect both rights. [LB247]

SENATOR WALLMAN: Thank you. Anything that can help this out. My brother adopted two children; I know it can be quite an ordeal. So if we can help some of this out, then I thank Dr. Johnson for this bill, and thank you, Mr. President. [LB247]

SENATOR FRIEND: Thank you, Senator Wallman. Members, we are discussing AM1391, an amendment to LB247. Senator Langemeier, you are recognized. [LB247]

SENATOR LANGEMEIER: Mr. President, members of the body, would Senator Johnson yield to a question? [LB247]

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SENATOR FRIEND: Senator Johnson, will you yield? [LB247]

SENATOR JOHNSON: Yes. [LB247]

SENATOR LANGEMEIER: Senator Johnson, LB247 itself, my understanding, it was one bill, and then the committee amendments amended four or some four or five others? [LB247]

SENATOR JOHNSON: Yes, this is a Christmas tree. [LB247]

SENATOR LANGEMEIER: This is a Christmas tree, and that's what I want to talk about. I'm not rising in support or not in favor of AM1391; I think it's a good bill in itself. But I just want to talk a little bit about, you know, our constitution says that no bill should go more than one subject, and so we've put in four bills, one bill, and now we've added a Banking bill; now we're going to add a Judiciary bill. So we're going from colorectal cancer screening; that was in Insurance. We had an HHS bill. Now we're adding a Judiciary bill that has to deal with adoption. I think we're getting off the topic of one subject matter, and so I just want to be on the record as noting, as I think we're pushing the limits there. And so with that, I return my time back to the Chair. [LB247]

SENATOR FRIEND: Thank you, Senator Langemeier. Senator Fulton, you are recognized. [LB247]

SENATOR FULTON: Thank you, Mr. President. Would Senator Johnson yield to a question? [LB247]

SENATOR FRIEND: Senator Johnson, again, will you yield to a question? [LB247]

SENATOR JOHNSON: Yes, sir. [LB247]

SENATOR FULTON: I figured you were up already so. Let's see, I think it's on page...the end of page 3, beginning of page 4. "Consent is not required of a putative father who has failed to timely file notice of objection..." and some other things. And then there's also the next section talks about "Consent shall not be required of an adjudicated...father..." My question has to do with, how does this compare to the policy that exists for the foster care program? Is this...would this be congruent with the policy that exists within the foster care program by which we are able to adopt? [LB247]

SENATOR JOHNSON: I can't tell you that. I don't know the answer to that one. What I do know is, this just reflects other portions of the law so that it's consistent with how it's written. [LB247]

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SENATOR FULTON: Okay. So this language is statutory language. There's some jurisprudent precedent that brought forward this language. [LB247]

SENATOR JOHNSON: That's my understanding. [LB247]

SENATOR FULTON: Okay. Okay, thank you, Senator Johnson. In reading through this, I've been having discussions on the foster care program, and hopefully in the interim, myself and some other senators will be able to look a little bit more closely into that program. I don't know enough about the policy that exists that guides as to whether or not termination should ensue in a foster care case to know whether this is consistent with what exists in the foster care program. I'm not positive that this needs to be consistent with that, but it seems, by way of policy, it ought to be. So I guess I raise that concern. I'm not necessarily against the amendment, but that's something maybe another has more information to, and certainly, in between now and Final Reading, I'll try to get some information on it. Hopefully, Health and Human Services can provide that information, too. Thank you, Mr. President. [LB247]

SENATOR FRIEND: Thank you, Senator Fulton. Senator Nelson, you are recognized. [LB247]

SENATOR NELSON: Mr. President, members of the body, I rise to voice some concern. This is all new to me, but I'm a little...I have some concern about a 23-page amendment that deals with fathers' rights and a lot of various things. It may very well be that all of these things are in order and that we can trust what's in there, but every page has a correction of some sort, or new wording. I haven't even had time to read the two cases involved to see what they're about, or even to go through this. I guess I just frankly...this is what we might call a surprise. I think there are important issues that are being covered here, especially with fathers' rights, whether it be under paternity or under adoption, and I think we ought to take more time with things like this. I'd like to address a question to Senator Johnson. [LB247]

SENATOR FRIEND: Senator Johnson, again, will you yield? [LB247]

SENATOR JOHNSON: Yes, sir. [LB247]

SENATOR NELSON: Senator Johnson, I guess it's my understanding, if we pass this today, we would still have time to take a look at this and work out any concerns. Is that correct? [LB247]

SENATOR JOHNSON: Yes, Senator Nelson, and let me just say this, that I will be happy to work with you between now and Final Reading to alleviate any of those concerns. We did have unanimous agreement of all people at the time who presented the testimony, with some of the leading legal firms doing the testifying, that do most of

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the adoptions. But you are right, and we'd be happy to work with you, so. [LB247]

SENATOR NELSON: But this was LB478 in Judiciary Committee, and then how did this come to Health and Human Services? [LB247]

SENATOR JOHNSON: Well, this is my bill, and in addition, in an effort to expedite its passage with the session drawing to a close, there was not a place, as I understand it, and I'd let the Chairman of Judiciary Committee comment on this. But this seemed to be the best method to get an issue that we were told was badly needed by all of the testifiers, because it is causing problems in adoption. So I'll be glad to work with you before Final Reading. [LB247]

SENATOR NELSON: All right. Well, one final question: Is there something imperative in here, or so extraordinary, you know, that this could not be taken up next year and looked at a little more carefully? [LB247]

SENATOR JOHNSON: Again, I would...let's, if you would, give you time to look that over, and then see if you feel that it is imperative or not, and we can work it out for Final Reading. [LB247]

SENATOR NELSON: All right. Well, at this juncture I'm not going to oppose this amendment. I will vote to move it on, but I would certainly appreciate being able to work with you on it to make sure that there isn't anything in here that's out of order. [LB247]

SENATOR JOHNSON: We certainly will. [LB247]

SENATOR NELSON: All right. Thank you, Senator Johnson. Thank you, Mr. President. [LB247]

SENATOR FRIEND: Thank you, Senator Nelson and Senator Johnson. Senator Howard, you are recognized. [LB247]

SENATOR HOWARD: Thank you, Mr. President and members. I too rise in concern regarding placing such an important issue as adoption on LB247, as a Christmas tree amendment. I've not had the opportunity to review this material, and as a social worker who has handled many adoptions, these matters must be handled with the utmost care and caution. The rights of both parents must be respected in the course of the adoption process. The future well-being of the child in question is at stake in these matters. I have concerns about this. I am going to reserve my judgment and my vote, and watch carefully as this process goes along. Thank you. [LB247]

SENATOR FRIEND: Thank you, Senator Howard. Senator Johnson, there are no other senators wishing to speak. You are recognized to close on AM1391. [LB247]

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SENATOR JOHNSON: Thank you, Mr. President. Again, these are meant to be technical changes regarding jurisdiction, etcetera, in this bill. But let me tell you this: I will be happy to visit with all of those of you that are concerned, who have not had the experience of going through this with the Judiciary Committee, and work with you to solve your concerns before Final Reading. With that, please vote for this amendment. [LB247]

SENATOR FRIEND: Thank you, Senator Johnson. Members of the Legislature, you've heard the closing on AM1391. The question is, shall AM1391 be adopted to LB247? All those in favor please vote aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB247]

CLERK: 28 ayes, 0 nays, Mr. President, on the adoption of Senator Johnson's amendment. [LB247]

SENATOR FRIEND: AM1391 is adopted. [LB247]

CLERK: Senator McGill, I have nothing further on the bill. [LB247]

SENATOR FRIEND: Senator McGill, for a motion. [LB247]

SENATOR MCGILL: Mr. President, I move LB247 to E&R for engrossing. [LB247]

SENATOR FRIEND: Members, you've heard the motion. All those in favor of the advancement of LB247 signify by saying aye. All those opposed say nay. LB247 is advanced. General File, Mr. Clerk. [LB247]

CLERK: Mr. President, LB653, a bill introduced originally by Senator Raikes. (Read title of LB653.) The bill was discussed yesterday, Mr. President. At that time, Senator Raikes presented the committee amendments. He then moved to amend the committee amendments with AM1379. That amendment is pending. (Legislative Journal page 1662.) [LB653]

SENATOR FRIEND: Senator Raikes, if you could do the Legislature a small favor and remind us where we are on this piece of legislation. [LB653]

SENATOR RAIKES: Thank you, Mr. President. I would be pleased to attempt. The amendment that we're currently on is brief and clarifying. It changes the operative date as a clarification of the kindergarten through third grade reporting provision, and also addresses concern about linking student teacher data and the anticipated cost of that in the student information database. That's the amendment we're currently on. That is an amendment to the committee amendment which addresses some changes in our

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student assessment system, commonly known as STARS. And I would be happy to answer any questions on either of those. Thank you. [LB653]

SENATOR FRIEND: Thank you for the review, Senator Raikes. We move to discussion on AM1379. Senator Erdman, you are recognized. [LB653]

SENATOR ERDMAN: Mr. President, would yield to some questions? [LB653]

SENATOR FRIEND: Senator Raikes, will you yield to some questions? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR ERDMAN: Senator Raikes, first of all, I guess the obvious question that comes to mind with this bill, as it has with another small bill that you have been spending a great deal of time on, is we heard some comments yesterday about the proposed fiscal note. Do you have firm numbers, or I believe the fiscal note is as the bill was originally drafted. [LB653]

SENATOR RAIKES: Right. [LB653]

SENATOR ERDMAN: Do we know...and again, I think you referenced the Department of Ed's analysis from yesterday. Do we have any idea, with AM1319, is this a cost-neutral, does this cost us something, is it covered under the ESU bill? Maybe you could connect those dots before I get into my other questions. [LB653]

SENATOR RAIKES: Senator, I can't give you a firm number. My guess is that in the first year of the biennium the cost would be \$70,000, and that is to collect individual student information to go into the database. [LB653]

SENATOR ERDMAN: Let's stop right there. When we talk about individual student information, specifically what are we talking about? [LB653]

SENATOR RAIKES: The database has student identifiers, and for each student they have the identifier, demographic information, and several items of data about their results on student assessments of various kinds and sorts and that sort of thing. [LB653]

SENATOR ERDMAN: So we're creating the benchmark, if you will, the first step so that we know student X scored here and we can link that back to that student. How do we know...? I see there's language in the committee amendment, "Provide for the confidentiality of the results of individual students." How do we do that now or do we do that? We don't... [LB653]

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SENATOR RAIKES: This effort is underway, Senator. Nebraska is like many other states that, at the time of No Child Left Behind, given the data reporting requirements, a number of states undertook an effort very similar to this to provide such a database, to be able to use that as a source for doing the reporting to the federal government. A very key part of that is protection of individual student confidentiality, and Nebraska has its techniques for doing that, and it is based upon what has been done in all the other states that are doing it. [LB653]

SENATOR ERDMAN: So we're doing that now... [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR ERDMAN: ...to comply with No Child Left Behind? [LB653]

SENATOR RAIKES: Yes, this effort is underway. In fact, I think this year the system is in a pilot stage. [LB653]

SENATOR ERDMAN: So if we do that now and it's to comply with No Child Left Behind, does the information that we collect from the students end up in Washington or does it stay in Nebraska or how do we...? [LB653]

SENATOR RAIKES: No, the... [LB653]

SENATOR ERDMAN: Because ultimately we're trying to comply with the federal law. How do we check that back down to the state? [LB653]

SENATOR RAIKES: The database is here. [LB653]

SENATOR ERDMAN: Okay. [LB653]

SENATOR RAIKES: And some of the information in the database is to be reported, to comply with No Child Left Behind, the U.S. Department of Education, or however that works; and I'm not real sure about that. It also, I believe, an underlying thought in this bill is it provides us an opportunity to do analyses, policy analyses with information within the state apart from what might be required in the way of reporting for No Child Left Behind. [LB653]

SENATOR ERDMAN: And that would lead me to my next question then. Who would have access to the information...there is...some information goes to the national level for compliance with No Child Left Behind. [LB653]

SENATOR FRIEND: One minute. [LB653]

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SENATOR ERDMAN: As you just said, we would have information available on the state level to do analysis. Currently, if this is in a pilot project, how do they propose that to be safeguarded? Essentially, who has access to that for other purposes than the STARS program? Is it only the... [LB653]

SENATOR RAIKES: I'll try to get more, maybe more dependable answers to the questions. But my understanding is that virtually no one except the people who are actually involved in the day-to-day information collecting has access to individual student information. There is also controlled access to the use of that information for analysis. For example, if you wanted to find out how... [LB653]

SENATOR FRIEND: Time. Thank you, Senator Raikes and Senator Erdman. Senator Wightman, you're next and recognized. [LB653]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. If Senator Raikes would yield for a question, I have a question or two I would like to... [LB653]

SENATOR FRIEND: Senator Raikes, will you yield to Senator Wightman? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR WIGHTMAN: Senator Raikes, I know this was discussed yesterday, but could you clarify for me again the relationship between the STARS assessment and the statewide assessment that is being proposed under LB653? [LB653]

SENATOR RAIKES: Senator, the proposed assessment, statewide assessments, would all be under what is termed the STARS program. There's not anything being done here that would eliminate the STARS program or say, okay, that's only part of what we're going to do and we're going to do something different over here. What we're doing is we're, in a sense, codifying some of the practices that are already occurring in STARS. We're making a couple of changes in terms of the way the assessments are done, and you mentioned two of those. Instead of just a statewide writing test, we would also have a statewide reading and a statewide math test. Another thing we're doing is moving, or at least providing the opportunity to move a lot of the technical work from teachers in the classroom to the ESU level. [LB653]

SENATOR WIGHTMAN: Okay. [LB653]

SENATOR RAIKES: But it's all part of our statewide assessment system. [LB653]

SENATOR WIGHTMAN: And the statewide obviously is to provide a comparability between schools and students perhaps in different locations. Is that correct? [LB653]

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SENATOR RAIKES: Yes. And we've already gone down that path, as you understand, with the statewide writing exam. But this,...and actually there's a couple...in terms of enhancing comparability or reliability of comparisons between students in different school buildings or different school districts, there's a couple of things that are being changed. One of them is to have the statewide reading and math, as you mentioned. But another one is to move toward common proficiency levels on the various standards. Right now, those are the subject of individual school districts rather than there being a statewide proficiency level, if you will. And my understanding is, to a large extent this is not at variance with what the Department of Education has intended, but they have not gotten there yet and this is proposing that that's what will happen. [LB653]

SENATOR WIGHTMAN: Is the purpose of the statewide testing partially to accelerate compliance with No Child Left Behind? [LB653]

SENATOR RAIKES: That isn't a specific objective here as far as...it may well help in that regard, but that's not really the driver. [LB653]

SENATOR WIGHTMAN: Now from the information I've received, the State Department of Education hasn't necessarily signed on to this. As a matter of fact, they, I think, maybe are recommending that the implementation be delayed a year. Is that correct? [LB653]

SENATOR RAIKES: This amendment that we're now on, Senator, does delay it one year. [LB653]

SENATOR WIGHTMAN: Okay. Thank you, Senator Raikes. Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Wightman and Senator Raikes. Senator Carlson, you are recognized. [LB653]

SENATOR CARLSON: Mr. President and members of the Legislature, this being my first experience in the Legislature, and I don't know how many others can share these feelings with me, but I'm in a state of frustration and I don't know quite how to deal with it. And I'm not criticizing anyone. The Education Committee had a lot of heady issues to deal with and none of them easy. But we start with LB653 and then we go to AM1319, which is significantly different from LB653, and so I alluded to this yesterday. But looking at those that testified for LB653, other than not counting Senator Raikes, there was one for it, and we ran out of spaces on the sheet for those against it. And then AM1319 comes to us yesterday and we're supposed to digest it, understand it, and vote the right way on it. I've had experience in education but it's been a long time ago. I've had experience on the school board and it's been 13 years since I served on the school board. So I feel some frustration in knowing how to digest this and make the best vote

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when, following and during the testimony yesterday, I'm getting phone calls and e-mails saying vote against it. And I want to make a wise vote. So those of you on the Education Committee, I don't know how many others share the feelings that I do. We want to make a good vote. We want to make the right vote. And this happens to be an issue with me. There are some things that we have put before us that in your heart you feel like you know what's right, you know what's best for the people of Nebraska, you know how you're going to vote, and you vote that way. There are other things, it's just not that way. For me, this happens to be one of them. And so I am in a state of struggle and I'll sit down and listen to some more testimony. Thank you. [LB653]

SENATOR FRIEND: Thank you, Senator Carlson. Senator Pahls, you are recognized. [LB653]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I'm going to continue with some of the discussion that we had yesterday evening and hopefully try to clear up a couple of, I think, errors on my part because I think I confused at least some senators when it came to the statewide reading assessment because we are thinking about enlarging that into math and reading. Just to give you an idea, we're not really trying to increase the workload but we're trying to make sure teachers are emphasizing certain skills. And the point I'm going to, just to give you an idea of the six traits, and then Senator Hansen said, well, there are many, many more, but just let me explain. The things that we're asking the children to do is, in their writing, look at the idea and content; look at the organization; and, as yesterday I said, the voice; look at the word choice; look at conventions, and that basically for most people not in education, that would be like the spelling and the grammar; and then look for sentence fluency. So what we do is, the teachers, these are the issues that they need to be teaching to throughout the school year. These are not an addition because, in other words, the part that talks about organization, that means that in your writing you have a beginning, middle, and end. And when it comes to word choice, instead of saying the fire, you may say the bright fire. You're trying to increase the interest of the story. These are not something new. So the teacher teaches these throughout the year, making sure--and at the different grade levels--to make sure that concept gets across. And then, lo and behold, we have a testing day. The children are given a prop that they are not familiar with. They write this, and this is what we, that's judged are these six components in that writing. The teachers do not judge that. They are sent off to another place and other people evaluate those writings. It is stressful. It is wearying, weary work. But we're trying to say these are the things that we're looking for, and then the teachers, or the students are given scores on different components. That's across the state. Now if you look at the budget, that's a pretty significant cost because it's labor-intensive. Another thing I like to talk about is the achievement test. I know people say we do not want to make comparisons but we do know that the different schools, they are going to be compared because the World-Herald shows the different schools throughout the, at least the metropolitan area and where they scored. The one thing that we need to think about, I

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don't know if you realize this, we want to compare different schools with each other, and that may not be fair in some ways. And the reason why, because we know where those schools should be, their anticipated level, because there is a test that gives us that information, even on the individual child. So let's say that I happen to be at a school and, just for sake of numbers, it's scoring at the 40 percentile. And you say, oh. And then another school is scoring at the 60. Well, this school is automatically better. Maybe not, because this school that scored at the 60 should have scored at the 80, and the school that scored at the 40 maybe should have scored at the 30 or the 40. You see what I mean? The numbers move so the lower number does not necessarily mean that the other school... [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR PAHLS: ...is achieving more. In fact, they may not be doing as well. So there are an awful lot of variables with achievement tests that we need to be very cautious about. And as I said yesterday, we ought to look at the norm, when the test was "normed." And the neat thing about it is if we do want to make comparisons, the, as I said yesterday, the Omaha, Lincoln, Millard area will be all using the same Terra Nova in the future. So if you are into comparison, that will be. I'm not into comparing different schools. I'm into seeing what the growth was within that school. To me, again I'm talking about the individual schools. Another thing that is of interest to me, on these achievement tests, are they going to be machine scored? In the larger schools they are. But let's say your school may have seven third-graders. Will the teacher hand score those? Because you can do that. Many years ago, many, many years ago, I hand scored, and then you have a formula where you make that into percentiles. A lot of factors involved that we need to be taking... [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR PAHLS: Thank you. [LB653]

SENATOR FRIEND: Thank you, Senator Pahls. Senator Dierks, you are recognized. [LB653]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I have some of the same concerns that Senator Carlson has. I'm going to be hard-pressed to support this amendment, and one of the reasons is I'm not too sure how far we should go with the database on our students. Should every student be categorized and placed in the database? Is that some sort of an invasion of privacy? There's just so many questions with that, that I'd urge all of you to give some strong thought to that process. I think that the Department of Education is already doing this. But we're going to put it in statute to make it legal now, I guess. I think that's the way I understand it. At this point, I'm going to have to have some more assurances before I'm going to be able to support

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this amendment. Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Dierks. Members, we are discussing AM1379, an amendment to AM1319, the Education Committee amendments. Senator Howard, you are recognized. [LB653]

SENATOR HOWARD: Thank you, Mr. President and members. I would like to ask Senator Adams a few questions, if he would yield. [LB653]

SENATOR FRIEND: Senator Adams, will you yield to a question from Senator Howard? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR HOWARD: Thank you. I appreciate that you've made your statements last night and the information you provided regarding the clarifications for the assessments. And I'd like a little more information about that, especially for the children ages kindergarten through second grade who are going to be tested. Is there any potential for paper and pencil standardized test being administered to these very young children under this bill? [LB653]

SENATOR ADAMS: In answer to your question, I think the fact that, Senator, we put the word "potential" in there. I suppose anything is possible but I would find it really hard to believe that in those grade levels teachers would be using the typical testing method that you and I stereotypically think of. [LB653]

SENATOR HOWARD: So then I'd be safe in believing that it's not the intent to use the standardized method for these children. [LB653]

SENATOR ADAMS: No, and you understand this because you know children, too. But at those levels, different kinds of measuring devices are going to be used than what we might think of at the high school level. [LB653]

SENATOR HOWARD: I appreciate that, I appreciate that. Will it be made clear that only developmentally appropriate methods of assessment be used for these early grades? Would I be safe in believing that, too? [LB653]

SENATOR ADAMS: Oh, I would think so because the teachers that would be developing these things are sensitive to those kinds of things and I can't imagine that they wouldn't want them to be developmentally appropriate. [LB653]

SENATOR HOWARD: Good, which leads into my third concern. Will the teachers for these children in these very early grades continue to have the ability to create

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assessments on their own, like the portfolios? [LB653]

SENATOR ADAMS: Absolutely, absolutely. [LB653]

SENATOR HOWARD: Good. [LB653]

SENATOR ADAMS: We'd want them to be part of this. If the teachers aren't part of it, Senator Howard, then in effect we lose part of the focus of what Nebraska is doing with assessments. Whether we agree or disagree with the direction that Nebraska has been going, the fact is we're seven years down the road and we need to continue that rather than throw it away. And what's key to that is that teachers are the creators of the measurement devices. [LB653]

SENATOR HOWARD: I couldn't agree with you more and I think we really need to respect the investment these teachers have in not only the testing instrument but also in the progress of the student. And it was clear during the testimony that teachers were very concerned about this issue and certainly want to continue to have input, and to have the testing that they have been able to do in the past, respected. And is it the intent of this bill to prohibit the use of standardized tests, and we've covered this pretty much, but for those very young children? I just, I would like to have that reemphasized. [LB653]

SENATOR ADAMS: You know, I can't tell you that there are even standardized tests available for those ages. There may very well be and what the teachers and administration and staff decide to use and what is appropriate, that may figure into the mix. That I can't say. [LB653]

SENATOR HOWARD: Right, and I'm sure there's a standardized test that tests just about anything so I wouldn't be at all surprised if it doesn't cover children as young as that. One of the concerns that really is prevalent with me is the risk of labelling a child who possibly doesn't test as well, especially in those early years, and then to have that label follow them. And I know there's few ways to really prevent that but I think it's something that we have to be well aware of and not to become a part of that problem as we look at testing with the best of intentions. And I understand we'd like to establish a baseline so we can measure progress but I'd also caution that labelling can have severe consequences and also limit a child's opportunity. [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR HOWARD: Thank you. I would like to offer the remainder of my time, a brief moment, to Senator Pahls. Thank you. [LB653]

SENATOR FRIEND: Senator Pahls, 50 seconds. [LB653]

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SENATOR PAHLS: Thank you, Mr. President. Thank you, Senator. The concern about student names, I hope I can ease that a little bit because they have an ID number. So the ID number is what flows. So if you see a list you would not see their names, you would see ID numbers. That's why, you know, through the computer, you just write the number in, type the number in, that will give that to you. Another concern that I do have with this short amount of time is the weariness of testing. Just to let you know, there are reading teachers who test, there are psychologists who test, there are speech pathologists who test. We give hearing tests, we give eye tests. So there is an awful lot of testing going on in the school that I think you would be amazed the sophistication of these testing instruments. And yes, if you want achievement tests in the lower grades, it's there. There are companies... [LB653]

SENATOR FRIEND: Time. Thank you, Senator Pahls. Senator Erdman, you're next and you're recognized. [LB653]

SENATOR ERDMAN: Thank you, Mr. President. And I'm going to try to pick up where I left off, if Senator Raikes would yield. [LB653]

SENATOR FRIEND: Senator Raikes, will you yield to a question from Senator Erdman? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR ERDMAN: Senator Raikes, I think where we left off, we were talking about the information that's collected currently. As I understand what's before us and reading what the Department of Ed has sent us, this is after the performance audit either reaffirming or putting in statute some of the processes that are already in place but also making the changes, defining assessment, some of those issues that came up in the performance audit. So essentially what we're doing is we're bringing the Department of Ed's vision in the statute. And when we do that, we'll have the opportunity to see what that vision is directly and determine what that all looks like. And so some of these questions may not be directed here, but since it's here I think it's appropriate to ask. When we talk about the information that's gathered from the students, the personally identifiable information comes into the state; it goes into a database of some kind for us to be able to track the students. It's my understanding that they get a, I think it's called a unique identifier. They don't use their Social Security number as the university used to do when I was a student just ten short years ago, but they use some number that's assigned to the student. [LB653]

SENATOR RAIKES: That's correct. It's a student identifier and that's sort of a whole separate part of the process. [LB653]

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SENATOR ERDMAN: And so that information goes into a database. And as we left off, we were talking about who has access to that database. Currently the state has the database. To the extent that we need to comply with some federal law, we have the opportunity to send that information on for compliance. [LB653]

SENATOR RAIKES: That's true. There's not, so far as I know, any federal requirement that we do have a student information database. But it is certainly much easier and more efficient to comply with reporting requirements with such a database. [LB653]

SENATOR ERDMAN: Okay. [LB653]

SENATOR RAIKES: And that's been the motivation for doing that. [LB653]

SENATOR ERDMAN: And I believe this is from the Nebraska Department of Education Statewide Student Record System, Requirements Specification, Version 3.0, dated February 9, '04, "The system will collect and maintain individual student records from preK-12 public schools and districts." And it's my understanding that preK-12 begins at birth under that definition. Is there a reason why...and again, it's probably somewhat a disadvantage because you're bringing the bill, it's the department's policy that we're looking at here. PreK-12, if we're testing kids in kindergarten but we're going to begin compiling information from them before they get to kindergarten, what is the intended purpose? [LB653]

SENATOR RAIKES: I think the idea there, Senator, is that we do, as you know, have state-funded collaborative early childhood education programs. And there is an opportunity with this for young children to receive an identifier at that stage and be included then in the student information database. I would suggest to you that I think that's a fairly important piece of information, just from the standpoint if you have some kindergarten readiness information you'd be able to see how effective the early childhood programs were in improving kindergarten readiness. [LB653]

SENATOR ERDMAN: Okay. So it is designed to tie in with the early childhood program... [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR ERDMAN: ...and I believe that's accurate, that our early childhood program does that. Let me go back to the identifier number. It's my understanding that the Department of Ed can collect the Social Security number of the student. Are you aware of that? [LB653]

SENATOR RAIKES: I'm not; I'm not. [LB653]

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SENATOR FRIEND: One minute. [LB653]

SENATOR ERDMAN: And I'll get this later information because I don't have it readily available, but it's my understanding that the policy states that using the student's Social Security number in the statewide student database is optional and that the template states that the Social Security number can be used for verification of a student. When assigning the state ID, it may be used for links to approve postsecondary, vocational, and public service organizations, and as needed by career tech education for follow-up. So it's my understanding that even though we have the primary identifier of the number, that there's nothing that prohibits the Department of Education from also collecting the Social Security number of that student and including that in the database. And so far what I've read is that actually the database is designed to facilitate that. And so then my next observation then is, if you have that at the state level and we dump that into another program or database on a federal level, how do we go to extend the confidentiality of our students if our system collects that? And again, this is probably... [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR ERDMAN: ...a disadvantage to you because it's the Department of Ed's program. Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Erdman and Senator Raikes. Senator Wallman, you are recognized. [LB653]

SENATOR WALLMAN: Thank you, Mr. President. We're still about testing, testing, huh? No Child Left Behind. I've been in education on the school boards for about 16 years, and every time you get a new president you're going to have a different plan. So why are we in such a hurry to change our plan, you know? We're going to have a different buzzword two years down the road. It's not going to be the same, Mr. Chairman; it's going to be something else. So testing, testing. If we test lower down the pike, what school is supposed to be for little kids? What's the number one agenda if you go to kindergarten? I didn't go to kindergarten, so I can't say everything I learned in kindergarten, I learned in kindergarten. I can't say it because I don't know. And I am a ESL student, English is my second language. So you think...so what we ought to be going here now, instead of this testing, testing, testing...may I ask Senator Kopplin a question? [LB653]

SENATOR FRIEND: Senator Kopplin, will you yield to a question from Senator Wallman? [LB653]

SENATOR KOPPLIN: Yes, I will. [LB653]

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SENATOR WALLMAN: Do good ESUs do this right now? [LB653]

SENATOR KOPPLIN: I believe that...well, I can speak mostly for my own, but I believe every ESU in the state is working with teachers to develop local tests. [LB653]

SENATOR WALLMAN: They help teachers along in this area? [LB653]

SENATOR KOPPLIN: I believe they're the central meeting point for all these. I wouldn't say that for every school system in the state because I don't know. But ESUs have been a central part of drawing teachers together to do this. [LB653]

SENATOR WALLMAN: Thank you. And I, too, think if we're going to test somebody, maybe we ought to test the ESUs, you know. Are they doing the job? Are they helping our teachers, universities, private colleges? There's definitely a difference in teachers as they come out of these institutions, and maybe we ought to set up a mentor program like Tom Osborne suggested--you know, mentors. My wife is a mentor for some teachers. She's a sub teacher. But you pull teachers out of the classroom during the year to do this and that, and the principals...and I'm sorry, Senator Kopplin, but the superintendents can take off on their winter conventions and things, but the teachers have to stay at school or go to some meeting to get to know more things. Improvement, school improvement, we've had all those things in our school. So most schools, if we have a few schools that aren't living up to the bar, aren't up here where they should be, then let's pay attention to those schools and the ESUs, help them out. And I think we can do a job without passing more testing, because if you test too much, kids get turned off from school and they're just going to do enough to get by. Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Wallman. Senator Avery, you are next and you're recognized. [LB653]

SENATOR AVERY: Thank you, Mr. President. Most of you know that I have spent a good part of my adult life in education. However, my experience in the K-12 environment is limited to my time as a student. And I know that the two are quite different. But while I was at the university, I observed firsthand the product of our schools. Some of my students would arrive well-prepared and would excel in the classroom. Others would arrive woefully unprepared. Frequently, I would administer a pretest at the beginning of the semester to get a benchmark measurement of what the students knew and how much distance I needed to cover in the semester. Some of the results of those tests were stunning. Some students had never heard of the Russian Revolution, others had no idea that Poland was a part of Europe. Those are just some examples. What I learned is that we need to be very much concerned about how we are preparing our students for college, and we need to know how well we are doing that. And measurement, of course, is a part of it. I have a friend in the math department at

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UNL who sent me a letter last week. And he made, I think, a very interesting point. He said that, in general, our students do pretty well when compared to other people in the nation, but we do not do well in mathematic comparisons with students in other countries. The point here is that our students have to compete not just in Nebraska, not just in the nation, they are having to compete in a global economy now. So the results are clear. On an international basis, U.S. mathematics students' scores are in the lower ranks of industrialized countries. In fact, some Third World countries do better. Some of the newly emerging economies, like South Korea, do better. So if we allow districts to create their own system of determining how and whether a student is understanding something, say like the Pythagorean theorem, that makes no sense, especially in the modern world. This theorem is the same in Plattsmouth, Nebraska, as it is in New York, as it is in Shanghai, in London and Paris. We need to have the ability to test our students so that we can know how they compare, not only regionally within districts, but nationally and internationally. No testing system is perfect; I know that. There is a margin of error in every test instrument that's ever been created. But assessment is the crucial link between effective teaching, student learning, and educational standards. STARS is a very creative measurement instrument to the extent that I understand it. But STARS is not eliminated by this bill. I am told that the teachers like STARS because it is a valuable teaching tool because you can find out how your students are doing in certain areas, you know where you need to do the work... [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR AVERY: ...so they can catch up. I was at that hearing where we spent three hours listening to testimony, mostly from teachers and administrators who were very positive about STARS. We...the main opposition, it seems to me, came about because teachers and administrators really don't want schools and students to be compared. But let me say this: Parents want and deserve to know if their children are learning and how they stack up against others in the school building, in the district, in the state, in the region, and the nation. Taxpayers need to know if they're getting a good return on their money. Testing can stimulate innovation and testing can create more accountability. We need to know also how our at-risk children are doing. [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR AVERY: Testing helps us do that. Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Avery. Senators wishing to speak: Harms, Schimek, Kopplin, Pahls, Langemeier, Fulton, Nelson, and others. Senator Harms. [LB653]

SENATOR HARMS: Thank you, Mr. President and colleagues. I wonder if Senator Carlson could yield for a question. [LB653]

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SENATOR FRIEND: Senator Carlson, are you available to yield to a question from Senator Harms? [LB653]

SENATOR CARLSON: Yes. [LB653]

SENATOR HARMS: Senator Carlson, last night, we were...I was listening to your discussion on the same issue and you were talking about the comprehensive test. And what I wanted to talk to you a little bit--last night it was too late and I was tired and I just let it go by--but what I'm really interested in talking about in this comprehensive test that we're looking at for our children is, what are your views about that core that should make this a comprehensive test? Because, you see, I think that's the critical issue that we're going to have to address and that core is going to have to change because the world global economy, which I mentioned earlier here a couple days ago, is changing and the skill sets are different, and our children will not come out of our schools prepared for this new global economy. And so I was just wondering about it, because you've been in education. I'm curious about what you think that core should be and how that might result in the kind of testing that we want to do. [LB653]

SENATOR CARLSON: Well, Senator Harms, I think my answer is going to be in generalities. I brought up the idea of comprehensive, in that, first of all, if you look at the validity of a test, and it tests whether or not it tests what it's supposed to test, I look at that as being a little more confining than the overall comprehensive nature of a test. But if we're going to have comparisons, whether it be with schools within the state or whether it be schools in other states or whether it be schools in other nations, whatever the subject matter, the tests developed should be comprehensive so that they cover, and I'm going to say all the material--you can never cover all the material--but covers a good portion of the material. And that then, I believe, prevents the temptation for teachers to teach to a certain test if it isn't comprehensive. If it is comprehensive, what's the difference whether they teach to it or not? They're going to teach the right material. [LB653]

SENATOR HARMS: Yeah, well, thank you. That's what I was looking for. I really wanted to get into the core aspect of it but that's okay for now. Thank you very much. I appreciate that. I think that the central question is here, that I look at, is how can the tests and the measurements better be employed to improve the ways that public schools address the needs of individual students? And I really believe that's what we're talking about here. And that question involves a deeper exploration of state educational standards and it focuses on earlier and more result-oriented testing of young children, with the express purpose of identifying teaching needs before achievement gaps can form. And in this review of information, and in this amendment in this bill, we talk about starting at the third grade. And I'd like to...I wonder if Senator Pahls would yield for a moment. [LB653]

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SENATOR FRIEND: Senator Pahls, will you yield to a question from Senator Harms?
[LB653]

SENATOR PAHLS: Yes, I will. [LB653]

SENATOR HARMS: Senator Pahls, I liked your thought process on this issue. And in this material that we have today and in this bill, it talks about the third grade. And I happen to think that third grade is too late. One thing I've learned here from the brightness of this group of men and women in here, that early intervention is critical to success with issues. And I just wanted to know what your thoughts are about the third grade and starting at the third grade and starting to identify what we need to do with these children. [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR PAHLS: Okay, let me address this a little bit. In my past experiences, I've actually been very successful. And the reason why has been because as that child enters the school, we start, automatically start taking a look at the children at a very early age. And then that child has special needs, that's what we...I mean, we really hit the age really hard. That's when you need to do it. That's why I am for this early assessing. But there are so many different types of assessing. I will be up a little bit later on. I will speak to that. [LB653]

SENATOR HARMS: Thank you very much. What I'm looking for would be your thoughts about earlier than the third grade because I've seen that happen in my own family and I know that early intervention made a big difference in the success and going on and being successful in school. So I really would be interested in your views because I think you're on target. [LB653]

SENATOR PAHLS: Yes, and just let's think back a couple days ago when we were talking about autism. We need to capture that in a very, very early stage. That's like a child, if a child comes to a school and does not have some of the... [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR PAHLS: Thank you. [LB653]

SENATOR FRIEND: Thank you, Senator Pahls and Senator Harms. Senator Schimek. Senator Schimek, you are recognized. [LB653]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I think this is a very, very important issue and it's a very, very good discussion. I don't want us to get

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away from what's actually in the amendment. Now we've got an amendment before us that talks about delaying the implementation, and probably we should get to a vote on that pretty soon. But I would like to give some time to Senator Adams in just a minute so that he can kind of bring us back on track about what's actually in AM1319. You know, I've heard some mentions of some e-mails today, and I was curious so I went back and looked because I haven't received any. And I don't know what's in your e-mails. I'd like to know, I guess, from a personal standpoint, what some of your e-mails are saying so that some of those questions that maybe those are raising could be addressed. And I would imagine that Senator Adams would like to know also, and Senator Raikes. But keep in mind that folks who write in, sometimes don't really know what the amendment...and in this case there is a substantial amendment to the bill. It is not the bill that was originally introduced anymore. So with that, Mr. President, I would like to give my remainder of my time to Senator Adams, if I might. [LB653]

SENATOR FRIEND: Senator Adams, 3 minutes and 30 seconds. [LB653]

SENATOR ADAMS: Thank you, Senator Schimek. And 3 minutes and 30 seconds, here we go. I've been listening to all of the comments and they're very genuine and very positive and very useful. Now I'm going to try to bind all that together and respond to many of them and draw your attention back to the amendments in the bill itself. I've heard comments that we spend all of our time testing in the classroom anymore and we ought to just do away with it. If I could turn the hands of time back in education probably 10 or 20 years, I'd be right there too. If we do nothing with this bill, I'm going to tell you that testing still is not going to go away. It is not going to go away. The state of Nebraska sets educational standards. We set the standards in mathematics and language and the social studies, and then we provide state aid. And if you're going to set a standard, you have to measure where the student is at in relationship to that standard. Now teachers have been doing that since the beginning of time. This indeed is a much more formalized process and one that a lot of teachers don't like. I didn't like it. But it's reality and it's not going away. We could say that, well, when the Washington administration changes, maybe No Child Left Behind would go away. That might be a good thing. But you know what? Even if it does, I'm not sure but now after seven years of implementing local assessments but what we might continue in Nebraska to stay down that path. I don't know that it's going away nor do I know that our constituents or, more importantly, our teachers want it to go away. What this bill does, I believe, is to simplify the process for the teachers. I know you're getting e-mails out there that are saying go for this or some that are saying our world is coming to an end. The component parts, let me run through them very quickly. I'm sure my time is about up. We're asking the State Department of Education, who has already been developing and implementing a statewide writing, to go to statewide reading and mathematics. They're probably going to use materials that teachers and ESUs have already developed for that purpose. [LB653]

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SENATOR FRIEND: One minute. [LB653]

SENATOR ADAMS: It's not like we're going to start all over again and create a new level of testing. Secondly, and what I believe to be one of the most important components for all of the other subject areas where assessments are required, what this bill simply says is, schools, you can continue to do what you've been doing; we encourage it; or you can more actively involve the ESU in your area in the clerical portfolio development, which is the part that most absorbs teachers' time. And testing those young kids? Don't imagine...I just can't believe that teachers would allow, in any school district, kids at that age to be swarmed over with tests. It is benchmarking. Where are they at, so we know how far we've gotten before we move to the next grade and the next grade. And this data that's going to be accumulated? It can be aggregated, it can be disaggregated so that we can see how schools are doing, we can see how certain... [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR ADAMS: Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Adams. (Visitors introduced.) Back to discussion on AM1379. Senator Kopplin, you are recognized. [LB653]

SENATOR KOPPLIN: Thank you, Mr. President, colleagues. I'm certainly not a proponent of comparative testing. But I'm going to support, I think, these amendments that came out of the Education Committee because it's a compromise. I said, I think, because as I started to listen to some people talk about the need for having test scores that you can compare, and parents can look at and decide how good that school is doing, you know, my support just started to drop because I fought that all the time. I don't like that. Let me give you an example. Let's all 49 of us state senators take a test in here on the constitution. Half of you are going to be below average and the rest of us are going to whisper and giggle behind your back, and the bottom five, we're actually going to point at you and laugh out loud. That's what comparative testing does. It's stupid. So we have to give an achievement test in all schools. That's part of the rules and regulations. So everybody gives the CAT scores or whatever. You get an itemized list of questions with four multiple choice on it. You know, on a bad day you ought to get 25 percent right, because you got four choices, you're going to get there. I've seen kids that score at the second percentile and I'm thinking, what did they do? Well, most of them just filled in all the blanks because they were so bored. What we're talking about with the STARS...I support STARS; I support the work the teachers have done; I support them getting down to talking to kids and looking at this testing as a way of determining where they need to go. But I know that many in this body want that score. I'm not going to convince you that you shouldn't have a comparative score. You're not going to convince me that you need one. But the bottom line, what we've done, and

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Senator Adams did a great deal of the work on it, was to keep intact what the teachers have done, and said you have done great work. We've also changed the definitions, however, so that those of you that want to make some kind of a score, can reach a score, if that's important to you. It's really not going to show you anything. We make a lot of deal about test scores, and we talk about, on the senior level, the ACT scores. And you know, they're always reported in the papers. Well, I can tell you, if you've got one group of kids with two or three just--kids that shoot the top off of that--we write the stories and we brag about them in the press. The next year we've got a group of kids that are pretty much average. We kind of hand the scores behind our back to the press and say, oh, yeah, this is what we got this year. It changes from year to year, and we're going to try to judge what schools are or are not by the tests they're giving. Senator Pahls has this all right. We give tests to figure out where kids are and where to go from there. I have real concerns about K-3 testing because, as he said, there are achievement tests out there for K-3 students. Not a good idea. They need to be tested to find out where they are,... [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR KOPPLIN: ...and then that teacher can go ahead and move them as far as he or she can get them. That's what testing is all about. It's not to make comparisons and make it look good in the press of having...how many schools have we got? Four hundred, 500 schools listed in the paper. And you can go down the line and say ah-ha, we're doing really well. Nonsense. It just doesn't matter. And if a parent wants to go and look and say, oh, that's a good school because of the test score, they're way off. Senator Hansen was right last night. There's so many other things that come into play: how many kids attend regularly, how many scholarships were given to your graduating seniors, what happened to those seniors five years down the road. That's the kind of information you need to judge whether a school did a good job or a bad job, not what a test score is. But that's where we are in this state. People want a score... [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR KOPPLIN: Thank you. [LB653]

SENATOR FRIEND: Thank you, Senator Kopplin. Senator Pahls, you are recognized. [LB653]

SENATOR PAHLS: Mr. President and members of the body, you know, I know testing is a reality and I think we need to take a look at that because there are people out there who do want to make judgments. I have no problem with that; that's life. But I think inside a lot of us need to know there are a number of types of tests that we give. As I said a little bit last night, here a kindergartner come in, we look at that kindergartner. And we don't say, day four, take out a paper and pencil test, you're going to know the

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ABC's. We find out what children need, if they need additional help in those areas. Slowly we work it throughout the school year, the sounds throughout the school year. The teacher sits down on one on one. We find the data and that data follows the child through the school. So many different types, what people are calling testing, I think is the teacher does on a regular basis. Now I will say one thing. The statewide writing test, I think, probably has improved writing throughout the state because we know these are the things that are expected and the teachers are looking at that. That has merit. It's not like that achievement test. Again, if your heart is in the achievement, take a look at where the anticipated level is for that school. Compare the school to itself. You may also want to compare it to other schools, but compare it to itself. And the part I liked about the K-3 is I can remember many years ago in high school, you know, we had a good basketball team. Rah-rah-rah, we made the newspaper. Probably we ought to have turned that around because if we can make a rah-rah-rah in the early grades, the outcomes are just going to be tremendous. I think we sort of have it backwards. Make that team in the primary grades, and you're going to find out you're going to have an even better team as you get up the scale. I do still have a couple questions about the budget part of this but I will not speak to that issue right now in this amendment. I would like to give the rest of my time to Senator Langemeier. [LB653]

SENATOR FRIEND: Senator Langemeier, you have 2 minutes and 45 seconds. [LB653]

SENATOR LANGEMEIER: Mr. President, Senator Pahls, members of the body, thank you for your time. You don't see me standing up, talking about education issues. I know where my expertise is and where it isn't. However, I want to thank Senator Adams for the discussion we've had and continued conversation on this issue. I've been corresponding with my teachers in my district, and I appreciate each and every one of them for taking the time out of their day and sending me e-mails. And in that discussion, I've been e-mailing back. I say, you know, NSEA supports this. And I got one back this morning and it says, of course NSEA would; they're advocating for teachers and this is good for teachers, but are they advocating for students? And that's what my teachers are saying, does this advocate for students? In one of their earlier conversations, she gave me an example...and I've asked these teachers to designate one person as their spokesman so I don't have to send the same e-mail to all of them, and so they've done that and I appreciate that. But she gives me a little example here. She says, you know, in the diversity in Schuyler--we've talked about diversity in Omaha, OPS; I think they've seen nothing until they come to Schuyler and you want to see diversity--she gives me an example. She says, we'll have one class that comes in that I'll teach and they'll pass the test with flying colors. The next class comes in, less of them spoke English when they started, and so we've got to get over that hurdle. And then we fail miserably with the next class the next year. And our concern is, did I become a bad teacher? Did my teaching habits change from year to year? She says no; she believes it's the knowledge the students come in... [LB653]

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SENATOR FRIEND: One minute. [LB653]

SENATOR LANGEMEIER: ...with, the variance, and that's her concern. And so I want to go on record appreciating all the feedback I've gotten from my students and the other senators that have more expertise than I in this. And so I think, in the end, I think I'm going to support this, at least on General File, so we can move it on and have more discussion. However, I do have some concerns and I'll continue to research. That's my nature, as I research things to death, will try and learn as much as I can before this comes up on Select File. Thank you, Mr. President. Thank you, Senator Pahls. [LB653]

SENATOR FRIEND: Thank you, Senator Langemeier and Senator Pahls. Senator Langemeier, you are next. [LB653]

SENATOR LANGEMEIER: Question. [LB653]

SENATOR FRIEND: Members of the Legislature, the question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Record please, Mr. Clerk. [LB653]

CLERK: 25 ayes, 0 nays, Mr. President, to cease debate. [LB653]

SENATOR FRIEND: Debate does cease. Senator Raikes, you are recognized to close on AM1379. [LB653]

SENATOR RAIKES: Thank you, Mr. President. Again, this is a clarifying amendment to the committee amendment. I much appreciate the discussion. I think this is a very important topic. I do urge your support for this amendment to the committee amendment. Thank you. [LB653]

SENATOR FRIEND: Thank you, Senator Raikes. Members, you have heard the closing on AM1379 to the Education Committee amendments, AM1319. The question is, shall AM1379 be adopted? All those in favor please signify by voting aye; all those opposed vote nay. Have you all voted who wish to? Record please, Mr. Clerk. [LB653]

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of the amendment. [LB653]

SENATOR FRIEND: AM1379 is adopted. Mr. Clerk, do you have items? [LB653]

CLERK: I do, Mr. President. Reference report of study resolutions to be inserted in the Legislative Journal. Bills read on Final Reading were presented to the Governor at 9:50 a.m. (re LB339, LB578, LB588, LB588A, LB674, LB305, and LB305A). And Enrollment and Review reports LB299 as correctly engrossed. That's all that I had, Mr. President.

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(Legislative Journal pages 1675-1686.) [LB339 LB578 LB588 LB588A LB674 LB305 LB305A LB299]

SENATOR FRIEND: Thank you, Mr. Clerk. Members, back to discussion of the Education Committee amendments, AM1319. There are senators wishing to speak. Senator Fulton, you are recognized. (Legislative Journal page 1617.) [LB653]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Raikes yield to a question? [LB653]

SENATOR FRIEND: Senator Raikes, will you yield to a question? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR FULTON: Senator Raikes and I have had some conversations off the mike, and so this is an opportunity to share what I think might be some questions that are out there already. Number one, could you clarify, Senator Raikes, the fiscal note, what the fiscal note associated with the amendment and the bill will properly be? [LB653]

SENATOR RAIKES: The process, as you know, Senator, is for, once we finish the General File discussion and, if it is advanced, there would be a fiscal note come along. I don't want to speak with any certainty about what would be there. But my belief is that the first year would be \$70,000, and that would be to collect individual student information from those providers of the national assessments that are used now in Nebraska schools. The second year, the fiscal note may be \$580,000 or thereabouts, if the progress is made to implement either a statewide reading or a statewide math test in that year. I'm taking that off of information provided by the department, so that would be my guess. I would also tell you and remind you that in LB603 we would provide additional funding to ESUs in the second year of the biennium, and it is my belief that that additional funding can be used to provide support for that statewide assessment. [LB653 LB603]

SENATOR FULTON: Thank you, Senator Raikes. That at least gives an order of magnitude. I was of the impression it was a different order of magnitude and that gets us in the ballpark anyway, so thank you for that. Secondly, to clarify NSSRS and I forget the number but the bill that's going to be amended into LB653. To be clear, this is applicable to public schools only, and is not, these standards are not applicable to nonpublic schools. Is that correct? If Senator Raikes would yield. [LB653]

SENATOR FRIEND: Pardon me, members. Senator Raikes, will you yield to a question? [LB653]

SENATOR RAIKES: Yes, yes. Yes, that's correct, Senator. It's been the practice for as

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long as I can remember that the assessment and reporting requirements apply to public schools only. And that is not changed by this proposal. [LB653]

SENATOR FULTON: Okay. And then I'd like some clarification about what we're actually creating by statute here. Are we--and I'll give you two possibilities--are we creating a standardized test, a single standardized, for example, math test for all second-graders in the state; a single standardized test that will be applied, the same test, to all second-graders throughout the state; or are we testing all second-graders in the state with a standard? Do you see the difference? [LB653]

SENATOR RAIKES: I do, Senator. And first, let me mention that we now test in fourth, eighth, and eleventh grades. And this proposal would not change that. We are changing our current system by adding, in addition to a statewide writing test, a statewide math test and a statewide reading test. Those tests would be developed in the same way, the same manner that our current assessments, locally based assessments are. That is from the bottom up. They would be based on or testing of, rather, the state standards that the State Board of Education has adopted... [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR RAIKES: ...in the relevant subject matter area. [LB653]

SENATOR FULTON: Well, are we then...so is there...the results of this legislation, if this moves forward and becomes law, will the upshot mean that we have a single test that all second-graders are going to take? Is that the intention here? Is that what's going to happen? [LB653]

SENATOR RAIKES: Senator, for fourth-graders in, say, math, there would be a statewide assessment in math much the same as we now have a statewide assessment for writing for all fourth-graders. [LB653]

SENATOR FULTON: And is that a single test? Is that the same test? I guess that's what I'm getting at here is, by standardized assessment, are we saying there will be a test which will be the test or are we saying there will be a choice of tests but it will have to meet a certain standard? [LB653]

SENATOR RAIKES: We're not specific enough to say it has to be exactly the same test. And I want to mention there quickly, ACT for example. If you take the ACT test in Nebraska, the same year, same so on and so forth... [LB653]

SENATOR FRIEND: Time. Thank you, Senator Raikes and Senator Fulton. Senator Nelson, you are recognized. [LB653]

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SENATOR NELSON: Thank you, Mr. President, members of the body. I want to thank Senator Adams for the very clear statements he makes and the explanations. I'm sort of a layperson here as far as education is concerned. But I do have a couple of questions that I think I would like to ask Senator Adams. [LB653]

SENATOR FRIEND: Senator Adams, would you yield to some questions? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR NELSON: As I look at AM1319, it seems to me like there's a lot of imperative and requirements: shall implement, shall determine, shall report. Is this mandatory? Will this become, let's put it that way, mandatory that these four different models be used? Is there anything in there that makes it mandatory for the schools? [LB653]

SENATOR ADAMS: The testing process, Senator, since its origination in 1999, has been mandatory. [LB653]

SENATOR NELSON: Has been mandatory? [LB653]

SENATOR ADAMS: Right. [LB653]

SENATOR NELSON: Well, I think you told us that the individual schools can continue to use their own assessment and their own testing. [LB653]

SENATOR ADAMS: But you're right about that, but their developing that has been in response to a mandate from the state. [LB653]

SENATOR NELSON: All right, but it was my understanding, and maybe I misunderstand, that they could continue to use that and would not have to use one of these four models. Is that wrong? [LB653]

SENATOR ADAMS: That's correct. AM1319 says to the school districts, you can continue to do what you've been doing, or we're going to give you options. The four models, we move away from. [LB653]

SENATOR NELSON: We move away from those? I didn't understand your... [LB653]

SENATOR ADAMS: In the original language there were those four models. We've done away with those four models. [LB653]

SENATOR NELSON: Okay. [LB653]

SENATOR ADAMS: In 1999, the Accountability Act that was passed required that four

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models be developed. They weren't; that's why we're here today. This language changes previous statute to get away from those four models. And really, it goes back to more of what's been going on for the last seven years. [LB653]

SENATOR NELSON: Has the statewide assessment of writing, in your view, has that been successful? Has it been useful? [LB653]

SENATOR ADAMS: Yes. Yes, I believe it has. [LB653]

SENATOR NELSON: All right. This is to provide information for the public and policymakers on the performance of public schools and to provide for comparison among Nebraska public schools in comparison. I guess I have this question, and I'm thinking of the OPS and I think Senator Langemeier and Senator Kopplin, I agree with them on this. What purpose do you see in comparing all the various schools? [LB653]

SENATOR ADAMS: If there's a value in it, and Senator Kopplin said it very, very well, every student is different, the curriculums are different, schools are different, situations are different. But in some cases, parents do demand to know. And part of the way that we can get some comparability without completely deviating from what we've done is--and I don't want to get too deeply into this--is to establish some proficiency levels that are across the board. So whatever Westside said is proficient in fourth-grade math, the proficiency level at a different school would be determined to be the same. So we could compare the proficiency levels but we're not necessarily using the same test. Now I'm getting deeper into testing than what you wanted, I'm sorry. [LB653]

SENATOR NELSON: (Laugh) Okay. I think in terms of my own district, OPS, where we have many minorities, especially Hispanic, young students who don't have great facility, if any facility at all, in the English language when they come into the system... [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR NELSON: ...it's going to take a while before they get to the point where testing is going to be of any value. And so we test them early on and find that they're not doing well. And it seems to me like this points a finger perhaps at OPS and says you aren't meeting the standards; you aren't doing what you should be in comparison with all the other districts around the state. Can you speak to that? [LB653]

SENATOR ADAMS: Well, I don't know that OPS would be compared to other districts around the state. They might be compared to those districts that are part of the learning community that are contiguous with them. And the data that's accumulated, Senator, it can be disaggregated. In other words, we could pull data out to see how the first grade at OPS did in one of their buildings and we can look at that data and say, well, based on the scores they didn't do very well. Well, let's dig deeper. How many ELL learners were

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there? How many students in that class that qualified... [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR ADAMS: ...for free and reduced lunch? We can see that. Thank you. [LB653]

SENATOR NELSON: Thank you very much, Senator. Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Nelson and Senator Adams. Senator Hansen, you are recognized. [LB653]

SENATOR HANSEN: Thank you, Mr. President, members of the body. I had a couple of questions, too, for Senator Adams, if he would yield. [LB653]

SENATOR FRIEND: Senator Adams, will you yield to a couple of questions? [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR HANSEN: Thank you, Senator Adams. A little bit ago we were talking off the mike about what we were going to do with the data that we get. And you brought up the term that I had never heard before today, and that was, if I was correct and by the time I got from there over here to write it down, disaggregate the data. [LB653]

SENATOR ADAMS: Disaggregate. [LB653]

SENATOR HANSEN: Could you explain that syndrome? (Laugh) [LB653]

SENATOR ADAMS: (Laughter) That syndrome? Well, let's see. Here's the teacher coming out of me; let me think of a good example. If I were to say in aggregate of the 49 of us in here, I want to know how all of us scored on the constitution test that Senator Kopplin was going to give us all a few moments ago. I could look at the aggregate score. Now I've got that over here in a bucket. Now what I can do is use the database to disaggregate that, to start breaking those scores down. I could say I want to know what the scores were on everyone in here under the age of 40. I want to know what the scores are--(laugh) quit it, Senator--on everybody sitting on this side of the aisle. Now in the public school system, we could break that down by English as a second language learners. We could break it down by students who qualify for free and reduced lunch. [LB653]

SENATOR HANSEN: Okay. Thank you, Senator Adams. I think that's about all I need. I just don't understand that concept, I guess. If it's not a syndrome, at least it's a concept.

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Because when we...I believe that, like Senator Harms says, you need to be able to measure something before you can judge its or measure its improvement. And I really agree with that. But when you get the numbers, get the ages of everybody in this room, you have a total of the number. You have to divide by N, or the number of the people in this room. And that is the average. When you start--I have to go back to my notes--disaggregate the data, do you want to take out the left-handers? Do you want to take out the ones with less than 40 percent hair left on their head? Those are the reasons I can't figure out why we are trying to disaggregate the data. Those are the school children that we're talking about in a certain building. They are there. How can you disaggregate them from the test numbers? How can you disaggregate them from the reporting? Senator Adams, would you yield to respond to that one more time? [LB653]

SENATOR FRIEND: Senator Adams, will you yield to a question? [LB653]

SENATOR ADAMS: Yes, I will, and I'm glad you're going to let me respond. I'm sitting over here (inaudible); I want to do that. We can use the database to disaggregate, but maybe the question you're really asking, why would we want to do that? [LB653]

SENATOR HANSEN: Right. [LB653]

SENATOR ADAMS: If I were the teachers in Senator Langemeier's school and I have a huge population of ELL learners, I certainly want to have that data disaggregated so that I can show...I want to be able to show parents in my community, I want to be able to show the State Department of Education if they ask, I want to be able to see myself how those students are doing, because they're a unique body of learners that can influence the outcome of the scores. [LB653]

SENATOR HANSEN: Is that the type of data that you would report to the state... [LB653]

SENATOR ADAMS: Yes. [LB653]

SENATOR HANSEN: ...and the state would turn around and report to the nation? [LB653]

SENATOR ADAMS: I don't know what they report to the nation but it would go into the database to be reported to the state, yes. [LB653]

SENATOR HANSEN: I just, I still don't understand the whole concept of it. Because the numbers are there, the people are there, the children are there, the people who are in this room, and you can't get rid of them. They're still here and we have a number. And that number needs to be... [LB653]

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SENATOR FRIEND: One minute. [LB653]

SENATOR HANSEN: ...divided by the number of people in the room. That number in the school needs to be divided by the number of the children in the school. That's why I cannot see how you can compare one school to another. And I assume that you're using this disaggregate concept to do that, but it looks like we're making excuses for our school system. When I look around the room, I see several members of the Education Committee in here. I'm looking for the one with the halo. But every time I look at Senator Adams, all I see is a bell curve. Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Hansen and Senator Adams. Senator Erdman, you are recognized. [LB653]

SENATOR ERDMAN: Mr. President, thank you. Senator Adams, as the resident expert, would you yield to some questions because I don't see Senator Raikes? [LB653]

SENATOR FRIEND: Senator Raikes... [LB653]

SENATOR ERDMAN: Senator Adams. I'm sorry, Mr. President. [LB653]

SENATOR FRIEND: I'm sorry, Senator Erdman. Senator Adams, will you yield? [LB653]

SENATOR ADAMS: I will. [LB653]

SENATOR ERDMAN: Just so that I'm clear, based on your last conversation with Senator Hansen, it's my understand that when those students are tested, that all data will be reported to the state. What you're talking about is when we go to study that data we'll be able to differentiate the different classes. So I think Senator Hansen is partially correct, and that is that all information will be submitted but when you go and look at what that actually tells you, you'll be able to then determine from that information that was submitted, in whole, the parts that make up the total. Is that accurate? [LB653]

SENATOR ADAMS: I believe that's accurate. That's a good question, so we clarify that...maybe we clarify that for Senator Hansen. [LB653]

SENATOR ERDMAN: Okay. I have one other question for you, Senator, and it deals with the committee amendment on page 4. And you don't have to go there, I'll just tell you what it says. Right now, the Department of Education has the authority to do state assessments and they have their process. And again, as my conversations before, we are being asked or the committee is asking us to put in statute essentially similar ideas that are either already there or what the department is doing by rule and reg. If I read in page 4, lines 13 and 14, in Section 3, we're specifically taking away the authority of the

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State Board of Education to adopt and promulgate rules and regulations to carry out the section. Do you know why that's being done? Because I'm under the impression, and understanding this unique dynamic where we have the Department of Ed that's not a code agency over here running around doing what the State Board of Education authorizes them to do or what they're allowed to do under statute. They have rule one through a million, whatever they are, rule 10, rule 11, rule 12, they have certain authorities and which they call rules to adopt governing education principles for school districts. We're removing their authority to adopt and promulgate rules. So if the argument is what we're doing is putting, and that's just in that one section. If what we're doing is putting into statute what they're already doing, if some of that is being done by rules and reg, have we connected those dots, or am I misreading this first part? Because this generally deals with the assessment plan, the confidentiality, those things that they're authorized to do, are you aware of why that language is being struck? [LB653]

SENATOR ADAMS: Senator, I'm not sure exactly why it's being struck. I can't answer your question for you. [LB653]

SENATOR ERDMAN: Okay. I'll follow up on that. Thank you, Senator Adams. One of the things that I think was missing from the list of questions that Senator Kopplin was asking, and Senator Hansen dovetailed on this last night, were all the things that you would ask before you go to a school. The logical one that Senator Kopplin missed out was how many of the kids that go to that school have ever played professional sports, right? Senator Hansen can tell you that there's a former North Platte student that plays in the major league baseball program or baseball league. I mean, there are some of those schools that have that. That's kind of lighthearted to add to that. I think one of the things that must be pointed out, I'm not necessarily opposed to LB653, I'm just trying to understand it. I understand why we need to have coordination. What you don't want to have happen, and we alluded to this on other bills this session, what you don't want to have happen is to have a district be able to move the bar so that they can attain whatever goal they want to. You want to be able to have some basis to gauge all of those districts against. The question is, what's the most fair and appropriate way to accomplish that? What are the considerations that have to be taken into effect to be able to make sure that you're not holding one school to an impossible standard which may be a reasonable one over here... [LB653]

SENATOR FRIEND: One minute. [LB653]

SENATOR ERDMAN: ...and in all due respect to Senator Avery, what we're not talking about here is what the curriculum should be. No one in here is saying we should change the Pythagorean theorem for Lincoln High School to this and York High School to this. That's not what this is about. This is about whether or not you're learning. This is assessing the learning process. If they don't know what the theorem is now, they're in

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trouble as teachers if they're teaching math. But there's a lot of emotion, there's a lot of history tied up into this. I'm getting e-mails from teachers. And with all due respect to those that have said they don't know what's going on, they do. They've been into it up to their neck since '99. They're interested in knowing how this affects them. I think the debate is appropriate. I think it's great we have individuals like Senator Adams here who have gone through this and can help us understand where we have come and an understanding of how we get to where we think we need to be if this is the public policy for the state. [LB653]

SENATOR FRIEND: Time. [LB653]

SENATOR ERDMAN: Thank you, Mr. President. [LB653]

SENATOR FRIEND: Thank you, Senator Erdman. Senator Carlson, you are recognized. [LB653]

SENATOR CARLSON: Mr. President, members of the Legislature, in sitting and listening to the debate continue, I have enjoyed it and appreciate it. And I'm going to make a few comments that come to mind. And I'm saying this is a little bit frustration morning but hopefully I can shed a little bit of light on some of this. And I'm going to respond to something that Senator Harms brought out and Senator Hansen, directly or indirectly. We want every child in Nebraska to have the opportunity for a quality education. And then our administrators and teachers do their best to try and help the students attain, achieve, earn, and complete a quality education. We have a responsibility as a body to pass legislation to make this opportunity available and possible. But part of the frustration is, there are no guarantees. We want it to be fair for every student in Nebraska. But it won't be fair for every student in Nebraska and it can't be fair for every student in Nebraska. This is America. And so I'm sitting here thinking about these concerns and Senator Harms talks about early intervention and how important that is. And it is important. Well, when does school start? School starts at birth. I think there's good evidence to say that school starts before birth. But it starts very much earlier than the day they walk through the school building or the school door for the first time. And so in the first five years of life, it isn't fair that in their first five years, children, some children, have better teachers than others: parents, grandparents, older brothers and sisters. I talked to a senator yesterday, and I won't identify who it is, but what he said was very true in regard to this. He said, when my children walked through school or into the schoolhouse for the first day, they had probably been read to 2,000 hours. That's not fair. And the fact is that those who come to kindergarten better educated because they've had better teachers and better opportunity, advance more quickly than others. It'll never be totally equitable and fair, and because of that, many times it's very frustrating. But we simply must do the best that we can for everyone. Thank you, Mr. President. [LB653]

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SENATOR FRIEND: Thank you, Senator Carlson. Mr. Clerk, items? [LB653]

CLERK: I have no items, Mr. President, other than a priority motion. Senator Cornett would move to recess until 1:30 p.m.

SENATOR FRIEND: Members, you have heard the motion to recess until 1:30 p.m. All those in favor please say aye. All those opposed say nay. Well, the ayes have it. We are in recess.

RECESS

SENATOR FLOOD PRESIDING

SPEAKER FLOOD: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence.

SENATOR AGUILAR PRESIDING

SENATOR AGUILAR: Mr. Clerk, please record.

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

SENATOR AGUILAR: Thank you, Mr. Clerk. Do you have items for the record?

CLERK: I have nothing at this time, Mr. President.

SENATOR AGUILAR: We will proceed to the items on this afternoon's agenda. Mr. Clerk.

CLERK: Mr. President, we're discussing the committee amendments to LB653. (AM1319, Legislative Journal page 1617.) [LB653]

SENATOR AGUILAR: Those wishing to speak on LB653 are Senators Wightman, Erdman, and Pahls. Senator Wightman, you are recognized. [LB653]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I'm really torn on this bill. Obviously, I have some school administrators who are not in favor of it within my district; perhaps some are. I would like to respond a little bit to what Senator Hansen says. I think in our district, probably more in the community of Lexington, I can see some major advantage from the disaggregation that Senator Adams talked about earlier. We are like Senator Langemeier in that we have a high percentage of Hispanics, possibly as high as Senator Langemeier would have. I don't know that, but we do have

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a very high percentage. And I can see some advantage to be able to pull out the figures from the state testing and see what those scores were for the minorities because I think that would help explain to the--I wouldn't call them majorities--to the Anglo population, that maybe their students are doing as well. There's always a perception there that because of the fact that teachers are spending extra time with non-English-proficient students, that perhaps the upper level of students or those who are English proficient are doing more poorly because they don't get enough of the time with the teacher. I think that it would be an advantage to pull that information out and then be able to segregate those scores--I hesitate to use the word segregate--but "differentiate" those scores. And so I can see some advantage from statewide testing. Now I know part of the problem that some of the superintendents have--and that may be in the larger schools--they're concerned over the fact that if we're going to have statewide testing, perhaps the testing ought to actually be statewide and be done through the Department of Education, as opposed to being done through the ESUs. I don't know, is Senator Adams here? I guess not. [LB653]

SENATOR AGUILAR: Senator Adams, are you here? [LB653]

SENATOR WIGHTMAN: Senator Raikes is here. [LB653]

SENATOR AGUILAR: Will you yield to a question from Senator Wightman? [LB653]

SENATOR RAIKES: Yes. [LB653]

SENATOR WIGHTMAN: Senator Raikes, I've had some feedback from some of the superintendents in my district that feel that if we're going to have statewide testing then why do we use the ESUs? And I understand part of the problem is that the Department of Education is not particularly favorable to this bill and that maybe they have not been complying with previous legislation. Is that part of the problem? [LB653]

SENATOR RAIKES: Well, Senator, it's a good question. Certainly there are a couple of different ways you can go about statewide testing. You can have a purchased test at the statewide level and implement it, more or less, what I'll describe as a top-down method: this is a test we have picked at the state level and we're going to put it down into every school district. Or you can go the way that is being proposed here whereby you develop the test sort of from the bottom up, beginning at the classroom up through the ESUs, and then proceed from there. I suspect that the difficulty some people have is a conceptual attachment to the notion that all these tests are going to be individually developed in each classroom. That certainly is still possible, but I think we've heard from Senator Adams and others that that can be very, very burdensome on teachers. [LB653]

SENATOR AGUILAR: One minute. [LB653]

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SENATOR RAIKES: And, in fact, practice suggests that that load has been lightened by collaborating through ESUs to get this job done. In some sense, what we're doing here is building upon the practice that has actually occurred: namely, collaboration through ESUs to develop tests. This would take it a step further to a statewide level. [LB653]

SENATOR WIGHTMAN: One of the concerns I have in that regard is that I am informed that some of the larger schools have very little contact with the ESUs, and that apparently includes Lexington, Kearney, Grand Island. They do most of the work that the ESU would do with the smaller schools. Is that a correct perception? [LB653]

SENATOR RAIKES: That may be correct, Senator. And if that's the case and they would prefer to operate on their own, they would not be prohibited from doing that in this bill. [LB653]

SENATOR WIGHTMAN: Okay. Thank you, Senator Raikes. Thank you, Mr. President. [LB653]

SENATOR AGUILAR: Time. Senator Pahls, you are next and you are recognized. [LB653]

SENATOR PAHLS: Mr. President, members of the body, I'm still trying to go back to this, using this as a model so maybe we could understand some of the testing. I'm going to talk about what's already in place, is this statewide reading test. There are six points that they expect children to understand: ideas; organization; voice; word choices; conventions, which would be spelling and grammar; and sentence fluency. What they do, these people who look at this...let's say I'm the child. My writing, they would rate me, let's say, on the ideas and content. They would give me some points between one and ten. On all six of those items they would rate me. So then I would understand when this...it was sent back to my classroom teacher. She would share it with me and with my parent or parents, and we'd take a look at it and say, oh, yes, you did very well on this; it looks like you need to work on organization, and organization is beginning, middle, and end. So that would be one way the teacher could also use as a way of assessing my writing ability. So something like this, I see very, very beneficial. The other parts that they're expecting in math and reading, I don't have those in front of me. But I have been assured by Senator Adams that there will be choices, and I think when they hear "choices," that should relieve some of the people's stress. Another thing too: I do think when we have K-3 information we need to be very careful how we look at that and how we evaluate that, because, remember, we're still dealing with very, very young minds. This should give us some ways of assessing the way we need to go. This is not a cure-all. To me, I see this as benchmarks: things for us to take a look at. And again, I'm saying teachers assess daily. A child walks into the classroom; they're assessing that child. Not necessarily what you think, in academics; they're looking at the whole child.

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So I think that's one thing we need to keep in mind. And when it comes to...one of the senators said, well, you are afraid of comparisons. No, I am not. I just think that is just one. Again, I say make a comparison, where you should be and where you are. Okay? If at all possible, could I have Senator Flood yield? Yes. [LB653]

SENATOR AGUILAR: Senator Flood, would you respond? [LB653]

SPEAKER FLOOD: Yes. [LB653]

SENATOR PAHLS: Senator Flood, let's say that you are in Norfolk right now and you read in the newspaper...and I'm going to let you just pick out two elementary schools in Norfolk so we can use that as a reference. Just give me two Norfolk schools. [LB653]

SPEAKER FLOOD: Lincoln Elementary and Grant Elementary. [LB653]

SENATOR PAHLS: Okay, let's say Lincoln and Grant. So let's say that if you read in the newspaper...and I don't know either one of these schools; I'm just using these because we need a name to attach. Let's say that you see Lincoln's achievement test scores are very high and Grant's are lower than what you'd like to see. What would that bring to your mind, just without much thinking? I mean what would you... [LB653]

SPEAKER FLOOD: That Lincoln's are lower than Grant's? [LB653]

SENATOR PAHLS: Yeah, right. One or the other is lower than what you think would be good. What is the thing that would come to your mind? [LB653]

SPEAKER FLOOD: Well, like a lot of people, I guess I wouldn't jump to assumptions. I'd probably wonder what was at play that...you know, I wouldn't automatically assume that there was deficiencies among teachers. I guess I would want to know what's at play to make one school lower than the other. [LB653]

SENATOR PAHLS: Okay, great. I appreciate that. That was a very good answer in my perception or perspective. This is why I'm saying we need to know what each individual school, what that school is all about. Because in that particular school, who knows? Maybe earlier in that year a number of families were brought in by...a church may have brought a number of families into that school. They have had not enough time really to become part of the Norfolk culture, but we're going to test them. So we should know that. [LB653]

SENATOR AGUILAR: One minute. [LB653]

SENATOR PAHLS: We need to know the individual school. Would Senator Synowiecki yield for a question? [LB653]

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SENATOR SYNOWIECKI: Yes. [LB653]

SENATOR PAHLS: Senator, if there were two schools in your district, there was a significant difference, what would come to your mind? [LB653]

SENATOR SYNOWIECKI: Well, just like Senator Flood responded to your question, Senator, I would want to look at it. I mean, I wouldn't have a knee-jerk assumption that one school was better than the other or that the teachers in one school are, automatically assumed, are better than the other. I would look at it in the totality of the circumstance. [LB653]

SENATOR PAHLS: Okay. Thank you. I believe a lot of people--and again, that was a good answer--a lot of people wouldn't do that. They may not realize that the district had just moved a number of resource classrooms into that building and those scores will be lower. That's why we need to know. We need a profile, as you've heard me say a number of times, of the school. People need to know what those schools look like and why they're in those situations [LB653]

SENATOR AGUILAR: Time. [LB653]

SENATOR PAHLS: Thank you. [LB653]

SENATOR AGUILAR: Thank you, Senator Pahls. Senator Erdman, you are next and recognized. [LB653]

SENATOR ERDMAN: Mr. President, would Senator Pahls yield to a question? [LB653]

SENATOR AGUILAR: Senator Pahls, would you yield? [LB653]

SENATOR PAHLS: Yes, I would. [LB653]

SENATOR ERDMAN: Senator Pahls, can you give me two high schools in the Omaha area? You pick the two. [LB653]

SENATOR PAHLS: Let's try Omaha North and Millard North. [LB653]

SENATOR ERDMAN: Omaha North, Millard North. [LB653]

SENATOR PAHLS: Yes. [LB653]

SENATOR ERDMAN: Do they have athletic programs at those two schools? [LB653]

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SENATOR PAHLS: Yes. [LB653]

SENATOR ERDMAN: Do they both play basketball? [LB653]

SENATOR PAHLS: Yes. [LB653]

SENATOR ERDMAN: Men's basketball or boys' basketball? [LB653]

SENATOR PAHLS: Yes. [LB653]

SENATOR ERDMAN: If you saw in the paper that one team beat the other team in basketball, say by 20 points, what would that tell you? [LB653]

SENATOR PAHLS: Good kids, trying and working hard. I just...see, I don't view things probably as one, two, three, as you do. That would not upset me, to be honest with you. [LB653]

SENATOR ERDMAN: Oh, I'm not making a judgment on the results. I'm just asking for your opinion, and I would encourage you not to make judgments on mine. But what would that...it would tell you what? That one team did better than the other (inaudible). [LB653]

SENATOR PAHLS: No, not necessarily. No. See, what I'm saying, it could be the refereeing, it could be where you're located. [LB653]

SENATOR ERDMAN: (Laugh) The refereeing? I'll take that personally. (Laughter) [LB653]

SENATOR PAHLS: It could be, if you're playing what school. You know that when they play, there are a lot of variables involved. See, what I'm...what you're saying to me is what I want you, when you are looking at schools, there are lots of variables when you're talking about achievement, in all aspects. Some schools, when it deals with, let's say, vandalism...I'm glad you're letting me use your time. [LB653]

SENATOR ERDMAN: Actually, I'm not but you're doing it anyways. [LB653]

SENATOR PAHLS: Okay. [LB653]

SENATOR ERDMAN: Thank you, Senator Pahls. (Laughter) [LB653]

SENATOR PAHLS: Thank you. [LB653]

SENATOR ERDMAN: Appreciate it. I think the point is not lost, however. Senator, you

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know--it's somewhat lighthearted--Senator Pahls picked Senator Flood and makes him do the hypothetical in Norfolk. I think Senator Flood's response was appropriate. You would want to know the reasons. You would want to know the details. Senator Pahls is right. If that situation happens...and maybe one of those teams is number one in the state and one of the teams was last, and the team that was last, won; you'd want to know why. You wouldn't just simply look at the results. So I think to that point he's right. But what you're also missing, as hard as this may be for Senator Pahls to realize, what you're also missing is, is that it was based on the rules that were set before them and how those rules were enforced that determined the outcome of that game. Part of that contribution was based on the activity or the effort placed by the students. Maybe it was coaching; maybe it was the.... We have a less than satisfactory gymnasium in certain areas of the state, maybe it was the environment; maybe it was the home field advantage; whatever. There are a lot of factors. I think Senator Pahls is right, but I wanted to kind of lightheartedly jab him a little bit that we don't quit keeping score in basketball games because one team loses. We seek to understand how to become better. And I think that's what he's saying, is when we're keeping the score we need to analyze the entire process, as you would if you were a coach on that team that lost. You would want to become better. That's the expectation. Nobody has the expectation that your school is going to be the worst in anything and you should let that go. Going back to the bill that's before us, specifically the amendment, as was pointed out earlier, and I have confirmed this, that the language that I asked Senator Adams about on page 4, lines 13 and 14, needs to be reinstated at some point, giving the Department of Ed the authority for rules and regs. Because what we did with the technical amendment that was adopted, was extend the date that the State Board of Education has to implement a statewide system for assessment, by a year. And, by repealing this language that takes away their authority to adopt and promulgate rules and regulations, we eliminate, I would argue, their authority to have them. And some may argue that that's okay, whether or not you agree or not with what the Department of Ed has been doing. But there are things that I think people who have come to this discussion after the committee advanced the bill, that are interested. You know, I would hope, and again this is hard to explain. Those of you that are following the Omaha Public Schools bill, say, well, the bill advanced 42-0, and, you know, I can't believe that there's discussion about something contrary now. Our process allows us to take the bill and advance it and have further discussion. If we kill this bill or if we don't advance this bill, we can't go in the back room, as they can in Congress, and just summons up a new idea, and say, here it comes again. You have to have the vehicle. [LB653]

SENATOR AGUILAR: One minute. [LB653]

SENATOR ERDMAN: So I hope that in this process that we're not just talking in abstract, as Senator Pahls and others would have us do in the bigger picture, but that we literally look at the language and apply the language appropriately, but also make sure that if we're going to make this a process that extends the existing structure, that

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that goes longer than the one year. And if it does go longer than that one year, that we make sure that the department has the authority to continue their process until, should this bill pass, the new process becomes effective. Thank you, Mr. President. [LB653]

SENATOR AGUILAR: Thank you, Senator Erdman. Your light is on next. You may continue. [LB653]

SENATOR ERDMAN: Is that the last light, Mr. President? [LB653]

SENATOR AGUILAR: Yes, it is. [LB653]

SENATOR ERDMAN: I'll waive. [LB653]

SENATOR AGUILAR: Senator Erdman waives. Senator Raikes, you're recognized to close on AM1319. [LB653]

SENATOR RAIKES: Thank you, Mr. President, members. Again, thank you for the thorough discussion; many good points made. Let me remind you that this bill is a, in a lot of respects, a middle course. We're correcting a situation in which practice is at variance with statute, and we're correcting it by permitting in statute some of the practice that has been used or in place. But we're also requiring some changes, particularly a statewide reading assessment, a statewide math assessment, bigger involvement of ESUs in the test construction procedure, and also some guidelines as to the input of data into our newly developed or newly developing student information database. I believe this is an important piece of legislation, one that we should advance, and I urge you to vote to do so. Thank you. [LB653]

SENATOR AGUILAR: Thank you, Senator Raikes. You've heard the closing on AM1319. All those in favor vote aye; those opposed vote nay. Have you all voted that care to? Senator Raikes, for what reason do you rise? [LB653]

SENATOR RAIKES: Mr. President, I would...I would request...a call of the house. [LB653]

SENATOR AGUILAR: There's been a request for a call of the house. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB653]

ASSISTANT CLERK: 29 ayes, 0 nays, to go under call, Mr. President. [LB653]

SENATOR AGUILAR: The house is under call. All unexcused senators return to the floor and record your presence. The house is under call. Senator Heidemann, Senator Gay, Senator Pedersen, Senator Hudkins, Senator Dubas. Senator Preister, Senator Chambers, the house is under call. Senator Raikes, do you wish to proceed? [LB653]

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SENATOR RAIKES: Yes, and I would accept call-ins. [LB653]

SENATOR AGUILAR: Call-ins will be accepted. [LB653]

ASSISTANT CLERK: Senator Chambers voting yes. Senator Avery voting yes. Senator Mines voting yes. [LB653]

SENATOR AGUILAR: Record, Mr. Clerk. [LB653]

ASSISTANT CLERK: 27 ayes, 4 nays, to cease debate (sic), Mr. President. [LB653]

SENATOR AGUILAR: The amendment is adopted. I do raise the call. (Visitors introduced.) We now consider advancement to E&R Initial of LB653. Senator Raikes. [LB653]

SENATOR RAIKES: Thank you, Mr. President, members. Thank you for your support on the committee amendment, and I hope I can count on it for the advancement of the bill. Thank you. [LB653]

SENATOR AGUILAR: You've heard the closing on LB653. All those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB653]

CLERK: 26 ayes, 5 nays, on the advancement. [LB653]

SENATOR AGUILAR: LB653 is advanced. Mr. Clerk. [LB653]

CLERK: Mr. President, the next bill, LB265. (Read title.) The bill was introduced January 10, Business and Labor, General File. There are committee amendments pending. (AM863, Legislative Journal page 1073.) [LB265]

SENATOR AGUILAR: Senator Cornett, you're recognized to open on LB265. [LB265]

SENATOR CORNETT: Thank you, Mr. President and members of the body. LB265 was introduced by the Business and Labor Committee at the request of the Department of Labor. LB265, through the committee amendments, would also incorporate provisions of LB209, LB226, LB432, and LB543. Because of the addition of several other amendments to LB265, the committee amendments become the bill and, for the sake of time, I'm going to go ahead and discuss those amendments. Thank you. Sections 2 through 11 of AM863 are the provisions of LB265, which make various changes to the unemployment insurance program, many of which are housekeeping measures. The most important provisions from LB265, in terms of the need for passage, are contained in Sections 5 and 6 of the committee amendment. These sections provide the federally

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mandated conformity requirements regarding the confidentiality of information obtained by the department in the administration of Nebraska's Employment Security Law. The primary requirement that we need to adopt is a criminal penalty for unauthorized redisclosures of confidential U.I. information. LB265 also contains the following measures. It will close a loophole so that the employers paying their employees in commodity certificates not intended for personal consumption will still be required to provide unemployment coverage for their workers. The Commissioner of Labor would be authorized to charge a fee for returned checks. Because of the improved condition of the Unemployment Trust Fund, the bill removes the authority to impose an emergency solvency surcharge, and strikes the cap at the maximum weekly benefit. To improve the business climate, those employers with the best reserve account ratios would be able to receive a zero percent tax bracket. The bill also addresses potential rate manipulation by positive balance employers who artificially move employees among various related companies in order to achieve lower rates than they intended. The department would be authorized to garnish wages to collect unemployment overpayments which were attained through fraud. Finally, employers who willfully refuse to pay unemployment taxes could be held personally liable. Sections 12 through 16 deal with the Boiler Inspection Act from LB226. LB226 has already been signed into law, so I will have an amendment to follow, striking these sections from the bill. Section 1, and 17 through 25, are the provisions of LB432, which was introduced by Senator Friend. LB432 would rename the Act Prohibiting Unjust Discrimination in Employment, to the Age Discrimination in Employment Act. The act would be expanded to include all individuals over the age of 40, and change the way in which the act is applicable to employment agencies. The process for filing a complaint would also be codified. AM863 also contains provisions of LB209, which is another committee bill introduced on behalf of the Department of Labor. LB209 would merge the Amusement Ride Fund, the Elevator Inspection Fund, and the Conveyance Safety Fund into one cash fund called the Mechanical Safety Inspection Fund. All three of these programs are administered by the Department of Labor. They have the same inspectors and administrative staff. LB209 would simply allow the department to use one checking account instead of three for these three areas. Sections 26 through 34 contain the provisions from LB543, originally introduced by Senator Synowiecki. These sections would merge the elevator code into the new Conveyance Safety Act adopted last year. For those of you who were in the body last year, you may remember the Conveyance Safety Act governs the safety and inspection requirements for elevators in the three counties that have more than 100,000 inhabitants. The old elevator code applies to the rest of the state. LB543 would merge the two acts into the Conveyance Safety Act. As written, all counties with less than 100,000 inhabitants would be exempt from the inspections on private residences, and the licensing requirements for mechanics would not apply to greater Nebraska. I'd like to point out that each of these bills were moved out of committee with no opposing votes. I'd be happy to try and answer any questions that you might have. The provisions of LB543 and LB432 are substantively the same as they were when they were originally introduced, so I'm sure Senators Synowiecki and Friend would also be willing to answer

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questions pertaining to their bills that are incorporated. Thank you. [LB265 LB209 LB226 LB432 LB543]

SENATOR AGUILAR: You've heard the opening on AM863. Mr. Clerk. [LB265]

CLERK: Mr. President, Senator Cornett would move to amend with AM1282. (Legislative Journal page 1663.) [LB265]

SENATOR AGUILAR: Senator Cornett, you're recognized to open. [LB265]

SENATOR CORNETT: Thank you, Mr. President, members of the body. As I mentioned earlier, this amendment strikes the provisions of LB226 from the committee amendment. LB226 was also a consent calendar item and has already been signed into law, so we are no longer in need of it in this bill. This amendment also changes the operative date for the unemployment insurance provisions of LB265 to July 1, 2007. There are a number of items within those sections that would improve our business climate rating. In order for those to be considered in the ranking, they need to be in effect for the entire fiscal year. I would urge the body to adopt AM1282, and thank you. [LB265 LB226]

SENATOR AGUILAR: Thank you, Senator Cornett. You've heard the opening on AM1282. Mr. Clerk, do you have anything else on the bill? There are no other lights on. You are recognized to close, Senator Cornett. Senator Cornett waives closing. The question is, shall AM1282 be adopted? Those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB265]

CLERK: 32 ayes, 0 nays, Mr. President, on the amendment to the amendment. [LB265]

SENATOR AGUILAR: The amendment is adopted. We're now back to the committee amendments. There are no lights on, Senator Cornett. You're recognized to close. [LB265]

SENATOR CORNETT: Thank you very much, Mr. President, members of the body. I urge the body to support the passage of the committee amendments to LB265. They do become the bill. Thank you very much. [LB265]

SENATOR AGUILAR: You've heard the close on AM863, the committee amendments. Those in favor vote aye; those opposed vote nay. Have you all voted that care to? Record, Mr. Clerk. [LB265]

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB265]

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SENATOR AGUILAR: The committee amendments are adopted. [LB265]

CLERK: I have nothing further on the bill, Mr. President. [LB265]

SENATOR AGUILAR: Senator Cornett, you are recognized to close on LB265. [LB265]

SENATOR CORNETT: Thank you, Mr. President and members of the body. LB265 contains provisions that would bring Nebraska into conformity with federal law. Failure to comply with these new confidentiality provisions in the bill would jeopardize over \$200 million in federal tax credits for Nebraska employers, and \$14 million in administrative grant funds received by the Department of Labor. The committee chose these bills to be included in our second priority bill because they were important. As I stated earlier, there were no opponents at each of their hearings, and they were voted out with no opposing votes. Thank you for your time and I would ask the body to adopt LB265. [LB265]

SENATOR AGUILAR: You've heard the closing on LB265. Those in favor of advancement vote aye; those opposed vote nay. Record, Mr. Clerk. [LB265]

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to advance LB265. [LB265]

SENATOR AGUILAR: LB265 is advanced. Mr. Clerk. [LB265]

CLERK: Mr. President, the next bill, LB475, is a bill by Senator Chambers. (Read title.) The bill was introduced on January 17, referred to the Judiciary Committee, advanced to General File. There are committee amendments pending, Mr. President. (AM399, Legislative Journal page 674.) [LB475]

SENATOR AGUILAR: Senator Chambers, you're recognized to open on LB475. [LB475]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is a bill that is going to touch people in different ways. There are some who hold to outmoded notions that a person is gay or lesbian or, to use the general term, homosexual by choice or by training. That is not the case in my opinion. The purpose of this bill is to carry out the stated intent of the state of Nebraska and the policy expressed. I handed out the statement of intent so that you can see what I presented to the committee. It's a thumbnail sketch of the bill and the approach that is being taken. There are two attachments. One relates to the standards that judges must adhere to based on the Nebraska Code of Judicial Conduct, which governs whatever judges do. A violation of this code can subject a judge to something as mild as a reprimand or as serious as removal from the bench. One of the things stated in Canon 3...that's C-a-n-o-n. These canons are the principles according to which judges function. The

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term "canon" is like another way of saying paragraph or section. So Canon 3 says, in boldface, "A judge shall perform the duties of judicial office impartially and diligently." There are five subdivisions. The fifth one says, "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit..." any court employees, lawyers, or whoever comes before the court to engage in such bias or prejudice. It is not a secret that this society is very hostile toward people who appear different, and to most people nothing and nobody is more different from a person who is homosexual. That is one who prefers a member of his or her own sex to a member of the opposite sex. What people do in their private life, what people do in their bedrooms, in motel rooms, in hotel rooms, is nobody's business but theirs, in my view. When Americans have so much time to put their eyes to other people's keyholes where their bedroom is concerned, put their ear against the bedroom wall and their noses in people's crotches where their genitalia are located, because they are so obsessed with that, they need to get a life. What I am concerned about is having every person entitled to employment so that he or she can provide the necessities of life for himself, herself, anybody else who may be dependent upon that person. Sexual orientation in Nebraska is very ugly, and some of it manifested itself during the committee hearing. Some of those notions will be expressed on this floor. Some people will be very self-righteous and point the finger, but three will be pointing back at them on other things. When you find a group in America which, in the opinion of many people if not most people, is scorned, that group will be marked for scapegoating. The late Jerry Falwell said that the planes probably crashed into the towers and tornadoes come because America tolerates gay men and lesbian women. Another Christian stalwart named Pat Robertson expressed similar views. So when a bedrock doctrine of a religion is based on hatred of a group, that religion is marked for what it is. When people hide behind religion, I think it converts the whole concept of religion into a dirty thing. Fortunately for me, all I have to do is be aware that a creature is a human being and then every right available to every other human being should be accorded to them. When the state has a policy against discriminating against people, when they place themselves in a voluntary relationship such as marriage, when they go into a voluntary lifestyle such as religion, those are the last people who ought to stand on this floor and pontificate and say people choose to do this, yet their religion is what they choose to do but they want to be protected against discrimination based on their religion. So we're going to have an opportunity to explore a lot of areas that will hit people really where they live. In addition to the Code of Judicial Conduct prohibiting judges from discriminating or manifesting bias or prejudice based on a person's sexual orientation, there are several statutory references existing right now, and I've handed them out to you, which aim at protecting people against mistreatment based on sexual orientation, discrimination based on sexual orientation. I am not one to rely on statistics. I am not one to tell you what is going on in other states, unless you ask me and I know the answer. But in anticipating what people might ask, and I don't have a precise

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number, there are states, numerous cities, many companies, especially among the Fortune 500, which allow no discrimination based on sexual orientation. There are companies which have expressed a reluctance to come to Nebraska because of the attitude they have toward people who are gay or lesbian. Many of their employees are of that persuasion. And to come to a place where there is such outright hatred and contempt that it is enshrined in the constitution, and the so-called and supposed representatives of the people take a position that discrimination should be allowed, those companies have no interest in subjecting their employees to an environment such as that. What I want to do is try to get the Legislature, by 25 votes at least, to say that the policy of this state, which is aimed at ensuring to every person the right to earn an honest living, and a person will not be deprived of that right based on his or her sexual orientation. In Nebraska you can be denied a job and you have no recourse. You can have a job which you've held for decades and be fired based on sexual orientation or perceived sexual orientation, and you have no recourse. You can be denied advancement... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: ...or promotion based on sexual orientation or perceived sexual orientation. I don't fear homosexual men or lesbian women. I don't fear heterosexual men or heterosexual women. But what I do not like are people of any stripe who are going to look at somebody based on what he or she is, and say, you're not quite human. And even though it is crystal-clear that you are discriminated against and denied opportunities which are basic to a society, and I sit back and let that happen without doing something, I cannot do it. That is my opening, Mr. President. Thank you. [LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. (Visitors introduced.) Mr. Clerk. Senator Ashford, you are recognized to open on the committee amendments. [LB475]

SENATOR ASHFORD: Thank you, Mr. President, and I have the amendment, committee amendments AM399 to the bill. I'm going to just read it, it's short, and rather than try to explain it. It's an important amendment. It's an amendment that the committee felt was important because it exempts religious institutions from the bill, but I'm just going to go ahead and read it. It indicates that this act "shall not apply to any bona fide religious organization, which organization shall include any religious corporation, organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious corporation, organization, association, or society." This amendment was added by the committee at, I believe, am I correct, Senator Chambers, that you agreed to it? Is that correct? So I think what this does is, at least for me and other...I can't speak for other members of the committee, makes this a better bill. My experience on this issue dates back to the years I was in the Legislature and we had a bill involving hate crimes, or I

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did, and that bill passed the Legislature with sexual orientation as part of that bill. And those of you who...I mean all of us remember, I'm sure, the well-publicized instances where individuals who are gay were killed or severely injured as a direct result of their sexual orientation. And I was proud of the Legislature for the adoption of the hate crimes bill and also for the inclusion of sexual orientation. The loss of a job or the inability to obtain a job because of sexual orientation, to me, as long as religious institutions are not included, and I think there are many, many issues involved there--obviously, we all know what those are--is an important measure. We are a free society. We are a society that is founded on our freedom: our freedom of religion, our freedom to believe what we so wish. And it is fundamental to me that to deny someone or to injure someone physically because of their sexual orientation is so foreign to our values in America as to be self-explanatory. And though I will agree that the issues involved in employment may be somewhat different and not quite as obvious to some, the injury that results from the inability to work, to earn a living, is also fundamental to the American system. To deny that to any person because of their sex, their religion, their color, their ethnicity, is foreign to a free society in my view, at least the way I look at it. All of us must come to our own conclusion on this, obviously, but to me it is fundamental to how I view the world. I urge the adoption of AM399. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Ashford. Those wishing to speak on AM399 are Senators Engel, Fulton, Carlson, Schimek, Chambers, Erdman, Kruse, and Avery. Senator Engel, you are recognized. [LB475]

SENATOR ENGEL: Mr. President, members of the body, I certainly approve of the amendment to the bill. I do not approve the bill itself, and I'll tell you why. I do not...I do not appreciate anybody bashing, bullying, or doing physical harm to people because they're gay. Those same people who would do it to a gay person would do it to anybody that they thought they could do it to. It could be a person of color. It could be a weak person. It could be a female. It could be whatever, even a child. Those people are cowards in their own right, and mostly they go around in packs doing that. And those are what I call real hate crimes and I think they do have...our hate laws do take care of that. And if we're going to do anything here, I think if those hate laws aren't taking care of it, we should enhance those hate laws to make sure that those people pay a dear price for taking advantage of those of gay orientation and/or anybody of a weak nature to where they pick on them. Because those people, personally, are not too far away from the animal kingdom and I think they should be punished. So that's not why I...I do oppose that happening, but I do believe we have laws on the books to protect them. Also, as far as gay people themselves, I have nothing against gay people. I had a nephew who was gay. He died of AIDS several years ago, before they came up with this medication that's keeping many of them alive. That didn't keep us from loving him. I didn't particularly personally approve of his lifestyle, but that was what he chose, or some people say that's the way he's oriented. Either way, either way, I don't believe in

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that type of discrimination. But the only problem I have is by giving them minority status then I believe they're taking away a lot of the rights that the rest of us have like as an employer. Now the few people I've employed in my life, I've never asked them whether they're gay or anything like that, and I admit maybe they were, maybe they weren't. I've always felt most of them probably weren't, but it didn't make any difference to me. However, if they were not performing in their duties and I decided to get rid of them, not because of their sexual orientation or anything else, then they could come up with this discrimination card, and that's what concerns me. I think people should be hired and fired on their ability, not on their race, creed, sexual orientation or whatever, and that is the part of this that concerns me, not the...again, I have nothing against gay people. I have many people that I know that happen to be gay, and I appreciate their talents, I appreciate the people. And I don't run in some of the same packs they do, but...well, I really do, because there are a lot of gay people in society that are in the business area, they're workers, they're laborers. When I was in the service, there was one of the great big, toughest sergeants we had happened to be gay, and that's so be it. That's the way it was. But I...like again, I say I do not have anything against them. I don't approve of their lifestyle, but that's their business, it's not mine. It's their persuasion and that's the way they are, that's the way they want to be. That's fine with me. However, I don't believe we should give them special minority status because I think it's going to infringe upon the rights of us as employers to hire people for their abilities and not for their...and be able to fire them for the same reason and not because of sexual orientation. So with that, I return the rest of my time to the Chair. [LB475]

SENATOR AGUILAR: Thank you, Senator Engel. Next up is Senator Fulton, followed by Senator Carlson. Senator Fulton, you are recognized. [LB475]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. I do support AM399. I think that does improve the bill. I am adamantly opposed to LB475, however, and I want to do this reasonably. Track with me, if you will. Throughout this bill the words "Nebraska Fair Employment Practice" are stricken. In fact, if you read through the bill, that's the conspicuous thing is that that's pretty much the only thing that happens throughout the bill. The words that are substituted are "Employment Nondiscrimination Act." Why is that important? It exists now, fair employment. It will exist, if this were to pass, as nondiscrimination. The nature of the act is changed. Fair employment is a positive; nondiscrimination is a negative. We've talked about that on other bills. Why is that so important here? Positive, to posit something, is universal; it's inclusive. To negate necessitates singularity, identity. And so when we do this we will have to pay better...more close attention to the things that are being outlined. Now there's a list that is given, page 5 of the bill and throughout the bill, okay?

"Notwithstanding any other law or laws heretofore enacted, all cities and villages in this state shall have the power by ordinance to define, regulate, suppress, and prevent discrimination," prevent discrimination, "on the basis of race, color, creed, religion, ancestry..." etcetera. This bill would add sexual orientation to that list. These things that

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are listed have a class status. They are protected within statute presently. Sexual orientation will become another protected class. It will be elevated to the level of race, religion, creed. And so this is not an insignificant thing. If we were to pass LB475, we are elevating...we are creating a new protected class, so it's very important what we do...that we recognize this isn't simply about who we discriminate against or who we don't discriminate against. This is, by policy, creating a new protected class. The third point: That new protected class which we are creating, a class based on sexual orientation, has no definition in this bill. Now I was up late last night looking, talking about this bill and whether other bills have been introduced in the past like this. To my understanding, other bills that have been introduced in the past do have a definition of what sexual orientation is. Why is that important? Let me give you an example. If we pass LB475, we create a new protected class, that of sexual orientation. How far do we take sexual orientation? I will give you an example that, while some may consider it extreme, is illustrative of why...illustrative, sorry, of why sexual orientation ought to have some kind of definition. Let's take, for instance, there's a group called NAMBLA. It's called the North American Man/Boy Love Association. In my opinion, it's a disgusting group. It exists and it's had a lot of press; that's how I even know about this group. What if there is an individual whose sexual orientation puts him in that category: man/boy love? [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR FULTON: And he applies for a job at one of our public schools to teach young children. Is that not cause for concern? Is it unreasonable to think that we shouldn't have someone who is an adherent of the North American Man/Boy Love Association teaching in our public schools with access to young boys? Now one could say, ah, but that would be illegal: there are statutes which prohibit statutory rape. One cannot have those relations with minors. But perhaps he will say, well, I'm a law-abiding citizen, I don't break the law, but I am oriented this way. Recall the words here are sexual orientation. I don't actually do this. I'm just inclined that way. I have a predilection, a preference, an orientation. [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR FULTON: Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Senator Carlson, you are next, followed by Senator Schimek, and you are recognized, Senator Carlson. [LB475]

SENATOR CARLSON: Mr. President and members of the Legislature, I don't see Senator Ashford. If he can hear this and would return, I'd like to address some questions to him, and until such time I would like to address Senator Chambers. [LB475]

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SENATOR AGUILAR: Senator Chambers, would you yield to a question? [LB475]

SENATOR CHAMBERS: Yes, I will, or several. [LB475]

SENATOR CARLSON: Thank you, Senator Chambers. In the time that I've been in the Legislature, I believe, and I hope I'm correct, you have become my friend. I'm going to ask you, do you believe I have become your friend? [LB475]

SENATOR CHAMBERS: That remains to be seen after today. (Laughter) [LB475]

SENATOR CARLSON: That's what I was afraid of. And with that answer, I think that is my answer, that...the second question is--you don't know this and I don't know this--have you and I been on opposite sides on votes in these four months, many times? [LB475]

SENATOR CHAMBERS: I know we've been on opposite side sometimes, but I really don't keep count and I really mean that. [LB475]

SENATOR CARLSON: Okay. And we'll probably be on the opposite side on this and I'm going to still consider you my friend. But I have a question about the amendment. Do you approve of the amendment? [LB475]

SENATOR CHAMBERS: Yes. [LB475]

SENATOR CARLSON: Why? [LB475]

SENATOR CHAMBERS: Because it has been something that was in the bill and it has a bearing on people's religious activity. The only time this amendment would come into play, and let me get it so that I won't misstate it, but if you've read the amendment you see where it says that there has to be a...all right. If it's a "bona fide religious organization, which organization shall include any religious corporation, organization, association, or society or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious corporation, organization, association or society." I'm not interested in messing with anybody's religion, and I deliberately excluded this language when I had the bill drafted, knowing it would bring Mr. Cunningham before the committee. He would offer the amendment and I would ask him, Mr. Cunningham, if that amendment is adopted, would the Catholic Conference remove any opposition it had to the bill? He said, yes. I said, I wanted the committee members to hear that from you. And I had a version of the amendment that we have put in the bill, read it to him and said, would that meet with your satisfaction? He said, that's just what I want. I said, well, you've got it and I've got your acknowledgement here that the Catholic Church is no longer opposed to the bill. He said, that's right. So that was my strategy,

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but it had always been a part of the bill. [LB475]

SENATOR CARLSON: Okay. I was going to follow up with the idea that I've told you in the past several times that you are consistent on principle, and I guess I look at this, and if this is the right thing across the board then why would the church be excluded? But I accept and appreciate your answer. And I guess, with that, I'll wait until Senator Ashford comes back and I'll press my light again. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Carlson, Senator Chambers. Next up is Senator Schimek, followed by Senator Chambers. Senator Schimek, you are recognized. [LB475]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I can't remember how many times we've had this or similar bills before us, but it has been a number of times, and we've had a number of discussions on it, and every year I hope and think that maybe this will be the year that we will be able to pass it. I think it's an important bill. I think it says a lot about the character of our state. I don't know why anybody should be discriminated against in the workplace. I think that there are some classes of people that need the protection. That's why we have those listed in state statute already. The state of Nebraska hires gay and lesbian people, no questions asked. I don't know why any business couldn't do that. What I want to do is I want to take apart, just a little bit, an e-mail that I have received numerous times in the last day or so. The e-mails all have exactly the same message, and I don't think the message is very persuasive. There are three things in that message, and the first part of the message says that LB475 would tie the hands of employers for whom character and sexual behavior are meaningful factors in their hiring decisions. Does this mean that people who have a homosexual persuasion don't have any character; that they're bad apples; that they're bad actors? That's what one would probably be able to gather from this. Are the people who might be hired under this provision under this bill going to be exhibiting sexual behavior in the workplace? Why would they? Why would they, any more than a heterosexual person would exhibit in the workplace? And maybe sometimes that happens, I don't know. But I think that the reasons for being against LB475 are very argumentative. The second part of the e-mail says that LB475 would force some religious entities to comply with the legislation, and again I think that's been addressed in the amendment. The third part of the e-mail says LB475 would place the state's stamp of approval on behaviors that are demonstrably harmful to the physical and emotional health of individuals and cultures. Well, I would argue that being discriminated against in the workplace or anywhere else is harmful to the physical and emotional health of that person. We know of many individuals who have spent a lifetime trying to cover their sexual orientation, and eventually, either not being successful and coming out, as they say, or suffering some kind of an emotional breakdown, committing suicide, whatever. I just think these are very poor reasons given to me to oppose this bill, and I wish and I hope that you can think about this in terms of what you would do if

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your son or your daughter came to you and said, I have something to tell you and it's important to me, and they told you, he or she told you, that he or she was gay or lesbian. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR SCHIMEK: I don't know how many of you would be changed in outlook by this, those of you who think this would be a bad bill, but I would certainly want my son or daughter to be accepted in society and to be able to get a job to take care of himself or herself. I probably won't talk many times on this particular bill, but I wanted it stated for the record how I felt about it. I think it's a very important bill. I think it would really do a lot for a certain group of people that are very discriminated against, and I don't think it would cost you or me or those employers much at all to do it and to implement it. Thank you very much. [LB475]

SENATOR AGUILAR: Thank you, Senator Schimek. Senator Chambers, you're next, followed by Senator Erdman. [LB475]

SENATOR CHAMBERS: Mr. President, members of the Legislature, as a member of one of these protected groups, it always causes me to have a very uncomfortable feeling when somebody who's a member of a protected group, as is Senator Fulton, say that others don't deserve the protection. He's protected twice. He's a Catholic and he's a Filipino. And here is one like me. And do you know why I am so sensitive to other people's hurt? Because I know what it does to me, I know what it does to my children, and I know what it does when people look at you a certain way but they cannot treat you that way because of the law. And when we have people who have their protection, pontificating like the worst racists, bigots and homophobes, it tells me that they've lost their way. But they are comfortable in receiving a kind of protection they will deny to others. I have something I'm going to read. I wrote it. It's called "Homophobe's Homily," and I dedicate it to Senator Fulton, Senator...all the others who feel that way, but especially to those who are like me, already members of a protected class and want to deny protection to others. "They're everywhere! They're everywhere! / They walk our streets. They breathe our air. / They're under beds and on the stair, / Like lurking monsters in their lair. / They're on the ships. They're in the air. / They're working here. They're working there. / On railroads, taking travelers' fare, / Or our cars and trucks they do repair. / They serve us: doctors giving care. / They're lawyers, seeking process fair. / The garb of nuns and priests they wear. / They've infiltrated everywhere. / They've sat in the electric chair / And judges were who sent them there. / They may have long, short, or no hair; / Be homeless, or have cash to spare. / They may be single or a pair. / Some play lion; some the hare. / They like their meat well-done or rare / And some, for veggies only care. / They play whist, bridge and solitaire. / No scarlet letter do they wear; / No mark of Cain in forehead bear. / The moral giants ooze despair / Because they cannot lay them bare, / Nor snag them in escape-proof snare. / To turn our backs,

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we do not dare, / So on your guard, beware, take care. / They're everywhere! They're everywhere! / Who are they, these fearsome others? / They're our very own sisters and brothers!" Who is my sister and who is my brother? There will be people who look at Senator Fulton, after something like West Virginia or Virginia Tech; he looks oriental. And I told him, if you run into things because of that attitude that's being shown, talk to me about it. We need people who are willing to stand for those who cannot stand for themselves. We have the power to make this a society where people have the opportunity to make a decent living. And for the record, I'm going to read what that policy is. Section 81-1356(1): Equal employment opportunity means the right of all persons to work and to advance on the basis of merit and ability without regard to race, color, religion, national origin, age, sex, marital status, or physical or mental disability. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: And to this sexual orientation would be added. Now the policy of the state is as follows, found in Section 48-1101: It is the policy of this state to foster the employment of all employable persons on the basis of merit regardless of their race, color, religion, sex, disability, marital status, or national origin and to safeguard their right to obtain and hold employment without discrimination. Denying equal opportunity for employment is contrary to the principles of freedom and is a burden on the objectives of the public policy of this state. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Erdman, you're next, followed by Senator Kruse. [LB475]

SENATOR ERDMAN: Thank you, Mr. President. Would Senator Chambers yield to some questions? [LB475]

SENATOR AGUILAR: Senator Chambers, would you yield to a question? [LB475]

SENATOR CHAMBERS: Yes, some he said, and I will. [LB475]

SENATOR ERDMAN: How many is some, Senator? [LB475]

SENATOR CHAMBERS: Say it again. [LB475]

SENATOR ERDMAN: What number would be some? [LB475]

SENATOR CHAMBERS: Well, that's an indefinite number, so it could be from one to however many you can get in before your time runs out. [LB475]

SENATOR ERDMAN: Okay. I just wanted to make sure I knew the constraints. We had

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talked briefly. Before we get to the actual topic of the bill, the majority of the language that's being amended or the majority of the law stays the same. The reason that there is so many pages in the bill is because the name of the act is being renamed. Is that accurate? [LB475]

SENATOR CHAMBERS: Yes, and there are some places where the term "marital status" is included in the listing where it does not currently exist in law. [LB475]

SENATOR ERDMAN: Correct. And the purpose of the name change would be...what would be the purpose of the name change of the act? [LB475]

SENATOR CHAMBERS: Because it would more accurately reflect what these types of bills do. [LB475]

SENATOR ERDMAN: Okay. And the purpose of the act now, as I understand it, deals specifically with employment and based on the categories or the classes that are specifically identified in the act currently. Is that accurate? [LB475]

SENATOR CHAMBERS: Yes, they are...they have a ready-made protection under the law against discrimination based on being a member of those classes or categories. [LB475]

SENATOR ERDMAN: And in the event that an individual finds themselves in one of those classes or is a member of one of those classes, probably more appropriately stated, and would seek remedy under the law, what is that process? [LB475]

SENATOR CHAMBERS: Well, you could first go to the Equal Employment Opportunity Commission and you'd have to establish that the reason for your termination was based on your being a member of that protected class. But if an employer can give any other reason, then you lose that protection because the termination was not based on your membership in one of those groups. [LB475]

SENATOR ERDMAN: And at the same point then, if an individual doesn't find themselves as a...is not a...doesn't find themselves but rather is not a member of one of those classes that is specifically designated in statute and would seek to use this act for a remedy, they would have the same result essentially as somebody who was terminated for just cause. Is that a fair reflection of this practice? [LB475]

SENATOR CHAMBERS: Let me see if...you're...are you asking me that if a person is not a member of one of these classes, the protections that are given to these classes would not be applied to that person? [LB475]

SENATOR ERDMAN: Right, they don't extend to that person. [LB475]

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SENATOR CHAMBERS: That's true. [LB475]

SENATOR ERDMAN: And so if you were... [LB475]

SENATOR CHAMBERS: A white male. [LB475]

SENATOR ERDMAN: Yeah, under the age of 40 who is not a member of a religious organization or didn't profess any religious belief, I guess, and that would be one of the protections, they would have no protection, as an example. [LB475]

SENATOR CHAMBERS: Not that...not based... [LB475]

SENATOR ERDMAN: Not specifically. [LB475]

SENATOR CHAMBERS: ...on being a member of the white male establishment. [LB475]

SENATOR ERDMAN: Right. [LB475]

SENATOR CHAMBERS: But if you were fired for a reason that is not legitimate, then you would file your action based on that, and there might be some federal protections that you would have also. [LB475]

SENATOR ERDMAN: And would that, that recourse, would that be handled directly with the employer, whether it be through the same process, through the same equal opportunity process that's outlined in this act? [LB475]

SENATOR CHAMBERS: You can go through the Equal Opportunity Commission, but if certain types of discrimination are carried on, for example, by a political subdivision, you wouldn't have to exhaust the remedy found in this act. You could go straight into court... [LB475]

SENATOR ERDMAN: Right. [LB475]

SENATOR CHAMBERS: ...or you could file a federal action. And that's not based on merely being a member of one of these protected classes. [LB475]

SENATOR ERDMAN: Okay. And the last question that I would have is, going back to the name change again, and I think this was mentioned earlier, maybe it was Senator Fulton, it's simply a reflection of...it's simply an updating of the name in your attempt to better reflect what you're trying to accomplish should this bill pass, and it doesn't...there's no...there's nothing that is in law now that hinges upon the name other

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than the fact that that's just what... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR ERDMAN: ...the name is referenced as? [LB475]

SENATOR CHAMBERS: Right. When a person reads the bill, they know that it's prohibiting discrimination. It is not affirmatively saying you have to hire this person or you have to hire that person, otherwise you're not being fair. It is saying that you may not discriminate against this person based on his or her membership in one of these groups. [LB475]

SENATOR ERDMAN: And I think that's accurate. You cannot...you shall not...the Nondiscrimination Act applies to those individuals or those groups or classes that are listed in the act. [LB475]

SENATOR CHAMBERS: Right. [LB475]

SENATOR ERDMAN: Not everyone; just those listed in the act. [LB475]

SENATOR CHAMBERS: Right. [LB475]

SENATOR ERDMAN: Okay. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Erdman. Senator Kruse, you are next and recognized. [LB475]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I stand in support of the amendment and in strong support of the bill. Speaking first to the amendment, since it is a religious matter, I have struggled with this. I am a member of a church which has open membership. Everybody is welcome. In that process of discussing that with a variety of congregations, I've tried to imagine a church that would say you're not welcome here for any given reason. Well, you don't have to imagine it too much because you've found some that would take that position, but it's interesting it's never for some moral fault, like the person just got back from prison or someplace. It's for things that are projected from one's own personality that we mirror and see the hate. I say with others that we are talking about our own character here. It is a question of accepting into our society, not into our home. It's not a question of agreeing with somebody else's statements, and certainly not a question of trying to guess what their lifestyle might be. I smiled when someone asked a few minutes ago how do you define homosexual orientation. Well, 20 years ago I taught courses on that all across Nebraska and never did define it. I can't define heterosexual orientation. It's important to notice here, and it's been mentioned, but it needs to underline in our feelings. Our feelings when they are there are about

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sexual behavior, hetero or homosexual. We have feelings. I have feelings about misuse of sexuality and of abusing somebody else because of their sex, male or female, by either sex. That is not what we're talking about here because that's not part of the definition and it cannot be. What we are talking about is the appearance of being gay. And there are persons who claim to be quite expert at that, and they therefore can refuse to rent to somebody, some fellow who's got fine bones, a marked walk, and a different voice box structure. Now a different way of walking, a different way of being connected in the bones, and the voice box structure are often signs of being gay, and you put that together as a package and then you're pretty sure that you know what this person is. We must say to one another because that's not the basis on which you judge or fire somebody or judge who they are. Is it an emotional issue? Yes. I commend the group for the rational talk that's gone on here. In teaching those classes years ago I always had persons who got very agitated within the group and would follow through with them later. Most of the men who became agitated on this subject were gay. They had absorbed so much abuse and they were so afraid of it, that this was their protection. They would go to meetings like this and shout out against gay persons. It is terribly, terribly sad, but again and again and again, when I would take the time and they finally get my trust and I get their trust, we'd find out somebody who's really hurting inside, who is... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR KRUSE: ...going for self-preservation because of the perceived attitude. Many times that's not the attitude of the public. I don't think people care that much about it, most, but the tremendous pain that's caused by it. Our statement here can do a lot to lead our people to recognize that we're not judging someone even though we would disagree with some of their opinions. Thank you. [LB475]

SENATOR AGUILAR: Thank you, Senator Kruse. Those waiting to speak on AM399 are Senators Avery, Friend, Nantkes, Fulton, Carlson, Chambers, Erdman, Harms, and Rogert. Senator Avery, you are recognized. [LB475]

SENATOR AVERY: Thank you, Mr. President. I want to start by pointing out an irony. If you go to your green copy, on page 63, the last page, you'll see Section 42, "The following section is outright repealed: Section 48-1109." And on the committee's white copy, page 2, that means that we are striking all references that permit discrimination against members of the Communist Party. I don't hear anybody talking about that. I wonder why? Well, could it be that we shouldn't be discriminating against people because of their beliefs? Maybe that wouldn't be constitutional. Let me suggest to you that there is a parallel here for this issue with sexual orientation. The state, that is government, has the constitutional authority to discriminate against people on the basis of what they do, their behavior. It is constitutionally permissible for us to restrict how people behave. For example, you can discriminate against people who break the laws

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by imposing coercive punishment for things they do. What the state cannot do and should not do is discriminate against people based on who and what they are. For example, it is unlawful to discriminate against people because of their gender, their race. In the South, they had Jim Crow laws that discriminated against blacks because of what they were, not how they behaved, but who they were, who they are, and that was unconstitutional. I believe that that same principle applies here. Now I realize that there are a number of people who believe that one's sexual orientation is a matter of choice, that it's not a matter of nature, it's nurture, but I have looked at the scientific evidence and I don't think there's a whole lot of scientific support for nurture but there's a lot of support for nature. Twins, sometimes one will be gay and the other will not. Is that a matter of nurture, some mistake the parent made? Scientific evidence says no. This bill is not an endorsement of any particular behavior or lifestyle. It is an endorsement of nondiscrimination. Senator Fulton said that this bill creates a class of people for special rights, and I ask you, what is special about giving gay people the same rights you and I enjoy? What's special about that? In a just society, we must make sure that discrimination wherever and in whatever form it appears is condemned. We cannot and we must not tolerate discrimination. Now I've received a lot of mail on this issue, virtually all of it expressing the same points. I suspect it's an organized effort. In my campaign for office I was targeted by my opponent with a vicious piece of direct mail that attacked me on this issue. The brochure showed two male figures on a wedding cake. It says, Bill Avery supports gay marriage. It wasn't true, but I guess it didn't matter. For many people this is a political issue and it's only a political issue, but for me it's a matter of conscience. I cannot tolerate discrimination anywhere in any form, so I will vote my conscience, and that means I will press the green button. Thank you. [LB475]

SENATOR AGUILAR: Thank you, Senator Avery. (Visitors introduced.) Mr. Clerk. [LB475]

CLERK: Mr. President, some items. Enrollment and Review reports LB554, LB573, LB142, LR1CA to Select File. Enrollment and Review also reports LB221 correctly engrossed. A communication from the Governor. (Read re LB367, LB367A, LB305, and LB305A.) A new A bill, LB247A, by Senator Johnson. (Read LB247A by title for the first time.) LR211, by Senator Mines, will be laid over; an amendment to be printed by Senator Hudkins to LB358; and a notice of confirmation hearing by the Government Committee. That's all that I have, Mr. President. (Legislative Journal pages 1688-1693.) [LB475 LB554 LB573 LB142 LR1CA LB221 LB367 LB367A LB305 LB305A LB247A LR211 LB358]

SENATOR AGUILAR: Thank you, Mr. Clerk. Senator Friend, you are next and you are recognized. [LB475]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. I...my brief stint on the Judiciary Committee, I know I had talked to members of the committee

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and Senator Chambers. We've dealt with this issue; Senator Schimek was right. Dealt with it in different ways, not always in General File, not always on Select File or whatever. I don't even remember if it ever has gotten to that point, but certainly in committee we talked about it. I don't think it would be any surprise to Senator Chambers' understanding of my, I guess, high-level views of this subject matter, but I don't really think I've necessarily ever made it a secret. But he's very passionate about this issue; I respect that. I did want to touch on the amendment, AM399. I've got to be honest with respect to this amendment. This amendment is not flawed as a stand-alone item, but it's flawed, it's functionally flawed if you add it to this bill. The amendment becomes flawed and then the bill becomes flawed. And no disrespect to the Judiciary Committee at all, I just...if Senator Chambers' bill, LB475, is legitimate public policy, it should be legitimate public policy all the way down the line. We've touched on that a little bit in this debate. But that's it; that's what it should be. I disagree with the public policy argument. Quite frankly, I'll probably vote against AM399 and the underlying bill. But if this amendment passes, this public policy suddenly becomes pretty hypocritical in my view. Go ahead and discriminate in this arena, but goodness knows, don't let that Fortune 500 company or anybody else discriminate. That doesn't make a whole lot of sense to me, folks. I've got a little bit of a problem with that. That notwithstanding, I think that I'm a little bit concerned, too, with...and I brought this up in Judiciary Committee in the past; I actually...we've had conversations about it. The definition of sexual orientation or the lack thereof in this bill does concern me a little bit. It concerns me a great deal actually. There are--Senator Ashford passed out a sheet--there are, in relationship to statewide employment laws and policies, there are sexual orientation laws, 19 of them, I believe, all over the nation. It's my understanding that the definition of sexual orientation in almost every one of those cases is a tad different, and I think part of that is probably because the federal government hasn't weighed in on it yet. But that notwithstanding, that's problematic. It's problematic that there is a discrepancy in some cases from state to state, and then the fact that we aren't even including one in here, I think that's problematic. But then flat-out, I...Senator Avery is right. Senator Avery is very right. A lot of folks use an issue like this, either way, as a political tool. Oh, that person, you know, is for gay rights; that person is...whatever. People do that. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR FRIEND: Senator Chambers, obviously we all know that's not the case, and I don't think anybody else out here yet has done that either, at least I hope not. My unease is philosophical and it's personal; it's as simple as that. And I can go into that deeper but I'm going to run out of time, obviously, and I don't know that I have to. Maybe he deserves a vote straight up on LB475. I don't think I like this amendment though. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Friend. Senator Nantkes, you are next and

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recognized. [LB475]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. I rise in support of AM399 and in support of the underlying bill, LB475, and I do so for the following three reasons. But first I want to talk about some general principles in relation to this public policy; second, about some historical implications underlying both the amendment and LB475; and then finally to talk personally about GLBT individuals and families in Lincoln, in my district, and in my life. This is not about individual feelings. This is not about religious teachings. This is about the state's complicit support of discrimination in the workplace based upon an arbitrary and suspect reason and classification. And let's be clear in this debate, specifically to address some of Senator Fulton's concerns. Sexual orientation is separate and distinct from criminal acts as advocated by groups like NAMBLA. We're talking about sexual orientation, not criminal acts and providing protection for those. My good friend and seatmate Senator Engel spoke early on in this debate, and he says that he believes in a world where employment decisions should be based on merit and performance, and so we don't need bills like this. Well, I think that's one of the most compelling reasons to pass legislation like this. I, too, believe in a world where employment decisions should be based on merit and performance of duties as hired to perform, and without passage of legislation like LB475, we have no way to ensure that employment decisions are based on merit and otherwise not based on arbitrary and suspect classification. Second, to make a few points about history: Friends, the civil rights movement did not begin nor end with the dramatic events of the 1950s and '60s. Since our nation's founding, ordinary citizens have struggled to fulfill our country's ideals and promise of full equality under the law. In the Declaration of Independence, and I quote: We hold these truths to be self-evident, that all men are created equal...and that among these are life, liberty and the pursuit of happiness. From our very founding ideals forward, we continue to struggle with ideas encompassing basic equality which is contained in this public policy discussion. As we move forward through history and see the adoption of the Thirteenth and Fourteenth Amendment; of the Civil Rights Act during Reconstruction; of the Nineteenth Amendment ensuring people like me, women, receive constitutional protection in their struggle to attain full participation economically, socially, and politically; and we move forward into the Civil Rights Acts of 1964 and the Voting Rights Act. And then we move to more recent history, to quote a U.S. Supreme Court case, Lawrence v. Texas, from 2003, in addressing some similar ideas, Justice Anthony Kennedy wrote: Liberty presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct. As we can see this progression through history, as reflected not only in our laws but in our judicial decisions, I think we need to keep that in mind. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR NANTKES: And then finally, friends, I wanted to share with you; we've all

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received countless e-mails, phone calls, and written letters in regards to this bill. This is some correspondence received from a constituent in my district when I had written back letting them know about my support on this issue, and I'm going to allow the constituent to remain, to protect their privacy, but just to quote from the e-mail, they note: As a GLBT individual in Lincoln, one expects aggression or indifference from one's elected representatives. Thank you for surprising me at a time when I was beginning to lose faith in the system. It's nice to hear something positive. We're talking about individuals and families who are productive, who are taxpayers, who are parents, who are neighbors, who are citizens, and they feel nothing but aggression... [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR NANTKES: ...and indifference from our government? There's something wrong there. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Nantkes. Those wanting to speak are Senator Fulton, Carlson, Chambers, Erdman, Harms, Rogert, and Schimek. Senator Fulton, you are recognized. [LB475]

SENATOR FULTON: Thank you, Mr. President, members of the Legislature. Thank you for this debate too. This is a very important issue, I think. Senator Schimek said something that I glommed onto and that I wrote down: The state of Nebraska hires gay and lesbian people, no questions asked. If that's the case, doesn't that disprove the need for this bill? I don't...I don't see this. Maybe I don't get out much: I have kids. Maybe I don't...maybe I'm not out to see the rampant discrimination against people because of sexual orientation within the workplace. I'm curious what...is there...is there a great need for this bill? Part of that list of protected classes, part of their history, was that there was great discrimination. There has been great discrimination based on race or religion. The need existed, and so a just society addressed that need. Now my point by saying that this has become listed in the negative. Rather than this bill being a positive, it's now listed as a nondiscrimination--it's in the negative--is that it would then become more consistent for us to list all of those individuals or classes which we ought to extend a protected class status to. We have to start listing them all off. Sexual orientation: I don't...I don't see the grand discrimination across the country based on sexual orientation in the workplace. I did some quick research and my legislative aide found some research. I inquired, what is the average...the average salary per capita of homosexual couples as compared to heterosexual couples? And I found--this is a little bit old but I think it still illustrates my point here; it was reported in The Wall Street Journal, July 18, 1991: Average annual household income. Blacks with three years of high school, \$12,166 a year average household income; Hispanics with one to three years of high school, \$17,939--about \$18,000 a year. The national average, the national average annual household income, \$32,000 a year. For those declaring a homosexual orientation, average annual household income, \$55,430. And they make more than we

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do here in the Legislature, that household anyway. Probably reasons for that: two individuals, each with separate careers, often not having a lot of kids, if they have kids at all. Average annual household income about 80 percent higher than the national average. If that's the case and there is rampant discrimination within the employment, within the workplace, how is it that they have this high a household average, those who declare a homosexual orientation? So again, I'm asking, what necessitates this bill? Are we responding to widespread discrimination? Have you ever been lobbied by a Filipino group? Do the Filipino groups have lobbyists out there? Maybe they're avoiding me, I don't know. I haven't been lobbied by a Filipino group. My mom; I suppose that counts, but... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR FULTON: Did you get lobbied to support this bill? I did. Actually I had a very good discussion. It's a good...I like debate. Does the need exist to take a great and remarkable step in our public policy to extend protected class status to one based on sexual orientation? I say no. The data that I have before me indicate no. I'd like to put that question out there. I also am curious what is the definition of sexual orientation. Perhaps the NAMBLA example is too far-fetched, but I don't know. There is no definition for sexual orientation. How far do we take it? A couple of questions that I put forward to the body. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Fulton. Senator Carlson, you're next. You're recognized. [LB475]

SENATOR CARLSON: Mr. President, members of the Legislature, I would address a question to Senator Ashford, if he would yield. [LB475]

SENATOR AGUILAR: Senator Ashford, would you yield? [LB475]

SENATOR ASHFORD: I will, Mr. President. [LB475]

SENATOR CARLSON: Okay. Senator Ashford, I asked on the statement of intent,... [LB475]

SENATOR ASHFORD: Yes. [LB475]

SENATOR CARLSON: ...in the third paragraph, it says, "Employment discrimination based on race, color, religion, sex, disability, marital status, or national origin, currently is prohibited." [LB475]

SENATOR ASHFORD: Uh-huh. [LB475]

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SENATOR CARLSON: Well, in the bill itself, "creed," "ancestry," "familial status" are also listed, and was that intentional or was that just left out of the statement of intent by accident, I guess? [LB475]

SENATOR ASHFORD: I think...that's a good question, Senator Nelson (sic), and I appreciate you coming to me with the question so I could find the answer for you, I think. That portion of the existing law where the sexual orientation is added, the word "sexual orientation" is added, is the section of statute dealing with the permitting cities, counties, and other municipalities, I guess generally, or subdivisions, to enact a law that prohibits discrimination based on sexual orientation. It was left out of the...my guess...I don't have the exact answer for you as to why it was left out of the statement of intent but I believe because the focus--and maybe Senator Chambers knows--but the focus of the bill is on employment, which is another section of the statute. That would be my answer to that, Senator Nelson (sic). [LB475]

SENATOR CARLSON: Senator Ashford, I have another question. [LB475]

SENATOR ASHFORD: There's Senator Nelson over there. I apologize, Senator Carlson. Thanks, Senator Erdman, for that. Appreciate it. [LB475]

SENATOR CARLSON: Okay. Senator Ashford, the other thing that's come around and we've been given, has your initials on it, on the Nebraska Association of Sociological Indicators Survey. And I was given this yesterday and had a nice, brief visit with a young man that came to see me about this and gave this to me. And I've gotten a little information from you that indicated this was a polling of 1,800 people statewide, but we've got results here for 49 districts. And if we divide 1,800 by 49, that's about 36 per district, which is not very many. But the other thing is, if you look down there, and we--you and I talked about this--District 6 through District 13 have the same exact results. It's been awhile but I know a little bit about random sampling and how you go about it, and that's just highly, highly, highly unlikely that on a random survey you could have that kind of results exactly. And then we look down at District 25 through 29; look on the back side, District 46; they're all exactly 83 percent, same result. So I've got some questions about these results and I don't have the knowledge of how this really was conducted either and I don't know what additional information you might have. [LB475]

SENATOR ASHFORD: Thank you, Senator Carlson. I always...being half Scandinavian, I always think they're kind of all alike. You know, (inaudible) look, I get mixed up, but... [LB475]

SENATOR CARLSON: "Yah." [LB475]

SENATOR ASHFORD: ...the one...the one...my answer is, and that's a...it's a good

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question. My answer is, and I think you helped me with the answer yourself,... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR ASHFORD: ...and that is that it is a large group, 1,800, which certainly can be a representative sample, but it's reported by district. And in that regard there are, yeah, I believe you mentioned, 36 persons per district were polled, and I've done some work in this area, and my answer would be, without studying it, that the smaller the sample per district does explain to some extent the consistency in the numbers, but I could be corrected. But that would be my answer, Senator. [LB475]

SENATOR CARLSON: Okay. Thank you, Senator Ashford. And I would just make one other comment before I sit down: that I appreciated Senator Friend's ideas on this and the amendment, and I would tend to agree with him. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Carlson and Senator Ashford. Senator Chambers, you are next and recognized. [LB475]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there was one time Jesus was being confronted, and it might have been in the parable of Lazarus and the rich man. And he wanted to let...he asked God to let him go back and tell his brothers, who were living like he had lived: don't come to this place; it's terrible. And the statement was made: They won't believe, though one came back from the dead. So Senator Fulton will not change his mind. And let me show you what happens with these engineers who want to give the impression of being so logical. He mentioned the salary level of an African-American household where the people had three years of education, high school education. He did the same thing when he talked about the Hispanics. Then he went to homosexuals and didn't mention an education level, did he? So didn't he use a different standard for making his judgments? And when he talked about the average salary of households around the country, did he say average salaries of those with three years of college...or high school education? No, because he's accepting this propaganda to support his homophobic view. There is not a definition for any of these other categories, but they don't say, what does sex mean? Sex, to me, means intercourse. It doesn't say gender. You all are putting that on it. And you know what you tell me? People know what you mean when you say sex. When the court, the Supreme Court, which rules on these kind of issues, put the term "sexual orientation" in its own Code of Conduct, why didn't they define it? Because they know what it means and so does Senator Fulton and so does Senator Friend. They dummy up when it's convenient to do so. What does national origin mean? Does it apply to Senator Fulton? His origin, I presume, is in America. But there's a derivation from the Philippines. He calls himself a Filipino. Well, maybe because he's got a white father who can give him some cover, he can try to talk like a white person. But if he had a Filipino father and his name was Macapagal, instead of Fulton, then he would see something. He wants to say

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that there's no discrimination because he hasn't seen it. He hasn't taken any polls or statistics, and he's not following the logic that he wants to make us believe he believes in because he's an engineer. He uses that dodge when it's convenient. And sometimes he'll even say I want the data, the data, the data. He's the one who gave the example. He thinks I don't pay attention to him. He might have forgotten that he said an African-American household with three years of high school education; Hispanic, three years of high school education; average around the county, no mention of education level; homosexuals, no mention of education. Then Senator Carlson is going to raise issues with this poll that Senator Ashford gave him, but he didn't even think about what Senator Fulton said because they're on the same side. And for Senator Carlson and Senator Friend who don't read the existing law...it is thick. On page 32 of the bill, existing law: This act, "shall not apply to a religious corporation, organization, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, organization, association, or society of its religious activities,..." [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: "...or the employment of any individual by his or her parent, grandparent, spouse, child, or grandchild, or in the domestic service of any person." So those ideas are already in the law. This is not a strange amendment, as Senator Friend is talking about, and it used to always be in the bill every time it was introduced, and he never objected to it and said it shouldn't have been there. This is the closest he has come to skullduggery, "shenaniganery," and "shell gamery," and I shall pursue that further the next time I'm recognized by any manner. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. Next up is Senator Erdman, followed by Senator Harms. [LB475]

SENATOR ERDMAN: Thank you, Mr. President. Would Senator Ashford yield to a question? [LB475]

SENATOR AGUILAR: Senator Ashford, would you yield to a question? [LB475]

SENATOR ASHFORD: Yeah. [LB475]

SENATOR ERDMAN: Senator Ashford. [LB475]

SENATOR ASHFORD: Yes. [LB475]

SENATOR ERDMAN: Thank you, Senator Johnson (sic). Would you help me understand why this...? I'm following along with what Senator Chambers just said and I think it intends to do more than what's here, just so that we're all clear. This amendment

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complements what's in existing law. Is that accurate? [LB475]

SENATOR ASHFORD: That's correct. [LB475]

SENATOR ERDMAN: And then it extends beyond the organization, association, or society, of its religious activities, to also include nonprofit institutions that are operated, supervised, and controlled with...or excuse me...in conjunction with a religious corporation, organization, association, or society. So essentially it's not just the organization itself, but how far in that organization does that go? Is that anything that that organization that may be considered a religious entity would conduct, or is there some demarcation that... [LB475]

SENATOR ASHFORD: It's broad, Senator Erdman. [LB475]

SENATOR ERDMAN: So it...you would argue or you would state that it would be an outright exemption for religious organizations regardless of number of employees. [LB475]

SENATOR ASHFORD: That would be my intent, Senator Erdman. [LB475]

SENATOR ERDMAN: Okay. Senator Ashford, if I can continue on. I was just joking. I know you're not Senator Johnson. [LB475]

SENATOR ASHFORD: I might be. [LB475]

SENATOR ERDMAN: I don't think you got that, but...I think he's better looking, but I won't say that out loud. [LB475]

SENATOR ASHFORD: No. Keep that to yourself, Senator Erdman, if you would. [LB475]

SENATOR ERDMAN: Thank you. If I look at the sheet that you distributed on statewide employment laws and policies, and I do think that this is important, but I want to point out that what is recognized as a term may not be universally recognized. And I'm not trying to necessarily pick a battle here, but there are a number of states, 17 states, including the District of Columbia, that have similar protections as what Senator Chambers, in LB475, would propose. My research shows that eight of them have a definition in law. In your opinion, based as your position as the Chair of Judiciary, does the court have a definition or is there a general understanding that the court applies when they put it in their canon what this term means? I just...I simply want to know. [LB475]

SENATOR ASHFORD: And that's a fair question, but would you please repeat the

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beginning of your question again because I didn't follow your... [LB475]

SENATOR ERDMAN: Sure. Other states have adopted a specific definition. [LB475]

SENATOR ASHFORD: For what? Sexual orientation? [LB475]

SENATOR ERDMAN: For the term "sexual orientation," what it is, and actually there's things that say that it does not include. Senator Chambers has appropriately displayed that there are existing statutory references, as well as the courts have used this term. Do you know if there is a--because I know it's not in statute anywhere--do you know if the court has a standard or a terminology that they use generally to reflect what that represents? [LB475]

SENATOR ASHFORD: Thank you. Yes, there are myriad of cases that would utilize the term "sexual orientation"--I don't have the cases in front of me--and which would deal with a particular fact circumstance, if that's what you're asking. The question is, do we need to add additional language to the bill regarding the definition of sexual orientation? My opinion is no, but if there is other language that would better define it, I would be happy to look at it. [LB475]

SENATOR ERDMAN: Sure. And I'm just curious because it is a standard of the court or at least of the judges, and I wanted to make sure that if there was a process or a term that we could use. And that's all I would have for you, Senator Ashford. Thank you for your response. One of the things that needs to be pointed out, and whether you're in favor or opposed to the bill in the form that it is in,... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR ERDMAN: ...I think there is some ambiguity, and if there wasn't you wouldn't find definitions in other states. Senator Nantkes pointed out that something that is illegal...something that is illegal is not this definition. And in other states, such as Illinois, they specifically state that sexual orientation does not include a physical or sexual attraction to a minor by an adult. I think that was at least one of the arguments Senator Fulton made. And if that's what this is intended to say, I don't see why that's a problem to state that, if that's clearly the intent of the law, because this is a standard that the employer will have to be using to determine their employment practices or the standard that they will be held to in the event that a circumstance would come up in which they would find themselves subject to this act. Either by the transcript here on the floor or in statute, I think it should be clear, at least to some parameters, as to what this term generally refers to, since there is no specific definition either in state law or in the court's canon. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Time. Thank you, Senator Erdman. Next up is Senator Harms,

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followed by Senator Rogert. Senator Harms, you're recognized. [LB475]

SENATOR HARMS: Thank you, Mr. President, colleagues. I rise to support AM399, but I oppose LB475. And Senator Schimek, in her statement, caught my attention in regard to talking about sons and daughters or children, something of that nature. And I'd have to tell you if my son or my daughter came to me and said, Dad, I want you to know that I'm gay, I would love them the same. I think life is a series of choices. Your lifestyle is whatever you choose to live. It's not my responsibility to be critical of what lifestyle you choose to live. It doesn't mean that I have to agree upon it. But my opposition to this has never been whether you're gay or not. It's the fact that we want to place this in the same category as race, color, creed, religion, ancestry, sex, marital status, and national origin. I do not believe that sexual orientation belongs there. I do not believe that our forefathers, when they wrote the Constitution, had that in their mind. And so that's what I have objected to. It's not that it's their lifestyle or that I would be critical of what lifestyle you choose. If it was my son or daughter, as I said before, I would love them the same. It's their choice. It doesn't mean that I would agree with it, but that's your choice and I would make sure that you're taken care of. And so...and over the years I've had the fortunate opportunity to be on a number of commissions and things, not only in Nebraska but across the country, and I have worked with people who were gay and I never opposed them. I didn't look at them differently, because I think life is just a series of choices and you choose what style of life you want to live. I would yield the rest of my time to Senator Fulton if he needs it. [LB475]

SENATOR AGUILAR: Senator Fulton, you have 2 minutes, 45 seconds. [LB475]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Harms. I'd like to respond, if I could, to Senator Chambers' scrutinization of the numbers. I'm not positive why. This was the Simmons Market Research Bureau's first survey that was released in 1989. I was citing from The Wall Street Journal, July 18, 1991. It's a little dated, but I think it still illustrates the point. I think the reason why they listed levels of education for the Hispanic and the black categories that they performed this research with is because those are individuals who would have a hard time getting a job: a member of a minority class with a limited amount of education. The numbers, \$12,000 a year and \$18,000 a year, approximately, represent those average household incomes, individuals having a difficult time getting a job. The national average annual household income again was \$32,000 a year. The average annual household income for those professing a homosexual orientation, again, \$55,000 a year. The numbers are stubborn things. That I was making reference to levels of education indicates the difficulty one finds in getting a job without education and being in a minority class, a protected class. That doesn't seem to flesh out. Some more information from this survey: gay.com, it's a Web portal. [LB475]

SENATOR AGUILAR: One minute. [LB475]

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SENATOR FULTON: The homosexual community represents a \$610 billion market. That was a study done by the Selig Center for Growth and the University of Georgia. It's probably not imperative that I cite these, but I do just so that you know I'm not making this up. Twenty-one percent of homosexuals have household incomes exceeding \$100,000; 17 percent hold master's degrees, compared with 4 percent of the U.S. population as a whole. These are influential people. Is there a need to provide protected class status for those who profess a homosexual orientation? Again, the numbers are stubborn things, and I don't think so, and the question remains for the floor. I hope to hear some more debate on that. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Fulton. Senator Rogert, you're next, followed by Senator Schimek. [LB475]

SENATOR ROBERT: Thank you, Mr. President. Members of the body, by the way, I didn't wear this shirt and tie on purpose today. It was just an accident. (Laughter) And I've been fairly quiet this week. We've been discussing a lot of topics, but I've gotten a few e-mails on this one today and I wanted to just get up and just speak just a little bit, and then I'm going to yield my time. You've probably all gotten the same form e-mail that I've gotten about 50 or 60 times yet this morning, and I'm just going to read a little bit out of it. It says LB475 would tie the hands of employers for whom character and sexual behavior are meaningful factors in their hiring decisions. LB475 would force some religious entities to comply with the legislation in spite of their strongly held beliefs about morality and family. LB475 would place the state's stamp of approval on behaviors that are demonstrative--I'm going to play Mark Christensen, forget that word--that are harmful to physical and emotional health of individuals and cultures. Well, we're taking care of that with AM399, and regardless of how you think about LB475, you should vote for this amendment because of that. And I guess I want to reiterate the fact that Senator Avery made earlier, that it's scientifically proven and it's just the truth that sexual orientation is not a learned behavior. Nobody messed these guys up. Nobody trained them to be homosexuals. Nobody taught them to be that way. They were born that way. And to discriminate them in any way should be carefully looked upon, no matter how we do it. And I was asked earlier, are there any homosexuals living in my district? And my answer was, I kind of smiled and said, well, there's probably a few. And I know there are a few, but most of them would move away because it's not a very fun life in small town rural Nebraska as a homosexual, because they're ashamed a little bit. They're picked on a little bit. But I think we really need to consider carefully what we do here, and we don't want to change the laws to where we create an open door for protections for classes of people. But we want to make sure that every one of God's creatures are treated fairly and equally, and maybe this bill does it and maybe it doesn't, but we definitely want to look at passing AM399 on to LB475. And with that, Mr. President, I'll yield my time to Senator Chambers. [LB475]

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SENATOR AGUILAR: Senator Chambers, you have 2 minutes, 24 seconds. [LB475]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Rogert. Members of the Legislature, one reason I don't use statistics is because I base what I do on my view, on what I believe what my principles are. Nobody will rail against white racism and white supremacy more than me, but you cannot find a white person who ever approached me for help whom I did not help. And they're the ones who, as a group, are oppressing black people as a group. Yet here's Senator Fulton, a member of a group who would be discriminated against if he wasn't protected by a white father who could protect him while he was little, send him to school, take care of him, and if anybody said anything, they knew he had a white daddy at home. Yeah, this is reality. He's been shielded all of his life. He says he's a Filipino, but he's not. Why would not a Filipino come to him for anything? You just heard the reason. He'd say, well, you're a Filipino, you say you're discriminated against; I'm not. And by the way, I didn't say macaca, as that racist down South said with reference to that Indian person. I said Macapagal, and Senator Fulton knows that that is a Filipino name and it's not an insult. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: This is a racist society. It has a lot of homophobes in this society. Senator Fulton ignored what I said, although he knows it's true, that there are prominent preachers, like Jerry Falwell--he's gone to wherever people like him go--and Pat Robertson who blamed tornadoes and attacks on the Twin Towers on homosexuals. And Senator Fulton doesn't see anything wrong with that: Well, that doesn't indicate they have a problem in this society just because somebody says God punishes the country because of them. Senator Rogert mentioned what Senator Fulton has to know, because he reads a lot, in small towns what would happen to a person who would acknowledge he is a homosexual man, or a woman, that she's a lesbian woman. I'm so much better off than all these hypocritical "Christians" who talk about loving everybody. I don't even have to love everybody. [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR CHAMBERS: But I show more of it than they do because I don't have religion impeding me and hiding behind it. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Schimek, you are next, followed by Senator Nantkes. [LB475]

SENATOR SCHIMEK: Mr. President, I would yield my time to Senator Chambers. [LB475]

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SENATOR AGUILAR: Senator Chambers, you have 4 minutes and 52 seconds.
[LB475]

SENATOR CHAMBERS: Thank you, Mr. President. Bless you, Senator Schimek. Members of the Legislature, we keep hearing these hypocrites stand up here and talk about we're creating a class and giving them special rights. What we're doing is acknowledging that there are a group of people who have been singled out for mistreatment and we are giving protection to those people from the wrongs they are suffering. This is America. When we recognize that a group of people are suffering wrongs because of what they are, we as lawmakers should provide a protection instead of hypocritically standing up here and saying, well, if my child told me that he's gay, or my daughter, then I would...I'd love them the same way and I'd help them. But he would not help them by passing a law that says they cannot be discriminated against. He's got enough money to pay for his kids when they can't get a job, but there are other people who want their children to be able to work, who want their children to not be shamed. Why do you think there are a lot of people who won't acknowledge their homosexual orientation? Because they know how people, like some on this floor, feel toward them. That's what they know. You all know it too. It reminds me of something I say when we discuss this bill. There was a man named Merrick, known as the Elephant Man, and he had these growths that would even push the bones out of shape, and his face was misshapen, the back, and he wore a hood, a burlap hood, with an eye hole cut in it. And he was in this station or some place--it's been a long time since I saw the film--and these boys, for some reason, started chasing him, as kids will do, just like people on this floor will do. They'll attack those and chase those who are different instead of spreading their arms and saying, God told me to protect the least of his and you're one of the least and need it more, so I'm going to protect you. No, they throw the stones and they certainly are not without sin. So as he was running down the street being pursued, he bumped this little girl. She fell. Then the mob, all the Christians in full-throated roar, chased him, and he went into a dead end and he's backed against this wall and there are two walls on each side and the mob is coming to him. And somebody snatched off the hood, and the horror that he was accustomed to seeing he saw in every one of their faces. And there were so many people there and they were full of so much hatred that he knew he couldn't fight them off, so he made the only appeal that he could, and some were advancing on him, and he said--it was hard to understand but you could: I am a human being! I am a human being! And they stopped. We're talking about human beings, but you all are not. You can sit here and pontificate and put the amendment that protects the Catholic Church, yeah, put that on, but then you're against the bill. You wouldn't love your child if your child said that, and you know your child is not going to say it and that's why you say this. Everybody's child is my child, and I show what I would do for mine by what I'll do for others. If your child were of this persuasion, based on the things they hear you say, they wouldn't tell you. And the boy and the girl would say, boy, I wish we could tell Dad, I wish we could tell Mama, but we know what they'd think about us because we hear what they say about these others who are just like us.

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They birthed us into the world. We didn't choose to be in a set of circumstances where people treat us like we're animals. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: We had some Christians who came before our committee and equated people who are of the homosexual persuasion with those who practice bestiality. That's the lowdown, dirty-mindedness of these people who are homophobic. They're not even talking about human beings. And those are the shameful things they say about God's children. Of one blood, Senator Carlson, God made all nations of people, and homosexuals are people too. Marriage is a chosen position. You were not born married, you chose to get married. But you're protected. So is Senator Harms, but he thinks these people should not have the protection he has as a married man and that his wife has as a married woman. Senator Carlson doesn't think they should have the protection that he has as a Christian; same with Senator Fulton. Oh, they got their protection and they're happy. You know what America means to them? Justice, freedom, and equality... [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR CHAMBERS: ...for them. Did you say time? [LB475]

SENATOR AGUILAR: Time, Senator. [LB475]

SENATOR CHAMBERS: Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Nantkes, you are next and you are recognized. [LB475]

SENATOR NANTKES: Thank you, Mr. President. Good afternoon, colleagues. Just a few comments that I wanted to address in the course of this debate, a few things brought up by my good friend Senator Fulton, who is a careful and diligent researcher and advocate for statistics and facts. Senator Fulton, I really, number one, don't see the relevance in an average national household income survey from, I believe it was, the '90s that was quoted. First of all, that doesn't really take into account the fact that, as has been noted by some other colleagues here today, there are many states that do have protections in the workplace for gay, lesbian, bisexual, and transgendered individuals. So I'd like to make that point for the record. Secondly, I'd like to note that if in fact that is the reasons for your opposition to the amendment and the underlying bill, because you do not believe that there is rampant discrimination within society in reference to sexual orientation, then what would it bother you if we passed this law to provide some legal protection for maybe the few instances wherein this is the basis of discriminatory behavior? I wanted to just point out a couple things in that regard, and

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then finally just to talk and share with you what I've visited about with many of my friends and colleagues and neighbors in regard to this issue. It's difficult for me, as a young person and as a student of history, to look back at the pre-civil rights era and to fully understand the level of segregation and discrimination our country perpetrated amongst, upon racial minorities and women. It's very hard for me to understand that. And I truly believe the same underlying issues in regards to legal rights and protections for a gay, lesbian, bisexual, and transgendered individuals and families will apply in future generations. They will look back upon our debate and dialogue today and have difficulty comprehending the opposition. With that, I would yield any remaining time to Senator Chambers. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Senator Chambers, you have 2 minutes, 10 seconds. [LB475]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Nantkes. And here's something that I want to emphasize for those who keep asking about a definition. There have been many hate crimes prosecutions throughout this country, and hate crimes laws include a prohibition against committing a crime against somebody based on sexual orientation, and not one of those laws was ever challenged because there was no definition of sexual orientation. The law we have right now on the books that talks about hate crimes has no definition. You know why I don't go into that? If the definition were there that they wanted, they wouldn't support the bill anyway. They wouldn't support it anyway. And Senator Harms shocks me at his naiveté. He said he didn't think that the forefathers believed in, I guess, protecting the rights of gay and lesbian people, because that's why he invoked them, but they believed in having sex with teenage girls, which would be statutory rape today, and in some cases was outright rape, sex by force: Thomas Jefferson, Patrick Henry, George Washington. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: And you know how you can tell that they were committing statutory rape? Because they kept records of the children they had on these slave women, and when you calculated the age of the slave as opposed to the age of the mother, that woman was in her very early teens at the time that white racist dog impregnated her, and she was his slave. And Senator Harms is going to invoke a man like that as the moral paradigm, and say because men like that, he thinks, but he doesn't know, would be against what we're talking about. But he doesn't condemn them for statutory and outright rape of young girls, and their own records prove it. You've got to be careful who you summon from the nether regions as your witness. I say again, I'm lucky because I can do what I think is necessary to protect anybody who is a member of any group... [LB475]

SENATOR AGUILAR: Time. [LB475]

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SENATOR CHAMBERS: ...when they are mistreated. Thank you, Mr. President.
[LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Fulton, you are next.
This is your third time and you are recognized. [LB475]

SENATOR FULTON: Thank you, Mr. President. Senator Nantkes raises legitimate questions and I'd like to respond to them. In 1991, I don't know how many laws existed providing protected-class status for those professing a homosexual orientation. That being the case, there were no laws at that time. Still, homosexual households had incomes significantly higher than the national average. Now this, this bill, has to do with employment law such that employers should not discriminate against individuals who profess a homo...who profess some sexual orientation. One cannot discriminate based on sexual orientation if we pass LB475. The reason it's significant to bring up household income numbers, how does one earn an income if one is having a hard time finding a job? If a homosexual who professes that orientation is being discriminated against such that he or she cannot get a job, how is it that they have...that the homosexual...a homosexual household has that high an income? They must be able to get jobs. If one is able to get a job to that degree, more than other Americans are able to earn, then I say the need for this bill doesn't exist. Now it's rightly questioned, if there is no need why would you be opposed to the bill? I respond by saying I'm opposed to the bill because this is a significant step. We're elevating sexual orientation to protected-class status without giving it a definition. Senator Chambers, I believe, would say that a definition isn't needed. He brought up the case of bestiality. States have laws against that. Why? Consenting adult. Why is that? If we pass LB475, I would think that individuals, who I obviously disagree with and their lifestyle, but if they choose bestiality as a form of sexual impression...expression, they would be able to say that my orientation should not allow you to discriminate against that practice. And maybe that's not the case, and maybe if we narrow the definition of sexual orientation that wouldn't be a concern. Maybe there are those who believe that shouldn't be a concern. I believe it should be. But that's why. If I'm trying to demonstrate that there is no need, and I believe that the numbers I've put forward would indicate that there isn't a need because individuals who do profess a certain sexual orientation are not being discriminated against, then certainly we can recognize that just because it doesn't matter, we shouldn't elevate, because it introduces a whole area of questions. Sexual orientation means a great...can mean a great deal. And in this society, which I would argue is pretty heavily saturated with sex--everything under the sun goes--if there is no definition, sexual orientation can mean any plethora of things. Now Senator Chambers brought up Jerry Falwell and others who blame natural disasters on homosexuals. I'm assuming he wants me to condemn Jerry Falwell and the others for saying this. Well, I do. Natural disasters happen to good, bad, and everything in between. [LB475]

SENATOR AGUILAR: One minute. [LB475]

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SENATOR FULTON: That has nothing to do with discrimination in the workplace. Respectfully, within debate, I would say that's obfuscating the point. Is there a need? And if there's a need, shall we not define who it is that is in need? Something else that I've recognized: whether my dad is white, green, or black does not say that I've had his protection my entire life. If I did or didn't, it's irrelevant to whether this bill is worthwhile, and I will stand by the numbers and the reason and the logic as to why this bill should or shouldn't be put forward. I maintain that LB475 is bad policy. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Fulton. Senator Chambers, you are next and this is your third time. [LB475]

SENATOR CHAMBERS: Thank you. Mr. President, I'd like to ask Senator Fulton a question. [LB475]

SENATOR AGUILAR: Senator Fulton, would you yield to a question? [LB475]

SENATOR FULTON: Yes. [LB475]

SENATOR CHAMBERS: Senator Fulton, what population group are those figures you read us about the average income of homosexual families? What is the population group you're using? [LB475]

SENATOR FULTON: Population group: Do you mean demographic? [LB475]

SENATOR CHAMBERS: Yes. First of all, what group are we talking about? [LB475]

SENATOR FULTON: Who? The group that's...well, what I'm reading from is a report that was released by The Wall Street Journal. [LB475]

SENATOR CHAMBERS: And was that for homosexuals in New York, in California, or just where? Because you're the man of numbers. Now I'm going to hold you to that standard you pretend you hold yourself to. Where did the people live who were the subject of that study which resulted in those numbers? [LB475]

SENATOR FULTON: My understanding, that it was a countrywide study. [LB475]

SENATOR CHAMBERS: Oh. Then let's bring...is this a law that's going to affect the country as a whole? [LB475]

SENATOR FULTON: No, this law would affect the state of Nebraska. [LB475]

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SENATOR CHAMBERS: Okay. So let's bring it to Nebraska, "Mr. Engineer," who believes in the numbers and wants to stick with the numbers. How many homosexual households are there in Nebraska? [LB475]

SENATOR FULTON: I do not know. [LB475]

SENATOR CHAMBERS: What is the average income of a homosexual household in Nebraska? [LB475]

SENATOR FULTON: I do not know, but I don't think it would be unreasonable to say that it's higher than the average. [LB475]

SENATOR CHAMBERS: How do you...if you don't know, how can you say that, "Mr. Engineer"? If you don't know, how can you say what it is if you don't know what it is? [LB475]

SENATOR FULTON: I would say that I do know based on what the national averages are. [LB475]

SENATOR CHAMBERS: Oh, so you know what the average in Nebraska is based on what the national average is. [LB475]

SENATOR FULTON: I believe that it would be higher than what the average in Nebraska is. [LB475]

SENATOR CHAMBERS: Thank you, Mr. Fulton. This is the man who wants to make you think he has done so much research, and you see how he answers that question? He should have stopped when he said, I don't know. He brought us a flawed paradigm and we're supposed to be dumb enough to accept it because he's dumb enough to bring it. And I know he's been protected by his father, and he knows that I know it. He can fool you all and he can say it's not relevant, but you know why it's relevant? Because I'm talking about his attitude. He's been shielded and protected and that's why he believes there's no discrimination. And as for Falwell and the rest of them, I mention them, "Mr. Engineer," to show you the attitude of people in this society toward homosexuals. You didn't listen carefully so you didn't understand what I was saying. You're so busy being defensive that you had to come up with an answer, and you hurt yourself. Let's say there is a family of homosexuals in Nebraska and their average income is \$10,000. There's another family with an average...and their income is \$100,000. The two family incomes together constitute \$110,000, so the average family income of homosexuals in Nebraska is \$55,000. That is so inane. Talk about obfuscation. Obfuscation would be elevating his argument to a level to which it is not entitled. He knows better than to bring that kind of mess to me. He tells other people that he associates with, that he's an engineer and he researches, and that causes him

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to be taken with fear and trembling. You brought it, Senator Fulton, and you're going to try to use a national study and you don't even know how many people from each state were involved. You don't even know if each state was involved. And then he's going to apply it to Nebraska. He doesn't know how many homosexual families there are in Nebraska. And what difference would that make anyway as far as the justice of what it is that we're doing? [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: If every one of them made \$100,000, they should not be discriminated against. There are black people who make large amounts of money and they cannot buy houses in Omaha where their money would entitle them to buy if there was not racial discrimination. That's why I know that he's been protected. He doesn't even understand the kind of discrimination that people confront when they are a member of a minority. There are two minority members in this body: Chambers and Aguilar. When we talk about black people, it's not hue, it's point of view. He needs to understand some things. He's the one who said he's a minority member, not me. As for this bestiality, if a human being did that, that would be considered abuse of the animal, Senator Fulton. You cannot cut off an animal's head because you want to. That is a felony. [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR CHAMBERS: Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Ashford, you are next and you are recognized. [LB475]

SENATOR ASHFORD: Thank you, Mr. President. I just want to say a few things and then Senator Carlson has indicated that he has some information on his poll...my poll, and I want to give him some time. And I know this is a passionate issue. I worked very hard, when I was in the Legislature before, on the hate crimes law, as I mentioned before. I do believe that there is discrimination and there has been discrimination historically against people who...based on their sexual orientation. I grew up in an industry where there was a tremendous amount of discrimination and I knew many people who suffered that discrimination, and it's not important for me to talk about that in detail. I mean, we've read about what happened over the centuries where people are discriminated against for sexual orientation. I don't think...and I, in listening to my colleagues, I don't think anybody in this room does not believe that there is discrimination of some kind, and they support...and I appreciated Senator Engel's comments about hate crimes because he supports that, and I think that's significant. I think it's a real problem. I have many gay friends and I know it's a problem. And I know there's a debate about whether homosexuality is a choice or whether it's something you

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inherit. I, quite frankly, don't particularly care whether it's a choice or whether it's something you inherit. I know that people who are gay are gay in their whole being. And I have had experience with many people, as I've said, over my lifetime who are gay, and I feel deeply sorry for the way they are treated, and they are treated in a discriminatory fashion. And I support this bill and voted it out of committee not because I...and I expected this kind of debate. We had this same kind of debate over hate crimes, over whether or not we should put into statute the words "sexual orientation." And Senator Erdman is correct, there are numbers of states that define it differently. But in my heart I know that there is discrimination and it happens on a daily basis. And I also know that for the most part people who are gay, who have a sexual orientation that's different from the majority, have that sexual orientation for reasons that they can't even explain, but they have it. And in the committee, we attempted, and maybe it's not...and apparently not good enough, to address the sincere concerns of religious institutions about applying a law like this to those institutions. I just would summarize and say this: I know that Senator Fulton, Senator Engel, Senator Carlson are not interested in discriminating against anybody. I think we just all have differences of opinion as to how pervasive this problem is, or the nature of the problem. Nobody here today is going to change anybody's mind about that. I think our minds are already made up and...but for me, these kinds of things are important, and that doesn't mean that they're not important to my colleagues. I just think we have to continue to be, in our society, we have to continue to be observant, we have to continue to be watchful of discrimination, because we all know the history. We all know what happened in World War II. We all know about those things. And I know my colleagues don't want that to happen again and they're not advocating that. But it could happen again. There's no question in my mind it could happen again. And my colleagues aren't going to be people who are going to be part of that if it ever happens again, but I think it could happen again. I believe that in my marrow. I believe it absolutely, sincerely, without any equivocation. And as long as we deal with the issue of religious beliefs and the institutions where religious beliefs may not have that same sort of feeling about the issue, which is a concern to me and I'm glad the amendment is in there, if that's not enough for some of my colleagues, I respect that, but I'm going to be voting for this amendment. I'm going to be voting for the bill because we can never lose sight of what the past has taught us, and it is truly... [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR ASHFORD: ...important to me. Thank you. [LB475]

SENATOR AGUILAR: Sorry, I missed your warning, Senator. Thank you, Senator Ashford. Senator Carlson, you are next. You are recognized. [LB475]

SENATOR CARLSON: Mr. President, members of the Legislature, I simply wanted to rise because I questioned this survey that Senator Ashford handed out, and Nanette, in

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my office, tracked down and got some information back, and so I don't want to hide it. I want to just cover it a bit. These questions were asked in 2004 by the Bureau of Sociological Research at the University of Nebraska, and indicates it's a survey, a random sample telephone survey of approximately 1,800 adults in Nebraska. Now I don't know how the question was asked, the tone or anything like that, and I'm not...when it says random sample, I will accept that it was a random sample. The first question: Is it okay for an employer to hire or not hire an applicant based on the applicant's sexual orientation? And the additional information I have lumps everything together, and so the categories that could have been selected were: strongly agree, agree, neutral, disagree, or strongly disagree. And to that first question the combined percentages were about 72 percent that either disagreed or strongly disagreed. And then the second question: A property owner should be allowed to rent or sell a property based on a potential renter or buyer's sexual orientation. And the same five categories were possibilities, and to those, about 67 percent disagreed or strongly disagreed. So I have this information. I wasn't going to ignore it, and that's what I wanted to announce. Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Carlson. Senator Schimek, you are next, followed by Senator Nantkes. Senator Schimek, you are recognized. [LB475]

SENATOR SCHIMEK: Thank you, Mr. President and members, and thank you, Senator Carlson. I think 1,800 is a very large sampling. Usually they consider that you need about 300, I believe, per congressional district, and that's a very good-sized sample. So I think that the Bureau of Sociological Research also is an independent group that you could...would not expect to have a slanted kind of poll. You know, I guess that those of us who have faced discrimination at some point in our life may be sensitive to the discrimination that others may be exposed to. I can tell you that I have been. I don't talk about it. I don't think it's something that I want to dwell on. But I can remember when I was young and newly married, had a new baby, and wanted to get back into teaching. And my husband had already been hired and was teaching in a public high school in this state, and I applied. And I have to tell you that my resume was as good or better than his, and I'm not saying that for any reason than just to explain that I...my resume wasn't even looked at, even though they needed a history teacher. And the explanation was that they wouldn't hire me because I was married to somebody who was already working in the system, and I felt very discriminated against on that basis. I felt that I had just as much right to apply for a job in that public school as he did, and he felt the same way, too, I have to tell you that. And if I had known then what I know now, I might have taken them to court over it because there was no good reason. I mean what were they worried about? That we were going to fight in the hallways or we were going to be caught necking in one of the classrooms? (Laugh) I don't know. But there was absolutely no earthly reason except that my marital status. And maybe that's not even so egregious as the old policies that school systems had of not hiring married women at all. If you were a married woman, you were not hired by the school system. And later

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on, if you were a pregnant woman, married, you certainly couldn't work for that school system, and the minute you got pregnant you had to leave that school system. Now some of you are young and may not remember those days, but I remember, and that's not been so long ago. If you've never experienced it, you may not feel it for somebody else as powerfully as some who have been discriminated against. Mr. President, how much time do I have? [LB475]

SENATOR AGUILAR: One minute and 43 seconds. [LB475]

SENATOR SCHIMEK: Then I will just say that I hope we can keep this debate on a level on which we try to share pertinent information with others. I agree with Senator Ashford: probably minds are already made up on this issue. But it probably is important to say things for the record. Senator Nantkes alluded to this a little while ago, but we had a conversation, several of us did a little while back, and the consensus was that eventually, eight years down the road or ten years down the road, this issue will be a thing of the past... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR SCHIMEK: ...and people won't even believe that we ever had to have this discussion on the floor of the Legislature time and time again. It will be something that it's just accepted. And I think that by looking at that map that Senator Ashford passed out to this group, I think that you can see that states are gradually filling in. We will have two on our borders shortly that have passed such laws, and I suspect that in another ten years this map will probably be about full. I don't want to see Nebraska be a big hole in the center of the universe. Thank you. [LB475]

SENATOR AGUILAR: Thank you, Senator Schimek. Madam Clerk. [LB475]

ASSISTANT CLERK: Mr. President, Senator Chambers would move to amend AM399 with FA116. (Legislative Journal page 1693.) [LB475]

SENATOR AGUILAR: Senator Chambers, you are recognized to open on your floor amendment. [LB475]

SENATOR CHAMBERS: Thank you. Mr. President, this is for the purpose of giving me the opportunity to continue speaking. But in line 2 of the amendment that is offered by the Judiciary Committee, I would strike the three words "the Employment Nondiscrimination" and replace those words with the word "this." So instead of saying provisions of the Nondiscrimination...the Employment Nondiscrimination Act, it would simply say provisions of "this act." It's not a substantive change, I will withdraw it, but it's to give me the opportunity. I want to read a letter that just came today, part of it, "Dear Senator Chambers,--and this is from a white guy; I'd even forgotten about him--back in

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1989 you were kind enough to write a reference letter for me to the Texas Board of Law Examiners recommending my approval to sit for the bar examination notwithstanding my felony record in the state of Nebraska. Due in part to your recommendation, the Texas Board of Law Examiners determined that I possess, quote, good morale character, unquote, and approved my application. Although I eventually took the California bar instead, passing on my first attempt in February 1993, I submitted your letter to the California bar which also approved my application." Then he mentions how long he's practiced in California and so forth. Now you all have heard me, as I stated, rail against white racism, but I bet I got more letters like this from white people that I've helped whom some of you all would not even deign to help, and I've helped a lot of those people in Nebraska when they're mistreated by the police and the sheriffs and the State Patrol and school systems. I'm working on a case now where a little boy, I'm not sure whether he had autism, was drinking out of a toilet stool in a school. See, you all don't believe that, do you? But it's brought to me. The family went everywhere they could, got no help, and they finally had to come to me, and I'm going to see what we can do about that. There are many people in this society who are mistreated. But I'd like to ask Senator Fulton a question or two, to give him an opportunity to rehabilitate himself after that scathing critique I made. [LB475]

SENATOR AGUILAR: Senator. [LB475]

SENATOR CHAMBERS: Senator Fulton, you were talking about the need for definitions, in your opinion. Is that correct? [LB475]

SENATOR FULTON: I was, yes. [LB475]

SENATOR CHAMBERS: Is race one of the items which a person cannot be discriminated against based upon? [LB475]

SENATOR FULTON: Yes. [LB475]

SENATOR CHAMBERS: Is race a scientific term? [LB475]

SENATOR FULTON: It could be. [LB475]

SENATOR CHAMBERS: Not could. [LB475]

SENATOR FULTON: I don't know that it is specifically here. [LB475]

SENATOR CHAMBERS: Is race deemed by scientist to be a scientific term? [LB475]

SENATOR FULTON: It could be. Anthropologists would say yes. [LB475]

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SENATOR CHAMBERS: Race...thank you. Members of the Legislature...that's all I'll ask you, Senator Fulton. Race has no scientific meaning. It is not recognized as a scientific term. It is utilized for convenience' sake, especially in a country like America. Some people talk about a white race. What is a white race? There was a judge who talked about a Hispanic race. Some of these terms relate to culture, not even biological makeup, not even necessarily originating in a country where that designation would apply. Language is used very carelessly and loosely, but that's a word that's not defined in the current law and nobody worries about that, and courts haven't had any difficulty applying the word. Does marital status refer to somebody who is single as well as somebody who's married, somebody who's divorced, somebody who was married and got an annulment? That term is not defined. None of these words are defined. What is religion? Religion is not defined anywhere in the statute. They're not worried about that because it applies to them. All he's got to do is say, I belong to the Catholic faith, I'm a religious person, I'm discriminated against because of my religion. He doesn't have to define it any further. Age: what does age mean? Some people say it's not so much a matter of years as of responsibility, but there is a general, conventional acceptance of what the term "age" applies to. Could it apply to a certain period in history, the age of iron, the age of brass, the age of stone tools, the Ice Age? Or does it refer to the number of years a person has been on this earth? They don't define these terms, and they don't have to be defined, and courts have used these terms and applied them, and the court is where you have to be concerned about their application and whether or not they're understood. If the Nebraska Supreme Court thought people didn't know what the term "sexual orientation" meant, and the court is imposing the duty not to discriminate on that basis on judges, lawyers, and others who come into the courtroom, the court would have defined the term. But the court knows what it means and Senator Fulton knows what it means. But back to bestiality, if he had sex with an animal, that would be considered animal abuse. I don't care what his orientation is. He could say his religion tells him that he's got to take a cat and gut it alive, but that would be a felony in Nebraska, and he can call it religion all he wants to. He could say that his religion requires him to have sex with his daughter, and he'd go to jail for it regardless of what he said his orientation was. So these people who are so intelligent suddenly dummy up and don't understand anything. They know, but they're taking an unsupportable position and they got to find a way to make it sound plausible. He can't escape. He's done a lot of damage to his credibility today as an engineer. Oh, wait a minute, I made a presumption. What kind of engineer is Senator Fulton? He never told us. Maybe he's the kind of engineer who'd put his hat on backward, grab that throttle and pull that string, (makes train whistle and chugging sounds). Isn't that an engineer? I made a presumption. Why should I expect somebody who's spent his life driving trains to understand the intricacies of logic or to understand that a study that is from 1991, based on a population group that we're not discussing, would apply in 2007 today in Nebraska? Well, to somebody who's been driving trains, that's allowable, so I'll pass on from that. People will talk about my passion toward something. If that means that I feel deeply what I'm dealing with, then I will accept the term, but I never apply it to anything

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that I do. I'm not passionate toward things. I might be passionate toward a person, but not a thing or an idea. I think language should be more carefully used than that. But I feel deeply about what I'm talking about here. And we're not going to get a vote on it today; our numbers were few from the beginning, so don't worry about that. And if the hope of some was that I'd take a vote when the numbers were too small to have a chance to get the bill advanced and then it would be off the agenda, I hate to disabuse you of that misperception. I'm going to go back to what I was talking about on religion because somebody prayed this morning. Senator Fulton, somebody was talking about whether or not I'd ever offer a prayer and, if I did, what would the result be. And a person said, well, God wouldn't pay attention to it. And when the person was asked, why wouldn't he, do you know what the reply was? God would think he was joking. See there? If I wanted to pray, of what value would it be? None. So why should I bother with that? You gave me a statement that said the best sermons are lived, not preached. The best way to show that religion has impact is to apply it. Why call you me, Lord, Lord, and do not the things that I say? Many people will say, Lord, Lord, on that day, and I'll say depart from me because I know you not. Why do you say you don't know me? Because I was hungry, naked and so forth and you turned your back on me. [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR CHAMBERS: And you did it to the least of these, you did it unto me. The ones who deserved help and protection, you refused to give it to them, you refused to give it to me. I doubt if there's a person on this floor who professes to be a Christian, if they saw what they really believed to be Jesus walking through here and he said, I need a drink of water, 48 cups of water would appear; I need a hamburger, they'd zoom in their cars to Burger King or McDonald's and come back with 48 hamburgers. But then find somebody who is ragged, emaciated, maybe with body odor, matted hair, dirty, and say, I'm hungry, I'm thirsty. They'd say, security, red coat, get this person out of here because there's no room in this inn. Now we have people who are knocking at the door, and we have Senator Fulton talking about numbers: numbers 15 years old. [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR CHAMBERS: Thank you, Mr. President. [LB475]

SENATOR AGUILAR: Thank you, Senator Chambers. Senator Erdman, you're next and you are recognized. [LB475]

SENATOR ERDMAN: Thank you, Mr. President. Good afternoon, Senator Friend. Senator Chambers, would you yield to a question? [LB475]

SENATOR AGUILAR: Senator Chambers, would you yield to a question? [LB475]

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SENATOR CHAMBERS: Yes, I will. [LB475]

SENATOR ERDMAN: Senator, it will actually be more than one question. But we have had conversations in the past about the construction of law and how, in different circumstances, the court may interpret or construct a remedy or a...may extend the plain reading of the language, whether it's constitutional or otherwise. And generally, under equal protection, they extended a different provision of the law to accomplish equal protection in Nebraska. Are you...do you recall? We even had that conversation today. [LB475]

SENATOR CHAMBERS: Yes. But let us say they interpret the law... [LB475]

SENATOR ERDMAN: There you go. [LB475]

SENATOR CHAMBERS: ...to say that it applies to that situation. [LB475]

SENATOR ERDMAN: Fair enough. Fair enough. When we're constructing language, and we had a very good tutorial on LB142, which was criminal statute, about the words must mean something. [LB475 LB142]

SENATOR CHAMBERS: Yes. [LB475]

SENATOR ERDMAN: And in criminal law, when you're, as Senator Pirsch is or was, a prosecutor--maybe he still is--you have a burden to prove the individual has violated the act or the crime in which we have (inaudible) in statute and those words mean something towards proving that guilt. [LB475]

SENATOR CHAMBERS: Yes, you have to prove every element of the offense beyond a reasonable doubt, correct. [LB475]

SENATOR ERDMAN: Fair enough. When you go to the civil law, which is what this law is, you still have a burden of understanding what the law is, but it may not be as high in the terms of strict understanding of that terminology. Is that a fair representation of criminal law versus civil law? [LB475]

SENATOR CHAMBERS: Civil law requires a preponderance of the evidence, which means if you have a scale, whichever one can tilt the scale the least bit is the one who wins. [LB475]

SENATOR ERDMAN: And which side of the scale did Mr. Hergert end up in? [LB475]

SENATOR CHAMBERS: Mr. Hergert wound up where he belonged. (Laugh) [LB475]

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SENATOR ERDMAN: That's (inaudible). [LB475]

SENATOR CHAMBERS: The scales of justice... [LB475]

SENATOR ERDMAN: But that...but that was the same standard that we use now under our impeachment proceedings, was the preponderance of evidence,... [LB475]

SENATOR CHAMBERS: Yes. [LB475]

SENATOR ERDMAN: ...as opposed to beyond a reasonable doubt. [LB475]

SENATOR CHAMBERS: Beyond, yes. [LB475]

SENATOR ERDMAN: Okay. We spent a great deal of time on LB564 this session dealing with recreational liability. That's a civil law, correct? [LB475 LB564]

SENATOR CHAMBERS: Yes. [LB475]

SENATOR ERDMAN: And I believe I have written somewhere that words mean something, and you'd spent a great deal of time going through the language of that law, but it was because we wanted to make sure, at least you did, that people understood what was in the act... [LB475]

SENATOR CHAMBERS: Yes. [LB475]

SENATOR ERDMAN: ...as it pertained to either those that would be subject to the act or the potential remedy that would be removed from those individuals that would seek it under the current interpretation of the court, which has now changed with the passage of LB564. Is that accurate? [LB475 LB564]

SENATOR CHAMBERS: Correct, just as everybody on this floor knows that this bill is dealing with homosexuality. [LB475]

SENATOR ERDMAN: Fair enough. And that would be my next question. If you go back ten years ago, and I don't know exactly when Senator Ashford was previous...his previous term was, some of the issues he was talking about when sexual orientation was proposed, that was the plain meaning of the word, which is generally what the courts would construct as their interpretation of the law, absent a definition. Is that accurate? And then they have other vehicles, if it's not clear to them what that means, that they can go and decipher that. Is that more... [LB475]

SENATOR CHAMBERS: Are you asking me am I of the opinion that when the hate crimes law was adopted in the first instance, the courts understood what sexual

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orientation meant? [LB475]

SENATOR ERDMAN: Right. [LB475]

SENATOR CHAMBERS: Yes. [LB475]

SENATOR ERDMAN: Right. [LB475]

SENATOR CHAMBERS: Yes. [LB475]

SENATOR ERDMAN: And would you say that that same definition is the same definition that could be extended to the canons and the provisions that they have in their court rulings or court directions for judges that you've referenced here today, and would be the same understanding that would be advanced should this bill become law? [LB475]

SENATOR CHAMBERS: I'm saying that the court knows what that term means and would apply that meaning to any case that came before it where sexual orientation was at issue. [LB475]

SENATOR ERDMAN: And if I'm...if I heard you correctly, you said that you believe it's clear that everyone knows that that term means homosexuality for the purposes of this bill or that... [LB475]

SENATOR AGUILAR: One minute. [LB475]

SENATOR ERDMAN: ...term in statute. Is that...? [LB475]

SENATOR CHAMBERS: I'm saying we all know that's what we're talking about. [LB475]

SENATOR ERDMAN: Okay. So absent legislative history or something specific that says what that terminology would mean, absent that, in the plain reading of the language then the court would have another vehicle in which they would have to analyze what the intent was to determine what that definition would be, correct? [LB475]

SENATOR CHAMBERS: If the court has already dealt with this subject, as courts have, and they will look to other jurisdictions,... [LB475]

SENATOR ERDMAN: Right. [LB475]

SENATOR CHAMBERS: ...they will not be swayed by what we say on the floor of the Legislature that something means. But if we write a definition in statute then that definition will control and govern. [LB475]

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SENATOR ERDMAN: Okay. Fair enough. And I think that's...I think that's appropriate. I mean I'm just...I'm understanding what you're saying. The term "race," "religion," "gender," those things have been tried in the courts and are either generally accepted based on the plain reading of their language, or there's precedent that... [LB475]

SENATOR AGUILAR: Time. [LB475]

SENATOR ERDMAN: ...that determines that. (Inaudible). [LB475]

SENATOR CHAMBERS: Yeah, they'll say the general understanding. [LB475]

SENATOR ERDMAN: Right. Thank you. [LB475]

SENATOR AGUILAR: Thank you, Senator Erdman, Senator Chambers. I recognize Speaker Flood for an announcement. [LB475]

SPEAKER FLOOD: Thank you, Mr. President, members. It has been a long week. We have a lot of work to do next week. We are about to adjourn this afternoon and I wanted to remind you that we will be adjourning until 9:00 a.m. on Monday morning, at which time we will begin discussing LB641. I want to urge you to get lots of rest and relaxation over the weekend because we will be working late nights next week as we work through the very difficult and complex issues presented in LB641. It has been our intention this week to work toward compromise, and while I do appreciate everyone's attention to this big issue and coming to the 7:30 meetings, we still have work to do over the weekend. That being said, Mr. President, I would ask that Senator Raikes be recognized for a point of personal privilege, as Chairman of the Education Committee, to advise our members and the public as to what he and his committee members have been working on and the process that we will employ beginning Monday. And as far as amendments, to the extent that you can file them it would be appreciated, as I will be looking at amendments over the weekend. I will probably wait until Monday morning to order the amendments appropriately on Select File, after I've had a chance to look at the new ones filed. So if you can't get them to me, I understand. I will have to see them and understand them before I begin ordering the same on Monday, but I will be doing that first thing once session is underway. Thank you, Mr. President. [LB641]

SENATOR AGUILAR: Senator Raikes, as Chair of the Education Committee, you are recognized. [LB641]

SENATOR RAIKES: Thank you, Mr. President, members. We have just filed an amendment to LB641, which we hope will be the subject of discussion on Monday. The amendment that we have filed is a white copy amendment. The Bill Drafters have not yet finished the page and line amendment. Both are amendments to LB...or AM1258, which is the current LB641. We will get you the page and line amendment as soon as it

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is available on Monday. This will give you an opportunity to have a straight read through the amendment with the white copy, and also to see the changes that we've made in AM1258 with the page and line amendment. We have a couple of summary sheets that describe the amendment and the changes that are embodied therein. We'd be happy to share those with you. If you have any questions about either of those as you depart for the weekend, I'd be happy to address them. So thank you. [LB641]

SENATOR AGUILAR: Thank you, Senator Raikes. Mr. Clerk, items on your desk?

CLERK: I do, Mr. President. Senator Avery would offer LR212; that will be laid over. Amendments to be printed: Senator Schimek, LB646; Senator Kopplin, LB171; Senator Cornett, LB641; and Senator Raikes, LB641. (Legislative Journal pages 1693-1695.) [LR212 LB646 LB171 LB641]

Mr. President, I do have a priority motion. Senator Johnson would move to adjourn until Monday morning, May 21, at 9:00 a.m.

SENATOR AGUILAR: You've heard the motion to adjourn. All those in favor say aye. Those opposed, nay. We are adjourned.