

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

Floor Debate
May 30, 2007

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PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the eighty-ninth day of the One Hundredth Legislature, First Session. Our chaplain for today is Senator Wallman. Would you all please rise?

SENATOR WALLMAN: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Senator Wallman. I call to order the eighty-ninth day of the One Hundredth Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

PRESIDENT SHEEHY: Corrections for the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: Mr. President, at this time I have neither messages, reports, nor announcements.

PRESIDENT SHEEHY: (Visitors introduced.) Mr. Clerk, we will now move to Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, the first bill is LB97. [LB97]

CLERK: (Read LB97 on Final Reading.) [LB97]

PRESIDENT SHEEHY: All provision of law relative to procedure having been complied with, the question is, shall LB97 pass? All those in favor vote yea; opposed, nay. Please

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record, Mr. Clerk. [LB97]

CLERK: (Record vote read, Legislative Journal pages 1851-1852.) 42 ayes, 1 nay, 3 present and not voting, and 3 excused and not voting, Mr. President. [LB97]

PRESIDENT SHEEHY: LB97 passes. We will now proceed to LB142. [LB97 LB142]

CLERK: (Read LB142 on Final Reading.) [LB142]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB142 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB142]

CLERK: (Record vote read, Legislative Journal pages 1852-1853.) 45 ayes, 2 present and not voting, and 2 excused and not voting, Mr. President. [LB142]

PRESIDENT SHEEHY: LB142 passes. We will now proceed to LB247. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB142 LB247]

CLERK: 40 ayes, 2 nays, Mr. President, to dispense with the at-large reading. [LB247]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB247]

CLERK: (Read title of LB247.) [LB247]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB247 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. (Doctor of the day and visitors introduced.) Mr. Clerk, please record. [LB247]

CLERK: (Record vote read, Legislative Journal page 1855.) 47 ayes, 1 present and not voting, 1 excused and not voting, Mr. President. [LB247]

PRESIDENT SHEEHY: LB247 passes with the emergency clause attached. We will now proceed to LB247A. [LB247 LB247A]

CLERK: (Read LB247A on Final Reading.) [LB247A]

PRESIDENT SHEEHY: All provisions of the law relative to procedure having been complied with, the question is, shall LB247A pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB247A]

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CLERK: (Record vote read, Legislative Journal pages 1855-1856.) 47 ayes, 1 present and not voting, 1 excused and not voting, Mr. President. [LB247A]

PRESIDENT SHEEHY: LB247A passes. We will now proceed to LB358. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB247A LB358]

CLERK: 42 ayes, 4 nays, Mr. President, to dispense with the at-large reading. [LB358]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB358]

CLERK: (Read title of LB358.) [LB358]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB358 pass? All those in favor vote yea; opposed, nay. The kolaches which are currently being distributed throughout the Chamber are for Senator Karpisek's 17th wedding anniversary, which will be one month from today. Thank you, Senator. Mr. Clerk, please record. [LB358]

CLERK: (Record vote read, Legislative Journal pages 1856-1857.) 47 ayes, 1 present and not voting, 1 excused and not voting, Mr. President. [LB358]

PRESIDENT SHEEHY: LB358 passes. We will now proceed to LB456. [LB358 LB456]

ASSISTANT CLERK: (Read LB456 on Final Reading.) [LB456]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB456 pass? All those in favor vote yea; opposed, nay. Please record, Madam Clerk. [LB456]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1857-1858.) The vote is 46 ayes, 2 present and not voting, 1 excused and not voting, Mr. President. [LB456]

PRESIDENT SHEEHY: LB456 passes. We will now proceed to LB551. [LB456 LB551]

ASSISTANT CLERK: (Read LB551 on Final Reading.) [LB551]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB551 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Madam Clerk. [LB551]

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ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1858-1859.) The vote is 38 ayes, 9 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB551]

PRESIDENT SHEEHY: LB551 passes with the emergency clause attached. We will now proceed to LB551A. [LB551 LB551A]

ASSISTANT CLERK: (Read LB551A on Final Reading.) [LB551A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB551A pass? All those in favor vote yea; opposed, nay. Please record, Madam Clerk. [LB551A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1859-1860.) The vote is 41 ayes, 2 nays, 5 present and not voting, 1 excused and not voting, Mr. President. [LB551A]

PRESIDENT SHEEHY: LB551A passes. We will now proceed to LB554. Madam Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB551A LB554]

ASSISTANT CLERK: Vote is 38 ayes, 2 nays to dispense with the at-large reading, Mr. President. [LB554]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB554]

ASSISTANT CLERK: (Read title of LB554.) [LB554]

PRESIDENT SHEEHY: All provision of law relative to procedure having been complied with, the question is, shall LB554 pass? All those in favor vote yea; opposed, nay. Mr. Clerk, please record. [LB554]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1860-1861.) Vote is 46 ayes, 2 present and not voting, 1 excused and not voting, Mr. President. [LB554]

PRESIDENT SHEEHY: LB554 passes. We will now proceed to LB554A. [LB554 LB554A]

ASSISTANT CLERK: (Read LB554A on Final Reading.) [LB554A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied

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with, the question is, shall LB554A pass? All those in favor vote yea; opposed nay. Please record, Mr. Clerk. [LB554A]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1861-1862.) Vote is 48 ayes, 1 excused and not voting, Mr. President. [LB554A]

PRESIDENT SHEEHY: LB554A passes. We will now proceed to LB573. [LB554A LB573]

ASSISTANT CLERK: (Read LB573 on Final Reading.) [LB573]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB573 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB573]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1862.) Vote is 44 ayes, 4 present and not voting, 1 excused and not voting, Mr. President. [LB573]

PRESIDENT SHEEHY: LB573 passes. We will now proceed to LR1CA. [LB573 LR1CA]

ASSISTANT CLERK: Mr. President, I have a motion on the desk. Senator Preister would move to return LR1CA to Select File for a specific amendment, that being to strike the enacting clause. (FA143, Legislative Journal page 1862-1863.) [LR1CA]

PRESIDENT SHEEHY: Senator Preister, you are recognized on your motion. [LR1CA]

SENATOR PREISTER: Thank you all, Honorable President, friends. I put this up just to briefly remind everyone what this is and why it's important. This is the constitutional amendment that would give the voters of Nebraska a chance to vote on a pay increase to a total of \$22,000--no cost of living, no benefits, no healthcare, nothing else--a salary of \$22,000 starting in the year 2011. So it would be on the primary ballot in May of 2010, which means it would only have been before the voters twice in 23 years. I took into account the concerns over putting it before the voters too frequently. That doesn't seem too frequent to give them the opportunity to make the choice. We are not making the choice; the voters are making the choice. In today's World-Herald, I saw again where someone said let the voters decide. Wasn't on this issue, but people frequently say they want the option of making the choice. This is an important choice because I think it contributes to the validity of this legislative body. We need to have proportional representation, equal representation by minorities, by women, by working-class Nebraskans. And the average person cannot afford to run when they have \$12,000 a year to live on. We're at the end of May. Anyone who thinks that we only work 120 days can see that...90 days or 60 days rather, can see almost half the year is gone and we're still in session working here. We work year-round. It essentially is a bigger time

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commitment than most people ever realized. Nearly half of us will be gone when this goes on the ballot. Most of us won't be affected. Some people will be up for reelection at that time. But it is for the integrity of the Legislature. It means that we can be at least more available to more of the people in Nebraska. This is going to take 40 votes. It's four-fifths requirement. The only other thing that requires four-fifths majority vote is to extend this session. I'm not even going to ask you to extend the session. (Laughter) But to do this, we need a higher number of votes. It's not about me. I won't be here. I will be out of the body for two years but I will be working on it, as other members have committed to doing. I think it's doable but it takes your vote to make it accessible to the public. All you're doing with your vote is giving the public an opportunity to vote. Please, I ask you, give the public a chance to vote on it. Thank you. Mr. Clerk, I would withdraw that amendment. [LR1CA]

PRESIDENT SHEEHY: Motion to return is withdrawn. Mr. Clerk, would you proceed with the reading of LR1CA? [LR1CA]

ASSISTANT CLERK: (Read LR1CA on Final Reading.) [LR1CA]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LR1CA pass, providing for the submission of such proposition at the next special election in conjunction with the statewide primary election in May of 2010? This requires 40 votes. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR1CA]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1864.) Vote is 42 ayes, 6 present and not voting, 1 excused and not voting, Mr. President. [LR1CA]

PRESIDENT SHEEHY: LR1CA passes. Mr. Clerk, do you have items for the record? [LR1CA]

CLERK: I do, Mr. President. Your Committee on Enrollment and Review reports they have examined and reviewed LB171 and LB171A, and report those to Select File with Enrollment and Review amendments attached. And I have a reference report referring LR219 to the Judiciary Committee. That's all that I had, Mr. President. (Legislative Journal pages 1864-1866.) [LB171 LB171A LR219]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB97, LB142, LB247, LB247A, LB358, LB456, LB551, LB551A, LB554, LB554A, LB573, LR1CA, along with other legislation resolutions, LR213 and LR215. Mr. Clerk, we will now move to agenda items under General File. [LB97 LB142 LB247 LB247A LB358 LB456 LB551 LB551A LB554 LB554A LB573 LR1CA LR213 LR215]

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CLERK: Mr. President, the first bill, LB177, introduced by Senator Janssen. (Read title.) Introduced on January 9, referred to the Revenue Committee, advanced to General File. There are committee amendments, Mr. President. (AM279, Legislative Journal page 546.) [LB177]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Janssen, you are recognized to open on LB177. [LB177]

SENATOR JANSSEN: Thank you, Mr. Lieutenant Governor, members of the Legislature. LB177 was introduced to improve the Nebraska Advantage Microenterprise Tax Act that was first passed two years ago. The Microenterprise Act provides a 20 percent refundable investment tax credit up to \$10,000 for a business with five or fewer employees if they meet certain investment objectives. The tax credit is currently capped at \$2 million per year and the business is limited to a lifetime total tax credit of \$10,000. Since the act was passed, the \$2 million cap has been met each year. However, some concerns about the act have been raised since it was implemented. This bill, LB177, would improve the program and make it more focused so that it has a greater impact on microbusinesses across Nebraska. The committee amendment rewrites the bill so I'll provide additional details on the changes made to LB177 during my opening on the committee amendments. Thank you. [LB177]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You've heard the opening to LB177. We will now move to the amendment from the Revenue Committee, AM279. Senator Janssen. [LB177]

SENATOR JANSSEN: Thank you, Mr. President and members. With the adoption of the committee amendments, which rewrites the bill, LB177 makes several changes needed to better focus the credit where it will do the most good to help these small businesses. The credit currently applies only to investments in plant, equipment, repairs, and new employees. These limitations reduce the effectiveness in spurring microenterprise development and creating new opportunities. Focusing the credit on employees and capital makes it a poor fit with microenterprises because many aren't capital-intensive and many don't hire employees. Under this amendment, the credit would be targeted toward beginning farmers or those who are involved in value-added agriculture, as well as other small businesses with five or fewer employees. It would also include the employer's cost of health insurance as compensation for purposes of employment increase qualifying for benefits. This would provide an incentive for providing health insurance for employees of these businesses. The bill would exclude from compensation any amount paid to an employee that is in excess of 150 percent of the state average weekly wage. The purpose of this change is to ensure that it is not used by business owners simply to increase their own salaries. LB177 will also include increased expenditures for advertising, legal, and professional service as investments for purposes of qualifying for these benefits. This change recognizes the role of these

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investments in a microbusiness. The improvements made through LB177 provide microbusinesses with an improved means to enhance their business and spur economic growth in all parts of the state. I believe these changes would improve the microenterprise program, and I would like to ask for your support of the committee amendments. Thank you. [LB177]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You have heard the opening to the committee amendment, AM279. Mr. Clerk, you have an amendment to the committee amendment? [LB177]

CLERK: Mr. President, Senator Janssen would move to amend the committee amendments with FA128. (Legislative Journal page 1742.) [LB177]

PRESIDENT SHEEHY: Senator Janssen, you're recognized to open on your FA128. [LB177]

SENATOR JANSSEN: Thank you, Mr. President. This floor amendment to the committee amendments, FA128, would add "at the time of application" after "employees" on page 1 in line 20. This was suggested by someone who works with the program, to clarify that a business would be allowed to exceed the five employee limit after they qualify for the tax credit. If this amendment is adopted, a microbusiness will not be penalized for growth. That is the extent of the floor amendment, just puts a safeguard and so that the companies could grow if they needed to. With that, I'd answer any questions. Thank you. [LB177]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You've heard the opening to the amendment to committee amendments, FA128. The floor is open for discussion. Any members wishing to speak? Seeing none, Senator Janssen, you're recognized to close. [LB177]

SENATOR JANSSEN: I'll waive closing on the floor amendment. [LB177]

PRESIDENT SHEEHY: Senator Janssen waives closing on the amendment. The question before the body is, shall FA128 be adopted to AM279? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB177]

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of the amendment to the committee amendments. [LB177]

PRESIDENT SHEEHY: FA128 is adopted. We will now return to floor discussion on committee amendment, AM279. Senator Janssen, currently no members wishing to speak. You're recognized to close on your committee amendment, AM279. [LB177]

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SENATOR JANSSEN: Thank you, Mr. President. This does improve the bill, and I believe that we're making progress with this committee amendment on the microenterprise business throughout the state of Nebraska. With that, I'd ask for your adoption of the committee amendments and the passage of the bill. Thank you. [LB177]

PRESIDENT SHEEHY: Thank you, Senator Janssen. You've heard the closing on the amendment. The question is, shall AM279 be adopted to LB177? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB177]

CLERK: 29 ayes, 0 nays on adoption of committee amendments. [LB177]

PRESIDENT SHEEHY: AM279 is adopted. We will now return to floor discussion on LB177. Senator Pirsch, you are recognized. [LB177]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I was wondering if Senator Janssen would yield to a quick question or two. [LB177]

PRESIDENT SHEEHY: Senator Janssen, would you yield? [LB177]

SENATOR JANSSEN: Yes. [LB177]

SENATOR PIRSCH: What is the fiscal note or appropriation that is attendant with LB177? [LB177]

SENATOR JANSSEN: After the amendment to the committee amendments, that will go away. [LB177]

SENATOR PIRSCH: Okay. So there's no... [LB177]

SENATOR JANSSEN: There is no fiscal note now. [LB177]

SENATOR PIRSCH: Okay, very good. That's the only question I had. [LB177]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Are there additional members wishing to speak on this item? Seeing none, Senator Janssen, you're recognized to close on LB177. Senator Janssen waives closing. The question before the body is, shall LB177 advance to E&R Initial? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB177]

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB177. [LB177]

PRESIDENT SHEEHY: LB177 does advance. (Visitors introduced.) Next item under General File, Mr. Clerk? [LB177]

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CLERK: Mr. President, LB246, introduced by Senator Johnson. (Read title.) The bill was introduced on January 10 of this year, referred to the Judiciary Committee. The bill was advanced to General File. There are committee amendments, Mr. President. (AM800, Legislative Journal page 1059.) [LB246]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Johnson, you're recognized to open on LB246. [LB246]

SENATOR JOHNSON: Thank you, Mr. President, members of the body. We're reaching kind of the end of the trail here for the legislative session, and it wasn't lost on me the irony that we are talking about organ retrievals from deceased patients. One of the things that we want to thank our Speaker for making this a Speaker's priority bill. LB246 was advanced from the Judiciary Committee with a vote of six in favor, one no, and one not voting. Let me tell you what the situation is in the United States and also in Nebraska. There is a severe shortage of available transplantable organs throughout the United States. There are almost 95,000 people on the organ sharing transplant waiting list. Every 12 minutes, there is another person added to the waiting list. We said there are 95,000 people on the waiting list. In 2005, the last year we have recorded, there were 28,000 organ transplants completed; 28,000 with 95,000 on the waiting list. The Nebraska numbers reflect the national numbers as well. There are more than 500 people on the organ waiting list in Nebraska alone--more than 500. In Nebraska, from the year 2005 to the end of 2006, the Nebraska Organ Recovery System had 11 coroners decline to allow organ donations on persons who were pronounced brain dead. If you take these denials, the potential for additional lives saved was as many as 88 people in Nebraska alone. Many lifesaving transplantable organs cannot be recovered from potential donors in a time frame consistent with transplantation of good organs, when the proximal cause of death or means of death places the donor under the jurisdiction of a coroner. LB246 is an addition to the statutes, setting forth the duties of the county coroners. The bill is intended to facilitate the recovery of transplantable organs from the decedents under the coroner's jurisdiction. Here's the important parts. LB246 will require coroners or their physicians or their designees to complete a timely investigation to determine whether any transplantable organs or tissues contain evidence of the proximate cause or means of death. Additionally, coroners will be able to deny the recovery of any organs or tissues containing evidence of the proximate cause or means of death, thereby maintaining the balance between availability of organs and tissues for transplantation and the orderly administration of justice. Other states have the same problems as Nebraska. A review, however, of case law shows that there are no cases in which a state was not adequately able to investigate a crime or a criminal defendant because necessary evidence had been altered by the organ donation. Many states have already passed laws similar to this and our bill is similar to these states: Wisconsin, New York, Tennessee, Mississippi, New Jersey, Texas, California, Arkansas, and Michigan. LB246 has broad support from not only the

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Nebraska Organ Retrieval System but the Nebraska Medical Association, the UNMC Medical Center, Creighton University, Nebraska Hospital Association, and many other organization and support families. One of the first things I did when I was approached with this legislation is to take it to the County Attorneys Association and many other groups have been consulted since. LB246 will save lives and increase the number of people with their gift of life. Donor families will also have the consolation that the painful death that their family has endured will bring life and joy to others. I might say that after the hearing, I encountered several of these families where this had been the case where their family member was not allowed to be a donor, and they were quite upset with the process that they had gone through. So with that, Mr. President, I would conclude my opening on LB246. There is a committee amendment which essentially will replace the primary bill. Thank you. [LB246]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the opening to LB246. We will now move to the committee amendment, AM800. Senator Ashford. [LB246]

SENATOR ASHFORD: Thank you, Mr. President. For those of us who supported the original organ donor bill years ago that Arlene Nelson brought to the Legislature, thank you, Senator Johnson, for your efforts. Senator Johnson has outlined the reasons for the bill and the substantive portions of the bill. And the committee amendments really make no change to the substance of LB246. However, there is a reorganization. As you look at the amendment, you'll see that it's a rewrite of the entire bill. In actuality, it really was just simply a reorganization of the bill into various sections. The substance of the bill is as was described very adequately by Senator Johnson. The amendments make no...AM800 makes no change to the obligation of the coroner to perform preliminary investigation within a time frame compatible with preservation of organs and tissue for donation. And it also provides in the amendment no change from the original bill that the organs may be harvested if the coroner fails to perform preliminary investigation in a timely manner, addressing the issue that Senator Johnson described. The bill does do a couple of clarifying things. First of all, it defines "donor" to include living persons who have agreed to donate organs as a potential donor. It provides blanket in the bill, but it clarifies in the amendment that the donor must be a decedent--must be dead, obviously, prior to the harvesting of the organs. The bill provides civil and criminal immunity for individuals complying in good faith with the act. The amendment removes civil immunity as those immunities are provided in other parts, other legislation. And criminal liability is still provided as it was in the original bill. So in summary, Mr. President, this amendment for the most part is a reorganization of the sections of the original LB246. AM800 includes all of the substantive provisions described by Senator Johnson. As Senator Johnson suggests, the bill with the amendments was advanced by the Judiciary Committee. We had a thorough hearing discussion on the issues. A variety of witnesses came in and testified about some of the frustration that Senator Johnson has described with the ability to have these organs harvested in a timely manner to preserve the

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organs for transplant. And with that, Mr. President, I would urge the adoption of AM800 and the advancement of LB246. [LB246]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening to AM800, Judiciary Committee amendment to LB246. Mr. Clerk, do you have an amendment to the committee amendment on your desk? [LB246]

CLERK: I do, Mr. President. Senator Chambers, would move to amend the committee amendments by striking Section 1 thereof. (FA144, Legislative Journal page 1867.) [LB246]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on your amendment to committee amendment. [LB246]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, were I attempting to kill this bill, I would offer a kill motion. I voted against this bill in the committee. I was there for the hearing and I had some serious reservations. So I'm going to make motions to strike each section, to give Senator Johnson the opportunity to explain what these sections...the provisions in the bill that I have a problem with. I will not take an equal amount of time on each section because some of them may seem relatively self-explanatory. But in order to discuss the bill the way that I want to, rather than try to fabricate amendments, say, to strike a word here or strike a word there, I will go after each section. When Senator Johnson has satisfied the problems that I have with that section, I will withdraw that amendment. But to show the kind of mood that I'm in, because I've looked at it a little bit, this little rhyme is dedicated to Senator Johnson who...first of all, let me ask him a question or two for the record. [LB246]

PRESIDENT SHEEHY: Senator Johnson, would you yield to questions? [LB246]

SENATOR JOHNSON: Certainly. [LB246]

SENATOR CHAMBERS: Senator Johnson, how many academic degrees do you have and what are they? [LB246]

SENATOR JOHNSON: I guess the first one is a bachelor of science, then an M.D., and that's all of the actual degrees. But after that, I had an internship and then a surgery residency. But they don't give diplomas for those. [LB246]

SENATOR CHAMBERS: I would consider your M.D. a medical degree as opposed to an academic degree because it is a professional degree. But you do have an M.D. degree. [LB246]

SENATOR JOHNSON: Yes, sir. [LB246]

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SENATOR CHAMBERS: And you took an internship? [LB246]

SENATOR JOHNSON: Yes, sir. [LB246]

SENATOR CHAMBERS: And a residency? [LB246]

SENATOR JOHNSON: Yes, 1962 to '66. [LB246]

SENATOR CHAMBERS: A while back, right? [LB246]

SENATOR JOHNSON: I'm afraid so. [LB246]

SENATOR CHAMBERS: Now if you can recall, I will ask you some questions... [LB246]

SENATOR JOHNSON: Certainly. [LB246]

SENATOR CHAMBERS: ...if you can recall the answer. But if you can't, just let me know and I will let you go. But before I ask them, are you currently a practicing physician? [LB246]

SENATOR JOHNSON: I still have my license, sir, but I do not actively practice. [LB246]

SENATOR CHAMBERS: Okay. [LB246]

SENATOR JOHNSON: And Senator, let me say that I will turn on my light so that if I do answer a question too lengthy and use up your time, we'll use my time. [LB246]

SENATOR CHAMBERS: Thank you. Now if you want to take your seat, you can. Members of the Legislature, if you look at this committee statement, you will see a long list of proponents. I saw something in this list that was interesting to me. Following on this list the University of Nebraska Medical Center is the Nebraska Funeral Directors Association. And you know what the turn of mind that I have? I couldn't resist what that made me think of. And here's what it made me think of, Senator Johnson, and I didn't have much time so you have to overlook it. The Funeral Directors Association merged with the AMA; tis a marriage made in heaven, both groups' members say. For the doctors part, they claim, our services won't vary; undertakers then intone, their mishaps we shall bury. Speaking though of services, the doctors all have good reps; our services require we follow in their footsteps. Members of the Legislature, this is a very serious issue and I don't mean by that it's solemn or depressing. I mean it's one that addresses a very consequential social issue. The one that the bill addresses relates to some of these people known as coroners who will not, in a timely fashion, assist with the activities that are necessary to allow the organs of somebody who made it clear he or

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she chose to be a donor and had his or her life cut short through the intervention of an unkind fate. So this bill is designed to rectify that situation so that any organs which can be retrieved will be retrieved unless the physician designated by the coroner or the coroner's physician to conduct a preliminary investigation, unless that physician determines that organs or tissues which are to be donated may be involved in the determination of the proximate cause of death or the means used to inflict death. The proximate cause means that one which immediately...maybe not necessarily immediately, but the one that resulted or led to the death. There can be intervening actions, even secondary causes. But if to determine the ultimate cause of death certain tissues and organs must be retained as evidence, those organs and tissues will not be available for transplantation. They cannot be obtained. That, based on what I understood the testimony to be aiming at, is the matter that is to be addressed by the bill. So now I would like to go into Section 1, if Senator Johnson will work with me. [LB246]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB246]

SENATOR JOHNSON: Yes. [LB246]

SENATOR CHAMBERS: Senator Johnson, just very briefly, what is the Uniform Anatomical Gift Act which is mentioned in the findings in Section 1, so that we know what that is at the beginning and we don't have to keep questioning it? [LB246]

SENATOR JOHNSON: I believe what we're referring to here is what the Chairman of your committee, Brad Ashford, alluded to. In other words, it was the law that put into effect how organs go about being retrieved and which ones would be and so on. For instance, how do you determine a cause of death? Years ago, for instance, before there were sophisticated machinery to demonstrate it, like an electroencephalogram where you look for the brain waves, basically what you did is found out whether the person had a pulse, which you might check in the neck. If you had a stethoscope, you might listen to the heart. Or another way that's very accurate is to take a flashlight and shine it in a person's eyes. That is one of the most accurate ways because when a person is brain dead, the pupils of the eyes will dilate, and we call it dilated and fixed. In other words, they will be wide open and when you shine the light in there, there will be no reaction to constrict down. They won't react to that light. And that is still a very good way. But now pretty universally what you will have in declaring a person brain dead is where they will use the electroencephalogram, or EEG, and see if there is any brain activity. [LB246]

SENATOR CHAMBERS: Now Senator Johnson, if a body is cold, if rigor mortis is beginning to be... [LB246]

PRESIDENT SHEEHY: One minute. [LB246]

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SENATOR CHAMBERS: ...evident, that is a certain indication that death has occurred, correct? [LB246]

SENATOR JOHNSON: Well, there...yes and no. Certainly there would be other diseases that could give you stiffness and things like this as well. So just if a person happened to have polio, you know, 50 years ago or something like that from the waist down, they might look like rigor mortis had set in. So you can't necessarily...I've actually had the opportunity to operate on a few people that have had polio 50 years ago. And their muscles look more like liver than they look like muscles. [LB246]

SENATOR CHAMBERS: So those kinds of things that you might can observe with your eyes alone or the touch of your hands will not be accepted today as a way to determine that death has occurred. [LB246]

SENATOR JOHNSON: No. [LB246]

SENATOR CHAMBERS: There are more precise and sophisticated... [LB246]

PRESIDENT SHEEHY: Time, Senator. [LB246]

SENATOR CHAMBERS: ...methods. Thank you. [LB246]

PRESIDENT SHEEHY: Members wishing to speak...you have heard the opening FA144 to the committee amendment. The floor is open for discussion. Members requesting to speak are Senator Stuthman, followed by Senator Pedersen, Senator Fulton, Senator Howard, Senator Johnson, Senator Chambers, and Senator McDonald. Senator Stuthman. [LB246]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I would like to engage in a little conversation with Senator Johnson, if I may. [LB246]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB246]

SENATOR JOHNSON: Certainly. [LB246]

SENATOR STUTHMAN: Senator Johnson, the real intent of this bill is to hopefully be able to collect or harvest organs from individuals that, you know, want to donate their organs in a more timely manner so that these organs are not being able to be used? Is that the real intent of this bill? [LB246]

SENATOR JOHNSON: It certainly is. And one of the things is that...let's make one thing clear to the Legislature convened here. I didn't dare say "body" is what almost came to my mind. But one of the things is this, is that let's make clear that people understand

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that these people are declared brain dead before any harvesting of organs occur by the means that I was just discussing with Senator Chambers. And that was the reason for our discussion, is so that there is no question these people are brain dead. Now that does not mean that their heart might not be still pumping, perhaps not as good as it should, but it will be pumping blood to the kidneys, for instance, that you might harvest for a transplant. But here's the other thing, is that these are treated like any other donor. And we're basically talking any other donor other than the criminal case. And so the person will have signed his driver's license, just like you or I might have. But if he has not, the responsible family member will then be the person in charge of deciding whether there is any, you know, desire to forward this person's organs after he has been declared brain dead to be transplanted. So they're treated just like any other donor, whether this is a criminal case or just a person that's been in an accident where he had massive head injuries from an auto wreck, for instance. [LB246]

SENATOR STUTHMAN: And this would be the determination upon being brain dead or chances of survival are zero. Do you have any record, Senator Johnson, of how many of these cases in the past that organs were not being able to be harvested because of the fact of too much of a time delay or anything in that instance? Do you have any record on that? [LB246]

SENATOR JOHNSON: Yes. There was a recent year within the last couple that I am aware of where there were 8 cases one year, and another year I believe there was 11. So in the neighborhood of eight to ten a year in Nebraska has been the unfortunate thing. Now the number of organs that can be transplanted ordinarily runs from about four to seven. So if you multiply say, ten people times seven, then you're talking 70 lives... [LB246]

PRESIDENT SHEEHY: One minute. [LB246]

SENATOR JOHNSON: ...that could have been saved that year. So it's a significant number. And what really is the object of this bill is to ensure that the coroner or the coroner's representative takes part on the scene with the retrieval and decision-making of these organs. [LB246]

SENATOR STUTHMAN: Thank you, Senator Johnson. And I think this is very important because I think, you know, that if these things can be done in a timely manner...and I'm looking at the fact that the amount of people that could be recipients of these organs that could live a normal life in the future. And like you said, you know, there could be up to 70 individuals a year that could have a new breath of life. And I think that's very important, so I thank you for your comments, Senator Johnson. Thank you. [LB246]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Pedersen. [LB246]

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SENATOR PEDERSEN: Thank you, Mr. President and members of the Legislature. I stand in full-hearted support of LB246, AM800, and I think FA144. Being as I have worked some and studied in this field, I wanted to bring some information to those who may not be aware that there is a difference between brain dead and body dead. Senator Johnson, Dr. Johnson has already made it pretty clear--if the heart is pumping then the body is still alive. That doesn't mean that it cannot be brain dead. We are talking about harvesting organs from somebody who is brain dead. From somebody who is body dead, once the heart has stopped pumping and the body is dead, incomplete, there is no more chance for harvesting except in two areas and that would be skin and eyes. So from a body that is dead, once again, all you can harvest is skin in some cases and eyes. The timely matter is these people are already on their death bed if they're brain dead, and we want to get the organs or the organ retrievers want to get the organs before they are completely dead, because that shuts it off from retrieving their organs. There is a problem, but Senator Johnson has taken care of that in the bill--when doctors...when the coroners do not want to let the body be retrieved from because of, let's say a murder case. And the reason for that is they may not have hurt the organs in this brain dead person in the actual murder, but by the time you open them up and take the organs out you have really tore up the body, and they may not be able to find the evidence they need for their criminal cases. To some, that might be gory. To some of us, it's fascinating and very, very interesting and what a machine. But the hurry is to get them--the organs, when I say get them--before they are completely dead. Because once they are pronounced dead and the heart stops beating, there's no more retrieval. And if I'm wrong in that, Senator Johnson can correct that. I have seen it happen several times, the retrieval of organs, and it's fascinating. I've also seen hundreds of autopsies. And it's...the machine itself is fascinating. And if there's something that I can answer on any of them that you might have questions on or off the floor, please feel free. But this is (inaudible) LB246 is a good bill. And believe it or not, when we're talking about death we'll save lives. Thank you. [LB246]

PRESIDENT SHEEHY: Thank you, Senator Pedersen. Senator Fulton. [LB246]

SENATOR FULTON: Thank you, Mr. President. I have a couple of questions for Senator Johnson if he would yield. [LB246]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB246]

SENATOR JOHNSON: Certainly. [LB246]

SENATOR FULTON: Okay. In the committee amendment, AM800, there are a couple of times where some terminology is used that I'd just like to get an idea of what it means legally or what it would mean legally. Page 1, line 9 in the amendments... [LB246]

SENATOR JOHNSON: Okay, I don't have that right in front of me,... [LB246]

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SENATOR FULTON: Okay, I'll go ahead and read it. [LB246]

SENATOR JOHNSON: ...but go ahead and read it, if you would. [LB246]

SENATOR FULTON: Okay. "To accomplish these purposes, the following constitutes the procedure to facilitate the recovery of organs and tissues from donors under the jurisdiction of a coroner," and that terminology is used a couple of times in the amendment. What does that mean, under the jurisdiction of a coroner? Could you just...I'd like some clarity on that, is all. [LB246]

SENATOR JOHNSON: Yes. Well, any time there is a suspicion of death either imminently caused by a homicide or of some nature like that, the coroner does actually step in before the person dies, in many instances. And it's my understanding that is true, not only in Nebraska but in most states, that before the person is actually declared dead, the coroner or his designee will be at bedside, so to speak, and that it is his job to preserve the evidence or might say to evaluate as well as preserve the evidence that might be present. [LB246]

SENATOR FULTON: Are there places in statute that provide for who and who is not under the jurisdiction of a coroner? Does this already exist in Section 23 of the statute? [LB246]

SENATOR JOHNSON: It's my understanding it is and that, like I say, it's relatively common throughout the states, and it's my understanding that it is common, or true in Nebraska as well. [LB246]

SENATOR FULTON: Okay. Thank you, Senator. There's one more question I'll have, and this actually was brought to me some time ago. Someone...a constituent sent me an e-mail. Actually I don't know if it was a constituent or not, but someone sent me an e-mail asking this question and I didn't have a response. So page 2, line 5 in the amendment and I'll go ahead and read, "The coroner may designate the coroner's physician or another physician to conduct the preliminary investigation." So those responsibilities that a coroner has, he could designate a physician to conduct the preliminary investigation. Is there any provision within existing statute or within this bill that would eliminate a potential conflict of interest for such a physician? And the conflict of interest that was brought to me that I couldn't respond to was, what if that physician also happens to be on the organ recovery team or on the transplant team? [LB246]

SENATOR JOHNSON: Yeah. And sir, that's a good question. And it...the intent of this legislation is to clearly delineate the difference. That was why we spent a little bit of time earlier with Senator Chambers to delineate that part of the issue. Now the next question is this,... [LB246]

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PRESIDENT SHEEHY: One minute. [LB246]

SENATOR JOHNSON: ...is, that is there any, quote, potential conflict of interest with the organ retrieval team? The organ retrieval team does not even come into existence or into the picture until these decisions have been made. So no, there is no conflict of interest, and there certainly is not intended to be any, and we should state that in the record. No, there is not, and thank you for asking that question. [LB246]

SENATOR FULTON: Okay, thank you, Senator Johnson. Thank you, Mr. President. [LB246]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Howard. [LB246]

SENATOR HOWARD: Thank you, Mr. President and members of the body. If Senator Johnson would be willing to answer a question or two. [LB246]

PRESIDENT SHEEHY: Senator Johnson, would you yield? [LB246]

SENATOR JOHNSON: Yes. [LB246]

SENATOR HOWARD: Thank you. To make this issue as easy to understand as possible, could you take a bit of time to explain in layman's terms what you see the problem that's existed in the past regarding the donation of organs? [LB246]

SENATOR JOHNSON: Fine, thank you. Yes, and it will take me just a little bit of time to give you an answer, by the way. But here has been the situation, is that many times, obviously, that these decisions have to be made at 3:00 or 4:00 in the morning. And to rely on the good intentions of the coroner or his designee has not worked, not only in our state but in most other states, if not all other states. And so what really this bill does, I like to call it a very loud alarm clock which gets all the participants at the scene at the same time making this very difficult decision. There have been instances in this state and in other states where the coroner, for whatever reason, will not show up at 3:00 or 4:00 in the morning and will just say, no, I'm not coming in. This is a case where there will be a prosecution of a defendant in a criminal case, and we are not going to muddy the waters by allowing any organs to be retrieved in connection with this case, so that the defense does not have the opportunity to show up in court and say, well, he would have survived if you hadn't taken out his heart and his kidneys and so on. So it's to create a teamwork so that these individuals do show up at the time of the harvesting of these organs and work together in determining the cause of death. But equally important, that these organs were not the cause of death that were harvested. So I think it's the team concept. If we require the coroner or his designee to be there at the time of the harvesting, then he can see that the organ was good, uninjured, and was not the

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cause of death and can point that out in court. As I mentioned, there was one, two people that testified; one from Topeka, Kansas, and one in Nebraska. And they stated that not only had they never seen a case, and one of them was doing this for 25 years, but they could not find a case where the removal of the organs actually had an influence on the conviction or whatnot... [LB246]

PRESIDENT SHEEHY: One minute. [LB246]

SENATOR JOHNSON: ...of the perpetrator, so. [LB246]

SENATOR HOWARD: So you feel you've addressed the concerns regarding possible criminal action... [LB246]

SENATOR JOHNSON: Right. [LB246]

SENATOR HOWARD: ...and untimely death. [LB246]

SENATOR JOHNSON: Right. And one other thing while we're talking about things like that, and that's this. For instance, if the person did have a fatal gunshot wound to the head and this was in a 22-year-old with a very good heart, if the coroner is there at the time, he can see that indeed the heart looks normal, functions normal, and in addition, when it is transplanted into somebody, it functions normally. So he then has a complete record to testify in court that, no, the removal of that was not the case. The other thing is, as you harvest several organs out of the body, when you get done... [LB246]

PRESIDENT SHEEHY: Time, Senator. [LB246]

SENATOR JOHNSON: Thank you. [LB246]

SENATOR HOWARD: Thank you, Mr. President. [LB246]

PRESIDENT SHEEHY: We have Senator Johnson, followed by Senator Chambers, Senator McDonald. Senator Johnson. [LB246]

SENATOR JOHNSON: Well, let me just finish with what I was talking about, in that if you have the team there and you remove an organ like the heart, that if it is removed, it looks normal, it's functioning normal in place, and you transplant it into someone and it works very well, basically it looks good and it functions good and it is good. So the coroner can make a very good determination and a very good testimony along that line. Now we'll try and not get gory on you here as Senator Dwite Pedersen tried not to do as well. But when you harvest several organs, obviously that's what you're there to do. And you certainly don't want to injure or open the bowel or something like that and contaminate the kidneys, as an example, and then cause infection in the transplanted

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kidneys. But nonetheless, as you remove these different organs, and we're talking quite a few of them. We're talking hearts, we're talking lungs, we're talking livers, we're talking kidneys; in certain cases, pancreases, etcetera. And so when you do that, you know, you have in many respects done an autopsy in those areas. One other thing that we should mention as well is that there are also various body fluids that will be collected for tissue typing and this type of thing as well, so that these fluids also and the results of those would be available to the coroner as well. So they actually, by showing up, will have a better degree of information that will be available to them to use at a trial than if they just do an autopsy on the body at 8:30 the next morning, rather than getting up at 3:00 in the middle of the night. So with that, I believe it's time to call it a morning and thank you very much. [LB246]

PRESIDENT SHEEHY: Thank you, Senator Johnson. Mr. Clerk, do you have items for the record? [LB246]

CLERK: I do, Mr. President. I have a motion with respect to the indefinite postponement of certain bills. (In re LB31, LB31A, LB33, LB46, LB103, LB114, LB119, LB120, LB121, LB122, LB125, LB126, LB127, LB128, LB129, LB130, LB134, LB149, LB156, LB189, LB190, LB260, LB301, LB303, LB303A, LB314, LB346, LB369, LB370, LB370A, LB385, LB398, LB399, LB417, LB417A, LB426, LB426A, LB427, LB458, LB475A, LB478, LB479, LB484, LB491, LB496, LB505, LB519, LB627, LB637, LB659, LB665, LB682.) That's offered by Senator Flood. That will be printed. A withdrawal of a gubernatorial appointment with respect to the Community Corrections Council, Mr. President. Bills read on Final Reading this morning were presented to the Governor at 11:25. (In re LB97, LB142, LB247, LB247A, LB358, LB456, LB551, LB551A, LB554, LB554A, LB573.) The constitutional amendment read on Final Reading was presented to the Secretary of State at 11:30. (In re LR1CA.) Senator Avery, an amendment to LB112 to be printed. Senator Erdman would like to add his name to LB498 as cointroducer. And I do have a priority motion, Mr. President. Senator Langemeier would move to recess until 1:30 p.m. (Legislative Journal pages 1867-1868.) [LB31 LB31A LB33 LB46 LB103 LB114 LB119 LB120 LB121 LB122 LB125 LB126 LB127 LB128 LB129 LB130 LB134 LB149 LB156 LB189 LB190 LB260 LB301 LB303 LB303A LB314 LB346 LB369 LB370 LB370A LB385 LB398 LB399 LB417 LB417A LB426 LB426A LB427 LB458 LB475A LB478 LB479 LB484 LB491 LB496 LB505 LB519 LB627 LB637 LB659 LB665 LB682 LB97 LB142 LB247 LB247A LB358 LB456 LB551 LB551A LB554 LB554A LB573 LR1CA LB112 LB498]

PRESIDENT SHEEHY: You have a motion before you to recess until 1:30 p.m. All those in favor say aye. Opposed, nay. We are in recess.

RECESS

SENATOR LANGEMEIER PRESIDING

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SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please return to the Chamber and record your presence. Senators, the afternoon session is about to reconvene. Please return to the Chamber and record your presence. Mr. Clerk, please record.

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

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

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now proceed to the first item on the afternoon's agenda, which leaves us where we left before the lunch recess on LB246 with FA144. We're going to return now to discussion. There were a number of lights on when we recessed. Senator Chambers, you are recognized. [LB246]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there has been considerable discussion. Questions were asked and answered and initially I thought I might have to do a lot of that lifting, but since I don't, I can focus on one of the areas that was of particular interest to me. And, Senator Johnson, if you would yield to a question or two, maybe I can get it cleared up. [LB246]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question? [LB246]

SENATOR JOHNSON: Yes, sir, I'll try. [LB246]

SENATOR CHAMBERS: Senator Johnson, on page 3 of the committee amendment is Section 4, and it describes a situation where the coroner or the coroner's physician or other physician does not take the action necessary to complete a preliminary investigation in a timely fashion, and in such a set of circumstances the organs may be recovered pursuant to the Uniform Anatomical Gift Act as though the donor was not within the coroner's jurisdiction, which simply put, if I understand this, means that if the coroner does not take appropriate action within a period of time that would allow these organs to be retrieved while they're still usable, then those organs can be retrieved as they could in any other situation where the coroner was not involved. Is that what the language says, more or less? [LB246]

SENATOR JOHNSON: That's my understanding, Senator Chambers. [LB246]

SENATOR CHAMBERS: Okay. Now if this should be done and the coroner later

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on...because the body must be sent to the coroner after the organs have been retrieved, if for any reason a coroner--and usually that's the county attorney, it doesn't have to be somebody trained in medicine at all--if that person wants to raise a question as to whether or not those organs were essential to determining the cause of death, there is nothing negative that can happen to the physician who retrieved the organs, because this provision of law provides protection in that situation. [LB246]

SENATOR JOHNSON: That's my under... [LB246]

SENATOR CHAMBERS: Is that correct? [LB246]

SENATOR JOHNSON: Yes. Yes. [LB246]

SENATOR CHAMBERS: And when this law becomes effective, anybody serving as a coroner has notice of this requirement in the law that there must be timely action by the coroner or the organs can be retrieved. That notice would be in this law. Isn't that correct? [LB246]

SENATOR JOHNSON: That's correct. [LB246]

SENATOR CHAMBERS: And even if somebody who is serving as a coroner, or the coroner's designee, said, well, I didn't know anything about that, this would be one of those situations where ignorance of the law is no excuse. Would you agree? [LB246]

SENATOR JOHNSON: Even for the coroners. [LB246]

SENATOR CHAMBERS: Right. So if people are reading this and have concerns about it, as I initially did,... [LB246]

SENATOR JOHNSON: Yes, sir. [LB246]

SENATOR CHAMBERS: ...they don't even need to worry about that, because there is nothing that is going to come back against the physician who retrieved the organs and made use of them, correct? [LB246]

SENATOR JOHNSON: Yes, sir, correct. [LB246]

SENATOR CHAMBERS: Now that that particular one is out of the way... [LB246]

SENATOR JOHNSON: Senator Chambers,... [LB246]

SENATOR CHAMBERS: Yes. [LB246]

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SENATOR JOHNSON: ...could I interrupt you for just a second? [LB246]

SENATOR CHAMBERS: Yes. [LB246]

SENATOR JOHNSON: And I'll be glad to give you time back. [LB246]

SENATOR CHAMBERS: Okay. [LB246]

SENATOR JOHNSON: I'll turn on...turn on my light right now so we'd have that opportunity. You're touching a little bit on the same subject that Senator Fulton did just before lunch, and we did look up the answer in the statutes as far as what this is concerning. And if it would be all right with you, I'd read that at this time. [LB246]

SENATOR CHAMBERS: Yes. [LB246]

SENATOR JOHNSON: All right. Here we go. The time of death is determined by a physician who attends the donor at his or her death or if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part, except for the enucleation of eyes. [LB246]

SENATOR LANGEMEIER: One minute. [LB246]

SENATOR JOHNSON: An approximately qualified designee of a physician with training in...and so on. [LB246]

SENATOR CHAMBERS: Okay. [LB246]

SENATOR JOHNSON: But... [LB246]

SENATOR CHAMBERS: Now that part wasn't bothering me where the physician who would certify death is not the one to do the retrieval. [LB246]

SENATOR JOHNSON: All right. I'm sorry. [LB246]

SENATOR CHAMBERS: I wanted to focus just on the one doing the retrieval in the situation where the coroner is uncooperative. [LB246]

SENATOR JOHNSON: Yes, sir. [LB246]

SENATOR CHAMBERS: And you answered that question to my satisfaction,... [LB246]

SENATOR JOHNSON: Okay. [LB246]

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SENATOR CHAMBERS: ...so that's all I would have. Thank you, Senator Johnson. [LB246]

SENATOR JOHNSON: Okay. Thank you. [LB246]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator McDonald, you're recognized. [LB246]

SENATOR McDONALD: Mr. President, members of the body, I serve on the Judiciary Committee where this bill was heard, and I guess many of us don't realize that once we put that we want to be an organ donor on our driver's license, we just assume that when those times of need come our organs will be harvested and transplanted to someone that's in need. With this bill that came from Senator Johnson, we realize then and there that that doesn't always happen. I'd like to ask Senator Johnson a couple of questions. [LB246]

SENATOR LANGEMEIER: Senator Johnson, would you yield to questions? [LB246]

SENATOR JOHNSON: I'll try. Thank you. [LB246]

SENATOR McDONALD: Senator Johnson, and I'm not going to ask for exact numbers, but are there people...many people on the waiting list to be organ recipients? [LB246]

SENATOR JOHNSON: Yes. If I remember correctly it's in the neighborhood of 500 in Nebraska at any given time. [LB246]

SENATOR McDONALD: And with the Med Center that is known for its transplant facility, I'm assuming that we get many from outside the state of Nebraska. [LB246]

SENATOR JOHNSON: Yes. I think that there have been people that come from all over the world, literally, for organ transplants. [LB246]

SENATOR McDONALD: If your bill does not pass, is there an opportunity for those organs not to be utilized to their biggest potential? [LB246]

SENATOR JOHNSON: Yes, and that's really the heart of the matter of this bill, is that for one reason or another the coroner or his designee is not showing up, shall we say, at a time that is consistent with both preserving the evidence, which is his number one job, but also at a time when the organs could be harvested and become donor organs to someone in need. [LB246]

SENATOR McDONALD: And the organs are a vital necessity for all of us and a vital commodity, so to speak, for those in need. I think it was last year I passed a repository

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bill for the transplant center in Omaha which would allow unused medication that are for transplants. People that lose their insurance or have no way to afford the medications, that they could go into the repository, get maybe some medications to help them through that, to get on Medicaid. Without those vital organs those people wouldn't even be alive today, and we need to make sure that we do have sufficient organs for those people so that whether it's you or I or anyone else listening, that if we are in need of an organ, we know that at some point in time our life might be saved because of it. And I truly support this bill, I support the amendment, and I think that you need to also. Thank you. [LB246]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Senator Johnson, you're recognized. [LB246]

SENATOR JOHNSON: Sir, are there any more lights on after mine? [LB246]

SENATOR LANGEMEIER: Yes, there are. [LB246]

SENATOR JOHNSON: I will then yield my time or turn my light off at this time and let others ask those questions or comment. [LB246]

SENATOR LANGEMEIER: Okay. Thank you, Senator Johnson. Senator Carlson, you are recognized. [LB246]

SENATOR CARLSON: Mr. President and members of the Legislature, I would like to address a question to Senator Johnson. [LB246]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question? [LB246]

SENATOR JOHNSON: Yes, sir. [LB246]

SENATOR CARLSON: Senator Johnson, of course, this is a question coming from someone that doesn't know a whole lot of anything about this particular area, but if you have it in front of you would you turn to page 3 and Section 6. [LB246]

SENATOR JOHNSON: I will in just a second. My staff will provide me with this. [LB246]

SENATOR CARLSON: Okay. [LB246]

SENATOR JOHNSON: Okay. Go ahead, sir. [LB246]

SENATOR CARLSON: Okay, this is more maybe understanding, but it starts out: If the coroner releases organ or tissue for recovery... [LB246]

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SENATOR JOHNSON: Sir, which line and so on? [LB246]

SENATOR CARLSON: Okay, I'm sorry, Section 6, line 25. [LB246]

SENATOR JOHNSON: All right. [LB246]

SENATOR CARLSON: If the coroner releases any organ or tissue for recovery, he or she may request. I'll get back to that "may" rather than "shall." Then it goes on to the rest of it--may request that samples and so forth be taken and delivered to the coroner. Now it looks like it's delivered to himself and so what's the purpose of that section and why is it "may" instead of "shall"? [LB246]

SENATOR JOHNSON: Okay. And what I'm going to try and do is interpret this for you as I would understand the circumstances. The...one of the things is that the organ may look perfectly normal to his eye, and remember that eye may not be that of a physician, so one of the things that he could do as well is to request a biopsy of that organ to show that the organ is normal, or he could request a specimen, such as urine from a kidney, that also if it was normal, then this would be additional evidence for him should the case go to court. [LB246]

SENATOR CARLSON: Okay, and it sounds like a prudent person would do that. [LB246]

SENATOR JOHNSON: Yes, and basically that's all we're really trying to do is to get prudent people together at 3:00 or 4:00 in the morning and make these decisions. [LB246]

SENATOR CARLSON: And so it isn't necessarily delivering those samples to himself. It might be to somebody else. [LB246]

SENATOR JOHNSON: Yes. But in a sense...I mean, they would be under his possession, if you will, so that he would mark them for evidence and so that they would be clearly...you know, the responsibility would be his and also the tests that were run would come back to him, so. [LB246]

SENATOR CARLSON: Okay, and you're okay that the wording is "may" instead of "shall." [LB246]

SENATOR JOHNSON: Yes. [LB246]

SENATOR CARLSON: Okay. Thank you. [LB246]

SENATOR JOHNSON: Again, the organs, he may not need to do that. They may look

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so completely normal that he wouldn't do that. [LB246]

SENATOR CARLSON: Okay. Thank you, Senator Johnson. Thank you, Mr. President. [LB246]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Kruse, you're recognized. [LB246]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I would like to put a personal face on this for my colleagues, for I have stood at that bed in the hospital many times as a chaplain in a hospital for the last 25 years. It is 5:00 in the morning. Your pager goes off and you come to a room where there are persons that you've never seen before. It's an eerie light and a soft hush in the room as the family comes...is invited back into the room. You've seen them before in an outer room and visited with them, but now we stand around that bed of a 21-year-old young man whose been in a motorcycle accident or crash--may not have been an accident. There is not a mark on him. I just want you to feel that place. There's no sheet over him or anything, for the medics have just stepped back from the bed, and there you see a perfect body and the family gathering around. I've never heard any great sounds, it's just kind of a murmur, because the medical persons have said that he's brain dead. There's not a mark on his body. It's an unreal scene. There's continued movement to his body because of the device that keeps him breathing. The heart keeps pumping. I'm just kind of covering some of the things you've heard in medical term, but here is where it's real. The heart is still pumping. That's essential to keep the flow of blood through the organs that might be donated, and so in order for that to happen you have to keep oxygen coming into that blood, and that's why the respirator keeps pumping as though the person is breathing. It's a grotesque movement of the body that indicates this artificial breathing. Do understand that the persons standing around that bed two hours earlier were fast asleep, in rest at home. Now they're standing with their son and grandson. They are in a state of shock. They are in grief that cannot be described or imagined, and it's a lot of denial going on. And after we get to the point where we can talk a little bit, then it's my responsibility, hopefully with the physician by my side, to ask if they want to donate organs. It is a huge transition. I just want you to feel that. And I'm kind of trying to define the word "timely." We've heard that several times. What's timely? I don't have unlimited time to bring this subject up. I have found again and again a family that, in that state of shock, is saying we've lost everything and then say, could we get something out of this? It is in that kind of a sense that families make these decisions. It is with that forlorn hope that somebody else might live because their son has died. [LB246]

SENATOR LANGEMEIER: One minute. [LB246]

SENATOR KRUSE: All of that goes on before the coroner comes, before these other decisions. All of that has to go on, and then that is a seamless process. Several...Dr.

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Johnson has referred to a team. It's a team. We're all part of a team. We are carefully trained and retrained on a regular basis. I have to have that happen, every bit, to be sure that I'm up on the legal and medical technicalities so that the family has a clear but simple understanding of what is happening. I commend all of us to this process, to thinking about it. I am so grateful to Dr. Johnson and to the committee for bringing this because there are times at that time in the morning, when a coroner can be independent. There are times, for reason, for independent... [LB246]

SENATOR LANGEMEIER: Time. [LB246]

SENATOR KRUSE: ...if he knows better. [LB246]

SENATOR LANGEMEIER: Time. [LB246]

SENATOR KRUSE: Thank you. [LB246]

SENATOR LANGEMEIER: Thank you, Senator Kruse. There are no other lights on. Senator Chambers, you are recognized to close. [LB246]

SENATOR CHAMBERS: Mr. President, members of the Legislature, as I stated at the outset, these amendments that I had offered would each strike a section from the bill. Not being aware that there would be the kind of discussion that occurred, the kind of questions asked and answered, I thought this might be the method necessary for me to get answers to the questions that I had. But because the concerns that I had have been addressed and the main one that Senator Johnson just completed, there's not any reason for me to keep those amendments up there. But I do have a question I want to ask of Senator Johnson. [LB246]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question? [LB246]

SENATOR JOHNSON: Yes, sir. [LB246]

SENATOR CHAMBERS: Senator Johnson, once again, if you will turn to page 3 of the committee amendment,... [LB246]

SENATOR JOHNSON: Yes, sir. [LB246]

SENATOR CHAMBERS: ...Section 5, beginning in line 20, states the following: "If the coroner denies recovery of an organ or tissue, the coroner shall state in a written report the reasons such recovery was denied and provide the report within ten days to the federally designated organ procurement organization in Nebraska." If the coroner fails or refuses to comply with this, then what? [LB246]

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SENATOR JOHNSON: Then it is if the coroner was not there to make a decision, so... [LB246]

SENATOR CHAMBERS: But I meant there's nothing that enforces this, that if the coroner, in other words, fails or refuses to supply this report at all, there is no sanction on the coroner under the law. Is that correct? [LB246]

SENATOR JOHNSON: Yes, that's correct. [LB246]

SENATOR CHAMBERS: Oh, okay, so this can be ignored... [LB246]

SENATOR JOHNSON: I...in... [LB246]

SENATOR CHAMBERS: ...without punishment or... [LB246]

SENATOR JOHNSON: From that standpoint, yes, sir. [LB246]

SENATOR CHAMBERS: Okay. Thank you, Senator Johnson. Members of the Legislature, I think we can hope that any person filling the role of a coroner will comply with this law without us saying that if he or she fails it's a criminal offense. If the person who is serving in that role has any ethics or sense of duty and responsibility, this will be complied with. But if we should have an occasion in the future when it is not, I think that would be soon enough for us to consider saying that the coroner shall do this or else. I'm merely calling attention to it so that once again, anybody interested in kind of monitoring how this legislation will be complied with can make note of that and see whether such a report would be submitted by a coroner. Because from the way I read this, it doesn't matter why the coroner denies the recovery of these organs. Regardless of why, there must be a report given. And I would have an interest in seeing that such reports are provided, because if we enact a law such as this we should know how serious the issue is that we're dealing with. We should insist that everybody covered under this law, who has a duty imposed because of it, is going to take it as seriously as we do. Mr. President, I would withdraw that and any other amendments that I have pending. [LB246]

SENATOR LANGEMEIER: Senator Chambers, you have one, two, three, four, five, six, seven, eight amendments: FA144, FA145, FA146, FA147, FA148, FA149, FA150, and FA151. [LB246]

SENATOR CHAMBERS: Yes, yes, yes, yes, yes, yes, yes, yes. [LB246]

SENATOR LANGEMEIER: They're all withdrawn. [LB246]

SENATOR CHAMBERS: Thank you. [LB246]

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SENATOR LANGEMEIER: Mr. Clerk. [LB246]

CLERK: I have nothing further pending to the committee amendments, Mr. President. [LB246]

SENATOR LANGEMEIER: We return now to discussion on AM800, the committee amendment to LB246. The floor is now open for discussion. Senator Pankonin, your light is on. You're recognized. [LB246]

SENATOR PANKONIN: Mr. President, members of the body, as I sat here today and as my first session is nearly over, it's been interesting. Joel Johnson as Chairman of the committee, one of the committees I serve on--Health and Human Services--I know has been interested in this topic, in this bill. And then to have Lowen Kruse, Senator Kruse, weigh in as a pastor from those experiences he's had. So we've had a doctor weigh in, a pastor. And Senator Chambers, in his usual role of asking questions and making us think about the issues and the implications and the consequences, I just appreciate the way the discussion has unfolded and I think this is good public policy. There is a need for these organs, and if it's done properly it can be a benefit for the public. And fortunately my family, or some of the people I'm close to, have not had a need for, but I've known people that have had need for organ transplants and how desperate they become and their families become, and so if we can do this properly with the right protections in place, this is an important thing that this Legislature can do. And I thank all those involved, especially Dr. Johnson, who's had a great interest in this sort of policy. Thank you. [LB246]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. Seeing no other lights on, Senator Ashford, you are recognized to close on the committee amendments. [LB246]

SENATOR ASHFORD: Thank you, Mr. President, and thank you, Senator Johnson, for all your hard work, and the Judiciary Committee for working through the amendments. And with that, I would urge adoption of AM800. [LB246]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on AM800, offered by the Judiciary Committee. The question is, shall the committee amendments be adopted to LB246? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB246]

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB246]

SENATOR LANGEMEIER: AM800 is adopted. We return now to discussion on LB246, the bill itself. Seeing no lights on, Senator Johnson, you are recognized to close on

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LB246. [LB246]

SENATOR JOHNSON: Thank you, Mr. President. I think one of the things that we've seen here today, and I'd call your particular attention to our freshmen senators which basically are no longer freshmen, but usually you've got a pretty good bill and a pretty good law pending if it passes the Chambers' microscope. As far as the bill itself and its intent, I cannot improve on what Senator Kruse has told us, and therefore, I would ask for your vote to advance LB246. Thank you very, very much. [LB246]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have now heard the closing on LB246. The question before the body is, shall LB246 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB246]

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB246. [LB246]

SENATOR LANGEMEIER: LB246 does advance. (Visitors introduced.) We will be passing over LB112 and moving to the next item on the agenda, legislative resolutions. Items for the record, Mr. Clerk. [LB246 LB112]

CLERK: Thank you, Mr. President. Your Committee on Government provides a confirmation report regarding an appointment to the State Personnel Board. Your Committee on Enrollment and Review reports LB177 back to Select File with Enrollment and Review amendments attached. Judiciary Committee, to whom was referred LB428, reports the same back to the Legislature with a recommendation it be advanced to General File, and LB668 advanced to General File. And that's all that I have, Mr. President. (Legislative Journal pages 1869-1871.) [LB177 LB428 LB668]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now proceed with LR10. [LR10]

CLERK: Mr. President, LR10 was originally introduced by Senator Johnson. It was introduced in January. As a result of its introduction, it was referred to the Health and Human Services Committee for public hearing. The resolution was reported back to the Legislature for further consideration, but attached to it were committee amendments, as offered...strike that. It was just reported back to the Legislature for further consideration, Mr. President. (AM545, Legislative Journal page 731.) [LR10]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Johnson, you are recognized to open on LR10. [LR10]

SENATOR JOHNSON: Thank you, Mr. President. Members, what we're asking here is this, is that LR10 petitions Congress to reauthorize the state children's health insurance program, commonly known as the SCHIP. LR10 was heard on February 21 of this year

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by the Health and Human Services Committee and advanced unanimously by the committee as amended. The state children's health insurance program created by Congress in 1996, known as Kids Connection in Nebraska, has been a resounding success. Without coverage, a child is more likely to go without immunizations, to go without primary care, often resulting in visits to the emergency room, and is more likely to miss school. Children account for 64 percent of the Medicaid population in Nebraska but represent only 25 percent of the Medicaid funding. The federal government has encouraged Nebraska's participation in the program by paying 71 percent of the cost of the SCHIP programs. The SCHIP program is up for reauthorization in Congress this year. A failure to reauthorize this program in a timely manner and in proper amount of funding will risk cutting approximately 24,000 off of the critical healthcare services they need. This resolution, quote, urges the member of Congress or Nebraska's congressional delegation to ensure that Congress reauthorize in a timely manner. It urges the Governor to use his best efforts to work with the congressional delegation to ensure the SCHIP reauthorization in this timely manner, and proclaims that all complements of state government should work together with educators, healthcare providers, social workers, and parents to ensure that all available public and private assistance for providing healthcare benefits to uninsured children in the state to be used to the maximum extent possible. And lastly, urges the Governor to use his best efforts to provide meaningful assistance to help identify and enroll children who qualify for Medicaid or the Kids Connection program. Sir, would you like me to go on with AM545 as part of this? [LR10]

SENATOR LANGEMEIER: Thank you, Senator Johnson. As the Clerk has stated, there are committee amendments offered by the Health and Human Services Committee. Senator Johnson, as Chairman of that committee, you are recognized to open on the committee amendments. [LR10]

SENATOR JOHNSON: Thank you, Mr. President. AM545, the resolution as amended by the committee amendment, urges members of the congressional delegation to ensure that Congress reauthorize the state's children's health insurance program, that is the SCHIP, to assure appropriate federal funding for the Kids Connection program, and two, urges the Governor to use his best efforts to provide meaningful assistance to help identify and enroll children who qualify for the Medicaid or the Kids Connection program. And it strikes paragraphs three and four. The committee has determined that these paragraphs went beyond the scope of simply urging timely reauthorization of the SCHIP program. With that, Mr. President, I would urge the adoption of LR10 with the amendment, AM545. [LR10]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have now heard the opening on LR10 and the committee amendments, AM545. The floor is now open for discussion. Seeing no lights on, Senator Johnson, you are recognized to close on the committee amendments, AM545. He waives closing. The question before the body is,

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shall AM545 be adopted to LR10? All those in favor vote aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LR10]

CLERK: 31 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LR10]

SENATOR LANGEMEIER: AM545 is adopted. We return now to discussion on LR10, the bill itself. Seeing no lights on, Senator Johnson, you are recognized to close on LR10. [LR10]

SENATOR JOHNSON: Mr. President, I would simply ask that we vote for LR10, and thank you very much for your consideration. [LR10]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on LR10. The question before the body is, shall LR10 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LR10]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption of LR10. [LR10]

SENATOR LANGEMEIER: LR10 is adopted. Mr. Clerk, LR13. [LR10 LR13]

CLERK: Mr. President, LR13. I might indicate Natural Resources will meet now underneath the north balcony; Natural Resources Committee, north balcony. LR13 was a resolution originally introduced by Senator White. It encourages public fire departments to read and implement national fire safety guidelines. It was referred to the Urban Affairs Committee for public hearing, Mr. President. Resolution was advanced to the Legislature for further consideration. I have no amendments at this time. [LR13]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. At this time I'd ask the body to keep their visiting down to a minimum so we can hear the speakers and give them proper attention. Senator White, you are recognized to open on LR13. [LR13]

SENATOR WHITE: Thank you, Mr. President. This is a fairly straightforward legislative resolution. It asks this body to encourage our public fire departments to, without binding them to, follow safety guidelines that have been adopted not only across the country but often internationally. These safety guidelines are important and they're important for a number of reasons. First, they help protect the firefighters. These guidelines include things such as the minimum amount of staffing on a truck, equipment, fire safety protective clothing, different issues like that. By passing a resolution instead of a law we do not bind small fire departments that may have trouble getting enough volunteers to attend a fire at a given time, nor do we put on them undue burdens for costs. But we do direct their attention at the fact that they're engaged in an extremely dangerous and very important piece of work that the public safety daily depends on. I would hope that this

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body would adopt this resolution, urge our municipalities or public fire departments to look at these regulations, look at these rules, implement them where possible, and thereby ensure the safety not only of the public but of those who risk their lives to protect them. Thank you, Mr. President. [LR13]

SENATOR LANGEMEIER: Thank you, Senator White. You have heard the opening on LR13. The floor is now open for discussion. Seeing no lights...Senator Janssen, you're recognized. [LR13]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. If I could ask Senator White a question, please. [LR13]

SENATOR LANGEMEIER: Senator White, would you yield to a question? [LR13]

SENATOR WHITE: Yes, sir. [LR13]

SENATOR JANSSEN: Senator White, would this also affect volunteer fire departments or just paid firemen? [LR13]

SENATOR WHITE: Well, it would not require anybody to do anything, Senator, but I think it's any public fire department; just urge them to become familiar with it, and they don't have to, but really... [LR13]

SENATOR JANSSEN: But it would be...volunteers could also take advantage of it. [LR13]

SENATOR WHITE: Oh sure. And all it's saying is wherever possible, guys, look at this, you know. But if you've got a fire and you're supposed to have six people on this truck and you only have five, well, you go, you roll to the fire, you know? But it would be nice if they knew what the professional people say the safest number is, what jobs they should do, how they can protect them, that there's somebody outside who can come in and rescue if a firefighter goes down, those kind of guidelines. It would be nice if they'd read them, and really we're just asking them to read them and, where possible, implement them. [LR13]

SENATOR JANSSEN: Well, thank you, Senator White. And I will support the resolution. I think it is good for all rural fire protection districts, paid firemen, whatever they are. Anyone who volunteers, the volunteer firemen in this state and across the country, do a remarkable job. So thank you for bringing the resolution. [LR13]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Seeing no other lights on, Senator White, you are recognized to close on LR13. He waives closing. The question before the body is, shall LR13 be adopted? All those in favor vote yea; all those

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opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LR13]

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of LR13. [LR13]

SENATOR LANGEMEIER: LR13 is adopted. Mr. Clerk, LR37. [LR13 LR37]

CLERK: LR37, Mr. President, originally introduced by Senator Hudkins. It's a resolution asking the Legislature to support an immediate review of the current federal ISTEA restrictions imposed on Nebraska. Resolution was introduced on February 22. At that time it was referred to the Transportation and Telecommunications Committee for public hearing. The resolution was advanced to General File. At this time I have no amendments to the resolution. [LR37]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Hudkins, you are recognized to open on LR37. [LR37]

SENATOR HUDKINS: Thank you, Mr. President and members of the Legislature. I would ask your support for this resolution. This particular resolution calls on representatives from the Nebraska Department of Roads, the State Patrol, the Department of Motor Vehicles, the state Department of Agriculture, and the Highway Safety Council to examine the issues and safety considerations surrounding any combination vehicle extensions in Nebraska and to applicable laws in states already permitting exceeded lengths. LR37 was cosponsored by ten other senators and is strongly supported by the Nebraska Grain and Feed Association. The resolution doesn't support repeal of the restrictions; rather, an examination of the practicality of these restrictions in today's environment. Under the Intermodal Surface Transportation Efficiency Act, commonly known as ISTEA, of 1991, Congress assumed authority over combination vehicle lengths from the states and Nebraska's maximum length law for combination vehicles was frozen at 65 feet. However, states to the north and to the west of Nebraska maintained their longer truck length under the 1991 act. I understand the serious safety and infrastructure concerns that many regulatory representatives will have on this issue; however, it's important to note that the resolution only calls for a review of the federal restrictions, not repeal. Only Congress can grant an exemption. If we look to those states that have had a positive experience with extended truck lengths for many years, including restrictions on certain combinations and on certain highways, we may be able to bridge this gap. As a matter of fact, Nebraska beet growers have benefited for some time under a federal exemption that allows beet trucks to run at 81 feet, 6 inches. Over the past several years, Nebraska custom harvesters worked with our congressional delegation to finally obtain a federal exemption which the state of Nebraska enacted in 2006, allowing the operation of commercial vehicle combinations not exceeding 81.6 for custom harvesters operating in and through Nebraska. Today Nebraska grain elevators and producers alike are faced with serious transportation challenges, including sustained record fuel prices, hauling longer distances to terminal

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markets or processing facilities, and the lack of capacity by Class I railroads to efficiently haul grain by rail. If LR37 is adopted, the Transportation Committee could serve as a host, bringing the various stakeholders together for a series of meetings that would serve to inform and educate all stakeholders on the history behind the current Nebraska truck length limitations. Other state transportation agencies charged with the design and enforcement of their extended truck programs should also be invited to offer their experience. And I would urge your adoption of LR37. Thank you, Mr. President. [LR37]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have now heard the opening to LR37. The floor is now open for discussion. Senator Rogert, you are recognized. [LR37]

SENATOR ROGERT: Thank you, Mr. President, members of the body. I rise in support of LR37 and I think this is a fairly important idea to look at. Coming from my district and many districts out in western Nebraska, where the beef industry is very important, this would allow some of our beef producers to move their cattle from the state of Nebraska to elsewhere, or from elsewhere to the state of Nebraska, as far as from the feedlot to grass, or to grass from the feedlot, in a more efficient manner. It would allow longer trucks so we could put...handle more animals at one time. So I rise in support of this, and I urge the body to consider it and pass it. Thank you, Mr. President. [LR37]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Are there anyone else wishing to speak to LR37? Seeing no lights on, Senator Hudkins, you are recognized to close on LR37. [LR37]

SENATOR HUDKINS: Thank you, Mr. President. Again, this resolution is not a repeal of the law as it currently stands. It is just asking the Department of Roads, the State Patrol, DMV, the Department of Agriculture, and the Highway Safety Council to look at the lengths in Nebraska of trucks and the lengths in other states of trucks. Thank you, Mr. President. [LR37]

SENATOR LANGEMEIER: Thank you, Senator Hudkins. You have now heard the closing on LR37. The question before the body is, shall LR37 be adopted? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LR37]

CLERK: 30 ayes, 0 nays, Mr. President, on adoption of the resolution. [LR37]

SENATOR LANGEMEIER: LR37 is adopted. Mr. Clerk, LR39. [LR37 LR39]

CLERK: LR39, introduced by Senator Johnson and found on Journal page 670 asks the Legislature to urge the members of the Nebraska congressional delegation to ensure that Congress fully fund mental health and substance abuse treatment. Resolution was

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introduced in February of this year. At that time, Mr. President, referred to the Health and Human Services Committee for hearing. Resolution was advanced to General File. There are Health and Human Services Committee amendments pending. (AM757, Legislative Journal page 890.) [LR39]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Johnson, you are recognized to open on LR39. [LR39]

SENATOR JOHNSON: Thank you, Mr. President. LR39 is a legislative resolution brought to me by Senator Synowiecki, and lest I forget later, I want to leave some time for Senator Synowiecki to comment. Many of the members of the Health and Services...Health and Human Services Committee were cosponsors of this resolution. The resolution simply urges our congressional delegation to support congressional funding for mental health and substance abuse services. The resolution also urges the Governor to work to ensure that federal mental health and substance abuse funding is restored. An increasing number of people are experiencing behavioral health disorders of various kinds and in varying degrees. Many people experience difficulty in accessing needed services. Because of the inadequate private insurance coverage for behavioral health disorders, many people are forced to access public behavioral health system and Medicaid for services. As you know, LB1083 was passed by the Legislature in 2004 to bring about substantive and lasting reform in our state's behavioral health system. In light of term limits in the Legislature, there is an even greater need to educate and inform ourselves about this important reform. We have made tremendous progress in this effort. It is extremely important for us to complete the task we have begun. Let me repeat that. It is extremely important for us to complete the task we have begun. Federal mental health and substance abuse funding is critical to our ongoing success. Mr. President, this of course is a nonbinding resolution, but it expresses the will of this Legislature on an important matter of public policy, and it will equip our congressional representatives to better represent the will of our constituents. Therefore, I'd ask approval of this resolution. I want to thank Senator Synowiecki for bringing this to our attention, and I will yield the rest of my time to Senator Synowiecki. [LR39]

SENATOR LANGEMEIER: Senator Synowiecki, 7 minutes. [LR39]

SENATOR SYNOWIECKI: Thank you, Senator Langemeier. Thank you, Senator Johnson. I appreciate you and your leadership on this issue. I appreciate you being receptive, too. What came across my desk on quite a few occasions is the ever decreasing federal provisions that are afforded the state of Nebraska so that we can serve our citizens that are confronting and facing mental health and substance issues. As you're very well aware, Senator Johnson, we're in the middle of a reform effort in the state, and I think it's increasingly in our best interests that we maximize the federal dollars that are available so that we can adequately serve citizens in our state that are increasingly confronted with disorders in the area of mental health, and particularly in

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the area of substance abuse. And to give you an idea of the decreasing reliance on the federal government for funds towards this endeavor, in 1982 the federal block grants represented 15.8 percent of our entire effort statewide relative to substance abuse and mental health services--almost 16 percent. In 2006 this represented...the same federal assistance amounted to 3.4 percent of our total effort. That's a dramatic decrease. More recently, comparatively speaking, in fiscal year 2004 the federal block grant funding dollars were \$2,105,983, and in 2007 that number has decreased \$99,775. And as everyone, I think, is aware that the cost for these services have dramatically increased, while the federal assistance has decreased. In 2005 the federal block grant total was \$10,031,195. Now it's \$9,871,000. As Senator Johnson indicated, this is a nonbinding resolution, a resolution that will be sent to our congressional delegation encouraging our delegation to fully fund efforts to provide much needed services in the area of mental health and substance abuse to citizens in our state that are needing these services and needing these professional services. And I would encourage your support of this resolution. Thank you. [LR39]

SENATOR LANGEMEIER: Thank you, Senator Synowiecki and Senator Johnson. As the Clerk has stated, there are committee amendments offered by the Health and Human Services Committee, AM757. Senator Johnson, as Chair of the Health and Human Services Committee, you are recognized to open on the committee amendments. [LR39]

SENATOR JOHNSON: Mr. President, thank you very much. Committee amendment AM757, and I will be very, very brief, the committee amendment strikes paragraph three of the resolution. The committee felt that these provisions went beyond the scope of simply urging appropriate federal funding for behavioral health and substance abuse services. With that, I would ask that you please pass this amendment, and furthermore, that you advance or pass the resolution as well. Thank you. [LR39]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have now heard the opening on LR39 and the committee amendments, AM757. The floor is now open for discussion. Seeing no lights on, Senator Johnson, you're recognized to close. He waives closing. The question before the body is, shall AM757 be adopted to LR39. All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LR39]

CLERK: 27 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LR39]

SENATOR LANGEMEIER: Committee amendments are adopted. We return now to discussion on LR39, the bill itself. Seeing no lights on, Senator Johnson, you are recognized to close. Senator Johnson waives closing. The question is, shall LR39 be adopted? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk.

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[LR39]

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of LR39. [LR39]

SENATOR LANGEMEIER: LR39 is adopted. Speaker Flood, you are recognized for announcement. [LR39]

SPEAKER FLOOD: Thank you, Mr. President, members. Quick announcement regarding the schedule. Tomorrow morning we will start at 11:00 a.m. Again, tomorrow morning the start time for the Legislature will be 11:00 a.m. We will break for lunch, return at 1:30, conclude our business in the afternoon. Again, we'll start tomorrow at 11:00 a.m. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Speaker Flood. We're now proceeding with the agenda, legislative resolutions, LR73. [LR73]

CLERK: Mr. President, LR73 introduced by Senator Chambers, found on Journal page 1,166, encourages the United States Congress to enact the Lyme and Tick-Borne Disease Prevention, Education, and Research Act of 2007. Resolution was introduced and referred to the Health and Human Services Committee for hearing. It was reported back to the Legislature for further consideration. I have no amendments at this time, Mr. President. [LR73]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Chambers, you are recognized to open on LR73. [LR73]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, for the record, Lyme disease got its name from the city of Lyme, Connecticut. In 1977 some children were found to have arthritis, and upon further research and study, it was discovered that a tick-borne disease was in existence. And in 1991, I believe it was, the Council of State and Territorial Epidemiologists designated Lyme disease as one of those which is nationally notifiable. So that means a record is kept of this disease. The age groups most at risk would include children between the ages of 5 and 9, and adults in their 50s and 60s and beyond, which would include me, Senator Wallman, Senator Carlson, Senator Hansen, Senator Nelson, and everybody else with a form of "son" on the end of their name, whether it's s-o-n or s-e-n, and Senator Harms, because the people ran out of gas when they got to H-a-r-m-s. They should have put o-n on the end of it, and he'd be among the rest of us. But this is a disease which is often misdiagnosed. Some doctors are unaware of it. It's a bacterial infection and it mimics other diseases. It can be treated with antibiotics if it's caught early enough and it mimics these diseases, can be misdiagnosed, but if it's untreated it can lead to severe heart, neurological, vision, and joint problems because the bacteria can affect many different organs and organ systems. The purpose of this resolution is to encourage Congress to

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enact a bill which is pending before them, and it would be called the Lyme and Tick-Borne Disease Prevention, Education, and Research Act of 2007. It would advance the treatment of and cure for Lyme and other tick-borne diseases by expanding federal efforts concerning prevention, education, treatment, and research activities related to these diseases. Under the form of the bill, \$20 million would be appropriated for each of the federal fiscal years 2008 through 2012, and what this amendment is doing is merely recommending and encouraging Congress to enact this legislation. The number of the bill is H.R. 741, and I'm hoping that you will see the necessity of this kind of legislation being enacted. There are people suffering from this disease and even though it is nationally notifiable, there still are doctors unfamiliar with it, will confuse the symptoms with other diseases, and the person is not given early treatment which can counteract the disease. So not being treated, it runs its course and the person may suffer the kind of debilitating circumstances that will make it impossible to hold a job or carry on ordinary day-to-day activities. It is a very serious disease, but it can be treated. So that's what the resolution would do--merely encourage Congress to enact the legislation. I hope you will support the resolution. Thank you, Mr. President. [LR73]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Wallman. [LR73]

SENATOR WALLMAN: Thank you, Mr. President. Thank you, Senator Chambers. I know of a lady who had Lyme disease, and they tested her for about everything but the right thing till she finally told them that's what she wanted to be tested for. And I think that's a misdiagnosed problem we have with all these deers and these ticks, and we'll go with the deer problem some other time. But I think this is a very good bill that Senator Chambers has, and I urge the body to support it also. Thank you, Mr. President. [LR73]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Are there additional members requesting to speak on LR73? Seeing none, Senator Chambers, you're recognized to close. [LR73]

SENATOR CHAMBERS: Thank you. Mr. President and members of the Legislature, I want to be sure that I have the date correct. There was a proclamation issued by the Governor that proclaimed May Lyme Disease Awareness Month. That has already been done, so there is starting to be a recognition, and we will just kind of further and facilitate that knowledge by the adoption of this resolution. Thank you, Mr. President. [LR73]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the closing to LR73. The question is, shall LR73 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR73]

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CLERK: 29 ayes, 0 nays, Mr. President, on adoption of LR73. [LR73]

PRESIDENT SHEEHY: LR73 is adopted. Next legislative resolution. [LR73]

CLERK: Mr. President, LR28, originally introduced by Senator Fischer, asks the Legislature to oppose enactment or enforcement in this state of the REAL ID Act. Resolution was introduced in February of this year. At that time it was reported...referred to the Transportation Committee for public hearing. Resolution was advanced to General File for further consideration. It may be found on page 552 of the Journal, Mr. President. [LR28]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Fischer, you're recognized to open on LR28. [LR28]

SENATOR FISCHER: Thank you, Mr. Lieutenant Governor and members of the body. LR28 states the Nebraska Legislature's opposition to the federal REAL ID Act and urges Congress to repeal that legislation. On May 11, 2005, Congress passed the REAL ID Act as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act. The REAL ID provisions of the bill were attached after the House of Representatives already passed the bill. Thus, the REAL ID Act was never considered in any hearing and was not the subject of a separate vote in either house of Congress. This act creates national standards for the issuance of states' driver's licenses and identification cards. The act establishes certain procedures and requirements that must be met by the states by May 11, 2008, if state's issued IDs are to be accepted as valid identification by the federal government. After REAL ID is implemented, a Nebraska citizen will be required to show his or her compliant ID before access is granted to federal facilities, nuclear power plants, or commercial airlines. Even though Congress has mandated that all participating states have the REAL ID system in place by May of 2008, the Department of Homeland Security has yet to provide the final rules necessary to implement these drastic changes. DHS continues to work on the proposed rule and hopes to have the final rule issued sometime later this summer. The current rule does allow a state to apply for an extension that would delay REAL ID's implementation date until January 2, 2010. The Nebraska DMV is in the process of applying for this extension. REAL ID's national standards will alter longstanding state laws, regulations, and practices governing the qualifications for and the production and issuance of IDs in every state. Nebraska is no exception. A substantial investment will be required by the state to meet the objectives of the REAL ID Act, and all of the approximately 1.5 million Nebraska identification cardholders will feel the impact. The Nebraska Department of Motor Vehicles is currently investigating what changes are needed to implement REAL ID, but two significant changes that are almost certain to occur will be central issuance and regional sites throughout Nebraska. With central issuance, a citizen who comes to apply for a license will be issued a temporary

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document receiving the actual license in the mail some time later. Also, no longer will a Nebraska citizen be able to go to their local county DMV office to obtain a driver's license. Regional sites would be set up across the state and in maybe 15 to 20 places, centering around populous areas. A preliminary investigation of the requirements of REAL ID shows that there is no way for Nebraska to keep its current system in place. With all of the changes that will be required with REAL ID, there can be no doubt that the state and its citizens will incur significant expense. A study conducted by the National Governors Association, the American Association of Motor Vehicle Administrators, and NCSL concluded that REAL ID will cost more than \$11 billion over five years and have a major impact on services to the public. The DMV has estimated that about \$26 million of that will be Nebraska's burden to bear. To date, Congress has appropriated \$40 million to help the states with implementation of REAL ID. The most recent appropriation bill in Congress appropriates an additional \$50 million, well short of the estimated \$1 billion in startup costs for REAL ID. This is essentially the largest unfunded mandate ever handed down by Congress to the states. Thirty-five states have introduced some kind of legislative action in the form of a resolution or bill that relates to the opposition of the REAL ID Act. To date, eight states have passed resolutions similar to LR28 that urges Congress to repeal REAL ID. Seven other states have passed a bill or resolution that refuses to implement REAL ID. There have been some discussion about repealing or delaying REAL ID at the national level. A bill in the house would repeal the REAL ID driver's license requirements and implement a negotiated rule-making process with interested parties. There's a similar bill in the United States Senate. Both of these bills were introduced in mid-February and no action has been taken to date. Due to the delay of the DHS rules, no one can say for certain what REAL ID entails. However, even the most optimistic outlook has severe consequences on how Nebraska issues its identification cards. LR28 states the Legislature's opposition with respect to the REAL ID Act. Essentially, that act intrudes upon the state's sovereign power afforded by the Tenth Amendment, that it mandates an unfunded national identification system, and that it threatens the privacy of every driver's license and ID holder in the United States. I would urge you to support LR28. Thank you, Mr. President. [LR28]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the opening to LR28. The floor is now open for discussion. Senator Chambers. [LR28]

SENATOR CHAMBERS: Mr. President, members of the Legislature, this legislation that Senator Fischer has discussed is so unbelievably bad that it is unbelievable. Such legislation should not even come from the United States Congress, either house, even after they had attended one of those functions put on by the lobbyists who may have plied them all with John Barleycorn. I cannot believe this is a reality, and I applaud Senator Fischer for bringing this resolution. But here's what I have to say, and I hope her mother is watching. (Laughter) How can Senator Fischer be so wrong on LB305 and so right on this one? Her righteousness on this one erases all of the other things that I

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may have disagreed with her on up to this date. She is as fresh and pure as a newborn infant, and I really applaud her for this, in all seriousness, because if anybody had paid attention to half of what Senator Fischer told us and would just look at some of the requirements for producing one of these documents, you would wonder how in the world this is even to be put into effect. So I hope we will all vote for her resolution, and I hope we get more than the number of votes that we've gotten on some of the others. We know that these resolutions may not go anywhere, but I believe this one is dealing with a matter so serious that I hope we can get...I'd like us to get all the votes of people here, but it's not my resolution. I do intend to vote for it and Senator Fischer, if I could vote more than once, I would. Thank you, Mr. President. [LR28 LB305]

PRESIDENT SHEEHY: Thank you, Senator Chambers. Senator Carlson. [LR28]

SENATOR CARLSON: Mr. President, members of the Legislature, just about two minutes ago when Senator Chambers started to speak my heart dropped about 12 inches because when he said this is an unbelievably bad piece of legislation, I thought he was referring to Senator Fischer's resolution. And now my heart bounced back up. And I recall several weeks ago those two voted the same on five bills in a row, and I think they'll vote the same this time and I'll vote with them. Thank you, Mr. President. [LR28]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Are there other members wishing to speak on LR28? Seeing none, Senator Fischer, you're recognized to close. [LR28]

SENATOR FISCHER: Thank you, Mr. Lieutenant Governor. Thank you, Senator Carlson and Senator Chambers. Senator Chambers, I hope my mother is watching, too. She'll like you a little better today. (Laughter) Also, I'm going to take you up on your offer, even though you didn't quite mean it the way I'm going to take you up on it when you said you'd vote for this twice if you could. I'll save that vote for next year sometime. I hope that you all will support this resolution. It is a serious matter. The cost to the state is unbelievable. The requirements are unbelievable, as Senator Chambers said. And it is the largest unfunded mandate from the federal level to the states, and I think if enough states continue to pass these resolutions, perhaps our congressional delegation will listen to the legislatures at the state level and rethink their position on this. So with that, I would ask you, again, to please support LR28. Thank you. [LR28]

PRESIDENT SHEEHY: Thank you, Senator Fischer. You have heard the closing. The question before the body is, shall LR28 be adopted? All those in favor vote yea; opposed, nay. Mr. Clerk, please record. [LR28]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of the resolution. [LR28]

PRESIDENT SHEEHY: LR28 is adopted. Next legislative resolution. [LR28]

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CLERK: Mr. President, LR214, offered by Senator Chambers, asks the Legislature to express its support to learn that DNA exonerations increase the accuracy and reliability of criminal investigations. The resolution was introduced on May 21, referred to the Judiciary Committee for public hearing. The resolution was advanced to the Legislature for further consideration. At this time I have no amendments pending. [LR214]

PRESIDENT SHEEHY: Senator Chambers, you're recognized to open on LR214. [LR214]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'm going to read the text of the resolution: Whereas, no one benefits from a wrongful conviction except the actual perpetrator of crime, who eludes justice; and whereas, convicting the guilty and protecting the innocent are two fundamental goals of the constitutional criminal justice system; and whereas, postconviction DNA testing, on April 23, 2007, proved the innocence of the 200th wrongfully convicted person; and whereas, the examination of convictions proved erroneous by DNA evidence enables us to learn what aspects of the criminal justice process lead to wrongful convictions in all these criminal cases where it occurs; whereas, recognizing and understanding the causes of wrongful convictions enables us to identify means of improving the accuracy and reliability of criminal investigations and strengthening criminal prosecutions, and thus minimize the possibility of misdirected criminal investigations and wrongful convictions; and whereas, such a process of examination, communication, and remediation by criminal justice system leaders can help ensure both the fair administration of justice and the public's faith and confidence in the criminal justice system; and whereas, the Conference of Chief Justices and the Conference of State Court Administrators endorses the creation of state entities to prevent the conviction of persons charged with criminal acts they did not commit; and whereas, the American Bar Association has urged federal, state, and territorial governments to identify and remedy the causes of wrongful conviction; now, therefore, be it resolved by the members of the One Hundredth Legislature of Nebraska, First Session, one, that the Legislature expresses support of all efforts to learn from DNA exonerations to increase the accuracy and reliability of criminal investigations, strengthen prosecutions, protect the innocent, and enhance public safety. Members, there are various organizations, various groups of people who don't constitute an organization, there are commissions and entities established in various states dedicated to examining cases where there is strong indication that the person was wrongfully convicted. Many people may have heard of the Innocence Project under Barry Scheck and his associates, but they are not the only ones who work on these types of cases. Some of them have not really made it in newspapers throughout the country, but because the Innocence Project is one that reporters are familiar with, they will usually report when an exoneration has resulted from the activities of those working with the Innocence Project, but many others are involved in this kind of activity. The DNA cases can exist only when biological evidence

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is present. In most crimes, there will be no biological evidence. When Don Kleine, the Douglas County Attorney--a man for whom I have profound respect and I've expressed it publicly to him, in his presence, when he was not present--had stated that there are none of these cases to date in Nebraska where such an exoneration occurred, but he acknowledged that there may be spotty preservation and proper handling of biological evidence. These samples may be degraded over time because not properly handled, they may become contaminated, they may not be properly stored, so throughout this state there will be differing methodologies with different degrees of effectiveness of handling biological evidence. I was able to shepherd through the Legislature a bill that relates to DNA testing. It will allow people previously convicted, where there is biological evidence available but the level of sophistication did not attend the testing at that time that we have now, but, and this might be a side issue, the Nebraska Supreme Court has set such a high bar before DNA testing can in some cases be utilized or after it has been utilized, that new trials are virtually impossible to obtain despite the DNA evidence that could bring into question the validity of a conviction. The Nebraska Supreme Court stated--and I'm oversimplifying for the purpose of making the point, but I don't think I'm being inaccurate--that before a new trial can be granted the evidence must be such that when presented to a jury it will result in an outcome different from the original one. Well, since the original outcome was guilt, the only way that you can have a different outcome is innocence. But innocence is a matter of facts being presented, facts being weighed, and the evidence would have to be admissible, and then the jury reaches a verdict. Well, the Supreme Court is determining in advance that this evidence would not result in innocence; therefore, there's no new trial. We are not talking about a standard where you have to prove innocence, but one that would create enough question or doubt about the validity of the conviction that a new trial is granted, and that new trial is granted so that the evidence can be presented and properly weighed and then a jury arrives at a verdict, unless the person agrees to have a trial without a judge. But the purpose of this resolution is not to raise all of those issues but to support efforts of every kind aimed at strengthening prosecution, protecting the innocent, doing all that can be done to weed out the flaws in the criminal justice system that results, first of all, in a person who did not convict (sic) a crime being charged of it, a person charged with a crime he or she did not commit, then being convicted of that crime and sentenced. There are problems with prosecution. There are problems with criminal investigations, whether conducted by the police officials or members of the prosecutorial staff. I see serious problems with the defense bar because sometimes judges will appoint people to defend accused individuals, which appointees do not have experience in the realm of criminal law where a defense has to be provided. This is one of the most serious matters confronting a society because it relates to the entire panoply of state power and coercive force being directed against one person to find that person guilty and have him or her punished at the hands of the state. The state, in practically every situation, has the advantage. So to the extent that the system can be structured to eliminate wrongful convictions, it ought to be done. Do I have a magic wand that I could wave that would make all of these things right? I don't have. But were I made the czar who would judge all criminal cases

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throughout the country, that is the next best thing to having a magic wand. But when I face reality,... [LR214]

PRESIDENT SHEEHY: One minute. [LR214]

SENATOR CHAMBERS: ...you'll have a greater likelihood of finding a magic wand than of my being named czar in the way that I described. Any questions you have about this resolution I'm prepared to answer. Thank you, Mr. President. [LR214]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the opening to LR214. Members wishing to speak are Senator Pirsch and Senator Wallman. Senator Pirsch. [LR214]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. And thank you, Senator Chambers. I do agree with the intent and spirit behind the resolution expressed on page 2 that the legislators should support reasonable efforts to learn the...to learn from DNA exonerations, increase accuracy and reliability of criminal investigations, strengthen prosecutions, protect the innocent, and enhance public safety. I was wondering if Senator Chambers would engage in a little dialogue with respect to something. [LR214]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LR214]

SENATOR CHAMBERS: Yes, I will. [LR214]

SENATOR PIRSCH: Very good. And Senator Chambers, separate and apart from the resolution part in the prefatory remarks or the preamble, as it were, on page 1, you've...there is a provision you've included amongst your resolution that begins or states something to the effect of whereas postconviction DNA testing on April 23, 2007, proved the innocence of the 200th wrongfully convicted person. That is a part of the resolution, correct? I'm sorry,... [LR214]

SENATOR CHAMBERS: Yes. [LR214]

SENATOR PIRSCH: ...part of this legislative resolution. Okay. And with respect to that statement, and I'm interested in exploring your use of the term "innocence" as a technically correct term as opposed to some different term, such as, instead of saying the word "innocent," perhaps lack of proof beyond a reasonable doubt. I guess my question is, is it your understanding that among these 200 cases you reference, and I don't have the factual background or anything of those cases, I take it these are from outside Nebraska, is that correct? [LR214]

SENATOR CHAMBERS: That's correct. [LR214]

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SENATOR PIRSCH: Okay. Among these 200 cases you reference, are there any cases where...that involve cases where a prosecutor may have suspected even after the DNA evidence was produced that the defendant may possibly be guilty or even was guilty but, in any effect, dismissed the charges because the prosecutor believed that there was not proof to the degree that it would be able to be proof beyond a reasonable doubt? [LR214]

SENATOR CHAMBERS: Senator Pirsch, I have not read any of these cases and the reported decisions of any court. I have read about many of these cases but not all of them. And in all of the reading that I do and all of the cases that I've seen reported on television when people were being released from jail, it wasn't on the basis of what people might call a legal technicality where there was evidence but it just didn't rise to the level of proof beyond a reasonable doubt. These men and women were excluded as being possible perpetrators. They were excluded. And as Mr. Kleine pointed out, the DNA evidence was such that it pointed to somebody other than this person as having committed the crime, and these were the types of cases, not where DNA evidence was one of the elements. It's where you had the DNA evidence, once tested, excluded the one who had been convicted as possibly even being the perpetrator. [LR214]

SENATOR PIRSCH: Well, thank you. I guess that is the reason I rose, is my concern of the correct usage of the term "proved the innocence," "proof of innocence," as opposed to lack of proof beyond a reasonable... [LR214]

PRESIDENT SHEEHY: One minute. [LR214]

SENATOR PIRSCH: ...lack of proof beyond a reasonable doubt that...to distinguish the two. I don't know that we have in the criminal justice system or in the legal system in general a process by which a person is deemed innocent. We do have in the criminal justice field a procedure by which people can be deemed not guilty by lack of proof beyond a reasonable doubt. And so I just wanted to have a little dialogue around that particular topic. Thank you. [LR214]

PRESIDENT SHEEHY: Thank you, Senator Pirsch. Senator Wallman, followed by Senator Carlson. Senator Wallman. [LR214]

SENATOR WALLMAN: Thank you, Mr. President. Senator Chambers, may I ask a question? [LR214]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LR214]

SENATOR CHAMBERS: Yes, I will. [LR214]

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SENATOR WALLMAN: Was this your idea of a bill, or was it judiciary system? [LR214]

SENATOR CHAMBERS: Could you say it again? [LR214]

SENATOR WALLMAN: Was this your idea of the bill, or judiciary brought it to you, or...? [LR214]

SENATOR CHAMBERS: No. No, the judiciary did not ask me to do this. You mean by that judges are... [LR214]

SENATOR WALLMAN: Yes. [LR214]

SENATOR CHAMBERS: No, no. And if they had asked me, I would have been stunned, but I would have carried it without hesitation. [LR214]

SENATOR WALLMAN: Okay. Thank you. DNA testing I think does prove innocence or prove guilty. But do you think we're giving away personal freedoms? Say I was in a questionable situation and the attorney or the police thought I may have been the perpetuator (sic) of a murder. Do you think they should be able to get my DNA? [LR214]

SENATOR CHAMBERS: Here's the way that works. Before you can be compelled to give a sample, there must be probable cause, first of all, that a crime was committed, and probable cause that you committed the crime. It can't be a hunch, it cannot be reasonable suspicion, but probable cause. Once that has been established, if you do not voluntarily give a sample, a court order can be obtained by a court who is approached and is convinced that there is probable cause. Then a sample can be taken from you even against your will. [LR214]

SENATOR WALLMAN: Thank you, Senator Chambers. Thank you, Mr. President. [LR214]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Carlson, followed by Senator Wightman. Senator Carlson. [LR214]

SENATOR CARLSON: Mr. President, members of the Legislature, I, too, would like to address a question...two questions to Senator Chambers, if he would yield. [LR214]

PRESIDENT SHEEHY: Senator Chambers, will you yield? [LR214]

SENATOR CHAMBERS: Yes, I will. [LR214]

SENATOR CARLSON: Senator Chambers, I'm going to ask you what I believe is a legal question, in layman's terms, so that I can understand it. I'm going to ask you two

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questions here. Do you believe that following this resolution will reduce the probability of an innocent party convicted of a crime? [LR214]

SENATOR CHAMBERS: You mean if what the...the resolution itself will not do anything. [LR214]

SENATOR CARLSON: No, following. [LR214]

SENATOR CHAMBERS: Oh, if what the resolution is proposing were done I think it would reduce the likelihood, but it would not do away with the conviction of innocent people altogether. [LR214]

SENATOR CARLSON: Okay. But it...I'm not trying to trick you here, but you believe it would reduce the probability of an innocent party being convicted. [LR214]

SENATOR CHAMBERS: Yes,... [LR214]

SENATOR CARLSON: Okay. [LR214]

SENATOR CHAMBERS: ...I think it would. [LR214]

SENATOR CARLSON: Now I'm going to ask it in a different way. Do you believe that following the resolution will reduce the probability of a guilty party being set free? [LR214]

SENATOR CHAMBERS: I can't answer that question, I really can't. First of all, now we're getting to what legal terms mean. A person is presumed innocent no matter what the charges or the nature of the crime. The state must prove beyond a reasonable doubt that the person did the crime. If there is a person who committed the most atrocious murder but the state does not have the evidence, then there is a case where a guilty person is not going to be convicted, will not be sentenced, and will not be punished. And I cannot say that even with the adoption of this resolution and if everything in it is complied with that somebody guilty will not be set free. But if you have highly trained, professional prosecutors, they are adequately staffed and funded, then they will put together their case in such a way that it's not going to be as likely that a guilty person may escape. But that is not the flip side of the coin which would say it's not as likely that an innocent person would be convicted. [LR214]

SENATOR CARLSON: Okay. And I'll just ask one more statement because I think you would agree with this, I believe you will, that this resolution, you don't believe this is going to help guilty people be set free. [LR214]

SENATOR CHAMBERS: Oh, no. I'm not interested in guilty people being set free. I just

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want to be sure that the one punished is actually guilty. [LR214]

SENATOR CARLSON: Yeah, and there's...in the criminal system there's a balance in there that's not easy to reach because it's very difficult to reach a complete certainty, but... [LR214]

SENATOR CHAMBERS: That's why it says innocent beyond a reasonable doubt. There can be some doubt and the person can be convicted, but if the doubt is based on reason then that person cannot be convicted, even if you have evidence. [LR214]

SENATOR CARLSON: Okay. [LR214]

SENATOR CHAMBERS: But if it's not enough to remove reasonable doubt, the person has to be cut loose. [LR214]

SENATOR CARLSON: Okay. Thank you, Senator Chambers. Thank you, Mr. President. [LR214]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Wightman, followed by Senator Nelson. Senator Wightman. [LR214]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I want to congratulate Senator Chambers for bringing this. Obviously, if there have been 200 people, and I wasn't aware of the number, but I know that there have been a number on death row, I know some in Illinois, whether there have been any in Texas...but I think eight or nine in Illinois that have been set free because of DNA testing. I think there are overzealous prosecutors. There are overzealous law enforcement officers. Obviously there are, or there wouldn't have been 200 people. Somebody had to be stating something that they truly say they believe when there's very little proof of it for there to be 200 people who have been proven innocent by DNA testing. I have no idea how many people have claimed to be innocent and then the DNA testing failed to prove them innocent, but there certainly are overzealous people in the justice system, and I think that we can learn something from examination of those people who have been exonerated or those cases where people have been exonerated from...as a result of DNA testing. So I think the legislative resolution is well-thought-out. I look at it and, addressing what some of Senator Carlson's concern was, we've often said that it's better 100 guilty people should be set free than 1 innocent person convicted. That may be an overstatement in some of our minds, including mine perhaps, but it depends. If they're going to go on death row as a result of that conviction and that conviction was wrongfully obtained, then I think we can learn something from DNA testing, I think...or DNA exonerations, and I think we should examine that to see exactly what we can learn from it. Thank you, Mr. Chairman. Thank you, Senator Chambers. [LR214]

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PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Nelson. [LR214]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to address a question to Senator Chambers. [LR214]

PRESIDENT SHEEHY: Senator Chambers, would you yield? [LR214]

SENATOR CHAMBERS: Yes, I will. [LR214]

SENATOR NELSON: Senator, I agree with this. I wholly support it. All of the preambles are understandable, but I ran into a little of a stumbling block there when I got to the resolution itself, on page 2, be it resolved by the members, etcetera. Should there be a comma after the word "exonerations"? In other words, if you struck... [LR214]

SENATOR CHAMBERS: Yes. [LR214]

SENATOR NELSON: ...the words... [LR214]

SENATOR CHAMBERS: Yes. [LR214]

SENATOR NELSON: ...to learn from... [LR214]

SENATOR CHAMBERS: Yes. [LR214]

SENATOR NELSON: All right. Because otherwise it...I'm wondering what the actual intent. Are we going to...our efforts to increase the accuracy as a result of learning from...I don't know if it's possible for the final version to just...to fix that up a little bit. Your response is yes? [LR214]

SENATOR CHAMBERS: Oh, yes, and I think we could...somebody could just do that with a pen. (Laugh) [LR214]

SENATOR NELSON: All right. Okay. That's all I have. Thank you very much. Thank you, Mr. President. [LR214]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Are there additional members wishing to speak on LR214? Seeing no lights on, Senator Chambers, you're recognized to close. [LR214]

SENATOR CHAMBERS: Thank you. Mr. President, because this is such a serious matter, I do want to wrap it up without waiving my close...my closing. When some of these exonerations occur, a person will have served many years in prison. When they do occur some of these very overzealous prosecutors, as Senator Wightman

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mentioned--and they do exist--will say this proves the system works. And that person may have been one who resisted the release of the person where the DNA proved innocence, and the court would step in and say the person shall be released today. These exonerations don't prove that the system works. They prove the system didn't work. Many of these people will have had multiple appeals. Several appellate courts or individual judges will have upheld the conviction. When you can have a person traversing that much appellate real estate and still be deemed guilty when he or she is actually innocent, it shows that the system is not working. As Senator Wightman pointed out, a large percentage of the people on Illinois' death row, in fact a higher percentage of people who were on Illinois' death row, were let off as innocent than remained. So when you find this many people removed from death row, you know that untold numbers of innocent people have been executed in this country. You can just look at the number of persons executed in Illinois. I don't have the actual number, but if in these somewhat modern times where you might want to presume that there is a greater degree of care in investigations, prosecution, and the conducting of trials, and you have a larger percentage of people found guilty of murders they didn't commit than the percentage who likely did commit the murders, something is terribly wrong. And you know in prior years there had to be the executions of people who were innocent. That should give all of us pause. Remember, this resolution doesn't do anything other than express support for those efforts to improve the system, correct it where that is possible. If term limits does not cut me off and I could get into this Legislature again, I would like to be able to persuade my colleagues to establish some kind of mechanism for examining the system, cases that might be shaky, because there is nothing gained by a society when flaws in the system can result in innocent people being convicted and punished. The U.S. Supreme Court: One of the judges said in one of the cases that a state can make the drinking of one drop of liquor a crime, but no state can count the number of drops of liquor in a single... [LR214]

PRESIDENT SHEEHY: One minute. [LR214]

SENATOR CHAMBERS: ...shot glass and make each one of those drops a crime so that you could extend the punishment of that person out to an indeterminate number of years. To do such a thing would violate the Eighth Amendment against cruel and unusual punishment. So although states can do certain things, they are unconstitutional. And if there might be such flaws in the system, in this state's administration of its laws, especially the criminal justice system, we should be interested as elected officials in rectifying that set of circumstances. Thank you, Mr. President. [LR214]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the closing to LR214. The question before the body is, shall LR214 be adopted? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LR214]

CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of LR214. [LR214]

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PRESIDENT SHEEHY: LR214 is adopted. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR13, LR37, LR73, LR28, and LR214. Mr. Clerk, do you have items for the record? [LR214 LR13 LR37 LR73 LR28]

CLERK: Mr. President, I do. A communication from the Governor to the Clerk. (Read re LB12, LB12A, LB73, LB73A, LB117, LB211, LB211A, LB304, LB316, LB316A, LB324, LB324A, LB328, LB328A, LB342, LB342A, LB377, LB377A, LB425, LB425A, LB441, LB441A, LB470, LB470A, LB540, LB540A, LB603, and LB603A.) Health Committee will have an Executive Session tomorrow morning at 10:30, Mr. President, in Room 2022. (Legislative Journal pages 1872-1873.) [LB12 LB12A LB73 LB73A LB117 LB211 LB211A LB304 LB316 LB316A LB324 LB324A LB328 LB328A LB342 LB342A LB377 LB377A LB425 LB425A LB441 LB441A LB470 LB470A LB540 LB540A LB603 LB603A]

And I have a priority motion. Senator Pahls would move to adjourn until Thursday morning, May 31, at 11:00 a.m.

PRESIDENT SHEEHY: You have heard the motion to adjourn until Thursday, May 31, 2007, at 11:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned.