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Transcriber's Office

Floor Debate
February 14, 2008

[LB157 LB196 LB395 LB465 LB480 LB609 LB621 LB755 LB756 LB845 LB867 LB880
LB903 LB1092]

SENATOR ENGEL PRESIDING

SENATOR ENGEL: The chaplain of the day is Pastor Paul Coen from the Luther Memorial Lutheran Church from Syracuse, Nebraska, Senator Heidemann's district. So will you please stand and listen to the prayer.

PASTOR COEN: (Prayer offered.)

SENATOR ENGEL: Thank you, Reverend Coen. And now, would all the members please check in.

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

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

CLERK: I have no corrections, Mr. President.

SENATOR ENGEL: Thank you very much, Mr. Clerk. And are there any messages, reports, or announcements?

CLERK: Mr. President, the Governor communicates with the Clerk. (Read re LB157, LB196, LB465, LB480, and LB621.) Appointment letter from the Governor; will be referred to Reference. Lobby report for this week, Mr. President, and I've received reports from the Auditor of Public Accounts, the Energy Office, and the Rural Development Commission. Those will be on file in the Clerk's Office. And I have priority bill designations: Transportation Committee has selected LB755 as one of the two committee priority bills, and LB756 as the second, those offered by Senator Fischer, as Chair. That's all that I have, Mr. President. (Legislative Journal pages 593-595.) [LB157 LB196 LB465 LB480 LB621 LB755 LB756]

SENATOR ENGEL: Thank you, Mr. Clerk. Before we proceed, the cookies that are being handed out this morning are compliments of Senator Langemeier. (Applause) Senator Stuthman, you're recognized.

SENATOR STUTHMAN: Happy Valentine's Day to everyone here today, and today is a very special day for me. I would just like to announce that my wife and I are the proud grandparents of our eighth grandchild, which was born yesterday afternoon to our youngest son Eric and his wife Amanda. They named him Will Nathan, and he arrived weighing 9 pounds, 13 ounces, and was 22 inches long, and everyone is doing wonderful. So thank you very much.

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SENATOR ENGEL: Congratulations! Mr. Clerk, we will now proceed to the first item on the agenda, which is LB395. [LB395]

CLERK: LB395, Mr. President. The bill is on Final Reading. Yesterday the Legislature considered a motion to return by Senator Johnson, AM1736. The bill was returned. Pending is the specific amendment, AM1736, Mr. President. (Legislative Journal page 567.) [LB395]

SENATOR ENGEL: Senator Johnson, you are recognized to proceed. [LB395]

SENATOR JOHNSON: Thank you, Mr. President. [LB395]

SENATOR ENGEL: I'd like to remind everybody we are on Final Reading, so if you'd please take your seats. Thank you. [LB395]

SENATOR JOHNSON: Mr. President, members of the Legislature, I would ask for your approval of AM1736. AM1736 does three things: First, it removes the opt-out provisions of the bill in Sections 16 and 17, and it removes the current operative date provisions in Section 22. Secondly, the amendment provides a new operative date of 12 months after the Governor signs the bill, and adds the emergency clause. Adding the emergency clause starts the 12-month clock ticking when the Governor signs the bill. Thirdly, the amendment revises the definition of tobacco retail outlet and makes other technical changes. Therefore, I would just ask and commend this amendment to all of my colleagues here. I think that this does improve the bill substantially and would ask for your approval of AM1736. [LB395]

SENATOR ENGEL: Senator Erdman, you're recognized. [LB395]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. I'm going to rise in opposition to this amendment, and I'm not going to rise in opposition to the amendment and say that we should leave the bill in the form that it's in, because candidly, the way that 25 of my colleagues voted to put this bill in this form is irresponsible. I don't know any other way to put it. We put this bill on Final Reading so that we could fix it, and what we intended to fix was the provision in the law that was adopted, and that was the opt-out provision. I think we should vote down the Johnson amendment, and then I think we should offer an amendment to fix--and I will be willing to do this if you vote this amendment down--to fix the opt-out provisions and to have an up or down vote on LB395. I wasn't a part of a deal, and I'm not bound by any agreement. What I am bound by is making sure that the process and the procedures that I've been a part of is fair, and from the standpoint of where I've been as a member of the Health and Human Services Committee for eight years, I don't want this bill heard before the Health Committee this year again, and if you want to hear it next year, go for

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it. But I can argue both sides of this. But that's not what we're discussing today. If Senator Johnson wants the opportunity to make whole cloth out of what this bill currently is, then we as a Legislature should have the opportunity to make it what we want it, as well, because we are beyond the point, in my opinion, of letting the introducer choose the form that this bill is in. You had that chance on General File, you had that chance on Select File; it is no longer about the wishes of Senator Johnson. It is about what is reasonable and respectable public policy for the state of Nebraska; candidly, AM1736 is not it. LB395, in the form that it is in, is not it. Now if you adopt Senator Johnson's amendment, I'll have an amendment to that to fix his amendment, to make it more logical for what he's trying to actually accomplish. But my thought is, is that we should fix the opt-out provision in LB395 to make it workable, and we should leave that be the public policy of the state of Nebraska and allow for citizens across the state to have a voice, and here's why. I get e-mails from my constituents saying, leave us alone. I get e-mails from my constituents saying, we want a ban. I got an e-mail from one of my constituents last night that opened a business, opened a restaurant specifically to provide a nonsmoking restaurant in their community where there wasn't one. So here we are. We're going to take away that advantage for somebody being responsible and doing what I candidly think they should do on their own without the heavy hand of state government doing it. But at the same point, beyond the philosophical debate, it's one of practicality. What we're doing with AM1736 is saying, the debate that was held in Lincoln is good enough for all the communities that I represent, because they've thought through, in their policy in Lincoln, the considerations that need to be in place, in places like Dalton, in Gurley, and Potter, and Dix, and they have not. And candidly, they probably don't even know where those places are, unless the people who live in Lincoln were originally from those areas. So if you want to provide a reasonable solution, I submit to you that AM1736 is not it. If you want to fix what's in LB395, we can do that. But Senator Johnson doesn't want an opt out, even though 70 percent of the restaurants in his hometown are smoke free now. Senator Johnson doesn't want an opt out to allow Nebraskans across the state to have this discussion, because it's not going on in the communities. They want to dupe the Legislature into doing something for them, because their elected officials don't have the courage or the willingness to engage in this dialogue. Why should we be the ones that have to solve it for them? And to be honest with you, I'm not sure there's a problem to be solved, especially in Senator Johnson's home community. Am I saying that what is being proposed here is devious or underhanded? Absolutely not. I'm asking for reasonableness. I'm asking for cooler heads to understand the discussion that's before us,... [LB395]

SENATOR ENGEL: One minute. [LB395]

SENATOR ERDMAN: ...and that is that we're going to require of all communities that whatever this discussion was, that was highly heated and has obvious errors and problems within the community of Lincoln, that somehow adopting that statewide is a good idea. Again, I submit to you it's not, and regardless of whether I will support LB395

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or not is irrelevant. This is about what the policy should be, should we as a Legislature pass it. Senator Johnson knows that my attempts and my efforts as a member of the Health Committee, regardless of whether he's been the Chairman or others have been, on this issue have been to be insightful and be of assistance. We may ultimately disagree on the role of government to accomplish this. I think we can generally agree on the goal, and I hope that that discussion continues this morning. Thank you, Mr. President. [LB395]

SENATOR ENGEL: Thank you, Senator Erdman. Senator Kruse, you are recognized. [LB395]

SENATOR KRUSE: Mr. President and colleagues, thank you. I also affirm continuing discussion. Be clear--I support the amendment that is before us and, if that amendment passes, the return to Final Reading for this bill. As I indicated yesterday, there is an alternative. If we do nothing, then the citizens and various organizations will step forward and spend their resources and energy to take care of this matter. I would agree that this is the place where it should be talked about. This is the place where it can be battled out. This is the place where it can be challenged, discussed. We are the ones who can have differing opinions. We are the ones who can represent the whole state. That really is not possible in a group outside this body, so I affirm that this is the place to do it, I affirm our process, and I affirm this amendment in doing it. And in order to illustrate that, I would like to make the point that we're really talking about things that are not voluntary, which is all around us. There is no person here, no business in the state, that operates on a voluntary basis. We are talking here about a health issue. Mr. President, I would ask if Senator Karpisek would yield. [LB395]

SENATOR ENGEL: Senator Karpisek? [LB395]

SENATOR KARPISEK: Yes, I will. [LB395]

SENATOR KRUSE: Thank you. You run a meat market; is that correct? [LB395]

SENATOR KARPISEK: Correct. [LB395]

SENATOR KRUSE: You have health regulations within that meat market; is that correct? [LB395]

SENATOR KARPISEK: I'm inspected by the state of Nebraska. [LB395]

SENATOR KRUSE: Do you have a cooler, a meat cooler there? [LB395]

SENATOR KARPISEK: More than one. [LB395]

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SENATOR KRUSE: What temperature do you keep it? [LB395]

SENATOR KARPISEK: Between 34 and 36. [LB395]

SENATOR KRUSE: Oh, it would seem to me it might save you some electric bill if you would run it at a higher rate. Why don't you run it at a higher rate? [LB395]

SENATOR KARPISEK: Because that's what it's designed to run at. [LB395]

SENATOR KRUSE: Is that the design because the state health authorities say that's what it ought to be? [LB395]

SENATOR KARPISEK: I know where you're trying to go, Senator. It's because the meat will spoil, and if I get someone sick that comes and buys my product, that is to protect my customers from me. And I will say, as Senator Chambers said, you people don't listen. I've said that over and over. [LB395]

SENATOR KRUSE: Yes. [LB395]

SENATOR KARPISEK: It's to protect my customers from me, not my customers from other customers. So I think where you're trying to go is pointless. [LB395]

SENATOR KRUSE: I have heard your statement, and I appreciate it. I am sure you do try to protect your customers. But you have health regulations that you have to follow. Is that not correct? [LB395]

SENATOR KARPISEK: Yes, sir, but to me, that is apples and oranges, and you're trying to make some sort of a banana out of it. (Laughter) [LB395]

SENATOR KRUSE: Well, looking at the banana, would you agree that this present debate before us involves a health issue? [LB395]

SENATOR KARPISEK: Debatable. [LB395]

SENATOR KRUSE: Thank you. Senator Karpisek... [LB395]

SENATOR ENGEL: One minute. [LB395]

SENATOR KRUSE: ...obviously wants to resist saying yes to some of those, and I accept that. I understand. We all understand. This is a health issue, and when we are saying this, we're not coming down hard on somebody. Not a one of us here is free to drive the speed that we might choose to drive, even when we have all kinds of reasons that would say this is best for my business, I have a delivery system; therefore, I need to

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go faster so that I can make more money at it. You can't do that. We are always controlling businesses and each other, and so the debate before us is most appropriate, and the action that we propose here, I think, is warranted. Thank you. [LB395]

SENATOR ENGEL: Thank you, Senator Kruse. (Visitors introduced.) With that, Senator Fischer, you are recognized. [LB395]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I'd like to begin this morning by recognizing Senator Harms and Senator Kruse. From their comments yesterday and their concern with the health and well-being of the citizens in that state, we do need to thank them for that. But what I want to recognize them for is their consistency. Both of those senators had bills in Transportation and Telecommunications this week. Senator Harms has a bill that deals with seat belts on school buses, requiring seat belts on school buses to protect children, to protect their health, protect their safety. That is consistent with his stand on this bill. Senator Kruse has a bill in Transportation and Telecommunications that we had a hearing on this week, and that is to make seat belts a primary offense. Right now they are a secondary offense. His bill would make that a primary offense, so that our law enforcement people could stop citizens who are not wearing a seat belt. They don't have to wait to stop those people if they are speeding, if they have a light out, whatever. They can stop them for not wearing a seat belt. That view of Senator Kruse's is consistent with his stand on this bill. He is trying to save lives. He is trying to protect people, and I do appreciate their stance. What I don't appreciate is when we vary from what I think is the topic, and the topic of this bill is health. But since many of you on the floor have varied from that and you speak about business, and you speak about a level playing field, then I feel I can stand up and also address that. And I will address that because, in my opinion, this bill, a state mandate for a smoking ban, is a violation of private property rights. I support a smoking ban in public buildings. I support a smoking ban where people have to go to conduct business. They have to come to a county courthouse. They have to go to city offices. They go to public libraries. They go to the university. They go to events at Devaney Center. Those are all public places. This building we are in today is a public place, and when citizens come here to be involved in the process of state government, they shouldn't have to be exposed to secondhand smoke. However, when citizens choose to go into a restaurant that is owned by a private individual, they are making a choice. That is personal responsibility. They make that choice. I don't believe it is proper for the state to mandate that those businesses, that those private owners, have to ban smoking because of decisions that we make on this floor. Seventy to eighty percent of the people in this state are already under a smoking ban. I heard some of my rural colleagues say yesterday they were getting e-mails, and their people have changed their minds and they want a state smoking ban. I can tell you that I have received e-mails that are contrary to that, not just from my district but from many of your citizens in your district. I have people who own private businesses, and they really don't want Lincoln and Omaha telling them what to do. I have people who favor a statewide

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smoking ban, and I've heard from them. And in my district, we get tired of Lincoln and Omaha telling us what to do. So I am opposed to this bill for that reason. [LB395]

SENATOR ENGEL: One minute. [LB395]

SENATOR FISCHER: Cigarettes are a legal product. We haven't talked about banning them in the state of Nebraska. If we're serious about health concerns, that should be the discussion. If we are serious about health concerns, that's the discussion. How far do we go with state mandates? I see Mississippi has a bill introduced that overweight people can't go into restaurants. I said this last year. Are we going to have a scale outside every restaurant, and the owner then, I don't know how they'll determine it, but I guess they can look at me and say, gee, Deb, you look kind of overweight today; you're looking a little chubby; sorry, you can't come in. Because obesity is a problem. [LB395]

SENATOR ENGEL: Time. [LB395]

SENATOR FISCHER: The costs for obesity are higher than smoking. Thank you. [LB395]

SENATOR ENGEL: Thank you, Senator Fischer. Senator Pankonin, you're recognized. [LB395]

SENATOR PANKONIN: Thank you, Mr. President. Folks are speaking with a lot of passion this morning and I appreciate that, and I probably don't have that passion necessarily, but just want to weigh in on the amendment and the bill briefly. On the amendment, as far as the opt out goes, I think that's a...to me, it's more important than the bill that we get rid of the opt out. As a former small town mayor and city council person, I just think that is going to cause so many problems, especially the way it's written. But just the concept of it, I think you're going to have community and counties that are going to be in an uproar, and it will be a...it's going to be a huge problem we'd have to come back and deal with, I'm just sure, so definitely for the amendment. I think that would be a large problem. As far as the underlying bill, LB395, I talked about that last year; just have a personal interest in it because of how things have changed over the years. I think about my own family. As I mentioned last year, both my parents died probably younger than they should have, my dad especially, the same age as I am now, was a heavy smoker, and I think secondhand smoke and my mom smoking had to do with her early demise, as well. And the three of us siblings didn't smoke, and the point is, Senator Chambers said yesterday, used to smoke here on the floor and in committee hearings, and over time things change. And we may be at the point, the tipping point here, where it's time to change the policy. But that waits to be seen, and that will play out hopefully this morning. But I am definitely against the opt out. I just think that will cause huge problems for us statewide, and so I urge you to vote for the amendment and strongly consider the bill. And I don't know if there's anybody that still hasn't made

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their decision, so I think as we proceed this morning, hopefully we can bring this to resolution. Thank you. [LB395]

SENATOR ENGEL: Thank you, Senator Pankonin. Senator Karpisek, you are recognized. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, just reading through the paper or on the e-mail today, and I see that Grand Island is going to put the smoking ban on the ballot. Senator Aguilar was quoted and did a fine job of talking about the bill and how the process is working. In my opinion, that's the way to go. Grand Island City Council is tired of us messing around with it, so they're going to take it in their own hands--good for them! Phillips is right near Grand Island. Maybe they don't want it; should be up to them. Right now that's what we're talking about, is the opt out. We keep getting sidetracked and talking about the benefits of not smoking. That's fine, I guess, if we want to talk about that. I'm going to try to just talk about the amendment. Senator Erdman talks about someone that just built a new restaurant to be smoke free. We want to talk about leveling the playing field. Well, that levels it for them, but they weren't expecting that. So that's not going to help them at all. Maybe it will; maybe it won't, I guess. My point is, is I feel that it should be the business owner's choice. I can live with an opt out for the city. Those mayors and city council have been elected by their people to decide their fate. Let them have the say. I know we make state policy here. I don't feel that this is a state policy issue. I know that many of you will disagree with that. That is my feeling, and I will go back to what we said earlier. Just because Lincoln and Omaha and maybe Grand Island and Blair and whoever else wants to implement a smoking ban, great, if that's what their...they think their people want. But I think we're forgetting about a big part of the state that isn't on this side or in the corridor where a lot of people are. I think we need to leave it up to the people, which means leaving up to their local government to decide. I got an e-mail this morning from Fairbury expressing the same thoughts, so I have gotten issues on both sides of the bill. But out of my district has been overwhelmingly to keep the opt out in and let us decide. And I still feel that we have an opt out; it's called local ownership. Let them decide. And I know we're going to try to keep connecting it to the health bill. I don't see the correlation there. Maybe I'm blind. I don't think it's there. The health code is for me not to get my customers sick, not what they can do in my business. This is what my customers can do in my business. It probably also doesn't bode well that I own a meat market and I use my business as an example. I'm talking primarily about bars, but since I don't own a bar and I do own a meat market, I try to talk about my business. I can shift gears and talk about bars, I guess. I stopped in last night to see what the local crowd thought. I think we saw 4 people out of probably 30 that weren't smoking. Again, the owner was there, he thought it was fine,... [LB395]

SENATOR ENGEL: One minute. [LB395]

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SENATOR KARPISEK: ...he does not like this. Thank you, Mr. President. He does not like this idea. He doesn't smoke. If he didn't think that it was good for his business, he wouldn't have smoking in there. Again, I know that smoking isn't good. We're going back to that. We all agree smoking isn't good. Secondhand smoke--no, it's not good. I think if you're not around it 24/7 it's not going to kill you right away. People get cancer that have never smoked, not been around smoking. Again, I just want to say I think it's up to the individuals. Let's leave something for the people out in the other parts of the state to decide their own fate. Thank you, Mr. President. [LB395]

SENATOR ENGEL: Thank you, Senator Karpisek. Senator Carlson, you're recognized. [LB395]

SENATOR CARLSON: Mr. President and members of the Legislature, before I make the remarks that I've prepared this morning, I want to comment on something that Senator Fischer said, and I certainly agree. This whole issue, I think, is about public health. It cannot be and should not be anything about a level playing field. I had mentioned yesterday that I had an amendment that I would like to have seen considered--my amendment, which I want to mention for the debate, but I'm not going to submit it. I would have liked to have seen 93 mandatory countywide elections to opt in or out as a county, not as a town, not as a city or a community, but by counties. If that were done, I think I know what the results would be. I think all 93 would ban smoking. But if two or three or four or five or six voted not to ban smoking, so what? The people, not us, would have spoken. I think this would answer some of the concerns that Senator Karpisek has. Now I don't think my amendment would pass, so I'm not going to submit it. The question is whether or not a public health issue takes precedent over a freedom of choice issue. Now I will vote for the bill, for the amendment, AM1736. If AM1736 fails, I will vote for LB395. If we vote against LB395, there will be a state referendum for a ban on the November ballot. I know what the outcome of that referendum would be. It will ban smoking. The majority of people are for that, and guess who decides that statewide referendum? Lincoln and Omaha. Not that I don't like Lincoln and Omaha, but that's the way it would figure out. And I'm not bitter about that. I think that's just a fact. So there's a lot to think about as we continue on this path, and I welcome the balance of the testimony. If I have time remaining, I'd like to yield it to Senator Aguilar. [LB395]

SENATOR ENGEL: Senator Aguilar, would you accept? [LB395]

SENATOR AGUILAR: Thank you, Mr. President. Thank you, Senator Carlson. I just wanted to touch base on a couple items here, because I think the discussion is kind of getting askew here in another direction, and I think we should stay focused on what we're talking about. I don't think this discussion is about obese people. I don't think that has any place in this conversation. That's merely an attempt to cloud the waters a little bit and get us off track and forget about what we're talking about. A couple senators got up and spoke to the fact that there was a restaurant that opened up, nonsmoking

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facility. Well, I would submit to you I've heard from many, many restaurant owners throughout the state who are just waiting for us to do it, because we're the only ones that can do it fairly, in a fair manner where the whole state is smoke free. They don't have to worry about neighboring communities coming, ripping off their business clients. It's a commonsense thing. I ask you to support this amendment. Thank you, Mr. President. [LB395]

SENATOR ENGEL: Time. I was distracted up here by one of our colleagues, but with that, I would love to recognize Senator Chambers as the next testifier. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, having been described as a testifier, it is with great trepidation that I step into the dock this morning. I will have a few things to say, which probably will be ignored by everybody. See, I got your attention. But at any rate, I want to start with what Senator Pankonin said, not the substance of his comments on the bill, because I agree with that. But he sold himself short due to great modesty and humility. He referred to himself as a small-town mayor. Having served with Senator Pankonin and observed him, he needs to rephrase that. Senator Pankonin was the mayor of a small town, but by no means is he a small-town mayor. I just thought I should make that clear. Senator Karpisek, though a "meatologist," does not know the difference between sausage and hotdogs, so were I to enter his meat market, I would ignore the label on any products that he has, and I would trust my eyes. And that brings me logically to a comment from Senator Erdman. He had stated that what he wants in this bill is what is reasonable. In the same way that beauty is in the eye of the beholder, reasonableness is in the mind of the person doing the asserting. So what is reasonable in the mind of Senator Erdman clearly is not deemed reasonable by a majority of the body, as it has expressed its preferences thus far. So mentioning reasonableness is not really an argument. Senator Fischer said she does not want to be told by Omaha and Lincoln what to do, and the people in her area of the state are tired of being told by Omaha and Lincoln what to do. I'm tired of the Legislature telling me what to do. Do you know I'm a law-abiding citizen? Do you realize that if I want to smoke marijuana in the privacy of my own home, where I'm hurting nobody, I can't do that. I can't do that without being in violation of the law. I can't snort cocaine if I choose to do so, because you all and others situated as you are going to tell me what to do, when what I'm doing is of none of your business, and it doesn't hurt you or anybody else. That's why when these kind of comments are made about having a private business and doing what you want to do there, are preposterous and outside the bounds of rational discussion, because they ignore the realities of this society, the legal structure, the laws, the innumerable operations by a state under its police powers, as they are called. We all know, who are rational, that we're talking about a health issue here. We also know that a health issue is of statewide concern. We also know or should know that matters of statewide concern are appropriate for dealings with/by the Legislature. What is being done here today is perfectly proper and appropriate. Senator... [LB395]

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SENATOR ENGEL: One minute. [LB395]

SENATOR CHAMBERS: ...Fischer, when she first began mentioning the senators who have bills before her committee, caused a name to jump right into my mind, and that was Mata Hari. But Mata Hari was a woman who was unfairly, unjustly convicted of something of which she was not guilty. She was not a threat to anybody. So her name is now infamous because people associate it with terrible things, but if they did a little reading about Mata Hari...they don't even know where she came from. But she did not do what she was condemned for having done. The Rosenbergs ought not to have been executed unjustifiably in the way that they were. So what does that have to do with what we're talking about here this morning? That governments do whatever they want to do; sometimes they do the wrong thing. Those of us who are interested in the welfare of the people, as we are on this bill, must do the right thing... [LB395]

SENATOR ENGEL: Time. [LB395]

SENATOR CHAMBERS: ...as representatives of that government. Thank you, Mr. President. [LB395]

SENATOR ENGEL: Thank you, Senator Chambers. Senator Erdman. [LB395]

SENATOR ERDMAN: Thank you, Mr. President. I'm in good company today. Senator Chambers said that my ability to promote my position as being reasonable is not the prevailing or the majority opinion on the floor. And generally, that's where he finds himself, and so I'm in good company. Whether or not you agree with my position or not is one thing; whether or not we should be reasonable in the policy we adopt is probably another. And I'm not saying that, in the past when other bills have been out here, whether it's requiring a sign or other things, that it wasn't reasonable to consider. And, in fact, at the end of the day we did consider a lot of those ideas, and we're...at least I am--I'm speak for myself--am grateful for the work that is done on the floor, especially by Senator Chambers, to try to improve the legislation that is before us, whether he supports it or not. And at times I would consider him to be unreasonable, as well, but he's doing what he believes is appropriate and I'm grateful that we have a process that provides for that. One of the things that has been interesting is the contrast, and we keep bringing in Senator Karpisek's business into this discussion. The irony about that process, and was part of our discussion last year under the Pure Food Act, which is a regulation of the Department of Agriculture, is that those regulations are not arrived at in an ivory tower. They're arrived at by allowing those that will be regulated to have an input in the process. Ultimately, it's up to the regulating body to decide, but what you're doing here is completely different than that. It's completely different than your zoning process, to which individuals have direct say in that process, as how it affects their entity locally, as crafting that policy to effect the uses are appropriate for that area. One

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can make the argument that they have that say through us, and then by saying that we that are in support of a different idea than what is being proposed are being unreasonable, to me is, again, contrary to the other practices. So there's two sides to this discussion. Is this the right public policy, and is this the right way to accomplish it? I can agree that this is the right public policy. That's not what's in debate here for me. Is this the way to accomplish it is where I'm debating the issues. And if it's unreasonable to ask that my communities have the same opportunities that Lincoln and Omaha had, then I guess they were unreasonable when they did what they did. I mean, it has to get back to the discussion. If you want to vote for a smoking ban, vote for AM1736. I'm somewhat surprised that Senator Carlson is going to vote for LB395, even if the amendment isn't adopted. That's unreasonable, because the process is unreasonable. The opt-out provision--it's not unreasonable, it's insane. It makes no logical sense to the process. If the people of the state of Nebraska had the opportunity by simply having 5 percent of them sign a petition to stop any bill that we pass without a vote of the people, would that be reasonable? No. But that's what is in the underlying bill. Regardless of what we do with this amendment, we have to fix that, and I am willing, as I have been throughout the time that I've been in the Legislature on this topic--and I'm going to offer a revised amendment that I've worked out with Senator Johnson, if this amendment gets adopted--to try to provide that. But where I'm at is not, is it good or bad to smoke? Is it good or bad to allow for individuals to exercise this right that's legal? Again, I don't know how much more clearly I can state that I don't think you should smoke. I haven't smoked. I never will smoke. I stood beside the bed of my grandma and watched her die from lung cancer. Candidly, I have no use for it. [LB395]

SENATOR ENGEL: One minute. [LB395]

SENATOR ERDMAN: But I've also gone to funerals and seen individuals that have been killed by other legal substances, as well. That's not what this debate is about. This debate is about reasonable accommodation and, more importantly, appropriate safeguards. People are going to do things that we don't agree with individually. Fair enough. But we have a stake in the game because of the money that we generate from their unreasonable acts, or in my opinion, illogical acts. I'm debating whether or not this is the right way to do it or not, not whether or not the question before us is, is it the right policy? It's a matter of process, not about the ultimate policy. Thank you, Mr. President. [LB395]

SENATOR ENGEL: Thank you, Senator Erdman. Senator Lautenbaugh. [LB395]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And for the record, I think yesterday the discussion with Senator Karpisek was about the difference between hotdogs and wieners, and the lack of a difference between the two, and he seemed to know that and I would trust anything I purchased at his shop, even though it may someday kill me, if taken to excess, (laughter) and not because it came

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from his shop. That's just the nature of the beast. Again, we're hearing today that this opt out causes problems and so it must be taken out. We must do away with the opt-out provision. And it's not drafted well, undeniably; it doesn't make sense as written. But it should be improved, not stricken. We're talking here about something that we're struggling to find a way to do, and that should give us pause and make us think maybe we shouldn't be doing it the way we're doing it, to say the least. We're talking about giving people a year to adjust to this. I get mail from my constituents just as everyone else does. I get an e-mail, letter from a gentleman who owns a place of business, invested thousands and thousands of dollars so he would have a specialized ventilation system, so the air would be clean for his patrons and he could allow his patrons to smoke if they chose...so choose. We're going to give him a year to get those thousands and thousands of dollars back. What good does that do him? What possible good does that do him? What is he doing to do in that year? Go sell the ventilation system on a secondhand market? That doesn't make any sense. And consider the example I threw out yesterday--a cigar bar. There are such places with big walk-in humidors that have liquor licenses. They sell cigars, they sell liquor. There are people on this floor who think that those businesses are protected by both the amendment and the underlying Final Reading bill. That is not true. The Final Reading bill says retailers and those that sell incidental, that sell tobacco products and products incidental to tobacco. This amendment doesn't just take out the opt-out provision; it also clarifies that products incidental to tobacco do not include alcohol. So what we're saying and who we're trying to protect are people who go into bars that frequently have the name "cigar" right in the name of the bar, that have a big walk-in humidor, and we're protecting the public from that kind of a place. I would submit to you that no one who goes in there, no one who works there, no one who encounters such a place as that is surprised to find smoke inside. And if you don't want to be around the smoke, there's a very simple way to avoid it. I acknowledge a ban is coming. I mean, we're fighting against a tide here, I understand that. But there have to be reasonable limits, be it a local opt-out provision or all of us taking a deep breath of this great clean air we're enjoying in this Chamber, and say to ourselves, what are we doing here? Who really needs our protection, and who are we trying to protect? And I would submit to you that we are going too far here. This is not a question of whether or not we can do this--we surely can do it. We can roll right over the rights of these business owners and put them out of business, and we don't have to give it a second thought if we don't want to, but we should, because we are putting people out of business for selling a legal product or allowing people to smoke a legal product in their businesses. And like I said, I know the ban is coming. I know this is what is going to happen. Progressive places like France, California, and Lincoln are way ahead of us on this. But I hear from Blair and Ft. Calhoun in my district that say again, just because Omaha did this doesn't mean it should be forced down our throats. That's where the opt out came from. That makes sense to me. [LB395]

SENATOR ENGEL: One minute. [LB395]

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SENATOR LAUTENBAUGH: I agree with Senator Fischer's comments, and...oh, she's in a conversation. I was going to yield the rest of my time to her. I'll yield it to Senator Karpisek. [LB395]

SENATOR ENGEL: Senator Karpisek, you have 48 seconds. [LB395]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. We talk about this issue going to a vote of the people, and Senator Carlson knows how it will come out, and I will probably agree with him. But I remember quite a few years ago when the seat belt issue came up, and everybody said, oh, that will pass easily, and Lincoln and Omaha passed it. And all of a sudden the votes came in from the western side of the state, and it didn't pass. So if that's the way it's coming, fine. I agree with Senator Lautenbaugh. I know it's coming. But I'd rather have the people tell us that, then. Let them say it, let them do it. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY PRESIDING [LB395]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator McDonald. [LB395]

SENATOR McDONALD: Mr. President and members of the body, I'd like to have a dialogue with Senator Karpisek. [LB395]

PRESIDENT SHEEHY: Senator Karpisek, would you yield? [LB395]

SENATOR KARPISEK: Yes, I would. [LB395]

SENATOR McDONALD: Senator Karpisek, these are going to be tough questions, and I know it's going to be difficult for you to answer those. Have you ever been to Phillips, Nebraska? [LB395]

SENATOR KARPISEK: Yes, I have. [LB395]

SENATOR McDONALD: You have been to Phillips, Nebraska. [LB395]

SENATOR KARPISEK: I think once. [LB395]

SENATOR McDONALD: And what did you see in Phillips, Nebraska? [LB395]

SENATOR KARPISEK: I saw my friend's Uncle Phillip. True--true story. (Laughter) I don't think it was named after him, but that's... [LB395]

SENATOR McDONALD: (Laugh) Thank you, Senator Karpisek. I wasn't going to speak on this bill this morning, but when Senator Karpisek mentions Phillips, I graduated from

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Phillips. I've been to Phillips. I lived most of my life outside of Phillips. But the sad thing about it is when we lost our school many, many years ago, we also lost our bar, so we don't have any opportunities for people from Grand Island to go to Phillips and smoke. So it isn't going to happen. I just want to let you know that I continue to support this amendment. I continue to support this bill. I think it's the right thing to do. Unfortunately, not everybody believes that this is the right thing to do, but I think if you ask most of those people that are concerned about the smoking ban and disagree with it, probably like to smoke a few cigarettes now and then and, you know, those are the ones that are truly concerned about making sure that everyone can smoke. Not everyone, but our smokers do tend to support not having a smoking ban, or at least opting out. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator McDonald. Senator Aguilar, followed by Senator Wightman, Senator Fischer, Senator Nantkes, and others. Senator Aguilar. [LB395]

SENATOR AGUILAR: Thank you, Mr. President. First, I'd like to thank Senator Erdman for taking part at a really quality level in this discussion and working to make this bill better, because I honestly believe he's trying to do that. And he's also making good arguments against Senator Karpisek, as far as the opt-out clause. Senator Lautenbaugh also spoke of the opt out and how that would work with businesses, and I submit to you over and over again that the opt-out clause can hurt...has the opportunity to hurt business more than it would ever help business, that's for sure. We don't want to put our communities in that situation. That's why I so strongly believe in the statewide ban without the opt out. I really think that's necessary to accomplish the goal we're after. I was a little discouraged when one of the senators--I believe it was Senator Karpisek--wouldn't admit that this is a health issue. You need to wake up a little bit. This is a health issue. If you'll recall back when Senator Johnson first opened on this bill, he spoke eloquently about the fact that this is an opportunity for the state to make the biggest move ever to reduce Medicaid costs, and that stands true today and nobody can argue against that fact. Between that and what the state could accomplish by having fluoride, for instance, it's massive numbers as far as the money. The problem with this situation is, nonsmokers are being asked to subsidize smokers in the amount of money that they pay towards these health costs, and that's an issue nobody has really addressed. That's why the argument is so strong. I truly believe we need to get this done. And once again, my thanks to Senator Johnson for bringing it forward. I'd yield the rest of my time to Senator Chambers, if he wants it. [LB395]

PRESIDENT SHEEHY: Senator Chambers, you're being yielded about 3 minutes. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, Senator Karpisek's business comes up because when he speaks he mentions it. I've

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been trying gently to inform this young whippersnapper behind me named Lautenbaugh that he needs to pay attention. He said that the debate yesterday was between wieners...hotdogs and wieners. That's not it. He didn't listen. Senator Karpisek didn't listen. I was talking about sausage. Senator Karpisek got up and talked about hotdogs. He will inform Senator Lautenbaugh, if Senator Lautenbaugh is teachable, but he's not teachable. He always comes in here, he didn't hear anything, but he's automatically against what I say, so he's going to join Senator Karpisek who had to acknowledge he was wrong yesterday, he misheard what I said. Now these seem like minor things, but keep an eye on how some people determine what they're going to say and when they're going to say it. The discussion...it might seem simple. Just like when Captain Queeg was sitting there, facing whatever they called that inquiry in the Navy, rolling those two steel balls in his hand and saying, ah, but the strawberries, the strawberries. And I knew I had heard somebody say that...talk like that when I heard President Bush speak. It was Humphrey Bogart who would shh at the end of his words. So Senator Lautenbaugh is caught up in the "strawberriesh" of Senator Karpisek. I know what I say, and I correct people when they misstate what I say. But some people around here find it easier to create a straw person or a meat person, knock that down, and convince themselves that they've dealt with what I said. But since we are just kind of expatiating free over the entire scene that relates to smoking, I'll going to make that correction again, so that Senator Lautenbaugh will pay attention to what is said or he makes sure that he heard it before he tries to comment on it. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: But he caught on quickly that the best way to please his constituents is to show that he disagrees with Senator Chambers and that he's going to put Senator Chambers in his place. Now he didn't say that, but people come down here all the time, they campaign on that. They might run against Senator Carlson, but they campaign against Senator Chambers. I'm going to go down there and I'll put him in his place. Even former Speaker Senator Brashear admitted that that's the way he ran. Other senators have pointed out how their opponents ran. Senator Warner, when he was alive, stated that these new people come down here saying that they're going to put Senator Chambers in his place and they never do and, beyond that, they usually wind up supporting and defending him. That's because when they're here long enough, they open their mind and they understand what is being said. I'm being a teacher during the remaining 40 days that I have here. [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. The doughnuts that you received this morning are compliments of Senator Stuthman in celebration and honor of

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the birth of his new grandson. Senator Stuthman, congratulations! Senator Wightman. [LB395]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the Legislature. For those of you who haven't seen it, Senator Stuthman has a picture of the grandson over here, and you may want to wander by and take a look at it. At any rate, sometimes you get categorized even while you're waiting to speak, and I think Senator Erdman categorized me because he called Senator Carlson's position unreasonable, so I apparently am going to fit into that camp. (Laughter) His idea was that if you were for AM1736 and said that you would vote for LB395, even if AM1736 failed, that that was an unreasonable position. I find myself in that position. I hope that doesn't happen. I will support AM1736, but I...and I don't think it will...I'll have to make that decision; would also vote for LB395 without the amendment. I still think it would be better than nothing. I know that Senator Johnson doesn't agree with that and would probably pull the bill in that situation. I'd like to respond to one comment that Senator Fischer made that says that, at a private business, that people have a right to choose whether they go in there or not. I would ask does an employee have the right? Probably they have a right to choose whether or not they will go into the place of business, but frequently that may be the only choice that he or she would have, as far as a job opportunity. In many towns jobs aren't that available, and so quite frequently employees may well be subjected to the secondhand smoke that comes from allowing smoking in the establishment, and I think they don't always have that choice. I would also ask, does a child who comes into a restaurant with a parent have that choice? Obviously, they do not. I suppose that if their eyes become irritated enough and they have to be taken out, maybe they wouldn't be taken back again, but I think that's a fairly small choice. From the people I talked to, and that represents a number of board members of local entities, county boards and cities--I've had proclamations from various of the cities in which they've requested that I support this without the opt out--I think most of them would prefer not to have the opt out. I agree that it may be a cop-out on their part, from the standpoint that they would just as soon avoid that situation with their own constituents and they would rather let us take the heat, but I guess that's why we're being paid the big bucks to take that heat, to decide on public policy. I know Senator Karpisek says let the people decide. Taken to its logical extreme, we could not pass any legislation down here and could just take the position that the people could decide everything. I think we have to make those hard choices. We have to make choices for the citizens of the state of Nebraska everyday. They have the right, if they feel that we've gone too far, to override that through the initiative process. But until they do, we make that choice everyday. So I will continue to support AM1736. Just as Senator Carlson's unreasonable position, I probably would vote for LB395, even if it comes to a vote without with the amendment, but I would much prefer to vote on it having been amended to take out the opt-out provision. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Fischer. [LB395]

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SENATOR FISCHER: Thank you, Mr. Lieutenant Governor and members of the body. I wasn't going to speak again, but my name has been taken in vain a number of times, so I think I need to respond. First of all, I would like to say--I don't see Senator Carlson; oh, there's Senator Carlson--I like your idea of an amendment, and I hope you go forward on that at our next stage here with the countywide opt out. I would certainly support that, because at least it's not the state mandating a policy on individuals and on businesses. It would be a decision made by local people, and I think that's what we need to remember here. Currently, cities can do this, but then we get into the argument about, well, gee, we don't have a level playing field. Senator Aguilar said that the owners of businesses are waiting for us to do this, because they don't want people ripping off their customers. We all know that the majority of people in this state seem to support a smoking ban. We've heard that a number of times on the floor. If the majority of people support a smoking ban, then why aren't they frequenting these businesses that don't allow smoking? Why do some of you in here feel that those businesses are at a disadvantage? Why do many of you in here keep referring to, we need to level the playing field? I don't want to go to a restaurant that has smoking. In Valentine we've been fortunate that two of our restaurants have decided to go nonsmoking, and they did that on their own. In Callaway, another of my communities in Custer County, a restaurant decided to go nonsmoking--they did that on their own and they did it because people requested it. They did it because their customers wanted it nonsmoking, and the owners responded to that. It didn't take a statewide mandate. Senator Aguilar also brought up that he felt I was a little illogical in my argument, when I brought up about obesity. I would have to disagree with him on that, because my argument is about the principle of limited government. And a part of this argument on a smoking ban, outside of the health issues--which I believe should be the main topic that's being discussed, and many of us are getting off of that--besides that, besides private property rights, besides the cost to the state, the argument here is limited government, and that's a principle that I firmly believe in. I don't think we need government telling citizens what to do. Senator Chambers says this is a statewide concern. Okay, that goes back to the health of people in this state. That goes back to my obesity comment, that in Mississippi a bill has been introduced that restaurants can't serve obese people. How they determine that I don't know. I would suggest to them that they put a scale outside the restaurant. Of course, then you get into liability concerns. Perhaps Senator White or Senator Lathrop could address those, on what would happen to a restaurant owner when they tell somebody they're too obese to come in and eat. I don't want Nebraska to head in this direction. We don't need the state of Nebraska telling us what we need to do. If you are truly concerned about health, ban cigarettes. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR FISCHER: If you're truly concerned about the cost to the state from smoking-related illnesses, address obesity. We are not doing that. Obesity costs to this

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state are higher than smoking-related illnesses cost. And I believe if you go out to the lobby and talk to the lobbyists that are out there with health organizations, they will confirm that and they will have the information for you. My principle here is limited government. I don't believe I have strayed from that. I believe my arguments have been logical, but then all of us, when we stand up on the mike, believe our arguments are logical and should be listened to. So I thank you for your attention. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Fischer. Senator Nantkes, followed by Senator Karpisek, Senator Chambers, Senator Carlson, and others. Senator Nantkes. [LB395]

SENATOR NANTKES: Thank you, Mr. President. Good morning, colleagues. Just to echo some of the ideas brought forward in Senator Fischer and Senator Karpisek's eloquent testimony this...or eloquent debate this morning, I just wanted to talk a little bit about why I'm in opposition to the amendment and the underlying legislation. In terms of the arguments related to a level playing field and providing for an opt-out provision, as I mentioned in debate yesterday, I represent Lincoln, as you know. We've had the opportunity to have a community-wide dialogue about what best suited the needs of our community. I feel each community deserves the opportunity to do the same. I also believe that as we hear from people all across the state, in city boards or city village boards, county boards, and mayors saying, please help us, please help us so that we can have, you know, a uniform law here and provide us the political cover that we need, I think those are really weak arguments. I think that each individual policymaker in those local jurisdictions needs to stand up and have that dialogue with their individual constituents, instead of turning to us and asking for that cover. Also, I think one point that has been missing from the debate thus far is that we keep focusing on bars and restaurants and their owners and their patrons. But remember: This is really a much broader prohibition contained in this legislation. This applies to all businesses with employees, just as the ban here in Lincoln does. So we're not only talking about establishments where people want to maybe go in with their family and have a hamburger or dinner and feel, because of the environment, they're prohibited from doing that. But we're talking about the mom-and-pop shop in Seward, Nebraska; in Bee, Nebraska; in Louisville, where they've got a car repair shop, and they've got one or two employees there, and that individual business owner has decided that he's a smoker and he wants to be able to smoke in his shop. I mean, we have serious questions in terms of the legitimacy and capabilities of enforcement in regards to this wide-ranging ban. And I think that we need to think...be very cautious as we proceed. This isn't just about bars and restaurants. This is very broad in application, and that poses additional problems and questions that I think we need to be asking ourselves. With that, I'd yield the balance of my time to Senator Karpisek, if he wishes to utilize it. [LB395]

PRESIDENT SHEEHY: Senator Karpisek, approximately 2 minutes. [LB395]

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SENATOR KARPISEK: Thank you, Mr. President, members of the body. Senator Chambers is after me, so I'd just as well--I, figuratively and literally--give him a little ammunition here. Yesterday he did say sausage, and I talked about hotdogs and wieners. We have so many different kinds of sausage at our store that if I started, I'd sound like Bubba off of Forrest Gump, and I didn't want to confuse Senator Chambers if he doesn't know about all the different kinds of sausage. So I did just turn it into what I thought I heard, and he is correct. But again, I don't want to get him confused, because he confuses me a lot. I've been getting e-mails, one from Dwight, Nebraska, today, saying they own a restaurant that is smoke free. They decided to keep it that way, to do it that way, and they want that option kept in. Exeter, Nebraska, two bars have been e-mailing me; Fairbury. I think there's a lot of places out there that are just asking to be left alone. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR KARPISEK: Thank you, Mr. President. I'll also start on another e-mail I got from Crete that said to leave the ban the way it is, and they also blamed Senator Chambers for the weather and how bad it's been, because of his suit with God. (Laughter) So to the lady that I saw fall coming in this morning, I would...if you're hurt, I would take that up with Senator Chambers, because it is obviously his fault. We talked about that we can't drive as fast as we want to drive, there's a limit. You're right, but we can drive. They let us drive. They don't say you can't drive, you might get in a wreck. You can't go 100 miles an hour, no, but you can drive. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. And, Senator, you are next in the queue. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. There are a lot of other things that people get sick from. I would say that we talk about the depletion of the ozone, we talk about global warming, whether it's real or not. That's a whole nother debate. But the exhaust fumes off of cars, out of industry are terrible on us, too. So do we get rid of cars? And I know this is a stretch, but I, like Senator Chambers, am trying to draw some sort of analogy in here to make you think about the other things that are around you; maybe radio waves, I don't know. We've had a lot of cancer. What is causing so much cancer? Is it that we know now what cancer is? People used to just die and didn't know why, now we know? I don't know, but there's a lot of other outside influence on us. I don't think by people coming into a bar or a restaurant or a meat market or a body shop and spending an hour or two in there is going to significantly hurt their health. We can argue about, what about the people that work there; they have to work there. I don't agree with that. You don't have to work anywhere. If you don't like it, buy the place. Then you can do what you want. Again, I know that not everyone is going

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to agree with that, and I'm just giving Senator Chambers a little easier time to get after me. Maybe I can control what he gets after me about. Again, I just think this is personal property rights. I'm not arguing smokers' rights; I am not arguing anything else other than personal property rights and local control. Senator Wightman said that we make state policy everyday in here. You bet we do, and I think it's kind of like the speed limit. We make it everyday, but there is a place that we have to stop. The petitioners, if they're going to get their petitions together and petition to have a smoking ban put on the ballot, I say good. That's fine. I don't know that we need to do it here, not in the way that we're doing it. I don't agree with it. I have also tried to keep government out of our lives as much as we can since I've been here. I've said before, I think that we're here to help people. Now getting rid of smoke in bars, restaurants will help some people. It will also hurt some people. I don't think that we're thinking about the owners, if it's going to put them at an economic disadvantage. Can they stay open? We have enough problems trying to keep businesses open now. We're always talking economic development, trying to give tax incentives. Oh, but we're going to take away what you can do to get people in, but we'll give you a few dollars in your tax return if you make it to the end of the year. Again, I just think that it should be up to the owner or at least up to the local government to decide this issue. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Chambers. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, because the pending amendment is what the bill will become, I'm not going to have any other comments on this amendment that is pending, but I'd like to ask Senator Karpisek a question or two, if he will respond. [LB395]

PRESIDENT SHEEHY: Senator Karpisek, would you yield to some questions? [LB395]

SENATOR KARPISEK: Yes, I will. [LB395]

SENATOR CHAMBERS: Senator Karpisek, if the Legislature passed a law that prohibited a sheriff, a police officer or any other law enforcement person from arresting somebody smoking marijuana in his or her own home, would you oppose that? [LB395]

SENATOR KARPISEK: Yes, I would. [LB395]

SENATOR CHAMBERS: Even though it's in their own home? [LB395]

SENATOR KARPISEK: It's illegal. [LB395]

SENATOR CHAMBERS: If we made it legal--forget what the federal government has done--and allowed people to sell it and make money and hire others to sell it to make money, would you be opposed to that? [LB395]

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SENATOR KARPISEK: Oh sure, I'd be opposed to that. [LB395]

SENATOR CHAMBERS: Thank you. Members of the Legislature, Senator Karpisek is very interesting to listen to, and even more interesting to observe, so I think in honor of him and to drive a nail into the coffin of his and my discussion about hotdogs versus sausage, I wrote an ode to Senator Karpisek (laughter), written on the spur of the moment: A drummer is a professional "beatologist." / Senator Karpisek is a professional "meatologist." / A "beatologist" knows the difference between beats, / But Senator Karpisek knows not the difference between meats. / Senator Karpisek knows the difference 'twixt profit and "lossage" / But, alas, not the difference 'twixt hotdogs and sausage. (Laughter) [LB395]

PRESIDENT SHEEHY: Senator Carlson, followed by Senator Aguilar, Senator Friend, and Senator Erdman. Senator Carlson [LB395]

SENATOR CARLSON: Mr. President, members of the Legislature, I'm going to try and follow that. My first comment is to Senator Fischer. And, Senator Fischer, you are usually on target, but please stop talking about obesity. My obesity doesn't hurt you. This morning Senator Stuthman has contributed greatly to the obesity of the Legislature. (Laughter) And except for Senator Chambers, we all loved it. Now Senator Erdman has been a friend. Senator Erdman is a friend, and Senator Erdman will continue to be a friend, but I'd like to address a couple of questions to Senator Erdman, if he would yield. [LB395]

PRESIDENT SHEEHY: Senator Erdman, would you yield to some questions? [LB395]

SENATOR ERDMAN: I would gladly yield to my friend. [LB395]

SENATOR CARLSON: Senator Erdman, is AM1736 reasonable? [LB395]

SENATOR ERDMAN: You're going to have to be more specific, because there are some presumptions one has to make. [LB395]

SENATOR CARLSON: I would like if you could, as best you can, answer yes or no. [LB395]

SENATOR ERDMAN: It's within context, Senator Carlson. Is it more reasonable than the bill? No. Is it a reasonable solution? Yes. [LB395]

SENATOR CARLSON: Is LB395, by itself, reasonable? [LB395]

SENATOR ERDMAN: In the form that it is in, no. [LB395]

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SENATOR CARLSON: Is my opt-out provision that I discussed reasonable? [LB395]

SENATOR ERDMAN: In my opinion it is, and something similar will soon follow. [LB395]

SENATOR CARLSON: So therefore, any opt-out provision may be reasonable. [LB395]

SENATOR ERDMAN: I think that is accurate, Senator. [LB395]

SENATOR CARLSON: Okay, thank you for your answers. Now there are some absolutes that Senator Erdman and I agree upon, and I know that for sure. But I simply finish by saying that, in my humble opinion, reasonableness may be one thing to you and another thing to me. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Aguilar. [LB395]

SENATOR AGUILAR: Thank you, Mr. President and members. Mr. President, I respectfully call the question. [LB395]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do see five hands. The question before the body is on the question to cease debate. All those in favor vote yea; opposed, nay. Have all voted who wish? Senator Aguilar. [LB395]

SENATOR AGUILAR: I request a call of the house. [LB395]

PRESIDENT SHEEHY: There has been a request...senators, we are on Final Reading. I would ask that you record your presence. Mr. Clerk, we will proceed with a roll call vote on the question to cease debate. [LB395]

CLERK: (Roll call vote taken.) 33 ayes, 14 nays, Mr. President, to cease debate. [LB395]

PRESIDENT SHEEHY: The motion to cease debate passes. Senator Johnson, you're recognized to close on your amendment. [LB395]

SENATOR JOHNSON: Thank you, Mr. President. We've had a good discussion here this morning. What I want to remind the body is this, is basically what we are talking about here is LB395 and whether it should have an opt-out clause or not. That is the discussion that we are taking part in today. One of the things that there have been some other discussions alluded to, particularly by Senator Erdman, he has some valid concerns that will be brought up and I will be supporting those concerns. But basically, what this is, is that we remove the opt-out clause; is the main thing that we're dealing

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with here today. I would recommend strongly that we do advance this amendment. Those who are opposed to the bill will have a chance at a later date for, should we say, full discussion at that point in time. What I would like to do today is to get the bill in the form that this amendment brings about, and that is the original bill without an opt-out clause, and then we will go from there. So with that, I ask for your support of this amendment. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Johnson. You have heard the closing. The question before the body is on the adoption of AM1736 to LB395. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB395]

CLERK: 33 ayes, 13 nays, Mr. President, on the adoption of the Select File amendment. [LB395]

PRESIDENT SHEEHY: AM1736 is adopted. Senator McGill. [LB395]

SENATOR MCGILL: Mr. President, I move LB395 to E&R for engrossing. [LB395]

PRESIDENT SHEEHY: There has been a request for a board vote on the advancement of LB395. All those in favor...Senator Aguilar. [LB395]

SENATOR AGUILAR: I'm sorry. I didn't get the question. [LB395]

PRESIDENT SHEEHY: You were next in the queue. [LB395]

SENATOR AGUILAR: I'm sorry. I waive. [LB395]

PRESIDENT SHEEHY: Senator Friend. Senator Erdman. Senator Schimek. Senator Schimek waives. There are no other lights. We will continue with a board vote on the motion to advance. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB395]

CLERK: 33 ayes, 14 nays, Mr. President, on the motion to readvance the bill. [LB395]

PRESIDENT SHEEHY: LB395 does advance. Items for the record, Mr. Clerk? [LB395]

CLERK: Mr. President, I do have other motions to LB395, but before we proceed, a priority bill designation: Senator Kopplin, LB880. Confirmation hearing reports from Retirement Systems, Natural Resources, and from Agriculture, signed by the respective Chairpersons. I have a Reference report referring a gubernatorial appointee to standing committee for confirmation hearing. (Legislative Journal pages 595-596.) [LB395 LB880]

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Mr. President, Senator Erdman, I have AM1840, with respect to a motion to return, but I have a note you want to withdraw AM1840, Senator? I didn't know if you wanted to do that now or... [LB395]

PRESIDENT SHEEHY: Senator, do you wish to withdraw? [LB395]

SENATOR ERDMAN: Mr. Clerk, I believe that is correct. I have refiled a different amendment, so we'll just withdraw this one. [LB395]

CLERK: Mr. President, Senator Synowiecki would move to return the bill for a specific amendment, AM1872. (Legislative Journal page 597.) [LB395]

PRESIDENT SHEEHY: Senator Synowiecki, you're recognized to open on AM1872. [LB395]

SENATOR SYNOWIECKI: Okay, thank you, Mr. Lieutenant Governor. I didn't know I'd be up next. Relative to this amendment, first of all, members, I want to let you know that I had a conversation with Senator Johnson, I believe it was on Tuesday. This is not a surprise amendment by any means. We had a very direct and substantive conversation about this amendment, and Senator Johnson assured me and kind of gave me a green light to go ahead and run this amendment. Members, I think we're doing a lot with this bill in terms of entrepreneurial interest. If I understand, Senator Erdman's amendment that will be coming later will be delaying implementation of the act. We have within the bill, within the bill we have tobacco shops, as I understand it, are exempt from the provisions of the bill, I think, mostly because of an entrepreneurial interest. Members, what my amendment does is exempts from the bill Horsemen's Park in Omaha, Nebraska. And let me tell you why I think we need to do this. Horsemen's Park is in a very unique situation. They are involved in and engaged in a market that is entirely unique. They're not in competition with your corner bar, your corner restaurant. Horsemen's Park is in direct competition and in the marketplace with casino establishments and Class III gaming establishments that are obviously outside of our jurisdiction in the state of Iowa. What Horsemen's Park provides is simulcast racing and live horse racing for their patrons. That's what they provide. People go there essentially to place wagers on horse racing. And what is particularly unique with the Horsemen's Park situation, and I "MapQuested" it here, is that under ten miles, nine miles and three blocks away, are other facilities whereby this activity is being done in the state of Iowa and where smoking will continue to take place. I feel strongly, I agree with the horsemen that this places Horsemen's Park in a disproportionately disadvantage in the marketplace. A little thing about Horsemen's Park: they have 40-foot high ceilings, they have a 100 percent return air system that...it's a pretty extensive system. This means that all the air is completely recycled every hour. Estimates that banning smoking may lower the handle at Horsemen's Park by as much as 30 percent. Horsemen's Park has 150 employees. What is of particular concern to me is marketplace, and I think we're recognizing some

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entrepreneurship segments within this bill. I think we take a look at this, we've given exemptions in the bill already, we're delaying the implementation, I think in large part so small businesses can prepare for this. But the fact of the matter is, Horsemen's Park is extraordinarily unique in that their market, their competition are establishments that are within ten miles, within ten miles of the facility that we have no control over obviously. And I think this would place them at a disadvantage in the marketplace for gaming. Now what this amendment does is allows an exemption for Horsemen's Park and that exemption goes away, goes away immediately should Class III gaming that I'm speaking of--particularly the casinos, and more particularly Bluffs Run that offers the same type of gaming that Horsemen's Park does--if they would ever cease the ability to smoke in them establishments, likewise Horsemen's Park would lose this exemption. Appreciate your consideration of the amendment and thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You have heard the opening to AM1872. Members wishing to speak: Senator Erdman, Senator Friend, Senator Pedersen, and others. Senator Erdman. [LB395]

SENATOR ERDMAN: Thank you, Mr. President. I had, out of respect to the process and Senator Johnson, I didn't take up the opportunity to speak on the advancement. But I would like to follow up with a conversation Senator Carlson and I were having before the question was called on Senator Johnson's amendment. So would Senator Carlson yield to a question? [LB395]

PRESIDENT SHEEHY: Senator Carlson, would you yield? [LB395]

SENATOR CARLSON: Yes, I will. [LB395]

SENATOR ERDMAN: My friend, Senator Carlson, it's good that we can continue this discussion. The amendment was adopted that Senator Johnson had offered that took the opt-out provision out of the bill and made it a statewide smoking ban. Is that correct? [LB395]

SENATOR CARLSON: Yes. [LB395]

SENATOR ERDMAN: So you now no longer find yourself in the position of having to vote for a bill that had problematic language in it as it sat on Final Reading before we adopted that amendment, correct? [LB395]

SENATOR CARLSON: Correct. [LB395]

SENATOR ERDMAN: Okay. That would have been unreasonable to put that opt-out provision, the way that it was written, into law. Would you agree? [LB395]

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SENATOR CARLSON: I think that I agree with you. [LB395]

SENATOR ERDMAN: Let me re-ask it this way just to make it a little clearer. Say the Legislature passes LB609, which I believe is your bill to provide for grants to rural communities to encourage them to market their community to people worldwide, regionally, wherever, to bring them back to the communities. And say we had a provision of law that said if 5 percent of Nebraskans signed a petition, that law would not go into effect. Would that be a reasonable way to deal with legislation, especially say your bill, should it pass? [LB395 LB609]

SENATOR CARLSON: That wouldn't be a pleasant circumstance. And to be honest with you, I haven't thought that through far enough to really be able to say whether it's reasonable or unreasonable. It wouldn't be pleasant. [LB395]

SENATOR ERDMAN: Is it...what is the process now, Senator Carlson, that the citizens of the state of Nebraska can stop or prevent legislation from becoming law before a vote of the people? [LB395]

SENATOR CARLSON: Well, I think it's just what you said. [LB395]

SENATOR ERDMAN: It's 10 percent. So under the bill as it was adopted, and I believe you voted for that amendment on Select File to put that flawed language in there, and I think it was because you were being told what it did. And in spite of efforts to point out that there were flaws, the way that it was being done was problematic, just as it would be problematic if we said to Nebraskans if 5 percent of you can get together, you don't get a vote, but the law is repealed. That would be a problematic way of handling legislation or public policy in the state of Nebraska. Would you agree? [LB395]

SENATOR CARLSON: Well, it's the difference between whether 5 percent is reasonable or 10 percent is reasonable. But it's problematic, yes. [LB395]

SENATOR ERDMAN: The difference is, Senator Carlson, that at that 10 percent level there's a vote before any action is taken. The way that the bill was written, there was no vote. If 5 percent of the people signed a petition, the law or the ordinance was repealed. So you're letting 5 percent actually cast a vote by filing the petition to repeal a law. That's what I was referring to as unreasonable. And I think it would have been problematic had that not been corrected. And as I pointed out, I would have offered an amendment to correct that had the amendment not been adopted, because regardless of whether I agree with LB395, I didn't agree with that provision, whether it was when you and others voted to adopt it or whether it was later on. I'm just pointing out what my logic was on the reasonableness and I'll give you a couple seconds to respond if you'd like. [LB395]

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SENATOR CARLSON: Well, I appreciate your explanation and your response, and I would say that your presentation is reasonable. Thank you. [LB395]

SENATOR ERDMAN: Thank you, Senator Carlson. Members, I'm interested in this amendment. It's not new to the debate. I'm wondering just out loud, though, and I recognize the interest here is for a limited purpose and specific because of the impact of what our neighbors are doing across the river. However, the city of Lincoln annexed... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR ERDMAN: ...State Fair Park so that it would be smoke free. But the interesting part about what the city of Lincoln did was they didn't annex the entire property. They did what we call a limited annex. They annexed the boundaries for two reasons: one, to accomplish the goal of prohibiting smoking at State Fair Park; but two, to capture any sales tax revenue to help them meet their match to pay for the 10 percent requirement under the constitution to get the lottery funds for the fair. Pretty creative. They have no obligation for infrastructure, they just get the sales tax. I'm sure we'll hear more about that at a later date. I'm wondering out loud if we're going to provide this one benefit, if there isn't a more responsible...or if this is truly a public policy we're going to adopt of an exemption, should we not exempt other racetracks in the state, which may or may not be positive. But I know Hastings and... [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR ERDMAN: ...Grand Island and Columbus have similar tracks, and maybe Senator Synowiecki can address that. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you. Mr. Clerk, do you have messages on your desk? [LB395]

CLERK: Mr. President, just an Urban Affairs Exec Session at 11:00 today in Room 2022; Urban Affairs at 11:00. Thank you. [LB395]

PRESIDENT SHEEHY: (Doctor of the day introduced.) Senator Friend. [LB395]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. This has been, you know, obviously a wild few days in regard to this subject matter. And I would be taken aback or I would be concerned about it, but it's been wild out here in regard to this subject matter before. The only reason I'm bringing this up right now is because, in a lot of ways, because Senator Synowiecki brought this amendment. And I wanted to speak to the idea of the exemptions or options available to a body like this. The only time I heard about this idea is when I actually brought it up. And shame on me

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for not putting anything into any form that we could actually use, not that anybody would have accepted it. I never thought a bill like this would be necessary the last five, six years of my life. I thought what might be more appropriate is to deal with it, and I've said this on the record before, to deal with smoking the way we deal with liquor. You go to the state, you turn around and say I want some certification, I want to put my application in, I either want it stamped or rejected, and give me my license or don't give me the license. If I'm a bad actor, I don't get it; if I'm a good actor, for all intents and purposes, it happens for me. Shame on me for not putting something in writing or language that I could have gone in front of Health and Human Services or anything else to try to promote. Shame on me. But now, because of what Omaha and Lincoln have done, we have a statewide regulatory problem and that regulatory problem is the reason that the landscape in this debate has changed, not just for me but for many out on this floor. This bill failed miserably a few years ago--up in smoke, no pun intended; failed miserably. It is a train on a track and it's going, but it's because it's a regulatory problem, not because I think this is the best solution. It's why my feelings have changed, to a degree. If we could have licensed the product, cigarettes, in a way that we license liquor, if we could have regulated it the way we regulate liquor, if we could change the establishment and their process and procedure in order to deal with this stuff, we might have been on to something. But there's two final problems I wanted to point out. It doesn't matter whether we were on to something or not. You know why that idea would have gone blazing in flames? Because there's a certain sect of our society that doesn't want to see that happen. They do not want people smoking, period. It's bad for them. And I'm not talking about people in here. I'm talking about establishments outside of this body that don't think that that idea that I just promoted is very good. If they could get rid of liquor licenses, they'd do the same. Do I find that offensive? Yeah, I do. They're both legal products. One of them is regulated, heavily regulated; the other isn't. They want something different, folks. They want to tell us how to lead our lives. So if you could go out, even if you can go out and get that smoking license, they didn't want that. That's why somebody like me doesn't show the intestinal fortitude... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR FRIEND: ...to bring a bill like that. It wouldn't have passed. This will because we've got a problem and they know they've got everybody where they need them. The second problem is, there aren't any options available to me now. Like I said, Lincoln and Omaha have messed this up so bad that we're in a situation, and they know it, where they can paint us into a corner. So here's my situation--and again, shame on me for it--force me to hold my nose and hold my breath and vote for a bill that I know is fundamentally bad. And I'm going to do it because I'm sick of walking across the street and realizing that that business owner in my community, that some of them can smoke, the business owner across the street, the guy in the other building across the street can't allow any of his patrons to do it. It's where I am now. Senator Synowiecki's amendment would be great. So would about nine other amendments. [LB395]

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PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR FRIEND: Where do we go? Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Friend. Senator Pedersen, followed by Senator Lautenbaugh, Senator Johnson, and Senator Synowiecki. Senator Pedersen. [LB395]

SENATOR PEDERSEN: Thank you, Mr. Lieutenant Governor and members of the Legislature. I want to visit with you just a few minutes about Senator Synowiecki's amendment. I voted for Senator Johnson's amendment, AM1736. I'm also one of those that do not like the idea that we have to legislate this, and have voted against it in the past. But I voted for it now because I believe it levels the playing field in many...in all instances except one, and that is Horsemen's Park. And, yes, it's natural I would visit with you a little bit about Horsemen's Park because I've worked for and with the horsemen of the state of Nebraska for 18 years. I want to tell you a little bit about these people. There's a few thousand of them who love horses and have made their living all their lives with horse racing. They're a culture all of their own. My first three years of working for them was exactly that, I worked for them because they didn't know me. I was new. I was a program they didn't have in the past. My position is, I'm employee assistance counselor. I help them not with alcohol, not with just alcohol and drug issues, as a counselor, but I help with medical, dental, the other issues when they help in them areas, legal, and refer them to other people as needs come up. They are a neat, wonderful group of people. And after the first three years, when finally getting accepted, it's family. In the past 15 years, I have been there to bury their dead, to welcome their new ones, marriages. These people work from sunup until sundown because of their love for their trade, and they have to work year-round, 24/7, because the horses need to be fed, exercised, watered, bathed, and you don't walk away from them. They have lost a lot of their support in the state of Nebraska because of what has happened on the Iowa side. Horsemen's Park in Omaha helps support them across the state in Grand Island, Columbus, here in Lincoln, and a small track in South Sioux City. They are uniquely affected by this bill because of their competition across the state line. A big percentage, large percentage of the people who come to Horsemen's Park smoke. And if they lose that percentage across the river to Iowa, we are pounding the last few nails into their livelihood. We need to do this, people, to keep them going. And as soon as that competition would disappear... [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR PEDERSEN: ...in the way of Iowa doing away with smoking in their...this would automatically follow. This is also a level playing field and being fair. Thank you. [LB395]

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PRESIDENT SHEEHY: Thank you, Senator Pedersen. Senator Lautenbaugh. [LB395]

SENATOR LAUTENBAUGH: Thank you, Mr. Lieutenant Governor, members of the body. I do rise in support of this amendment because I think it is very clear what we're trying to do here. We're creating a place where people are going to know that there's smoking allowed and people can go in there and either expose themselves to it or not. So everyone who chooses to work there is going to know, everyone who chooses to go there is going to know. And I understand that. My point is, I don't think we should stop here. But I do rise in favor of this amendment. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Johnson. Senator Johnson. [LB395]

SENATOR JOHNSON: I'm sorry? [LB395]

PRESIDENT SHEEHY: Your time, Senator. [LB395]

SENATOR JOHNSON: Oh, excuse me. Mr. Lieutenant Governor, in his usual gentlemanly way, our fine senator from Omaha, Senator Synowiecki, came to me with this proposal in a very upright manner. Yes, this is a great institution that has done many good things. My good friend Senator Fischer, however, is sitting behind me and said, you know, our town is nine miles from the South Dakota border, which is probably less driving time than what we're talking within the city of Omaha or Council Bluffs. And I'm sure that there are good people in Valentine as well. And so that isn't the question here. I agree that there are instances like this where there is some disparity in how it is going to affect businesses. But overall, we still go back to trying to level the playing field and make it as fair as we can. We've heard this innumerable times. One day I received from six different cities asking for the level playing concept. Six cities in one day asked for this to happen. If we open the door for Horsemen's track, good as they may be, there will instantly be a line that forms behind that open door and we will be back to the playing field that no longer is level. We adopted LB395 with the new amendment to get us back to where we are. As much as I would like to accommodate good people like this, like Senator Synowiecki and others, where do you draw the line? We've created the level playing field; let's stay there. Now let me just advise you of one thing. As we have been working with Senator Erdman, and there will be an amendment from Senator Erdman that we are going to support. And basically what it does, and it will help Horsemen's Park and other businesses, we are trying to make this as easy a change on businesses as we can. If, as is now the case, when this would go into effect, it would still be a cold weather time when this would go into effect. You will see that the date will be changed to a specific date. It will be a warm weather date, which should help businesses be able to adjust and do anything that they need... [LB395]

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PRESIDENT SHEEHY: One minute. [LB395]

SENATOR JOHNSON: ...along this line. So, yes, Senator Synowiecki, as good a man as he was, did come to me with this, but I told him at that time that we could not support it because, again, it made it so that the playing field did make exceptions. And where do you draw the line there? So I would ask that you reject Senator Synowiecki's amendment and we go back to the level playing field. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Johnson. Senator Synowiecki, followed by Senator Nelson and Senator Erdman. Senator Synowiecki. [LB395]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor and members. And thank you for the discussion on the amendment. A couple things have come up. I don't think, Senator Johnson, you'll have a long line of exemptions coming because this is very narrow and it's very unique. And let me tell you, there's a horse track--and I know Senator Aguilar has been involved--in Grand Island, there's a racetrack in South Sioux City, there's a racetrack in Columbus. None of these, with all due respect to Senator Aguilar, none of these will have a direct and substantive and immediate competition factor when this goes through. And the Valentine example; there is no simulcast horse racing in Valentine and then likewise some in South Dakota. I think they have a casino there, but we don't have casino gaming in Valentine, Nebraska. What we do have, members, what we do have is simulcast racing, gaming, simulcast gaming at Horsemen's Park. Less than ten miles away we have simulcast wagering at the Bluffs Run Casino. This will put...the smoking ban will put one establishment and one establishment only in a disproportionate position in the market for gaming. I'm talking about apples to apples here. There is a state-of-the-art simulcast facility at the Bluffs Run Casino. That is what the horsemen offer at Horsemen's Park in Omaha, which is less than ten miles away. You cannot find, Senator Johnson, you cannot find another example such as this. The Grand Island track, the Columbus track, the Sioux City track, none of these tracks fit this very narrow description; none of them. Horsemen's Park is not in competition with Dinker's Bar. They're not in competition with the Bohemian Cafe. They're in direct and immediate competition with Bluffs Run. And the amendment indicates that if the state of Iowa embarks on a smoking ban, that this exemption goes away immediately, so that we have, as Senator Johnson so eloquently spoke, we will then now have the level playing field. But if this smoking ban goes in, what you're going to have is Horsemen's Park and only Horsemen's Park disproportionately impacted in the gaming market in a very direct and narrow way, in that there is simulcast racing in Council Bluffs and this situation, this situation does not occur anywhere in our state. So I don't think that we're going to be seeing other exemption amendments following because I won't support them, because this is particularly unique. It disproportionately impacts the market for Horsemen's Park in Omaha and disproportionately impacts Nebraska horsemen. Thank you. [LB395]

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PRESIDENT SHEEHY: Thank you, Senator Synowiecki. Senator Nelson. [LB395]

SENATOR NELSON: Thank you, Mr. President, members of the Legislature. I find myself in sort of a strange position this morning. I did not see Senator Synowiecki's amendment until about an hour ago and got to think about it. I'm from Omaha. Basically, I'm opposed to gambling in most forms because of the ill effects it has on our society. But I used to office not too far from Ak-Sar-Ben. I love horses. I used to make it a point to go over to Ak-Sar-Ben maybe two or three times during the season on a nice day, especially late in the afternoon if I had finished my work, and sit there for the rest of the races and maybe place a bet once or twice or three. Won big once; lost most of the time. But that's my excursion into gambling. I was disappointed, I was sorry when Ak-Sar-Ben had to close down because it's been described...well, racing and the racing community is described as a unique community, close-knit, and it does provide employment and also keeps...makes a living for those who breed horses and take them to the various races. And I commended the Horsemen's Park. I was glad to see them pull themselves up by their bootstraps and get started up out there. Believe it or not, I have never been to Horsemen's Park, but I'm glad it's there. And I don't believe in making exemptions or exceptions unnecessarily. But I think this is one instance where I would come out in support of what Senator Synowiecki is doing here, and I would say we ought to make an exemption for the reasons you've heard on the floor already. This is a unique thing there. It provides employment. I think, as Senator Pedersen said, it's going to put the final nails in the coffin if we don't permit smoking out there when casinos and also the other racing in Iowa so close by does permit it. It's going to attract people to go over there, the people that do smoke. It's going to attract them to go over there just as the dog races took the people away from Ak-Sar-Ben and caused its demise. So at this time I will continue to listen, but I feel that I'm going to support Senator Synowiecki's amendment. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Senator Erdman, followed by Senator Lautenbaugh. Senator Erdman. [LB395]

SENATOR ERDMAN: Mr. President, members of the Legislature, I think there are some uniquenesses here. I'm not sure whether I will support Senator Synowiecki's amendment or not. But I think he has brought up an interesting point about what the playing field is levelled against. Typically, what we have been talking about at this point is the playing field within Nebraska. It's not lost on me that there are communities in the state of Nebraska and businesses in the state of Nebraska similarly situated to Senator Synowiecki's example on the other side of the state line. Now Senator Synowiecki is right, the way that he has drafted his amendment is rational for the entity or the area that he would like to have exempted. But the logic then follows that if we would have a similarly situated entity on the other side of a state line that's in direct competition with Nebraska business, would we not want to consider that as well? Restaurants, bars, whatever; you go through that process. The other side obviously is that what we have

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found our friends in Iowa to do is that they've raised their tax on cigarettes by a dollar. So you'll probably see a lot of folks coming to Nebraska to buy their cigarettes because our tax is 64 cents. But I think it's an interesting discussion. That's the complexity of a statewide ban. That's the complexity of not allowing discussion or opportunities locally or regionally to account for these uniquenesses. So I'm not...at this point, I'm open to what Senator Synowiecki is offering, not because of what he's offering but because of the philosophy or the logic behind it. We very well could be impacting other businesses that are within the same distance as this on the other side of a state line, whether it's South Sioux, whether it's between Bushnell and Pine Bluffs, Wyoming. There are scenarios that one may be able to make the same logical argument. It's ten miles from Bushnell to Pine Bluffs, Wyoming. So it's more than just simply a level playing field. Now we're to the point where we're going to set the playing field for Nebraska, and rightfully so, if that's what we want to do, the Legislature can do that. But we shouldn't do it without an understanding of the impact it's going to have because we have no control over what our neighboring states do, and it's clear that Congress isn't going to do this. And if we had some control over what was going on maybe in north Omaha around a small community that's within the boundaries of the Missouri River on this side but under the jurisdiction of the state of Iowa, we would probably pursue something there as well. But I think it's interesting, Senator Synowiecki. I appreciate you bringing up, clarifying the rationale behind why you've drafted the amendment the way that you have. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Erdman. Senator Lautenbaugh. Are there additional members requesting to speak? Seeing none, Senator Synowiecki, you're recognized to close. [LB395]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor, members. Appreciate the discussion, but it's really a simple amendment. It's very narrow, purposefully so because I think this is a situation that literally cannot be repeated throughout our state. Again, not to be repetitive, we offer--at Horsemen's Park in Omaha, Nebraska, it's on about 60th and Q--we offer simulcast and live racing. A majority of the dates at Horsemen's Park in Omaha are simulcast; a facility and they simulcast races. Horsemen's Park is in direct and immediate competition with Bluffs Run Casino, who likewise offers simulcast racing. This is a uniqueness that I don't think is repeated in our state relative to the gaming market. Anecdotally perhaps you can assume, and probably rightfully so, that those that patron a horse track, those that participate in pari-mutuel wagering, you know, they might have a tendency to smoke. As I understand it, Horsemen's Park management estimates that about 60 percent of their patrons smoke. They have extensive nonsmoking areas at Horsemen's Park and they do have a state-of-the-art, air-capture system. As I understand it, in talking to the management at Horsemen's Park, they receive virtually no complaints from patrons relative to the smoke, the nonsmoking folks that attend the facility. What we're targeting here is the 60 percent of the patrons that do go to Horsemen's Park and enjoy a cigar or enjoy a

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cigarette while they're reading the racing form. And what's going to likely happen, given the very close geographic proximity--again, I "MapQuested" it and I have it here, maybe I should have passed it out--it's less than ten miles, less than ten miles. So what we're talking about here is a targeted population of smokers that enjoy pari-mutuel wagering that have an alternative available to themselves whereby they can either go to the Bluffs Run Casino or Horsemen's. Personally, me myself, I actually live closer to the Bluffs Run Casino. But I've been known to go to Horsemen's Park on occasion to play the ponies because I like the facility, I like to support Nebraska-bred businesses. Nevertheless, that's what's before you, that's what's before you. This is really truly unique, it's very narrow. I've got a great deal of respect for Senator Johnson and would want to reiterate that we did have a very open and frank conversation. But I just disagree. You're not going to have a line of folks coming in after this. This is very narrow, extremely unique. I can't think of it occurring again throughout our state in terms of the gaming market and what Horsemen's Park is going to confront should we move forward with the underlying bill. So thank you for your consideration. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You have heard the closing. The question before the body is on the adoption of AM1872 to LB395. All those in favor vote yea; opposed, nay. Correct, the motion is to return. This is on a motion to return to Select. Have all voted who wish? Please record, Mr. Clerk. Senator Synowiecki? [LB395]

SENATOR SYNOWIECKI: Mr. Lieutenant Governor, can I call the house? [LB395]

PRESIDENT SHEEHY: We are on Final Reading and all members are present. [LB395]

SENATOR SYNOWIECKI: Oh, a roll call vote then. I'm sorry. [LB395]

PRESIDENT SHEEHY: There has been a request for roll call. Mr. Clerk. Senators, please record your presence. Senator White, would you...Senator Heidemann. Never mind. Mr. Clerk, please proceed with the roll call. [LB395]

CLERK: (Roll call vote taken, Legislative Journal page 597.) 27 ayes, 6 nays on the motion to return, Mr. President. [LB395]

PRESIDENT SHEEHY: To motion to return is adopted. Senator Synowiecki, you're recognized to open on your amendment. [LB395]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Thank you, members. I think for the most part we had the substantive conversation relative to the merits of the amendment during the previous debate. I just, you know, emphasize that this is not any sort of referendum on gaming or gambling or anything. This is what's presented to us right now. And again, what we have is a facility in Omaha that's in a marketplace that

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involves Council Bluffs; very direct, very immediate competition from an outlet in Council Bluffs. The amendment provides that if smoking is not allowed in the Council Bluffs facility, it will immediately end the exemption that's listed here. I'll say it again: I don't know of another situation throughout the entire state where we have this direct and immediate competition to a gaming facility. And I would encourage the adoption of the amendment. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Synowiecki. You have heard the opening to AM1872. Are there members wishing to speak? Senator Chambers. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I'd like to ask Senator Synowiecki a couple of questions. [LB395]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB395]

SENATOR SYNOWIECKI: Sure. [LB395]

SENATOR CHAMBERS: Senator Synowiecki, a person should be able to look at the laws in the books in Nebraska to determine what the law in Nebraska is. You, in effect, are making a Nebraska law depend upon what is done by a legislature in another state. Is that correct? [LB395]

SENATOR SYNOWIECKI: Here's what I'm intending to do. What I'm intending to do is provide an exemption to a particular outlet under LB395 if smoking is permitted at another teleracing facility that is located within 12 miles of our facility. [LB395]

SENATOR CHAMBERS: And it could be 12 miles from that facility in Omaha that would locate the one you're talking about in another state. Is that true? [LB395]

SENATOR SYNOWIECKI: Well, in deference to Senator Johnson's concern, I wanted, Senator Chambers, to make it very specific, very narrow, and very limited. [LB395]

SENATOR CHAMBERS: I understand that. I just want to be sure I know what is happening here. The facility envisioned as being in competition with this Horsemen's Park would be located in Iowa. Is that true or false? [LB395]

SENATOR SYNOWIECKI: Yes, it is. [LB395]

SENATOR CHAMBERS: So either the smoking policy would be changed in that facility in Iowa by the facility itself, the city in which it's located, or the state legislature of Iowa. Is that true? [LB395]

SENATOR SYNOWIECKI: It could be any or all of them. As the amendment reads, is if

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smoking is permitted at such telecasting (sic) facility. [LB395]

SENATOR CHAMBERS: And how is a determination to be made that smoking is or is not permitted in that facility? [LB395]

SENATOR SYNOWIECKI: It would be whether or not the facility that we're speaking of here in the amendment allows smoking. I think a practical understanding of that is if smoking is not permitted, and that would then induce the mechanism within this amendment that Horsemen's Park would then not permit smoking. [LB395]

SENATOR CHAMBERS: There is no requirement in your amendment placed on Horsemen's Park to make that determination relative to smoking or nonsmoking in the other facility, is there? [LB395]

SENATOR SYNOWIECKI: Okay, I don't understand, Senator. What was the question? [LB395]

SENATOR CHAMBERS: Horsemen's Park is not required under your amendment to make a determination of whether smoking is or is not allowed in the facility in Iowa. Is that true? In other words, on whom is the responsibility placed to determine whether there is or is not smoking allowed in this Iowa facility? [LB395]

SENATOR SYNOWIECKI: Well, I think by action of either the facility itself that may not allow smoking by the Iowa Legislature, by...I don't know if it's in the city limits of Council Bluffs or not, but it might be a city ordinance that would disallow smoking. And then that would automatically enact the provisions of the amendment. [LB395]

SENATOR CHAMBERS: Is it up to Horsemen's Park to determine whether smoking has been banned? [LB395]

SENATOR SYNOWIECKI: Well, by law they would not be able to allow smoking if it's not permitted at a telecasting (sic) facility within 12 miles of its boundary. [LB395]

SENATOR CHAMBERS: How is it to be made known to Horsemen's Park that there is no smoking allowed, therefore, smoking must terminate at Horsemen's Park? [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR SYNOWIECKI: I think as a practical matter, if any move is taken either privately by the facility itself or by the city council of Council Bluffs or by the state legislature, that will be prevalently known. [LB395]

SENATOR CHAMBERS: Then would a newspaper article addressing the issue be

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acceptable as evidence in court, if it's necessary to go to court, that Horsemen's Park must not allow smoking because this article says it no longer is allowed at the Iowa facility? [LB395]

SENATOR SYNOWIECKI: My assumption is, Senator Chambers, that Horsemen's Park would act in good faith. Their management came to me with this amendment because of their serious and very narrow concerns. I think in good faith that they would cease smoking at their operations because this noncompetitive nature of what we have before us would then go away immediately and they would not allow smoking. [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR CHAMBERS: I'll wait until I'm recognized. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Senator Gay, followed by Senator Chambers. Senator Gay. [LB395]

SENATOR GAY: Thank you, Mr. President. I rise opposed to this amendment. And I respect Senator Synowiecki, for he did discuss this, as Senator Johnson said; came to him and told him what he wanted to do. But I oppose this for two reason: one, we did talk about this in the Health Committee on the original bill and we didn't want to do this. But now if we open up this, it's going to be the next thing and the next thing. The part of the problem, that I'm...for an overall fair bill, is if you...let's say we have a keno and one mile across Harrison Street is Douglas County, and then we have one in Sarpy County or anywhere else. But you can imagine the situations here. We're going to open up a Pandora's box here of, well, I've got a thing and I've got a thing. So I just don't want to see us go there. We were having this discussion, and I know he has every right to do this and, you know, that's what we're doing here. But I just don't want to go there. Part of the reason, I think a fair, comprehensive view of this is fair to everyone. If we start now it's going to be...we can come up with a lot of different situations, I think, unfortunately. So I'd encourage you to not pass this amendment. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Chambers. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, rather than ask Senator Synowiecki an additional series of questions, I will make a few assertions. There is no way to establish, for the purpose of presenting evidence in court, whether or not smoking is or is not allowed in the Iowa facility. If the city in which that facility is located passed an ordinance, would a certified copy of that ordinance be necessary to be presented in court? If the Legislature of Iowa imposed a statewide smoking ban, are you going to have to review their law to make sure that they did not allow an exemption which would prevent Nebraska's law from taking effect? In short, how wise is it to say

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that Nebraska law is going to be automatically triggered into operation when something is done in another state? It doesn't say that if that happens then a responsible agency in Nebraska will take note and take appropriate action. The way the amendment is drafted, it could be left to the citizen to do so. I just don't think it is a wise or sensible way for the Legislature to enact a law. Then another issue can arise. This is being done for gambling. Senator Synowiecki does not want us to look at it as a referendum on gaming. But Senator Fischer has talked about various businesses, Senator Karpisek has talked about businesses that ought to be allowed to do what they want to do. You know what they can say? You created an exemption for gamblers, we're not gambling, all we're doing is serving drinks, all we do is have a restaurant. But the Legislature, while doing all of the talking about health issues, and especially that Chambers fellow saying it's a statewide issue, then you're going to turn right around and carve out an exception for the gamblers. Is Nebraska going on record as saying that gambling enterprises hold a higher status of respect than ordinary commercial enterprises? That argument can be made because, in fact, that is what is being done. My old friend "Parson" Carlson, as parsons are able to do, could probably find a way to reconcile a view of somebody who is against gambling, nevertheless supporting this exemption for gamblers while at the same time not granting an exemption to an establishment that does not engage in gambling. I think it can really be said, without fear of contradiction that is credible, that there is a split in Nebraska regarding whether gambling ought to be legal. Horse racing and the activities Senator Synowiecki is talking about are legal, but they constitute gambling. If the exemption in this statewide act that we're putting into the law is for gambling only, you are elevating gambling above every other enterprise in the state. Gambling. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: And you're doing it by allowing an additional incentive to gamble here. And that incentive is to partake of a substance which everybody acknowledges is harmful to the health and well-being of individuals and society at large. So this is the double whammy. You exempt the gambling den and you allow the incentive to bring people into that gambling den to take the form as a noxious toxic substance. Why don't you allow opium to be smoked there also? Because the people who gamble are out of their heads anyway if they think they're going to win. I don't fault Senator Synowiecki for bringing his amendment. If people want to vote for it, they can. I'm offering one person's characterization of what... [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR CHAMBERS: ...adoption of that amendment will be. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. (Visitors introduced.) Members

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wishing to speak: Senator Johnson, followed by Senator Avery and Senator Chambers. Senator Johnson. Senator Johnson. [LB395]

SENATOR JOHNSON: Thank you, Mr. Lieutenant Governor. I'm not going to stand here very long except to tell you this: is yes, I think that the Horsemen's Park people are very good people as well. Where do you draw the line? We have set this level playing field that we've talked about. And as soon as this was brought up, there was a buzz about what would be the next motion that would appear. And I would be quite sure that there are going to be other motions that will follow. Perhaps I'm wrong, and we will abide obviously by the will of the body. But I think, and as we've said before, I think this does open the door and that's...we've been trying to make this as level a playing field as we can. We will go by the will of the body, but I think it does open the door. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Johnson. Senator Avery. [LB395]

SENATOR AVERY: Thank you, Mr. President. I am going to oppose this amendment. I do understand the motives that--I think I do--that Senator Synowiecki brings to this. I believe Horsemen Park is in his district and I do not fault him for trying to serve the interests of his constituents. But I'm concerned that this amendment pokes a hole in the smoking ban. Are we going to have a consistent and comprehensive ban or are we not? What do we say to Omaha bars and restaurants when they come to this body and make the same argument that Horsemen Park is making? Is it fair to exempt one establishment but not others? I don't think so. I think it is not fair. I think that we should really be concerned about undoing a very good piece of work. I will vote against this proposal because it does serious damage to a bill that I believe represents some of the best work that we've done since I joined this body last year. So let's not start the process of undoing some very good work, and I ask you to vote against this amendment. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Chambers. [LB395]

SENATOR CHAMBERS: Mr. President, I have a question or two to ask of Senator Synowiecki. [LB395]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield to some questions? [LB395]

SENATOR SYNOWIECKI: Yes. [LB395]

SENATOR CHAMBERS: Senator Synowiecki, I've never gone to Horsemen's Park. I don't know where it is. I don't know how it's organized or set up. So I have to ask you questions for my own information. Is there a bar in Horsemen's Park or at Horsemen's

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Park? [LB395]

SENATOR SYNOWIECKI: Yes, yes. [LB395]

SENATOR CHAMBERS: So then a person could go there just to be able to drink and smoke because there couldn't be any smoking at another bar. Is that true? [LB395]

SENATOR SYNOWIECKI: That's true, yes. [LB395]

SENATOR CHAMBERS: So then...thank you, that's all I will ask you. Members of the Legislature, you're supporting one bar being given the right to have smoking whereas other bars cannot. Senator Synowiecki believes that the people at Horsemen's Park are acting in good faith. You all know that on some matters I'm very cynical. Whenever we're dealing with gambling or selling liquor, I'm extremely cynical and I have to be shown that a person or a collection of persons will be acting in good faith when any step being taken by that person or the group will result in increased profits. In this set of circumstances, you have a bar and people come there only to drink, and they come to the bar to drink and to smoke. If there is another bar, there is no smoking there. I didn't talk about level or even playing fields at any point during my discussion of this bill; others did. This amendment was proposed under the rubric of a level playing field. That field had to be made level between what's happening in Omaha and what's happening in Iowa. But it's not even a level playing field with what's happening in Omaha or down the block and around the corner. Now I don't know where the bars are located. But you're giving an Omaha bar what you're not giving to the others. I'd like to ask Senator Synowiecki a question. [LB395]

PRESIDENT SHEEHY: Senator Synowiecki, would you yield? [LB395]

SENATOR SYNOWIECKI: Yes. [LB395]

SENATOR CHAMBERS: Senator Synowiecki, have you been authorized to make a deal with the devil, if necessary, to get your amendment? [LB395]

SENATOR SYNOWIECKI: (Laugh) Senator Chambers, no. I... [LB395]

SENATOR CHAMBERS: Okay. Well, wait a minute, let me tell you what the deal is. I will support your amendment if you agree to ban consumption of any alcoholic beverage at Horsemen's Park. Would they be willing to do that, and make it just a gambling den? [LB395]

SENATOR SYNOWIECKI: No, I don't believe they would do that, Senator. [LB395]

SENATOR CHAMBERS: Okay. Thank you, Senator Synowiecki. And I knew the answer

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to that. I'm not quite that naive. If you're going to have something other than gambling, you're doing something, if you adopt this amendment, which I think goes exactly counter to not only what is in the bill, but all the arguments that have been given. People were on this floor making what I presumed were principled arguments, taking principled positions. But all of those principles are going to take wings. There was a song of a guy in prison: if I had the wings of an angel, right over these prison walls I'd fly; right to the arms of...well, I'll stop. All of those principled arguments are going to fly out the window. You heard Senator Fischer. I'm going to call her "Parsoness" Fischer because she was raising the issue of principle surrounding this entire thing and people such as myself said I wasn't a part of that deal. But I'll tell you where my principles are coming into play with reference to this bill. [LB395]

PRESIDENT SHEEHY: One minute. [LB395]

SENATOR CHAMBERS: We're going to treat everybody the same under it, and I think it would be highly unprincipled to let one bar, one tavern, one saloon have smoking and all of the others are on the outside looking in with their little noses running and pressed against that cold windowpane and saying, why only them and not me--my fingertips are turning blue, the excrescence from my nose is freezing, and they're in there warm and comfortable and smoking, and we cannot. That's the way I picture it. You don't have to do it because I'm going to judge you. Who am I to judge you? But your own conscience should do some judging, and there will be others who will judge the Legislature and those who vote for this after all of the principled statements that had been made earlier. [LB395]

PRESIDENT SHEEHY: Time, Senator. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: That was your third time. Are there additional members wishing to speak? Seeing none, Senator Synowiecki, you're recognized to close on AM1872. [LB395]

SENATOR SYNOWIECKI: Thank you, Mr. Lieutenant Governor. Could I, as a procedural matter, first ask that everyone check in first? [LB395]

PRESIDENT SHEEHY: Members, would you please check in. Senator Heidemann, Senator Cornett, Senator Ashford, Senator Aguilar, would you please check in. [LB395]

SENATOR SYNOWIECKI: Mr. Lieutenant Governor, members, my time is running now, is...oh, it's not? I don't intend to take any more of the body's time on this. I appreciate the dialogue, appreciate the questions and the concerns. What we have, again, is an amendment that would exempt one particular facility that has a very unique set of

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circumstances. It's involved in a gaming market that includes influences within that market that we have no jurisdiction over relative to smoking policy. The facility has extensive nonsmoking space. However, about 60 percent of the patrons that go to Horsemen's Park indulge in smoking. There is a legitimate...I think there is a legitimate concern that that market is at risk for our Nebraska-bred business in Omaha. I don't think you can find in the gaming market--I'm talking about the gaming market--a parallel incidence where this happens anywhere in our state relative to gaming on pari-mutuel wagering. The fact of the matter is, is there's a casino within ten miles. It's actually nine miles and three blocks from the facility that will offer the full range of smoking for their patrons. Horsemen's Park will not. It's true; Horsemen's sells alcohol beverages at the facility. But I can assure you that the overwhelming revenues for that facility come from gaming dollars and that the gaming dollars support the 150 employees. The 150 employees are supported almost entirely by the gaming revenue, not by the bar revenues, if you will. This situation does not apply to any other horse track in our state. It doesn't apply to South Sioux City, it does not apply to Grand Island, it does not apply to Columbus. They are not in direct, in immediate competition with other venues, they're not, for simulcast racing. There is a provision in the bill...and I trust fully and entirely in good faith that the Horsemen's Park, if there is an action by the Council Bluffs City Council, Iowa Legislature, what have you to end smoking at that establishment, I can assure you that Horsemen's Park will cease that activity. It is a competition issue. It is a level playing field for pari-mutuel gaming issue. It's not an issue that can, I think, be repeated anywhere in our state. It's very unique, it's very narrow, and what we're asking here is that we have a level playing field with pari-mutuel gaming competition. I ask for your support of the amendment. Thank you. [LB395]

PRESIDENT SHEEHY: Senator Chambers. [LB395]

SENATOR CHAMBERS: I would request that the roll be called up yonder by the Clerk. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Chambers. You have heard the closing on AM1872. The question before the body is on the adoption, and there is a request for a roll call. Mr. Clerk. [LB395]

CLERK: (Roll call vote taken, Legislative Journal page 598.) 14 ayes, 22 nays, Mr. President, on the Select File amendment. [LB395]

PRESIDENT SHEEHY: The amendment is not adopted. Senator McGill. [LB395]

SENATOR MCGILL: Mr. President, I move LB395 to E&R for engrossing. [LB395]

PRESIDENT SHEEHY: There has been a request for a board vote on the advancement. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk.

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[LB395]

CLERK: 32 ayes, 11 nays on the motion to readvance the bill, Mr. President. [LB395]

PRESIDENT SHEEHY: Motion to readvance does pass. (Visitors introduced.) Next item, Mr. Clerk. [LB395]

CLERK: Mr. President, Senator Erdman would move to return LB395 to Select File for a specific amendment. Senator, AM1901. (Legislative Journal page 598.) [LB395]

PRESIDENT SHEEHY: Senator Erdman, you're recognized to open. [LB395]

SENATOR ERDMAN: Thank you, Mr. President, members of the Legislature. AM1901 is a clarifying amendment that I believe Senator Johnson is in support of. And let me walk you through the mechanics of LB395 just briefly so that you have an idea of why I offer this to Senator Johnson. And again, it's designed to be helpful, not to be antagonistic or dilatory. If LB395 passes, it has an emergency clause on it. If you don't get 33 votes, the emergency clause goes away and you revote. And if you get 25 votes, then the bill becomes effective 90 days after legislative session is adjourned. The operative date of this bill is one year after the effective date. So whether or not there's enough votes to adopt the emergency clause will affect the date of enactment. It was instructive to me to hear from Senator Chambers about Senator Synowiecki's amendment about being sure that the public is clearly aware of when the law would go into effect. Of course, we have other laws on the books that if other states vote to pay football players, then our law becomes effective. But from the standpoint of what we're trying to do here, we're trying to be clear that if LB395 goes into effect, instead of either whichever date it passed this year plus a year or July 17 of next year, we want the people to know, if this law passes, when it will become effective. My amendment does that. It states that the effective date of this bill, LB395, will be June 1 of 2009. Now I take somewhat of a risk at doing that because I recognize that Senator Johnson has to get 33 votes to enact his bill. However, if he doesn't get 33 votes this bill would still be enacted. It would just be cumbersome as far as how the law would be understood. So this would simply state a date. The amendment requires 25 votes. If the amendment is adopted, the passage of LB395 only requires 25 votes. And the ability for the bill to actually do what Senator Johnson intended under his amendment would only take 25 votes instead of the 33 that he had offered. Now I'm aware that there were some that were given this carrot to vote for the bill, that if we delay the implementation date one year that they would vote for the bill. My intent is not to undermine that, but my intention is to simply make the process--call me crazy--fairer for Senator Johnson but, most importantly, clearer for the citizens to know when this law would become effective. It would become effective June 1, 2009, which would be the first Monday of June of next year. I would encourage your vote to return to Select File. If Senator Johnson would like a couple moments to...he's in conversation. I'll hold just a second. Senator Johnson, I

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have completed my opening and would yield you time to state whether you support or oppose the motion to return and the amendment. [LB395]

PRESIDENT SHEEHY: Senator Johnson. [LB395]

SENATOR JOHNSON: Thank you. And thank you, Senator Erdman. Yes, I very much support what...the efforts of Senator Erdman. I think that he is correct and this will be helpful. One of the things, again, that we've had much discussion about here this morning is this: is as we pass this public health measure, let's make sure that we be as kind to our business community as we can as we make this change. This will help in the change because one of the side effects from this is that the change will be during warm weather, the first of June, as opposed to the middle of March or some date like that. So it would just help in the transition for businesses. Any construction or whatever that they might choose to do in an effort to make their business transition to this. So with that, I would ask your support for Senator Erdman's good amendment. Thank you. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Johnson and Senator Erdman. Senator Johnson, you are next in the queue. Thank you, Senator Johnson. Senator Lautenbaugh. Senator Lautenbaugh waives. Are there additional members wishing to speak on the motion to return to Select? Senator Erdman, you're recognized to close. [LB395]

SENATOR ERDMAN: Thank you, Mr. President. Just to be clear again, this makes the effective date clearer to the public should this bill pass. It also is fairer to Senator Johnson as for the number of votes he would be required to enact the bill, should it become law. If you vote to return to Select File, I will waive my opening. Thank you, Mr. President. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Erdman. You've heard the closing on the motion to return to Select. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB395]

CLERK: 33 ayes, 0 nays, Mr. President, on the motion to return the bill. [LB395]

PRESIDENT SHEEHY: The motion to return does pass. Senator Erdman, you're recognized to open on your amendment. Senator Erdman waives closing (sic). Other members wishing to speak? Seeing none, Senator Erdman, you're recognized to close. [LB395]

SENATOR ERDMAN: Waive my opening but not my closing, because I'm going to tell you again what we're doing in case you forgot in the last three seconds. (Laughter) This amendment makes the effective date clearer, as well as the operative date. They would be one and the same, the first Monday of 2009, which is June 1. If you adopt this

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amendment, Senator Johnson and the supporters would only need 25 votes to do that. We will then, at a later date, have a discussion about another policy option I will offer you. But I would encourage your adoption of AM1901. [LB395]

PRESIDENT SHEEHY: Thank you, Senator Erdman. You have heard the closing. The question before the body is on the adoption of AM1901 to LB395. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB395]

CLERK: 42 ayes, 0 nays, Mr. President, on the adoption of the Select File amendment. [LB395]

PRESIDENT SHEEHY: The amendment is adopted. Senator McGill. [LB395]

SENATOR MCGILL: Mr. President, I move LB395 to E&R for engrossing. [LB395]

PRESIDENT SHEEHY: You have heard the motion. All those in favor say aye. Opposed, nay. The Chair rules it does advance. [LB395]

CLERK: Mr. President, with respect to LB395, Senator Erdman, I have AM1903. [LB395]

PRESIDENT SHEEHY: Senator Erdman. [LB395]

SENATOR ERDMAN: Mr. Clerk, I believe that's the amendment I'd like to withdraw. [LB395]

CLERK: Yes, sir. [LB395]

PRESIDENT SHEEHY: AM1903 is withdrawn. Mr. Clerk, do you have items for the record? [LB395]

CLERK: Mr. President, items for the record: your Committee on Education reports LB903 as indefinitely postponed. Transportation Committee reports LB845 and LB867 to General File. I have a series of confirmation hearing reports from the Transportation Committee. An amendment to be printed to LB395 by Senator Erdman. An announcement that Judiciary Committee will meet in Executive Session at 1:00 today; Judiciary, 1:00 today. Senator Harms would like to add his name...I'm sorry, Senator Howard would like to add her name to LB1092. (Legislative Journal pages 600-602.) [LB903 LB845 LB867 LB395 LB1092]

And I do have a priority motion, Mr. President. Senator Flood would move to adjourn until Tuesday morning, February 19, at 10:00 a.m. []

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Transcriber's Office

Floor Debate
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PRESIDENT SHEEHY: You have all heard the motion to adjourn until Tuesday, February 19, 2008, at 10:00 a.m. All those in favor say aye. Opposed, nay. We are adjourned. []