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Floor Debate
March 25, 2010

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SENATOR JANSSEN PRESIDING

SENATOR JANSSEN: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-eighth day of the One Hundred First Legislature, Second Session. Our chaplain for today is Chaplain Larry Ramsey from the BSDC All Faiths Chapel in Beatrice, Nebraska, Senator Wallman's district. Please rise.

CHAPLAIN RAMSEY: (Prayer offered.)

SENATOR JANSSEN: Thank you, Chaplain Ramsey. I call to order the forty-eighth day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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

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

CLERK: I have no corrections, Mr. President.

SENATOR JANSSEN: Thank you. Are there any messages, reports, or announcements?

CLERK: A new resolution: Senator Christensen offers LR430 as an interim study resolution; that will be referred to the board. And a motion to be printed with respect to LB742. That's all that I have, Mr. President. (Legislative Journal pages 1041-1042.) [LR430 LB742]

SENATOR JANSSEN: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda. Mr. Clerk.

CLERK: Mr. President, LB1105, a bill by Senator Council. (Read title.) The bill was introduced on January 21 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are committee amendments pending. (AM2147, Legislative Journal page 803.) [LB1105]

SENATOR JANSSEN: Thank you. Senator Council, you are recognized to open on LB1105. [LB1105]

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SENATOR COUNCIL: Thank you, Mr. President and fellow members of the Unicameral. I rise this morning to ask for your favorable consideration of the advancement of LB1105. Throughout this session, the cost of operating government has been one of the primary issues of debate. Bills have been advanced that are designed to grow our economy so as to improve our revenue picture. Bills have been defeated because of the fiscal implications of pursuing a particular course of action, regardless of how noble that course of action might have been. Indeed, in our quest to control the cost of government, we have even advanced a bill intended to eliminate a constitutional office. It would appear no program or service of government is immune from these serious budget considerations. However, there is one area of government that has escaped this budgetary scrutiny and LB1105 is intended to correct that situation. Based on statements we heard throughout yesterday's debates, our current revenue shortfalls and the looming budget deficits present a problem of crisis proportions. I believe that this crisis requires a dispassionate analysis of the costs of maintaining the death penalty. LB1105 provides for just such a dispassionate analysis of the costs of maintaining this program of government. I introduced LB1105 knowing full well that there are some in this body who have grown weary of discussing the death penalty. I know that there are some who believe that this issue was settled and laid to rest by last year's vote on the lethal injection bill. I also know that there are those in this body who not only believe but I have heard them state that the death penalty must be maintained no matter what the cost. I suspect that those who hold such beliefs do so on the basis of their sense of what the public opinion is in the state of Nebraska relative to the death penalty. The question that must be asked, however, is how has that public opinion been shaped? What information has the public relied upon in reaching their position? The public is well aware of the philosophical debates, the ethical dilemmas, the religious discussions, and the emotional pleas that have made...been made in the past with regard to the death penalty. The one factor that has garnered little if any public discourse is the economic cost of maintaining the death penalty. Now some may question whether it is proper or ethical to relegate such a sensitive issue as the death penalty to one of simple economic terms. Well, I submit to you we have not imposed that type of scrutiny on any other measure that has come before the body this year, and I submit to you that the better question to ask is, why shouldn't we know what the cost of maintaining the death penalty means to the taxpayers of this state? We profess to be concerned about any amount of taxation that the residents of the state of Nebraska are subjected to. And we do that because this is a matter of public policy. When everything else is said and done about the death penalty, the fact remains that the death penalty is a matter of state public policy. And as with any other public policy, questions must be raised as to whether the death penalty is a wise and efficient use of taxpayer dollars. As is the nature of public opinion polls, most public opinion poll results are dictated by the question that is posed. If the only thing the public knows about the death penalty is that it represents the state carrying out what, quite frankly, is vengeance for the taking of a life, it shouldn't surprise any of us if many people believe that that's appropriate. But if

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the death penalty does not...if the public doesn't know the actual costs of the death penalty, the actual efficiency or lack thereof of the death penalty, do we really know what the public opinion is? In fact, what do we as a body, a Legislature, know about the costs of the death penalty? I submit to you that we know very little because this body is a microcosm of the public and when you don't have information to shape a decision reasonably and rationally, we arrive at irrational positions. So what do we know about the cost of the death penalty? Nationally, the average cost of a single death penalty case from arrest to execution ranges from \$1 million to \$3 million and takes into account that some studies have estimated the cost to be as high as \$7 million. This figure compares to an average cost of \$500,000 for a life imprisonment case, including incarceration. Mr. President, I would respectfully request a gavel. [LB1105]

SENATOR JANSSEN: (Gavel) [LB1105]

SENATOR COUNCIL: I can accept the fact that people may have made up their minds on this subject, but I respectfully request at least the attention of this body on what I believe to be a very serious subject. Again, nationally, the average cost of a death penalty case from arrest to conviction ranges from \$1 million to \$3 million and takes into account that many studies have shown the costs to be closer to \$7 million. What has been found to account for these higher costs? First, it is to be noted and has been raised in previous cases and discussions that in most death penalty cases the taxpayers, the taxpayers, the taxpayers foot the bill to prosecute as well as defend the accused. The cost of defense is higher in these cases because an indigent defendant facing the risk of losing his or her life must be afforded top level legal representation, including expert witnesses. The defense of death penalty cases generally involve more pretrial motions. [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: And for my colleagues here, who are involved in the defense work in this state, know how much time, effort, and cost goes into pretrial motions. The cost of prosecutions are higher because the process that we have set forth requires essentially two trials to be conducted, one that determines the guilt or innocence, the other which determines whether the sentence of death is appropriate. LB1105 asks this body to require that the cost associated with maintaining the death penalty be identified and disclosed to the citizens of the state of Nebraska so that they can make a reasoned decision as to whether they want to maintain the death penalty or... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR COUNCIL: ...rather a more efficient and equally effective alternative... [LB1105]

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SENATOR JANSSEN: Time, Senator Council. [LB1105]

SENATOR COUNCIL: ...such as life without parole. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Council. As the Clerk has stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair of the committee, you are recognized to open on the amendments. [LB1105]

SENATOR ASHFORD: Good morning, everyone. Thank you, Mr. President. And we do have committee amendments to AM...or AM2147. Before I get into the committee amendments, though, I would like to just briefly state that, from my perspective, as Chair of the Judiciary Committee, the reason I feel this bill is so incredibly important is that we have a tradition in the Judiciary Committee, clearly, and also in the body as a whole to make certain that when we make public policy we have adequate information. We did this most recently on the issue of juvenile justice, and I promise you, I will not start talking about juvenile justice, but I will say this; that it was really the report that we commissioned two years ago and spent \$300,000 on dealing with the issue of guardian ad litem and defense attorneys that got our committee thinking about the policy considerations involved in the juvenile court system. The issues of law and justice and punishment and consequences are incredibly complex. They are...there's the human condition in maybe its most raw form. It is difficult, at best, to make policy in this area because every human event has some sort of repercussion in this area and a consequence, and to make laws about them and to, in some sense, try to play God really in determining what the law should be, how should we respond as a state to particular behavior in society is...every day we in the committee get up, I do and I know my committee colleagues do, thinking about this is really hard work. This is extremely difficult work to try to think about how we are going to deal with the kinds of behaviors that exist out there that impact all of us, impact society with the costs of incarceration generally, the tax...our tax base, our obligations as a state moneywise. But obviously every single criminal act has a consequence to someone else. When we make something a crime, it has a consequence to the perpetrator and to the victim, obviously. When we talk about the death penalty, the ultimate punishment that this state can prescribe, and we deal with that and we think about it and we talk about it, we know that there are numbers of people who have committed the most heinous acts that one can imagine that have not been given the death penalty. Why is that? You know, why does that happen? What are the criteria and the standards that go into that consideration? We know that to be true. We talk about it out here every time we talk about the death penalty and other kinds of crimes. Interestingly enough, the other day I was talking to the public defender. Senator Coash set up a meeting with the public defender in Lincoln and he came in and said there are so many...so many petty penalties in our law for minor offenses that result in incarceration, we can't handle all these cases. And some of the most petty offenses require...could result in incarceration. Therefore, you have a jury trial. This whole issue of how do we sentence people for wrongdoing is so complex and

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so difficult. If we can't think about and study in depth the punishment for the ultimate crime, or the ultimate punishment for the crime of first-degree murder, as Senator Council is requesting that we do, how are we ever going to sort out the other parts of our sentencing law? How else are we going to think about, in an appropriate manner, sentence policy? As Chairman of the committee, I really implore you, I plead with you to please give us this money to do this study, not so we can repeal the death penalty because so that...so we can have the information in our committee to analyze what we're doing from the least to the highest punishment and sentence. With that, I would go over briefly the committee amendments. They provide that the Community Corrections Council and not the State Auditor is directed to supervise the study. I know Senator Council discussed this matter with the State Auditor and the State Auditor suggested that his office was not equipped to do the study, and so the Community Corrections Council is agreeable to doing so. The College of Public Affairs and Community Service at the University of Nebraska at Omaha, one of the nation's premier colleges in criminal justice, has agreed to do the study for a very, very small amount of money. In fact, it's unbelievable to me that \$50,000 would be able to cover this. We do have people at UNO who are expert, nationally recognized experts in criminal justice who are willing to do this study for \$50,000. It provides that the study conducted shall examine the direct and indirect costs of administering the death penalty on non-death-penalty sentences resulting from murder in the first degree. This is so critical. You've got...you don't got to do anything, but I would ask you to please consider that you give to our committee the ability to analyze the sentencing program in our state. It is disparate. It is, quite frankly, a bit screwed up. We need the study and the \$50,000 is going to help us far beyond the price tag of \$50,000. How much time do I have, Mr. President? [LB1105]

SENATOR JANSSEN: Three minutes, forty-three seconds. [LB1105]

SENATOR ASHFORD: Thanks. I would give my time to Senator Council, if she would like. [LB1105]

SENATOR JANSSEN: Senator Council, you are yielded 3 minutes and 36 seconds. [LB1105]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. And just getting back to the point about the costs, and I'll speak briefly to the amendment, the amendment recognized the inability or the perceived inability on the part of the State Auditor to conduct the level of analysis that would be required for us to clearly and thoroughly evaluate the costs of the death penalty. And I want to thank Auditor Foley for coming and sitting with me and outlining why it was that he didn't believe that his office could perform the level of review that was required. I selected the State Auditor from the outset because that's what our surrounding states used. In Kansas, they used their Legislative Audit Committee. Well, in conducting additional research on this subject and

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reviewing what other states have done, the government has developed a protocol for such studies and that protocol was developed as a result of a study conducted by Duke University. So since it is clear that this is a matter of academic study, that I did approach the College of Public Affairs at UNO and spoke to the experts in the area of criminal justice who are ready, willing, and able to conduct this study, are familiar with the protocols, and in fact have conducted studies on behalf of the state on other issues and have done so under the supervision of the Community Corrections Council, and that's why the Community Corrections Council was identified as the agency to oversee the study, because they have worked in the past with the College of Public Affairs on similar types of studies. They know where the data is held. And in that regard, I want to speak to what occurred when the committee discussed LB1105. There was only one person who testified in opposition... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: ...to LB1105 and that opposition came from the County Attorneys, and it may surprise you that it was not opposition to identifying and determining the actual costs of the death penalty. The opposition was to the fact that the bill requests that the study consider costs back as far as 25 years, and what their concern was, was they may not have records going back that far. Well, the simple fact is, is you can only study that which you have, and so if the records don't go back that far, then the study will have to be developed around the facts that are present. So in my opinion, that opposition has been addressed by the mere protocol that would be used in conducting this study and that is... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR COUNCIL: ...to consider the evidence that's there. [LB1105]

SENATOR JANSSEN: Thank you, Senators Ashford and Council. (Doctor of the day introduced.) Continuing on, Mr. Clerk, there's an amendment to the committee amendment? [LB1105]

CLERK: Mr. President, Senator Council would move to amend the committee amendment with AM2241. (Legislative Journal page 942.) [LB1105]

SENATOR JANSSEN: Senator Council, you are recognized to open on your amendment to the committee amendment. [LB1105]

SENATOR COUNCIL: Yes. The amendment to the committee amendment, Mr. President, is very simple. The amendment, AM2147, again provides that the study would be conducted by the College of Public Affairs and Community Service of the University of Nebraska at Omaha at a cost not to exceed \$50,000. The amendment to

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the committee amendment simply provides for the State Treasurer to transfer up to \$50,000 from the Commission on Public Advocacy Operations Cash Fund to the Community Corrections Council in order to have the Community Corrections Council pay for the conduct of the study. So all that AM2241 does is provide for the transfer of the funds that would be needed to carry out the study from a cash fund into a Community Corrections Council Cash Fund, so we're talking about existing funds. And when we're talking about the costs, I think it's important again to stress the fact that I don't believe that we have ever given the amount of scrutiny and consideration to what the costs associated with the maintenance of the death penalty versus perhaps a more efficient and equally effective alternative. I was discussing some of those costs in my opening and we have, at this point in time, without the conduct of a study such as that provided for in LB1105, we are left to speculate and hypothesize about what it costs the taxpayers of the state of Nebraska to maintain the death penalty. What do we know about those costs? Well, in my research, again, I don't have any data to do a comparative analysis but what I do know is that a recent death penalty case in Nebraska cost three-quarters of a million dollars for the penalty phase alone. What does that mean? That means there wasn't even a trial. That means the individual pled guilty so there was no cost associated with determining their guilt or innocence; it was just whether or not imposition of the death penalty was appropriate under the circumstances. And as you'll recall from last year's discussion, that involves considering the aggravating and mitigating circumstances. That phase alone cost three-quarters of a million dollars. And when we look at what we know from a study that this body commissioned in 1999, what we know from that 1999 study is that out of 177, out of 177 death penalty eligible cases...now I emphasize the 177 death penalty eligible cases because we've heard the discussion and the conversation that the death penalty is reserved for the most heinous of offenses so someone determined that there were 177 such heinous cases between 1973 and 1999. And of those 177 cases, only 89 of them were actually tried as death penalty cases, only 89 of them. And of those 89, only 24 resulted in a death penalty being imposed. And of the 24 where the death penalty was imposed, 13 of the 24, almost...over half, were commuted to a sentence less than death; 4 of those individuals died while in prison; 1 of those individuals was outright released; and 3 of those are still sitting on death row, they are 3 of the 11 that are currently on death row, and 3 were executed. So what does that mean? What does that information, that limited information tell you? What that limited information tells you is that of the 89 cases that went to trial, 83 ended up being effectively life in prison without possibility of parole; 83 of the 89 the ultimate result was the equivalent of life without possibility of parole. And what did it cost the taxpayers of the state of Nebraska to achieve that result? Just applying the national average, since we don't know what it costs in the state of Nebraska, but applying the national average and being conservative in that application, and if we only applied half of the national average costs of a death penalty case, those 89 cases cost the taxpayers of the state of Nebraska \$45 million. And it's kind of coincidental because yesterday we were talking about \$46 million spread out over a 20-year period of time. Here it was \$45 million spread out over

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a 25-year period of time. Shouldn't we have the same level of concern about the effect of utilizing taxpayer dollars in this way as we were yesterday when we were debating whether or not there should be a sales tax imposed on the sewer fee? We're talking about the equivalent amount of dollars. And the concern that was expressed yesterday was that if that sales tax was not imposed, it would result in a \$46 million property tax burden on the residents served by the Omaha sewer system. Well, here we have a \$45 million tax liability and who does that fall on? I'll tell you. It falls on the very same property taxpayers that we professed such concern about yesterday. And how does that occur, ladies and gentlemen? It occurs because the overwhelming majority of the cost of prosecuting and defending death penalty cases rests on your county governments, your county governments. I know that the Norfolk situation was a horrendously tragic situation, but that resulted in a tax burden on the residents of the Norfolk area to cover over \$3 million in just simple prosecution costs. Doesn't account for the public defense costs, doesn't account for the costs of defending the appeal, doesn't account for the costs of segregating those individuals during the pendency of the trial, and does not and will not account for the costs associated with the length of time that ordinarily results between a trial and an execution. At a minimum, on the basis of a state study, we're talking about eight years. In Nebraska, it approaches closer to 20 to 25 years. If you start talking about... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: ...life expectancies, in fact, the greater likelihood that in a death penalty case in Nebraska the person would die in prison. What is that? Life without possibility of parole. So taking the \$45 million figure and applying it to the three executions that occurred in that 25-year period, that's \$15 million per case. Is that a reasonable figure when there is an equally effective and efficient alternative? I submit to you that it is not. And without this data, we cannot really engage intelligently in a budgetary debate. We cannot reasonably and intelligently know whether or not the taxpayers in the state of Nebraska who are... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR COUNCIL: Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senator Council. (Visitors introduced.) Those wishing to speak on AM2241 include Senators Hadley, Harms, Dierks, Lautenbaugh, Conrad, Loudon, Council, Gloor, and Coash. Senator Hadley, you are up and recognized. [LB1105]

SENATOR HADLEY: Mr. President, members of the body, good morning. And I think this will be an interesting debate and I'm anxious to listen to it. Would Senator Council yield to a question? [LB1105]

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SENATOR JANSSEN: Senator Council, will you yield? [LB1105]

SENATOR COUNCIL: Yes, Mr. President. [LB1105]

SENATOR HADLEY: Senator Council, I want to be sure. Are we only studying the costs involved with the death penalty cases? Or will we be studying also the costs involved in incarcerating a person for their complete natural life? [LB1105]

SENATOR COUNCIL: And that's an excellent question, Senator Hadley. I'm glad you asked it. And it will be a comparative study. If you look at AM2147, it directs the College of Public Affairs to look at the direct and indirect costs of the death penalty versus the direct and indirect costs of a non-death-penalty sentence. [LB1105]

SENATOR HADLEY: Okay. Thank you, Senator Council, because I think that's important. Whenever we're making judgments, we want to have both sides in the costs and I'm sure that the college in Omaha will certainly do an excellent job in doing it. I have...there have been a lot of studies done on this. This is not a new topic. If you look, there's probably 10 or 15 states that have looked at this and so there is a lot of information out there. I want to be sure. Senator Council, would you yield to another question? [LB1105]

SENATOR COUNCIL: Certainly, Senator Hadley. [LB1105]

SENATOR HADLEY: The UNO college, are they sure that they can do an in-depth, appropriate study for that amount of money? [LB1105]

SENATOR COUNCIL: Yes, indeed. And, Senator Hadley, I posed the question to them twice because, yeah, I was concerned. I know that the cost of the study that was conducted by them on sentencing recidivism cost about \$300,000, but the issue as presented, as I understand it, that they are clear about where to access the costs. If you look at the language of the bill, it asks them to obtain costs from the county attorney's office, from the Attorney General's Office, from the Corrections Department. They are used to and know...have ready access to, for example, the Corrections Department. [LB1105]

SENATOR HADLEY: Okay. So you feel that they will. [LB1105]

SENATOR COUNCIL: Yes. [LB1105]

SENATOR HADLEY: Okay. Good. I would yield any remaining time I have to Senator Carlson. [LB1105]

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SENATOR JANSSEN: Senator Carlson, you're yielded 2 minutes 27 seconds. [LB1105]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. And I think I'm okay in asking this. Having this time yielded to me, I would like to address a question to Senator Council, if she would yield. [LB1105]

SENATOR JANSSEN: Senator Council, will you yield? [LB1105]

SENATOR COUNCIL: Yes, Senator Carlson. [LB1105]

SENATOR CARLSON: Senator Council, in a study of costs, and I was listening carefully to what Senator Hadley asked, and this may be a question that you don't even think we could get there. But as we have more people incarcerated, you and I both agree that, I think, that we have too many people incarcerated for too many reasons and I am not for building new prisons or more prisons, but there is a definite cost factor if this becomes an issue. Is that in any way included in the cost of life imprisonment,... [LB1105]

SENATOR COUNCIL: Well,... [LB1105]

SENATOR CARLSON: ...construction of new prisons? [LB1105]

SENATOR COUNCIL: Well, I suspect when we ask them to develop the direct and indirect costs of incarceration, certainly that can be a question that is specifically provided to them to provide us information back with. We have the opportunity to shape this study. As the amendment, which substitutes for the original bill, it sets out what costs they are to look at. And as I indicated,... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: ...they will be in many ways guided by the Duke University study which sets out the protocols. GAO, the General Administration Office, has set out protocols for conducting these kinds of studies, so there would be at least some information, some data, that would enable us to see what kind of impact additional life sentences would have on our correctional center capacity. [LB1105]

SENATOR CARLSON: Okay. Thank you, Senator Council. And certainly this is an important item, if this bill moves forward, that all of those things that could affect the figuring in the costs should be considered, and I'm confident that you would do that. Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senators Hadley, Carlson, and Council. Those wishing to speak: Senators Harms, Dierks, Lautenbaugh, Conrad, Loudon, Council, Gloor, Coash, and Avery. Senator Harms, you're recognized. [LB1105]

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SENATOR HARMS: Thank you, Mr. President, colleagues. Senator Council, would you yield? [LB1105]

SENATOR JANSSEN: Senator Council, would you yield? [LB1105]

SENATOR COUNCIL: Yes, Senator Harms. [LB1105]

SENATOR HARMS: Senator Council, as you develop the study, what state are you modeling after? [LB1105]

SENATOR COUNCIL: Pardon? [LB1105]

SENATOR HARMS: What state would you be modeling this study after? There have been some states that have done this. What state are you picking out to work with the University of Nebraska-Omaha that you might want to model this after? [LB1105]

SENATOR COUNCIL: Well, the study that I understand that would guide the university is the model that was developed by Duke University that was utilized by a number of states. And if I may continue to respond, Kansas conducted theirs in an audit format, which was the model I used for the original green version of the bill. But our State Auditor didn't feel comfortable, didn't feel like his office possessed the expertise to carry it out in the same manner as the state of Kansas had. [LB1105]

SENATOR HARMS: Okay. Thank you. I have some concerns about getting the appropriate data to do a study on this, and let me walk you through this to start with and I'll come back again and finish this up. There was a letter sent by my good friends Senator Danielle Nantkes, now Conrad, Danielle, and then Jeremy Nordquist. On May 11, May 13, 2009, they asked about capital litigation cost information and I found it to be interesting. They had some really good questions. They had some questions on budgeting, staffing, anticipated litigation, communications, and this went to David Cookson, the chief deputy Attorney General. My point here is that under the area of budget caught my attention to the fact, and I'd like to just quote this if I may. This is the answer to the question about budgeting. To the best of our knowledge, going back to Douglas administration, the Department of Justice has never tracked the expenditures of its funding on a case-by-case basis. That's the first issue we're going to run into. You will not, I will tell you now, you will struggle getting accurate data to do the comparisons here. The last...the last three death...people who went through the process was 37 years ago. And I can tell you now in government, that data is going to be tough to find. And they went on to say the Department of Justice does not now and, to the best of our knowledge, never has had a budget in which funds were specifically identified on capital litigation. And that's going to be our issue. You are going to be...you're going to have difficulty comparing these cases with each other. Each death penalty case is different.

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It's longer, there are more appeals, and how are you going to come up with this and what data will you use so that we can actually verify the very fact that this is accurate information, colleagues? I don't care if we do the study. I'm just telling you that this is going to be difficult to do. Let's take just a moment and talk about how many people are involved in these kinds of cases. Well, we've got agencies, we've got individuals, and I can tell you now, if you get down into that cost factor, they don't have time sheets, they don't have the time set aside. So I can tell you, you'll have difficulty getting just that accuracy alone, and they have hundreds of hours in this but yet we're not going to be able to compare these folks. We already know that our judicial system doesn't have a budget for it, so what are you going to compare this against? Not only that, colleagues, if you're going to run this, you're going to run a comparable study to life imprisonment, I mean what does it cost us versus the death penalty. Because the real issue of this, if we turn this over and say we no longer want the death penalty, what about then the cost that we have right here for life imprisonment? You think that's cheap? No, it's not. And my point is that I think if you're going to do this in... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR HARMS: Pardon me, Mr. President? [LB1105]

SENATOR JANSSEN: One minute remaining. [LB1105]

SENATOR HARMS: Thank you. My point here is that if we're going to do an honest study, we need to do a comparison of both and run them parallel so when you get to the end we can actually have a dialogue on the factor here and the cost and what takes place. I'm concerned that we, when we get to the end of this, it will be very difficult for us to verify the accuracy of this data that's going to be assembled in this study. Not only that, as I said earlier, the last trial to execution was in 1973, 37...about 37 years ago. And when you don't have a budget and you don't have the data and we've never budgeted that, I don't know how you're going to find that and then what you're going to have is guesstimates here. I'm going to stop here, Mr. President, and I'll come back later. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Harms and Senator Council. Members, we are discussing AM2241. Members wishing to speak: Senators Dierks, Lautenbaugh, Conrad, Loudon, Council, Gloor, Coash, Avery, and Harms. Senator Dierks, you are recognized. [LB1105]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. Of course, I stand in support of the amendments and the bill itself. I had not a motto but a philosophy when I started my veterinary practice that my best-informed client was going to be my best client, and that proved true every week to me. The more I told them about what I was using and why I was using it, the better client they became and the more

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they appreciated what I told them. I think I had a very successful veterinary practice and I think that's because I had a very well-informed clientele. I try to use that same philosophy with my constituency in the 40th District. I think my best-informed constituent is going to be my best constituent. This bill today provides us with some information to make our constituents better informed. Senator, the opening...one of the opening statements that I heard Senator Council make struck home with me. She says, this body is a microcosm of the residents of the state, and how true that is. And I think that this piece of legislation should be enabled and enforced for them because they are who we represent and we represent who they are. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Dierks. Continuing discussion, those wanting to speak, Senators Lautenbaugh, Conrad, Loudon, Council, Gloor, Coash, Avery, Harms, and Lathrop. Senator Lautenbaugh, you are recognized. [LB1105]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of this body. I do rise in opposition to this bill and I did a little foreshadowing last week and indicated that my problem is with the studies we do, the studies we authorize, the money we spend when we don't have any money. And we've been down this road. Senator Ashford is a good friend of mine but it was remarkable to me that he mentioned the guardian ad litem study as something that informed us and helped us with his bill this year. But there was a certain amount of *deja vu*, and I can understand why he thought of it, because back in 2008 Senator Chambers carried an amendment to a bill that would have taken money from the Commission on Public Advocacy--I hope this is sounding familiar--and conducted a study, a quarter of a million dollars I believe we spent on that one, and this was to study the juvenile justice system in some particular ways regarding guardians ad litem and I think juveniles being tried as adults. So we spent a quarter of a million dollars and the university let the study out to someone from, I think, New Jersey and someone from Colorado, and it was hundreds of pages with attachments. And there are maybe 3,000 to 4,000 kids in the foster care system in this state and they interviewed 6, 6 kids. They then went out and talked to a group to get feedback on guardians ad litem and they took no pains to make sure that it was a random sample or a statistically significant sample. They went and interviewed a group that was already formed to basically air grievances about the system. And they were shocked to find that those people who got together to air grievances about the system had grievances about the system. So we wasted, in my mind, a quarter of a million dollars. And one thing that this does bring home to me, as we're having this discussion today, is, and I'm checking, how much money does the Commission on Public Advocacy have that they can afford to part with a quarter of a million here, \$50,000 there to do these things? And I may very well look into that because I am genuinely curious as to where that money is going and what it is doing when we're not spending it on the ideas we come up with every year or so. I think it's worth knowing. And I think my friend Senator Harms touched on a lot of problems with what we're doing here, because I can see this coming a million miles away. We're going to ask someone to go find out the unknowable because these

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attorneys at the county level don't keep track of their time hourly. But that's okay. We can kind of guess. And the AG's Office doesn't have someone that's specifically tasked to capital cases. They do other things because there just aren't that many capital cases. But that's okay, we can kind of guess as to what they do. The remarkable thing about the last study is that it was funded with funds from the Commission on Public Advocacy. The gentleman on the Commission for Public Advocacy...from the Commission on Public Advocacy had been advocating for years for a certain outcome. The study was funded and miraculously the study recommended that particular outcome, despite the fact that there was nothing in the study that would lead you to that conclusion. So I wonder what this study will conclude based upon guesstimates and people... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR LAUTENBAUGH: ...making good faith estimates to find out something, something that I think the Attorney General responded and said, look, it's not that much, our people do other things most of their time. And this is going to cost us \$50,000. And I wonder what we'll find and I wonder what else we could have done with that \$50,000 especially now. There is no point in doing this because, as we learned last time we debated the death penalty, the people who are opposed to capital punishment aren't going to be swayed by the outcome of this. They're going to oppose it no matter what. They're very clear about that. So this is \$50,000 to buy a study to try to discuss it next year and try to sway the people who are in favor of the death penalty. That's what we're doing here. Let's be clear about it. People opposed to capital punishment have made it very clear. They don't care what this study will show. They're opposed to the death penalty. [LB1105]

SENATOR JANSSEN: Time. Thank you, Senator Lautenbaugh. Those wishing to speak include Senators Conrad, Loudon, Council, Gloor, Coash, Avery, Harms, and Lathrop. Senator Conrad, you are recognized. [LB1105]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I rise in strong support of the underlying legislation and the proposed amendments. As discussed in greater detail during the course of debate related to the lethal injection bill and in other contexts, we have started to raise important and significant questions related to costs for administering this portion of our criminal justice system. All along the way, as those important questions were raised, we were continually responded to with incomplete information at best. I believe that Senator Council has made a good faith effort to try and pull together in a comprehensive manner the issues related to the costs associated with carrying out the death penalty and comparing them to the alternative of life in prison without the possibility of parole. Colleagues, more than a dozen states have found that the death penalty is up to ten times more expensive than life sentences without the possibility of parole. Each execution in Nebraska since 1973 is conservatively estimated to have cost \$15 million. And what is the purpose of this? And

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as Senator Lautenbaugh noted, it may not make a difference in terms of his opinion as to capital punishment. It may not make a difference in terms of my opinion as to capital punishment. But it's an important tool that we need to have available as we make decisions concerning public policy related to how these precious state resources are utilized. And in the alternative, by making the investment in this public policy, how many other crimes go unsolved, unprosecuted, or otherwise? There are a multitude of important public policy reasons to get a handle on these costs in a concrete and comprehensive way. We know that one recent Nebraska death penalty case cost an estimated \$750,000 just for the sentencing phase alone, and this was because the defendant pleaded guilty so there was no trial and no cost associated with determining the guilt or innocence factor. When discussing the lethal injection legislation that was before us last session, you were each provided information from Nebraskans against the death penalty, which I am relying on heavily in my comments again here today. And they highlighted cost issues specifically as one of the reasons that we should be concerned about moving forward with lethal injection or with capital punishment as a whole. And so don't take my words for it but take the words of those with expertise at really the front lines of these difficult public policy issues. For example, as reported in the Lincoln Journal Star, March 8, 2008, Captain Jim Davidsaver from the Lincoln Police Department said, and I quote, it's not enough to get tough on crime; we need to get smart about it. An incredible amount of time and money is spent to prosecute a very small number of death penalty cases. This is not a wise use of our scarce resources. In a forum before the League of Women Voters of Lincoln-Lancaster County on January 15, 2008, special Attorney General J. Kirk Brown, who is the state...who was then the state's chief death penalty attorney, said the costs of Nebraska's death penalty system are, quote unquote, staggering. From law enforcement... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR CONRAD: ...experts on the front lines of these public policies, we know that these costs are significant and we have a right to know what they are in a concrete and comprehensive manner. And in regards to Senator Lautenbaugh's comments maligning the Commission on Public Advocacy, I think that we need to proceed with caution in that regard. They are an extraordinarily small state agency charged with an extraordinary amount of responsibility and duty that they carry out very, very well. If you would like some information about what this small group of people do as a critical component of our overall criminal justice system, I'm going to pass that around so people have a chance to educate themselves about this agency and the important work that they do. And let's keep our...let's keep our focus on the issues before us instead of maligning good people who sacrifice on a personal financial level to carry out public service for the state of Nebraska. We were all cautioned about that yesterday... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

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SENATOR CONRAD: ...and I think it remains true for this agency as well. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Conrad. Those wishing to speak include Senators Louden, Council, Gloor, Council, Coash, Avery, Harms, Lathrop, and Lautenbaugh. Senator Louden, you are recognized. [LB1105]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I've listened to the conversation here this morning with Senator Council and some of the members of the Legislature, she's answered some of the questions I think that would probably be on our minds. As we look at the amendment that we have here, we're supposed to study the different costs between administering the death penalty and the non-death-penalty, and also some of the costs of housing inmates on death row, and these are all what is set out in the amendment to be studied. Also, the costs to the counties, which is tremendous when you have these murder cases and for the counties to litigate. In fact, it breaks some of these counties. Usually their funds are gone when they have to hire defense attorneys for those persons that are being charged. What I'm wondering is, and this...what this is all about is to see whether it's going to be cheaper to repeal the death penalty. I mean this is what we're talking about and this is what we're trying to push forwards, is to show that it would be cheaper to have life in prison rather than the death penalty. So I would ask then if you go to that type of situation, instead of having a death penalty you'd have a life in prison, will the costs still come back up there? Because people will still be wanting to hire defense attorneys that don't have any money to prepare themselves, so they don't have to go to life in prison, try to get it set down so it would be a term of years, 25 or 30 years or something like that. So when we have this information that comes out here and these costs are brought forwards, will we know anymore than what we actually know now? I don't have a problem with studies. They're worthwhile. I do have a problem with some of the information you get out of them because many of the studies you get, you can't use the information for any intelligent decisions anyway. You have to go by what has been done over a period of years and, at the present time, I don't know if anybody has done the cost on what it costs to keep an inmate in there for the rest of his life. They talk about those that were on death row without life imprisonment, but those costs can vary depending on the health and the life span of the individual that's incarcerated. I guess as far as having the study, I wonder--it's, yeah, it's \$50,000 to have a study--will we get \$50,000 worth of information out of it afterwards that can be used successfully to defend a position on repealing the death penalty. And that's what this is all about, is trying to get information to repeal the death penalty. If it wasn't for something like that, why would we be having the study? So I have a problem with the amendment. I think there probably needs to be some type of a study. I don't know if it needs to cost \$50,000 to do this. I'm surprised that some of this couldn't be done on some of these other grant funding deals, because it's mostly gathering information. If you're going to gather that information then you'll be gathering it out of the state of Nebraska. I don't see any point

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in gathering information from other states. You have to take care of what we do and spend in Nebraska on these and there should be some place, a ledger, that would actually have the pluses and minuses on both sides. So I think it's probably some kind of an idea that needs to be brought forwards, but I question whether it...whether we'll find out anything that will be relevant out of it, and I don't know if we need to spend the \$50,000 to do it. I would think we could have some kind of a grant process... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR LOUDEN: ...to do this. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Louden. Members, we're discussing AM2241. Members wishing to speak are Senators Council, Gloor, Coash, Avery, Harms, Lathrop, Lautenbaugh, and Flood. Senator Council, you are recognized. [LB1105]

SENATOR COUNCIL: Thank you, Mr. President. You know, I must begin by saying that the hypocrisy that permeates this body never ceases to amaze me. I sat here yesterday, like most of you and listened to the debate on the sales tax issue on the sewer separation project, listening to the information that was exchanged with regard to the situation in Plattsmouth and I listened to the very same senator who today says these statements maligning an agency, suggesting that they altered or predetermined the results of a study, making the same kind of maligning statements that he chastised one of our colleagues about making yesterday, and in fact made the same statements. When Senator White said he knew this to be the case, he knew this to be the case, he knew this to be the case, Senator Lautenbaugh challenged him about how he knew that. Yet Senator Lautenbaugh expects us to accept his assertion that he knows that every person in the state of Nebraska that may be supportive of the death penalty, he knows that their position is inalterable. He knows for a fact that this information would have no effect on those individual opinions, yet yesterday couldn't accept a statement from a colleague that, based upon facts available to him, what he said was true. I think we need to be careful about...because we don't know what we're talking about. The Commission of Public Advocacy's Cash Fund was selected, ladies and gentlemen, because I recognized early on that to request this body to expend some money I'd have to find a source that wasn't General Funds, and I searched for such a source like most of you who have introduced bills that have a fiscal implication. I searched for funds and the Commission on Public Advocacy should be insulted and I'm insulted. I selected the Commission on Public Advocacy, Senator Lautenbaugh. They didn't ask me to perform this study on their behalf and, in fact, in the conversation, because as a courtesy to them, I didn't ask permission to reach into their fund but I contacted them as a courtesy and said here's some cash that we may be able to use. They're concerned about drawing this cash out of their funds but I believe that this study is important enough to the state that we need that information. The Commission on Public Advocacy has

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absolutely nothing to do with the motivation behind this study. And the study that Senator Lautenbaugh referred to was not conducted by the College of Public Affairs. [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: But we did commission a study by the College of Public Affairs, sentencing and recidivism. I haven't heard any criticism of the results of that study. And the results of that study have enabled this state's Community Corrections Council to make a significant impact on the rates of incarceration in the state of Nebraska. So when we look at what the costs associated with this...and when I get back on the mike I'm going to ask if we're equally concerned about the fact that when the lethal injection bill passed last year it had absolutely no fiscal note. Nobody raised a question about that. Nobody is saying, how can you undertake this at no cost? We accepted blithely the statement it may be minor costs. The response to our Freedom of Information Act request indicates that the Department of Corrections alone... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR COUNCIL: ...has spent \$35,000. [LB1105]

SENATOR JANSSEN: Thank you, Senator Council. Those wishing to speak include Senators Gloor, Coash, Avery, Harms, Lathrop Lautenbaugh, Flood, Giese, Conrad, and Council. Senator Gloor, you're up and recognized. [LB1105]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. My comments will mirror very much I believe Senator Harms's. I have concerns about the quality of data that could be used in a study like this, but first of all I would like to thank Senator Council and applaud her for wanting to take an approach towards a very controversial subject that's based upon data in a policy decision and not just a motion or conviction. Too often I believe that drives our policy discussions. And certainly the work of the Judiciary Committee, Senator Council is to get some data on a very important subject of policy decision for us, but the problem with data and the problem I have with the study is that too often data that's available to us, numbers, are seen as a truth unto themselves, and numbers have a sneaky way of misinforming us. Numbers have a very sneaky way of undermining their own credibility. We've talked about some of the past studies that we looked at during the lethal injection discussion and what those numbers might have told us, but one of the things that I look for with my background had to do with healthcare expenditures, and my comments here will be very similar to the concerns I had during that debate. The expenses used for healthcare for people who are incarcerated for life are built around average numbers for inmate populations and under the general category, I believe, of housing in most cases. But there are a far, far, far larger majority of inmates who are younger, healthier than there are lifers, people who

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will leave maybe at mid-life, maybe later, but they will leave and will not die in prison. We know that 80 percent of our healthcare costs for us, as well as inmate populations, will happen in the last six months of your life, and very few lifers, there are always exceptions, very few lifers will die in their sleep. In fact, because of the lifestyles that they've probably led that may be part and parcel of their criminal background, they're likely to have debilitating disease. Caring for lifers in those last six months of their life will be an expensive, expensive, expensive proposition, not just one-on-one care but more so. They can't just be sent to a hospital. They can't just be sent to the same long-term care facility you and I may go to. They will require exceptional levels of care that will run into the tens if not hundreds of thousands of dollars, and those numbers don't seem to find their way into the housing statistics that usually are part and parcel of the data. And there's an inflationary component. To get the numbers necessary to have a valid statistical base, we will have to go back a number of years, and we know healthcare costs have been double-digit inflationary. How do we take costs that are 10-15 years old? Will the people have the discipline, who are crunching these numbers, have the discipline to go back and figure in some sort of inflationary component to the numbers that are brought forward? All of this is going to be needed for statistical validity. Hasn't happened yet in numbers that I've seen. And if I don't trust the process of data gathering, I won't trust its results. And if I can't get comfortable with the results and I'm certainly not comfortable with the process that I have seen in the past, I can't support spending state dollars and I can't support LB1105. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Gloor. Those wishing to speak to AM2241 include Senators Coash, Avery, Harms, Lathrop, Lautenbaugh, Flood, Giese, Conrad, and Council. Senator Coash, you are up and recognized. [LB1105]

SENATOR COASH: Thank you, Mr. President. Thank you, colleagues. I'm going to speak once and I'm not going to talk again. I encourage my colleagues to do your count. We know where this is...we know where it is here. But this bill is important to Senator Council. Her objection to the death penalty, and mine also, is on moral grounds but, colleagues, that battle is over in this body. We debated this last year. The debate over the death penalty was justified on grounds of justice and doing the right thing. Well, colleagues, now we have the opportunity in LB1105 to justify the death penalty on fiscal grounds. I'm not afraid of that. Some of you have argued that we can't put a price on justice and I can agree with that, but I don't find it to be a compelling argument for ignoring what justice costs. We do want to know what our prisons cost. We do want to know how various criminal penalties affect costs, all for the simple reasons that there is just not an infinite amount of money, folks, that we have to be spending on government programs. So we don't have anything to fear from figuring this out. However, I don't believe that, no matter what the cost comes out, this is going to change one person's mind. The votes are where they were last year on this issue. But, colleagues, we pride ourselves in this body of being a transparent form of government. I do feel we owe it to

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the citizens to let them know how their money is spent. But I do agree with Senator Lautenbaugh, both sides, we use this study to fit whatever purpose or dismiss it for whatever purpose they happen to fall on. We're at a point, colleagues, where I think bills like this will have lots of people wanting to chime in. This will be one of those issues where everything will be said about the issue but not everybody got to say it. I think all has been said about this issue. We know where we are on this. I don't think we should belabor the point. I encourage your support of LB1105. Thank you, Mr. President.
[LB1105]

SENATOR JANSSEN: Thank you, Senator Coash. Those wishing to speak: Senators Avery, Harms, Lathrop, Lautenbaugh, Flood, Giese, Conrad, Council, and Campbell. Senator Avery, you're up and recognized. [LB1105]

SENATOR AVERY: Thank you, Mr. President. I remember last year when we passed the lethal injection bill the fiscal note attached to that bill, LB36, indicated that it would cost nothing. I was more than a little surprised by that because it seems to me that almost any program is likely to cost something, especially a program bearing the legal complexities of prosecuting capital crimes. Now I don't mean to criticize our Fiscal Office. I think they do good work. Maybe, however, they simply didn't have adequate information for a complete analysis. LB1105 will provide information that we need in order to make informed judgments. It will provide us with an accurate picture of the death penalty's fiscal impact. Hopefully even capital punishment's staunchest proponents would agree that better data makes for better debate no matter what the subject might be. Other states have already undergone this process. A 2003 Kansas study, very similar to the one Senator Council has proposed here, found that the cost of the death penalty was 70 percent higher than the costs of a comparable non-death-penalty case. The investigation costs for death sentence cases was about 3 times greater, the trial costs 16 times greater, and the appeal costs 21 times greater. In fact, the median cost of the death penalty during the course of a prisoner's lifetime cost Kansas taxpayers approximately \$1.26 million. When the median cost of a comparable non-death-penalty case is considered in the case in Kansas, the taxpayers pay only about \$740,000, a big difference. So in Kansas, a neighboring state with comparable social and judicial makeup to our state, eliminating the death penalty would save over \$500,000 per case. These extraordinary costs pay for a punishment that is rarely if ever implemented in Nebraska. We've only executed three people since 1959, and Kansas has not executed anyone since 1965. Other states offer similar stories. In Tennessee the death penalty trials cost an average of 48 percent more than life imprisonment cases. In Maryland, the total cost for the death penalty over the past 24 years which produced five executions will be \$186 million. That amounts to over \$37 million per execution. In California similar statistics have been produced. New York and New Jersey have found the same thing, spending over \$100 million per year on systems that produced no executions. The high cost of the death penalty in those cases have many causes: more expensive police investigations, longer trials, higher defense costs, higher

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prosecution costs, postconviction costs,... [LB1105 LB36]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR AVERY: ...resentencing hearings, death row costs, extra state appeals, extra federal appeals, the execution itself. The study that Senator Council is proposing will need to take each of these costs into account to produce an accurate report. Setting aside our moral and ethnical beliefs about the death penalty, it would seem to me to be useful to us as policymakers to have these facts and this information. Perhaps capital punishment is worth diverting limited resources away from crime prevention or mental health treatment, victims' services, drug rehabilitation, and educational institutions, or instead of the death penalty perhaps we could better deter crime by simply hiring more police officers. The point is the only way we can ever have a fully informed debate is to know what the costs are. I plan to... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR AVERY: ...support this and I hope that you will too. Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senator Avery. Those wishing to speak include Senators Harms, Lathrop, Lautenbaugh, Flood, Giese, Conrad, Council, and Campbell. Senator Harms, you're up and recognized. [LB1105]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Council, I just want to take a moment to let you know that I'm not really against study. Okay? Primarily, from my background and experiences and historically, I put a lot of emphasis on research, so I think it's really important to do it because it's the only way through the science process can we actually get to the issue sometimes to fully understand it. My question has been, and it will continue to be, will be the accuracy of the data. That's what my concern is, not that you're going to...we're going to do the study, not that we're going to take this issue on. It will be the fact of the accuracy of the data and the ability to verify the data, because this is going to turn to be a large public policy decision. Let's just say that we find this to be relatively expensive. Then this body will have to then probably have the debate of whether we have the death penalty or life imprisonment. And I think when you...when you're going to make that kind of decision then we have to make sure that the data is accurate. We can collect the data and we can verify the data because then it puts everything (inaudible) put the study into question, and that's what I'm concerned about. And I go back to the...and I'm really glad that you moved off of Kansas. That was probably the best thing you could have done, because Kansas has some looping holes in that study and it's not...was not a good example to use. I have not had a chance to review the one from the University of Duke yet but I will before we get maybe to...this goes to...from General to Select. But Kansas, the death penalty cost, I'm just glad we're not going to use that as the model because it's not a good one to use. It

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had some gaping holes. One of the things I wanted to ask you, Senator Council, if you'd just now yield for a couple seconds so you kind of understand where I'm coming from. It's not an attack on what you want to do; it's just the thoughts about the accuracy of the data. Have you had...my experiences with the University of Nebraska at Omaha in regard to the research they're doing for us in our Planning Committee has just been absolutely outstanding. So I think what you're going to get from...I'm assuming this is from the Lincoln campus, is that correct? Would you yield, please? Could I ask, Mr. President, for Senator Council to yield so we could have a conversation? [LB1105]

SENATOR JANSSEN: Senator Council, will you yield? [LB1105]

SENATOR COUNCIL: Yes. [LB1105]

SENATOR HARMS: Senator Council, the question I'd ask, this is going to be with the University of Nebraska in Lincoln? [LB1105]

SENATOR COUNCIL: It's the University of Nebraska at Omaha. [LB1105]

SENATOR HARMS: Oh. Okay. [LB1105]

SENATOR COUNCIL: And, Senator Harms, it's basically the faculty and administration in the area that has dealt almost exclusively in criminal justice matters. [LB1105]

SENATOR HARMS: Yeah. My experiences with that whole segment has been outstanding, and I don't think that that's going to be an issue for us. I think what they will do will be a very accurate report. I think it will be well done. Where it's going to cause them some difficulty, I think, is getting to the accuracy of the data. For example, when you look at the judicial branch, and we would eventually have to get down to asking the Supreme Court to give us some idea about their cost if you're going to figure all this out. In the Kansas study, they refused to give it. In fact, what they had to do is they had to go to North Carolina and they had to go to Missouri, and then they had to use a guesstimate. And that's what I'm...my greatest fear is that we won't have that data. So let's talk a little bit about if we can...Mr. President, how much time do I have? [LB1105]

SENATOR JANSSEN: One minute 10 seconds. [LB1105]

SENATOR HARMS: Well, we're not going to get very far, but I'll be back. Let's talk a little bit about what would you...what are the facts that you would like to have in this study, and then secondly, would you be willing to do a comparison... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR HARMS: Thank you, Mr. President. Would you be willing, as we do this, to

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run a comparison simultaneously with life imprisonment? Because that's going to be probably easier for us to get to on those costs. I'd just like to hear what your thoughts are and then we can come back later on and finish this conversation, but let's go as far as we can. [LB1105]

SENATOR COUNCIL: Okay, and quickly in the limited time, Senator Harms, and I respect and appreciate your questions because the questions you asked are the questions that need to be asked. But that's exactly what is intended by the study. If you look at page 1 of AM2147, "The study conducted pursuant to section 1 of this act shall examine the direct and indirect costs of administering the death penalty and non-death-penalty sentences resulting from murder in the first degree." The intent has always been for it to be a comparative analysis. And in terms of the issue as to the availability of the data... [LB1105]

SENATOR JANSSEN: Time. Thank you, Senator Harms and Senator Council. Those wishing to speak include Senators Lathrop, Lautenbaugh, Flood, Giese, Conrad, Council, Campbell, and Harms. Senator Lathrop, you're up and recognized. [LB1105]

SENATOR LATHROP: Thank you very much, Mr. President and colleagues. Good morning. I stand in support of LB1105 and I would like to share my thoughts on this bill. The first time death penalty came up as a subject matter of debate on this floor since I've been here, I was sitting up where Senator Mello is and I stood up and talked about a study from North Carolina and a study that was done in Kansas that talked about the expense related to death penalty versus the cost of lifetime incarceration. And immediately...and I'm forgetting his name...one of my colleagues that was supportive of the death penalty stood up from the back row and said, well, those studies don't apply; we can't learn anything about Nebraska's death penalty costs reading a study from North Carolina or Kansas. So today we have an opportunity to learn what the costs are. And instead of embracing the idea of doing a study that has a modest price tag to it, we're dividing along the lines of whether you think the death penalty is a good idea or a bad idea. You know, I've been here four years now and I've watched us study virtually everything. We've studied water, we've studied what to do with water, we've studied education, we've studied higher education and K through 12. We've studied virtually everything. We have task forces to study all kinds of things and we don't hear the criticism that we're hearing today, the skepticism about the result. What we may well find from this study is that the costs are exactly the same. I think it's interesting that the folks who oppose the study are the same people that oppose repeal of the death penalty, and it would suggest that they have a pretty good idea what this is going to look like. We just don't want a credible study because then we're going to have to talk about that the next time repeal comes up. We are studying...and my friend, Senator Harms, you know, I like this guy. We're on almost everything at the...we vote very similarly even though we...you might be surprised that that's the case. And to have somebody from the academic world tell us that we can't study this because we can't get precise data. We

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do it all the time. We do it all the time. I will suggest to you that we should allow the study to go forward, and I'm okay with comparing the cost of putting these people in jail for the rest of their lives versus the cost of the death penalty. And let us have a study that gives us the best estimate. If it is done poorly, if it is done with bad information, then we can criticize the study when it's complete. But this one isn't going in the drawer. This isn't like a lot of studies that never get read. We're not going to pay \$250,000 for this study and throw it in a drawer or have them interview six people. But today--today it's not about whether you're for or against the death penalty. It's about whether or not you want to have information so that we can make an intelligent decision. [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR LATHROP: More and more what we're finding in the country is that about one or two states a year are abandoning the death penalty because of the cost. We shouldn't be so wedded to the past that we're unwilling to learn what it costs us so that we can chart a direction for the future. And there is nothing unique about this study. We do them all the time. I think we should have and allow the people of the state of Nebraska to know, is it equal; does it cost...are we saving money putting these people to death; is it cheaper to put them in jail for the rest of their life? And then that can be part of the discussion. If there is to be some condemnation of the manner in which the study is done, let us do it when it's complete. Then we can criticize what...how the study was done, if in fact...it may show such a disparity... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR LATHROP: ...that there's no room for criticism. Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senator Lathrop. Members, we're discussing AM2241. Members wishing to speak include Senators Lautenbaugh, Flood, Giese, Conrad, Council, Campbell, and Harms. Senator Lautenbaugh, you're up and recognized. [LB1105]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I do want to make sure some of the things I said before are perfectly clear. When I said if you're opposed to capital punishment, this study won't change your mind, I wasn't referring to the state at large; I wasn't referring to anywhere beyond this body. And I would challenge any of you, if are opposed to capital punishment, to consider what if it were free? Would you just say, all right, I'm okay with that? And I'm not speculating. I recall from one of the annual debates on capital punishment where that statement was made at the mike on this floor. I am not going to support capital punishment no matter what, is what was said. So I'm taking that person at his or her word, and I don't know how this study would help. And again, my friend, Senator Conrad, if you're hoping for concrete numbers at the end of this \$50,000 process, you're going to be disappointed

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because...and I can't stress enough, but I will, nobody in this business is hourly in this process. The county attorneys aren't hourly, the judges aren't hourly, clerks aren't hourly, the AG's Office I don't believe works hourly. So they're going to guess. They're just going to guess. And if it's important that we have a study because we need to know, despite the fact that we've been discussing studies from elsewhere all morning but we still don't know, can we just adopt the Kansas study with all of its flaws, and move on, because we'll be \$50,000 ahead at that point and we can move on and debate the bill again next year with what I believe will be equally good information regarding cost, as we'll have post-study. And my comments regarding the prior study that Senator Ashford brought up, were true. That is what happened. That money came from the Commission on Public Advocacy last time. I did question how much money they have if we're going to keep going to that well. I found out. So, fine; I know the answer to that. But I oppose this. And I'm being very clear, I'm opposing this and I didn't say it wouldn't change my mind, even. I never made that statement. I said this study is a one way door, if you will. It's designed to educate--I love that term when people use that. We just want to educate you as to the cost. It's not educating people on the other side because, again, the mind is made up. That's what was said during the last debate and I'm just assuming that's still the case. I just don't see a lot of flexibility on this and I don't see where we have money to throw around on things like this. I suggested last week when Senator Nantkes had a task force--Conrad, excuse me. Senator Conrad had a task force bill with a study in it. I wasn't really thrilled about the study because I think we are...well, we're either in a budget crisis or we're not. We're either serious about it or we're not. And when I consider what we're going to get out of this study, I don't think we should spend this money. And if the Commission on Public Advocacy has funds to give up, we should take them and spend them on something that is actually a priority of the state at this point; not this. And so I would urge you to vote against the various amendments and vote against the underlying bill. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Lautenbaugh. Continuing on, those wishing to speak include Senators Flood, Giese, Conrad, Council, Campbell, Harms, and Haar. Senator Flood, you are recognized. [LB1105]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. And Senator Council, thank you for bringing this as a bill. I know earlier in this session it came up as an amendment to repeal, and I think by having the committee process we were able to examine some of the concerns, and obviously the support for having a study like this. My concern about a study...and I've told Senator Council, call my county, get any number you want, find out what it costs on those bank murders. I have no interest in hiding numbers. But what I think we're forgetting here is we're starting from this erroneous position that a murderer is a murderer is a murderer; that all of these cases are the same. You know, what was the act that caused the crime to occur? Was it a bank robbery gone bad? Was it somebody poisoning somebody else? Was it a rape murder? Those facts have different challenges in court. Do you have DNA evidence?

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Do you need to hire a DNA expert? Do you have to seek additional counseling or opinions to process the evidence? Is the FBI involved? Did the evidence go to the Virginia-based crime lab, and do you have expenses related to the chain of custody and all of the...bringing back all of the...the different folks that handled the evidence in the state of Virginia on behalf of the federal government? You know, what is the mental capacity of the defendant? Do you have to hire a psychiatrist to come in and evaluate them independently from the defense counsel's psychiatrist, which in most cases the state pays for both sides? What about developmental disabilities? If you're charging somebody with first degree murder or death penalty-eligible, do you have that issue there, I mean? Or should we have that issue on life...would we also have that issue on life in prison without the possibility of parole? What about a confession? Did you have a confession? What if you didn't have a confession? What if you had circumstantial evidence that you're using to secure a conviction? Do you have an evidence suppression motion filed by the defendant in an individual case? All of these are different factors that weigh differently on each case. Five people dying in a bank? Different deal than, you know...and different types of evidence and different agencies involved than maybe a different, separate first degree murder case. So...and then you have the legal strategy of both sides: the prosecution and the defense. The other thing that concerns me is there's this idea that somehow life in prison costs less to prosecute than a death penalty case. For all the reasons I just listed and hundreds more, we don't know if that's a different cost. I do share Senator Lautenbaugh's concern, if the Commission on Public Advocacy found miraculously \$250,000 for a study that was shoved in a drawer, why aren't they at the table paying for this? They spent all year working on the death penalty last year. Seemed to have plenty of time to stand out in the lobby and work. Admittedly, so did members of the Attorney General's staff. But where's the money? The final thing I'll say is county attorneys make decisions on whether to prosecute somebody with first degree murder on a death-eligible case. They're elected. They are beholden to the constituents of that county. If the people in that county don't want them, they don't reelect them. And they make decisions every day as to how much the county will spend to prosecute somebody. Sure, the caption reads: State of Nebraska versus, you know, the defendant's name. But the county is paying for that, that prosecution, and in most cases the county is paying for the defense. And the public defenders are elected, too, in most cases. So I guess... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SPEAKER FLOOD: ...I don't see how a study is going to resolve some of the complicated issues here. I don't have any problem asking my county to come up with every copy of every claim submitted and use that. If Senator Council wants it, I'll have that delivered within 14 days if it's necessary to compile that information so people can see what was spent in Madison County. I think people have a right to know what a case like that costs. But let me tell you, those victims' families, they didn't have to drive to some federal courthouse in Omaha to watch the person who murdered their loved one

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face trial. They were able to go to the courthouse in Madison, 17...or, you know, 15 miles south of Norfolk and watch the justice system work. And they came from Humphrey and they came from Stanton and they came from Plainview and they came from Norfolk and other communities to watch justice work its way through the system. And in the end, we obviously had four convictions, three of which are on death row. [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SPEAKER FLOOD: Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Flood. Those wishing to speak, Senators Giese, Conrad, Council, Campbell, Harms, and Haar. Senator Giese, you're up and recognized. [LB1105]

SENATOR GIESE: Thank you, Mr. President. Would Senator Council yield to some questions? [LB1105]

SENATOR JANSSEN: Senator Council, will you yield? [LB1105]

SENATOR COUNCIL: Yes, Senator Giese. [LB1105]

SENATOR GIESE: Thank you, Senator Council. I'd like to talk a little bit, if you would, about the costs. There has been estimates of a death penalty case costing anywhere from \$1.5 million on up to as high as I have heard is \$25 million. Do you want to address that or can you address that a little bit more? [LB1105]

SENATOR COUNCIL: Well, yes, Senator Giese. The numbers you refer to are numbers that have been published as a result of studies conducted in various states across the country who have looked at the cost of death penalty cases. As I stated in my opening, the national average is that it's \$1 million to \$3 million, and can be anywhere from 40 percent more, to 70 percent more than the cost of just prosecuting a murder case that does not involve the death penalty. [LB1105]

SENATOR GIESE: And then in relationship to the costs on the counties versus the state, any thoughts on that? How much is shared by a county and how much is shared by a state in a death penalty case? [LB1105]

SENATOR COUNCIL: And interestingly enough, you know, Senator Flood accurately stated that initially the cost of prosecution and defense, in most cases, falls on counties. It's the county attorney that prosecutes. It's the county that would bear the expense of any expert witnesses that the county attorney believed necessary to prosecute that case. The public defender's office would bear the cost of the defense. And while the

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public defenders are paid staff members, it ignores the costs associated with expert witnesses which would have to come out of the county's coffers to cover those expenses. So in the first instance, up to conviction, those costs are borne by counties. And last year, when the lethal injection bill was being debated, I vividly recall County Attorney Joe Smith from Madison lamenting the fact that Madison County had to bear \$3 million in costs in the prosecution of those Norfolk bank robbery cases. [LB1105]

SENATOR GIESE: Well, thank you, Senator Council. I appreciate that. And colleagues, I just want to point out that things do change. We used to have a thing called jail reimbursement for our counties. We don't have that anymore. And it's been said over and over again on this floor that it's not about the money. The death penalty, it's not about the money. But I beg to differ. We've heard time and time again, colleagues, Senator Heidemann, saying that we are going to look under rocks for \$10 or \$10,000 for important things like education, transportation. And I would beg to differ with Senator Coash. He suggested that the debate on the death penalty is over. I think Senator Council's bill, which I do support, proves that the debate on the death penalty is not over. Senator Lautenbaugh was correct in saying that we don't know the outcome of the study. But we do have something in Nebraska called term limits. And although we may not address the issue again this year, the next Legislature may look quite different than this one does... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR GIESE: ...and they might have a different opinion on Senator Council's study. So I do support LB1105 and would yield any further time to Senator Council. [LB1105]

SENATOR JANSSEN: Senator Council, you're yielded 48 seconds. [LB1105]

SENATOR COUNCIL: Yes. Well, thank you, Senator Giese. And I think I'll just use the 48 seconds to try to finish up on a very genuine and legitimate question raised by my colleague, Senator Harms, and would provide him with copies of this information after this round of debate. But there is a recognition among the research community that's involved in these types of comparative analyses that the data is limited and there is a specific protocol that is utilized and is...I'll refer you to the report, criminal justice, "Limited Data Available on Costs of Death Sentences," that was issued by the Government Accountability Office and that... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR COUNCIL: Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senators Giese and Council. Those wishing to speak

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include Senators Conrad, Council, Campell, Harms, Haar, and Price. Senator Conrad, you are recognized. [LB1105]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. Just in reaction to some of the points of you and questions and concerns that have been presented in regards to LB1105 thus far, and I think it's good to be responsive to legitimate questions that have been brought forward in regards to the composition and conduct of the proposed study before us. But I say to you, colleagues, if you are concerned about making this a comprehensive evaluation tool for public policy purposes work with us to help design the parameters of the study and to put forward a better piece of legislation that addresses your concerns about the type of evaluation and the corresponding logistics that will be conducted, rather than just voting against the bill. Otherwise, those may not be sincere and legitimate questions and concerns, but rather dilatory tactics in terms of your general opinion on capital punishment or specifically on LB1105. So if there are legitimate concerns about the type of study being proposed, put it in an amendment to make the study better. Bring forward concrete ideas about how that could be accomplished. It's also been said that this study may not make any difference to those of us here in the body or beyond who have strong opinions on either side of capital punishment, the capital punishment issue. And as Senator Giese noted, that it's more important now than ever with the term limits dynamic to assist future legislators in making these decisions. But we also, I think, need to proceed very cautiously and carefully before we make those kinds of blanket statements and before we substitute our judgment for that of the Nebraska taxpayer, in whole, in part, in an individual or collective sense. Finally, I want to talk a little bit more about actual costs. And Senator Council started to detail some of this, and I wanted to visit about it as well. We made a significant amount of requests for data and information related to potential costs with lethal injection last year that were not provided. Since that time, through a Freedom of Information Act request, we have been able to start getting some detailed information back in about the actual costs that have been paid for by the state of Nebraska in regards to that legislation already. If you remember, friends, the lethal injection bill had a fiscal note that demonstrated zero cost. It was zero. Well, we know already from this Freedom of Information request that, thus far, a variety of state agencies has spent \$35,088.28 in terms of just developing the protocol related to lethal injection. Just the protocol. Costs from the State Fire Marshal, reviewing plans, costs from various construction entities in terms of retrofitting the death chambers, trips, plane trips, hotel rooms, dinners, all on the taxpayer dollar, traveling around the country. I'm not sure what the purpose is. I guess to explore how to put the protocols into place, which, you know, the Speaker and others told us during the course of debate on lethal injection... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR CONRAD: ...from him to the Attorney General's Office, that there was no

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need to worry about those protocols; that they would be fully taken care of and spelled out in the lethal injection bill. That's not true. Expenses for emergency medical technicians related to education, training. We've got a \$6,000 bill from the Nebraska Department of Aeronautics related to flights. We have bills related to private flights otherwise. Bills from Menards in terms of buying different recording equipment, wall mounts, paint, etcetera, etcetera, etcetera. If people are interested in seeing more of this information, I'm sure we'll have a time to get into it, in a more detailed manner. I know my time is running short. But be clear, when legitimate questions regarding costs were brought forward, we said, we were told there were none. And we said that can't be true. It defies common sense. And they said it is true; we can take care of it with existing funds. [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR CONRAD: Well, we know that's not true and that's why this study is needed. [LB1105]

SENATOR JANSSEN: Thank you, Senator Conrad. (Visitors introduced.) Those wishing to speak on AM2241 includes Senators Council, Campbell, Harms, Haar, and Price. Senator Council, you are up and recognized. [LB1105]

SENATOR COUNCIL: Yes, thank you, Mr. President. I want to begin by just following up on some points that Senator Conrad just made, and it goes to, again, the issue of the funding of this study and the fact that I, as the person who introduced this bill, looked for a source of funding, and didn't ask permission to seek those funds. And the suggestion made that if the Commission on Public Advocacy can afford to absorb the \$50,000 cost associated with this study, perhaps they can absorb other costs to take care of other matters of state government. Well, Senator Conrad just enlightened the body to the fact that despite the representation otherwise during last year's debate, the costs of the lethal injection protocol were significant. If \$50,000 is viewed as significant, \$35,000 is viewed...should be equally viewed as significant, particularly in the context of being advised that it wouldn't cost anything. So I hope that those who are of the opinion that if the Commission on Public Advocacy could absorb an additional \$50,000 reduction in their budget, then the Department of Corrections can absorb an additional \$35,000 in their budget. So if we want to take the view that there's money available and it can be used someplace else, well, the Department of Corrections should not be off of that radar. Secondly, I'm glad that Speaker Flood acknowledged the fact, because he was suggesting in his testimony that the proponents of repeal of the death penalty who have people in the lobby should probably use their resources for this study. And I am glad he was quick to acknowledge then we ought to reduce the AG's budget by the amount of time that his staff members have been out there lobbying on the other side of this debate. Thirdly, I'm kind of surprised that I believe that the Speaker left the impression that a murder case involving a death penalty sentence being sought and a murder case

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involving a sentence of life in prison, and I don't want to mischaracterize his statement. He did acknowledge that, and I agree, that different cases have different facts and may require different strategies. But I believe that the Speaker also left the impression that the actual costs of prosecuting a death penalty murder case is the same as a life in prison murder case if you assume all things being equal, that that being you don't have to have experts, you don't have to have a lot of pretrial motions. Well, that is absolutely not true. Death penalty cases require, by statute, by the law of this state, that a trial be conducted in two phases: one, the guilt or innocent determination phase; the other is the penalty phase. And that's where the aggravating and mitigating factors are submitted to the jury for a determination as to whether the death penalty should be imposed. You do not have that phase if death... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: ...is not the penalty being sought. The Speaker also talked about the additional costs associated with psychological evaluations if there is a question as to whether or not the defendant has certain mental capacity. Ladies and gentlemen, that only applies in a death penalty case in terms of the imposition of the penalty. It may have some bearing on whether or not there's guilt or innocence, but that is mandatory in a case involving the death penalty because the Supreme Court of the United States and this state, as well, has ruled that you cannot put a person who is mentally retarded to death. So that's something you have to do in a death penalty case that you don't have to do in a nondeath penalty case. And those facts need to be made aware. And finally, what I recall one of my colleagues saying last year... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR COUNCIL: Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Council. Members, we're discussing AM2241. Those wishing to speak are Senators Campbell, Harms, Haar, Price, Conrad, and Council. Senator Campbell, you are recognized. [LB1105]

SENATOR CAMPBELL: Thank you, Mr. President, and good morning, colleagues. You know, part of the thing as you grow older is you realize you've been around a long time, and so I want to give just a little history on the Commission on Public Advocacy. Attorney General Bob Spire convened a task force, a group of us from across the state, to look at the whole issue of public defense. And while I cannot address Senator Lautenbaugh's issues of defining how they spend their money now, I want you to know why this came into being. The Attorney General's Office did that and I think still does offer assistance to county prosecutors on capital cases, and rightfully so. That's totally within the scope and they should be doing that. But what Attorney General Spire was concerned about was that we had some counties across the state that were not filing in

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capital cases because they didn't feel that they could afford them; they didn't feel that they had the kind of expertise within their county that they could appoint a public defender, because a lot of counties don't have public defenders on a regular basis. And so the task force brought forward the idea of the Commission on Public Advocacy which would offer help to counties across the state in capital cases in the defense. And what's so good about this is that they will offer help to Douglas County, Lancaster, Arthur, Stanton County, whatever it may be. And so I didn't want the body to think that this commission was not a good thing. It is. It ensures equal defense and equal prosecution across the state, which we should want for any citizen. I supported, last year, the death penalty measure and I will continue to support that measure as we looked at it last year. But even after that debate, I continued to get questions from supporters and opponents of the death penalty that would say, what exactly does it cost? And I had to say to them, well, I can kind of give you some ballpark figures about what it might have cost in Lancaster County. I understand the concern that's being raised today about the framework of the study and how that will be put together, and I'm hopeful the conversations between Senator Council and Senator Harms will help us on that. But frankly, colleagues, I am bothered by the fact that citizens come forward and say, what does something cost? How many of us will run and go to any lengths to find out for a constituent what we're spending in state government? We will do anything. We will go to the...any length to get that information. I think the citizens that are asking and saying, what does this cost, should be treated in the same vein and with the same idea that if we can do a study that will help get that answer, that's valid. And I also would hasten to add that in such a study, even though I am on the opposite side of Senator Council last year, I do understand the necessity of looking at the issue because we may find other ways as we go through this study that all of us would agree... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR CAMPBELL: ...we could save money. I would hope that you would keep in mind that just because some citizens are asking for this and not a vast majority, that doesn't make their questioning, a question to us, any less important. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Campbell. (Visitors introduced.) Those wishing to speak to AM2241 includes Senator Harms, Haar, Price, Conrad, and Council Senator Harms, you're up and recognized and this is your third and final time. [LB1105]

SENATOR HARMS: Oh, thank you, Mr. President and colleagues. Senator Campbell...or excuse me, Senator Council, would you...let's finish our conversation. [LB1105]

SENATOR JANSSEN: Senator Council, will you yield? [LB1105]

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SENATOR COUNCIL: Yes. [LB1105]

SENATOR HARMS: Thank you, Mr. President. I'm just in a little hurry today. Senator Council, I want you to understand, first of all, that my conversations with you have nothing to do about you. [LB1105]

SENATOR COUNCIL: Oh, absolutely. [LB1105]

SENATOR HARMS: Okay. And secondly, I know tomorrow if we were dealing with issues like racial profiling, Afro-American children living in poverty, and the number of teenagers being killed, you and I would be on the same side... [LB1105]

SENATOR COUNCIL: Absolutely. [LB1105]

SENATOR HARMS: ...without any questions, because we've already had those conversations. What I would like to talk about now is kind of finish up where you and I were unable to finish, because I think it's important. Could you...can you remember where we were in that conversation? And then let's talk about that. And then if we have enough time, what I would like to talk to you a little bit about is the protocol, and then the framing of this study because that's very important. I mean, that will make a difference about whether our colleagues will support this or not, is the actual framing and what's going to be in there. So let's just start where we ended, if you can recall that, and then we'll walk ourselves through the rest of this, okay? [LB1105]

SENATOR COUNCIL: Yes. And thank you, Senator Harms. And before I do, just let me preface it. I have no doubt in my mind that your questioning of this measure is motivated by a desire to address this from a purely objective perspective, and I respect that and I trust that I had conveyed that initially when I spoke, that your questions are legitimate questions that need to be asked and I'm prepared to respond to them. But what I was referring to and indicating that would make available to any senator who's interested, and is what is going to be provided to the College of Public Affairs as a little bit of a guide, is what the U.S. Government Accountability Office has constructed as a chart that could be used in conducting these types of studies. And as I indicated, that chart is based on the National Center for State Courts Research Model for Determining Death Penalty Costs that resulted in one of the most comprehensive cost studies performed to date, and that was a 1993 Duke University study. The study is entitled "The Costs of Processing Murder Cases in North Carolina," and you may be familiar with that. I think I heard you...I recall hearing you mention North Carolina. Now...and one of the things about these guidelines, Senator Harms, is it recognizes that the cost of adjudicating a murder case is more than what the naked eye can see, and that there are...these items often are not split out in separate line item categories and that they are not always enumerated by dollar figures. So the study itself takes into account all of those issues in establishing the guidelines for conducting the type of study that hopefully will be the

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result of LB1105. [LB1105]

SENATOR HARMS: Senator, are these national guidelines that we would be following? [LB1105]

SENATOR COUNCIL: Yes. [LB1105]

SENATOR HARMS: Okay. Go ahead. Finish. I'm sorry. [LB1105]

SENATOR COUNCIL: Yes, and so that's what...and what the focus is, the cost considered should be only those borne by the state and county government agencies, including any unit costs of principal resources that can be identified. And I must state that it is not uncommon in accounting for the use of funds, to use full-time equivalencies for purposes of accounting, trial court costs, appellate and postconviction costs, and prison costs. [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: And just...and with regard to the prison costs issue, Senator Gloor raised genuine, legitimate questions too. All of those costs would be taken into account. What would be the average...what would be the average cost of housing an inmate for the remainder of their natural life? And that would take into account, you know, some nationally recognized standard for determining what the medical costs would be. [LB1105]

SENATOR HARMS: Thank you very much, Senator Council. How much time do I have, Mr. President? [LB1105]

SENATOR JANSSEN: Twenty seconds. [LB1105]

SENATOR HARMS: Well, I'll find another way to get back, Senator Council. There's a couple more things I want to talk to you about, and then I promise I'll leave you alone for the rest of the day. Okay? [LB1105]

SENATOR COUNCIL: Not a problem. [LB1105]

SENATOR HARMS: Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senators Harms and Council. Those wishing to speak include Senator Haar, Price, Conrad, and Council. Senator Haar, you're up and recognized. [LB1105]

SENATOR HAAR: Mr. President and members of the body, I rise in support of LB1105

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and the concept here. And it was mentioned earlier that it may not change any minds, any of our minds in this body when this study is done. However, one of the lessons...I really try to listen carefully as things go on here, and my friend Tom White said that there are three things the Legislature can do. We can punish people, we can fund things, and we can educate. And we're talking not just about the people in this room, but we're talking about our constituents and people in the state of Nebraska. So what we do in this Chamber in the way of education not only reaches us, it reaches out to all the people of Nebraska. A lot of people do follow this, the newspapers follow it. So I think in our...in that role of education, I think this is an important education for the people of Nebraska because it is one of the...one of the issues that comes up whenever the death penalty is discussed: What is the cost of the death penalty? So I agree with Senator Campbell, that's a question that comes up. It came up on the campaign trail: What is the cost of the death penalty? So it's not only to educate us in this Chamber; it's to educate our constituents and the people of Nebraska. I also find the point that Senator Gloor talked about, very interesting, and I'd like to hear about that. People who are on life without parole and they grow older and they require medical treatment, where does that figure into it? Because, frankly, my opposition to the death penalty is included, the cost, and I'd like to know...I'd like to have an answer to that question: What does it really cost to keep somebody for life? And having said that, then I'd like to give the rest of my time to Senator Harms to continue his discussion because I found that informative. Thank you. [LB1105]

SENATOR JANSSEN: Senator Harms, you're yielded 2 minutes 52 seconds. [LB1105]

SENATOR HARMS: Thank you, Senator Haar, for your kindness. Senator Council, we're back together again here for a few minutes. [LB1105]

SENATOR JANSSEN: Senator Council, will you yield? [LB1105]

SENATOR COUNCIL: Yes. [LB1105]

SENATOR HARMS: You, earlier, talked a little bit about protocol. Could you help me better understand when you were talking about the protocol of these studies, what were you referring to, for us? [LB1105]

SENATOR COUNCIL: The study parameters and how they determined how to quantify costs where there are situations where you don't have separate line item budgets. There are guidelines for quantifying those numbers in these studies. [LB1105]

SENATOR HARMS: So those would be national standards that we would follow. [LB1105]

SENATOR COUNCIL: Yes. [LB1105]

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SENATOR HARMS: Okay, Senator, the other question I have for you today is if we're actually going to do this study and our colleagues would feel comfortable with this, would you be willing to expand this into looking at life imprisonment too, because I think those have to...that has to run parallel. Because when we get to the end and want to have a discussion maybe next year on this floor from the results you found in your study, that other question is going to come up on the basis that, well, so it costs us for the death penalty, what's the comparison long term in regard to life imprisonment? Because I think those two have to be compared. Because when I go home and what I've heard some of my colleagues say here today, the question comes up is, well, what does it cost? Well, I don't now what it costs. What does it cost for the death penalty, John? Or what does it cost for...how do you compare that for life imprisonment? I think these two things have to run parallel. [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR HARMS: Thank you, Mr. President. I think they have to run parallel if we're going to actually have an intelligent debate in the future about this issue. Because this is what we're talking about. We're going to be building a platform here, colleagues, for a public policy discussion in the future. Is that right, Senator Council? [LB1105]

SENATOR COUNCIL: Yes, absolutely, Senator Harms. And if I need to clarify further the language of Section 2 of the bill about the absolute intent is a comparative, that we will get the costs of a death sentence in a homicide case and the costs of a life in prison for the remainder of their natural life in a homicide case. [LB1105]

SENATOR HARMS: Thank you. Because I agree with you there. And so, colleagues, what I'm really telling you here is that we need to pay attention to this and you need to make sure that this is an accurate study which I think Senator Council will do everything she can to make it accurate, but we have to make sure that we understand we're building the platform for a much greater discussion which will come next year about the death penalty. [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR HARMS: Oh, thank you, Mr. President. Good timing. [LB1105]

SENATOR JANSSEN: Thank you, Senators Haar, Harms, and Council. (Visitors introduced.) Continuing on, those wishing to speak include Senators Price, Conrad, Council, and Howard. Senator Price, you are recognized. [LB1105]

SENATOR PRICE: Thank you, Mr. President and members of the body. Good morning...afternoon. I've been listening to the discussion and here's some questions

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that I would bring out for you on a study. And we're talking about a specific protocol and elements of a protocol. And the question I come to you with is I believe I heard Senator Lautenbaugh perhaps say earlier, is will we actually get an exact number? And here's why I ask are we going to get an exact number. In working in the weather career field for many, many years, we depend on numerical models to predict the weather. We deal with numerical modeling to predict our state budget. You have to do this. These numerical models all have some presumptions, and then they have factors that are added in, and it gets quite complicated, quite quickly. And the old joke in the weather business was you could get three forecasters in a room and come up with four or five forecasts. And many people will make jokes about it. They'll say weather is the only career field you can be wrong half the time and still be counted good. So I'd ask you, if we're talking about a protocol that we haven't identified yet and we're expecting that we will get exacting results from it, I think we're a little too hopeful there. Just yesterday and throughout the day, and even perhaps later today, we're going to talk about property valuations: how many people can be using the very same statutes we have today and come up with different valuations for what many people would argue are the same properties. But we can't get that to be exact. You will not get the same number, applying the same principles; you just don't get the same numbers. Ladies and gentlemen, even at the national level, when we talk about national studies now, we'll bring in national numbers and we'll bring in these findings and we'll use them, at the national level one of the highest offices, the CBO, could not even score some of the most recent legislation and maintain a semblance of abject profession...well, I would say exactness. There we go. There's a decent word there for that. They just can't always agree, and now we're going to go and spend some money to answer some questions people have on the exact cost. Now I'll probably open myself up for a couple of e-mails and phone calls with the following comment, but that's okay. During my campaign I knocked on a lot of doors and I talked to a lot of people, and not once--a number somewhat less than one, perhaps greater than zero--was I asked what's the cost of the death penalty. They asked me are you for it or are you against it, but they didn't ask me how much it costs. I didn't have to wonder about going and finding a number. So perhaps the 3rd Legislative District is a little different. But again, I'd like to leave you with this again. Models are predicated on assumptions, and if you want to know how accurate models can be, look at your local weather forecast and remember that forecast over the past ten years and the little sayings you have about weather forecasting. Thank you, Mr. President.
[LB1105]

SENATOR JANSSEN: Thank you, Senator Price. Those wishing to speak on AM2241 include Senators Conrad, Council, and Howard. Senator Conrad, you're up and recognized. [LB1105]

SENATOR CONRAD: Thank you, Mr. President. Thank you, colleagues. I think we've had a good debate and dialogue thus far, and I really appreciated the commentary and questions and dialogue between Senator Harms and Senator Council in regards to

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these issues, both with very different perspectives on the underlying concern, being capital punishment, but definitely a credit to the vision, abilities, and thoughtfulness that Senator Harms brings with him into this body related to conducting careful evaluation of the variety of different public policy proposals before us, and ensuring that we can make informed decisions as we move forward. I'd offer to Senator Council or Senator Harms more time if they would like to continue that dialogue or further discuss any questions, so with that I'd be happy to yield to Senator Council. [LB1105]

SENATOR JANSSEN: Senator Council, you're yield 3 minutes 55 seconds. [LB1105]

SENATOR COUNCIL: Yes, thank you very much, Senator Conrad. And I can't help but respond to my friend and colleague, Senator Price's comments. If you take...if we take Senator Price's position to its logical extent, we can't rely on the Forecasting Board to establish our biennial budget because we don't get exact numbers; we don't get accurate numbers; we get numbers based upon certain presumptions. Certainly, if anyone has expectations that their going to get exact numbers here, you're going to get the same kinds of results that other states have received as a result of their studies. You're going to get the range of costs, the range of differences in costs, and hopefully be in a position to make a reasoned decision. Senator Price also alluded to the fact that while he was on the campaign trail that he didn't recall--and I hope I heard that correctly--anyone asking about the cost of the death penalty. Well, in the time that I have been granted graciously by Senator Conrad I just want to read excerpts from the testimony of Miriam Thimm Kelle who appeared and testified at the Judiciary Committee hearing on LB1105. And for those of you who don't know Ms. Kelly, Ms. Kelly is the sister of one of the victims of the homicide committed by Michael Ryan, one of the individuals sitting on death row, and this is taken directly from her testimony. "I know how the state is in need of accounting for every penny. I try to be very conscious of time, electricity, and inventory as I do my work..." because she is a state employee. She's a nurse at the Beatrice State Developmental Center. "I want the Legislature to do the same by being aware of costs in every aspect of the state's work. I understand some of us do not agree on the death penalty, but today it is a cost issue. We cannot close a blind eye to any of the state's work. I wonder why our state does not have a 4 micron MRI scanner? Will we be treating people with schizophrenia properly? Since my brother's terrible death, how have we become more proactive with mental health? This year I hope to find the true cost of the death penalty..." [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: "...so we can make rational decisions in these tough economic times. Please tell me we are moving toward an answer and not simply opposing each other. Thank you, Miriam Thimm Kelle." So here is the family member of a homicide victim in the state of Nebraska. The perpetrator of that crime currently sits on death row. And this member of our state, this employee of one of our state departments is

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questioning the costs because in her daily work she sees unmet needs with regard to the Beatrice Developmental Center. She wants an answer to the question of how much does it cost. And last year... [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SENATOR COUNCIL: Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senators Conrad and Council. Those wishing to speak on AM2241, Senator Howard, you are up and recognized. [LB1105]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I haven't spoken on this issue this morning, but I thought I would just share a memory with you that I have. Back in 2006, the second year that I was down here, on a floor amendment I took a half-million dollars out of the budget and I said we don't need another study of Health and Human Services. We had had 12 studies in eight years, and that's a lot of studies. As I said, I was successful in that, and I think that was the right thing not to continually pursue that and put money into a study that, for the most part, sat on the shelf. I'm not a big fan of studies. In all the years I worked for Health and Human Services as a case manager, I didn't see any results come from those. I'm going to give the remainder of my time to Senator Harms. [LB1105]

SENATOR JANSSEN: Senator Harms, you're yielded 4 minutes 12 seconds. [LB1105]

SENATOR HARMS: Thank you, Senator Howard. Thank you, Mr. President and colleagues. I'm still struggling with this issue and, to be honest with you, I will vote for the amendments but most likely would not vote for this bill. And the reason for that is, is that I think the issues of the actual data and for us to be able to verify that data is going to be very difficult because we...I think we all agree that the majority of the money probably starts at the county level, and then moves on up into the appeals and into the prison segment. I just don't believe that government at either one of those levels have the accurate data. I mean, I don't think they do at all. I don't think that when you look to do this right, you need to understand the agencies. You need to understand how many individuals are involved. We need to bill those folks out. To be able to verify that data is going to be very difficult for us. We haven't had a...we've only had three executions since 1973. That's almost 37 years ago. I don't believe that you're going to be to get to the bottom of this cost. If we would choose to go this direction, I would be in hopes that this study would be expanded to do lifelong or the prisoners who are there life, their entire life, so that we can get a better cost analysis to look at that. And I can tell you right now, that's not going to be cheap, colleagues. And I want to come back and emphasize one more time and then I'm through: This is the beginning of another battle. This is the beginning of building the platform to take on the issue of the death penalty. I have always been a supporter of research and will continue to be a supporter of

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research. But I don't know if you can put a figure on the fact that in a heinous crime like we've had in Scottsbluff, Nebraska, and you've heard those conversations more than once on this floor, I don't think there's any other results than the death penalty, regardless of what the cost might be. And those are the things you have to wrestle with in your own heart and your own mind. But I'm here to tell you that this is just the beginning of a much longer battle and a much harder battle in the future. I commend Senator Council for what she's doing. If I felt that we could have accurate data that we could hang on and understand what the true costs are, I would be her advocate on this issue. But I just don't know whether we can get there or not. So thank you, Mr. President and colleagues. [LB1105]

SENATOR JANSSEN: Thank you, Senator Howard and Senator Harms. There are no members wishing to speak on that. Senator Council, you are recognized to close on your amendment to the committee amendments. [LB1105]

SENATOR COUNCIL: Yes, thank you, Mr. President. And for those who don't recall, the amendment to the committee amendments just simply provides for the transfer of the funds from the Commission on Public Advocacy to the Community Corrections Council to cover the costs of the study. As I have previously stated, I respect and appreciate the concern expressed by those, like Senator Harms, about the accuracy of the data and the study. But I think it's important for us to know even that, Senator Harms, that if we expect other areas of government to be accountable, we expect them to be able to identify and provide us with accurate data as to what it costs them to carry out the functions that we impose upon them and place responsibility in their hands for. So in that regard, I believe that the need for this study is established. I regret the fact that there have been studies conducted in the past that have not provided the kinds of results that were expected or the action that was expected, but I would hope that that would not be the determining factor of whether or not there is a need for and value to be gained from this study. Because if that is not the case, then I would submit to you that there should be no studies commissioned by this body. There should be no interim studies commissioned by this body if there is a concern as to the actions that will result from those studies. I believe that the public needs to know the costs associated with this public policy decision. I vividly recall one of my colleagues last year on the death penalty debate saying that they were firmly in support of the death penalty and that that was because public opinion in the state of Nebraska supported the death penalty. And my question to begin with when I opened on LB1105 is, how do we know how the public opinion has been shaped? Would that public opinion be different if they were aware of the costs of the death penalty as compared to the cost of imposing penalties that resulted in an equally effective and probably more efficient alternative? I have spent a lot of time since we adjourned sine die last session, and as a part of that, have been in discussion with colleagues from other state legislatures, those that retain a death penalty as well as those who do not. In fact, one of the cochairs...well, the two cochairs of the NCSL's Sentencing and Recidivism Task Force, one is from the state of Kansas,

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one is from the state of Texas. Kansas has been considering the costs of maintaining the death penalty in their budgetary considerations. Texas has not, although they have the data and I can provide you with the data. And so Texas has made a conscious decision... [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SENATOR COUNCIL: ...based on facts, based on the results of a study. We make decisions not based upon those facts but based upon our belief as to what the public wants. We've even gone so far as to superimpose our belief that the families of homicide victims want the death penalty; they want closure. Well, Ms. Kelle's testimony to the Judiciary Committee runs counter to that. She's a member of the family of a victim of a homicide and she has requested this body to consider the costs and to let the public know what the costs are so that we can make a reasoned decision. I urge you to advance AM2241 which is the amendment to the committee's amendment. Thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Council. You have heard the closing on the amendment. The question is, shall the amendment to the committee amendment to LB1105 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Council, for what purpose do you rise? [LB1105]

SENATOR COUNCIL: I request a call of the house. [LB1105]

SENATOR JANSSEN: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB1105]

CLERK: 37 ayes, 0 nay, Mr. President, to place the house under call. [LB1105]

SENATOR JANSSEN: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator McGill, the house is under call. Senator McGill, please report to the Chamber. Senator Council, all members are present or accounted for. How would you like to proceed? [LB1105]

SENATOR COUNCIL: A roll call vote in regular order, please. [LB1105]

SENATOR JANSSEN: We'll proceed, roll call vote, regular order. Mr. Clerk, call the roll. [LB1105]

CLERK: (Roll call vote taken, Legislative Journal pages 1042-1043.) 30 ayes, 13 nays

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on the amendment to the committee amendments, Mr. President. [LB1105]

SENATOR JANSSEN: The amendment passes. Please record. Continuing to discussion on the committee amendments AM2147. There are no lights. Senator Ashford, you are recognized to close on the committee amendments. [LB1105]

SENATOR ASHFORD: I would just urge the adoption of the committee amendments and the advancement of the bill. Thank you. [LB1105]

SENATOR JANSSEN: You have heard the closing on the committee amendments. The question is, shall the committee amendments to LB1105 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Council, for what purpose do you rise? [LB1105]

SENATOR COUNCIL: I was rising for a roll call vote, Mr. President. Regular order. [LB1105]

SENATOR JANSSEN: There's been a request for a roll call vote in regular order. Mr. Clerk. [LB1105]

CLERK: (Roll call vote taken, Legislative Journal pages 1043-1044.) 28 ayes, 17 nays on the committee amendments, Mr. President. [LB1105]

SENATOR JANSSEN: The amendment is adopted. I raise the call. Returning to discussion on LB1105, those wishing to speak: Senator Flood, you are recognized. [LB1105]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members, if I may I'd like to ask Senator Council a question. [LB1105]

SENATOR JANSSEN: Senator Council, will you yield? [LB1105]

SENATOR COUNCIL: Certainly. [LB1105]

SPEAKER FLOOD: Senator Council, I'd like to ask you about AM2241, which I believe was just adopted to the committee amendments that were just also adopted. And I look in the language, I believe it's on, forgive me, page 3 where it says. "The State Treasurer shall transfer up to fifty thousand dollars from the Commission on Public Advocacy Operations Cash Fund to the Community Corrections Uniform Data Analysis Cash Fund in FY 2010-11. The executive director of the Community Corrections Council shall certify the exact amount of such transfer based upon the actual costs of the study." Can you just share again for the body exactly what that paragraph is designed to do and how did Community Corrections get into this? [LB1105]

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SENATOR COUNCIL: Okay. What it's designed to do is that the cost of the study was an estimate because we had not provided the specific parameters and protocol to the College of Public Affairs. And based upon the guidelines that were provided to them, they indicated that the study would be in a range that would not exceed \$50,000. So if the study ends up costing less than \$50,000, all that's being authorized here is the expenditure of the exact amount of the cost study. [LB1105]

SPEAKER FLOOD: And then who puts out the RFP for the study? [LB1105]

SENATOR COUNCIL: The Community Corrections Council. [LB1105]

SPEAKER FLOOD: Okay. And how did Community Corrections Council get identified as the agency to do this? [LB1105]

SENATOR COUNCIL: They were identified as the agency to do it because of the relationship they have with overseeing and administering a previous study conducted by the College of Public Affairs on sentencing and recidivism. [LB1105]

SPEAKER FLOOD: And what did that study concern? [LB1105]

SENATOR COUNCIL: Sentencing and recidivism. [LB1105]

SPEAKER FLOOD: Okay. I...you know, I guess I have a question...and you are a member of the Community Corrections Council, is that accurate? [LB1105]

SENATOR COUNCIL: Yes, sir. I'm the nonvoting member representing the Legislature. [LB1105]

SPEAKER FLOOD: Okay. I guess I just have a question here. We're asking the Community Corrections Council to get involved in issues related to the death penalty. I just...you know, I'm not saying that's necessarily a bad thing, but we all need to know what's going on here, folks, okay? We're sending this to the Community Corrections Council and they're going to set the...send it out for the study. And I guess I'd rather, to be honest with you, I'd rather have them in charge of it than the Commission on Public Advocacy if that says anything. Because I do think that the Community Corrections Council has a range of people. But this gives me a chance to talk about something that's not necessarily connected to this specific deal here. We've created this Community Corrections Council which has all three branches of government in it. Now, Senator Council is a nonvoting member. We've got judges and we've got county attorneys and we've got therapists and, you know, Senator Brashear created this thing to solve the problem. I do think we have to remember there's separation of government...separation of branches of government in our constitution. We're handing

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this study to a group of people that represent all the different branches of government. You're asking judges now...and I believe the judges are voting members of the Community Corrections Council as I recall. And I have an issue. I think what...Community Corrections is good and we need to do more in that area, and for that reason I haven't really gone at the core of the structure there, but I think there's a separation of powers issue that has to be paid attention to. We see these issues out there that we want to solve and we put a bunch of branches under one commission, and suddenly we're solving a problem. We're all at the table. You could be at the table without voting on administering what I believe is an executive branch function. And I just want you all to know, this is going to the Community Corrections Council. [LB1105]

SENATOR JANSSEN: One minute. [LB1105]

SPEAKER FLOOD: It looks like it's going to go forward. I remain opposed but I thought that needed to be pointed out and I thank Senator Council for answering those questions. And I do support the goal of community corrections, and that is to keep people in the community that are nonviolent offenders so that they earn a living, pay their child support, raise their family. And I think Senator Council and I share that mission and I respect the fact that she cares enough to give her time to be on there. She's a nonvoting member. But, folks, we've got people from the judicial branch on there that have, in my opinion, no business playing executive branch officers. They chose to be in the judicial branch. If they want to make policy in this state, invite them to resign and run for the Legislature. If they want to administer programs, invite them to resign and join the executive branch in this state. But I do have an issue with the way that thing is made up. [LB1105]

SENATOR JANSSEN: Time. [LB1105]

SPEAKER FLOOD: Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senator Flood. Those wishing to speak includes Senators Council, Carlson, and Lathrop. Senator Council, you are up and recognized. [LB1105]

SENATOR COUNCIL: Yes. And Mr. President, I'm just going to be brief. I hear what Senator Flood is expressing as a concern. But again, I want to make it clear because the impression is being left is that the Community Corrections Council sought to conduct this study. That is not what occurred. In searching, first, for funding, I looked to the Commission on Public Advocacy. Second, in terms of administering, overseeing the study, I looked to entities that had a relationship with the College of Public Affairs who had overseen the expenditures of state funds for a study. The protocol that's going to be developed, we've...I've discussed in my interchange with Senator Harms. That's not the work of the Community Corrections Council. And, quite frankly, when the Community

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Corrections Council was identified by this senator because of that relationship, they know the players at the College of Public Affairs. They know how to account for the expenditure of funds. But is, by no means the Community Corrections Council driving this study. And I think it's unfair to suggest otherwise because that's not the intent. We often look for places to house certain activities. That's what occurred with regard to LB1105. And, in fact, Senator Flood, there are some members of the Community Corrections Council who did express concern that they would be viewed as being the promoters of this study and were concerned about that. I said their purpose here is to administer, oversight. Read the language of the bill. I just urge all to consider what the objective here is, and that's to provide members of the public with accurate information. If you want to attack the study, when the study is conducted...and I would invite you to participate in discussions with the College of Public Affairs if you have concern. Senator Flood, if you think the oversight should be housed somewhere else, I'm willing to sit down and discuss that with you between now and Select File. If you think it ought to be overseen by some agency other than the Community Corrections Council, I'm open to considering that. Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senator Council. Members wishing to speak, Senator Carlson, followed by Wightman. Senator Carlson, you are up and recognized. [LB1105]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I voted green twice and now we're ready to vote on LB1105, and Senator Flood brings up a question that I should have probably recognized before, and I'm not leveling anything at Senator Council, but I do have a question I'd like to address to Senator Ashford. [LB1105]

SENATOR JANSSEN: Senator Ashford, will you yield? [LB1105]

SENATOR ASHFORD: Yes. [LB1105]

SENATOR CARLSON: If Community Corrections receives this cash and conducts...they're in charge of conducting the study, is there an outcome possibly that they would rather see with this study? [LB1105]

SENATOR ASHFORD: It's hard to tell, Senator. And I think the issue that has been raised is a good one and I've just spoken to the Speaker, and you really shouldn't necessarily have caught it. I should have caught it. But, yeah, I mean I think we need to change it, and what I suggested to Speaker Flood is that what we might do is have the agency in charge be the Judiciary Committee of the Legislature, which Speaker Flood agreed with. So that would be an amendment we could do on Select File that would get it within our jurisdiction of the Legislature, so. [LB1105]

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SENATOR CARLSON: Okay. Thank you, Senator Ashford. And as I've indicated, I voted yes twice, but I think this is a question and I'll just step aside and see where we go from here. Thank you. [LB1105]

SENATOR JANSSEN: Thank you, Senators Carlson and Ashford. Those wishing to speak on LB1105 include Senator Wightman, Lautenbaugh, and Council. Senator Wightman, you're up and recognized. [LB1105]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. First of all, for the record, I want to state that I still believe that the death penalty is an appropriate penalty. I voted in favor of the death penalty throughout my time here in the Legislature, which has been for the last three and a fraction years. At the same time, I think as we move forward we do have to look at priorities. I think a lot of times our constituents...and I, like Senator Harms and Senator Gloor and others that have spoken here, worry about exactly how accurate this is going to be as far as cost. But I do believe that we...I don't even remember the figures because I haven't been here on the floor during all of the debate. But as I recall, maybe 80 times that the...since the 1970s that the death penalty has been asked for by the prosecuting attorney. I do believe it probably costs \$500,000 extra every time we do that. And for that period of time, we have executed three people as I have listened to the discussion here today. So it's costing a lot of money. The rest of them, we spent the same amount of money in feeding and boarding those prisoners that we've spent, and probably more, so if 83 is correct--and I'm not sure that it is--and we've actually administered the death penalty in three cases, and 80 we must have spent the same amount of money as we do on the rest of the lifers that have been in prison and been incarcerated, and at the same time we've spent all of this money on 83 in attempting to convict them, and had them sentenced to the death penalty. So I think the public has the right to know that. I do worry about the accuracy of the information we're going to get. We might get the same information if we used those studies of other states. But it seems to me that the public needs to be able to make an informed decision, and then I think it will raise the awareness if we have this study by UNO. And so I just believe that it's worth...and I think we've spent money on studies that probably have provided us with less information. So I do intend to support LB1105 even though I remain committed to the death penalty, but certainly would be willing to change my mind if it appears that the cost is such that it does not make sense for the state in considering all the priorities of expenditures that we're going to have over the next several years. As we look at this budget, particularly the revenues that are going to come in and the estimate of where we're going to be two years from now, in the next biennium when we look at that bottom figure of \$704 million shortfall, I think we do have to look at our priorities. And I think the public and the constituents should have the best information available and maybe they will change some of our minds when they really look at the figures and what it's costing us. With that, thank you, Mr. President. [LB1105]

SENATOR JANSSEN: Thank you, Senator Wightman. Those wishing to speak on

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LB1105, Senators Council and Lautenbaugh. Senator Council, you are recognized.
[LB1105]

SENATOR COUNCIL: Yes, thank you, Mr. President. I just want the body to know that there have been discussions occurring off the mike with regard to the concern about the entity overseeing the study. And just a point of correction: The judges on the Community Corrections Council, by statute, are not voting members of that body. They provide input just as the two legislative representatives. But the other discussion that has occurred off the mike and, in fact, suggested by Senator Flood, is that the Judiciary Committee be assigned the oversight of the study. And I have absolutely no problem with that and will file the appropriate amendment before the matter comes back on Select File, and I would just ask the body to advance LB1105 at this time. Thank you.
[LB1105]

SENATOR JANSSEN: Thank you, Senator Council. Senator Lautenbaugh, you are recognized. [LB1105]

SENATOR LAUTENBAUGH: Thank you, Mr. President, and I'll be very brief. I listened to what Senator Wightman was saying about how, you know, we do have \$700 million-and-some that we have to find, coming up here, and he thinks that looking at the cost of capital punishment might be a way to close that gap. As I said earlier, I think we need to look at the cost of everything and this study is a good place to start. I think the information is available otherwise. I don't think we have the money to keep on doing things like this. I would urge you to vote no. [LB1105]

SENATOR JANSSEN: Thank you, Senator Lautenbaugh. There are no more members wishing to speak on LB1105. Senator Council, do you wish to close? [LB1105]

SENATOR COUNCIL: All I ask, Mr. President, is a call of the house and a roll call vote in regular order. [LB1105]

SENATOR JANSSEN: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote no. Mr. Clerk, please record. [LB1105]

CLERK: 40 ayes, 0 nays, Mr. President, to place the house under call. [LB1105]

SENATOR JANSSEN: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Fulton, the house is under call. Senator Council, all members are present or accounted for. You've requested a roll call vote in regular order. Mr. Clerk, call the roll.
[LB1105]

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CLERK: (Roll call vote taken, Legislative Journal page 1044.) 22 ayes, 22 nays, Mr. President, on the advancement. [LB1105]

SENATOR JANSSEN: The bill is not advanced. Mr. Clerk, items for the record. I raise the call. [LB1105]

CLERK: Mr. President, a series of resolutions. Senator Haar offers LR431, LR432, LR433; Senator Nordquist, LR434; Dubas, LR435; Gay, LR436; Pankonin, LR437, all calling for interim studies, all to be referred to the board. New A bill. Senator Louden offers LB1002A. (Read title for the first time.) Judiciary will have an Exec Session upon recess in Room 1113; Judiciary at 1113. (Legislative Journal pages 1044-1048.) [LR431 LR432 LR433 LR434 LR435 LR436 LR437 LB1002A]

And Senator Sullivan would move to recess the body until 1:30 p.m.

SENATOR JANSSEN: There is a motion to recess until 1:30 p.m. All in favor say aye. Opposed, same sign. Motion carries. We're adjourned until 1:30 today. (Gavel)

RECESS

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good afternoon, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for the afternoon session is about to reconvene. Senators, please return to the Chamber and record your presence.

SENATOR ROBERT PRESIDING

SENATOR ROBERT: Mr. Clerk, please record.

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

SENATOR ROBERT: Do have any items for the record?

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

SENATOR ROBERT: Members, we will now proceed to the 1:30 agenda, General File 2010 senator priority bills, LB780. Mr. Clerk. [LB780]

CLERK: Mr. President, LB780. (Read title.) The bill was introduced on January 7 of this year, referred to the Business and Labor Committee for public hearing, advanced to General File. There are committee amendments, Mr. President. (AM2064, Legislative

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Journal page 743.) [LB780]

SENATOR ROBERT: Senator Lathrop, you're recognized to open on LB780. [LB780]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. LB780 can be viewed as a step in the right direction for mental health. It can be viewed as a small change to the work comp statutes. And let me explain what LB780 does. First a little background on work comp. In Nebraska, as in many states across the country, we have a requirement that before you can receive workers' compensation benefits, you must have first suffered a physical injury. So someone who has been in an industrial accident and been paralyzed from the waist down will be entitled to receive benefits for the care and treatment of that spinal cord injury. If that person develops depression because of the spinal cord injury, they will be entitled to receive benefits for the mental injury that follows. But in Nebraska, you cannot recover for a mental injury if you haven't been hurt first physically. In the law, we call it a mental stimulus causing the mental injury and you may have heard me call this the mental, mental injury...the mental, mental bill because in work comp Nebraska does not recognize mental injuries that have as their stimulus or their beginning point a mental insult. Let me give you an example. If you were a law enforcement officer and you were on routine patrol and you got a call to someplace in your community, let's say that there's a burglary over at the 7-Eleven or at a bar, and you show up at the back alley and somebody comes out the back door, you've never had to shoot your gun in the line of duty, and the person comes out the back door, takes aim at you and you pull your revolver and shoot them. Most of our law enforcement would probably receive some form of debriefing, some counseling at work, and in most cases that would take care of it. But in rare occasions, it's not enough. Law enforcement in those situations can suffer things like posttraumatic stress disorder. Those injuries would not be covered under that circumstance. If the police officer hurt himself in the alley, that would be covered. But because the injury is mental or emotional and it began without a physical injury, it's not covered in the state of Nebraska. LB780 does something very, very simple. It says, if you are a first responder, that is law enforcement, firefighter, EMT, that if you suffer an emotional injury in the scope and course of your employment that has as its stimulus a nonphysical insult, that it will be covered. Some things that are important about this bill what it does and what it does not do. The bill doesn't cover if the firefighter or the law enforcement officer gets in a beef with the captain over personnel issues. Personnel issues are not covered. And you should also know that when we had a hearing on this most of the people that came in and talked about it from the political subdivisions said, I don't even know if we'd use this or have occasion to use this. We have programs in our firehouse and programs in our police station to deal with those law enforcement and first responders who find themselves in that situation. We have debriefing, we have a certain level of counseling that can take place right there at the firehouse. But they also acknowledge something that's important and the reason for this bill. That some people suffer an injury to their mind, to their emotion that is so significant, we're not talking about feeling sad, we're not

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talking about having something haunt you for a couple of days, we're talking about posttraumatic stress disorder and like injuries. These folks that will be covered are first responders only and they deserve our support. I want to talk as long as I'm introducing the bill about the money, and some of the concerns that I've heard come back from the lobby behind me. The first concern is there will be a flood of cases. No, there won't. We have the Fiscal Office...this wasn't Steve Lathrop's work, the Fiscal Office looked at those states that have universal coverage for mental, mental injuries and they found that such claims are rare indeed. We have "Nebraskatized" the numbers from Missouri and Arkansas in the fiscal note. And when I say we've "Nebraskatized" the numbers, we have taken the experience in Arkansas and the experience in Missouri where they have universal coverage for this kind of an injury across the entire population and they have reduced the number of occurrences for two things. One is, the smaller population and the other is the fact that this will only apply to first responders. The net affect of that is this. That we will likely see, not just with the state when you look at that fiscal note, two claims a year. Two claims a year for a mental, mental injury by a first responder. And the average cost of those is about \$4,000. Less than that. The two claims...two claims a year should cost about \$7,400 on average. Some years it might be a little lower. Some years it might be a little higher. Two claims. And I've had someone ask me today when I was talking to them about this bill, well, why should the taxpayer have to pay that? First of all, the first responder most likely to use this care, most likely to avail themselves of this benefit are the volunteer firemen in this state. And let me talk about the volunteer firemen for just a minute because they serve my local Ralston community and they do that job admirably. They do it well and they do it for free. This state and our local communities save millions of dollars by having volunteer firemen and volunteer firefighters and volunteer EMTs serve our communities. They have trouble with recruitment and retention. And one of the problems that they have on occasion is the person in the rural community serving on a volunteer fire department that arrives at a call and finds someone they know dead, mangled in a car accident, near death or past that point, and they are responding to the things...they are doing the things in our community for free that we really don't want to do ourselves. I couldn't do that work. I couldn't probably make that call because I don't have the constitution to show up and see people who have been mangled in a car accident or killed. They're the same people that respond to suicides. They respond to drowning in a pool. They respond to the things and see the things that most of us couldn't stand to see or bear to see. And most of the time they're okay with that. And most of the time they develop a...I'll call it a thick skin enough to be able to deal with that and go on with their lives and go back to their job and do their work... [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR LATHROP: ...and most of the time they can take care of this with a debriefing, with the Chaplain, with their colleagues, most of the time. But a couple of times a year we're going to lose a first responder because they can't deal with it,

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because they can't get the image of someone they had to shoot, because they can't get the image of someone they knew in an automobile accident, because they can't get the image of that little child at the bottom of a pool out of their mind and they cannot sleep, they cannot rest, there is no escape. There is no escape from the image of that call that they took and they need professional help. They need professional help. The experience of other states that have done this find that the cost is about \$4,000 a person. [LB780]

SENATOR ROBERT: Time. [LB780]

SENATOR LATHROP: We'll do that twice. [LB780]

SENATOR ROBERT: Time, Senator. Senator Lathrop, the clerk stated there are committee amendments. You're recognized as Chair of Business and Labor to open on the committee amendment. [LB780]

SENATOR LATHROP: Thank you, Mr. President and colleagues. The committee amendment is very simple. It clarifies the definition of first responders, firefighters, EMTs, sworn law enforcement officers. Two cases a year. That's it. Two cases a year. Now you would think that for two cases a year, providing the appropriate care to someone that has posttraumatic stress disorder that they suffered in the line of duty serving in our communities, and we wouldn't have any opposition. Seventy-five hundred dollars is the fiscal note. And this bill has been worked, it has been worked by the lobby like we're talking about millions of dollars and a huge waste of dollars and public resources. I want to talk about some of the concerns that have been expressed, some of the things that you've heard when you've been pulled out to the lobby by those who would oppose care for our first responders. They've said, you can't believe the fiscal note. Well, my first answer to that is, that's all we got to go with around here. We now have people trying to pull you off of this bill by telling you not to believe the fiscal note. It will be a much bigger expansion than that. Well, that's not the experience of other states. We didn't make these numbers up. We have taken the experience from other states with similar type of benefits and converted them into what will happen in Nebraska and that's your fiscal note, \$7,400. But still the criticism continues, that's not enough. So I passed out something that came from NCCI. You'll have this on your desk. Let me tell you who NCCI is. NCCI is an outfit that is the group that tells us if we tweak work comp, what will happen to the premiums. If we want to change the benefits in any respect, include more people, give more money, take a little bit of money away, these are the people that do the math and tell you what effect will it have. And I'll ask you to take that and flip it to the back page, the last paragraph. Our analysis above indicates that any increase in Nebraska's overall work comp costs will be negligible if LB780 is enacted. So while you are being asked to ignore the fiscal note, look at what NCCI says, negligible. But the criticism continues and the drum beat in the lobby continues and the next thing they say is, well, today it's first responders and tomorrow it will be

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everybody in the world. The retailers, the grocery people were even opposed to this. Let me tell you, this affects not one person in private, in the private sector. Not a single person in the private sector will be covered by this. This is 100 percent state troopers and people that serve in our local communities. I will tell you, and I've said this from the time I've introduced this bill which was introduced and passed two years ago, incidentally, that I oppose any attempt to expand mental, mental coverage beyond first responders. I will tell you that there is a logic for covering our first responders. They serve our communities. And the volunteer firefighters do it for free. I think this is the least we can do for those who serve our communities for nothing. But I will tell you as long as I'm in this body I will fight any attempt to expand mental, mental beyond first responders. Those who tell you today it's the first responders, tomorrow it's everybody, I will tell you they will do that over my objection. It will not happen. I will leave a record behind today that would make it difficult for anybody to expand this beyond first responders. So what are we left with for opposition and why? You know the people that are out there talking don't represent the political subdivisions in the state of Nebraska. They represent private industry. They work the bill like it's going to touch their lives and their industry. It will not. My city of Ralston, Nebraska, it's a first-class city, kind of tucked away in the metropolitan area in Douglas County. It is a great community. It's a lot like the communities my rural friends come from. It is served by volunteer firemen. They answer the call. I talked to my chief about this bill and I said, you know, how often does this happen? He said, you know what, Steve, two days ago I had to go on a call where a 16-year-old kid hung himself in his bedroom. And I had to cut the kid out of the closet where he hung himself and he said, I've got kids that age. I have kids that age. It was darn hard. We have those calls once in a while and we got to go back to the fire station and talk about it and most of the time that's enough. But a couple times this year, a couple times next year there's going to be somebody who cannot get that image out of their mind, who cannot sleep, who will self-medicate, they will lose their marriage because they're suffering posttraumatic stress disorder and we've turned our back on them and said, you're on your own. Can they get this care somewhere? No, they don't. You think the health plans covers this, they don't. There is no parity for a medical policy to cover this kind of care. They're going to be paying deductibles, they're going to be paying copays, there will be a limit on the number of visits, and then they'll probably get about half of the cost of the care covered. And what's going to happen? They're not going to get the care. And then we've got a time bomb. Somebody who will self-medicate, somebody whose marriage will be lost over this, and we will have turned our back on them, and I don't think that's the right thing to do. And the people out back that want to tell you this is the thin end of the wedge and you should vote against it, I will tell you that's nonsense. This is about keeping score. Are we going to let a modest change to work comp through or are we going to stand shoulder to shoulder and stop them? It doesn't even affect the business community. It doesn't even affect the business community. I have never had to go down a dark alley in the middle of the night. You know, in Omaha it has become sort of in vogue to take a shot at the fire department and the police. People are concerned about their contracts and something called spiking.

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You probably all know about that. I'm going to tell you the people that did all the spiking are gone. The people that are left are the ones that need this coverage. They're not spiking their pay. They're serving our communities. About ten years ago we had 9/11 right? Two towers in New York were struck by terrorists and the people that go to the scene of that kind of a catastrophe are our law enforcement and our first responders. And we've forgotten that. In Nebraska it's been kind of fun to kick the fire department around and forget what they do for our communities. But they're the ones that put their lives on the line. Law enforcement puts their lives on the line. They're the people you call when you hear a noise out in the back yard... [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR LATHROP: ...in the middle of the night and they're the ones that respond to it. And a couple of times this year and a couple of times next year, two of those people are going to need our help for \$7,400. I think that's a small price to pay to cover these people. It is not a wholesale expansion of work comp and I encourage your support of AM2064 and LB780. Thank you. [LB780]

SENATOR ROBERT: Thank you, Senator Lathrop. (Visitors introduced.) Members, you've heard the opening to LB780 and the committee amendment, AM2064. Moving on to discussion, those wishing to speak: Senators White, Stuthman, Coash, Utter, Gay, Dubas, and others. Senator White, you're recognized. [LB780]

SENATOR WHITE: Thank you, Mr. President. I rise in support of this bill and I want to tell you a story that just occurred this week. I went in to get a haircut, a friend of the family, a longtime friend, friend of my father's when they were young, is a retired master gunnery sergeant from the United States Marine Corp. He lost his brother, also a Marine, in Peleliu, in a landing. He fought and saw a lot of ugly fighting in Guam and other places cleaning out caves and I asked him, and understand this is over 60 years later, are you going to watch the new series, Pacific? The war on the Pacific and he said, no, it bothers my wife, I dream. I watch something like that, if it's anything more than 30 seconds, when I go to sleep, I wake up and she tells me I'm screaming and scaring her and pounding the pillow in my sleep. He is one of the finest human beings I know. He has given so much to this country and six decades later he still suffers. And we did not know what it meant then to have a posttraumatic stress disorder. And I don't know what exactly he remembers in his dreams. I can tell you that the backs of his hands are white because he was a sergeant and they were in a squad cleaning out caves occupied by Japanese soldiers and his friend was shot, his friend was running the flamethrower, and sergeant...who, I'm not going to use his name because of privacy, I'm really honored and I'd love to talk to you but his dreams are private to him. He had to pick up the flamethrower without the asbestos gloves to protect his hands and they were badly burned and they're still discolored from that. And those scars on his hands don't bother him at all but the scars in his head 60 years later still haunt his dreams, still

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haunt his family, and he has been a model citizen. We can treat this now. That's the part that I think each and every one of us should realize when we walk away from this. Whether it is the grocer down the street in a small town who hops in the ambulance to go out to the Interstate and help some couple from California who have been run over by a semi-truck or it's a volunteer firefighter in a small town that runs into a house and pulls a badly burned child out and watches that child die, we can now help them. Unlike what we understood in 1945, we now know what we can do. If we diagnose it, and if we have the will to treat it, this is the most treatable condition. I don't think anybody who serves this country whether as a Marine or as an ambulance attendant or as a firefighter should have to have dreams 65 years later that disturb their wife because of the things they did for all of us. Thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator White. Senator Stuthman, you're next and recognized. [LB780]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. First of all, I would just like to inform the body that I've been a volunteer fireman for 36 years. And I think, you know, I have really benefitted from the fact of being a volunteer fireman and the help a guy can provide. I do have a constituent in my area, and I'm going to read you, going to talk to you a little bit about the occurrences that they've had in that local community. It is in my district. And last year in the summer of 2009, you know five miles south of Clarkson, there was an 18-month-old boy was found by the babysitter face down in a backyard pool. A first responder, which was an individual that was in private construction business was the first one there and he went there directly when he got the call. And he started CPR by himself for five to seven minutes until the unit and help arrived. A 19-year-old first responder helps with the CPR for the 20 minutes it took before they got to the hospital. He has a number of cousins of the same age and it was one of his first calls that he responded to, to try to give CPR to this 18-month-old child that had been in the pool. Fifteen minutes later a second call came out from the same location because the 14-year-old babysitter overdosed on a bottle of antidepressants and was lethargic. That was a real, real situation mainly because of the fact that this child, this 18-month-old child...an individual, first responder, one of the first times that he ever responded to something like this and tried to revive the child but was unable to. In the same area a number of years before that, and as many of you know on a farm where you have grain bins, overhead bins, this situation occurred when there were six boys, all brothers, and the one individual that was 8-years-old went into a bin of soybean meal, fell in, or went into it and was sucked down into that soybean meal and suffocated in the bin. First of all the first responders had to find him and then they got him out of that overhead bin and then they had to get all of the soybean meal out of his mouth, out of his nose, so that they could begin mouth to mouth resuscitation. I think, you know, the people that were there doing the first responding and had to do the mouth to mouth, you know, they knew that it was in vain for them to do that. But in respect to the family they had to try and try and try to revive that child. And I think if any

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one of you have ever been in a situation where you have to give mouth to mouth resuscitation to a child you will never forget that. You will never forget that. The thing that happens to situations like this is, a number of people will be able to cope with it and be able to get over it, but there's always a few that can't get over it. [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR STUTHMAN: And the fact is, you can observe these people, they get withdrawn, they don't go out into the community very much because of the fact that they maybe should have helped more but they saw a dying child right in front of their eyes. I had the experience of coming on to an accident once where an individual was pinned under the accident (sic). That was a number of years before but I was the first responder on that accident and at that time there was an individual pinned under the vehicle, someone else was there. I don't know how I did it but I lifted the vehicle up enough to pull the individual out and he was saved. This was something that, you know, never did bother me, but things that bother me are, you know, when you have a child, you know, that you're trying to help. [LB780]

SENATOR ROBERT: Time, Senator. [LB780]

SENATOR STUTHMAN: Thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator Stuthman. Senator Coash, you're next and recognized. [LB780]

SENATOR COASH: Thank you, Mr. President. Would Senator Lathrop yield to a few questions? [LB780]

SENATOR ROBERT: Senator Lathrop, would you yield to a question? [LB780]

SENATOR LATHROP: Yes, I would. [LB780]

SENATOR COASH: Okay. Thank you, Senator Lathrop. Senator Lathrop, I've been trying to get a lot of information on this you alluded to in your opening. There's lots of different kinds of information going along but I did want to ask you about the standard of evidence here that is in the green copy, which is what I pulled up, line 4, page 2. But establishes by a preponderance of evidence that the employee, the employment conditions caused the mental injury. During the committee hearing or in the drafting in this bill, did you consider other standards of evidence or how did you come to the standard that you did that came into the green copy? [LB780]

SENATOR LATHROP: That...we had a lot of discussion about that the other night on TERC. A preponderance of the evidence is the universally accepted measure of proof in

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civil cases. That's what they use in work comp right now. [LB780]

SENATOR COASH: Okay. So that's the standard in workers' comp. And the reason I asked that is because I do work in HR and one of the concerns that I do have is abuse of workers' comp. I've seen abuse in workers' comp, not with mental injuries but with physical injuries, and I've seen employees figure out ways and work with their physicians, either on purpose or through kind of underhanded ways, to continue to use workers' comp longer than would be necessary to really cover their injury. And so I was just wanting to know where we came up with that standard and if there was any testimony on one side or the other about...did you hear anything about abuses of this particular provision? [LB780]

SENATOR LATHROP: No. Let me suggest a couple things to you. First of all, the law has always been behind the curve when it comes to mental injuries in torts, in third-party claims. Making claims has always...emotional claims has always lagged behind physical claims because of that idea that somebody could say they're having problems and not really have them, try to appear like their suffering a mental injury when they haven't. The reality is that the science of treating posttraumatic stress disorder has come far enough that there are clearly defined criteria for identifying somebody who has posttraumatic stress disorder so it is not something that is easily fabricated. The other thing, Senator Coash, is that with an emotional injury, it's more...it is easier to get somebody back to work doing something. In work comp if a person suffers a herniated lumbar disc and they do physical work, they're a construction worker or something like that, they can't get out of bed to go in and do light duty work. But a person that suffers an emotional injury can still be put back to work doing something. And so the likelihood is that what we'll see with most of these claims is the treatment piece. And the treatment you can see for the average in the two states that have this universally is about \$4,000 a person. And so the idea that someone is going to fake an emotional injury so that they can get more treatment, not likely. Because they're not likely to spend much time at home after one of these injuries. I'm not going to tell you somebody couldn't be so totally over the top in terms of injured emotionally that they wouldn't spend time off of work, but that's not likely. [LB780]

SENATOR COASH: Okay. That helps me a little bit and I know you practice and...or you practice law so you've seen that kind of things as well. I have another question. It has to do with the critical incident stress management program and that was given to me as a program that handles these kinds of things. And I went to Senator Gay as this is a program administered through HHS and he just gave me some of this and I know he may speak to it... [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR COASH: ...here in a little bit, but one of the core functions is listed on the

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DHHS Web site as part of the critical incident stress management program is intervention services. The types of intervention include critical incident stress debriefings and mental health referrals. So was there any talk about rather than going the work comp route, which LB780 does, but to enhance this critical incident stress management so that it would be easier for first responders to get covered under this? [LB780]

SENATOR LATHROP: No. And I'm glad you brought that up because even the Web site says what they do is make a referral. They don't make a referral and then pay for it. They say, you know, Joe, here's the name of a doc, good luck. Now, the stress debriefing, most of these fire houses and the police departments, I think, already have that. They sit around...I'll take Ralston since I know a little bit about that. [LB780]

SENATOR ROBERT: Time, Senators. [LB780]

SENATOR COASH: Thank you. [LB780]

SENATOR ROBERT: Thank you, Senator Coash and Senator Lathrop. Senator Utter, you're next and recognized. [LB780]

SENATOR UTTER: Thank you very much and good afternoon, colleagues. And I'm wondering, Mr. President, if Senator Lathrop would yield to a question or two? [LB780]

SENATOR ROBERT: Senator Lathrop, would you yield to a question from Senator Utter? [LB780]

SENATOR LATHROP: Yes, I would. [LB780]

SENATOR UTTER: Senator Lathrop, I'm looking at your amendment that changes the definition of the people that would be covered here. And I'm looking down under...it starts about line 6 where...actually it starts on line 5. It says, or a volunteer or a paid individual licensed under a licensure classification in subdivision (1) of Section 38-1217 who provides immediate medical care in order to prevent loss of life or aggravation or psychological or physiological illness or injury. Can you help me with who those people will be under Section 38-1217? [LB780]

SENATOR LATHROP: Yes. Section 38-1217 says they're emergency medical technicians, emergency medical technicians-intermediate, and paramedics. So they're people that ride the ambulance. [LB780]

SENATOR UTTER: Senator Lathrop, is there any way that those people might also be the people who work in the emergency room that are emergency room nurses and emergency room physicians and the people that are active in the emergency room

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when a severe injury comes in? [LB780]

SENATOR LATHROP: I don't think so. I have Section 38-1217 in front of me and it calls them out-of-hospital emergency care providers and then lists the emergency medical technicians and paramedics. [LB780]

SENATOR UTTER: Is there any thought at all, Senator Lathrop, that the folks that do work in emergency rooms in hospitals could not suffer the same degree of stress and have the same problems as those who arrive on the scene of an accident? [LB780]

SENATOR LATHROP: I'm sure that they could. We have to draw a line somewhere and I put it at first responders and the folks that show up on scene. I am sensitive to what the emergency medical people go through, the ER docs, and so forth, but my bill...and I think it's fair to limit it to those folks that go on scene who are out in the field. [LB780]

SENATOR UTTER: I like you, Senator Lathrop, have deep appreciation for the work that they do and the work that I couldn't do to be honest with you. And so I sincerely appreciate the things that particularly the volunteers do. I think there's a distinction between the volunteers, honestly, and the paid people because I think they kind of know what they're getting into and what the possibilities might be in the description of the duties that they have to do every day. But I'm particularly sympathetic, I think, to the volunteers. But I'm also concerned, I think, about the mandate. And folks, this looks to me like this is a mandate that the state Legislature is now sending back to our villages and cities and towns and, frankly, I think we're just a step away of including a lot more folks in this category when we go take it another step to the emergency rooms and maybe some other places that we're not even thinking about today. And so I must admit I really have some grave concerns about what we're doing here. [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR UTTER: And as much as I appreciate the services of those people and as much as I value the things that they do for our communities, particularly the volunteers, I have some real questions in my mind about the mandate that we are sending back home in telling the people in the villages and the cities. And I've talked to the people of my town of Hastings about this. They have concerns about it also. And I think we have to be careful what kind of a mandate we might be sending back home that is unfunded. Thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator Utter. (Visitors introduced.) Returning to discussion, those wishing to speak: Senators Gay, Dubas, Cornett, Fulton, Wallman, and others. Senator Gay, you're recognized. [LB780]

SENATOR GAY: Thank you, Mr. President. I was reviewing, listening to Senator

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Lathrop's comments and they're very eloquent and I would share my strong support for police and fire. I think, over the years I've had a chance to watch the sheriff's department and volunteer firefighters and professional firefighters and I think we would all agree that's a noble profession. I was looking at the bill and I noticed the four fiscal notes and I started reading them and getting a better understanding of where we are, what the amendment does, how it narrows it down. It still gets a little bit...I'm trying to make up my mind of where I'm at of going through the information and some things still kind of jump out at me. One, was as Senator Utter just said, is this a legislative remedy or could this be done in a contract negotiation or how should this be handled? It sounds very good and noble to provide more benefits. However, for the last 49 days I've been hearing about budgets, budgets, budgets and I hate to always put in, you know, financial terms to these things but sometimes that's what they are. This may be a small one, may be a large one. I'm not so sure and I'm listening closely to try to figure out where we're at on that. But this specific narrow group is based on activities they knew, a little bit, were dangerous or mentally challenging when they got into it. And I just kind of wonder, trying to decide what to do here of where that works. But I guess at this point would Senator Lathrop answer a few questions. [LB780]

SENATOR ROBERT: Senator Lathrop, would you yield to a question? [LB780]

SENATOR LATHROP: Yes. [LB780]

SENATOR GAY: Thank you, Senator Lathrop. Senator Lathrop, when it does come to this, I saw some of the opponents and the proponents and the opponents and we're going to have that on a bill like this, but some of the opponents, League of Municipalities, the business groups, and some of those things, at some point why would not, though, when we talk about, you talked about too and I do think it's kind of popular to police and fire in the bigger cities have come under a little pressure. They do a great job and I have friends in both, so do you. But at some point, though, why could this not be done in a negotiation when they sit down with their local municipality? In Papillion, that I represent Papillion and La Vista, we have some paid and some volunteer so I've kind of in both. Why could this not be done on...if it's such a small occurrence, why could they not put something in their own language in their own contracts? Why is this a state remedy and not a local remedy to this situation? [LB780]

SENATOR LATHROP: First of all, what we're not...we're not providing a state remedy. What we're doing is making a small change to work comp and they can't negotiate that. They can't do that. We have to change the law in order for this benefit to be available to them. [LB780]

SENATOR GAY: But if the benefit, though, on the fiscal note it says the benefit is going to be used by a very...we don't know when and, hopefully, it would never be used but if they have this critical incident stress management group, I kind of read a little bit about

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that with Senator Coash, we were looking into that. But if it's such a small thing, you get them on track, they go see a psychiatrist, counselor, whatever needs to happen. This is not an ongoing lifetime event. Maybe it is, maybe it isn't. But if it's such a small fee why could not this be covered? Why does it have to be put in? We're taking a select group and the last time we discussed this, taking the select group of firefighters and police versus other challenging jobs that were out there, you talked about this could be opening the door to the next thing. But why would this not be, if it's such a small amount, just done locally if they decide to do this? I still don't see why we need to open up the whole workers' comp program. [LB780]

SENATOR LATHROP: I'll answer that. The city of Broken Bow who was...that is serviced by volunteer firemen cannot choose to provide work comp benefits for this occurrence because the law doesn't provide for it. [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR LATHROP: You cannot negotiate for something for a work comp benefit the law doesn't provide for. All we are doing is making it clear that the work comp statute is changed so that this is available to these folks. The other answer to that is, is that these volunteers aren't negotiating anything. They're doing this for free. So it's not like they have something to negotiate with the city of Broken Bow or the city of Ralston or the city of La Vista. [LB780]

SENATOR GAY: We're going to run out of time. I was going to then ask on, should there be a cap or something like this? Could there be a cap placed in here that could satisfy some people? I don't know what that is. I wasn't there to listen to your committee hearings and we're just...many of us are hearing this the first time out or second time, whatever the case may be. But some of these same issues still I struggle with back and forth but you don't have enough time to answer that but I'm sure I'll listen in closely to the debate... [LB780]

SENATOR ROBERT: Time. [LB780]

SENATOR GAY: ...and I appreciate it. Thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator Gay. Senator Dubas, you're next and recognized. [LB780]

SENATOR DUBAS: Thank you, Mr. President. Good afternoon, members of the body. I have learned in the four years that I've been down here that there are a few issues that the minute you say the word, everybody just goes to their corners and the fences come up and it's pretty hard to get past that. And I've learned that workmens' comp is one of those issues that the minute you say it, people get really, really nervous. And to a

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degree I understand why they do. Workmens' comp, it's a big program, it's a complex issue. A lot is involved with it. I understand where the businesses and where the political subdivisions are coming from. This is a big part of their budgets. It costs them money. And if it costs them money, it costs us, as citizens, money. So I'm not trying to diminish their concerns at all. I certainly do understand. I also know there's a lot of fraud and abuse. I've heard from people who have given me, you know, solid information about the way these types of programs are abused. We can't dismiss that either. But I also know the benefits of programs such as workmens' comp. My family was the beneficiary of workmens' comp. My father was very seriously injured when I was a young child and if it weren't for workmens' comp and the other assistance that we had, you know, my family would have had a very, very difficult time getting through. He was off work for a considerable amount of time. So, you know, we can get caught up in the abuses and all the things that are wrong with the program but we have to remember that it's there to serve a purpose and it does serve those who are very much in need. Senator Lathrop touched on, just briefly touched on an issue that I've become quite interested in and that's recruitment and retention of our volunteers. And I've had an interim study and I've been trying to work with the volunteers across the state. And not that this would have a direct impact on the ability to recruit and retain these volunteers, but it could make a difference. And I'd just like to take the opportunity to put us on notice as a state. Over 80 percent of our property and personhood relies on volunteers to service us in those most demanding times, whether it's fire or rescue or whatever. As you travel across the state of Nebraska you are more than likely to depend on a volunteer to come to your aid than you are a paid person. So I'm not diminishing what the paid people do, but we're relying on volunteers to do very much the same thing that paid people are doing. And our paid personnel have some extra benefits as far as training and support services that maybe our volunteers don't have. So I think as a state, this is definitely going to be something in the very near future we're going to have to address. How do we make sure that everybody and all of our property across the state is adequately protected in times of emergency. Would Senator Lathrop yield to some questions, please. [LB780]

SENATOR ROBERT: Senator Lathrop, would you yield to a question? [LB780]

SENATOR LATHROP: Yes, I will. [LB780]

SENATOR DUBAS: Thank you, Senator Lathrop. One of the concerns that have been brought to my attention is the cost of premiums and especially for political subdivisions. Would these people see an immediate spike of any kind in the premiums that they pay for workmens' comp if this is passed? [LB780]

SENATOR LATHROP: I can't imagine, honestly. If you have two cases a year and it cost on average \$7,400 to take care of both cases and you spread that around the state of Nebraska in the different communities, a couple bucks, maybe. I mean, the NCCI report says this would have a negligible affect. [LB780]

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SENATOR DUBAS: So they shouldn't be getting these notices from the workmens' comp insurance saying, oh, because this coverage is now allowed you're premiums are going to take a 25 percent jump. [LB780]

SENATOR LATHROP: No, no, no, no, no. [LB780]

SENATOR DUBAS: If a volunteer, and maybe perhaps even a paid person in this capacity, if they have private insurance... [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR DUBAS: ...that covers this, would workmens' comp still kick in on it too, or...? [LB780]

SENATOR LATHROP: Yes. [LB780]

SENATOR DUBAS: Okay. All right. And I guess, again, just in the brief amount of time we have left, why is it that we need to address this through workmens' comp rather than through insurance or something else? [LB780]

SENATOR LATHROP: I'd be happy to answer that question and it will dovetail in with what Senator Coash asked me and that is, isn't this covered by the Critical Incident Stress Management program and I'm reading from that program, a document that says, it is not the function of the program to replace ongoing professional counseling or psychotherapy but to provide education, prevention and crisis intervention. They don't provide the care. Okay. So what we do with these folks is we say, good luck. And they come out of service. And all the money that we've spent training them, all the contribution they've made to our community is gone. [LB780]

SENATOR ROBERT: Time, Senator. [LB780]

SENATOR LATHROP: Because they can't answer the calls anymore. Thank you. [LB780]

SENATOR ROBERT: Thank you, Senator Lathrop and Senator Dubas. Mr. Clerk, items. [LB780]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB950, LB918A, and LB507 to Select File. Have an amendment to be printed to LB877 by Senator Cornett. (See also amendment by Senator Adams to LB1071.) And two new resolutions, LR438 and LR439 offered by Senator Pahls, both calling for interim studies. That's all that I had, Mr. President. Thank you. (Legislative Journal pages 1049-1052.) [LB780 LB950]

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LB918A LB507 LB877 LB1071 LR438 LR439]

SENATOR ROBERT: Thank you, Mr. Clerk. Returning to discussion, we are discussing AM2064, the committee amendment to LB780. Those wishing to speak: Senators Cornett, Fulton, Wallman, Sullivan, Janssen, and others. Senator Cornett, you're recognized. [LB780]

SENATOR CORNETT: Thank you, Mr. President and members of the body. For the members that came in two years ago and don't remember, Steve and I led the charge on this bill three years ago. I don't think that there's anyone probably in this body except Senator Stuthman and maybe the military people...there might be people that I don't know their backgrounds, that are more able to speak to this issue than I am. First of all, you keep talking about critical incidence stress debriefing. Let me tell you what that is. As a police officer you see something that the rest of you don't want to see. You've signed up to do a job and as Senator Utter said, you're getting paid to do it. You probably are better able to deal with it than the volunteer. You don't know what you're getting into it when you get hired. Most cops are hired 21, 22 years old. You see something that no one should have to see. You do something that no one should have to do and you come into work the next night and lo and behold, the administration has set up a critical incident stress debriefing for you without asking you if you want to go, without asking you if you need to go. And they tell you you're going to sit down with a bunch of other people and if you come from a law enforcement background, let me tell you something, you don't share your feelings with any one about anything. Because as soon as you do, you're labeled as weak. Then you sit in a circle and you maybe have some donuts and coffee and it's all touchy-feely and you don't talk about anything, not a thing because you don't admit how you really feel about anything. Then you go back and if somebody does break down, then they get referred to psychological help. And let me tell you something, your department doesn't pay for it. It comes out of your pocket. And then God forbid, you're labeled as having an issue on the police department. They sit you at a desk and they take your gun from you and they treat you like an outsider. I have seen people, I've had friends that were treated like this. They were ostracized. They were set at a desk by themselves for eight hours a day answering a phone because they did something that no one else in this room is willing to step up and do. And then they have to pay for their treatment out of their own pocket because it's not covered under worker comp and your copay isn't paid by your department. And some departments don't even offer psychological health insurance. And then you get retired or you can't go to work anymore or God forbid, you commit suicide. I'm passing around articles that I've pulled off. One on how posttraumatic stress debriefings are not effective, particularly for law enforcement because we are trained not to talk about our feelings. We are trained not to share. We are trained when we do, it's a sign of weakness. I'm passing out an article on the suicide rate among police officers, way higher than the rest of the population. One out of every four police officers is either an alcoholic or on medications for psychiatric disorders. Why do you suppose that is, ladies

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and gentlemen? Do you suppose they were an alcoholic or they were on those medications when they got hired? No. That would have come out in their background check. That would have come out in their drug screen. That would have come out in their psych test. [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR CORNETT: Ten years down the road is about the time when things really get bad for a cop. They've seen more than most people. They've done things that you don't want to do and if they get a paper cut in this state, workers' comp pays for it, a paper cut. They don't pay for it if they have to shoot somebody. They don't pay for workers' comp and for psychiatric help if they watch their partner get shot and die. They don't pay for it when they see a friend's child ran over. They don't pay for it when you have to go down a railroad track and pick up parts of a woman that has been hit by a train for more than a quarter of a mile. [LB780]

SENATOR ROBERT: Time, Senator. Thank you, Senator Cornett. Senator Fulton, you're recognized. [LB780]

SENATOR FULTON: Thank you, Mr. President and members of the body. I see Senator Lathrop and I wonder if Senator Lathrop would yield to a series of questions. [LB780]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB780]

SENATOR LATHROP: Yes, I will. [LB780]

SENATOR FULTON: Thank you, Senator. I'm getting back up to speed. I'm now recalling a little bit of what we discussed when we last talked about this bill. When I was here I believe when we last talked about it and at the time I was opposed. And I think that's where I still am but I'm going to ask some questions and maybe you can help shine some light. Part of the problem here and part of the hesitancy it seems to me is how one is able to concretize and make objective a mental injury which, while real, is not...it's incorporeal, it's not tangible, it's...we can't grasp it. And so it seems to me that there is going to have to be some type of process by which we identify mental, mental injury. So I guess my first question is, in the fiscal note that we see from the state and maybe even from NCCI, but from the state, is that just the benefit that's paid out or does that include any litigation which was required in order, which might be required in order to identify that which is mental, and extraordinary and unusual and can you comment on that? Does litigation...? [LB780]

SENATOR LATHROP: I would assume that it includes the cost of litigation because it's the data on what these cost in other states. [LB780]

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SENATOR FULTON: Okay. Do we know that? [LB780]

SENATOR LATHROP: And certainly the NCCI would include that. [LB780]

SENATOR FULTON: Now would NCCI include litigation or does NCCI only talk about the benefit that's paid? [LB780]

SENATOR LATHROP: No, I think it would include the cost of litigation. I know I've seen NCCI statements that talk about the number of litigated cases. There's no reason to litigate these, by the way. They don't necessarily, two cases don't necessarily become litigated just because they involved emotional injuries. [LB780]

SENATOR FULTON: Okay. I don't... [LB780]

SENATOR LATHROP: It's in fact, the number of cases, the percentage of cases litigated in work comp is very, very small. [LB780]

SENATOR FULTON: Well, let me ask you this then. Help me understand, maybe...I started this by setting forth the premise that I think what is presenting us a challenge is the difference between a physical injury and a mental injury. Is there not...there is a difference, first of all, because we established that. That which is physical is more easily quantified and concretized, whereas a mental injury, while real, is not as easily quantified or concretized. [LB780]

SENATOR LATHROP: I would disagree. Let me give you an example. Some guy sprains their low back lifting...digging or lifting pipe at work. Sprains his low back. There isn't a test you can find that will identify that injury. That's one of those injuries that requires subjective...the doctors...a relationship between the patient and the doctor and subjective complaints of pain to identify the injury. [LB780]

SENATOR FULTON: You don't...you wouldn't...it seems to me that in that case there would be some physically quantifiable mechanism to return to make that person whole again. [LB780]

SENATOR LATHROP: Nope. Nope. Happens all the time. And the other side of this is, Senator, that you're assuming that a posttraumatic stress disorder doesn't have certain criteria or doesn't have certain indicia of a manifestation of that condition. They do. There are tests to determine whether or not someone has posttraumatic stress disorder. Are you...one of the hallmarks is reliving it over and over, okay? Somebody that comes in and says, well, gee, I haven't been able to get out of bed since this happened to me. Well, tell me what do you...you know, what happens when you're asleep? Nothing. I sleep a lot. That guy doesn't have posttraumatic stress disorder. And I'm not an expert on the condition but I can you this that if there is a question, the other side always gets

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to hire their own expert and examine the claimant. [LB780]

SENATOR FULTON: Well, there's...that's what I'm getting at here. It seems to me there will be disputes. If one says... [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR FULTON: ...that I suffered this injury, it's a mental injury as result of extraordinary and unusual circumstances and one side says that injury is not something that is the result of...there's going to be some type...you just mentioned that there would be a witness that would be hired. That's an expense and I can envision that that is what part of the problem going forward would be or what the concern is. That's going to cost money and I can't imagine that that's being contemplated on a fiscal note that says \$7,500. [LB780]

SENATOR LATHROP: Oh, yeah, it is. [LB780]

SENATOR FULTON: So an expert witness is less than \$7,500? [LB780]

SENATOR LATHROP: They don't hire them every time. Not everybody thinks that the guy making a work comp claim is faking. Just because you're making a work comp claim doesn't mean you're a fake or a fraud. [LB780]

SENATOR FULTON: A mental claim, though. [LB780]

SENATOR LATHROP: Sure. My guess is you'll be able to tell because he's, you know, he's having trouble with his wife, he's probably lost a bunch of weight, and he's throwing up in the waste basket. [LB780]

SENATOR FULTON: And then how would we...this has been informative. I mean, if you read that, I... [LB780]

SENATOR ROBERT: Time. [LB780]

SENATOR FULTON: Thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator Fulton and Senator Lathrop. Senator Wallman, you're next and recognized. [LB780]

SENATOR WALLMAN: Thank you, Mr. President and members of the body. I want to thank Senator Lathrop for letting me prioritize this bill. And it bothers me a little how we're going against the volunteers here. They don't get paid, folks. They take care of us in the country, small towns, villages. These people take time out of their business, they

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run around. I've used them several times myself and in my family. It's pretty traumatic when your good friend comes to you in the middle of the night and said, your son is in a bad accident. And then you have to deal with your wife and your daughter. So the volunteer firefighters or EMTs are very dear to my heart. And Senator Utter has talked about mandates. Folks, if you're an EMT you have a mandate for training. It costs money. It costs time, and they're passionate about their job because they take care of their neighbors and friends. And I've lived along 77 most of my life, seen two tragic accidents myself. And both times they died. And you come upon that accident and watch a screaming daughter-in-law scream about if her children are still alive, that's something you won't forget. So maybe a farmer has a little thicker skin because he watches his favorite animal or horse die, I don't know. But when a person dies, it's different. And you'll never forget it. And my neighbor, less than a half a mile away when I was growing up, had syndrome from World War II, hand-to-hand combat. Call up my place, Dad would send me over there to help calm him down because the wife and children were scared, screaming about things that happened way long ago. Never got any counseling much after World War II. So mental illness, everybody is scared of it. What's the cost? What is the cost if we don't do anything? I think we should take care of our volunteers and our EMTs and our police departments because they see, like Senator Cornett was very traumatic in what she said, they see things that most of us, hopefully, will never see. But the ones that do, some need help, some don't. And so I would yield the rest of my time to Senator Lathrop, if he would like. [LB780]

SENATOR ROBERT: Senator Lathrop, 2:15. [LB780]

SENATOR LATHROP: Thank you. And, Senator Wallman, I neglected to thank you for prioritizing this and supporting it and for that please forgive me, and thank you very much for your kind words. You know, when we were having this hearing in the Business and Labor Committee and I listened to folks from different communities that somebody probably talked into coming down and testifying against or neutral, I wondered for a minute if these guys maintain their fire trucks. You know, do they change the oil in their trucks or change the tires on these big fire trucks? You know, we're perfectly willing to spend the money to maintain a fire truck and buy new equipment but some guy we've trained, some guy we've trained, somebody who has served the community has posttraumatic stress disorder, and we say, you're on your own. I've had people ask me, well, why should the community pick this up? The answer is, if they don't, this person is picking it up all by themselves. [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR LATHROP: For service to your community, they're going to pick up the cost themselves or not get it and then pay the price themselves in their personal life. I would encourage you to read the things that Senator Cornett has sent around. The estimate is it's two people a year, \$7,400. And I can hear from the questions, we're looking for a

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reason not to support this. We haven't come in here to this debate with an open mind about what the right thing to do is. We've had people out behind the glass tell us what side we ought to be on. And that really is shameful. It's shameful because we've not come in here with an open mind about it because I really think particularly those of you who are served by volunteer firemen would say, you mean that we're talking about two cases a year. [LB780]

SENATOR ROBERT: Time. [LB780]

SENATOR LATHROP: And you mean we're talking about \$7,400 a year. [LB780]

SENATOR ROBERT: Time, Senator. [LB780]

SENATOR LATHROP: Thank you. [LB780]

SENATOR ROBERT: Thank you, Senator Lathrop and Senator Wallman. Senator Sullivan, you're recognized. [LB780]

SENATOR SULLIVAN: Thank you very much, Mr. President and members. In this body it seems to me or at least I've learned thus far, that we arrive...there's a process by which we arrive at our own individual decisions in legislation. We read the bill, we listen to our constituents, we listen to testimony, we look at any data that might be presented to us or that we gather ourselves, and then we make our decision. And in that process of doing that on this legislation I find that I must rise in support of it. The bill is limited in its scope to first responders. It doesn't open the floodgates so that workmens' compensation claims could be opened to many other new individuals. I've listened to the testimony. Of course, it's very compelling by Senator Lathrop. Appreciated the comments from Senator Cornett. I've also listened to my constituents and one of their testimony and one of their comments was very compelling. A paramedic in rural Nebraska, a member of an EMS team for over 25 years. She says, I know that the deepest and most long-lasting wounds are unseen. I know of too many good first responders that have left EMS because of emotional trauma. Perhaps if they had been able to get professional counseling, they would have been able to continue to serve their communities. The amount of money it would take to fund this bill is minor compared to the cost of training new responders. So in answer to some of the comments that were made previously, is this a mandate that's coming down to villages and small communities? I don't believe it is. They are already helping fund the cost of training for those local volunteers. And so I speak specifically to the situation in rural Nebraska when I stand in support of this legislation. Isn't that the least we can do for these volunteers? In recognition not only of their service but in recognition of the fact that mental anguish is a condition and we've already shown thus far in some of our conversation that we've got a little bit of a hang-up there. We take these volunteers for granted. I'll be the first to admit that. When the whistle blows in Cedar Rapids, I know

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that those EMTs, I know that those volunteer firefighters are going to go out. But you know what they go out to see oftentimes is a horrible accident, is a death, is a suicide, and there's a double whammy there. Because you know what those are? Those in many cases, in fact the majority of those cases, are their friends or their relatives. And when they go back, we don't have those support services that Senator Cornett talked about. They sit in the solace of their individual homes or their men have to go to the bar and spend a little bit too much time there because they don't have an outlet. This is a small help that we are providing for them. And I ask you to give your support to this legislation. Thank you. [LB780]

SENATOR ROBERT: Thank you, Senator Sullivan. Senator Janssen, you're recognized. [LB780]

SENATOR JANSSEN: Thank you, Mr. President and members. Would Senator Lathrop yield to a quick question. [LB780]

SENATOR ROBERT: Senator Lathrop, will you yield to a question from Senator Janssen? [LB780]

SENATOR LATHROP: Yes, I will. [LB780]

SENATOR JANSSEN: Thank you, Senator Lathrop. It's been a little bit since your opening and I took some notes here but I wanted to...I think you were...did you mention Arkansas and Missouri as states that presently have this and use them as a comparison? [LB780]

SENATOR LATHROP: What I said was, the Fiscal Office looked at Arkansas and Missouri and the difference, Senator Janssen, is they cover every employment as far as I know. And so we're just talking about first responders. Arkansas, Missouri allow the store clerk or the emergency room person to collect. [LB780]

SENATOR JANSSEN: Okay. All right. Thank you. I think that clears that up for me. Do they, and I just went over the NCCI estimate, does that NCCI estimate include any of the government data which would be Arkansas, Missouri? [LB780]

SENATOR LATHROP: Well, that outfit is a client of one of the people that are working against this bill so I would assume it would or if it didn't, it would be amended. So my assumption is, yes. [LB780]

SENATOR JANSSEN: I believe that actually the answer is no, that they did not include that and we can talk off the mike about the information I got. Because I...this bill, I'm not, I guess, rising in what you would call violent opposition to it because I like the premise behind it. And I'm not sure how open you are to amending it. Probably not real open.

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When I...it's tough for me to look at my volunteer firefighters. They're very passionate about this bill. This is a big bill for them. I can echo what everybody has said in here about the volunteer firefighters. And I told them that I did not support this and I told them why. I found it while serving on the Fremont City Council sometimes there was quite a few abuses to workers' comp. Now I'm not trying to paint a broad brush and saying that they would all do that, but I think we can all admit that that does happen in workers' comp. There is an element of fraud that happens in that. In a particular case on the city council I served on, one of the city employees was claiming that their medical condition, their alcoholism was a direct result of a first response. And I believe in this situation it was widely known that that probably was not the case but continued on down that path with quite a bit of litigation at that time and that's a closed type of record that I can't discuss too much in detail about it due to confidentiality. So I was wondering how much that would open it up and I don't have further questions for you, Senator. And I was just going through Missouri's bill and there's some things in it that I like that I'd like to see incorporated if we move forward with this type of legislation. And I read your amendment. But in Arkansas for instance, there's limits on mental, mental claims to only those that are the result of a crime. So that would be one difference than what I see in LB780. It limits coverage to 26 weeks. If the claim is for death, it must occur within one year of the injury. We have no such limitation. And these are just some differences. I won't say all of these would be something that I would push for, but these are just some of the differences that...and honestly were pointed out to me, Senator Lathrop. They use strict construction theory for determining workers' compensation claims. Nebraska uses a theory that requires disputes to be weighted for the benefit of the employee. I also oppose this, basically being a small business owner and have seen...I've had some lower back claims that I've had to go to hearings on and whatnot. I can't speak to the validity of all of those. I feel that some of them were brought fraudulently. But I also wonder about the fiscal note and there were so many people that testified at this hearing in opposition and proponents, opponents, like you said, you're going to see many of those and to say that there would only be two, there wouldn't be more... [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR JANSSEN: Thank you, Mr. President. I just wonder if there would not be more. I would prefer to see something come first more limited in scope if possible. So like I said, I can't rise in...I am opposing this bill. I'm looking for a grayer area to work with this on and would be willing to work with you on that. It just kind of depends how the vote comes out, but thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator Janssen. Senator Stuthman, you're recognized. [LB780]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. As the

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majority of you realize, you know, the ability for a lot of these smaller rural communities to get first responders or to keep people on, you know, the fire department and their little rescue units, is really hard. Mainly because of the fact that the majority of the people either work in a larger community and there's not many left in those communities during the day to be first responders. And when incidents happen like I mentioned before, it's real hard to get people to volunteer to help with the first responding. And I feel that everybody in the state of Nebraska should have, you know, some protection, some assurance that maybe they could get help within a short period of time. After I spoke before, I did receive an e-mail from a community and the community does have a paid fire department, a paid rescue crew, 24 hour a day. And they had stated that access to mental health professionals is provided free through our Employee Assistance Program. And I would like to ask Senator Lathrop a question. [LB780]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB780]

SENATOR LATHROP: Yes. [LB780]

SENATOR STUTHMAN: Senator Lathrop, as I had just stated, you know, if there is a paid fire department, a paid rescue first responders in a community, they have free access to mental health professionals through the Employee Assistance Program. Would this be correct? [LB780]

SENATOR LATHROP: Some of them do. I mean, there might be a counselor that they send you to and you talk to the counselor but that person may or may not know. That person is talking to you about your bad marriage and he's talking to you about the fight you had with your wife and the fact that you don't get along with the guys at the fire station and then you roll in there with posttraumatic stress disorder, it's a different breed of cat. We're talking only about very, very significant condition. And no, those places don't have psychiatrists there to provide that care. Some of them might have a counselor. This would get you psychiatric care because some of these folks need more than just counseling. Now a lot of people...I don't want to mislead you. We're talking about a few people that really, really have a bad response to something they've done. Most of the people will be okay with a little bit of, you know, in the fire station kind of care that's already available. [LB780]

SENATOR STUTHMAN: Okay. Thank you, Senator Lathrop. The issue that I have is, you know, this professional help is provided through their Employee Assistant Program. In my opinion, that is an employee but the majority of what we're talking about is a volunteer. These are not employees. They're not employees of that little rural community first responder team. They're all volunteers. They're not employees. So I think we're talking about two different things in respect to, you know, some of the larger communities, you know, have access to a lot of things which smaller communities don't have that access to. And like I stated, you know, some of these smaller communities,

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you know, have to really beg for people to be on the first responder team or to even be on the volunteer fire department. So I think the situation is different between the totally volunteer fire department and the paid fire department which a lot of the larger and medium-sized communities have. [LB780]

SENATOR ROBERT: One minute. [LB780]

SENATOR STUTHMAN: And I think what we're talking about here is what is a true volunteer fire department as Senator Lathrop has stated, you know. Hopefully, that will never happen that they have to get some help but there are individuals that can't cope with it. But I don't think there's going to be a lot of them. So I am very concerned about those few individuals that can't get help and can't deal with the issue and get really withdrawn from the community, from their family, maybe from work. Maybe they just need a little bit of help and that's what I think this does provide. Thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator Stuthman. (Visitors introduced.) Returning to discussion. Senators wishing to speak on the committee amendment, AM2064, to LB780: Senators Hadley, Gay, Dierks, Karpisek, Cornett, and others. Senator Hadley, you're recognized. [LB780]

SENATOR HADLEY: Mr. President, members of the body, thank you. Would Senator Lathrop yield to a question? [LB780]

SENATOR ROBERT: Senator Lathrop, will you yield to a question? [LB780]

SENATOR LATHROP: Yes, I would. [LB780]

SENATOR HADLEY: Senator Lathrop, I just did a little basic looking on the ambulance services of Nebraska and we have some private ambulance services that are not city, not county. Has anybody looked into how this would impact them? For example Hastings, I believe they have a completely private ambulance service. I believe Scottsbluff has Valley Ambulance and such as that. Do you see this being a problem, as a cost shifting to them, and do you think they will be able to handle the costs of this additional workmen's comp insurance? [LB780]

SENATOR LATHROP: Let me ask you a question before I answer that. Are these guys going on emergency runs or are they just taking somebody from the nursing home over to the hospital? [LB780]

SENATOR HADLEY: I believe Hastings only has one ambulance service. So if there is an emergency in Hastings, it's a private company that picks them up at the accident and takes them to the hospital. [LB780]

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SENATOR LATHROP: I have to tell you, you have me on that one. I would have to look. Perhaps we could talk about that between General and Select about whether they're covered and not covered. But again, I'd still take you back to that handout I gave you from the folks who are experts in what this will cost and they referred to it as a negligible effect. So even if it were a private person, even if the private outfit were covered and somebody on there, even if they had to pick up the coverage, according to the experts the cost would be negligible. [LB780]

SENATOR HADLEY: Okay. Thank you, Senator Lathrop. I guess I have the same concerns, even for example in Kearney with Good Samaritan Hospital. Good Samaritan Hospital runs the ambulance service and, in essence, it has a quite large emergency service and the city is very thankful they do it. And I worry about them picking up additional costs, so it would be interesting for me to know what the additional costs in workers' comp premiums would be for, you know, operations like that and whether or not those costs...are they reimbursable, whether they're not reimbursable. The last thing I guess in unintended consequences would be to...some may end up with ambulance services going out of business because we've added another cost to their cost structure that is not reimbursable. [LB780]

SENATOR LATHROP: If that's a question, I'll answer it. [LB780]

SENATOR HADLEY: Yes. [LB780]

SENATOR LATHROP: The document that I handed out, these guys are the universally recognized experts on what it will cost. There is no other place I can go to get a different number for you. Their conclusion is it would be negligible. So if somebody is going out of business, they're on the verge of it apparently right now. I do not see the change that would affect, according to the fiscal note and the analysis done by that office, not me, two people, \$7,400 spread across the state. I think negligible sounds bigger than it probably will be. [LB780]

SENATOR HADLEY: Okay. Okay. Thank you, Senator Lathrop. I happened to run across a study and it approximated between 7 percent of all firefighters meets criteria for current diagnosis of PTSD, so I guess there could be a question of where we fit in that particular area. Thank you, Mr. President. [LB780]

SENATOR ROBERT: Thank you, Senator Hadley. Senator Gay, you're recognized. [LB780]

SENATOR GAY: Thank you, Mr. President. I was checking in to see if there could be an amendment to put on here. We talked about, I heard Senator Lathrop say, it's a minimal cost, it's just a few people, workers' comp claims wouldn't go up for the municipalities,

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it's just fractional. I'm not...I'm just not so sure and I need more information on that. But the thing that's concerning to me when I look at the proponents, I completely understand. The opponents, when I look at that, though, I see League of Municipalities and that's the one that kind of stands out in my mind. Nebraska Risk Manager and the city of Lincoln's risk manager were opponents to this. If we are so sure of the cost of what's going on here, that it's very negligible, we should create our own fund, a state fund, and fund this. Don't pass it down to the municipalities and just say, well, it's not going to be a whole lot. Maybe we should look into...and I'd ask Senator Lathrop a question. [LB780]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB780]

SENATOR LATHROP: Yes, I will. [LB780]

SENATOR GAY: The idea of creating our own fund, if we're going to...again, I said why is this a state issue? Why don't we create our own fund and say, listen, if you have some issues, we will pay for it? We're not going to ask Wahoo, Nebraska, pay for this; Papillion, Nebraska; Benkleman; whoever it may be. Why don't we pay for some of the things that we're going to do here? [LB780]

SENATOR LATHROP: If you want to put an amendment in, I'll sign off on it and I'll tell you what the fiscal note will be--\$7,400. I think that we are looking for reasons not to like this. Seventy-four hundred dollars spread around the communities is change. It's change. We're making this harder than it needs to be honestly. It's \$7,400. I didn't make these numbers up. The Fiscal Office gave us their best estimate of what this will cost. It's two people and that's not just the state's version of it, which is what belongs in the fiscal note, but with two people, we don't know if they're going to be people in the community or people on the State Patrol. But it's a small amount, it really is. [LB780]

SENATOR GAY: The fiscal note, when you read the fiscal note, and there's four of them, goes gradually. Your amendment helps fix this I think a little bit and I commend you on the amendment. I think the amendment is a good amendment. However, that doesn't go on the workers' comp. We have no idea what the workers' comp would be, the increased workers' compensation that a municipality would have to fund. And that's the other amendment maybe we should look at, is what would that cost be. Because if we're not, we're passing costs down possibly. We don't know that. You said offhand it's just a small portion, it's negligible. We don't know that. I mean you're looking at this... [LB780]

SENATOR LATHROP: No, no, I'm not making this up, Senator Gay. This NCCI,... [LB780]

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SENATOR GAY: CCI. [LB780]

SENATOR LATHROP: ...these are the experts. They're the ones that said it would be negligible. I just repeated it. I didn't make that up. [LB780]

SENATOR GAY: Well, the proposal makes no mention of any caps on the dollar amount or duration of the benefits. [LB780]

SENATOR LATHROP: These are the cheapest...okay. [LB780]

SENATOR GAY: Some claims could be sizable. The duration of temporary disability would last until the treating physician, who may be a psychiatrist, determines the injured worker has reached the point of maximum medical. If you go add something on to your workers' comp program in a municipality, I'm assuming it's going to cost a certain amount of money. I don't know what that is. You said it's negligible. I think we should create a fund that if it isn't negligible we would pick up the difference, because if we don't, we're passing it down to local communities and, therefore, local property taxes. And we're all against, of course, local property taxes going up. I've heard that many, many times in my service here. I don't think we can define that, but if we are going to go there wouldn't this alleviate some of the concerns that we have? Because the business community is afraid it's starting something new, but this applies to municipalities. Why would we not cover their expense as a unit of government? [LB780]

SENATOR LATHROP: The business community doesn't have a dog in this fight. I, honest to gosh, we're not covering people in the private sector. [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR LATHROP: And if we set up a fund, it would be \$7,400. Here's the thing that maybe we're thinking about and that is we're comparing somebody with posttraumatic stress disorder to somebody that's paralyzed from the waist down. That's an expensive claim for work comp. We cover it. It's an expensive claim. When you have an injury like this, unlike a physical injury, first of all, posttraumatic stress disorder, which is typically what we're talking about, responds to treatment. It responds to proper care. The sooner you do it the more likely it is to be effective, the more effective it will be and the faster the person will be fine. But these people can do other things while they're getting the care. So a guy with a back injury can't even get out of bed; the guy with the posttraumatic stress disorder, with appropriate amount of care, and I assume that's minimal to start with or a minimum amount, and he's back to work doing something, light duty, something that he can do. [LB780]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Gay. Thank you, Senator

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Lathrop. Members requesting to speak on AM2064 to LB780, we have Senator Dierks followed by Senator Karpisek, Senator Cornett, Senator Dubas, Senator Gloor, and others. Senator Dierks, you're recognized. [LB780]

SENATOR DIERKS: Thank you, Mr. President. I've heard from a number of my volunteer fire department people in my legislative district and that's all we have. They're all volunteers out there. We're finding fewer and fewer people that we can get to come and take these jobs. Our population is declining, getting older, and we're in kind of a world of hurt out there to keep volunteer firemen on our staffs. They tell me that this type of legislation would be encouraging to them and help them gain new members, and I'm going to work at that angle and I'm going to support the legislation from that standpoint. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator Karpisek, you're recognized. [LB780]

SENATOR KARPISEK: Thank you, Mr. President. Members of the body, there's not a whole lot more to say in support of this bill. I think everyone has covered it pretty well, but I thought that I should at least get my two cents in because we do hear a lot of the positives, don't hear many of the negatives. I do credit Senator Gay for asking questions, trying to come up with some alternatives. And I give Senator Utter a pat on the back for being concerned about cost. However, this, to me, does go right to the volunteers. And I don't want to take anything away from the paid people. I'll get to them later. But the volunteers that work a 40-hour week or own their own business and maybe work a 80-hour week and in the middle of the night get up to go put out a fire, to go scrape their friends off a highway or maybe some of their relation, who else does this in a small town? Everybody knows everybody there. Almost anybody that you're going to have to go work on you know and maybe you're related to. Don't you think that that could really mess you up? If that person could take a little bit of...little bit of counseling, even a few hundred dollars worth, and straighten them out to be the same person they were to begin with. What else can happen? They can lose their job. They can lose their family. They can spiral downward and then what happened? We just lost another productive member of that small community. We can't afford to lose any more members of those communities. Can't afford to lose people in the big communities. These people do these things. I couldn't do it. I've never been on a volunteer fire department or rescue. I don't think I could do it. I appreciate what they do. My concern is for them. They're putting their necks out there. They are doing that for us. And, yes, they can get hurt physically; they'll be covered. But what about mentally? If anybody here against this bill doesn't think that that could mess you up, I think that we better have a little interim study and maybe we'll sit at a few fire halls across the state and we'll go running out on some calls, see how you feel after that, see if you're not a different person. Now the people that are paid, they know those risks. You bet they do. They also know that they might get smoke inhalation, a broken leg, a broken arm, so why are we paying them for

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that? Why are we paying for those? You know that that could happen. I don't think that that cuts, folks. You know the pressures of that job. You know that you could get hurt physically so why pay you? I think we have to think about what is right for people, how to keep them happy, healthy, active in our societies. I don't want to raise insurance premiums either. And Senator Lathrop does think that if we had an A bill with this that it would be the \$7,400. I'm sorry, I tend to disagree. I've seen enough A bills around here and I don't want to get into that fight, but I disagree; the old death by the A bill again. I just think that we need to look at this... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR KARPISEK: Thank you, Mr. President. Give these people some hope. We can't also afford to lose the people off the departments. One bad thing happens to them, they can't take it, they're not going to be back. Who would? I know that there is a lot of worry about people, oh, this will just spread right to the business community right away. Can't guarantee that it won't. Senator Lathrop has said as long as he's here he'll fight that off. As long as I'm here I would fight that off. It's not what we want. If somebody is trying to get the camel's nose under the tent, which I can't stand that phrase anymore, being here four years, I'd like to smack the camel in the nose with a rolled-up newspaper and tell him to get out. That's not what we're after. Please consider these people that are just trying to help all of us. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Cornett, you're recognized. [LB780]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. I'm going to read you some statistics to begin with. This is just for rates of divorce, alcoholism, domestic violence, and suicides among police officers. Our divorce rate is 60 to 70 percent higher than the national average. When I was on the police department, women police officers had a 90 percent divorce rate for their first marriage. Our alcoholism rate is two times higher than the national average. Our domestic violence rate is the highest in the nation for professionals. There's a lot of reasons for that. You get really used to violence when you're a police officer. Our suicide rate is three times the national average. I sit here and I listen to cost, I look at the NCCI and I'm going to read it directly because Senator Gay did a very good job of cutting Senator Lathrop off. Each of these states, at most a negligible amount of benefits paid or expected to be paid for those types of claims. You know why? It goes back to the fact we don't like to admit we have a problem. You're not going to see a flood of people claiming work comp claims for mental illness or for posttraumatic stress. Nobody wants to be labeled that way. The people that will seek this are the people that truly, truly need it, and they're not going to sitting at home in front of their TV drinking a beer and eating potato chips. Paid departments make you go to work when you're under workers' comp. If you are physically able to drag your body there, you go and you sit at a desk. You

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answer phones, you do data checks, you run record checks, you register guns. You do whatever they need you to do, grunt work, and all you want to do is get back to your cruiser. All you want to do is go back to your normal life. You talk about costs, I've got an article on a study here that the national average for training a police officer just for the first few weeks of training is \$30,000 per officer per department. How many people do we lose every year to alcoholism, to domestic violence, to suicide in this country because they are not getting help? Like Senator Karpisek, I am sick of that statement--nose under the tent. We're willing to help people that break a leg. We're willing to help people that fall down on the ice. We're willing to recognize that is a legitimate injury that occurred at work, but we're not willing to recognize that mental illness is a legitimate problem in this country or a legitimate problem for our first responders? Senator Gay talked about setting up a separate fund for this; why don't we set up a separate fund for the \$7,400? You know what? Because it's workers' comp. Why don't we set up a separate fund for all work comp injuries? Is that the way we want to run the government, that the state picks up the tab for every municipalities' injury? Senator Price, are you...would you be willing to answer a question or two? [LB780]

PRESIDENT SHEEHY: Senator Price, would you yield? [LB780]

SENATOR PRICE: Yes. [LB780]

SENATOR CORNETT: Senator Price, you were in the military. Am I correct? [LB780]

SENATOR PRICE: Yes. [LB780]

SENATOR CORNETT: Do people in the military frequently see things like I'm talking about? [LB780]

SENATOR PRICE: There are those that... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR PRICE: ...there are those that do. [LB780]

SENATOR CORNETT: And if they suffer a mental injury like a physical injury, is there help available for them through the VA or through TRICARE? [LB780]

SENATOR PRICE: If they are sent through the evaluation, go through a DSM-IV and are classified that way, yes. [LB780]

SENATOR CORNETT: If they are classified to have suffered a mental injury at work for our government, they can receive care without having to pay for it. Am I correct? [LB780]

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SENATOR PRICE: I would say, yes, on the base of that. Yes. [LB780]

SENATOR CORNETT: What is the difference between the military and our police and our fire and our volunteers in this state? [LB780]

SENATOR PRICE: The military is paid by the federal government. [LB780]

SENATOR CORNETT: And is there any difference in the obligation to take care of the people who take care of us? [LB780]

SENATOR PRICE: I'd have to say no. [LB780]

SENATOR CORNETT: Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Dubas, you're recognized. [LB780]

SENATOR DUBAS: Thank you, Mr. Lieutenant Governor. As I stated before, the first time I spoke, you know, this is one of those issues that the minute you say workmen's comp people just immediately go to their respective corners. And again, I understand where the business and political subdivisions are coming from, but I also don't think that's a reason why we immediately just put up the walls and say can't go there, can't go there, because of what might happen. I think Senator Sullivan talked about having an open mind and really looking at, seriously looking at the information that is put before us, looking at this NCCI letter and report, looking at what other states have done. This is not information that's being fabricated or just pulled out of the clear blue sky. These are things that we can go and we can corroborate that they're factual and the experiences have been as they're stated. So, you know, I'm not wanting to diminish what the concerns are about workmen's comp and the possible ramifications, but I also don't want to let that fear prevent us from doing something that is the right thing to do, in my mind. Again, these are people who provide a very, very valuable service to the citizens of our state and we need to recognize the position that they put themselves into for us. Would Senator Lathrop please yield for a question? [LB780]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Dubas? [LB780]

SENATOR LATHROP: Yes, I will. [LB780]

SENATOR DUBAS: Thank you, Senator Lathrop. As we've looked at what the other states have done, you've got the information on how it's working for them, and if it's in there I'm sorry if I missed it, but how long have these other states been providing mental, mental coverage? [LB780]

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SENATOR LATHROP: I do not know the answer to that. I do know that looking at the fiscal note it looks like they took their experience for the last three years to develop the data for the fiscal note. [LB780]

SENATOR DUBAS: So there's at least three years worth of... [LB780]

SENATOR LATHROP: Pardon me, four:... [LB780]

SENATOR DUBAS: Okay, so... [LB780]

SENATOR LATHROP: ...2006 through 2009. [LB780]

SENATOR DUBAS: Okay. So at least four years so it's pretty reliable information then that we are basing this on. [LB780]

SENATOR LATHROP: It's current. [LB780]

SENATOR DUBAS: And I know that this is an issue that's very close to your heart and you've been working on since we came down here and some of these other states have put limitations in place or they've got some parameters around how many dollars worth of services that they can give. Have you considered or looked at what other states have done before making the decision on your particular bill? [LB780]

SENATOR LATHROP: Well, the position I've taken on my particular bill is a function of what I think is the right thing to do. It's also a function of my experience three years ago when, in the wake of Von Maur, when we had employees up at Von Maur who witnessed a massacre and a lot of them had significant problems, as you can expect. We put the bill in originally to cover anybody that was a first responder or anyone who witnessed a violent criminal act, and it was later amended, because that wasn't going to go through here, to be first responders only, and that's what passed. I think there's a logic to first responders. There's a logic to first responders in this small expansion because they're serving our communities. Many of them are volunteers. Others are people that put their life on the line, literally, going into burning houses, going down dark alleys in the middle of the night chasing people for our safety. And I think they should be afforded a special place and the protections that they need should be available in the work comp statute. [LB780]

SENATOR DUBAS: I will not disagree with you. I appreciate you introducing the bill and would yield you the rest of my time, should you so choose. [LB780]

PRESIDENT SHEEHY: Senator Lathrop, you're yielded 1 minute. [LB780]

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SENATOR LATHROP: Thank you. Senator Dubas, I appreciate that. There are, of course, a number of concerns that people have expressed. I've tried to address those as we've gone through this. I see Senator Gloor standing up. Hopefully, he'll have...we'll have some dialogue. I think it's important, though, that you know that the reason the numbers are lower than you would expect, intuitively, if I would have told you don't look at the fiscal note, tell me what you think this is going to cost, you would have guessed something in six figures or seven figures probably, and the reason for that is not a lot of disability payments, it's the care. It's about getting these people care. And that's what this bill will accomplish for people that need it. It's effective treatment as well and the sooner we get it for them the better the outcomes. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Thank you, Senator Dubas. Members requesting to speak on AM2064 to LB780, we have Senator Gloor, followed by Senator Lathrop, Senator Flood, Senator Nelson, Senator Utter, and others. Senator Gloor, you're recognized. [LB780]

SENATOR GLOOR: Thank you, Mr. President. Members of the body, I have a knot in my stomach. I can't recall a bill I have struggled over as much as this bill this session. I've told Senator Lathrop my leanings were against this bill and he was kind enough to spend not a small amount of time visiting with me about some of my misgivings. It's my friend Senator Wallman's priority bill. And I have my own stories. I'm one of the people Senator Cornett referred to who has their own experiences, obviously nothing like hers. None of us do, thank goodness. I've shared in the past my experience as a first responder. I told the story of a motorcycle accident in a German field late at night. But I especially remember the baby that was nonresponsive, was not breathing, laying on a couch in base housing and it was the baby of a fellow worker at our hospital, shrieking family members around, desperately trying to do CPR to keep this baby...breathe life back into this baby so we could get it to the emergency room, unsuccessfully. I remember that to this day, like it was yesterday I remember that, and so I'm empathetic. And I know there are others who, with memories like that, multiple experiences like that. I have nowhere near as many memories like that, thank goodness, as some first responders have problems, but I have been a manager for a lot longer than I was a first responder and my antennae go up on this bill. The hair on the back of my neck prickles by different components of this bill that have me concerned and make it difficult for me not to fall off the side of the fence with my original leanings. There are a lack of claim limitations on this that make me uncomfortable, both for cost and coverage as a result of death; the weighting of this, the inability of the employer or the county, the municipality, to steer the employee--hope that's not seen as a bad word--but to be involved in deciding where that employee goes for the care they're going to get; and the small financial impact (laugh), which should be a plus, especially makes me uncomfortable and it should do just the opposite. My managerial sixth sense screams at me about this bill and it's not a good reason for any of you to do what I'm unfortunately going to do for those of you who support it, but it's the reason I feel the way that I do

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and felt I should explain it by way of an explanation of my vote against LB780. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator Lathrop, you're recognized. [LB780]

SENATOR LATHROP: Thank you, Mr. President, colleagues. I wanted to take this opportunity to visit with you a little bit about work comp because I think somebody earlier said as soon as, I think it was Senator Dubas, as soon as you bring up the term or the phrase "work comp," everybody goes in to their corners, and I think everybody is running to their corners today because they all have this preconceived notion about work comp. The notion is that people that make work comp claims are not honorable, that they're...you know, that some people are scamming the system and that, because we're talking about mental or emotional injuries, that that's more likely to happen here and that we'll have huge expenses. I heard Senator Gloor. He's saying, I'm looking at the number, \$7,400, and intuitively I'm having trouble accepting that. Let me tell you why it would be less and it's less for two reasons than a typical claim. I'm sure this is less than the typical person that hurts their back or the person that might suffer a knee or a shoulder injury in the scope and course of their employment. The cost of a claim is a function of two things. It's a function of a lot of different things but mostly it's a function of how much care are you going to require and what's that care going to amount to and how much time are you going to be off work. So the guy that suffers the back injury is going to need more time to get well and that person is going to be off work longer, right? Because most the people that suffer the back injury are the guy working in the trades or, frankly, CNAs, nurses. They have a lot of back injuries lifting patients. When you talk about an injury like this, those considerations are why the number is lower than you might have expected. Let me tell you why. When you talk about an emotional injury, if we can get them care early, if we can get them care early, plug them in with a psychiatrist and a psychologist or a counselor for the proper care, they're not going to miss time from work. These are not the kinds of injuries that are going to take you off the job site. To collect a penny in disability benefits you have to be off work for seven days in a row. If you're not off work for seven days in a row, the only thing you're going to get out of work comp is the care, the care, that's it. And in work comp, if you suffer an injury and you can go back to doing a different job at your workplace even with the injury, you got to go back and do it. So the person with the emotional injury that we're talking about here is not likely to be off work long enough to get benefits. That's why you see the average costs somewhere around \$4,000. I'm willing to bet that some of that's litigation expense, but the greatest share of it is...the greatest share of that on average is the cost of care. So when people receive the care, soon they'll be back to work and not get disability benefits. The care is relatively inexpensive for the problem we're talking about. These kind of problems, posttraumatic stress disorder, are now coming to light even more so than they did after the Vietnam War. We're watching people come back from the Middle East that have been subject to and seen some pretty gruesome

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things and we are finding some of our soldiers now coming back with posttraumatic stress disorder and it is in the Veterans' Administration hospitals where they have... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR LATHROP: ...where they have made great strides in the treatment of this condition. They have made great strides in diagnosing the condition and in treating the condition. That's why the numbers are so low. You needn't be afraid. This isn't a sleight of hand. I didn't make these up. These came from other states who have an experience enough to tell us what this is going to look like. It's mostly going to be about care and, friends, if we don't provide the care, we're going to lose these people. They're not going to stay and serve us. And these are people serving our community. I really, really urge your support of the amendment and the underlying bill. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Senator Flood, you're recognized. [LB780]

SPEAKER FLOOD: Thank you, Mr. President. Good afternoon, members. I come at this issue from a little different perspective. When I was elected as the state senator from Madison County, we were in the middle of behavioral healthcare reform and we were shutting down a state psychiatric hospital in Senator Utter's district and in my district from providing acute psychiatric services to the mentally ill. So I learned a lot in that process about psychiatric care and treatment and community-based services. I learned about the stigma attached to behavioral health troubles. I watched enough on a behavioral health unit to see police officers who shackle the legs of a mentally ill person and handcuff them or put them in a belt when they transport them. And I'm not putting down law enforcement. They have to do that. That's their protocol. But that's how we treat the mentally ill in Nebraska, just so you know. When you're placed in emergency protective custody, we shackle your legs and we handcuff you and we take you to another facility, like a criminal. And you wonder why there's a stigma. That said, I think we all can agree that if you get the help you need, you can treat a mental illness and you can move on and you can restore your quality of life. So that's where I come to this issue from. The second component to this, you know, and I've seen this before in my service in the Legislature, we have these volunteers across the state and you might know that I've been pushing a bill and it was resolved last year on first responders and the amount of time. See, we make these EMTs go to 100-plus hours of training. We run them through every hoop in the book, in my opinion. We got guys that are working 45 to 60 hours a week at Nucor Steel in Norfolk and, instead of going home to be with their family, they're going to the community college to get a few more hours in to stay certified or to get their certification. And then they send them back to Battle Creek and the whistle goes off at 3:00 in the morning and they respond to Highway 275 at the intersection of 121 and there's a multicar collision and there's a little child in the back

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seat. Mom may be a fatality in the front seat and they have to use the jaws of life to get that child out, knowing that Mom is dead. And then we send them back home. They get up for their shift at Nucor at 5:30, they work all day, they do some more of their hours at the community college, and we all pretend like they should be able to handle that and they should tough it out or do it on their own dime. Well, let me tell you something. No taxpayer in this state wants to see the bill you're going to have to pay to get rid of all these volunteer squads across Nebraska. You want a bus barn every 25 miles? Do you want to have regional fire houses where you have paid staff in there? We can't do it without the volunteers. So even if you do it just for the volunteers, it's worth it. Next point I want to make on the paid staff, you can talk about Von Maur, I can talk about a bank robbery in Norfolk, I know those police officers, they will never forget what they saw when they walked in that bank after two minutes of gun smoke. That doesn't go away. It doesn't get any easier, you know? We had a state trooper commit suicide after that robbery. You tell me this isn't a real problem. It has impacted my district. I don't like the idea of increased costs, but I don't like the idea of people going to work in service to their community, their city, their county, their state, still struggling with not only mental illness... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SPEAKER FLOOD: ...but the stigma. We want to be serious about parity. We want to be serious about doing the right thing. I'm going to vote like I did before to support this bill. And I pride myself on being probusiness. I want to have that reputation because that's what I ran on, that's important to me. But you can't stick everything in a box and say this is probusiness, this isn't. To be a legislator, you have to look at the words in the bill, you have to apply them to the facts that they will be applied to across the state, and you have to say, you know what, this is different. I'm going to do what I think is right and I'm going to go to bed tonight knowing that this is the vote that I cast and I cast it for the right reasons. So I'm going to vote yes and I appreciate the fact that they had the courage to bring the bill back, and let's pass it this year. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Flood. Senator Nelson, you're recognized. [LB780]

SENATOR NELSON: Thank you, Mr. President, members of the body. I have a few questions for Senator Lathrop, if he will yield. [LB780]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Nelson? [LB780]

SENATOR LATHROP: Yes, I will. [LB780]

SENATOR NELSON: Senator Lathrop, you were standing here as the Speaker was addressing our colleagues? [LB780]

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SENATOR LATHROP: Words of eloquence. [LB780]

SENATOR NELSON: After hearing those words of eloquence and that litany of all the things that are going wrong, are you still sticking with two claims a year and \$7,400 in costs? [LB780]

SENATOR LATHROP: I think that's going to be the average. I have to tell you, since we don't have these claims in the state of Nebraska, all we can do is look to other communities and ask what's happening. Thirty-six states have mental, mental care, right, mental, mental claims. We're in the minority having none. We're just talking about making a very narrow exception for mental, mental injuries. [LB780]

SENATOR NELSON: I'd like to refer to the NCCI analysis and on the second page, paragraph 2, and this has been discussed before, no mention of any cap on the dollar amount; therefore, some claims could be sizeable. The duration of temporary disability benefits could last until the treating physician, who may be a psychiatrist, determines that the injured worker has reached a point of maximum medical improvement. If someone makes a claim here, are they going to be under temporary permanent disability? [LB780]

SENATOR LATHROP: It would be called temporary total disability. [LB780]

SENATOR NELSON: Temporary total person. [LB780]

SENATOR LATHROP: And for reasons that I outlined when I last spoke, I expect that that wouldn't happen very frequently because, unlike a physical injury that prevents you from leaving the house, an emotional injury for which you're receiving treatment is likely to permit you to go back to work even in a light duty or a more sedentary capacity. So I would not, notwithstanding that...you never know, right? [LB780]

SENATOR NELSON: That's right. [LB780]

SENATOR LATHROP: We never know all the circumstances that can happen. All we can do is go with the law of averages here as we make policy and the fiscal note reflects that. [LB780]

SENATOR NELSON: And if the treating physician determines, after an interview or two, that there is potential danger to the other workers because of the condition of this person claiming trauma, isn't he likely to say he's temporarily totally disabled? [LB780]

SENATOR LATHROP: I think you are confusing insanity with posttraumatic stress disorder, although one probably could lead to the other. But I don't think that people with

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posttraumatic stress disorder who receive timely care are necessarily a threat to their coworkers. [LB780]

SENATOR NELSON: Well, but they could be, right? And then we're talking about temporary total disability and we're talking about a psychiatrist who might meet with them once a week at a cost perhaps of \$100 an hour and it could take a long, long time before that person comes off of temporary total disability. [LB780]

SENATOR LATHROP: I think we want that guy treating with a psychiatrist. (Laugh) I don't want that guy going home and not having somebody treating him, if he's dangerous. [LB780]

SENATOR NELSON: Well,... [LB780]

SENATOR LATHROP: I mean, I don't want to be argumentative, but the reality is posttraumatic stress disorder is an emotional condition but it's not insanity, and I... [LB780]

SENATOR NELSON: Well,... [LB780]

SENATOR LATHROP: We do hear the guys...the guy that goes postal, right, and it's in the bell tower. That's probably posttraumatic stress disorder gone untreated. But I'd be very surprised if we have a doctor that says, he can't go back to work this week because he might injure one of his coworkers. [LB780]

SENATOR NELSON: Well, then moving on, at that point a determination would be made. Once he's reached maximum medical improvement, whether a loss of earning capacity exists,... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR NELSON: ...in other words, permanent disability. So there's a possibility of permanent disability here if this is really a severe case. Wouldn't that be correct? [LB780]

SENATOR LATHROP: Would he have a loss of earning capacity if they receive timely treatment and in the end, when they've reached maximum medical improvement, there are some residuals. With an emotional injury, I think it would be hard to have that. That's why the numbers are low. It's hard for me to imagine somebody who has had proper care having a loss of earning capacity after they've reached maximum medical improvement. [LB780]

SENATOR NELSON: Well, I...we disagree on that. I have real reservations about what

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the actual costs can be here. I simply...I can't buy the fiscal note here. I note that Missouri is one of the states identified here by NCCI and they have completely different standards than the state of Nebraska does. [LB780]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Nelson. Members requesting to speak on AM2064 to LB780, we have Senator Utter, followed by Senator Wallman, Senator Price, Senator Gay, and Senator Cornett. Senator Utter, you're recognized. [LB780]

SENATOR UTTER: Thank you very much, Mr. President, colleagues. Would Senator Lathrop yield to a question, please? [LB780]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Utter? [LB780]

SENATOR LATHROP: Yes, I would. [LB780]

SENATOR UTTER: Senator Lathrop, the sheet that you passed out from NCCI, do you know, does that cover the entire universe of workmen's comp claims, those by private insurance in addition to those that may be members of a government pool of some kind? [LB780]

SENATOR LATHROP: Here's what I know about the process and they're not my clients so all I do is get information from them. But over in Business and Labor, if somebody is tweaking a work comp bill, these guys are the ones to talk to us. What typically happens, my understanding, Senator, is somebody introduces a bill and we send the bill over to NCCI and say what effect will this have on work comp claims in the state of Nebraska, and then they give us the feedback. I think you'll see...well, yeah. [LB780]

SENATOR UTTER: My concern, Senator, that this may not represent the entire universe of workmen's comp claims and, for that reason, may not...that the negligible cost statement may not cover the entire spectrum of the claims that may arrive that would cost the taxpayers of this state money to resolve. [LB780]

SENATOR LATHROP: If that was a question, then my response is...I guess my response is all I can tell you is these guys are the experts. They looked at this bill and this is their conclusion. Now if somebody out behind the glass is telling us that, boy, I know this is my client but you can't believe what they've written, I don't know how to respond to that. I feel like I'm shadow boxing on these numbers here but the reality is the Fiscal Office that I don't have any control over came up with a number and NCCI, who are the experts, gave us a conclusion that it will have a negligible impact. [LB780]

SENATOR UTTER: Thank you very much, Senator. Appreciate it. [LB780]

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PRESIDENT SHEEHY: Thank you, Senator Utter. Senator Wallman, you're recognized. [LB780]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I hear a lot about cost here, what does it cost. What does it cost to keep our volunteer firefighters and EMTs on board? You know, there is a cost for training: \$800 for an EMT, \$5,000 for a paramedic you spend, and under \$8,000 for a firefighter under a fire protection program. So you're talking major dollars here to keep our volunteers aboard. And that is money well...but look who pays that. Who pays that? Your communities, your local fire districts. My brother is on a fire board. He knows what they spend to keep and train the firemen. And so I thank God for our EMTs and firemen because they take care of us farmers in rural America and your small towns and villages. And so I think it's a good, good bill. We should do this for our volunteers. And thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Wallman. Senator Price, you're recognized. [LB780]

SENATOR PRICE: Thank you, Lieutenant Governor. Members of the body, I've been out there doing a little research. I have a little research on my own personal experiences but we're going to stay away from those. I went out to a Web site, officer.com and I'll provide that to you all if you should want it, and looked at numbers and they gave some numbers, but I'll start off with some first that were done by rescueworkers.com on PTSD. And first I'm going to talk about numbers. We've heard numbers, and I'm talking about the incidents. Law enforcement officers who agreed to be in these studies had a rate and rates of PTSD ranging between 3 to 17 percent, and that 45 percent of officers have a sleep disorder, which is typically attributed to a PTSD event. In a study by Cornell, et al., in 1999, comparing our first responders to various nations, they found that U.S. firefighters in urban departments had about a 22 percent incident rate of PTSD and that when you looked at it in comparison with German firefighters it was 18.2 percent--so we do see a little bit of consistency there--and that 20 percent of emergency ambulance personnel have been found to have PTSD. So the incident rate is...can be much higher when we're having to deal with these things. And that in this other article, as I was telling you, approximately 30 percent of all individuals who have PTSD could be having some psychotic-type episodes so they have some pretty heavy medications they have to be on. Now at the hearing, let's talk about the hearing. I understand at the hearing there were numerous firefighting personnel who testified who said that they knew of two or three people in their departments each who would, they believe, qualify for the PTSD. I also was just told just this past week the state of Nebraska paid \$9,000 for a psychiatric evaluation. Now since it's self-insured, the state paid that, so that's...these are facts for you to look at. I'll be glad to share them with you. I'd like to ask Senator Lathrop a question, if he had a moment. [LB780]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Price? [LB780]

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SENATOR PRICE: Thank you very much, Senator Lathrop, and the question I have is in understanding the...get a better understanding of the legal challenges, not challenges but definitions, can you talk to me and help me to understand the primary...the concept of primary with this PTSD? I mean, you know, as you were saying on the other side of the glass there's a lot of information, whether, as in Missouri, when they pay this out I believe the PTSD, the stressor, has to be the only thing to happen. There could be no other factors involved. Can you illuminate a little bit on that, please? [LB780]

SENATOR LATHROP: I don't know what they're telling you behind the glass and I've never practiced in Missouri. I'm not trying to be unhelpful but what we're talking about is an identifiable occurrence. In the law, Senator, in the law you have to have an accident in the scope and course of employment, and an accident is a term of art. [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR LATHROP: It has to be a particular thing. So the day-to-day grind of a job is not an accident, but if you shot somebody in the line of duty as a police officer or you came upon the child that's drowned in the pool and it brings you to the edge and you develop the posttraumatic stress disorder, that's an accident, okay? [LB780]

SENATOR PRICE: All right. Thank you very much, Senator Lathrop. Well, ladies and gentlemen, I will continue to listen to this debate and see what we can separate from this for this decision. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator Gay, you're recognized. [LB780]

SENATOR GAY: Thank you, Mr. President. Between last time I spoke and now when I'm speaking, I was asking the League. Basically, my concern is, is this an unfunded mandate to municipalities? There's a letter that I received, and probably you all received, from the city of Omaha who provides mental health coverage under their insurance program. And I was listening to Senator Cornett and some others and it's just hard. Senator Gloor I thought gave a very good speech of where we are. I think many of us are struggling. Who doesn't want to help police and fire? And this is again a very good idea. It's just the cost. I'm on the third revision of the fiscal note and part of what I said is if we're going to do this, we should pay for it. But now...and then I went on the NCCI Web site and they took Maine and Missouri. Arkansas wasn't even mentioned as one of the comparable states but Maine was and Missouri. So then I go down to the agency response and talk to them, and if you read that on page 3 of Revision 3, you know, we're talking a half a million dollars. So my question, if Senator Lathrop would yield to a question... [LB780]

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PRESIDENT SHEEHY: Senator Lathrop, would you yield? [LB780]

SENATOR LATHROP: Sure. [LB780]

SENATOR GAY: Senator Lathrop, and I don't want to catch you off guard and you can respond to this later, but basically what that's saying, they took Maine as a comparable and then they talked about that, took that to our 800 employees who would qualify, and this is state only, as first responders, and then took a number of results there and it said 15 percent of those who filed would have nonmental...these kind of claims of that 15; then they came down to 10 and they went to \$46,000 benefit per claim for that. So then they took that and then basically, if you read through there, and everyone can read this on their own, there's \$463,000. I'm struggling with \$7,400 or whatever and this, and truly I am and I think others are. But the part that scares me is those people who are self-insured. I said why couldn't we just cover this, because many communities are self-insured, others have to go out and buy their workers' comp, whatever the case may be, so there's no standard across the state. But the cost to the city of Lincoln and others, it's just all over the board here. And I think by a statement, it's not going to cost anything, it will. Workers' comp premiums would go up, and I'm just not so sure how much, but that agency review was very high. I'm sure you probably have some reference to it. I'll give you some time to respond. [LB780]

SENATOR LATHROP: I'd be happy to. I'm reading it as we go and what the...first of all, yeah, I'll avoid the particular criticism of the people that wrote that, but let me just say this is the concern I have. They said, well, the State Patrol had an average claim of \$46,304 per work comp claim and we think there will be ten more per year, which is not consistent with...that's worse than all of Missouri that covers every single employee in the state, but never mind that. The problem is they're comparing physical injuries. They've never paid a claim for a state trooper for posttraumatic stress disorder, but they've taken physical injuries these guys get, so if they're shot in the line of duty, if they hurt their back wrestling with a suspect, their average claims are apparently \$46,000. These are different claims. They're not physical injuries. We're talking about some counseling and seeing a psychiatrist and perhaps some medication. So the difficulty with the way they've done it, which I don't think is...maybe, maybe they just didn't think through or look at other states which would have been more instructive,... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR LATHROP: But to use physical injuries as a measure for what these will cost, set them on a course to come up with an outlandish number, which is right where they arrived at. [LB780]

SENATOR GAY: So we're comparing apples to oranges, is what you're saying. [LB780]

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SENATOR LATHROP: That's exactly right. [LB780]

SENATOR GAY: It has no relevance to the discussion. [LB780]

SENATOR LATHROP: None. [LB780]

SENATOR GAY: That's where we're going to go. That's...it's in the fiscal note, I was reading it, bringing it out, that's why we struggle back and forth. What is the cost of workers' comp? I don't think we have that. I think we should set aside a pool and I'm talking a large pool, but I don't know how to distinguish that or I'd have an amendment right now. Could be a quarter of a million, could be a hundred, I don't know what the number is. It's just too hard to distinguish. We can't do that because some are self-insured, some buy their workers' comp, whatever. Otherwise, I would go that route and I'd be more apt to support the bill. Right now, again, we struggle and, you know, making these decisions on...I don't think it would be a whole lot. Let's move forward is difficult for me to make at this time and still listening to the debate. Thank you, Senator Lathrop. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Gay. Senator Gay, that was your third time. Members requesting to speak on AM2064 to LB780, we have Senator Cornett, followed by Senator Krist, Senator Wightman, Senator Price, Senator Fulton, and Senator Karpisek. Senator Cornett, you're recognized, and this is your third time. [LB780]

SENATOR CORNETT: Thank you, Lieutenant Governor and members of the body. I hear numbers being thrown back and forth and how much this is going to cost and whether we should set up a pool or not. Workers' comp was established to help injured workers. There I hear of an amendment that's going to sunset this in three years, and I support that. We should look at how much it's going to cost. I don't have a problem with that. But unlike a lot of the people in here, even though fiscally I am very conservative in a lot of ways, I don't care what it's going to cost. We treat back injuries, we treat neck injuries, we treat leg injuries. I'm standing here, I've been on work comp, was on it for a year and a half while I had all my leg surgeries. Work comp has paid for every one of my leg surgeries, six of them, thank you. Do you think that's any less expensive or more expensive than if I was standing here with posttraumatic stress? What people in here are failing to realize, the debate isn't about the cost and the debate isn't about whether we should be covering it under work comp or not. The debate is about whether you recognize mental illness as an illness, as an injury. If you are injured at work you should be treated. That is why we establish workers' comp. Now I don't believe it's going to cost the state that much and I don't believe it's going to bankrupt it at all. What is the cost if we don't? And I know that I've pulled off more articles than you probably ever wanted to listen to today, but members of law enforcement sometimes feel they cannot disclose their mental illness for fear of unemployment. The stigma and consequence of mental illness manifests similarly in both the military and law enforcement, presenting

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consequences that are often career ending because of the level of risk, danger, and associated stress inherent with their line of work. Law enforcement officers face an extraordinary high probability of developing posttraumatic stress disorder as well as other mental illnesses. It is important to have systems in place to embrace mental health and create a safe environment for addressing mental illness directly. Unfortunately, stigma and lack of understanding can create a culture of secrecy and denial. While officers rarely divulge the existence of mental illness and, therefore, do not seek the appropriate treatment, this lack of treatment allows a disorder to worsen and ultimately jeopardize not only their career but their personal lives as well. I could hand out more statistics and hand out more paper. Posttraumatic stress, if treated early, is curable. It is treatable. You will return that person to the workplace. They may never leave the workplace. Matter of fact, it's recommended that the person continues working if they have posttraumatic stress, that they continue going to work every day. They may need some medication to sleep at night, they may need some counseling, but these will be returned to our society as full members. They're not going to go home and secretly drink, secretly abuse pills, and cost society more in the long run. I guess I fail to understand why we think or there's people in this body that think it's okay for the military to be covered. Okay, the federal government pays for that. I understand that. Our taxes pay for the federal government just like they pay for the state government. We're paying for that just as we will pay for this. [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR CORNETT: This is about recognizing posttraumatic stress as an injury and it's about acknowledging that mental illness is an illness and an injury and that it can be treated, and it's about recognizing that it is a real injury, as real as an injury as that back injury or as that leg injury. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Cornett. Senator Krist, you're recognized. [LB780]

SENATOR KRIST: Thank you, Mr. President, colleagues. I have to tell you that if you've ever seen someone vaporized or if you've taken off and there's been an airplane on the ramp that left about the same time you have and it's not back on the ramp and you know what that means, it affects you emotionally. It affects you spiritually and, most importantly, it affects how you think. The counseling that goes on at the federal government level with our troops is a science. If we were having this discussion 20 years ago I would tell you that there's a bunch of ambulance chasers out there and there's a bunch of fakes out there. But I would invite you, if there's still time, to go call the Veterans' Administration and see if this is a recognized science and if the medical technology is out there, and I think you would find, as Senator Hagel did in the last fund-raiser downtown that I participated in, PTSD is real and, oh, but for the grace of God, go I. Leaving the drama out of this whole conversation, I will tell you that PTSD is

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why we're having this conversation. Mental, mental means I didn't get the bullet, I watched the bullet being delivered; I didn't die in the accident, I watched my next-door neighbor die in the accident. I think we need to think about things on multiple levels. I understand it's all about money, money, money. I understand that if it's about an insurance policy that covers it, it's okay. I've been lobbied hard, extremely hard, that we need to keep this out of one pot of money and keep it in another pot of money; we're already doing a good job of treating PTSD. I would argue that that's not the case. What I have seen, what I have...in the research that I have done, the kinds of things that I have looked at, my own personal experiences, my life, my military history, the people who I have been with who have been treated early and return to the cockpit, and those that have been left to go or were afraid to come forward for a stigma or for not having the treatment available that were lost to us. I had 14 pilots and I needed 13 of them to fly the sorties to continue a 24-hour-a-day coverage. I had two guys come in one day and say, I can't do it, boss, I can't fly. Within a couple of hours and the right kind of conversation from the flight docs and from the people who were there, they were productive, they came back up on-line. Is that a story? Is it fiction? No, it's real. It happens. Do we have the money to spend on PTSD on mental, mental? I don't know how we don't have the money to spend on this issue. Maybe there's something that can be done to make the amendment and the bill more palatable to those that are sitting on the fence but I would say to your first responders, this is very, very important. To the people who recruit first responders, this is very, very important. To the people who want to retain first responders, this is very, very important. And everyone in this room has somebody that fits into that category that you represent or they are that person. Mr. President, I'd like to ask Senator Lathrop if he would yield to a question. [LB780]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Krist? And you have 1 minute. [LB780]

SENATOR LATHROP: Certainly. [LB780]

SENATOR KRIST: Does this...who does this specifically deal with? [LB780]

SENATOR LATHROP: First responders only: law enforcement, firefighters, ambulance drivers. [LB780]

SENATOR KRIST: Is there any possibility that this would spill over into the corporate community? [LB780]

SENATOR LATHROP: I know you came late because of some other responsibilities. I've stood on the floor before you got here and insisted that I would resist any attempt to have this expanded into any other sector. [LB780]

SENATOR KRIST: Thank you for that. Thank you for responding to my question.

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Hopefully I'll be back in January and I also will make sure that this doesn't spill over. I think we need to talk about supporting it and amending it, if we need to, to minimize that exposure, if that's what it needs...if that's what we need to do. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Wightman, you're recognized. [LB780]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I think that probably everyone here could support this bill if we were assured that the cost is \$7,400 per year, but I think all of us have grave concerns that that might not be the case. To try to alleviate my own fears in that regard, I would have some questions of Senator Lathrop, if he would yield. [LB780]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Wightman? [LB780]

SENATOR LATHROP: Yes. [LB780]

SENATOR WIGHTMAN: Senator Lathrop, you and I talked off the mike, is that correct,... [LB780]

SENATOR LATHROP: We did. [LB780]

SENATOR WIGHTMAN: ...a few minutes ago? One of the questions I had, for example, the Speaker mentioned the Norfolk bank robbery and that one of the patrolmen committed suicide as a result of that, I believe. Can you tell me if we would have had this bill, a law based upon the same language as we have in this bill, would that have been a compensable injury, the suicide, and become a death claim? [LB780]

SENATOR LATHROP: It is...it would have had many, many hurdles to clear, but it potentially could have started out that way. [LB780]

SENATOR WIGHTMAN: As a matter of fact, I think you said the family were your clients. Is that correct? [LB780]

SENATOR LATHROP: That's true. [LB780]

SENATOR WIGHTMAN: And there were efforts made to collect so we really don't know what would have been the effect had this law been in effect at that time. [LB780]

SENATOR LATHROP: No, we don't. [LB780]

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SENATOR WIGHTMAN: Can you tell me what the likely cost of a death claim under the workmen's comp, say if somebody, a patrolman maybe, that was 30 years of age? [LB780]

SENATOR LATHROP: You know what? It...honestly, I never got to that point. We filed the claim in that particular case and the rulings, you'll appreciate this, it was on a 12(b)(6) motion so we never got past the complaint. I never looked at the benefits, never examined the benefits and, frankly, I've never handled a death claim in a work comp case before so I couldn't tell you. [LB780]

SENATOR WIGHTMAN: Okay. It is standardized somewhat in that it would be based upon what the earnings were at that time and how many years of life expectancy that the person would have, is that correct, or do you know that? [LB780]

SENATOR LATHROP: It's dependent upon a lot of things if someone were to make a death claim. Those are very, very, very difficult, very difficult to make a claim for taking one's own life. [LB780]

SENATOR WIGHTMAN: If it had been a compensable claim, it is likely that it would have been many times \$7,400 that we're talking about as the annual cost here. [LB780]

SENATOR LATHROP: If it would have been a compensable death claim, I believe they have something for burial and some benefit for the family, but honestly, Senator Wightman, I'm not ducking it. I never got there and so I don't know what the benefits would have been. [LB780]

SENATOR WIGHTMAN: Okay. I have a couple of other questions. Now with regard to the fiscal note, that's what it would cost the state of Nebraska or the best estimate of what it would cost the state of Nebraska because the only people that would be covered under this fiscal note would be the approximate 800 employees that are set forth that would be employees who would be considered first responders that would be employees of the state of Nebraska. Is that correct? [LB780]

SENATOR LATHROP: I don't think it is. Actually, if you'll look closely at that first page of that third revision, it says state employees and political subdivisions. So it wouldn't be...I could actually get up here and start arguing that it should be less than \$7,400 but it's sort of beside the point because it includes employees of political subdivisions, first responders that are volunteer firemen that are not state employees. So it's likely that the state's share of this is, you know, maybe one claim every three or four years. [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR WIGHTMAN: Okay. Now as first responders, though, the owners of a private

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ambulance company would also become first responders, their employees. Is that correct? [LB780]

SENATOR LATHROP: I don't...it wasn't my intention to do that and certainly not the guy that hauls somebody from the nursing home to the doctor's office, but I promise to look at that between General and Select File. [LB780]

SENATOR WIGHTMAN: Okay. Thank you, Senator. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Wightman. Senator Fulton, you're recognized. Senator Fulton. [LB780]

SENATOR FULTON: Thank you, Mr. President. When we've been talking about this, there's something that I've noticed has come up. One of the concerns is that if we do...if we pass this bill and we relegate the bill to first responders that at some point in the future that would be grounds to widen the bill to encompass more people. That's one of the concerns, so those who are opposed to this bill, that's a concern. That's one of my concerns. Yet I have heard as one of the arguments in favor of this bill that PTSD is a real affliction and I don't disagree with that. It most certainly is. But to make that argument only fuels those of us who oppose this bill. If indeed PTSD is a real affliction, and it is, then is it just as real for a first responder or, I should say, is it just as real for a non-first responder as it is for a first responder? And so it seems to me that that would be grounds to see how this would have to widen in future years. So if the example that I put forward, what if someone who is employed publicly, and this could apply to someone who is employed privately, by the way, but let's say that someone who is employed publicly and the example I came up with was a lifeguard, comes upon an accident obviously within the pool and suffers PTSD and suffers a mental injury. That person, under this bill, would not be covered. Yet that which is suffered is the same as that which was suffered by a first responder. Now I understand that we can...we can identify who this bill applies to, but to level the argument that PTSD is real, first, that's not what is being disputed here, but to level that argument only adds to the concern as to what could happen with this bill going forward. So I need to point that out because that's what's going through my mind, and maybe that will help some, maybe it won't. Would Senator Lathrop yield to a question? [LB780]

PRESIDENT SHEEHY: Senator Lathrop, would you yield to Senator Fulton? [LB780]

SENATOR LATHROP: Sure. [LB780]

SENATOR FULTON: Senator, when we last spoke, we were talking about physical and mental injury, and I wanted to ask something about the definition of extraordinary and unusual. When you first started...when you first opened on the bill, you gave some examples of really some horrific situations which could be envisioned. How do you

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distinguish that which is extraordinary and unusual between that which is ordinary and usual with first responders? [LB780]

SENATOR LATHROP: Good question, and the answer is it kind of goes back to what Senator Price and I were talking about, and that is in work comp it's not enough...for example, let's say that you're law enforcement and you've been in the cruiser, working a difficult district and you've been doing that for 15 years and you start drinking and you start getting depression, you start exhibiting evidence of a mental injury because of the way the job has worn on you over time. That would not be compensable. If you, as Senator Stuthman used as an example, if you showed up at the scene, let's say you're law enforcement and you have to shoot somebody and now you can't get it out of your mind and you develop posttraumatic stress disorder. That would be the type of an accident that would be extraordinary. It's not the day to day, the accumulation... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR LATHROP: ...of the day-to-day traumas of doing that kind of work and seeing those kind of things, but it is a particular event. And in work comp, it's perfectly consistent with a physical injury requirement that we have an accident. [LB780]

SENATOR FULTON: Senator, I understand the difference between a specific event and that which occurs from a specific event versus that which has accumulated over time, but I...and I'm not arguing whether that what you are describing is extraordinary and unusual, but I suspect that that would be argued by a unit of government that what you were describing would be part of...would be ordinary to the job. Would that not be a position that the government entity would probably take? [LB780]

SENATOR LATHROP: I don't...I think the language would permit a claim for, for example, posttraumatic stress disorder if you shot somebody. I don't think... [LB780]

PRESIDENT SHEEHY: Time, Senator. [LB780]

SENATOR FULTON: Thank you. [LB780]

PRESIDENT SHEEHY: Members requesting to speak on AM2064 to LB780, we have Senator Karpisek, followed by Senator Stuthman, Senator Nelson, Senator Carlson, and Senator Langemeier. Senator Karpisek, you're recognized. [LB780]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I'm having a little bit of a chuckle here with this low fiscal note. I don't think I have ever heard anybody say a fiscal note is too low before. I think this might be the first time. (Laugh) So it makes me remember back to having the meat market and you'd have a sale on sirloin steaks, about half price, and people would come in and say, what's wrong with

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them? (Laugh) Nothing is wrong with them; we're trying to sell them; we have too many. Nah, something must be wrong with them; you're giving them away. No, nothing is wrong with them, try one. Nope, no, I'm not going to try it; give me that T-bone for 10 bucks a pound, I know that's good; that's pretty high though, isn't it? Yeah, yeah, that is pretty high because those are on sale. (Laugh) Reminds me of the same thing--this is too low, it can't be right. Huh. It is funny and I'm not trying to make light of it but it is kind of cracking me up. The other thing that is kind of hitting my funny bone a little bit today is we're worried about these fictitious claims on the mental. How many fictitious claims are there on workers' comp now do you think? Oh, my elbow hurts; I fell down at home but I limped in to work so I could fall down again at work and file my workers' comp claim. I know we try to watch that, folks, but that happens all the time. And we're worried about a few here or there. I would have to say that the people that they're going to be referred to will be the first ones to say, no, sorry, you are having some problems but that's not the problem; sorry, we can't cover it. Maybe I'm wrong. Then we have a problem with the profession. But the doctor can't tell if you slipped at home or if you slipped at work or if you've got tennis elbow from playing tennis or from lifting boxes all day. We do have a lot of claims there and I know we try to watch them. I would like to watch it more. That was one of the goals when I came here but, guess what, that costs money. That has a fiscal note of a lot of money because we have to hire more people to watch it so that doesn't work out either. It just goes to prove again that if you're not too sure about a bill, you can find anything to make it not look right, not smell right--too expensive, not expensive enough, don't know who it covers for sure. It's all there. If you can't support this bill I understand that. I have some concerns too. But I have more concerns of doing nothing. I think that there was talk about a sunset amendment coming up. I haven't decided on that one yet, how I'm going to feel about that. I suppose if things are going all right we can always push it out farther but that will be a different Legislature probably or if it's two years. I don't know what they're drafting. But let's think about this again. Think about the people that are doing this. This isn't going to go to the businesses. This isn't going to expand. Again, I know there's concern of that. Slippery slope, there's another one I don't like. The only slippery slope I like would be on the ski slopes and I'm not very good at that either and I'm getting too old. Then I might have a workers' comp bill. I might drag in here with a bum foot. Oh, that's right, we don't get any health insurance as senators. Anyway, folks,... [LB780]

PRESIDENT SHEEHY: One minute. [LB780]

SENATOR KARPISEK: ...let's take a good look at this. Thank you, Mr. President. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Nelson, you're recognized. [LB780]

SENATOR NELSON: Thank you, Mr. President and members of the body. In my

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discourse with Senator Lathrop, we somehow...and I'm not going to ask you any questions, Senator Lathrop, we somehow got off of mental illness and insanity. The bill talks about mental illness and, in my mind, that's completely different from physical claims--a damaged elbow, a broken leg, or things like that. Those you can see; those you can prove. Mental illness is another thing. I'm going to talk a little bit about what Senator Cornett told us and this is a very emotional issue, I'm sure, with anyone who has served in uniformed service in a paid position, but it would seem to me if what she says is so, that these paid professionals, especially in the police force, are unwilling to make any claims because they don't want to show any fear, then it would seem to me that the only time we were going to find claims there are if it looks to be a particular advantage for that claimant to go for complete, total disability. And I think it's entirely possible to game the system here. If you think that you can avoid this by claiming total disability, that's going to be expensive, it's going to be costly for the court, but it could result in a considerable amount of money if it is found that this mental illness is a total disability. I've talked with some of the volunteers out in the lobby and I certainly appreciate the dilemma. Here they are, they're volunteering their time and there's a possibility, and I don't discount this, that because of what could happen to a loved one or someone they know, that they could suffer this, I don't think...I think if they're...and this is just my own feeling, if they're strong enough to volunteer to serve as a volunteer, then I think for the most part they're going to be able to survive some trauma here. So there may be some claims; they may not be significant. But I think it's more in the paid services that we're going to have to run into a problem and that we're going to have considerable cost. Thank you, Mr. President, and thank (microphone malfunction) body. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Nelson. Mr. Clerk, do you have items for the record? [LB780]

CLERK: I do, Mr. President. Your Committee on Enrollment and Review reports LB728 as correctly engrossed, LB1002 and LB1057, all of those reported correctly engrossed. Senator Council would like to print an amendment to LB842, Senator Council to LB961, Senator Council to LB510, and Senator Adams to LB1072. New resolutions: Senator Giese offers LR440 calling for an interim study, that will be referred to the Executive Board; Senator Flood offers LR441, that will be laid over; Senator Fischer, LR442 and LR443, both of those calling for interim studies, both will be referred to Reference...or to the Executive Board, I should say. That's all that I have, Mr. President. (Legislative Journal pages 1052-1056.) [LB728 LB1002 LB1057 LB842 LB961 LB510 LB1072 LR440 LR441 LR442 LR443]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Resuming floor discussion on AM2064 to LB780, we have Senator Carlson, followed by Senator Langemeier. Senator Carlson, you're recognized. [LB780]

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SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I put my light on, thinking that we'd be further ahead on an amendment that's coming and so I'm going to yield my time until that comes. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Senator Langemeier, you're recognized. Senator Lathrop, you're recognized. [LB780]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I appreciate the conversation and the debate we've had, the discussion this afternoon and where we're at, and I'd like to kind of tell you where this is going. We're out of people to talk, which is a good thing. I've listened to your concerns. We've kind of talked to people about the money involved, the idea that there are going to be more claims than the fiscal note would suggest and that the claims would be more expensive than they suggest, and it's a little bit like Karpisek's meat market. No one wants to believe that the sirloin steak is half price. And so my thought today is, and I intend to put in when Bill Drafters comes through, an amendment to put a three-year sunset on here. I do it reluctantly. I'm disappointed that I have to because it strikes me that this is either a good idea or a bad idea or we're taking care of people or we're not going to take care of them. But I appreciate that a number of you are unfamiliar with the subject matter enough and you have been pressured sufficiently that you have become skeptical of the idea of even a modest expansion of work comp. I am looking for an amendment. Not here yet, so I'll keep talking but I promise I'll take it out of my close. I think we've...I think many of you have come to appreciate, and certainly I appreciate, the remarks of Senator Krist, who gave us a good description of what we're talking about when we talk about posttraumatic stress disorder, that it is important that we provide for the people that are there for us in our communities, paid or unpaid, but maybe even particularly so the volunteer who doesn't get anything out of this, who is most prone probably to posttraumatic stress disorder and it's the right thing to do. Yeah. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. Members requesting to speak on AM2064 to LB780, we have Senator Carlson, followed by Senator Langemeier. Senator Carlson, you're recognized. [LB780]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm going to pretend that the amendment is already here and I will talk on it. Senator Lathrop has indicated that it's going to have a three-year sunset provision, which would mean it would sunset June 30, 2013. I will support that amendment. I will vote for that. If that amendment passes, I'll vote for the bill. Sunsets don't bother me. In LB701, 2007, for vegetation removal, I accepted a two-year sunset provision. You had to prove it's going to work. In LB98 a year ago, that was to extend the work of the vegetation removal for four years, and now that has a four-year sunset provision. That's okay. My LB1057 to establish the task force in the Republican Basin that's gone through Select File has a two-year sunset provision. That's fine. If the legislation doesn't work, it puts

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an end to it and it gives it an end time. I want to be supportive of first responders, particularly those that are volunteers. Volunteers, because of what they are willing to do, save us millions of dollars every year and I think that puts them in a separate category than many others as far as benefits may be concerned. And so the sunset provision of three years, many of us hopefully will still be here three years from now and we can deal with it at that time. If it is as Senator Lathrop and Senator Cornett really believe, it won't be difficult to remove the sunset provision in 2013. If it happens that between now and then there are significant claims and that causes a financial problem, we have to deal with the sunset provision. We'll be faced with a difficult decision in 2013. That's okay. That's what we're here for. So I will support that amendment as it comes forth and then hopefully the body will support that amendment and we can get on to voting on the bill. Thank you, Mr. President. [LB780 LB98 LB1057]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Mr. Clerk, do you have an amendment to the committee amendment? [LB780]

CLERK: Mr. President, Senator Lathrop would move to amend the committee amendments with AM2351. (Legislative Journal page 1056.) [LB780]

PRESIDENT SHEEHY: Senator Lathrop, you're recognized to open on amendment to committee amendment, AM2351. [LB780]

SENATOR LATHROP: Thank you very much. I think this amendment is the sunset that I promised the last time I was at the mike. It would sunset the bill before June 30, 2013. What this will do is afford us an opportunity to have some experience with this bill so that we can see if the greatest fears of some in this body have been realized or if it will be, as I expect and hope to be, a negligible effect upon costs to local communities to take care of the significant mental health needs of a very few. I would encourage your support of AM2351. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the opening of AM2351 to AM2064. Are there members requesting to speak? Seeing none, Senator Lathrop, you're recognized to close. Senator Lathrop waives closing. The question before the body is on the adoption of AM2351 to AM2064. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB780]

CLERK: 36 ayes, 0 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB780]

PRESIDENT SHEEHY: AM2351 is adopted. Now we will resume floor discussion on AM2064. Senator Carlson, you're recognized. [LB780]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. We

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deal with the lobby and people that have concerns, and I asked for the three-year sunset because I assumed and hoped that I would still be here in three years. Now I understand there's a technicality and some in the lobby now that were against the bill want it to be a four-year sunset. All I'm doing is bringing that up because maybe it will come back on Select File. I appreciate the vote here and, rather than be a surprise, we'll see where that goes. But I appreciate your support and I certainly am now going to support AM2064 and the underlying bill. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Carlson. Seeing no additional requests to speak, Senator Lathrop, you're recognized to close on the Business and Labor Committee amendment, AM2064. [LB780]

SENATOR LATHROP: Thank you, colleagues. I appreciate your support of the last amendment. AM2064 simply defines...amends the green copy to better define the first responder. I think we have something we all can embrace here, the idea that we'll have three years worth of experience for the mental, mental work comp claim for our first responders, and I would encourage your support of AM2064. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You've heard the closing of AM2064 to LB780. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB780]

CLERK: 37 ayes, 0 nays, Mr. President, on adoption of committee amendments. [LB780]

PRESIDENT SHEEHY: AM2064 is adopted. We will now return to floor discussion on LB780. Seeing no requests to speak, Senator Lathrop, you're recognized to close. [LB780]

SENATOR LATHROP: Thank you, Mr. President. Colleagues, today I've heard a number of you stand up and talk about how much you appreciate your first responders. Some of you have then not really liked the bill, some of you have, but all of you have appreciated, recognized what the law enforcement does in this state, what the firefighters do, paid or otherwise, for our communities. It is altogether fitting that we advance LB780 and take care of those who serve our communities that will unfortunately suffer significant injuries in the line of duty. Thank you. [LB780]

PRESIDENT SHEEHY: Thank you, Senator Lathrop. You have heard the closing. The question before the body is on the advancement of LB780. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB780]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB780. [LB780]

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PRESIDENT SHEEHY: LB780 advances. We will now proceed to LB594. [LB780 LB594]

CLERK: LB594, a bill by Senator Dierks. (Read title.) The bill was introduced on January 21 of last year. At that time it was referred to the Judiciary Committee. The bill was advanced to General File. There are committee amendments, Mr. President. (AM1699, Legislative Journal page 978.) [LB594]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Dierks, you're recognized to open on LB594. [LB594]

SENATOR DIERKS: Thank you, Mr. Chairman, members of the Legislature. I am very pleased to open on my priority bill, LB594. [LB594]

PRESIDENT SHEEHY: (Gavel) [LB594]

SENATOR DIERKS: I believe LB594 is one of the most important bills that I have ever introduced during my 20 years in the Nebraska Legislature. The purpose of this bill is to adopt the Women's Health Protection Act. There is a proposed Judiciary Committee amendment that replaces the original bill. I want to spend a little time talking about the ideas behind LB594 and why I introduced the bill. According to a 2004 article in the Medical Science Monitor, 52 percent of women felt rushed into having an abortion, 67 percent received no counseling beforehand, 84 percent reported that they did not receive adequate counseling. Many abortion providers have compromised the standard of care for counseling and screening of patients in order to reduce costs and maximize profits. I believe this situation is unacceptable and it will change with the passage of LB594. To better understand this bill one must understand the difference between risk factors and complications. Risk factors predict health problems. Complications are the health problem. For example, obesity, high blood pressure and a family history of heart disease are risk factors that may indicate heart disease as a complication. Risk factors often associated with abortion include feeling pressured into an unwanted abortion, holding moral beliefs that are contrary to the results of an abortion, a desire to keep ones baby and a prior history of depression. These risk factors often lead to the following complications: elevated rates of alcohol abuse, depression, anxiety and suicidal behavior. Women must be told about the risk factors they possess and the complications they may experience if an abortion occurs. Let me be clear that the risk factors I am talking about in this bill are different from the overall risks women face when they choose to have an abortion. There are medical risks associated with all medical procedures. In addition to the risk of requesting a medical procedure, there are individual risks based on each woman's current physical and mental health. Those are the risks addressed in LB594. I believe LB594 is a good bill, it provides better healthcare for women because it helps them facilitate a doctor-patient relationship between a doctor and a pregnant woman. It gives the woman more information about

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an important choice she's about to make. Doctors in every other area of medicine make sure screening for risk factors is done using checklists. Screening is not a burden, it is a good medical practice and it may prevent other health problems in the future. During my years in the Legislature some of the most difficult testimony I have ever listened to comes from women who have regretted their decision to have abortions. Senators may have different views on abortion but I believe we all want to make sure that women who are pregnant have the best medical care and information we can possibly give them. LB594 will help women by ensuring they have the same medical treatment for an abortion as they would with any other medical procedure. With that, Mr. President, I'll conclude my opening and I thank you very much. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Dierks. You've heard the opening to LB594. As was noted, there is a Judiciary Committee amendment, AM1699. Senator Ashford, you're recognized to open. [LB594]

SENATOR ASHFORD: Thank you, Mr. President. I do have a series of changes to the green copy of the bill in AM1699. And these amendments were drafted primarily in response to issues that were raised by the Nebraska Medical Association. And these changes are as follows: The amendment would place most of the provisions of the original bill into existing statutes rather than create a separate act. Two, the amendment would enact new legislative findings regarding the importance of preabortion screening and counseling and the issue of nonphysicians who perform illegal abortions. And those findings are clearly stated in the amendment. The amendment would clarify the definitions of complications associated with abortion and risk factors associated with abortion. The amendment would place the preabortion screening and counseling provisions of LB594 into the existing informed consent requirements instead of creating, as I stated earlier, a defined act of malpractice. The amendment would require the physician performing the abortion to form and document in the medical record of the woman a judgment that the risk factors are negligible, continuation of the pregnancy would pose risks to the woman's physical or mental health that are greater than those associated with an abortion, or continuation of the pregnancy would pose risk to the woman's physical or mental health that are less than those associated with an abortion. The amendment would eliminate the provisions allowing recovery of punitive damages for violations of the preabortion screening and counseling requirements and for reckless endangerment caused by abortion providers other than physicians or pharmacists. The amendment would require the preabortion screening and counseling requirements to be completed at least one hour prior to the abortion procedure to allow time for reflection. This corresponds to the time frame that was enacted last year, as you may recall in LB675, the ultrasound bill. The amendment would eliminate physicians who refer women for abortions from the screening and counseling requirements. The amendment would eliminate the creation of a presumption that the negligence of failure to comply with the screening and counseling was willful or wantoned. The amendment finally would clarify that violations of the new screening and

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counseling requirements under the bill are not grounds for any criminal sanctions or actions or disciplinary actions under the Uniform Credentialing Act. And in conclusion, of course, I would like to thank Senator Dierks and his staff for their cooperation and help in preparing these amendments...this amendment, AM1699, to LB594. Thank you, Mr. President. [LB594 LB675]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening of the Judiciary Committee amendment, AM1699, to LB594. Mr. Clerk, do you have an amendment to the committee amendment? [LB594]

CLERK: Mr. President, Senator Dierks would move to amend the committee amendment with AM2306. (Legislative Journal page 1039.) [LB594]

PRESIDENT SHEEHY: Senator Dierks, you're recognized to open on your amendment to committee amendment, AM2306. [LB594]

SENATOR DIERKS: Thank you, Mr. President, members of the body. AM2306 is a technical amendment to LB594. It just clarifies that Sections 5 to 11 are also placed in the same section of statute with the rest of the bill. Thank you. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Dierks. You've heard the opening of the amendment to committee amendment, AM2306 to AM1699. Members requesting to speak: Senator McGill followed by Senator Pirsch, Senator Conrad and Senator Gloor. Senator McGill, you're recognized. [LB594]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I apologize for my voice being like this today. But we've got to live with it. We just spent three hours talking about mental health. And I'm glad we'll get to continue this discussion because, as most of you know, mental health is something that's incredibly important to me. I believe we as a society need to treat mental health like we do physical health. The Speaker's bill on abortion, which we're not hearing today yet, LB1103 removes any concern for women's mental health 20 weeks into pregnancy. This bill does the opposite and puts greater emphasis on women's mental health early in pregnancy. Why this drastic contradiction on the importance of women's mental health? The bill introducers feel passionately about attempting to decrease the number of abortions. And I would like to see the number of abortions and unplanned pregnancies go down. But what I don't want to hear today is people standing up saying they care about a woman's mental state, her ability to make a decision while pregnant when they are planning to vote for LB1103 which removes consideration of women's mental health. If you completely and utterly oppose abortion, then fine, you'll support any bill that has a pro-life stamp of approval on it, well written or not, then I get that. But don't you dare, don't you dare say that you support this bill for women's mental health, for that stake when you plan to vote for LB1103. They're contradictory, you cannot make that claim and support both of these bills. Our

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current laws on abortion already take mental health into consideration. Despite what Senator Dierks just said, when you go to an abortion clinic you have to sign paperwork about whether or not you were coerced into having an abortion. You do get counseling. But okay, even if I give the benefit of the doubt that more could be done to inform women about mental illness following abortion or after becoming a parent for that matter, what would that process look like? Let me tell you that the details are not in LB594. The bill calls for a list of risk factors to be evaluated by a mental health professional. What is that list of risk factors? The bill only says it will be factors listed in peer journals. Do we have examples before us of appropriate journals? How can we pass this law without any knowledge of examples of these journal articles and how it will be applied in our...with our physicians? The APA, the American Psychological Association, which is ironically cited on some of the handouts that Senator Dierks passed out, you know, if you actually go to their report from 2008, the Task Force on Mental Health and Abortion, you'll see their findings that say a critical evaluation of the published literature revealed that the majority of studies suffered from mythological problems, often severe in nature. Not only that, but after looking at this evidence, they said, many of the same risk factors also predict negative psychological reactions to other types of stressful life events, including childbirth, and hence are not uniquely predicting of psychological responses following abortion. In fact, it says that if you're having your single first legal abortion that the effects are the same as if you were having the child. So really the findings in that study contradict the purpose of this bill or it certainly proves that it is not necessary. So with no reliable research, according to the American Psychological Association, who I would assume would be the premier expert on this bill, what will physicians use as this list of risk factors? And the bill doesn't call for physicians to use the same... [LB594 LB1103]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR MCGILL: ...list of risk factors. Each location could have a different list, one could say, oh, a history of mental illness is a risk factor, while another one says poverty is a risk factor. This bill does not lay out a proper path for our physicians to use. Now this bill's introducer's intent is to make sure that women later down the road, you know, aren't experiencing negative consequences like increased depression. But how depressed will the pregnant girl be when she's teased at school for being pregnant? How does the girl who's pregnant, walking down the hallway at school, react when she's called a "slut" by her friends at school? What kind of negative impact does that leave on her life? We need to make sure that we're taking into consideration the negative consequences of having the baby as we balance these out for an individual. And even if we did come up with a list of risks... [LB594]

PRESIDENT SHEEHY: Time, Senator. [LB594]

SENATOR MCGILL: Thank you. [LB594]

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PRESIDENT SHEEHY: Thank you, Senator McGill. Senator Conrad, you're recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator McGill, for her excellent words in opposition to this legislation. I want to start, colleagues, by setting some ground rules and setting a baseline for this dialogue. And it's part of a private conversation that Senator Dierks and I had earlier that I won't reveal the entirety thereof to the floor and to the public and to the record. But the gist of it is this: Senator Cap Dierks and Gloria Dierks have always been the genuine, dedicated, sincere people that you know them to be in every instance, in every experience that I've ever had since the moment I met them through today. And it's difficult to put into words how much I admire and respect Senator Dierks in terms of his sincere commitment to protecting the most vulnerable in our society across the spectrum with his strong opposition to the death penalty, with his care and concern for family farmers and the working poor to the work that he's done this session in terms of trying to restore prenatal care to those who have lost it. So that being said, I plan to move forward and I hope that others who engage in this debate can join with me and join with Senator Dierks in having a professional, informative and measured dialogue about these very, very difficult and emotionally painful issues contained in LB594. With that, I rise in strong opposition to LB594 and the corresponding committee amendment and the amendment filed by Senator Dierks for the following reasons. This bill is unconstitutionally vague. This bill is impossible to comply with for doctors who try to do so even in good faith. This bill is an extreme departure from accepted medical practice and ethics. This bill would require physicians to go against their experience and ethics by counseling their patients with information they believe to be at best irrelevant and at worst wrong and harmful to women's health. Colleagues, no state in the country has passed a bill anything like this. This bill does nothing to improve women's health or women's lives. Finally, it's redundant in terms of the existing framework of Nebraska law related to these difficult issues. Currently, women in Nebraska seeking abortion are being given full information and complete counseling and, as Senator McGill noted, there is nothing in the record to indicate otherwise. I've had a chance to review the committee transcripts because, as you well know, I'm not a member of the Judiciary Committee, and so I didn't have a chance to hear from or evaluate the proponents and opponents of this legislation firsthand so I had to read it by making a request for the transcript. And nothing, nothing in the legislative committee transcript demonstrates that there is a particular source of evil that needs to be addressed with this legislation, that there is an inadequacy present in our current and existing statutory framework. There's not one piece of evidence. In news reports today those in favor of this legislation said they have a strong belief that there are inadequacies in our system. [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

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SENATOR CONRAD: But they have no proof. I challenge you to bring forward proof before you engage the time of this august body. And if you do find proof, address it in a measured way, not with broad, sweeping, unconstitutional and dangerous legislation that infringes upon individuals' constitutionally protected liberty interests as defined by our constitution and as illuminated through a variety of our jurisprudence. Thank you, Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Speaker Flood, you have an announcement. [LB594]

SPEAKER FLOOD: Thank you, Mr. President. Good evening, members. A couple of quick items regarding tomorrow that I want to talk about tonight. As relates to tomorrow's agenda, you're going to see some Final Reading up tomorrow, specifically the budget bills are going to be up on Final Reading. And then I put part of the other Final Reading bills on tomorrow's agenda, estimated to be about an hour's worth total. So there are some bills on Final Reading that will not be showing on tomorrow's agenda. I didn't want to take too much time on Final Reading tomorrow so we have some other matters to get to. We will be working through the lunchhour tomorrow, just to remind everybody. One other note before I get to tonight's announcement. When you check in, in the morning, you have to be physically present in the Legislature and press your green light. That is much appreciated. That's how the Legislature should operate and that's how we will operate. So please be here in the morning if you want to check in and do that in the Chamber and not by phone. And the final thing I want to talk about with 13-plus amendments filed on LB594, we will be working late tonight. Thank you, Mr. President.

PRESIDENT SHEEHY: Thank you, Speaker Flood. Mr. Clerk, do you have items for the record? [LB594]

CLERK: Mr. President, Enrollment and Review reports LB951, LB951A, LB965 and LB1081 as correctly engrossed. That's all that I have. Thank you. (Legislative Journal page 1057.) [LB951 LB951A LB965 LB1081]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Continuing with floor discussion of AM2306 to AM1699. Members requesting to speak: Senator Gloor followed by Senator McGill and Senator Conrad. Senator Gloor, you're recognized. [LB594]

SENATOR GLOOR: Thank you, Mr. President. I wonder if Senator Ashford would yield to some questions. [LB594]

PRESIDENT SHEEHY: Senator Ashford, would you yield to Senator Gloor? [LB594]

SENATOR ASHFORD: Sure. [LB594]

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SENATOR GLOOR: I've been doing some quick reading, and I haven't read quickly enough for queuing up here. But I will take a shot at trying to clear some things up. And I hope you can help me, Senator Ashford. The issue of risk factors, am I correct in my assumption that we are trying to define risk factors by going to journals? We haven't defined exactly which journals, except professional journals that relate to medical care, ob-gyn, whatnot and studies that come from those journals that have a statistical validity factor of less than 5 percent? [LB594]

SENATOR ASHFORD: Yes. [LB594]

SENATOR GLOOR: Is that correct? (Laugh) Okay. But we have yet to have the research done. We don't know yet what those risk factors would be, that is how we will plan to define them. Is that correct? [LB594]

SENATOR ASHFORD: Yes. And that...yes. [LB594]

SENATOR GLOOR: Okay. [LB594]

SENATOR ASHFORD: The idea, again this was an amendment brought to us by the Medical Association. And, obviously, these are evolving standards. And therefore that's why, I believe, the suggestion was that we have that language. It's an evolving process of determining the risk factors. And that's why they defined it that way in the... [LB594]

SENATOR GLOOR: And again, based upon language brought to us or language agreed to by the Nebraska Medical Association. [LB594]

SENATOR ASHFORD: Yes. [LB594]

SENATOR GLOOR: We have exempted physicians but in the original bill, not in the amendment, there was a listing of other healthcare professionals,... [LB594]

SENATOR ASHFORD: Right. [LB594]

SENATOR GLOOR: ...physicians assistants and whatnot. Those individuals would still be in there and subject to the prosecution and penalties listed. Is that correct? [LB594]

SENATOR ASHFORD: The civil penalties. [LB594]

SENATOR GLOOR: Are there still... [LB594]

SENATOR ASHFORD: Not...I'm sorry, and Stacey reminded me, not the referring physicians. The referring physicians are specifically excluded. [LB594]

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SENATOR GLOOR: Correct. But the other professionals, as listed in the original bill, are still included. [LB594]

SENATOR ASHFORD: Correct. [LB594]

SENATOR GLOOR: And damages of \$10,000 per risk factor, is that in the amendment still, too, or... [LB594]

SENATOR ASHFORD: No, those are out, Senator Gloor. [LB594]

SENATOR GLOOR: Those are out, okay. Thank you, Senator Ashford. I know I have some more questions but I'm still trying to sort through all this and I hope to get back to you later. [LB594]

SENATOR ASHFORD: Thank you. [LB594]

SENATOR GLOOR: Thank you and thank you, Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Senator McGill, you're recognized. [LB594]

SENATOR MCGILL: Thank you, Mr. President. And I'll pick up where they left off, real quick, before I get to the rest of my opening comments. But as I said, Senator Gloor, this piece of legislation, this amendment doesn't say what the risk factors are. It's vague in nature in terms of who even determines which journals. It says, okay, they have to be kept in this library of journals or whatnot. But then who in Nebraska then goes through those journals and decides which of these risk factors are going to be part of what we use in Nebraska? There's no person identified in this bill to make that decision. So is every place that offers abortion supposed to through and make up their own? Are they each supposed to be...have the responsibility of keeping up-to-date on these journals and making sure that they're evolving with what's new out there? The bill isn't clear. And there are good intentions here in this legislation to make sure that we are talking to the women that come in and making sure they're well aware of their situation. And if they do have low self-esteem, which would be considered a risk factor, I believe, or perhaps a history of mental illness, you know, those may be the two common ones that people may think of or maybe a history of sexual abuse. But there are a lot of other risk factors. Senator Dierks, in his opening, said a negative belief about abortion as a risk factor. So that's anyone who thinks abortion should be legal. Some doctors could throw that in. And my point with what I was trying to say earlier as I opened is that there are risk factors the moment you get pregnant. If you are young and it's an unplanned pregnancy, which by the way the APA article points out that many studies don't take into consideration if the pregnancy was wanted or not. And clearly the psychological

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repercussions are different if the pregnancy is wanted or not. In both cases if the person has the baby or doesn't there is psychological impacts. And if we care so much about the mental health of our women, then why don't we do more to assess mental health of our young people before they get pregnant? We all know how tumultuous life is in our teen years and in our twenties. Better mental health screenings could be beneficial to all young people, men and women. I would argue all of us need mental health screenings. But if you cared about a woman's mental health you should be...we should be here right now voting on legislation for better counseling in our schools, in particular, and mental health services to young people before they're pregnant or they get someone else pregnant. We would be focusing on empowering young women, building their confidence and providing them with opportunities, that is how we care for the mental health of our young people so they are less likely to have unplanned pregnancies. Treatment of mental health should be just like it's treated for physical health. Now if the research was there to show a direct correlation between abortion and these negative impacts that are any worse than the negative impacts for anything else or just being a teenager has negative impacts on your mental state, if the research was there, maybe I would feel differently about this. But according to the APA, the research is clearly not there. They say it's incredibly misleading and the methodologies used were not appropriate. This bill is about putting up another barrier to abortion, plain and simple. And if that's what you want, then I get that, then vote for this bill. But just don't use the false claim of caring for mental health so that you can reach that purpose. Thank you, Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator McGill. Senator Conrad, you're recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Folks, I think on these difficult issues there still remains some common ground or there should remain some common ground. If we're serious about reducing the number of abortions, we have to get serious about reducing the number of unintended pregnancies in our society. And study after study after study demonstrates the best way to do that, according to science and according to common sense, is to increase our level of education and increase preventative services that are available to our citizenry. And along those lines, I have introduced legislation to do that in this body, not this session but last session, which is still alive in the Health Committee. It hasn't been voted out, trying to increase access to preventative and contraceptive care for more low-income women in Nebraska. These are the things that we should be talking about, that we should be thinking about if we want to get serious about reducing the number of abortions. Because bills like LB594 just won't do that. And they use terms like informed consent as pawns to put an undue burden on women, exercising their constitutionally protected rights to make the best choice they can for them, for their future, for their family. And who they have to answer to is their doctor, their God and their conscious, not state government. Government does not belong in these areas of our life. And it certainly doesn't belong in these areas of our life when it

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puts forward ideas, burdens, barriers and legislative strictures that interfere with those rights. I think it's important that we go through and build the record carefully, recognizing that this is a law of first impression, recognizing the great potential for lengthy and expensive litigation related to these issues. And there are so many aspects, again, no matter how well-intentioned within the lines, within the words of LB594 that are so vague and so unclear that we have to take pains to build an appropriate legislative record. And I think one place that we can start is with the reports, the vital statistic reports put out by the Nebraska Department of Health and Human Services related to abortion. We have very strict reporting requirements in Nebraska and that's good because it provides us a good baseline of information about these issues. I'm going to start with the reports in 2005 and work forward to the most recent, the 2008 report. And again, these are the Nebraska statistical reports on abortions, published by the Nebraska Health and Human Services System, they're readily available on the Internet or I'd be happy to make a copy for any of you if you're interested in reading these. But let's just again start out with a baseline of facts that are critically important to this debate. Let's look at the reasons for abortion in Nebraska as reported by women who seek abortion. [LB594]

SENATOR PRICE PRESIDING

SENATOR PRICE: One minute. [LB594]

SENATOR CONRAD: Reasons range from maternal physical health, mental health, mental life endangerment, fetal anomaly, socioeconomic issues, sexual assault, incest, contraceptive failure, lack of contraception or a nonreported issue. These are the reasons that women seek abortion in Nebraska. None of these are easy circumstances to deal with. The vast majority of women in Nebraska, starting in 2005, working our way through to 2008, report the reason for abortion to be contraception failure or no contraceptive used; the third highest reason being socioeconomic issues. And then there is a significant amount of women who have serious health and life issues that they must contend with. And there's a significant amount of women who have... [LB594]

SENATOR PRICE: Time. [LB594]

SENATOR CONRAD: Thank you, Mr. President. [LB594]

SENATOR PRICE: Thank you, Senator Conrad. Next, Senator Rogert followed by Senator Council, Haar, Dierks and McGill. Senator Rogert, you are recognized. [LB594]

SENATOR ROGERT: Thank you, Mr. President. I yield my time to Senator Conrad. [LB594]

SENATOR PRICE: Senator Conrad, you are recognized and you have 4 minutes and

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55 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President. In continuation, there are a significant number of women who also have very difficult decisions to make in relation to the health and well-being of the fetus. And we've heard heartbreaking stories, as reported to the Judiciary Committee, as reported in the media or otherwise, about parents who were given the kind of news that there are fetal health issues, there are fetal anomaly issues that will never allow this to be a viable pregnancy. But LB594 does not take into account those issues. It lays down a one size fits all rule without telling us what the rules are. That's problematic. Also in these same reports from the Nebraska Department of Health and Human Services, spanning from 2005 to 2008, I've gone through and I've examined the reports in relation to the title Number and Percent of Abortions by Various Complications of Procedures. In the last five years, as published by the Nebraska Department of Health and Human Services, guess how many complications have arisen due to abortion in Nebraska? Because we've heard a lot about how there's a variety of dangerous issues surrounding this medical procedure that we must act, that we must pass this sweeping legislation. According to the Nebraska Department of Health and Human Services out of 3,173 abortions in Nebraska in 2005, how many presented no complications? All of them, 100 percent. How many reported cervical laceration? Zero. How many reported perforation of the uterus or otherwise? Zero. How many reported hemorrhage? Zero. How many reported a retained product issue? Zero. How many reported infection? Zero. Other complications, zero. And we'll go through each of these reports because we'll have plenty of time tonight. And they'll tell you the same information and the same data. There isn't an inherent danger with this medically safe, medically sound medical procedure that must be available to our citizenry according to our constitution, according to our Supreme Court and according to our common sense. Most of the strongly held beliefs surrounding these issues emanate from a religious perspective, which I believe we can celebrate those different religious traditions and perspectives. But they don't belong on the legislative floor. I'm not asking people to check their religious tradition or perspective at the door. Of course, that's part of the influence in your public policymaking. But it can't be the only influence. There is a separation between church and state. Some of our citizenry is not religious. Different religions hold different views about abortion. So it makes it an untenable baseline for public policy decision making. [LB594]

SENATOR PRICE: One minute. [LB594]

SENATOR CONRAD: I think we'll have a chance to delve more deeply into what the record looks like for Nebraska, what the implications of LB594 would be if passed, and really what these issues mean to our state and our citizenry as we move forward. But I think that's at least a good start in helping to distill the fact that LB594 is a solution in search of a problem. And it seeks to act in a way that is unconstitutional, unfair and unworkable for Nebraska women and Nebraska doctors. Thank you. [LB594]

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SENATOR PRICE: Thank you, Senator Conrad. Senator Council, you are next and recognized. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. First, I want to make it perfectly clear that I respect and admire Senator Dierks's true pro-life convictions. I respect his desire, a desire that I share, to prevent women from making the difficult decision to have an abortion. I believe that we can't discuss LB594 without discussing LB1103. And I think the body needs to understand the relationship between the two. I was present and did not vote on LB594. And the reason I didn't vote on LB594 was, and it was difficult for me to reconcile what is in LB594 after, shortly before that, voting on LB1103. I voted against LB1103. And one of the primary reasons I voted against LB1103 is that LB1103 does not take into consideration the mental health of the woman and the effect of continuing a pregnancy on the mental health of the woman, yet, as Senator McGill has pointed out, interestingly enough LB594 does. If you look at the Judiciary Committee amendment to LB594, on page 11, one of the vague requirements imposed upon someone subject to the provisions of LB594, it begins on page 10 and it requires "The physician performing the abortion has formed a reasonable medical judgment, documented in the permanent record, that (a) the preponderance of statistically validated medical studies demonstrates that the physical, psychological and familial risks associated with abortion for patients with risk factors similar to the patient's risk factor are negligible risks." Where does this comparison come from? If you read earlier provisions of the bill, it speaks to these risk factors as set forth in peer-reviewed publications with some statistical variance that applies. But nowhere in that section does it talk about when the doctor is analyzing those risk factors that the doctor has to ensure that the risk factors listed in that peer publication...the subjects have the identical risk factors of the patient that is being considered at that time, because that's what it says. Because the doctor...risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks. Does that mean all risk factors? Does that mean a preponderance of the risk factors? Does that mean any risk factors? [LB594 LB1103]

SENATOR PRICE: One minute. [LB594]

SENATOR COUNCIL: But of greater significance is the next section. "Continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion." So what does that say? That a risk factor is whether or not there would be some harm to the mental health of the woman that would be greater if she continued the pregnancy than if she terminated it. Yet LB1103 says you ignore that, it doesn't matter. One of my colleagues even said, if the woman was diagnosed as being suicidal it didn't make any difference. Yet in LB594 it is a factor that if not considered you go later in the bill... [LB594 LB1103]

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SENATOR PRICE: Time. [LB594]

SENATOR COUNCIL: ...and there's a rebuttable presumption that the woman wouldn't have had the abortion if you hadn't...if you didn't tell them. So in addition to the vague... [LB594]

SENATOR PRICE: Time, Senator. [LB594]

SENATOR COUNCIL: Thank you. [LB594]

SENATOR PRICE: Thank you, Senator Council. Senator Haar, you are next and recognized. [LB594]

SENATOR HAAR: Thank you, Mr. President, members of the body. First of all, I, too, have to express my admiration of Senator Dierks who is my deskmate. And earlier we shook hands and said that we might disagree on some of these issues and, of course, we're still friends. First of all, and it hasn't been said, but I don't know a better time to get at the mike and talk a little bit about this. But I want to thank Senator Ashford, Senator Campbell, Coash and the others who have worked for weeks now to try and resolve the issue of having prenatal care denied to pregnant women. It seems...I'm really just so mystified that in this body we cannot come up with a way to celebrate life by giving prenatal care to pregnant women. Just from a humanity standpoint of view, we know that many of these children that will finally be born without prenatal care will be American citizens. And certainly I think we want the best for American citizens. And then, you know, you can throw in the economic argument of wouldn't it be a lot cheaper to have American citizens born that were healthier than if they didn't have prenatal care. And all the research shows, and I didn't bring it with me, but there's just tons of research that shows that prenatal care produces healthier babies when they are born. It's so interesting that when we line our values up, the value, apparently, of somebody not being in this country legally trumps that of the value of doing the right thing for prenatal care for pregnant women. And we've already seen, I mean, here we're talking about these issues of abortion. We've already seen that women are having abortions because...by choice because they cannot afford prenatal care and they're afraid of what that might do to the fetus. It just is beyond me. Again, I know that we've...that there are members of this body who have worked tirelessly to resolve this issue and not being able to do it. Even though someone privately has come up and said they would privately fund a part of this, we have an administration that said no. We will see the results of these bad decisions in the future. It's going to cost us more money and it's not the right thing to do. And again, I want to thank those who have worked tirelessly at this. I think the rest of us have said, well, if there's no chance of this passing and so on that there's not much we can do. And I think that's really true. [LB594]

SENATOR PRICE: One minute. [LB594]

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SENATOR HAAR: So with that, I will...I'm going to get into the discussion of the bill itself. But I would give the remainder of my time to Senator McGill. [LB594]

SENATOR PRICE: Thank you, Senator Haar. Senator McGill, you are yielded 40 seconds. [LB594]

SENATOR MCGILL: Really quick, I just wanted to point out the irony. You know, Senator Ashford had us Judiciary Committee members go in today and talk to some of the clinic leaders and doctors who have been treating some of the women who have since gotten abortions since their funding for prenatal care was taken away. And it's interesting to me that, you know, if this bill had passed they would be going into their abortion clinics or their doctor, a doctor and they would be asked all these questions about their mental health. And they'd have to say the state coerced me into doing this. It was the state and our actions and some people, both in this body and in the administrative branch of government, who weren't willing to stand up and give them the care that they need. So the state is the one... [LB594]

SENATOR PRICE: Time. [LB594]

SENATOR MCGILL: ...coercing them. [LB594]

SENATOR PRICE: Thank you, Senators McGill and Haar. Senator Dierks, you are next and recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. President. I wanted to make something square here. I really didn't say in my opening that...anything about negative moral beliefs, that was not part of my language. Nebraska has two abortion clinics, one in Lincoln and one in Omaha. And I've been told that both clinics perform 20 to 30 abortions per day on the days they perform abortions. I think that is reprehensible. The 2008 report of the American Psychological Association Task Force on Mental Health and Abortion acknowledges these risk factors. And I'm going to tell them to you right here: terminating a pregnancy that is wanted or meaningful; perceived pressure from others to terminate a pregnancy; now these are risk factors that have been identified by the American Psychological Association Task Force on Mental Health and Abortion; perceived opposition to the abortion from partners, family and/or friends; lack of perceived social support from others; low self-esteem; a pessimistic outlook; low perceived control; a history of mental health problems prior to the pregnancy; feelings of stigma; perceived need for secrecy; exposure to antiabortion picketing; use of avoidance or denial coping strategies; feelings of commitment to the pregnancy; ambivalence about the abortion decision; low perceived ability to cope with the abortion prior to the abortion. These are the risk factors we're talking about, folks. They are real and they've been identified. Women are suffering from avoidable physical and psychological complications that may

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have been prevented or minimized if the proper preabortion screening standards had been met. Just as with any other medical procedure, women contemplating abortion deserve an individualized risk profile, not one size fits all counseling. Women deserve better. A caring society can do better. Thank you. [LB594]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Thank you, Senator Dierks. Senator McGill, you're recognized. This is your third time. [LB594]

SENATOR MCGILL: Mr. President, members of the body, with all due respect to Senator Dierks, who I do know and love, you know, once again he's citing the same study that I've been reading from right here. And if you want me to I'll print off all 100 pages of this for every single member of the Legislature. Because it says with those same risk factors, yes, they are risk factors. But they say many of these same factors also predict negative psychological reactions to other types of stressful life events including childbirth and hence are not uniquely predictive of psychological responses following abortion. Those are risk factors for any tough decisions in life. They're already in the position of being pregnant and they're going to have similar negative consequences for having the pregnancy. I'm going to read more from...this is from the executive summary, at the beginning of that task force report. The best scientific evidence published indicates that among adult women who have an unplanned pregnancy the relative risk of mental health problems is no greater if they have a single, elective, first trimester abortion than if they deliver that pregnancy. This is the same report. None of the literature reviewed adequately addresses the prevalence of mental health problems among women in the United States who have had an abortion. In general, however, the prevalence of mental health problems observed among women in the United States who had a single, legal, first trimester abortion for nontherapeutic reasons was consistent with normative rates of comparable mental health problems in the general population of women in the United States. So these women who had the abortions may have these risk factors but they're the same ones that I face even though I've never had an abortion. Well designed, rigorously conducted scientific research would help disentangle confronting...confounding factors and establish relative risks of abortion compared to its alternatives, which they're saying there could be better studies out there but we're not there yet. As well as factors associated with variation among women in their responses following abortion. Even so, there is unlikely to be a single definitive research study that will determine the mental health implications of abortion once and for all given the diversity and complexity of women and their circumstances. Women are in such a broad range of circumstances from there being a health issue for them, a health issue of the child. I know a woman who's taking care of the friend of her teenage daughter because the friend of her daughter, who's pregnant, has a mother who's saying you either have an abortion or I'm going to put you in a group home. How does that girl make that decision when her mom's willing to alienate her? Such different

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and complicated and diverse situations. The report also talked about how many of the studies comparing, you know, that show that women are more depressed or have these negative consequences if they have an abortion compared them to women who had their pregnancies, but don't say if those women who had the babies wanted them or not. You know, obviously, if a woman wants the baby they're going to have, hopefully, a good outcome. Although, postpartum depression is one of the many things that could follow a pregnancy, whether it's planned or unplanned. You know, this report, and I will, if I have to, print off all 100 pages and give them to everyone in here. Yes, there are risk factors. There are risk factors in day-to-day life, in creating us and our mental health moving forward. And I would argue we all need mental health screenings a lot more regularly, just as we do physical health screenings, so that young people and especially young women can learn to cope with these issues earlier in life. You know, if they've been sexually abused, which is a risk factor for having trouble with abortion if you've had one. You know, you're going to have trouble the rest of your life if you were sexually abused if you're not getting the proper mental healthcare. Why are we helping them to a greater extent... [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR MCGILL: ...extent beforehand? You know, when it comes to LB1103 in this bill, you know, I do not support LB1103 because it takes out the consideration for mental health. And one would argue maybe I should be supporting this. But without there being a process, without there being good data that shows there's a connection, without us having a policy for how we choose those risk factors I don't want different clinics having different risk factors on their list. If it was just a history of mental illness, I could understand that. But what are the rest of those risk factors that are going to make up those lists at various clinics? Those are some of my concerns and why, you know, I will be voting against this and will likely be voting against LB1103 as well. Thank you, Mr. President. [LB594 LB1103]

PRESIDENT SHEEHY: Thank you, Senator McGill. Senator Conrad, you're recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. To continue on in the vein of dialogue that Senator McGill has just completed and that was in response to some comments brought forward by Senator Dierks, I think that this recent exchange actually provides a good illustration of the dangerous situation LB594 presents. It puts into law an untenable standard for utilization of information that can be cherry-picked, that can be manipulated. Senator Dierks, a proponent of this legislation, has passed around a list of risk factors according to an APA Mental Health Task Force. Senator McGill has completed the context for the findings of that same task force. We're both relying on the same data and pieces of information in supporting our very divergent positions. This is the perfect illustration and example of why LB594 is dangerous, because it allows

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people to cherry-pick, it allows people to look at one narrow part of a broader study. It allows the utilization of one study that may later be contradicted or retracted. If you don't believe me, Google the American Psychological Association, look at their Web site, read the 100-plus page report that Senator McGill and I have read that we're welcome, we're happy to distribute to the members of this body or beyond. It couldn't be more clear on their Web site, titled "Mental Health and Abortion Task Force." Mental health problems are not a direct result of choosing to have an abortion according to the American Psychological Association Task Force. Elective abortion is a difficult decision for most women. But there is no evidence that abortion itself is the cause of these symptoms of stress, grief or feelings of loss. Some people cite post-abortion syndrome as a consequence of having an abortion. There is no medical diagnosis with this name. Look at the committee statement, read the committee transcript and forget about the national organization if you don't trust that or don't put any stock in the American Psychological Association. The Nebraska Psychological Association is opposed to this legislation, testified in opposition to this legislation and brought forward mental health practitioners, licensed by our state and by our laws, talking about why this is an unworkable bill, why it's dangerous for women's mental health, why it's an impossible standard for doctors to meet. But that makes no difference. We're going to choose to supplant scientific, medical expertise and research for what a political action group tells us to do. Well, I'm certainly not. I believe in science, I believe in medicine and I believe in women. And that's why I'm going to work hard to build a record in opposition to this legislation because it fails on all... [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR CONRAD: ...accounts, no matter how well-intentioned the introducer may be. Let's read a little bit from the committee transcript about how one would go about potentially even evaluating medical research or science as contemplated in this legislation because it's not clearly spelled out. Does the legislation include only those things published and studied in our licensing jurisdiction, Nebraska, the United States, other countries? But they license medical professionals under a different standard, so how can we compare the research that's been put out on a different standard? What happens if that research is later retracted or contradicted or found to be... [LB594]

PRESIDENT SHEEHY: Time, Senator. [LB594]

SENATOR CONRAD: ...bunk science? Thank you, Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Conrad, that was your third time. Mr. Clerk, do you have items for the record? [LB594]

CLERK: I do, Mr. President. Study resolutions: Senator Carlson offers LR444, LR445, LR446, LR447, LR448. And amendments to be printed: Senator Campbell to LB999;

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Senator Lathrop to LB779; Senator Haar to LB1014; Senator Rogert, LB817; Senator Avery, LB779. Thank you, Mr. President. (Legislative Journal pages 1058-1068.) [LR444 LR445 LR446 LR447 LR448 LB999 LB779 LB1014 LB817]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Continuing floor discussion on AM2306 to AM1699, members requesting to speak: Senator Council followed by Senator Ashford, Senator Cook and Senator Haar. Senator Council, you're recognized. [LB594]

SENATOR COUNCIL: Yes, thank you, Mr. President. I do want to get back to the portions of the committee amendment that I was referring to, pages 10 and 11, with regard to these compliance obligations of the physician. And if you focus your attention on page 10 beginning at line 23 it imposes an obligation on a physician performing the abortion to document in the record one of three things. That "the preponderance of statistically validated medical studies demonstrates that the physical, psychological and familial risks associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks." In what context, ladies and gentlemen? What standard? Or that the "continuance of the pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy were terminated by induced abortion," which gets back to the point of my objection to LB1103, or that the "continuance of the pregnancy would involve less risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated by an induced abortion." Okay, so if the doctor documents "(c)," which is that continuing the pregnancy wouldn't put the pregnant woman under any greater risk than inducing the pregnancy (sic), what have we accomplished other than to send these providers through this convoluted and confusing process for what purpose. Let's look at right above that section. It imposes, on page 10 of the committee amendment, beginning at line 15, "If any risk factors associated with abortion were identified" the performing physician has to inform the pregnant woman "of the following in such manner and detail that a reasonable person would consider these factors to be material to a decision of undergoing an elective medical procedure." Okay, look at all the standards. First of all, we have these risk factors associated and then we have to go and figure out whether they are or they aren't a risk factor. Then we have to figure out whether a reasonable person would consider those factors material. And then it gets even more convoluted because the first one they have to inform them of is "each complication associated with each identified risk factor." Okay? Let's go back to page 3 because it defines a complication. A "complication associated with abortion means any adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a 5 percent probability that the result is due to chance." So does that mean you only have to have one peer-reviewed journal out there that arrives at this conclusion? Does it mean that if there are conflicting peer-reviewed journals that it's not a complication? And I don't know, I'm not a doctor. But do these peer-reviewed journals... [LB594 LB1103]

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PRESIDENT SHEEHY: One minute. [LB594]

SENATOR COUNCIL: ...list whether or not there is a statistical association that is less than 5 percent? Is there some little chart on the side of the study that says this is or this is not statistically validated? Because it gets more convoluted. Because then you take the definition of "complication" and you have to go back to page 4, it says "a risk factor associated with an abortion means any factor, including any physical, psychological, emotional, demographic, or situational factor for which there is a statistical association with one or more complications." Now I just told you a complication has to mean "adverse physical, psychological, or emotional reaction that is reported in a peer-reviewed journal to be statistically associated with abortion such that there is less than a 5 percent probability that it's left to chance." [LB594]

PRESIDENT SHEEHY: Time, Senator. [LB594]

SENATOR COUNCIL: Who can figure this out? Thank you. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Council. Senator Ashford, you're recognized. [LB594]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. And I was struck by Senator Haar talking about prenatal. And all of our statutes regarding abortion are uniform in their expression of intent when it comes to preservation of life. And when we talk about the informed consent law that's currently in statute, it reads that, "the following provisions are motivated by the legislative intrusion of the United States Supreme Court by virtue of its decision removing the protection afforded the unborn. And the relevant sections are in no way to be construed as legislatively encouraging abortions at any stage of unborn human development but are rather an expression of the will of the people of the state of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible." That...whether...and there is disagreement on the language in LB594 and there will be disagreement, I'm sure, on the language in...used in the 20-week bill that's coming up, Senator Flood's. But I've been in this Legislature 12 years. And I have been through many, many debates regarding the preservation of life. And as I get older, I get more and more thoughtful about that issue, the preservation of life in all of its forms. And I don't think I've ever been so struck by an issue as I have been by this prenatal issue, when it is so clear to me that, at least for the years that I've been here, and I remember my good friend, Senator Bernice Labeledz, sitting right there in that chair. And whenever I or anyone else would say something that was in anyway contrary to her strong beliefs, as Senator Dierks so well remembers, about the preservation of life. And to think of her efforts for all those years to make sure that no child in our state, who resides in the confines of our state will ever have to suffer in the womb and that they can be born as healthy babies. That has been the policy of our state for all the time that I have been in

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this Legislature and before that time. And I was struck by Senator Haar because he's saying it so well. I've also...very rarely have I ever seen an issue that has brought together individuals on all sides of the abortion, classic abortion debate to, in a...really in a very lazer-like fashion to really call out and say no, there must be a way to help these children. When I...today we did have a session with a doctor from OneWorld. And she's told us that there have been two abortions that she absolutely knows about in her clinic. These are ladies who are Latino ladies who are...whose culture and religion are absolutely adverse to abortion and they have had abortions in the last week because they are in fear of their safety and the safety of their babies. That is incredible. Senator Council asked a great question about teen pregnancies. And Dr. McVey said, this is going to be real bad because these teenage moms who are not going to get coverage under Medicaid now, who are citizens of this country and are not going to get medical care, their babies are going to die or they're going to get an abortion. There is no way that we can idly sit by and allow that to happen in this state. [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR ASHFORD: I don't know what we're going to do about it. I assume that these two bills will pass. And I respect with all my heart the people who have brought these bills, whether they're outside the glass or inside the glass or in the basement or up in heaven or wherever they are, I respect them. And I respect them for what they care about. But I...and I expect that they're going to pass. And I expect that at the end of the day in April we will have done nothing for prenatal care for poor women and poor teenage women who are going to be sick and their babies are going to be sick and they're going to die. This is something that I don't get and I will never get and I don't get. And I just...it cannot be. Thank you, Mr. Lieutenant Governor. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Ashford. Senator Cook, you're recognized. [LB594]

SENATOR COOK: Thank you, Mr. President and members of the body. I also rise in opposition to this amendment and to the bill in its current form but also want to offer my thanks and respect to Senator Dierks for the sincerity with which I'm certain he brought the bill proposal. I have a different philosophy, I guess, about how we prevent unwanted pregnancy and therefore prevent the demand for abortion. My philosophies may be a little bit more strategic in that we go toward the root causes. Senator Conrad read a list a little bit earlier about the reasons that women list for seeking an abortion. I agree that comprehensive sexuality education or public health education, information about self-efficacy and self-esteem is the route to go. I'd also like to see this body invest more energy into innovative job creation. Another reason that Senator Conrad listed for people seeking abortion was flat out, very unromantic, very un...you know, the reasons why people seek abortions are not necessarily related to their lack of love for a child coming into their family. They're because they don't have quite simply the means to

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support another child. Senator Council made a reference to the number of teen pregnancies. I also, in a portion of my district, see record teen pregnancy, record STI, chlamydia and gonorrhea, which as we know through the statistics related to those infections lead to higher rates of HIV within five years. So again, understanding the reason why Senator Dierks would bring a proposal of a very different opinion about how we lower or diminish or eliminate the demand for abortion in our state. Thank you, Mr. President. I will yield the balance of my time to Senator Conrad, should she choose to take it. [LB594]

PRESIDENT SHEEHY: Senator Conrad, you're yielded 2 minutes 30 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President and thank you, Senator Cook, for your good information and good thoughts in terms of this debate as we move forward. Gosh, there's just so many points that I'd like to make as we move forward. And, I guess, the good news is we have plenty of time to do that. But to dovetail on a point that Senator McGill and Senator Council started to detail in relation to even if there were, taking for the sake of argument, the fact that there may be risk factors that are out there that should be evaluated prior to elective abortion, there's no standard in LB594 for how that's calculated. And there's ultimately no prohibition against seeking the abortion, even if all supposed risk factors are present. (Laugh) So the only conclusion...let's say, for example, just as a point of reference, a concrete example of what I'm talking about. There are in fact, for the sake of argument, let's say ten risk factors associated with what this bill is concerned with, according to the studies that are contemplated and referred to in this legislation. [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR CONRAD: Let's say a woman has one of those present. Is there a different outcome for her? What if she has three out of ten? What if she has five out of ten, is there a different outcome for her, a different treatment? What if she has nine out of ten? Is there a different outcome? Is there a different treatment for her? What if she has ten out of ten? What if she has 1 out of 100? What if she has 2 out of 98? There's no standard. So the presence of these supposed risk factors really mean nothing in terms of her ability to procure abortion but rather do nothing but provide an undue burden and an undue barrier in seeking this evaluation prior to exercising her constitutional rights. There is no other conclusion. Senator Dierks mentioned he believes there are two abortion providers in... [LB594]

PRESIDENT SHEEHY: Time, Senator. [LB594]

SENATOR CONRAD: ...Nebraska. Thank you, Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Members requesting to speak on

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AM2306 to AM1699: we have Senator Haar followed by Senator Council and Senator Karpisek. Senator Haar, you're recognized. [LB594]

SENATOR HAAR: Mr. President, members of the body, I would like to engage in some conversation with Senator Ashford, please. [LB594]

PRESIDENT SHEEHY: Senator Ashford, would you yield to Senator Haar? [LB594]

SENATOR ASHFORD: Yes. [LB594]

SENATOR HAAR: I really do want to...I want to spend time later exploring the bill from 20,000 feet because I don't quite understand the implications yet. But I want to talk some more about prenatal care for poor women. You quoted something from a bill that talked about the preservation of life. And what was that again? Do you still have that handy? [LB594]

SENATOR ASHFORD: Well, that's the introductory paragraph in the informed...existing informed consent statutes. [LB594]

SENATOR HAAR: Okay. [LB594]

SENATOR ASHFORD: And it's...yes. Do you...read that again or... [LB594]

SENATOR HAAR: Could you quote that for me. Yeah, please. [LB594]

SENATOR ASHFORD: That the following provisions are motivated by the legislative intrusion of the United States Supreme Court by virtue of its decision removing the protection afforded the unborn and that the sections in question are in no way to be construed as legislatively encouraging abortions at any stage of unborn human development but are rather an expression of the will of the people of the state of Nebraska and the members of the Legislature to provide protection for the life of the unborn child whenever possible. [LB594]

SENATOR HAAR: So the intent is...does that... [LB594]

SENATOR ASHFORD: Well, I think, yes, I mean, we're weighing in on the side of the life of the unborn child. And I think what the issue is, those things that...the way I read it, certainly this applies to a different statute, well, it's the same statute we're discussing here, it doesn't apply to the prenatal law but...or the funding statute. But what we're, I think, talking about here, what I believe it to say is those things that are within our control, I mean, if we as a state have the ability to take an act or take an action that's going to preserve the life of an unborn baby, then we should...it's the state's view that we should do something to do that. And that's why I think the prenatal issue is so

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significant, because we have the power, we've been doing it for 30 years. We've been... [LB594]

SENATOR HAAR: And we've said that's our intent. I would like a copy of that, if I could. [LB594]

SENATOR ASHFORD: Yeah. [LB594]

SENATOR HAAR: And also, I'd like a copy, Senator McGill, of that other report because I do need to read all of this stuff and really dig into it. And then, Senator Dierks, I have a question for you. And this was on some of the risks you mentioned. And is this correct, one of them...I'm sorry, can I... [LB594]

PRESIDENT SHEEHY: Senator Dierks, would you yield? [LB594]

SENATOR DIERKS: Yes. [LB594]

SENATOR HAAR: Okay. Is one of those the lack of social support from others? Was that on your list? [LB594]

SENATOR DIERKS: Yes, lack of perceived social support from others. [LB594]

SENATOR HAAR: Wow. The lack of prenatal care from the state of Nebraska, would that probably fall under that risk if this evaluation were being done? [LB594]

SENATOR DIERKS: I think it could be probably be brought in that area, yeah. [LB594]

SENATOR HAAR: And that's very interesting. [LB594]

SENATOR DIERKS: And I, of course, was supportive of that prenatal care bill when it came through. But we just didn't quite have the support to get it. I just...I shouldn't say this but with me you're pro-life or you're pro-life. And that's why I'm trying to do whatever I can to protect those babies. [LB594]

SENATOR HAAR: Well, yes. And I appreciate your stand on that. But again, I'm just struck. You read that... [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR HAAR: ...risk and then talking about the list...lack of social support. I think on this particular issue of prenatal care, I mean, there's all kinds of pros. There's pro-choice, there's pro-life, there's...I'm going to talk later about pro-prevention. But all of us come together under this issue, our humanity, that if someone chooses to have a

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baby and they're pregnant and they need prenatal care, I would think we'd all gather together and say it's basic humanity on our part to do something about that. So all I can say is, shame on us. I appreciate the efforts, I'm not accusing anyone here. But shame on us for not solving this. I hope we will continue to work on it. Thank you, Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Council, you're recognizes. And this is your third time. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. Would Senator Conrad yield to a couple of questions? [LB594]

PRESIDENT SHEEHY: Senator Conrad, would you yield to Senator Council? [LB594]

SENATOR CONRAD: Yes, of course. [LB594]

SENATOR COUNCIL: Yes. Senator Dierks recited a very startling and disturbing number. And are you aware of the number of reported abortions last year? [LB594]

SENATOR CONRAD: Thank you, Senator Council. According to the 2008 statistical report on abortions, put out by the Nebraska Department of Health and Human Services, and I believe this is the most recent data available, I'm not sure if they have the 2009 numbers up yet, but the total number of abortions in Nebraska in 2008, and I just want to make sure I give you the right number here was 2,813. [LB594]

SENATOR COUNCIL: Two thousand eight hundred and thirteen, and I don't have a calculator here, but if we were to divide that by 60, the statement was there are two abortion providers... [LB594]

SENATOR CONRAD: I believe, Senator Dierks noted there was two abortion providers that performed 20 to 30 abortions a day, I'm not sure how he came up with that number or where that derives from, but that was the data that was put in the record. [LB594]

SENATOR COUNCIL: So if we divided 2,800 by 60, that would be about 4 days, 40 days... [LB594]

SENATOR CONRAD: Senator Council, I think one reason that I went to law school was because I'm not good at math. (Laugh) [LB594]

SENATOR COUNCIL: ...because I'm not a mathematician. [LB594]

SENATOR CONRAD: So I'm not going to jump in with even a potential guess as to how that would work out. But you're right, it doesn't seem like the numbers add up. [LB594]

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SENATOR COUNCIL: Okay. Well, that's the first point. And the second point I just wanted to follow up on is again what is being imposed here and what is the ultimate objective. And I think both Senator McGill and Senator Conrad have pointed out the fact that if a pregnant woman...the doctor performs the evaluation of risk factors that are set out here, assuming they can identify which risk factors are the applicable risk factors that are validated by peer reviews, there is still the likelihood of an abortion being performed. But if you look at the civil liability portion of this, this is what is just so interesting. It shall be an affirmative defense to an allegation of inadequate disclosure, and the disclosure is all of the stuff that we've been talking about--the risk factors, the complication factors, all of those things--if that occurs then an affirmative defense is that the provider omitted the information because statistically validated surveys of the general population of women of reproductive age conducted within the three years before or after the contested abortion demonstrate that less than 5 percent of women would consider the contested information to be relevant to an abortion decision. What are we doing here? Is the provider then free to just identify a survey? Can they perform the survey? [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR COUNCIL: Because the law says any survey conducted within three years before or after the contested abortion, what is to stop a provider from conducting a survey of reproductive-age women and coming up with the result needed to have an affirmative defense here? The bill, I'm telling you, as much as I firmly want to reduce or eliminate women having abortions, and I'm glad that Senator Cook did, you know, refer to, you know, the way to stop abortions is to prevent unplanned pregnancies in the first instance, this piece of legislation is only going to create problems. That's all this bill will do is create problems. And there is no standard here. It will be challenged if anyone is faced with... [LB594]

PRESIDENT SHEEHY: Time, Senator. [LB594]

SENATOR COUNCIL: Thank you. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Council. Members requesting to speak: Senator Karpisek, followed by Senator Haar. Senator Karpisek, you're recognized. [LB594]

SENATOR KARPISEK: Thank you, Mr. President and members of the body. I'd like to yield my time to Senator Conrad. [LB594]

PRESIDENT SHEEHY: Senator Conrad, you're yielded 4 minutes 50 seconds. [LB594]

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SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Karpisek. I do want to continue the dialogue in regards to the numbers that Senator Council and I just discussed, brought forward by Senator Dierks in the course of the debate. He mentioned that there's two abortion providers in Nebraska that perform 20 to 30 abortions a day and found that unacceptable. So apparently, proponents have conceded that even if these alleged risk factors did exist and they were 100 percent present in a woman seeking an elective abortion, there really would be nothing in this legislation or otherwise to prevent that from happening. So the only conclusion that we can take is that this is nothing but a backdoor attempt to increase the time that women are going to have to be there at their health clinics, that doctors are going to have to utilize to jump through these hoops. We don't even know what the hoops are but it's really a clear, clear illustration of how this is nothing but an undue burden and barrier as women seek elective abortion for whatever reason they may have--physical, mental, fetal health, maternal health and well-being, economic reasons, rape and incest let's not forget. Unless I hear otherwise, because it's nowhere in the committee record, it's nowhere in the committee transcript, what the purpose of these alleged risk factors, screening for them, reporting on them, and documenting them is other than just to add a bunch of time to the process to slow down the process. That's an undue burden. And according to Casey, which is the relevant case law in regards to not only informed consent but in regards to undue burden, that can't stand. It can't stand, and anybody who tells you otherwise is wrong. But unfortunately, we're going to go through a lengthy debate here in the Nebraska Legislature, lengthy litigation in the court system to prove it, to come back to the point that we're already at without passing this bill. Here's a question: If this bill is adopted, would women who provide...or would doctors who provide healthcare, reproductive healthcare for women, since it provides no clear guideposts for how a doctor in good faith can comply with it, would they be able to get medical malpractice insurance? That's never been addressed. That's never been brought up. I don't know, did anybody ask carriers of that kind of insurance, if it would be available? It's a case of first impression. The introducers have noted that, proponents have noted that. There is no standard to compare it to in other states. If those kinds of provisions are complicated and unavailable under this legislation, isn't this really a backdoor attempt to put up more burdens and more barriers to what is constitutionally protected for women in difficult, difficult circumstances? And can't we find better ways to lift them... [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR CONRAD: ...up and support them than LB594, which fails doctors, fails women, and fails to meet the objectives of reducing the number of abortions? Because let's just get real honest real fast. Before Roe v. Wade, there was abortion. After Roe v. Wade, there is abortion. If Roe v. Wade was overturned, there will be abortion. So in order to make abortion less thinkable, less necessary, we have to make unintended pregnancies less prevalent. And how do we do that? Through education and prevention.

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Does LB594 have anything related to education or prevention? No, sadly, unfortunately. I think as we move forward we'll have a chance to talk more... [LB594]

PRESIDENT SHEEHY: Time, Senator. [LB594]

SENATOR CONRAD: Thank you. Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Conrad. Senator Haar, you're recognized. This is your third time. [LB594]

SENATOR HAAR: Mr. President, members of the body, do we know how long lunch is...supper is going to be served? (Laughter) I'll rush in afterwards. Okay. Thank you. I would like to ask...I don't see Senator...Senator Dierks, could I ask you some questions? [LB594]

PRESIDENT SHEEHY: Senator Dierks, would you yield to Senator Haar? [LB594]

SENATOR DIERKS: Yes. [LB594]

SENATOR HAAR: Okay. Thank you very much. What I need to do is...I was...I guess I was somewhat caught unaware that...or by surprise that this would come up today, so I haven't read through and really digested. It's a long bill, 16 pages. So I'm going to ask you just some basic questions that I need to understand this. In your summary of the bill, it says adopts the Women's Health Protection Act; require a reasonable evaluation of factors before an abortion is performed. So am I to understand then once a reasonable evaluation has been performed then it's up to the woman to decide or who decides after that reasonable...? [LB594]

SENATOR DIERKS: The woman always makes the decision. The doctor has to give her the information that she needs. [LB594]

SENATOR HAAR: Okay. So, knowing you, this is obviously a pro-choice...or pro-life bill but it's also somewhat pro-choice because we're saying at the end the woman would decide. So we're...just to clarify that, that nobody is going to tell her then how...or nobody will step in at the end and evaluate it for her. It will be up to the woman to do that. [LB594]

SENATOR DIERKS: The evaluation will be made by a professional. [LB594]

SENATOR HAAR: Right. But once evaluations are made...so, for example, once a woman evaluated decides, does this bill prevent a woman from having an abortion, does this bill itself? [LB594]

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SENATOR DIERKS: This bill...this bill doesn't prevent anything. It just provides that there's proper risk factors identified and told to the woman before she has the abortion, and it says that it has to be done within 24 hours before the abortion occurs. [LB594]

SENATOR HAAR: Okay. Okay. And then...and again, I haven't read the total bill, which I will be doing soon, but is one of the risk factors in any of this thing birth control or, again, does this bill have anything to do with birth control or is it... [LB594]

SENATOR DIERKS: I don't...they didn't put it in those particular words but I think they're looking at coping with situations and if birth control was a problem I suppose that...if it was one of the risk factors, why, they'd have to tell her about it. They would find that out by discussing it with her. [LB594]

SENATOR HAAR: Okay. So in terms of birth control, the risk factor might be that it was...let's say she didn't mean to get pregnant but her birth control failed or something like that or... [LB594]

SENATOR DIERKS: Sure. [LB594]

SENATOR HAAR: Okay. Okay. And then does the doctor...you know, we heard a lot of talk in the health...when the health bill was being discussed and we heard this clever use of words where they define death panels and it sounded like somebody was going to sit and evaluate all these things and then decide whether somebody should get healthcare... [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR HAAR: ...or not, but this...but again, that not being the case here but does the doctor...are they required or prevented from putting any kind of emphasis on one evaluation, one of these risks or another, or simply going through them? Is this just an objective evaluation? [LB594]

SENATOR DIERKS: That's my opinion. They're supposed to do an objective evaluation and present all the facts to the proposed patient. [LB594]

SENATOR HAAR: Okay. So in this case, the doctor is not...is not sort of being pro-choice or pro-life or anything; they're doing an evaluation. And I know there are...that there are penalties for not going through the total evaluation. Are there penalties to the doctor for slanting the conversation either way? [LB594]

PRESIDENT SHEEHY: Time, Senator. Time. [LB594]

SENATOR HAAR: Thank you. [LB594]

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PRESIDENT SHEEHY: Thank you, Senator Haar. Senator Christensen, you're recognized. [LB594]

SENATOR CHRISTENSEN: Thank you, Mr. President. I guess I got to sit here and ask if somebody wants to get you to talk about consent, they want to talk about information and that it has to be required before you have a procedure, who would have a medical procedure and not want to know what's going to happen, what the consequences are? You go in, even you see on TV when they're looking at prescription drugs advertised, they give the consequences, they give the potential hazards and drawbacks to it. I don't understand the concern of informing people and giving people information. You know, what's wrong with informing people about risk factors? You know, if you care about life, women, babies, why would you object about information? If you don't like a certain one or something, to attempt to alter it, that's one thing. Just to say you don't need information makes no sense. You know, I heard the argument that before Roe v. Wade there was abortions and there's still abortions, so why do we need this? I'll answer that with another question. We had murder before there was a law thou shall not kill. And we still have murder, so why don't we get rid of that law? We had speeders before there was a law against speeding. We still have speeders. I'm one of them. Why don't we get rid of the law then? I'd love to run 150 down the interstate. I don't understand this type of logic. It's just a...you know, it's a filibuster. Let's call it what it is. But I still have to ask you, why is it wrong to have information? You know, it's that simple. I don't know who would take any medical procedure and not want information, want to know the risks, the hazards, the consequences. You know, think about that. Why? First of all, I can't understand why you'd want to kill somebody. It's a proven fact, if you don't remove that baby from the womb it will be born. It will turn into a human just like you and I. You know, I don't understand. Is one life more important than another life? Something to think about. You know, if a baby has no worth, I'll guarantee you people retired have no worth to society. That's where we'll move. That's where the world will go. When you get the world killing babies, you'll get the world with euthanasia. That's where it goes. It's happened in a number of countries. So I don't understand the debate here. [LB594]

PRESIDENT SHEEHY: One minute. [LB594]

SENATOR CHRISTENSEN: You know, I know it's a filibuster, but think about what is wrong with information. This world is full of information. (Laugh) So anyway, I'm going to quit there. Thank you, Mr. President. [LB594]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Members requesting to speak on AM2306: Senator Mello, followed by Senator Sullivan and Senator Giese. Senator Mello, you're recognized. [LB594]

SENATOR MELLO: Thank you, Mr. President. Members of the Legislature, I rise in

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support of LB594 and would yield the remainder of my time to Senator McGill. [LB594]

PRESIDENT SHEEHY: Senator McGill, you're yielded 4 minutes 50 seconds. [LB594]

SENATOR MCGILL: Thank you, Mr. President. Thank you, Senator Mello. Apparently Senator Christensen wasn't out here listening to anything we were saying and, therefore, doesn't have any idea what we've even been debating about. If he did, he'd know that, as we've said a million times over, that this APA Task Force on Mental Health and Abortion has said that critical evaluation of the published literature revealed the majority of studies suffered from methodological problems, often severe in nature, and that the best scientific evidence published indicates that most adult women who have an unplanned pregnancy, the relative risk of mental health problems is no greater if they had a single, first trimester abortion than if they delivered their pregnancies. Obviously, we are...whether you support abortion or not, and I completely understand that Senator Christensen is entirely pro-life and has no particular...will just support anything that he sees has a pro-life basis of which would stop abortions, and I respect that. But I do have a problem with people saying that we're not making legitimate arguments when this bill doesn't explain how doctors are supposed to come up with this list of risk factors and have a uniform risk factor list across the state. That's a very legitimate concern. And I'd love to see Senator Christensen throw up an amendment that would then iron that particular problem out and also tell us what particular journals, since the American Psychological Association says there are no reliable peer review articles yet, I'd love to know where he thinks that the information should come from in order to make this list of risk factors. Again, I respect...if he just wants to stand up and say he's pro-life and, therefore...and thinks this bill is going to reduce abortion, that's fine. But to say that we're not making any sort of valid arguments and are solely filibustering for the sake of it isn't the case. I mean it would help if there were actually people in here listening to most of this debate, but most people don't want to listen, because they know this is a right-to-life bill, they have to vote green. You know what, fine, but don't say that we're not making any good points and that we're up here wasting time. I wish Senator Christensen was still out here. Oh, are you? Would Senator Christensen yield to a question? [LB594]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Senator Christensen, will you yield to a question from Senator McGill? [LB594]

SENATOR CHRISTENSEN: Yes. [LB594]

SENATOR MCGILL: Thank you. And this actually doesn't have to do with this bill but, Senator Christensen, did you support LB1110, which would have given prenatal care to the illegal immigrants? [LB594 LB1110]

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SENATOR CHRISTENSEN: I have said all along I would support that. [LB594]

SENATOR MCGILL: Would you have? Were you part of the vote count that members of the body tried to select? Because you just went on about how being pro-life and stopping any abortions is like the most important thing to you. [LB594]

SENATOR CHRISTENSEN: I did. You can ask them. [LB594]

SENATOR MCGILL: Okay. Well, thank you. Are you a cosponsor of that particular piece of legislation? [LB594]

SENATOR CHRISTENSEN: No. [LB594]

SENATOR MCGILL: Okay. Thank you. And if we have to, I mean this has become a part of the debate here today as, you know, if this piece of legislation were in effect and the women, and we know there are at least six of the illegal immigrants who have gone to get abortions, they can go in and they'd be asked all these questions about their mental health and risk factors, and being an illegal immigrant with no economic...without the economic ability to pay for prenatal care is the thing that tipped the scales for them, which means the state is the cause of their abortions. We had the women in here from one of the clinics in south Omaha today over lunch telling us that the women who came in were, you know, they were religious and they want to have their kids but they're scared about their economic conditions and the prenatal thing put them over the edge. It put them over the edge. We are the coercion, we as the state of Nebraska, because there are people in this body, maybe not Senator Christensen but others in here, who weren't able to stand up and say that I would support LB1110 despite the fact that the Governor doesn't. And for people to just sit here and not really comment on this bill is frustrating. I'm glad that Senator Christensen actually had the nerve to get up and comment on it. I think everybody can see the flaws that Senator Nantkes, Senator Council, and I and others have pointed out in how this bill is supposed to be enacted, but you've blindly turn your eyes away from it, from these basic flaws that could actually probably be fixed and would take away most of our arguments,... [LB594 LB1110]

SPEAKER FLOOD: Thirty seconds. [LB594]

SENATOR MCGILL: ...but instead sit quiet, not worried about the prenatal situation or not willing to take a stand on it, and that's incredibly frustrating to me here tonight, members. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator McGill. Senator Sullivan, you are recognized. [LB594]

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SENATOR SULLIVAN: Thank you, Mr. Speaker. I do appreciate the conversation. I am listening. I'm not participating. And so I'm going to yield the remainder of my time to Senator Conrad. [LB594]

SPEAKER FLOOD: Senator Conrad, 4 minutes 50 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Sullivan. Again, just a quick response to Senator Christensen, he says this is about information, why are we afraid of information. We're actually not afraid of information, but LB594, through the Judiciary Committee amendment or otherwise, doesn't tell us how to gather and how to utilize any sort of relevant or irrelevant information. LB594 doesn't give us any guidance in providing workable, usable, or relevant information. So no one is afraid of information. No one is afraid of informed consent. In fact, Nebraska has some of the strongest, if not the strongest, informed consent laws on the books. Whether it's supplemented by ultrasound bills last year or the long progeny of legislation that this body has adopted in regards to ensuring we have strong informed consent, we do. And if there's weaknesses in it, it was primarily introduced and written by Nebraska Right To Life, so they're to blame. But that's another point. But don't say that we're afraid of information. I'm not. I'm not afraid of putting information into the hands of individuals to make responsible choices about their bodies, about their personal privacy. The same side who says we're afraid of information doesn't want to have comprehensive, age-appropriate sex education, so let's be clear about who's afraid of information in this debate. And let's be clear at what's really at the heart of these issues. Casey, again setting the standard for not only the undue burden that a state cannot impose on a woman's constitutional rights to exercise her liberty and privacy, it also is the standard for informed consent and it helps us to remember what we're talking about. What is at stake here? Quoting: The law affords constitutional protection to personal decisions related to marriage, procreation, contraception, family relationships, child rearing and education. The right of the individual to be free from unwarranted governmental intrusion into the matter so fundamentally affecting the person as the decision whether or not to bear or beget a child is recognized by this court, is recognized as emanating from our constitution. You can have sincere disagreements about whether or not Roe v. Wade is good law, about whether or not the Supreme Court got it right or wrong, but the fact remains it is the law of the land. It has been the law of the land for some time and thankfully so, so that people in difficult situations can have a safe alternative available to them to do the best they can at the time. LB594 does not provide a framework to provide information to women seeking elective abortion, nor does it provide... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: ...a framework for doctors as to how to gather, distribute, update, and utilize this information. Read the bill. Read the committee amendment. It's not in there. There is no clear standard for how these potential, alleged risk factors may or

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may not be compiled and utilized. It says that there will be an annual assemblage of this information from the point of abortion, so does the doctor need to reevaluate the potential medical research before every abortion? Once a year? Once a week? Different clinics could utilize different sets of information and data, so there's... [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR CONRAD: ...no uniform standard. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Giese, you are recognized. [LB594]

SENATOR GIESE: Thank you, Mr. Speaker. I have a question for Senator Conrad, if she would yield. [LB594]

SPEAKER FLOOD: Senator Conrad, will you yield to a question from Senator Giese? [LB594]

SENATOR CONRAD: Yes, absolutely. [LB594]

SENATOR GIESE: Thank you, Senator Conrad. The discussion...and, Senator, I was paying close attention and still am, Senator Christensen mentioned before about information being...I mean what is the fear of information being provided, and on the...and I will just ask a question and I'll yield you the rest of my time. But can you shed some light on that and then also touch on the checklist of the positive and negative results for each risk factor that is in the amendment? So I'll leave it at that and yield you the balance of my time. [LB594]

SENATOR CONRAD: Thank you, Senator Giese. And to preface my comments, I'm not trying to be evasive but it's not clear to me, from reading the bill or the amendment, the intent of that language, how it would be implemented, how it would be evaluated. But I can tell you this, that the informed consent process has become a pawn in the pro-life movement in an attempt to restrict access to abortion, plain and simple. Scientific evidence notwithstanding, under the guise of an information approach or a kinder, gentler approach, and what have been called, and for good reason, the abortion wars, the pro-life movement has waged a campaign around the country to portray abortion as a threat to women's health and women's mental health, despite the fact that our own statistics and data from the Nebraska Department of Health and Human Services related to physical and mental complications associated with abortion show zero. But they continue to perpetuate this falsehood, this myth, and have now put forward various and sundry potential studies that may or may not demonstrate an association to these risk factors with those women who seek elective abortion. But be clear, in the bill it talks about an association. It doesn't talk about a causation. I have an amendment filed that

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does just that. That would be a clearer connection to how we utilize these risk factors, these evaluation factors from a scientific standpoint, which, be clear, I'm not a scientist. I'm not a doctor. But this...these words have meaning. They're legal terms of art. They're scientific terms that have independent definition and connotation. And it talks about associations, risk factors of associations, not causation, which there's a critical difference there and which is one of the few among many, many problems with this legislation. In response to these abortion wars and these false claims about the dangers of abortion, the APA put together their Mental Health Task Force on Abortion to evaluate this science, this body of work. And Senator McGill and myself and others have pointed you to the American Psychological Association Task Force to read the full report and read their conclusions that demonstrate clearly abortion is not a threat to women's health. It couldn't be more clear. The Nebraska Psychological Association came in and testified to the committee with the same concerns, with the same information. [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: And the danger in results indicating some sort of an association rather than a causation allow results to be cherry-picked, allow science to be manipulated, and Nebraska women deserve better and Nebraska doctors who want to adhere to the law in good faith deserve a clear road map for how to do that. LB594 offers none of that. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Dierks, you are recognized. Senator Dierks, you are recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. Speaker. And, members of the Legislature, I forgot to mention when I've been up before that we owe a debt of gratitude to the Nebraska Medical Association. They have brought some concerns and the Committee of the Judiciary corrected the concerns they had with the bill. The bill we have, which is an amendment to the original bill, contains all the concerns that the Nebraska Medical Association had and I want to thank them for their help on that. Senator Conrad had a question, what if she has ten of ten risk factors? If it doesn't say at what point the bill prohibits a risky abortion, what does it do? That's what it's for. She is correct, it does not prohibit an abortion even if a woman has ten of the ten factors. The doctor and the woman can still decide to do the abortion. But what the bill does is to ensure that the doctor at least looks at and considers those risk factors when discussing options with the woman and gives her notice that she might be more likely to experience problems so she'll be better prepared to seek help and counseling if she does have negative problems. The ultimate objective is to better ensure that doctors give women good advice and counsel. You can't do that without proper preabortion screening. How do you give good advice unless you ask the appropriate questions in advance, such as is anyone pressuring you to choose an abortion? If a woman answers yes to such a

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question, hopefully that will lead to a conversation that will either lead the doctor to help her to avoid an unwanted abortion or not. This is a commonsense piece of legislation, ladies and gentlemen. I've called it that from the very beginning. What medical procedure do you go through that you don't have to do some assessment for adverse complications? This is simply a good sense piece of legislation to provide for the right health factors before the woman has the abortion. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Dierks. Senator Cook, you are recognized. [LB594]

SENATOR COOK: Thank you, Mr. President. I would yield my time to Senator Council, if she'll have it. [LB594]

SPEAKER FLOOD: Senator Council, 4 minutes 50 seconds. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. I'm sorry, colleagues, I cannot sit silently when again I hear hypocritical statements being made in these Chambers. One of my colleagues a few minutes ago passionately talked about what's the problem with information, why is everybody concerned about giving people information, you need information to make decisions, these women need to have this information, why would you oppose people having information to make a reasoned decision. Where was that logic this morning when all LB1105 wanted to do was to give people information so they could form a reasoned opinion? That wasn't present this morning, as evident by the vote cast by that colleague. You know, we have to remember what we say and do because there are those outside this Chamber and inside this Chamber who remember what we say and do. Senator Dierks, I appreciate their concern, but in response to the statement you just made there is nothing you just said that isn't already provided for in current statute. No abortion shall be performed except with the voluntary and informed consent of the woman upon whom the abortion is to be performed. The woman must be told the following by the physician who is to perform the abortion: the particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risk of infection, hemorrhage, perforated uterus, danger to subsequent pregnancies, and infertility; the probable gestational age of the child; the medical risks associated with carrying her child to term; and that she cannot be forced or required by anyone to have an abortion and is free to withhold or withdraw her consent for an abortion. That's currently provided for. LB594 really doesn't add anything to existing law other than confusion and contradiction. Senator Giese asked the question in reading from page 10 of the amendment, and it was a legitimate question, Senator Giese, because it says the written evaluation to be prepared by this provider shall include, at a minimum, a checklist identifying both the positive and negative results of the evaluation for each risk factor associated with abortion, and you asked what are the...what are the negatives that you check. I can't find anything in the bill that says what is the negative associated with it, unless you go back to that section that I have

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questioned from the beginning that says the preponderance of statistically validated medical studies demonstrate that the physical, psychological, and familial risk associated with abortion for patients with risk factors similar to the patient's risk factors are negligible risks. Does that make it a positive risk factor? I don't know. And how would a healthcare provider be expected to know how we or, for the better question, how a court of law would interpret that. [LB594 LB1105]

SPEAKER FLOOD: One minute. [LB594]

SENATOR COUNCIL: You've just pointed out yet another one of the vagaries about LB594. And please rest assured I am an advocate for providing people with information so they can make informed decisions. We already have that in statute. There is no reason to go beyond what's in statute and rely upon or attempt to rely upon undocumented standards. We don't list the standards. We refer these physicians to somewhere else. One place it says a peer review published study. Another place it says peer review published studies. What standard... [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR COUNCIL: ...are they to be held to? [LB594]

SPEAKER FLOOD: Thank you, Senator Council. Senator Cook, you are recognized. [LB594]

SENATOR COOK: Thank you, Mr. President. I would yield my time to Senator McGill. [LB594]

SPEAKER FLOOD: Senator McGill, 4 minutes 50 seconds. [LB594]

SENATOR MCGILL: Thank you, Senator Cook and Mr. Speaker. I have passed around the executive summary of this infamous APA Task Force on Mental Health and Abortion because I think, you know, when you read over it, you'll see that, you know, what we're citing...first of all, both sides have been citing this document so hopefully that says something about its ability to be as objective as possible. But you'll see the statements they're making, the statements that myself, I've been reading and Senator Nantkes has made reference to. I wish my highlighting had come off on here. But they talk about the comparisons between a women who has an abortion or those who don't and, you know, the last paragraph does say, well-disciplined, rigorous, conducted scientific research would help disentangle these confounding factors and establish relative risks. But this research does not exist yet, and you'll see what research does exist shows that these risk factors lead to the same consequences whether somebody has gotten pregnant and has an abortion, gotten pregnant and not had an abortion, or just lived their lives. Teenagers and young people even in their twenties go through all kinds of emotional

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roller coasters and new situations in life that cause stress and make them confused and can lead to depression and other issues. Now and when it comes to, you know, I know Senator Dierks, you know, really wants to make sure people aren't being coerced, and I totally understand. I don't want people to feel like they have to get an abortion, absolutely not. But Senator Council is right that this is already taking place. You know, in doing research for this bill, I talked to a young woman who had an abortion and she said she was asked twice if she was coerced and then had to sign a document saying that she wasn't coerced. I don't know what else this bill would do in addition to that when it comes to this issue. And so if that is the primary thing that we're trying to prevent, is coercion, I don't know what this bill does. We already go as far as really I think we can go in terms of trying to identify that. And I am a huge advocate for making sure that we're treating mental health issues. Maybe I would feel better if once a woman got this analysis we were also saying that she has to have mental health treatment to go along with, whether she's having the abortion or not. Here we are identifying risk factors and telling her, oh, this is going to...you know, an abortion is going to make you more depressed. Or the bill does say, you know, maybe if you have the abortion, you know, we can give you information saying that you will have a better mental state than if you went through the pregnancy. The reports, according to the bill, can go either way. But we're still not going that extra step of saying, oh, it looks like you're going to have a psychological issue whether you're having the baby or not. Here, here's some recommendations on how to seek further help and further treatment. That's nowhere in here. Don't we want to be not only identifying risk factors but trying to treat our young people? Honestly, I think going into high school every child should have a mental health screening and we do need more counselors in schools and trying to get through the behavioral issues and the risk factors which are the same for getting pregnant in the first place. I mean these are the same risk factors for a young person to get pregnant unexpectedly. You know, we're not trying to treat them beforehand when we really should be and the focus should be there, because this bill really does nothing to help them lead a better life. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator McGill. Senator Gloor, you're recognized, followed by Senator Rogert. [LB594]

SENATOR GLOOR: Thank you, Mr. President. I am not an attorney, much to my mother's great disappointment, but I would like to speak to an attorney, specifically I would like to speak to and ask a question of Senator Conrad, if I might. [LB594]

SPEAKER FLOOD: Senator Conrad, will you yield to a question from Senator Gloor? [LB594]

SENATOR CONRAD: Yes, absolutely. [LB594]

SENATOR GLOOR: This is a completely different line of questioning that's come up...

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[LB594]

SENATOR CONRAD: Great. [LB594]

SENATOR GLOOR: ...and I'm asking it...yes, I (laughter) think everyone would appreciate a break in the line of questioning. This also gives me a chance to talk about one of my favorite subjects and that is LB949, which was my bill related to home sprinklers being forced, by a new code, into every new home built in this state, obviously something still hung up in committee that we would like to address. But nonetheless, having had the chance to put my oar in the water on that topic, one of the things we discovered is the current statute has us as a state automatically adopting new building codes upon publication by the international building commission. The Supreme Court ruled several years ago that this was an unlawful delegation of legislative authority. So my question would be, as I'm looking through the amendment, if we are deferring risk factors to professional publications with different degrees of statistical validity, might we be running that same risk of an unlawful delegation of legislative authority? [LB594 LB949]

SENATOR CONRAD: Thank you, Senator Gloor. Just trying to make sure that I have the entirety of the context of your question so I can be as responsive as possible. And as preface, I'm not familiar with the case law. I take your word for it as to its conclusions. And I'm guessing two key distinctions come into play: one, this being an issue about individual liberty and constitutional rights afforded to all people, but in this case particularly women, under the U.S. Constitution in the Bill of Rights, it probably rises to a different level of judicial scrutiny in terms of how we evaluate this from a legal perspective; two, I'm guessing that unconstitutional delegation of power emanating from a different source, whether statutory framework or otherwise, or the checks and balances inherent in our constitutional structure, does raise important questions, some of the same questions that we brought up during the lethal injection debate last year, about whether or not we could delegate the authority to define the lethal injection protocols to unelected bureaucrats at the Department of Corrections. This body said yes. Here in this context you're asking can we delegate our responsibility to doctors to come up with the framework to evaluate risk factors. [LB594]

SENATOR GLOOR: Correct. [LB594]

SENATOR CONRAD: The proponents will tell you yes; I will tell you that's problematic. [LB594]

SENATOR GLOOR: And what I'm wondering is if the Supreme Court is also telling us that it's problematic based upon...and understand the international building commission is not a governmental entity. It is a professional association, a collaborative of professional organizations who get involved in home building. [LB594]

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SENATOR CONRAD: I'll tell you, Senator Gloor, this is...it's been noted by proponents this is a case of first impression, so it's difficult to make an educated guess about what the courts will or will not do but for extrapolating what they've already said on issues of informed consent. [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: The controlling case is the Casey case, which I believe would vitiate what LB594 is trying to do. [LB594]

SENATOR GLOOR: Thank you, Senator Conrad. I am in support of Senator Dierks's bill, but I also feel it important to point out what might be some challenges that we have in the legislation as currently written, and I will probably research this issue a little more as best I am able. Thank you. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Gloor. Senator Rogert, you're recognized. [LB594]

SENATOR ROGERT: Thank you, Mr. President. I yield my time to Senator Conrad. [LB594]

SPEAKER FLOOD: Senator Conrad, 4 minutes 55 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President. And thank you, too, to Senator Rogert for the time. Colleagues, I did want to continue my discussion of what the data shows us here in Nebraska. This is from the 2005 Nebraska Statistical Report on Abortion published by the Nebraska Health and Human Services System, just to clarify this before we get into some of the other substantive amendments because I think we are moving in that direction. The 2005 report indicates that 85 percent of women who sought abortions in 2005 were over the age of majority, 15 percent were teens or children. So let's be also very clear about what we're talking about here. We're saying adult women don't have the capacity and don't have the ability to make decisions for themselves and that's why we have to be paternalistic in our approach in putting additional burdens in front of them as they make decisions related to elective abortion. That's something that I think is bothersome in terms of the underlying subtext of this debate because it's offensive to women. It's offensive to their abilities to be an active participant fully in our society by substituting our judgment, or our political judgment, for their reality. Also from this report, the reason for abortion in 2005 that women reported, there was 4,520 abortions in Nebraska in 2005, contraception failure, 23 percent or 734 women; no contraception used 26.2 percent of women or 831; socioeconomic reasons, 89.9 percent of abortions reported for that reason, 2,853. And I know Senator Dierks is a champion of the downtrodden and the vulnerable in our society and is a strong

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supporter of critical human service programs so there is definitely no hypocrisy there in terms of his desire to battle and reduce the number of unintended pregnancies and abortions by providing economic support to those in society who need it, but ask yourself, colleagues, can you all say that? When policies and programs have been brought forward to strengthen the social safety net to provide more economic support for vulnerable women, how many of those bills have you introduced? How many have you voted for? How many have we passed in the past few years in our time here? Women are telling you, as 89 percent of women who sought abortions in Nebraska in 2005 told you, it was because of economic reasons. And then, of course, there's women who face fetal anomaly, maternal life endangerment, mental health issues, and maternal physical health issues. LB594 makes no exception, makes no distinction for women who are not carrying viable pregnancies, who have serious fetal anomalies present that inform their decision to pursue elective abortion; makes no distinction, no exception for those women. It makes no exception for women who already have existing mental health or physical health issues present. Again, 2005, no complications reported... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: ...as a percent of abortions performed. Two thousand and six, Nebraska Statistical Report of Abortion, published by Nebraska Health and Human Services System, how many complications from elective abortion were reported? Zero. What were the reasons that people sought elective abortion? Same reasons. Two thousand and seven, do we see any differences? No. How many complications were reported? Zero. Do we see major distinctions in the reasons? Not really. Are the majority of those people seeking elective abortion adult women? Yes. Two thousand and eight, do we see any differences in the information that was reported that we know to be available setting a baseline for this dialogue and discussion? [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR CONRAD: Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Campbell, you are recognized. [LB594]

SENATOR CAMPBELL: Thank you, Mr. President, and good evening, colleagues. Would Senator Conrad yield to a question? [LB594]

SPEAKER FLOOD: Senator Conrad, will you yield to a question from Senator Campbell? [LB594]

SENATOR CONRAD: Yes, of course. [LB594]

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SENATOR CAMPBELL: Senator Conrad, I'm going to give a little brief explanation before we get to the question, but earlier this evening I was talking with Senator Council off the mike because I'm trying to clarify in my own mind the parameters of this bill and I find it very complicated in terms of going from one section and then back and so forth. One of the items in the report is on page 4 in the very last line, line 27, and it has, again speaking to the journals that one would have to use in looking at these factors, and it says "not less than 12 months prior to the day." I am concerned here in terms of how would someone put together a checklist of the risk factors when they, as I understand it, have to be so individualized against the research? Am I reading that correctly? [LB594]

SENATOR CONRAD: Senator Campbell, I think you are and (laugh) again, not to be evasive, but I don't have an answer for you because it doesn't make sense to me as I read it either and it's not clear to me. So that there's these indexed compilations available by a variety of scientific services but it doesn't indicate whether or not the medical provider has to subscribe to them, has to read any of the indexed journals, when they set the annual update for that potential compilation of a risk factor checklist, whether or not different clinics and different doctors within the same clinic or in different clinics would have a different set of information available to them. We just...we simply don't know. [LB594]

SENATOR CAMPBELL: Thank you, Senator Conrad. Colleagues, I do want you to take some time to try to go through the amendment because I think when someone certainly that we've all talked about tonight with the esteem that we hold for Senator Dierks, we all owe it to really understand the amendment that's being brought forward, and part of my concern in my discussion with Senator Council had to do with the fact that you are supposed to list out the risk factors and each complication that could come from that and then you are supposed to cross that with the risk factors that the woman who is appearing for an abortion would be looking at. Now I realize that the risk complications for me might be very different than the risk calculations for a different person and therein lies somewhat of the puzzle of this bill, because it would seem to me extremely complicated for anyone to make sure that they are complying. And so please, colleagues, look at the complexity here and make sure we understand what we are going to ask people to do as they administer this bill. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Campbell. There are no other lights on. Senator Dierks, you are recognized to close on AM2306. [LB594]

SENATOR DIERKS: Thank you, Mr. Speaker, and thank you, members of the Legislature. I think that we're having a good discussion and I think it's good for us to do that. With that, I'm going to ask that you support the amendment, AM2306, to AM1699. Thank you. [LB594]

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SPEAKER FLOOD: Thank you, Senator Dierks. Members, you've heard the closing to AM2306. The question before the body is, shall AM2306 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Dierks, for what purpose do you rise? [LB594]

SENATOR DIERKS: Well, it looks to me like we're short on citizens here. Maybe we ought to have a call of the house. [LB594]

SPEAKER FLOOD: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Members, the question is, shall the house go under call? Mr. Clerk, please record. [LB594]

CLERK: 29 ayes, 0 nays to go under call. [LB594]

SPEAKER FLOOD: Thank you, Mr. Clerk. The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Adams, Senator Gloor, Senator Avery, please check in. The house is under call. Senator Avery, Senator Gloor, please return the Chamber and check in. The house is under call. Senator Dierks, all members are present or otherwise accounted for. How do you wish to proceed? [LB594]

SENATOR DIERKS: Let's do a roll call vote, Mr. Speaker, in regular order. [LB594]

SPEAKER FLOOD: A roll call vote in regular order has been requested. The question is, shall AM2306 be amended into...or to AM1699? Mr. Clerk, please read the roll in regular order. [LB594]

CLERK: (Roll call vote taken, Legislative Journal page 1068.) 32 ayes, 6 nays, Mr. President. [LB594]

SPEAKER FLOOD: AM2306 is adopted. Mr. Clerk, I do raise the call. [LB594]

CLERK: I have some items, Mr. President, if I may. [LB594]

SPEAKER FLOOD: Certainly. [LB594]

CLERK: Senator Mello offers LR449, LR450, LR451, all study resolutions, all will be referred to the board. Senator Coash would like to print an amendment to LB779. (Legislative Journal pages 1069-1077.) [LR449 LR450 LR451 LB779]

Mr. President, the next amendment to the committee amendments, Senator Conrad,

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AM2317. (Legislative Journal pages 1077-1079.) [LB594]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on AM2317. [LB594]

SENATOR CONRAD: Thank you, Mr. President. And if I could just ask a point of information before we proceed... [LB594]

SPEAKER FLOOD: Certainly. [LB594]

SENATOR CONRAD: ...or just ask for how much time do I have available in my open? [LB594]

SPEAKER FLOOD: Ten minutes. [LB594]

SENATOR CONRAD: Ten minutes, okay. I'll ask for an indulgence of time from the body. As you well know, I have filed a variety of amendments and I just want to double-check my records to make sure that I'm speaking accurately and appropriately to each. So just a moment. Okay. Thank you, colleagues. And thank you, I'll go ahead and open on AM2317. [LB594]

SPEAKER FLOOD: You're recognized. [LB594]

SENATOR CONRAD: Colleagues, this is the first amendment that I filed to LB594 and really represents the most comprehensive changes proposed to the legislation and is probably most clearly what I believe to be an avenue to make this legislation workable for doctors, for women, addressing some of the points that we brought up earlier in the debate regards to inconsistencies and incompleteness in terms of the standards or purported standards that we are then going to hold doctors and women to, and not even hold them to but extend criminal and civil liabilities towards. So this is the most comprehensive amendment that we'll see tonight that I believe, if adopted, would alleviate many of the concerns regarding application of this legislation, when and if it's adopted. The other amendments that you will see later are more specific in nature, related to different, distinct, substantive areas of the bill. This is a more comprehensive approach to addressing some of the problems, concerns, and otherwise with the underlying legislation that I look forward to a good debate on. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the opening on AM2317. We now turn to discussion. Senator Dierks, you are recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. Speaker. And with all respect to Senator Conrad, I think the bill is in great shape. We don't think there are any amendments that we can accept that will make it any better. Thank you. [LB594]

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SPEAKER FLOOD: Thank you, Senator Dierks. Senator Conrad, you are recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Some of the key components related to this amendment are as follows and goes to the heart of some of the issues and problems related to this legislation as a whole. In principle, this amendment more clearly defines the standard to be utilized for developing these evaluative tools, how the information would be gathered, administered, updated. It provides a clear connection, instead of association as contemplated by the underlying legislation, to actual causation, which I think is an important scientific distinction. And it also cuts out many other sections of the bill which are redundant according to existing law. But really, the gist of this amendment and, like I said, colleagues, I think this would go a long way in alleviating a lot of the concerns and questions that have been brought forward because it provides a clearer standard for women and doctor, in good...who are trying to operate in good faith, to comply with and it has a better explanation of the scientific materials to be utilized and as contemplated in the legislation, because I think that's important. And my opinion, of course, matters very little in terms of this debate, but I will rely on those who do have expertise on these areas...in these areas and who have brought forward information to help us understand the standard for evaluating social science and scientific research and literature. And in fact, there were these exact kind of experts who came forward last year to the Judiciary Committee and who testified at the committee level in regards to this bill. There was a woman named Lisa Crockett, you'll see on your committee amendment (sic) and I'm going to rely heavily on the transcript of that hearing in my comments related to this, who was a Ph.D. in human development, had 20 years experience as both a researcher and a professor and as an empirical researcher, and has been published in over 50 scientific publications, many of which appeared in peer-reviewed scientific journals, and also served as a peer reviewer for scientific research. There is no proponent with that kind of expertise at the committee level who's come forward to talk about the standard for evaluating the standards like we have available here. And this expert warns us about how the current language in LB594, not corrected through the committee amendment, AM1699, but rather more appropriately defined and evaluated in the substance of my amendment, AM2317, it helps us to get an understanding, a concrete understanding, of how we evaluate the evaluation tools. She tells us and told the committee that the standards utilized in social science research for evaluating literature included in the bill, specifically the publication in peer-reviewed journals and findings of statistically significant associations, are important but not sufficient for evaluating empirical literature. In fact, studies that have met these standards have sometimes later proved to be erroneous or fail to be confirmed by subsequent researchers. [LB594]

SPEAKER FLOOD: One minute. [LB594]

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SENATOR CONRAD: Well, this legislation doesn't take into account those realities of scientific research or publication and, again, provokes and provides an unworkable trap for women and doctors who are, in good faith, trying to comply with these ideas. She goes on to tell the committee that there's many reasons a study can be methodologically flawed or biased and there are no exceptions for when that instance may occur in the legislation or in the committee amendment, which is another concern. But in addition to sampling error, which is of course a natural occurrence in scientific and social scientific research and, again, not specifically addressed in a clear manner in this legislation or the committee amendment, there are other things we need to be wary of, including inaccurate data entry, measurement error, data and incorrect data analysis,... [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR CONRAD: ...or any other things that would contribute to erroneous findings. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator McGill, you are recognized. [LB594]

SENATOR MCGILL: Thank you, Mr. Speaker, members of the body. I'd like to thank Senator Conrad for bringing this amendment. And I know there's an infamous...I know Senator Fischer infamously always says, why make a bad bill better? You don't do that. And I feel that Senator Nantkes is at least trying to fill some of the holes that are currently in this bill and maybe folks will like the noncomprehensive approach in some of the small things in later amendments, but there are legitimate things that we're trying to fill here and that Senator Conrad is trying to fill here, like on page 2 of the amendment: The Department shall perform these searches and review new studies and republish the materials annually. This is needed information in how this legislation would be enacted, that is desperately missing and needed in this piece of legislation. Otherwise, we're going to have doctors across the state not knowing what risk factors they should be using, not actually following the newest updates of the journals and what information is in them. So I don't understand why anybody would be opposed to at least that part of her amendment because we can't expect every single doctor to keep up to date on every single risk factor and the flow of those things. I think it's absolutely critical that we try to stick that into this bill somewhere. And I hope, and it's sad, but I hope that it's just because Senator Conrad is bringing amendments that there's an assumption made or that any of us don't want to try to make this legislation more workable. You know, it's interesting, if you actually sit down and talk to Senator Council and Senator Conrad and I, you'll see that we actually all have different views on abortion and what the limitations should be and what they shouldn't be. For instance, on the Speaker's bill this year, LB1103, I personally don't have a problem with the fetal pain aspect and moving it back to 20 weeks, whereas my colleagues do have a problem with that. We have different

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opinions on this matter. Where I have problems with this particular piece of legislation, where I think they do, too, or I don't know, I can't speak for them, is dealing with this assumption, well, first of all, that we want to improve informed consent but we don't want to improve the information we're giving to kids and young people before they get pregnant. You know, people say they want more information out there given to the woman. Well, they don't until she's pregnant. We're just adding on information. You know, the proponents say, you know, I just had a conversation with Senator Mello about this issue and he's saying that they're just trying to add information on to make sure that the woman makes, you know, a good decision and knows the mental health consequences. But again, no, that in and of itself is one thing, but when we also have a piece of legislation, LB1103, which takes away consideration on mental health, which is the reason that I will not support the Speaker's bill, you have just two contradictory messages claiming...at least this bill claims that you're caring about a woman's mental health and giving her more information, making sure she's taking those consequences into play and into her mind as she's making that decision. But the other bill, it's saying we don't care if you're suicidal, if you're that depressed because your baby has something wrong with it, some critical disease or some...yeah, some critical disease where they'll either die shortly after birth or they have...they're deformed in some way and that could lead a woman to being depressed and suicidal. And in that case, we're throwing concern for her health out the door. And I know everyone who votes for this bill is going to vote for that one. They directly contradict each other when it comes to mental health. So I just continue to ask that, you know, the proponents just be straightforward and honest that they're looking for a barrier towards getting an abortion. I mean that's what you're trying to do with this bill and that's fine. I know some people are adamantly pro-life. [LB594 LB1103]

SPEAKER FLOOD: One minute. [LB594]

SENATOR MCGILL: But just don't fool yourselves that you're doing this for the sake of the woman's mental health, not when you have two votes this year within a few weeks of each other that are so contradictory. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator McGill. Senator Council, you are recognized. [LB594]

SENATOR COUNCIL: Yes, thank you, Mr. President. I have read AM2317 and if Senator Conrad would yield to a couple of questions, please. [LB594]

SPEAKER FLOOD: Senator Conrad, will you yield to a couple questions from Senator Council? [LB594]

SENATOR CONRAD: Yes, of course. [LB594]

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SENATOR COUNCIL: Okay. AM2317 indicates that it's an amendment to the committee amendment, but it appears not to coincide with the sections of the committee amendment. [LB594]

SENATOR CONRAD: Thank you, Senator Council, and I believe that that is an important clarification. I believe this amendment was actually drafted probably to a version of the legislation, not to the committee amendment, and if people have concerns about that we could easily refile on Select, redraft and refile and move through the subsequent amendments that I filed today, or we can continue here and see what happens and discuss the substance thereof. [LB594]

SENATOR COUNCIL: And I appreciate that, Senator Conrad, because I wanted my position on the amendment to be based upon my understanding of what the...your intent was in introducing the amendment, and I believe that your intent in introducing the amendment was to substitute in its entirety, beginning on what is now Section 2 of the committee amendment, and instead substituting what is the new Section 6 that basically expands the informed consent...the current informed consent statute. Am I correct in my understanding? [LB594]

SENATOR CONRAD: That's correct. [LB594]

SENATOR COUNCIL: And if you look at that, I am supportive of that intent because if you look at what AM2317 does, it provides a standard and it provides a consistent standard. It provides a consistent resource that the providers would be bound to know what has been published by the Department of Health and Human Services relative to risks associated with abortion and whether or not those risk factors have risen to the level of the 5 percent, less than 5 percent probability of being left to chance. If you look at that language, it speaks to causation, it speaks to outcome, but of greater significance to me is that the providers will not be left to fend for themselves in terms of determining what is or is not a peer-review, published, validated survey or summary but they could rely on the materials developed and distributed and made available by the Department of Health and Human Services. So there's no question, there's no doubt that if a particular provider says, I relied upon article X that was published on this day and is included in this library, and then for whatever reason it's no longer in that library, the question is, is if they relied upon the materials that were provided by the Department of Health and Human Services, there is at least a measurable standard. Under the law, as reflected in the committee amendment, there is no measurable standard. It's vague. It's ambiguous. This provides at least some structure for holding providers accountable. And as Senator McGill stated,... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR COUNCIL: ...I'm not inclined to make good legislation...I mean bad

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legislation better, but I'm adamantly opposed to the passage of bad legislation. Thank you, Senator Conrad. [LB594]

SPEAKER FLOOD: Thank you, Senator Council. Senator Haar, you are recognized. [LB594]

SENATOR HAAR: Mr. President, members of the council...council, right, members of the body, I had some questions. I don't know if...Senator Ashford isn't here. Senator Dierks. [LB594]

SPEAKER FLOOD: Senator Dierks, as he makes his way up,... [LB594]

SENATOR HAAR: Okay. [LB594]

SPEAKER FLOOD: ...would you yield to a question, Senator Dierks, from Senator Haar? He will. [LB594]

SENATOR DIERKS: Yes. [LB594]

SENATOR HAAR: Good. Okay. (Laugh) Thank you very much. Again, I'm just trying to explore the mechanics of how all of this works, and any of you who served on a committee with me probably understand that. Would this apply, if one of these undocumented women who is pregnant goes to a doctor and this were in place, would they have to go through that same process with the doctor before they got an abortion? [LB594]

SENATOR DIERKS: Before an abortion? [LB594]

SENATOR HAAR: Yeah. [LB594]

SENATOR DIERKS: That's what the bill would call for, yes. [LB594]

SENATOR HAAR: Okay. Is this process that a woman goes through, is it a Q&A with the doctor? I mean obviously there's a survey and so on, but is the woman allowed to ask the doctor questions or is this just a strict one-way evaluation? [LB594]

SENATOR DIERKS: Well, I wouldn't see why she couldn't. I mean it should be a discussion between both of them. But I think that the decision, as far as the health and the risk factor, that's up to the doctor. He might decide, by asking her questions, whether there is a risk or not, and I think that's appropriate, so. [LB594]

SENATOR HAAR: And I'm sorry I'm dwelling on this but I'm so taken back by the refusal to deal with prenatal care. So obviously, one of the risks to a woman who's pregnant is

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not having prenatal care. Wouldn't you agree? [LB594]

SENATOR DIERKS: Yes. [LB594]

SENATOR HAAR: So if the doctor says that and it's on the checklist, it says, are you getting prenatal care, and she says, no, because I can't because of my immigration status, and she says what do I do now, Doctor, what does the doctor say to her? [LB594]

SENATOR DIERKS: Well, he would probably counsel her to hold forth. I don't know what he would say. It's his decision. It's a medical decision. He has to...he has to assess those factors and tell her what the options are. I would imagine a medical doctor would try and tell her to get some help someplace. [LB594]

SENATOR HAAR: To find an agency or... [LB594]

SENATOR DIERKS: Well, sure, maybe a church or some...I don't know, whoever has that stuff. [LB594]

SENATOR HAAR: So... [LB594]

SENATOR DIERKS: That was one of the options I thought that the Governor was talking about when he said he didn't want to support the prenatal care bill. He thought there was some options out there that would take care of that. And I agree with you about the prenatal thing. I thought we should have had it. [LB594]

SENATOR HAAR: I mean talk about risk and talk about pressure on a woman who's told by a doctor that there's a real risk she's not getting prenatal care and now she knows she can't get it. That would be a tremendous pressure on her, I would think. [LB594]

SENATOR DIERKS: Well, don't you think she should know that though? That's what I'm saying. This is a commonsense bill. We're just trying to provide these ladies with whatever medical information concerning those risk factors, whatever that is. [LB594]

SENATOR HAAR: So are doctors in this case...now these would be their general practitioner, correct, that does this evaluation or not? [LB594]

SENATOR DIERKS: Could be the general practitioner or it could be the abortion provider. [LB594]

SENATOR HAAR: Okay. Is there anything in this bill that gives special training to the doctor? I mean in the case we were just discussing of the lack of prenatal care because

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of the immigration status, is there any training for that doctor as to where he would refer this woman? Or does it just... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR HAAR: ...depend on his own knowledge, his own opinion? [LB594]

SENATOR DIERKS: I think he depends on his own opinion, his training. He should have enough in his medical training to determine the factors, the risk factors. [LB594]

SENATOR HAAR: But if the...these what-if questions, where do I go now, Doctor, for help, that wouldn't necessarily be a part of his training. [LB594]

SENATOR DIERKS: He should be able to make some sort of acknowledgement about that, some recommendation. I think most medical doctors have those options, Ken. [LB594]

SENATOR HAAR: Okay. But...and we should be talking about he or she for doctor I guess. (Laugh) That's my mistake. [LB594]

SENATOR DIERKS: Well, I'm relying on the medical profession to provide the kind of medical doctors that do these things and I think they do. [LB594]

SENATOR HAAR: But in this case, basically a doctor then would also be providing kind of social services kind of references that may or may not be a part of his training. [LB594]

SENATOR DIERKS: Well,... [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR HAAR: Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Haar, Senator Dierks. Senator Krist, you are recognized. Before we go to Senator Krist, Mr. Clerk, do you have items for the record? [LB594]

CLERK: Excuse me, Senator, yes, very quickly. Senator Mello would offer LR452, that resolution will be laid over; and LR453 is by Senator Council. Thank you, Mr. President. (Legislative Journal pages 1079-1080.) [LR452 LR453]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Krist, you are recognized. [LB594]

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SENATOR KRIST: Thank you, Speaker, colleagues. I wanted to just start by saying, in response to Senator McGill's challenge that some of us, who were sitting here saying nothing, needed to stand up and say something. I do agree. I respect Senator Council and Senator McGill and Senator Conrad. I was looking for a Senator Nantkes a few minutes ago but I guess I figured that out. Although I respect the three of you and I know that you all have different opinions and, as ladies, probably are more qualified than me to make a statement about what's right or wrong, I have to say that Senator Council came on mike a few seconds ago, a few minutes ago, and questioned the sections as they applied and lined up with the amendment, AM2317, to the committee amendment, AM1699, and it seems to me to highlight a pure fact. We're engaged in a filibuster. There will never be an up or down vote on LB594. For that, I'm sorry. I supported LB1110. I am a pro-life person and I would like to have had an up or down vote. I think that what Senator Dierks has done, and, Senator Dierks, I want to thank you for bringing it forward, is shine the light on yet another piece of information that would be critical for a young woman, legal or illegal, white or black, Hispanic or Chinese, and I could go on, to make the right decision in her life. Now if you're a pro-life person, it takes on a different complexion; if you're a pro-choice person, yet another complexion. But that's not what we're debating or I didn't think that's what we were debating. I thought we were debating information, the best information to make the best decision. Again, as a pro-life person, I would have liked to have seen an up or down vote on LB594 and, as a supporter who is not a hypocrite and has not been a hypocrite in the short time I've spent with you in this body on those issues, I take issue to the fact that we probably will never see an up or down on LB594. Thanks for your time. [LB594 LB1110]

SPEAKER FLOOD: Thank you, Senator Krist. Senator Conrad, you are recognized. [LB594]

SENATOR CONRAD: Thank you, Mr. President. And Senator Krist, the good news is you will see an up or down vote on LB594. I think that's something we could probably all agree on. No matter how hard I or others would work who have questions and concerns about this bill, according to the rules of this body, whether we go to an up or down vote based upon...or predicated by a cloture motion at the eight-hour point or four-hour point on Select, or through the natural course of both on the amendments that I've filed, AM2317, or subsequent amendments. And I told the Speaker at the beginning of the debate and Senator Dierks that I have no preconceived notion in terms of how this will play out. If we have to go to the eight-point...eight hours to get full and fair debate on the substantive issues that we've brought forward, then that's what we'll do. If we can get it done earlier, which I'm hopeful for, then that's what we will do. So to say, well, let's just call it what it is, it's a filibuster; no, I don't think that's fair. I think it's full and fair debate on an important issue involving constitutional rights and mental and physical health, and you will have a chance to vote up or down on this legislation. Maybe not tonight but tomorrow, not only on General File, but Select, then in Final Reading, because I think I

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can do the math to know that I won't have enough votes to stop a cloture motion at this or any other level of debate. So that's the good news for your perspective, Senator Krist. I want to go back to talking about what this amendment seeks to do in terms of trying to provide some level of uniformity in terms of the evaluative tool and some objectivity in terms for how these tools are developed regarding risk factors or otherwise, and key distinctions regarding potential associations of risk factors and causation in risk factors when it comes to elective abortions. Studies published in peer-reviewed journals every day reach ambiguous or contested conclusions, and definitely, frequently reach the conclusion that more study is necessary. This bill provides no guidance to physicians about how to evaluate those studies or even which of the risk factors named in such studies should be included on the list of their compilation when putting together a list of risk factors, positive or negative. This bill is an extraordinary departure from accepted medical practice and ethics--medical ethics. Physicians treat their patients according to their training. Senator Dierks is absolutely right in that regard. They also treat them according to their judgment, experience, and to other values and based on the evidence before them. Medical ethical guidelines in practice rules require physicians to counsel patients on relevant risks to consider, with this procedure or any procedure. Yet, this legislation, this bill will force physicians to practice medicine in a manner that is actually a violation of their own training and ethics by requiring, by mandating them to counsel patients about risks that may be misleading or irrelevant. There is no safety...safeguard in this legislation otherwise. That's what this amendment seeks to do. This bill would require physicians to inform women of risks... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: ...even if there is conflicting reported data or the physician believes the study reporting an adverse effect is actually flawed in methodology or otherwise. That's problematic, colleagues. The fact that a study has been published does not mean that evidence is uncontroverted. In fact, studies published in peer-reviewed journals often reach ambiguous conclusions, often have their methodology questioned, often reach disparate conclusions. Moreover, peer-reviewed journals often publish different studies that reach different conclusions or conflicting conclusions. So by requiring a physician to counsel their patient about any risk with a statistical association to abortion, rather than proven causation, this bill requires physicians to tell their patients about risks that aren't caused or even related to abortion. That's problematic. [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR CONRAD: Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Council, you are recognized. [LB594]

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SENATOR COUNCIL: Thank you, Mr. President. I will yield my time to Senator Conrad if she would like it. [LB594]

SPEAKER FLOOD: Senator Conrad, 4 minutes 50 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Senator Council. Again, colleagues, be reminded, this is a case, this is the law, first impression. We have no other guidance, no other experience in other states who have tried to implement the logistical morass that is put forward in LB594. And, in fact, this bill has been characterized as one of the most biased and extreme counseling requirements the country has ever seen. Not my words but words from people who practice in the field of legislation related to these issues and health practitioners in women's healthcare. This legislation requires a physician to create a laundry list of ever-changing, possibly false and misleading, and potentially irrelevant risk factors that have no basis in medicine or policy that only could potentially harm the women of Nebraska and their physicians. So not only do we give them an unworkable standard and set to compile this information, counsel their patients about, with no uniformity, no accountability, no understanding, but then we extend additional civil and criminal liabilities to all those involved. That is problematic. Women should have full and complete information available to them when they seek this type of procedure or any medical procedure. That is something that we can all agree on. But by injecting junk science, irrelevant facts, or contradictory facts into that dialogue, that's what's problematic about LB594. It substitutes our political judgment or our religious feelings into the privacy of the doctor/patient relationship and forces a mandate upon them that they utilize and share information that may or may not be factual, may or may not be relevant, may or may not be applicable to that patient. That is an impossible, unworkable standard that we should be trying to address through substantive, realistic language like I'm putting forward in this amendment. The other amendments that I've filed seek to strike particular sections of the committee amendment because they are specifically and distinctly problematic. This is a more proactive, positive approach to trying to provide some clarity to existing language that I believe, if were adopted, again would remove a lot of the questions and concerns that have been brought forward already. So it is clear, however, and it's, of course, the proponent's choice about whether or not he wants to work together or try and change any of this language. Senator Dierks has stated very clearly at this moment in time that he stands by the language of the committee amendment and the underlying legislation that that would be attached to. And that's definitely his prerogative. I respect that prerogative. But this is, in fact, a realistic, substantive attempt to try and provide clarity, uniformity, and ease of application and understanding for women and doctors if and when LB594 is adopted as part of our statutory framework. [LB594]

SPEAKER FLOOD: One minute. [LB594]

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SENATOR CONRAD: Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Haar, you are recognized. [LB594]

SENATOR HAAR: More questions. Again, just basic information. If I could ask Senator Dierks a question? [LB594]

SPEAKER FLOOD: Senator Dierks, will you yield to a question from Senator Haar? [LB594]

SENATOR DIERKS: Yes. Yes. [LB594]

SENATOR HAAR: Okay. Again, the mechanical workings of this whole thing. Who exactly designs the checklist? [LB594]

SENATOR DIERKS: Who designs what? [LB594]

SENATOR HAAR: The checklist that will have to be used. Is it the AMA or something like that, or...? [LB594]

SENATOR DIERKS: They would have that. A medical doctor knows what the risks are and he would already know what to ask. He doesn't have to have a list. [LB594]

SENATOR HAAR: Okay. So if...one doctor may actually use a different list than another...or...so if there isn't a checklist, anyway, in the evaluation, one doctor might use a different evaluation than another. Is that correct? [LB594]

SENATOR DIERKS: I suppose. I'm...you know, I think we're not giving doctors enough credit. I think they know what they have to do. And for us to try to design their protocol, I think that's not fair to them. I think that they know that. Now there may be some set of risk assessments that are set out there for them. We have them outlined here so they're available for them if they want to look at them. But I'm not sure that anybody puts them in the statute. The day may come we may be doing that. [LB594]

SENATOR HAAR: So there is no group like the AMA or something. If I were a doctor--and I'm not--but I would be...I would feel uncomfortable if I could actually be sued for not going through a proper evaluation but I wasn't told what that evaluation was supposed to be. [LB594]

SENATOR DIERKS: Well, but you see, he will know, before he gives the evaluation, what the evaluation is supposed to be. He's not going to do something that's going to get him in trouble. [LB594]

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SENATOR HAAR: Okay. And...but that's up to the doctor, himself or herself, to actually come up with the evaluation. There's no organization that's going to compile this? [LB594]

SENATOR DIERKS: Not that I'm aware of. [LB594]

SENATOR HAAR: Okay. [LB594]

SENATOR DIERKS: You know, I think that these medical doctors, when they graduate from medical school, are given all these tools that they need to make these assessments. If they're going to be an ob-gyn, they know what the risks are and they know what to ask, so. [LB594]

SENATOR HAAR: Okay. And in this doctor/patient situation then, if...let's say there was a badly deformed fetus and the doctor knows that this is likely to result in a stillbirth or a baby without a skull or something like this, without a formed skull, is it...and the question is going to be asked, "What should I do, Doctor?" Again, is that up to the doctor? Some doctors may...would a doctor be at risk if he suggested abortion, for example? [LB594]

SENATOR DIERKS: I don't think so if he thinks that the proper way to go. [LB594]

SENATOR HAAR: Okay. So this really...all of this evaluation falls on the back of the doctor. [LB594]

SENATOR DIERKS: They have to do an adequate job of risk assessment. [LB594]

SENATOR HAAR: And that would be the...if somebody then took that doctor to court, it would be up to the judge to decide whether that doctor had done an adequate job or not. [LB594]

SENATOR DIERKS: Well, I would imagine. [LB594]

SENATOR HAAR: Okay. Now...and again, maybe this just has to be up to the doctor, and...but if a doctor said, "Is someone pressing you?", and that's one of the questions someone brought up earlier, and the patient said, "Yes, I'm really being pressed to have an abortion by my boyfriend," let's say, for example. Then it's again totally up to the doctor to decide whether or not to intervene in that situation...or just to say...make a written report of that or something like that. I mean... [LB594]

SENATOR DIERKS: Well, I think...you know, I don't think he... [LB594]

SPEAKER FLOOD: One minute. [LB594]

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SENATOR DIERKS: He's not under any obligation to obey what the boyfriend wants. He's under an obligation to report to the lady the problems that she's having with her risk assessment. If it looks like it's overwhelming, then he can...she's going to have to make the decision. [LB594]

SENATOR HAAR: Okay. Is this report then going to be in writing or not? I mean, do they...or is it just... [LB594]

SENATOR DIERKS: I don't know. [LB594]

SENATOR HAAR: Because I have questions, then, about the privacy of that report. If there's anything in writing, if you went to court it sounds almost like it would be doctor said; no, I said; doctor said, I said, kind of situation. [LB594]

SENATOR DIERKS: Well, they've been to court before, Ken, and I suppose they'll go again. [LB594]

SENATOR HAAR: Okay. Okay. Well, I appreciate those answers. I...and I'm going to...I will make a call tomorrow. I'm just curious from the doctor's standpoint how they look at this kind of amorphous kind of counseling that they're...evaluation and counseling... [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR HAAR: ...that leaves him legally responsible. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Haar, Senator Dierks. Before we continue with discussion, Mr. Clerk, items for the record. [LB594]

CLERK: Mr. President, a series of amendments to be printed (re LB594). Thank you. (Legislative Journal pages 1080-1081.) [LB594]

SPEAKER FLOOD: Thank you, Mr. Clerk. Senator Council, you are recognized and this is your third and final time. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. With all due respect to my learned colleague, Senator Dierks, I must disagree with your statement that these doctors know what the risk factors are. What the issue here is, I don't think anyone disputes that they know what the risk factors are, and the current state of the law imposes upon them an obligation to convey to their patient what they medically believe to be the risk factors. The problem is that LB594 requires them to identify other risk factors. LB594 requires them to go to these peer-reviewed publications and look to make sure that there aren't

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any new risk factors du jour. That's the problem and I think that's the question that Senator Haar was attempting to get to is that under LB594 the provider is required to seek out and determine from these publications what someone, anyone, has recently determined to be a risk factor. Then they're required to prepare a checklist based upon what they have found. And where the problem arises is that under LB594 they are then civilly liable if they fail to disclose a given risk factor. And there is...the assumption is that they have access to and have gone through this entire list. And what I see AM2317 doing is identifying and formalizing the list of risk factors that these providers will be held accountable for sharing information with the patient. That's the problem and that's what AM2317 is designed to address. Because as I heard Senator Dierks, and I agree with him and I think that fundamentally he believes that, too, is that the healthcare provider, they're physicians. They're deemed to have some expertise in this area. They know what the risk factors are. And if you look at the current statute, they're required to disclose those types of risk to anyone seeking an abortion from them. That's why I maintain that LB594 is completely unnecessary. The mechanism is in place for these certified medical providers to exercise their medical judgment and their training in terms of adequately and fully informing their patients of medical risks associated with the elective procedure that they are pursuing. Having made that statement, I will yield any balance of my time to Senator Conrad if she'd like to have it. [LB594]

SPEAKER FLOOD: Senator Conrad, Senator Council has given you 1 minute 15 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Council. I'm sorry I didn't have a chance to hear the entirety of your remarks as I was engaged in conversation off the mike. But I did want to talk about one of the additional hurdles or problems or concerns with this legislation. It has been noted by proponents that one of the potential risk factors that we need to screen for and be wary of... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: ...and warn about is whether or not a woman's religion influences her thinking or beliefs about abortion. And so now, not only have we put forward this standard that says, doctors, you have to go out and look at this research, whether it's a year before the abortion, whether it's annually, whether it's in these indexes, whether it's relevant or not relevant. You also have to ask your patient what her religion is and what her religious beliefs are, and you have to be an expert about how each religion feels about abortion and life issues because then that's part of developing this tool kit, this risk factor list. You...I think that goes far beyond what would be contemplated in a medical doctor's training and experience, to not only know... [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

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SENATOR CONRAD: Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Nantkes, Senator Council. Senator Cook, you are recognized. [LB594]

SENATOR COOK: Thank you, Mr. President, members of the body. I would yield my time to Senator Conrad should she choose to take it. [LB594]

SPEAKER FLOOD: Senator Conrad, 4 minutes 50 seconds. [LB594]

SENATOR CONRAD: I will...thank you, Mr. President. Thank you, Senator Cook. I will take it. I wanted to continue my comments in regards to how we compile these potential lists of potential risks. And some that have been talked about is how the individual woman's religious tradition or religious perspective influences her thinking about abortion and how that sets up a potential risk factor that should be considered. Again, I think Senator Dierks is right that through training medical doctors know a lot about medical risks and may have some understanding of mental health issues associated with this legislation. Of course, there are separate and distinct professions that have specific expertise on mental health issues, so I think even that's a stretch. But now we're also saying, doctors, you have to ask your patients what their religion is, and then you have to ask...you have to know inherently, or ask, what that religion's perspective on abortion is. Well, I can tell you from a quick search and from common sense that different religions have different perspectives on abortion. And, of course, individual practitioners of those diverse set of religious traditions have different feelings that may or may not be in concert with their religious traditions, feelings on abortion, and life issues as a whole. So again this is just yet another example of the untenable, unworkable standard and framework that we're putting upon doctors and that we're putting upon women in the context of this legislation, which is so dangerous, so troublesome, and impossible to meet. This isn't a commonsense, straightforward proposal. This is an impossible, undue burden to women exercising their individual rights of liberty and privacy. Could anybody in this body chime in and tell me off the top of their heads if we think it's okay for doctors to be trained in every religion's religious traditions, views on abortion and life, and if they should...if that should be a requirement for licensure in Nebraska? Because essentially that's what we're saying with LB594, which is problematic, at best. Another key component of the amendment before us that I did want to bring forward is how this idea was constructed. It puts the burden of compiling this information on the Department of Health and Human Services so that we have one actor, one body who already handles credentialing for doctors, for example; for health clinics, for example; evaluating the information, distributing the information, updating the information, and helping to provide the checklist that LB594 contemplates. And, colleagues, this isn't a new concept. We did it last year. You did it last year in passing the ultrasound bills. You required the Department of Health and Human Services to compile a list of people, health clinics, licensed or unlicensed, that perform

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free ultrasounds, and distribute that widely. You put these burdens on the Department of Health and Human Services before. And if we're going to do it for something as simple as the provision of free ultrasounds by licensed or unlicensed clinics, we should definitely have an objective standard bearer... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: ...and clear actor administering the provisions of this associated risk checklist. And if somebody has a better idea for who to do that beyond the Department of Health and Human Services, I'm wide open to that. But again I think it goes a long way in removing some of the questions, uncertainty, and confusion that LB594 presents. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Haar, you are recognized. This is your third and final time. [LB594]

SENATOR HAAR: Mr. President, members of the body. I'm struggling to deal with how this could work, practically, when a doctor is held legally responsible in the end. And I got a copy of the testimony given March 5, 2009, when this was first heard apparently in committee. And a licensed psychologist with a Ph.D. in clinical psychology and representing the National Psychological Association opposed LB594, and here were her remarks. She said, we don't just find one study that supports our position, or she said this is a danger; we have to be careful that we don't just find just one study that supports our position and put too much faith in that because there may be other high quality studies that refute it. In any particular study you can pick out one or two aspects of it and quote those in such a way that may somehow distort the findings. I mean, we're all obviously aware of this, that we can take information and pretty much interpret it the way we want. And she is saying here that a lot of this information is not...you know, is not cast in stone, basically. And then she goes on to some other problems. And basically she says, you know, for example, do you talk about stressful life events, including childbirth itself, for some women, childbirth may be so scary that they wouldn't want to go through with it; that they might want to have an abortion. So...or that if you have children in poverty with...in a one-parent home, that the chances for that child are much more likely to succeed. I mean, so is a general practitioner expected to make those kinds of risk factors known to the woman, or does it just come down to the risk in bearing the child and the risk of pregnancy? There's just...without someone designing this...I mean, if we're going to do this, then there has to be some kind of design to this that we can all look at and we can probably debate. And then she raises questions about studies within the last 12 months suggesting an evaluator would need to be informed of any conclusion from all published studies, regardless of their quality. They may focus on just a few cases or consider...you know, there are just so many variables in this sort of thing, how is a general practitioner supposed to do this? And I intend to call the AMA tomorrow morning, the Nebraska Medical Association, and ask how they

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prepare doctors for this if this goes through. Not only to give...I mean, there are two things really here. We're trying to protect the health of the woman but we're also trying to protect the doctors from lawsuits because if the doctors are...if this makes them more liable to lawsuits, obviously they're not going to want to do this in the first place. At least, I can't believe they would. She talks about, you know, who pays for this? If you have to do it an hour before, nowhere in the bill, I believe, does it say the doctor who would be performing the abortion or would this be some other doctor who would have to do it. So now you're an illegal immigrant who is pregnant and you go to a doctor, who pays for that bill? Obviously, you can't go to a doctor that's going to be...receive any benefit through Nebraska healthcare. [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR HAAR: And the questions just go on and on, not only to protect the mother in this case, the expectant mother, but also to protect the medical profession, because one way to cut off medical service is to scare the hell out of doctors. And I can't believe that this kind of evaluation that has legal consequences depends on most recent research and all these kinds of things wouldn't put a lot of doctors in the courtroom, and we're already saying one of the costs of...one of the reasons for the high cost of medical care is because of lawsuits. And this just increases that possibility. Thank you very much. [LB594]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Cook, you are recognized. [LB594]

SENATOR COOK: Thank you, Mr. President and members of the body. I will yield my time to Senator Conrad. [LB594]

SPEAKER FLOOD: Senator Conrad, 4 minutes 55 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Senator Cook. Actually, colleagues, I think part of the reason I brought forward this amendment to try and provide a clear framework for the risk factor list or checklist that is contemplated in the legislation is not just because it's important that we have uniformity in terms of application and utilization, but also because doctors and women are subject to criminal or civil liability because of their failure to comply with these rules. And that's what's problematic and that's what we do have to be watchful of and concerned about, because...and maybe that...maybe it is a strategy utilized by proponents to create an unworkable standard that subjects the few providers, the few quality healthcare providers willing to do this kind of work, to potential liability. Maybe that's a strategy that they are interested in pursuing that is part of the motives or substance of LB594. But you think that that's a stretch? Well, let me tell you it's not. In fact, we have information that has been reported to the Kaiser Foundation about how this campaign has actually

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been conducted in Great Britain, and this is from a June 14, 2002, report where a British woman was...who had announced her intention to sue the United Kingdom's national health service for negligence by failing to warn her of potential psychological consequences from obtaining an elective abortion four years previously. If that sounds shocking, if that sounds strange, I agree, and I had to reread that report a couple times because I thought it was quite outrageous. But are we really prepared to create that same kind of cause of action with this legislation, in this same kind of unworkable framework, to subject our doctors and other medical professionals who work in women's healthcare to that kind of liability? Is that fair? Is that workable? I suggest it is not. I also suggest it is a legitimate reason why this legislation has sincere and significant constitutional, statutory, and other legal complications and problems that will inhibit its adoption or application, even if passed by this body. But these are things to know. These are things to consider. And by putting into place a clearer standard for this type of evaluation, maybe it increases the chances for women's healthcare providers to actually be afforded a policy for their medical malpractice work, or it's necessary to do their work, because as I mentioned earlier in the debate, when you force upon them an unworkable standard with no clear guidelines, no clear framework for how to implement it, could a doctor who's trying to comply in good faith, (a) ever comply, or (b) ever get medical malpractice insurance under this current standard? Because if the answer is no, that's another huge red flag that this is nothing but an undue burden on women's... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR CONRAD: ...constitutionally protected rights to make decisions and choices based upon their individual liberty, their individual privacy, and to have those decisions be judged, not by this body, but by their conscience, by their God, in consultation with their doctors, with their husbands, with their boyfriends, with their partners, with their moms and dads, with their support system if they're lucky enough to have one. That's what we're talking about here. That's whose judgment we should be focused on. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Dierks, you are recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. Speaker. I should point out that this bill is not vague and it is not difficult for doctors to comply with the screening standard. The bill allows that screening for any newly discovered risk factors does not need to begin until a full year after such results are published in the peer-reviewed journal. That allows the medical association like the National Abortion Federation and Planned Parenthood plenty of time to update their checklist and to notify their physician members about the best available research. There's only a handful of studies being published each year with few, if any, reporting any new risk factors. There is no reason why it should be

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difficult for the National Abortion Federation to keep on top of the literature. It should not be the job of the state or the Department of Health to create the list, because doing so risks politicization of this list. It is properly the job of the physician or at least the physician's support groups like the National Abortion Federation, which trains abortion providers, to keep track of the literature. Thank you, Mr. Speaker. [LB594]

SPEAKER FLOOD: Thank you, Senator Dierks. Senator Cook, you are recognized. [LB594]

SENATOR COOK: Mr. President, I'll yield my time to Senator Conrad. [LB594]

SPEAKER FLOOD: Senator Conrad, 4 minutes 55 seconds. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Cook. Senator Dierks, thank you for adding that idea into the context of this substantive debate. But I challenge that "assertation" in terms of substance, and form, I guess. And that would be the belief that Senator Dierks believes and proponents believe that we should put the burden on private organizations which may or may not have a presence within the state of Nebraska to develop the list contemplated to be utilized for evaluating risk factors for women seeking elective abortions. If that is the intent of this legislation, and proponents feel that people from Planned Parenthood or other doctors or professional organizations or private organizations which work in the women's healthcare industry are to be the final arbiter for this kind of an evaluation, that's great to know. That's actually very helpful to know from my perspective, because I do trust those quality healthcare providers with a long history of expertise on these issues to form an informed judgment about what type of risk factors are relevant or not relevant, which are negative or nonnegative. If Senator Dierks and proponents believe that Planned Parenthood and others should be the final arbiter for this evaluation, that's helpful to know. But I still think it would probably be inappropriate for us to delegate that responsibility to those private organizations which we may or may not have any sort of regulatory authority over or jurisdiction over. It goes back to Senator Gloor's comments earlier as to unconstitutional delegation of authority, and we can get into that further, I believe. But my amendment puts the burden on the state to put together this list, to evaluate the research, and to distribute it, update it, and evaluate it, because the multitude of reporting requirements related to this legislation, which we haven't even begun to talk about, are ultimately filed with the state. So it only makes sense that the state, an objective actor, the Department of Health and Human Services, their licensing or credential board should be the final arbiter for pulling together this information. So with that, Mr. President, I think that we are probably...I don't know how many other lights are on. The Chamber looks particularly quiet, but I think that we have a good and fair understanding of what this amendment seeks to do. I would urge people's support thereof. And then I know the hour is late but we have many important amendments and issues in front of us and so I think this is the last time I'll speak on this particular amendment. Thank you. [LB594]

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SPEAKER FLOOD: Thank you, Senator Conrad. There are no lights on. You are recognized to close on AM2317 to AM1699. She waived her opportunity to close. The question before the body is, shall AM2317 be adopted? All those in favor vote...Senator Conrad, for what purpose do you rise? [LB594]

SENATOR CONRAD: Mr. President, I just have a point of personal information. Do we have a quorum present? [LB594]

SPEAKER FLOOD: We do, Senator. [LB594]

SENATOR CONRAD: Okay. I would ask for a call of the house, please. [LB594]

SPEAKER FLOOD: Senator Conrad has requested that the house go under call. All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB594]

CLERK: 27 ayes, 0 nays, Mr. President, to place the house under call. [LB594]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Schilz, Dubas, Lathrop, Janssen, Karpisek, Pankonin, Lautenbaugh, please return to the floor and record your presence. The house is under call. Senator Schilz, Senator Karpisek, Senator Pankonin, please record your presence. Senator Conrad, all members are present or otherwise accounted for. How did you wish to proceed? [LB594]

SENATOR CONRAD: I don't think a roll call vote is necessary. We could just take a record vote, please. [LB594]

SPEAKER FLOOD: Board vote? [LB594]

SENATOR CONRAD: Board vote. [LB594]

SPEAKER FLOOD: Record vote? [LB594]

SENATOR CONRAD: Board vote. [LB594]

SPEAKER FLOOD: And, Senator Conrad, would you also like a record taken of the board vote? [LB594]

SENATOR CONRAD: Yes, Mr. President, I would. [LB594]

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SPEAKER FLOOD: Thank you, Senator Conrad. Mr. Clerk...or, members, the question is, shall AM2317 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB594]

CLERK: (Record vote read, Legislative Journal page 1082.) 9 ayes, 27 nays, Mr. President, on the amendment. [LB594]

SPEAKER FLOOD: AM2317 is not adopted. I do raise the call. [LB594]

CLERK: Mr. President, the next amendment, Senator Conrad, I now have AM2327 in front of me. (Legislative Journal page 1080.) [LB594]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on AM2327. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Colleagues, these next amendments that come, in case you missed the earlier opening or dialogue, are less substantive in nature but do go to specific components of the committee amendment. So I think they're important and they are substantive in nature because we need to get a better understanding of the language that is contemplated in each of these sections. And if we can't get a clear description of what is intended by this language, then it should be stricken and the amendment should be adopted. So with that...and again, colleagues, I don't ask to be obstreperous for obstreperousness...(laugh) for no good reason, but rather to shine light and provide information and inform the dialogue about the language that is utilized in this legislation. So if you turn to the committee amendment, page 2, this amendment strikes section (8) and asks questions about what this language means. The language says this bill provides "the right to redress against nonphysicians who perform illegal abortions or encourage self-abortion as an important means of protecting women's health." Well, okay. I'm not sure what that means. What nonphysicians perform illegal abortions in Nebraska or otherwise? Does this contemplate pharmacists? Does this contemplate nurses? Does this contemplate those who prescribe and administer contraception, the Plan B pill, or otherwise? It's not clear from the face of this language what that means. And so therefore, it's difficult for people of good faith and good will to comply with it, and I don't have the opportunity to learn more about that through reading the committee transcript because it wasn't asked. It wasn't specifically addressed or contemplated by members of the committee or testifiers on either side of this issue as to what the intent of this specific language and section was. Providing the right to redress, I'm assuming refers to civil and criminal liability, but I don't know who's included in that as nonphysicians who perform illegal abortions. What does that mean? And so with that, that's a question posed by this amendment. I'm hopeful that Senator Dierks or others would be able to just provide a brief explanation about that so that we can proceed through the string of substantive amendments that are to come. Thank you. [LB594]

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SENATOR SULLIVAN: Thank you, Senator Conrad. Next up to speak: Senator Haar. [LB594]

SENATOR HAAR: Madam Chair and members of the body. I'd like to ask Senator Gloor a question if I could. [LB594]

SENATOR SULLIVAN: Senator Gloor, would you yield? [LB594]

SENATOR GLOOR: Yes. [LB594]

SENATOR HAAR: I've been waiting for you to get back on the floor, so. (Laugh) [LB594]

SENATOR GLOOR: Thank you, sir. [LB594]

SENATOR HAAR: Is there any other place...you know, having been a hospital administrator, you probably have a broad view of the scope of requirements. Is there any other place that you know of that requires this kind of precounseling in this way? [LB594]

SENATOR GLOOR: Well, I would need a little help with this kind of counseling in this way, I believe, Senator. That's kind of broad for me. [LB594]

SENATOR HAAR: I'm sorry. That's too broad and I think this bill is too broad. But this requires a preevaluation based on the most current literature and so on, and leaves doctors liable if they don't comply with that rather general requirement. Is there any other procedure that has those things? It requires a list of evaluations based on the most current literature with a criminal penalty if the doctor doesn't follow through. [LB594]

SENATOR GLOOR: I am not aware of specific criminal penalties. I'm certainly aware of the fact that when it comes to what would be called informed consent, that it is very common to sit down with a listing of what the possible complications, as an example, might be: ramifications of taking a certain procedure. In fact, you don't even have to deal with surgeries. You can watch all...and heaven knows, there are plenty of advertisement for pharmaceuticals on TV, and very quickly they run through, sometimes in 20 seconds, a listing of multiple potential complications...and if any of these occurs, see your physician, yada yada. So it's pretty common that a listing of potential complications is referred to. The criminal aspects of it is, at least to my knowledge, not common. [LB594]

SENATOR HAAR: And I've been through enough minor kinds of surgeries that I've

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been...you know, I've been in that situation with a doctor where they tell me what the risks are. Is that usually just based on their knowledge from medical school and their reading, or is that...is there a prescribed knowledge base for the questions that they would, you know, talk to me about? [LB594]

SENATOR GLOOR: You know, that's a great question. And I kind of knew where you were headed with the questioning. I don't know how that list is determined. I do think that there are within specific areas of academies of study, colleges of study like the American College of Orthopedics, when they publish or provide information to that particular specialty it will give guidance or provide specifics of what kind of complications are likely to come about as a result of a total knee replacement, as an example, or a knee arthroscopy. So I believe they do defer to professional organizations in coming up with a list of potential complications that might be as a result of the procedure. [LB594]

SENATOR HAAR: Without naming names of doctors you worked with, would you agree that some do a better job of that than others? [LB594]

SENATOR GLOOR: Actually I would tell you that, quite frankly,... [LB594]

SENATOR SULLIVAN: One minute. [LB594]

SENATOR GLOOR: Thank you. Quite frequently, it is not the doctors that do that; it's the staff. The doctors would have ultimate responsibility to sign off on it, but I think it's...would be pretty safe to say it is an expectation that it's done, and it is done very, very uniformly. It's pretty much like scrubbing a surgery site. It would be extremely rare for that not to occur. [LB594]

SENATOR HAAR: Okay. And believe it or not, in the surgeries I've had I spent quite a bit of time asking questions of the doctor. (Laugh) [LB594]

SENATOR GLOOR: I can imagine that, Senator. Good for you. That's a good thing. [LB594]

SENATOR HAAR: I've always chosen doctors who will spend that time and not just tell me what's going to happen, so. [LB594]

SENATOR GLOOR: You are a wise patient. [LB594]

SENATOR HAAR: Thank you very much. [LB594]

SENATOR SULLIVAN: Thank you very much, Senators. Next wishing to speak is Senator Conrad. You're recognized. [LB594]

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SENATOR CONRAD: Thank you, Mr. President. Again, just a quick question some people have asked me. And, of course, it's every individual senator's right and prerogative to debate the larger issues and the other questions and concerns that have been brought forward in contemplation of this legislation tonight to the greatest extent of their abilities and desire. I'm going to be very clear in what my approach is for bringing these amendments and for the rest of this debate. I'm asking for a simple explanation in the record of whether or not these terms are defined elsewhere in statute, and if so, where; and if they're not, what do they mean or what are they intended to mean. That's all I'm asking. And if we can't get that basic information, then I think we should strike that section. So again, what is meant by section (8), page 2? "Providing a right to redress against nonphysicians who perform illegal abortions or encourage self-abortion is an important means of protecting women's health." I'm just asking for anybody to provide a reference to where that is defined elsewhere in statute or what it is meant in this legislation. And if we can't get that explanation, I think we should strike it, and it's the same kind of questions that are going to come on the subsequent amendments. So debate to your heart's desire. I think that's a good thing. But that is my point; that is my plan for moving forward with the rest of these. And again, I'd welcome the information from any senator. Thank you. [LB594]

SENATOR SULLIVAN: Thank you, Senator Conrad. Those wishing to speak are Senators Dierks and Haar. Senator Dierks, you're recognized. [LB594]

SENATOR DIERKS: Thank you, Madam President. Members of the Legislature, again I just want to tell you that we think the bill is drafted in great order and we don't need any amendments. We're not accepting any amendments for the bill. Now we've spent a great deal of time in the Judiciary Committee and with the Medical Association getting this language right and we're going to stick with it. There was a couple other things I wanted to read into the record. Senator Haar was asking me some questions earlier this evening about the checklist for risk factors, and I think we should put this in the record that the doctor is free to follow a standard list of risk factors that might be provided by specialists with the National Abortion Federation, for example, or could use his own. But if he uses his own, he faces liability for not following the list prepared by the National Abortion Federation. So the list is out there, Senator Haar. If the doctor fails to investigate and develop a checklist or to get help in forming a checklist from someone like the National Abortion Federation, then that is negligence. If a doctor doesn't want to do proper screening and counseling, he shouldn't be performing an abortion. If a doctor doesn't want to keep up with the literature on his speciality, he should find another speciality. Why should abortion providers not be expected to keep aware of the literature? Why should they not be expected to have the skills and knowledge necessary to give good advice? Thank you, Madam President. [LB594]

SENATOR SULLIVAN: Thank you, Senator Dierks. The Chair recognizes Senator Haar.

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[LB594]

SENATOR HAAR: Madam Chair, members of the body, I'd like to ask Senator Dierks a question if I could. [LB594]

SENATOR SULLIVAN: I'm sorry? [LB594]

SENATOR HAAR: I'd like to ask Senator Dierks a question if I could. [LB594]

SENATOR SULLIVAN: Senator Dierks, would you yield? [LB594]

SENATOR DIERKS: Yes. [LB594]

SENATOR HAAR: Now, I'm sorry, when you talked about the checklist, which group was that from? I just didn't get it. [LB594]

SENATOR DIERKS: It's the American Federation of Abortion Providers, I believe, isn't that the...? The National Abortion Federation. [LB594]

SENATOR HAAR: Okay. So in other words if they used...if...and the other thing is from this bill does this evaluation have to be done by the abortion provider, him or herself, or could it be a GP or a psychologist or...? Who would have to perform this? [LB594]

SENATOR DIERKS: I think it's got to be a medical doctor. [LB594]

SENATOR HAAR: But it could be a GP that's not going to do the abortion, as well? [LB594]

SENATOR DIERKS: That's my understanding. [LB594]

SENATOR HAAR: Okay. [LB594]

SENATOR DIERKS: But the GP better have knowledge of what he's doing about the risks. [LB594]

SENATOR HAAR: Right. And the checklist you referred to would be that kind of... [LB594]

SENATOR DIERKS: Yeah. [LB594]

SENATOR HAAR: ...that kind of thing. So I don't know...ask Senator Ashford. Maybe Senator Lathrop, if... [LB594]

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SENATOR DIERKS: I may have to change my mind on that, but at this point that's what I think. [LB594]

SENATOR HAAR: Okay. Well, maybe you can let me know for sure. But I wanted to ask a lawyer a question. Senator Lathrop held up his hand. [LB594]

SENATOR SULLIVAN: Senator Lathrop, would you yield? [LB594]

SENATOR LATHROP: I was mostly acknowledging that I was a lawyer. [LB594]

SENATOR HAAR: (Laugh) So what will this cost me per hour? [LB594]

SENATOR LATHROP: I'm afraid it's \$12,000 a year, whether I'm answering your questions or not. [LB594]

SENATOR HAAR: (Laughter) I guess... [LB594]

SENATOR LATHROP: So let's give it a whirl and keep it simple (inaudible). [LB594]

SENATOR HAAR: I'm assuming I don't get what I paid for. (Laugh) In this kind of situation where there is not a prescribed list and somebody sues the doctor, how would a judge possibly approach this situation? [LB594]

SENATOR LATHROP: I'm glad you asked and let me explain. Since Senator Dierks's bill is couched in terms of a medical malpractice claim, I'll try to answer that. In a typical...and I say typical--something outside this context--in a typical medical malpractice case it becomes, there are legal issues, of course, which is, did the doctor breach a standard of care? That's always the issue: Did the doctor breach a standard of care? The standard of care in a medical malpractice case is typically established by competing expert witnesses. So if it is about someone who is alleged to have made a mistake during the middle of an operation, you would bring in other surgeons. The surgeons would say, Dr. Defendant did this incorrectly because the standard of care requires that you look for this, look for that, look for this, and if--you know, this factor, the other risk factor--and if they are present, you don't do it. Or it may be what we call an informed consent case. And in an informed consent case--and I'll give you an example. I had eye surgery awhile ago. They put me through a big long list of things in the informed consent--you could go blind, we could make it worse--I mean, it's a long list. And I had to watch a video and then sign something that said I watched the video and I acknowledged all the risks. If a doctor doesn't properly inform you of all the risks and then you go ahead to the procedure and have an outcome that is a bad outcome, that he should or she should have told you about before going through it, you can bring a cause of action against them. What Senator... [LB594]

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SENATOR SULLIVAN: One minute. [LB594]

SENATOR LATHROP: Pardon me? [LB594]

SENATOR SULLIVAN: One minute. [LB594]

SENATOR LATHROP: What Senator Dierks's bill does is it basically says go to the literature, peer-reviewed literature, and identify what those risk factors and tell your patient. That isn't a lot different than what doctors do right now. We don't spell it out that way but doctors are required to talk about those risks that are known and appreciable risks of a procedure. And if they don't, they can be sued if you have a bad outcome. And, you know, you would have to establish that if you had told me that I could have gone blind during my eye surgery I never would have had it, then you can bring a cause of action. His bill is a little bit unique because in medical malpractice litigation we don't say in the hospital liability medical...Hospital-Medical Liability Act, you have to go through, find all these risk factors in the literature... [LB594]

SENATOR SULLIVAN: Time, Senators. Senator Haar, you are the next in the queue to speak and this will be your third and last time. [LB594]

SENATOR HAAR: Okay. Thank you, Madam Chair. I'd like to continue to hear from Senator Lathrop. [LB594]

SENATOR SULLIVAN: Would you yield, Senator? [LB594]

SENATOR LATHROP: Yes, I will. And to continue, in some sense much of that is implied. Right? So if you are going to have surgery and one of the risks is infection, or if you're going to have eye surgery and one of the risks is you could go blind or it could be worse or a detached retina, if those are recognized risks, they should be explaining those to a client or to a patient before the surgery. Otherwise, you don't have informed consent. And that's the same model that we're using, Senator Dierks is using in his bill. It's an informed consent statute. It's an informed consent bill. And if you are not provided with the proper information so that you can provide informed consent, then you give rise to a cause of action. His bill does something that's unique. It's a little bit different. It says you need to go search the medical literature and these are the things you need to inform somebody about--these particular risks. [LB594]

SENATOR HAAR: Well, with nothing in writing, how does a judge decide if it's not...you know, in this case, especially, you could have someone basically trying to trap a doctor into...that they didn't get good enough advice. How would the court prove one way or the other? [LB594]

SENATOR LATHROP: My...let me tell you. You've seen the pictures and if you've had a

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procedure you know that right before you go into the operating room they hand you this piece of paper and you might spend some time with a nurse that goes over it, or the doctor. And they'll say, you know what? You're going to have your kidney taken out and before we take your kidney out, we need to tell you what the...you know, what the things are that could go wrong so that you can agree to this procedure knowing what the bad things are that could happen. And you agree that they could kill you with the anesthesia...I'm being a little bit strong about it, but they tell you there's risks associated with the anesthesia; there's risk associated with bleeding; there's risk associated with infection and whatever the particular risks are related to a kidney surgery and that's on a written form. And it typically will say, I have agreed to have, you know, blank procedure, and you're filling in "kidney removed" by Dr. Blank Haar, and Dr. Haar has explained to me that these are the risks, and infection, bleeding, whatever they are. Now if you don't go through that process...if you don't go through that process, and I'm pretty simple when it comes to the medicine of taking somebody's kidney out, but if there's something bad that can happen, it's not intuitive, it's not something that's generally known and they don't tell you about it and it happens to you, you can make a claim about it. That's...they're not great cases. Pretty hard to make those informed consent claims as a matter of, you know, medical malpractice. But the reality is, you can make that claim. And what the bill does here is it essentially works off the same framework and says you can make a medical malpractice case for the lack of informed consent in those instances where you haven't advised someone about to undergo this procedure of the known risk factors, and the known risk factors are defined. And it does...it's a little unusual to make a doctor go searching through the medical literature to find those, but it's not necessarily inconsistent with what we do in other medicine, which is, you know what, you're the expert, you're the kidney surgeon, you need to tell me what the risks are before I have it; tell me what the chances are... [LB594]

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SPEAKER FLOOD: One minute. [LB594]

SENATOR LATHROP: ...so I can have a little dialogue with you and say, okay, I could bleed to death or I could have an infection, but tell me what the chances of that are. You have that dialogue so that you as a consumer of medical care can say, yeah, it scares me but let's go ahead with it. [LB594]

SENATOR HAAR: Okay. Well, I do consider that expert advice. I hope his salary is raised in some respects. Thanks. [LB594]

SPEAKER FLOOD: Thank you, Senator Haar. There are no lights on. Senator Conrad, you're recognized to close on AM2327. [LB594]

SENATOR CONRAD: Thank you, Mr. President. And colleagues, again, my intention is

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to go through these amendments in subsequent order, quickly and substantively, to clarify the language in the bill as amended by the Judiciary Committee amendment. I'm asking for a simple explanation. What do the terms "providing a right to redress," i.e., creating a liability, "against nonphysicians who perform illegal abortions or encourage self-abortions is an important means of protecting women's health" mean? No one has told me if those terms are defined elsewhere in statute. I couldn't find them. Nobody has told me what they are meant to inject into this legislation or debate. And if we can't get a simple explanation about what these terms that proponents have written into this bill do and mean, we should strike them and we should adopt AM2327. I don't know who they mean by nonphysicians who perform illegal abortions. Again, does this contemplate contraception prescribers or those who administer contraception or the Plan B pill? Does this encompass pharmacists or nurses? To...I don't know what it means to encourage a self-abortion. That's not defined. If you are an Internet service provider and you provide access to the Internet with that kind of information, are you liable? I don't know. These are actual legitimate questions that nobody has addressed in the context of this debate. So if we can't define, if we can't explain what we write into our laws, we should strike it. So with that, I'd ask you to strike this section and adopt AM2327. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the closing to AM2327. The question before the body is, shall AM2327 be adopted? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB594]

CLERK: 5 ayes, 20 nays, Mr. President, on the adoption of the amendment. [LB594]

SPEAKER FLOOD: AM2327 is not adopted. Mr. Clerk. [LB594]

CLERK: Senator Conrad, I now have your next amendment, Senator, AM2328. (Legislative Journal page 1080.) [LB594]

SPEAKER FLOOD: Senator Conrad? [LB594]

SENATOR CONRAD: Thank you, Mr. President. Mr. Clerk, I would like to withdraw or pass over that amendment, whatever is the appropriate procedure. I think the substance thereof was fully and fairly debated in the context of the first amendment that we looked at earlier, and proceed to the next. [LB594]

SPEAKER FLOOD: Mr. Clerk, what was the amendment number on that? [LB594]

CLERK: AM2328. [LB594]

SPEAKER FLOOD: AM2328 is withdrawn. [LB594]

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CLERK: Senator Conrad, I now have AM2329. (Legislative Journal page 1080.) [LB594]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on AM2329. [LB594]

SENATOR CONRAD: Thank you, Mr. President, and thank you, Mr. Clerk, for that procedural assistance. Colleagues, again, not to belabor the point, and no pun intended there, but this amendment asks for a simple explanation. The language I am proposing to strike says, on page 5, section (12), lines 2 through 4, "Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body." I don't know what that means. Does that reference...is that reference described or defined elsewhere in our statutory framework? It was not subject to the issues brought forward at the committee hearing. It's not in the transcript. If there is a commonsense or typical usage of what that language is meant or intended to elicit in terms of why it was written in to this legislation, I'm looking for a simple explanation. If that does not exist, I believe we should strike it. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the opening to AM2329. There are no lights on. Senator Conrad, you're recognized to close on AM2329. [LB594]

SENATOR CONRAD: Thank you, Mr. President. And I guess I'm disappointed to not see any lights on offering a potential explanation as to what that language that you're voting in support of means. Does that mean nobody knows? Does that mean nobody cares to look? Does that mean it's irrelevant? I guess that's up to you to explain your votes. But without having any sort of knowledge as to what this language means, I ponder and pose the questions, is self-induced abortion as a means of abortion, including "menstrual extraction attempted or completed by a pregnant women on her own body," a problem in Nebraska? Has any evidence ever been presented to the committee or this body related thereto? It's not in the committee record. I know these are unpleasant terms to talk about. I do not relish this opportunity. I am asking legitimate, factual questions. Again, does this definition include taking oral prescriptions or utilizing other contraceptive devices? Does this, in fact, criminalize actions that women may take intentionally or accidentally? Does this encompass other dangerous activity that a woman may engage in while pregnant, and then thus be...suffer liability because she engaged in an inherently dangerous activity like bungee jumping or severe dieting or horse riding or otherwise? Then would she be guilty of self-induced abortion? I don't know. I'm asking these legitimate questions and we have, unfortunately, no record before us that answers them. So with that, I ask that you strike section (12), page 5, lines 2 through 4. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the closing on AM2329 to AM1699. The question before the body is, shall AM2329 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to?

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Mr. Clerk, please record. [LB594]

CLERK: 7 ayes, 23 nays on the amendment, Mr. President. [LB594]

SPEAKER FLOOD: AM2329 is not adopted. Mr. Clerk. [LB594]

CLERK: Senator Conrad, I now have AM2330, Senator. (Legislative Journal page 1080.) [LB594]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on AM2330. [LB594]

SENATOR CONRAD: Thank you, Mr. President, and thank you, colleagues. We're making good progress, so hopefully people will be able to get home to their families and other activities soon, and I'm hopeful that we can continue to move forward. Colleagues, quite simply, this amendment strikes, on page 9 of your committee amendment, section (4), and that concludes over onto page 10 as well. And again, I'm asking just for a simple definition or explanation that exists elsewhere in our statutory framework or that is contemplated by this language, because it is not clear from the language on its face. Again, another example of how this bill is unconstitutionally vague and it was not discussed in the context of the committee transcript, so it exists nowhere else in the record before us. I also have questions as to why this section contemplates a time frame of one hour prior that the evaluation must be conducted prior to the medical procedure. Other sections of the bill put in a 24-hour waiting period, a 48-hour waiting period. There's no continuity or uniformity in regards to the time frame standards contemplated by the legislation. And if we can't get a better understanding thereof, then I think we should strike this section. The other questions posed by this section is, if you read on the lines, "At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker licensed under the Uniform Credentialing Act has," and then it goes through the list and the duties of what they must do. Well, it's been said time and time and time again that we should put this burden on the physician; on the doctor providing these services. Yet, this delegates the responsibility to a variety of other actors within the medical context. So what is it? And is that possible in terms of their knowledgeability, skills, expertise, or otherwise? Does that require a healthcare provider who operates in the women's health context to have those kind...does this mandate that every women's healthcare provider in office have these kind of professionals on staff? Again, legitimate questions. I'm simply seeking an answer to or a reference to otherwise in statutory framework so that we have a clear understanding of this bill rather than the vagueness that exists on its face. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the opening on AM2330. Turning to discussion, Senator Council, followed by Senators Haar and

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Dierks. Senator Council, you are recognized. [LB594]

SENATOR COUNCIL: Yes, thank you, Mr. President. I, too, have a concern about this provision--it begins with subparagraph (4)--and how it relates to earlier provisions that speak to the checklist and performing the risk analysis through the checklist. It's not clear to me what it is that the provider here is being asked or being held to a standard and obligated to do since when we get back and talk about the liability. The liability is based on omitting or failing to do or take one of these numerous steps that is outlined, and particularly with regard to the "At least one hour prior to the performance." It's not clear to me whether the intent there is that someone other than the person performing the elective procedure has to perform these evaluations, or if it's the person who's performing the elective procedure. If it is the person who's performing the elective procedure, it would seem to me that you could just simply state that at least one hour prior to the performance of an abortion, the physician...the physician or a provider shall conduct this evaluation. Well, presumably they've already conducted that evaluation because earlier we provide...by this statute, require them to conduct this checklist of the positive and negative--well, it's in this section--the positive and negative risk factors. And is that to be performed by someone else? It's certainly not clear. The other part, it gets back to one of the earlier amendments in line 19 on page 10, the person, whoever that person is because it's not clear, is to have in this written record each complication associated with each identified risk factor. Well, again, it gets back to the issue of where is this compilation of applicable complications? And if there is a study somewhere or an article published in a peer-reviewed publication that identifies something as a complication, yet no one else has identified it as a complication, is the failure to disclose that grounds for subjecting the provider to the civil liability provisions that are contained in the latter portions of this particular piece of legislation? Again, it's in this section at the top of page 11 where there is this recognition that it is conceivable that the continuance of a pregnancy would involve risk of injury to the physical or mental health of the pregnant woman greater than if the pregnancy was terminated by induced abortion. And that kind of gets back to... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR COUNCIL: ...the question that was raised with regard to the previous amendment. And I apologize, Senator Conrad. I was looking at something on my laptop and neglected to push my light or I would have spoken on that amendment. But for those reasons I will support AM2330 and urge the body to do so as well. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Council. Senator Haar, you are recognized. [LB594]

SENATOR HAAR: Mr. President, members of the body, I wish there was something in

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this bill which would require the Legislature and the Governor to understand the risk of a woman not having prenatal care, but that's not in the bill. And I'm asking very specific questions because this is a very specific...the consequences of this are great, not only to the pregnant woman, but to the fetus and the doctor. So I just have to ask these specific questions. And so I would like to ask another question of Senator Dierks if I could. [LB594]

SPEAKER FLOOD: Senator Dierks, will you yield to a question from Senator Haar? [LB594]

SENATOR DIERKS: Yes. [LB594]

SENATOR HAAR: Okay. And if Senator Ashford were here I would have asked him this question because it's a committee amendment. But on page 5, line 2, where it talks about "Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body," one of the things we have to make sure here, too, is that women know when they're going to be breaking the law. And some people I've talked to, for example, consider the morning-after pill, abortion. So could you tell me or do you have any idea who would make the determination on something like the morning-after pill, whether it's abortion or not? [LB594]

SENATOR DIERKS: You know, I think...I don't know the answer to that. I think that...I think maybe courts and judges make those decisions, but I don't know. (Inaudible.) [LB594]

SENATOR HAAR: Okay. And without Senator Ashford here as a the committee Chair, I guess I will ask him that question. [LB594]

SENATOR DIERKS: Maybe Senator Lathrop could tell you. [LB594]

SENATOR HAAR: Okay. Is he also on the committee? Could I ask Senator Lathrop a question? [LB594]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Haar? [LB594]

SENATOR LATHROP: Yes, I will. [LB594]

SENATOR HAAR: Free advice again? Thank you. [LB594]

SENATOR LATHROP: Every day. [LB594]

SENATOR HAAR: Okay. My question was on page 5, lines 2 through 4, it talks about

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"Self-induced abortion means any abortion or menstrual extraction attempted or completed by a pregnant woman on her own body." Some people consider the morning-after pill, abortion. And so it's very...you know, it's important here for a woman to know whether or not she's breaking the law. Is there anything that tells us that in this law? [LB594]

SENATOR LATHROP: You know, I had a question about one of the...I don't know a lot about the procedures. I'll be the first to admit I don't know a lot about the procedures, but I saw where pharmacists came up at different times in this bill. And I asked one of the folks who were involved in this bill with Senator Dierks, whether the morning-after pill is considered an abortion, and I'm told it's not. Now there's some RUD-something or another that's a different...it's a different pill that you can take further into the pregnancy to induce an abortion, which I think is considered...help me out, Cap. I don't think the morning-after pill is considered an abortion. I don't know that, though, to be sure. [LB594]

SENATOR HAAR: So, in a bill like this, who decides? Who decides whether that is an abortion? I mean, there...some people say it is and some people say it isn't. Do we look to the pharmacist? Do we look to general practitioners? Do we look to this Legislature? Who defines that? Again, because a woman needs to know whether or not she's breaking the law. [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR LATHROP: Well, I would have to look to see if any of those terms are further defined in the bill. That would be whether abortion is defined in the bill and whether menstrual extraction is defined in the bill, which is how I would approach that. And I'm trying to look through...as you know, there's 20 pages here... [LB594]

SENATOR HAAR: Yes. [LB594]

SENATOR LATHROP: ...and I'm trying to look through it as you're asking me the question. Or whether or not that's not defined somewhere else in statute, either one of those terms. In other words, you're asking me a question about a definitional term in the bill. I have to look to see if the terms that are used to define self-induced abortion are defined anywhere else in the law, and while I'm on the mike I... [LB594]

SPEAKER FLOOD: Time, Senator. [LB594]

SENATOR LATHROP: I'm not going to be able to get that done for you. [LB594]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Dierks, you are recognized. [LB594]

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SENATOR DIERKS: Thank you, Mr. Speaker, members of the Legislature. I have a couple items I'd like to get on the record. Regarding illegal abortions in subsection (6), page 14, lines 7 to 15, this bill is intended to protect women from abortions that might endanger her health. The doctors are liable for proper screening. If someone who isn't a doctor does an illegal abortion, the woman can sue that person for reckless endangerment. This is important because normally a woman who has an illegal abortion has no right of redress against the person who does the illegal abortion, especially if she knows that it is illegal; in other words, even if she knows the person isn't a doctor. So, for example, if a midwife does an abortion that is illegal and she will then be subject to both criminal prosecution but also to civil liability if the woman chooses to sue. And the question has been asked several times tonight: Who does the screening? A general practitioner and others are possible. If you go to page 9, lines 23 to 26, it includes the following persons as being able to do the screening: the physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or a social worker licensed under the Uniform Credentialing Act. And with that, Mr. Speaker, I'm urging your not accepting this amendment of Senator Conrad's. We think that, like I said before, that are legislation is drafted very well without any amendments. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Dierks. Senator Haar, you are recognized. [LB594]

SENATOR HAAR: Mr. President, members of the body, I'd like to ask Senator Dierks a question. [LB594]

SPEAKER FLOOD: Senator Dierks, Senator Haar would like to ask you a question. [LB594]

SENATOR DIERKS: Sure. [LB594]

SENATOR HAAR: Okay. Under this procedure, under this law, could someone who's an illegal immigrant who got an illegal abortion, could she go to Nebraska courts and sue, or do I need to ask that of one of our lawyers? [LB594]

SENATOR DIERKS: You better ask an attorney that. But my opinion is that just from what I know about these things, that baby at the time that it's conceived is a living human being and is actually...will become eventually a citizen of our nation. So I'm not sure about the legalities there, but it looks to me like they're suspect. [LB594]

SENATOR HAAR: Okay. I appreciate that. I'm just going to have to grab the closest lawyer because they're all...Senator Wightman, could I ask him a question? [LB594]

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SPEAKER FLOOD: Senator Wightman, will you yield to a question from Senator Haar?
[LB594]

SENATOR HAAR: Or Senator Council. That would be okay, too. I'm sorry. She's closer. I'd like to ask Senator Council a question. [LB594]

SPEAKER FLOOD: Senator Haar. [LB594]

SENATOR HAAR: Yes. [LB594]

SPEAKER FLOOD: You do not want to ask Senator Wightman a question? [LB594]

SENATOR HAAR: That's correct. I'll...yeah. [LB594]

SPEAKER FLOOD: Who would like to ask a question? [LB594]

SENATOR HAAR: I would like to ask Senator Council a question. [LB594]

SPEAKER FLOOD: Senator Council, will you yield to a question from Senator Haar?
[LB594]

SENATOR COUNCIL: Yes. [LB594]

SENATOR HAAR: Okay. In a situation where something is not defined in the law...for example, if there is no further definition of abortion in this, who decides whether something like the morning-after pill is abortion or not? Who makes the decision then?
[LB594]

SENATOR COUNCIL: That's unclear, Senator Haar. Without a definition somewhere of that term, it's unclear, and it would probably be left to the courts to decide. [LB594]

SENATOR HAAR: Okay. Yeah, and Senator Wightman, I've just got to tell you, I didn't mean to "dis" you in any way. I said I'd grab the closest lawyer and it is Senator Council. Could you also tell me, Senator Council, in this situation if an illegal immigrant who got an illegal abortion, can they come to the Nebraska courts to file a lawsuit? [LB594]

SENATOR COUNCIL: I...it's my opinion, Senator Haar, that that person would not have standing to bring a civil action in a Nebraska court. [LB594]

SENATOR HAAR: Okay. Thank you, very much. And thank you for your patience, Mr. Speaker. Appreciate it. [LB594]

SPEAKER FLOOD: Thank you, Senator Haar. Senator Council, you are now

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recognized. [LB594]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. And when I was on the mike earlier the question that I posed I think I found the answer to and that's the problem that I have with this section of the committee amendment and why I support AM2330. At the bottom of page 9 of the committee amendment, again, it says "At least one hour prior to the performance of an abortion, a physician, psychiatrist, psychologist, mental health practitioner, physician assistant, registered nurse, or social worker licensed under the Uniform Credentialing Act has" done these enumerated items. And my question was, does that require another individual to be involved in this process, an additional individual...an individual in addition to the medical provider who was performing the elective procedure? I think I have the answer in subpart (c) which appears on page 10 because it says one of the things that has to be done or documented is that the pregnant woman and the physician who is to perform the abortion has been informed of the results of the evaluation. I don't understand what is the necessity of inserting another person into this patient-doctor relationship by requiring...you're holding the physician accountable in the civil liability section yet it's...there's a third party here who has evaluated the pregnant woman to identify if the pregnant woman had the perception of feeling pressured or coerced and evaluated the pregnant woman to identify the presence of any risk factors, and then inform the pregnant woman and the physician. Who are these duties being imposed on? In one instance, it appears that the duty is on the person performing the elective procedure, presumably a physician certified under the Uniform Credentialing Act, yet the obligations that are listed in subpart (4) appear to apply to a third party. So does this bill then make both parties liable under the civil liability section if there's a, for example, if there is no written report in the record that was to be prepared at least one hour prior to? So who's responsible? Is it the service provider who is liable or is it the physician or psychiatrist or psychologist? This bill is confusing and the ambiguities are so severe that its enforceability, its constitutionality, quite frankly, is questionable because it is vague and ambiguous on its face. And for those reasons, I support AM2330 which strikes subpart (4) in its entirety and that begins on line 23, page 9 of the amendment and goes all the way over to line 24 on page 11. And I would urge the body to join in striking that section because it is absolutely vague and ambiguous. [LB594]

SPEAKER FLOOD: Thank you, Senator Council. Senator Conrad, you are recognized. [LB594]

SENATOR CONRAD: Mr. President, am I the last light on because I could also use this as my time to close? [LB594]

SPEAKER FLOOD: Senator Council's light is on. [LB594]

SENATOR CONRAD: Okay. Is it on still? [LB594]

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SPEAKER FLOOD: It is now off. [LB594]

SENATOR CONRAD: (Laugh) Okay, thank you. Thank you, colleagues. Thank you for the good dialogue and the good questions. Again, I'll ask for your support of this amendment. We have yet to have a clear explanation as to... [LB594]

SPEAKER FLOOD: Senator Council, just to make...or Senator Conrad, this is your closing, is that right? [LB594]

SENATOR CONRAD: Yes, yes. [LB594]

SPEAKER FLOOD: Okay. [LB594]

SENATOR CONRAD: I'd ask for your support of the amendment because we, in the course of that dialogue, did not elicit any information as to the meaning and intent of the language that was drafted starting on page 9 and moving into page 10. And actually, the only explanation we received from Senator Dierks and thank you, Senator Dierks, for entering that into the record, is that, in fact, this is much, much, much more than an informed consent bill. Senator Dierks admitted on the record that this section and other aspects of this legislation creates a new cause of action, a brand new cause of action under Nebraska law that we've never before had established. That imparts criminal and civil liability on people who may or may not perform illegal abortions, which is nowhere defined in law which could include contraception, the list goes on and on and on about the dangers and accuracies, vagueness, and troubles existing with this legislation. And just look at page 10 of the committee amendment on the top of the page we're going to extend this cause of action to people who have to evaluate whether or not a pregnant woman had the perception of feeling pressured. How could you ever evaluate that on an objective sense whether or not a pregnant woman had the perception of feeling pressured or coerced, not if she was pressured or coerced, not if she felt that way, but if she perceived she felt pressured or coerced into thinking or consenting to an abortion? So forget about the issues related to information, informed consent which are separate and distinct in other aspects of this legislation. As Senator Dierks admitted, we're creating a new, distinct, and separate cause of action extending civil and criminal liabilities beyond physicians engaged in this practice, based on standards that are nowhere else defined in our statutory framework or in common usage or practice. And I urge you to strike this section. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the closing on AM2330. The question before the body is, shall AM2330 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB594]

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CLERK: 6 ayes, 22 nays, Mr. President, on the adoption of the amendment. [LB594]

SPEAKER FLOOD: AM2330 is not adopted. Mr. Clerk. [LB594]

CLERK: Mr. President, the next amendment, Senator, would you...what was that AM number again, please, that you want to take up? [LB594]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Mr. Clerk. Colleagues, I've advised the Clerk that we'll go ahead and pass over or withdraw the subsequent amendments with the exception of AM2335 that I would like to have debate and consideration of tonight. We'll make a determination as to whether or not to refile the additional or other amendments we did not get to on Select or bring separate and distinct amendments at that time on the next round of debate. But with that, just for your planning purposes and otherwise, I would like to have dialogue, debate, and vote on AM2335 and then conclude for the evening. [LB594]

SPEAKER FLOOD: Mr. Clerk, would you list the amendments that Senator Conrad intends to withdraw. [LB594]

CLERK: Senator, then pursuant to that you'd like to withdraw AM2331, AM2332, AM2333, and AM2334 and take up AM2335. Right? [LB594]

SENATOR CONRAD: Yes, Mr. Clerk. [LB594]

CLERK: Thank you, Senator. [LB594]

SPEAKER FLOOD: Senator Conrad, for further clarification, is it also your intent to withdraw AM2336 and AM2338 at this time? [LB594]

SENATOR CONRAD: It is, Mr. President, if that is allowable. [LB594]

SPEAKER FLOOD: Okay. Thank you. The Chair will show AM2331, AM2332, AM2333, and AM2334 at this time all withdrawn. Mr. Clerk. [LB594]

CLERK: Senator Conrad would move to offer AM2335 as an amendment to the committee amendments. (Legislative Journal page 1081.) [LB594]

SPEAKER FLOOD: Senator Conrad, you're recognized to open on AM2335. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Thank you colleagues, and thank you, Mr. Clerk, for your assistance with that procedural issue. Again, I think we've had a great debate on these issues. I think a lot of information has been brought forward that was nowhere else clear on the record, and that's important. It's not meant to waste your

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time or be difficult. It's related to issues of constitutional rights and freedom that will most likely be litigated and thus have to have a legislative record available to further distill and distinguish what is meant by this language which is unconstitutionally vague and unworkable on its face. Colleagues, the intent of this amendment, AM2335, if you look at the committee amendment on page 13 and you look in subsection (3), lines 14 through 21, this is another example of why this bill is a lot more than enhancing our informed consent rules and regulations. This component of the legislation takes the bold, dramatic, and in my opinion very dangerous step forward in changing the commonly, well-established, long adhered to principles of how we qualify an expert witness in the context of litigation. It flies in the face of our rules of evidence contained in Chapter 27 of our codes. It flies in the face of what would be commonplace and understood amongst attorneys who frequently engage themselves in litigation and who have to qualify experts from time to time of the so-called Daubert standard, which we can get into later, but what this section of the bill says is that in pursuing criminal and civil liability against the physician who may...who hasn't complied with this unworkable framework, instead of following the standard of care according to what is common practice in your industry and based upon the judgment of peers who practice in this area, any doctor, any doctor can make the determination about whether or not the healthcare provider, the women's healthcare provider acted appropriately, whether or not they ever practiced in the area of women's health. And we're saying we're going to throw away our other statutory framework, our large body of law that says who is qualified to be an expert. And, colleagues, these reasons exist because we want juries and we want judges and we want opinion makers to have information and expert opinions available by experts in that field. It doesn't have to be doctors. The standard comes up frequently, say, for example, if you want to qualify somebody as an expert TV repairman, then you go through their education, training, and otherwise about why, in fact, they are qualified to give an expert opinion as a TV repairman if it's relevant to the case. But we've established a new cause of action for nonphysicians in this legislation and now we extend additional civil and criminal liabilities to physicians who can't comply with this unworkable standard and we hold them to a new standard in terms of evidence. And we say, we're not going to hold you to the judgment of your peers with expertise on these issues. In fact, any doctor with any kind of experience, with any kind of training, a podiatrist, he could be the expert that gives this opinion, that's okay under this law. That's not fair to the impartial decision maker, whether it be a judge or a jury. It doesn't harmonize with our long-established legal precedent in terms of who qualifies as an expert witness and how we qualify them as an expert witness. And unless someone can provide an explanation otherwise, we should strike this section of the law. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Senator Council, you are recognized. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. As a practicing member of the bar for

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over three decades, I rise in support of AM2335. This section of LB594 treads upon the authority of the trial court in terms of making determinations and qualifying individuals as experts. And what's particularly disturbing about this section is that this would be to qualify an expert to provide testimony with regard to the screening, counseling, management, and treatment of pregnancies, presumably in relation to the obligations imposed earlier in the legislation and to say that the trial court shouldn't be the one that determines whether the fact that an individual has not performed an elective abortion in the past whether that should or should not automatically disqualify someone. That's a decision to be made by the court. And earlier in the discussion this evening, and I will stand to be corrected if I am wrong, Senator Dierks made a statement regarding, when we were talking about the risk factors associated with abortion and the complications associated when you look at these convoluted definitions that are in this bill, again, if you hearken back a "Risk factor associated with abortion means any factor, including any physical, psychological, emotional, demographic, or situational factor for which there is a statistical association with one or more complications associated with abortion such that there is less than a 5 percent probability that such statistical association is due to chance." Yet in this section, it is almost established that any practitioner is capable and qualified to the point of being an expert on whether or not someone has complied with the requirement to evaluate these risk factors. It also goes to the evaluation of each complication associated with each identified risk factor. Again, the definition of a complication is as convoluted as the definition of a risk factor. But the one common thread is that both of those standards are tied to abortions and associated with abortions and are based upon involvement and some level of expertise with regard to performing that procedure. Yet this provision of LB594 ignores that the very expertise that all of us, and Senator Dierks included, would expect of someone performing this elective procedure. Yet you don't need that level of knowledge, you don't need that level... [LB594]

SPEAKER FLOOD: One minute. [LB594]

SENATOR COUNCIL: ...of expertise if you're going to be a witness and want to be qualified as an expert. Expert qualification is a question to be decided by the trial court. And this provision should be eliminated as it crosses over and treads upon the authority of the judiciary. And with that being said, I would urge adoption of AM2335. [LB594]

SPEAKER FLOOD: Thank you, Senator Council. Senator Dierks, you are recognized. [LB594]

SENATOR DIERKS: Thank you, Mr. Speaker. Again, I have to tell you that with regard to this amendment the medical profession looked this bill over and they were just fine with that particular language. So because we did take their suggestions for the final amendment we have, I wanted to put a couple more things in the record. I just figured this out. The morning after pill is not considered an abortion by physicians or by the law.

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A woman using the morning after pill would not be exposed to any criminal or civil penalties by this bill. The bill does not create any criminal threat against a woman who has an illegal abortion. Instead, it allows the woman who has an illegal abortion or who commits an illegal self-abortion with encouragement to do so by a person who is not a doctor. If doctors can be held liable to not put a woman's health at risk, why shouldn't the woman also be able to hold a person who is basically practicing medicine without a license liable for reckless endangerment? The physician can screen himself, folks, or the physician can designate a third party such as a nurse to do this for the physician. This is a convenience to the physician and it is similar to how nurses in other medical procedures do the informed consent as an agent of the physician. Thank you. And again, I'd like to tell you we don't accept the amendments. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Dierks. Senator Council, you are recognized. [LB594]

SENATOR COUNCIL: Thank you, Mr. President. I have made the points that I wish to make with regard to AM2335, and I will yield the balance of my time to Senator Conrad if she would like. [LB594]

SPEAKER FLOOD: Senator Conrad, 4:45. [LB594]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Council. Colleagues, I plan to wrap up very quickly. In consultation with others off the mike, I want to clarify the record. If you read the language on page 13, lines 14 through 21 which does, in fact, impact the long-established precedent, history, and statutory framework concerning how we establish and qualify expert witnesses as such, I overspoke and said this could include any medical doctor. In fact, the language itself does provide that "A licensed obstetrician or family practitioner who regularly assists pregnant women in resolving medical matters relating to pregnancy may be qualified to testify as an expert on the screening, counseling, management, and treatment of pregnancies;" but the fact remains that it disallows for who would normally be considered qualified to serve as an expert in terms of this kind of inquiry. It should be somebody who has specific expertise in this field, somebody who is a peer of the doctor on trial, somebody who has practiced what is in question. And I don't know if you could otherwise find in statute this kind of definition, this kind of limitation, this kind of contradiction to what is afforded attorneys and litigants, and, of course, decision makers in regards to considering how trials are conducted under our rules of evidence in Chapter 27 of Nebraska Revised Statutes which, if you look as to 27-701 through 27-706, which clearly defines expert testimony and opinion and how you qualify someone as such, it again begs the question about why we would change the standard in this instance. And that's another of the many, many problems, questions, and concerns that LB594 raises and forces on our citizenry and our doctors. So while subjecting them to additional civil and criminal liabilities and an unworkable and

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untenable standard and framework which they cannot comply with in good faith, now we're taking away their ability to defend themselves by presenting evidence of their peer based on experience of their peers and those who practice in this industry and instead are expanding the category of those who have zero experience in this particular issue to provide an expert opinion. With that, this amendment should be adopted. This language should be struck. Thank you, Mr. President. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. You are now recognized. [LB594]

SENATOR CONRAD: I think that can suffice as my closing. Thank you for your patience and consideration, colleagues, in what has been a very long and I believe very valuable debate. And with that, I'd urge your adoption of the amendment and will look forward to continuation of these issues on Select File. [LB594]

SPEAKER FLOOD: Thank you, Senator Conrad. Members, you've heard the closing to AM2335 to AM1699. All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB594]

CLERK: 8 ayes, 24 nays, Mr. President, on the adoption of the amendment. [LB594]

SPEAKER FLOOD: The amendment is adopted. Mr. Clerk. Oh, I'm sorry. The amendment is not adopted. The Chair's error. [LB594]

CLERK: Senator Conrad, Senator, I understand from your earlier comments that...I don't want to be presumptuous, but you want to withdraw the AM2336, AM2338, and AM2339 at this time? [LB594]

SENATOR CONRAD: Yes, Mr. Clerk. If that's allowable, that would be my intention. [LB594]

SPEAKER FLOOD: AM2336, AM2338, and AM2339 are withdrawn. [LB594]

CLERK: I have nothing further pending to the committee amendments, Mr. President. [LB594]

SPEAKER FLOOD: Senator Lathrop, as Vice Chair of the Judiciary Committee, you are recognized to close on AM1699. [LB594]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I think we've had an exhaustive discussion of the bill, the committee amendments, which were the subject of a number of amendments, and a good deal of discussion. They are amendments which primarily respond to concerns expressed by the Nebraska Medical Association. They are accommodations agreed to by Senator Dierks. I would encourage your support of

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AM1699. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Lathrop. Senator Dierks, for what purpose did you want to rise? [LB594]

SENATOR DIERKS: I'd like a call of the house, Mr. Speaker. [LB594]

SPEAKER FLOOD: There has been a request to place the house under call. All those in favor of the house going under call please vote yea; those opposed please vote nay. Mr. Clerk, please record. [LB594]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB594]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. All members are present or otherwise accounted for. The question before the body is, shall AM1699 be adopted? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB594]

CLERK: 34 ayes, 7 nays, Mr. President, on the adoption of committee amendments. [LB594]

SPEAKER FLOOD: Committee amendments are adopted. [LB594]

CLERK: I have nothing further on the bill, Mr. President. [LB594]

SPEAKER FLOOD: Senator Dierks, you are recognized to close on LB594. [LB594]

SENATOR DIERKS: Thank you, Mr. Speaker. And I want to thank the body for their patience and for sticking around these late hours. It's gratifying to me and I appreciate it very much. With that, I'd like to ask your support to advance the bill and will look forward to more discussion on Select File. Thank you. [LB594]

SPEAKER FLOOD: Thank you, Senator Dierks. Members, you've heard the closing to LB594. The question before the body is, shall LB594 advance to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB594]

CLERK: 34 ayes, 7 nays on the advancement of the bill. [LB594]

SPEAKER FLOOD: LB594 advances to E&R Initial. I do raise the call. Mr. Clerk, items for the record. [LB594]

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CLERK: At this time, Mr. President, I have no items other than a priority motion. Senator Wightman would move to adjourn the body until Friday morning, March 24, at 9:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)