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Floor Debate  
March 30, 2010

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[LB266 LB430 LB563A LB594 LB728 LB742 LB779 LB817 LB836 LB849 LB862 LB877  
LB879 LB882 LB887 LB931 LB937 LB937A LB951A LB951 LB956 LB1002 LB1018  
LB1048 LB1057 LB1072 LB1102 LB1102A LB1103 LB1109A LB1109 LR6CA LR277CA  
LR412 LR414 LR415 LR416 LR417 LR418 LR420 LR516 LR539]

PRESIDENT SHEEHY PRESIDING

PRESIDENT SHEEHY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-first day of the One Hundred First Legislature, Second Session. Our chaplain for today is the Reverend Dwight Ford from Grace City Church in Omaha, Nebraska, Senator Council's district. Would you all please rise.

REVEREND FORD: (Prayer offered.)

PRESIDENT SHEEHY: Thank you, Reverend Ford. I call to order the fifty-first day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Please record, Mr. Clerk.

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

PRESIDENT SHEEHY: Are there corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT SHEEHY: Messages, reports, or announcements?

CLERK: An amendment, Senator Loudon to LB1002; and a communication from the Speaker to the Chair of the Reference Committee. That's all that I have. (Legislative Journal page 1195.) [LB1002]

PRESIDENT SHEEHY: (Doctor of the day introduced.) Mr. Clerk, we will move to Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, the first bill is LB836. [LB836]

CLERK: (Read LB836 on Final Reading.) [LB836]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB836 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB836]

CLERK: (Record vote read, Legislative Journal page 1196.) 46 ayes, 1 nay, 1 present and not voting, 1 excused and not voting, Mr. President. [LB836]

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PRESIDENT SHEEHY: LB836 passes. We will now proceed to LB879. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB836 LB879]

CLERK: 41 ayes, 2 nays, Mr. President, to dispense with the at-large reading. [LB879]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB879]

CLERK: (Read title of LB879.) [LB879]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB879 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB879]

CLERK: (Record vote read, Legislative Journal pages 1197-1198.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB879]

PRESIDENT SHEEHY: LB879 passes with the emergency clause attached. We will now proceed to LB882. [LB879 LB882]

CLERK: (Read LB882 on Final Reading.) [LB882]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB882 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB882]

CLERK: (Record vote read, Legislative Journal page 1198.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB882]

PRESIDENT SHEEHY: LB882 passes. We will now proceed to LB937. [LB882 LB937]

CLERK: (Read LB937 on Final Reading.) [LB937]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB937 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB937]

CLERK: (Record vote read, Legislative Journal page 1199.) 38 ayes, 8 nays, 2 present and not voting, 1 excused and not voting, Mr. President. [LB937]

PRESIDENT SHEEHY: LB937 passes with the emergency clause attached. We'll now

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proceed to LB937A. [LB937 LB937A]

CLERK: (Read LB937A on Final Reading.) [LB937A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB937A pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB937A]

CLERK: (Record vote read, Legislative Journal pages 1199-1200.) 38 ayes, 9 nays, 1 present and not voting, 1 excused and not voting, Mr. President. [LB937A]

PRESIDENT SHEEHY: LB937A passes with the emergency clause attached. We now proceed to LB956. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB937A LB956]

CLERK: 45 ayes, 1 nay to dispense with the at-large reading. [LB956]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB956]

CLERK: (Read title of LB956.) [LB956]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB956 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB956]

CLERK: (Record vote read, Legislative Journal page 1201.) 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB956]

PRESIDENT SHEEHY: LB956 passes with the emergency clause attached. We now proceed to LB1018. Mr. Clerk, the first vote is to dispense with the at-large reading. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB956 LB1018]

CLERK: 42 ayes, 1 nay, Mr. President, to dispense with the at-large reading. [LB1018]

PRESIDENT SHEEHY: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB1018]

CLERK: (Read title of LB1018.) [LB1018]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB1018 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1018]

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ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1201-1202.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB1018]

PRESIDENT SHEEHY: LB1018 passes. We'll now proceed to LB728. [LB1018 LB728]

ASSISTANT CLERK: (Read LB728 on Final Reading.) [LB728]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB728 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB728]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1202-1203.) Vote is 47 ayes, 1 nay, 1 excused and not voting, Mr. President. [LB728]

PRESIDENT SHEEHY: LB728 passes. We'll now proceed to LB951. [LB728 LB951]

ASSISTANT CLERK: (Read LB951 on Final Reading.) [LB951]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB951 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB951]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1203.) Vote is 32 ayes, 11 nays, 5 present and not voting, 1 excused and not voting, Mr. President. [LB951]

PRESIDENT SHEEHY: LB951 passes. We will now proceed to LB951A. [LB951 LB951A]

ASSISTANT CLERK: (Read LB951A on Final Reading.) [LB951A]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB951A pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB951A]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1204.) Vote is 37 ayes, 2 nays, 9 present and not voting, 1 excused and not voting. [LB951A]

PRESIDENT SHEEHY: LB951A passes. We will now proceed to LB1057. [LB951A LB1057]

ASSISTANT CLERK: (Read LB1057 on Final Reading.) [LB1057]

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PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB1057 pass with the emergency clause attached? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1057]

ASSISTANT CLERK: (Record vote read, Legislative Journal page 1205.) Vote is 48 ayes, 0 nays, 1 excused and not voting. [LB1057]

PRESIDENT SHEEHY: LB1057 passes with the emergency clause attached. (Visitors introduced.) We will now proceed to LB742. [LB1057 LB742]

ASSISTANT CLERK: Mr. President, with respect to LB742, Senator Council would move to return the bill to Select File for specific amendment, that being to strike the enacting clause. [LB742]

PRESIDENT SHEEHY: Senator Council, you're recognized to open on your motion to return to Select File. [LB742]

SENATOR COUNCIL: Yes, Mr. President, thank you. I have been in discussions with Senator McCoy and the purpose for returning it to Select File for this amendment is to make clear on the record what types of claims are subject to the provisions of this particular piece of legislation. And with that, I will close on the motion to return, but is it permissible to ask Senator McCoy a couple of questions if he would yield? [LB742]

PRESIDENT SHEEHY: Senator McCoy, would you yield to Senator Council? [LB742]

SENATOR McCOY: Yes. [LB742]

SENATOR COUNCIL: Thank you, Senator McCoy. Referring to the questions and the discussion we've had off the mike, I was concerned in particular about claims and the word "claims" as used in this piece of legislation, and in school districts, for example, at the board meetings the payments that are to be made on invoices received by the school district are listed out in a document and they're referred to as claims. Is it your intent that LB742 applies to such claims? [LB742]

SENATOR McCOY: The focus of this legislation is settlement agreements, Senator Council, and the term "claim" is used throughout the legislation to ensure records in which a public entity pays money to someone are public records. And if a settle...the claim falls under the definition of a settlement agreement, is greater than \$50,000 or 1 percent of the total annual budget of that entity under the legislation, that claim needs to be on the agenda. The intent of this bill isn't to cover the regular payment of bills. And various public entities deal with claims different ways, as you well know. Many public entities have consent agendas in which claims are listed and this bill is not attempting to

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change how those public entities currently deal with claims, but only ensure that if there's a large settlement agreement that it needs to appear on the agenda. [LB742]

SENATOR COUNCIL: And that's all I needed to know, Senator McCoy. I don't think we need to go into any further detail. It's just to make sure and to provide guidance to those public entities who list their payments for services, materials, and equipment in the form of claims and publish them as a part of their minutes, that they understand that this bill is not intended to relate to those types of claims, that it's just in terms of settlements. And with that, I will withdraw the motion. [LB742]

PRESIDENT SHEEHY: The motion to return to Select is withdrawn. Mr. Clerk, please proceed with LB742. [LB742]

ASSISTANT CLERK: (Read LB742 on Final Reading.) [LB742]

PRESIDENT SHEEHY: All provisions of law relative to procedure having been complied with, the question is, shall LB742 pass? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB742]

ASSISTANT CLERK: (Record vote read, Legislative Journal pages 1205-1206.) Vote is 48 ayes, 0 nays, 1 excused and not voting, Mr. President. [LB742]

PRESIDENT SHEEHY: LB742 passes. Items for the record, Mr. Clerk? [LB742]

CLERK: Mr. President, I have an Attorney General's Opinion regarding LB1102 to be inserted. That's all I have. (Legislative Journal pages 1206-1221.) [LB1102]

PRESIDENT SHEEHY: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB836, LB879, LB882, LB937, LB937A, LB956, LB1018, LB728, LB951, LB951A, LB1057, and LB742; also LR412, LR414, LR415, LR416, LR417, LR418, and LR420. Mr. Clerk, we will now move to the first item under General File, LB1102. [LB836 LB879 LB882 LB937 LB937A LB956 LB1018 LB728 LB951 LB951A LB1057 LB742 LR412 LR414 LR415 LR416 LR417 LR418 LR420 LB1102]

CLERK: LB1102 by Senator Giese. (Read title.) The bill was introduced on January 21 of this year, referred to the Judiciary Committee for public hearing. The bill was advanced to General File. There are Judiciary Committee amendments, Mr. President. (AM2234, Legislative Journal page 924.) [LB1102]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. Senator Giese, you're recognized to open on LB1102. [LB1102]

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SENATOR GIESE: Thank you, Mr. President and members of the body. The horse racing industry has been a vibrant part of many Nebraska communities, including my hometown of South Sioux City, for more than 80 years. LB1102 is an attempt to help save this longstanding industry by authorizing the State Racing Commission to license and regulate pari-mutuel wagering on historic horse races, also known as instant racing. The first question I asked before I introduced this bill, and the question that you are likely asking yourselves now is, what is historic horse racing and how does it work? Historic horse racing is an enhanced form of the simulcast racing that is already present at licensed racetracks in Nebraska. The real difference between the existing simulcast racing and historic horse racing is that patrons are betting on a race that has already been won. After inserting money into an instant racing terminal, a central server selects 1 of more than 200,000 previously run races for the bettor to wager on. [LB1102]

PRESIDENT SHEEHY: (Gavel) [LB1102]

SENATOR GIESE: The bettor is given basic information about the horses at the time the race was run but is not given the name of the racetrack or any of the horses in the race. Contrary to the arguments that have been made by gambling opponents in the media, the instant racing machines authorized by LB1102 are not slot machines. While the machines do employ sound and flashing lights to mimic slot machines, the underlying gambling done on these machines is pari-mutuel simulcast racing which is already authorized by the Nebraska Constitution and already being regulated by the State Racing Commission. LB1102 also does not amount to expanded gambling and is valid under the existing provisions of the Nebraska Constitution which allow for pari-mutuel wagering. Under the bill, instant racing machines could only be operated at licensed racetracks; not at bars, not at convenience stores, and not on Indian reservations unless one of the tribes opened a licensed racetrack. Operating an instant racing machine outside of a licensed racetrack would be a Class III misdemeanor under the provisions of this bill. And while I am not a lawyer, the body should have received a letter from Attorney Dennis Lee, chairman of the Nebraska State Racing Commission, to Senator Lautenbaugh, explaining the legality of LB1102 and historic horse racing under the Nebraska Constitution. There are currently five licensed thoroughbred racetracks in the state of Nebraska, as well as a quarter horse track in Hastings. Two of those tracks, Columbus Races in Columbus, and Atokad Park outside of South Sioux City, are all but assured to close if something cannot be done this session. Failure of the Legislature to finally take action to help horse racing industry will result in significant job losses in my district and the five other communities with licensed racetracks. Gambling opponents are quick to claim that nothing can save the horse racing industry; that we should forget about horse racing in Nebraska because the industry isn't viable. I would counter by pointing to the example of Arkansas where historic horse racing was first invented. Simply put, historic horse racing saved the horse racing industry in Arkansas, and it could save the industry here in Nebraska. I ask the body to keep in mind the thousands of jobs, many of them in agriculture, that would be impacted by the loss of

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the horse racing industry in Nebraska if LB1102 does not pass. I want to thank Senator Lautenbaugh, selecting LB1102 as his priority bill, and the Judiciary Committee for all of their work on this bill, and I would urge the body to support Nebraska jobs and support LB1102. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Giese. You have heard the opening to LB1102. (Visitors introduced.) Continuing with LB1102, as was noted there is a Judiciary Committee amendment, AM2234. Senator Ashford, you're recognized to open. [LB1102]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. I'm a fast reader and I am an attorney, but I have been unable to read fast enough this Attorney General's Opinion that was just placed at my desk. Certainly had we had this Attorney General's Opinion, I might have been able to, prior to this, might have been able to offer some comment upon it. We did have a legal opinion in the committee from the Racing Commission attorney who deals with these issues on a daily basis, so I regret that I cannot, at least at this stage of the debate, and I will spend some time off the floor to take a look at the Attorney General's Opinion. It was my understanding from talking to Senator Lautenbaugh and others that when the Judiciary Committee looked at this, that the Attorney General was not going to take any...make any inner...or to provide any opinion stating that this bill was unconstitutional. So this is a bit of a surprise. But maybe we can talk about that later on. I'm sure we will. Certainly, the committee was concerned with the issue of whether or not these particular machines were slot machines. We...the committee, I talked about that issue at some length; also talked about the issue of pari-mutuel wagering, whether or not the bill sustained the pari-mutuel wagering standard and we believe that it does, by a majority of the votes of the committee--and there were a couple of votes that did not support putting this bill to the floor--but the majority of the members did. And so many of the issues that I have--I have taken a cursory look at the opinion--that were raised by the Attorney General, we did discuss in some length and in some depth in our committee. We were concerned about making sure that what the individuals who were wagering...obviously, people who go to a racetrack today wager. That's why they're there, partially, is to make a bet on a horse race. They can bet on a live race. They can bet on a race that is a simulcast race that is simulcasted into the enclosure. And then if the Legislature so sees fit, they would be able to wager on other types of horse races that have been run in the past. We were concerned, and the committee amendments do reflect the concern, that these races be run, these historic races be run in such a manner that the integrity of the race be preserved. And that committee amendment is part of the committee amendment. We also wanted to ensure that local bodies, a local body review the plan for the historic racing in their county; and therefore, we give the county board the authority to approve, by resolution, the form of wagering that will be conducted at the enclosure prior to going to the Racing Commission. So, in effect, the county board would look at what was being suggested by the...for the historic racing plan and make a determination as to whether

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or not that plan was consistent with the community that the historic racing would take place in. We require the commission to determine and mandate that enough of the historic race be shown on the machine, as I mentioned. So there will be a...it's not simply a...and this was my major concern was whether or not these races were just some sort of subterfuge or some sort of way to just have a slot machine. Clearly, that's not the case. They are not just a slot machine where you can sort of put money in and have an instance sort of result. You would...in fact...and I think maybe Senator Lautenbaugh will talk about how it works, but there are...there is information about the particular race that's being viewed: the jockeys in the race, the odds that were...the odds that exactly...that actually existed at the time the original race was run. There are tax provisions that we put into the committee amendments, providing a tax rate on the gross sum wagered on historic races. And those tax rates are stated in the committee amendments. The proceeds from those taxes would go to several sources. One would be the...5 percent would go to a community betterment grant for the area around the race enclosure, the racetrack. There would be additional funds that would go to Compulsive Gamblers Assistance Fund, which is something we do quite a bit of with these kinds of things. There would be some portion of the proceeds would go to the program cash...Probation Program Cash Fund for reentry programs, and to the Violence Prevention Cash Fund for issuance of grants. I think basically, members, obviously, we in the committee were confronted with the issues that we're all going to be talking about here today is, is this pari-mutuel wagering? If it is, it's very much like what is already going on in the state. We're not...in my view, we're not expanding gambling but we are wagering in a way that's very similar to how we are wagering today within the enclosure of a racetrack, using a methodology, albeit using historic races, but very similar to watching a simulcasted race on a video machine. If we're going to have races in the state, horse racing in the state, if we're going to...and we may not want to. And, you know, whether or not, not approving this bill will cause the total demise of horse racing, we may hear differing opinions on that, my sense is that it probably will make it very difficult for horse racing to continue to exist if additional revenue does not come in. I remember years ago I was actually on the commission that ran the Ak-Sar-Ben racetrack in its last years. And we were asked to support casino-type gambling or slot machines at Ak-Sar-Ben. And our commission, called RaceCo at the time, we voted not to do that. We voted to, even though it was a tough vote and we knew that the vote probably meant the closure of the Ak-Sar-Ben track as it then existed, we didn't feel...I didn't feel and I did not agree with using slot machines as a vehicle to preserve horse racing. I'm sensitive to the issue. We went through in long division what slot machines would have meant revenue-wise to Ak-Sar-Ben. There's no question it would have been a boon to Ak-Sar-Ben at the time. And we voted no. The result is what we have at Ak-Sar-Ben today, which is certainly a wonderful facility for economic development and education. But so with that, Mr. Lieutenant Governor, I would conclude by saying I don't believe and I don't believe a majority of the committee members believe that we're talking about slot machines here, no matter...just because someone says this is a slot machine, that doesn't make it a slot machine. I mean, I think we have to take a look at it.

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Is it more like what is going on at a racetrack today in the form of simulcasting? People wager. There are seven or eight races going on at a time at these racetracks now that are simulcast from tracks across the state. And you can bet on seven or eight races at a time. I just have a hard time understanding why this is a whole lot different as long as they're not this instant payoff kind of machine. And this, in my view, is not. So though we can call them slot machines and we can say they're slot machines and people all around can say these are slot machines and this is an expansion of gambling, it really isn't. I mean, if we're going to have horse racing, we should provide within those racetracks--not outside the racetracks; and I don't agree, myself personally, with expanding gambling outside of the tracks--but if we're going to allow these tracks to continue, we need to have something consistent with what they're already doing be lawful so that they can raise the revenue they need to operate. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR ASHFORD: Thank you, Mr. Lieutenant Governor. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Ashford. You have heard the opening of the Judiciary Committee amendment, AM2234. Mr. Clerk, you have an amendment to committee amendment. [LB1102]

CLERK: I do, Mr. President. Senator Avery would move to amend the Judiciary Committee amendments with AM2348. (Legislative Journal page 1221.) [LB1102]

PRESIDENT SHEEHY: Senator Avery, you're recognized to open on AM2348. [LB1102]

SENATOR AVERY: Thank you, Mr. President. AM2348 would strike on page 1 of the AM2234, line 4, it would strike the words, "a form of horse race that" and insert "an electronic gaming device that displays a horse race and" and then it reads on "that creates a pari-mutuel pool." What this does, it makes clear what it is, I believe, we're talking about. We're talking about racing slot machines. In fact, the industry refers to these as instant race terminals. I believe Senator Giese used those words in his opening. These are devices that are plugged into a wall, paying out wagers that were calculated at a central terminal; devices that have bells and whistles, interactive buttons that you can press to wager your bet; devices that have repackaged horse racing into a mini video clip of a previous race surrounded by graphics, advertisements that you can watch and literally just seconds before placing your bet. If you look at the handout that Senator McCoy passed around, and if you've ever seen a slot machine, that's a slot. What you see here is an instant racing terminal. Historic racing is a misleading characterization by proponents of LB1102 to encourage us to think that we're really engaging in regular horse racing, Churchill Downs, the Belmont, the Preakness, the generations of exceptional equestrian lineage, a sporting event of the finest. Horse racing history is long and it is storied; it is the sport of kings; and it can be a thing of

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beauty. However, make no mistake about it, what we are talking about today are racing slot machines. This is not historic racing. This is not traditional horse racing. But this is slot machines that have been repackaged as horse racing. For example, take AmTote, that's an acronym for American Totalizer. This is the premier automated totalizer company of pari-mutuel wagering in the world. AmTote machines accept wagers, calculate odds and payouts, and allows for the redemption of winnings in pari-mutuel racing slot machines. AmTote provides the most cutting-edge technological advancements available in instant racing today. It attracts new gamblers to pari-mutuel gambling with high resolution graphics, customized product branding and advertising ability, 17-inch color touch screens, high quality audio sound systems, responsive touch screen interfacing, customer loyalty points redeemable for additional prizes, 60,000 digital videos of previously run races. AmTote machines make interactive wagering faster, easier, and ultimately highly addictive to customers. This is what we would legalize if we passed LB1102. Let me tell you that for most gamblers it is important to have that instant fix, that instant ability to get a result. In slot machine gambling, an individual purchases the right to play by coin, cash, bar code, or ticket in-ticket out. LB1102 does the same. The slot machine is activated by touching a screen or a button to play. LB1102 does the same. Slot machines have brightly colored media, flashing lights, animated characters, bells and whistles, and audio. LB1102 does the same. Slot machines may or may not involve skill or chance. LB1102 is the same. There is nothing more...what I see here is nothing more than an expansion of the most addictive class of gambling. This has been before us many times before. In November of 2004, in the general election, voters voted against slot machine gambling. It failed. In 2005, it failed. Again in 2009, the General Affairs Committee did not advance LR6CA. It did not advance LB266. They both failed. I urge you to recognize LB1102 for what it is, and the committee amendment does not make it better. These are...these two together are expansions of slot machine gambling in the state of Nebraska and we do not need this. I am not convinced that the future of live horse racing in this state depends upon this bill. I will speak later about the economics of gambling, in general, and I will talk also about the impact that this bill might have on keno receipts and pickle card receipts, the money of which goes to some very worthy programs. And I think we have to look at the impact this bill might have on other forms of income that are in the form of legalized gambling in the state already. So with that, Mr. President, I will end and listen to the debate. I expect it to be long and vigorous. Thank you. [LB1102 LR6CA LB266]

PRESIDENT SHEEHY: Thank you, Senator Avery. You've heard the opening of amendment to committee amendment, AM2348 to AM2234. Members requesting to speak are Senator Christensen, followed by Senator McCoy, Senator Fulton, Senator Harms, Senator Gloor, Senator Karpisek, and others. Senator Christensen, you're recognized. [LB1102]

SENATOR CHRISTENSEN: Thank you, Mr. President. I pause here and ask you why are dog tracks dying? Why are horse track racing dying? We're a microwave society.

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People want instant gratification. They want to be able to turn a bet quickly, and that's also turns into losing money quickly. You know, I don't see...if this was a good thing, then I'd see people making a living doing it on the gambling side of this. I understand people who own the horse races are making a living on that side. But, you know, you can't make a living betting on the horses. You're going to lose. I don't know who...I don't think there's anybody that can say here consistently they go win a lot of money and that they could do it for a living. It is going to affect families. It's going to take money out of this state because most of the people that run it, machines and things this way, typically are from out of state. Money leaves. You know, I'm struggling why we would even want to have this out here. Would Senator Giese yield to a question, please? [LB1102]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Christensen? [LB1102]

SENATOR GIESE: Yes, I will. [LB1102]

SENATOR CHRISTENSEN: How many races, the way this is set up, could be run in a minute? [LB1102]

SENATOR GIESE: Senator Christensen, I've heard that it may be as few as two. And I don't know if it would go faster than that, but I think it's approximately two. [LB1102]

SENATOR CHRISTENSEN: And in normal horse racing, how many minutes does it take for an average race from start to finish, or from the start of one to the start of the second one? [LB1102]

SENATOR GIESE: I'm being told 22. [LB1102]

SENATOR CHRISTENSEN: Okay. So basically you're telling me we could go from 2 races per minute where it has been 1 per 22 minutes, so we're going to increase another 44 races in that same time period. So what would you say the average person wins in a year's time betting on horses? [LB1102]

SENATOR GIESE: Wins? [LB1102]

SENATOR CHRISTENSEN: Wins. [LB1102]

SENATOR GIESE: I have no idea. [LB1102]

SENATOR CHRISTENSEN: Would you say more people win or lose? [LB1102]

SENATOR GIESE: The smart ones probably win. [LB1102]

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SENATOR CHRISTENSEN: (Laugh) [LB1102]

SENATOR GIESE: The ones that look at the forms win. [LB1102]

SENATOR CHRISTENSEN: Do you think there's people can make a living betting on horse racing? [LB1102]

SENATOR GIESE: Oh, I think they do. I think they do. There are people that probably do, in my opinion. [LB1102]

SENATOR CHRISTENSEN: Would you say that would be a large percentage? [LB1102]

SENATOR GIESE: No, probably not. Probably not. [LB1102]

SENATOR CHRISTENSEN: Thank you. You know, I look at this and I go...it goes to my point of being a microwave society. People want to be able to turn bets quickly. And if we're going from 1 race taking 22 minutes to doing 44 races in that same amount of time, illustrates my point people are wanting to do something quickly. Well, if there's very few people making a living doing this on the gambling side, which I'm not sure anybody can, then we're going to set this up for an additional number of people losing money. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR CHRISTENSEN: And pulling money away from families, because when you're addicted to it and you're attending this all the time, you ending up pulling money away from the important factors of being involved in a family, providing for that family, and it's a detriment to the society as a whole. Thank you. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Christensen. Senator McCoy, you're recognized. [LB1102]

SENATOR McCOY: Thank you, Mr. President and members. It's not lightly that I stand here today in opposition to LB1102. I respect my colleagues, Senator Lautenbaugh and Senator Giese, for bringing this bill. I value the horse racing industry in our state. As many of you know, fourth generation ranch kid. I grew up around horses my entire life. We had retired racehorses on our ranch and we raised horses. I appreciate what that industry means to our state and the jobs it represents. However, I don't feel that this legislation is the right course of action to attempt to preserve that industry in our state for a number of different reasons. You should have all received the Attorney General's Opinion--it was issued this morning--along with a handout of a picture of a historic horse racing machine from the state of Maryland. I hope we have a long discussion this

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morning, perhaps into the afternoon on this issue because it's one that's very important. It's an issue that has grave impact on our state. As a senator who represents a district that includes part of the city of Omaha, I have certain reservations about keno revenues and the impact on those revenues and different programs that they pay for that other senators may not have, but, in time, I'll look forward to discussing more of those with you. I support Senator Avery's AM2348 and his subsequent amendments. As you look through this Attorney General's Opinion, a few things jump out at me at face value, and I know we have a number of very intelligent legal minds amongst the body and I'm sure they'll weigh in at some point during this discussion as well. But one thing strikes me very clear, that the constitution in Article III, Section 24, says that pari-mutuel betting is allowed on racing on a "wherever run," not "whenever run." Past races, as in historic race horsing as outlined in the bill and the committee amendment, would be a "whenever run" status. I think that immediately jumps out as one of the reasons that the Attorney General found this legislation to be unconstitutional on a number of fronts, and I look forward to that discussion this morning. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator McCoy. Senator Fulton, you're recognized. [LB1102]

SENATOR FULTON: Thank you, Mr. President, members of the body. I do encourage my colleagues to look through that Attorney General's Opinion. Senator McCoy actually requested it and then I requested a similar opinion not long after, and I've started to make my way through it. I think you'll find it informative. I'm going to talk a little bit about something that my colleague, Senator Council, said yesterday, and tie it to the relevance of our vote on this particular bill. Yesterday, on my priority bill, we were talking about concealed carry, and that's not what we're talking about here today but let me grasp a principle that was brought forth yesterday. Senator Council is opposed to the idea of concealed weapons just in principle. I think she made that clear. But she said that we in the Legislature had passed a law last year, LB430, and the law is the law, and regardless of her personal opinion the city of Omaha and all other cities should respect and regard the law. And that struck me and I have great respect for Senator Council. What she said is something I agree with. Regardless what one believes, the law is the law; we accept it. It happened a little bit today on a bill that we passed earlier, a particular bill, I think it was Senator Avery's bill that I was opposed to. But when it came time to vote for the A bill, I felt it appropriate to fund the A bill because the bill had passed and would soon become law. Now I want you to take that principle that sometimes we don't get our way, individually we have to abide the rule of law, and apply that to these votes that we have had on expanded gambling in Nebraska. Regardless how you feel individually about expanded gambling, the people of Nebraska have voted. Really it is our highest authority, the voice of the people, and they have voted consistently in numerous elections and they've said no to expanded gambling. And I'm going to break this down into very simple logic. The language of the bill utilizes the word "wagering." Page 3, line 20, "It shall be a Class III misdemeanor to use a device for

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pari-mutuel wagering on historic horse races outside the premises of a licensed racetrack enclosure." There's a reason why we attach a penalty for those places outside the racing enclosure. But I want you to pay attention: We use the word "wagering." Well, ask yourself this: If the people of Nebraska, if you put this question to the people of Nebraska--Do you believe wagering is another word for gambling?--I'd say they'd probably say it is. And then if we ask them: But we would like to make it that there is...make it such that there can be more wagering in Nebraska. And the intention, the intention, I will grant you, is legitimate and laudable. I think the intention here is to help the horse racing industry, but the mechanism by which we accomplish that is to expand gambling. Logically, there's no other way you can get past this. There would be more wagering tomorrow, should this bill pass, than there is today. Put another way, we would expand gambling. And the people of Nebraska have said no to this over and over. And so I ask you to go back to that principle. We have a rule of law. We follow the rule of law even if we don't agree with the rule of law. The people of Nebraska have spoken. They are our bosses and they have said no to expanded gambling. And regardless one's opinion,... [LB1102 LB430]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR FULTON: ...this is what they have said over and over. And I have to ask myself, if we were to move this forward, what would the people of Nebraska say? I have a sense that they would probably say: What part of no don't you understand? Now again, I will freely admit that this is laudable in its intention. But we are senators setting policy. Let Washington worry about bailouts. That is not what we should be about. We are about setting policy. And the consistent policy as directed by the people of Nebraska is that we should not expand gambling in Nebraska. I suggest that we should respect what they have said. We should therefore vote no to this bill, recognizing indeed the intention is laudable but the mechanism by which we arrive at that intention has been said no to by the people of Nebraska. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Fulton. Senator Harms, you're recognized. [LB1102]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in opposition of this bill. I do support Senator Avery's amendment. I've had concerns the last time we talked about horse racing and gambling and this particular issue. My views haven't changed any at all in regard to this issue. One of the things that I found that, how I feel about this, is that, you know, horse racing isn't like a dinosaur. It's more like a black rhinoceros--something that someday will be extinct only in zoos as an exhibit but not in the real world as something alive and thriving and part of the landscape. And that's really the issue we're talking about here. We are about to try to bail out a dying industry, a dying business that, quite frankly, people do not have the interest in it. And I think we need to pay attention. I think what has been said earlier, Senator Fulton's point, is that

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we are not paying attention to what the people want. This is a great example of what happened with healthcare and what has happened, how the people have said, as government you're not paying attention, you're not listening to us; we don't want this. And we've already had more than one vote on this issue and I don't understand why we keep bringing this back. Senator Giese, would you yield for a couple questions so maybe we could visit a little bit today? [LB1102]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Harms? [LB1102]

SENATOR GIESE: Yes, I will. [LB1102]

SENATOR HARMS: Senator Giese, what is the condition of horse racing in Nebraska today? What's the financial condition that it's in? [LB1102]

SENATOR GIESE: Senator Harms, I don't have an exact number for you but I would say it's not doing well. I mean, is that close enough of an answer? [LB1102]

SENATOR HARMS: Well, I'd say it's doing really poorly, and that's why we're bringing this forward, and I think that it's important to bring this out. Do you have any idea, for sure, what that revenue flow might be from winning to losing...I mean, from expenditures to profit to loss in regard to this issue? [LB1102]

SENATOR GIESE: I don't, Senator Harms. [LB1102]

SENATOR HARMS: Okay. I can tell you that I think it's very poor and I think what we are doing is we're bailing out an industry that's dead. And when you look at the charts on preferred gambling activities, the only thing that shows any really increase, anything that people really have a high interest in is in regard to slots. It's like 79, almost 80 percent. From that point, it's on down. When you get to horse racing, in order to even get it off the chart or up on the chart, they had to add dog racing. It is so far down the line of what people prefer, I don't care what you do with this bill, I don't care what you add to it, it isn't going to work. And I object to us trying to expand this by using what I call slots. You know what? If it looks like a duck, has feathers like a duck, it walks like a duck, and it swims like a duck, it's a duck. And this is a duck, folks. We are talking about slot gambling, no matter what terminology you want to use, where we want to go with this. And I object to this. I think it's wrong. Not only that; when you take a look at what happens with this process, the problems that are associated with this and gambling are staggering in this great state. When you look what it does to families, when you look at the analysis that was done in 2008 and 2009, it's very clear that it has a negative impact of families and to children because we have...we just don't have the amount of money today that we had a year ago to be able to spend on these kinds of activities. So what happens when you're so involved in gambling and you're committed to it and you can't control your gambling, you spend it. And so who suffers? It's the family and the children

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and the wives of people who are addicted to this. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR HARMS: Thank you, Mr. President. And then you have the issue of the financial conditions of the family. It just simply drains the family. And I object to this; I think it's the wrong thing for us to do. I don't believe it's where we need to be and it's the last thing we need to do, is to hurt families further. I'm going to talk a little bit later about what it does to some of the data and statistics that I have studied and looked at that addresses teenagers and gambling and what's occurring in that part of our market. So thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Harms. Senator Gloor, you're recognized. [LB1102]

SENATOR GLOOR: Thank you, Mr. President. Good morning, members. I come from a district that has a track, but I don't want the members to presuppose that I have made up my mind. I have, in fact, told proponents and opponents of this bill that I am very much on the fence and will be paying even more attention than usual this morning and this afternoon, probably, on this important bill. I do, though, get a chuckle out of discussion about Nebraskans and individuals in this great country who are opposed to gaming, wagering, gambling, whatever the term may be, yet all reach into their pockets and pull out twenty-dollar bills and beyond to participate in a pool related to the NCAA tournaments going on right now. So there is a small, in some cases not so small, degree of hypocrisy that goes on with what we say we want to do and what we, in fact, will participate in, given the need to do so. I wonder if Senator Giese would yield to a question or two? [LB1102]

PRESIDENT SHEEHY: Senator Giese, would you yield to Senator Gloor? [LB1102]

SENATOR GIESE: Yes, I will. [LB1102]

SENATOR GLOOR: Senator Giese, you handed out a document here that says, "The Impact of Historic Horse Racing in Arkansas," and it's labeled here, "Average Daily Purses." There's a one-third increase, it would appear, over a ten-year period in average daily purses. Would you explain what is meant by this graph, "Average Daily Purses"? [LB1102]

SENATOR GIESE: Senator Gloor, I would say that these tracks--and, of course, the five in Nebraska are the ones that we're concerned about--but have to offer purses on their races per day. And that is driven, I would say, by attendance. And if they're not making money on their track the purses go down, and if they can't make money they eventually close. So they have to offer that and it's based on attendance, handle, etcetera, at that

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track. [LB1102]

SENATOR GLOOR: But a purse is...the purses relate to really nothing related to the historic racing. The purses relate to the live racing that goes on and the fact that they were able to pump more money into the purses, correct, the winnings for the owners of the horses? [LB1102]

SENATOR GIESE: Senator Gloor, I believe it would be both. It would be as a result of both the live racing and the historic racing is how the purses would be offered. [LB1102]

SENATOR GLOOR: Well, I understand the theory then: More money in purses means better racing which attracts more people to the track. Do we have any numbers that show us increase in the overall intake of horse racing in Arkansas as a result of increased purses of any kind? Any numbers that equate the increased purses to increased, in this case, the take that the state of Arkansas gets from horse racing? [LB1102]

SENATOR GIESE: I don't have those right now but I have a feeling I'll have a chance to get those to you before the...and maybe somebody else has those, Senator Gloor. [LB1102]

SENATOR GLOOR: Okay. Thank you, Senator Giese. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Gloor. Members requesting to speak on AM2348 to AM2234, we have Senator Karpisek, followed by Senator Stuthman, Senator Price, Senator Dierks, Senator Lautenbaugh, and others. Senator Karpisek, you're recognized. [LB1102]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. As you know, I've brought a few bills to try to help the horse racing industry. Haven't been successful but we've been close. Senator Harms at least stands up and says that he thinks the industry is dying and he doesn't really even support it, and I appreciate that. Most of what I hear is, oh, we support it but not this way. Then I'd like to talk to you and find out what you want to do about it instead of just saying no every time; we can't do that; I'd sure like to help them but, no, we can't do it that way. Is Senator Fulton in? If he's around I'd like to ask him a few questions. But until he gets here, I hear the buzzwords coming out today: slots, bailouts, healthcare. Senator Harms, way to go, way to get healthcare in there to scare people on this. I don't know how you reached that far, but I'll let you have it. Ducks, it quacks like a duck. We had to see a duck in our committee one day. That was nice. We're doing all of these to scare people. Senator Fulton is here. Could I ask him a few questions, please? [LB1102]

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PRESIDENT SHEEHY: Senator Fulton, would you yield to Senator Karpisek? [LB1102]

SENATOR FULTON: I will. [LB1102]

SENATOR KARPISEK: Thank you, Senator Fulton. Do we have a lottery in the state, Senator? [LB1102]

SENATOR FULTON: We do, yes, Senator. [LB1102]

SENATOR KARPISEK: And how did we get that? Did the people have to vote on that? [LB1102]

SENATOR FULTON: I'm not positive but I believe so, yes. [LB1102]

SENATOR KARPISEK: And since we have it, they must have voted yes. [LB1102]

SENATOR FULTON: I would assume so, yes. [LB1102]

SENATOR KARPISEK: Okay. So then that goes against what you said they've said no on all these occasions. [LB1102]

SENATOR FULTON: I disagree. It's pretty clear they've said no to expanded gambling. [LB1102]

SENATOR KARPISEK: Well, then how do we have lottery? [LB1102]

SENATOR FULTON: I would argue that the folks...well, just to be logical about it... [LB1102]

SENATOR KARPISEK: They voted for it? [LB1102]

SENATOR FULTON: They voted for... [LB1102]

SENATOR KARPISEK: They voted for it. [LB1102]

SENATOR FULTON: ...the lottery, yes, but I think that they voted against expanded gambling. [LB1102]

SENATOR KARPISEK: Thank you. How about keno? Do we have keno? [LB1102]

SENATOR FULTON: Yes. [LB1102]

SENATOR KARPISEK: And how did we get that? [LB1102]

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SENATOR FULTON: I believe it was by a vote of the people. [LB1102]

SENATOR KARPISEK: And so how did they...? They must have voted yes. [LB1102]

SENATOR FULTON: They must have. Yes. [LB1102]

SENATOR KARPISEK: Yes. So again, when you say they said no, you'd be incorrect. [LB1102]

SENATOR FULTON: No. They did say no; that's clear as day. [LB1102]

SENATOR KARPISEK: Then how do we have it? [LB1102]

SENATOR FULTON: They said yes to keno and no to the expanded gambling. [LB1102]

SENATOR KARPISEK: Oh, that's not expanded gambling in your book. Keno isn't expanded gambling? [LB1102]

SENATOR FULTON: You'd have to ask the people, Senator. [LB1102]

SENATOR KARPISEK: Well, and obviously they said yes. Okay. Bingo we have...thank you, Senator Fulton, for proving my point there. And as Senator Chambers would have said: Thank you, Fred Astaire. We have pickle cards, bingo; we have a lot of other gambling. And, you know, since we are on this, I think next year I'm going to bring some bills. Senator McCoy is always concerned about keno and I appreciate that, but I think we should get rid of that. We should get rid of all of this stuff because it's so bad. It's so bad for our families. It's so bad for everything. I think we ought to get rid of it all. Is that where we want to go? Or then are we going to say, well, no, we can't do that because we get money off of it. I know you get tired of hearing me on this stuff and I get tired of hearing you on it. And there's bills that come up all the time. Senator Harms said he doesn't know why we have to do...talk about it again. I hear a lot of bills that I don't like and they keep coming up again and again and again and again, and there's one this afternoon. But they keep coming up and that's why we have this Legislature: to bring things and discuss them. I think we just need to be a little more honest here, quit stump "speeching," quit campaigning on the floor, and think about what we're trying to do... [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR KARPISEK: Thank you. And be honest. If you don't like gambling, I completely respect that. And again, Senator Harms has been very good about standing

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up and saying that. I don't agree with some of the things he says. I don't think it's as traumatic to families as some of the other things. Let's talk about drugs and even alcohol and some of the other things we have. And he's working on that and I appreciate that, too. These are things we need to talk about. I know it's very, very cut-and-dried for some people. It's very cut-and-dried for me, too. But let's quit using all the scare tactics. Let's talk about what's in the bill and what we can try to do for horse racing. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Senator Stuthman, you're recognized. [LB1102]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I want to expand a little bit more on, as what Senator Karpisek was talking about, on the lottery, the State Lottery Act. And the people must have voted for that. We have the State Lottery Act and we have, you know, all of the instant win cards and forms like that. I think people should go to some of the Kwik Shops or filling stations on an afternoon or evening, mainly on Friday afternoons when people have to cash their paychecks, and watch and observe how many people, you know, get five tickets for this, four tickets for this, and just a number of different types of gambling that they have, opportunities to gamble. So I took it upon myself early this morning and called my local Kwik Shop, filling station there, and I asked the individual: I says, can you tell me with the lottery, with the State Lottery Act, can you tell me how many new types of scratch-off tickets have you had in the last six months? She said, oh, my gosh, she says, that's going to take me a little while to get that, and she says, and when I get that, you better have a big sheet of paper to write them all down. There are a lot of new forms of scratch-off tickets, different types of gambling, different forms, different types of things to entice people to try something new. Is that expanded gambling? In my opinion, it is. And that's probably some type of a loophole in the Lottery Act when it was placed on the ballot or when it was adopted, that they can adopt any type of a scratch ticket to entice people to come and bet. And that's an instant bet. You buy the ticket, you head out. I see them come back, they have three or four tickets where they cash in. They don't take any cash. They get tickets in return. So we do have the gambling. We have immediate gambling. Maybe it does affect families. But what we're looking at here with this bill is just one form of trying to expand a little bit at the racetracks. We had the live meet which was the original start of the horse races when you had to go to the track and bet. And now we have the simulcasting which you can bet on any track in the United States, or maybe further away yet, as to you could place a bet. And it is simulcasted and you have the machines. In my local community at the Columbus Races there, we have a lot of machines. You can bet on any one you want to. The thing about what we're thinking about right now is this expanded part of it, the historic races. I want you people to know that these are actual races that have run. When I had this bill a couple years ago, it was kind of the dead horse race. Yes, the majority of those horses are dead already. But they were actual races that were run. They were filmed. They were run, and they were

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wagered upon at that time. All those races are put together in a disc and I have to kind of question the fact that Senator Christensen said maybe you could bet every two minutes on one. Maybe if you're...if you want to get rid of a lot of money, you probably will. But on that machine you can get the form, you can get the... [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR STUTHMAN: ...how many wins that horse had, how many wins that jockey had. You can put that all together. For the people that have never been to a racetrack, the people sit there and study the forms. There are a lot of people that don't study the forms. They just pick out, there's a nice looking horse; I'll put \$2 to win on that one or \$5 to show. And it takes a few minutes to run the race, but there's a race run, like, every 22 to 28 minutes at a racetrack when they have racing, when they have the live racing. So I just think this is something...this is something that, you know, I think it's something that we should do. We're only trying to expand one little thing. When the lottery thing, they bring out new scratch tickets probably every week, but that's not expanded gambling. [LB1102]

PRESIDENT SHEEHY: Time, Senator. [LB1102]

SENATOR STUTHMAN: Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Thank you, Lieutenant Governor, members of the body. I rise in support of Senator Avery's amendment and I rise up against LB1102. I'm kind of perplexed, as a member of General Affairs, how this ended up in Judiciary. I don't know. I haven't really heard a lot of that discussion yet, perhaps. I'll be interested in understanding that and maybe we should have a motion to recommit it to have it rereferenced. But I don't think we'll do that. But the idea is this is a gambling bill and it didn't go to General Affairs, so I find that kind of interesting. The other question I have is based on this business. Look at the business model here. In this business model, the only way profits are seen by the owners is if the buyers are losing. Again, the only way the owners see a profit is if the buyers are losing. I don't know of another industry that's predicated on that model. Now I understand that people are horse owners and they've worked there. That's a fine job, fine industry. They're hardworking individuals. But it's the predominant theme there and that's why I have a problem with this. Now as a form of entertainment, we have many forms of entertainment, understood, and I don't find a problem with that in and of itself. And Senator Giese had earlier made a comment about if you're looking at the forms, that equals a win. I don't think that is an absolute. There's a lot of people who look at the forms and don't win. So I don't believe that that's a great thing to carry forward in thinking that this is a great opportunity here. And so, again, I

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rise in opposition to the underlying bill, in support of this amendment if it's going to make it any better. And it is interesting to hear and see the maneuver where we didn't go through General Affairs on this. I'm sure there's a very good explanation if someone will take the time to elaborate on, later on in the day, ad nauseam. And with that, I would yield the balance of my time to Senator Avery if he would like to use it. [LB1102]

PRESIDENT SHEEHY: Senator Avery, you're being yielded 2 minutes 25 seconds. [LB1102]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Price. We've heard some talk about the importance of this for generating revenue to keep horse racing alive in this state. There is another side, another economic side to this issue. Paul Samuelson, the Nobel laureate in economics, some years ago wrote a best-selling textbook on economics. And in that textbook, he has a chapter in which he talks about gambling, the economics of gambling. And he pointed out that gambling revenue is actually a negative drag on the economy because, number one, it does not create any product. Gambling revenue creates no product. It creates nothing of value. What it does is simply transfers wealth from one set of consumers to another. It does not spread through the economy because most of the income generated is confined to the gambling venue--the racetrack, in this case. The...he goes on to point out that in most cases that the economic activity around legalized gambling locations is such that it kind of sucks the life out of surrounding businesses. Restaurants often close. Capital investment declines around these venues. Money that could be invested, loaned and recycled through the economy is instead risked in a legalized gambling location. Legalized gambling siphons off a lot of money from the economy. More money is wagered on gambling than is spent on...in fact, this is a study that came out not too long ago and this is a nationwide study that showed that more money is wagered on gambling than is spent on elementary and secondary education. The numbers were \$286 billion versus \$213 billion. That's a pretty stunning number. [LB1102]

PRESIDENT SHEEHY: Time, Senator. [LB1102]

SENATOR AVERY: Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Dierks, you're recognized. [LB1102]

SENATOR DIERKS: Thank you, Mr. President. And, members of the Legislature, I, too, stand in opposition to the bill. I'll just give you a little experience with my own gambling process, I guess. I had gone to the gambling casino up in South Dakota, up by Lake Andes, my wife and I. And I said, we'll take \$20 and split it. You can spend \$10 and I'll spend \$10 and when it's gone we'll leave. And it took about 15 minutes and we were leaving. And I got to thinking about that. The day before I had been over to Chambers,

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25 miles away, doing a caesarian on a heifer, and at that time caesarians were...I was charging, I think, \$30 a caesarian. And I had to drive 25 miles over there. That would be...and we charged 50 cents a mile one way, so that's \$12.50 plus \$30, would be \$42.50. And it took me an hour to drive over and back and an hour to do the caesarian, so I spent probably two hours doing that. And it was pretty cold that night. It was awfully good to get inside where it was warm. But I got to thinking, how foolish can you be? The amount of work I went through and the amount of money I earned for that work, and then went over and just dropped it all in the slot machine, took 15 minutes. Isn't that something? Smart. S-m-a-r-t, folks. I'm asking when I read this Attorney General's Opinion, and I'm not an...I'm far from an attorney, as well, but it's seems to me that it's pretty specific when it says, "The vagueness and lack of specificity in the introduced bill, which contains no definition of historic horse races and no indication on its face that it is intended to authorize wagering on previously run races through the use of IRTs, raises a question as to whether the bill as originally drafted involves an improper delegation of legislative authority without adequate standards. The pending Judiciary Committee amendment, however, appears to eliminate any improper delegation of legislative authority. Finally, if LB1102 becomes law and wagering on historic horse races through IRTs is approved under the legislation, then the state, absent a judicial determination that such gaming is unconstitutional, would be obligated to negotiate a compact with any Native American tribe seeking to conduct this form of Class III gaming on Indian lands located within the state. Any state authority to regulate IRTs operated on Indian lands would be a matter subject to negotiation as part of the compact process." So what else do we need? I stand in opposition to LB1102 and I don't think you can amend it to make any better. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Dierks. (Visitors introduced.) Continuing with floor discussion of AM2348 to AM2234, members requesting to speak are Senator Lautenbaugh, followed by Senator Avery, Senator Christensen, Senator McCoy, Senator Harms, Senator Fulton, and others. Senator Lautenbaugh, you're recognized. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. Senator Council, will you yield to a question? [LB1102]

PRESIDENT SHEEHY: Senator Council, would you yield to Senator Lautenbaugh? [LB1102]

SENATOR COUNCIL: Yes, Mr. President. [LB1102]

SENATOR LAUTENBAUGH: Senator Council, I would direct your attention to the handout I sent around. Would you agree that appears to be an assault rifle? [LB1102]

SENATOR COUNCIL: It certainly does, Senator Lautenbaugh. [LB1102]

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SENATOR LAUTENBAUGH: Looks dangerous, doesn't it? [LB1102]

SENATOR COUNCIL: It looks very dangerous. It has a full clip in it. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Senator Council. We heard the argument today: If it walks like a duck, talks like a duck, quacks like a duck, looks like a duck, whatever, these are slot machines. You got a picture from the state of Maryland because that's relevant. I was asked, are these the machines we're talking about? I said I have no idea. I've never seen this picture before. But it was passed out to you. So I sent you a picture of a gun to make a point. That's an assault rifle according to Senator Council, and it sure as heck looks like one. That's a picture of a toy I just printed off of the Internet and printed it in this Chamber. If it walks like a duck and quacks like a duck, it isn't necessarily a duck by the legal definition. It could be a duck impersonator. It could be made to look like a duck. It could be a toy assault weapon, whatever. Actual laws and rules apply to these things. Don't be fooled by the, "well, this is what it looks like and I don't like it" argument. That's not where we are here. My record has been very clear on expanded gambling over the years. I have opposed it consistently, without fail, every single time. But this isn't it, my colleagues. This is not expanded gambling. And what's the quote from? I think it was Alice in Wonderland: Words mean what I say they mean and exactly how I use them, and nothing more and nothing less, something to that effect. Do you know why this is expanded gambling? Yes, I must have butchered that according to Senator Sullivan over there. Do you know why this is expanded gambling? Because it could bring in more ad revenue or more gambling revenue to the tracks, which is what we're trying to do to save the industry. If that is your definition of expanded gambling, then if the tracks do an ad campaign and it brings in more people, that is expanded gambling. And that is crazy. That is just simply crazy, but that is what you're being told. And think of the other argument: This is bad; this is expanded gambling because it could take revenue away from keno and pickle cards. Well, is it expanded gambling or is it shuffled around gambling? What are we really worried about here? This is an industry that has existed in the state for a long time, and it's dying, and we are doing everything we can to kill it with our inaction. Everything that is proposed: We don't like this; no, we can't take that step; no, we can't go this far. We support the industry; we support it, by gosh, and the probably 4,000 jobs that are dependent upon it, just not enough to stop killing it, just not enough to do something to save it. And what are we going to tell these people? From the worker at the track to the person cutting the hay and everyone in between, what do we say? We're sorry; you're all out of work. Maybe we'll send them pies. That's a lot of pies. And we're standing here saying we find this unacceptable. In our judgment, we find this unacceptable. The opposition to this bill I would paint on some level, at least what we're hearing from outside the body, as kind of an extreme antigambling argument. And if you feel that way, then there are things you should be doing. You should be getting rid of keno. You should be getting rid of pickles. You should just be putting the tracks out of business... [LB1102]

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PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR LAUTENBAUGH: ...because it's all gambling and we are where we are. But we have these things on life support and we refuse to do anything to help them, as Senator Karpisek said time and time again. And when this reasonable, modest proposal comes along to save the industry, we turn up our noses and say, no, we don't want to do this either. Well, when? Is it just time to turn out the lights? Because that's what we're doing. Make no mistake, that's what we're doing if we fail to act here. It's in our hands and this is the last option this year. This is it. The revenue from this would go to help problem gamblers, not from these tracks, because the statistics don't show that's where the problem comes from. The problem is coming from across the river. We're going to try to help that. It goes for juvenile justice, neighborhood renovation, etcetera. The revenue from this would be used for good causes and it would save an industry, and this is not expanded gambling if it is allowed under our constitution. [LB1102]

PRESIDENT SHEEHY: Time, Senator. Thank you, Senator Lautenbaugh. Senator Avery, you're recognized. [LB1102]

SENATOR AVERY: Thank you, Mr. President. I want to talk a little bit more about the economic and social costs of this bill. I've been looking at some studies that show even if you take a conservative view of the cost-benefit ratio of gambling, the costs outweigh the benefits 3:1. That's for every dollar that you get in benefits, it costs you \$3. The social costs from gambling are approximately \$219 per adult, annually. The social benefits are less than \$46 per adult, annually. If you look at the...what they call the pathological gambler, studies have shown across the nation that the conservative estimate of the costs of a pathological gambler is over \$10,000 per year. Now that's compared to about \$46 for the social benefits of gambling. If we look at the fiscal note, we can see that the Department of Revenue estimates that there will be a net loss of income for keno and pickle cards. Well, we in Lancaster County have benefited rather significantly from keno and pickle card gambling because the way the law was structured when we approved keno and pickle cards, a good portion of the income would go to a community betterment and property tax relief fund, as well as community betterment projects. Let me talk a little bit about some of those. Antelope Valley Projects from 1993 to 2009 received over \$2 million in keno money. The Calvert Recreation Center received over \$600,000 in keno money; the Heartland Big Brothers and Big Sisters program, almost \$40,000; Highlands pool, the new development out in Highlands--not so new anymore--\$1.1 million to build a community project for children. More than \$5 million went into the library system for data processing equipment and media equipment; Star City Shores Aquatic Center down on Highway 2 and 27th Street, over \$2.7 million; University Place pool design and construction, \$2.2 million. We're talking about significant community betterment investment in property tax relief. These are important. Affordable housing got over a million dollars in this period, or at least in

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the period 1992 to 2007. The Omaha...this is extending beyond Lincoln into Omaha...the Omaha Public Library system got \$3.7 million. The Nebraska Humane Society got \$4.2 million; Henry Doorly Zoo, \$16.8 million. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR AVERY: So we're talking about some significant community betterment projects that will be harmed if we siphon off money by approving this bill--money that would go to keno and pickle card purchases--because we are not creating new economic activity. What you're doing is you're diverting resources and gambling money now that goes to other forms of gambling; you just send it to another place. And I think somebody else made that point, and they might have been a proponent, made that point earlier on the mike. You're not creating new economic activity. You're not creating a product. You're not adding value to anything. In fact, as I just pointed out, there are enormous costs involved. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Christensen, you're recognized. [LB1102]

SENATOR CHRISTENSEN: Thank you, Mr. President. I support the amendment we're on right now because I believe it really calls this what it is. It is a gambling device. It is not just a race that you're watching. It is a machine. You know, I think we need to think about what this really does. You know, I know there's a disagreement between people whether this is expanded gambling or not, but...and what it's really going to do. But I don't think there's anybody going to deny there's consequences. The more racing we have, the more gamblers we have, the more money that's increased. You know, I was throwing the reason a little bit ago that, you know, the more racing, the larger the purses, the better the races, the healthier the industry, you know. And that also means the more losers we've had, because for the purses to get larger and the racetracks to make money and the owners of the horse to make money, somebody has had to lose that money. And, you know, people said, well, what can we do to help the racing industry? I haven't been worried about this side of things, but, you know, we give you simulcast racing--maybe somebody can answer this for me--fact is, isn't there horse racing going on worldwide almost year-round? I would have to think there is, so if you need more races, you bring in more TVs and more simulcasting. You've got a tool already that's been approved. You literally could have something to bet on all the time. And I really believe that would be expanding what you currently have, where now you're trying to bring in new machines, a different form. We're calling it historic horse racing in the bill and it is a historic race, but the way it's being delivered is not the whole race. It's not currently being run. It is just a glimpse of a former race so that we can make the bets faster. And I really don't think that's really sticking to what the horse race industry is. You watch a race; you read the data. I can remember going before in my lifetime. Didn't decide to return. I didn't figure it was worth my time to sit there and study these,

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figure out who's likely to win, looking at the jockeys' results, the horses' results, putting them together, and spending my day. That wasn't what fit my personality of enjoyment. But I think there is things they can do to expand with the tools they've got, with races around the world, called simulcasting, that we don't have to bring in these new machines that...where the different definitions come up--is this a slot machine-style gambling, is it really just a historic race--you know, that debate that we're having. You know, I'm nervous that we're going down the wrong trend if we bring in these machines, because I believe that we'll add to the addictions because I believe it will add the number of times people can bet because people want to do things quickly. You can do the same thing bringing in a lot of simulcasting that's within your current tools, so you could have... [LB1102]

SENATOR COASH PRESIDING []

SENATOR COASH: One minute. [LB1102]

SENATOR CHRISTENSEN: ...20 different races running. If you had 20 different screens, 20 different races running worldwide, you'd have 1 going every minute. You'd be achieving a whole lot more than you are right now with just having one race every 22 minutes. So you've got tools that could be used right now. I'm not saying to me that's a great thing, but at the same time it's a tool you have available. I think that's something that you can look at if they want to save the horse racing industry, because that was a tool asked for a number of years ago to save the horse racing industry--need simulcasting. It was given to them. And I think that's the direction they need to be looking. That's the tools they have. I really don't agree that this is not a slot machine-style betting if we change this. Thank you, Mr. President. [LB1102]

SENATOR COASH: Thank you, Senator Christensen. Requesting to speak, we have Senator McCoy, Harms, Fulton, Stuthman, Council, and others. Senator McCoy, you are next and recognized. [LB1102]

SENATOR McCOY: Thank you, Mr. President and members. Senator Lautenbaugh stood up a few moments ago to talk about it's not expanded gambling. I would beg to differ. I believe the Attorney General's Opinion indicated that this is expanded gambling on a number of different fronts. First and foremost, that the constitution doesn't allow instant racing terminals, historic horse racing, by nature of the actual machine itself and the fact that, as I talked about the first time I got up, that the constitution very specifically refers to wagering on horse races wherever run, not whenever run--the whenever being necessary for a historic horse race, not to even get into whether or not this falls under the distinction of not being classified as pari-mutuel betting. And the Attorney General very clearly indicates that we probably don't even need to get into that discussion as it would be unconstitutional under the first version of that, and that clearly the voters across Nebraska have voted on live racing. The Legislature has produced legislation

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based upon live racing, either in person, live racing, or simulcast, not historical horse racing or horse racing in the past. That is why I believe that this is expanded gambling, not the additional revenue stream that Senator Lautenbaugh talked about. Senator Lautenbaugh also talked about it shuffled revenue and what would be the problem with that. Well, let me go through this just very clearly in my mind. And Senator Avery talked about this earlier as it relates to not only the zoo in Omaha but also the city of Lincoln. Let me talk about the city of Omaha. The city of Omaha, starting in 2011, according to what I've been told by the city, has entered into a contract to use \$2 million annually from keno revenues for the new baseball stadium for the next 30 years. That's a \$60 million commitment. There is no provision in this legislation to compensate for a keno revenue shortfall and what that would mean for the taxpayers within the city of Omaha. Now I know many in this body don't come from the city of Omaha and I understand that. However, as the largest metropolitan area in the state and an area that I represent a portion of, that concerns me greatly. Senator Lautenbaugh is correct, the revenues or a portion of the revenues under this legislation do go to some very worthy causes, and for that he is to be lauded, as is Senator Giese. However there is, again, there is no provision in this legislation to compensate for if a revenue, if one occurs, happens in keno, how does...what happens to that \$2 million a year contract? And that's just one component of keno revenue, folks. There are many different, very, very worthwhile programs: the arts, Joslyn Art Museum, others, the zoo, as has been mentioned by Senator Avery. In this budget shortfall, those areas that have such large importance to our communities, we don't have the budget, state budget, to give to those areas. Keno revenues are going towards those. We could argue over the merits of keno or lottery. And that, to me, this isn't the place for that. That's not what this discussion is about. But what we should be having discussion is on if we're attempting to preserve the horse racing industry, what are we...what would be the unintended consequence of that? What could be the unintended consequence of that? And what kind of an impact would that have... [LB1102]

SENATOR COASH: One minute. [LB1102]

SENATOR McCOY: ...on our communities? That shuffled revenue, ladies and gentlemen, is a major, major problem, aside from whether or not this is unconstitutional, as the Attorney General has clearly said that it is. Thank you, Mr. President. [LB1102]

SENATOR COASH: Thank you, Senator McCoy. Senator Harms, you are next and recognized. [LB1102]

SENATOR HARMS: Thank you, Mr. President, colleagues. Mr. President, how many times is this for me? How many times so I know how to handle this? [LB1102]

SENATOR COASH: This is your second time. [LB1102]

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SENATOR HARMS: Second time? Thank you, Mr. President. One of the things, I like to have my colleagues here that are attorneys who I have lots of respect for. They're very bright legal minds that are on this floor and we listen to on a regular basis. When you look at the Attorney General's Opinion, I mean, it's very clear to me when you just read the last sentence in his conclusion, it says: Finally, LB1102 becomes law, legislative authority...or becomes law and wagering on historical horse races through the IRTs is approved under this legislation, then the state, in the absence of a judicial determination that such gaming is unconstitutional. I would like to hear a little bit of discussion somewhere along that conclusion from folks that are attorneys here that, like I say, I have lots of respect for and do listen to. But it's very clear to me that even if this piece of legislation passes, it's going to be challenged and most likely will be found unconstitutional. And so I don't know whether we are truly having...wasting time here or actually getting all the facts on the table. But let me share with you some things that catches my attention. I always like to go to some of the data that I can find. What's happening in regard, in this country, in regard to gambling? This industry has grown tenfold since 1975, and players with household incomes under \$10,000 bet nearly three times more than people that have an income of \$50,000. So what it really is saying is the people who are impacted on all phases of gambling, whether it's horse racing or lottery, whatever it is, it's the people who don't have the money that shouldn't be doing it to start with, and they become addicted to it. And here's the shocking thing to me, is that gambling among young people is on an increase. Forty-two percent, nationally, of 14-year-olds gamble; 49 percent of 15-year-olds; and 63 percent of 16-year-olds; and 76 percent of 18-year-olds. Don't tell me this is not a problem, colleagues. Young people are getting caught in this early and they get caught in this whole aspect of gambling and it becomes an illness on their part. According to the American Psychological Association, Internet could be the most addictive of all, excluding alcohol, drugs, and gambling. The average debt incurred...the average debt incurred by a male pathological gambler in the U.S. is between \$55,000 and \$90,000--the annual debt. So don't tell me that it doesn't have an impact. And \$15,000 is for the female gambler. The average rate of divorce for problem gamblers is nearly doubled than the nongamblers. Suicide rate of pathological gamblers is 20 times higher than the nongamblers; 65 percent of pathological gamblers commit crimes to support their gambling habit. And here we're arguing that it doesn't have any impact about families? It does have an impact about families. And that's what this issue is about for me. I will always stand up on this floor and debate and argue about gambling. I wasn't here when lottery was passed. I most likely would have been against it because I know what the impact is. I've seen it. I've had an opportunity to experience it with some of my friends who have gotten hooked into the gambling aspect and it destroys their life. It destroys their families and no matter how you cut it, colleagues, it's not good. It's not good for Nebraska and it's not good for the people in Nebraska. We are expanding gambling with this. The Attorney General's Opinion made it very clear that this is an expansion, an expansion that is illegal and it's unconstitutional. [LB1102]

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SENATOR COASH: One minute. [LB1102]

SENATOR HARMS: Thank you, Mr. President. I'll stop here. Thank you, colleagues. [LB1102]

SENATOR COASH: Thank you, Senator Harms. Senator Fulton, you are next and recognized. [LB1102]

SENATOR FULTON: Thank you, Mr. President, members of the body. Senator Karpisek is not on the floor now. We had an exchange which I am going to revisit because I think it's illustrative for the entire...for the body, and I think for the people of Nebraska, too. The point that Senator Karpisek I think was trying to make is that at one point or another Nebraskans voted to expand keno, to include keno and the lottery. And I think his point would be that, therefore, they would accept this. With that I disagree. And let me give you my theory as to how these votes have played out. Again, this is not our...it's not...we don't have the authority to say this is what the people meant. The people tell us what they meant through their votes. But I have a theory as to how this has developed. Lottery and keno were passed by a vote of the people long ago, and my understanding is, like, two decades ago. And I could be wrong about that. If I am, someone correct me. In recent years, we've had numerous votes as to whether we should expand gambling and the people have said no. Expand gambling. So as Senator Karpisek and I were having this exchange, this is how I would respond and how I respond now that I'm on my own time. The people have said yes to gambling up to an extent, and then when we came back to ask them again, they said no. And we asked them again and they said no. And we asked them again and they said no. And we've asked them several times here on this floor. And if people are willing to go back and ask the people of Nebraska again what they say, I suspect the people of Nebraska would probably say no again. I don't know. Maybe they'll take a vote and it will be different. But what we're talking about is expanded gambling. The people of Nebraska have allowed a certain measure of gambling up to an extent, and we have asked whether we could expand that and they have said no consistently, over and over and over. In 2004, let me read the ballot language to you. You can pull this right off the Internet, the Secretary of State's Web site. Two thousand four, it was Initiative Measure 420. There were three provisions. I'm going to focus in on provision 2, anyway. "A vote 'FOR' will enact a statute which permits communities to:" and it's point (2), "authorize the use of electronic, mechanical or other gaming devices at casinos, strategic premises where at least 250 of such devices are operated, and racetracks." The people voted no on that. Now perhaps it could be argued that they were saying no to parts of Initiative 420 but not other parts. Logically, that might be argued. But I submit to you that the consistency with which the people of Nebraska have said no to expanded gambling ought to get a public servant's attention. And for me, that's what has happened on LB1102. Again, I understand what the intention is and I don't disparage the attention. The intention is laudable. But we've heard this: The ends don't justify the means. The means by which

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we get there is to expand gambling. I don't think there's any other way logically to come about that. We are asking to allow more pari-mutuel wagering tomorrow than what exists today. By definition, that is expanded gambling. And so while I recognize where Senator Karpisek's questions are coming from, I suggest that we don't have to discern what the people say about expanded gambling. They have spoken consistently and we should listen. And I know it's frustrating to those who would like to expand gambling, but the people have spoken on this. There are other bills with which...other laws with which I disagree and I've talked with some of you off the microphone. But the law is the law is the law. And again, I'll invoke Senator Council. [LB1102]

SENATOR COASH: One minute. [LB1102]

SENATOR FULTON: She said yesterday what I...it just blew me away. It surprised me how she came out and said it, and it's...that's laudable, it's consistent. And so it seems to me that what we're talking about here is expanded gambling. And if we're trying to discern a vote of the people, I have submitted to you what I think might be occurring. We should pay attention chronologically how the votes have occurred. And in recent years it's been pretty consistent, folks. So I'm opposed to LB1102 because I think that it expands gambling and it seems very clear to me that the people have said no to this consistently, over and over. Thank you, Mr. President. [LB1102]

SENATOR COASH: Thank you, Senator Fulton. Senator Stuthman, you are next and recognized. [LB1102]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I want to go back to some of the conversation that's been on the floor this morning and explain my position on that. Now Senator Avery had stated, you know, from the keno, the real benefits of it in his statement, those about \$35 million of revenue generated for a bunch of those projects. Senator McCoy said there was \$60 million, you know, generated from keno that would go to projects. And Senator Harms stated that gambling was increasing on the young people, and I'll probably totally agree with that. The thing about this \$95 million that was going to these projects, where did that money come from? That probably came from some of these younger people that got more interested in gambling. So we're taking it away from people that are addicted to the keno, taking away from them, the poorer families, what hope to win in the keno machines...we're taking away from them to fund a lot of these projects. So we're taking money from the poor, a percent of the money from the poor for these projects that these two senators are really proud of. They didn't go to property tax. They didn't go anywhere else to generate the revenue. They got it from the people that were taking a chance and gambled. And I'm sure that \$95 million that was generated there isn't the only amount of money that was lost by the people gambling. I feel that the racetracks with the method of gambling that they have right now with the fact that a live racetrack is run about every 22 to 28 minutes, and there's usually 10, 12 races in an afternoon or evening, I think

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that's one of the best things that we have because it doesn't allow the people to put in 20 bucks immediately and get a return. It takes a little bit more time. So it's a form of entertainment. There's some skill to it. Everybody is concerned now. They want a quick...a quick return. Put in 20 bucks, push the button. Hmm, that one is gone, never to be returned, another 20, another 20. I personally viewed an individual that pumped in 400 bucks in two minutes and got nothing back, and that was in a slot machine. The thing that concerns me is the thoroughbred racing industry that we have here, which is part of our number one industry--agriculture, there are live horses, there are people working on the tracks, there are people, you know, that train the horses. There's a lot of things that reflect to agriculture, that benefit agriculture, and it's an industry that is losing out. Why is it losing out? Because we still have the same things that we've always had a racetrack: the live meet, or now we have the simulcast where you can watch another live meet. In my opinion, yes, maybe it is a little bit expanded gambling. But I don't think it's any more expanded gambling than the fact of the... [LB1102]

SENATOR COASH: One minute. [LB1102]

SENATOR STUTHMAN: ...of the lottery when they come up with a new type of scratch-off tickets, another type of scratch-off tickets. Something that they advertise, you know, that you can win. Different types, different names of the game, it's still the same thing, in my opinion. But it expands it because it's another type. Maybe that was a loophole in the Lottery Act that they could do this and continue to do this. So I'm working, in my opinion, to try to save, you know, the thoroughbred races in the state of Nebraska. And this isn't, in my opinion, a real quick thing. People have to study it. Yes, you can push a button, you know, in two and half minutes the race is run. Horses run very fast. I personally viewed the machines. But I think this is something that is very workable at the tracks. It's not a place where they're going to get a lot of people just stopping in, push the button... [LB1102]

SENATOR COASH: Time, Senator. [LB1102]

SENATOR STUTHMAN: Thank you, Mr. President. [LB1102]

SENATOR COASH: Senator Council, you are next. [LB1102]

SENATOR COUNCIL: Yes, thank you, Mr. President. I have sat intently listening to the debate this morning and I must make some observations. Number one, there has been this debate about what is and what is not expanded gambling and what have and what the voters have not indicated. With all due respect to my colleague, Senator Fulton, citizens of the state of Nebraska have not consistently voted against expanded gambling. What they may have consistently voted against were particular forms of gambling, but they have not consistently voted against expanded gambling. Gambling that suits their purposes, gambling forms that for whatever reason they find acceptable,

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they have supported--keno, lottery, horse racing. So the issue...oh, bingo. Don't let me forget bingo. So the issue is the form of gambling. And in this instance, the citizens of the state of Nebraska have, I believe, traditionally supported the form of gambling, horse racing, but the issue of form on this measure appears to be the machine, because as I read the constitution, and someone stated it, you know, horse racing run wherever. I guess kind of inherent in wherever, is whenever, but reasonable minds could differ on that. Senator Stuthman made a point that, you know, I sat here and was thinking about, the citizens of the state of Nebraska, the majority have voted to approve a lottery. We've got the Nebraska State Lottery. And if you read your constitution, it says that the Legislature may establish a lottery to be operated and regulated by the state of Nebraska. When the voters approved the lottery, it was Powerball. And the voters approved the lottery, in my opinion, in large measure because we told them where the money was going to go, where the proceeds were going to go. We told them it was going to go to help to fund education in the state of Nebraska. And a lot of people believed that that was a good use of gambling proceeds. Which brings me to a point that I was attempting to make on my death penalty cost bill. You give people information, it affects their opinions. And when we talk about these costs, I sit here and I'm listening to people who are definitively stating how much money will be diverted away from keno and pickles if LB1102 passes. Where did this data come from? How is it so accurate? Why are we prepared to rely on it when we can't rely on any other data or the accuracy of any other data? And I submit to you, interestingly enough, as a person who periodically enjoys a game of keno, I would never, ever in life set foot in a horse racing track to play this game. It does not appeal to me. So for those who are coming up with these figures about how many keno players and how much keno revenue you would lose, I don't know who you're talking to or where that data comes from. And if you are so concerned about the loss of keno revenue,... [LB1102]

SENATOR COASH: One minute. [LB1102]

SENATOR COUNCIL: ...we shouldn't have passed the ban on smoking. You ask any keno operator in the state of Nebraska what has had the largest impact on their revenues, it's the no smoking ban. Didn't bother us then. So why does a diversion of some of the keno revenue mean so much to us now? I believe, quite frankly, the issue comes down to the form here, this IRT. Senator Lautenbaugh, I don't know whether that's the machine or it's not the machine, but one thing that the voters in Nebraska have said, they don't want slot machines, but I don't know that this is a slot machine. All I know is it depicts horse racing, and the voters in the state of Nebraska said horse racing is a form of gambling that is A-OK with us. And so the question is,... [LB1102]

SENATOR COASH: Time, Senator. [LB1102]

SENATOR COUNCIL: ...do you give it to them in another form? [LB1102]

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SENATOR COASH: Senator Pankonin, you are next. Senator Gloor, you are recognized. [LB1102]

SENATOR GLOOR: Thank you, Mr. President. I found it interesting, as I was listening to Senator Council, that I "upflashed" an NCSL summit meeting in Louisville, Kentucky, with a picture of a race horse on the logo and a reference to Churchill Downs. Obviously, there's more than gaming that goes on with horse racing. There's also the opportunity for promotion, and tourism connects with it. But I want to say that I appreciate Senator Lautenbaugh and Senator Council's comments getting us back to the issue of thoroughbred racing which has a very long and storied history in this state--something that the voters approved. I'm guessing that thoroughbred racing has probably been legal in this state longer than bingo. Perhaps I'm wrong and somebody will certainly e-mail me if that's the case, but it is and was, for years, the only form of gaming that the citizens of this state supported, and it was called gaming; it wasn't called gambling. Because I think with the back-and-forth on whether it's going to generate revenue or not for the state, I do think it was looked at as gaming. Certainly the few times that I participate in gaming, I don't expect to win. I know it's a form of entertainment. And I think thoroughbred racing is a form of entertainment and was looked at as a form of entertainment in this state and beyond. And this state had, in Ak-Sar-Ben, one of the premier racing facilities in the country. Its name was mentioned along with Saratoga and Churchill Downs and Santa Anita and Aqueduct. You wonder, though, the marketing firm that decided to come up with the name of a track by spelling the name of this state backwards. Thank goodness our state wasn't called Albuquerque. We'd have had people swallowing their tongues. This is an industry. There are jobs dependent upon it. And the question I think before us is, as Senator Stuthman so aptly put, is this just a remake, a small maneuver in horse racing that is like a new form of marketing for scratch-off cards, or are these gaming, gambling machines? But it's an industry that deserves, given its long history here, a serious discussion about it because I think the future of it is dependent...I wonder...on our decision. I wonder if Senator Lautenbaugh would yield to a question. [LB1102]

SENATOR COASH: Senator Lautenbaugh, will you yield for a question? [LB1102]

SENATOR LAUTENBAUGH: Yes, I will. [LB1102]

SENATOR GLOOR: Senator Lautenbaugh, we've not really talked much about the numbers that relate to this, and I guess my question is, are we talking about numbers significant enough, do we think, that it can make a difference on saving racing in this state? [LB1102]

SENATOR LAUTENBAUGH: Yes, I believe so. Really the only state that we have comparables from, I guess, would be Arkansas at this point. And while this has not led to expanded gambling, the introduction of these machines at the tracks has led to

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revenue that has made that track in Arkansas one of the premier tracks in the nation. And extrapolating upon that, if there was \$100 million in wagering on this, it would probably result in about \$10 million to the various tracks here in Nebraska. [LB1102]

SENATOR GLOOR: Enough money to make a significant difference for years to come, do we think? [LB1102]

SENATOR LAUTENBAUGH: Yes. And honestly, that's the only reason I'm supporting this. [LB1102]

SENATOR GLOOR: And so if someone were to come back with a bill another four or five years from now saying, well, we need just a little more, is that something that you would likely be supportive of? [LB1102]

SENATOR LAUTENBAUGH: That wouldn't be my inclination, no. It took a lot to get me to this point and no further. [LB1102]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. I was also supportive of LR277CA, which was a constitutional amendment that would have allowed satellite wagering. And I was supportive of it because, again, given the storied history of this form of gaming in this state and given our ag roots, and as Senator McCoy even points out... [LB1102 LR277CA]

SENATOR COASH: One minute. [LB1102]

SENATOR GLOOR: ...thank you, Mr. President...how many of us grew up around or directly in contact with all kinds of livestock, including horses, and in some cases thoroughbred horses, this deserves a hard look. And I thought, well, let's take it back to the voters. Let's let the voters tell us whether thoroughbred racing is still important, understanding that the approval of that particular constitutional amendment might save the industry. We didn't get that far and we may not get that far with this bill. I'm still asking questions but I'm doing so from the perspective of this may be it for the thoroughbred industry. And in a state where thoroughbred racing has thrived once upon a time, with our ag roots, is that the right thing to do or does it deserve another opportunity? Thank you, Mr. President. [LB1102]

SENATOR COASH: Thank you, Senator Gloor. Senator Schilz, you are recognized. [LB1102]

SENATOR SCHILZ: Thank you, Mr. President. Sorry about that. Good morning, everyone, and welcome to another lively debate. You know, in all this, I think...I think, and I just got off the...out of the Rotunda with a conversation on this, and there's some pretty substantial feelings both ways and I understand that. But I think in all this that

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there's one thing being lost in the conversation here, and that is the people that have these jobs. We're talking about the breeders of the horses. We're talking about the trainers of the horses. We're talking about the people that work at the racetracks. You know, this is an industry and it is a proud industry. It's been around for quite awhile. Now some might say, you know, well, this is a dying industry; it's going to die anyway. Well, first of all, is it our place to tell anybody which industry should survive and which industry shouldn't? As the state of Nebraska, as a government, a legal industry, should we be the ones going out there and telling them, yes, we deem you okay to survive? I don't want to be in that kind of government. You know, we talk about industries where people have to lose for others to gain. Well, my personal experience being in the cattle industry, almost always if one segment of that industry, whether you're a rancher, a feeder, or a packer, at least one of those segments has to be losing for the others to make any money. That's just the way the cycle works. Okay? So I...you know, I...and I understand what you're saying, that it's a losing proposition. Well, for the past 24 months buying any cattle at all has been a losing proposition as well. So, you know, I look at that. And I mean, obviously, gambling is predicated upon you losing the majority of the time, but you know that going in. I think there's some things that you can look there. You know, when I hear members of the Legislature stand up and say things like "we gave you," well, the last time I remember, the Legislature should give everyone the opportunity to vote on this, and they have in the past. And whenever that vote has taken place, the state of Nebraska recognizes that, respects that, and moves along. That doesn't mean that you can't introduce legislation going forward that changes that; or that maybe you didn't get it quite right. I've seen a lot of bond issues go in front of communities for schools that get voted down one, two, three, four times in a row. And then all of a sudden that community comes up with what fits. But if we do it just once, and we lose, and we throw up our hands and say, well, that's the will of the people, then at some point, guys, there's no reason for us to come back anymore because everything has already been decided. So I look at that and I think that new ideas are essential to a healthy debate. New ideas are essential to being able to do that and to be able to be successful. So the question is, if you vote no today, are you voting for not expanding gambling or are you voting against an industry that has a rich tradition in Nebraska and has done very well to provide thousands of people with jobs, with revenue, and to provide many thousands more with an entertainment out there... [LB1102]

SENATOR COASH: One minute. [LB1102]

SENATOR SCHILZ: ...that you really can't find anywhere else? So, you know, in all this stuff, I like to play devil's advocate once in awhile. I'm not...I'm not sure that you can do anything to turn the thing around. But if people of an industry want something and it is constitutional, I think we need to find out...we need to find that out. Then I don't want to throw...I don't want to say that those 2,000 jobs are throwaway jobs. I'm not ready to do that. Thank you very much. [LB1102]

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SENATOR COASH: Thank you, Senator Schilz. Senator Lautenbaugh, you are recognized. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I will answer Senator Schilz's last rhetorical question. If you vote against this, yes, you're voting against this industry and we are turning out the lights on these thousands of jobs. That's just the long and the short of it. And you can say it's going to happen anyway and maybe that will make you feel better if it eventually does happen should we fail to do what we should do today, but I'm here to tell you this is a chance to save it. And if I'm wrong and it fails anyway, then we're not really out anything. But this is what they tell me they need to survive. I don't see this as an expansion in gambling. And again, we'll continue to quibble about that, but anything that provides more betting on horse racing is not expanded gambling, per se. That just means more people are betting on horse racing. I can't stress enough, if that's your argument then a successful ad campaign at the track would be expanded gambling because more people would show up to bet on horse racing, and I don't think that's what expanded gambling means. It certainly isn't what it means to me. But I do want to be clear because I think we're stealing some bases here when we discuss the Attorney General's Opinion. We obtained an opinion from Denny Lee, attorney at the Racing Commission, because he's an expert in the area. His opinion was clear: This is constitutional. The Attorney General has been represented as saying this is clearly unconstitutional. But words mean things and that's not what his opinion says. At one point he says "likely." Is that better than 50 percent? Is that 60 percent? Is it 51 percent? What does likely mean? I had had discussions with the Attorney General's Office before we went down this road. It was described as unclear to them and now it's described as likely. Well, that's an attorney's opinion. Denny Lee is also an attorney; he gave his opinion. I'm an attorney; I have my opinion. I wouldn't have brought...I wouldn't have prioritized this otherwise. But again, as often happens, sometimes our floor debates do divulge disturbing tendencies that we may have as a body. Who are we to say...? I heard the comment, well, you can't make a living betting on horses. Well, you can't make a living going to the movies either. Maybe we should outlaw movies. I mean, that just doesn't make any sense to me. This is entertainment, folks. It's not something I choose to do regularly or even annually, come to think of it. But I don't think I'm in a position to stand up and say you shouldn't do this or I disapprove of this or this is not how you should spend your money. Senator Dierks, if you went out and earned the money you earned on that trip and then went and spent it somewhere, more power to you. If you went to see a movie, that's fine. If you went to wherever you said you went--I kind of lost that part of the way through--but somehow you gambled it away, so be it. There is a certain amount of choice that we're supposed to have as free individuals as to what we do with our own income. And I get very uncomfortable when we stand here and say, well, people shouldn't do that. There absolutely are problem gamblers. This bill actually provides funds to take care of problem gambling. Our friends across the river may not be doing that, so we have ills

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without the revenue as far as that goes. This bill seeks to address that with the revenue we get from it. We have the remarkable argument that, well, gambling is okay depending on where the money goes. You can't pass this immoral bill because it'll hurt keno revenue. Well, come on. First of all, as Senator Council eloquently pointed out, how on earth can they possibly know that, that this method of betting on horse races is actually a direct competitor of keno? I don't see it, folks. [LB1102]

SENATOR COASH: One minute. [LB1102]

SENATOR LAUTENBAUGH: I just plain don't see it. But that ignores the underlying question: How are we to decide then which form of gambling is okay and which isn't? We allow an awful lot and yet we turn our noses up at this, some of us, and say, oh no, this is impermissible, this is immoral, this is just wrong, this leads to ruin. Well, lots of people have problems with lots of things. There's Internet addiction, there's gambling addiction, there's alcoholism, etcetera, etcetera, etcetera, and we don't outlaw the underlying product. We try to treat those that have a problem. This bill provides for some of that and tries to save 4,000 jobs in Nebraska. In my mind, that's a pretty good deal and I am prioritizing it for that reason. And my stand on gambling has been clear and I support this and you can conclude from that what you will, but I don't see this as an expansion and I see this as the right thing to do. [LB1102]

SENATOR COASH: Time. Thank you, Senator Lautenbaugh. Senator Christensen, you are next. [LB1102]

SENATOR CHRISTENSEN: Thank you, Mr. President. I'm looking around here. I don't see Senator Karpisek. Would Senator Giese yield again to a question? [LB1102]

SENATOR COASH: Senator Giese, will you yield to a question? [LB1102]

SENATOR GIESE: Yes, I will. [LB1102]

SENATOR CHRISTENSEN: Senator Giese, would the horse racing industry be willing to make a tough decision like the irrigators in the Republican did? We looked at putting an excise tax or an occupation tax on our own industry, our own local municipalities. So for you guys, you would have to look at an excise tax, instead of on the activity of irrigation, put it on the horse racing industry and the cities that benefit from the horse racing industries in their cities. Could you not handle this in that matter of having an excise tax on your own industry, like we did in the Republican, on the water, rather than my interpretation as expansion of gambling? [LB1102]

SENATOR GIESE: I'm not quite sure I get the question. I think we got the...let me just say that I think we've got the cart before the horse here. We're talking about an industry that is struggling, has been struggling, has come time and time again. I don't think

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they're in any position to make any judgment on doing something that you're referring to today. [LB1102]

SENATOR CHRISTENSEN: Well, I guess what I'm thinking about, Senator Karpisek, and that's why I looked for him, had mentioned that no one has provided ideas and ways to help the industry, but they want to support it. I'm not one that has stood up and says I want to support the industry or save the industry, I don't believe, but at the same time I can say we stepped up in our area and taxed ourselves, our own communities to save an industry we believed in: irrigated agriculture. Are you willing to work on a bill next year to step up and save your horse racing industry by putting a tax on your own cities and on your own industry? That would be the question. [LB1102]

SENATOR GIESE: I'll just say I would not be opposed to working on such legislation, so... [LB1102]

SENATOR CHRISTENSEN: So there is potentially another avenue here that we could come...thank you, Senator Giese. There is other alternatives that can be done here, and sometimes they are difficult decisions that have to be made. And I have stood up here with a number of colleagues that helped me write my legislation, as well as this whole body has stepped up and said, you know, we're going to give you the opportunity to save your industry. We'll give you the tools; you figure out how to do it. I believe we have the same situation here. If they want to save this industry, I believe they can step up and work with their local communities. They can step up and work with their industry and figure out a way to build that other horse racing facility that I was told in committee they want to build here in Lincoln to replace the State Fair Park one, that they'd be able to deal with this issue, a very difficult issue. And it is frustrating. I would like to see our horsemen survive. Now I'm going to go ahead and say it: I'd like to see them survive. But I look at this as a gambling issue. I don't want to expand it so I guess I'm going to step up and say I think there's alternatives that we can look at and I'm going to challenge these guys to work on this over the interim... [LB1102]

SENATOR COASH: One minute. [LB1102]

SENATOR CHRISTENSEN: ...and bring back an opportunity to work on their industry. Thank you, Mr. President. [LB1102]

SENATOR COASH: Thank you, Senator Christensen. Mr. Clerk, items for the record. [LB1102]

CLERK: Mr. President, new A bill. (Read LB563A and LB1102A by title for the first time.) I have a new resolution: LR539, Senator Fulton. The bills read on Final Reading this morning were presented to the Governor at 10:17 (re LB836, LB879, LB882, LB937, LB937A, LB956, LB1018, LB728, LB951, LB951A, LB1057, LB742). Senator

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Avery would like to print an amendment...no, that's not right. Enrollment and Review reports they've examined and engrossed LB817, LB1109, and LB1109A. Senator Pahls would like to add his name as a cointroducer to LR516. (Legislative Journal pages 1222-1224.) [LB563A LB1102A LR539 LB836 LB879 LB882 LB937 LB937A LB956 LB1018 LB728 LB951 LB951A LB1057 LB742 LB817 LB1109 LB1109A LR516]

And Senator Rogert would move to recess the body until 1:30, Mr. President.

SENATOR COASH: You have heard the motion to recess until 1:30. All those in favor say aye. Opposed, nay. We are in recess.

RECESS

PRESIDENT SHEEHY PRESIDING

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

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

PRESIDENT SHEEHY: Are there items for the record?

CLERK: I have a confirmation report from the General Affairs Committee and a communication from the Speaker to the Chair of the Reference Committee. That's all that I had, Mr. President. (Legislative Journal pages 1224-1225.)

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We'll proceed to LB1102. [LB1102]

CLERK: Mr. President, the Legislature left the issue at noon with the committee amendments pending and an amendment by Senator Avery, specifically AM2348, as an amendment to the committee amendments. (Legislative Journal page 1221.) [LB1102]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will continue with floor discussion of AM2348 to AM2234. Members requesting to speak are Senator Price, followed by Senator McCoy, Senator Avery, Senator Stuthman, Senator Lautenbaugh, Senator Karpisek, and Senator Pankonin. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Thank you, Lieutenant Governor and members of the body. Welcome back from lunch. We're back on this again. And since I last spoke, I did a little research. There are some questions I had on the pari-mutuel wagering and what constitutes that, how that takes over. And I had made a statement about...on the backs of losers. And Senator Giese engaged me and helped me understand a little better

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about how the pari-mutuel pool works and that everybody gets an opportunity to put in their wagers, it's closed, and then it's a percentage of that pool. So we're not really...it's not exactly as I had said it was, but then again it isn't exactly like I said it wasn't. So in given that I decided...in the research I looked at this and I learned some terms and I learned some ideas. Ladies and gentlemen, the way this kind of works in this whole pari-mutuel betting organization, which is currently a legal activity, I believe it's on live races. But the way this works is the house, the agency, the agent taking the bets gets a commission. And that commission is how they make their money. And the question I have is, does anybody here in the Legislature, does anybody here know what the percentage for the house is? Do we know what the average for the national, all the way across the nation, all the different states, how that national average is? In my research it says it's anywhere between 10 to 14 percent. So I would be happy if someone would tell me how much the house gets for their commission on the pari-mutuel wagering. Next question I have in learning was something called the round...rounding. Evidently, when you take, let's say, 14 percent or 14.25 percent, you end up with some odd numbers. So what they do is they round it down to the nearest dime, generally speaking. They like to call this breakage. And the breakage is retained by the betting agent. So you have two revenue streams for the betting agent, you have the commission and then you have breakage. Perhaps we should have a bill, in talking with other senators at lunch, maybe we should have an amendment to this bill that says a breakage, if that's taken, the breakage would go to pay down property taxes in the state. I think that's a great idea. And that doesn't just serve one constituency but would serve the state. So I'll be interested in finding out and hearing more on both the percentage and the breakage. And then there was a third concept, and this was a minimum payout. In some places they have decided to legislate that there will be a minimum payout for each bet. Now you can make it very small and the horse...and the horse racing, in general, of about, oh I guess \$1.02, or we can make it more substantial, it would be \$1.05 or \$1.08, just concepts to be talking about. The next thing I want to bring up in the study...and I did, I went out on the Web. Isn't that a wonderful tool? And what we found out on the Web, this is a problem that the horse racing industry has been facing and dealing with for many, many years. And you know, it turns out, I have the paper here from the University of Kentucky, it's from the Department of Equine Administration out of the university there, and it says an additional ten days of competitive sports would have resulted in a 4 percent decrease in attendance and wagering. That was back in 1987. The question I have for everybody here is,... [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR PRICE: ...we've heard, thank you, we've heard enumerated many times of the various forms we have available. And coincidental to the fact of the decrease in the number of people attending and betting at the racetracks with the various lottery tickets, now we have Mega Millions, between pickle tickets, between all the various forms of wagering we have, see there's a finite pool of people and they're being drawn to other

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things. Now what about this downtown stadium in Omaha? Is that going to take more people away from the ability of the pool of those who would bet? Are we going to come back in three more years because we were successful in getting a professional team here maybe? Now we have to come back and do more and more? I'd like the body to think about these things and also to answer the question, what is the percentage of take for the house and do we have breakage and wouldn't it be better to spend that maybe on property tax? Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Price. Senator McCoy, you're recognized. This is your third time. [LB1102]

SENATOR McCOY: Thank you, Mr. President, members. Would Senator Heidemann yield to a question, please? [LB1102]

PRESIDENT SHEEHY: Senator Heidemann, would you yield to Senator McCoy? [LB1102]

SENATOR HEIDEMANN: Yes. [LB1102]

SENATOR McCOY: Thank you, Senator Heidemann. If you'd be so kind, Senator, would you go into what the fiscal impact would be under this legislation. [LB1102]

SENATOR HEIDEMANN: As the bill is originally, I couldn't tell you exactly for sure. The only thing that I know, that if the amendments are adopted as we see before us now there will be a fiscal impact. Department of Revenue has given us some numbers, of course, depending on if the amendments are adopted or not. They consider there's going to be a revenue loss of not quite \$200,000 a year, right at \$200,000. [LB1102]

SENATOR McCOY: And can you also tell me how it works, if you could, on...I know the amendment, the green copy and also the amendment talks about 1 percent of the first \$100 million and 1.5 percent beyond that. Can you go into...is this tax exempt on the first \$10 million or do we immediately start collecting that 1 percent from dollar one? [LB1102]

SENATOR HEIDEMANN: Just one second. From what we're gathering right now it's from dollar one. [LB1102]

SENATOR McCOY: Okay. So as you see this, this is a \$200,000 a year loss of revenue is your understanding at this point? [LB1102]

SENATOR HEIDEMANN: If the amendments get adopted, because they think that the gambling money, it's a finite source and this actually will take some keno gambling money away. And because we get revenue from the keno money that no longer will be

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there, we will show a revenue loss of right at \$200,000 probably per year. [LB1102]

SENATOR McCOY: Thank you, Senator Heidemann. And, colleagues, as I mentioned earlier in the discussion before the noon break, that finite resource, if you will, is one of my major concerns. As I've said, we use these, as we all know, we use these keno revenues and we can agree to disagree or whatever you want to say on the validity and the usefulness of keno or lottery or bingo or whatever. But nonetheless, our communities all benefit from these keno revenues, particularly in my case the Omaha metropolitan community. And I'm very concerned under this finite resource of where will we plug the gap with these revenues? Where will we come up with this money? What about this contract that the city of Omaha has at \$2 million a year to the baseball stadium for the next 30 years? I'm worried about the taxpayers in my district. That \$2 million will come back on the backs of taxpayers in the Omaha community for this commitment, and it's a good commitment, mind you. I don't have a problem with that. It will bring...it will be a major economic development boon to the city of Omaha to have the new baseball stadium built and finished and completed with a long-term commitment of the College World Series and for all the other purposes that it will be used. But nonetheless, it is a commitment, that if it can't be honored through keno revenues it will come back on the taxpayers in our community at a time when what more can we ask them to assume? [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR McCOY: Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator McCoy. Senator Avery, you're recognized. This is your third time. [LB1102]

SENATOR AVERY: Thank you, Mr. President. I think it needs to be reemphasized that gambling does not create new money. What we're talking about here with LB1102 is really redistributing the existing pool of gambling money. As I indicated in earlier comments on the mike, economists have long argued that gambling activity is largely a negative activity in any economy, because it's not...the money spent on gambling does not create a product, doesn't create something that has some value added to it so that you are creating new wealth. In fact, what it does is to draw...it drains money out of other kinds of economic activity. I think that the legislation partly recognizes some of the negative effects of gambling on society. Otherwise, why would we have 5 percent of all receipts going to the state Racing Commission's Cash Fund to be distributed by the Racing Commission for community betterment grants? Why would we have in the bill one-third of the remainder of all receipts going to the Probation Program Cash Fund? Why would we have one-third of the remaining receipts go the Violence Prevention Cash Fund and the other one-third to the Compulsive Gambler Assistance Fund? Even this bill recognizes the negative social effects of gambling. The risk of gambling is not so

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much losing one's money, although that is a risk obviously, but the bigger risk according to many sociologists and many psychologists is the danger of losing control of one's life. Like other substances and activities that become addictive, games of chance too often turn on their players and the transaction that starts out as entertainment turns into a nightmare for many people. The pattern is quite predictable. What happens is that the tide of gambling expansion begins to create a backwash of addiction. And that is true in many ways that people can't predict. And what happens is that according to the psychologists who have recognized recently that gambling is a form of addiction or can be. The American Psychiatric Association in 1995 made that determination. A researcher at Harvard Medical School reported that gambling is an addictive behavior and has all of the properties of a psychoactive substance. And again, the reason is that it changes the neurochemistry of the brain. It causes excitement, often leading the participant to forget about outside problems and the stresses of everyday life. Particularly electronic gambling of the sort we're talking about here in particular offers a seemingly noncompetitive diversion from reality. Psychologists have also argued that gambling environments are scientifically and socially designed to transport players beyond the realm of rational decisions. One prominent researcher concluded that strong emotional and physiological responses during a session of play is a natural human experience. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR AVERY: The expectation that the player will be able to continue to make controlled and informed rational decisions and judgments is ill-founded; continuous to play becomes the overriding drive. Even for the best intended gamblers, the majority of whom say that they set limits on how much they will lose, they often find themselves out of control and unable to stop themselves. This has potential social pathologies and it's recognized in the bill by the setting aside and earmarking of these funds. So I would ask you to take a very serious look at what we are being asked to do in LB1102. I'm not saying that this is an immoral bill. I'm just saying that look at the consequences, look at the economics, look at the social consequences and look at what it does to other sources of income that we have... [LB1102]

PRESIDENT SHEEHY: Time, Senator. [LB1102]

SENATOR AVERY: ...come to rely upon in this state. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Avery. Senator Stuthman, you're recognized. This is your third time. [LB1102]

SENATOR STUTHMAN: Thank you, Lieutenant Governor, members of the body. I just want to talk a little bit more about, you know, the issue of expanded gambling. You

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know, we...the state had originally...they had the Powerball, which does attract a lot of money. People really bet the Powerball. And the drawings for that, you know, is on Wednesday and Saturday night. But now, you know, I don't think the Legislature did pass anything that we would expand that part of it or the people in the state of Nebraska decided that, yes, we want to expand that a little more and now we have Mega Millions, Mega Millions that we can bet on, and that drawing is on Tuesday and Friday night. So we've got the possibility of winning on Tuesday night, Wednesday night, Friday night, and Saturday night. And that goes on every week, the betting for that. Is that expanded gambling? I would say it probably is because we had the Powerball Wednesday and Saturday night. Now we expanded it to Mega Millions, like I had stated, and the drawing for that is on Tuesday and Friday. I also have a concern about the fact that, as Senator McCoy was stating, that, you know, it's going to take a lot of money away from the keno. I don't really think that it's going to have that large of an effect on it. I don't think that the people that attend, you know, attend the races are going to leave the establishments for the keno and go to the racetracks just to bet on historic racing. But if they do they will leave one establishment and go to another establishment and be also betting. Yes, I realize, you know, the money from the tracks, you know, doesn't filter down into those projects of Omaha. But I really think the fact is I don't think it's going to have a major impact on the people that do play the keno. I really think, in my opinion, that, you know, just offering that one more opportunity at the racetracks that, in my opinion, it's not expanding gambling, it's historic races, actual races that are selected on a machine and then you can bet on that race. You take into consideration, you know, what horse is winning, what horse has been out that many times, just like the form states now when you go to the tracks and bet on simulcasting also. You get that information for those races. But the thing about historic races is you have absolutely no idea whether it was the sixth race in 1941 in Louisville, Kentucky, or if it was the third race in 1947 in California. There's no way that you'll be able to tell because of the fact names are changed and everything like that. And if you have the ability to do that, you know, more power to you. I don't think there's anybody that has quite that amount of memory to remember all those races. I just feel that what we have with an actual racing of horse racing and the amount of time that it takes to run the race gives the people an opportunity as to how much they want to... [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR STUTHMAN: ...do for entertainment. And that's what a lot of people go for is the entertainment. Yes, there are people that come to Columbus when we have the simulcasting. It's the normal group of people that come there, a few new ones once in a while but not a lot. But what really attracts the people is when we have our live meet in Columbus. Sad to say it does cost us a little money. And I hate to see that just for the fact of the amount of people that it does employ in the community and what it does, you know, to an actual race meet. Maybe it should be a die...maybe it should pass on. But the issue, in my opinion, is I think we need to try to keep it as long as possible. The

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people of nowadays want instant results and the most of the results are negative. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Stuthman. Senator Lautenbaugh, you're recognized. This is your third time. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. Senator Avery, will you yield to a question? [LB1102]

PRESIDENT SHEEHY: Senator Avery, would you yield to Senator Lautenbaugh? [LB1102]

SENATOR AVERY: Yes, I will. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Senator. You previously went down a list of some of the things that keno money in Lincoln goes for. Could you give us a brief recap of that. [LB1102]

SENATOR AVERY: I certainly will, hold on just a second. I don't have it right here, but I can tell you that millions of dollars, \$16 million went to Henry Doorly Zoo in Omaha, another \$5 million went to data acquisition and equipment for the Lincoln library system. We had \$1.1 million that went to build a new swimming pool in northeast Lincoln. I think more than \$1 million went to build a swimming pool at Star City Shores, down here on Highway 2. I don't have the actual numbers before me so I'm trying to recall some of those, but it's significant money, Senator. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Senator. So is it your opinion that the advent of keno caused the zoo to be rundown? [LB1102]

SENATOR AVERY: I don't know what caused the zoo to be rundown. I'm not even sure if it was rundown. These could have been improvements. [LB1102]

SENATOR LAUTENBAUGH: Is it your opinion that the advent of keno necessitated the expenditure of funds on the library system or just facilitated it? [LB1102]

SENATOR AVERY: I'm not sure. I think that we had some needs here that we weren't able to meet with ordinary tax revenue, and keno was seen as a way to achieve some amenities that we couldn't afford. [LB1102]

SENATOR LAUTENBAUGH: And did the advent of keno cause the closure of pools so that we had to build more swimming pools? [LB1102]

SENATOR AVERY: I doubt that. [LB1102]

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SENATOR LAUTENBAUGH: Thank you, Senator. See, here's what I have a problem with. We have three things, excuse me, four things we're using this revenue for that we'll get from this new bill, and we're told that this bill must cause these things because that's what we're using the revenue from. That doesn't seem to have been the case with keno. Keno did not cause the zoo to be a little old, keno did not cause the library to need a technology upgrade, keno did not cause the need for swimming pools. Historic horse racing is not causing juvenile violence. Historical horse racing does not create the need for community corrections, which is where another third of the money is going to go. And the problem gambling we're talking about, as I alluded to earlier, is what I believe is arising from across the river but not being handled from across the river. So, no, it is false to say that because that is what we're using the revenue for here that all of those ills are being caused by what this bill would allow--some historic horse racing at a few tracks. That's just a red herring. But we've had a whole school of red herring today. What have we learned so far? Gambling is bad, especially when it cuts into our take. People should spend their money largely as we see fit or they are just wrong. These machines which play actual races from the past and give you winning percentages, average earnings per start, trainer and jockey success, etcetera, before you bet, those are just like slots because they're boxes and they might have lights and buttons on them, so they are slots. No difference, no difference at all because we think they look like them. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR LAUTENBAUGH: And we know what the track should do. Despite the fact that they're in the business and they came to us, we think they should have more simulcasting. According to Senator Christensen, well, they just need to do more simulcasting. I wish that would have occurred to them before we went through all this trouble, but apparently it did not. And they should tax themselves somehow, which is like standing in a bucket and trying to lift yourself up. Maybe they should tax themselves 100 percent, so then they would have 200 percent revenue and the problem would be solved. Folks, we're trying to save jobs here. What do you suppose the fiscal note of losing 4,000 jobs statewide would be? And this nonsense about this cutting into keno, it's curious they didn't come to the committee and say, gee, this is a bad idea, it's going to cut into keno. They must have missed us that day. Maybe they don't have a lobbyist anymore. I don't know. But we sure didn't hear from them. But now we're all worried about their interest because this is somehow going to put keno under. Folks, there's a lot more going on here. [LB1102]

PRESIDENT SHEEHY: Time, Senator. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Mr. President. [LB1102]

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PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Karpisek, you're recognized. [LB1102]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I apologize to Senators Fulton and Christensen when they wanted to engage me this morning in some debate, but I had to go to my office or this place might have melted down. So I will try to control it this time. But if I'm gone again, you know why. Senator Avery is talking about the money in the bill for the problem gambling. And I had a bill last year for slots that were actual slots in the horse tracks. And the people came in with Gambling Assistance and they actually testified that there wouldn't be many more gambling problems because of the slots, because the people that are already gambling addicts have probably already become gambling addicts. We are underfunded in that area and the money there would go for helping those people. Now that was in...they were neutral on my bill. Now Senator Friend had a little problem with that but, besides that, I did ask him why that was and he said exactly, we already have the problem, we need the money, this isn't going to create that many more. Senator Christensen, not a bad idea, thank you, somehow to try to get people to get money in those cities. I don't know. And I appreciate any ideas that people can bring up. However, just throwing them out there and hoping they'll stick probably isn't going to work. Senator Fulton did think that I meant, since we have passed some gambling legislation that passed, that I think this would pass. Absolutely not. I don't know if it would pass or not. I would say that it would be about a fifty-fifty shot if it got out of here. And that's probably a better shot than it has of getting out of here. My argument is that, Senator Fulton, you kept saying that it hasn't passed, nothing has passed. Well, that's just not true. Keno was expanded gambling when it passed; lottery was expanded gambling when it passed. Okay? I don't know if it would pass or not but I'd like to get it out there. I guess, I go back to what are we so scared of, of letting the people vote? If they're going to be mad that we're going to give them a chance to vote then I'll let them be mad at me. Boy, I'm going to let you try to decide on this. So I'll take that heat. Senator Harms also kind of brought up the health bill (laugh) and, hey, I wish we could vote on that one too. People would feel better, but that's not going to happen. This does and would have to...why can't people vote? What is the big deal? Now on this, of course, it wouldn't have to. Because why? Because it's not any different than what's already happening. We've asked about how the money would be split. It would be exactly the same as it is now on simulcasting, no different, just that there would be some machines. Senator Lautenbaugh had me laughing a little too hard when I took the mike. The things that may be slot machines, I would say a pinball machine may be a slot machine because it has bells and whistles and you can win a free game on it. But I don't think that that's a slot machine either. You know, again, last year I had the bill to do slot machines. I heard the body and I heard the people say we don't want them. Okay. I dropped it. I still think that we should have more of a debate on that and send it out to the people to vote on. But... [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

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SENATOR KARPISEK: ...I guess, we're not going to and so I've dropped it. We need to do something to try to keep these people running. I don't think this is a bailout. This is just trying to give them another tool in their toolbox. This is not giving them taxpayer money. This is voluntary money that people go to spend. I do appreciate everyone who is on both sides of this. And I will try to not melt myself or anyone else down for at least a little while. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. Members requesting to speak on AM2348 to AM2234, we have Senator Pankonin, followed by Senator Wallman, Senator Coash, Senator Price, Senator Harms, Senator Krist, and others. Senator Pankonin, you're recognized. [LB1102]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I want to first say that my friend, Senator Karpisek, and myself are on the opposite end of this issue. But I do want to give him my sincere appreciation. During his time as a policymaker here on these issues, he's been a supporter of the Compulsive Gamblers Assistance Fund and a supporter of that influence on this bill as well. And I think that is important and something that I do very much appreciate. Now today, earlier this morning when he was kind of wound up, I went over to him. He had facetiously said that he might introduce a bill to do away with some of these other forms, and I told him I'd sign on, but he laughed, as he is now. So anyway, I just wanted to make three comments here about the bill. The first one is I think maybe we haven't spent as much time as we should on the constitutional question and the fact that we got this ruling today. The thing that I read into this, looked at it a couple of times, is that it's not just one issue with this bill that the Attorney General's Office has brought up but it's several. And I'm not an attorney but when I see something that has had as many questions as this it makes me wonder that there isn't some flaws or some constitutional problems. If you do go to page 12, I'm not asking that you necessarily need to do that, but it asks the question about, is wagering using an electronic historic horse racing terminal a method of pari-mutuel wagering? And it says "likely cannot." And then you move over, it asks about the improper delegation of legislative authority and it says that may be a question. Then it goes on to talking about the issue with the Native Americans and opening up new avenues for that gambling, which is a concern, I think, to some of us, and it says that that could be potentially a question as well. So I think that's the first point I want to reemphasize that, you know, we've had, I think, a pretty strong ruling. I say ruling, opinion from the Attorney General on this bill that I think is important. The second thing are the machines themselves. Now whether they're slot machines or whatever, I don't know that much about it, I'm not going to try to define it. But I do think that it is important to note, as I've mentioned before, I'm interested in the compulsive gambling fund and those sort of things. And we do know from that kind of research that speed is a big factor. If people get that instant feedback and it's quick and that sort of thing, it's stimulating to them, they will spend more. They will bet more, lose more, and it can be

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more potential problems for them. So I think that's important to note that no matter how you classify these machines they are...it's a little different than waiting for that next horse race, that they come at you fast. There is some information that's been passed out. And one of the quotes I wanted to read was about the costs. It's been brought up before but I think it's important again to note the economic impact of video gambling machines in particular is considerable. A leading study from Australia, in 2000, concluded that for every 80 video gambling machines, \$2 million was drained from the local economy each year. Additionally, for every three video gambling machines, two jobs were lost, plus the cost of treating people that have problems, addictive problems with these machines. So I think that's something that you really have to take into account here that we're going at a different way than...there's a horse race involved, but, as we've heard, it can go back to the 1940s. But really that's not the point. The point is it's an electronic, quick feedback, speed is involved to try to get people real involved and that can sometimes lead to addictive behavior. The third thing about the expansion issue, you know we've heard about every side of this issue today, I guess it depends how you define expansion. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR PANKONIN: We are in the same locations, I agree with that, but we are using a different approach to try to get people to gamble more. And, I mean, I think that is the intent is to expand the take, the betting, the activity. And then it gets down to your general philosophy about public policy choices. I'm just not a fan of gambling. I think it's a regressive tax on folks. And if the opportunity ever arose to peel back some of the programs we already have, that's no problem for me because I'd be right there. So I don't think I'm being hypocritical on that one. But appreciate the time to visit with you this afternoon. We've had a long discussion and hopefully we'll come to some resolution here. Thank you. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Pankonin. Senator Wallman, you're recognized. [LB1102]

SENATOR WALLMAN: Question. [LB1102]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on AM2348? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1102]

CLERK: 28 ayes, 0 nays, Mr. President, on the motion to cease debate. [LB1102]

PRESIDENT SHEEHY: The motion to cease debate is adopted. Senator Avery, you're recognized to close on AM2348. [LB1102]

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SENATOR AVERY: Thank you, Mr. President. AM2348 will change page 1, line 3 in the AM2234, which would strike the words "form of horse race that" and insert "an electronic gaming device that displays a horse race." In my opening remarks on this I made a point that these devices are instant racing terminals, even proponents refer to them as that at times, and that what we are really talking about here is a form of slot machines for horse racing and not horse racing itself and, therefore, I think, the definition in the law to indicate that it is an electronic gaming device that displays a horse race. With that, I will close and ask you to vote yes on AM2348. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the closing. The question before the body is on the adoption of AM2348 to AM2234. All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1102]

SENATOR AVERY: Mr. President. [LB1102]

PRESIDENT SHEEHY: Senator Avery. [LB1102]

SENATOR AVERY: I request a call of the house and a roll call vote in regular order. [LB1102]

PRESIDENT SHEEHY: There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1102]

CLERK: 31 ayes, 0 nays to place the house under call. [LB1102]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Cornett, Senator Janssen, would you check in. Senator Avery, all members are present. Members, you are voting on the adoption of AM2348 to AM2234. Mr. Clerk, there's been a request for a roll call in regular order. [LB1102]

CLERK: (Roll call vote taken, Legislative Journal page 1225.) 16 ayes, 22 nays, Mr. President, on the amendment. [LB1102]

PRESIDENT SHEEHY: AM2348 is not adopted. The call is raised. Mr. Clerk, we will move to the next amendment to committee amendment. [LB1102]

CLERK: Senator Avery would move to amend the committee amendments with AM2349. (Legislative Journal page 1226.) [LB1102]

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PRESIDENT SHEEHY: Senator Avery, you're recognized to open on AM2349. [LB1102]

SENATOR AVERY: Thank you, Mr. President. AM2349 replaces what I believe we can all agree is excessively vague and ambiguous language in Section 2 of AM2234. That language reads that the Racing Commission shall require enough of the historic horse race to be televised so as to maintain the integrity of such horse race before a wager can be made. What is enough of a horse race to maintain the integrity? Ten seconds, thirty seconds? If you look at the 2009 Belmont Stakes, Summer Bird won and it won in a half-mile race in 2 minutes and 27 seconds. Ghostzapper won the 2004 Breeders' Cup Classic by three lengths with a time of 1 minute 59 seconds. Would we undermine the integrity of these races by proposing that wagers be focused on the final 5 seconds or 10 seconds or 20 seconds or 30 seconds of any race? What I am suggesting here is that this language be clarified. Supporters of this bill argue that LB1102 is meant to bolster horse racing. If that's the case, then watching the entire race shouldn't be offensive. It's a horse race. Let's watch the whole thing. So the racing industry in Nebraska ought to be eager to endorse an amendment that would require, as this one does, that the entire horse race be shown. Preserving the integrity and the utility of the horse and the agriculture industry should be a central objective. In fact, I support efforts by the University of Nebraska to forge partnerships with Lancaster County and 4-H clubs and equestrian clubs to develop the 84th Street horse park campus. I'm not against that. I think, though, that the university could benefit from such a venue for their horse programs without this legislation. The language in the committee amendment is vague, it is unclear, it leaves too much control up to the discretion of the Racing Commission. If this isn't about expansion of gambling, as we have heard many times, and if it is about preserving the integrity of horse racing and the industry, then watching the entire race would seem to me to be quite reasonable. Watching the entire race would contribute to maintaining the integrity of the sport. If, however, what we're looking to do is speed up the opportunities for betting then, yeah, let's leave it up to the Racing Commission to decide what is enough of the race. Let's let them decide that. And I suspect that you will see that the result will be a pretty fast turnaround on these wagers, maybe close to that of a spin. So I think that let's take a look at this. We're not asking for a whole lot; just say make it clear what is enough. Enough ought to be the entire race. Watching only the photo finish so you can get quickly to your next wager should not be what this is about. If it's not about that then let's support this amendment to view the entire race before a wager can be made. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Avery. You have heard the opening of AM2349 to AM2234. Members requesting to speak are Senator Coash, followed by Senator Price, Senator Harms, Senator Krist, Senator Fulton, Senator Schilz, and others. Senator Coash, you're recognized. [LB1102]

SENATOR COASH: Thank you, Mr. President, and thank you, members. Listened carefully through this morning, through the afternoon. And want to talk for a moment

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about a provision in the Judiciary Committee amendment that I pushed for very hard that I think is an important piece of this bill that we haven't talked about. Should we look at tracks across the state differently? Nebraska has five racetracks: two in big cities, three in smaller communities. Do we think that gambling problems in those communities are going to be proportionate to the size of those communities? Do we think that maybe gambling addictions might be more prevalent in communities that have more access, such as Senator Lautenbaugh has mentioned across the river to our friends? This gambling problem is going to be different when you have options that are 3 miles away versus options that are 180 miles away. I think we'll see a difference. And that's why it was important for me that when we discussed AM2234 that we give the local counties the option to say, hold on a second, this is our track, this is where we are and this is how we feel about it. Omaha citizens might view this a little bit differently than citizens in Columbus. Omaha citizens and the leaders politically in the Omaha community have to take into consideration what's three miles away? Columbus has a different consideration. I don't look at this part of the Judiciary Committee amendment as passing the buck. I think what we're asking is that those who are closest to the people examine this issue and make their decisions with their constituents, as mine as well. We've had a lot of talk about keno revenue. If you have a community with a track in it that depends heavily on keno revenue to support its education or support its parks or whatever it supports, then that community might look a little bit differently and say, you know what, we have a small community, we only have so many entertainment dollars that we think can be spent in our community, we don't want to take the risk of additional opportunities, and so we're going to say no. I think that's an important piece of this legislation. It's reflected in the Judiciary Committee amendment. And I think it's a good amendment, from that part of the amendment, I guess. I have reservations about all the other places that we're going. But giving the local county boards the option of saying if this is what we want we'll take it, if we don't we're not going to, I think is important. And I don't think it's passing the buck. And I think we as a Legislature pride ourselves on local control. I think this amendment gives us that. And I think we can trust our local elected officials to say, this is okay for our community, this is not okay for our community. So I just wanted to bring that up because, after all the debate, nobody has talked about the fact that if this amendment passes it's not a done deal, folks. These machines don't all of a sudden show up in tracks across the state the day that this bill goes into effect. Then the racetrack has got some work to do. They have to go and talk to the citizens of the community where they want to have racing and they have to convince them that this is an okay thing. And then, through the county board, they have to approve it. So since we didn't have any part...I just hadn't heard any of that discussion. I thought it was important that we consider that. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR COASH: And with that, I'll yield the rest of my time to Senator Lautenbaugh, if he chooses. [LB1102]

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PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 50 seconds. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And thank you, Senator Coash. Some things I didn't get to last time at the mike that I think are important, it's all well and good to say you support a new track in Lincoln, but if you kill this industry and you don't support this bill that's likely not going to happen. And it's all well and good to say you support the equestrian programs at the university, but they won't have a place without a track. And without this bill they likely won't have a track. And we stand here talking about whether or not under this amendment--which I don't think is a serious proposal, I think it's probably more for delay than anything else--whether or not we should require them to watch the entire race, whether we should substitute our judgment for the Racing Commission. We specifically discussed that in committee and we left it up to them. I think you can watch half a football game and get the gist of it, I think you can watch the last five minutes of a basketball game and I'm good... [LB1102]

PRESIDENT SHEEHY: Time, Senator. [LB1102]

SENATOR LAUTENBAUGH: Thank you. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Coash. Thank you, Senator Lautenbaugh. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Thank you, Lieutenant Governor, members. Well, in the last hour, since I last spoke with you, no one has come up to me to clarify what the percentage the house takes. So I guess we don't want to talk about that. But here's what I would like to talk about. Sitting in the General Affairs Committee, we hear a lot of different variations on strategies to increase or to expand or whatever word you want to wrap around putting available more gambling in Nebraska. And one of the issues we had is they wanted to be able to lower the number of horse races at a track yet maintain the ability for the offtrack betting. And the problem with that was, and I'll stand corrected as we get more exact here later on, but you have to have a minimum number, a percentage of the total races of the prior year run to be qualified for having the offtrack betting in your facility. And in listening to these bills, what we've learned is there are two...ladies and gentlemen, there are two entities within the horse racing world, I would say parent entity. One is the house, the establishment where the betting takes place, the track. The other one is the community of horse owners, trainers, laborers. And let me assure you those two groups are not on the same page at all times. And anybody who sat through the General Affairs hearings knows this. And I believe this legislation will drive a deeper wedge between the two groups. And I say this because by allowing machines that run a partial race to have a return of up to 14 percent, or whatever that number is that we haven't been told yet, will play to the advantage of the house. I

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haven't heard someone say how the percentage of take will actually help those people in the horse racing industry. The Benevolent Horsemen's group has come before our committee and testified against certain bills within the horse racing industry because of the difference between wanting to run fewer races. Know there's a cost to putting on a race. You have to hire a lot of people. The house would rather not do any of it. Matter of fact, I've heard that the house would just rather be able to run the offtrack betting and sell the alcohol the whole day and not even have to do anything pesky with the horses. And if you doubt me, where are the dogs in Iowa? The dogs don't run anymore. Horses don't run anymore, the boats don't run anymore. It's all about putting down the anchor, getting the churn, getting the turnover on the play. So if you think by voting for this underlying bill you are helping the industry, be assured, in my opinion, you're not necessarily directly helping the owners and the workers; you're helping the house. You're driving apart the two main groups within the entire industry, the house and the owners. And I don't believe you're getting to where you want to be. And with that, I'd yield the balance of my time to Senator Avery, if he would like to use it. [LB1102]

PRESIDENT SHEEHY: Senator Avery, you're yielded 1 minute. [LB1102]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Price. Mr. President, I wish to withdraw AM2349. [LB1102]

PRESIDENT SHEEHY: AM2349 is withdrawn. Mr. Clerk, we will move to the next amendment to committee amendment. [LB1102]

CLERK: Mr. President, Senator Avery would move to amend with AM2350. [LB1102]

SENATOR AVERY: I wish to withdraw that one, too, Mr. President, and the next one, AM2352. [LB1102]

PRESIDENT SHEEHY: AM2350 is withdrawn. [LB1102]

CLERK: I have nothing further pending to the committee amendments, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Mr. Clerk. We will now return to floor discussion on the Judiciary Committee amendment, AM2234. Members requesting to speak are Senator Krist, followed by Senator Schilz, Senator Janssen, Senator Giese, Senator Karpisek, and others. Senator Krist, you're recognized. (Legislative Journal page 924.) [LB1102]

SENATOR KRIST: Thank you, Lieutenant Governor and colleagues. I think that anyone who's ever been in the restaurant business or been associated with anybody in the restaurant business or have been to a restaurant in their life, which should encompass

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or include just about everybody in this room, will realize that the largest margin of profit is not in the food but in the alcohol. The largest margin in profit that keeps the tracks running, that keeps the horse industry alive is not in the live racing; it is in those things that support the live racing. You've been given examples of how slot machines, "nonslot" machines, pari-mutuel, offtrack have supplemented the horse industry and the tracks. We've spent a lot of time in this session talking about specifically how by moving the fairgrounds we will be eliminating one of the five opportunities for live horse racing. I sat in General Affairs and heard the same kind of dialogue that Senator Price talked about just a few minutes ago on the mike. And to me, you all have your minds made up one way or the other. I'm not sure I do right now. I'll listen to the rest of the debate, whatever exists. But I am going to tell you one thing. I have heard off the mike and from colleagues and from others that the horse industry, racing industry in this state is dead, let it die. I take great offense because the people who came before our committee, the families that own the ranches that help with the 85,000 quarter horses in this state, 35,000 of which are racing, and families involved in that racing are going to be allowed to die. Their economy is going to fold up or they're going to take their horses into another place to race. Are we expanding gambling? Again, I reserve the right to vote at the end of this debate. Are those machines slot machines? I believe the jury is still out on whether you would define it as a slot machine. Is the AG's Opinion correct? Will the Supreme Court uphold what we have done if there are contests? I don't know. But as I stand here today, no matter what my vote is, I pledge that if I come back to this body in January I will do everything I can to help the horsemen's industry survive for the family ranch and the family farm. Thanks for your time. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Krist. Senator Schilz, you're recognized. [LB1102]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I think I want to thank Senator Krist for remembering most of what this debate is about. And it's about the families and the jobs and the livelihoods of what these men and women do every day as a part of this industry. It's important to me to see those kind of jobs stay around the state of Nebraska. I don't think they're...I think they're good jobs, I think it's worthy work that people should be proud of doing. And, you know, it's that important to keep these around. If it's 4,000 jobs or 2,000 jobs or whatever, I mean, let's remember the jobs and let's remember the economic impact of those jobs if they're not there anymore. And with that, I'd yield the rest of my time to Senator Lautenbaugh, if he'd like it. [LB1102]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 3 minutes 50 seconds. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And it does look like we're moving to a vote on this. And that's a good thing. But I would urge

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you to not have the sentiment of, oh, I pledge to come back next year and do something different. And we've heard a lot of ideas expressed here. We heard that there might be a difference between the house and the breeders and the other horsemen, etcetera. Now we can stand here in the lobby and speculate as to who may be for or who may be against this, but I don't think we have to. I mean you can look at the committee statement and see who came in and testified, and that pretty much tells the story. And if it's your belief or your supposition or if you want others to believe that somehow one group of breeders is for this and one is against it, and the house is somehow for it and some houses are against it in this industry, well, you're mistaken because we've heard nothing but unanimity of support from the industry on this. There was no opposition from the industry in committee. My e-mail has not contained any opposition from people that are actually in the business because they know what I've been telling you, that we're faced with lights out here if we don't do something at long last. And I feel like we're just grasping for reasons not to do this. And I would submit to you that we've had these debates before. And I've always said the slippery slope argument is always invalid, unless I'm the one making it. But it is invalid in reality. Last year we had another bill that dealt with a tobacco product of some kind, I don't recall, and there was going to be one of those outlets on every corner if that bill passed. And there are five of them. Now we have a very modest bill that would legalize these things at the tracks and we're being told of all the ills that will flow from this. Ignore the jobs we're saving, ignore all of that, somehow the ills will flow and there will be this huge proliferation. And despite the fact that I believe every time Nebraskans have been able to vote on horse racing at the ballot they've approved what we've suggested, and I would submit to you that if you went out and explained what these machines actually were and said to people, do you really care if these things are located at the track or not, you would get a resounding, no, why would we care? Why would we worry about that, having machines that portray horse racing at a horse racing track? [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR LAUTENBAUGH: It's almost like we're fearful of the fact that it's a machine, like you know the camera can steal your soul, somehow this machine is going to do something to you like the...you know, the simulcast ones don't, apparently, but these do. And we talked about how we should just have more simulcasting or that we should have the races somehow more quickly or less quickly or whatever it is in our opinion. But, folks, we're the amateurs at this. The people in the business, from the farms to the tracks, are telling us this is what they need to survive. It would be great if we would just listen, just listen and do what the right thing is for 3,000 or 4,000 working Nebraskans. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh, Senator Schilz. Members requesting to speak on AM2234, we have Senator Janssen, followed by Senator Giese, Senator Karpisek, Senator Price, Senator Nelson, Senator Harms, and others. Senator

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Janssen, you're recognized. [LB1102]

SENATOR JANSSEN: Thank you, Mr. President, members of the body. Originally, I was thinking about calling the question. Obviously, it's too late to do that at this point in time. But I don't have much to say on it and I plan on yielding the balance of my time to Senator Lautenbaugh, if he does take it. But the few things that I've taken from the debate, and I've listened intently in my long history in this body, which now is, I believe, exactly 150 days of service, there's not many bills where I'm dead set against that I start to move off of a little bit, and this happens to be one of them. I came here, like many of you, and ran on the, I guess, not the total platform but the idea of, no, I don't support expanded gambling. I told Senator Lautenbaugh as much last summer when we talked about this issue, I don't support expanded gambling. And we started talking today, is this expanded gambling? Senator Pankonin brought up something when he was speaking that I took note of. And to his credit, he's against gambling and he said that. He said he would probably, to paraphrase, get rid of it if he could. But he did say this doesn't...he's not sure if it expands gambling, he says, but it does encourage more gambling. And I think that's what it's intended to do. Yes, it does encourage more gambling at one site, just for the same reason they changed scratch tickets at the convenience stores. They have different games for bingo. They encourage the same product to be used in a different manner. And that's what I'm starting to struggle with and thinking that it is the same product. So as I...I'll continue to listen here. I'm kind of caught in that in-between side of I love horse racing. In fact, I'm going to be gone for a few...oh, I'm not going to miss any days this year, but I'll be at the Kentucky Derby later next month, so I'll be enjoying that. And I will put a wager down. And I believe they do have historic horse racing. I think they just added that there. It wasn't there last year. And I'll probably bet \$10 a race and I'll probably lose every race, like I usually do. And I can afford it, \$10 a race, and I won't become addicted to it when I come back and I probably won't go gamble every weekend, and I don't think I have since last year's Kentucky Derby. With that, if there is any time left, I'll yield the balance to Senator Lautenbaugh. [LB1102]

PRESIDENT SHEEHY: Senator Lautenbaugh, you're yielded 2 minutes 40 seconds. [LB1102]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Janssen. Briefly put, I'm not sure we're still changing any minds here. If we were before, I don't know that we still are, I should say. I've made my appeal repeatedly on this. And I do thank Senator Giese for bringing this bill and Senator Ashford for his work on it. I sound like I'm closing and it's not my bill to close on. But I do say this, and I mean this: I have always opposed expanded gambling, but I have also always opposed job loss. And I don't see this as something new we're bringing in from out of the state. I see this as allowing what goes on at horse tracks to continue to go on at horse tracks, albeit in a slightly different form, though not in an unconstitutional form, in the opinion of Mr. Lee

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from the Racing Commission and my opinion, for what it's worth. And I would just urge you again to please support the committee amendment, support the underlying bill when we do get to a vote on this. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Lautenbaugh. Senator Giese, you're recognized. [LB1102]

SENATOR GIESE: Thank you, Mr. President. There's been a handout just here lately. And I'd just like to touch base on that with you, colleagues. And this really, in my opinion, gets down to the crux of the matter. Senator Schilz talked about it a couple of times already today. And that's on the basic hardworking people involved in not only this industry but lots of smaller industries throughout this great state. Let me just quote from some of the testimony in the committee hearing. Horses create many jobs for people. Typically, at each track in Nebraska, whether it be in Grand Island, Lincoln or Columbus, 1,000 horses will be stabled on the grounds. Along with the horses, another 500 people travel with the circuit living on the road in whatever town we happen to be. Each horse individually generates about \$15 an hour labor cost and nearly \$10 an hour supply cost per day. Now all that money mostly goes back into the communities that these tracks are in. There is roughly...that is roughly \$25,000 per day per horse that are directly backing the economy of these towns that have horse racing. And I think that that is the general consensus of this bill is that it's an effort to save an industry that has been struggling. And I think this bill will do that. And I appreciate your attention, Senator Janssen. Thank you for staying with us. I know it's hard to get you off of a position. But if we can do that, we've accomplished something. Thank you. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Giese. Senator Karpisek, you're recognized. [LB1102]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Senator Price had talked earlier about the referencing of this bill. So I thought I'd talk a little bit about that now. And although these bills usually would come to General Affairs, my main concern was the constitutionality issue--and, lo and behold, we are in the middle of it--and I thought that the Judiciary Committee could handle it better. I expected the request for the opinion to come much sooner, as one did on my bill last year. And then that just sat and we never did get an opinion on that, which I find a little bit ironic. But that's all right. This one seemed to get cranked out pretty quickly. Attorney General Bruning, I would consider him my friend. I probably shouldn't do that to him but I'm going to consider him my friend and I think he does a good job. I will say that he is an attorney, that it is his opinion. Now we can't say 100 percent by this opinion which way this is going to go. And again, I do admire the man, but he is antigambling. We've known that, he's always been antigambling. So when an opinion comes out, I think he's going to lean that way whether he means to or not. So I respect the opinion. He may be right; he may not be right. I'm not surprised on his opinion, that's for sure. But I think that

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we do have to remember that it's an opinion. We can't just say, oh no, this is just not going to be constitutional. I don't know. That's the way it works. That's one of the techniques here to try to get a bill held, screwed up, whatever you want to do to it, but it is a technique and it works quite well. It's worked well on this bill, I suppose, because I don't know that it changed anyone's minds. I know it changed a lot of minds on my bill last year when we couldn't get an opinion and so nobody wanted to vote a possibly unconstitutional bill out of committee. And it had me a little bit nervous, too, although I'm sure that mine was not going to be found unconstitutional. This bill again is another way to try to help the racing community. I don't feel it's a bailout. It's not tax money. Bailouts are tax money. This is a way to help them help themselves. Now as I've been involved with these groups for about four years now, yeah, they don't always see everything eye to eye and I don't think any group ever does. And I know in some committee hearings some of the senators have told them, you guys need to sit down and regroup and work on issues and try to make it better for yourselves. And I think they've come a long way with that. They're trying; I guess just running out of ideas on what to do. I wish that there was an easier fix. I wish it didn't have to have a different kind of gambling. I wish it could just work. I still believe that if we could get the new track here in Lincoln that they would do much better. And really, in my opinion, after we would help them get that track and it doesn't work, I would probably even be done to say, well, I don't know what else we could do, we've tried everything. Even I would probably throw my hands up in the air and give. I'm not to that point yet. Again, I think there are different ideas. And I'd be more than happy to hear some of them. [LB1102]

PRESIDENT SHEEHY: One minute. [LB1102]

SENATOR KARPISEK: I think it's going to take some real brainstorming to keep them around. I think Grand Island has a lot to lose at Fonner Park if they don't...if they're not able to keep racing. I think Lincoln, I'm a little bit confused maybe on the Lincoln senators that they don't seem to worry too much about the racing community here in Lincoln. I think that that's a big income for the city of Lincoln and I hope that they think about that as they vote on this. Thank you, Mr. President. [LB1102]

PRESIDENT SHEEHY: Thank you, Senator Karpisek. (Visitors introduced.) Continuing with floor discussion of AM2234 to LB1102, members requesting to speak: Senator Price, followed by Senator Nelson, Senator Harms, Senator Lautenbaugh, Senator Avery, Senator Stuthman, and Senator Council. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Question. [LB1102]

PRESIDENT SHEEHY: There has been a call for the question. Do I see five hands? I do. The question before the body is, shall debate cease on AM2234? All those in favor vote yea; opposed, nay. Senator Price. [LB1102]

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SENATOR PRICE: Call of the house. [LB1102]

PRESIDENT SHEEHY: There has been a request for a call of the house. The question before the body is, shall the house be placed under call? All those in favor vote yea; opposed, nay. Please record, Mr. Clerk. [LB1102]

CLERK: 29 ayes, 0 nays, Mr. President, to place the house under call. [LB1102]

PRESIDENT SHEEHY: The house is placed under call. All unexcused senators please report to the Legislative Chamber. All unauthorized personnel please step from the floor. The house is under call. Senators, please record your presence. Senator Price, all members are present or accounted for. Members, the question before the body is on the motion to cease debate on AM2234. There's been a request for a roll call in reverse order. Mr. Clerk. [LB1102]

CLERK: (Roll call vote taken, Legislative Journal pages 1226-1227.) 11 ayes, 30 nays, Mr. President. [LB1102]

PRESIDENT SHEEHY: The motion to cease debate is not adopted. The call is raised. We will resume floor discussion on AM2234. Members requesting to speak are Senator Nelson, followed by Senator Harms, Senator Lautenbaugh, Senator Avery, Senator Stuthman, Senator Council, and others. Senator Nelson, you're recognized. [LB1102]

SENATOR NELSON: Thank you, Mr. President, members of the Legislature. I haven't spoken up until this time, so I'm glad that we did not cease debate. All I'm hearing today is that this is a jobs bill. Colleagues, this is not a jobs bill, it should not be a jobs bill. There has to be a better way to help the racing industry in the state of Nebraska, and it's not up to us to pass legislation that's going to expand gambling and put it on the backs of people who are losing money and are affecting families and bringing about a lot of things in the state that are undesirable, and those have already been recounted. Has anybody bothered to read the opinion from the Attorney General? No one has talked about that. Senator Lautenbaugh has referred to an opinion by Dennis Lee of the Racing Commission. Dennis Lee says: I think it's constitutional, the people in Arkansas think it's constitutional, and that's all there is. You have in front of you, if you've had a chance to read it and taken the time, a 17-page opinion from the Attorney General's Office. And I take a little exception to Senator Karpisek insinuating that it's in favor of not passing this because he's against gambling. This was not written by the Attorney General. It was approved by him, but I believe the attorney that did it is Jay Bartel. I don't know him, but I have to believe as an attorney and doing all the work that he's done, which reads very, very well and very competently, that he's an impartial person here just telling us what the law is. And I can tell you if you want to pass LB1102, I think it's going to be turned down by our Supreme Court. I think we are going beyond our

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authority here. In 1988, they made an exception to increase pari-mutuel betting to simulcasting, and at the same time, because there was a doubt about intrastate racing, they passed that too. What they were talking about, and you will see this in page after page of the Attorney General's Opinion, was live racing. It appears several places, the term "live racing" appears in the statutes that are cited here. We're not talking about dead racing, as somebody referred to it, or as doing rerunning or races that have taken place before and now we're throwing on a screen that resembles a slot machine. Reference is made here to several opinions in which exactly what we are doing here today has been declared unconstitutional, particularly in light of the wording of our statute. And I'm not going to go into that, it would take too long and I don't have the time. The Wyoming court considered this question and they found that, regardless of what it was called, it was a gambling device. It was a slot machine that was misrepresented as gambling, not gambling but as voting in a simulcasting manner. And there again, I've looked at that opinion and it pretty much follows what we are seeing here and what we are doing here today. One thing that hasn't been mentioned, if you look at the opinion and part 4 (sic), I think Senator Fulton requested that, regarding to gambling on the reservations. This is considered a Class III type of gambling, and if we pass a type III type of gambling here through this legislation, then we are going to have to negotiate with the Indian tribes and work out some sort of... [LB1102]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR NELSON: ...a contract with them. And if you think that's not going to happen, I think you're sadly mistaken. They don't have to do a full-fledged racetrack. All they have to do is put a quarter horse racetrack in and run some races, and they've got racing that they can simulcast and they can go ahead and do this type of gambling. And this is not something that I as a legislator from Omaha want to see in light of what we already have in place across the river. I urge you, regardless of what you had heard today, to consider the constitutional implications to take a look at this or at least find out a little more about what they are and think in terms of what are we doing here? Are we passing legislation that is obviously unconstitutional in light of the wording of our constitution? This is not live simulcasting placed on a slot machine type of thing. This has to be... [LB1102]

SENATOR LANGEMEIER: Time. [LB1102]

SENATOR NELSON: ...live. Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Nelson. Those wishing to speak, we have Senator Harms, Lautenbaugh, Avery, Stuthman, Council, Schilz, Fulton, and others. Senator Harms, you're recognized. [LB1102]

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SENATOR HARMS: Thank you, Mr. President, colleagues. There was a study done by Richard John...excuse me, a researcher by John Warren Kindt. I'm going to spell that to make sure I pronounce it right, K-i-n-d-t, and he stated in this research that you cannot gamble your way to prosperity but you can gamble your way into more recession and even depression. And he's a leading researcher. He spent 20 years in regard to researching gambling, both nationally and internationally, and he has just recently published a book--it's five volumes--in regard to gambling in the United States as well as internationally. And what he found, what I thought was rather interesting, he said that in his findings both...keep in mind, this is internationally as well as this country, that gambling fails valid cost-benefit analysis similar to proposals that seek to legalize marijuana and addictive drugs. He also found that history shows that government internationally does have some problems in regard to gambling and the gambling actually begins to control government in some of the countries internationally. Government-sponsored gambling is second to only the big oil and oil dependency as most threatening catalyst for worldwide economy and for financial destabilization. He also found in this study across the country and the world that crime jumps 10 percent on the areas where we have casinos, and personal bankruptcies soar between 18 and 42 percent, and the number of new addicted gamblers double. What's interesting in his study, he identified Australia has the world's highest concentration of gambling, but it also has the highest per person social cost of any industrialized nation. So it definitely tells us that there's an issue with this and a problem with it. What I found interesting--and, Senator Lautenbaugh, you might be interested in this--despite job creation claims by gambling industry, you know where their money goes? Ninety percent internationally of gambling revenue goes into slot machines which create new...which do not create new employment. And that's exactly...that particular area is exactly the thing I talked about earlier in regard to how people view gambling and what their choice is. They have a choice in what kind of gambling they're going to do. It's not going to be horse racing. It's going to be slots. It's going to be that aspect of it. And it almost goes out of sight, it's probably 78 or 79 percent of the people in this nation, this great country, would choose the slots for it. And as I said earlier in this particular chart that in order for horse racing to even get off the scale, up on the scale, they had to add dog racing to it. There has not been and there is not a great deal of interest nationally in regard to horse racing and in regard to these games. I believe very strongly that we are really expanding the gambling aspect, that's what it's about. We got a failing industry that without the use of these machines, they have no future, they have no hope. Now I want to make it very clear that I am not against the ranchers or the farmers or the people who raise horses. They do some great things. That's not a problem with me. [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR HARMS: Thank you, Mr. President. I'm really addressing the issue of

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gambling. During the break today, I had a couple of young teenagers stop into my office and say we'd like to talk to you about this bill you're debating. I said, well, that would be great, I'd love to visit with you. And they said, why are you so against our family farms and ranches? And I said, honey, I'm not against your farms and ranchers. It all boils down to gambling, what the costs are to gambling, what creates the issues, because this country pays a great deal for people who are...quite frankly, cannot control their gambling urges. We see a tremendous increase in the number of young teenagers getting involved both nationally and internationally, and we're headed for some really serious issues here, colleagues. So I would urge you, as we continue this debate, which I am sure we're going to be here for a while, that you oppose this bill. Thank you, Mr. Colleague...thank you, Mr. President, colleagues. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Harms. Mr. Clerk for a motion. [LB1102]

CLERK: Mr. President, Senator Avery, I understand you now would like to reoffer AM2349 as an amendment to the committee amendments? (Legislative Journal page 1226.) [LB1102]

SENATOR AVERY: That is correct. [LB1102]

SENATOR LANGEMEIER: Thank you. Senator Avery, you are recognized to open on AM2349. [LB1102]

SENATOR AVERY: You will recall...thank you, Mr. President. You will recall that when we were discussing this previously, AM2349 is designed to clarify the language that is in the committee amendment which says that the Racing Commission shall require that enough of the horse race is shown to retain the integrity of the race itself. I argued at that time that this is vague and that we need clarity, and that in order to get clarity I think that it makes sense to adopt this amendment which states that the race shall be shown in its entirety. So the commission does not have the discretion to decide that you're only going to show ten seconds of the race or maybe the photo finish of the race. We are talking about vague and unclear language. This, I think, the language in the amendment leaves too much to the discretion of the Racing Commission. If this is not about expanding gambling, and we've heard a lot about that, if it's really about preserving the horse racing industry, then let's preserve the entire integrity of the horse race. Let's let the entire race be shown before a wager can be made. My concern is that the Racing Commission would require only the last five seconds or so of the race, which will allow for the quick turnaround of wagering, which is of course a well-known characteristic of video slots. So I am asking you to approve this amendment that will allow the entire integrity of the...the entire race to be shown and the integrity of the race to be maintained. While I have the microphone, I would like to call your attention to a law that was passed by the 104th Congress of the United States that set up a commission known as the National Gambling Impact Study Commission. That commission was

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charged with conducting a comprehensive legal and factual study of the social and economic impacts of gambling at all levels of government, federal, state, and local, and also to look at the impact among Native American tribal governments. The interesting thing about that task force or that commission is that not only did they recommend that gambling be restricted to those who are at least 21 years of age--not 19 as we have here in the state of Nebraska but 21--they also recommended that warnings regarding the dangers and risk of gambling, as well as the odds where feasible, should be posted in prominent locations in all gambling facilities. Why would you want to do that? If gambling is a good activity, why would we be talking about the dangers and risks of gambling? They also recommended that the states where there was little regulatory oversight that would allow them to properly manage gambling, that they should create, to the extent possible, organizations and go-to organizations that are involved in managing lotteries and supplying lotteries to go through a vigorous licensing process and to adequately create regulatory capabilities. They ask that and recommended further that states should publicly develop and review regulations of their gambling in all forms to use best practices where possible and to adopt these legislatively. But here's what I want to get to: This is the...in chapter three of that report, page...recommendation 12...I'm going to read it twice: The commission recommends that states should refuse to allow the introduction of casino-type gambling into pari-mutuel facilities for the primary purpose of saving a pari-mutuel facility that the market has determined no longer serves the community or for the purpose of competing with other forms of gambling. That bears directly on our discussion here. The commission recommended that states refuse to allow the introduction of casino-type gambling into pari-mutuel facilities for the primary purpose of saving a pari-mutuel facility that the market has determined no longer serves the community or for the purpose of competing with other forms of gambling. What they're saying here is that if a form of gambling cannot survive in the marketplace, if it cannot survive by what it contributes to the economy, if it cannot survive by what it offers to consumers, then it should not be propped up by other forms of pari-mutuel gambling, and specifically that other forms of pari-mutuel gambling should not be introduced into those facilities. I'm not saying the federal government is always right, but you ought to know that this was a group of people who are experts in the field of gambling and they knew a little bit about what they were discussing. There are other issues that we're going to want to talk about. I've refiled all of my amendments. This one that we're talking about right now simply clears up the language that now reads, "enough of the race should be shown to maintain the integrity." I'm suggesting that it ought to be the entire race. This is, after all, the integrity of the horse race itself, so let's watch the whole thing. Let's not allow for the quick turnaround of wagering which does get into expanding gambling, in my view. With that, I will close for now. Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator Avery, your light is on and you are next. Do you want to waive that opportunity? [LB1102]

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SENATOR AVERY: Thank you, Mr. President. I have a couple of comments that I would like to make about the Nebraska Lottery. We have discussed already the impact that this bill, if passed, would have on keno funds and pickle card funds. We talked at length about the valuable contributions those funds have made to community betterment, and that's why they're called community betterment funds. The fiscal note does, in fact, specifically address the likely impact on keno and pickle card funds. In fact, it speaks about the likely probability that about \$198,000 in fiscal year 2010-11 would be lost in pickle and keno card revenues. They also estimate that a reduction in the Charitable Gaming Cash Fund of about \$132,000 would result in fiscal year 2010-11 from this bill. They do not address the impact on the Nebraska Lottery. I suspect that there is an impact there as well, but what might that mean? Well, here's what might be threatened: Since 2004, the Nebraska Lottery has put almost \$127 million in the Education Innovation Fund. It has put an additional \$41.4 million in the Nebraska Scholarship Fund. It has generated \$149.7 million in the Nebraska Environmental Trust Fund, another \$14.1 million in the Nebraska State Fair Support and Improvement Fund, and another \$8.5 million in the Compulsive Gamblers Assistance Fund. These are worthy investments of lottery money. What happens to that money? How much do we lose as a result of the siphoning off of gambling money? We have discussed in here already numerous times that gambling...there is a...it is a finite pool of money. Gambling activity does not generate new money, it simply moves money around. It does not create anything of value. It is largely a negative economic activity. So if we already admit that LB1102 if passed will, in fact, siphon off money from keno and pickle cards and would deny money to the existing Charitable Gaming Cash Fund, then what we need to ask ourselves is: What about the lottery money? That's a significant amount of money. What happens there? How much will be lost? What will be, then, the impact on important programs that those lottery funds now take care of? Senator Heidemann mentioned the likely impact of about \$200,000 on the State Treasury in these lost funds. I don't remember us talking about the lottery money, but I suspect if you figure that in, it's probably going to be more than \$200,000. So let's not just talk about jobs. Heard a lot of talk about jobs, but you did not hear much talk about what happens to the surrounding areas where these gambling venues exist. All the evidence I have seen is consistent in showing that what happens when you create gambling venues of this sort or you expand it, particularly, you take money from the surrounding neighborhoods, you take money out of retail, you take money out of lending institutions because you're not creating new economic activity. [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR AVERY: I'm sorry, Mr. President? [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR AVERY: Thank you. You're not creating new economic activity. The money

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that is generated within the gambling venue is spent within that establishment. It's not money that goes into savings and loan or bank savings account or goes into buying of groceries or buying clothing and other retail items like that. What happens is that the money that is generated is spent within the establishment itself and that mostly what is happening is simply moving money around. Have money that is spent by many people to benefit a very few, not anything beyond that. I am suggesting there is a powerful economic argument here that is largely negative and... [LB1102]

SENATOR LANGEMEIER: Time. [LB1102]

SENATOR AVERY: Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the opening and the first discussion on AM2349. Those wishing to speak, we have Senator Stuthman, Council, Schilz, Price, Pankonin, Janssen, Wallman, Ashford, and others. Senator Stuthman, you're recognized. [LB1102]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I've been listening to the debate and, you know, I've been here for eight years and what we continually try to do here in the legislative body is try to grow Nebraska, grow Nebraska. Well, it sounds to me like we have an industry here, the thoroughbred racing industry, you know, that is trying to help themselves by trying to have another form of actual racing, you know, in their form of entertainment. And I think that's where it all started, you know, years ago. It was an entertainment and it still is entertainment. People go out to the races for entertainment, that's the main emphasis, and then they bet on it and that's part of their entertainment. I think, you know, the betting on the horses, in my opinion, is different than betting on the Powerball, the Mega Millions, and all of those things because they want quick results. And as Senator Harms has stated, you know, 90 percent of the betting form of gambling is through slot machines. So why aren't we addressing that if gambling is absolutely something terrible that's taking money out of the pockets of the poor, taking that away, taking clothes away from children, taking medical help for children away from families, creating alcoholism because of the fact they lost a lot of money? They went to the slots, lost 250 bucks, most of their paycheck went there, went back home, couldn't face their wife, and that's what happens. There's where the biggest problem comes from. Now there's a continued part of this debate is the fact of all of these funds going to these organizations. You know, what are we going to do if we don't get these funds? What are we going to do when we take these funds from these poor people that are addicted to gambling and use them for benefits of the communities and helping with organizations, relieving people of property taxes on the backs of the few people that gamble? I think we better think about that. If this industry which is trying to help themselves...and in my opinion, it's not a slot machine. It's an actual race condensed down to a shorter period of time. And it doesn't bother me if they have to run the whole race. That doesn't bother me at all. I think that would probably be

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okay. But the fact is we have an industry that is part of agriculture, part of livestock, part of employing people in communities, helping communities out, especially those that have these racetracks--Columbus, Grand Island, Lincoln, Sioux City, Omaha. I think the issue is we have an industry, an industry that is trying to give a form of entertainment to people and they're trying to survive themselves. Or should we say, too bad, I think your industry is dead and we're going to help name the pallbearers as you leave the state of Nebraska? [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR STUTHMAN: I think we should take that into consideration. You know, we want to grow Nebraska. Do we want to drive these people out of the state of Nebraska? It seems like that's what we're trying to do. We're not...we're not saying what I'm trying to hear is the fact that we have an industry that's trying to help themselves, trying to help themselves with another actual race that was run and allow people to bet on that. I don't think the people are going to leave the keno parlors and come in groves over to the racetracks just to bet on historic racing. I don't think that's going to happen, I really don't. Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Council, you're recognized. [LB1102]

SENATOR COUNCIL: Thank you, Mr. President. During the course of today's debate, I've learned not only a lot about the issue that is the subject of the debate, but I have been provided with a lot of (inaudible) for debates on future items that will be coming before the body. Senator Lautenbaugh has certainly provided me with some excellent argument. When anyone wants to come forth with slippery slope arguments, I will adopt his position that it's only a slippery slope if I want it to be a slippery slope. Senator Nelson raised a number of issues with regard to the constitutionality of LB1102 in light of the Attorney General's Opinion. First, I trust that Senator Nelson will maintain that same level of vigilance with regard to the constitutionality of other measures that will come before this body before we adjourn. But secondly, I have not had an opportunity to read the entire Attorney General's Opinion and that's because I got caught on a couple of pages of his opinion, and it related directly to what Senator Nelson was talking about. If you go to the last paragraph of the opinion, sure, it appears that the Attorney General's conclusion is that LB1102 is unconstitutional. That's his conclusion, but you need to read his opinion because, like many opinions where there's no definite answer, there's a recognition that this issue could be decided either way. And I just want to point out a couple of parts of the opinion. On page 6, the Attorney General states that Article III, Section 24(4) authorizes legislation providing for the licensing and regulation of wagering "on the results of horse races, wherever run, either within or outside of the state, by the pari-mutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure." It goes on to say: If wagering on "historic horse races"

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by use of IRTs is construed to be "wagering on the results of horse races," is done "by the pari-mutuel method" and is "conducted by licensees within a licensed racetrack enclosure," it could be argued that it conforms to the language of Article III, Section 24(4) and thus may be authorized by the Legislature. He goes on to say: as this form of wagering no doubt did not exist when the constitution was amended to authorize pari-mutuel wagering on horse races in 1934, or, for that matter, in 1988 when simulcast wagering was approved, recognizing the Legislature's power to authorize wagering on "historic horse races" could be viewed as consistent with the principle that constitutional terms and provisions are expanded and enlarged by construction to meet the advancing affairs of men. What the Attorney General is saying is that the argument can be made that LB1102 is in fact constitutional. But the other point is why this bill was presented to the Judiciary Committee. As a member of the Judiciary Committee, I listened to the testimony and a lot of reasonable minds will differ as to whether that's the real reason that the legislation... [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR COUNCIL: ...was advanced. But the people who testified were horse owners, horse breeders, trainers who said there's a need for this legislation. Well, allow me to remind you why the constitution was amended in the first instance in 1934, nearly three-quarters of a century ago, to allow for betting on horse racing. Even the Attorney General recognizes it. "Originally, pari-mutuel wagering on horse racing was authorized in 1934 out of a recognition of the importance of the livestock and horse breeding industries. Allowing pari-mutuel wagering on horse races provided a means to support and promote these industries." In fact, when the constitution was amended in 1988 to authorize simulcasting, it was done so largely to help the racing industry... [LB1102]

SENATOR LANGEMEIER: Time. [LB1102]

SENATOR COUNCIL: ...in the face of other gambling. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Council. Those still wishing to speak, we have Senator Price, Pankonin, Janssen, Wallman, McCoy, Cook, and Campbell. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Thank you, Mr. President, members of the body, and thank you, Senator Council. You have provided a tremendous segue into my dissertation, if you would. Earlier today I spoke about there being a division and I talked about the two major groups within the industry, and not long after somebody got up and said, well, that's not necessarily true, and that might not be true on this bill. But as Senator Stuthman walks off the floor--and I'm not going to engage you, don't worry about it, I just wanted to call you to it--on Monday, February 22, we did hear in committee LB887. And this...and I encourage all the members to go out to their Web sites on their computers

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and take a gander. We indefinitely postponed this bill because this bill required or wanted to require that we reduce from 70 percent of the racing days in 1988 to 50 percent of the racing days in 1988, and therein lies the rub. You see, they didn't want to have to have as many races. Races are expensive. You know, you have to hire all the people and the clock people and the judges and, you know, the veterinarian and the list is pretty exhaustive. And it's good, it's good economics. But they wanted to take it down from the 70 down to 50 percent. Now as I look at the committee statement, we see opponents representing the Nebraska HBPA. So what gives? You know, we had a bill last year where we talked about dental hygienists and technicians and we say, hey, you all get your act together before you come to us changing things. And now we had a bill earlier this year and there was a little bit of issue there. And people would tell you that everything is kumbaya. Everybody would tell you that this is to save the horse racing industry, yet earlier this year they weren't trying to really work for the industry. Ladies and gentlemen, I challenge you once again, go out there, take a look at LB887 and read the language where it says specifically, no underlines, no redirects, live horse racing, and that if you wanted to conduct simulcast and then offtrack betting that you were going to have to race at least 70 percent of the days in 1988 unless there was a tornado or some other act of God. And yet this year they came in to change that, and you think they won't come in next year or the year after? There are proponents who would be more than happy, it seems to me, to end the whole messy part with the horses and just go straight to the machines. So I encourage you, again, to take a look. And with that, I would yield the balance of my time...well, wait, before I yield the balance of my time...no, I'll yield it, Senator Avery, if you'd like it. [LB1102 LB887]

SENATOR LANGEMEIER: Senator Avery, 1:40. [LB1102]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator Price. One thing we have not talked about that I think is worth some discussion, some consideration, and that is whether or not if the courts were to decide this is in fact unconstitutional and, therefore, it does involve an expansion of gambling into an unconstitutional area, what would that mean for the Indian Gaming Regulatory Act? That is...by my understanding, this is what is called a Class III gaming activity. Some people say that if Nebraska moves to this kind of expanded gambling in our state, that that would place us in the category of casino-type gambling, in which case it might open up possibilities for Indian tribes in this state to have the right to contract to get their own permits for legitimate casino gambling. I don't know if that's an issue or not, but it's something I think that we might want to consider in our discussions. What are the broader implications of the bill that we're looking at? I'm looking around to see if there's somebody that might answer some questions that... [LB1102]

SENATOR LANGEMEIER: Time. [LB1102]

SENATOR AVERY: ...I have who are on the...Senator Ashford,... [LB1102]

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SENATOR LANGEMEIER: Time. [LB1102]

SENATOR AVERY: ...I see you are here. I wonder if you would yield to a question or two. [LB1102]

SENATOR LANGEMEIER: Time. Thank you, Senator Avery... [LB1102]

SENATOR AVERY: Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: ...and Senator Price. Senator Pankonin, you're recognized. Senator Pankonin, you are next. Not seeing Senator Pankonin, Senator Wallman, you're recognized. [LB1102]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. We've heard about every kind of angle you can hear. Well, we're scared of the Native Americans, what they might do to this bill. We're scared of slot machines. We're scared of society. Has brought up health concerns about gambling in a foreign country, which happens to have nationalized healthcare, so we can't compare to that. So all these things are brought up. Why do we bring this up? Well, we're scared we might lose revenue over here. That's gambling revenue. Does a little lottery ticket eat hay? Does it eat anything? It takes nothing. It uses paper, another tree. How many trees are we going to shoot down with tickets, lottery tickets like Senator Stuthman mentioned, you know, scratch-offs? It's expanded all the time. And will this expand gambling? I don't know. I think it's just another form. So we can say expand, another form, we can be against this, we can be for this, but the horsemen, folks, in my community, they put on one heck of a Fourth of July celebration out of their pocket, not a ticket, not paper tickets. And if Senator Price was here, I'd like to see what his odds are of winning a lottery. What are the odds there? Probably a million to 1 or 10 million to 1. And I would like to ask Senator Janssen a question, if he would yield. [LB1102]

SENATOR LANGEMEIER: Senator Janssen, would you yield? [LB1102]

SENATOR JANSSEN: Yes. [LB1102]

SENATOR WALLMAN: Thank you, Senator Janssen. Is it possible...it would probably be illegal, but is it possible to gamble on the Internet? [LB1102]

SENATOR JANSSEN: I believe it is possible. However, I would have no firsthand knowledge of that. [LB1102]

SENATOR WALLMAN: I appreciate that. Thank you. So there is expanded gambling going on all over the place. Is it a detriment to society? Sure it is, but lots of these horse

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breeders, they pay taxes in Nebraska, they buy feed in Nebraska, they buy fuel in Nebraska, and they do lots of things in Nebraska, and yet we don't like them. I can hear that. We don't like them. That bothers me, folks. Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator McCoy, you're recognized. [LB1102]

SENATOR McCOY: Thank you, Mr. President and members. Would Senator Ashford yield to a question? [LB1102]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB1102]

SENATOR ASHFORD: Yup. [LB1102]

SENATOR McCOY: Thank you, Senator Ashford, and I see you have the AG's Opinion there, Attorney General's Opinion, it appears. I wanted to ask a couple of questions if I could and if you'd be so kind. Hopefully, you've had a chance to go through and take a look at the Attorney General's Opinion since we first received it this morning. Would you, if you'd be so kind, go over how you see that this qualifies as pari-mutuel based upon what the Attorney General talked about in his opinion? [LB1102]

SENATOR ASHFORD: Thank you, Senator McCoy. The Attorney General does not get to the issue of pari-mutuel wagering in his opinion because, prior to getting to that portion of the opinion, he opines that possibly historic races might be violative of the constitution. So he doesn't get to the issue of pari-mutuel betting, as I read it. He doesn't know. He doesn't give that opinion. He doesn't take us there. Pari-mutuel betting, as I understand it, is you're betting against other bettors, the house is not taking a cut as they do in slot machines. And that was one of the primary reasons why we put the bill out. We put the bill out because we believed it was not violative of the pari-mutuel betting provisions. And the Attorney General doesn't go there. The only thing we had in the committee was the opinion of the Racing Commission executive director who'd been an attorney since 1980 and opined that they could, in fact, design a pari-mutuel process. So we had that opinion and we don't have anything from the Attorney General that refutes that. So, you know, there's just nothing here that would lead this Legislature to opine that there is a...this violates the pari-mutuel portion of the law in Nebraska. [LB1102]

SENATOR McCOY: Does it concern you, the live issue as far as simulcast, whether it's a race that's ran in the past, is it historic horse racing or what's clearly in statute and constitutional as far as the simulcast versus the historic and...have you had a chance to... [LB1102]

SENATOR ASHFORD: Yeah. [LB1102]

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SENATOR McCOY: ...give that some thought? [LB1102]

SENATOR ASHFORD: Yeah, I have. And, Senator McCoy, these are great questions and I appreciate being asked the questions. The Attorney General, again, he does not opine that historic horse racing is violative of Nebraska law. He does not...he said it's very possible that historic horse races, because of the advances in technology, advancements in technology, that historic horse racing is a logical extension of simulcasting. I was here when we did simulcasting, and the same arguments were being made then about simulcasting as are being made now about historic racing, exact same arguments, exactly the same arguments. And so I think what the Attorney General...here's what I think. I think the Attorney General is unsure. I think the Attorney General is unsure, or his attorney that wrote this and then of course he signed it, he's unsure as to what a court would do because you do have courts across the country that have found this methodology to be constitutional, and it's being implemented in many other states. That's what we had in front of us in the Judiciary Committee. [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR ASHFORD: So that's what we were dealing with. [LB1102]

SENATOR McCOY: Well, I appreciate that, Senator Ashford, and I greatly appreciate and admire your legal expertise in this area and as Chairman of the Judiciary Committee that obviously oversaw this legislation. I think, though, that it's important to point out that there are some other situations as we've seen, that Wyoming has found these machines to be unconstitutional, as has the state of Maryland. And some of that has been passed out and the Attorney General, it appears in his opinion, has looked at those and they have been determined that they didn't meet the smell test as far as pari-mutuel was concerned, nor did they actually qualify as constitutional and enough different than slot machines. So, again, as the Attorney General found this unconstitutional, I think it's important to point out that we do have... [LB1102]

SENATOR LANGEMEIER: Time. Time. [LB1102]

SENATOR McCOY: Thank you. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator McCoy. Senator Cook, you're recognized. Senator Cook, your light is next and you are recognized. Not seeing Senator Cook, Senator Campbell, you're recognized. [LB1102]

SENATOR CAMPBELL: Thank you, Mr. President, and good afternoon, colleagues. I do apologize that I have not been here for all of the discussion. Several of us from the Transportation Committee went to Senator Ben Nelson's transportation summit which is

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being held at the County-City Building and I want you all to know that we were very proud Senator Fischer was representing us on the welcome panel and I believe she is there still taking comments. And I think it will be very worthwhile for helping us address some of the problems that cities and counties have run across in building roads. I was asked over the noonhour by one of my esteemed colleagues if I was going to make a comment about this and the colleague said that perhaps if I did not, they would ask me a question about my gambling history. So I decided that perhaps the better part of truth and disclosure would be that I would stand and make some comments. Generally, I have been very much opposed to gambling and expansion of gambling in the state and as we have looked at that issue. In the situation, the colleague said, I'd like to hear from someone also from Lincoln and how you look at this. And I have to say, colleagues, I see this as an extension of what is already happening at the racetracks. And the second point I'd like to say is that, you know, here's an industry that particularly in Lincoln was told, well, the State Fair is going to move to Grand Island and we are going to have Innovation Campus, and at some point you have to move, you have to leave. Now to date, to my knowledge, that industry has not showed up here and said, well, you're making us move, just give us the money, make us whole. How many times, I mean, we've heard that in the history? And I look at this...I guess I believe that it is not expanded. I think it is an extension of what they're already doing, they're only doing it at five tracks. And, colleagues, this is an industry who's tried to come up with some creative solutions to solve their own problem. And for that matter, I wanted to share that with my esteemed colleague who asked me that question. So thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Campbell. Senator Gloor, you're recognized. [LB1102]

SENATOR GLOOR: I'm tempted to still ask Senator Campbell that question, but Senator Campbell and I decided long ago we share a common bond in many ways, and that being the case, we were both so tight that we squeak when we walk and therefore are unlikely to gamble very much. I enjoyed listening to Senator Price talk about LB887. My maternal Scandinavian heritage and my degree from the University of Minnesota leave me eminently qualified to tell Scandinavian stories, specifically Ole and Lena stories. And I am reminded of one of those stories that had to do with Ole and his buddy Lars who were cutting cords of wood that they would sell in the north woods. After about two weeks, they put them on the truck that they had, would haul them to town and sell them. They realized they were losing quite a bit money and when they ran the numbers, they were selling the cords of wood for \$20 a cord and they were...it was costing them somewhere around \$30 a cord of wood. They pondered it and pondered it and pondering it, and finally decided the only solution was to get a bigger truck. Those of you who have levels of higher math will quickly understand that bigger truck was the least of the solutions they have out here. And certainly the horse racing industry understands under LB887 that one of the ways you can reduce that expense is to at

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least get a smaller truck or at least reduce the days that you are running a race and at the same time be able to maintain some of those revenue streams. LB887 was just an attempt at good common-sense business, and I think most people who sit down and run numbers would recognize that. I do not think it provides, once again, the famous slippery slope to let even more gaming machines come in. We would have to vote on that. That would have to be addressed statutorily. And the type of machines we're talking about under historic racing are not enough to substantially support in any way, shape, or form the high operating costs of a full-blown racetrack. LB887 is not a problem. I have listened for quite a while now and started off telling people that I was on the fence. I would tell you that I am in support of the Judiciary amendment and I am in support of LB1102, I think for the reasons that have to do with the history of thoroughbred racing and gaming in this state, that this is, as Senator Stuthman pointed out, a variation on opportunities to market racing. And because of that, I am in support of LB1102 and hope fellow members who have been on the fence in the past will join me in that support. Thank you, Mr. President. [LB1102 LB887]

SENATOR LANGEMEIER: Thank you, Senator Gloor. Senator Karpisek, you're recognized. [LB1102]

SENATOR KARPISEK: Question. [LB1102]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on AM2349? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Senator Karpisek, for what purpose do you rise? [LB1102]

SENATOR KARPISEK: I guess I'm going to have to call the house, Mr. President. [LB1102]

SENATOR LANGEMEIER: There has been a request to put the house under call. All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB1102]

ASSISTANT CLERK: 29 ayes, 0 nays to go under call, Mr. President. [LB1102]

SENATOR LANGEMEIER: The house is under call. Senators, the house is under call. All unauthorized personnel please leave the floor. The house is under call. Senators, please return to the Chamber and record your presence. Senator Karpisek, would you check in, please. Senator Lathrop, would you please check in. Senator Heidemann, Senator Wightman, Senator Gay, Senator Pahls, Senator Lautenbaugh, and Senator Fulton, please return to the Chamber and record your presence. Senator Karpisek, for what purpose do you rise? [LB1102]

SENATOR KARPISEK: I would accept call-in votes, Mr. President. [LB1102]

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SENATOR LANGEMEIER: Thank you. [LB1102]

ASSISTANT CLERK: Senator Lautenbaugh voting yes. Senator Adams voting yes. Senator Nordquist voting yes. [LB1102]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB1102]

ASSISTANT CLERK: 26 ayes, 2 nays to cease debate, Mr. President. [LB1102]

SENATOR LANGEMEIER: The motion to cease debate is adopted. Senator Avery, at that time I remove the call. Senator Avery, you are recognized to close on AM2349. [LB1102]

SENATOR AVERY: Thank you, Mr. President. AM2349 replaces excessively vague and ambiguous language in Section 2 of AM2234, which is the committee amendment. In the committee amendment, it is stated that the commission, the Racing Commission shall require enough of the historic horse race to be televised so as to maintain the integrity of such horse race before another wager can be placed. What I want to do is replace that language "enough" with "the entire length of the race." And as I explained in floor debate, it should not be offensive to the racing industry to have the entire race shown on the screen of these machines before a wager can be placed. The language currently is too vague, it is unclear, it leaves too much room for discretion by the Racing Commission. If this issue is about preserving the horse racing industry, then watching an entire race would maintain the integrity of the sport. Even in simulcasting, wagers are based on the entire race, not a portion of it. So if you're really not talking about expanding gambling in some creative way through a video slot format, then let's have the whole race, not just the photo finish or five or ten seconds of the race. Let's make it really an integral part of the racing sport itself. The only argument I can think for shortening it beyond its entire length would be to hasten the placing of another wager, which gets too close to slots for me. So I ask you to vote yes on AM2349. Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the closing on AM2349 offered to the Judiciary amendments. The question before the body is, shall AM2349 be adopted? All those in favor vote yea; and all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1102]

ASSISTANT CLERK: 17 ayes, 26 nays, Mr. President. [LB1102]

SENATOR LANGEMEIER: AM2349 is not adopted. Mr. Clerk, next motion. [LB1102]

ASSISTANT CLERK: Mr. President, Senator Avery would offer AM2350. (Legislative

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Journal page 1226.) [LB1102]

SENATOR LANGEMEIER: Senator Avery, you are recognized to open on AM2350. [LB1102]

SENATOR AVERY: Thank you, Mr. President. AM2350 addresses, again, the committee amendment, AM2234. In page 1, line 21, strike "initial, one-time" and insert "annual" licensing fee of \$1,000. Quite simply, this amendment would require an annual licensing fee for each racing slot machine used for pari-mutuel wagering on video horse races. If we really want to bolster the racing industry, then why not charge more for licensed machines? According to the committee amendment, the licensing fees will be credited to the Historic Horseracing Distribution Fund. The fund will distribute the money in the following manner: 5 percent to the State Racing Commission for community betterment grants for areas within one mile of the location of the racetrack. And then it reads that there are other provisions where, (1) the remainder would be divided into one-third for the Probation Program Cash Fund, one-third to the Violence Prevention Cash Fund, and one-third to the Compulsive Gamblers Assistance Fund. It seems to me that if you approve this amendment which would require an annual licensing fee of \$1,000, there would be a lot more money available to distribute and it would bolster the argument that is being made here that this is really about creating revenue that would save the industry. So with that, Mr. President, I would ask my colleagues to advance AM2350 as an amendment to the committee amendment, AM2234. Thank you. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Avery. You have heard the opening on AM2350. The floor is now open for discussion. Those wishing to speak, we have Senator Avery, Price, Council, Stuthman, Christensen, and McCoy. Senator Avery, you are recognized. Senator Avery waives his opportunity. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Thank you, Mr. President, members of the body. You know, you always get a chance to learn here in the Legislature, and I'm glad to know that one more hour of speaking on the bills and the amendments that are offered were enough to complete a call of the house and to get a vote. That's a refreshing thing to note. Questions I was thinking about as I was listening to debate, first, I'd like to thank Senator Lathrop (sic) for getting me the answer. It is 10 percent goes to the house for carrying the bets. We don't know yet about the breakage, but I'm sure that answer will be coming soon, too, whether we have breakage. Also, is Senator...would Senator Karpisek yield to a question? [LB1102]

SENATOR LANGEMEIER: Senator Karpisek, would you yield? [LB1102]

SENATOR KARPISEK: I will. [LB1102]

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SENATOR PRICE: Thank you, Senator Karpisek. I got a quick question for you on LB887. Do you remember that bill that we had in committee this year? [LB1102 LB887]

SENATOR KARPISEK: Yes, I do. [LB1102]

SENATOR PRICE: And do you recall that we actually had people on both sides of the issue there where we had someone representing the HBPA who was against that bill? [LB1102]

SENATOR KARPISEK: Yes. [LB1102]

SENATOR PRICE: And what do you remember characterizes why they were against the bill? [LB1102]

SENATOR KARPISEK: Because it would have been less days of live racing, so their horse owners would have less days to run and so less days to make money. [LB1102]

SENATOR PRICE: All right. Thank you. Senator Dierks, would you yield to a question? [LB1102]

SENATOR LANGEMEIER: Senator Dierks, would you yield? [LB1102]

SENATOR DIERKS: Yes. [LB1102]

SENATOR PRICE: Thank you, Senator Dierks. Do you recall LB887 and what we were talking about and how the differences were between the parties involved? [LB1102 LB887]

SENATOR DIERKS: Oh, a little of it, yes. [LB1102]

SENATOR PRICE: Would you share a little bit of that with the body, please? [LB1102]

SENATOR DIERKS: (Laugh) Well, it's an interesting...it was an interesting debate because we saw people from the same side of the issue on different sides of the bill and that's always a little puzzling. But we...I think the committee understood what was necessary in that case and that's what they did in the killing of the bill. [LB1102]

SENATOR PRICE: Thank you very much, Senator. Would Senator Ashford yield to a question? [LB1102]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB1102]

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SENATOR PRICE: Seeing he's not here, would Senator Lautenbaugh yield to a question? [LB1102]

SENATOR LANGEMEIER: Senator Lautenbaugh, would you yield? [LB1102]

SENATOR LAUTENBAUGH: Yes, I will. [LB1102]

SENATOR PRICE: Thank you very much, Senator Lautenbaugh. And I do want to make sure that we understood that was Senator Lautenbaugh that did come up with the information, 10 percent, and I do appreciate that. You know, my question for you, Senator Lautenbaugh, it goes with the Section 21...1201 through 1223, and obviously you're pretty familiar with that when carrying this bill, and in there they talk about specifically that a simulcast was going to be allowed as long as there was live racing at that racetrack, and they had to have at least 70 percent of the racing days. Am I characterizing that correctly? [LB1102]

SENATOR LAUTENBAUGH: Well, no, I'm not carrying this bill. [LB1102]

SENATOR PRICE: No, you're not carrying the bill but you're fighting for it and it's something you're prioritizing, I believe. [LB1102]

SENATOR LAUTENBAUGH: Yes, yes. [LB1102]

SENATOR PRICE: So are you familiar with it at all? [LB1102]

SENATOR LAUTENBAUGH: I'm familiar with the bill, certainly, not so much simulcasting, but... [LB1102]

SENATOR PRICE: Great. Okay, so not so much simulcasting. So do you think that there would be any impact to the authority to have simulcasting now that we've had the introduction of nonlive racing being conducted at the racetracks? [LB1102]

SENATOR LAUTENBAUGH: I would have thought if that was a legitimate concern, much like the decrease in lottery revenues we heard about earlier, if either of those things were legitimate concerns, someone may have mentioned them before you today. [LB1102]

SENATOR PRICE: Okay. Great. And I guess before me today you didn't know that the two parties had ever disagreed on any bills. [LB1102]

SENATOR LAUTENBAUGH: Actually no, I think I said that they did not come in and disagree on this bill. If you find... [LB1102]

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SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR LAUTENBAUGH: I don't think you can find any two parties that have never disagreed on anything and I surely did not say that. I said on this bill... [LB1102]

SENATOR PRICE: Absolutely. [LB1102]

SENATOR LAUTENBAUGH: ...it's been remarkably clear. [LB1102]

SENATOR PRICE: Oh, absolutely, you did. But I just want to make sure that we had had it clarified that the two parties...and I appreciate your candor there, Senator Lautenbaugh. So, ladies and gentlemen, what you see here again, if we talk about this more and more, that the parties don't agree. And I do have concerns because it does seem kind of interesting how the law gets interpreted. And then when we put this out way back in 1988, the law specifically said that they could do this simulcast wagering and conduct these simulcast races based on live racing. Now we're introducing a nonlive race. I wonder if there's some type of peril or jeopardy for the offtrack betting people because that's not what the law specifically included. And I wish I had had Senator Ashford here to answer that question, but... [LB1102]

SENATOR LANGEMEIER: Time. [LB1102]

SENATOR PRICE: Thank you. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Price. Senator Christensen, you're recognized. [LB1102]

SENATOR CHRISTENSEN: Thank you, Mr. President. Colleagues, I guess I'm a little disappointed. I never heard one person talk about my proposed way of saving the gambling industry. I threw a couple of them out right before dinner and not a single person has commented on them. If I missed it, I apologize. But, you know, there is, there's races going on, was one of them, all over the world that you can simulcast, so virtually you would have one finishing every minute. That is one of them. You can utilize the tool you got now. You don't have to expand this. The other one is, if you really believe in the industry, put on an excise tax, occupation tax. The cities that are going to benefit from it, they can charge, they can pay, the industry can pay. It's taking care of yourself. This body put it upon the Republican to do it. It'd be no different. If you care about the industry, ante up. We don't have to expand this. It doesn't have to be expanded out to start including machines that...whether you say they look like, act like a slot machine. They sure look like them. It's pretty obvious by the picture that came out. Yeah, it don't have a handle to pull. There's a different definition whether it's a chance or not. Some people say, well, it's not chance, it's just a...you read the materials, you study up on the jockey, you study up on the horse, you can make an educated guess. It's still

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chance. There's a lot of risk to it. Again, people don't make a living doing it, they do on the side of racing or owning a horse. People work at the tracks make a living, but as far as the gambling side of it, they don't. It's not an industry that's creating wealth, but there's...you know, there's a lot of entertainment things that don't. If you're an individual that can do it on the entertainment side, that's fine, but there's a lot of people who can't. You know, I think there's alternatives to expanding this that we can do. They've got tools they haven't maximized, in my opinion. They just want to move to different machines. You know, people, if it's really about horse racing, why did we kill the last amendment when you get to watch the full race? What was wrong with it? If it's about horse racing, why can't you watch the race? It don't make sense. That was a perfect amendment. If you like horse racing, then you should want to watch the horses run. If you like gambling, you just want to throw your money in and pull your lever or throw your money in and get the race over and throw it in again. So there's a lot of things that really haven't been answered here today. I hear we want to save the racing industry. If it's about the racing industry, somebody explain to me why we can't watch the race. I don't understand. It makes no sense. If it's about the racing industry, let's watch... [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR CHRISTENSEN: ...the race. So I'll be anxious to hear, see if anyone else would like to address them taking care of their own situation instead of expanding it. To me, it's totally different. You're not watching a live race. We made that very clear in the last amendment. We're not taking care of the horses that are running. If it's about the horsemen, then we'd be trying to have more races, more people out there circling that track for people to watch. If it's about gambling, then we're going to be, how fast can we turn it? If we can do two races a minute, fantastic. But I tell you, we have the alternative. Simulcasting has been given to you, you have the way to do it. Thank you. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator McCoy, you're recognized. [LB1102]

SENATOR McCOY: Thank you, Mr. President. And I'd like to continue my dialogue with a couple more questions for Senator Ashford, if he would yield. [LB1102]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR McCOY: Thank you, Senator Ashford. When we talked a short time ago, we were talking about the aspects of the pari-mutuel and I, like, pulled back from that a little bit, but I did want to touch on that and talk a little bit more about the initial aspect of the AG's ruling, if we could, in a little greater detail. It would appear from the Attorney General's Opinion that these instant racing terminals, IRTs, historic horse racing

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machines...the Attorney General's ruling said that we believe the Supreme Court would likely conclude the IRTs are impermissible electronic gambling devices within the prohibition against games of chance in Article III, Section 24(1). Would you talk on that a little bit if you could, Senator Ashford? [LB1102]

SENATOR ASHFORD: Well, thank you and I appreciate this is a constructive line of questioning. I'm not sure the answers are going to be very constructive. But there are three or four places in the opinion, in his opinion, where he indicates that either it's likely that something may occur in a court decision or it may occur in a court decision. You know, my reading of the Arkansas case, which is the case that is, in my view, seems to be the most dispositive because of the fact situation, and that the conclusion of that court was that...and we had that opinion in front of us in the Judiciary Committee, my view was that this kind of historic horse racing is not violative of prohibition such as that. But the Attorney General is saying it's likely that it would be. I just...you know, he didn't say it was. He said it was likely. You know, everyone has to come to their own conclusion there. I don't think it is because other courts across the country have come up with...have opined differently, but you could draw your own conclusion there. He does say "likely," you're right. [LB1102]

SENATOR McCOY: I agree that his word or their word is likely in that particular case, but thank you, Senator Ashford. Can you tell me also if you would on the "wherever run" or "whenever run," can we talk a little more about that? [LB1102]

SENATOR ASHFORD: We can. I think Senator Lautenbaugh is a better "wherever/whenever" guy. I think he's the "wherever/whenever" expert. I'm (laugh)...I know we've had that discussion, so I might defer to Senator Lautenbaugh on the "wherever/whenever." [LB1102]

SENATOR McCOY: And that's fine. And I can certainly do that. I would just be curious to know if you believe that "wherever" in the constitution, in your mind does that mean "live" or... [LB1102]

SENATOR ASHFORD: I don't think...if it meant live, then simulcasting would be unconstitutional because, in effect, there's time delay in simulcasting. You're not...and that's a very interesting question because in 1988 when we did simulcasting, that really...that was one of the questions: Is it live? Well, no, it's not live, it's live...it's not going...I mean, if we sit in the room and watch ourselves in there, we're not live, per se; we're half a second off. So, I mean, a simulcast is live I guess as live can be, but it's not live in front of you. So that discussion was...occurred when we did the 1988 debate on this issue. Simulcast...I think what the Attorney General is concluding, though, Senator... [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

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SENATOR ASHFORD: ...Senator McCoy, is he's concluding that there's been advancements in technology that have gone from the '30s when we started with pari-mutuel betting in Nebraska to simulcasting in 1988 to historic horse races in 2010, and I think what he's saying is it is possible--and he says it--that it is possible that because of the advancements of technology, and we didn't know in 1933 or '34 what we know now that this very...it could be constitutional. That's what I read him to say. [LB1102]

SENATOR McCOY: And I understand that... [LB1102]

SENATOR ASHFORD: Yeah. [LB1102]

SENATOR McCOY: ...but tape delay in the case of when we watch ourselves in the lounge or anywhere else in the building doesn't necessarily mean it isn't live... [LB1102]

SENATOR ASHFORD: Right. [LB1102]

SENATOR McCOY: ...because it isn't recorded yesterday. [LB1102]

SENATOR ASHFORD: Correct. [LB1102]

SENATOR McCOY: It is currently going on. However, it might be... [LB1102]

SENATOR ASHFORD: It's going on here, yes. (Laugh) [LB1102]

SENATOR McCOY: Right. [LB1102]

SENATOR ASHFORD: No, I agree. And I'm not trying to be silly about it. [LB1102]

SENATOR McCOY No, I understand. [LB1102]

SENATOR ASHFORD: And your point is well taken. [LB1102]

SENATOR McCOY: Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator McCoy. Senator Harms, you're recognized. [LB1102]

SENATOR HARMS: Thank you, Mr. President and colleagues. I find that this debate has been interesting. It comes at a perfect time for us that March is awareness of problem gambling, so what a great opportunity we have to debate this for the month of March. And, Senator Lathrop, thank you. You have definitely given us the opportunity to

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let the public know and understand what kind of problem solving we have and what kind of problems we have in gambling. The National Council on Problem Gambling and the Nebraska Chapter has indicated that Nebraska does have a serious issue and a serious problem in regard to gambling. And in 2006 they estimated, and it's probably...and they know that it's because of the tough times that gambling has gone up higher because a lot of people are trying to find ways that they might hit the jackpot, that dream of being rich. But in 2006 they estimated that 1 percent of the state adult population, which in Nebraska is 13,000 people, are pathological gamblers, and 2 percent, which is 26,000 in Nebraska, have gambling problems. What I found probably most alarming to me is the fact that they estimate that the percentage of adolescents with gambling problems are even higher. And that's 2 percent of adolescents in this state are estimated to be pathological gamblers and 4 percent are problem gamblers. Colleagues, that alarms me and that's one of the main reasons why I stand here and will continue to stand here for eight hours or whatever it takes to get people to understand that we're headed towards even a broader and more serious issue here when you have teenagers involved in that aspect. Not only that, we've seen what's happened to our teenagers in regard to alcohol and drugs and all the other things that goes with this. We're headed on a collision course in this great state in regard to that particular issue. If you look at horse racing in this great state, what does it really bring to this state and what does it bring to society? Well, it brings four things to us. It brings us addiction, it brings bankruptcy, it brings crime, and it brings family destruction. The research shows very clearly what happens when people get addicted to this aspect of gambling. Family has the highest amount in the charts that you see and the research that we see that suffer for this. I don't know whether or not you've had the fortunate opportunity to visit with or experience any of your friends or neighbors who get hooked into gambling. It's like being hooked into alcohol. It's a sickness. You can't control it and you will battle it for the rest of your life. From that point of family loss, you go down the line to you begin to lose your friends and, from that, many people are so addicted to it that their health has an impact...is impacted by what they're doing. Emotionally, once you go through that process, you'll find... [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR HARMS: Pardon me, Mr. President? [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR HARMS: Thank you, Mr. President...that emotionally you'll begin to have others issues and other problems if you don't go for and ask for help and services to address this issue. But higher than the family and the social issues is the fact that financially, folks, it's pretty much over for people. They cannot afford to do it. There have been many people in this great state and people in this great nation that have gone bankrupt. I mean, it has not only destroyed their families and their relationships with all

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of their friends and family, it destroys them. It destroys their financial income. It destroys what they've worked so hard to get. They can't pass it on to their families for generations are suffered from this. Thank you, Mr. President. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Pankonin, you're recognized. [LB1102]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I want to talk about a couple of other aspects here. One of them that I find interesting that I...and I've been gone for some of the time so if I've...this ground has been covered I hate to bring it up again, but on page 15 of the Attorney General's Opinion, the issue of this legislation, the aspect of the Native Americans being able to expand this type of gambling on tribal lands, you know, I think it's interesting. And I'm reading from the last paragraph, page 15: If LB1102 becomes law and wagering on historic horse races through IRTs is approved under the legislation, the state, absent a judicial determination that such gaming is unconstitutional, would be obligated to negotiate a compact with any Native American tribe seeking to conduct this form of Class III gaming on Indian lands located within the state. It cites some other statute and whatever, but, anyway, it talks about this negotiation would have to happen. But I think the important thing here is, we've talked earlier today about expansion of gambling and gaming, and I brought the issue that I think it was legitimate to say that this activity would be in the same locations that we already had. But I think it is important to note that that might not be true under this situation. I mean, this doesn't prohibit Native American tribes from kind of setting up a horse track but not really for horse track activities too much. It would be mainly so these electronic machines could be placed because that's, as we've heard today, it probably would increase the amount of gambling, amount of gaming. And so I think that's something in this opinion that is troubling to me in that it may have some unintended consequences of some pretty big expansion and one that we would have to negotiate with tribes about where it can happen and under what form. So I think that's something you need to take into account on this issue. I think it's something that is a concern of mine. I think I'm sure it is a concern of others that we could have an expansion of a lot of locations under this type of legislation, that the Attorney General has spoken in that way. The other thing that sometime this afternoon Senator Fulton had passed out kind of a conclusion about Initiative 420 and this initiative was in the general election in 2004, at least that's what it says on the handout from Senator Fulton. And I know he's gone right now, but I thought it was interesting and obviously this was probably for an expansion that exceeds the scope of this bill, but it did have some of the...I think the gaming devices we're talking about, the electronics, the fact that they were racetracks. And I think it's important to note that this measure did fail. The vote total, according to Senator Fulton, was 53:47. So like here, it's an issue that people are divided on, but this is one that we talked about before on the floor. Some of these issues have gone to the votes of the people. Some have been approved; some have not. This one in 2004 wasn't and by a, you know, pretty fair margin was defeated. So I just want you to take

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those things into account. But I think especially of concern to me is that we could have an issue with tribes wanting to get into this form of gambling, expand it, and we would have to negotiate on how that would all work. And I think is of concern because that would definitely be an expansion under any definition. [LB1102]

SENATOR LANGEMEIER: One minute. [LB1102]

SENATOR PANKONIN: And I think that's something that you all have to think about is something that's a consequence of this that we may not really want to see or have to deal with. So with that, I appreciate your attention and as we'll continue to discuss this, the merits of, I hope you take those couple of points into account. Thank you. [LB1102]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. Those wishing to speak, we have Senator Avery, Price, McCoy, Lautenbaugh, Harms, Nelson, and Christensen. Senator Avery, you're recognized. [LB1102]

SENATOR AVERY: Thank you, Mr. President. I wonder if Senator Ashford or Senator...Senator Ashford might yield to a question. [LB1102]

SENATOR LANGEMEIER: Senator Ashford, would you yield? [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR AVERY: Thank you, Senator Ashford. Do you know if there's anything in this bill, I couldn't find it, that indicates the age, the minimum age that one would have to have achieved before they can participate in this kind of gambling? [LB1102]

SENATOR ASHFORD: Well, I don't think they can...I think there's a prohibition in other parts of the statute that they have to be an adult, but I don't know if I can pin...that's the answer but I'm not sure if I can quote you the section exactly. [LB1102]

SENATOR AVERY: So we do have a minimum age somewhere in statute? [LB1102]

SENATOR ASHFORD: Correct. [LB1102]

SENATOR AVERY: I think you're right. And I believe it might be 19, but there is no...nothing in the committee amendment that changes that? [LB1102]

SENATOR ASHFORD: No. [LB1102]

SENATOR AVERY: Not at all. All right. Let me ask you another question, if you don't mind. Do you know how many machines would be allowed per track or venue? [LB1102]

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SENATOR ASHFORD: It would be up...here's how...Senator Avery, if I might just explain how I think it would occur. What would happen if we passed this is there would be a plan developed, let's say if it's in Lincoln, by the track in Lincoln. It would be submitted to the Lancaster County Board and they could...they would enumerate the number of machines that they would put in the track. In talking to people about this, the number appears to be somewhere around 100, but it would go to the county board. The county board would ask...get into the issue of how many is too many, you know, how many is too few and so forth. But there is no specific number, but I believe 100 is the number that has been tossed around. [LB1102]

SENATOR AVERY: Is it the case that the county board must approve... [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR AVERY: ...these licenses or the machines would not be placed? [LB1102]

SENATOR ASHFORD: That's correct. [LB1102]

SENATOR AVERY: All right. If the county...if I may ask another question, if the county agrees to house these machines through a resolution, then they can determine the specific number in that resolution? [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR AVERY: Can they also provide for a procedure to remove machines? [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR AVERY: And what other kind of regulations might the county boards be able to devise? [LB1102]

SENATOR ASHFORD: Well, they could determine whether or not, for example, whether these machines have to be in an enclosed part of the track. For example, it could be in a...not in the main floor where the dining area is; it could be in another enclosed area. They could do that. They could certainly determine the hours of operation, for example, that sort of thing and other, you know, other requirements. The Racing Commission, though, would have the...would still have to approve it. So it would go to the county board, and then the Racing Commission would have to approve it as well. [LB1102]

SENATOR AVERY: What happens if there is a disagreement between the county board and the Racing Commission? [LB1102]

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SENATOR ASHFORD: The Racing Commission, if it doesn't approve a county plan, then there wouldn't be a...they wouldn't be allowed to have the machines in the enclosure. [LB1102]

SENATOR AVERY: Well, let me ask you also... [LB1102]

SENATOR ASHFORD: But they wouldn't...but, good question. The Racing Commission couldn't adopt another plan that would be different from the county board's plan. [LB1102]

SENATOR AVERY: But the Racing Commission could deny the county board plan? [LB1102]

SENATOR ASHFORD: Correct. [LB1102]

SENATOR AVERY: And then the county board would have to go back and reconsider. [LB1102]

SENATOR ASHFORD: That's correct. [LB1102]

SENATOR AVERY: And so the Racing Commission cannot independently establish any of these or authorize any of them. [LB1102]

SENATOR ASHFORD: Correct. [LB1102]

SENATOR AVERY: The only thing they can do is administer them once they're in place. [LB1102]

SENATOR ASHFORD: That's correct. [LB1102]

SENATOR AVERY: All right. What...are these machines... [LB1102]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: One minute. [LB1102]

SENATOR AVERY: They could be side by side with simulcasting machines. Is that correct? [LB1102]

SENATOR ASHFORD: Yes. Well, the simulcasting TVs, I guess, or video machines are usually up on the wall or on the...you know, on the wall and people bet at a betting area like it... [LB1102]

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SENATOR AVERY: So these would have to be on the floor. [LB1102]

SENATOR ASHFORD: Correct. [LB1102]

SENATOR AVERY: And would that...would you say that that's similar to slot machines? [LB1102]

SENATOR ASHFORD: Well, slot machines are generally on the floor, but I don't...honestly, Senator Avery, I just don't think they're slot machines, but they are on the floor, yes. [LB1102]

SENATOR AVERY: Okay. And they would be able to be operated or gamed, played, wagered throughout the entire time that the racing venue is open, whether or not live horses are running. [LB1102]

SENATOR ASHFORD: That's correct. But what the committee thought, Senator Avery, was that because the simulcasting... [LB1102]

SENATOR CARLSON: Time. [LB1102]

SENATOR ASHFORD: ...is going on all the time...okay. [LB1102]

SENATOR AVERY: Thank you. [LB1102]

SENATOR CARLSON: Thank you, Senator Ashford and Senator Avery. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Thank you, Mr. President, members of the body. Sitting here playing with some numbers. I was looking at the statute, at least particularly as we're dealing with it 2-2103, 2101...1201 and through 1223, okay, and I want to read to you what it says. A license would be granted based on conducting primarily quarter horse and thoroughbred races. I say again, a license would be granted, predicated...this is for the simulcast, predicated on the number of races ran in the previous year being primarily, keyword, primarily, quarter horse and thoroughbred. So the question before us is, are these historic races, races? Now if these are considered to be races, and let's just say we have one machine per track, and 1 race every ten minutes, that would be 36 races in an hour. And in an eight-hour day there would be 288 per day. A hundred-day racing year and you'd have to have 2,880...or you would have 2,880 dead horse races. Now remember, the license is granted primarily on the horse races that are quarter horse or thoroughbred, so are they races? Now we just heard...pardon me? We had just heard that Senator Ashford talked about there being up to 100 machines perhaps, local determination. And if we take those and we say that you have 10 machines or, no, let's

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go with 100 machines, and let's say we go with the maximum of 2 races per...a race per every two minutes, so 30 per hour, would give you about 3,000 plays per hour. Thirty thousand per day on a ten-hour day six days...if you have six tracks would be 180,000 plays per day. If you go 100 days, that's 1.8 million races or plays. Which is it going to be, races or plays? And I bring this up for our Lincoln senators because they were talking about the new Lincoln track. And if you have to have these races based primarily on quarter horse and thoroughbred races, are these a race or not? If they're a race, you're going to have a hard time adding up all the simulcast races in a year and come up to "primarily," because to me, now I'm not an attorney, but just basic common sense would say "primarily" could mean greater than 50 percent. Fifty percent of that 1.8 million would have to be met to be granted a license. And those are some interesting questions. But that's a lot of plays either way you shake that, whether you have 100 machines going for ten hours a day and only 100 days out of the year or you only have 2 machines going. There are six tracks where they're going to try to put this in, so it would be interesting to see how the law would have to be or statute would have to be revised just in case these are actually races, because either they're races or they're plays. And I'll be interested to hear how the body determines whether or not these are actually races or not. See the bottom line there, again, continues to be the statute, as we read before in LB887 in the committee, said it had to be primarily quarter horse and thoroughbred racing going on at the track. So the question... [LB1102 LB887]

SENATOR CARLSON: One minute. [LB1102]

SENATOR PRICE: Thank you. So the question becomes, what is primarily going on at that track? Is it primarily racing or is it primarily gambling on machines? Whether we call them slot machines, washing machines, you know, you figure it out. But what if the primary thing...and I think when you look on this and you delve into this, you may not get a license for a track in Lincoln. Thank you, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator Price. Senators wishing to speak: McCoy, Harms, Nelson, Christensen, and Avery. Senator McCoy, you're recognized. [LB1102]

SENATOR McCOY: Thank you, Mr. President and members. Would Senator Ashford yield? [LB1102]

SENATOR CARLSON: Senator Ashford, would you yield? [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR McCOY: Thank you, Senator. I'd like to talk a little bit about the fiscal impact of this. And as it's been talked about not only today but in very recent days, greatly appreciate, as I know a lot of folks across the state do, your involvement with economic development and the Omaha metropolitan community and your involvement with MECA

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and the Qwest Center and what that's meant to the city of Omaha and the state as a whole. And I would imagine that you probably had some discussions, I would assume, in committee on the impact that this would have to keno and the lack of a provision in the original green copy of the bill or the amendment to divert some of the revenue on this, as in the case of keno, back into some of these very worthwhile projects for the arts, for the new baseball stadium and others. Would you comment on that, please, Senator Ashford? [LB1102]

SENATOR ASHFORD: Yes. Unfortunately, Senator McCoy, I've been here during debates on all those issues, starting out with simulcasting and...not pari-mutuel betting, which was 1934 when we created the Unicameral and returned for pari-mutuel betting, but...I wasn't there then. But we did...I was here for the debate on the lottery. I was here on the...which carried with one vote and with 25 votes when Governor Nelson was here. I was here in '88 when Governor Orr was here and we debated simulcasting. And I was here on numerous occasions when keno was debated and eventually authorized. In each case, the major...one of the key issues that was discussed was, what will these additional forms of gambling have on the existing form of gambling? The only difference is that when you're dealing with simulcasting...when we were dealing with simulcasting we were dealing with the horse racing industry. And that's why at the time, obviously it went to the voters, the voters approved simulcasting, authorized simulcasting because it was...as they did the lottery. Interestingly enough, the voters approved the lottery and keno has obviously been approved by the local municipalities. So, yes, those issues are out there. In each case there's always discussion about how is this going to take away from another form of gambling. The real fact is that there are so many people that want to gamble in Douglas County, quite frankly, and they do--they gamble with, you know, on sporting events, even though they're not supposed to, and they go over to Council Bluffs and they gamble there--that, quite frankly, it just hasn't had that big an impact on other forms of gambling. It just hasn't. People want to be able to have that choice in my city, generally. They don't want casinos, I don't believe. And I oppose casinos and I oppose slots. They might want slots, too, but these kinds of forms of gambling they seem to want. I don't know. [LB1102]

SENATOR McCOY: Well, thank you, Senator Ashford. I appreciate those words. You know, we've talked about how the Omaha Zoological Society receives money from keno, the Humane Society, Buy.com Omaha Classic, Joslyn Art Museum, Domestic Violence Fund, Lauritzen Gardens, Convention and Visitors Bureau. There are a number of very, very worthwhile programs in the Omaha metropolitan area that receive funding... [LB1102]

SENATOR CARLSON: One minute. [LB1102]

SENATOR McCOY: ...from keno revenues. And there is no such provision in the committee amendment, nor the green copy of this bill, to divert some of those revenue

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streams, some of that revenue stream, as is the case with keno, to those programs, much less the new stadium that, as I've talked about today several times, is \$2 million a year for 30 years. If keno revenue dries up, where will that \$2 million a year come from? It will come from the taxpayers of Omaha and that concerns me greatly at a time that that shouldn't happen. Thank you, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator McCoy and Senator Ashford. Senator Harms, you're recognized. [LB1102]

SENATOR HARMS: Thank you, Mr. President and colleagues. I wanted to share another study with you that was done. It's entitled, "Cutting the Cards and Craps: Right Thinking About Gambling Economics," by Earl Grinols. He did a study that I thought was rather interesting and one of the things that he found out was that by studying the problem the pathological gamblers, the resource burden to society is fairly high. And, in fact, it costs us more by the fact that people have become pathological gamblers. There are at least nine distinct types of gambling social costs that affect not only this state but other states in this great nation and they are, one, which is crime, and that's...it would include adjudication, incarceration, and that would include police cost. Two, it would have an impact on business and employment cost. We have the loss of productivity on the job, we have loss of employment time and other cost of firms when people get hooked into this. They can't keep a job. They can't show up in the mornings. We have, which I've said earlier, bankruptcy, lawsuits, legal costs, bill collection costs, and that list just goes on. And in some cases people get so emotionally wrapped up that we find that in the studies that they've done is that suicide is an issue. Five, illness, this is costs associated with depression, stress-related illnesses, anxiety, cognitive distortions, severe headaches, and that list goes on of what actually happens to people in regard to their own health. And six, there are social costs that are attached to this and that deals with therapy, that deals with treatment, that deals with welfare, that deals with food stamps, costs associated with unemployment. And also keep in mind that earlier in this discussion I shared with you where a majority of the people are who are gambling and it's people who cannot afford it, people who don't have the money, people who are wanting and hopes and their beliefs that if they could just hit it big that they can get out of this problem. It doesn't happen, not very often at least. Seven, it deals with government to direct regulatory cost. It has an impact on welfare. It has an impact on a lot of other issues. It has an impact on, number eight, would be family cost. And that's costs that are associated with divorce, separation, spouse abuse, child neglect, and that list goes on. It also has an impact on abused dollars, resources acquired from family. Resources that are acquired from the family, from friends, from employers, for false pretenses. And so we find, regardless of how we want to view this and regardless of how you want to vote on this, it is and does provide some real social issues for this nation as well as this great state. And as you mull this over where you think you want to be, we need to keep in mind that we have an Attorney General's Opinion who says it's unconstitutional... [LB1102]

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SENATOR CARLSON: One minute. [LB1102]

SENATOR HARMS: ...thank you, Mr. President,...that no matter what happens, I would probably...would not be surprised this would be tried in the courts and, if the Attorney General is correct, it will be unconstitutional. So I would urge you to mull these over and to think about some of the social issues that gambling brings about. And then I go back to the same issue that we have an industry that just isn't making it. And this is their last ditch, their last hope. And I don't think, because when you look at the social cost, that we should give them that opportunity. Thank you, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator Harms. Senator Nelson, you're recognized. [LB1102]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to address a question or two to Senator Ashford, if he will yield. [LB1102]

SENATOR CARLSON: Senator Ashford, would you yield? [LB1102]

SENATOR ASHFORD: Yes, as long as they're not legal questions. (Laughter) I'm sorry. [LB1102]

SENATOR NELSON: I'm not going to permit you to refer things to Senator Lautenbaugh, Senator. These aren't hard. You made reference to the Arkansas Supreme Court opinion. I guess there was one apparently that you're aware of? [LB1102]

SENATOR ASHFORD: Yes, Senator Nelson. I don't have the opinion in my hand but I can get it. [LB1102]

SENATOR NELSON: Well, yeah, I don't know, but to your knowledge, the statute that they were construing, was that absolutely the same as the one we have here in Nebraska? [LB1102]

SENATOR ASHFORD: Not with the committee amendments. I don't think it was as tightly...the part of it...the committee amendments are referenced by the Attorney General on page 14 of his opinion and I think he gives a...is very positive about those committee amendments. Those were not in the Arkansas statute, as far as I can recall. Those are our additions. [LB1102]

SENATOR NELSON: All right. I think you voiced the opinion that you don't think this machine is a slot machine, doesn't appear, doesn't look like a slot machine. [LB1102]

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SENATOR ASHFORD: Well, it doesn't play like one. It could look like one, maybe, it depends on...I mean, if you don't like slot machines and you come at this from that view, you could, I'm sure you could think about it as looking like a slot machine. I don't doubt that. But I don't think it plays like a slot machine. [LB1102]

SENATOR NELSON: No, there's no handle. There is a difference there. [LB1102]

SENATOR ASHFORD: Well, but some slot machines you just press a button now. [LB1102]

SENATOR NELSON: Well, that's true. [LB1102]

SENATOR ASHFORD: Yeah. [LB1102]

SENATOR NELSON: It was interesting, you had to agree that they were probably on the floor. I can't imagine a row of 50 machines hanging from the ceiling and people pushing the button, standing up. [LB1102]

SENATOR ASHFORD: No, no, they're right there on the ground, I think. [LB1102]

SENATOR NELSON: All right. Do you have any idea about how many of these machines would be authorized? [LB1102]

SENATOR ASHFORD: It would be up to the county board of each county. [LB1102]

SENATOR NELSON: In each of the seven venues, is that correct? [LB1102]

SENATOR ASHFORD: Right. Correct. [LB1102]

SENATOR NELSON: It's possible there could be 50 to 75 to 100 machines in each one? [LB1102]

SENATOR ASHFORD: Yep. [LB1102]

SENATOR NELSON: Do you think anybody would continue to play the simulcasting with all those other machines available? [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR NELSON: For what reason? [LB1102]

SENATOR ASHFORD: Well, I mean, I can use me as an example. I mean, simulcasting is fun because you're...you know, you can watch the race at Del Mar and I've been once

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in five years, but I did have fun when I did it. The simulcasting is a current race that's going on generally close to the time. So I mean, it's fun to do that. I've never played an historic race machine but I don't know, I don't know, is it possible they would...I think they would play both. Here's my sense of it. My sense of it is if you like horse racing, you will play it. You will try it. You know, if you don't like horse racing, I don't know if it's going to have that much allure for you. [LB1102]

SENATOR NELSON: Well, thank you, Senator. You're apparently...you go there for fun and you like to watch the race. You like to see it on the big screen and you're not there to beat the house or... [LB1102]

SENATOR ASHFORD: Well, I never have come close, so, no, that's not my goal. [LB1102]

SENATOR NELSON: Neither have I. But am I...thank you very much. My presumption is that if we put in these machines, instant racing machines, that everybody will turn to those and they'll be pretty much the same people. But they'll just have an opportunity to push the button, if there's no handle there, that many more times. It really isn't racing anymore, it's just the same as a slot machine. May I also read, and you've already said that you don't think it looks like a slot machine. [LB1102]

SENATOR ASHFORD: I don't think it plays like one. [LB1102]

SENATOR NELSON: Plays like one. All right. [LB1102]

SENATOR CARLSON: One minute. [LB1102]

SENATOR NELSON: All right. Let me read you what the Wyoming court in 134 Pacific 3d 1223 said at the end of its opinion: We agree with the district court's tacit conclusion that we are not dealing with a new technology here; we are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering. Although it may be a good try, we are not so easily beguiled. Now there is a court that heard a lot of argument, read a lot of briefs and everything, and that was their opinion. And that, of course, is different than yours. But I want to put that out that it is a slot machine that attempts to mimic traditional pari-mutuel wagering and that's what we have here. We have a slot machine. It may not be called a slot machine by our court if it has to be litigated, and I hope that it doesn't, but that's what we have and this is why, in part, that I object to it. [LB1102]

SENATOR CARLSON: Time. [LB1102]

SENATOR NELSON: And at another time, I will speak again. Thank you. [LB1102]

SENATOR CARLSON: Thank you, Senator Nelson. Senator Christensen, you're

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recognized. [LB1102]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Lautenbaugh yield to a question, please? [LB1102]

SENATOR CARLSON: Senator Lautenbaugh, would you yield? [LB1102]

SENATOR LAUTENBAUGH: Yes, I will. [LB1102]

SENATOR CHRISTENSEN: Senator, what would you say this bill is about? Is this about saving the racing industry or is this about gambling? [LB1102]

SENATOR LAUTENBAUGH: I would say it's about saving the racing industry. [LB1102]

SENATOR CHRISTENSEN: And explain to me again how we're going to save the racing industry doing this. [LB1102]

SENATOR LAUTENBAUGH: Well, this would attract more people to the track. There would be more income coming to the track. The purses would be higher for the races. I mean, the proof is in the pudding if you look at Arkansas. It's exactly what happened there. It revived the industry all the way down to the farm level, if you will. [LB1102]

SENATOR CHRISTENSEN: But basically, what we're doing for the industry is giving them additional funds. We're really not expanding the number of days that they're running their horses, maybe not increasing the number of horses, maybe not even increasing the profitability of the individual horse owners. [LB1102]

SENATOR LAUTENBAUGH: Actually, I wouldn't say we're giving them anything. I would say we're allowing a once free people to actually go do what they might want to do at the track. I don't think we're giving them any tax money as I read this. [LB1102]

SENATOR CHRISTENSEN: No, I'm not saying giving them tax money but they would be taking money...if this is to save the racing industry, then they're going to have to benefit from it somehow. But I don't think the individual horse owner and jockey is going to make any more out of this, are they? [LB1102]

SENATOR LAUTENBAUGH: Well, yes. I mean, it's all part of the same industry. They don't work in a vacuum out there. The jockeys, the breeders, they're all part of the racing industry. [LB1102]

SENATOR CHRISTENSEN: But if we're actually trying to save the racing industry, wouldn't we want to be increasing the number of races they get and their purses and money they make this way? [LB1102]

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SENATOR LAUTENBAUGH: Well, honestly, I guess at some point you have to defer to the people who are in the business. And again, as I pointed out on this bill, there was a unanimity of opinion, at least as near as I could tell, from everyone involved, every expert in the business saying this is what we need. It didn't occur to me to say, well, what about if we did this or what about if we did that, because this was presented as something that was consistent with what was already going on at the track and that would bring bigger crowds in, which would increase the number of days. It just all flows together so it didn't occur to me to tell them how they should save their own industry. I listened to what they said they needed and decided it was something that comported with our constitution and something I could support. [LB1102]

SENATOR CHRISTENSEN: Would I be correct in saying that there won't be any added days of actual horses racing at a track but there would just be machines that people can go and bet on the historic races? [LB1102]

SENATOR LAUTENBAUGH: Not necessarily, no. [LB1102]

SENATOR CHRISTENSEN: Explain that. [LB1102]

SENATOR LAUTENBAUGH: Well, again, if the crowds...they don't have fewer days of racing because people don't want there to be races, the people at the track don't want there to be races. If they had greater crowds and greater purses, which would lead to greater crowds, they would have more days of racing. I mean, it's all interrelated in that way. [LB1102]

SENATOR CHRISTENSEN: So, if they actually have more physical races and larger purses, you believe more people come out and gamble and they would actually secure the industry that way? [LB1102]

SENATOR LAUTENBAUGH: Yes. [LB1102]

SENATOR CHRISTENSEN: Couldn't we just increase the number of racing days and not bring in the machines then? [LB1102]

SENATOR LAUTENBAUGH: Well, unfortunately, I think the other component we would have to do with that would be to compel people to go to the track somehow and I'm not really interested in doing that. This is a mechanism that would allow people, you know, encourage them to come to the track and increase what available...the activities available to them there. [LB1102]

SENATOR CARLSON: One minute. [LB1102]

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SENATOR LAUTENBAUGH: I don't think we can mandate more race days and make those days profitable. That would seem to be contrary to basic economics. [LB1102]

SENATOR CHRISTENSEN: But if this is about getting more people to the racetracks, isn't there incentives we could do? Because if there's food, people tend to go places. If there's higher payouts or something this way, wouldn't that bring more people? [LB1102]

SENATOR LAUTENBAUGH: Well, Senator, again, I'm not in the business. I do know they exist to be racetracks and so the activity that you want to have more of to bring people out would be racing and racing related activities like these machines. I don't think...again, we're not looking to hand money to these guys or give people cash incentives to go to the track or anything like that. And I was here earlier when you discussed somehow these entities should tax someone to raise some money somehow and I don't know how, if a industry is revenue short, you tax them to prosperity. [LB1102]

SENATOR CARLSON: Time. [LB1102]

SENATOR CHRISTENSEN: Thank you. [LB1102]

SENATOR LAUTENBAUGH: Thank you. [LB1102]

SENATOR CARLSON: Thank you, Senator Christensen and Senator Lautenbaugh. Senator Avery, you're recognized. This is your second time. [LB1102]

SENATOR AVERY: Thank you, Mr. President. It seems like I've spoken all day, not just my second time. I want to say that I appreciate what Senator Harms mentioned on the mike a few minutes ago. He's looking at empirical studies. These are studies that are based upon factual information. I have one here commissioned by the Connecticut Department of Revenue. They found that 47 percent of gambling patrons interviewed in that state considered themselves problem or pathological gamblers. The study included on-site interviews with more than 900 gamblers at casinos and pari-mutuel betting facilities. Nearly one-third of the gamblers surveyed met the criteria for pathological gambling. And I've got some information on that I might get to in a minute. Also as a control or a check against the accuracy of those 900 interviews with gamblers on site, the researchers conducted a phone survey of Connecticut residents and they found that pathological gambling was only 1.2 percent of the general population. So as a problem for the larger society, that's fairly small. But when you get into the realm of the gamblers themselves, 47 percent were classified as problem or pathological gamblers. Well, this leads me to call your attention to a Web site that is prepared by and maintained by the Nebraska Department of Health and Human Services, the Division of Behavioral Health. It's entitled, "Problem Gambling, a National Problem, a Problem for Nebraska." They

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point out in this Web site that problem gambling is gambling that causes mental, emotional, social and/or financial harm to a person, family, and/or group, work environment, school environment, community, etcetera. And they also note that when gambling is a problem for some it becomes a problem for all, because now you're talking about social cost and financial cost to the state. Recent national estimates place the social and economic cost of each problem gambler at approximately \$3,222. And that's just the problem gambler. When you go...when you escalate that to the level of the pathological gambler, the cost is \$11,304 for each pathological gambler--a high cost. Three percent of adults, that is 42,267, in Nebraska experience some kind of gambling problem each year. That's over 42,000 Nebraska citizens experience some form of gambling problem each year. The estimated annual cost to the state is over \$200 million. Gamblers Anonymous, and I'm still on the Web site, Gamblers Anonymous studies report that approximately 50 percent of the participants reported having stolen items in order to finance their gambling habit, and over 33 percent had been arrested. So Gamblers Anonymous tell us that approximately 50 percent of the people who are in their program, their treatment program, admit to having stolen goods... [LB1102]

SENATOR CARLSON: One minute. [LB1102]

SENATOR AVERY: ...in order to finance their gambling problem and 33 percent of them had been arrested. Also based on reported consumers served in 2005, this implies that annually more than 11,000 Nebraskans committed crimes relating to gambling. That is...another way of putting that is that 11,000 Nebraskans actually committed other crimes in order to finance gambling or other crimes were caused by the gambling problem. So have you ever gambled for longer than you intended? That's an indicator that you might have a problem. Have you ever borrowed money to gamble? Have you ever felt remorseful after gambling? Have you ever lied about how many times you've gambled? Have you ever bet more than you intended? If you answer yes to any of these questions, then call this hot line. We maintain this with tax money, a hot line to help problem gamblers, because it does become a problem for a large number of those... [LB1102]

SENATOR CARLSON: Time. [LB1102]

SENATOR AVERY: ...who gamble. Thank you, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator Avery. Those still wishing to speak: Senators Price, McCoy, Wightman, Pankonin, and others. Senator Price, you're recognized. [LB1102]

SENATOR PRICE: Thank you, Mr. President, members of the body. Well, continue to do more research and again I still do believe that when we look at the statute and we look at 2-1228, that's where they actually talk about "primarily" and that...how do we

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measure "primarily"? Now would "primarily," if it's not on the number of races, is "primarily" predicated on the revenue generated by the activities at the track? Because I believe if you have all these machines and revenue, it would be interesting to see how they would actually define "primarily." And also I had Senator Stuthman, who was kind enough to come in and set me straight. Out at Columbus, he was saying they only race three days a week. So we run the numbers, 10 machines, 30 per hour, would be 300. You know, so we can go and on, but anyway it works out to be about 5,400 plays there per week. So just we do six tracks, that would be 32,400 plays. But my next, I guess, nugget I found in reading in 2-1224, where it says, "No simulcast or interstate simulcast shall be authorized which would jeopardize present live racing, horse breeding, or employment opportunities or which would infringe on current operations or markets of the racetracks which generate significant revenue for local governments in the state." I found that kind of interesting. So when we were talking earlier about this LB887, and they were wanting to decrease the number of days, that looked like it might have flown directly in the face of that because, see, we have right here in statute. We don't want to do anything that would, you know, impact something that generates significant revenue for local governments in the state. And my contention is that if you have all these machines out there and they would move the way Senator Stuthman had advocated in LB887, you would indeed be impacting that because, see, we would run less horses and that would have a big impact because we get revenue from the hay and from the workers and all the facilities. And we've heard on and on again about how much and how widespread the industry is. And so I would submit to you that we would be heading down a path, and I'm very happy that the committee decided to not report that out of committee and to IPP it because we wouldn't want to be in conflict with statute. We would have set up some crisis, now maybe not constitutional crisis, but we would have set up a crisis then nonetheless because we would have been flying directly in opposition to 2-1224. Again, the question comes is, it said, "No simulcast or interstate simulcast shall be authorized." I wonder if the amendment should be put in to amend 2-1224 because we said these laws and statutes were brought about as they come along because it's a living, breathing document. What we're dealing with are the changes that have come about in our society and now that we have the mechanical wonders and machines that can help us while away the time and give us great enjoyment, one of the things is, are the machines impacting the bottom line? Are we already in conflict with 2-1224? Would Senator Avery yield to a question? [LB1102 LB887]

SENATOR CARLSON: Senator Avery, would you yield? [LB1102]

SENATOR AVERY: Yes, sir, I will. [LB1102]

SENATOR PRICE: Thank you very much, Senator Avery. Sorry to catch and make you run back. The question I had to you on an earlier line of a discussion I was having was the idea of the primarily running these races, quarter horse races and... [LB1102]

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SENATOR CARLSON: One minute. [LB1102]

SENATOR PRICE: Thank you, Mr. President. And the question is, do you believe that there's even a possibility, remote as it could be, that any track seeking a license here in Lincoln may be in jeopardy because they won't have been able to have primarily met the threshold? [LB1102]

SENATOR AVERY: My guess is that they will twist themselves into the shape of a pretzel to meet these thresholds, so I would say probably not, sir. [LB1102]

SENATOR PRICE: Well, thank you very much, Senator Avery. And to the members at large around the building and here listening, I think it was quite interesting in reading. I actually did go through all the sections. I won't pass a test on it right now. But I will tell you it is somewhat convoluted when we do have them say in one place that you have to have run at least, you know, 70 percent of the races to have this and another place one day of live racing. So to the questions we had earlier about live racing, whether it's on TV or in place... [LB1102]

SENATOR CARLSON: Time. [LB1102]

SENATOR PRICE: ...seems to answer it. Thank you very much, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator Avery and Senator Price. Senator Price this was your third time. Senator McCoy, you're recognized. This is your third time. [LB1102]

SENATOR McCOY: Thank you, Mr. President, members. Would Senator Lathrop yield, please? [LB1102]

SENATOR CARLSON: Senator Lathrop, would you yield? [LB1102]

SENATOR LATHROP: Yes. [LB1102]

SENATOR McCOY: Thank you, Senator. We've heard from Senator Christensen a number of times today as we've talked about this bill. And as one of the dissenting no votes on this legislation coming out of committee, your name is also listed as a no vote on coming out of committee and wondered if you could elaborate on why that might have been. [LB1102]

SENATOR LATHROP: Sure. I had some concerns about this. Frankly, I'm not sure what I'd do with it if it went to a vote right now because I have listened and there's been a lot of discussion today about the horse industry. And as you know, I'm the proud owner of a

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horse, got a little experience. It's not a race horse. It's less productive than that, probably more expensive. But I have an appreciation for those who are in the horse industry and so I...you know, I'm kind of where Senator Lautenbaugh expressed, which is, I really do, I'm somebody who generally opposes the expansion of gambling. And when this came through the committee, frankly, my thought was it was an expansion of gambling. As I listened to it today and as I read the work that has gone on here, I'm still listening. And I haven't been standing up advocating either way because I am interested in those who are going to talk about what this means to the horse industry in the state. These are people who I...some of whom I know and some of whom I've had experience, opportunities to meet as I practice law in the state, and they're good people. And they're engaged in an honorable profession and an honorable calling raising horses and raising the hay that we feed the horses, and the farriers and the vets who work on these animals. And that's all intertwined in this discussion. When we talk about the horse industry and the horse racing industry, we're talking about good people. And the focus today has been, a lot of it by the opponents, has been on the gambling aspect of this and is it an expansion of gambling. You know, I suppose if we open another track, anything could be interpreted as an expansion of gambling. I think perhaps the question is, is this horse racing? Because there's nothing wrong with horse racing under our constitution. Then we just have to decide if we think it's a good idea or not. And that's the discussion I'm listening to tonight. So I appreciate the question. [LB1102]

SENATOR McCOY: Thank you, Senator. Could you also elaborate on what this may mean for keno revenues, in particular how it might affect keno revenues in your legislative district. [LB1102]

SENATOR LATHROP: You know, I won't...I'm not an expert on that. Honestly, I've heard the discussion today. I've been listening and the discussion has been, there's finite dollars that chase the gambling; that whether, you know, if we added slot machines, there would still be a finite number of dollars put into gambling. I don't know if that's true or not. I've played keno once, maybe twice in my whole life. [LB1102]

SENATOR CARLSON: One minute. [LB1102]

SENATOR LATHROP: I might have been to the horses once and the boats maybe...I was there a couple of weeks ago, didn't even go to the slot machines. I'm just not a gambler. Never had any luck at it, don't think it's that much fun. But some people do and I can appreciate that. And I also, when it comes to the horse racing industry--I'm now 53 years old or will be in a couple of days--I remember the heyday of Ak-Sar-Ben when you'd look down 72nd Street and it was wall-to-wall cars. And people were there for the pageantry. It was a social event, a social occasion, and they left the track and they all went to the Johnny's and the Mr. C's and the steakhouses around this town and filled them up. And they brought busloads of people here from Kansas City. And I think that that was entertainment. That's a form of entertainment and... [LB1102]

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SENATOR CARLSON: Time. [LB1102]

SENATOR LATHROP: ...it's not just flushing money down the drain. Thank you. [LB1102]

SENATOR CARLSON: Thank you, Senator Lathrop and Senator McCoy. Senator Wightman, you're recognized. [LB1102]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I haven't spoken on this issue here today. Have I debated it? I've debated it a lot in my mind. I've wrestled with my conscience as to whether I should engage in the discussion. Senator Gloor mentioned earlier that he was amused by the people who thought gambling was a major problem but was always amused by those who got out a few dollars when it came time to enter the office pool on football. Well, I'd say bingo, I'm one of those. I have engaged in that. I've engaged in a friendly wager. I know some that have called that Christian incentive. (Laughter) Having said that, do I feel I have a conflict? No, no more than I do when I'm going down Interstate 80 and I exceed 75 miles per hour. I don't think I've forfeited my right to vote with regard to speed laws. So...but nevertheless, I have made up my mind that, because it would be a bit hypocritical, I probably will not vote on LB1102. I think I owe it to my constituents to say why I'm not. I probably will vote on the amendments. I think you can make it a better bill by voting on the amendments. I don't see any...being hypocritical to that. But I certainly agree with things that Senator Harms has said today. There is a high, high social cost to gambling. And in a previous life, I occasionally got to bankruptcy courts. One of the questions that is frequently asked or maybe was always asked by trustees is, did any of these debts result from gambling, and almost invariably they did, some of them at least but certainly a vast majority of them. So I think Senator Harms is right on when he says that it does wreck families, it does wreck people's lives. So while I won't vote in favor, I will not vote. And I guess I heard Senator Harms this morning arguing or discussing the fact that if it walks like a duck, acts like a duck, sounds like a duck, probably it's a duck. So to follow that one step further I would...I ask if Senator Ashford would yield. [LB1102]

SENATOR CARLSON: Senator Ashford, would you yield? [LB1102]

SENATOR ASHFORD: Yes, Senator Wightman. [LB1102]

SENATOR WIGHTMAN: And I've discussed it with Senator Ashford off the mike. [LB1102]

SENATOR ASHFORD: I'm prepared for this question. [LB1102]

SENATOR WIGHTMAN: Okay. I wanted him to be prepared. Have you seen any of the

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machines that are used in this historic horse racing? [LB1102]

SENATOR ASHFORD: Yes. [LB1102]

SENATOR WIGHTMAN: And I guess I would ask you, do they appear more like a horse or do they appear more like a slot? [LB1102]

SENATOR ASHFORD: More like a horse or a slot, meaning a slot machine? [LB1102]

SENATOR WIGHTMAN: Slot machine. [LB1102]

SENATOR ASHFORD: Well, it's on the floor. We've established that. It's not up in the ceiling. Senator Nelson established that with his questions. I guess I'd have to say it probably appears to be more like (laugh) a slot machine than an actual horse. (Laughter) But I'm not going to...that's going out on a real limb, Senator Wightman, so I don't want you to, you know. [LB1102]

SENATOR WIGHTMAN: You mean, you haven't seen too many horses. (Laughter) [LB1102]

SENATOR ASHFORD: Not as many as you probably (laughter) or Senator Lathrop, but... [LB1102]

SENATOR WIGHTMAN: Okay. Well, I do believe that it is expanded gambling probably just as much as if we put slot machines in those same arenas where people will be attending horse races. [LB1102]

SENATOR CARLSON: One minute. [LB1102]

SENATOR WIGHTMAN: So I do have to believe that it is expanded gambling. And I did say that I wouldn't vote for expanded gambling and yet here I am somewhat hypocritical. I'm not planning to admit either the time or the place when I may have placed any bets but...on a ball game, but I certainly wouldn't deny that I've done such. So I at least thought I owed it to my constituency on a major issue such as this to explain why I would not be casting a vote. Thank you, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator Wightman and Senator Ashford. Senator Pankonin, you're recognized. [LB1102]

SENATOR PANKONIN: Thank you, Mr. President. Something that Senator Lathrop talked about when he was answering some questions, I want to start with that. And first of all, I'm about five years his senior and I also remember Ak-Sar-Ben in its fullness and its heyday and not that I attended very often or whatever, but it was such a special

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place. And Senator Howard talked about...or when I talked to her once about an earlier bill, mentioned that as well. And, you know, unfortunately, and the way Senator Lathrop described it, brought back a lot of memories of my parents and just a different era. And, unfortunately, we can't go back. And that's like so many things in life. We have great memories and, you know, back then there was a fair amount of time between races and placing your bets and all these sort of things and going out to those steakhouses that he mentioned and just brought a lot of memories back. But, unfortunately, we can't turn back the clock and in some ways it's unfortunate. But the discussion we just had about these machines, I think that's one of the sad things here about the industry involved and trying to recreate something that just won't happen again. But it is a different type of racing, it's...that we're talking about in this bill. It's a gambling machine that's fast paced and has a tendency to draw people in for multiple betting opportunities in a short period of time. That's why the handle goes up and that's where the problems potentially can come from. Now if our presiding officer, Senator Carlson, was in his regular seat, I'd be asking him a question. And that question would be, because we're going to...this is a letter, by the way, from the National Council on Problem Gambling. It's dated February 5, 2010, so it's pretty current. What are the odds that a high school male athlete will play football in high school and in college and be drafted to the NFL and be on the winning Super Bowl team? Now Senator Carlson probably knows this but it's...according to this, the odds are 1 in 64,000, almost 65,000. What are the odds of winning the Powerball grand prize? It's about 1 in 195,000,000. What are the odds that an adult in the United States had a problem with gambling last year? That's 1 in 50. And here's another statistic that I think is important. What are the odds someone, somewhere in the country will call the National Problem Gambling help line in the next minute? That's one in two. So it's an issue for a lot of people and some of the behavior that Senator Harms has talked so eloquently about, the problems that it can lead to, this is...probably didn't happen as often in the Ak-Sar-Ben style of past history. But these machines have more that effect, are more addictive, can lead to people having problems and start them on a road that isn't good public policy. Which my last point is going to be, I think, unfortunately, one of the reasons I've just never had an interest personally, but I guess I'm a little bit old school in that I think government is based on taxes and funding from activities such as this, it's just not...it just doesn't square with me as much as people deciding to pay taxes in a more regular fashion, making those decisions. It just seems like we're building something, we're trying to have a revenue stream from people's weakness and distress and sometimes the hard times they put themselves in. And I know that there's other things that that could be, those conclusions could be drawn to... [LB1102]

SENATOR CARLSON: One minute. [LB1102]

SENATOR PANKONIN: ...but I think this one in particular. We talked about expanding an activity today. I think if we don't...and I'll go back to my previous statement. I think this could lead to expansion of locations because of the tribe...Indian tribe issue. But I

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just think there's enough problems with it that we hope you'll vote against this bill if we get that opportunity. Thank you, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator Pankonin. Members still wishing to speak: Senator Harms, Christensen, Nelson, and Dierks. Senator Harms, you're recognized. This is your third time. [LB1102]

SENATOR HARMS: Thank you, Mr. President and colleagues. The National Council on Problem Gambling in this decade has received over...almost 2 million calls in regard to their help line for problem gambling. In 2009, the total calls for the national help line totaled 270,242 calls, which is a 6 percent increase in 2008. Calls came from the range of people from the age of 45 to 54 age group, which kind of topped the list. Male callers outnumbered the female callers by approximately 18 percent in 2009. While the addiction affects both genders, the studies show that men are much more likely to gamble and gamble for large stakes and on more things, different kinds of games. It may be difficult to tell in some cases whether or not someone simply enjoys gambling or gambling for large stakes or there's something else that pushes them to do this. I'd like to share with you what some of the signs are for a person who has a gambling issue. Some of these are also similar to a drug abuse, alcohol abuse, and other kinds of addictions. There's some similarity here. One, they are just simply preoccupied with gambling and they're unable to stop. That's pretty much the same as people that are involved in alcohol or drug abuse. Two, they brag about gambling. They exaggerate their wins and they minimize their losses. So they don't want to admit that this is a gambling problem, that it is an issue. They become restless and irritable when not gambling--the same thing that you see in regard to drugs and you see about alcohol. It's the same thing. People become restless and they're driven back to it. They gamble to win back what they've lost, which they never get. They borrow money for their losses. They lie to hide the time that they've spent in gambling or their unpaid debts--same thing with drugs and alcohol. You borrow whatever you can. You steal whatever you can to help your habit. You lie about these issues. And they have frequent unexplained absences, kind of like an alcoholic. You can always tell if you're in an organization and people don't come to work on a Friday or a Monday, and it's consistent, you need to start asking the question, what is with this individual, because many times they're an alcoholic or they're involved in other issues such as drugs. A lot of times this will push them to doing things illegal to pay their gambling debts or just to get the money to gamble. It jeopardizes a significant relationship or job by gambling. That relationship can be with their friends. That relationship could be with their families, their wives or their husbands. It has an impact and that impact is negatively. What I'm hoping that you'll at least carry away with you and regardless of whether how you want to look at this filibustering, because that's really what we're doing. [LB1102]

SENATOR CARLSON: One minute. [LB1102]

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SENATOR HARMS: Oh, thank you, Mr. President. You're very gracious, thank you. Gambling is truly an addiction which is a serious matter. And if you don't pay attention to it, if you don't realize that this is serious, you can get yourself hooked very carefully. And that's why it's important to understand that there are places where you can go get help. And the national gaming (sic) help line, which is 24 hours, is confidential. And we look at the numbers that they have, which I said almost 2 million in this decade, it's increased phenomenal from 2000 to 2009. It went from 115,000 people to over 270,000 people made calls. In 2000 that averaged a month 9,642 calls and in 2009... [LB1102]

SENATOR CARLSON: Time. [LB1102]

SENATOR HARMS: Thank you, Mr. President. [LB1102]

SENATOR CARLSON: Thank you, Senator Harms. Senator Christensen, you're recognized. This is your third time. [LB1102]

SENATOR CHRISTENSEN: Thank you, Mr. President. Is Senator Hadley around? I had told him I wanted to talk to him. You know, again, I continue to want to visit with people about the direction we're going here, if this is really about the industry or if this is about gambling. You know I've had several conversations with different people. They'd come up to me off the mikes and say, you know, Mark, this is about the horse racing. If it's about horse racing, then let's watch the races. If it's about gambling, then let's admit, this is about gambling. I've had several people, I think, are very confused because they keep telling me they are in support of the horse racing industry but yet they don't want to vote to watch the races. They don't want to vote to increase the simulcasting. They don't want to vote to visit about what really is horse racing. You know, when we're watching a machine of horses that are dead, that's true historic horse racing, but we can't even watch the race. You know, jokingly, people have asked back here if this gun that was handed out was to shoot the machines if you lose betting on a historic race. Someone even asked me if I would sponsor the amendment for it because they thought I liked guns a lot. But, you know, we've had a lot of fun on this bill and we probably have made everybody's mind up where we're at. I don't know if we've made up our minds on what's the best solution because I still say expanding gambling is not the direction we need to go. There are ways to address this horse racing industry and I really believe that we can do it in another way. I believe they can bring a bill another year that can be done in a way that helps them more. I believe they can do it right now by bringing more simulcasting in which is currently allowed. So again, I want everybody to think about how they vote on this bill. You know as we continue this filibuster for eight hours, if it...cloture would happen to have the votes, we'll go four hours again on the next round. Yeah, I guess you can make your decision where you want to go, guys. I don't know when that motion for cloture will come. We know it will have to come. And so I can just address you. If you're tired of this, don't vote for that cloture because we'll go four hours on the next one. That's the fun of this. Unfortunately, we've all been on both sides of it.

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So again, as we go on through this, thinking about this industry, there's a lot of good people in this industry, there's a lot of good animals, there's a lot of good jockeys, there's a lot of people in this, but let's facilitate a way that they can work with their industry and actually be promoting the racing, what it's really about, not be looking at just gambling. Because when we're bringing in a machine to run, it's no different than getting... [LB1102]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB1102]

SENATOR CHRISTENSEN: ...on the Web site that was sent to everyone. We can at any point in time get on the Internet and gamble. There's horse racing there. It's been sent to you. I've seen a number of senators looking at it. That right there is one of the things that's really hurting the horse racing industry, the ability to have it on the Internet. They don't have to go to the races. You know, think about there's many ways that we can help this industry if we will think about it. I know I've asked the questions about taxing themselves, the simulcasting, and people said this come from the industry, it's what they wanted. I can tell you it failed dog owners in Iowa because they passed a bill. As of July 1, they no longer have to have dogs racing at the racetracks. It's all... [LB1102]

SPEAKER FLOOD: Time, Senator. [LB1102]

SENATOR CHRISTENSEN: ...on the machine. Thank you, Mr. President. [LB1102]

SPEAKER FLOOD: The Legislature will momentarily stand at ease. While we are standing at ease, Mr. Clerk, items for the record. [LB1102]

CLERK: Thank you, Mr. President. I have an explanation from Senator Krist, explanation of vote (re LB836, LB879, LB882, LB937, LB937A, LB956, LB1018, LB728, LB951, LB951A, LB1057, and LB742). Reference report from the Reference Committee, and Enrollment and Review reports LB931, LB1072, LB779 to Select File with E&R amendments attached. That's all that I have, Mr. President. (Legislative Journal page 1228.) [LB836 LB879 LB882 LB937 LB937A LB956 LB1018 LB728 LB951 LB951A LB1057 LB742 LB931 LB1072 LB779]

SPEAKER FLOOD: Senator Giese, will you please approach the Chair. Mr. Clerk, you have a motion on the desk. [LB1102]

CLERK: Mr. President, Senator Giese would move to invoke cloture pursuant to Rule 7, Section 10. [LB1102]

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SPEAKER FLOOD: It is the ruling of the Chair that Senator Giese's motion to invoke cloture, pursuant to Rule 7, Section 10, is in order as there has been full and fair debate on LB1102. Senator Giese, for what purpose do you rise? [LB1102]

SENATOR GIESE: Mr. Speaker, I would request a call of the house. [LB1102]

SPEAKER FLOOD: Thank you, Senator Giese. 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. [LB1102]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB1102]

SPEAKER FLOOD: The house is under call. Senators, please record your presence. Those unexcused 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 Avery, Senator Hadley, Senator Hansen, Senator Pahls, Senator Adams, Senator Langemeier, Senator Pirsch, Senator Howard, Senator Loudon, Senator Janssen, Senator Heidemann, Senator Conrad, please return to the Chamber and record your presence. The house is under call. Senator Heidemann, please return to the Chamber and record your presence. The house is under call. Senator Giese, all members are present or otherwise accounted for. How did you want to proceed? I understand you wanted a roll call vote. [LB1102]

SENATOR GIESE: Yes, in reverse order, please. [LB1102]

SPEAKER FLOOD: Members, the first vote is the motion to invoke cloture. Mr. Clerk, please read the roll in reverse order. [LB1102]

CLERK: (Roll call vote taken, Legislative Journal page 1229.) 30 ayes, 13 nays on the motion for cloture. [LB1102]

SPEAKER FLOOD: The motion for cloture is not adopted. Mr. Clerk, we now proceed to LB1103. I do raise the call. [LB1102 LB1103]

CLERK: Mr. President, LB1103 is a bill by Senator Flood. (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. I do have Judiciary Committee amendments. (AM2063, Legislative Journal page 978.) [LB1103]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you. Senator Flood, you're recognized to open on LB1103. [LB1103]

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SPEAKER FLOOD: Good evening, Mr. President, members. As I first mentioned at the public hearing on this bill, I recognize that there's probably no more divisive political issue than abortion. But it remains my hope today to continue an honest and thoughtful discussion of LB1103. I've given the subject of late-term abortions much thought, and while I believe all innocent human life should be given protections by the state, as a lawyer I recognize that a law that bans all abortions would be struck down by the U.S. Supreme Court. This is where I believe LB1103 presents middle ground on which people on both sides of the abortion divide might agree. LB1103 doesn't ban all abortions. It would not regulate abortion practice prior to 20 weeks fertilization age. What LB1103 says, in effect, is that after the unborn baby reaches 20 weeks, reaches a point where he or she is able to feel pain, Nebraska has a greater interest in protecting that fetal life. At that point, with certain exceptions, late-term abortions would be prohibited. The Supreme Court has recognized that the state has a duty to define its interest in the abortion debate, and that's what I hope in today's discussion to establish. I hope to establish that there is a legitimate, legal argument to allow for this kind of regulation of abortions, which are late term but perhaps prior to viability. LB1103 is premised on several significant factual findings and these findings were amended to conform to the expert testimony presented at the public hearing. They are: Number one, at least by 20 weeks after fertilization there is substantial evidence that an unborn child has the physical structures necessary to experience pain. Number two, there is substantial evidence that by 20 weeks after fertilization unborn children seek to evade certain stimuli in a manner which an infant or adult would be interpreted as a response to pain. Number three, anesthesia is routinely administered to unborn children who have developed 20 weeks or more past fertilization who undergo prenatal surgery. Number four, even before 20 weeks after fertilization, unborn children have been observed to exhibit hormonal stress responses to painful stimuli. Such responses were reduced when pain medication was administered directly to such unborn children. And number five, it is the purpose of the state of Nebraska to assert a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain. For these factual findings I relied on the testimony of four well-qualified doctors who testified at the hearing. Additionally, I relied on the testimony of other medical professionals and the results of studies that have been published in peer review journals, including the Congressional testimony of Dr. Robert White and Dr. Curtis Cook and the testimony of Dr. Sunny Anand for the U.S. Department of Justice in the partial-birth abortion litigation. This is an important point. Justice Anthony Kennedy is widely regarded as the swing vote on the abortion issue. He has emphasized that it is "inappropriate for the judicial branch to provide an exhaustive list of state interest implicated by abortion." That's found in his dissent in Stenberg 530, U.S. 961. He also said, "Casey is premised on the states having an important constitutional role in defining their interest in the abortion debate," again, Stenberg 530, U.S. at 961. In other words, the Legislature can supply crucial facts in the balancing of state and private interests in this manner. It does seem

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reasonable to me that if an unborn child reaches 20 weeks and has an ability to feel pain, he or she is worthy of the state's protection. Abortions after 20 weeks postfertilization are rare in Nebraska. In the most recent data available from DHHS, none of the abortions reported were 20 weeks or older. I realize most of the abortions reported did not specify the age of the unborn child, but the national data confirms that abortions after 20 weeks are unusual or specifically that 1.3 percent of abortions performed in '06 were at or more than 21 weeks gestation according to CDC data. With these facts in mind, I think LB1103 is a modest and reasonable proposal which fairly balances the privacy rights of a woman with the interest of the state in protecting and promoting fetal life. While the bill does not impact a majority of situations, it will provide a needed protection for the unborn child who is 20 weeks of age from the painful procedures of abortion. In discussing this bill, one objection has been raised that this bill would prohibit previability abortions. As you know, Nebraska currently has a postviability ban on abortions. Viability is generally considered to be 23 to 24 weeks postfertilization. At St. Elizabeth Hospital in Lincoln, for example, they routinely resuscitate 23-week-old babies. LB1103, with certain exceptions, draws a bright line at 20 weeks. Thus, it would prohibit abortions at a point in the development of the unborn child two or so weeks earlier than the current law. In the analysis that I have done I think there are several good reasons to think the U.S. Supreme Court would uphold LB1103 if it had the opportunity. I will offer some of these reasons when I get up to speak again. Another constitutional question is the scope of the medical emergency exception language. There are exceptions to the 20-week prohibition for medical emergencies which the bill defines, and this exception language is contained in Section 5 of AM2063, which begins on page 4. Under (1) of Section 5, the amendment states the woman "has a condition which so complicates her medical condition as to necessitate the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function; or (2) it is necessary to preserve the life of an unborn child." This last part, (2), was added after the hearing to include a situation such as twin-to-twin transfusion syndrome where the intent is to save the life of one of the babies. Since my office and I were involved in putting together the amendment to LB1103, I thought I would just take a minute to touch on some of the main changes in addition to the findings and exception language that I mentioned above. The title of the act would be changed to better reflect the purposes of the bill. Previously it had been called the Abortion Pain Prevention Act. It is better described as the Pain-Capable Abortion (sic) Child Protection Act. Also there was some confusion about measuring the age of the unborn child. From the beginning, LB1103 has been internally consistent. But doctors typically measure the start of a pregnancy as the first day of the woman's last menstrual period. This is called the menstrual age or gestational age and is about two weeks ahead of when fertilization actually occurs. In other words, 22 weeks menstrual age or gestational age is 20 weeks fertilization age or the actual time the baby has been developing. The change from gestational age in the bill as originally introduced to postfertilization age in the amendment should clear up any potential confusion. With that, I would like to thank the body for its consideration of LB1103, and I would urge you

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to adopt the Judiciary Committee amendment, AM2063, and the underlying bill, LB1103. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. As the Clerk has stated, there is a Judiciary amendment offered by the Judiciary Committee, AM2063. Senator Ashford, as Chair of the Judiciary Committee, you're recognized to open on the committee amendment. [LB1103]

SENATOR ASHFORD: Thank you, Mr. President and members. And I will offer the committee amendments. I did pass around an article from June 15, 2009, that...in The New York Times that really struck me and I've kept it and it's actually brown now from being kept since that time because I read it a lot. The abortion issue has been before this Legislature many times. I've been engaged in many, many debates on the abortion issue. We've heard the discussion in many, many committee hearings and one of the dilemmas and interest...well, one of the interesting...and I'd invite you to, if you would, read this because I think it really to me sort of crystallizes some of the issues that we all face in dealing with abortion in the United States. And it talks about...I'm not going to read it necessarily but...other than maybe a few sentences, but what it talks about is the dilemma we all have because of Roe v. Wade. It is really literally impossible for us to talk about what they talk about in due course all the time in European countries, for example, in establishing what is in the best interest of the unborn child and what is in the best interest of the mother. And in doing so they have come up, in most European countries, with certain standards of when an abortion should occur and when it should not and it ranges from as early as 12 weeks in some countries up to 20 weeks in other countries. But in no case, I don't recall any country in Europe anyway that had a restriction of longer than 20 weeks. And the reason they can do that, obviously, is because they don't have the case of Roe v. Wade; they don't have the constitutional, legal issues that Roe raises in those countries. But this article really says a lot to me because it says that because we can't really talk about what is the proper place, whether it's 20 weeks or 15 weeks or any previability standard at least up to this bill, until the time of this bill, any sort of discussion about previability restrictions such as this would be prohibited under Roe v. Wade, and that...the result of that is we never really have a thorough discussion about when the line really should be drawn. And for that, I commend Speaker Flood here because what he's doing is he's...you know, if you went to ten constitutional scholars and asked them, is this bill as drafted constitutional, I'm guessing more than half would say, probably not. But you may get some to say that it is. But what Senator Flood has done here today in my view has...is a valuable service to this body because he's opened up a discussion that is had in countries all over the world except the United States. What is the proper place to put restrictions and what restrictions should they be in dealing with abortion? And in countries that, for example, have...how much time do I have? [LB1103]

SENATOR LANGEMEIER: 6:24. [LB1103]

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SENATOR ASHFORD: That there are countries, sophisticated European countries that have talked about women's health. For example, the prenatal issue that we're wrestling with in the Legislature, that wouldn't even be a question in a European country that prenatal care would be given to all women and that women...so that their babies could be born healthy. In this country we have to struggle with that for some reason that's totally unbelievable to me, why we would have to struggle with why we want healthy babies born. And in Europe they can...and likewise, they can talk about what is the proper line to be drawn. I think Senator Flood is right. I think the line is 20 weeks. I think he's absolutely right that it should be 20 weeks. There is no question that there is fetal pain, no question. And there is no question that in a very small number of cases a 20-week-old unborn baby can be saved, no question. And in talking to the people I rely on in the medical community on all sides of the abortion issue agree with that, unequivocally. So I think in all the years I've been here, this issue and discussing this issue is very, very important and Speaker Flood has done us a service by bringing this issue to us. The irony, of course, is because of Roe v. Wade, the way it's been interpreted, we cannot talk about the other things, what is...you know, what should happen at 12 weeks, 13 weeks, 14 weeks, 15 weeks, at least traditionally we haven't been able to, and we can't put abortion into the democratic process as has been the case in European countries. So I applaud Speaker Flood. And with that, I'm going to go over the committee amendments and they're very straightforward and so I'll go through each one. AM2063 does several things. It renames the act. The Pain-Capable Unborn Child Protection Act is the new name. It...as Speaker Flood mentioned, references to gestational age are changed to postfertilization age which gets you to the 20 weeks, as Speaker Flood discussed. Legislative findings in Section 3(3), (4), (5), and (6) are stricken and replaced with findings about observations of responses to pain and the use of pain medication on unborn children. Another finding asserts that Nebraska has a compelling state interest in protecting the lives of the unborn from the stage at which they are capable of feeling pain. The amendment would add an exception to the ban on abortions after 20 weeks postfertilization age for abortions necessary to preserve the life of an unborn child. And this is an amendment that was offered to us by Speaker Flood to address the issue raised in the hearing about twins, twins or triplets, and the necessity of aborting to save the life of one of the twins, one of the unborn children. The amendment would strike the ability of a grandparent to maintain an action against the person who performed the abortion. And finally, language was stricken that would limit the discretion of the medical board to discipline professionals under the act. How much time do I have? [LB1103]

SENATOR LANGEMEIER: 2:20. [LB1103]

SENATOR ASHFORD: So in conclusion, the committee amendments are straightforward and, I would suggest, not particularly controversial and helpful in the case of twins. So in conclusion, because I'm not going to talk about this issue unless

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someone asks me any more questions, but for me the threshold question of whether or not we ought to protect the unborn child at 20 weeks, that burden has been met for me. The question now becomes whether...and the discussion has to be around the issues of constitutionality and the exceptions of how those fit into that context. I...it's tough. It's a tough call. It's a tough call. There is no question that Speaker Flood is right, that we ought to protect children at 20 weeks, and the discussion tonight and maybe tomorrow will be on how far we can go under today's interpretations of our constitution. And the way we have addressed the issue of abortion since Roe v. Wade, we are limited, as I suggested, to discussions about... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR ASHFORD: ...discussions about what we do with these very late-term abortions when I wish we could talk about what we do with abortions that occur at ten weeks and eight weeks, and develop a standard for when an abortion can or should or should not occur earlier on in the process. But quite frankly, we are at this stage of the game prohibited from...well, not prohibited from discussing them, but we certainly are much more restricted in what we can and can't do. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Mr. Clerk, items for the record. [LB1103]

CLERK: Mr. President, amendments to LB849, LB877, LB862, LB1102, and to LB1048. (Legislative Journal pages 1230-1232.) [LB849 LB877 LB862 LB1102 LB1048]

Mr. President, Senator Conrad would move to amend the committee amendments with AM2432. (Legislative Journal page 1232.) [LB1103]

SENATOR LANGEMEIER: Senator Conrad, you're recognized to open on AM2432. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. Good evening, colleagues. I'm going to start off to hopefully set an appropriate tone for this important debate with a quote from one of the seminal cases in regards to women's reproductive health issues from the United States Supreme Court and it's commonly referred to as the Casey case, which we've heard quoted a few times already tonight. But I think it's an appropriate way to start the dialogue where the Supreme Court finds that: Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even at its earliest stage. But our obligation is to defend liberty for all, not to mandate our own moral code. The underlying constitutional issue is whether the state can resolve these philosophical questions in such a definitive way that a woman lacks all choice in the matter. I think that's a good overview of some of the important issues that we will be talking about. And

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initially, I do want to point out for the body and to publicly thank Speaker Flood for working with me and other opponents in regards to this legislation to structure the debate and to ensure that we have appropriate parameters to address important and significant issues and to move forward in a professional and appropriate manner. So with that, colleagues, I rise in opposition to LB1103. The Supreme Court has been very, very clear. States may not ban abortion prior to viability and may not draw a bright line at a particular gestational age to establish when viability begins. This has been our history, our case law for over 35 years and they have never once wavered from that standard, and for good reason, which we will have an opportunity to talk about as we move forward. The court has also insisted on each and every occasion that the determination of viability must be left to the physician's judgment, not to a Legislature, not to a court, not to any other outside group but the physician's judgment. The case law noted by proponents of this legislation, most notably Carhart II, which is cited as Gonzales v. Carhart, 550 U.S. 124, in 2007, did not alter the constitutional jurisprudence regarding viability. In fact, it is relevant for the majority of analysis related to the issues contained in LB1103. Finally, the Supreme Court has consistently held that even after viability, women must be able to obtain abortions to preserve their lives and health. LB1103 fails on this count as well, without carving out an appropriate, a humane, a common-sense health exception for women, which according to our constitution and the case law that emanates therefrom must be present. And it is not present in LB1103. Finally, one of the key problems in relation to this legislation is that this bill excludes mental health within the context of defining a medical emergency and fails to even meet the most basic constitutional thresholds for what a medical emergency exception must contain. So I've drafted, colleagues, a series of amendments that address these very issues: removing the 20-week bright line standard and replacing it with the long established, long held, long supported viability...individualized viability standard that will meet court muster, constitutional muster and otherwise; an appropriate health exception that will meet the needs of women, particularly in the most vulnerable and serious of cases; a medical emergency exception which deals with these pressing and important mental health issues; and then finally an amendment dealing with physician's judgment. The last amendment, colleagues, that I do want to draw your attention to is something that I have worked on in conjunction with the Speaker. In recognizing that this is a case of first impression and will, more than likely, be litigated extensively on both sides, that in order to give all of the parties a fair opportunity to prepare the litigation in the way that it needs to be prepared, this would move the effective date for LB1103 to three months from when it would normally take effect. And that's something we've worked on together and I'm hopeful as we move forward here with a brief discussion on each of these substantive amendments that we can finally end with some consensus and agreement on. And again I thank the Speaker for working together in crafting that and shaping the parameters of this debate. A couple of points early on that I do want to mention, Senator Ashford spoke passionately and significantly about international standards. And while international standards can sometimes assist legislatures and courts in reaching consensus on different and difficult public policy questions, in the United States our

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rights are determined by and protected by the United States Constitution. These rights cannot be taken away based on the fact that there's less rigorous protections utilized abroad. For example, legislatures cannot take away or restrict the freedom of speech because that emanates from our constitution, even if there's different standards for those kinds of basic or civil rights utilized in foreign countries or in other jurisdictions. There is not an equal comparison for not only legal analysis but basic common sense as well. LB1103 cannot be justified on the grounds that other countries do not provide the same protection for abortion afforded to women of the United States, because that flies in the face of not only our constitution but a 35-year history of jurisprudence that finds the same conclusion. Allowing states to ban abortion before viability would in truth mean that states could adopt one theory of life in conflict with a broad variety of firmly held beliefs among the people in this nation and, in doing so, overwrite the rights, the individual rights, of the woman that are at stake. And we'll have a chance to talk more specifically about why viability has been and should be the appropriate standard, an individualized viability standard rather than a bright line, 20-week standard. Mr. President, can you tell me how much time I have left in my opening? [LB1103]

SENATOR LANGEMEIER: Two minutes. [LB1103]

SENATOR CONRAD: Okay. Colleagues, I do also want to take a moment during the course of this debate to point out the fact that there is a dramatically incomplete record before us in terms of establishing the conclusiveness surrounding fetal pain and other related issues. And if you read the committee transcript, if you read the evidence that was presented to the committee from those who held themselves out to be experts, you will find, you will see very quickly that even proponents of this legislation have no agreement as to where this bright line should begin. And that's problematic because that's what LB1103 asks us to do here today. And we'll have a chance to talk about that more as we move forward. But I think it's an overstatement, and I think it's not a complete truth to say that medical science... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR CONRAD: ...has clearly established some of the issues related and underlying in this legislation, because it hasn't. There is not consensus, there is not established scientific fact as to what is being purported as legitimate state interest to change our constitutional standard from individualized viability to a bright line, 20-week standard. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the opening on AM2432 offered to the Judiciary amendments to LB1103. The floor is now open for discussion. Those wishing to speak, we have Senator Conrad, Cook, McGill, Flood, Dierks, McCoy, Council, Mello, and others. Senator Conrad, you're recognized. [LB1103]

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SENATOR CONRAD: Thank you, Mr. President. And I did want to continue just briefly in regards to the substance of this amendment. This first amendment replaces the 20-week, bright line standard for banning elective abortion and returns it to where our constitution tells us it must be, which is an individualized assessment of viability made by an attending physician. For more than 35 years the U.S. Supreme Court has recognized that the U.S. Constitution prohibits a state from enacting a law that bans abortion prior to the point in pregnancy when the fetus is viable. See Roe v. Wade, see Planned Parenthood of Southeastern Pennsylvania v. Casey, and the list goes on and on and on and on and on. The opinion joined by Justice Kennedy specifically held that, and I quote, viability marks the earliest point, the earliest point at which the state's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions. Colleagues, this is why similar legislation in recent times in other states has been "resoundly" defeated by the courts. And Senator Ashford, while well-intentioned, is wrong in saying that the Speaker has done us a service in bringing forward this legislation and generating this type of debate, because we can look to the experience of our sister states who have tried these very words, who have tried to impose these very restrictions, been "resoundly" defeated in the courts. There's a case on point exactly, that almost mirrors the attempt put forward in LB1103 to codify additional restrictions and to set a bright line instead of an individualized viability assessment and it was "resoundly" overturned by the courts in the Tenth Circuit. So we don't have to guess, we don't have to posture as to what a court may or may not do. We know. It's clear. It's clear from the time Roe was decided until where we stand today. And there's nothing in the United States Supreme Court jurisprudence that says otherwise. Proponents of this legislation are trying to utilize a recent case related to a specific procedure involving late-term abortions as indicia for why we can move forward and try and change this 35-year history of our jurisprudence. I'll tell you, colleagues, scholar after scholar after scholar resoundingly agrees that the court will not and should not do so because our constitution, our jurisprudence, sets an individualized viability assessment and rejects any bright line rule otherwise, whether it's based on fetal weight, length, weeks of gestation, etcetera, etcetera, the list goes on and on, and nothing in Carhart v. Gonzales says otherwise. It is a limited holding to a specific procedure. This is a broad and sweeping ban that flies in the face of the individual liberty rights afforded to all Americans under our constitution and reiterate and reaffirmed and supported by 35 years of United States Supreme Court history. And most recently, the same conclusion on the same issue has been found by the courts in Utah. They've rejected a 20-week bright line rule in the Tenth Circuit. It's the same issue that is before us in LB1103. This amendment seeks to strike the bright line from the legislation,... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR CONRAD: ...return the standard to where it constitutionally must be and that is an individualized viability assessment. Thank you, Mr. President. [LB1103]

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SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Cook, you're recognized. [LB1103]

SENATOR COOK: Thank you, Mr. President, members of the body. I would yield my time to Senator Conrad, if she would like it. [LB1103]

SENATOR LANGEMEIER: Senator Conrad, 4:52. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Cook. To continue on the discussion regarding viability, colleagues, the Supreme Court has never wavered from this position despite numerous opportunities to do so. The court has emphasized that viability is a necessary flexible term and states cannot place viability, which is essentially a medical concept, at a specific point in the gestational period. That's quoting Planned Parenthood of Central Missouri v. Danforth. It was decided by the United States Supreme Court in 1976: The time when viability is achieved will vary with each pregnancy, and the determination of whether a particular fetus is viable, and must be a matter for the judgment of the responsible attending physician. It is not within the legislative purview. The courts have been clear about that and for good reason. Also quoting Supreme Court precedent, Colautti v. Franklin, 1979: Viability is reached when, and in the judgment of the attending physician on the particular facts of the case before him, there is a reasonable likelihood of the fetus' sustained survival outside of the womb, with or without artificial support. Because this point may differ with each pregnancy, neither the Legislature nor the courts may proclaim one of the elements entering into the ascertainment of viability--be it weeks of gestation, fetal weight, or any other single factor--as the determinant of when the state has a compelling interest in the life or health of the fetus. "Viability is the critical point." That's what this amendment offers and, frankly, would have removed many, many of the concerns with this proposed legislation. But to be clear, there are others beyond just this viability issue that do remain when it comes to women's health and, in particular, their mental health, which is not provided for or afforded under this legislation. The viability standard, like I said before, colleagues, has never been retreated from, and it's for good reason, because it recognizes individuals have different issues, different needs that arise in the course of their individualized pregnancy. And why it's particularly important is because it takes into account those pregnancies that, because of fetal anomaly, because of medical issues, will never be viable. And that existing standard and existing precedent provides an acknowledgement and humane option and ability for parents who came to this Legislature, who testified as to the heartbreaking consequences and decisions they had to live through and work through when they found out there were serious fetal anomalies and deformities that would never be consistent with life. This removes that option for all of those families and says instead, you don't have that option; you don't get to utilize this type of standard and analysis. You, in fact, will be forced to carry a pregnancy to term that is nonviable because of medical or fetal anomalies or issues.

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And even though the Speaker has attempted to address the situation with multiple births as presented to the committee,... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR CONRAD: ...read your papers today. The family that testified, that shared that personal story, says that the amendment does, in fact, not go far enough to provide protection to families like them who have had to make these kinds of difficult decisions. And it provides no protection to the kinds of issues brought forward by other families demonstrating the heartbreaking decisions they had to work through in a nonmultiple birth or pregnancy situation. And look no farther than the committee transcript. And there's nothing in the committee amendment or the existing bright line standard at 20 weeks that provides for that understanding and acknowledgement that some pregnancies simply will never be viable, will never be consistent with life. Yet this legislation and the committee amendment makes no exception. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad and Senator Cook. Senator McGill, you're recognized. [LB1103]

SENATOR MCGILL: Thank you, Mr. President, members of the body. I'm just going to speak probably this one time because, you know, I don't have tremendous problems with the bill. I'm okay with the 20 weeks. You know, I'm somebody who likes to think in a scientific or medical way and I think there is evidence showing that we could start moving that viability point back a little bit. But my main concern is, as I mentioned before on LB594, is the mental health element and the inconsistency between these two bills. It is not acceptable to me to take out the mental health exception from the law. And, you know, I guess I applaud Senator Flood or Speaker Flood for trying to put two different constitutionally challengeable items in this bill, both on the viability and on the mental health issue. But I simply cannot support the bill based on the viability element, or not the viability but the mental health element of this. I think it sends a mixed message that on an earlier bill we get up and say that a woman's mental health is so important to us in determining whether or not she should have an abortion, she needs to be so aware and educated on the possible side effects on her mental health, and then to have a bill that takes away the thought process and consideration surrounding mental health. I mean, what if a woman is severely depressed about a deformity or something that they've found in the baby and she's now even afraid to go in and talk to a doctor about these issues and then becomes suicidal because she doesn't feel like there is an out or someone she can go to talk to; that they'll just give her a brick wall of, no, you can't have an abortion. And I'm just really concerned about what that does for women and the inconsistency with the other bill. I also am concerned about the inconsistency when it comes to the prenatal issue, which Senator Ashford mentioned earlier, and our unwillingness to take up that issue and do the right thing when we expect these women,

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especially the women that we're talking about here in this 1.3 percent of abortions are women...and usually married. I mean these are the families where it's a man and woman with a planned pregnancy and there ends up being something wrong with the fetus, something wrong with the baby. And to ask them to then have that child, but then say, oh, it's okay for parts of the population to not have prenatal care is just an abomination, in my mind. And with that, I will wrap things up and yield the rest of my time to Senator Conrad. [LB1103 LB594]

SENATOR LANGEMEIER: Senator Conrad, 2:20. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator McGill, for your kind words of support and also for the time. And this is a great place to dovetail off these comments. Colleagues, abortion after 20 weeks is rare. The Speaker noted in his testimony before the committee and also here today that the most recent data from the Nebraska Department of Health and Human Services demonstrates that there were no abortions at 20-plus weeks that were reported. And the national data confirms that these elective abortions that we're talking about, and nonelective therapeutic abortions that we're talking about and that are subject to the restrictions in LB1103, are less than 2 percent of those that occur each year nationwide. So I think it is important to note that this is...this legislation is less about addressing a specific problem in Nebraska or generally and more about setting a legal precedent and pushing the envelope to eviscerate the constitutionally protected rights of women. This is indeed a solution in search of a problem. And, colleagues, I want to talk... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR CONRAD: ...a little bit more...did you say one minute, Mr. President? [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR CONRAD: Okay. Thank you, Mr. President. I do want to start a dialogue about the information presented in the record and at the committee level regarding the so-called experts' opinions regarding fetal pain and why that should be utilized to establish a legitimate state interest on these issues because, again, I think that you will see that clearly there is no conclusion available, established in medical science or otherwise, that this is the appropriate bright line to set or to draw. And proponents of the legislation can find no concurrence on that regard and may have motives otherwise in terms of why they came forward in support of this legislation, again, which affects very, very few procedures nationwide, and is not about addressing a specific problem in Nebraska. [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

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SENATOR CONRAD: Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad and Senator McGill. Senator Flood, you're recognized. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. One thing I can always say about Senator Conrad and others in this body that I think will oppose, and obviously Senator Conrad does, the bill as currently written, they present their arguments in such a way I think we can get our hands around what the issues are. And Senator Conrad's amendment, AM2432, works to take us back in this green copy, if adopted, to a system of viability, which is exactly the law in Nebraska right now, which has been upheld constitutionally. What I want to talk about for a second is, why did I introduce a bill that departs from the viability standard and creates essentially a new standard? I think that deserves an answer. And I want you to know that I would not have introduced this bill if I hadn't done my homework and been able to answer the question myself legally. And I have the good fortune of working with a very capable attorney in my office, Matt Boever, who, together with me, looked through the most recent decisions and all the decisions and I continue to turn back to Gonzales v. Carhart, the Gonzales v. Carhart case. The opinion was published April 18, 2007. And I'll talk about viability in the majority opinion. But essentially in the dissent in Gonzales v. Carhart, Justice Ginsburg on the U.S. Supreme Court, who was arguably very much in favor of Roe v. Wade and its decision and holding, impact on the country, wrote in her dissent, quote, the decision...and this is in reference to the decision in Gonzales v. Carhart, "blurs the line, firmly drawn in Casey, between previability and postviability abortions." When I saw that, I got my hands around something that I thought was credible. And I know, and it is true this is a dissent; it can be seen as dicta, it is essentially dicta. It has to be taken with the weight that it is given, given the majority opinion of the court. But here we have a Justice of the United States Supreme Court firmly in favor of Roe v. Wade admitting in the dissent that the Gonzales case majority opinion blurs the line between previable and postviable abortions. I've got to admit that got my attention. It got my attention to the point that when I read it, the opinion in it's entirety, and I looked at other provisions in the majority opinion written by Justice Kennedy, Justice Kennedy states, the court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty. And that was important to me, and let me tell you why that's important to me. I knew from the research that I had done on when unborn children feel pain that there is some medical uncertainty as to the point in gestation where that pain occurs. There's evidence that shows it's at eight weeks. And I've had people from across the state call me and say, Senator Flood, babies feel pain at 8 weeks; why are you going with 20? I've read journals that suggest it's 18 weeks. Countries in Europe have an 18-week prohibition after that point. And I will admit there are some studies that suggest 26 to 29 weeks. Why did I pick 20 weeks? I picked 20 weeks because,... [LB1103]

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SENATOR LANGEMEIER: One minute. [LB1103]

SPEAKER FLOOD: ...to the extent there is consensus on when unborn children feel pain, to the extent there is consensus, it's at 20 weeks. There is a Harvard Law Review article, and I can make that available to you, where essentially the author states, to the extent there's consensus, it's at 20 weeks when babies feel that fetal pain that it can be documented. Am I certain? Can anybody be certain? I will offer to you, no. But where there is uncertainty, as it relates to scientific medical evidence, legislatures have wide discretion, and that comes from the United States Supreme Court. We are a Legislature. We dictate the policy. We identify the problem and we come up with a solution and we ground that solution as to whether or not the state has a legitimate and substantial interest. And I'll get into that in a little bit. I submit to you... [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. Those still wishing to speak, we have Senator Dierks, McCoy, Council, Pirsch, Carlson, Haar, and others. Senator Dierks, you're recognized. [LB1103]

SENATOR DIERKS: Thank you, Mr. President and members of the Legislature. I, of course, stand in support of Senator Flood's bill and in opposition to the amendments if they're going to be...try to weaken it. I couldn't be prouder of Senator Flood. One of the statements he just made was, we are a state and we do what we have to do for our state. I think that speaks real strongly for sovereignty, which I think we really need to be looking at. I've had some experiences that many of you I know haven't had. I took a course, a required course, when I went through veterinary school in embryology. And if I told you I had the best embryology instructor in the nation, I wouldn't be bragging at all because I know he was. He came to class. We had an hour's class every morning for nine weeks from 10:00 to 11:00. He brought four different colors of chalk with him and he had some notes, but he just got up there and started painting us a picture and the picture started over at this side of the blackboard and went over to this side. And when we came back the next day he brought it back over here and kept on going over here. And we started with a fertilized egg and we ended up with an embryo, I mean, we ended up with a live birth, I mean, a picture of a live birth. He used red chalk to indicate what were arteries. He used blue chalk to indicate what was veins. He used a yellow chalk to indicate what was nerves and white chalk to kind of outline the different body organisms. Was an amazing man and it was an amazing course. So when, you know, when I graduated from veterinary school we didn't have the ultrasound equipment that we do today. Today when we do pregnancy testing of our heifers, it's all...we do it now with an ultrasound machine and we can do that at 60 days. That's roughly eight weeks

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and if I told you that the cowboys are there to help us, and we go to other ranches around there, too, and help them, but when the veterinarian is doing this and he has the probe in the rectum of the cow laying it over the uterus of the cow, and you can actually see that embryo and you can measure the size of it on the screen. There's a little scale on the screen. He can tell us, if we get there at 60 days, he can tell us those heifers are going to calf because they were inseminated and those heifers are going to calf because they were bred by a bull in the pasture. They didn't take on insemination. We do heat synchronization and try to bring everything into heat at once. So we'll do this with 100 heifers every year, maybe 120. And then we get them in at the right time and do the pregnancy exam. Every one of those people have watched that and every one have seen that embryo move in that heifer. That's eight weeks, folks. So Senator Flood is very safe in doing predictability at 20 weeks. We are a nation of principles and morals. I have always been and hope I will always be. And I'm reminded of President Dwight Eisenhower's Inaugural Address in which he said: A people that value its privileges above its principles soon loses both. Ladies and gentlemen, we have an opportunity here to show where our principles are. Thank you. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Dierks. Senator McCoy, you're recognized. [LB1103]

SENATOR McCOY: Thank you, Mr. President and members. I rise this evening in support of LB1103, in opposition to AM2432. And I would yield the remainder of my time to Senator Flood. [LB1103]

SENATOR LANGEMEIER: Senator Flood, 4:40. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President and members. I want to go on a little bit on the record here to talk about some of the testimony that I relied on at the committee hearing that further, I think, establishes for the Legislature our role here in finding...we're essentially making a finding that babies can feel pain at 20 weeks based upon weighing the evidence that we have in front of us and the testimony and the public comment. And I want to talk to you about Dr. Ferdinand Salvacion, who is the medical director of the Pain Management Program at the Memorial Medical Center in Springfield, Illinois. He has an appointment to the clinical faculty as an associate professor of anesthesiology at Southern Illinois School of Medicine, and he's been practicing exclusively in the speciality of pain medicine since 1996. He was here in Nebraska and testified on February 25, 2010, in front of the Judiciary Committee. And I think what he said has great weight and bearing on another of the reasons that this deserves your support. In his testimony he stated that in some of the studies that he'd looked at, there's coordinated pain behavior demonstrated as early as 16 weeks. He went on to say, and I quote: We can measure electrical activity in the brain of the fetus. We can look at these neuroendocrine markers, which is the hormones that are released by a fetus under stress. We look at behavior issues, withdrawal from painful stimulus, and we can infer

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some of that from the behavior of the preterm neonates--premature babies that are born as early as 23 weeks. He goes on to say in his testimony on February 25, 2010: We can only infer the perception of it based upon these surrogate markers, but these are the same markers that we use in our field of anesthesia. When we're anesthetizing an adult or a pediatric patient, we observe change, the same physiological changes that are markers for pain--increase in blood pressure, heart rate, movement, alterations in electrical activity. And because of that observation, we realize that the patient is experiencing pain and it so alters our medical care of the patient in that state. An adult anesthetized individual is rendered nonverbal, just the way the fetus is nonverbal. I understand that you may have questions about 20 weeks. I offer that to you because that was the testimony at the hearing in our Judiciary Committee. And together, in my office, prepared an analysis as to how wide the door opens for Nebraska to adopt this new 20-week standard. And I don't want to confuse anybody. This isn't a pre- or postviability standard. This is a new standard based upon our interest as a state Legislature to recognize that we have an interest in protecting the life of that fetus while it remains unborn. Upholding LB1103 does not require the United States Supreme Court to scrap the balancing framework of Casey or the fundamental right found in Roe. It only asks the court to evolve with,... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SPEAKER FLOOD: ...assuming the Legislature reflects as much, emerging scientific evidence that weighs in favor of a strong state interest in regulating abortions 20 weeks postfertilization. Returning to Gonzales v. Carhart, and I've shared with you some of the quotes that I like the best from Justice Kennedy, but he talks about in the opinion, the majority opinion, the state has an interest in promoting respect for human life at all stages in the pregnancy. Our interest in protecting the life of a baby that is 20 weeks postfertilization, I think, is very legitimate. We have shown... [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

SPEAKER FLOOD: Time? [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Council, you're recognized. [LB1103]

SENATOR COUNCIL: Thank you, Mr. President. I rise in support of AM2432, in opposition to the Judiciary Committee amendments and the underlying bill. There are so many problems with this bill I, quite frankly, don't know where to start. But I think I'll start

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with the amendment and the change in the name that's reflected in the Judiciary Committee amendment. It went from Abortion Pain Prevention Act now to Pain-Capable Unborn Child Protection Act, Pain-Capable Unborn Child Protection Act. You know the inference to be drawn from that is that this state cares about protecting unborn children after 20 weeks. But that inference is belied by our actions, by our conduct. If we were really concerned about protecting unborn children who are pain-capable, we would have provided prenatal care for any pregnant woman in this state. We didn't bother to find out how many of those women who are being deprived of prenatal care were 20-weeks postfertilization. We didn't care. We didn't even bother to ask. But we purport by this legislation to be concerned about protecting pain-capable unborn children. That's not true. And while I respect my colleague and Judiciary Committee Chairman, Senator Ashford, I vehemently disagree with the conclusions he represented during his opening on the amendments. Whether or not children, an unborn child can experience pain at 20 weeks, contrary to what he said, is not unequivocal. In fact, it was contradicted just a moment ago by Speaker Flood when he said to the extent that there is a consensus, it's 20 weeks. That's quite a qualifier, to the extent that there is a consensus. The way I was taught to interpret and read "to the extent there is a consensus" implies that there probably isn't a consensus. So for someone to make a statement that it has been unequivocally established, that is not true. Yes, there were witnesses who testified at the Judiciary Committee and there were no medical witnesses testifying contrary. But does that make it unequivocal? Does that make it fact? No, to the extent that there is a consensus. I also appreciate the fact that Senator Flood, Speaker Flood, just conceded why this bill was introduced. This bill was introduced to advance an agenda that seeks to have the court evolve in its opinions regarding when a state can place restrictions on abortion. Inherent in that statement is the Speaker's acknowledgement of the fact that the current state of the law, dissenting statements notwithstanding, is that the state has no compelling interest; it has been found to be unconstitutional for a state to restrict access to an abortion... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR COUNCIL: ...prior to viability. That's the state of the law. And I said earlier today when we were debating LB1102, that I was going to remind some senators who opposed LB1102 about how strongly they opposed it because of it's questionable constitutionality. Well, I would trust that those same senators would oppose LB1103 because its constitutionality is not even a question, Supreme Court decision after Supreme Court decision. [LB1103 LB1102]

SENATOR LANGEMEIER: Time. Thank you, Senator Council. Those still wishing to speak, we have Senator Carlson, Haar, Harms, Krist, Conrad, Flood, Christensen, and others. Senator Carlson, you're recognized. [LB1103]

SENATOR CARLSON: Mr. President and members of the Legislature, my testimony is

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going to be brief. I am in support of LB1103 and in support of the Judiciary amendment, AM2063. I'm also appreciative, thus far, of how civil our discussion and testimony has been and would hope it continues in that vein. And with that, that is all I have to say at this time. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Carlson. (Visitors introduced.) Returning to discussion on AM2432, those wishing to speak, we have Senator Haar, Harms, Krist, Conrad, Flood, and others. Senator Haar, you're recognized. [LB1103]

SENATOR HAAR: Thank you, Mr. President. I'd like to relinquish my time to Senator Conrad. [LB1103]

SENATOR LANGEMEIER: Senator Conrad, 4:54. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. Thank you, Senator Haar, for the time and I did want to talk just briefly in regards to the information provided at the committee level from the alleged experts and point out some information that I think casts at least a shadow of a doubt, if not a serious problem, with the information that they provided and why we lack an established and clear record on whether or not we have grounds to establish a legitimate state interest with the bright line 20-week standard. And to be clear, I think in some ways, colleagues, that this notion of fetal pain is somewhat of a misnomer in terms of really what's at the heart of this debate. Again, I think that, at best, there is a sense of inconclusiveness that exists in the scientific record and in scientific study as to the question of whether or not there...fetal life does experience pain, and if and when, how that would be evaluated, proved, or otherwise. But let's, in fact, just examine the record briefly. There was four...at least four, five witnesses presented to the committee and held themselves out to be experts in this regard. The first expert was somebody not licensed to practice medicine in our state, a medical doctor from Illinois, who set the standard at the ability to feel fetal pain from 16 weeks to 23 weeks. And he says on page 15 of the committee record, conclusion: A frame of reference does not currently exist for the prenatal condition. We cannot conclusively establish when fetal pain is felt, if it is felt. And he admits he has no experience or expertise with fetal pain or developmental issues. The second expert presented to the committee was also a medical doctor, not licensed to practice medicine in this state, who flew in from Alaska. Their testimony is found on page 21 through 28 of the committee transcript. And again, there is really no clear or distinguished expertise regarding fetal pain or development that we can draw from, from that testimony. The third expert presented to the committee was not a medical professional at all but, rather, a purported legal scholar on these issues. And, colleagues, she is a woman named Teresa Collett, who is not licensed to practice law in Nebraska but is a lawyer from Minnesota, who is also running for Congress in Minnesota and also has traveled around the country making a living off of defending abortion-related cases and bills up to the extent of even \$100,000 payment from the state of Oklahoma in regards to defending certain abortion-related legislation

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there. So not only does she have a political interest that compromises her ability to be a credible expert on these issues with her run for Congress, but she clearly has a financial conflict of interest as well in terms of how she presents these issues. [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR CONRAD: Finally, we do have some information presented by a doctor from Lincoln, the fourth expert who did testify at the committee level who is admittedly pro-life and, yes, is an ob-gyn but is not an expert on fetal pain. And then finally, the fifth expert presented is an ob-gyn from the state of Washington, also not licensed to practice medicine in the state of Nebraska, and it was not clear if they were an expert in fetal development or fetal pain. So we have a very, very incomplete record in terms of the extent and nature and conclusiveness of whether or not there is such a thing as fetal pain, when in fact that does exist, how in fact that is evaluated and this calls into question the legitimacy of the purported state interest put forward in establishing a 20-week standard for abortion bans in LB1103. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad and Senator Haar. Senator Harms, you're recognized. [LB1103]

SENATOR HARMS: Thank you, Mr. President and colleagues. I rise in support of the amendment, AM2063, and the underlying bill, LB1103. I oppose AM2432. I'd like to yield the rest of my time to Senator Flood. [LB1103]

SENATOR LANGEMEIER: Senator Flood, 4:43. [LB1103]

SPEAKER FLOOD: Thank you, Senator Harms and Mr. President. Senator Conrad just talked about the witnesses that appeared as proponents in front of the Judiciary Committee on LB1103. Teresa Collett is a respected constitutional scholar at the University of St. Thomas. She's licensed to practice law at least in the state of Minnesota, but when the Legislature passed a law in Oklahoma having to do with abortion, the Attorney General of that state called upon Teresa Collett to defend the state of Oklahoma as their lawyer. I think that demonstrates the people of Oklahoma's confidence in a lawyer from Minnesota with a Minnesota law license. That demonstrates that Teresa Collett came to Nebraska and she knows what she's talking about. She didn't receive a fee for coming here. She didn't charge us hourly for her testimony. She provided the Judiciary Committee with analysis following her decades-long experience in constitutional law and more specifically the issue of abortion. I want to talk about some of the other evidence, if you will, that I relied upon in bringing this bill forward. There's a gentleman by the name of Dr. Sunny Anand, A-n-a-n-d, who is a research fellow, Department of Pediatrics, University of Oxford, a research fellow in anesthesia, Harvard Medical School, clinical fellow in pediatrics, Harvard Medical School. He signed an affidavit, essentially, wherein he states he's the coauthor of approximately 200

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publications. And he states in a summary of opinion: It is my opinion that the human fetus possesses the ability to experience pain from 20 weeks of gestation, if not earlier. And the pain perceived by a fetus is possibly more intense than that perceived by term newborns or older children. He goes on to state: Anesthetic agents that are routinely administered to the mother during this procedure would be insufficient to ensure that the fetus does not feel pain, and higher doses of anesthetic drugs, enough to produce fetal anesthesia, would seriously compromise the health of the mother. This is what we have to pay attention to. We are a Legislature. We set the policy of the state. And maybe more in this bill than other bills, we have an obligation and when you press that green or red button, you are acknowledging that you have listened to the debate, that you've weighed the interests, looked at the committee statement, relied upon the debate on this floor, and you are acknowledging that a vote yes for LB1103 is reason that Nebraska should change its policy and adopt the standard of 20 weeks postfertilization for purposes of prohibiting abortions after that date, subject to the medical exception language found in the bill, because we as Nebraskans have a legitimate and substantial... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SPEAKER FLOOD: ...state interest to protect fetal life at this stage of the pregnancy, 20 weeks. We've heard from Senator Conrad and others and I think myself, we've talked about where the viability standard is, we're moving it back a couple weeks. But my bill doesn't have to do with viability. It has to do with when the fetus feels pain. That is a life. That is a life worth protecting. We've voted on this floor to make it a crime to assault a woman that's pregnant, fetal assault, fetal homicide, because the state recognizes that baby... [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood and Senator Harms. Senator Krist, you're recognized. [LB1103]

SENATOR KRIST: Thank you, Mr. Speaker. I wonder if Senator Conrad would yield to a question. [LB1103]

SENATOR LANGEMEIER: Senator Conrad, would you yield? [LB1103]

SENATOR CONRAD: Yes, for my good friend, Senator Krist, anytime. [LB1103]

SENATOR KRIST: Seems like we meet here a lot. [LB1103]

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SENATOR CONRAD: Yes, it does. [LB1103]

SENATOR KRIST: With all due respect, and I understand what Senator Flood just said about the issue at hand, but in terms of credibility, I also read the transcript and actually know my colleague from the University of St. Thomas. Would you say that Justice Sandra Day O'Connor has credibility on this issue? [LB1103]

SENATOR CONRAD: In terms of whether or not there should be a bright line, 20-week standard or a viability...individualized viability standard? Is that the question? [LB1103]

SENATOR KRIST: In terms of her involvement in the Supreme Court and her weighing in on these issues over the years. [LB1103]

SENATOR CONRAD: I agree and concede that she was a distinguished member of the United States Supreme Court and has been an active participant in a variety of cases involving these issues. [LB1103]

SENATOR KRIST: Okay. Thank you, Senator. I thank you for your time. Let me remind this body that Roe v. Wade legislation happened in 1973. In 1975 I was offered the opportunity to have a knee surgery that would cut the side of my knee open, rearrange things, put it back together and be on crutches for a couple of months. In 1979, Walter Payton and I had that same...well, he's not a good friend, but we had that same surgery done arthroscopically and we walked away from it within two days and he was back on the football field in about a month and a half. Science changes. Technology changes. In 1983, Justice Sandra Day O'Connor argued in a 1983 decision that Roe was on a collision course with itself. She said the improvements in technology would continually push the point of fetal viability closer to the beginning of pregnancy, allowing states greater opportunity to regulate the right to an abortion, and this seems to be the case up to the point. Doctors believe a fetus can be viable during the 23rd week, which is a week earlier than it was before. This I quote from a 1997 document. A document that brings us into a definition, the fetus is viable when it reaches an anatomic threshold when critical organs, such as lungs, kidneys, etcetera, can sustain life. And then finally, as we go on the chronology forward, in 2006, during the past several decades neonatal care has improved with advances in medical science and, therefore, the limit of viability has moved earlier. As of 2006, the two youngest children to survive premature birth are thought to be James Elgin Gill, born on 20 May 1987 in Ottawa, Canada, at 21 weeks and 5 days gestation; Amillia Taylor born on 24 October 2006 in Miami, Florida, at 21 weeks, 6 days. Both children were born under 20 weeks from fertilization or a few days past the midpoint of an average full-term pregnancy. Despite their premature births, both developed into healthy children. My point is this: In 1973 science, medical technology was different. It was different in '75. It was different in '79. Sandra Day O'Connor, who arguably, and conceded by Senator Conrad, is a recognized legal expert on the issue, said that as medical technology changes and advances we will become

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earlier and earlier. And let me quote it again. I think her exact words were...she said the improvements in technology would continually push the point of fetal viability closer to the beginning of the pregnancy, allowing states... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR KRIST: ...greater opportunity to regulate the right to an abortion. I agree with Senator Flood. When you push the green button or the red button, you need to read the minutes. You need to do your own investigation. I am neither a medical doctor nor a lawyer. I'm not licensed to practice in any state--good for the states. But I'll say this: I do believe that we are on the right track. Thank you, colleagues. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Krist. Senator Conrad, you're recognized. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Krist, for those questions. But I think it is important to know, colleagues, and the Speaker has admitted in terms of his legal research and analysis on the issue, that he is seizing upon what is fairly and, in his words, and I agree with them, dicta from a dissenting opinion in a recent case on this issue. And I believe the quotes read into the record by Senator Krist are nothing but more of same concerning dicta. There's a key distinction in Supreme Court opinions or any courts' opinions, for that matter. There's an essential holding at issue in every case and then there is other analysis, other reasoning, other procedural postures, other facts presented, etcetera, etcetera. Those are all nonessential to the key holding in a case but rather an explanation for how the court arrived at that decision. And that's what dicta is and that's not controlling in a legal sense and not relevant in this or a court of law or this forum. So let's be clear about that as we move forward. And the Speaker has been honest and straightforward in terms of his description of what he is seizing upon in the legal progeny in bringing forward this legislation. So I think that...I commend him for being straightforward in that regard and I think that it is important that we do stay on point. Colleagues, Americans and Nebraskans overwhelmingly oppose the imposition of politics into the doctor-patient relationship. And that's what LB1103 is. And by setting forward a standard, a bright line standard that is not backed by scientific consensus, we are really failing women and failing doctors and putting our politics before our medicine and our science and our constitution, which we have a sworn duty to uphold. And I think that's important to remember as we move forward. In addition to the information that was presented at the committee level from both proponents, which is inconclusive, and opponents, which demonstrates the same, there is a replete body of scientific research and data presented and published that further speak to the inconclusive nature of what is purported to be the legitimate state interest before us. And I'm quoting from the Center for Advancing New Standards in Reproductive Health based in the University of California and accompanying paper issued by Lee Ralston and J. Drew, in 2005, titled "Fetal Pain, A Systematic Multidisciplinary Review of the

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Evidence," published in the Journal of American Medical Association, 294, 947 through 954. And what the conclusions of that study and that center are, are as follows: Based on the available scientific evidence, a fetus probably does not have the functional capacity to experience pain until the 29th week of pregnancy at the earliest. This conclusion should provide relief and comfort to women and families and those concerned with the health and welfare of pregnant women. States that seek to modify their requirements or restrictions surrounding legal abortion should be reluctant to do so based on what is, at best, inconclusive science. So again, colleagues, and to be clear, I'm not going to belabor the point because one thing about statistics and studies is that you can...each side can cherry-pick and put forward what they believe to be most powerful in support of their position, and I do believe that the fetal pain issue is... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR CONRAD: ...a misnomer. And to follow up in response to Senator Krist's dialogue on this issue, colleagues, the question is not whether or not science and technology has advanced from when Roe was first decided in the '70s, and it has. And, thankfully, it has in terms of not only what we are able to do for pregnant women and children and babies, but in many other areas as well. And the key issue is not whether or not science and technology has advanced, but whether or not the court has ever changed the individualized viability standard at issue in these cases. And it has not. From 1970 to 2007, it has never once changed its essential holding that an individualized viability standard must be present... [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

SENATOR CONRAD: ...and that a bright line rule will not stand. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator Flood, you're recognized. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. I've received e-mails, letters from opponents to this bill and Senator Conrad raised it a moment ago and that is, why should the state get in between a doctor and a patient? And, you know, we're talking about abortion, and that has been the central issue of a lot of the letters that I've gotten. There's no use being coy. I'm against abortion. I don't think it's right. It has my attention. It has the attention of a lot of members in here on both sides of the issue. But nobody ever writes me a letter and says, I don't like it that a doctor has to report child abuse. I don't like it that a doctor has to report physical domestic violence or sexual assault to protect the patient from an abuser. Or what about the ability of a doctor to convince a mental health board of a patient's mental condition to protect the patient from himself or

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herself or others? The bottom line is, that's expected. Now you may not agree with my position on abortion and I can appreciate there are differences. But in this case, in that argument, we believe that that child deserves protection, albeit he or she is unborn, but it is a child. And so that's what we're asking the Legislature to do in the situation where we are beyond 20 weeks postfertilization. And that's a pretty high standard for us to meet, at least for me to have the Legislature tell a doctor in that doctor-patient relationship what our standard is. But I believe the Legislature tonight, if we advance LB1103 on General File, we are saying this is wrong. It should be prohibited unless one of the medical exceptions are met, and that's the policy of the state of Nebraska. I just thought it was worth talking about that specific issue raised about the doctor-patient relationship. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. Those still wishing to speak, we have Senator Christensen, Council, Haar, Harms, Pirsch, Carlson, and Price. Senator Christensen, you're recognized. [LB1103]

SENATOR CHRISTENSEN: Thank you, Mr. President. Colleagues, I stand here just thinking about the concept of this bill. You know, we think about when a baby feels pain in the womb. It's been established by doctors that they need to give an anesthetic not only to the mother but also to the baby when their baby has reached 20 weeks of age. Right there shows you that life is there, that it's worth defending and that it needs to be defended. What's difficult for me, being pro-life and believing that life starts at conception, that we need to go back to day one, is not in a bill like this having the medical field and the ability to know that a baby could be alive at that stage. We know there's...I believe the egg and sperm meet and I don't think anybody can deny over time that grows into a life. And I believe right there is where we should be with our standard. But if this bill gives us additional measures for what science has proven right now where babies feel pain, I think that's extremely important that we support this bill. We try to limit the pain. We try to take care of people that are mistreated in life all over. But sometimes we neglect the baby in the womb. And I think it's very important that we think about what we're doing. I appreciate Senator Flood bringing this bill. It's had a lot of discussion in committee. Had a lot of people testify and share on it, and I'm sure we could have went much longer than we did. But this is a very critical issue and hits each one of us in a different spot. But to me, we can't overlook the value of what doctors have said. They need anesthetic to relieve the pain at 20 weeks. How can we not say that's not a life right there and needs to be protected? It's hard for me to stop there. I know I've said this several times. I don't like abortion at all. I'd love to totally eliminate it. But the fact is, we have to live within what we're allowed to legislate and what the courts have allowed us to do. Doesn't mean it's right, but it means what we're living with. But we have to constantly at least keep up with where medical science is. I'm a firm believer in years to come we'll prove that that baby is alive, viable at earlier ages, that it feels pain at an earlier age, and we'll have to adjust this to an earlier time. This bill is not prohibiting and not to be used or twisted to mean that life isn't important for that. This is just another

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way of measuring the importance of where life has to be protected. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Christensen. Senator Council, you're recognized. [LB1103]

SENATOR COUNCIL: Thank you, Mr. President. You know, I respect Senator Krist and the medical chronology that he provided for us. But I must concur in the conclusion reached by my colleague, Senator Conrad. The issue is not whether or not medical science has advanced. That's a given. The question is whether or not the constitutional standard has changed, and one fact that cannot be challenged is it has not. Senator Krist mentioned what the state of medicine was in 1973 and then what the state of medicine was in 1979 and I don't dispute that. But between 1973 and 1992, according to Senator Krist, there was significant medical advancement, I'm sure. I don't even know the dates that these studies that the so-called experts based their testimony on, when those studies took place. Some of them may have been last month. Some of them may have been ten years ago. I don't know. But what I do know is that the Supreme Court has said and has not departed from its statement that viability marks the earliest point at which the state's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions. I'm aware of no decision of the Supreme Court since then, since 1992, that has changed that standard. And that's the issue. I appreciate the passion with which those who support this want to see a change. And again, Senator Flood acknowledged that he wants to see the Supreme Court evolve to this standard. But as I pointed out, that statement, inherent in that statement is an acknowledgement that the court has not evolved to that point yet and, ergo, this law is unconstitutional. On its face, it's unconstitutional. In addition to the issue of viability, this law is unconstitutional because...and I listened to you and no one disputes...I don't think there's a person in this body that doesn't respect and appreciate life, doesn't want to see women have to make probably the most difficult choice a woman has to make in her life. But what I don't appreciate is that this law and much of this discussion ignores that woman. This law does not take into account issues of mental health surrounding this very difficult decision. Yet last week, when we were debating my friend and colleague Senator Dierks's bill, all throughout that bill it mandates consideration of all of these psychological and emotional issues that a woman in a position of having to make a decision whether to terminate a pregnancy... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR COUNCIL: ...must undergo. And if you read that bill, despite our arguments during the committee discussion that you needed to have a mental health component because, ladies and gentlemen, there are situations where the woman is at greater risk to her own personal mental health by carrying a baby to term than she is by an abortion. And Senator Dierks's bill recognized that and, in fact, required the physician to note that

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in that woman's record. If he or she performed the abortion, he had to state that the abortion was performed because the risk to the mental health of the woman from carrying the baby to term outweighed the risk associated with the abortion. So I don't understand how you can reconcile... [LB1103]

SENATOR LANGEMEIER: Time. Thank you, Senator Council. Senator Haar, you're recognized. [LB1103]

SENATOR HAAR: Mr. President, members of the body, I'm not going to argue about the 20 weeks really because the U.S. Supreme Court will decide that, I'm sure. And I really feel at a disadvantage being a male in this situation. There's no way I'm ever going to have to face the tough decisions that I'm going to bring up in a minute. And I'd like to carry on a little bit of Q&A with Senator Flood, if I could. [LB1103]

SENATOR LANGEMEIER: Senator Flood, would you yield? [LB1103]

SPEAKER FLOOD: Yes. [LB1103]

SENATOR HAAR: Okay. Well, first of all, I'd just like to say that a bright line is always going to allude us and what I've handed out are some really questionable situations. And I'd like to go over each one and then get your opinion, please. The first one is called anencephaly. It's a condition which occurs when the cephalic or head end of the neural tube fails to close resulting in the absence of a major portion of the brain, skull, and scalp. Infants with this disorder are born without a forebrain and a cerebrum. The remaining brain tissue is often exposed, not covered by bone or skin. A baby born with anencephaly is usually blind, deaf, unconscious, and unable to feel pain. Although some babies may be born with a rudimentary brain stem, the lack of a functioning cerebrum permanently rules out the possibility of ever gaining consciousness. And the picture I have on this I just Googled. You know, you go out to Google image and put in anencephaly and then images and there's a lot of them. And at the bottom of that picture, it's really important. Here's anencephaly, which is one of the more common congenital CNS anomalies seen in one-half to one in a thousand live births. Supplementing the material, I'm sorry, supplementing the maternal diet before and during pregnancy with folate will greatly reduce the chance for such defects. And this is from the University of Utah. Senator Flood, if this were discovered, anencephaly, in the 22nd week, would it make the parents criminals to decide to abort this child? [LB1103]

SPEAKER FLOOD: No. [LB1103]

SENATOR HAAR: Could you explain where that is in your bill? [LB1103]

SPEAKER FLOOD: LB1103, nowhere in the green copy, criminalizes the patient for seeking an abortion. The criminal penalty only applies to the provider of the abortion.

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[LB1103]

SENATOR HAAR: Okay. So if a doctor performed an abortion where this condition was the case and it was 22 weeks, would he or she be, you know, breaking the Nebraska law? [LB1103]

SPEAKER FLOOD: Unable to answer that question unless I was assured that the medical exception, should this be law, did not provide for an exception. And I wouldn't know the facts of the case to be able to give you an opinion as to whether this law or not would sanction the provider. [LB1103]

SENATOR HAAR: Is that something we could find out because I think that's a terribly important question? [LB1103]

SPEAKER FLOOD: I think the question that you want to ask is, if there was no medical exception that applied, would the doctor face a sanction for performing an abortion post 20 weeks for such a condition as anencephaly? Is that a correct way to state your question? [LB1103]

SENATOR HAAR: Yes. [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR HAAR: Yes. [LB1103]

SPEAKER FLOOD: And the answer would be, under this law, yes. [LB1103]

SENATOR HAAR: So matter what the condition, no matter what was seen on ultrasound, and no matter whether or not this condition was confirmed, the doctor would still be breaking the law. [LB1103]

SPEAKER FLOOD: That's true. And if I may give you a response,... [LB1103]

SENATOR HAAR: Sure, please. [LB1103]

SPEAKER FLOOD: ...I'm the first to admit there are tough cases, cases that we don't even want to think about, but it's fair to ask the question. And my question in thinking about this is, when do we allow abortions for the imperfect child? You've raised the toughest of the tough cases. And it was hard to listen to that testimony. That's why we included the language for the twin-to-twin transfer issue. But if the baby, you know... [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

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SPEAKER FLOOD: I'll get some time. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Harms, you're recognized. [LB1103]

SENATOR HARMS: Thank you, Mr. President and colleagues. While an unborn child cannot verbally express the pain that he or she experiences, all biological indicators suggest that unborn children are capable of feeling pain at least at 20 weeks. The neural pathways are present for pain to be experienced quite early in an unborn baby. And that comes from Steven Calvin, a perinatologist, who is from the University of Minnesota. Scientific evidence does suggest that abortion is excruciating pain for the unborn child. The highest pain receptor density before birth is between the ages of 20 and 30 weeks. An unborn child has more pain receptors per square inch than any other time before or after birth with only a very thin layer of skin for protection. At 20 weeks the fetal brain has full complement of brain cells present in adulthood ready and waiting to receive pain signals from the body and their electrical activity can be recorded by just a standard EEG. So I do arise in support of this bill because I believe there is evidence that a child, unborn child receives that pain and it's there at 20 weeks. Mr. President, how much time do I have? [LB1103]

SENATOR LANGEMEIER: 2:50. [LB1103]

SENATOR HARMS: Okay. I'd like to walk you through, if I can, by the actual development of a child. At 18 days we have brain development occurring. The brain begins to shape only after 18 days of conception and by 20 days the brain has already begun to form. You've got the forebrain, the midbrain, the hindbrain, and the spinal cord are in the process of developing. Five weeks, the pain receptors come forward. Four or five weeks after conception, pain receptors appear around the mouth, followed by nerve fibers which carry stimuli to the brain. By 18 weeks pain receptors have appeared throughout the body. Around week six, the unborn child first responds to touch. Six weeks the cortex develops. In weeks 16 to 18 the cerebral cortex develops. By 18 weeks the cortex has fully complemented a complement of neurons. In adults, the cortex has been recognized as the center of pain consciousness. And at eight weeks is what I call the main relay center has actually developed in the child in the brain. It carries the sentry impulses from the spinal cord to the cortex. Fourteen to 18 weeks the nerve tracts...in 18 weeks, the nerve tract is connecting with the spinal cord and also connects to that relay center and is preparing to be able to transfer that indication of pain for the unborn child. Eighteen weeks it talks about stress hormones. As early as 18 weeks, stress hormones are released by the unborn child, injected by a needle, just as they are when an adult feels pain. [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

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SENATOR HARMS: Thank you, Mr. President. Hormone levels in those babies decrease as the pain relievers are supplied. Before 18 weeks, even before the nerve tracts are fully established, the unborn child may feel pain. Studies show that infants whose cortex is severely reduced, if not altogether missing, may experience pain as long as other neurological structures are functioning. In 20 weeks, all parts are in place, colleagues, for that unborn child to feel the pain. And so that's why I support LB1103 and the Judiciary Committee, because I really believe in my own heart that this child can feel pain at 20 weeks. And I am against the abortion as much as possible. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Harms. Senator Pirsch, you're recognized. [LB1103]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I stand in strong support of Senator Flood's bill and in opposition to Senator Conrad's amendments. There are very compelling reasons to pass this bill and I urge this body to do so. The best evidence is that the unborn child at 20 weeks of age does experience pain, and not just pain but can experience intense pain, as Senator Flood has spoken to before. And one of just many experts, Dr. Anand, whose qualifications are nothing to sneeze at, Oxford University, Harvard University, over 200 publications, his experience directly on point indicates in his professional opinion that the fetus can experience pain by 20 weeks, and that would be intense pain. As Senator Harms very accurately pointed to that, it is at that particular point in the development of that unborn child that their pain receptors, those nerve endings are exposed, and so that is the height at which they can have the capacity to feel that pain. And so that, by the way, is not just Dr. Anand's opinion, but the opinion of many, many highly qualified experts. I will go on at length in additional chances to speak, but I did want to give Speaker Flood the opportunity to address the question that Senator Haar had brought forth earlier. Thank you. [LB1103]

SENATOR LANGEMEIER: Senator Flood, 3:10. [LB1103]

SPEAKER FLOOD: Thank you, Senator Pirsch, and thank you for your strong commitment to this bill. I want to just be as honest as I can and I had thought about the types of issues that Senator Haar raised a moment ago, anencephaly and spina bifida issues. And I sat through that hearing and I watched the testifiers that testified as opponents talk about some of these things. And it's hard not to fight back tears listening to somebody talk about such a difficult situation. I can't deny that. And the first thing I did when I sat there was, what can I do? I don't want to hurt people with my bill. The twin-to-twin transfer thing, I said, there's got to be something we can do. But you know, and it's hard...I mean it was very hard to sit there and hear that. I'm glad I was sitting there. I'm glad I was three feet away and had a chance to talk to both of those individuals after they testified. But I also asked the question, why does a baby that's

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going to be born with a disability become a better candidate for an abortion? Does their disability make them less human? Are they less deserving of the state's protection? I, for a minute, am not casting stones at how difficult that decision was for those folks. And let me tell you, unless you were in that room on that day, you can't even appreciate how hard it was to listen to that. I was moved just listening. [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SPEAKER FLOOD: But those disabilities...that is still a life. And reasonable people can differ on what should happen there but I do believe the state's protection extends to all human life. And that's why I believe this bill makes sense. If you disagree with me on this point I get it, I understand. Because you can't sit through that hearing and not have your mind race five different ways to Sunday. But at the end of the day, that's a human life, and albeit there may be a disability, but still deserving of the state's protection. That's where I come down. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood and Senator Pirsch. Senator Price, you're recognized. [LB1103]

SENATOR PRICE: Thank you, Mr. Speaker, members of the body. I want to prepare myself. First and foremost I rise in support of LB1103. And the questions I was thinking about, particularly when Senator Krist started talking about technology and then I believe Senator Harms brought it up, you know, one day we're going to be faced with a technology that possibly will tell us a baby's mood by brain wave patterns. And I say this because not too long ago there was a patient who was in a coma for a long period of time. And the basic prognosis was there would be no recovery from the coma. But the mother felt different and worked and worked and worked. And one day they got a neural response of some sort and they put the young man, I believe it was, through a PET scan, I believe it was. Eventually, the individual was able to communicate by tapping on a device with one toe. And what came out of this long thing was the individual was trapped inside the body, unable to give a physiological response that was understood by medicine and all the doctors, and wanted to scream to get outside and communicate. Well, luckily, and in this one case, it isn't every case, luckily that communication path was established, this individual is moving forward. So it makes me wonder, will they be able to do the same thing for an infant in a womb? Look at the difference in the technology with an ultrasound. When my first child was shown to me on an ultrasound, I have to be honest with you, I thought I was looking at clouds, trying to make an idea of what I thought I saw. And then I see what technology does today with an ultrasound. I mean, the baby can almost wink at you and give you a thumbs up. So those give me concern. So I think we'll be back here again maybe one day having to deal with that. And then I started thinking about the brain and development. Last year we went to a seminar that talked about how fast an infant's brain is developing up to 36 months. Hundreds of synapses are being built, these little buds, making it available for learning.

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And how important it was to get learning and training and education to a child, how important it was the number of words spoken in a household and how that impacts a child and how, by the age of three years, some children can almost never catch up to other children who had the ability and had been afforded more stimulus. The people of Voices for Children told me and some other folks that came, they wanted \$15,000 a year per child in Nebraska who were at-risk, because it was so important to get there from birth on. And it led me to believe, what's the study, what about...does birth begin this building of the brain? Of course we know better than that because I'm holding here a study that they have, a handout on fetal alcohol syndrome. It talks about the effects of alcohol at 20 weeks on the hippocampus and other areas of the brain. So if there are damages going on then, if just by the mere fact of drinking too much alcohol can create such a reduction in capability in that developing brain, how so much more would this one, this choice? Now I'm not here to say the choice is easy or light, just to talk about the scientific part about it and talk about the aspect of where that bright line is we're discussing. So again, I do rise in support of LB1103. Thank you, Mr. President.  
[LB1103]

SENATOR LANGEMEIER: Thank you, Senator Price. Those still wishing to speak, we have Senator Council, Haar, McGill, and Wallman. Senator Council, you're recognized.  
[LB1103]

SENATOR COUNCIL: Thank you, Mr. President. And contrary to some of the statements that have been made, science doesn't dictate the development of a child. Science dictates what you can determine about that development. So to suggest that as science advances children are going to advance at faster paces or gain more capabilities is simply nonsense. But with regard to the pain issue and with regard to the state of the medical profession and the professionals on it, I was reminded, I had to borrow from Senator Conrad the copy of the Judiciary Committee transcript because I had the pleasure of engaging in a little dialogue with Professor Collett. I vividly recalled at one point during our exchange her deliberate and conscious attempt to evade answering a question that I posed. And she continued to do so. And I posed it again and I asked her, if there was a case that she was aware of, in her opinion, since the Colautti decision, which said that a state is prohibited from banning an abortion prior to viability? I asked her that question and her answer was, well, there was a case subsequent to Colautti that dealt with viability, but it did not have the strict date limitation that Colautti did. So what was her answer? The answer was, no, there is no case since Colautti that would state that it's constitutional for a state to ban an abortion prior to viability. Then I asked her the question about the state of the medical profession on the question of when a fetus experiences pain. And I specifically asked her if this 20-week standard was universally accepted amongst the medical community. Her response was, well, it's reflected in the Royal College of Obstetricians and Gynecologists standards and it's reflected in the Medical College of Alberta Province, in Canada--you know, Canada, the place that we don't want to model their healthcare, okay--and she...the practice as

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described by a prior witness, she said. And so I said, well, then let me ask it this way, because she wouldn't answer the question directly. I said, let me ask it this way: Are there people who disagree with the opinions medical professionals who have some degree of credibility and respectability, to your knowledge, who disagree with the testimony that a fetus experiences pain at 20 weeks? Her answer, to my knowledge, Senator Council, there are physicians who define pain differently and therefore disagree, but if they use a similar definition of pain, I believe there is a strong consensus. That testimony is neither definitive or unequivocal; it's her opinion and that's all it is, is her opinion. And we're prepared to develop and enact state policy based on this opinion. Well, we ignored the testimony that was presented by someone from the state of Nebraska who testified in opposition to LB1103,... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR COUNCIL: ...representing the Nebraska Psychological Association, who testified against LB1103 because LB1103 unconstitutionally fails to take into consideration the mental health of the mother in the decision whether or not to continue the pregnancy. And she stated, women considering an abortion at 20-plus weeks are often in situations involving a previously wanted pregnancy that has developed severe complications, such as a recently discovered major fetal abnormality or an emerging maternal health problem that, while not imminently life-threatening, is still very grave. Yet we ignore that fact. We deprive the mother... [LB1103]

SENATOR LANGEMEIER: Time. Thank you, Senator Council. Senator Haar, you're recognized. [LB1103]

SENATOR HAAR: Mr. President, members of the body, I want to continue on fetal abnormalities. And, Senator Flood, and I know this is a very difficult, emotional issue and it is for me, for both of us. But the bright line we're trying to establish will always elude us, especially as science and technology get better and better, because the ability to keep bodily functions functioning is just going wild at both ends. You can keep younger and younger and younger fetuses alive and you can keep older and older people alive simply with the machines that we have. And I think that question is going to become more and more difficult. And, in fact, it's one of the reasons that medical costs are so high, that we really haven't dealt with this whole thing of what science and technology can do. And Senator Flood mentioned, how do you define what life is? And let's say it's an anencephalic baby. If that fetus were being grown in some kind of machine, there would be no question. But this fetus is growing inside a woman. And again, I'm at a disadvantage because I don't have to face this. But right now in the United States there's 7.5 maternal deaths in childbirth per 100,000 U.S. births. That means...and I don't know how many women think about this, but there's...her life is at stake in every birth as well. Again, if it were only the birth of the fetus it might be a different question, but we're also talking about the life of the woman. And so here's

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where we become godlike in trying to determine this bright line, where I can sit in this Legislature and decide what a bright line is when that decision...I don't have to think about the life of the mother, I don't have to think about the life of the fetus. So I'd like to go on to the second page of my handout. And this abnormal fetus development is called iniencephaly. Iniencephaly is a rare neural tube defect that combines extreme backward bending of the fetus' head with severe defects of the spine. Most fetuses with the condition have other associated anomalies such as anencephaly, cephalocele, which is part of the cranial contents protrudes from the skull, hydrocephalus, which is the absence of the lower jaw, brain, cardiovascular disorders, on and on and on, and where one of the possibilities is actually the fusion of the two eyes and that's why it's called cyclopia. The prognosis for those with iniencephaly is extremely poor. Newborns with the condition seldom live more than a few hours and the distortion of the fetal body may also pose a danger to the mother's life. And so I need to ask, and I've been trained to be a computer analyst, designing programs and so on. And so I have to keep asking "what if" questions because you never put a computer program out there if you can't answer the "what if" questions. And obviously, you can never be 100 percent sure. But you need to be as sure as possible and so we have to ask these questions. You know, again the Supreme Court will decide. [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR HAAR: But if it decides that 20 weeks is acceptable, then how do we decide if this fetus anomaly at 22 weeks, if there's an abortion, if the doctor should be held responsible or not? And again, Senator Flood, I'd like to ask a question. [LB1103]

SENATOR LANGEMEIER: Senator Schilz...excuse me, Senator Flood, would you yield? [LB1103]

SPEAKER FLOOD: Yes. [LB1103]

SENATOR HAAR: Is this in the bill? Would it allow for this abortion of this sort of thing? If the decision was made by the wife, the husband, and the doctor that there needed to be an abortion, would the doctor, at 22 weeks, still be held responsible under the law? [LB1103]

SPEAKER FLOOD: Just so I'm clear, when you say, this abortion, this sort of thing, what are you talking about? [LB1103]

SENATOR HAAR: I'm sorry, the second page, the iniencephaly. If this were the situation of the fetus and at 22 weeks it was discovered and an abortion was done by a doctor... [LB1103]

SENATOR LANGEMEIER: Time. [LB1103]

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SENATOR HAAR: ...would he be held responsible? [LB1103]

SENATOR LANGEMEIER: Time. Thank you, Senator Haar. Senator McGill, you're recognized. [LB1103]

SENATOR MCGILL: Mr. President, I yield my time to Senator Haar. [LB1103]

SENATOR LANGEMEIER: Senator Haar, 4:58. [LB1103]

SENATOR HAAR: Okay. Senator Flood, I'd like to... [LB1103]

SENATOR LANGEMEIER: Senator Flood, would you yield? [LB1103]

SPEAKER FLOOD: Yes. [LB1103]

SENATOR HAAR: So if you'd continue, we both got kind of cut off in that conversation. Would the doctor, in a 22-week abortion, in this case with this fetus, iniencephaly, the husband, the wife, the doctor, the minister, whoever is involved, the family in this decided to have an abortion. Would the doctor be guilty of a crime? [LB1103]

SPEAKER FLOOD: Based upon what I have in front of me here, which is your handout, page 2, iniencephaly, is that the one I'm looking at? [LB1103]

SENATOR HAAR: Yes. [LB1103]

SPEAKER FLOOD: My assumption is that the baby is living at the time the abortion is performed. [LB1103]

SENATOR HAAR: Correct. [LB1103]

SPEAKER FLOOD: It's a human life and if the pregnancy were terminated after 20 weeks it would, in fact, be prohibited and the doctor would face sanction. [LB1103]

SENATOR HAAR: Okay, thank you. [LB1103]

SPEAKER FLOOD: Yes. [LB1103]

SENATOR HAAR: And then page 3, the third one, and again the picture I got on the second one, you simply go out to Google, you plug in iniencephaly and ask for images and there are many images that you can find. Now the third case is actually a Nebraska woman who called in or wrote in, I don't know how she got in touch, but anyway, hearing about LB1103 and this is her story. And the picture at the bottom of the page is

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a condition in which the baby's brain is outside the skull. And I'd like to read this. If I can't finish it now, I'll do it on my next light. My name is Melissa. I had a medical termination, as it is called, almost exactly two years ago. After my husband and I had been married for two years, we decided we wanted to try to have a child. This is a wanted and intended pregnancy. With great luck, we conceived quickly. I can't tell you how elated we both were. We had financially and emotionally planned for our child before we even knew that I was pregnant. I was excited at the prospect of being a stay-at-home mom. We had an excellent ob-gyn who made sure I was on the prenatal vitamins, folic acid being one of those. I made sure I didn't eat anything I wasn't supposed to, such as certain kinds of fish, deli meat, etcetera. I tried to eat mostly organic foods. And when it was time for our routine checkup at 20 weeks, routine checkup at 20 weeks, we were so excited, we were going to find out the sex of our baby. I remember everything like it was yesterday. My husband was at my side when the ultrasound tech was doing her job looking all over my tummy at the various parts of our precious child. All of a sudden, she excused herself and left the room abruptly. And from there on I'm not sure I can read this. But the point was that the doctor's prognosis, and after another prognosis for sure, was that they all confirmed what my doctor had said. My baby's prognosis was very bad. If she did survive to birth, most likely my child would die shortly after. I would have had to watch my child suffer to breathe to live. And her case...this is...the picture I've shown you again, I've just Googled and this...what she found out is that the fetus that she was carrying, its brain was outside its body and there was very little chance it would live. [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR HAAR: So they decided to have an abortion. And under this new law where we've drawn a bright line, we've played God with a bright line and not made exceptions. We made exception for the twins where one has to be sacrificed. But we haven't made allowance for at least a dozen or two dozen. I found a list on the Internet with 72 different kind of abnormalities that can be found with ultrasound. Now some of those are more severe than others but there are some very severe ones like this. And we've made no allowance in this bill. We've turned doctors either into law breakers if they and the couple decide for an abortion, or we're going to...probably in this case she would have gone somewhere else for that abortion. We're forcing them to go somewhere else for the medical care. If this bill goes through, if we think we can draw a bright line... [LB1103]

SENATOR LANGEMEIER: Time. Thank you, Senator Haar. Senator Wallman, you're recognized. [LB1103]

SENATOR WALLMAN: Thank you, Mr. President. Good evening to the body. This is an emotional moment. I cosigned onto this bill also. And one of the happiest moments of my life, I guess, is when my wife said she was pregnant. And the second happiest by far

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was when my daughter put a bib on me at Christmastime and I didn't get it. She was expecting. So watching the ultrasounds and everything, that's pretty special. And I am definitely, always have been against abortion. One of my relatives had stillborn children. You cannot believe what that does to the father. We're just talking to the women here, too, but the fathers, it's pretty tough and especially when you have multiple stillborn children. So it's a blood disorder or genetic disorder, we don't know, but those little children looked perfect. So would that stick in my brain? You bet, lots of things stick in here, but I forget a lot of things too. So if Speaker Flood would like some time, I'd gladly yield him some. [LB1103]

SENATOR LANGEMEIER: Senator Flood, 3:45. Thank you, Senator Wallman. Senator Carlson, you're recognized. [LB1103]

SENATOR CARLSON: Thank you, Mr. President, members of the Legislature. I'd like to address a question to Senator Haar, if he would yield. [LB1103]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB1103]

SENATOR HAAR: Yes. [LB1103]

SENATOR CARLSON: Senator Haar, you gave a statistic. Was it 6 mothers out of 100,000 childbirths die? [LB1103]

SENATOR HAAR: What I have, the statistic is 7.5 maternal deaths per 100,000 births. [LB1103]

SENATOR CARLSON: Okay, 7.5? Okay, thank you, Senator Haar. [LB1103]

SENATOR HAAR: Yeah. [LB1103]

SENATOR CARLSON: And that's statistics that should cause concern. That's a serious statistic. Unfortunately, 100,000, out of 100,000 babies who are aborted, probably die. I'm going to make another comment on something that's bothered me from the start of this discussion. And now I've heard the term used by two members of our group that are opposed to the bill and two members of our group that support the bill. I'd ask this as a favor, can be ignored. Many of us have terms and words that bother us. I don't even like to say it, it's the "F" word. It's offensive to many of us in the Chamber. I think it's hurtful. I think it's demeaning. There are many other more considerate terms that are acceptable and available. I would say that he or she is a baby. He or she is an unborn baby. He or she is a person. He or she is an unborn person. He or she is a human being. He or she is an unborn human being. He or she is an innocent, unborn baby. He or she is life. He or she is a viable person. He is an unborn son or grandson. She is an unborn daughter or granddaughter. Again, I've appreciated the tenor of our debate and simply ask if we

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can use other words as we proceed in our discussion. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Fulton, you're recognized. [LB1103]

SENATOR FULTON: Thank you, Mr. President, members of the body. Would Senator Haar yield to a question? Would Senator Haar yield to a question, Mr. President? [LB1103]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB1103]

SENATOR HAAR: Yes, yes. [LB1103]

SENATOR FULTON: Thank you, Senator Haar. I've not been...I'm not quite following your argumentation and so I'm going to ask you a couple of questions. [LB1103]

SENATOR HAAR: Certainly. [LB1103]

SENATOR FULTON: You were talking specifically...your handout has to do with anencephaly. [LB1103]

SENATOR HAAR: Correct. [LB1103]

SENATOR FULTON: Is it your contention that, one, an unborn child who suffers from this malady doesn't feel pain? [LB1103]

SENATOR HAAR: I'm not an expert. I read what I read and it said that in this condition, where there is no brain that there is no consciousness and so, I guess, we'd be arguing about a definition of pain. Now if there's a physical response, probably. [LB1103]

SENATOR FULTON: If an unborn child that is afflicted with this malady could feel pain, would it be in the state's interest to advocate on his or her behalf? [LB1103]

SENATOR HAAR: I would say conditioned on allowing for the consideration of the mother and the decision made by the mother and the father and the doctor. I think in this case, the godlike decision has to be left in the hands of those people. [LB1103]

SENATOR FULTON: Then you would say that the state does not have any compelling interest to advocate on behalf of the unborn with regard to pain at any point. [LB1103]

SENATOR HAAR: No, I think... [LB1103]

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SENATOR FULTON: I'm trying to determine...I'm saying you've put forward a logical rationale. I'm trying to determine the bounds of your logic so I can better understand your argument. Then perhaps...I probably won't agree with you and I'm going to be blunt about that. But in understanding your argument and being able to articulate your argument, perhaps I can help to persuade you. And so I'm trying to identify, is your point, by bringing up this rare malady, to elucidate that these, who suffer such maladies, don't feel pain? [LB1103]

SENATOR HAAR: No. My point again is I'm not arguing about the pain threshold that we're talking about. The Supreme Court will decide that. I'm arguing that there are situations that are not allowed for in this bill that we must think about. [LB1103]

SENATOR FULTON: Okay. And I think I follow that then, which causes me to think and flesh out your argument. Then would you say that the state has any compelling interest for the unborn with or without abnormality? I mean the very subject matter of the bill has to do with the state's interest in advocating, and that might not be the right word, for the unborn. And we find that in the language of Roe v. Wade. This is utilizing the unborn child's ability to feel pain. And so I'm interested in how you're dealing with that which has been posited? What has been posited is that they can feel pain. And if that's true, then the state has some compelling interest and therefore it's legitimate for the state to bring forward legislation. So does one who suffers from such a malady, if he could or she could feel pain, would the state have any compelling interest? [LB1103]

SENATOR HAAR: Again, I'm not going to address that because I think Roe v. Wade has set a standard that I feel comfortable with. The thing of pain, for example, we could simply talk about movement, is there movement in the unborn. So for now I am... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR HAAR: ...satisfied with the Supreme Court's decision. [LB1103]

SENATOR FULTON: But we aren't the Supreme Court, Senator. We are legislators. And the idea is that we're trying to set forward policy. And so that's my question here. Is there ever a time when, in your mind, is there ever a time when the state has any compelling interest on behalf of the unborn? [LB1103]

SENATOR HAAR: Well, I think so. And I think we recognize that now in recognizing and supporting the Supreme Court's decision around viability. Again, you know, I suppose there are a dozen different things that you could decide on. Right now the law of the land is viability. And I am comfortable and I...with that. [LB1103]

SENATOR FULTON: And, Senator, I just remind you that we are the ones who makes

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the laws, not the courts. And that's part of the reason why I stand in favor of this bill, the Judiciary Committee amendment. I'll continue this at a later time. [LB1103]

SENATOR HAAR: Sure. Thank you. [LB1103]

SENATOR FULTON: Thank you, Senator, for yielding. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Seeing no other lights on, Senator Conrad, you're recognized to close on AM2432. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. Thank you, colleagues, for a good and thoughtful discussion on important and significant and difficult issues before us. I think that we have had a full, fair and good debate about whether or not we should replace the bright line standard set forward in LB1103 as amended by the Judiciary Committee amendment. And we, I think, have a clear understanding now of what my amendment seeks to do--replace that bright line and standard with what the United States Constitution and the courts have told us and have never wavered from should be the appropriate standard for a review when dealing with these issues. And that is an individualized assessment of viability, which is important not only for those seeking elective abortions prior to a date certain but is also critically important to deal with the pregnancies that are inconsistent with life and that are nonviable, and preserving options for those hard cases that the Speaker and others have talked about in a compelling way, and that is lacking in the existing committee amendment. Thank you, Mr. President. I'd urge your adoption. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the closing on AM2432. The question before the body is, shall AM2432 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1103]

CLERK: 5 ayes, 27 nays, Mr. President. [LB1103]

SENATOR LANGEMEIER: AM2432 is not adopted. Mr. Clerk, next amendment. [LB1103]

CLERK: Mr. President, Senator Conrad would move to amend with AM2425. (Legislative Journal page 1233.) [LB1103]

SENATOR LANGEMEIER: Senator Conrad, you are recognized to open on AM2425. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. Thank you, colleagues. The substance

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of the amendment and the issues contained in this amendment really goes to the substance and breadth and parameters of the health exception that should be available to women who are in this difficult situation. The Supreme Court has consistently held that even after viability, women must be able to obtain abortions to preserve not only their lives but also their health. And Casey really sets the standard for us in terms of what is acceptable in terms of providing an appropriate health exception for women in difficult situations. And to be clear, LB1103 and the Judiciary Committee AM2063 does not provide a constitutionally sound or humane exception for women's health. And that is what this amendment seeks to do. For as long as the Supreme Court has recognized access to abortion as constitutionally protected, it has also held that a state may ban abortions after viability. But such a ban must make an exception for when abortion is necessary in appropriate medical judgment for the preservation of the life or the health of the woman. And that emanates from Roe and continues on in the rest of the seminal cases surrounding this issue. LB1103's narrow exception, covering only situations where abortion is necessary to avert serious risk or substantial and irreversible physical impairment of a major bodily function, does not indeed meet this constitutional standard. The court has rejected the notion that the protection afforded to women's health by an abortion restriction may be so limited. See also Doe v. Bolton and Thornburgh, United States Supreme Court, 1986. See also Women's Medical Professional Corporation v. Voinovich and see also additional cases related to the progeny. LB1103 allows abortion only if necessary to avert serious risk of substantial and irreversible physical impairment of a major bodily function. It would be unconstitutional even if it applied only postviability, which it does not, because it does not allow all abortions that may be necessary for the preservation of the health of the woman. Nothing in the Carhart case or in other cases addressing these issues has detracted from the fact that a state, when imposing restrictions and regulations on women's health issues, must have a strong, vibrant and clear women's health exception. This legislation does not. This amendment seeks to do so. I urge your support. Thank you. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Cornett. You have heard the opening on AM2425. Excuse me, Senator Conrad. You have heard the opening on AM2425. The floor is now open for discussion. Senator Flood, you're recognized. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President, members. I oppose AM2425. I do believe the exception, medical exception contained in the green copy is not only constitutional but I believe it represents a change that needs to be made there. One of the concerns that has been raised already tonight and before is that there is this...the mental health of the mother that could lead to the mother harming herself or the unborn child. Dr. Grissom, who was a testifier at the hearing on LB1103, said...and is well credentialed. He's a physician from Alaska. He said there are medications that are commonly...that are used routinely in the treatment of severe depression, including electroconvulsive therapy for people who have mental health issues that put themselves at risk from the standpoint of depression. I do not believe that the termination of a pregnancy is a

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situation that outweighs the concern of the infant at times, because you can effectively treat the mental health during pregnancy. Dr. Kenney, who is a Lincoln physician, well credentialed in the care of obstetrics...of patients...women that are having children. If the mother has such medical conditions that require that...and this is his testimony, that require she is at significant risk to herself or to her form, then she will need to be managed in a hospital that's capable of taking care of her condition, so this is something that is currently done today without difficulty and very important. He goes on to say, "Let me discuss the different medical conditions that might be considered emergencies." First of all, we have...I don't want to go that direction because that doesn't relate to the mental health exception. I do not believe that in today's day and age with the mental health and behavioral health resources we have available to patients in our state that an abortion is necessary to prevent further harm to the mother or the unborn child. We have medications that are appropriate. We have physicians and access to health services that are appropriate. We have psychiatric acute and subacute hospitals in this state that are appropriate. There's the decision to be made by the physician as to whether or not the individual should be in a community-based setting or an acute residential or inpatient setting. To suggest that not allowing somebody to have an abortion is going to cause harm to that person or the unborn child because of their condition completely negates the entire protocol that's currently available to people that need behavioral health services. And certainly there was some testimony in opposition to that at the hearing. But the proponents that were medical, in the medical field dismissed the thought that there wasn't adequate treatment available in the community. So I guess I don't agree and I am not going to support AM2425 to AM2063 for those reasons, again going back to the testimony at the committee hearing. [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SPEAKER FLOOD: One of the things that I've learned a lot about in my time in the Legislature is behavioral healthcare. When I started they were in the process of reducing the number of patients at a mental hospital in my district. I know that we have a good system of care in Nebraska. And I hear from those professionals, including Dr. Kenney, who testified at the hearing as a representative of the Nebraska medical community, that there are options other than abortion. In fact, I can bring studies to the table tonight that suggest having the abortion further complicates the mental health condition of the mother. So I'm not for this. I'm not going to vote for it. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Council, you're recognized. [LB1103]

SENATOR COUNCIL: Thank you, Mr. President. First, in response to Senator Fulton, if that was your fundamental strongly held belief that we make the laws, not the courts, I trust that that becomes your mantra anytime a bill is challenged on constitutional

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grounds, like LB1102 was. I didn't hear that argument then when the counter argument was this could be found to be unconstitutional. And last I checked, that was a decision that was left to the courts. I stand in favor of AM2425. Senator Haar has made reference to some of the issues here. And what disturbs me greatly about the direction that this body is choosing to move in and that is the blatant, absolute blatant disregard for the interests and welfare of the mother to the point that this bill says if the mother was threatening suicide and has suicidal ideations it didn't matter. Yet as I indicated in my earlier testimony, Senator Dierks's bill took into consideration that fact. And if you were to reconcile the two I'm telling you you're hard-pressed to do it. Because if you read LB594, it suggests that if a woman who seeks an abortion comes in and has the very complicated, detailed evaluation that LB594 requires, that if the doctor documents that it's in the best interest of the mother, her mental health, not to carry the child to term, the implication in the language of LB594 is that an abortion would be appropriate in those circumstances. That's what the bill says. I don't have to make that up. Senator Flood was correct that one of the people who testified at the Judiciary Committee hearing in response to the questions I posed about the mental health was not a mental health practitioner, but he did testify that there are treatments and medications. And I would ask Speaker Flood to yield to a question, if he would. [LB1103 LB1102 LB594]

SENATOR LANGEMEIER: Senator Flood, would you yield? [LB1103]

SPEAKER FLOOD: Yes. [LB1103]

SENATOR COUNCIL: Senator Flood, what is electroconvulsive therapy? [LB1103]

SPEAKER FLOOD: I'm not a medical professional. I'm not qualified to answer that for you right now because I don't know. [LB1103]

SENATOR COUNCIL: Okay. And I appreciate that but that was...that individual's testimony, that was his example of the treatment that would be available to a mother who was seriously depressed and showed other indications of mental health disorder associated with her pregnancy. And the response was electroconvulsive therapy. I'm not a physician either. But nothing good comes out of the word "convulsive." And coupled with "electro," it would appear to me that we're talking about a seriously invasive procedure to the point again that we're willing to disregard the risk to the mother, we're willing to disregard the pain to the mother. And I would imagine that something that involves convulsions would imply... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR COUNCIL: ...some pain. We disregard that. The Judiciary Committee also had an opportunity to hear from two Nebraska healthcare providers about young women in Nebraska who had lost their prenatal care and were considering the difficult choice of

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terminating their pregnancies. And when asked what were some of the reasons for these decisions, the points that were raised had to do with the impact on these women, most of whom if not all of them had some moral opposition to abortion, being placed in a situation where the fear, the stress, the concern about carrying through with their pregnancy outweighed their moral opposition to abortion. [LB1103]

SENATOR LANGEMEIER: Time. Thank you, Senator Council. Senator Haar, you're recognized. [LB1103]

SENATOR HAAR: Mr. President, members of the body, to Senator Carlson I would just...I think I know what you mean by the "F" word and maybe we'll talk about that later. And out of respect to you, I will talk with you to use another term. But out of respect to me, and I have been used to scientific terminologies in sex education, etcetera, etcetera, so if I slip up you'll also have to understand it's not intentional. I know we're all anxious to get home. But this is such an important topic, I truly feel that this is a flawed bill. And the questions I asked earlier, and there really are no answers for them that are very satisfactory when you're considering a family who is having to face a birth that would...may not live or whatever, I think it's flawed. And those things need to be...we need to think about those things, even though they're terribly unpleasant, because otherwise we make lawbreakers out of people who are following their moral compass. And so I won't talk much more this evening. No doubt these amendments will not pass and LB1103 will go through first reading. But when it comes up to Select File, I do want to talk about some ways so that we don't need to have abortions. And one is very simple. And on that sheet that I handed out, if you notice where it says, supplementing the maternal diet before and during pregnancy with folate will greatly reduce the chance for such defects. I want to talk about that some more, about prenatal care, because we know that this will cause...proper prenatal care will result in less abortions. And then prevention, prevention in the first place. Half of all pregnancies are intentional, half are unintentional. And I'll pass out a chart on this on Select File. Two percent, only 2 percent of intended pregnancies are ended in abortion. And many of these are these cases where it's very difficult, because they're intended pregnancies but there is something terribly wrong with the unborn. Out of the unintentional pregnancies, again half of all pregnancies, 40 percent are terminated in abortion. And we can do something about that, we can do something about preventing unintended pregnancies, not 100 percent but we can go a long way. And we could go a lot farther with prenatal care. That's got to weigh on us heavily as well. Thank you very much. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Wightman, you're recognized. [LB1103]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I didn't intend to speak on this but I really think I need to. I don't think I can support Senator Conrad's AM2425. I think it's probably way too broad. Damage to health has been used in cases all over the

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nation to justify abortion for almost any cause. Somewhere you can find a doctor that says that it's probably going to damage the health, either physically or mentally. At the same time, I'm very disturbed that we can't come up with an exception that would take into account what Senator Haar has handed out with regard to anencephaly and the other three or two...whatever we would call them, iniencephaly. And the third one, I won't try to pronounce them all. But it seems to me that at some point we can't just wear blinders and that it's got to be all one way. It seems to me we have to take into account at some point, and I believe this could really affect the health of the mother, the mental health of the mother. And the fact is that if this mother wants to go to Kansas and have an abortion, she can go to Kansas and have an abortion. I don't think our law is going to have any effect at all upon a Kansas doctor. She can probably go to Iowa, she may be able to go to almost any surrounding state, probably not South Dakota. But the fact is we aren't legislating what's going to happen in this situation. We're just going to drive them into another forum. As I say, I don't think I can support AM2425. I think that's exactly what we've been seeing. But we ought to be able to come up, it seems to me, with some sort of an exception that covers the situations that Senator Haar has proposed here. As a matter of fact, I was contacted by a doctor in my own district. And he had a lady who had a situation much like this contact me. And she was torn. She didn't want to have an abortion. She was told that the baby would probably die within minutes after its birth if it even survived in womb. They were pro-life. They elected not to have it. And at some point it was determined that the baby could not live, absolutely. And so she was presented with the situation where I think she did have an abortion at that time, I'm not even quite sure, without rereading her e-mail, exactly what did occur. But it just seems to me that we have almost got to provide an exception in those cases. Now we can talk about playing God, we can talk about all kinds of things. But I just don't know how we can, in good conscience, pass a law when particularly the mother can go, whether we call her a mother, whether we call her an expectant mother, she can go to probably 30 or 40 other states in the Union and have that abortion and she won't be violating any law. I may be too high. Maybe it's 15 states, maybe it's 20 states. But I can assure you, she can go and we aren't legislating that she's going to have to give birth to this child, because she doesn't have to. I think that Roe v. Wade was probably decided, I know it was decided in a time when travel wasn't quite as...maybe beyond the means of some people to travel to another state. But to just rule this out is of great concern to me. As I say, I will not support AM2425. I might support a much more narrowly crafted exception. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Council, you're recognized. [LB1103]

SENATOR COUNCIL: Thank you, Mr. President. I want to briefly follow up on what Senator Wightman was dealing with and that's one of the problems with the bill in its current form. Not only does it ban an abortion prior to viability with the 20-week standard, it also bans an abortion beyond the 20 weeks, even in the case of a medical

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emergency, because a medical emergency has been so narrowly drawn. And what we've learned from the testimony of the individuals who appeared at the Judiciary Committee and reading from incidents that have occurred elsewhere, one of the things, one of the unintended consequences of having so narrowly drawn a medical emergency exception is that we may unintended...in an unintended fashion push people into making decisions to terminate pregnancies sooner to avoid the 20-week ban. And that's because in many of these conditions sometimes, as Senator Wightman, I think, in the example he gave there was a question whether the child would survive after birth. In many of these situations there's no assurance that the condition would be terminal, that the child may be able to survive after birth. But if families are put in such situations from a pressure perspective that forces them to make decisions before they can receive all of the appropriate medical consultations, the unintended consequence may be that we have individuals who elect, for fear of continuing a pregnancy that would result in the baby being born and unable to survive outside of the womb, making a decision to terminate that pregnancy when perhaps four, five more weeks there may have been, with all of these advances in medical science, some action that could have been taken to preserve that child's life. But we won't provide families that option under LB1103 because once the 20 weeks has been passed the only thing that could allow for the pregnancy to be terminated is if it threatened the mother's life, if the mother would not survive by carrying forward. So I agree with Senator Wightman that we must have a workable medical emergency option in any legislation that's passed. I don't agree that what is set forth in AM2425 is too broad. You know, that is the standard. I can't say with any certainty, Senator Wightman, that women routinely use a medical emergency excuse and that providers routinely accept those as the reason. But I do know that when faced with a situation such as that reflected in the example you gave,... [LB1103]

SENATOR LANGEMEIER: One minute. [LB1103]

SENATOR COUNCIL: ...none of us, none of us know what that mother or the family, if it's a family situation, none of us know the difficult decision that they have to make and the thought processes they go through and the stresses and pressures that they operate under. Yet we ignore the decisions that they make, that they believe that is in their best interest. We want to substitute our individual perceptions of what is in their best interest and ignore what the family and particularly the mother believes to be in her best interest. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Council. Seeing no other lights on, Senator Conrad, you're recognized to close on AM2425. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. Thank you, colleagues, for your good dialogue, discussion and questions about these important issues. Because again I think, regardless of how people feel about some of the underlying issues related to abortion, I think there is a lot of common ground in protecting women's life and women's health.

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And what my amendment seeks to do is to set the health exception for women's lives and women's health at a place that is established and defined and workable under our existing parameters affecting these issues and through the Supreme Court and its related seminal cases related to these issues. The court has held, in Doe v. Bolton and following through in Thornburgh, that medical judgment may be exercised in light of all the factors: physical, emotional, psychological, familial, the woman's age, etcetera, are all relevant to the well-being of the patient. All these factors relate to health. Further, it cannot be questioned that psychological well-being is a facet of health. And that's found in Thornburgh, in the Thornburgh case from the United States Supreme Court. So with that, I can appreciate that different sides have different opinions about the worthiness and the breadth of the health exceptions as they are written, but my amendment seeks to restore the health exception for women in this difficult circumstance to a clearly defined and established place according to the U.S. Constitution and case law. I'd urge its adoption. And after we vote, hopefully, we can continue to make quick progress in regards to the remaining substantive issues. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the closing on AM2425. The question before the body is, shall AM2425 be adopted to the committee amendments? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1103]

CLERK: 6 ayes, 27 nays, Mr. President, on the amendment. [LB1103]

SENATOR LANGEMEIER: AM2425 is not adopted. Mr. Clerk, next item. [LB1103]

CLERK: Mr. President, the next amendment to the committee amendment, Senator Conrad, AM2423. (Legislative Journal page 1233.) [LB1103]

SENATOR LANGEMEIER: Senator Conrad, you are recognized to open on AM2423. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. This amendment seeks to clarify and improve the existing medical emergency exception that is contained in the legislation. And it does so for the following reasons. The medical emergency exception that is presently in the bill is inadequate as a health exception but is also inadequate as a medical emergency exception as it fails to protect mental health. So what we're doing in terms of this amendment is ensuring that it covers, as constitutionally required, mental health. By excluding mental health, the medical emergency exception in LB1103 fails to even meet basic constitutional thresholds for a medical emergency exception. Again, the court has held this in occasion after occasion in every seminal case dealing with this issue that you must have a clear and acceptable standard when it comes to not only women's lives and health but also for medical emergencies. And this amendment seeks to restore that issue to the proper standard. I urge your adoption. Thank you. [LB1103]

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SENATOR LANGEMEIER: Thank you, Senator Cornett (sic). You have heard the opening on AM2423 offered to the committee amendments. The floor is now open for discussion. Seeing no lights on, Senator Conrad, you are recognized to close on AM2423. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. With that, colleagues, I think that we have at least a clear introduction and understanding of what this amendment seeks to do. And I guess hearing no opposition, that should ease its adoption. In all seriousness, which I was trying to inject a lighthearted moment into the debate, I believe that it would be fair to say that proponents of this legislation believe it is unnecessary and is currently covered by their legislation. But it's not my job to make their argument; mine is that it does not meet the appropriate standard and tries to return it thereto. So with that, I would urge its adoption. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the closing on AM2423 offered to the committee amendments. The question before the body is, shall AM2423 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1103]

CLERK: 5 ayes, 29 nays, Mr. President, on the adoption of the amendment. [LB1103]

SENATOR LANGEMEIER: AM2423 is not adopted. Mr. Clerk, next amendment. [LB1103]

CLERK: Mr. President, Senator Conrad would move to amend the committee amendments with AM2424. (Legislative Journal page 1233.) [LB1103]

SENATOR LANGEMEIER: Senator Conrad, you are recognized to open on AM2424. [LB1103]

SENATOR CONRAD: Thank you, Mr. President. This amendment seeks to remove language in the existing bill and the committee amendment that precludes the physician from using his or her best judgment as to the best procedure for women because the current legislation, as amended, sets the standard otherwise too high. This would require the physician to expose the woman to substantial health risks, even though in any other circumstance the physician would be able to use his judgment about what is best for the woman. And not only is this important for technical, medical, and legal reasons, but it goes back really, I think, to the heart of some of these issues that we've already discussed about how the majority of Americans and the majority of Nebraskans do not want an injection of politics into the doctor-patient relationship. And so this provides or returns the standard to where it should be, allowing a physician, in his or her best judgment, to make the best decisions and provide the best options to their patient.

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With that, I would be happy to answer any questions or otherwise urge its adoption. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the opening on AM2424 offered to the committee amendments to LB1103. The floor is now open for discussion. Those wishing to speak, we have Senator Flood and Council. Senator Flood, you're recognized. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. I'll be brief. I think we discussed issues related to doctor-patient relationship earlier in the debate on General File. For those reasons, I remain opposed to...I am opposed to this amendment, AM2424, to AM2063 and will be voting no. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Council, you're recognized. [LB1103]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in strong support of AM2424. Oftentimes in this body we represent that we speak on behalf of all of the citizens of this great state and know what the citizens of this great state have said or desire. And I do recall hearing at some points the questions about the discussion on healthcare reform and what citizens of this state did and didn't want. And one of the representations made was that citizens of this state don't want the government interfering with their relationship with their personal physician. And yet we are ready to do that in the case of a woman during a most critical medical juncture. And here all we're doing is saying, citizens of the state of Nebraska, we hear you that this should be a decision that's left up to your medical provider, who you have selected to provide you with medical care. And you should be allowed to rely on his or her best medical judgment as to what is necessary and appropriate for you under these circumstances. So for those reasons, I do support AM2424. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Council. Seeing no other lights on, Senator Conrad, you're recognized to close on AM2424. Senator Conrad waives closing. The question before the body is, shall AM2424 be adopted to the committee amendments to LB1103? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1103]

CLERK: 6 ayes, 31 nays, Mr. President, on the adoption of the amendment. [LB1103]

SENATOR LANGEMEIER: AM2424 is not adopted. Mr. Clerk, next amendment. [LB1103]

CLERK: Mr. President, Senator Conrad would move to amend the committee amendments with AM2430. (Legislative Journal page 1234.) [LB1103]

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SENATOR LANGEMEIER: Senator Conrad, you are recognized to open on AM2430. [LB1103]

SENATOR CONRAD: Mr. President, could I ask just a point of information? Is this the last amendment filed? [LB1103]

CLERK: It is, Senator. [LB1103]

SENATOR CONRAD: Okay, great, I just wanted to verify that I was... [LB1103]

CLERK: It's the one that starts "Insert the...new section: Section 13. This act becomes operative on." [LB1103]

SENATOR CONRAD: Yes, yes, thank you, Mr. Clerk. I did just want to ensure that I was being accurate in terms of where we were sequentially with the amendments. Thank you. Colleagues, this is the last amendment that opponents have filed in regards to this legislation. And I do want to thank those who have, on both sides, who have spoken eloquently, thoughtfully and clearly shared their beliefs surrounding these difficult issues, whether it be from a moral, a religious or other perspective. And I think that what I've tried to do tonight is to provide a clear record as to significant legal issues that are involved in this legislation and that are not, in my opinion and that of many others, are not fully addressed by the committee amendment. This amendment, I am hopeful, will allow us to conclude our discussion tonight with true consensus and true agreement. In preparing for the parameters of this debate, the Speaker...again I thank him publicly for his graciousness and his ability to be open, inclusive and helpful to all competing interests in trying to ensure that we can move forward in an efficient and an appropriate way. And recognizing all parties at the table in this debate that this is a case of first impression that will be subject to extensive litigation, in order to allow appropriate time for all parties to fully prepare we are simply moving back the effective date. There was no emergency clause on the original legislation, so it would not have taken effect immediately, rather would take effect three months after it was adopted, as is the case with all bills without a date certain or an emergency clause. So working together we were able to briefly extend the effective date for the operation of this legislation. And this was agreed to by myself and the Speaker and is critical to forming this debate and moving forward in an appropriate way, respectful of our process, our time left here during this short session and the many other issues that are before us and require our attention. So I'm hopeful that the Speaker will rise in support of this amendment as it was critical to our negotiations with how we structured this debate and is, I believe, technical in nature rather than substantive in allowing for full preparation and litigation surrounding these issues into the future. And I would urge everyone's adoption. Thank you, Mr. President. [LB1103]

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SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the opening on AM2430 offered to the committee amendments. The floor is now open for discussion. Senator Flood, you're recognized. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. Senator Conrad is right, I agreed to this and would urge its adoption. This moves the effective date until about October 15, 2010. I don't have it right in front of me here, but it is AM2430. And I appreciate again Senator Conrad and other opponents, such as Senator Council, Senator Haar, Senator McGill, for structuring this debate in such a way that I think we could get to the issues and have a thoughtful discussion. These aren't easy issues. And it's not easy subject matter. And it's not something you think about on a Tuesday night very often. But it is important and I do appreciate their willingness to structure the debate tonight and feel that it has been a good one on both sides. So I'm going to vote yes for AM2430. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. Senator Gloor, you're recognized. [LB1103]

SENATOR GLOOR: Thank you, Mr. President. I wonder if Senator Conrad would yield to a question? [LB1103]

SENATOR LANGEMEIER: Senator Conrad, would you yield? [LB1103]

SENATOR CONRAD: Yes, yes, of course. [LB1103]

SENATOR GLOOR: I believe this is going to fall into place nicely. But the term "operative," when it comes to medical procedures, has different meanings. Could you help, please, explain what we mean by going from "effective" to "operative." [LB1103]

SENATOR COUNCIL: Senator Gloor, and I'm sure that in "contextually" or otherwise there are legal terms of art and scientific terms with specific meaning. And to be clear it does not, in my opinion I believe, make any substantive changes to the implementation of this legislation but, rather, just sets a date certain in the near future for when it will take effect, when the law will be applied, when it will be implemented. [LB1103]

SENATOR GLOOR: Thank you. No more questions, thank you. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Gloor. Senator Fulton, you're recognized. [LB1103]

SENATOR FULTON: Thank you, Mr. President. Would Senator Conrad yield? [LB1103]

SENATOR LANGEMEIER: Senator Conrad, would you yield? [LB1103]

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SENATOR CONRAD: Yes, of course. [LB1103]

SENATOR FULTON: The difference then, Senator, between "effective" and "operative," there is no difference? [LB1103]

SENATOR CONRAD: I don't believe so, no. [LB1103]

SENATOR FULTON: Okay. Then could you explain the rationale. I guess, I understand there's been a compromise struck and I want to honor the compromise. But for the record and also just for the knowledge of those of us who are getting ready to vote on this, what was...what is accomplished by moving the operative date or the effective date, the operative date back to October 15? [LB1103]

SENATOR CONRAD: The short answer is not much (laugh) in terms of the substance of the bill. The original legislation, as proposed by the Speaker and unaffected by the committee amendment, did not have an emergency clause. So this bill would not become law when it was signed into law, when it completed its way through our process and when it reached the Governor's desk. And that's typical within many of the bills and pieces of legislation before us, as you well know. Some do have an emergency clause attached to them for specific purposes. And others then that do not, generally take effect approximately three months after they are adopted or signed into law. So recognizing that this is a case of first impression and that rises to the level of constitutional scrutiny and that anticipates extensive litigation, this is a sincere attempt to allow full and fair preparation for all parties involved in completing that process. [LB1103]

SENATOR FULTON: Thank you, Senator. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Pirsch, you're recognized. [LB1103]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. Just as a clarification, Senator Conrad, if she'd yield to a quick question. [LB1103]

SENATOR LANGEMEIER: Senator Conrad, would you yield? [LB1103]

SENATOR CONRAD: Yes, of course. [LB1103]

SENATOR PIRSCH: And the date that you believe then that this...well, let's talk about the regular process. Should this bill advance then and the Governor sign it, it typically goes into effect is it 90 days after the Governor signs it? [LB1103]

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SENATOR CONRAD: That's correct, Senator Pirsch. [LB1103]

SENATOR PIRSCH: Okay. And so what would that date...let's see, we adjourn sine die on the 14th, is that right? April 14? [LB1103]

SENATOR CONRAD: I believe that's when we're scheduled to adjourn sine die. I don't think that is a date certain until we do. And I think it is unclear from where we are in the process and in the session when this bill will pass all three rounds of debate and reach the Governor's desk. And I think that starts the time frame or the time forward. So knowing that we don't have a date certain in terms of the three-month default position, this was a compromise piece that the Speaker and I were able to come to, to provide for that full preparation. [LB1103]

SENATOR PIRSCH: And the rationale for having a hard date or the amendment, just briefly if you could (inaudible). [LB1103]

SENATOR CONRAD: It's approximately three additional months from when it would otherwise become law. It's not an exact science but that's approximately what it represents. [LB1103]

SENATOR PIRSCH: Okay, thanks for your answers. [LB1103]

SENATOR CONRAD: Oh, and just one...I'm sorry,... [LB1103]

SENATOR PIRSCH: Sure. [LB1103]

SENATOR CONRAD: ...just one other point quickly. [LB1103]

SENATOR PIRSCH: Sure, go ahead. [LB1103]

SENATOR CONRAD: There...this also is not completely unusual or atypical in our process. If a bill does not have an E clause, an emergency clause, and take effect immediately or have a default effectiveness date, so three months after it is signed into law, you can also set a date certain for effectiveness or operation. And we do it frequently with legislation and say, for example, it will take effect January 1 the next calendar year. This instead is a compromise piece that provides roughly an additional three months for its operative date so all parties can prepare. [LB1103]

SENATOR PIRSCH: Thank you. I have no further questions. Thank you. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Seeing no other lights on, Senator Conrad, you are recognized to close on AM2430. [LB1103]

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SENATOR CONRAD: Thank you, Mr. President. And thank you, colleagues, for the good questions. And actually Senator Rogert was helpful and just reminded me that the typical effective date for operation or effectiveness of the laws that we do pass is three months after adjournment. So to be clear and to clarify the record, I did want to make sure that everybody was on the same page in that regard. Again, this amendment is not substantive in nature. And it is a very straightforward, negotiated attempt to ensure that all parties involved in this important subject matter have a full and fair attempt and ability to pursue next steps, which will be, I think, most notably...most likely consider litigation and other issues surrounding that process. So again, I thank the Speaker for his support and his willingness to help negotiate the parameters of this debate in a thoughtful and effective way. And I thank the body for their time and kind consideration and attention to these difficult and emotional issues, and believe that both sides have done a good job tonight in establishing a clear record for their beliefs in why we should or should not adopt this public policy. And that's what we...we're doing our jobs. And that's why we were elected to be here. And it may not always be pleasant and it may not always be fun, and I think we're all tired, but it's part of the important work that we do and we do it in a humble and thoughtful way. And for that, I thank you all and wish you a good night after the adoption of this amendment. Thank you. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Conrad. You have heard the closing on AM2430 offered to the committee amendment. Question before the body is, shall AM2430 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB1103]

CLERK: 40 ayes, 0 nays on adoption of the amendment, Mr. President. [LB1103]

SENATOR LANGEMEIER: The amendment, AM2430, is adopted. [LB1103]

CLERK: I have nothing further to the committee amendments, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Now we return to discussion available on AM2063, the committee amendments. Seeing no lights on, Senator Ashford, you are recognized to close on the Judiciary Committee amendment, AM2063. [LB1103]

SENATOR ASHFORD: Thank you, Mr. President. I will just close by saying that I urge the body to adopt the committee amendments. I might say that I thought that Senator Wightman made a responsible suggestion and maybe we can have some discussion on that before Select File. With that, I'd urge the adoption of the committee amendments. And I'm going to support advancement of the bill. Thank you. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the closing on AM2063 offered to LB1103. The question before the body is, shall AM2063 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish

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to? Record, Mr. Clerk. [LB1103]

CLERK: 38 ayes, 4 nays on adoption of committee amendments. [LB1103]

SENATOR LANGEMEIER: The committee amendments are adopted. We return now to discussion on LB1103, the bill as amended. Seeing no lights on, Senator Flood, you're recognized to close on LB1103. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. Members, thank you for being here and for your attention to such a difficult issue. I believe this is the right state policy for Nebraska. I believe this is the right thing to do. And at the end of the day, we ultimately make the policy for the state, as we all know. I want to tell just a brief story about an issue that I learned a lot about one day in the Legislature. I had just been elected Speaker, it was 2007, and there was a bill on the agenda that I thought had issues with its constitutionality. And I ran into the Clerk's Office and I said, Mr. Clerk, I'm going to have to sit in the chair and I'm going to have to rule this is unconstitutional, because I felt that was my duty as the Speaker of the Legislature. It was a very black-and-white world that I thought we lived in, in terms of those types of things. And he sat me down and he shared with me the policies and procedures manual for legislators that NCSL puts together. And in there, there's a provision where it says, the presiding officer shall not rule on the constitutionality of a bill. That's the providence of the Legislature, that's within the scope of authority of the members of the Legislature, it's not for one person to decide. And, I guess, that has rung true with me ever since I had that day in the Clerk's Office because it isn't my job as a Speaker to decide, it's my job as a legislator. And in this case, our job is to weigh the evidence, to listen to the debate, look at the committee statement, determine whether Nebraska has a compelling and substantial state interest to protect babies, unborn babies after 20 weeks and then cast your vote. At the same time you have to weigh the concerns that Senator Conrad and Senator Council and others, Senator Haar, spoke about, including the concerns they had about constitutionality. And hopefully, I gave you enough of my perspective that you will agree with me on LB1103, but we have to weigh all of that. And at the end of the day, we have the responsibility to do what we think is right for Nebraskans. And in a check and balance system, the court has its opportunity to weigh that decision that we make in the Legislature in contrast to the facts of a specific case. So I urge you to vote for LB1103 and then I continue to look forward to...I look forward to working with all of you on Select File. Thank you, Mr. President. [LB1103]

SENATOR LANGEMEIER: Thank you, Senator Flood. You have heard the closing on LB1103. The question before the body is, shall LB1103 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Mr. Clerk, please record. [LB1103]

CLERK: 38 ayes, 5 nays, Mr. President, on the advancement of LB1103. [LB1103]

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SENATOR LANGEMEIER: LB1103 does advance. Speaker Flood for an announcement. [LB1103]

SPEAKER FLOOD: Thank you, Mr. President. One more thing before we go home tonight, the agenda for tomorrow will be out in just a little bit. I need to work on it back in my office. But tomorrow morning, at 9:00, we're going to start with consent calendar. And you'll see consent calendar on today's agenda, the yellow sheet that's attached, the second sheet to today's agenda, it's on yellow paper at your desk. That's what we're going to start with at 9:00. And I anticipate after consent calendar we'll take up Senator Krist's bill that has a motion to suspend rules on it. And then we'll continue with Select File, similar to what's listed on your agenda. So I just want you to know, tomorrow, 9:00, consent calendar. Thank you.

SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk, items for the record.

CLERK: I have no items, Mr. President. Priority motion: Senator Flood would move to adjourn the body until Wednesday morning, March 31, at 9:00 a.m.

SENATOR LANGEMEIER: Thank you. You've heard the motion to adjourn. All those in favor say aye. All those opposed say nay. The ayes have it, we stand adjourned.