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Floor Debate  
March 01, 2011

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[LB22 LB50 LB81 LB132 LB159 LB164 LB165 LB181A LB191 LB210 LB210A LB228  
LB237 LB257 LB278 LB281 LB314 LB333 LB357 LB368 LB399 LB471 LB521 LB543  
LB556 LR77 LR78 LR79 LR88 LR89 LR90 LR91 LR92]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-seventh day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Carlson.

SENATOR CARLSON: (Prayer offered.)

SENATOR LANGEMEIER: Thank you, Senator Carlson. I call to order the thirty-seventh day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

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

CLERK: Enrollment and Review reports LB165 to Select File with E&R amendments attached. Senator Harms would like to print an amendment to LB543. Senator Flood offers LR88. That will be laid over. And Senator Ashford announces the selection of LB357 as his personal priority bill for this session. (Legislative Journal pages 673-674.) That's all that I have, Mr. President. [LB165 LB543 LR88 LB357]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda: General File, LB22. [LB22]

CLERK: LB22 is a bill by Senator McCoy. (Read title.) The bill was introduced on January 6 of this year, Mr. President, at that time it was referred to the Banking, Commerce and Insurance Committee. The bill was advanced to General File. I do have an amendment to the bill by the principal introducer. [LB22]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator McCoy, you are recognized to open on LB22. [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR McCOY: Thank you, Mr. President and members. Good morning. I'm pleased to introduce LB22, which seeks to adopt the Mandate Opt-Out and Insurance Coverage Clarification Act, to you this morning. LB22 accomplishes two things. First, it affirmatively opts out Nebraska from allowing health insurance plans that cover abortions from participating in health insurance plan...participating health insurance exchanges, excuse me, that could be potentially offered in our state. This opt out is permitted under a compromise that was secured by our senior United States Senator Ben Nelson and is listed in Section 1303 of the federal Patient Protection and Affordable Care Act, otherwise known as PPACA. Five states passed similar opt out laws in 2010, and those would be Arizona, Louisiana, Mississippi, Missouri, and Tennessee. Second, LB22 prohibits private health insurance sold in Nebraska from providing elective abortion coverage except through an optional rider where the premium is paid solely by the insured. The issuer of the health insurance plan or policy may not provide an incentive or discount if the insured elects to purchase the additional rider. The only exceptions allowed in LB22 are to prevent the death of the mother or treat medical complications arising from an abortion. This is not a new concept for us here in Nebraska. The same language is already found in Nebraska State Statute 44-1615.01 prohibiting the use of public funds in abortion coverage. And that says in part, "This section shall not prohibit the insurer from offering individual employees special coverage for abortion if the costs for such coverage are borne solely by the employee." Currently, Idaho, Kentucky, Missouri, North Dakota, and Oklahoma, with the oldest being North Dakota in 1979, have laws limiting private insurance coverage for elective abortions. All five states allow an optional rider as proposed in LB22. In Coe v. Melahn on 1992, the Eighth Circuit Court of Appeals, of which Nebraska is a part of, upheld the Missouri law which is mirrored by LB22. The court ruled Missouri's law did not pose an undue burden and states are permitted to prohibit coverage of abortions in private health insurance. Thirty years ago almost to the day, 1981, the Nebraska Legislature passed LB125 which became Statute 44-16.01 (sic) prohibiting the use of public funds to pay for health insurance coverage for abortions. I believe LB22 continues what LB125 began in 1981. And I believe strongly that Nebraskans who morally object to abortion should not be forced to pay for the elective procedure through their tax dollars or insurance premiums. I'd also like to mention and thank not only my staff and many, many other folks who have helped over the last years we put together this legislation but I'd also like to thank Senator Dubas and her staff and others who also have worked very hard on a similar piece of legislation that the Banking Committee heard earlier this year as well, and her efforts are greatly appreciated as well. And you will also see an amendment which I introduced which clarifies a few things in a few moments and I'll open on that shortly. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator McCoy. Mr. Clerk for a motion. Speaker Flood for an announcement, excuse me. [LB22]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, colleagues. Briefly,

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

Floor Debate  
March 01, 2011

---

Senator Cook is not with us this morning, and for that reason should we arrive at LB543, I intend to pass over it today. Again, we'll be passing over LB543. Thank you, Mr. President.

SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk for an amendment. [LB22]

CLERK: Mr. President, Senator McCoy would move to amend his bill with AM539. (Legislative Journal page 674.) [LB22]

SENATOR LANGEMEIER: Senator McCoy, you're recognized to open on AM539. [LB22]

SENATOR McCOY: Thank you, Mr. President. I mentioned a moment ago that AM539 deletes what probably accurately could be described as some extraneous language in Section 2 of the green copy of the bill. I would greatly appreciate Senator Nordquist and Senator Mello, among others, who brought some of this to my attention that they felt like that potentially this could provide to be problematic over time if we left this in the bill. I agreed that that could be the case. And while I still believe in the tenor of what we had that we're taking out, I was happy to work with them on AM539 and then introduced it myself. I believe they'll speak in support not only of the amendment but of the bill shortly. And with that, I'll close. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator McCoy. You have heard the opening on LB22 and AM539. The floor is now open for discussion. Those wishing to speak, we have Senators Nordquist and Fulton. Senator Nordquist, you're recognized. [LB22]

SENATOR NORDQUIST: Thank you, Mr. President, members. I want to first start by thanking Senator McCoy for his willingness to work on AM539 and for his bringing of this legislation. I think it's a policy that a majority of this body and a majority of Nebraskans support. It gives us...it allows us to take advantage of the flexibility of the federal law to choose, to make the choice to opt out of abortion coverage related to the exchange and other policies. The amendment maintains the intent language that focuses on the key policies and removes other intent language that, you know, doesn't necessarily add to the bill. It focuses...rather just narrows the focus to the policy before us. And I appreciate his collaboration on that and I stand in strong support of LB22. Thank you. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Nordquist. Senator Fulton, you're recognized. [LB22]

SENATOR FULTON: Thank you, Mr. President. Just some brief comments. I'd looked at the amendment and it's reasonable and it seems responsible and Senator McCoy has

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

Floor Debate  
March 01, 2011

---

agreed to it. And so I just...I'm pleased that Senator McCoy has brought the bill. It's a couple of hot-button issues, but here in the Legislature we have a way of working together. And I'm pleased that Senator Nordquist has come up and offered his support. So I just want to be public in my thanks to Senator McCoy for bringing this important bill forward. I'll support both amendment and bill and ask everyone to do the same. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Fulton. Senator Conrad, you're recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. At this stage, I haven't had a chance to review the pending amendment. I printed it out so I'll have an opportunity to look at that hopefully shortly. But this morning I rise with more questions than answers at this point in time, and so I was hoping that Senator McCoy would yield to some questions please. [LB22]

SENATOR LANGEMEIER: Senator McCoy, would you yield? [LB22]

SENATOR McCOY: Of course. [LB22]

SENATOR CONRAD: Thank you, Senator McCoy. Can you tell me in your research in drafting this legislation and bringing forward...I don't know if it was part of the committee hearing or not, but did you contemplate or discover how this legislation would interface with ERISA or other federal healthcare-related legislation or regulations? [LB22]

SENATOR McCOY: Well, I don't recall, Senator Conrad, that the ERISA part of it specifically was discussed in the committee hearing. I might be mistaken on that, but as I recall I don't believe that that was. It's our understanding not only as we looked at this vis-a-vis through the legal counsel in the Banking Committee but also a great number of attorneys who looked at this that it didn't present a problem. I remember specifically a discussion, I believe, maybe...goodness, it's probably late last fall that was along that vein. And while I don't remember specifically every part of that discussion, I do remember that we talked about it, and as it was discussed then, it didn't provide a problem along those lines that I can recall anyway. [LB22]

SENATOR CONRAD: Okay. That's helpful. Thank you. I appreciate that. And as a matter of equity, this body currently and in previous years has looked at a variety of proposals regarded to mandates for private insurance, whether it be related to cochlear implants or prosthetics and in other instances. Can you tell me generally, philosophically how this legislation interfaces with the belief that we should or should not put mandates on the private insurance market? [LB22]

SENATOR McCOY: No, I appreciate that question, Senator Conrad, because you are

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

Floor Debate  
March 01, 2011

---

correct. Now in my third session as a part of the Banking, Commerce and Insurance Committee, we do talk about mandates, particularly insurance mandates obviously quite often. And I guess I see this a little bit differently in that regard in that we aren't in any way prohibiting private insurance plans from covering abortion, we just clearly define how they can go about doing that. And as a matter of fact, you look at the committee statement, the insurance industry didn't testify on this. They, as far as I know, are--unless something has happened since then I'm not aware of--supportive of what we're putting together because it clearly defined that for them. [LB22]

SENATOR CONRAD: Okay. I appreciate that. That's helpful because those are some of the broader philosophical questions that I think this legislation does indeed provoke, and I think it's important that we at least make an attempt to be consistent with our state public policies. And so appreciate hearing your feedback on that. The other issue or question that comes to mind when I had a chance to review this legislation, and, believe me, I don't pretend to be an expert on what the health insurance exchanges may or may not look like developed state by state in adherence to federal healthcare reform activities, but, Senator McCoy, did you have a chance to examine if those exchanges could potentially have options or available policies from insurance companies that may be licensed or regulated in another state? [LB22]

SENATOR LANGEMEIER: One minute. [LB22]

SENATOR McCOY: I'm sorry, do you mind repeating that very last part of that? I missed the very last thing. [LB22]

SENATOR CONRAD: No, it...yes. And I know we're running out of time, so I'll hit my light on here. [LB22]

SENATOR McCOY: And that's fine then. [LB22]

SENATOR CONRAD: But the essence of the question is really how this would apply in terms of commerce clause related issues where if there's going to be any private insurance companies that will be making offerings in Nebraska and how we could conceivably regulate a company outside of Nebraska's borders? [LB22]

SENATOR McCOY: Well, that's a good question. We also did talk about that. I don't know that we talked about that necessarily in the committee hearing, maybe briefly talked about that. But it's been my understanding...and I appreciate your legal expertise, especially in the issue of this arena, Senator Conrad, but it's my understanding as it's been explained to me and as I've looked through a number of court cases that whether it's Eighth Circuit Court of Appeals or otherwise or the Supreme Court... [LB22]

SENATOR LANGEMEIER: Time. Thank you, Senator Conrad. Senator Krist, you're

Floor Debate  
March 01, 2011

---

recognized. [LB22]

SENATOR KRIST: Thank you, Chair. Occasionally, we debate things on this floor and new law or laws or continuation or issues that are polarizing. And I just rise both in support of AM539 and of LB22. It is key, fundamentally key to what I think is the right of the citizen not to be included in some of the mandates that may come down and, in fact, that we should assist in making sure that the will of the people is the direction that we go. It is important I think to discuss both sides of the issue today. I think it's important that all sides are heard and that those polarizing efforts that happen on...in our society are represented. So I will...I look forward to the debate and look forward to the meaningful discussion that comes forward. With that, if Senator McCoy would like any time, I will yield the rest of my time to him. [LB22]

SENATOR LANGEMEIER: Senator McCoy, 3:30. [LB22]

SENATOR McCOY: Thank you, Mr. President. Thank you, Senator Krist. I greatly appreciate that. I'll beg the members' indulgence. I'll try and finish at the very least the question that Senator Conrad asked earlier which was, again, whether we thought this would affect interstate commerce. And I guess my question or my answer to that--pardon me--would be that we currently have the ability and the authority with many different issues in relating to insurance to regulate whether it's foreign or domestic insurance carriers and what coverage they offer within our state boundaries. It might be different than an insurance plan in Iowa or Kansas or California or New York. Doesn't have to be a neighboring state. But we have the ability and the authority to regulate that. So hopefully that answers Senator Conrad's question. I believe she has her light on as well and be happy to entertain any other questions or additional questions on that issue. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator McCoy and Senator Krist. The Big Mike's Beef Jerky that's being passed around is to celebrate Senator Sullivan's birthday. And also we have another birthday. Across the hall you'll see there's some pastry goods there. It's Senator Fischer's birthday as well. Let's give them a hand. Continuing discussion with AM539. Senator Conrad, you're recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President, and definitely many congratulations and happy, happy birthday to our colleagues and Nebraska. I think today is Nebraska's birthday as well. So I am jealous that they get to share that day. But just to continue some of the questions that we had a chance to start. And I appreciate Senator McCoy's helping to build the record and provide some more information about this legislation. I was hoping Senator McCoy would yield to a question. [LB22]

SENATOR LANGEMEIER: Senator McCoy, would you yield? [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR McCOY: I would. [LB22]

SENATOR CONRAD: Senator McCoy, in completing your research on this topic over the interim, can you tell me...and because the health insurance providers in fact did not come in to testify at the committee level, I'm thinking this piece of information may be absent from the record, but what I am trying to figure out is if in your research you reached out to any of the private insurance companies in Nebraska to determine whether or not this is actually an issue in Nebraska. Looking at the fiscal note, I see that--and as you mentioned in your opening--the state of Nebraska and the University of Nebraska already prohibit abortion coverage in their health insurance plans. So can you just tell us how pervasive an issue this may be in other aspects of the private sector insurance market? [LB22]

SENATOR McCOY: No, I appreciate that question and I'll try and be brief and answer that, Senator Conrad. In talking not only to the Department of Insurance but to individual private insurance carriers as well and their association representatives that we probably more oftentimes deal with here in the Capitol, the answer to that question is it was somewhat of an unknown. We don't really know how many, maybe even if any, providers currently private insurance plans cover abortion. Nationally,...again, I beg your indulgence and I'd be happy to hit my light if you'd like me to talk... [LB22]

SENATOR CONRAD: No, please do. Please do. [LB22]

SENATOR McCOY: ...more about this. But the Guttmacher Institute in 2008 did a study actually on this issue and I find it very, very interesting because it noted that only 30 percent of abortion patients had private insurance, and in that case, then only one-third of them actually used it for such a procedure. And it...in all, 12 percent of abortions nationally--and of course this, again, was in 2008--were paid for with private insurance. So it is a smaller number nationally. We don't really know what percentage that may be in Nebraska. It presumably fairly small. [LB22]

SENATOR CONRAD: No, that is helpful and I appreciate that because that was one question that came to mind in reviewing the legislation was if indeed we decide to move forward with this...with LB22 as amended, really how big of a problem are we addressing. And in trying to determine what those numbers look like in Nebraska, it seems that the record is indeed at least incomplete would be fair to say because we don't really have that information available. So of course we'll have to do our best to extrapolate federal statistics, and I appreciate you bringing those forward. That is indeed helpful. The set of questions I have, Senator McCoy, if you'll continue the conversation is related to some of the exceptions outlined in your legislation. And I'm wondering if you could provide maybe a little dialogue about the distinctions in your legislation versus the...or, I'm sorry, the exceptions in your legislation versus the exceptions that are in Senator Dubas' bill which is quite similar? [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR McCOY: In answer to that question, Senator Conrad, unless I'm mistaken, I don't believe that there are any differences unless I'm...again, unless I'm mistaken... [LB22]

SENATOR LANGEMEIER: One minute. [LB22]

SENATOR McCOY: ...between Senator Dubas' legislation and ours as it relates to exceptions. [LB22]

SENATOR CONRAD: Okay. I think that will conclude my questions for the moment. I thank Senator McCoy for providing that information on the record. And I'm going to review the amendment and hopefully that will indeed make this legislation a better and stronger bill, which I applaud him for working with others on that aspect. But I still have some concerns in relation to the legislation as a whole, and particularly how it singles out and vilifies a woman's right to fully participate in all decisions that she needs to take care of her reproductive healthcare. So thank you, Senator McCoy, and I'm hopeful that we'll be able to continue this thoughtful dialogue this morning. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Those wishing to speak, we have Senator Council, Campbell, Harr, and Haar. Senator Council, you're recognized. [LB22]

SENATOR COUNCIL: Yes, thank you, Mr. President. I have really mixed feelings about LB22 as well as the amendment. I appreciate the efforts of Senator McCoy, Senator Nordquist, Mello, and others who may have participated in developing AM539 with the elimination of that one statement of intent, which I personally found offensive to me because that's not a belief that I shared. But my concern with the bill, and I appreciate the work that Senator McCoy has put into it looking at how it comports with current statute and current insurance limitations, but I'm not comfortable and don't agree with the limited exception in LB22. And I'm reminded of the debate that occurred on the floor last year when we were debating a number of abortion-related bills, and I am seriously troubled by the fact that this bill is introduced in the context of healthcare reform. And healthcare reform, the intent of which was to make healthcare available and affordable to all Americans, that was the intent of the federal healthcare reform act was to make health insurance coverage available and affordable to all Americans. Yet in LB22, we are making a distinction between Americans, and I think it's a rather unfounded distinction with regard to the decisions that women find themselves in the position of having to make. First, on the healthcare-related issue, I don't understand why after all of the debate we've previously had with regard to the issue of fetal anomalies, and that fetal anomalies being not...unquestionably a tremendous healthcare decision that has to be made by a pregnant mother, yet here in LB22 we make no acknowledgment of the fact that that is a tremendous healthcare decision and is absolutely medically related.

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

Floor Debate  
March 01, 2011

---

It's not a question of where your philosophical position is on abortion. The question is the health of the mother and the fetus, yet in LB22 there's no recognition of that. So if a mother who is carrying multiple fetuses is placed in a position where she has to risk the lives of both fetuses because we have enacted legislation that does not allow her to insurance coverage to cover the cost of the healthcare that she would need to save that other fetus is shocking to me, that we don't view that as something that is appropriate for healthcare coverage. I also don't agree with the fact... [LB22]

SENATOR SULLIVAN PRESIDING

SENATOR SULLIVAN: One minute. [LB22]

SENATOR COUNCIL: ...that the rider provides an option. First, you know, I'm fundamentally, you know, disgusted with that proposition because it suggests that women decide that: you know, if I get pregnant I'm going to have an abortion so I better make sure I have insurance coverage. So you're going to pay for this additional premium yet we make a distinction and we provide classes of pregnant women because if you are unable to afford the kind of insurance coverage outside of the exchange, that you would want to obtain this rider. And I think that the statistic of 30 percent coverage kind of gives you an indication that this is not something that women make a conscious decision to go out and get a rider to their insurance coverage... [LB22]

SENATOR SULLIVAN: Time, Senator. [LB22]

SENATOR COUNCIL: Thank you. [LB22]

SENATOR SULLIVAN: Thank you, Senator Council. Those senators wishing to speak are Campbell, Burke Harr, Ken Haar, Dubas, and Senator Council. Senator Campbell, you're recognized. [LB22]

SENATOR CAMPBELL: Thank you, Madam President, and good morning, colleagues. I have to say I have mixed feelings about LB22 myself. And after discussions this morning with Senator Dubas, I thought Senator Dubas' bill was probably more appropriate as a starting place for us in the state because it did not include the private insurance industry. I do have some questions and I hope that we can find some information, Senator McCoy, on currently how insurance policies in the state of Nebraska deal with abortion. I am making the assumptions that some policies would not include it, and if I were out looking for insurance I could make that choice. But I don't know that and I hope we can clarify that. I do have a question for Senator McCoy if he would entertain one. [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield? [LB22]

Floor Debate  
March 01, 2011

---

SENATOR McCOY: Yes, I would. [LB22]

SENATOR CAMPBELL: Senator McCoy, I have to tell you that when it comes to insurance I always need a huge tutorial. For some reason or another when I was in school, I missed Insurance 101. Could you give me some examples in the current policies of the state how often riders are used and how that works and what kind of practice that is? [LB22]

SENATOR McCOY: Well, I'll do my best, Senator Campbell. One that springs to mind that I know we talked about...you know, and as I mentioned earlier where the insurance industry didn't take a position at all and as you can tell from the committee statement they didn't testify, they just didn't take a position on it. But one of the things that we talked about that would be I guess an analogy would be you can purchase cancer, a rider for cancer, types of cancer. Certainly you can do the same for maternity coverage. I know our family, my wife Shauna and I and our kids, we have a private insurance plan through the largest provider here in the state of Nebraska and we choose to purchase that rider for maternity coverage on our policy. So this would be a couple of examples that would be something that you can think of how a rider would operate in that arena. [LB22]

SENATOR SULLIVAN: If we think of the questions that Senator Council posed, how quickly could you obtain a rider to your policy if that was something that you needed to do or choose to do? [LB22]

SENATOR McCOY: I would think that that would vary from insurance carrier to insurance carrier, so I think you would want to talk about specific insurance carriers. And I'd be happy to expound on some of those questions that Senator Council raised... [LB22]

SENATOR CAMPBELL: Okay. [LB22]

SENATOR McCOY: ...if you would like me to. [LB22]

SENATOR CAMPBELL: Thank you, Senator McCoy. And, colleagues, I do think it's an extremely important discussion that we are beginning today in terms of the exchanges and for us to become much more familiar with what that would mean if this country proceeds with national healthcare as has been outlined. I appreciate Senator McCoy's taking time to answer those questions. Thank you, Madam President. [LB22]

SENATOR SULLIVAN: Thank you, Senator Campbell. The Chair recognizes Senator Burke Harr. [LB22]

SENATOR HARR: Thank you, Madam President, and happy birthday. This issue is a

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

Floor Debate  
March 01, 2011

---

very polarizing issue and it seems...I have a lot of problem and I don't know where I'm going on this bill, and so I guess I would ask Senator McCoy if he'd be willing to yield to some questions. [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield for some questions? [LB22]

SENATOR McCOY: Sure, I'd be happy to. [LB22]

SENATOR HARR: Thank you, Senator McCoy. As I stated, this is an area that is very polarizing and will probably lead to litigation, so I want to make sure that the language in this bill is as clear as possible. Section 3, part (1) on page 4, lines 3 through 9 talk about it must be, "verified in writing by the attending physician as necessary to prevent the death of the woman." What is the evidence required? Is it preponderance of an evidence beyond a reasonable doubt? What must be verified? What is the level? [LB22]

SENATOR McCOY: I apologize, a little bit of background noise. Do you mind repeating where you were looking at again, Senator Harr? [LB22]

SENATOR HARR: Yeah. It's Section 3, part (1), on page 4, lines 3 through 9. [LB22]

SENATOR McCOY: Okay. [LB22]

SENATOR HARR: And it says that it must be verified in writing by the attending as necessary to prevent the death of the woman. What is the level of evidence required? [LB22]

SENATOR McCOY: I don't know off the top of my head, Senator Harr. I can certainly check on that. I would extend this comment if I may, that what you're seeing there in that Section 3 is currently what is already in state statute for public insurance already. [LB22]

SENATOR HARR: Yeah. [LB22]

SENATOR McCOY: So what you're seeing there and what you just...Section 3, part (1) is what's already been part of state statute... [LB22]

SENATOR HARR: Yeah. [LB22]

SENATOR McCOY: ...for public employees since 1981. [LB22]

SENATOR HARR: Okay. And that gets to the next one there. It has the same language for private insurance, is that correct? [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR McCOY: Yes, that's correct. [LB22]

SENATOR HARR: Okay. And I guess my concern is, is that a doctor may say, hey, this is necessary to protect the woman from death, and later on an insurance company or someone else comes in and says, I don't agree with that. And I know you're a big fan of immunity clauses. Have you considered putting an immunity clause in there for doctors? [LB22]

SENATOR McCOY: No, that wasn't a consideration. Again, this goes with what has been existing state statute for just over 30 years now, and that issue has never come up that I'm aware of in the case of public employees for the state of Nebraska. [LB22]

SENATOR HARR: Okay. And my next question is, and I don't really know the answer to this one either, medical savings accounts as they currently operate as I understand it is the first X amount of dollars, let's say \$5,000, is paid for by the individual who has a medical savings account. How would that apply in this situation? Could they use their money in the medical savings account to pay for the abortion? [LB22]

SENATOR McCOY: I don't know the answer to that specific question, Senator Harr. I'd be happy to check into that and get back with you on that specific question. That's not an issue that has come up during discussions about this. I would presume though that that would be a very small number probably nationally if not in Nebraska that that would be employed. As I mentioned, that Guttmacher Institution study showed that nationally 63 percent of abortions are paid for... [LB22]

SENATOR HARR: Yeah. [LB22]

SENATOR McCOY: ...out of pocket. So I would imagine just based on those numbers it would be a very small number as it applies to medical savings accounts. [LB22]

SENATOR HARR: And, again, and I appreciate that but this bill is more likely than not going to be litigated and I think we need to make sure this is a very tight and concise bill, and that's why I'm asking the questions I am. [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR HARR: And then, finally, what is...and this is just to clarify, if there's a 12-year-old who is raped by her stepfather, that wouldn't be covered, is that correct? [LB22]

SENATOR McCOY: Well, in the case of Medicaid, yes, it would. [LB22]

SENATOR HARR: Okay. [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR McCOY: There is a court case, if I may mention it, Orr v. Nelson from 1995 that clearly states that rape and incest are covered under Medicaid in those cases. [LB22]

SENATOR HARR: Okay. And sexual assault in the first degree as defined by Nebraska statute that led a pregnancy, would that be covered or not covered? [LB22]

SENATOR McCOY: I don't know the specific answer to what you...you pulled away from the microphone just a hair bit. [LB22]

SENATOR HARR: Oh. [LB22]

SENATOR McCOY: What was that again, the very first part of what you said? [LB22]

SENATOR HARR: Sorry. Sexual assault, first degree as defined in Nebraska statute that leads to a pregnancy, would that be covered by...would there be coverage allowed for an abortion? [LB22]

SENATOR McCOY: If that is defined as... [LB22]

SENATOR SULLIVAN: Time, senators. [LB22]

SENATOR HARR: Thank you. [LB22]

SENATOR SULLIVAN: The Chair recognizes Senator Ken Haar. [LB22]

SENATOR HAAR: Madam President, members of the body, this is a polarizing issue and I think both sides need to be heard. One of the things I've been trying to do is think about this from the standpoint (laugh)...obviously I'm a male, it says so on my driver's license, and what I've been trying to do is to think of this somewhat from the standpoint of a woman because I personally have not or never will have an abortion, but women face this potential of having to think about this sometime during their life. I'm bothered, for example, very much by the fact that there are no exceptions to this for rape or incest then. And I believe there have been some polling that will show that even though the majority of Nebraskans are against abortion, that when you throw in rape and incest, that's no longer a majority, and we'll try and find that. I would like to ask Senator a few questions, Senator McCoy, please. [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield for a question? [LB22]

SENATOR McCOY: Sure, I'd be happy to. [LB22]

Floor Debate  
March 01, 2011

---

SENATOR HAAR: Okay. I'm sorry I can't face you. It's hard to talk into this mike. Could you give me those stats once again--I wasn't taking notes and I need to--on what percent of, you know, nationally the abortions are paid for by insurance and so on? [LB22]

SENATOR McCOY: Thank you, Senator Haar, Senator Ken Haar. I'd be happy to talk about that a little more because I think...and I'd be happy to show Senator Council that, I think either I misstated or maybe it was misunderstood. Thirty percent of abortion patients had private insurance. Didn't mean that that was only 30 percent had insurance. The 30 percent had private insurance according to this 2008 Guttmacher Institute study. And among those who did have private insurance, about one-third used their insurance and nearly two-thirds, 63 percent, paid out of pocket for such abortion procedures. In all, 12 percent of abortions were paid for with private insurance nationally. [LB22]

SENATOR HAAR: Twelve percent? [LB22]

SENATOR McCOY: Um-hum. [LB22]

SENATOR HAAR: Okay. But you say that Medicaid will pay for abortions. Could you go over that once more with me? [LB22]

SENATOR McCOY: Well, it's been determined by the courts that Medicaid does cover rape and incest, yes, under Medicaid, again. [LB22]

SENATOR HAAR: Does it depend on the age of the woman or just it covers it, period? [LB22]

SENATOR McCOY: I believe it just covers it, period, as far as I'm aware, Senator Haar. [LB22]

SENATOR HAAR: Okay. So why isn't that covered in this bill if the intent is just to do away with the payment of any abortions by any kind of money, any kind of public money, because Medicaid is...I mean, we pay a percentage of that as a state? [LB22]

SENATOR McCOY: Well, I appreciate that question. The answer to that is our Nebraska Legislature many years ago, 30 years ago as I've already mentioned, put in place for public...already existing for public employees in the state of Nebraska that it is for the life of the mother, and that's longstanding state statute here in Nebraska. And we duplicated that existing state statute which has been in place for 30 years in LB22. [LB22]

SENATOR HAAR: But can we do that for Medicaid or why isn't Medicaid covered in this

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

Floor Debate  
March 01, 2011

---

bill? [LB22]

SENATOR McCOY: Well, obviously that would be at the federal level, Senator Haar. [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR McCOY: This is for how we set this up in place for here in the state of Nebraska. [LB22]

SENATOR HAAR: Okay. So Medicaid we can't actually change. [LB22]

SENATOR McCOY: Not that I'm aware of. [LB22]

SENATOR HAAR: Okay. And then a final question and I want to go...you know, I'll get on the mike some more. But would you say that this bill would require women to plan for abortion if they were to get it under private healthcare then? [LB22]

SENATOR McCOY: Would you mind repeating that, I'm sorry? [LB22]

SENATOR HAAR: Yes. I see the assumption in this bill then that a woman would actually have to plan for abortion I suppose as a birth control method to buy a rider for private insurance. [LB22]

SENATOR McCOY: Well, I don't see it that way at all if that's a question, Senator Haar. I don't know if that's a statement or question. [LB22]

SENATOR SULLIVAN: Time, Senators. [LB22]

SENATOR HAAR: Okay. Thank you. [LB22]

SENATOR SULLIVAN: The Chair recognizes Senator Dubas. [LB22]

SENATOR DUBAS: Thank you very much, Madam President, and happy birthday. First, I'd like to say I rise in support of LB22 and the underlying amendment and thank Senator McCoy for the work that he and his staff have done on this bill. There's been a few questions asked. I think Senator McCoy has done a good job of answering them. I'd just like to reiterate on some of those questions. And one of the questions was the differences between my bill and Senator McCoy's bill. Basically the only real difference...ultimately we were going after the same thing, the difference with my bill is my bill would have allowed private insurance to be purchased outside of the exchange. So I think that's really where the difference lies. Otherwise we're after the same objective. It's also my understanding in some of the research that I've done is that if

Floor Debate  
March 01, 2011

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you're a member of the state group health insurance, you would not be allowed to purchase a rider. You would have to purchase a separate private health insurance plan. You wouldn't be able to purchase a rider. And as Senator McCoy has said multiple times, my bill along with his bill harmonized language with what's currently in statute. There was a question about how would that determination be made, and the sections basically says this shall not apply to coverage for an abortion which is verified in writing by the attending physician as necessary to prevent the death of the mother...of the woman or to coverage for medical complications arising from an abortion. So I think those are a few of the questions that have been asked and hopefully that helps answer things. I have consistently gone on record: I am pro-life. I never back away from that stance. Every child has the right to be born. I introduced LB132 as really what I viewed as the most simple, straightforward manner to take advantage of the opportunity that states were given to opt out of abortion services through the state insurance exchanges. And, again, I felt it harmonized well with statutes and language that we already had in place. One of the concerns that I have always had is when we make abortions more difficult, which...again, if I could stop every abortion in the country or the world I would be for that, but unfortunately it's a reality in our society. And my concern with making abortions more difficult is the potential to revert to the back alley type of procedures. Just recently there was a doctor found in Philadelphia by the Philadelphia Women's Medical Society who is taking advantage of women and providing abortions. And the stories that came forward from what this doctor was doing to these women were just beyond disgust, and he made millions and millions of dollars off of these women. So that's my fear. And, again, as I have consistently said on the floor of this Legislature, I am pro-life. Every child deserves to be born. But if we want that to be our reality, education, helping women understand that they have other options and then supporting them in those choices. If they aren't able to raise the child on their own, helping them find a family that will give that child the love and the care that the baby deserves. Again, every one of these babies deserves to be born. But for the women who are facing these circumstances, and oftentimes these are circumstances that none of us can begin to understand, and many of them feel like this is their only option, we owe them the support and the introduction of what other options are out there for them. [LB22 LB132]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR DUBAS: Again, I felt by introducing LB132 I was able to stand for my pro-life benefit...beliefs and those that I think are the beliefs of the majority of Nebraskans without that potential for a Philadelphia horror. So, again, I stand in strong support of Senator McCoy's bill and the underlying amendment, and hopefully have answered some of the questions that have been raised on this bill this morning. Thank you. [LB22 LB132]

SENATOR SULLIVAN: Thank you, Senator Dubas. The Chair recognizes Senator Council. [LB22]

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

Floor Debate  
March 01, 2011

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SENATOR COUNCIL: Thank you, Madam President. And with all due respect to my friend and colleague Senator Dubas, there is nothing in LB22 that would prevent a Philadelphia horror, in fact quite to the contrary. I think that LB22 would provide far more opportunities for Philadelphia-type horrors to occur. And, again, the concern that I have about LB22, Senator McCoy makes a valid point that the language in Section 3 comes out of longstanding statutory authority with regard to public employees and insurance policies obtained by the state of Nebraska. This governs private decisions and whether or not a private citizen wishes to acquire insurance through the exchange or outside of the exchange, which brings me to a question if Senator McCoy is willing to yield. [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield for a question? [LB22]

SENATOR McCOY: Of course. [LB22]

SENATOR COUNCIL: And the state of Nebraska has yet to decide whether we're going to offer a state insurance exchange, is that correct? [LB22]

SENATOR McCOY: As far as I know, that is correct, Senator Council. [LB22]

SENATOR COUNCIL: Okay. And in terms of how the state...and if the state elects to offer the opportunity for individuals to comply with the healthcare reform act through an exchange, what is...do you understand to be the level of the state's involvement in the exchange? [LB22]

SENATOR McCOY: Well, Senator Council, that is a topic of a lot of discussion in the Banking, Commerce and Insurance Committee of which I'm the Vice Chair of, and we talk about that often, and that's yet to be determined. [LB22]

SENATOR COUNCIL: Is it your understanding that the intent under the healthcare reform act is that the state somehow subsidized the cost of the insurance being provided through exchanges? [LB22]

SENATOR McCOY: Well, as I understand PPACA that would be correct. Although I may mention that there have been some recent developments as recent as yesterday when President Obama met with the nation's governors at the National Governors Association meeting in the East Room of the White House and there were some new comments made along the lines of how these insurance exchanges would be put into place. And so in light of those, while it doesn't change what is existing federal statute as it stands today, Senator Council, it would appear that there is a movement afoot to possibly change how those healthcare exchanges may be set in place. [LB22]

SENATOR COUNCIL: Okay. But in terms of the subsidy, it's not clear what, if any, state

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

Floor Debate  
March 01, 2011

---

funds would be required to set up the insurance exchanges. [LB22]

SENATOR McCOY: Not that I'm aware of, no. [LB22]

SENATOR COUNCIL: Okay. And one other question with regard to that. If the state elects to set up a state insurance exchange, Medicaid-eligible individuals would still access their healthcare coverage through Medicaid, is that correct? [LB22]

SENATOR McCOY: That is my understanding of the federal legislation, yes. [LB22]

SENATOR COUNCIL: Okay. So my question is, what is it in LB22 that gives an individual the same rights if they are in a financial position to access healthcare coverage through the exchange...? [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR COUNCIL: ...and in that instance would be prohibited from accessing coverage for an abortion that is required because of rape or incest, yet someone covered by Medicaid would be eligible to obtain that coverage and indeed someone who obtained insurance outside of the exchange and paid the premium for that type of coverage? Why are we setting up in LB22 different levels of coverage depending upon individual's financial conditions? [LB22]

SENATOR McCOY: Well, Senator Council, I imagine we have just a few minutes or a few seconds left and I'd be happy to address that more fully if you'd like. But the answer to that question, in my mind, is we already do so under current state statute for 30 years. Now was... [LB22]

SENATOR SULLIVAN: Time, Senators. The Chair recognizes Senator Conrad. And, Senator, this is your third time to speak. [LB22]

SENATOR CONRAD: Thank you, Madam President, and actually I'm glad my light is next because Senator Council very eloquently made the exact point that I was hoping to draw out a little bit more here because I think it is important to understand what is currently the law of the land and has been for many, many years. And I think people of good will on both sides of this difficult debate have acknowledged that when it comes to Medicaid coverage for reproductive healthcare we do have a very clear standard in place for appropriate exceptions, and those relate to health, life, rape, incest, and maybe in some instances fetal anomaly. And I think it's important to note that this legislation really only has an exception in place for the life of the mother. So it's important to note that this legislation which applies to the private sector is much, much more prohibitive than the coverage that we afford to citizens who are utilizing public options like Medicaid, and I think that sets up a real disparity and inequity in terms of

Floor Debate  
March 01, 2011

---

classifying type of coverage available based upon a citizen's socioeconomic status and may provoke some equal protection challenges or questions in terms of potential implementation. The other point that I did want to put on the record since this is my third time, I will be as quick as I can, but in relation to the commerce clause issues which I addressed with Senator McCoy early on in this debate, I do want to...and I think it's important that we tread very, very lightly in this area, colleagues, because as you may remember, Senator "Cap" Dierks had a bill last year, LB594, relating to additional regulations and impediments to women seeking reproductive healthcare. And as we all know, at this point in time that that legislation has been defeated in federal court and, in fact, the state of Nebraska has recently been ordered to pay almost \$140,000 in attorney's fees to Planned Parenthood's lawyers for their successful pursuance of overturning that law. And if you look at the judge's opinion in that case---I have a copy here for anybody who would like to read it--it's Planned Parenthood of the Heartland v. Dave Heineman Governor and it was filed July 14, 2010, you look on page 21 and 22, particularly in relation to how the court applied issues surrounding the commerce clause and the legislation that was subject to that litigation's overreach or attempt to regulate entities beyond the borders of Nebraska, the Attorney General's Office conceded out of the gate that indeed that had a severe commerce clause violation and they would not be pursuing that option in their defense. I think some of those same issues in relation to the commerce clause may be at play here in this proposed legislation. And so I'm going to have a chance to review that I think more carefully today and hopefully before Select File, but I think that's something that is important to know. Quick question for Senator McCoy if he'll yield. [LB22]

SENATOR McCOY: I'd be happy... [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield? And there is one minute left. [LB22]

SENATOR CONRAD: Oh, gosh! Okay, thank you. [LB22]

SENATOR McCOY: I'd be happy to. [LB22]

SENATOR CONRAD: Thank you. Senator McCoy, where does your family get health insurance from? The state or do you have a private plan? [LB22]

SENATOR McCOY: We have a private plan, Senator Conrad. [LB22]

SENATOR CONRAD: And when you and your family were choosing their private plan, did you have any discussion with your insurance broker or insurance agent about whether or not it covered abortion? [LB22]

SENATOR McCOY: Actually, no, we did not that I recall anyway. I might add though our

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

Floor Debate  
March 01, 2011

---

policy that we've had, we've had since my wife Shauna and I got married and that was over nine years ago now. [LB22]

SENATOR CONRAD: Sure. [LB22]

SENATOR McCOY: So I don't recall the specifics when we sat down, but I don't remember that that was a part of the discussion. [LB22]

SENATOR CONRAD: No, and I appreciate your candor and I know my time is running very, very (laugh) short. But it's actually a question that I was discussing with my husband last night and how this would really play out in real life, in the world because I don't think it's a conscious decision that many Nebraskans ponder. [LB22]

SENATOR SULLIVAN: Time, Senators. [LB22]

SENATOR CONRAD: Thank you, Madam President. [LB22]

SENATOR SULLIVAN: Thank you. The Chair recognizes Senator Ken Haar. [LB22]

SENATOR HAAR: Madam Chair, members of the body, to explore a little bit more what Senator Conrad was talking about...and by the way, I'm drawing up an amendment and will have that sometime soon, but I think if we're going to these extremes that we also need to go back and revisit this whole thing of providing prenatal care for all women so that the babies are healthy. Again, from the standpoint of a man, you might say, gee, I'm a planner. And I am. I'm a...I worked in data processing for a long time and I try to plan way ahead, but I can't imagine people planning to have an abortion. In some countries in this world we found out there were those kinds of things where abortion was the main method of birth control, but that's not the case anymore. And I can't imagine any woman, from the standpoint of a woman, planning to have an abortion. So this whole thing of a rider for abortion just...I don't think it makes any sense at all. I'd like to ask a question of Senator McCoy. [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield for a question? [LB22]

SENATOR McCOY: Sure, I'd be happy to. [LB22]

SENATOR HAAR: Now from what Senator Dubas was asking, I'm not clear. Could private companies in Nebraska still provide a rider or would it have to be a separate policy according to your bill? [LB22]

SENATOR McCOY: No, it would be a rider or an endorsement would be another phrase that insurance carriers may call it. It's a very simple process would be set up by each individual insurance carrier. [LB22]

Floor Debate  
March 01, 2011

---

SENATOR HAAR: Okay. So it wouldn't take a separate policy. Well, that's good, got to say that. Now my guess, too, when it comes to planning to have a rider for abortion, Senator McCoy, do you think that would be more common in let's say women who are in a solid relationship like a marriage or let's say young people who are sexually active? Do you think that's likely that they would have such a rider? [LB22]

SENATOR McCOY: I wouldn't want to speculate on that not being in that position I guess, Senator Haar. I guess the only comment I would offer to that, as I mentioned earlier is in the way of analogy. I would also maintain that one certainly wouldn't anticipate getting cancer, however, you could choose to add that to your insurance policy if you thought for whatever reason, hereditary history, family history, whatever the case may be, had any reason to suspect that that could be an issue, you always have that option to add that as a rider in your endorsement... [LB22]

SENATOR HAAR: Um-hum. [LB22]

SENATOR McCOY: ...to your policy. So I don't imagine anyone anticipates getting cancer. [LB22]

SENATOR HAAR: Well, okay. Thank you very much. But a lot of us are going to die of cancer in this room. We know that statistically, but only 4 percent of planned pregnancies end in abortion. And so I'd say that the thought about having a rider for cancer is probably much more in our sights. I'm also curious whether...an this would be another question, Senator McCoy, could parents add this rider for their children, for their daughters to a policy? Would that be covered by their private policy now or would that require a separate rider as well? [LB22]

SENATOR McCOY: Well, it would require a separate rider. It'd certainly be under their policy if they so desired to do that. But it would be my understanding that certainly that would be... [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR McCOY: ...a person's choice to do that if they would like. [LB22]

SENATOR HAAR: Okay. Well, again, what this comes down to, to me is that, for example, young people are sexually active and we know that that happens, are much, much less likely to have this kind of coverage than probably more than likely...more likely to go through the kind of back room stuff that we saw in the East. I think it discriminates against young people. I think it discriminates against the poor. Many of the poor don't even have insurance and those that have insurance would almost certainly not have this kind of rider. Thank you very much. [LB22]

Floor Debate  
March 01, 2011

---

SENATOR SULLIVAN: Thank you, Senators. (Visitors introduced.) The Chair recognizes Senator Council and, Senator, this is your third time to speak. [LB22]

SENATOR COUNCIL: Thank you again, Mr. President...Madam President, my apologies. I had Senator Haar's question on my mind. Would Senator McCoy yield to a question? [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield for a question? [LB22]

SENATOR McCOY: Sure, I'd be happy to. [LB22]

SENATOR COUNCIL: Yeah. Senator McCoy, do you personally believe that there's ever an occasion where a woman would need to have an abortion? [LB22]

SENATOR McCOY: I don't know that I can answer that question not knowing any of the circumstances, Senator Council. I don't know what you might be trying to determine with that question. [LB22]

SENATOR COUNCIL: Well, I guess the question is, is the way the bill is drafted, the presumption is, is that the decision...an abortion is always an elective decision, that it's an elective choice and it's an elective medical procedure, where the point I'm making is that there are occasions where it may be medically necessary for a woman to have an abortion. And what is being set out in LB22 as policy--and it kind of follows up on Senator Haar's questioning--the need to have a rider as opposed to the ability to provide, to obtain comprehensive health insurance coverage that may include the provision of coverage for an abortion that may be medically necessary for that woman's health. I personally don't understand the reasoning behind requiring a separate rider as opposed to allowing insurance carriers to provide extensive, comprehensive coverage. And if the coverage includes abortion coverage and the insured does not seek to have that coverage, they can certainly elect to opt out and that their premium be adjusted accordingly. But it's...this rider provision does imply that women consciously decide in advance that they may need to have an abortion in the future, and so we need to pay to have this rider prepared and have this additional premium charge. And, you know, I really believe that what it does is set up a class of individuals that we're separating. And even under the private insurance according to this, I guess if you could afford to have private insurance and if you could afford to pay a rider for an abortion--and correct me if I'm wrong, Senator McCoy, if you would yield to another question--that there would potentially be no exceptions for when that coverage would apply. Am I correct in reading LB22? [LB22]

SENATOR SULLIVAN: Senator McCoy, will you yield for a question? [LB22]

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

Floor Debate  
March 01, 2011

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SENATOR McCOY: Yes, I would. I'm not sure. Do you mind repeating what your actual question was? It was a run up to it, Senator Council. And I apologize. I got confused as to what you're questioning. [LB22]

SENATOR COUNCIL: Okay. Section 3 speaks to coverage under the exchange in that none of that coverage can provide for an abortion. And then (2) speaks to... [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR COUNCIL: ...obtaining insurance outside of the exchange and says you can obtain that coverage outside of the exchange if you pay this additional premium. But I don't see any restrictions in (4) as to the extent of that coverage. So my question was, if I buy a rider, then I don't have the limitation of death...I have an abortion under any circumstance if I pay for the additional rider, is that correct? [LB22]

SENATOR McCOY: Well, it's not defined. It just says that you can certainly purchase that for abortion coverage if you have a private plan. [LB22]

SENATOR COUNCIL: Okay. Well, I think the answer to my question is, there's no limitation in (2). So if we're really concerned about this, you know, limiting abortions and limiting the circumstances under which women have abortions, I think you need to question... [LB22]

SENATOR SULLIVAN: Time, Senators. [LB22]

SENATOR COUNCIL: Thank you. [LB22]

SENATOR SULLIVAN: The Chair recognizes Senator McCoy. [LB22]

SENATOR McCOY: Thank you, Madam President. Maybe I'll just answer a little bit different and additionally, I should say, and clarify that a little more. I think what we're really talking about here, folks, is this. I really don't think--and with all due respect to Senator Conrad--if there was an issue with interstate commerce, why then would have Congress nationally and the President put in Section 1303 in PPACA that allowed states--which is what we're talking about today--to limit abortion coverage in the healthcare exchanges? So I believe that addresses that situation, but...and question. In addition to that, I really think what we're talking about here is limiting abortion coverage under...with health insurance plans under the healthcare exchanges. But in addition to that extent and the rationale behind that is, is not allowing taxpayers' dollars to be used for abortions, for those folks across the United States who believe that to be morally reprehensible or...and those are my words or whatever their opinion of that might be. In addition to that, we're extending this to private insurance, and we're not saying that a private insurance carrier in the state of Nebraska cannot cover abortions. I want to be

Floor Debate  
March 01, 2011

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very clear about that. It just very clearly states that you have to have an optional rider or endorsement on you policy and that that premium goes to that solely. You know, and which, again, the rationale behind that is, in answer to Senator Council's question, in my view is that while someone may choose to have full coverage, we all understand I believe how insurance coverage works and our premium dollars go into a pool. So we may have someone who doesn't subscribe or doesn't believe in abortions, and we respect that, and someone who does, and we respect that also because we all appreciate different viewpoints of this, but our premium dollars go into a pool and if that coverage is used, it could be yours or mine or someone else's premium dollars that go to pay for that elective abortion. That is why private insurance is included in this. And I might mention also that the Eighth Circuit Court of Appeals in 1992 upheld Missouri's law which was enacted, the covered private insurance. Ours is mirrored after that. And if I may, I'd like to read to you just what they talked about in that opinion on this case because they upheld the private insurance part of this that's been in place in the state of Missouri since 1983. And the court held that the plaintiff, "introduced no evidence indicating that insurance policies covering elective abortions are unavailable or prohibitively expensive and consequently failed to show that the statute places an absolute obstacle or severe limitation on a woman's abortion decision." So that was the determination of the Eighth Circuit Court of Appeals that we are obviously a part of in the state of Nebraska. So I believe that the courts have weighed in on this, and a lot of that answers Senator Council's questions, in my opinion. I don't know how much time I have left, Madam President. [LB22]

SENATOR SULLIVAN: Just a little over a minute, Senator. [LB22]

SENATOR McCOY: I know it's not very long. I'd be happy to yield that time to Senator Conrad if she'd so wish, otherwise I will hit my light again if she desires. [LB22]

SENATOR SULLIVAN: Senator Conrad, would you like any of the extra time? There's about 55 seconds. [LB22]

SENATOR CONRAD: Thank you, Madam President, and thank you to Senator McCoy. I'll try and be brief. But I think he did hit upon a key distinction that I may not have been explaining very eloquently. I think that it's fair to say that when we put forward rules, regulations, or statutory prohibitions about the type of insurance that can be offered within the state of Nebraska, you don't invoke any of the commerce clause issues that would be present in a health insurance exchange conceivably wherein we could have companies that are not Nebraska insurance companies making insurance offerings to our citizenry through the exchange, and that's what provokes the dialogue, questions, and concerns under the prohibition in the commerce clause... [LB22]

SENATOR SULLIVAN: Time, Senators. [LB22]

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

Floor Debate  
March 01, 2011

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SENATOR CONRAD: ...as laid out in the United States Constitution. Thank you. [LB22]

SENATOR SULLIVAN: Thank you, Senators. (Visitors introduced.) The Chair now recognizes Senator Ken Haar. Senator Ken Haar is recognized. [LB22]

SENATOR HAAR: Thank you, Madam... [LB22]

SENATOR SULLIVAN: Senator, this is your third time. [LB22]

SENATOR HAAR: Thank you, Madam President, members of the body. I have an amendment that will be coming up in a minute for the exception of race...I'm sorry, rape and incest, and then going to fetal anomalies, one by one. So to make this clear again, even if currently an insurance policy offers coverage for abortion, would that have to be written into...Senator McCoy, could I ask you a couple of questions? [LB22]

SENATOR SULLIVAN: Senator McCoy, would you yield for some questions? [LB22]

SENATOR McCOY: I would. [LB22]

SENATOR HAAR: With current life insurance policies, does abortion have to be written in or is it automatically covered? Do you know what that would...? [LB22]

SENATOR McCOY: Did you say life insurance or did you mean health insurance? [LB22]

SENATOR HAAR: I'm sorry, I'm sorry. Health insurance. [LB22]

SENATOR McCOY: Now would you mind repeating that again? [LB22]

SENATOR HAAR: Okay. I'm sorry. With current health insurance policies, is abortion coverage a rider currently or is that covered by policies, do you know? [LB22]

SENATOR McCOY: Well, it's really not talked about in statute that I'm aware of, so I presume if an insurance carrier wanted to include abortion coverage it could be just part of a routine coverage in a policy as it exists today, in private insurance I might add. [LB22]

SENATOR HAAR: Okay. So my understanding then, right now it would be up to the insurance company but this would be in statute that it couldn't be covered. It's adding to the statutes, is that correct? [LB22]

SENATOR McCOY: Say that again? I'm sorry. [LB22]

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

Floor Debate  
March 01, 2011

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SENATOR HAAR: Okay. According to what I understand then, currently it would be up to the insurance company absolutely whether to do that or not, but under this statute as written, it could not be covered under just the policy. It'd have to be a separate rider. [LB22]

SENATOR McCOY: Correct. It would have to be set up...the rules to how that would be in place for that endorsement rider would be set up by any individual insurance carrier that desired to include that as part of their repertoire of endorsements or riders as a private insurance carrier. [LB22]

SENATOR HAAR: Okay. Now last year I talked about birth defects that would...are not sustainable once a fetus is born, and I talked about anencephaly where the child is born with no brain and there's absolutely no chance of them surviving for more than an hour or two. Would that be covered or is that also not covered unless you do a rider? [LB22]

SENATOR McCOY: I don't know the specific answer to that question, Senator Haar. [LB22]

SENATOR HAAR: So I guess the broader question is, would fetal anomalies be covered for abortion? Would that also be prohibited unless you had a rider? [LB22]

SENATOR McCOY: Well, as we talked about in LB22, I guess the answer to your question, Senator Haar, is that for 30 years now, 30 years this month as a matter of fact, we've had in place for state insurance for state employees, state of Nebraska, that it is not covered unless it is for the life of the mother, and we are extending that to private...well, we're putting that in place for the healthcare exchanges as well to mirror state law. [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR McCOY: So the specific question that you're talking about, no, it's not my understanding that it's covered unless it is for the life of the mother. [LB22]

SENATOR HAAR: Okay. Thank you very much. [LB22]

SENATOR SULLIVAN: Thank you, Senators. The Chair recognizes Senator Wallman. [LB22]

SENATOR WALLMAN: Thank you, Madam Chair. I'd yield the rest of my time to Senator Conrad. [LB22]

SENATOR SULLIVAN: Senator Conrad, you're recognized. [LB22]

Floor Debate  
March 01, 2011

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SENATOR CONRAD: Thank you, Madam President, and thank you, Senator Wallman. To be clear, I also want to extend sincere gratitude and appreciation to Senator McCoy because I think that some of the information and dialogue that we've had this morning is really helpful to understanding the parameters of this legislation and the larger issues that it may implicate as well. A couple of points just in terms of context which I'm not sure if I really had a chance to be clear about at the outset because we jumped into some of the technical and substantive specifics in question very quickly, which is a good thing. But I think there are philosophical issues which need to be addressed as well. Colleagues, I think it's very clear and well-established fact that on this floor and in the public as a whole that we have sincere and serious disagreements about reproductive healthcare issues. And I think that we can have those disagreements in a respectful and thoughtful way and that's how debate is proceeding this morning, which I am glad about. But from my perspective, LB22 even as amended really continues an ongoing evolution and trend which I find to be dangerous from a policy perspective. While we may have disagreements about abortion or reproductive healthcare, I find it especially troubling that recognizing the gravity and emotional considerations involved in these very personal medical decisions we continue to extend government into areas that intrudes upon liberty, whether it be into the doctor's office or now into the private insurance market. And what legislation like LB22 does is it really singles out women's healthcare needs as something to be vilified or something that we should make political hay on, and that's something that I find extraordinarily disturbing. I wanted to point out to you, in the most recent statistics that I could find available was from the Nebraska Department of Health and Human Services, the 2009 statistical report on abortions which is published each year and provides us with a great deal of data and information about who is seeking abortions in Nebraska and why. And, colleagues, what I think is also problematic with LB22, recognizing that we have different feelings about abortion and reproductive healthcare, the one area where we should have common ground is in terms of prevention and education because when we focus on those issues, that, according to common sense and science, is how we reduce the number of abortions. And nothing in LB22 relates to comprehensive, age-appropriate sex education. Nothing in LB22 relates to access or availability of contraception or other prevention measures. If we're serious about reducing abortion in Nebraska which I believe we are, then we must focus on some of those commonsense policies that give us the ability to truly do that. If you look at legislation that this body has passed in recent years which continues to intrude upon the... [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR CONRAD: ...privacy and sanctity of the doctor-patient relationship and seeks to provide additional barriers to women seeking to exercise their fundamental constitutional rights and make decisions about what's right for them, their family, and their body. We've seen more and more and more bills passed by this Legislature, yet we haven't seen the number of abortions go down, if you look at the statistics. Look, for

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

Floor Debate  
March 01, 2011

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example, at 2007 where there was 2,481 abortions; 2008 we had an increase to 2,813 abortions. Then we had a slight decrease from '08 to '09 but still higher than 2007, where in 2009 we had 2,551 abortions. Look further in the report to see the reported reason from Nebraska women for seeking abortion--contraceptive failure, fetal anomaly, incest, maternal life in danger, maternal... [LB22]

SENATOR SULLIVAN: Time, Senator. [LB22]

SENATOR CONRAD: Thank you, Madam President. [LB22]

SENATOR SULLIVAN: The Chair recognizes Senator Christensen. [LB22]

SENATOR CHRISTENSEN: Thank you, Madam President, get started here. I want to thank Senator McCoy for bringing this bill. And I want to thank both sides for very professional discussion today. I appreciate the bill. This bill gives people the choice, not the obligation. Allows people to choose to pay for abortion insurance or not to. Why should someone who doesn't believe in abortion have to pay for abortion premium insurance? So I think this is a win-win for all sides. I think it's very simple, commonsense legislation. I appreciate it gives women and families the choice of paying for the coverage or not. And I just appreciate how the discussion has went today. Thank you. [LB22]

SENATOR SULLIVAN: Thank you, Senator Christensen. The Chair recognizes Senator Wallman. [LB22]

SENATOR WALLMAN: Thank you, Madam President. This is a controversial issue. I appreciate both sides of the dialogue. As I remember last year, we was late into the evening on this issue. And I would yield the rest of my time to Senator Council. [LB22]

SENATOR SULLIVAN: Senator Council, you're recognized. [LB22]

SENATOR COUNCIL: Thank you, Madam President. And, I guess, it was fortuitous that I follow Senator Christensen because the point he was making was that if people wanted to pay to have coverage for abortion then they should be permitted to pay. Well, this bill doesn't follow that line of thought. It says if you are in the unfortunate financial situation that you have to rely on the insurance exchange to obtain health insurance coverage you can't buy that coverage. The way the bill is written you can't even buy the rider that is set out if you are able to buy insurance outside of the exchange. So, Senator Christensen, this bill doesn't do what you think it does because it does not provide individuals with that opportunity to exercise that personal-private right to obtain insurance coverage to cover what they believe to be their medical needs, which brings me to my next point. I've just sat here and struggled with why does the coverage, if an individual wants to have their policy cover elective abortion, why does it have to be set

Floor Debate  
March 01, 2011

---

out in a separate rider? I don't understand the necessity for that. But what it does indicate though and get...and raises the presumption that there are classes of women who consider abortion as their means of pregnancy prevention, that that's their birth control method. And that for those women who see abortion as a birth control method, here's your opportunity to go out and buy health insurance coverage to cover that decision. I think that flies squarely in the face of the professed desire of this body to reduce or prevent abortions and that abortions should be relegated to the most serious of circumstances involving the health of the mother or the health of the fetus. But what we're doing by this legislation is saying, okay, those of you who see abortion as a birth control option, we're going to provide you the means to accomplish that if you can afford it. But the other problem with this is it is inherently inconsistent. If you buy your insurance through the exchange, you cannot have any health coverage in the event you need an abortion unless your life is at risk--the death of the mother. If you are covered by Medicaid, you can obtain an abortion if it saves your life, if you were a victim of rape or if you were a victim of incest. And if you can afford to buy your insurance outside the exchange, you don't need Medicaid. The bill specifically says "shall provide coverage for an elective abortion with no limitations." This bill creates three classes of women, three classes... [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR COUNCIL: ...of insurance coverage--those who can't afford it, your life at risk, rape or incest. Those who go through the exchange only based on your life being at risk; those who can afford to buy coverage outside of the exchange and don't need to depend on Medicaid, you can get it for any reason you want. I don't believe that that's the policy that we want to establish in the state of Nebraska around this very serious and controversial issue. At a minimum we should be consistent in what we believe to be the policy based upon what we believe to be the opinions of the majority of people in the state of Nebraska. We are setting up through this bill, I believe, a basis for a claim of unequal protection under the law. [LB22]

SENATOR SULLIVAN: Time, Senator. The Chair recognizes Senator McGill. [LB22]

SENATOR MCGILL: I yield my time to Senator Conrad. [LB22]

SENATOR SULLIVAN: Senator Conrad, you're recognized. [LB22]

SENATOR CONRAD: Thank you, Madam President. Thank you, Senator McGill; I appreciate the time. Colleagues, I did want to finish the dialogue that I started in regards to the Nebraska abortion statistics and most notably from the most recent I have in the 2009 report. Women in Nebraska who seek abortion do so and they tell us why--because of contraceptive failure, fetal anomaly, incest, maternal life is endangered, maternal physical health is endangered, mental health complications, no

Floor Debate  
March 01, 2011

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contraception utilized, sexual assault, socioeconomic reasons, and then others that is more of a definitional kind of catchall. So be clear, if you want to sincerely reduce the number of abortions in Nebraska LB22 does not accomplish that. Senator McCoy and proponents have noted that at best this might apply to a third of the folks who have existing coverage based on national statistics. So number one, it's already a very, very, very small group at play. Number two, this legislation, as Senator Council and I have tried to dialogue about this morning, really sets up a variety of inconsistent standards which, I think, does indeed pose commerce clause and equal protection questions that we need to think more deeply about. Then finally, I think that we have to think very carefully about some of the general philosophical questions that are indeed at play here as well and whether or not this is a good idea to move forward. I think this is probably the first of many discussions that we will have in terms of how and if our state chooses to fully implement federal healthcare reform and the exchanges that are a key component therein. And I welcome that debate and think that is a healthy debate and something that we should continue to talk about. But I think if we're serious about reducing the number of abortions in Nebraska there is a plethora of other policies to pursue that would accomplish such. And LB22 just really doesn't do that. It's really if at best going to apply to a very, very small group of people in an inconsistent manner. And I think that we can do better, colleagues. I think that we can. And I think that we'll have an opportunity to talk about some of those alternatives in the future. And just to reiterate, these are not easy questions or easy areas of public policy to deal with but we also should not legislate on public opinion, particularly when fundamental constitutional rights and liberties are involved. So regardless of how opinion polls may state certain aspects that are provoked in this legislation or any of the pending or future amendments, when it comes to fundamental constitutional rights public opinion is irrelevant. It may have a play in terms of how we as politicians perceive these issues, but we must proceed ever, ever so lightly and carefully because if we are indeed lovers of... [LB22]

SENATOR SULLIVAN: One minute. [LB22]

SENATOR CONRAD: ...individual liberty, then we have to be careful when we move to restrict it. The liberty of the private corporations to enter into private contracts with their consumers at issue here and the liberty and autonomy of individual women and their relationship with their healthcare provider. There are a variety of liberties at play. And I think we should tread very, very cautiously with what is a consistent and inadequate bill in terms of reducing the number of abortions in Nebraska. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Conrad. Seeing no other lights on, Senator McCoy, you are recognized to close on AM539. [LB22]

Floor Debate  
March 01, 2011

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SENATOR McCOY: Thank you, Mr. President. And thank you members for what I believe to be a really good discussion this morning on what I consider to be an important issue which is why I made this my priority bill. I mentioned to you in my opening, and I understand obviously there is another amendment coming up in a moment from Senator Haar, I believe. But I'd like to take just a moment if I could to address a couple of concerns, one I've talked about with Senator Council off the mike and she encouraged me to mention this again on the mike which I'm happy to do so. I'm not an attorney. And I know there are many legal issues when it comes to abortion rights and there have been for decades across not only our country but here in Nebraska as well. And we, as recently as last session with LB1103, and hopefully in my mind and my opinion restricted the number of abortions hopefully dramatically. That would be my hope. What I find to be very important about this is when this was set in place in Congress, and again Senator Ben Nelson encouraged us in the Legislature on numerous occasions publicly and in the media to put together legislation like LB22, which is why we're here this morning among other reasons. One of the things that I think is important because when you talk about the Hyde Amendment that goes back several decades, we have a longstanding tradition in our country of not allowing taxpayer dollars to go to abortions. And that is why we're here, to make sure that, in my mind, that's why I brought this legislation, to make sure that we're clearly defining the taxpayer dollars under these health, yet to be set up and put in place, healthcare exchanges won't be used for elective abortions except in the life of the mother. Now here's why I believe that private insurance is such an important piece of this because we already, many, many years ago as I mentioned, in 1981, put in place here in the state of Nebraska similar guardrails, if you will, on this and said that it would be for the life of the mother. That is why we put that in with private insurance coverage. And the reason I think that's so important is because just as we say and clearly Congress and even the discussion I think on probably both sides on the issue of the federal healthcare legislation. I know President Obama also made note I believe numerous times of states being able to put into place this if they thought there was a concern. And I believe in extending that to private insurance because just as we talk about not wanting taxpayer dollars to go to pay for elective abortions, in a conversation I had with Senator Council off mike I said, that's why I believe this needs to be expanded to private insurance because in the case of an insurance pool, when you have insurance coverage your taxpayer dollars are commingled, pardon me, your premium dollars, just as it would be with taxpayer dollars. Your premium dollars are commingled and then pay for claims out of that insurance pool. Well, I think there's a large number of Nebraskans, while they are...while I respect the positions on both sides of this issue, I believe that polls show and I believe in basis of the number of calls and e-mails, visits that I've received on this issue, a good number of Nebraskans don't desire to have their private insurance premium dollars go to pay for this as well. And that is why I believe so firmly that we need to extend to private insurance as well as the new healthcare exchanges the same...the statute that's been in place for so many years with the state of Nebraska.

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

Floor Debate  
March 01, 2011

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And with that, I'd close, Mr. President. Thank you, and encourage members, if they would so desire, to advance AM539. Thank you. [LB22]

SENATOR LANGEMEIER: Thank you, Senator McCoy. You have heard the closing on AM539 offered to LB22. Question is, shall AM539 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB22]

CLERK: 36 ayes, 2 nays on adoption of the amendment, Mr. President. [LB22]

SENATOR LANGEMEIER: AM539 is adopted. Mr. Clerk, next amendment. [LB22]

CLERK: I have nothing further on the bill at this time, Mr. President. [LB22]

SENATOR LANGEMEIER: Mr. Clerk for an amendment. [LB22]

CLERK: I apologize, Mr. President. Senator Haar would move to amend with AM582. (Legislative Journal page 675.) [LB22]

SENATOR LANGEMEIER: Senator Haar, you are recognized to open on AM582. [LB22]

SENATOR HAAR: Mr. Chair, members of the body, basically, well, you can read it up there, it's page 4, line 9, would add the..."for an abortion that is performed because of an incident of rape or incest." This seemed so obvious to me. This is an extreme. But I think we have to look at extremes because a woman undergoing...that has been perpetrated on with rape or incest, it's an enormous emotional event. And I can't imagine what that would be like as a man. I think we have to try and put it in the context of the woman. There was a person who ran, his name was Clayton Williams, who ran against Ann Richards for governor in 1990. And here's what he said about rape, Clayton Williams compared rape to the weather saying that, "As long as it's inevitable, you may as well lay back and enjoy it." Thankfully it ended his campaign for governor. But I think when we talk about these kind of issues that we have to look at exactly that kind of issue. That it's very different for the woman experiencing a rape or with incest it's usually a child. And I think we have to think very seriously about that. So I would like to add as an amendment to this bill that makes the exception not only for a...to prevent the death of a woman, and according to the bill, the current bill as written, it's also...it could be coverage for medical complications arising from an abortion. So there are already two exceptions in there. But I think it must include rape or incest. And I would just ask the men in this body to consider what it means to experience that horrendous event. Thank you. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Haar. (Visitors introduced.) You have

Floor Debate  
March 01, 2011

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heard the opening on AM582 offered to LB22. The floor is now open for discussion. Those wishing to speak are Senator Conrad and Senator McCoy. Senator Conrad, you're recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And thank you, Senator Haar, for what I think is an important amendment here. And I was going back and looking at the committee amendment and how it modified the underlying legislation. And I think Senator Haar's amendment provides a good opportunity for us, since I don't see it defined in the bill or the amendment, to at least create a record on the definition of what an elective abortion is and I guess, converse to that or in contrast to that what a necessary abortion would or would not be defined as. If Senator Haar would yield to a question. [LB22]

SENATOR LANGEMEIER: Senator Haar, would you yield? [LB22]

SENATOR HAAR: Yes. [LB22]

SENATOR CONRAD: Senator Haar, do you believe that your amendment would help to provide a distinction as to what could fairly be considered an elective abortion versus a necessary abortion? [LB22]

SENATOR HAAR: Yes, very few women I know of who have been raped or have been the object of incest have done that voluntarily. That's absolutely the opposite of that definition, so yes. [LB22]

SENATOR CONRAD: Well, I couldn't agree more, Senator Haar. And I thank you so much for bringing this amendment because I think it is important. And it does make this legislation more consistent with the standard that we apply in terms of Medicaid coverage. And so that is, I think, important as we move forward to have some uniformity and consistency so that we do not indeed exacerbate potential equal protection problems based on socioeconomic status which I think may be part of this legislation. And thank you, Senator Haar. I don't have any more questions on this particular point. But I do want to throw out a couple points for dialogue to the body in seeing where the votes were on the amendment that was just adopted. I think that we can glean a couple of important points from where this body is headed. And it is heartening to me to see this body make an endorsement of Nebraska moving forward in an aggressive way to implement federal healthcare reform because that is what your vote indicated. And I think that is a good step forward where we can find a lot of common ground to figure out how to improve healthcare coverage for our citizenry because that is contemplated in your vote. The other piece is I think that this legislation and your votes in support thereof send a...somewhat a vote of no confidence to the Attorney General's Office and say we actually don't believe that your litigation strategies challenging federal healthcare reform are going to be successful. So we're going to have to put up a stopgap here because

Floor Debate  
March 01, 2011

---

that litigation is going nowhere. I think that's really interesting. And I hope that members contemplated that when they cast their vote and moved forward. And if they did not believe that, how did they distinguish their vote to mean otherwise? Thank you, Senator Haar. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Conrad. Senator McCoy, you're recognized. [LB22]

SENATOR McCOY: Thank you, Mr. President, members. I do not support AM582, Senator Haar's amendment. I believe, as I've said a number of times this morning, that we've had in place in longstanding state statute here in Nebraska since 1981 as it regards to state of Nebraska employees that the life of the mother as it's currently in place the death of the woman is what we subscribe to. And the reason for that is because it's our taxpayer dollars that are providing that coverage, we're paying for that coverage to those state employees. In the case of the yet to be set up health insurance exchanges, those again are our taxpayer dollars. So I believe that we should hold those healthcare exchanges to the same standard as we have held what has been paid for with taxpayer dollars here in Nebraska for 30 years. And I believe that to be very important, which is why I don't support this amendment because what it would very simply do is to undo what's been in place in current state statute for 30 years. And I don't believe that that is the direction that in my view, and I respect differing viewpoints, but in my view that is not the direction that the folks across Nebraska that I talked to about this issue would desire us to go. While I respect Senator Haar's position on this issue and any others that may ultimately vote for this amendment, I don't believe this is helpful in the situation, in the set of circumstances that we have held this statute in now for three decades. And with that, I would close, Mr. President. Thank you. [LB22]

SENATOR LANGEMEIER: Thank you, Senator McCoy. Senator Wallman, you're recognized. [LB22]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. This I think is an amendment that's okay. Should it be needed? No. But I think we have to realize that we as males are trying to set laws of the opposite sex and where's our responsibility? Responsibility should be on two people who caused this problem. It takes two to tango. So we keep going about this issue on the backside. If we actually want healthcare reform or we want this reform that's here, I appreciate Senator McCoy's bill. I will vote for this bill because I am definitely pro-life. But I can see the other side of the coin. I always try to put my shoe on the other person's foot, see where they're coming from, and it's tough, you can never do it. So thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator Council, you are recognized. [LB22]

Floor Debate  
March 01, 2011

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SENATOR COUNCIL: Yes, thank you very much, Mr. President. And with all due respect to my colleague Senator McCoy, while there is statutory authority limiting the insurance coverage that employees of the state of Nebraska can obtain, and that's policy and those policies are paid in part by taxpayer dollars, the fact also is that Medicaid recipients who need to undergo an abortion because of rape or incest can currently receive that medical service. Medicaid coverage is also paid for by taxpayer dollars. So the argument that we don't want...that this legislation is necessary to be consistent with a longstanding state policy of not using taxpayer dollars for abortions, well, we use taxpayer dollars for abortion in the case of rape and incest. And admittedly, Medicaid is governed and the coverage to be provided is governed by federal law. But the fact remains that taxpayer dollars support the provision of those services. And I think that if you want to maintain the argument about not utilizing taxpayer dollars, it falls and fails because of the fact that under Medicaid we are using taxpayer dollars. And what we're saying by not providing the same level of coverage to everyone in the state of Nebraska is that if you're on Medicaid and unfortunately are the victim of rape or incest you can have medical coverage under the Medicaid health insurance program. But if you make a little too much money to be covered by Medicaid and you have to obtain your health insurance coverage through the exchange, woe unto you if you're the victim of rape or incest because we expect you to pay that out of your pocket and we're not going to utilize taxpayer dollars. If taxpayer dollars weren't being used for any abortion-related services in this state, there may be some merit to Senator McCoy's argument. But that is not the case. Medicaid recipients can obtain abortion services in the case of threat of the death of the mother or when they're victims of rape or incest. And, you know, I also want to address the point about victims of rape or incest. I mean, this...almost this cavalier belief that someone who's experienced the trauma of a rape that we have a right to force that individual to carry that child to term, a child that person neither asked for or wanted. And compounded by the fact, and my colleague Senator Haar referred to it, we took action last session that if that mother is receiving Medicaid and makes a mistake, doesn't comply with all of the requirements with regard to her Medicaid coverage, we'll discontinue prenatal care. [LB22]

SENATOR LANGEMEIER: One minute. [LB22]

SENATOR COUNCIL: So here we are through this legislation we are unquestionably setting up classes of individuals who are eligible for what, at least under Medicaid regulations, we have excepted and applied that there's an exception for rape and incest. And I don't want it to be confused. I don't...I won't be voting in support of AM582 because I oppose LB22 and have an amendment being drafted, one that is required to be drafted by Bill Drafters. I don't know if it will get down today in time, but it addresses the very concerns that Senator McCoy outlined in response to some of my questions. So the next time I'm on the mike, I'll give you a little preview... [LB22]

SENATOR LANGEMEIER: Time. [LB22]

Floor Debate  
March 01, 2011

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SENATOR COUNCIL: ...as to what's in that amendment. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Ken Haar, you're recognized. [LB22]

SENATOR HAAR: This is my first time, right? Thank you. Mr. President, members of the body, with all due respect to Senator McCoy when he referred to a 30-year precedent, it seems that this year is not the year for quoting precedences. We have seen all kinds of precedences in how we deal with taxes and so on fall. So I would instead argue perhaps that if this concerns that 30-year precedent, it is time that we look at that precedent. The piece I handed out is so horrific that I'm not sure I'll be able to read it, but I think we need to. Now Lara Logan, the CBS correspondent, is not a resident of Nebraska but she could have been. One of the correspondents that was shot at in Bahrain, by the way, is from Lincoln. I know him personally. He's a New York resident now. But Lara Logan could have been a Nebraskan. And it just brings up the horrific situation around rape and incest. And I think if we as men in this Legislature ignore it and say there's precedent, this and that, that we're being remiss. So here goes. CBS News' Logan recovering after brutal attack: we all know about this, this was 2-24-2011 in Egypt. CBS News correspondent Lara Logan was recovering in a U.S. hospital Tuesday from a sexual attack and a beating she suffered while reporting on the tumultuous events in Cairo. And remember, according to LB22 if she had Nebraska insurance, health insurance without the rider, it wouldn't have covered her potential abortion in this case. According to London's Sunday Times, which cited unnamed sources, a group of men tore the 39-year-old reporter's clothes off, then proceeded to punch and beat her with flag poles during an attack that lasted between 20 and 30 minutes. Parts of her body were also covered in red marks later found to be caused by aggressive pinching, a source said. The security guards she arrived with also sustained injuries, including one who suffered a broken hand. "Lara is getting better daily," a friend told the reporter. "The psychological trauma is as bad as, if not worse than, the physical injuries." I don't know if she wound up pregnant from this attack but she could have certainly. "She might talk about it at some time in the future, but not now." A CBS source added: "I don't think anyone knows what happened in that square except Lara." And I think you can imagine, 20 to 30 minutes in a mob with flag poles. Logan, a foreign correspondent for CBS News show 60 Minutes, was in Cairo to cover the aftermath of former Egyptian president Hosni Mubarek's resignation. According to reports, the journalist lost her crew in the frenzy and was immediately swarmed by a hostile crowd that jostled her and started yelling "spy." She suffered what CBS initially called a brutal and sustained sexual assault and beating... [LB22]

SENATOR LANGEMEIER: One minute. [LB22]

SENATOR HAAR: ...from which she was eventually rescued by about 20 soldiers and

Floor Debate  
March 01, 2011

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women. Hours later, Logan was flown back to the U.S. She spent five days recuperating in a New York hospital before returning home to complete her recovery. So in Nebraska, if she had become pregnant from this brutal attack that lasted 20 to 30 minutes, she would not be covered unless she had a rider. And maybe, as Clay Williams said, you know, comparing rape to weather, as long as you're...it's inevitable, you may as well lay back and enjoy it. How terrible. How terrible. I think we must consider this when we talk about the issue of abortion. Thank you very much. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Council, you're recognized. [LB22]

SENATOR COUNCIL: Thank you again, Mr. President. As I stated when I was last on the mike, I've been working on an amendment that I think addresses the concern expressed by my colleague Senator McCoy because I specifically asked him why the necessity for a rider. And I appreciate his candor in responding to my question. And his response was because there are those who will be obtaining their insurance through a pool. Well, I don't think that's necessarily the case. But however insurance companies develop their premiums, when we're talking about the exchange, yeah, we're really basically talking about group insurance policies pooling. I don't think that it's necessarily the case that you're talking about an insurance pool when you're talking about someone purchasing insurance outside of an exchange in the private insurance market. I think they pretty much base those premiums on the health and age of the applicant as well as the potential risk of that person contracting particular diseases or experiencing certain medical conditions, it's all actuarial in terms of how the premiums are developed. So the amendment that I doubt whether it gets down before the debate today ends, but will certainly be filed, if this bill makes it to Select File will, in my opinion, address Senator McCoy's articulated concerns. And the bill basically states...the amendment basically states that this bill doesn't require any insurance company to provide abortion services coverage nor does it prohibit an insurance company from providing abortion service coverage. But if it does so under the exchange, then it has to do so without benefit of the credits that are set forth in the federal Health Care Reform Act. And it will also have to do so without the benefit of factoring in any cost reductions that result from the creation of the exchange. And with respect to the private insurance market, the amendment provides that if the insurance company does provide abortion service coverage that there has to be a separate amount identified and charged for that and that that separate amount must be based upon an actuarial determination so it's more individual specific and isn't based upon the pool or the factors that may be present in terms of coming up with a group insurance rate. I believe that that bill, that amendment would address all of the articulated concerns and that being not using taxpayer dollars to provide coverage, health insurance coverage that would cover abortion services. And it also covers the articulated concern about using premiums paid by those who may have a philosophical opposition to abortion from that being a part of the premium that's being paid. So it will make, I'm sure, the cost of such coverage very, very,... [LB22]

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

Floor Debate  
March 01, 2011

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SENATOR LANGEMEIER: One minute. [LB22]

SENATOR COUNCIL: ...very expensive. And again, I submit to you that what we will actually be doing, the unintended consequences of our act is that we are providing a mechanism available for women who rightly or wrongly choose to use abortion or view abortion as a birth control method, not a position or an opinion that I subscribe to. In fact, I'm adverse to that anyone would consider using abortion as a birth control method. But if we're telling individuals that here's an opportunity, here's the only opportunity for you to provide...for coverage of your medical costs associated with an abortion is if you buy this rider in advance and you are anticipating the need to have an abortion. [LB22]

SENATOR LANGEMEIER: Time. [LB22]

SENATOR COUNCIL: I think some...was that time, sir? [LB22]

SENATOR LANGEMEIER: Time. [LB22]

SENATOR COUNCIL: Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Ken Haar, you are the last light. You can either use your time or we'll recognize you to close. [LB22]

SENATOR HAAR: I'd like to use my time, please. [LB22]

SENATOR LANGEMEIER: You're recognized. [LB22]

SENATOR HAAR: My amendment would add to the existing--prevent the death of a woman to...and/or to coverage for medical complications arising from an abortion to rape and incest. I don't know how many of you have...know someone who was raped or the victim of incest but I do. And I have to watch my words really carefully here because the perpetrator has since died. But the effects of rape and incest go on throughout a woman's life. And to say that, gee whiz, we're going to cover...we're going to allow insurance companies to cover medical complications arising for an abortion. But if there was incest or rape, you know, incest usually doesn't wind up in abortion, it winds up in other physical injuries. But to say that that's not included is enormously callous by us men in the Legislature. I have a question for Senator McCoy, please. [LB22]

SENATOR LANGEMEIER: Senator McCoy, would you yield? [LB22]

SENATOR McCOY: Yes, I would. [LB22]

SENATOR HAAR: Senator McCoy, if a young girl was the victim of incest and it

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

Floor Debate  
March 01, 2011

---

required surgery and so on to fix that physically, would that be covered by insurance, do you know? [LB22]

SENATOR McCOY: You'd have to, with that hypothetical, Senator Haar, I don't know whether you're speaking of covered under Medicaid, I mean, you...I don't know how to answer that. [LB22]

SENATOR HAAR: Okay. Would that be prevented by your LB22? [LB22]

SENATOR McCOY: Would it be prevented? [LB22]

SENATOR HAAR: To medical coverage for incest. [LB22]

SENATOR McCOY: Are you talking about under the healthcare exchange? Are you talking about with a private insurance plan? Are you talking about if the... [LB22]

SENATOR HAAR: Well, let's start with private. Would that, right now according to LB22, would that be prevented by...would it prevent the insurance company from providing coverage for that incident, for incest that required surgery and so on to repair? [LB22]

SENATOR McCOY: I don't know the answer to that question you're speaking of surgery and all that. I think you would cross a boundary at some point, I would imagine, whereby...I don't know the answer to that question. But I...specifically, I guess, Senator Haar. [LB22]

SENATOR HAAR: Okay. Well, I think that might be useful to find out. Usually, in young children there is physical damage because of incest by the way. So...and the whole thing of rape again, if...you know, incest, obviously, once a young woman has reached puberty could require...could be a pregnancy. That would not be covered either by LB22. Again, I think putting ourselves in the position of a woman or a young girl, whatever, Lara Logan who has been brutalized, perhaps impregnated, we don't know that or not, and to say that wouldn't be covered is in my book totally inhumane. And that's why I offered this amendment. I... [LB22]

SENATOR LANGEMEIER: One minute. [LB22]

SENATOR HAAR: Okay, thank you very much. I guess, I'll just...can I segue into my closing then? Okay. So... [LB22]

SENATOR LANGEMEIER: There are other lights on now. [LB22]

SENATOR HAAR: Oh, okay so, okay, thank you. [LB22]

Floor Debate  
March 01, 2011

---

SENATOR LANGEMEIER: Thank you, Senator Haar. Senator Conrad, you're recognized. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And, colleagues, in preparation and trying to get some information to shed some light on the important issues contained in Senator Haar's amendment, I was doing a quick search to try and find reliable statistics on forcible rapes in Nebraska. And I'm looking at a table here. And I'm trying to get more specific information from the Crime Commission. But as noted earlier in the 2009 Statistical Report of Abortions, there were at least, let's see here, on page 3 you can find this in table 4, there were no abortions in Nebraska in 2009, mind you, reported based on incest. But in relation to sexual assault there were indeed 11 as the reported reason, self-reported by women. So I think that's important to know that even though these amendments further refine and narrow the application and permissible exceptions, we can find, I think, a compassionate and humane common ground which includes extending the protections and understanding that we apply for the health or the life of the women as contained in Senator McCoy's legislation to also those victims of sexual assault and incest. And just looking at some tables here and sometimes it's difficult to talk about sexual assault and rape statistics clearly because it is such an underreported crime, I think that we can all agree that that's a well-established fact considering the amount of victimization stigma and other issues surrounding this horrific and violent occurrence in our society. So recognizing that these numbers may be particularly underreported, you can look and see, I'll just start in 2000 here, where there was reported 436 forcible rapes in Nebraska. This is a table of Nebraska Crime Rates 1960 to 2009. So let's just start in this decade--436 in 2000, 431 in 2001, 464 in 2002, 504 in 2003, 620 in 2004, 581 in 2005, let me make sure as I change pages here that I'm looking at the right columns, 548 in 2006, 527 in 2007, 600 in 2008, and then almost 600, 595 in 2009, the most recent year for which statistics are available. So I think it's fair to say at least in the last decade I don't think that we've seen a year where there were less than 400 forcible rapes or sexual assaults reported in Nebraska. So mind you that only 11 women in 2009, out of those 595 who reported rape, chose to pursue abortion as what was best for them and their family. [LB22]

SENATOR LANGEMEIER: One minute. [LB22]

SENATOR CONRAD: So I think that the very narrow exception that Senator Haar has carved out is important and real to recognizing our acknowledgement of the pain and suffering evidenced by victims of this most horrific crime. And, of course, I think we fully support a woman's choice to make the best decision that is present for her, her family, between her, her doctor and her God if she would believe in that sort of deity. But nonetheless, the fact remains that this is a very small and important exception that I think that we can bridge some common ground on. So I want to thank Senator Haar for bringing this exception forward. And I hope that we can have favorable consideration of this to ensure consistency with the... [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR LANGEMEIER: Time. [LB22]

SENATOR CONRAD: ...exception set forth in... [LB22]

SENATOR LANGEMEIER: Time. [LB22]

SENATOR CONRAD: ...Medicaid and the Hyde Amendment. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Conrad. (Visitors introduced.) Mr. Clerk, items for the record? [LB22]

CLERK: Thank you, Mr. President. New A bill, LB210A, by Senator Cornett. (Read by title for the first time.) Series of hearing notices from the Revenue Committee and a notice from the Agriculture Committee signed by their chairs. Enrollment and Review reports LB81, LB159, LB164, LB181A, LB191, LB210, LB228, LB257, LB278, LB281, LB314, LB333, LB368, LB399, LB471, and LB556 as correctly engrossed. And Senator Campbell offers LR89, Mr. President. That will be laid over. That's all that I have. Thank you. (Legislative Journal pages 675-677.) [LB210A LB81 LB159 LB164 LB181A LB191 LB210 LB228 LB257 LB278 LB281 LB314 LB333 LB368 LB399 LB471 LB556 LR89]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR77, LR78, and LR79. Continuing with discussion, Senator Wightman, you are recognized. [LR77 LR78 LR79 LB22]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I know that I'm taking a step that's probably has not been in keeping with my previous vote here in the Legislature. But I rise in support of AM582. I think it's a reasonable exception that I think all mothers who are...or all women who are victims of rape and incest are faced with. And if we aren't going to provide coverage for abortion resulting from rape and incest it seems to me that we show very little empathy for the woman who is faced with this situation. And as Senator Conrad said, there are a lot of those women on an annual basis, and she gave the figures. First of all, I have some real questions about how much money the average policyholder of a health insurance policy is paying for this coverage. And if Senator McCoy is available, I would have a question or two of him. [LB22]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Senator McCoy, would you yield? [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR McCOY: I would. [LB22]

SENATOR WIGHTMAN: Thank you. With regard to studies of health insurance rates, policy rates, have you made a study as to what additional someone may be paying for, say, coverage to protect the life of the mother? How much does that cost on an average policy or do you have any way of knowing that? [LB22]

SENATOR McCOY: Are you referring to, Senator Wightman, under a private insurance plans or...? [LB22]

SENATOR WIGHTMAN: Right. [LB22]

SENATOR McCOY: I don't know that it's possible to know those statistics. I'm not aware of any of those statistics that are available. [LB22]

SENATOR WIGHTMAN: But part of the purpose of your bill is that all policyholders don't have to pay for the coverage that maybe only a few would want. Is that correct? [LB22]

SENATOR McCOY: That is correct, yes. [LB22]

SENATOR WIGHTMAN: And...but you really don't have any figures as to whether that's really costing any money. It may not be from the standpoint that they do cover, most of the time, obstetrics and gynecology. So it may well be that that is offset by the fact that they would not have those costs. Is that possible? [LB22]

SENATOR McCOY: I don't know. I wouldn't want to speculate on that, Senator Wightman. I don't know the answer to that question. I think this is more a matter of policy in addition to that by saying that we're not...we're going to make sure that, whether this is a small or a large number across the state of Nebraska, that we're going to put into statute the way it should be from this time going forward. [LB22]

SENATOR WIGHTMAN: Thank you. And I understand that, yet I know there's been discussion here with regard to whether people are in favor of or pro-life. And I'm sure that a majority are pro-life. And I certainly consider myself pro-life, even though I think there should be an exception for rape and incest. I think that it is very difficult for us as men to stand here or sit here, whichever the case might be, and make a decision what trauma a woman goes through that's suffering from rape and incest. And I think it could very easily affect the rest of their lives and probably does affect the rest of their lives. And to say that they don't have an option, now as I say, I consider myself pro-life. I'm absolutely opposed to opening a door big enough that it would cover the health of the mother. But if it threatens the life of the mother you have that within your bill. But if it threatens... [LB22]

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

Floor Debate  
March 01, 2011

---

SENATOR LANGEMEIER: One minute. [LB22]

SENATOR WIGHTMAN: ...the health of the mother I don't think that we should allow it for that purpose, at least beyond what the Supreme Court has already said we need to allow. So for those reasons I will be supporting AM582 because I do believe it's a reasonable exception. Thank you, Mr. President. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Haar, seeing no other lights on, you're recognized to close. [LB22]

SENATOR HAAR: Do I have five minutes for that, is that... [LB22]

SENATOR LANGEMEIER: You have five minutes to close. [LB22]

SENATOR HAAR: Five minutes, okay. Well, I would just urge you men in the audience to...men in the body, not in the audience, those, too, men in the body to consider the emotional impact of rape and incest on women. Lara Logan, if she was impregnated, imagine if she were forced to carry that baby in some form. And having been raped by a group of men, what kind of impact would that have? For a young woman in a family, sure, a family could buy a rider for abortion. But what family would, even in their wildest dreams, consider a rider for abortion anticipating incest of the father upon a daughter? It just wouldn't happen. I think this is a reasonable, very narrow kind of amendment recognizing that women in the case of rape or incest suffer irreparable psychological harm, in many cases physical harm. And it just is strange to me. We talked last week about the Universal Service Fund that we all pay in a few pennies to offer service to our fellow Nebraskans and that we wouldn't be willing to offer a few pennies additional perhaps on our insurance policies to cover rape and incest. With that, I would encourage and implore those in the body to vote for AM582. Thank you very much. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Haar. You have heard the closing on AM582 offered to LB22. The question before the body is, shall AM582 be adopted? There has been a request to put the house under call. Question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB22]

CLERK: 28 ayes, 0 nays, Mr. President, to place the house under call. [LB22]

SENATOR LANGEMEIER: The house is under call. Senators, please return to the Chamber and record your presence. Please all unauthorized personnel please leave the floor. The house is under call. Senator Nelson, would you please check in. Senator Pirsch, would you please check in. Senator Lautenbaugh, would you please check in.

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

Floor Debate  
March 01, 2011

---

Senator Carlson, would you please check in. Senators Cornett, Lathrop and Wallman, please return to the Chamber. The house is under call. Senators Cornett and Lathrop, please return to the Chamber. The house is under call. All members are present or accounted for. There has been a request for a roll call vote. The question before the body is, shall AM582 be adopted to LB22? Mr. Clerk, please call the roll. [LB22]

CLERK: (Roll call vote taken, Legislative Journal page 678.) 12 ayes, 28 nays, Mr. President, on the amendment. [LB22]

SENATOR LANGEMEIER: AM582 is not adopted. With that, I raise the call. Mr. Clerk, next amendment. [LB22]

CLERK: Mr. President, yes. Excuse me, Mr. President. Senator Conrad would move to amend with FA6. (Legislative Journal 679.) [LB22]

SENATOR LANGEMEIER: Senator Conrad, you are recognized to open on FA6. [LB22]

SENATOR CONRAD: Thank you, Mr. President. And thank you, colleagues. Good morning again. A couple of things at the outset here to be clear. Mr. President, in terms of opening on an amendment I have five minutes, is that right, or ten? [LB22]

SENATOR LANGEMEIER: You have ten minutes to open. [LB22]

SENATOR CONRAD: Thank you. Thank you for the clarification, I appreciate that. I think it's important to note a couple of things at the outset here. And again, Senator McCoy has done a, I think, very professional and admirable job of moving this legislation which is very important to him, obviously very, very important to him since it's his priority bill this year, moving it through the process in a respectful and thoughtful dialogue. And I think we've had a lot of good dialogue this morning on the different policy questions that surround this legislation. And again, I also want to be clear that this is just my personal legislative style and belief. I don't believe in filibustering for filibustering sake. I think we know where the votes are. I think that the body has made clear its opinions and feelings on this, despite turning its back on rape and incest survivors in the last amendment, which is unfortunate and a sad chapter in I think Nebraska history. But not new, we've seen that happen many times when...on this floor as people try and seek common sense, humane amendments to recognize the specific and tragic circumstances surrounding incest survivors and rape victims. But nonetheless, lest I digress, I do think that there's a difference between filibustering for filibustering sake and having a substantive dialogue on important ideas and amendments that seek to improve the legislation. And, you know, thus far with your indulgence and thoughtful consideration we've had, you know, when we conclude today maybe three hours on this bill. And, of course, we know that there is an informal eight-hour kind of requirement that this body utilizes before seeking to invoke cloture.

Floor Debate  
March 01, 2011

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And I don't have any plans to take it to that level in terms of an eight-hour debate. But I do think that the amendment that Senator McCoy introduced and that was adopted by this body made this legislation a better piece of legislation. I think the amendment that Senator Haar put forward for this body to consider and which just recently failed attempted to make this legislation better legislation. And I'm attempting to do the same through FA6. And, colleagues, if you have a chance to take a peek at it, I think that what it seeks to do is provide a mandate for private insurance plans to include contraception coverage. If we are serious about utilizing state mandates to enter into the private insurance market and utilize our regulatory powers in that regard to try and get after ways to prohibit or reduce the number of abortions in Nebraska, let's extend that to again what I consider to be a common sense and scientifically proven way to do so through contraceptive coverage. I'm hopeful that through the course of this debate and as we continue down the path this morning that Senator Council will also have an opportunity to visit about a very important bill that she introduced this year which is really a companion piece on this very topic and that contemplates comprehensive, age-appropriate sex education for students because I think that again when we talk about these very, very difficult issues, despite the fact that they are emotional and despite the fact that they are difficult to deal with, there is common ground. There is common ground that exists in this body. And there is common ground that exists in the general public, and that is surrounding prevention. What does prevention mean? Prevention means education and contraception. So if we think it's okay to impose our will on the private insurance market through LB22, then we should do the same if we're serious about utilizing the private insurance market to limit the number of abortions. One way that we can do that is by requiring all insurance plans to cover preventative reproductive healthcare services, including but not limited to contraception. So it's a very simple, straightforward amendment that seeks to do just that. Wanted to read a little bit of a special analysis from a quick Google search that came up, published by the Guttmacher Institute in 2003 about...titled, "The Cost of Contraception Insurance Coverage." And I'll just read a little bit of it for my opening here today to provide some context for this very serious and substantive floor amendment. The report finds that coverage is indeed lacking in their research about private sector insurance plans. "Historically, private-sector insurance in the United States has failed to provide adequate coverage of prescription contraceptives. Research showed that half of all traditional indemnity plans," and the statistics they have here are kind of old, but from, "1993 did not cover any reversible prescription methods of contraception, and only 15 percent covered all of the five leading methods--oral contraceptives, diaphragms, Depo-Provera, Norplant and IUD. At the other end of the spectrum, the vast majority, 93 percent, of HMOs, health maintenance organizations, provided some coverage of contraceptives, only 39 percent covered all five leading methods. Recent surveys of employers suggests that contraceptive coverage remains inadequate. In 2001, an annual survey by the Kaiser Family Foundation found that 41 percent of insured employees had coverage of all reversible contraceptives. In contrast, virtually all insured employees, 98 percent, had coverage of prescription drugs in general." And this,

Floor Debate  
March 01, 2011

---

colleagues, I think provokes a very important point about equities and disparities in terms of private insurance plans and their unequal treatment of prescriptions and contraception. And there's been a host of litigation and policy decisions surrounding those very topics in recent years. But I did want to point that out. Okay, "People insured by larger employers, those with 200 or more employees, were more likely than those insured by smaller employers to have contraceptive coverage. In 2002, Kaiser's survey found that coverage of oral contraceptives among insured employees jumped from 64 percent the previous year to 78 percent; it did not ask about other methods of contraception." Thus, you can see there's been a steady increase in private health insurance coverage and plans over recent years to be more expansive in the types of preventative care that they do indeed cover. And that's a good thing. That's a step forward. And without having the specific statistics available to me for who this would apply to in Nebraska, and apparently those aren't necessary because those statistics also aren't available for LB22 as admitted many times in the earlier dialogue today. I think that this provides some parity and some commonsense solutions to addressing how can we come together in the middle to find ways to reduce the number of unintended pregnancies in Nebraska and thus reduce the number of abortions in Nebraska. And we can do that by ensuring more Nebraska women have contraceptive care available in their private insurance plan. With that, I think that covers most on the opening, Mr. President. Thank you very much. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Conrad. (Visitors introduced.) You have heard the opening on FA6 offered to LB22. The floor is now open for discussion. Those wishing to talk, we have Senator McCoy, Ken Haar, Senator Council, and Senator Conrad. Senator McCoy, you're recognized. [LB22]

SENATOR McCOY: Thank you, Mr. President and members. I rise in opposition to FA6 for a couple of what I think to be pretty simple reasons and, hopefully, lucid reasons, I believe. And I appreciate Senator Conrad's thoughts on this. I know we all...at times we'll have differing opinions on issues, particularly those as thorny as this one. And along those lines, I'll share I guess briefly why I am not in favor of this amendment. While I appreciate Senator Conrad's passionate interest in this issue, for one pretty simple reason, I guess, in Section 1303 of the federal Patient Protection and Affordable Care Act, or PPACA, it gives us the express ability to do and discuss as individual states what we are discussing with LB22. So federal law left the ability for us to do what we're doing. Unfortunately, it did not allow us to delve into the arena of what Senator Conrad would desire to delve into with FA6. And the reason for that is the rules and regulations from federal HHS are rolling out by the day. And I probably, not that I want to draw him into this discussion, but I would imagine that Senator Nordquist who I know studies this probably closer than anyone in the body due to his position on the Health Committee, I believe, if I'm referring to it correctly, for NCSL as Chair of that committee nationally. He can probably speak to this more accurately than I. But it's my understanding that the rules and regulations are rolling out by the day from HHS. We

Floor Debate  
March 01, 2011

---

don't yet know what are in those rules and regs. And while I appreciate the intent of what Senator Conrad is trying to do here, I don't believe, it's my understanding anyway, that we are...have the ability as a state to make such a distinction and put such words and verbiage into statute because we don't know. As it stands now, PPACA talks about mandates at the state level having to be paid for by individual states. But there's a lot of discussion as to exactly how that...whether...how we would provide for the funding for that, how that would work under PPACA. I mean, it's very much a work in progress. It is existing federal statute. And we can all agree or disagree as to the need or to have that statute in place at the federal level or not. But to me that's a discussion for a different day. That's not what we're talking about with LB22. But what I fear we do with FA6 is we delve into another area that we didn't have the ability under PPACA and Section 1303 to discuss as a state. So with that, Mr. President, I would stand in opposition to FA6. Thank you. [LB22]

SENATOR LANGEMEIER: Thank you, Senator McCoy. Senator Ken Haar, you're recognized. [LB22]

SENATOR HAAR: Mr. President, members of the body, on our last vote it's disappointing but it's really interesting in the English language we don't have a word for a young woman who's been raped by her father and raises that son. I'm not sure whether we'd call that son a son-brother, a brother-son or anyway. I think we dismiss what goes on too frivolously. I would like to speak on this amendment and tomorrow I will speak a bunch more on this amendment. Prevention, prevention ought to be something we all agree upon. I'll pass out the graph tomorrow that shows that of all pregnancies, 50 percent are intended and 50 percent are unintended. Only 4 percent of intended pregnancies end in abortion, 40 percent of unintended pregnancies end in abortion. So for those of us, those of us who value life, why would we not try to prevent unintended pregnancies? And we'll show that simply beyond those statistics that the number of unintended pregnancies, the number of children from unintended pregnancies result in higher poverty for families, they result in lower education for families. There are numerous, numerous unintended consequences for unintended pregnancies and they are absolutely connected to each other. So again, half of all pregnancies are intended, half are unintended. And of those intended pregnancies only 4 percent end in abortion. And usually those are for fetal anomalies that are incompatible with life, and we'll talk about some of those like anencephaly, where the fetus has no brain and there's no change of life after birth. Forcing women to bear that kind of child, again, walk in their shoes. Forty percent of unintended pregnancies end in abortion. So it would seem that whereas all the restrictions that we keep putting on abortion in this state don't affect the abortion...that rate that much, it would seem that prevention of unintended pregnancies is something that we could all support as a way of preventing abortions. There is an absolute correspondence there. And I would encourage us, as I go into this tomorrow, to think carefully about an agenda that we could all agree on and that's prevention of unintended pregnancies, giving young men

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

Floor Debate  
March 01, 2011

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and women a chance of a better life. We all know that a family where the children are planned will be economically better off in the long run, there will be higher education in that family, and there's less child abuse, there's less winding up in foster care, there's less need for adoption. So I look forward to that discussion. Thank you so much. [LB22]

SENATOR LANGEMEIER: Thank you, Senator Haar. Mr. Clerk, items for the record. [LB22]

CLERK: I do, Mr. President. Thank you. Hearing notice from Nebraska Retirement Systems Committee. That's signed by Senator Nordquist. Senator Fulton offers LR90, that will be laid over; Senator Avery, LR91 and LR92, those, too, will be laid over. Senator Howard would like to print an amendment to LB237. Name adds: Senator Fulton would like to add his name to LB50; and Senators Bloomfield and Brasch to LB521. (Legislative Journal pages 679-681.) [LR90 LR91 LR92 LB237 LB50 LB521]

And I do have a priority motion, Mr. President. Senator Janssen would move to adjourn the body until Wednesday morning, March 2, at 9:00 a.m.

SENATOR LANGEMEIER: You have heard the motion to adjourn. All those in favor say aye. All those opposed say nay. The ayes have it, we are adjourned.