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Floor Debate  
May 10, 2011

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SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Good morning, ladies and gentlemen, welcome to the George W. Norris Legislative Chamber for the seventy-seventh day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Carlson. Please rise.

SENATOR CARLSON: (Prayer offered.)

SPEAKER FLOOD: Thank you, Senator Carlson. I call to order the seventy-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.

SPEAKER FLOOD: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

SPEAKER FLOOD: Are there any messages, reports, or announcements?

CLERK: Enrollment and Review reports LB256 and LB628 as correctly engrossed. Enrollment and Review also reports LB490 to Select File with Enrollment and Review amendments. And I have a confirmation hearing notice from the Government, Military and Veterans Affairs Committee signed by Senator Avery, as Chair. That's all that I had, Mr. President. (Legislative Journal pages 1493-1496.) [LB256 LB628 LB490]

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 the following legislative resolutions: LR179, LR180, LR181, LR182, LR183, LR184, LR185, LR186, LR187, LR188, LR189, LR190, LR191, LR192, LR193, LR194, LR195, and LR196. I am going to reorder the agenda for today as it relates to LB575 and LB575A. At this time, these two bills will be placed after LB521 on today's agenda. Please make a note of it. Again, LB575, LB575A will be placed after LB521 on today's agenda. Members, please find your seats in preparation for Final Reading. Mr. Clerk, the first bill is LB176. [LR179 LR180 LR181 LR182 LR183 LR184 LR185 LR186 LR187 LR188 LR189 LR190 LR191 LR192 LR193 LR194 LR195 LR196 LB176]

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CLERK: (Read LB176 on Final Reading.) [LB176]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB176 pass? All those in favor vote aye; all those opposed vote nay. Have all those voted who care to? Mr. Clerk, please record. [LB176]

CLERK: (Record vote read, Legislative Journal pages 1496-1497.) 43 ayes, 0 nays, 1 present and not voting, 5 excused and not voting, Mr. President. [LB176]

SPEAKER FLOOD: LB176 passes. Mr. Clerk, we now proceed to LB404. [LB176 LB404]

CLERK: (Read LB404 on Final Reading.) [LB404]

SPEAKER FLOOD: All provisions of law relative to procedure having been complied with, the question is, shall LB404 pass? All those in favor vote aye; all those opposed vote nay. Mr. Clerk, please record. [LB404]

CLERK: (Record vote read, Legislative Journal page 1497.) 44 ayes, 0 nays, 5 excused and not voting, Mr. President. [LB404]

SPEAKER FLOOD: LB404 passes. Pursuant to my prior announcement, LB575 and LB575A have been moved and reordered on the schedule to follow LB521 at the bottom of today's agenda. Mr. Clerk, we now move off of Final Reading to Select File, 2011 Speaker priority bills. We begin with LB684. [LB404 LB684]

CLERK: LB684, Senator Larson, I have Enrollment and Review amendments first of all, Senator. (ER104, Legislative Journal page 1387.) [LB684]

SPEAKER FLOOD: Senator Larson for a motion. [LB684]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB684 be adopted. [LB684]

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB684]

CLERK: Senator Schilz would move to amend with AM1421. (Legislative Journal page 1490.) [LB684]

SPEAKER FLOOD: Senator Schilz, you're recognized to open with AM1421. [LB684]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. Good morning. I

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just wanted to take a few minutes here and discuss this amendment, AM1421. And having conversations when we last discussed the bill on the floor under General File, we discussed about what would be important to take into consideration to have on this committee that we're reforming. And what this amendment would do is that it would look to add a representative from the Nebraska Department of Roads. Now you may think that that's a little bit out there but let's talk about it a little bit. And what I want everybody to understand is that it's very important that if you're going to have tourism in a state like Nebraska that you have the ability to get to those attractions and you're looking at promoting those attractions where the people are going through, where they're driving by. In our area, in my area out there, Interstate 80, major highways, 385, Highway 20, it's very important that we be cognizant of the fact that if somebody doesn't know there's an attraction there, they definitely won't stop. And so I've had many people from my district talk about we used to have visitor centers in the rest stops and with rest stops being closed down and being...you know, the priority not being as high there, we're losing the opportunity to get to these folks. And I think it's very important that we look at this and we understand that this is a big part of tourism, this is a big part of getting some of that revenue from those folks that come through our state and want to enjoy what we have. And so as we talked around, Senator Carlson and I and a few others talked about the possibility of putting a representative from the Nebraska Department of Roads on there and, you know, so this amendment came along. But I just wanted to take the opportunity, I think Senator Carlson wants to say a few words, about how important it is to have this in place and to be thinking about it as we go through and we make our decisions on promotion and how we get people to our parks and recreation areas. Thank you very much. [LB684]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Thank you, Senator Schilz. You have heard the opening on LB684 and AM1421 to that. The floor is now open for discussion. Senator Carlson, you're recognized. [LB684]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I brought this up on General File and talked to Senator Schilz about it simply because when we have tourism that's such an important part of our economy, people that come through Nebraska need to understand and know where attractions are, and the SAC Museum is not designated or indicated anyplace along the interstate that would direct people off the interstate. Now that's a federal issue, but it's important as we focus on tourism in the state and I thought it would be appropriate if a representative from the Department of Roads served on this committee because it would make them aware of attractions that need to be indicated to draw people. And if that's not the proper thing, still, this discussion hopefully will make the Department of Roads more aware and this committee and the Department of Economic Development more aware that you can't expect people to stop and pay money for attractions and spend money around the

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attractions if they don't even know it's there, and that's a big responsibility that should be handled through this committee and they could facilitate the process, and hopefully that will be a result of what we're doing. Thank you, Mr. President. [LB684]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Hansen, you're recognized. [LB684]

SENATOR HANSEN: Thank you, Mr. President and members of the Legislature. Would Senator Schilz yield to a question? [LB684]

SENATOR LANGEMEIER: Senator Schilz, would you yield? [LB684]

SENATOR SCHILZ: Yes. [LB684]

SENATOR HANSEN: Thank you, Senator Schilz. I had one question. I reviewed the list of people that were suggested to be on the tourism board and it seemed like they were all...I know some of them are state parks and that would be probably employees of Game and Parks to some extent, but there are other attractions, such as the Golden Spike in North Platte is a private entity, and the rest of them, the Hotel, Motel Association, the visitors and convention bureaus are all private groups. Are you suggesting that the Department of Roads be listed, added to this list? [LB684]

SENATOR SCHILZ: You know, it was...that was the amendment would say and I think that as we've had discussions with the Department of Economic Development, we've come to the realization that they have a process in place right now to get input from the Department of Roads. So in their discussions there, we've decided that even though the amendment has been offered that we will...that I would discuss it here this morning with those that wanted to speak on the importance of having cooperation, collaboration there, and then pull the amendment. So it was the intention to put that there but through our discussions we have decided to move in a different direction. I think it should be said, though--if you don't mind I take a little more time--that the language within the bill is permissible to allow the Department of Economic Development to name who they want to on that committee. So besides those ones that are outlined in there, DED can bring in whomever they want to help with the process. [LB684]

SENATOR HANSEN: Okay. Thank you. My question would be is would this be a voting or a nonvoting member if the Department of Roads would get a position on that board? [LB684]

SENATOR SCHILZ: Yeah, and as the amendment is written, that person would be a voting member, just like everyone else on that committee. [LB684]

SENATOR HANSEN: So the Department of Roads could have input on not supporting a

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project out, say, in Keith County. [LB684]

SENATOR SCHILZ: Can you repeat that, Senator? I'm sorry. [LB684]

SENATOR HANSEN: So Department of Roads could vote against doing...supporting a project in Keith County. [LB684]

SENATOR SCHILZ: Well, I suppose they could, yeah. [LB684]

SENATOR HANSEN: Well, I see a problem with that but... [LB684]

SENATOR SCHILZ: (Laugh) Okay. Well, me too, if you're asking my opinion. [LB684]

SENATOR HANSEN: Thank you, Senator. Thank you, Mr. President. [LB684]

SENATOR SCHILZ: Thank you. [LB684]

SENATOR LANGEMEIER: Thank you, Senator Hansen. Seeing no other lights on, Senator Schilz, you're recognized to close on AM1421. [LB684]

SENATOR SCHILZ: Thank you, Mr. President. And I'd just like to thank everyone for indulging myself and Senator Carlson here this morning. It is important that you let people know what's out there. As I travel around my district and go into the state of Colorado, it's amazing the amount of money that they spend on promotion, visitor centers. I know right off I-76, as you enter into Colorado at Julesburg, they have a big, large visitors' center where, I mean, it's got parking for trucks, it's got parking for trailers, RVs. It's a nice facility. And I think that we need to take advantage of those opportunities, especially in the areas where we have high traffic flow, to let those folks know. So just wanted to stand up, wanted to let everyone know how important I believe and Senator Carlson believes that is. But at this point, Mr. President, I would pull AM1421. Thank you. [LB684]

SENATOR LANGEMEIER: Thank you, Senator Schilz. AM1421 is withdrawn. [LB684]

CLERK: I have nothing further on the bill, Mr. President. [LB684]

SENATOR LANGEMEIER: Thank you. Senator Larson for a motion. [LB684]

SENATOR LARSON: Mr. President, I move that LB684 be advanced to E&R for engrossing. [LB684]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. LB684 advances. Mr. Clerk. [LB684]

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CLERK: Mr. President, LB684A, Senator Larson, I have no amendments to the bill. [LB684A]

SENATOR LANGEMEIER: Senator Larson for a motion. [LB684A]

SENATOR LARSON: Mr. President, I move that LB684A be advanced to E&R for engrossing. [LB684A]

SENATOR LANGEMEIER: You have heard the motion. All those in favor say aye. All those opposed say nay. The ayes have it. LB684A does advance. Mr. Clerk. [LB684A]

CLERK: LB673, Senator, no...I do have, excuse me, I do have E&R amendments. (ER127, Legislative Journal page 1447.) [LB673]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Senator Larson for a motion. [LB673]

SENATOR LARSON: Mr. President, I move that LB673...I move that amendments to LB673 be...the E&R amendments to LB673 be adopted. [LB673]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. [LB673]

CLERK: I have nothing further on that bill, Senator. [LB673]

SENATOR CARLSON: Senator Larson for a motion. [LB673]

SENATOR LARSON: Mr. President, I move that LB673 be advanced to E&R for engrossing. [LB673]

SENATOR CARLSON: You've heard the motion. All in favor say aye. Opposed, nay. Motion carried. Mr. Clerk. [LB673]

CLERK: LB226, Senator, does have Enrollment and Review amendments. (ER126, Legislative Journal page 1447.) [LB226]

SENATOR CARLSON: Senator Larson for a motion. [LB226]

SENATOR LARSON: Mr. President, I move that the E&R amendments to LB226 be adopted. [LB226]

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SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. [LB226]

CLERK: I have nothing further on that bill, Senator. [LB226]

SENATOR CARLSON: Senator Larson for a motion. [LB226]

SENATOR LARSON: Mr. President, I move that LB226 be advanced to E&R for engrossing. [LB226]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. Motion carried. Mr. Clerk. [LB226]

CLERK: Mr. President, General File, first bill, LB667, a bill introduced by Senator Flood. (Read title.) The bill was introduced on January 19, referred to the Judiciary Committee. The bill was advanced to General File. I do have Judiciary Committee amendments pending. (AM162, Legislative Journal page 1480.) [LB667]

SENATOR CARLSON: Thank you, Mr. Clerk. Speaker Flood, you're recognized to open on LB667. [LB667]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. This is Senator Wallman's priority bill and my bill in cooperation with the Judiciary Committee. And the Attorney General has been very helpful on this; the County Attorneys Association; the Criminal Defense Bar; different anti-alcohol advocacy groups as it relates to underage drinking; and Mothers Against Drunk Driving. And this is the culmination of all of that work for the sole purpose of making our roadways and, in some ways, our waterways safer. It seems like in the last couple of years we have seen unbelievable tragedy over and above... [LB667]

SENATOR CARLSON: (Gavel) [LB667]

SPEAKER FLOOD: ...what Nebraska is used to. In reality, our traffic fatalities have dwindled some but the types of accidents and the tragedies are unspeakable. Mr. Dave Lutton and his daughter, Jessica Bedient, who just had been married for a few weeks, died in a very horrible car crash in Douglas County. She was hit by someone who had a prior DWI and was still in the court system on that prior charge. And what I've been after since I got to the Legislature is trying to send a message: There's a better way to do this. If you get arrested for DWI, right now, in the state of Nebraska, you get a 30-day temporary license. You get an administrative license revocation which has a hard suspension of at least 30 days before you can get a work permit. The reality is, you'll wait a lifetime in Plainview, Nebraska, for a bus; you will wait a lifetime in Battle Creek for a cab. We don't have public transportation in much of rural Nebraska. And so what

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this bill basically says is that if you get arrested for a DWI-1, you have a temporary license for 15 days. If you elect to put an ignition interlock device in your car, and that's one of those machines with the little tube that you blow into that tests your breath for alcohol and, if you don't have alcohol on your breath, you can start your car and you can begin driving. Because at the end of the day it's not that we want to make sure these people aren't driving. We want them to get to work. We want them to get to their drug and alcohol education classes. We want them to pick their children up. We want them to pay child support. We want them to be productive members of society. All I'm saying is, let's use the technology available so that these offenders are still making their way to work, but we know one valuable thing about their current behavior and that is they are not drinking while operating a motor vehicle in this state. The one thing I want to stress is, in my opinion, the time to get the attention of a drunk driving offender--and a lot of times it's a symptom, a very prominent symptom of a much larger alcohol abuse problem--is the night of the arrest. The consequences have to be swift and immediate. And I do believe that by allowing them to put an ignition interlock device, they're going to be reminded every time they get in their car that they can't be trusted to drive without one of these devices until they prove to the rest of us that they are able to stay out from behind the wheel of a car while not drinking. Let me tell you what this does. Since the public hearing I've worked with the DMV and the AG, and we've reviewed the testimony. And I want to make this point very clear: This bill was not in any kind of shape to be roundly supported by every advocacy group at the hearing. If you watched the hearing, it was fairly obvious there were some big rifts. We worked very hard, listening to the testimony and trying to incorporate those suggestions and looking for common ground. I was proposing to get rid of the ALR. This bill, as amended, keeps the ALR. What does it do? It criminalizes the intoxicated transportation of a child. We have a lot of situations in this state where somebody is under the influence and then we've got a four-year-old in a car seat in the back seat. It makes motor vehicle homicide a distinct crime from DUI. It changes penalties regarding boating under the influence and makes other changes to the State Boat Act to bring it in line with the DUI. Omaha and the residential development, you've seen a lot of lakes develop around the Omaha area. It's becoming a much bigger issue in Douglas County. Regarding the ALR, the primary changes in AM162 are as follows. It provides statutory authority for officers to submit a sworn report to the DMV electronically. It provides for a 15-day temporary license for the offender. For first offense DUI or ALR, there will be no hard suspension. If the offender waives the right to an ALR hearing and applies for an ignition interlock, the offender would be required to use the ignition interlock device for 180 days and drive only for purposes allowed by the IIP. Also, the offender would get a day-for-day credit for having an ignition interlock if he or she is later ordered by the court to have ignition interlock installed in his or her vehicle. For second and subsequent DUI offenses or ALRs, the amendment provides that if the offender waives the right to an ALR hearing and applies for an IIP, there would be a reduced 45-day hard suspension, period. Current hard suspension is 60 days. The ignition interlock order would require one year of use. It provides for a 90-day hard suspension and one year revocation for refusals. It provides

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that if the offender petitions for an ALR hearing and loses at the hearing, he or she is not eligible for IIP under ALR. Following first offense DUI, for ALR, the ignition interlock permit would have more driving privileges than currently in statute. This amendment would allow travel for work, healthcare, education, substance abuse, community service, and parole or probation appointments. Let me tell you, the current rules for use of these devices don't allow you to go to your probation appointments, don't allow you to go to your drug and substance abuse appointments. That is ridiculous. You know, we, as citizens, are obviously punishing the offender, but at the same time you want this person to have every opportunity to address a substance abuse issue. Following a second or subsequent DUI offense or ALR, the ignition interlock permit would only allow travel for work, education, or substance abuse. It provides prosecutors the right to discovery when a motorist obtains statutory discovery in ALR proceedings; makes tampering with one of these devices a Class IV felony; provides DMV authority to administer an Ignition Interlock Fund for a benefit of indigents. That's been raised before: What happens if I can't afford one of these ignition interlock devices? The fund that takes some of those reinstatement fees can be used to provide for those who cannot buy one themselves. Other DUI-related provisions are: makes motor vehicle homicide of an unborn child a distinct crime from DUI; removes statutory authority to request a deposition for a Class W misdemeanor; on the court side, removes impoundment language and makes ignition interlocks mandatory for a conviction of first DUI offense, including high BAC, and second DUI offense not including the high BAC. There's a lot of information and a lot of changes in this bill. I believe the committee statement does a good job of outlining many of those. I did not get everything I had hoped for in this bill. The Judiciary Committee made some changes that I'm sure Senator Ashford is going to tell you about. But I do believe that this bill represents sound policy. We worked very closely with the Department of Motor Vehicles. We worked very closely with Dusty Vaughan as the legal counsel in the Transportation and Telecommunications Committee, and Matt Boever in my office has worked his tail off on this, this session. So I feel really good about what we're bringing to the floor and I'd ask you to support the bill and the underlying amendment. Thank you. [LB667]

SENATOR CARLSON: Thank you, Speaker Flood. As the Clerk stated, there are amendments from the Judiciary Committee. Senator Ashford, as Chair of the committee, you're recognized to open on the amendments. [LB667]

SENATOR ASHFORD: Thank you, Mr. President. And let me say this: The Judiciary Committee each year deals with numbers of bills that concern themselves with these issues, and this year was no exception. The exception this year, in my view, has been the thoughtfulness of the proponents on many of these measures, including yours, Mr. President, that is not a priority bill but that will be considered by the committee as we move forward. Senator Pirsch has brought us legislation that enhances penalties in those areas where enhancement of penalties we believe to be appropriate--and we will get to Senator Pirsch's bill in a moment. I will second what Speaker Flood has said: This

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effort behind LB667 has been extremely collaborative. I noted in reading the editorial that regarding this measure, last week sometime, that, in the Omaha World-Herald, that mentioned that the committee seemed tied in knots through the testimony--and that's not an inaccurate reflection. We had experts coming at us on this measure...or on this general idea of expanding the interlock from all different perspectives and with many different options. When we started with this effort in January, it was the decision we had to make as a committee was whether or not to maintain ALR as part of our prevention and enforcement in DUI cases, part of our tools that we use. And the decision made by the committee and I think in collaboration with Speaker Flood and DMV was that we should retain it. But that the interlock was critical and that...and as part of that interlock discussion what is also critical is that every individual who finds themselves in this position has the ability to obtain an interlock device. And I am convinced that such is the case with this bill, that there are sufficient resources. And this, DMV, we have discussed this issue at length with the DMV and they're convinced that there is sufficient monies available for the indigent offender as there must be. It does expand the ability of a DUI offender to drive and it does require a relatively severe penalty for manipulating these interlock devices. Any legislation in this area is not perfect, clearly, and there are ways to get around everything as there are ways to get around an interlock device. But we have, I believe, with the help of Speaker Flood and Matt, in his office, and DMV and others, and prosecutors across the state, have tried to address each one of those concerns and filled as much of the gap as we could. I also want to thank Senator Harms for his commitment to this issue. He has always been passionate about young people and intoxication and the harm that it does, and he has been an advocate who has come to the committee with many good proposals, some of which have been passed into law--and I want to thank him as well. We are hopeful in this committee that with the passage of LB667 and Senator Pirsch's bill and some other measures that are out there...Senator...Mr. President, Senator Carlson's bill, which does bring up the issue of dram shop. And I think we have to address that issue. We're not going to address it this session but we need to have a discussion about it. The issue of alcohol taxes was raised in an editorial the other day and has been raised in articles. I think it's something we have to think about as a prevention measure. There is no silver bullet to solving these problems and to hopefully correct the mayhem, as Senator Flood, Speaker Flood, rightly mentions that occurs on our roads every year. Speaker Flood has outlined the details of the amendment; I'm not going to go over them again. But on behalf of the committee, with some trepidation--Senator Lautenbaugh is not here--I'm going to thank everybody in the room. No, I'm not...just kidding (laugh), but it was a great effort by many people. And with that, Mr. President, I would urge the adoption of AM162 and the advancement of LB667. [LB667]

SENATOR CARLSON: Thank you, Senator Ashford. The floor is now open for debate and there are senators wishing to speak: Harms, Fulton, Gloor, Ashford, Pirsch, and Wallman. Senator Harms, you are recognized. [LB667]

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SENATOR HARMS: Thank you, Mr. President, colleagues. I rise in support of AM162 and the underlying bill LB667. I think this is a comprehensive approach. I think it's important for Nebraska to have this bill become a law. I think it'll save lives in the future. I am particularly interested in the area of watercraft. I introduced a bill this year, LB554, and, quite honestly, I approached it wrong. And the way that Senator...today, Senator Flood is approaching it, is the right way to do this. And my bill didn't come out of committee and I'm pleased with what I see happening here in regard to boating. Boating: We have found we're seeing so many serious accidents and deaths occurring because of alcohol in relationship to boating and the person who is in control of that boat. And so I applaud that aspect that adds a flavor to this bill that's very encouraging to me. And I wonder if Senator Flood would yield just to a couple questions for me, just more for clarification? [LB667 LB554]

SENATOR CARLSON: Speaker Flood, would you yield? [LB667]

SPEAKER FLOOD: Yes. [LB667]

SENATOR HARMS: Senator Flood, I noticed in the...I'm going to concentrate on the boating and the water side for just a few minutes if I may. I noticed in the bill you refer to state waters. Were you...state waters, is it defined as all the waters within the boundaries of this great state, which would mean both private and public? [LB667]

SPEAKER FLOOD: Well, I believe the Game and Parks Commission and the sheriffs' offices across the state, and in some situations the city police departments, have authority on certain bodies of water. Now a farm pond, I don't think that would, you know, would warrant a patrol effort by law enforcement. But certainly in a lot of these residential lakes around the city of Omaha or around the city of Columbus, the law enforcement do have the authority on those types of waterways. I guess I'd like to do a little bit more digging before I define a state waterway on the record. But I think you'd be surprised at how many bodies of water law enforcement have the ability to patrol and to make stops of other boats. [LB667]

SENATOR HARMS: The reason I'm bringing this up, I ran into this in regard to the legislation that I had introduced, and so we did quite a bit of research and we discovered that we do have, in law, the definitions of state waterways. We have the definition of boats, motorboats, personal watercrafts. And what I'm really leading up to, Senator Flood, is would it be important to refer them, where we use this, to where that is in the law? For example, if we talk about state waterways and you define that, would it be important to refer them to the law of 1978, LB21-6 (sic)? I don't know. I'm just trying to find a way that might make this easier for people to have a better understanding that we do have laws that define all these areas, and I'm just wondering whether this would make it better or not. I don't know. That's the question I'm asking, Senator. [LB667]

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SPEAKER FLOOD: Well, you know, it's certainly something to look into. I guess what I'd like to do is write that down and look at it between now and Select File. I would be hesitant...I am hesitant to define it on the fly on General File without making sure I understand what waterways would be included. I certainly don't want to limit law enforcement's ability to get on certain bodies of water. [LB667]

SENATOR HARMS: Well, thank you very much, Senator Flood. I rise in support of this, as I said before. I do think that we need to look at the definitions, because in the discussion I've had with law enforcement, particularly in the bill that I had introduced, that is a problem, and it is also the definition in regard to waterways was a problem as well as the definition of making sure we understood and the public understands... [LB667]

SENATOR CARLSON: One minute. [LB667]

SENATOR HARMS: ...what those definitions are. And by law we do have those. So thank you, Mr. President and colleagues. [LB667]

SPEAKER FLOOD: Oh, Mr. President,... [LB667]

SENATOR CARLSON: Senator Flood, you're recognized. [LB667]

SPEAKER FLOOD: Thank you, Mr. President. Quickly, I want to just say Section 37-1206 does define the waters of the state: "Waters of this state shall mean any waters within the territorial limits of Nebraska." And so I believe that's a broad enough definition to satisfy Senator Harms's concern as it relates to state waterways. I don't think that a farm pond would qualify if a law enforcement officer wanted to go and drive his boat around there. You would probably have to have some authority to enter the property. But waterways would be...is defined in Chapter 37. Thank you. [LB667]

SENATOR CARLSON: Thank you, Senator Harms and Senator Flood. (Visitors introduced.) Senator Fulton, you're recognized. [LB667]

SENATOR FULTON: Thank you, Mr. President and members of the body. There was a bill that I introduced this year. It was LB625, much of which is contained within LB667. So I want to thank Senator Speaker Flood for bringing this forward, learning it, working on it, getting in it, getting it to the position that it is today, into the form that it is today; and also Matt Boever, from his office; the Judiciary Committee for putting this forward; and, of course, for Senator Wallman for prioritizing. About 7:30 at night on a long night or a late night or if you're still in a committee hearing, you may ask yourself something that I have asked myself on occasion: What am I doing here? It can be hard work putting together these laws. And so there are times I am certain we question why we're here. Drunk driving and ignition interlocks was not something that I had envisioned

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when I entered the Legislature. I had different interests. But from the jump, there were issues that came before, personal in nature, that caused me to say this is something I have an obligation to do something about. It seems that at every moment when one says to oneself "What am I doing here?", there is a good response that manifests itself in some way. Last summer, I read in the papers about Tony and Jessica Bedient, who Senator Flood, Speaker Flood referenced earlier. The Bedient family are friends of mine. I was in college and went to church with his brother Chris and knew Tony through the Bedient family. You need to hear about this story. They were married for about five weeks. They were driving in Omaha when a repeat-offending--repeat-offending drunk driver--who was over the limit, smashed into their car and killed Jessica; injured Tony severely, and he's at a point now where he is still recovering. I saw him at church here just a couple weeks ago, and every time I see him I'm reminded why I'm here. It's for bills like this. You might remember, a couple years ago I did my Achilles tendon. Mike Gloor, Senator Gloor smiles. So I tore my Achilles tendon. And I went in, and when I was getting that cast removed there was a gentleman there who actually performed that service, a healthcare worker, and we talked. And he knew I was in the Legislature. He came to visit me about a week...or no, it was about a month and a half, maybe two months ago; it was earlier in this session. And he expressed to me how important it was that LB625 move forward, and now, contained in LB667, and he left this with me: His son Cameron, a teenager, attending Nebraska Wesleyan, killed by a drunk driver. It was at that moment, as I received this piece of paper--pardon for using the prop there--that I recognized this is one of the reasons why I'm here. I hope each of you recognizes that there is a purpose for your being here. And at 8 o'clock or 9 o'clock or early in the morning or whenever it is, that you ask yourself, "Why am I here?", you'll look at bills like LB667. For, one day, we will be gone from this Legislature and we will watch others carry on the tasks that we are carrying on today,... [LB667 LB625]

SENATOR CARLSON: One minute. [LB667]

SENATOR FULTON: ...and we'll be able to say that we did something that caused individuals who wouldn't otherwise be with us, to be with us, through the force of law. So I ask you to take that to heart, take very seriously the issue of drunk driving, and recognize the immense amount of work that has gone into LB667, not just by Speaker Flood, though certainly by him and his able-bodied aide, but by the many families who have been hurt, indeed some killed, by drunk driving, and recognize that our labors here in passing this bill are not in vain. Thank you, Mr. President. [LB667]

SENATOR CARLSON: Thank you, Senator Fulton. Senator Gloor, you're recognized. [LB667]

SENATOR GLOOR: Good morning, Mr. President and members. First of all, I should make it clear that my smiling at Senator Fulton's comments about his torn Achilles has nothing to do with my enjoyment over him having pain inflicted upon him, but rather, my

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understanding that as youthful and spry as Senator Fulton is, God sends us messages at times that reminds us we are all subject to the naturally occurring aging process, and should slow down, and that was the reason for my grin. To the topic at hand, I wonder if...well, before that, my segue would be I had been elected to office for not more than days, not yet in office, when I received a phone call from a constituent talking about these amazing interlocking devices that she had been reading about, and why did Nebraska not utilize these? In my research with my yet to be formerly hired staff, showed that we in fact had a law that put those in place. I wonder if Senator Flood would yield to a question? [LB667]

SENATOR CARLSON: Senator Flood, would you yield? [LB667]

SPEAKER FLOOD: Yes. [LB667]

SENATOR GLOOR: I believe I'm accurate in that reference to existing statutes. I know that you have gone into great detail about what this bill will do, but why were existing statutes found to be inadequate to address this issue? [LB667]

SPEAKER FLOOD: Specifically, like, administrative law revocation? [LB667]

SENATOR GLOOR: Yes. Yes. [LB667]

SPEAKER FLOOD: Well, my original bill proposed the elimination of the administrative law revocation program, and it started for me several years ago. But most recently, last summer, I was at a conference of law enforcement officers, 200-plus law enforcement officers gathered in Kearney, and the question was asked: Who here wants to keep the administrative law revocation program? Not one hand went up. These are sheriffs and police officers from across the state. Who here would like to see it repealed? Every hand went up. And my initial reaction was, why are we doing this program that law enforcement does not see the value in, because it costs a lot of money for overtime; we already have a court system; they can take the license. And ultimately, Senator Gloor, the longer I stayed in it, I did see the value in keeping the administrative law revocation there. But I think the groups were willing to come to the table and make an ignition interlock device part of that process, and that's what necessitated the need to remodel the existing ALR statutes. And I think we've got a product here we can be proud of, with a lot of work and help from others, so that's my reason. [LB667]

SENATOR GLOOR: Senator Flood, has the technology changed to the extent that you talked about the opportunities to expand the travel use? And I agree with that. Getting people to work, getting people to see their probation officer, all those are common-sense components. Is there any way that this interlock device tracks that or can be limited to those sorts of trips, or is that just something that the technology is not yet capable of accomplishing? [LB667]

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SPEAKER FLOOD: No, technology can't do that. The technology does...you know, I think the technology has come a long way since we put ALR in the books in the early '90s. But it's better, the ignition lock is better than the system we have now of driving under suspension. What happens now is you get your license suspended, and if you're a drunk, you still have a car, you still have a set of keys, it's got a license on it. You're not making good decisions; you're driving on a suspended license. And our courts are littered with DUS violations. So what I like about the ignition interlock is, at least, if you are driving, you're blowing into a device that says you're not drinking and the rest of us are safer. [LB667]

SENATOR GLOOR: And one last question if I might. Are you comfortable that...and I'm aware of the fund that can be used to help pay for these devices for the indigent. I think the definition of indigent... [LB667]

SENATOR CARLSON: One minute. [LB667]

SENATOR GLOOR: ...can be pretty broad. Thank you, Mr. President. Are you comfortable that there, in fact, will be funds and access to those funds is something that can be broadly accessed by people who are in need of some financial help to make sure these devices are installed? [LB667]

SPEAKER FLOOD: I am comfortable. The Department of Motor Vehicles has made this a priority and I agree with it. The amount in the fund fluctuates. I don't have those numbers; I'll certainly get them to you. But I believe that Beverly Neth over at the DMV has made this a priority. She recognizes it as a fund that's important, and it's also important to remember that a lot of reinstatement fees go into these types of cash accounts over at the DMV. So I'm hopeful that if someone is truly indigent that they will have the opportunity to get an ignition interlock device. [LB667]

SENATOR GLOOR: Thank you, Senator Flood. And I am in support of both AM162 and LB667. Thank you, Mr. President and Senator Flood. [LB667]

SENATOR CARLSON: Thank you, Senator Gloor and Senator Flood. Senator Wallman, you're recognized. [LB667]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. I'd like to thank Speaker Flood for allowing me to prioritize this bill. And I do live in rural America, rural Nebraska, and farmers also get DUIs. And do they drive? Maybe so, maybe not. But it's time we treat driving as a privilege and not a right, which is the way it should be. We're not entitled to the road. So when we choose to drink and drive, maybe we should lose the privilege to share the road, because we're putting others at risk. And statistics show that the first time a driver is convicted for drunk driving, they have driven drunk many

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times. Just think of about it this way: Just because you got a speeding ticket, was it your first time speeding? Probably not. A study of repeat impaired-driving offenders found that the majority of responders, about 54 percent, were alcohol-dependent. In addition, many of the respondents had at least one lifetime disorder in addition to alcohol abuse or dependence. Among those, the most prevalent was major depressive or dysthymic disorders, 31 percent; followed by posttraumatic stress disorder, 15 percent. So about the repeat offenders, out of the 1.5 million arrested impaired drivers each year, one-third are repeat offenders--one-third. That's according to the National Highway Traffic Safety Administration. So using data for 2007, the agency said that drivers with a blood alcohol concentration of .08 or higher involved in fatal crashes were eight times more likely to have a prior conviction for driving while impaired than drivers who had no alcohol in their blood. So according to the Insurance Institute for Highway Safety--they keep track of these things--by October 2009, 47 states had passed ignition interlock laws, mostly for repeat offenders. But interlock devices that measure a driver's blood alcohol and prevent a car from starting if alcohol is detected I think is a very good bill. And again I'd like to thank Speaker Flood for allowing me to prioritize this bill. Thank you, Mr. President. [LB667]

SENATOR CARLSON: Thank you, Senator Wallman. Those still wishing to speak: Bloomfield, Dubas, Pankonin, Harr, and Schilz. Senator Bloomfield, you're recognized. [LB667]

SENATOR BLOOMFIELD: Thank you, Mr. President and colleagues. There are a few people who like drunk drivers on the road less than professional truck drivers. We have been...I have personally been run off the road several times. It is the driver's priority to go ahead and run over the car if he so chooses. Fortunately or unfortunately, how you choose to take it, that's usually not our response. You'll find the big rig sitting down in the ditch with the wheels up in the air and the load scattered around, and possibly the driver injured or killed. I support this bill and the amendment. I do have one question, having not read clear through the thing as I should have. If Speaker Flood would take a question, I'd like to ask. [LB667]

SENATOR CARLSON: Senator Flood, would you yield? [LB667]

SPEAKER FLOOD: Yes. [LB667]

SENATOR BLOOMFIELD: Mr. Speaker, thanks for bringing this bill. Is there somewhere, hid away in it that I have not run across yet, an extra penalty for someone who has the device installed and then gets in his other vehicle and drives? [LB667]

SPEAKER FLOOD: Yes. It's a Class IV felony. There's two different levels, okay? And I think the Criminal Defense Attorneys brought this to my attention. If you are manipulating your device and...or you're driving a car without the device, intentionally,

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you're committing a Class IV felony. It's found on page 79 of AM162. It's in Section 40, it says "Any person who tampers with or circumvents an ignition interlock device installed under a court order or Department of Motor Vehicles order while the order is in effect or who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order or Department of Motor Vehicles order shall be guilty of a Class IV felony." And that's on page 79, Section 40, line 3. Then the second part of that, Senator Bloomfield, is "Any person who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order...shall be guilty of a Class III misdemeanor." The Class III misdemeanor is, okay, I'm supposed to be driving a car with an ignition interlock device, and instead of going to probation the officer stops me and I'm going to basketball practice at the Y, okay? I'm outside the scope of what I'm allowed to do. I didn't want to make that a felony after the Criminal Defense Attorneys raised that issue. That's not felony conduct. That's poor judgment and it's a Class III misdemeanor. But if you're sitting there tampering with the device or driving a car without it, the whole point of this is you've got to be using one of these things. So that's the difference. And thank you for raising that because that's been a question a lot of people have had. [LB667]

SENATOR BLOOMFIELD: Okay. Thank you, Mr. Speaker. And if Speaker Flood would like any time I have left, he's welcome to it. [LB667]

SENATOR CARLSON: Senator Flood waives. Thank you, Senator Bloomfield and Senator Flood. Senator Dubas, you're recognized. [LB667]

SENATOR DUBAS: Thank you very much, Mr. President. Good morning, colleagues. I stand in very strong support of this bill and the underlying amendment. And as the Speaker has outlined, while it might appear this is something we could deal with in a simple, straightforward manner, it's not simple and straightforward. But the use of technology that is outlined in this bill I think is pretty simple and straightforward, and why wouldn't we take advantage of the technology? And it continues to improve as we speak, and I think it affords us many opportunities to deal with this very, very serious issue. You know, I don't think there's anything more maddening or sad or depressing than to hear such tragic stories that involve accidents where the offender is either driving with a suspended license, driving with multiple DUIs, driving under the influence. And, you know, I know the question that crosses my mind and crosses everybody's mind: Why are these people on the road? Why should this be happening? And so how do we remove these drivers from the roads or at least if they're going--and our waterways too. I think that's an important aspect to bring into the conversation too. How do we get these people off the road or at least, if they're going to be on the road, they're on the road or our waterways in a safer frame of mind physically? And I think these ignition interlock systems are one of the most effective tools that we have available to us. We need to raise the level of awareness about what these devices do, how they're used, and how effective they can be. And again, as the Speaker pointed out, for those

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who live in rural Nebraska, public transportation is not something that's very available, and so we don't want to shut these people off from the places that they really need to be at--their jobs, their counseling, their meetings. Those are an important part of their recovery too. So again I think these devices provide that ability for them to get to where they need to be in a safe manner. We owe our citizens a level of confidence. We need to help them feel that when they're out on the streets, that people who are behind the wheel are not incapacitated. It's not something we can completely prevent, but I think through bills and laws such as this we can raise that level of confidence just a little bit. I think there's also a degree of accountability in this bill. And through the use of interlock devices, it does make the offender accountable for what they've done while also allowing them to continue to go where they need to go to get the help that they need to get. The disease of alcoholism removes that ability to make responsible decisions. When they're under the influence of this disease, their thought process is not that of one that the rest of us possess. And so punishing them by simply removing their driving privileges is not effective. It just...it doesn't affect them like it would the rest of us. We can't afford to put any obstacles in place for these people who are needing to get to AA meetings or NA meetings or counseling or what have you, because that's the key to their recovery. And so by punishing them by removing these driving privileges, we really do set them up for failure. So again I think these interlock devices can save lives in more ways than one. It can save the tragic loss of life from people who are driving under the influence and causing accidents and impacting innocent lives, and hopefully, through the recovery of the offender by getting them the help that they need, keeping them on track with their recovery and their program, we can save their life, improve their life and the life of their families too. So I do appreciate Senator Flood and all of the many people who have worked so diligently on this bill. [LB667]

SENATOR CARLSON: One minute. [LB667]

SENATOR DUBAS: I think it's a very, very important piece of legislation and will give it my full support. Thank you. [LB667]

SENATOR CARLSON: Thank you, Senator Dubas. Senator Pankonin, you're recognized. [LB667]

SENATOR PANKONIN: Thank you, Mr. President. Obviously there's been a lot of great comments about the reason for this legislation and all the folks that have worked on it, and I want to echo that as well very quickly. Thanks for everyone's efforts. Senator Bloomfield actually asked the question I was going to ask on this time about people that go around the interlock by maybe using someone else's vehicle. And I know there's a discussion going on but I did have a question for Senator Flood if he could take it. [LB667]

SENATOR CARLSON: Senator Flood, would you yield? [LB667]

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SPEAKER FLOOD: Yes. [LB667]

SENATOR PANKONIN: Senator Flood, sorry to take you away from your conference. A related question to Senator Bloomfield's about a person who has an interlock but then goes around it by using someone else's vehicle. You indicated that would be a Class IV felony. What is a Class IV felony? [LB667]

SPEAKER FLOOD: A Class IV felony is the lowest level of felony you can get. I think it's punishable by up to five years in prison and a fine of \$5,000...\$10,000, or both. [LB667]

SENATOR PANKONIN: Okay. Thank you. My follow-up question would be, what if some other individual knowingly lets someone use their vehicle that...to get around this? In other words, a person has the interlock but because they're impaired, or for whatever reason, they ask their mom, they ask the boyfriend, girlfriend, their friend, to use their car to get around this device, does that person have some skin in the game, have consequences for allowing them to use their vehicle knowingly? [LB667]

SPEAKER FLOOD: Conspiracy. No, (laugh) I don't think there's anything in the law right now that would tie that individual to the crime. I think that would be hard to prove the intent, because I'm sure Mom would say, well, I didn't know Junior was going use my car. But, no, there's no skin in the game for the owner of the other vehicle. [LB667]

SENATOR PANKONIN: Thank you, and I appreciate your explanation of that. We know there's always going to be a way to beat a...or people will try to come up with a way to get around the legislation, and I think the intent here, the idea is great, and in many cases it probably will work. I am concerned about the times when it won't and want to make sure the consequences are appropriate and I wanted to have this on the record. Thank you, Mr. President. [LB667]

SENATOR CARLSON: Thank you, Senator Pankonin and Senator Flood. Senator Burke Harr, you're recognized. [LB667]

SENATOR HARR: Thank you, Mr. President. I rise in support of this amendment and of the underlying bill. It seems every year there are two things you can count on in the Legislature--that is a DUI bill and an abortion bill. So when I first saw this DUI bill, I was a little hesitant, as I was with Senator Pirsch's. I ended up voting for both of them. And the reason is and what I like about both of them is it's not just a ratchet up of the system. It seems as though a lot of DUI bills that we write, that as a former prosecutor I looked at, they were written to the worst-case scenario and not to what happens everyday, and it really didn't take a look at how do we proactively look to stop drinking and driving. I feel both of these legislations do that...pieces of legislation do that. There is thought behind them. The ALR, it's true, people are going to find ways around the

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system. People found ways around the system before. But this is well-thought-out and this is a step forward from where we were before. Now, as I say, legislation is often crafted around the worst-case scenario. Worst-case scenarios also give us the ability to look at where there are deficiencies in the law, and I definitely think there were deficiencies within the waterways and I feel that this legislation properly addresses that issue. There's going to be a lot of talk out on the street, probably, about the changes in ALR, but I do think it's good. I look forward to more debate on ALR, and thank you very much, Mr. President. [LB667]

SENATOR CARLSON: Thank you, Senator Harr. Those still wishing to speak include Schilz and Schumacher. Senator Schilz, you're recognized. [LB667]

SENATOR SCHILZ: Thank you, Mr. President and members of the body. I stand here in support of the bill overall, but as I look and as Senator Schumacher has pointed out to me, there's a couple questions that I have and I won't stand up and ask anybody because we've been discussing them. But I think it's very important that we understand somewhere in the bill, and I'm still searching for it but I saw it on Senator Schumacher's, there's a place in there that says if a person is drinking or has a can of beer and a peace officer reasonably suspects that they have alcohol in their system, that they can be ordered to pull over and submit to a preliminary test which would be a Breathalyzer. And I just think we need to be somewhat careful about this, that we don't go too...I was just going to say (laugh) go too far overboard, but that kind of...anyway, that we be careful and understand that, you know, when we talk about reasons to pull somebody over for a violation such as this, that probable cause really is the fact that either they are driving impaired or there is a real reason other than they may just have a can of beer or something in their hand or within the boat. And I want us to be careful with that, and I know I was talking to Speaker Flood about it and we're looking into it. So I just wanted to bring that up and let everybody know and understand that, you know, we need to be careful how far afield we go on this. Thank you very much. [LB667]

SENATOR CARLSON: Thank you, Senator Schilz. Senator Schumacher, you're recognized. [LB667]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. Just to follow up on those particular comments. We've had a lot of discussion in this body about how we need to develop our tourism and entertainment facilities in this state; how that is our third largest industry; how it is the kind of thing that would bring people who can appreciate our wide-open spaces, our lake out at McConaughy, our rivers, things like that, and how that's a proper economic function. In going through the bill with Senator Schilz, we did notice this particular thing which there's nothing that dissuades people from coming to an environment if the environment is a hassle for them or if they hear of a friend being hassled for really no good reason. And this particular provision, on page 18, line 17, says that a peace officer can pull you over off of your boat, even if it

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just has a little Mickey Mouse engine on it, no matter what size of engine if it's a motorboat, can pull you over, take you up to the shore and make you stand there with people watching you, blow in a tube, touch your nose, wiggle your ears, whatever else it takes. And that is the kind of thing that is...we can spend all the money we want on tourism bureaus, and that will undo it in a heartbeat. And all the officer has to do is believe that you have any alcohol in your body. That's having a can of beer and seeing you take a sip or seeing an open or empty can on the floor of the boat or see you go onto the boat with a cooler and let you out there for 10-15 minutes while you're fishing or doing whatever. The standard should be that the officer has probable cause that you are impaired, that you are violating the legal limit for operation of a motorboat; not that you have any alcohol. If we do that, we just as well forget about spending money for tourism boards and things when we're trying to get people to come here and have fun. At some point public safety and liberty become at odds, and this particular measure probably puts them too much at odds and it should be resolved in favor of liberty. Thank you. [LB667]

SENATOR CARLSON: Thank you, Senator Schumacher. Senator Price, you're recognized. [LB667]

SENATOR PRICE: Thank you, Mr. President and members of the body. I rise in strong support of the amendment and the underlying bill. Some of you may recall I had the unfortunate experience of picking up a phone call and with someone who was telling me my wife had been hit in an accident. And she had been T-boned by a professional drinker who had five prior DWIs; only convicted of one with the great system we have. Only convicted of one. And it was on the professional drinking day of, you know, St. Patrick's Day. I'm glad she's okay. The car wasn't, but anyway. This hopefully will help those who can't even help themselves. That's really what we're talking about. I mean alcoholism and some alcohol...much alcohol abuse is something that a person obviously doesn't have control over it. And hopefully this bill and efforts like this will help them to help themselves. So I stand in strong support of this. But I would like to ask a question of Senator Ashford, if he would yield to a question? [LB667]

SENATOR CARLSON: Senator Ashford, would you yield? [LB667]

SENATOR ASHFORD: Yes. [LB667]

SENATOR PRICE: Thank you, Senator Ashford. The question I have, as we were talking about just now in the boating portion of this, it says if you have a...if the boat is under your control, I believe? Is that really what we're saying, that you're actually in motion with the watercraft and it's underway or you're at the wheel of the boat and therefore you're in control and if you have an alcohol issue? Or is it...is it to say whoever owns the boat, and if you're the owner of the boat and you're just sitting in the middle of the lake, where is the line of distinction drawn? [LB667]

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SENATOR ASHFORD: The law is, in my experience, is if you are in control of the boat or the vehicle, it's the same thing. You are susceptible to being charged with this offense. So you can, in fact, be sitting in the middle of the lake. If you're behind the wheel of the boat or in control, near the boat controls or have your hand on the boat controls. If you're the only one in the boat and you got out in the middle of the lake, the assumption is generally you must have been the one that got you there. And so there are any number of cases that are tried involving motor vehicles where the car, the motor vehicle, is not in motion and there's a person behind the wheel or juxtaposed to the wheel or something. So, yes, they don't have to actually be driving. [LB667]

SENATOR PRICE: Okay, great. Because, you know, many years ago I decided to become a boat owner and join that group of folks, you know. Instead of just fishing from the banks, I could go out at other places on our lakes. And it didn't take me long to realize I valued my life and my family's well-being more than I did catching a fish, because all too often what I found happens on lakes, and there's this great celebration of the consumption of alcohol, and that what happens is folks will lash their boats together. I couldn't believe this, even on the Missouri, they would drive up the Missouri on their boat and then lash their boats together or get all together, and drift down, and have a good old time. And then they would turn around and drive back up and drift back down again. And with all the logs and the other things floating in that river, I was always a little concerned about that myself and losing a lower end. But the other thing is then I found out the same thing happens out on the lakes. So my question is, if you have a group of folks tied up together and no one is obviously in control of the boat, because they're out there in the middle and they're anchored and they're lashed together, if they're all inebriated but no one is driving the boat, who gets the ticket? That's going to be my question: Who is going to be the one? Is it going to... [LB667]

SENATOR CARLSON: One minute. [LB667]

SENATOR PRICE: Thank you, Mr. President. The question still remains to me, if they don't pony up to who is driving the boat, where are we at? So that would be a question that I have that it would be interesting to hear the answer to. But again I stand in strong support of what we're doing here and I wouldn't be opposed if we had a bill one day that would do what they do down in Texas now where they actually have a judge on the side of the road. So if person refuses to blow and they just go ahead and have a quick hearing right then and there, and they actually order a blood test and that way you don't have to worry about a refusal to blow. You failed the sobriety test; the judge is right there, has probable cause or whatever the terms are. And they test you right there on the spot. Now that would be one way to take care of a lot of things and getting things done quicker. Thank you, Mr. President. [LB667]

SENATOR CARLSON: Thank you, Senator Price. Those still wishing to speak:

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Senators Krist and Nelson. Senator Krist, you're recognized. [LB667]

SENATOR KRIST: Thank you, Mr. President. I think that last session we had discussion about being serious about the drunk driving situation in the state, and I may have mentioned--I know I did--and I would remind this body again, there are many countries in the world that their blood alcohol content is so low that you are drunk, considered drunk, considered impaired, with less than a beer, less than a 12-ounce malt beverage. Those people are serious about drunk drivers and, in the country of Iceland, for example, the second offense is mandatory jail, and they're not really concerned about whether or not you can drive. They're not really concerned about whether you can get someplace. Now the Speaker has been very eloquent in stating and pointing out, that is there and this is here. In Nebraska, where we don't have mass transportation, there needs to be some affordability, some accountability for the individual to be able to get to those places they need to get to for help. Senator Dubas brought that up. They need to get to treatments and/or AA or any other place that they need to go to maintain a normal life and to get back to a normal life. I completely support and want to reinforce that everyone should support AM162 and LB667. It will be something that I personally, although I had no input in putting this bill forward, my vote will be a personal gratification in terms of this session. I will be proud to turn something out that I think makes a difference. But I'd like to speak for just one second, one 30-second or maybe a minute, to waterways and folks operating motorboats, sailboats. I have seen and have been witness to some horrendous accidents. I have been associated with folks...in fact, one lake south of Omaha, where a drunk boat driver ended the life of a middle-aged couple about to set upon their retirement. It was devastating to the family and it is no different whether that individual is operating a 2.5-horse small engine in a small boat or a 5-horse engine in a small boat or a large boat. If we would acquiesce and we would allow the proper enforcement of drunkenness in a boat to influence us in any way when it comes to tourism or when it comes to providing for public safety on our lakes and our rivers, then shame on us. The law is the law and it provides for public safety. And the individuals who choose not to be responsible, whether it's in a sailboat, a motorboat, a wave runner, or a car or a truck, they should indeed be held accountable to those same principles. So again, I'm in complete support of AM162 and LB667. Good morning and thank you, Mr. President. [LB667]

SENATOR CARLSON: Thank you, Senator Krist. Senator Nelson, you're recognized. [LB667]

SENATOR NELSON: Thank you, Mr. President. Good morning, members of the body. I rise in support of AM162 and the LB667. In light of all that's been said, I'm really happy that we're working in the ignition interlock device here as part of the method of solving these terrible things that we've seen the drunk drivers. I do have a question of Senator Ashford, if he will yield to some questions. [LB667]

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SENATOR CARLSON: Senator Ashford, would you yield? [LB667]

SENATOR ASHFORD: Yep. Okay. [LB667]

SENATOR CARLSON: Yes. Proceed, Senator Nelson. [LB667]

SENATOR NELSON: Does the senator yield? [LB667]

SENATOR CARLSON: Yes, he does. [LB667]

SENATOR ASHFORD: Yes, I do yield. [LB667]

SENATOR NELSON: All right. [LB667]

SENATOR ASHFORD: I yield more forcefully, yes. [LB667]

SENATOR NELSON: All right. I don't think you'd need to have notes for this; you've been involved in this...I'm asking you these questions because, as the head of the Judiciary Committee, you've gone through all these details and everything. This is a long, long bill, and even trying to read through the committee statement here is difficult. I'm just wondering if you, for our information, can tell us, just on broad terms, how the ALR has been modified. Have procedures been decreased, or are they mostly still the same and then the interlock provisions added in? For instance, I see you've increased the 12-year look-back period for ALR purposes to 15 years and eliminated a stay of revocation of a license, just things like that. Just broadly, is the ALR pretty much the way it was, or have there been some dramatic changes along with interjecting the ignition interlock provisions? [LB667]

SENATOR ASHFORD: First of all, the ALR procedure--the hearing process that is undertaken has been changed slightly to make it more efficient to allow for affidavits to be submitted in that process. The ALR appeal, or the right to go to the revocation hearing, is still there, and--but the incentive is not to go through that process. This bill incentivizes the receiving the--or getting the interlock device, and you have 15 days to do that. Once you make that decision, you give up or you relinquish your opportunity to go through an ALR hearing, and--but what you are getting is the ability to drive with the interlock. And if there is a first offense...and also the work permit provisions are eliminated; I believe I'm correct. So what we've done--and Senator Flood outlined this--is we've expanded the--for a first offense and even for second offense--we've expanded the types of places that you can drive to, with this interlock device. So that's expanded. There's a significant incentive in this bill to getting the interlock. So it reduces from 30 days to 15 days--well, 30 days is still there for the ALR, so that hasn't changed. But if you elect after--within 15 days...you get your temporary license for 15 days; if you elect within 15 days to get the interlock device--and then there's a fund to help pay for

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it--you don't go through the ALR. [LB667]

SENATOR CARLSON: One minute. [LB667]

SENATOR ASHFORD: I can go into more... [LB667]

SENATOR NELSON: Well, that's fine. What about the revocation periods? Have those changed any? [LB667]

SENATOR ASHFORD: I'm going to ask LaMont that. I...the... [LB667]

SENATOR NELSON: I mean... [LB667]

SENATOR ASHFORD: No. The answer is no. I don't believe. [LB667]

SENATOR NELSON: All right. So you've got the interlock device, but you're permitted to drive during the entire revocation... [LB667]

SENATOR ASHFORD: Correct. [LB667]

SENATOR NELSON: ...but those have not been shortened or lengthened in any way. [LB667]

SENATOR ASHFORD: No. [LB667]

SENATOR NELSON: All right, so those things remain the...all right, thank you for your explanation, Senator Ashford. I didn't mean to put you on the spot there... [LB667]

SENATOR ASHFORD: No. [LB667]

SENATOR NELSON: ...but I think you did a good job. Thank you. [LB667]

SENATOR CARLSON: Thank you, Senator Nelson and Senator Ashford. Senator Price, you're recognized. [LB667]

SENATOR PRICE: Thank you, Mr. President. I just want to rise to clarify a question I'd had earlier about--does a watercraft need to be under propulsion, or can you be strapped and just floating and drifting? And, absolutely, you must be behind--what they believe the--with the motor on and running and behind the wheel or the hand on the tiller. So if people are lashed together floating down the river or floating on the lake, then they would not be able to be charged. They would have to turn the boat on and move away; then a charge could be brought. So there we are, and I just wanted to make sure I clarified that. Thank you very much, Mr. President. [LB667]

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SENATOR CARLSON: Thank you, Senator Price. There are no other senators wishing to speak. Senator Ashford, you're recognized to close on AM162. [LB667]

SENATOR ASHFORD: Thank you, Mr. President. I--again, I would just reiterate my appreciation to all of those who worked on this amendment, which becomes the bill--and the Judiciary Committee. LaMont Rainey, as counsel, has been working on this issue, not only on this bill but on numerous other bills. And I thought Senator Burke Harr made a great point, and that--we struggle with this balance between enforcement and prevention every day, not only when we deal with DUI laws but certainly drug laws and those sorts of things. It is...the best result, the best outcome, of all of these things is to prevent these kinds of behaviors from occurring, not to have to come in after the fact and penalize or punish somebody. And our committee has worked tirelessly--the members and counsel and staff--to try to think about the best and most effective ways to prevent behaviors from occurring. And it is necessary at times, as we'll see in Senator Pirsch's bill, to address behaviors that get out of hand and become--that need harsher penalties. We understand that. But it is--trust me, it is much more difficult to find ways of preventing a behavior from occurring than it is to--than to write a bill that increases a punishment or penalty. And the debates we've had on this bill and many others have been great, and they're robust. And from all sides, it--we have a great committee that works very hard. This is a big bill. This is an important, important bill. It is the most significant piece of DUI legislation, combined with Senator Pirsch's efforts. And Senator Fulton, quite frankly, a couple years ago introduced us to the interlock as a policy alternative and put interlock into the debate in a real way. Every one of us have contributed to this debate in meaningful ways, not just as it relates to DUI but as it relates to other kinds of offenses. And, you know, we will continue in the Judiciary Committee to wrestle with these things. But I can tell you that Senator Flood's--Speaker Flood's efforts here are significant. And I strongly urge the adoption of AM162 and advancement of the bill. Thank you, Mr. President. [LB667]

SENATOR CARLSON: Thank you, Senator Ashford. Members, you've heard the closing on AM162. The question is, shall the amendment be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB667]

ASSISTANT CLERK: 40 ayes, 0 nays on the adoption of the committee amendments, Mr. President. [LB667]

SENATOR CARLSON: The amendments are adopted. We return to discussion of the underlying bill, LB667. Are there senators wishing to speak? Seeing none, Senator Flood, you're recognized to close. [LB667]

SPEAKER FLOOD: Thank you, Mr. President. And as with every bill, it's a learning experience. After General File, I'm going to spend some time on the boating provisions.

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I've heard from a number of you as it relates to boating under the influence of alcohol. And I'm going to visit with members between now and Select File to see what, if anything, needs to be changed there. One important note that you should be aware of--I think the question was asked earlier, maybe by Senator Nelson: Does anything change with the revocations, the administrative revocations? Nothing changes on second and subsequent; it's always going to be a year. On first, it goes from 90 to 180 days. But the trade-off there, I think, is that you can get the ignition interlock right away and begin driving, so there's no hard suspension. And finally, there are some people I really need to mention that have done an excellent job working with us: John Freudenburg from the Attorney General's Office has done an excellent job; Director of Department of Motor Vehicles Beverly Neth; legal counsel Noelle Sherdon; and Kathy Van Brocklin from the Department of Motor Vehicles. I'd be remiss if I didn't mention their names and thank them for their efforts. With that, I think we've had a good discussion on this bill. I would urge you to advance LB667 to E&R Initial. Thank you. [LB667]

SENATOR CARLSON: Thank you, Senator Flood. Members, the question is the advancement of LB667 to E&R Initial. All those in favor vote yea; opposed vote nay. Has everyone voted that wishes to vote? Record, Mr. Clerk. [LB667]

ASSISTANT CLERK: 41 ayes, 0 nays on the motion to advance the bill. [LB667]

SENATOR CARLSON: The bill does advance. [LB667]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LB176 and LB404. Items for the record, Mr. Clerk? [LB176 LB404]

ASSISTANT CLERK: Thank you, Mr. President. A series of things: Senator Cornett has an amendment to LB590 and to LB642, Senator Utter to LB357. New resolutions: LR213 by Senator Nordquist, LR214 by Senator Mello, LR215 by the Retirement Committee, LR216 by Senator Smith, and LR217 by Senator Cornett. That's all that I have. (Legislative Journal pages 1499-1504.) [LB590 LB642 LB357 LR213 LR214 LR215 LR216 LR217]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Thank you, Mr. Clerk. Next item.

ASSISTANT CLERK: Next bill is LB675, which was introduced by Senator Pirsch. (Read title.) The bill was read for the first time on January 19 of this year, referred to the Judiciary Committee; that committee reports the bill to General File with committee

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amendments. (AM1380, Legislative Journal page 1480.) [LB675]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Pirsch, you're recognized to open on LB675. [LB675]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. You know, before coming to this body, I was a criminal prosecutor in Douglas County for almost a decade, so I've seen firsthand the pain and grief that drunk driving has brought about. It has torn apart the lives of families in my district and throughout the state. I would like to, as we start here--and this dovetails very nicely with the prior bill that Senator Flood was offering--I'd like to thank the Judiciary Committee for their great amount of work on this particular bill--actually both bills. The Judiciary Committee I know has the highest flow of bills coming to it at the beginning of the year. And often the nature of the bills are very dense and complex, very lengthy bills, and so--dealing with legal issues--and so I do appreciate the hours and hours of time that all the members of that committee, Senators--Chairman Ashford--Coash, Council, Harr, Larson, Lathrop, Lautenbaugh, and McGill, have spent looking at these two bills. Okay, my bill is designed to target the most dangerous of drunk drivers: the habitual drunk driver, the worst of the worst, who have really no interest in changing their behavior, their dangerous ways. And so, you know, a judge, when I practiced back in Douglas County, always liked to say: Getting behind the wheel of a vehicle intoxicated is like getting behind the wheel of a 2,000-pound bullet. And it was true. With a certain group of offenders, it's really not a question of whether they're going to reoffend but simply when. Now, the green copy of my bill had six different facets. It would have created a mandatory minimum five years' imprisonment for DUI offenders who have four prior DUI convictions. It would have doubled all DUI fines, created a new criminal offense for anyone previously convicted of felony drunk driving with a 0.02 blood-alcohol concentration or above--kind of a zero-tolerance approach. It would have created a new criminal offense for driving with internal possession of drugs; extended the look-back period for determining whether DUIs exist, from its current level; and made penalties greater for leaving the scene of a collision where a death or a serious bodily injury was involved. At committee there were very thoughtful--there was thoughtful testimony presented, critiques of the original green copy language. And there will be a Judiciary Committee amendment coming, with certain amending language. I'd ask for your support. Just some statistics that help give you a greater understanding of the problem as it exists in this state. A recent survey ranked Nebraska as having the third-highest levels of drunk driving per capita in the nation. About 14,000 DUI arrests occur statewide each year. About--there are, worryingly, about 116 serial drunk drivers in the state, who have anywhere between 10 and 18 prior drunk driving convictions. About a third of all traffic fatalities in Nebraska are caused by alcohol-impaired drivers. And I think an important thing to mention is, in an average year, approximately 83 Nebraskans die due to alcohol-related crashes--totally needless. I posit to you if a terrorist had acted in the state and killed 83 Nebraskans in one year, it would not go under the radar as much as this factor, which

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was 83 Nebraskans, on average, are killed due to alcohol-related crashes. And so with those statistics, I would urge your support of the underlying bill. Thank you. [LB675]

SENATOR CARLSON: Thank you, Senator Pirsch. As the Clerk indicated, there are committee amendments from the Judiciary Committee, and Senator Ashford, as Chair of the committee, you are recognized to open on the committee amendments. [LB675]

SENATOR ASHFORD: Thank you, Mr. President. Let me first say that a gentleman has been coming before our committee for five years; his name is Bob Schmill. And I actually went to grade school with Bob Schmill, and so I've known him 30 or 40 years. And--but Bob lost his son, and he--to someone who left the scene of an accident. And the offense for leaving the scene of an accident was less, for leaving the scene, than had the person actually stayed at the scene. And Senator Pirsch's bill, not in any of the committee amendments but in Section 6, does enhance the penalty for leaving the scene of a personal injury where it involves death or a serious bodily injury. So I thank Senator Pirsch for addressing Bob Schmill's tragedy. Let me go through the committee amendments, if I...and the committee amendments do not address each section but most of the sections. The committee did advance the bill with the committee amendments 8-0. AM1380 would make the following changes. It increases the fine amounts under Section 1, which--DUI fines, from--the range was \$400 to \$600; it increases those fines from \$500 to \$1,000, contingent on the underlying offense. And this change responds to feedback from prosecuting city attorneys, who want to retain jurisdiction of some DUI cases they have now, so there was an adjustment of the fines somewhat downwards to address those issue. In Section 9...strike that. Secondly, it changes the look-back period for sentence enhancement purposes in Sections 2, 3, and 8 from 20 years to 15 years. And we've discussed the look-back provisions in Speaker Flood's bill. And this provision reflects that change to 15 years that was made in Speaker Flood's bill. It strikes Section 4 that would have provided a criminal offense for submitting a sample of a bodily fluid that contained a Schedule I or Schedule II drug. The committee determined that this section would be difficult to implement, as certain drugs can remain in a person's body for up to 30 days, if not longer, making it difficult to determine if the individual was under the influence. And this is a debate we have in the committee quite a bit, about dealing with driving under the influence of alcohol and driving under the influence of a scheduled drug or a drug. It lowers the--the committee amendments...illegal drug...the committee amendments lowers the penalty provided in Section 7 for a person with a prior DUI who drives with blood-alcohol content above 0.02, from a Class I misdemeanor to a Class IIIA misdemeanor. It changes the five-year mandatory minimum previously required for those convicted of fifth-offense or higher DUI and replaces it with a minimum sentence of two years. Under Section 9, it changes the amount of a fine that is required as a condition of probation from the current \$1,000 to \$2,000; so that changes in Section 9. Under Section 12, it requires those individuals with four or more DUI convictions to serve a minimum sentence of at least two years and complete a diagnostic evaluation and the programming identified before being

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eligible for parole. Let me just double-check; I believe that LaMont is telling me that I have covered the amendments of AM1380. So with that, Mr. President, I would urge the adoption of AM1380 and the advancement of LB675. Thank you. [LB675]

SENATOR CARLSON: Thank you, Senator Ashford. Members, you've heard the opening on LB675 and the committee amendments. The floor is now open for debate. Senator Howard, you're recognized. [LB675]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I stand in support of Senator Pirsch's bill, and I want to thank him for bringing this to us. The stakes are high, and the penalties should be high as well. This is not a simple matter of someone's having a night out; this is a matter of someone indulging in excess and repeatedly and causing harm to people whose no bigger mistake than was to be on the same highway or in the same area that they are. And I think a lot of families will appreciate Senator Pirsch's work. And I thank him for doing this. [LB675]

SENATOR CARLSON: Thank you, Senator Howard. Are there other senators wishing to speak? Seeing none, Senator Ashford, you're recognized to close. [LB675]

SENATOR ASHFORD: Thank you, Mr. President. And essentially what we are doing in these committee amendments is we are, to some degree, rolling back some of the fines and penalties in the initial green copy. But we're doing so at the request of prosecutors who wish to be able to continue to prosecute the cases they are...first offense or second offense DUI, for example, in the county court. We are retaining jurisdiction, essentially, in that court rather than bumping it up to a higher court. And that theme is--weaves throughout the committee amendments. Certainly these are not easy fines--or penalties; they are harsh. But I think, combined with the efforts of Speaker Flood, that we have a package here of bills that will--and initiatives--that will focus on prevention and increasing penalties without significantly changing how these cases are prosecuted but certainly indicating our concern that these subsequent offenses are serious; they're dangerous. People need help; they need to be off the streets. And that message is clearly being sent by Senator Pirsch's bill with the committee amendments. Thank you. [LB675]

SENATOR CARLSON: Thank you, Senator Ashford. The question is, shall the committee amendments to LB675 be adopted? All those in favor vote yea; all opposed vote nay. Has everyone voted who wishes to vote? Record, Mr. Clerk. [LB675]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB675]

SENATOR CARLSON: The amendments are adopted. We return to debate on LB675. Senator Schumacher, you're recognized. [LB675]

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SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. As we continue to jack up the penalties for these kind of things, some of the fringes of defending against these come into play, and certainly we will be hearing more about them. So I take observation of page 11, line 8, where it sets the standard for the guilty conduct. And it sets the standard at a concentration of 0.02 grams or more, by weight, of alcohol per 210 liters of breath. Now, that's talking chemistry talk. But basically it's saying a fixed weight of alcohol, so much alcohol, per so much size; and a liter is about a quarter of a gallon, just a little bit more. Now, we've all seen when it gets cold outside, if you have a balloon, the balloon gets smaller, because the temperature is lower outside. If you're heating it up, it gets bigger. Likewise, if you put a balloon in a high-pressure environment, it gets smaller; and if you put it in a low-pressure environment, it gets bigger. If you put the same amount of stuff inside that balloon at one temperature, you're going to get a different concentration than you are at another temperature. Likewise, the same amount of stuff at one pressure on the outside, you're going to get a different concentration than the--at another pressure. So would Senator Pirsch yield to a question? [LB675]

SENATOR CARLSON: Senator Pirsch, would you yield? [LB675]

SENATOR PIRSCH: I would. [LB675]

SENATOR SCHUMACHER: In your prosecutorial experience, do you know anywhere where it is fixed by statute at what temperature and pressure these tests are to be taken at? [LB675]

SENATOR PIRSCH: I--I believe, when you say, "these tests," are you referring to devices such as the interlock device or the DataMaster? [LB675]

SENATOR SCHUMACHER: No. What I'm referring to is--we say, so much stuff per volume... [LB675]

SENATOR PIRSCH: Yes. [LB675]

SENATOR SCHUMACHER: ...in this law. Okay? And the volume varies by temperature and pressure. My question is--and perhaps we should build a little legislative history on it--at what temperature and pressure are these tests determining the concentration to be conducted? [LB675]

SENATOR PIRSCH: Well, I do appreciate the question. And, if I'm allowed a little leeway here, it will be the same type of equipment utilized in this as currently with all drunk driving parameters. And so my understanding is, there are certain requirements to be met with regards to use of that equipment. And I can't answer the...there are

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individuals whose job is solely to maintain that equipment and make sure that it is utilized in certain conditions, otherwise the instrument itself will indicate: I can't give you a good reading. And so built into the equipment itself is an ability for the equipment to analyze itself and tell you: Because of the outside environments, I can't give you an accurate reading or not. But as to the exact science of that, I can't tell you. But there are...these types of measurements are done by all the standard types of equipment that are utilized--has been my experience--and is the same exact... [LB675]

SENATOR CARLSON: One minute. [LB675]

SENATOR PIRSCH: ...same exact equipment that is used on regular drunk drivers. [LB675]

SENATOR SCHUMACHER: Thank you, Senator Pirsch. I would suggest to the body that at some point, since we've jacked these penalties up, that these scientific arguments have merit in being made by a defense attorney, that we define at what temperature and pressure this breath is to be analyzed at. Thank you, Mr. President. [LB675]

SENATOR CARLSON: Thank you, Senator Schumacher and Senator Pirsch. Senator Pirsch, you're recognized. Senator Pirsch waives. Are there other senators wishing to speak? Seeing none, Senator Pirsch, you're recognized to close on LB675. [LB675]

SENATOR PIRSCH: Thank you, Mr. President. I'll be brief. I do appreciate the question that Senator Schumacher brings forward. It...and I just want to reassure him that there--in terms of how this--there is a 0.02 level that is set, but it will be utilizing the same exact equipment that has been utilized for decades and decades, that we rely on for our regular drunk driving determinations. And so there's no new technologies that will be employed here in terms of these types of questions; I know they have been raised by defense attorneys for decades and have been addressed by courts. And the state--the prosecutors do have that burden of a showing. And if a Frye or Daubert, you know, is the--our standard has changed over the years...but a motion is raised, then it is the prosecutor's burden in demonstrating the technology. So I do appreciate the question. Now, in closing, I will just say that it is clear: drunk driving kills. Too many families--it has been my experience--have suffered the loss of a loved one; too many victims' lives have been shattered. And so I hope this bill will help bring an end to some of the carnage, to some of the death. And I do appreciate your attention. I'd urge you to vote yes on the underlying bill. Thank you. [LB675]

SENATOR CARLSON: Thank you, Senator Pirsch. The question is the advancement of LB675 to E&R Initial. All those in favor vote yea; all opposed vote nay. Has everyone voted who wishes to vote? Record, Mr. Clerk. [LB675]

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CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB675. [LB675]

SENATOR CARLSON: LB675 is advanced. Mr. Clerk. [LB675]

CLERK: Mr. President, the next bill is LB521; it's a bill by Senator Fulton. (Read title.) Introduced on January 18 of this year, referred to the Judiciary Committee for purposes of a public hearing, advanced to General File. I do have Judiciary Committee amendments, Mr. President. (AM1100, Legislative Journal page 1433.) [LB521]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Fulton, you're recognized to open on your bill. [LB521]

SENATOR FULTON: Well, thank you, Mr. President. Members of the body, good morning. Okay, General File was moving quickly this morning, so let me catch my breath and I will open. Thank you, Mr. President. First with LB521, I want to thank the Judiciary Committee for their work and for putting this forward and developing AM1100. At the same time, I should acknowledge the assistance of the Nebraska Medical Association and the Attorney General's Office. You should have received an informal Attorney General's Opinion, this morning I passed that out, regarding AM1100 and LB521. LB521, as amended by AM1100, has a simple aim: all abortions in Nebraska should be treated in the same manner under our laws and, therefore, all women seeking an abortion should be afforded the opportunity to have a licensed physician present. Nebraska statute presently criminalizes the performance of an abortion by any person other than a licensed physician. Nebraska statute defines an abortion broadly to cover abortions performed surgically and so-called chemical or medical abortions which occur when RU-486, the abortion pill, is administered. LB521 and the accompanying committee amendment are necessary because the abortion industry is changing and our laws need to reflect this changing reality to continue to ensure public safety within our statute. In 2009, Planned Parenthood of Nebraska and Council Bluffs merged with Planned Parenthood of Greater Iowa to form a new affiliate--Planned Parenthood of the Heartland. One year prior to this merger, Planned Parenthood of Iowa began providing webcam abortions. This new means of expanding chemical abortions in the state of Iowa has resulted in an increase in the number of chemical abortions performed since this practice began, even while the number of surgical abortions indeed has decreased. In Iowa, there are at least 16 satellite Planned Parenthood sites across that state that do not offer surgical abortions. Abortions by RU-486 are being performed at these storefronts, which are mostly located in rural communities, and are being performed in even greater numbers, ever greater numbers. RU-486 is not being administered by a licensed physician at these rural locations but is being administered by use of a webcam linked through Internet connection to an abortionist in Des Moines. When a young woman seeks a chemical abortion, she will arrive at one of these satellite offices where she will be examined by a nurse practitioner or other healthcare professional, and is given a pregnancy test and receives an ultrasound. The abortionist then

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questions her over a webcam connection and asks her whether she wants to take the RU-486 drug regimen. The abortionist pushes a button in Des Moines, which opens a drawer before the mother in the satellite location. The mother then takes the abortion pill in the presence of the nurse or health professional at the satellite location. At no time is the mother in the physical presence of the abortionist when the abortion is performed. As I stated, Planned Parenthood of the Heartland was created in 2009 and encompasses both Iowa and Nebraska. Planned Parenthood of the Heartland testified at the committee hearing on LB521, held on March 9, that they don't currently provide webcam abortions in Nebraska and have no immediate plans to do so. On March 9, only three Planned Parenthood facilities existed in Nebraska and were limited to Lincoln and Omaha. Last month a new facility opened in Omaha. As that facility opened, Planned Parenthood of the Heartland announced that it would expand to ten facilities in Nebraska with all six new satellite facilities located outside of Lincoln and Omaha. Those locations include Fremont, Grand Island, Hastings, Kearney, Norfolk, and North Platte. If Planned Parenthood does not plan to offer webcam abortions in these communities, then they would have no reason to oppose LB521 because LB521 preserves the requirement that Nebraska physicians perform abortions whether chemical or surgical. If Planned Parenthood wants to have Nebraska physicians performing chemical abortions in these new communities, they may do so, so long as that physician is present at that particular location under this bill. As stated in the Attorney General's Opinion, LB521 does not present a substantial obstacle to obtaining an abortion, nor does requiring the presence of a physician in the performance of an abortion constitute an undue burden. It is within the authority of this body to regulate abortion and the provision of abortion using the Internet differently than with other medical procedures, because no other procedure involves the purposeful termination of life. It is within the authority of this body to regulate abortion so that the abortion is performed under circumstances that ensure maximum safety for the patient, and it is within the authority of this body to act within the broad latitude afforded to the states by our constitution to merely require that it is a licensed physician who must be present for the abortion that he or she is performing. Requiring the physical presence of the physician is motivated by and is important for the safety of the mother who undergoes a chemical abortion. Since its approval in 2000, the FDA has received reports of serious adverse events, including several deaths in the United States following chemical abortion with mifepristone and misoprostol, the two drugs that constitute the RU-486 regimen. The FDA guidelines make clear that these drugs are to be ingested by the mother in the presence of the physician who administers them. RU-486 is not the morning-after pill. That's something different, which you may have heard about in media accounts. RU-486 is only made available directly to certain physicians and is not available through a pharmacy or in any over-the-counter form. According to the FDA, the approved regimen for a chemical abortion through 49 days of pregnancy is on day one Mifeprex, which is the marketing term for the first pill, is administered orally in the presence of the physician. On day three, two tablets of misoprostol are ingested in the presence of the physician, and two weeks after the first dose the mother is to return to

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have the physician confirm that a complete abortion has occurred. If the abortion is not complete at that time, surgical abortion is recommended. Should complications arise, it is necessary to have a physician present who knows the patient's history that they have taken RU-486 and would have the ability to respond. We would expect the same for instances where a surgical abortion has not been completed as planned. In conclusion, members, AM1100 and LB521 are necessary to ensure that Nebraska law provides adequate protection, regardless of the method that it used to procure an abortion, by requiring the presence of a physician during an abortion. AM1100 is a good compromise put forward by the committee. It's narrowly tailored to provide this protection and I respectfully urge your advancement of the committee amendment and the underlying bill, LB521. Thank you, Mr. President. [LB521]

SENATOR CARLSON: Thank you, Senator Fulton. As the Clerk stated, there are committee amendments from the Judiciary Committee and, Senator Ashford, as Chair, you're recognized to open on those committee amendments. [LB521]

SENATOR ASHFORD: Committee amendment, AM1100, would strike the original sections and amend Section 28-335 to create a new criminal penalty for a physician who is not in the room with the patient when performing, inducing, or attempting an abortion. Any physician who knowingly or recklessly uses or prescribes any instrument, device, medicine, drug or other substance to perform, induce, or attempt an abortion without being physically present would be guilty of a Class IV felony. No civil or criminal penalty could be assessed against the patient under this subsection. The committee voted 4 to 3 to advance this bill. I'm just going to briefly, from my perspective, I'm going to note for the record my opposition to the bill and to the committee amendments because I think that it will effectively ban abortions available in the first seven weeks of pregnancy, thus placing an undue burden on women who will have to get surgical abortions. Doctors will not want to risk criminal penalties for providing this medication and not remaining with the mother until the abortion is complete. This was a major issue in our discussions in the committee and it struck me as exceedingly difficult to justify. If the penalty, in this case a felony, is imposed on a doctor who is not present when an abortion is performed, that requires that the doctor remain with that woman continuously. That simply is not going to happen in the case of a medically induced abortion. That could mean that the doctor would remain...would be required, to avoid criminal penalties, to remain with the woman and, quite frankly, when we're dealing with first trimester abortions and the undue burden test is that is what...where we are. That is the constitutional standard. I am concerned about advancing a bill again that would be enjoined if it is enacted. But I will say this, that there are four members of the committee who believe otherwise and I certainly do respect their opinion on this matter. And on behalf of the committee, I do urge the adoption of the amendment. I will oppose the bill for the reasons I've just stated. Thank you. [LB521]

SENATOR CARLSON: Thank you, Senator Ashford. Members, you've heard the

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opening on LB521 and AM1100. The floor is now open for debate. Those wishing to speak are McGill, Conrad, Council, Fulton, and Bloomfield. Senator McGill, you're recognized. [LB521]

SENATOR MCGILL: Thank you, Mr. President, members of the body. Obviously, I oppose this bill, but I want to take some time just to at least clarify some facts about how this drug is used and the procedure that a woman goes through if she does go to Planned Parenthood and choose this option. First off, the number of abortions in Iowa have gone down since this practice started taking place. Yes, more women are choosing this option, but the total number have gone down, and I want to make that clear that in Iowa the number of abortions have not gone up due to the use of this drug. I got Julie Schmit-Albin on the record admitting that the number of abortions in Iowa have gone down since this practice started. Second, I want to go into the reality of what happens if a woman goes to Planned Parenthood and wants this option. First of all, she has to be within the first seven weeks of her pregnancy. This is very early on. Anything above that is outside of FDA rules. Second, what happens when she's there, she goes through the exams, the ultrasound, she has the waiting period that any woman going for an abortion would need to be into, go through. She's with a nurse practitioner or other medical providers almost the entire time, but at the very end, when she decides to take this drug, that is when the doctor comes in, hands it to her and gives her the warnings. That's all he's there for. He hands her the drug and gives her the warnings. And I ask you what the difference is then if a doctor is in the room or somewhere else? The abortion is not spontaneous. Be one thing if you wanted the doctor to be there when the abortion took place, but it's a medication, it's a drug, I should say, and so that abortion isn't going to take place immediately. It's going to be overnight; it's going to be over the next couple days. There's a follow-up drug, as Senator Fulton explained, and that's the sort of drug a woman would take home with her as well in this case. And then there is a follow-up exam with a nurse practitioner, at the Planned Parenthood, for instance, a few weeks later, but the doctor is not there. What LB521 does is basically nothing. (Laugh) If you want to require...perhaps Senator Fulton should have come and said a doctor should have to be there for all those procedures when a woman is there deciding what kind of abortion she wants to get, but the status quo of how the process of abortion and pregnancy termination is followed, a doctor is literally only in the room to give the woman the drug. So what's the difference if he's sitting in Des Moines and tells her all the warnings and pushes a button and allows her to take that drug? There really is no difference, folks. Maybe that's why...well, (laugh) it's only for women in the early stages. They have all the same information in terms of the risks involved. Again, it's a drug you take. You take one of them there but the effects don't happen for a while later. And so even if there is one of these problems that they've been warned about, the doctor isn't going to be there. He's not in either of these situations, in the reality of today, when you're handed the bill...the drug in person or if you're given it over the Internet. So this particular piece of legislation, you know, is just looking at this one type of telemedicine that really is more of a prescription as opposed to a procedure that you take place and

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then it's over in a defined limit of time. It's something that takes a period of time over days, over weeks to take place. And, yes, if it is a failed procedure, if the prescription doesn't terminate the life, then the woman does come back for the more traditional form of abortion. But when you see the numbers in Iowa, that abortions have gone down,... [LB521]

SENATOR CARLSON: One minute. [LB521]

SENATOR MCGILL: ...they've gone down. Senator Fulton could argue that this makes abortion more accessible, but even though it's accessible in Iowa, abortions have gone down. To me, there is no evidence that this is going to lessen the number of abortions. Right now, we don't even offer this in Nebraska, but there's no evidence it would go down. Since a doctor is not there the whole time that drug is in the woman's system, he really can't be there to prevent any negative side effects. She'll just have to go in to see a doctor as a person normally would. So I don't see how it really helps in safety or the woman's health. So I struggle with why we're here today other than that this is another bill dealing with abortion. You know, I look forward to hearing some discussion... [LB521]

SENATOR CARLSON: Time. [LB521]

SENATOR MCGILL: Thank you, Mr. President. [LB521]

SENATOR CARLSON: Thank you, Senator McGill. Senator Conrad, you're recognized. [LB521]

SENATOR CONRAD: Thank you, Mr. President. Good morning, colleagues. I was hoping Senator Bloomfield would yield to some questions. [LB521]

SENATOR CARLSON: Senator Bloomfield, would you yield? [LB521]

SENATOR BLOOMFIELD: Yes. [LB521]

SENATOR CONRAD: Senator Bloomfield, this is your priority bill. Is that correct? [LB521]

SENATOR BLOOMFIELD: Yes, it is. [LB521]

SENATOR CONRAD: Is your intent to reduce the number of abortions in Nebraska? [LB521]

SENATOR BLOOMFIELD: That would be part of the hope. There is also a big part that deals with the safety of the patient. [LB521]

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SENATOR CONRAD: And, Senator Bloomfield, on that very question of safety, can you please share with the body what research or statistics you've relied upon that demonstrate that physical presence by a physician improve the safety of the patient or the outcome in the utilization of this procedure and drug? [LB521]

SENATOR BLOOMFIELD: I would remind you this is my priority bill. I did not write the bill. I would attempt to deflect those types of questions to Senator Fulton. I have done some research on it. [LB521]

SENATOR CONRAD: And what has that research uncovered in terms of safety and statistics on this topic, and could you please cite it or provide it for the record? [LB521]

SENATOR BLOOMFIELD: Well, I can't quote the numbers precisely. From what I have read, there are some issues with... [LB521]

SENATOR CONRAD: And where did you read that? [LB521]

SENATOR BLOOMFIELD: Where we read many things. It's in the information provided to us. In this case, most of my information or a good share of it has come from Planned Parenthood. I'm proud to admit that. I have not gone to the medical journals. I am not a fast reader. I have relied on information given to me by others. And I am proud to be...take this as my priority bill. [LB521]

SENATOR CONRAD: The information you relied on in coming up with the idea to make this your priority bill, the information came from Planned Parenthood. Is that correct? [LB521]

SENATOR BLOOMFIELD: A portion of it did. [LB521]

SENATOR CONRAD: And their information indicated that it was less safe for a patient to go through this process unless the doctor was physically present? [LB521]

SENATOR BLOOMFIELD: That is what I ascertained from what I read. The question came up or the comment was made earlier that you would simply go to the doctor and, again, without any medical background. To me, if there is an issue, you would want to go to the doctor that prescribed the medication. If that doctor is in Des Moines and you are in Fremont, that's a little tougher to do than it is if the doctor is in the town. That's... [LB521]

SENATOR CONRAD: Okay. Well, maybe...I know you have your light on later, Senator Bloomfield, and I'm hopeful you will provide that information, those statistics, and the medically reliable information that you've utilized. Because of course we all know, with

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700-plus bills being introduced this session and we each get one personal priority bill, you obviously took a great deal of time and attention in selecting this. Is that correct? [LB521]

SENATOR BLOOMFIELD: I took some time in selecting this. I looked at several. One of my...the bill that I personally introduced was on sexual predators, and after looking at both of them, I did choose this as a priority over that. [LB521]

SENATOR CONRAD: Because you believe that there is medical evidence that indicate it's safer for a woman to be in the physical presence of a doctor with this type of procedure? [LB521]

SENATOR BLOOMFIELD: I don't believe that a woman can be properly treated by a doctor 200 miles away from her. [LB521]

SENATOR CONRAD: In any instance? [LB521]

SENATOR BLOOMFIELD: No. [LB521]

SENATOR CONRAD: So you don't believe in telemedicine at all. [LB521]

SENATOR BLOOMFIELD: Not when it comes to handing out prescriptions that can alter the life of a mother, a patient, or the child. [LB521]

SENATOR CONRAD: So to be clear, your intent with this bill is to treat abortion differently, to reduce the number of abortions, and inhibit access to abortions in Nebraska. That's the only intent. [LB521]

SENATOR BLOOMFIELD: I believe you are misquoting facts there, ma'am. [LB521]

SENATOR CONRAD: What's your intent, sir? [LB521]

SENATOR BLOOMFIELD: My intent is to see this bill passed,... [LB521]

SENATOR CARLSON: One minute. [LB521]

SENATOR BLOOMFIELD: ...and hopefully keep the mothers healthier and prevent any damage that could be prevented by a doctor being on site instead of 200 miles away. [LB521]

SENATOR CONRAD: Senator Bloomfield, then why doesn't the same apply for other uses of telemedicine? [LB521]

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SENATOR BLOOMFIELD: I don't believe that the same types of injuries are going to be seen using what we refer to as telemedicine. [LB521]

SENATOR CONRAD: And what medical evidence do you have to indicate that there's any specific type of injury? [LB521]

SENATOR BLOOMFIELD: Again, I am not a doctor. I am not a doctor. I am going off of what I have read. I do not have that expertise other than what I feel in my gut when I read things. [LB521]

SENATOR CONRAD: So it's not based on medical evidence. It's based on your gut instinct. [LB521]

SENATOR BLOOMFIELD: It is based on what I have read from the information I've had made available to me. [LB521]

SENATOR CONRAD: Okay. If you could provide a citation for that information later when your time comes up. [LB521]

SENATOR CARLSON: Time. [LB521]

SENATOR CONRAD: Thank you, Mr. President. [LB521]

SENATOR CARLSON: Thank you, Senator Conrad and Senator Bloomfield. Senator Council, you're recognized. [LB521]

SENATOR COUNCIL: Thank you, Mr. President. As if there was any doubt, I was one of the members of the Judiciary Committee who voted in opposition to AM1100, as well as the advancement of LB521 to General File, and I did so because I believe that LB521 is fundamentally, constitutionally flawed. And I have listened intently to Senator Fulton's opening on the bill, as well as Senator Bloomfield's responses to the questions posed by Senator Conrad, and nothing in their comments alters my belief and, in fact, their comments, in my opinion, solidifies the fact that LB521 is unconstitutional. Senator Fulton correctly noted that under existing case law a state is free to regulate abortions when the intent of such regulations is to protect the health of the pregnant woman, and those are the only permissible restrictions on an abortion at previability stage, which is what LB521 relates to, previability stage. It is not permissible for a state to enact abortion regulations and restrictions previability for the purpose and the sole purpose of impeding a woman's access to abortion. When Senator Fulton introduced LB521 before the Judiciary Committee, he stated, and I quote, this practice, this practice being webcams, occurs in Iowa presently and LB521 is intended to prevent the proliferation of these webcam abortions into our state. That's the intent of LB521. The intent is not to protect the health or safety of the woman who elects this method, although in an

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attempt to bring this piece of legislation within constitutional scrutiny later in Senator Fulton's opening testimony he made reference to an 8 percent failure rate, but again the fact that there is a failure rate does not in and of itself establish that there's a health or safety risk. I submit to you that there was no evidence presented at the hearing on LB521 that established any significant health risk to a woman who elected to pursue this methodology of obtaining an abortion. Quite to the contrary, the evidence that was presented tended to establish the point that the intent of this is to ban this practice in Nebraska, and such a banning without a nexus to the health and safety of the woman is unconstitutional. And again, when we look at the context in which this was placed, and if you don't think it's bad, if you don't think... [LB521]

SENATOR CARLSON: One minute. [LB521]

SENATOR COUNCIL: ...the intent is to eliminate access or to circumscribe access, the statement was made that a pregnant woman who generally is in a rural setting, where there is no access to a physician being present and that that is the circumstance where a webcam would be utilized, that the sole intent here is to prevent that practice from occurring. Again, I submit to you that it is unconstitutional and the next time I'm on the mike I will address the questions posed to Senator Bloomfield with regard to the difference between any risk associated with the dispensing of RU-486 and the dispensing of any other prescription pharmaceutical via webcam. [LB521]

SENATOR CARLSON: Time. [LB521]

SENATOR COUNCIL: Thank you. [LB521]

SENATOR CARLSON: Thank you, Senator Council. Senator Bloomfield, you're recognized. [LB521]

SENATOR BLOOMFIELD: Thank you, Mr. President. I stand primarily at this time to say how pleased I am to have had the opportunity to prioritize this bill. I mentioned under usual questioning a few minutes ago that I chose this priority over my own bill that I had introduced because I think there are issues of safety and life involved here. I like the job Senator Fulton has done on this bill. I will defer to him at most cases when it gets down into the technical aspects of it, and I would at this time yield whatever time I have left to Senator Fulton if he chooses to use it. [LB521]

SENATOR CARLSON: Thank you, Senator Bloomfield. Senator Fulton, 4 minutes. [LB521]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Bloomfield. If I didn't mention it, I thank you also for prioritizing this bill. Okay, we'll deal with the objections as they come up. Senator Ashford is concerned that this would be a ban on

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RU-486 in Nebraska. I assure you that's not the intention and I don't believe the bill can be construed in that way. RU-486, to my knowledge, is utilized in Nebraska. It can continue to be utilized in Nebraska. We're simply asking that the way in which it is utilized today should be the way it shall be utilized tomorrow, and that is with the doctor physically present. I am going to pass out copies of a section from the FDA guidelines to doctors. The FDA makes the recommendation that a doctor be physically present in much the same way we are putting forward in this law, so it is not inconsistent what we're trying to propose here. Indeed, it's consistent with what the FDA has put forward. Further, you should know this type of legislation is being contemplated and passed in different states around the country. I believe Arizona was the last. Senator McGill, for the record, is absolutely correct about the number of abortions. I was making reference to the number of chemical abortions, which indeed has increased, which stands to reason if indeed these webcam abortions are the main mechanism through which chemical abortions...or one of the mechanisms through which chemical abortions are offered in Iowa. I don't know that this particular piece of legislation either increases or decreases the number of abortions. That's not really the intent of the legislation. We simply want to have the status quo in effect today with respect to a doctor present to a woman seeking an abortion. The question was asked, what is the difference if the doctor is present to the woman physically or in another city, and that really is a good question. That really gets to the crux of this particular measure. And there are a number of things that could be proffered, and if the debate continues I'll probably bring up the rest of these reasons, but one reason in particular has to do with this doctor-patient relationship. Now interestingly, when I brought...you may be surprised to know I've only brought two pieces of legislation dealing with abortion down here. The first one was a couple of years ago. It was that ultrasound bill. And if you recall, one of the reasons to...one of the reasons given by opponents of that bill was that it intruded upon the doctor-patient relationship. Now I and many of you disagreed with that, but it was an argument that was posited. And so I submit to you that the doctor who is prescribing Mifeprex, RU-486, having a relationship with the patient is going to occur much more fluidly if the doctor has actually met the patient. From a public policy standpoint,... [LB521]

SENATOR CARLSON: One minute. [LB521]

SENATOR FULTON: ...it's not that hard to see how these webcam abortions could be mass produced such that there is no doctor-patient relationship and that would at least be one reason why having a doctor physically present is worthwhile. In terms of reactions or a cause for concern as to whether RU-486 is safe, to be clear, this bill is not to determine what the FDA has determined. RU-486 is allowable in this country, so be it. I'm not trying to go after RU-486 in that regard. But certainly there's a compelling public interest here as it relates to patient safety, and I'm going to read some of the adverse reactions that appear on the Mifeprex tablet label when a doctor...which a doctor has access to. The treatment procedure, this is from adverse reactions on that

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label, the treatment procedure is designed to induce the vaginal bleeding and uterine cramping necessary to produce an abortion. Nearly all of the women who receive Mifeprex... [LB521]

SENATOR CARLSON: Time. [LB521]

SENATOR FULTON: Thank you, Mr. President. [LB521]

SENATOR CARLSON: Thank you, Senator Fulton. Those still wishing to speak are Sullivan, McGill, Conrad, Council, and Fulton. Senator Sullivan, you're recognized. [LB521]

SENATOR SULLIVAN: Thank you, Mr. President. I believe I rise in general support of the principle of this legislation, but I do have a clarification that I need to determine and wondered if Senator Fulton would yield for a question. [LB521]

SENATOR CARLSON: Senator Fulton, will you yield? [LB521]

SENATOR FULTON: I will. [LB521]

SENATOR SULLIVAN: Thank you, Senator. In rural Nebraska, telemedicine is a critical part of the whole pattern of healthcare delivery, and if I look at the definition of telemedicine, you know, it's continuing medical education, video consultation with patients, remote surgery. You know, it allows critical services to be delivered. It allows patients to link up with a specialist or a doctor in rural Nebraska to query a specialist in an urban area. It cuts down on the cost of healthcare in many situations. So my clarification and my need for determination is, does this legislation in any way present a negative impact for those kinds of deliveries of healthcare services in rural Nebraska? [LB521]

SENATOR FULTON: Thank you for the question, Senator. It does not. This legislation is...well, with the Judiciary Committee amendment, it's down to a little over a page. It's specific to abortion. It is not my intention to...far from my intention to inhibit telemedicine. This is specific to abortion, requiring the doctor's physical presence, and that is the extent of the law. And it's spelled out in LB521, AM1100. [LB521]

SENATOR SULLIVAN: Did your...the opinion you received from the Attorney General I guess underscore that and reaffirm that in any way? [LB521]

SENATOR FULTON: I believe so. The opinion that I passed out to you, question number one that we posed to the Attorney General was whether an abortion may be regulated differently than other medical procedures performed via an Internet connection, and the Attorney General, I won't read it here, it's your time, but the

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Attorney General said that, yes--and it's not just the Attorney General, he's basing this on case law--abortion may be treated differently than other procedures for reasons, again that are spelled out in this opinion. And that is how we've proceeded with the Judiciary Committee in going forward here. This is specific to abortion as it relates to webcams or telemedicine or Internet. [LB521]

SENATOR SULLIVAN: Thank you. I appreciate that clarification. You know, so many times I think it behooves us to travel cautiously down a path because oftentimes there are unintended consequences, and I appreciate that clarification from Senator Fulton. Thank you, Mr. President. [LB521]

SENATOR CARLSON: Thank you, Senator Sullivan and Senator Fulton. Senator McGill, you're recognized. [LB521]

SENATOR MCGILL: Thank you, Mr. President, members of the body. Just like to continue speaking about some of the things I started on with my last discussion. Again, you know, I appreciate Senator Fulton's acknowledgement that abortions have gone down in Iowa. I see that since 2006 they've gone down and that may have something to do with their comprehensive sex education plan that they have. It's one of the most comprehensive in the country. And at the same time, Nebraska's has fluctuated. It's gone up and down during that time period, although I can happily say that it is down right now. At least in 2009 it went down from the numbers in 2008. I still don't feel like anyone on the proponent side has really touched on how a doctor would help, with any medical risks, being there to administer this drug in comparison to the way that it's currently being administered, which again is literally the doctor walking into the room and handing the patient the drugs and giving them the warning. Everything up to that point is with a nurse practitioner or another physician-type of medical provider. There is no real doctor relationship. If anything, the woman is building that bond with the nurse practitioner who's there, who's doing almost all of the care. It's like when you go to the dentist, somebody else does all the work; the dentist comes in and looks real quick at the end and you're done. It's really the other, it's the nurse practitioner that does all the work. In my personal healthcare regimen, I see a nurse practitioner 100 percent of the time. I don't have a relationship with my doctor. So the women who are going to get one of these procedures, they're bonding with the person who is doing most of the care. The status quo is not the doctor being that person. And even if it was, Senator Bloomfield and Fulton haven't been able to tell us how having the doctor there for that 30 seconds is going to make a difference for any of those possible negative side effects, which I'm sure happen, you know, and certainly some of the abortions aren't...some of the pregnancies aren't terminated through this drug and so the woman comes in to either get help for the negative side effects or to go through with the abortion in another way. But having the doctor there for that 30 seconds, it's 30 seconds or so, maybe a minute, that doctor can't even really do anything in that period of time. And it is bothersome to me when that is apparently the reason for this bill and yet specifics can't be cited by the

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opponents. It is our job here in the Legislature to come with facts and evidence and not just our gut instincts and what we think sounds good. And I'm no fool, this is going to pass with flying colors, but it's also my job and Senator Conrad's and Senator Council's to stand up with evidence, with statistics and data and at least let the record know what the reality is. You know, telemedicine is going to change a lot of how we do business and what it means to have a physician present. With this particular drug, it alters what a procedure is. Abortion is seen as a procedure. This isn't something where you go in, you have a minor surgery, and you leave. It's a drug-induced abortion. It is a chemical abortion. How long should the doctor be there for this type of procedure? What's appropriate for telemedicine; what isn't? Raises a lot of interesting questions. I just don't think that there's been enough evidence here today to show that this is really necessary. I mean all it ultimately is going to do, folks, is require a woman to drive to get her medication from Sioux City or wherever it is; I'm not sure the Planned Parenthoods in Nebraska are even handing out the medication. But it requires you to have to drive to... [LB521]

SENATOR CARLSON: One minute. [LB521]

SENATOR MCGILL: ...terminate your pregnancy. And if a woman really wants an abortion, she's going to drive to get it. It's such a life-impacting change that, you know, if a woman really wants it, she's going to drive and find that opportunity. Again, abortions did not go up in Iowa so it wasn't, ooh, it's easier to get an abortion now so, you know, more women are going to get them. No, that is not what happens, and there's been no evidence presented by the opponent or the proponents to show that that happens. So again, at the end of the day what we're doing is requiring women to drive a little farther for something that could have been administered in this potential way. Thank you, Mr. President. [LB521]

SENATOR CARLSON: Thank you, Senator McGill. Senator Conrad, you're recognized. [LB521]

SENATOR CONRAD: Thank you, Mr. President. And Senator McGill, Senator Council, Senator Ashford are right. With any given piece of legislation it's our job to look at the proposals from a legal context, from a policy context, and also from a practical context, and I believe wholeheartedly that LB521 and AM1100 are riddled with problems in each respect. To continue with the importance of building the record so that we have a clear understanding of the intent and scope of this legislation, I'd ask Senator Bloomfield to yield to a question...to some questions. [LB521]

SENATOR CARLSON: Senator Bloomfield, will you yield? [LB521]

SENATOR BLOOMFIELD: Yes, I would. [LB521]

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SENATOR CONRAD: Senator Bloomfield, the original bill had specified RU-486 and two of its appropriate medical names and terminologies, as prohibited in this, the committee amendment provides no specific prohibition so, in essence, could be much more broad. Is that your understanding? [LB521]

SENATOR BLOOMFIELD: Senator Conrad, again I would remind you, I was not involved in the drafting of the bill. I was not involved in what took place in Judiciary. I did not testify on the bill. I support the bill. I am prioritizing the bill. [LB521]

SENATOR CONRAD: But you did feel that this was the most important bill out of every bill introduced this session. Is that right? [LB521]

SENATOR BLOOMFIELD: That's right. [LB521]

SENATOR CONRAD: Okay, so we're clear. Can you tell me... [LB521]

SENATOR BLOOMFIELD: You can, if you... [LB521]

SENATOR CONRAD: ...in your opinion, Senator Bloomfield, do you believe birth control is an abortion? [LB521]

SENATOR BLOOMFIELD: No. [LB521]

SENATOR CONRAD: Do you believe Plan B is an abortion? [LB521]

SENATOR BLOOMFIELD: I guess I'm not familiar with the term. [LB521]

SENATOR CONRAD: It's a significant amount of regular birth control pills used to terminate a pregnancy. [LB521]

SENATOR BLOOMFIELD: Having not studied the issue, why, to me anything that does what Senator McGill mentioned a moment ago, ends a life, to me is probably an abortion, yes. [LB521]

SENATOR CONRAD: Okay. So under Plan B or under RU-486, neither of which is specified in the committee amendment, do you understand how those drugs are administered and how they work, that you take one in the presence of a physician and then you take some at a later date at home? [LB521]

SENATOR BLOOMFIELD: Yes, I understand that. [LB521]

SENATOR CONRAD: So when you look at the Judiciary Committee amendment, which requires a physician to be present at the inducement of abortion, how can we legislate

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that a doctor must be present with the patient during that many days, many weeks period, because we can't specify the time of abortion? [LB521]

SENATOR BLOOMFIELD: You're dancing on technicalities, I believe. [LB521]

SENATOR CONRAD: No, I'm reading the language of the amendment for your priority bill. Please answer the question. [LB521]

SENATOR BLOOMFIELD: The doctor, as the bill says, needs to be present when the pill is administered. Again I go back, I would rather, if I am going to have complications, have that doctor within a short drive than I would in a clinic 200 miles away. I don't know how much plainer I can make that. And I do want to make... [LB521]

SENATOR CONRAD: And based on what, based on what research? [LB521]

SENATOR BLOOMFIELD: Based on the research of common sense. It takes longer to drive 200 miles than it does to drive across town. [LB521]

SENATOR CONRAD: And, Senator Bloomfield, can you please talk about the safety associated with RU-486 versus say, for example, the safety of Viagra or Tylenol or any other common drug that's utilized by our citizenry? [LB521]

SENATOR BLOOMFIELD: I happen to be on... [LB521]

SENATOR CONRAD: Would it be fair to say that it's no less safe than any other drug? [LB521]

SENATOR BLOOMFIELD: No, I don't believe it would be safe to say that. [LB521]

SENATOR CONRAD: And what do you base that assumption on? [LB521]

SENATOR BLOOMFIELD: I base that assumption, as I started to say, I happen to be on several heart medications. [LB521]

SENATOR CONRAD: Uh-huh. And they have risks. [LB521]

SENATOR BLOOMFIELD: Some of them have risks, including something as simple... [LB521]

SENATOR CONRAD: And would you agree that any drug, any pharmaceutical has risks? [LB521]

SENATOR BLOOMFIELD: Senator Conrad,... [LB521]

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SENATOR CARLSON: One minute. [LB521]

SENATOR BLOOMFIELD: ...you can stand back there and badger me if you like or you can let me attempt to answer a question. [LB521]

SENATOR CONRAD: I'm trying to get to your intent on your priority bill. [LB521]

SENATOR BLOOMFIELD: I am trying to answer the question on the priority bill. The first one that I'm still trying to answer, after having been interrupted, I believe is, no, RU-486 is not as safe as aspirin, but even aspirin, given... [LB521]

SENATOR CONRAD: And based on what? Based on what information? [LB521]

SENATOR BLOOMFIELD: Based on the fact that RU-486 does, number one, end the life of a child; number two, I believe endangers the life of the person taking that pill because it causes bleeding. [LB521]

SENATOR CONRAD: Thank you, Senator Bloomfield. And to be clear, we are on my time. So if you'd like to explain yourself further you're welcome to hit your light, but it is our job that we bring forward the policy and scientific evidence related to the intent of the legislation, which you chose out of over 700 bills as the most important before the body. [LB521]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Time, Senators. [LB521]

SENATOR CONRAD: Thank you, Mr. President. [LB521]

SPEAKER FLOOD: Senator Council, you are recognized. [LB521]

SENATOR COUNCIL: Thank you, Mr. President. I want to use my time to clarify some statements that have been made. First and foremost, Senator Fulton distributed a document, and I don't want to misquote him, that is taken from the FDA, as I understood it, that talked about the use and the risk associated with RU-486. And again, I don't mean to misquote him, but he stated that the FDA recommends that the physician be present during the administration of RU-486. First of all, my review of the FDA restrictions on RU-486 reflects that the FDA has only implemented eight specific restrictions on its use and none of those eight restrictions involve the actual, physical presence of the physician administering the drug, being present at the time. And in fact, I would like to direct your attention to the document that Senator Fulton did distribute, the last page which bears page 7 at the bottom. If you look under "Precautions,

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General: Administration must be under the supervision of a qualified physician." There is nothing in the FDA restrictions that say that the supervision has to be provided by way of physical presence. Webcam does provide for the supervision of a qualified physician so, please, colleagues, don't be misled. The FDA does not require or recommend that the physician be present. What FDA does require is that the administration be under the supervision of a qualified physician. And my understanding of how these webcam abortions are administered, according to Senator Fulton's description of it, the physician, a qualified physician, is supervising the administration. Secondly, it needs to be noted, because again, ladies and gentlemen, the concerns I express are concerns about the constitutionality of this measure and I firmly believe that it's constitutionally flawed, notwithstanding the opinion from the Attorney General, and I'll get to that in a minute. But there is case law that establishes that a state cannot implement a statute that imposes a burden on a woman's access to abortion on the basis of a tradition of practicing medicine in a particular way. Allow me to repeat that. The state cannot constitutionally implement a statute that imposes a burden on access to an abortion on the basis of a tradition of practicing medicine in a particular way. Please be mindful of Senator Fulton's statement the last time he was on the mike, and his statement was one of the reasons that he introduced LB521 is because webcam abortions aren't being performed in Nebraska now. [LB521]

SENATOR CARLSON: One minute. [LB521]

SENATOR COUNCIL: The only abortions being performed in Nebraska now are surgically and we don't want to...and I quote from his testimony before the Judiciary Committee, he wants to prevent the proliferation of these webcam abortions into our state. Again, by virtue of his very statements at the hearing and today, in my opinion, has established the unconstitutionality of LB521. In that regard, I direct your specific attention to the bottom of page 2 of the Attorney General's Opinion, "It is the position of this office that requiring the physician's physical presence is not an undue burden because it is not designed to strike at the right itself and also will not make it more difficult or more expensive to procure an abortion than what is currently available in Nebraska. That statement runs absolutely contrary to the statements that Senator Fulton has made today and at the Judiciary Committee. That... [LB521]

SENATOR CARLSON: Time. [LB521]

SENATOR COUNCIL: Thank you. [LB521]

SENATOR CARLSON: Thank you, Senator Council. Senator Fulton, you're recognized. [LB521]

SENATOR FULTON: Thank you, Mr. President. Members of the body, actually, I thank Senator Council and Senator Conrad for raising these questions; gives us an

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opportunity to clear up the record. I think I can deduce from the testimony here that Senator Conrad is not pleased with Senator Bloomfield's selection of his priority bill, and that's fine. That's her right. I do thank you, Senator Bloomfield. I want to be clear about present law and presently under...you can actually see this with AM1100 and this is something I believe...well, I'm positive it was discussed in the Judiciary Committee. Present law requires that an abortion be performed by a licensed physician. "The performing of an abortion by any person other than a licensed physician is a Class IV felony." Let us just bear this in mind. If the concern is that we're presenting an undue burden, let us also recognize that this is not a practice in Nebraska at present. So we can...I'll be touching on this here later on, I assume, when we go forward on this amendment. Senator Council is correct in her reference to physical presence, and if I misstated then I apologize and owe thanks to Senator Council. What I've passed out to you is from the FDA and, indeed, administration must be under the supervision of a qualified physician. This could, admittedly, be taken to mean that the physician does not have to be in the physical presence and that's probably what's being adhered to in Iowa. But my point in bringing this up and in passing out that document is that this isn't a flippant issue. RU-486 is a drug not without danger and not without potential significant adverse reactions, and it is the state's prerogative to act in this regard. Putting abortion...considered differently than other medical procedures, we as a state, as a Legislature can do that, and in passing out this piece of...this document to you from the FDA I'm suggesting we should do that. Clinical studies, this again from the tablet label of Mifeprex: In the U.S. trials, 92.1 percent of the 827 subjects had a complete medical abortion. There were 65 women, or 7.9 percent, who received surgical interventions. In other words, that's about an 8 percent failure rate. Eight percent is a pretty high number. We as a state have some obligation here. Let me read from the contraindications on the warning label of Mifeprex: Vaginal bleeding occurs in almost all patients during the treatment procedure. According to data from the U.S. and French trials, women should expect to experience bleeding or spotting for an average of 9 to 16 days, while up to 8 percent of all subjects may experience some type of bleeding for 30 days or more. "Bleeding was reported to last for 69 days in one patient in the French trials. In general, the duration of bleeding and spotting increased as the duration of the pregnancy increased." In some cases, excessive bleeding may require treatment by vasoconstrictor drugs, curettage, administration of saline infusions, and/or blood transfusions. "In the U.S. trials, 4.8 percent of subjects received administration of uterotonic medications and nine women, 1 percent, received... [LB521]

SENATOR CARLSON: One minute. [LB521]

SENATOR FULTON: ...intravenous fluids." Vasoconstrictor drugs were used in 4.3 percent of all subjects in all the French trials. I understand I'm reading some scientific terms here. "Blood transfusions were administered in 1 of 859 subjects in the U.S. trials and in 2 of 1,800 subjects in the French trials. Since heavy bleeding requiring curettage occurs in about 1 percent of patients, special care should be given to patients with

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hemostatic disorders, hypocoagulability, or severe anemia." A doctor being physically present to a mother consider...to a woman considering abortion would be open to that doctor's trying to determine whether indeed a hemostatic disorder or hypocoagulability or severe anemia is present. The FDA also recommends or it was...and it's on the Mifeprex tablet, that the child should not be longer than 49 days duration, something which can be ascertained... [LB521]

SENATOR CARLSON: Time. [LB521]

SENATOR FULTON: Thank you, Mr. President. [LB521]

SENATOR CARLSON: Thank you, Senator Fulton. Mr. Clerk, items for the record? [LB521]

CLERK: Thank you, Mr. President. Bills read on Final Reading this morning were presented to the Governor at 10:42 a.m. (re LB176 and LB404). A new resolution offered by the Natural Resources Committee and signed by its members calling for the creation of the Water Sustainability Funding Task Force. Pursuant to the introduction of that resolution, a communication from the Speaker regarding the referral of LR218 to Reference Committee for referral to standing committee for public hearing purposes. An announcement: Redistricting Committee will meet at 1:30 in Room 2022; Redistricting at 1:30. (Legislative Journal pages 1504-1506.) [LB176 LB404 LR218]

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

SENATOR CARLSON: Thank you, Mr. Clerk. Members, you've heard the motion. All in favor say aye. Opposed, nay. We are recessed until 1:30 p.m.

RECESS

SENATOR GLOOR PRESIDING

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

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

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any items for the record?

CLERK: I have one. Senator Pahls would offer LR219... [LR219]

SENATOR GLOOR: (Gavel)

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CLERK: ...calling for an interim study. That will be referred to the Executive Board. And that's all that I have, Mr. President. (Legislative Journal page 1507.) [LR219]

SENATOR GLOOR: Thank you, Mr. Clerk. We'll return to the agenda, General File. Mr. Clerk.

CLERK: Mr. President, the Legislature left the issue this morning, LB521. Senator Council would move to amend with AM1437. (Legislative Journal page 1507.) [LB521]

SENATOR GLOOR: Senator Council, you're recognized to open on your amendment to the committee amendment. [LB521]

SENATOR COUNCIL: I'm opening on the committee amendment? That's not the committee amendment. That's AM1100. And now I'm up. Okay. [LB521]

SENATOR GLOOR: Senator Council, you're recognized to open on your amendment to the committee amendment. [LB521]

SENATOR COUNCIL: Thank you. I think we have it clarified now. Thank you, Mr. President. And I am opening on AM1437 which is an amendment to the Judiciary Committee amendment, and it's a very brief and specific amendment, and I'm offering this amendment principally on the basis of some of the argument that's been made thus far as to the rationale for LB521. And all AM1437 does is remove the requirement that the licensed physician be in the same room with the patient. It doesn't remove the requirement that the physician be present, but it removes the requirement that the physician be present in the same room with the patient. And listening to Senator Fulton's arguments in support of LB521, as amended by AM1100, he expressed numerous points of concern about the potential for negative side effects as a result of the administration of RU-486. And the need, in view of that contention, and the need for there to be a physician present, the question I pose is whether the physician has to be present in the same room with the patient. And based upon my understanding of the medical protocol on RU-486, there is...at least nothing that I'm aware of that would require a mandate that the physician be present in the same room with the patient. And again if you look at the document that Senator Fulton distributed, and if you will recall some of his comments before we recessed for lunch, he pointed out a number of medical risks associated with RU-486. But one of the things he neglected to share with you, and not to suggest that that neglect was intentional in any way, however, the very first page, the very first paragraph of the document that Senator Fulton distributed says, "serious and sometimes fatal infections and bleeding occur very rarely," I emphasize, very rarely, following spontaneous surgical and medical abortions, including following those performed with the use of RU-486. This document goes on to specifically say, no causal relationship between the use of the drugs that form RU-486, and the bleeding or

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the infections or any of the other effects of medical abortion that Senator Fulton referred to, have ever been established. So I submit to you that if you look at the document that Senator Fulton distributed, and you look at some of the warnings associated with the use of RU-486...and I must take this opportunity to point out that this document is an FDA document, but this is a document that was released in connection with the trial, the FDA trials on RU-486. But again, in terms of my amendment and why I don't believe it's necessary that the physician be in the same room is that, again referring to the arguments made by Senator Fulton before we broke for lunch, and referring to the second page of the document he distributed, which bears page 6 at the bottom, and he quoted this, "according to data from the U.S. and French trials, women should expect to experience vaginal bleeding or spotting for an average of nine to sixteen days while up to 8 percent of all subjects may experience some type of bleeding for 30 days or more." My question to you then is, how do you eliminate or reduce or otherwise mitigate the likelihood of vaginal bleeding by requiring that the physician be present in the room, in the same room at the time that the drug is administered. I submit to you that it doesn't affect that. And, indeed, these consequences, these results, these outcomes are likely to occur regardless of where the physician is at the time that the drug is administered, because again it says, up to 8 percent of all subjects may experience some type of bleeding for 30 days or more. So the issue here, if we're talking about safety being of paramount concern here, and I submit to you that safety is really not the issue. If you again, you look at the documents that have been provided, it specifically states that you should advise the patient whether you will provide such care, or will refer her to another provider. These are all indicators that the expectation is that the drug will be ingested by the woman, the second one will be ingested at home. And that's really significant because there's nothing in LB521 that says that the doctor has to be at home with her when she ingests the second medication. And I don't read LB521 as requiring the...once the drug is administered, distributed, and that's through this technologically opening of the pill dispenser, any requirement that a physician be present when the patient takes the other pill home with her to administer according to the prescription requirements. Again AM1437 merely removes the language from AM1100, which is the committee amendment to LB521, it removes the requirement that the licensed physician be in the same room with the patient, and thus converts that requirement of AM1100 to just a requirement that a licensed physician be present. And with that, I would urge adoption of AM1437. [LB521]

SENATOR GLOOR: Thank you, Senator Council. Members, you've heard the opening on AM1437. Members in the queue: Conrad, Council, McGill, Krist, and Fulton. Senator Conrad, you are recognized. [LB521]

SENATOR CONRAD: Thank you, Mr. President and good afternoon, colleagues. I want to thank Senator Council for bringing forward this amendment, and I hope that it will find some common ground in some of the issues that we began to discuss this morning. To be clear, we had time this morning to get into some specifics in relation to policy basis,

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legal basis, and the practical basis for whether or not LB521 was necessary in Nebraska at this point in time. And I guess each senator will have to come to those conclusions on their own. I submit that it is completely unnecessary, as the proponents have stated clearly this type of activity is not happening in Nebraska. It is not happening in Nebraska. And as Senator Fulton notes when he passed out a variety of information related to the regulation and licensure of Nebraska's healthcare professionals, it's already prohibited in our rules and regulations. So LB521 is unnecessary. Sadly, LB521 in the auspices of seeking to do more to prevent abortion, really does not do so. It's premised upon faulty science, if any science, at that point in time I would contend the record is absent. Any sort of scientific or medical evidence that indicates that the utilization of this procedure or this pharmaceutical carries a risk greater than any other telemedicine procedure or any other pharmaceutical, it's not been established. Thus, it's unclear why we would need to treat in a disparate and discriminatory manner this type of procedure and this type of pharmaceutical. And I contend that the intent of LB521, rather than prohibiting a practice that isn't occurring in Nebraska, is nothing more than an ongoing assault on women's health and women's rights. And it does nothing to get serious about how we can really reduce the number of abortions in Nebraska. And common sense and science tell us how we can do that, and that's through education and prevention. And there's not one line, one penny, one thought devoted to education or prevention in LB521. That's the common ground we have to focus on, colleagues, that's been absent for the five years that I've been here in terms of a full and fair floor debate. That's the common ground that exists amongst the populous, and people who think carefully and thoughtfully about these issues. There is no values difference in the fact and understanding that we'd all like to see a lower number of unintended pregnancies in Nebraska. And as a result, we'd all like to see less abortions in Nebraska. But how are we going to accomplish that? It's clear, education and prevention, access to contraception, ensuring that Nebraskans know about their reproductive health. Prohibiting a practice as contained in LB521 that's not occurring in Nebraska, and based on no scientific or medical information, requiring or necessitating a different set of regulation to ensure patient safety, is really, really a sad use of the time for this august body. Knowing how many pressing public policy issues that are facing this great state, we're going out of our way to legislate on an issue that's not even happening within our borders. Why? So that we can make a political statement, so that we can continue our policy assault on women's health... [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR CONRAD: ...that we can continue our policy assault on women's rights, that we can continue our policy assault on the healthcare professionals who serve them. LB521 fails on a policy basis, a legal basis, and a practical basis, and we'll have the time to talk in more depth about why each of those contacts are lacking in terms of proponents means for bringing forward LB521. Thank you, Mr. President. [LB521]

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SENATOR GLOOR: Thank you, Senator Conrad. Senator Council, you're recognized. [LB521]

SENATOR COUNCIL: Thank you very much, Mr. President and I want to thank Senator Conrad for her statements. And again, I'm looking at LB521 in the context of both telehealth, as well as women and their reproductive rights. And when I look at Section 71-8502, which is the current Nebraska Telehealth Act, it says and I quote, "the use of telecommunications technology to deliver health care services can reduce health care costs, improve health care quality, improve access to health care, and enhance the economic health of communities in medically underserved areas of Nebraska." If one were to support LB521 for the reasons that have been articulated by its sponsor, as well as the senator who designated it as a priority, LB521 implies that telecommunications technology will do the exact opposite. If you accept their argument, the use of telecommunications technology to deliver healthcare services will increase healthcare costs, will diminish healthcare quality, will not improve access to healthcare, and will not enhance the economic health of communities medically underserved...in medically underserved areas of Nebraska. Now if you don't believe that to be true, then what you do believe to be true that only in the case of a woman exercising her reproductive rights to seek a medical abortion will these factors occur. And I suggest to you that there is no data, there is no support for that assertion. And in the absence of that kind of evidence, enactment of LB521 is unconstitutional, because it is, in fact, a denial of equal protection of the laws to women, because you are concluding that the only time healthcare costs will not be reduced, and healthcare quality will not be improved, and access to healthcare will not be improved, is in the case of a women who is seeking a medical abortion. On the safety issue, you know, constitutionally, if underlying LB521 is a serious and genuine concern about the health and safety of women, LB521 might pass constitutional muster. But again, there is no evidence of any greater safety or health risk to women utilizing this procedure via telehealth as it would be in the case of receiving this procedure in a physician's office. And indeed, since this...the enactment...the introduction of this bill was precipitated by what's going on in Iowa, let's talk about what's going on in Iowa. The Iowa Board of Medicine specifically found that the... [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR COUNCIL: ...RU-486 telehealth program in Iowa was safe and legal for women. So if we're going to follow what's going on in Iowa, and we're concerned about what's going on in Iowa, let's look at the data that exists as a result of what's going on in Iowa. And the data that exists is that that program has been validated by the Iowa Board of Medicine as being safe. So in the absence of any data developed in Nebraska suggesting that this procedure is unsafe, then I submit to you again that it is unconstitutional. At best, the provision that the doctor be in the same room be eliminated, and even then LB521 remains suspect from a constitutional perspective.

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Thank you. [LB521]

SENATOR GLOOR: Thank you, Senator Council. (Visitors introduced.) Members wishing to be heard: McGill, Krist, Fulton, Conrad, and Council. Senator McGill, you're recognized. [LB521]

SENATOR MCGILL: Thank you, Mr. President and members of the body. I will be brief. I just wanted to clear up at least some of the information about 92 percent...92 cases this drug has worked, and 8 percent failure rate. That's what I want to focus on. And I want to make sure people understand what an 8 percent failure rate means. Eight percent failure rate does not mean that the woman is sick, that she has some sort of fatal flaw caused by the drug. It means she's still pregnant. That's what an 8 percent failure risk is. The woman is still pregnant. Doesn't mean there is anything "wrong" with her unless proponents think that a woman still being pregnant is what is wrong. You know, you can throw out numbers, about a 1,000 people out of all of the abortions in the country, and that's the same as any side effect to Viagra or overdosing on Tylenol, or other matters. In fact, I've just started looking at some statistics here so I can't spout them off without readily knowing them and having them here in front of me. But that 8 percent failure risk you're hearing does not mean the woman is sick. It means she's still pregnant. I just want to make that clear. We also have heard information about a woman bleeding and spotting. Well, women bleed, once a month. And in this case, you're taking away the...or eating away at the cells and the lining of what was a life form. So you're going to bleed to get rid of it. It's similar to a miscarriage. A woman knows she's miscarried because she starts to bleed more. That's how it works. So it's not that she's bleeding because there's something "wrong" with her, it's because she's terminating that life. So to say the statistics about how much a woman bleeds or how often, that's just the by-product of the procedure that she's just gone through. It doesn't mean she has internal bleeding that is a cause of this particular drug. It's a by-product of ending that life. So I just wanted to make sure that those couple of things were clear on the record, and that those really aren't examples of some negative side effect of the drug. That's what it's supposed to be doing. Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator McGill. Senator Krist, you're recognized. [LB521]

SENATOR KRIST: Thank you, Mr. President and colleagues. There is, again, no doubt that you will have two definitive sides to this argument, this discussion, this debate. There will be those who are pro-life and those that are pro-choice. And when we all get up on the mike we tend to emulate, show people who we are. So there's no mistake, most of you do know, but I am pro-life. And the description that Senator McGill just went through is a termination of life to me because I believe life starts at conception. But just so you know where I'm going from, I'm trying to shift gears back to where we should be within this Chamber, and that's not interrogating each other, that is not treating this like

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a courtroom and asking technical questions that we know someone that we're targeting does not know, it is asking questions and getting to the point of the legislation. Now I've talked to several lawyers in this Chamber and there might be a question of constitutionality, and I believe we should get to that point without interrogating each other. And there might even be a case to be made that this doesn't happen in Nebraska today because, as Senator Fulton has handed out, prescribing drugs to an individual a physician has never met based solely on answers to questions provided by the Internet, telephone, or fax, is currently under the category of unprofessional conduct for a physician. Or it might be because item 7 prescribing drugs to an individual without first establishing a proper physician-patient relationship is number seven. Here's my point. I'm not going to make a phone call to a doctor and ask him to send me the proper blood pressure medication over the phone and have the magic drawer open up where I can get my medication and take it home without first establishing with that physician a relationship and getting a physical. A physical that tells that physician who I am, how I'm made up, and what my issues are. Now, I'm not a doctor. I've said it many times, I'm a pilot. Houses get bigger, houses get smaller, I go faster and slower. The point of this is, we have a responsibility in this Chamber to look not only at the constitutionality, but also to look at patient safety. And if we allow clinics to open up around the state that are going to offer this service without establishing a medical history and a physical being accomplished, which I have confirmed does not happen in all of the clinics around the state or around the state of Iowa over the noonhour. There are not complete physicals done, so we do not know if there's high blood pressure involved in most cases, maybe we do. Maybe we put the cuff on them and said, you're blood pressure is 140 over 80. That would be my concern. I wonder if Senator Fulton would yield to a question. [LB521]

SENATOR GLOOR: Senator Fulton, would you yield? [LB521]

SENATOR FULTON: I will. [LB521]

SENATOR KRIST: On those conditions that you described this morning, and I know you were reading from the paper and you're not a doctor, you're an engineer, but you told me that one of the risk factors involved would be if there was a preexisting condition in a patient and that that drug being administered would cause something to happen that was not intended to happen, that is pregnancy continuing, but some other kind of issue that would happen... [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR KRIST: ...as a result of taking that medication, is that correct? [LB521]

SENATOR FULTON: Yes, that would be a good way to describe it. [LB521]

SENATOR KRIST: Okay, and can you give me an example of that. I hate to have you

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pull out your notes but I think there was excessive bleeding or some other problems based upon potentially having a blood disorder or having a preexisting condition. [LB521]

SENATOR FULTON: Sure. What I referenced, since heavy bleeding requiring curettage occurs in about 1 percent of patients, special care should be given to patients with hemostatic disorders, hypocoaguability, or severe anemia. [LB521]

SENATOR KRIST: Okay. [LB521]

SENATOR FULTON: So these were three that were listed in the Mifeprex tablet label. [LB521]

SENATOR KRIST: Okay, thank you, Senator Fulton. I wonder if Senator Conrad would yield to a question. [LB521]

SENATOR GLOOR: Senator Conrad, would you yield? [LB521]

SENATOR CONRAD: Of course. [LB521]

SENATOR KRIST: Do you know for a fact that in the establishment of this drug should we not specifically say that it is illegal in Nebraska, and we all know that we have regulations on the books and unless we specifically say that, that people are not going to pay attention to it? [LB521]

SENATOR GLOOR: Time, Senator. [LB521]

SENATOR KRIST: Thank you. [LB521]

SENATOR GLOOR: Thank you, Senator Krist. Senator Fulton, you're recognized. [LB521]

SENATOR FULTON: Thank you, Mr. President and members of the body. AM1437, I stand in opposition to AM1437. In effect this would eviscerate the bill and what we're trying to accomplish here having the doctor physically present to the mother seeking an abortion, so. The document that I just handed out, we actually pulled this off the Internet, so this is Nebraska Health and Human Services Regulation and Licensure, and Senator Krist did touch on it but it's worth pointing out again. And the reason I do this, I mean, this isn't to pile on, I guess. The reason I do this is to explain to you, colleagues, that this isn't...this isn't out of the ordinary what we're asking for. We're simply asking the doctor to be present to the mother seeking an abortion. Okay. So front page here, this is unprofessional conduct, page 32. This section defines the following acts as unprofessional conduct. And number six, prescribing drugs to an individual the

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physician has never met based solely on answers to questions provided by the Internet, telephone, or fax. Pretty self-explanatory. Number seven, prescribing drugs to an individual without first establishing a proper physician-patient relationship. A proper physician-patient relationship requires that the physician make an informed medical judgment upon examination, diagnosis, and formulation of a treatment plan and that arrangements exist to ensure availability of the physician or physician coverage for follow-up patient care. What we're asking here again with this bill is not out of the ordinary. I think it could be argued it exists in rules and regulations. What I'm trying to do is make it statutory. Rules and regulations are promulgated through a public process, ultimately, however, by the executive branch. We, the legislative branch, have as our purview and prerogative, legislation. And that's why you see this before you, this bill, that is. Okay. A question. Whether an abortion may be regulated differently than other medical procedures? This comes back to the Attorney General's Opinion that you've received. And I want to point this out for the record. Nebraska currently allows telemedicine for the delivery of certain healthcare services. In fact, Nebraska has already adopted separate rules and regulations governing provisions of telemedicine for Medicaid covered telehealth services. The Supreme Court has emphasized that, "abortion is inherently different from other medical procedures because no other procedure involves the purposeful termination of a potential life." This was the Attorney General's Opinion reading from Harris v. McRae, 1980. LB521 would establish separate provisions governing use of telemedicine for abortions. It is the position of this office that as to the first question raised, this question which I have read to you in your informal opinion request, we believe regulation of abortions by the state may be treated differently than other medical procedures as it does with Medicaid covered telehealth services. Accordingly we believe provisions covering telemedicine for abortion are also justified. So we treat abortion differently than other telehealth services or telemedicine. We treat it differently because abortion is different. We have that as our purview, per what I just read to you, Harris v. McRae, and there are others that can be referenced. [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR FULTON: So we do treat abortion differently than other telehealth services. And this really comes back to Senator Sullivan's question, a good question. Is the intention behind this bill to ban or hinder other forms of telemedicine? My response is, no. And the plain language of the bill should make that clear. We're operating within our purview and within our prerogative when we treat abortion differently than other medical procedures with respect to telehealth. That's point one that I will make. There are a couple of other points. I will wait until my time comes up again. Thank you, members. Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Conrad, you're recognized. [LB521]

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SENATOR CONRAD: Thank you, Mr. President. Good afternoon, colleagues. I had a chance to visit with my good friend, Senator Krist, off the mike because his time was cut short in relation to his comments. And the point and the question that he had asked me to respond to, and I hope I get it exactly right based on our conversation was...his point was, we must admit that there are risks associated with this drug and this practice in any context, and I admit that. No one disagrees with that. My point is simply that there are risks associated with any drug and any medical practice. And so to single out this particular practice and this particular drug or type of drugs is, I think, where we have a point of disagreement. And nonetheless, we both came to the very, very clear and obvious conclusion that those issues are far beyond the scope of LB521, whether or not there should be additional regulation or requirement in relation to the use of RU-486 in Nebraska. That's far beyond the scope of LB521 and actually doesn't relate to that at all. So I did want to make sure that since he ran out of time that that sentiment got expressed in the record. And to be clear, colleagues, our job is to present our perspective on any issue that is before this body. And particularly in cases where the language itself on its face is vague, it's critically important that we build a record to establish legislative intent. I contend that LB521 and AM1100 are indeed vague and that is why legislative intent and the legislative record are so critically important. And the way that we do that is through legislative debate, and there is nothing unreasonable about expecting a member to have read and understood their own priority bill. Enough on that topic. I think that it is important to note that Senator Fulton and others have brought forward the premise or the proposition that because of patient safety we must adopt this legislation. And again the record is absent in terms of any scientific evidence, study, or research which indicates that the utilization of this type of medication, and this type of practice is inherently unsafe in any way differed by whether or not a physician is physically present in particular. And to quote from the FDA, the Food and Drug Administration, Drug Evaluation...Center for Drug Evaluation and Research, no drug is 100 percent safe. No pharmacologically active medicine exists that does not have side effects. Every adverse drug reaction associated with Mifepristone should be fully investigated as reactions from other drugs are. Mifepristone, and I apologize if I'm mispronouncing that, otherwise known as RU-486, should not receive special treatment from federal health agencies. It should be held...it should not be held to an unfair standard that is not imposed on other prescription medications. That's a statement by Janet Woodcock, medical director for the Center for Drug Evaluation and Research at the Food and Drug Administration before the subcommittee on oversight and investigation to the U.S. House of Representatives. It also can be found on the FDA Web site. So take that as part of the information that needs to be considered as we move forward. That's the FDA's pronouncement on this topic. So to suggest otherwise is disingenuous. And let's be clear. There are more than...according to the FDA, over 106,000 U.S. deaths... [LB521]

SENATOR GLOOR: One minute. [LB521]

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SENATOR CONRAD: ...thank you, Mr. President...from all adverse drug reactions each year. Adverse reactions associated with this drug account for less than one, one-thousandth of a percent of that number. So when you talk about patient safety, you have to talk about it broadly, and, unfortunately, Senator Sullivan, you can't untangle it from telemedicine as a whole, otherwise that is indeed just an undue burden. If these health risks exist for this practice and this drug, and we need to ban them for telemedicine purposes, the same must be true for other drugs and other practices. It's a slippery slope to suggest otherwise. And what implications does that have on access to quality medical healthcare in a rural state like Nebraska? Ask yourself the hard questions. [LB521]

SENATOR GLOOR: Time, Senator. [LB521]

SENATOR CONRAD: Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator Conrad. Senator Council. And this is your third time, Senator Council. [LB521]

SENATOR COUNCIL: Thank you, Mr. President and I guess I would...if it's my third time, I would ask the Chair to review it. I think this would be my third time if you count my opening on the amendment, but it's not my third time if you don't count the opening, so. [LB521]

SENATOR GLOOR: You have one more to close, Senator. [LB521]

SENATOR COUNCIL: Thank you very much, sir. I was hoping that Senator Fulton would make reference to the Health and Human Services guidelines because he doesn't realize he's made my point about the impact of LB521 on telehealth and...or better yet, the relationship between the current telehealth act and LB521, because if you look at the Nebraska Telehealth Act, and I refer you specifically to that section that is referenced in the Attorney General's Opinion, which is Section 71-8501 et seq., if you look at Section 71-8502, it discusses the exact subject of the regulations and licensure provisions that Senator Fulton had directed your attention to. And the point I wish to make is, these very same restrictions that Senator Fulton is suggesting to you would be violated without LB521 in the context of a webcam abortion. The suggestion is they somehow they are not violated under the regular telehealth act of Nebraska. And if you look at the telehealth act of Nebraska, it speaks to consultations. And nowhere in the act, Senator Sullivan, does it say that that consultation has to be face-to-face. What it says is, it can't be by telephone, it cannot be by e-mail message, and it cannot be by facsimile. And what does...what Senator Fulton passed out say? It says that it cannot be by Internet, e-mail, cannot be by telephone, or facsimile transmission. These regulations currently apply under the telehealth act, and so to imply that under any other provision

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of healthcare, via technology, you must have a face-to-face consultation with the patient is not true. And it is, in fact, absolutely contrary to what the Nebraska Telehealth Act authorizes. It authorizes that consultation to occur by any means except e-mail, just an e-mail message, telephone conversation, or a fax. What is a webcam? It's Skype. It is the person's image that I am talking to on a computer screen responding to me as I watch them respond. That is exactly what is permitted currently under the Nebraska Telehealth Act. So for Senator Fulton to suggest to you that if there was a webcam abortion provided that it would be a violation of these licensure provisions is absolutely untrue. [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR COUNCIL: And if it is true, then we can't have telehealth in Nebraska period, because according to Senator Fulton, that physician in Omaha, who is trying to treat someone in Box Butte, has to have first personally consulted with them. If that is what is required, what are we achieving by telehealth? We're trying to achieve what the legislative intent was--to reduce healthcare costs, improve healthcare quality, and improve access. So what is stated here in the licensing and regulation is what's required. No doubt about it. But it's required of a provider under a webcam abortion just as it is a provider who is giving a consultation with regard to some orthodontic procedure that the patient... [LB521]

SENATOR GLOOR: Time, Senator. [LB521]

SENATOR COUNCIL: Thank you. [LB521]

SENATOR GLOOR: Thank you, Senator Council. Senator Cook, you're recognized. [LB521]

SENATOR COOK: Thank you, Mr. President and good afternoon, colleagues. I would like to thank Senator Fulton for a reminder of all of us remembering why we came here. And as someone within the Chamber that has what is a rare opinion in this body, in the way it is currently set up, I told myself that I was going to represent a point of view that is much more represented in greater Nebraska, certainly in the greater metropolitan area of Omaha, and regionally, than is evident in terms of the votes in here. And I also wanted to offer in addition to the information about this bill being a bill that is to protect the health of the woman carrying the child and wishing not to, for whatever reason she and/or her family may decide, a reminder because history is such a great teacher for all of us. We're talking about patient safety. I want to remind everyone here that between the 1880s and 1973 abortion was illegal in all or most of the United States, and many women died, or had very serious medical problems as a result of that fact. Women often made their own desperate and dangerous attempts to induce abortions, or resorted to untrained practitioners who performed abortions with primitive instruments or in

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unsanitary conditions. Women went to emergency rooms with very serious complications including perforations of their uterus, retained placentas, severe bleeding, cervical wounds, infections, poisoning, shock, etcetera. Doctors who worked in emergency rooms before that time saw firsthand the consequences of the fact that abortion was illegal. Again, this is what was happening to the woman who was carrying the child. Doctors who worked in emergency rooms before 1973, and saw firsthand the consequences of illegal abortion, would be in the best position to know. This is quoting a doctor, Dr. Louise Thomas, a New York City resident, during the late 1960s. She summed up the dangers of illegal abortion remembering what was termed the Monday morning abortion lineup. What would happen is that women would get their paychecks on Friday. Friday night they would go to their abortionist and spend their money on the abortion. Saturday they would start being sick and they would drift in on Sunday, or Sunday evening, either hemorrhaging or septic. And they would be lined up outside the operating room to be cleaned out Monday morning. There was a lineup of women on stretchers outside the operating room, so you knew if you were an intern or a resident, when you came in Monday morning that was the first thing you were going to do. Then, I'd also like to quote a statistic and I do have a citation for those who might be interested. Each year an estimated 42 million women worldwide obtain abortions services to end pregnancy. Approximately 20 million of them obtain this procedure illegally. Earlier in the session there was a bill introduced before the Health and Human Services Committee, to which Senator Conrad made a reference, and that was a bill related to comprehensive education on birth control, all different methods, abstinence, birth control, education... [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR COOK: ...that would be...did you say one minute, Mr. President? [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR COOK: Thank you. Okay, one minute. That bill is still resting in committee, but as I respond to people who write to me, I don't really get that many individual letters, I get a lot of form letters on this issue. But when people write me an individual letter and in terms of my constituents and they're interested where I stand on the issue, this is what I tell them. That what we need, clearly, since people are not taking the advice of their parents or their leaders in education or somebody who might mentor them, is comprehensive education. Thank you. [LB521]

SENATOR GLOOR: Thank you, Senator Cook. Senators in the queue: McGill, Schumacher, Fulton, Conrad, and Ken Haar. Senator McGill, you're recognized. [LB521]

SENATOR MCGILL: Thank you, Mr. President and members of the body. I want to

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remind folks in here that the way that this procedure generally takes place, without the telehealth aspect of it, is that someone else performs the checkup, which if it isn't happening everywhere in Iowa, a checkup, I would certainly be in favor of requiring a checkup of some sort, a general physical before going through with any procedure like this. But you get that through a nurse practitioner and other staff and then the doctor literally comes in to hand off the drug. The doctor is not required to do anything beyond that to even listen to a heartbeat on the patient. And when Senator Krist brought up his blood pressure medicine and being...prescriptions being given out by doctors, and how they do a full physical, I never go to my doctor. I go to my nurse practitioner who gives me every medication that I have. I never see the actual doctor. I think it's good that a doctor is involved in these cases with this particular drug, but to compare, I see my doctor for X, Y, and Z to get this medication, I don't, I see a nurse practitioner. I get all of my other healthy medications and anything related to my health from a nurse practitioner. And to have people talk about, and try to use, oh, we need a patient-doctor, we need a strong patient-doctor relationship, and this bill discourages that. Well, the very reason that I have the philosophies I do on this issue is because I believe the choice to terminate a life should be between a woman, or the couple, her doctor, and her God. That's how a decision like this, a very deep and thoughtful and troubling decision should be made. But we as a government decide to go in and tell...say...tell a doctor what he can and cannot do. We are taking away from that relationship with many of our laws. We're taking away from that doctor-patient relationship and ability to talk openly about the issues facing that woman, or like I said, a couple in many cases, that doctor, and their God. And we should be doing everything that we can to prevent unplanned pregnancies. I would kill to see a bill in here hit the floor that actually focused on that. But every year we have these little tweaks that, honestly, like I said earlier, this bill does nothing but require a woman have to get in her car and drive. There's no proof it will lower abortions, that it will change the health of a woman. It's incredibly frustrating when for five years now we come, and this year there were three or four different bills brought on this issue, all of which, you know, I'm not going to...this will, hopefully, be my last time speaking because it's not worth spending my breath on something that really ultimately does so little to try to curb the problem where we could be investing money and ideas into prevention and making sure that women when they make their decisions don't get all this outside government, this is what you have to do or should do, but can talk to their family members, talk to the Father, talk to their doctor, and pray to their God, and make these tough decisions. Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator McGill. Senator Schumacher, you're recognized. [LB521]

SENATOR SCHUMACHER: Thank you, Mr. President. I was going to comment on my concerns that this may be opening the door for some state financing of certain phases of an abortion. But out of an accommodation to Senator Conrad so that she can ask some questions before Senator Ashford leaves, I yield my time to Senator Conrad.

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[LB521]

SENATOR GLOOR: Senator Conrad, 4 minutes 33 seconds. [LB521]

SENATOR CONRAD: Thank you, Mr. President and thank you, Senator Schumacher, for the professional courtesy. Senator Ashford has another meeting to attend to, so I'm trying to get this point in the record as quickly as possible and I will be yielding my time...my light, which is up in a moment, back to Senator Schumacher so we can hear his perspective. Senator Ashford...if Senator Ashford would yield, please. [LB521]

SENATOR GLOOR: Senator Ashford, would you yield? [LB521]

SENATOR ASHFORD: Yes. [LB521]

SENATOR CONRAD: Thank you, Senator Ashford. As Chair of the Judiciary Committee, you have the benefit of hearing all of these pieces of legislation at the committee level, and having an intense dialogue in the Executive Committee process that is something that is not available to somebody like me who doesn't serve on that committee, so I want to specifically ask you some questions about these issues, and was hoping that you could provide some expertise. Senator Ashford, I know that this year you also heard a bill by Senator Pirsch related to so-called conscience clause prohibitions or protections that basically said, you know, we can go ahead and make it okay for a doctor or a nurse practitioner or a pharmacist to not prescribe birth control if that is their personal belief. Is that right? [LB521]

SENATOR ASHFORD: Yes. [LB521]

SENATOR CONRAD: And so, the reason Senator Pirsch, and he's not on the floor otherwise I'd ask him, brought that bill I'm guessing, is because it would be fair to say that there is significant disagreement in the medical world and the political world about whether or not birth control is indeed an abortion. [LB521]

SENATOR ASHFORD: Yes. [LB521]

SENATOR CONRAD: And to be clear, Senator Ashford, the...LB521, as amended by AM1100, specifically removed three specific references to RU-486 and in it's known by its other medical terminologies, so the committee amendment specifically leaves vague whether or not birth control would be subject to these prohibitions. [LB521]

SENATOR ASHFORD: Yes. [LB521]

SENATOR CONRAD: Thank you, Senator Ashford. Thank you, Mr. President. [LB521]

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SENATOR GLOOR: Thank you, Senator Conrad. (Visitors introduced.) Continuing with floor debate, Senator Fulton, you're recognized. [LB521]

SENATOR FULTON: Thank you, Mr. President and members of the body. The second question that I pose, whether requiring the physical presence of a physician during an abortion, surgical or chemical, whether this constitutes an undue burden. This was part of the subject matter in the Attorney General's Opinion. First, I'd point out to you that under current law we are requiring that the abortion be performed by a licensed physician. That is within our prerogative if you read the Attorney General's Opinion. It also happens to be existing law. You can see that in AM1100, lines 5 and 6, the performing of an abortion by any person other than a licensed physician is a Class IV felony. Number two, as to whether physical presence constitutes an undue burden. The main reason for this has to do with safety concerns. My colleague, Senator Council, quoted from, I think, from the public hearing when I spoke and said that I don't want to see webcam abortions proliferating across Nebraska. That's a true statement. I don't. One of the reasons is because I don't think it's a safe practice. And I think it has, as part of our public policy, the unintended consequence of making the abortion procedure something cavalier, which happens over the course of Internet, certainly not from the mother's perspective, but perhaps from the doctors. So it's a legitimate debate, we can have public policy, but this is about safety. So I'm going to talk about why this is...why the RU-486 abortion procedure, this is something more than something you get over the counter. This is not just Tylenol or aspirin or what have you. This is something very serious. In the Mifeprex tablet label, which I've been reading from extensively, there's a list of contraindications. It's important to read these into the record. Administration of Mifeprex and Mesoprostol, or Misoprostol, something Senator Conrad share in common there. I don't know if I'm pronouncing this correctly, for the termination of pregnancy is contraindicated in patients with any of the following conditions: Confirmed or suspected ectopic pregnancy or undiagnosed adnexal masse; an IUD that's in place; chronic adrenal failure; concurrent long-term corticosteroid therapy; history of allergy to Mifepristone, Misoprostol, or other progestins; hemorrhagic disorders or concurrent anticoagulant therapy which may be in place at the time that this abortion is being sought. These are things that are pointed out in the tablet label. And as a matter of safety, I suggest that having the doctor present makes it more likely, makes it more easy, makes it more...raises the potential that these things which are listed in the Mifeprex tablet label actually are addressed by a doctor, a physician, a licensed physician. Now here again, we can have legitimate debate here in this Legislature as to whether a doctor should be present to make these determinations, physically, or not. And that's legitimate, we can have those debates. But whether the Legislature can make a determination on this... [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR FULTON: ...we can make this determination, for safety falls under the

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purview of the Legislature. So does our safety concern in presenting this bill present an undue burden? According to the Attorney General's Opinion, a state regulation is unduly burdensome if it has the "purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." This from Casey, Casey v. Planned Parenthood. In Gonzalez v. Carhart, still reading from the Attorney General's Opinion, the Supreme Court reaffirmed the plurality opinion in Casey ruling "the fact that a law which serves a valid purpose one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it." It is the position of this office that requiring the physician's physical presence, is not... [LB521]

SENATOR GLOOR: Time. [LB521]

SENATOR FULTON: Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator Fulton. Senators in the speaking queue: Senators Conrad, Ken Haar, Krist, and Fulton. Senator Conrad, you're recognized. This is your third time, Senator. [LB521]

SENATOR CONRAD: Thank you, Mr. President, and I will yield my time to Senator Schumacher. [LB521]

SENATOR GLOOR: Senator Schumacher, 4 minutes 50 seconds. [LB521]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. As I sit here listening to the debate today, it occurs to me that one of the things we may not want to do inadvertently is get ourselves in a position of financing these kind of abortions. And one may scratch your head initially, but when I say that, but there's some justification, I think, for saying that. We spent some time on LB22 making the point that these insurance plans and these insurance exchanges were not to finance abortions. But then we say that these things, this law will not apply to coverage for medical complications arising from an abortion. So the complication part of this will be covered, apparently, by these insurance plans under the legislation we recently passed. Now in looking at the law, and I think it needs some work to define what we mean here, we require that the...this is LB521, when I referred to the law, that the physician be physically present in the same room with the patient when the physician performs or induces the abortion. So we have a point in time called induction. Then somewhere within three weeks we have a point in time in which complications begin before it's all completed. So we're requiring the physician to be there for an undefined period of time. If he misguesses it, he might be guilty of a Class IV felony during this induction process. Once the induction is complete, he can leave the room and doesn't have to be present anymore. Then the complications set in, and for which we have a situation where the insurance coverage begins to apply. Now we take it one step further. What if this

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woman is on Medicaid? Once she crosses the bridge between induction and complication, does Medicaid have to pick up the tab for the completion phase of this operation? Well, one would say, no, we don't use Medicaid money for abortions. But this provision in LB521 goes on to say that no civil or criminal penalty will be assessed against a patient upon whom the abortion is performed and induced, or attempted to be performed or induced. I question whether or not the denial at that point of Medicaid coverage to that woman is, in fact, a civil penalty of sorts, and we are specifically exempting that particular thing. So I think we may be treading on reckless use of language here that needs to be cleaned up so we don't end up paying for these particular types of abortions. We are setting a standard of care during the induction phase that we are requiring the physical presence of an M.D. We should define when that induction phase is over, and when the complication phase set in, and whose going to pick up the tab for who on...when we get in the middle of this legislation, otherwise I think it may be fraught with litigation. Senator Cook's comments brought to mind something and she said, well, back in the day, there were all kinds of illegal abortions that were performed and that was great hazard to women. I tried to put myself in the shoes of somebody who, faced with this situation, was quite desperate and simply said, don't want to comply, want to go on-line, I want to get this pill, and just let it work recklessly without a doctor being present. And if you push this drug names into your gadgets... [LB521 LB22]

SENATOR GLOOR: One minute, Senator. [LB521]

SENATOR SCHUMACHER: ...you'll get about a half a million hits on where you can buy this stuff on-line and do it yourself. Now it may or may not be illegal to do that on-line. I couldn't find anything in our criminal code referring to this particular drug, but it might be under a different name. Boy, this particular thing, I would see that that, perhaps, is an outcome of this legislation even though I support doing everything we can to dissuade abortions. Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Krist, you are recognized. [LB521]

SENATOR KRIST: Thank you, Mr. President. Sorry for the delay. I just wanted to finish up when I asked Senator Conrad to yield for a question earlier. My point in the question is just this. With patient safety in mind, it would seem to me that one of the arguments that needs to be made about this type of procedure and/or medication is that there needs to be a physical workup done before any drug of this type is given. And just for the record, Senator McGill, I don't take blood pressure medication, but as an example I think that's a valid one because there are so many different kinds of blood pressure medication that the right kind is a lifesaver or the wrong kind can absolutely get you in trouble. But I think it's important that we AM1437 up so we concentrate a bit on the amendment and giving it some serious consideration. With that, would Senator Council

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yield for a question? [LB521]

SENATOR GLOOR: Senator Council, would you yield? [LB521]

SENATOR COUNCIL: Yes. [LB521]

SENATOR KRIST: Senator, in looking through, it's a very simple amendment, it simply says a doctor doesn't have to be in the same room. By definition, in following through my...if you follow and understand my comments previously, I'm really not concerned whether the doctor is in the same continent. The point is that the medication that's given is given for the right reason and is appropriate for someone in their physical condition. So if we say he's not in the same room, that's really no different than we do things today. A doctor comes in, does a physical, he may send a nurse back in, or a nurse practitioner back in to inject or to give a drug, and then the prescription that's given, the person is actually given at home. So, ultimately, would you concur with that position? [LB521]

SENATOR COUNCIL: Yes, Senator Krist and I'd go even further. Under the telehealth act as it exists now, that's what we allow to occur. [LB521]

SENATOR KRIST: Okay. So it's not necessarily that they're not in the same room or state or county, but it's the fact that the drug is being administered after there is some kind of exposure. Life flight helicopter comes in, they're calling in to a doctor on the ground. They've already done some kind of a workup. That's probably the worst case scenario, but something like that. Some kind of patient history has to be known for and according to our licensure and regulations in order for that relationship to exist between a physician and a patient. Would you agree? [LB521]

SENATOR COUNCIL: I agree and I think as well, Senator Krist, as I understand our licensing requirements and what I understand to be the practice is that a nurse practitioner is authorized to do that level of medical workup and provide that information to the physician and satisfy the requirements of developing that medical history. [LB521]

SENATOR KRIST: Okay. Thank you, Senator, and thanks for yielding to the question. Point being, I do believe patient safety is one of our big considerations here, and I do believe that some kind of physical workup in any case would be required at the right level, that the right clinical or clinician, whether it be a doctor or nurse practitioner who is qualified to make that assessment, but I stand...still stand in support of LB521 and the Judiciary amendments that have been filed against it. Thank you. [LB521]

SENATOR GLOOR: Thank you, Senator Krist. Senator Fulton, you're recognized and this is your third time speaking, Senator. [LB521]

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SENATOR FULTON: Thank you, Mr. President. I wasn't able to finish the second point that I wanted to make. And I'm making these points too, colleagues, because by now we all know, we take different positions on bills. The opponents of the bill have brought up legitimate concerns, I think, and so I'm making an attempt here to address these concerns. Undue burden. Does our safety concern, which motivate, which moves this bill, present an undue burden. And I was reading from our Attorney General's Opinion, and I'll pick up where I didn't get to finish. A state regulation is unduly burdensome if it has the "purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." In Gonzales v. Carhart, the Supreme Court reaffirmed the plurality opinion in Casey ruling "the fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it." It is the position of this office that requiring the physician's physical presence is not an undue burden because it is not designed to strike at the right itself, and also will not make it more difficult or more expensive to procure an abortion than what is currently available in Nebraska. A point that I tried to make early on in the debate is that I don't know that this bill will increase or decrease the incidence of abortion in Nebraska. I don't know. That's not why the bill is being brought forward. So when Senator McGill says that this bill does not decrease abortions, she's right, or she may be right. I don't know if it's going to increase or decrease abortions. That's not the point of the bill. Senator Conrad says, this practice isn't occurring in Nebraska. And I agree, it's not occurring in Nebraska. That's why I think that this is a bill that we could all vote for, pro-life and pro-choice. Senator McGill also said the bill really does not do anything. I disagree with that, but the upshot is, it's really not changing anything with respect to the practice of abortion in Nebraska. And so in that regard, this is not designed to strike at the right itself, which is what I have been putting forward in the first place. That's not why we're bringing this...why I am bringing this bill. And that ultimately is not why I ask you to support this bill. This bill isn't going to make abortion more or less prevalent, I don't believe. This is simply a matter of safety. The third point actually is not something the Attorney General addresses directly in his opinion. This is something that I've heard in argument or picked up in argument. I don't know that it's been explicated, specifically. But it's something that could be a question at some point and I want to address it now. Does this bill require a doctor to be present to the woman for days on end? I think this is why Senator Ashford was opposed to the bill previously. At least it sounded that way when he was opening on the committee amendment. It might be argued that since this is a two-drug procedure, and the process that the chemical...or the process that the chemical undertakes could take several days, in which case requiring the doctor to be present for those several days would constitute an undue burden. My response to that is that if you read the plain...just the plain language of the bill, this is from a section of statute that applies to all abortions, not just webcam abortions, but all abortions. [LB521]

SENATOR GLOOR: One minute. [LB521]

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SENATOR FULTON: No abortion shall...now from the bill, AM1100, no abortion shall be performed, induced, or attempted unless the physician who uses or prescribes any instrument, device, medicine, drug, or other substance to perform, induce, or attempt the abortion is physically present in the same room, and so forth. It seems to me from the plain language of the bill, the plain reading of the bill by a reasonable person would conclude that the word "induce" is applicable here when we're talking about RU-486 and the potential for webcam abortions. And so I'll make the case that simply reading the bill, this is not requiring a doctor to be present for days upon end because such a thing would have the incidental effect of making it more difficult or more expensive to procure an abortion. And that's not my intention, nor can it be gleaned from a plain reading of the bill. And so with that, I thank you, Mr. President. [LB521]

SENATOR GLOOR: Time, Senator. Thank you, Senator Fulton. The Chair recognizes Senator Cook. (Gavel) [LB521]

SENATOR COOK: Thank you, Mr. President. I would like to yield my time to Senator Council. [LB521]

SENATOR GLOOR: Senator Council, 4 minutes 52 seconds, Senator. [LB521]

SENATOR COUNCIL: Thank you very much, Mr. President. Again I certainly appreciate my colleague, Senator Fulton's attempt to place his bill and cast it in a better light, but when he speaks to the language, no abortion shall be performed, induced, or attempted unless the physician...the last time I read how the bills that are introduced, and if I look at LB521 everything underlined here is new language. And the current abortion laws are being amended by LB521 to add, no abortion shall be performed, induced, or attempted unless the physician who uses or prescribes any instrument, device, medicine, drug or other substance to perform, induce, or attempt shall be physically present in the same room. That's new language, colleagues. And for Senator Fulton to suggest that that's the current state of the law is, you know, quite frankly disingenuous because this is new language, and that's what is attempting to be accomplished by LB521. And Senator Schumacher, you raise a very valid point because that is a concern that was expressed in the committee. You know, when does the inducement end? When does the performance end? You know, in a surgical abortion when it is induced and when it ends, but in the case of RU-486, and I don't pretend to begin to articulate and to actually be in a position to really use these medical terms, so I'll keep using RU-486 recognizing that it's a two-drug protocol and that's what's important. And that was the point I was trying to make earlier and that everyone ignored. This is a two-drug protocol. So it's, you know, the safety issue is a nonstarter because if the doctor is present during the administration of the first drug, FDA, everybody says the second drug is administered at sometime later, not under the supervision of a physician. So the practical effect of LB521 is not only would it prohibit and ban webcam abortions utilizing RU-486, it would ban abortions using RU-486. And quite frankly, there has been no safety justification

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presented either today or to the Judiciary Committee when this bill was introduced. Again, you know Senator Fulton and I can stand here and read the Attorney General's Opinion to you all day, and we will. We will pick out selective passages of that opinion to read to you because that's what we do when we want to bolster our case. I tell you, you read it yourself. But I would submit to you to read one particular paragraph in particular. Notwithstanding the clear constitutionality of restricting the performance of abortions to physicians, a statute requiring the physicians physical presence in the same room with the patient is a case of first impression. There is no law specifically on this point. Attorney General goes on to say, however, we believe the case law supports their conclusion that such a requirement does not impose an undue burden. [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR COUNCIL: Okay? That's their conclusion. And there's no specific decision of any level of court that has said that this requirement is constitutional. But I do want you to note that the Attorney General begins the next to the last paragraph on the second page by saying, a state regulation is in fact unduly burdensome if it has the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus. Again, Senator Fulton stated clearly, unequivocally, what his purpose of introducing LB521 was, and that was to prevent the proliferation of this webcam abortion process in Nebraska, period. That's the purpose, that's the effect. So the next statement by the Attorney General is irrelevant. [LB521]

SENATOR GLOOR: Time, Senator. [LB521]

SENATOR COUNCIL: Thank you. [LB521]

SENATOR GLOOR: Thank you, Senator Council. The Chair recognizes Senator Avery. Senator Avery. [LB521]

SENATOR AVERY: Thank you, Mr. President. I've been so impressed with Senator Conrad, I'm going to yield the rest of my time to her. [LB521]

SENATOR GLOOR: Four minutes, 46 seconds, Senator Conrad. [LB521]

SENATOR CONRAD: Thank you, Mr. President and thank you, Senator Avery. And as a former student, that is indeed a true compliment, so thank you. Colleagues, this will be my last time on the mike this afternoon but there was one point that I did not have an opportunity to make earlier and got cut off and I wanted to make sure that the record was clear in this regard. Again, proponents of this legislation suggest that, incorrectly, that this medication RU-486...Senator Fulton is exactly right. I don't think any of us are pronouncing it correctly, so for practical purposes we'll say RU-486. Opponents incorrectly suggest that RU-486 is not safe. That claim is untrue. It's unsupported by the

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FDA, and it's unsupported by medical research and technology. Again, in fact, 99.841 percent of women utilizing this drug have not reported any adverse drug reaction. So the 8 percent that Senator Fulton talks to...about, that's not in relation to an injury or death to the patient. That's in relation to the fact that the medical abortion did not...was not successful. And then, indeed, women pursue surgical abortion thereafter. Again, there are literally over 100,000 deaths each year in the United States based on adverse drug reactions each year and the reactions associated with this drug account for less than one, one-thousandth of a percent of that number. In contrast, every year there's over 150 accidental overdoses of Tylenol that lead to deadly liver failure. In fact, the statistics show clearly, and this is from the Association of Reproductive Health Professionals in a 2005 article, that five men die from Viagra-related drug reactions out of every 100,000 prescriptions written. It's a fact. So if politicians and anti-choice advocates seek to put undue burdens or restrictions upon women, and upon their rights, and upon healthcare providers, and seek to put these restrictions on drugs that have proven records of safety and efficiency such as RU-486, then the same standard should be applied across the board. You know, we can read all we want selectively from complications on an FDA's Web site for any given drug, that doesn't build the medical record, that doesn't build the policy record, that doesn't build the legal record. I'll go ahead and show you how that can be done, in fact. Naprelan, which is...that comes in over-the-counter form and Aleve, and you can also get a prescription for that. Well, what kind of risks come with that, Aleve, or prescription Aleve? Well, according to the FDA they can cause increased risk of serious cardiovascular events. Myocardial infarction, which I believe is the medical term for a heart attack. Stroke. All of these can be fatal. The risk increases with duration of use. Patients with cardiovascular disease or risk factors for such are at greater risk. It goes on to list a laundry list of gastrointestinal risks that come with Aleve. What about Tylenol? According to the FDA, just this year in...January 13, 2011, the U.S. Food and Drug Administration, the FDA put new limits on acetaminophen, which comes, of course, in prescription strength, and also over the counter in Tylenol, because of the medical risks associated with its use. [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR CONRAD: Thank you, Mr. President. For example, it says that it's the leading cause of acute liver failure in the United States. According to the Center for Disease Control there's 1,600 cases of acute liver failure with Tylenol or acetaminophen each year. So that's a pretty significant medical risk that comes with a pretty recognizable pharmaceutical that we're all familiar with. And the point is simply this, the risks Senator Fulton put forward do not indicate there is a safety need to pass this legislation, and if it applies to this instance, it must apply in all telehealth, otherwise is an undue burden. Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator Conrad. (Visitors introduced.) Senator Cook, you're recognized for the third time, Senator. [LB521]

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SENATOR COOK: All right. Thank you very much, Mr. President. Good afternoon, colleagues. I'll yield my time to Senator Council. [LB521]

SENATOR GLOOR: Senator Council, 4 minutes 49 seconds. [LB521]

SENATOR COUNCIL: Thank you very much, Mr. President. Thank you again, Senator Cook for sharing your time with me because I think it is extremely important that we recognize what the, perhaps unintended consequences of enactment of LB521, and that's indeed why I offer my amendment, AM1437, because under the current Nebraska telehealth law there is no requirement that the physician be physically present in the same room with the patient during all manner and variety of very risky healthcare procedures. In fact, the regulations provided to you by Senator Fulton do, in fact, apply to all healthcare providers. And if you look at 471 of the Nebraska Administrative Code, Section 1-006, which are the portions of the Nebraska Administrative Code that apply to telehealth...Medicaid telehealth, it specifically says, under the act, telehealth consultation means any contact between a patient and a healthcare practitioner. Doesn't even require that it be a licensed physician. It says a healthcare practitioner. Relating to the healthcare diagnoses for Senator Krist and others who have expressed a legitimate concern about some kind of workup, relating to the healthcare, diagnoses or treatment of such patient through telehealth, but does not include a telephone conversation. That's right. Doesn't include an electronic mail message. That's right. Or a facsimile transmission. But you know what it talks to? H320 means the industrywide compressed audio-video communication standard from the International Telecommunication Union for real time, two-way, interactive audio-visual transmission with a minimum signal of so many gigabits per second. Okay. That's what a webcam abortion is--a use of real time, two-way communication. No greater or less risk to the health and safety of a patient than someone performing some kind of other medical procedure through telehealth. Senator Conrad spoke to the risks of Tylenol and Aleve. Yeah, since we're talking about women's health, let's talk about men's health. You know, if there are as many side effects from Viagra as there are from RU-486, so I trust that none of my rural colleagues who are in need of such a prescription would have to rely upon telehealth to accomplish it and achieve it because according to this bill, you're going to be out of luck because the doctor would have to be present and perform a diagnosis. And my understanding is that there are great and serious risk to those with high blood pressure and kidney disease and liver disease associated with a Viagra or a Cialis prescription. Be careful what you ask for, colleagues, because if you live in an area, an underserved health area... [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR COUNCIL: ...in the state of Nebraska, if we want to accept Senator Fulton's analysis that current Department of Health and Human Services licensing requirement

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prohibit what we were trying to accomplish with RU-486, it prohibits you obtaining a prescription for Viagra or Cialis without driving 200 miles to get it. And that is significant because that was a point that Senator Bloomfield made. He'd rather see someone drive 200 miles. Well, I suggest to you that that is evidence of the intent to make it more expensive to procure an abortion and, thus, further establishes the unconstitutionality of LB521. And for that reason, and I will reiterate it in my closing, I would urge you to advance AM1437. [LB521]

SENATOR GLOOR: Thank you, Senator Council. The Chair recognizes Senator Bloomfield. [LB521]

SENATOR BLOOMFIELD: Thank you, Mr. President. In the words of one of our silver-haired colleagues in the back room, if you're going to quote me, quote me correctly. I did not say I would rather see someone drive 200 miles. I said that would be the option if that's what they were forced to do. And I will grant the rest of my time to Senator Fulton if he would like it. [LB521]

SENATOR GLOOR: Senator Fulton, 4 minutes 32 seconds. [LB521]

SENATOR FULTON: Thank you, Mr. President. Thank you, Senator Bloomfield. I'm just going to be brief. I didn't...as I was wrapping up the points I wanted to make...yeah, if you have any questions specifically I'm open to any questions anyone has. I think we've thought through this. Judiciary Committee has thought through this. So I'd just ask that you support this. And I do oppose AM1437 and will advocate for AM1100 from Judiciary Committee and then LB521 finally. So with that, thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator Fulton. Seeing no senators remaining in the queue, Senator Council, you're recognized to close on your amendment to the committee amendments. [LB521]

SENATOR COUNCIL: Thank you, Mr. President. And I will begin by apologizing to my colleague Senator Bloomfield if I misstated what I understood him to say. And I will then base my comments on what I just understood him to say which is it may necessitate a woman driving 200 miles in order to obtain a surgical abortion or that may be involved if you don't allow telehealth. But for certain there was a reference to 200 miles and you won't be able to disagree with that. So there was a reference of 200 miles which gets to the issue of undue burden. Again, ladies and gentlemen, the statement in the Attorney General's Opinion that relying on a portion of the Casey decision that you have to listen to the qualifier. The fact that a law which serves a valid purpose, one not designed to strike at the right to obtain an abortion itself but which has the incidental affect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it. Listen to the operative qualifiers. First, the law has to serve a valid purpose and not be designed to strike at the very right to obtain an abortion in order for the fact

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that it may add to the expense or difficulty for you to invalidate it. I submit to you that the evidence presented to the Judiciary Committee, the testimony today, establishes that LB521 was not introduced for a valid purpose, rather it was designed for the purpose of making it difficult to exercise the constitutional right to obtain an abortion of a nonviable fetus. And the Attorney General's Opinion does not alter that result because in my view it ignores the statements made at the Judiciary Committee hearing. In fact, there's no reference in the Attorney General's Opinion to the testimony that was provided in support of this bill before the Judiciary Committee nor has it taken into consideration the statements that have been made today and the fundamental absence of any evidence supporting any increased safety risk associated with RU-486 administration via webcam. None. Zero. In fact, as previously stated and not refuted, the Iowa Board of Medicine specifically held that webcam RU-486 administration is safe--medical evidence, not opinion, not conjecture, not speculation, medical evidence. And I also think that the way that the LB521 is drafted raises the very distinct and critical issue as to how long the doctor needs to be present... [LB521]

SENATOR GLOOR: One minute. [LB521]

SENATOR COUNCIL: ...in the room because it speaks to perform, induce. I've heard it takes two to three weeks, I wouldn't know. And I'm going to make it clear: I don't advocate abortion but I do advocate a woman's right over her reproductive rights and I oppose any attempt by the Legislature to place undue burdens on the exercise of those basic reproductive rights. LB521 does just that which is why I urge your approval of AM1437. And, Mr. President, I would ask for a call of the house and a roll call vote in reverse order. [LB521]

SENATOR GLOOR: Thank you, Senator Council. Members, you've heard the request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB521]

CLERK: 27 ayes, 0 nays, Mr. President, to place the house under call. [LB521]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators McGill, Lathrop, Ashford, and Christensen, please return to the Chamber and record your presence. All members are present. Members, the question is, shall the amendment to the committee amendment to LB521 be adopted? Mr. Clerk, roll call, reverse order. [LB521]

CLERK: (Roll call vote taken, Legislative Journal pages 1507-1508.) 9 ayes, 34 nays, Mr. President, on the amendment. [LB521]

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SENATOR GLOOR: The amendment fails. The call is lifted. We return to discussion on the committee amendment. Seeing no senators in the speaking queue, Senator Ashford, you're recognized to close on the committee amendment. [LB521]

SENATOR ASHFORD: Thank you, Mr. President. On behalf of the Judiciary Committee and the five members who voted to advance LB521 I would urge the adoption of the amendment. [LB521]

SENATOR GLOOR: Thank you, Senator Ashford. Members, the question is, shall the committee amendments to LB521 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB521]

CLERK: 33 ayes, 9 nays on adoption of committee amendments. [LB521]

SENATOR GLOOR: The amendment is adopted. Discussion on the advancement of LB521 to E&R Initial. There are no senators in the speaking queue. Senator Fulton, you're recognized to close on the advancement of LB521. [LB521]

SENATOR FULTON: Thank you, Mr. President, members of the body. This was a debate held at a very high level and I thank the body for that, thank the opponents. This was a debate conducted in the best tradition of this Nebraska Legislature. Thank you. I ask respectfully that you vote for LB521, that we move this forward to Select File. There have been legitimate concerns raised about the constitutionality of this bill. We've worked within the framework of existing law, not overreaching. I have my own position. I'm pro-life but I recognize and respect the existence of our laws now. And what this does is to codify that which is occurring presently. We're simply saying that going forward the doctor should be physically present as a matter of safety for the mother. And with that, I ask for your favorable vote on LB521. Thank you, Mr. President. [LB521]

SENATOR GLOOR: Thank you, Senator Fulton. Members, the question is the advancement of LB521 to E&R Initial. All those in...Senator Conrad, for what purpose do you rise? [LB521]

SENATOR CONRAD: Thank you, Mr. President. I'd like to request a record vote please. [LB521]

SENATOR GLOOR: Thank you, Senator Conrad. So ordered. The question is the advancement of LB521 to E&R Initial. All those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB521]

CLERK: (Record vote read, Legislative Journal page 1508.) 34 ayes, 9 nays, Mr. President, on the advancement of LB521. [LB521]

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SENATOR GLOOR: The bill advances. Items for the record, announcements, Mr. Clerk. [LB521]

CLERK: Mr. Presidents, thank you. A series of study resolutions: LR220, LR221, LR222, LR223, Senator Cornett; Senator Mello, LR224, LR225; Senator Hadley, LR226, LR227, LR228, and LR229, all calling interim studies, all will be referred to the Executive Board. Enrollment and Review reports LB289 as correctly engrossed. Your Committee on Redistricting, chaired by Senator Langemeier, reports LB699 to General File. I have amendments to be printed: Senator Smith to LB589; Senator Flood to LB617. And I have a confirmation report from General Affairs signed by Senator Karpisek as Chair. That's all that I have, Mr. President. (Legislative Journal pages 1509-1517.) [LR220 LR221 LR222 LR223 LR224 LR225 LR226 LR227 LR228 LR229 LB289 LB699 LB589 LB617]

SENATOR GLOOR: Thank you, Mr. Clerk. We now return to Final Reading. Members should return to their seats in preparation for Final Reading. Mr. Clerk, first bill LB575. [LB575]

CLERK: Mr. President, with respect to LB575, I have a motion pursuant to Rule 6, Section 8 the Legislature approve with the dispensing of the at-large reading. [LB575]

SENATOR GLOOR: Mr. Clerk, the first vote is to dispense with the at-large reading. Members, all those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB575]

CLERK: 34 ayes, 4 nays, Mr. President, to dispense with the at-large reading. [LB575]

SENATOR GLOOR: The at-large reading is dispensed with. Mr. Clerk, please read the title. [LB575]

CLERK: (Read title of LB575.) [LB575]

SENATOR GLOOR: All provisions of law relative to procedure having been complied with, the question is, members, shall LB575 pass? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. Record, Mr. Clerk. [LB575]

CLERK: (Record vote read, Legislative Journal page 1518.) 43 ayes, 0 nays, 6 excused and not voting. [LB575]

SENATOR GLOOR: LB575 passes. Returning to Final Reading, LB575A. Mr. Clerk. [LB575 LB575A]

CLERK: (Read LB575A on Final Reading.) [LB575A]

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SENATOR GLOOR: All provisions of law relative to procedure having been complied with, the question is, shall LB575A pass? All those in favor vote aye; all those opposed vote nay. Have all voted who care to? Record, Mr. Clerk. [LB575A]

CLERK: (Record vote read, Legislative Journal pages 1518-1519.) 43 ayes, 0 nays, 6 excused and not voting. [LB575A]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: LB575A passes. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign: LB575 and LB575A. Mr. Clerk, items for the record. [LB575A LB575]

CLERK: Just one thing, Mr. President. The Revenue Committee will meet upon adjournment in Room 2022.

And Senator Campbell would move to adjourn the body until Wednesday morning, May 11, at 9:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)