

Transcript Prepared By the Clerk of the Legislature
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Floor Debate
February 09, 2015

[LB10 LB52 LB70 LB77 LB87 LB90 LB94 LB109 LB111 LB122 LB142 LB142A LB160
LB164 LB187 LB207 LB219 LB241 LB260 LB261 LB269 LB271 LR46 LR47]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: GOOD MORNING, LADIES AND GENTLEMEN. WELCOME TO THE GEORGE W. NORRIS LEGISLATIVE CHAMBER FOR THE TWENTY-THIRD DAY OF THE ONE HUNDRED FOURTH LEGISLATURE, FIRST SESSION. OUR CHAPLAIN FOR TODAY IS PASTOR GLENDA FERGUSON OF THE GRACE LUTHERAN CHURCH IN WAHOO, NEBRASKA, SENATOR JOHNSON'S DISTRICT. PLEASE RISE.

PASTOR FERGUSON: (PRAYER OFFERED.)

PRESIDENT FOLEY: THANK YOU, PASTOR FERGUSON. I CALL TO ORDER THE TWENTY-THIRD DAY OF THE ONE HUNDRED FOURTH LEGISLATURE, FIRST SESSION. SENATORS, PLEASE RECORD YOUR PRESENCE. ROLL CALL. MR. CLERK, PLEASE RECORD.

CLERK: I HAVE A QUORUM PRESENT, MR. PRESIDENT.

PRESIDENT FOLEY: THANK YOU, MR. CLERK. ARE THERE ANY CORRECTIONS FOR THE JOURNAL?

CLERK: I HAVE NO CORRECTIONS.

PRESIDENT FOLEY: THANK YOU, MR. CLERK. ARE THERE ANY MESSAGES, REPORTS, OR ANNOUNCEMENTS?

CLERK: MR. PRESIDENT, I HAVE A CONFLICT OF INTEREST STATEMENT FILED BY SENATOR BAKER. THAT WILL BE ON FILE IN THE CLERK'S OFFICE. THAT'S ALL THAT I HAVE, MR. PRESIDENT. (LEGISLATIVE JOURNAL PAGE 437.)

PRESIDENT FOLEY: THANK YOU, MR. CLERK. WHILE THE LEGISLATURE IS IN SESSION AND CAPABLE OF TRANSACTING BUSINESS, I PROPOSE TO SIGN AND DO HEREBY SIGN LR46 AND LR47. WE WILL NOW PROCEED TO THE FIRST ITEM ON THE AGENDA, GENERAL FILE. MR. CLERK. [LR46 LR47]

CLERK: LB87, INTRODUCED BY SENATOR CAMPBELL. (READ TITLE.) THE BILL WAS INTRODUCED ON JANUARY 8, REFERRED TO THE HEALTH AND HUMAN SERVICES COMMITTEE. THE BILL WAS ADVANCED TO GENERAL FILE. I HAVE NO AMENDMENTS TO THE BILL, MR. PRESIDENT. [LB87]

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PRESIDENT FOLEY: SENATOR CAMPBELL, BEFORE I RECOGNIZE YOU, MEMBERS, IF YOU WOULD PLEASE COME TO ORDER. SENATOR CAMPBELL, YOU'RE RECOGNIZED TO OPEN ON LB87. [LB87]

SENATOR CAMPBELL: THANK YOU, MR. PRESIDENT. LB87 WOULD MAKE A FEW CHANGES IN THE STATUTES GOVERNING THE NEBRASKA CHILDREN'S COMMISSION. FIRST, THE BILL WOULD ADOPT...OR ADD THE COMMISSIONER OF EDUCATION OR HIS OR HER DESIGNEE TO THE NONVOTING EX OFFICIO MEMBERS OF THE COMMISSION. BECAUSE EDUCATION IS AN IMPORTANT PART OF CHILDREN'S LIVES, IT MAKES SENSE I BELIEVE TO INCLUDE THE CHIEF STATE EDUCATION PERSON ON THE CHILDREN'S COMMISSION. SECOND, THE BILL WOULD REMOVES DUTIES...REMOVES THE DATES WHICH THE STATUTE SETS OUT AS THE COMMISSIONER'S REPORTING DEADLINES. THOSE DATES ARE OBSOLETE. LB87 REPLACES THEM WITH THE REQUIREMENT THAT THERE WILL BE A REPORT TO THE GOVERNOR AND TO THE HEALTH AND HUMAN SERVICES COMMITTEE ON DECEMBER 1, 2015. THIRD, THE CHILDREN'S COMMISSION IS SCHEDULED TO TERMINATE ON JUNE 30, 2016. HOWEVER, THE LEGISLATURE MAY CHOOSE TO CONTINUE THE COMMISSION. IF IT DOES, THEN UNDER LB87, THE COMMISSION WOULD BE REQUIRED TO ISSUE A REPORT ANNUALLY ON DECEMBER 1 FOR AS MANY YEARS AS THE COMMISSION IS CONTINUOUSLY IN OPERATION. THE HEALTH AND HUMAN SERVICES COMMITTEE VOTED UNANIMOUSLY TO ADVANCE LB87. THERE WERE NO OPPONENTS TO THE BILL. AT THE BILL'S HEARING, MS. KAREN AUTHIER, CHAIR OF THE CHILDREN'S COMMISSION, COULD NOT BE AT THE HEARING BUT PROVIDED A LETTER OF SUPPORT. I WOULD URGE YOUR YES VOTE ON LB87 AND WOULD BE HAPPY TO ADDRESS ANY QUESTIONS. THANK YOU, MR. PRESIDENT. [LB87]

PRESIDENT FOLEY: THANK YOU, SENATOR CAMPBELL. (DOCTOR OF THE DAY INTRODUCED.) DEBATE IS NOW OPEN ON LB87. SEEING NO SENATORS WISHING TO SPEAK, SENATOR CAMPBELL, YOU'RE WELCOME TO CLOSE ON LB87. SENATOR CAMPBELL WAIVES CLOSING. THE QUESTION IS THE ADVANCE OF LB87 TO E&R INITIAL. ALL THOSE IN FAVOR VOTE AYE; THOSE OPPOSED VOTE NAY. HAVE YOU ALL VOTED? RECORD, PLEASE, MR. CLERK. [LB87]

CLERK: 35 AYES, 0 NAYS, MR. PRESIDENT, ON THE ADVANCEMENT OF LB87. [LB87]

PRESIDENT FOLEY: THANK YOU, MR. CLERK. LB87 ADVANCES. WE RETURN TO GENERAL FILE. MR. CLERK. [LB87]

CLERK: LB90 INTRODUCED BY SENATOR CAMPBELL. (READ TITLE.) INTRODUCED ON JANUARY 8 OF THIS YEAR, REFERRED TO HEALTH AND

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HUMAN SERVICES, ADVANCED TO GENERAL FILE. ONCE AGAIN, I HAVE NO AMENDMENTS TO THE BILL AT THIS TIME, MR. PRESIDENT. [LB90]

PRESIDENT FOLEY: THANK YOU, MR. CLERK. SENATOR CAMPBELL, YOU'RE WELCOME TO OPEN ON LB90. [LB90]

SENATOR CAMPBELL: THANK YOU, MR. PRESIDENT. COLLEAGUES, LB90 DEALS WITH ONE ELEMENT OF WHAT WE KNOW AS THE 407 PROCESS. THIS IS THE PROCESS THAT HEALTH PROFESSIONALS MAY USE TO BECOME REGISTERED BY THE STATE OR TO CHANGE WHAT IS KNOWN AS THEIR SCOPE OF PRACTICE. THE NAME "407 PROCESS" COMES FROM THE ORIGINAL LEGISLATIVE BILL THAT CREATED THE SYSTEM OF REVIEW BACK IN THE 1990s...OR '80s. SORRY. I'D LIKE TO GIVE JUST A BRIEF BACKGROUND ON WHY THE 407 PROCESS WAS CREATED. AND, SENATORS, THIS IS EXTREMELY IMPORTANT TO GET THIS BACKGROUND BECAUSE YOU WILL BE DEALING WITH THE 407 PROCESS AT SOME TIME IN YOUR LEGISLATIVE CAREER. HEALTH PROFESSIONALS ARE OBVIOUSLY OF GREAT IMPORTANCE TO THE WELL-BEING OF NEBRASKANS. AT THE SAME TIME, HEALTH PROFESSIONS INVOLVE SPECIALIZED KNOWLEDGE AND HIGHLY TECHNICAL VOCABULARIES. IN ADDITION, THE MANY DISTINCT HEALTH PROFESSIONALS MUST WORK WITHIN THE SAME BROAD FIELD WHICH CAN SOMETIMES LEAD TO QUESTIONS ABOUT WHICH PROFESSION SHOULD PRACTICE CERTAIN PROCEDURES. THESE ARE NOT THE KINDS OF ISSUES THAT LEND THEMSELVES TO LENGTHY, INFORMED DISCUSSION ON THE FLOOR OF THE LEGISLATURE. SO IN ORDER TO HAVE THE INFORMATION WE NEED TO MAKE DECISIONS ABOUT REGULATING HEALTH PROFESSIONS, THE LEGISLATURE SET UP A PROCESS TO BE CONDUCTED WITHIN THE DIVISION OF PUBLIC HEALTH AT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES. AT THE END OF THE PROCESS, THE DIVISION ISSUES ITS FINDINGS AND RECOMMENDATIONS. AND AT THAT POINT, IF A SENATOR WANTS TO INTRODUCE LEGISLATION REGARDING REGULATION OR SCOPE OF PRACTICE, THERE IS A WEALTH OF INFORMATION THAT THE LEGISLATURE MAY USE TO INFORM ITS DISCUSSION AND DECISION MAKING. NEBRASKA ALLOWS FOR TWO WAYS TO CREATE A REVIEW OF A HEALTH PROFESSION, ONE, IN WHICH THE MEMBERS OF A PROFESSION ASK THE DEPARTMENT TO CONDUCT THE REVIEW. THE SECOND WAY IS FOR THE DIRECTOR OF THE DIVISION OF PUBLIC HEALTH AND THE CHAIRMAN OF THE HEALTH AND HUMAN SERVICES COMMITTEE TO ASK FOR THE REVIEW. AND THIS IS KNOWN AS A DIRECTED REVIEW. THERE ARE CERTAIN CONDITIONS WHICH MUST BE MET IN A DIRECTED REVIEW, AND THOSE ARE SPELLED OUT IN STATUTE. LB90 WOULD SIMPLY ADD A THIRD WAY TO CREATE A REVIEW OF HEALTH PROFESSIONS, AND THAT WOULD BE TO ALLOW THE CHAIRMAN OF THE HEALTH AND HUMAN SERVICES COMMITTEE IN CONSULTATION WITH THE MEMBERS OF THE COMMITTEE TO

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ASK FOR THE REVIEW. I BELIEVE THIS THIRD WAY IS NECESSARY BECAUSE THERE ARE...THERE HAVE BEEN TIMES IN THE PAST WHEN ALL OF THE MEMBERS OF THE HEALTH AND HUMAN SERVICES COMMITTEE FELT STRONGLY ABOUT AN ISSUE BROUGHT BEFORE THE COMMITTEE. THEY WANTED TO BE ABLE TO BE ON THE RECORD AND MAKE IT CLEAR THAT THEY THOUGHT THE ISSUE WAS ONE THAT WARRANTED A REVIEW. AT THE SAME TIME, THEY WANTED TO DEMONSTRATE IN THEIR COMMITMENT TO THE 407 PROCESS BY ASKING FOR A REVIEW RATHER THAN TAKING UP AN ISSUE WITHIN THE BACKGROUND...WITHOUT THE BACKGROUND NECESSARY TO MAKE AN INFORMED DECISION. IF LB90 WERE TO BE ENACTED, I DO NOT ANTICIPATE THAT IT WOULD BE USED OFTEN. HOWEVER, I DO BELIEVE THAT FOR THE SAKE OF MAINTAINING THE INTEGRITY OF THE 407 PROCESS AND TO AVOID POSITIONING QUESTIONS OF HEALTH PROFESSION REGULATION, THE THIRD OPTION SHOULD BE EXECUTED. I ENCOURAGE YOUR SUPPORT OF LB90 AND WOULD GLADLY ANSWER ANY QUESTIONS. THANK YOU, MR. PRESIDENT. [LB90]

PRESIDENT FOLEY: THANK YOU, SENATOR CAMPBELL. DEBATE IS NOW OPEN ON LB90. SEEING NO SENATORS WISHING TO SPEAK, SENATOR CAMPBELL, YOU'RE WELCOME TO CLOSE ON LB90. SENATOR CAMPBELL WAIVES CLOSING. THE QUESTION IS THE ADVANCE OF LB90 TO E&R INITIAL. ALL THOSE IN FAVOR VOTE AYE; THOSE OPPOSED VOTE NAY. HAVE YOU ALL VOTED? RECORD, PLEASE, MR. CLERK. [LB90]

CLERK: 31 AYES, 0 NAYS, MR. PRESIDENT, ON THE ADVANCEMENT OF LB90. [LB90]

PRESIDENT FOLEY: THANK YOU, MR. CLERK. LB90 ADVANCES. RETURNING NOW TO GENERAL FILE. MR. CLERK. [LB90]

CLERK: MR. PRESIDENT, LB70, INTRODUCED BY SENATOR SCHUMACHER. (READ TITLE.) INTRODUCED ON JANUARY 8, REFERRED TO THE REVENUE COMMITTEE. THE BILL WAS ADVANCED TO GENERAL FILE. THERE ARE COMMITTEE AMENDMENTS. I ALSO HAVE AN AMENDMENT TO THE COMMITTEE AMENDMENTS, MR. PRESIDENT. (AM118, LEGISLATIVE JOURNAL PAGE 365.) [LB70]

PRESIDENT FOLEY: THANK YOU, MR. CLERK. SENATOR SCHUMACHER, YOU'RE WELCOME TO OPEN ON LB70. [LB70]

SENATOR SCHUMACHER: THANK YOU, MR. PRESIDENT, MEMBERS OF THE BODY. LB70 IS A RESPONSE TO A PHENOMENA THAT'S BEGUN TO OCCUR IN THE LAST YEAR IN NEBRASKA WITH INCREASING INTENSITY. AND THAT IS THE

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PHENOMENA OF SLOT MACHINE-LOOKING DEVICES APPEARING IN BARS AND CONVENIENCE STORES AND POSSIBLY OTHER PLACES ACROSS THE STATE AND THE LAW ENFORCEMENT FOLKS BEING UNABLE TO COME TO A WAY TO RESPOND THAT FITS WITHIN THEIR CAPACITY AND THEIR BUDGETS. IT IMPOSES A TAX. THE COMMITTEE AMENDMENT MAKES IT A STATE TAX RATHER THAN A CITY AND COUNTY TAX. SO FOR PURPOSES OF THIS DISCUSSION, WE'LL TREAT IT AS A STATE TAX. THE TAX IS IMPOSED AT A RATHER HIGH RATE ON THESE MACHINES. WHEN A TAX IS IMPOSED, IT IS THE BURDEN OF THE MACHINE OWNER TO PROVE THAT THE MACHINE IS NOT A GAMBLING DEVICE RATHER THAN A BURDEN OF THE STATE TO PROVE THAT IT IS A GAMBLING DEVICE. TO UNDERSTAND WHAT'S GOING ON HERE AND WHY THIS HAS BECOME AN ISSUE THAT WE HAVE GOT TO GRAPPLE WITH, LET ME GIVE IT A LITTLE BIT OF HISTORY. SLOT MACHINE AND VIDEO MACHINE-TYPE GAMBLING HAS BEEN OUTLAWED IN THIS STATE FOREVER. AND IT USED TO BE EASY TO ENFORCE THAT LAW. A SLOT MACHINE WAS A BIG CUMBERSOME THING. IT WAS DIFFICULT TO BE ABLE TO BE MOVED. IF YOU MOVED IT, YOU HAD TO LEVEL IT AND MAKE SURE IT WAS BACK IN A-OK SHAPE FOR IT TO BE PLAYED. AND FOR THE MOST PART, THE PATROL AND LOCAL LAW ENFORCEMENT WERE ABLE TO HUNT THEM DOWN AND RUN THEM OVER WITH TRACTORS, WHICH IS I GUESS HOW THEY USED TO DISPOSE OF THEM. WELL, LIFE CHANGED IN ABOUT THE MID-EIGHTIES WHEN COMPUTERS AND VIDEO SCREENS CAME INTO BEING AND ONE COULD MAKE A VIDEO SCREEN AND A COMPUTER BEHAVE VERY MUCH LIKE A SLOT MACHINE WITH THE SAME ENDS. IT WOULD TAKE MONEY, IT WOULD SPIN THE WHEELS AROUND, AND THEN IT WOULD PAY OUT IN A SCORE OF SOME KIND THAT THE BAR OWNER OR THE CONVENIENCE STORE, WHOEVER WAS RUNNING IT, CONVERTED INTO MONEY. THEY WERE HARDER TO DEAL WITH BECAUSE ESSENTIALLY PROOF OF PAYOUT HAD TO OCCUR. IN NEBRASKA, THERE ARE THREE THINGS THAT MAKE A GAMBLING DEVICE A GAMBLING DEVICE: TAKES MONEY IN, PAYS MONEY OUT, AND WHETHER OR NOT YOU WIN OR LOSE IS DETERMINED PREDOMINANTLY BY CHANCE, ACCORDING TO THE COURTS. SO WHAT WAS HAPPENING IS BAR OWNERS IN THE MID-EIGHTIES AND INTO THE NINETIES WOULD SAY, LOOK, WE AREN'T PAYING OUT ON THIS MACHINE. THEY'RE JUST RUNNING UP THE SCORE AND HAVING A GREAT DEAL OF FUN PLAYING IT. WHAT IT TURNED OUT TO BE, THERE WAS A KNOCKOFF SWITCH, A BUTTON REMOTELY OR DIRECTLY THAT COULD BE PRESSED TO SET THE SCORE TO ZERO WHEN A PLAYER STARTED. AND THAT'S HOW THEY FIGURED OUT WHAT TO PAY OUT. AND THROUGHOUT THAT PERIOD OF TIME, THE PATROL AND THE BARS PLAYED CAT AND MOUSE. THE PATROLS WOULD DO A CRACKDOWN, THE MACHINES WOULD DISAPPEAR BECAUSE THE BARS HAD CALLING TREES TO HIDE THE THINGS IN THEIR BASEMENT. AND THEN WHEN THE HEAT WAS OFF, THEY WOULD COME BACK OUT AGAIN. USUALLY THE FINES WERE PRETTY MINIMAL. THE LEGISLATURE

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TRIED TO RESPOND WITH LIQUOR CONTROL COMMISSION REGULATIONS AND LICENSURE SANCTIONS. AND AT ONE TIME THERE WAS PROBABLY 1,500 TO 2,000 OF THESE MACHINES IN THE STATE ACCORDING TO TESTIMONY THAT WAS GIVEN SEVERAL YEARS AGO TO THE GENERAL AFFAIRS COMMITTEE. WHAT THEN HAPPENED WAS THE NEXT EVOLUTION. THE NEXT EVOLUTION WAS THE INTRODUCTION OF THE TOUCH SCREEN. AND WITH THE TOUCH SCREEN, THE PLAYER COULD INTERACT WITH THE MACHINE. IN INTERACTING WITH THE MACHINE, THEY COULD WIN OR LOSE. AND WHAT DETERMINED WHETHER OR NOT THEY WON OR LOST WAS A COMBINATION OF CHANCE AND SKILL--SOMETIMES MOSTLY CHANCE, SOMETIMES A LITTLE BIT MORE SKILL THAN CHANCE. AND A COMPANY IN OMAHA PUT OUT THESE MACHINES ACROSS THE STATE. THERE WAS LITIGATION THAT WENT TO THE SUPREME COURT. AND THE SUPREME COURT LOOKED AT THE EVIDENCE WHICH INCLUDED A REPORT FROM A GAMING ANALYSIS COMPANY THAT SAID THE MACHINES WERE MORE SKILL THAN CHANCE AND THE COURT APPLIED ITS OWN ANALYSIS AND DECREED THAT TWO OUT OF THE THREE LEVELS OF GAMES ON THIS PARTICULAR MACHINE THAT THE OMAHA COMPANY BUILT WERE ILLEGAL AND ONE WAS OKAY. THE COMPANY DISABLED THE TWO ILLEGAL MACHINES ON ITS MACHINES THROUGHOUT THE STATE...TWO ILLEGAL GAMES ON ITS MACHINES THROUGHOUT THE STATE AND MANY OF THOSE MACHINES STILL EXIST WITH THE LESS ATTRACTIVE LEGAL GAME. THE COURT ALSO SAID IT WAS THE STATE'S BURDEN TO PROVE BEYOND A REASONABLE DOUBT THAT A MACHINE WAS ILLEGAL. RECENTLY, WITHIN THE LAST YEAR, OUT-OF-STATE MANUFACTURERS HAVE COME IN AND HAVE PUSHED THE LIMIT KNOWING THAT IT'S VERY, VERY DIFFICULT AND VERY EXPENSIVE TO PROVE WHETHER SOMETHING IS MORE CHANCE THAN SKILL. AND AS A RESULT, THESE SLOT MACHINE-LIKE DEVICES OPERATING IN WHAT IS VERY LIKELY TO BE A NONLEGAL MODE ARE SPREADING ACROSS THE STATE. I CONTACTED THE ATTORNEY GENERAL'S OFFICE AFTER THE NOVEMBER PERIOD AND ASKED THE ATTORNEY GENERAL WHAT WAS BEING DONE. HE SAID HE'D CHECK INTO IT, HAD SOMEONE WITH THE STATE PATROL CALL ME. AND THEIR RESPONSE TO THIS WAS IT IS VERY, VERY EXPENSIVE TO PROVE THAT THESE ARE MORE CHANCE THAN SKILL. AND THEREFORE, RIGHT NOW ALL THEY'RE DOING IS LOOKING IF THEY HAVE A \$35 STICKER ON THEM UNTIL THEY GET FURTHER DIRECTION FROM SOMEBODY. THE RESPONSE THEN IS MUCH LIKE THE RULE WHERE AL CAPONE WAS ABLE TO BE APPREHENDED FOR ILLEGAL GAMBLING AND IT USED TAX LAW. THIS APPROACH IMPOSES A HIGH TAX ON ANY MACHINE THAT ACCEPTS VALUE, THAT AWARDS A MONETARY PRIZE, IS PLAYED BY A TOUCH SCREEN OR COMPUTER MOUSE OR THE LIKE, AND HAS NOT BEEN ADJUDICATED BY A COURT TO NOT CONSTITUTE A GAMBLING DEVICE AS DEFINED IN OUR LAW. IF IT MEETS THOSE TESTS, THEN IT IS TAXED. IF IT FAILS ONE OF THOSE TESTS, IT IS NOT A...NOT WITHIN THE PURVIEW OF THIS PARTICULAR TAX. THIS IS AN

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EFFORT TO BASICALLY ENFORCE THE LAW THROUGH TAX MECHANISMS AND TO THE EXTENT IT CAN'T BE ENFORCED TO RECEIVE SOME TAX PROCEEDS. IT IS A SITUATION WHERE IT IS AN ATTEMPT BY THE LEGISLATURE TO ADDRESS THIS PROBLEM. WE CANNOT ADDRESS IT MUCH ANY OTHER WAY. WE CANNOT REGULATE THESE MACHINES OR AUTHORIZE THEM BECAUSE OF CONSTITUTIONAL PROHIBITIONS. SO WE'VE ALREADY DECREED THEM TO BE ILLEGAL, BUT THE ENFORCEMENT IS VERY DIFFICULT AND EXPENSIVE. AS AMENDED, THERE'S...A STATE TAX IS IMPOSED. THE DEFINITION IS CLEANED UP. IT ORIGINALLY PROBABLY CAST WITH TOO BROAD A NET AND BROUGHT SOME DOLPHINS IN WITH THE SHARKS. SO THAT WAS CLEANED UP. AND IT WAS MADE A STATE TAX INSTEAD OF A COUNTY OPTION TAX BECAUSE THE ADMINISTRATION ON COUNTY OPTION TAXES OR CITY OPTION TAXES WOULD HAVE BEEN DIFFICULT TO IMPLEMENT AND THIS IS A SIMPLER IMPLEMENTATION FORMULA. BASICALLY THIS IS AN EFFORT TO BRING UNDER CONTROL WHAT IS AN EXPANSION FAIRLY RAPID IN NATURE... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR SCHUMACHER: ...OF ILLEGAL GAMING DEVICES IN THE STATE. AND THE TAX COMMISSIONER WILL ALSO, IN CONJUNCTION WITH THE REVENUE DEPARTMENT, BE ABLE TO HAVE JURISDICTION TO MONITOR AND TO CONTROL THESE MACHINES AND IF THE TAX ISN'T PAID TO TAKE THEM OFF OF THE MARKET. THANK YOU, MR. PRESIDENT. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR SCHUMACHER. AS THE CLERK INDICATED, THERE ARE AMENDMENTS FROM THE REVENUE COMMITTEE. SENATOR GLOOR, AS CHAIR OF THE COMMITTEE, YOU'RE RECOGNIZED TO OPEN ON THE COMMITTEE AMENDMENTS. SENATOR GLOOR. [LB70]

SENATOR GLOOR: THANK YOU, MR. PRESIDENT. GOOD MORNING, MEMBERS. AS SENATOR SCHUMACHER COVERED THEM BRIEFLY, BUT I WILL DO SO AGAIN. THE COMMITTEE AMENDMENT ATTEMPTS TO DO THREE THINGS. IT LEAVES THE POINT OF TAXATION AT THE STATE LEVEL LIKE THE EXISTING MECHANICAL AMUSEMENT DEVICE TAX, RATHER THAN ALLOWING CITIES OR COUNTIES TO IMPOSE IT. IT CLARIFIES WHICH MACHINES MAY BE SUBJECT TO THE ADDITIONAL OCCUPATIONAL TAX. AND IT SHIFTS THE BURDEN FROM THE STATE. AND THIS WAS ONE OF THE KEY POINTS THAT SENATOR SCHUMACHER SPENT SOME TIME TALKING ABOUT. IT SHIFTS THE BURDEN FROM THE STATE TO THE OPERATOR OF THE DEVICE TO ESTABLISH THAT THE MACHINE IS NOT OF A TYPE THAT IS SUBJECT TO THE ADDITIONAL OCCUPATION TAX. THANK YOU, AND THAT'S THE COMMITTEE AMENDMENT. [LB70]

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PRESIDENT FOLEY: THANK YOU, SENATOR GLOOR. MR. CLERK. [LB70]

ASSISTANT CLERK: MR. PRESIDENT, SENATOR KRIST WOULD MOVE TO AMEND THE COMMITTEE AMENDMENTS WITH AM235. (LEGISLATIVE JOURNAL PAGE 410.) [LB70]

PRESIDENT FOLEY: THANK YOU. SENATOR KRIST, YOU'RE RECOGNIZED TO OPEN ON YOUR AMENDMENT TO THE COMMITTEE AMENDMENT. SENATOR KRIST. [LB70]

SENATOR KRIST: THANK YOU, MR. PRESIDENT. GOOD MORNING, COLLEAGUES, AND GOOD MORNING, NEBRASKA. IT BECAME CLEAR TO ME THAT AN ISSUE THAT WAS NEAR AND DEAR TO MY HEART IN THE LAST FEW YEARS, THAT IS MAKING SURE THERE'S ENOUGH MONEY IN THE GAMBLERS ASSISTANCE FUND WHICH IS SET ASIDE BY CONSTITUTION A CERTAIN AMOUNT OF MONEY GOING INTO THAT FUND WHERE WE HELP PEOPLE WITH GAMBLERS' ADDICTIONS OF ONE KIND OR ANOTHER, THAT IF SENATOR SCHUMACHER WAS SUCCESSFUL IN THIS OCCUPATION TAX THAT A PORTION OF THAT SHOULD GO INTO THE GAMBLERS ASSISTANCE FUND. CURRENTLY THE FUND HAS A CASH RESERVE, APPROXIMATELY \$1.7 MILLION. AT THE PRESENT RATE OF EXPANSION...THEY ARE MOVING THEIR SERVICES INTO THE ENTIRE STATE OF NEBRASKA. BUT AT THE PRESENT RATE OF EXPANSION, WE ARE GOING TO HAVE TO MAKE SURE THAT THERE'S MORE MONEY IN THAT FUND FOR THE SERVICES THAT ARE REQUIRED AND GROWING SERVICES THAT ARE REQUIRED, ESPECIALLY WHEN IT COMES TO THE INTERNET GAMBLING THAT'S GOING ON NOW WITH OUR TEENS, WITH OUR KIDS. WE'RE GROWING THE ADDICTION. WE NEED TO KEEP UP WITH OBVIOUSLY HAVING THE SERVICES OUT THERE. THIS WOULD PROPOSE 3 PERCENT OF THAT TAX BE DEFERRED INTO THE GAMBLERS ASSISTANCE FUND TO SUSTAIN THAT FUND LONG TERM. AND I'D ALSO SAY THAT GOVERNOR RICKETTS HAS GIVEN HIS SUPPORT TO THE ASSISTANCE FUND. IT WAS A LINE ITEM IN HIS BUDGET FOR THIS YEAR. IT'S A SERIOUS MATTER. WITH ANYTHING, WHEN THERE IS AN ADDICTION IT AFFECTS FAMILIES. IT AFFECTS THE EMPLOYER, DOWNTIME FOR THAT PARTICULAR EMPLOYEE. SO I'D ASK YOU TO FAVORABLY CONSIDER AM235 TO THE UNDERLYING BILL, LB70. THANK YOU. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR KRIST. DEBATE IS NOW OPEN ON LB70 AND RELATED AMENDMENTS. SENATOR McCOY, YOU'RE RECOGNIZED. [LB70]

SENATOR McCOY: THANK YOU, MR. PRESIDENT, AND GOOD MORNING. I'VE HAD SEVERAL CONVERSATIONS OFF OF THE MICROPHONE THIS MORNING

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AND OVER THE WEEKEND WITH INDIVIDUALS ABOUT THIS BILL. IT PROBABLY COMES AS NO SURPRISE, ANYTHING THAT HAS TO DO WITH GAMBLING DEVICES POPS UP PRETTY QUICK ON MY RADAR SCREEN. YOU KNOW, I'VE SPENT THE LAST, WELL, SIX YEARS, THIS WILL BE THE SEVENTH, OPPOSING EXPANDED GAMBLING IN NEBRASKA BECAUSE IT'S MY OPINION THE MAJORITY OF NEBRASKANS HAVE THAT POSITION AND HAVE STATED SO MANY TIMES BY THEIR VOTES. I'M NOT SURE THAT'S WHAT THIS BILL DOES, BUT I DO THINK AS OUR CHAPLAIN OF THE DAY NOTED IN HER PRAYER ASKING THE ALMIGHTY TO GIVE US WISDOM IN MAKING SURE THE THINGS WE DO ON THIS FLOOR DON'T HAVE UNINTENDED CONSEQUENCES, I FEAR THAT PARTICULARLY AM118, THE REVENUE COMMITTEE AMENDMENT TO LB70, MAY HAVE SOME PRETTY GRAVE UNINTENDED CONSEQUENCES WHEN IT COMES TO WHAT WE'RE ACTUALLY TRYING TO DO HERE. AND WHEN I SAY WE, I MEAN THE REVENUE COMMITTEE BRINGING IT TO THE FULL FLOOR. I ALSO MIGHT ADD I'M NOT A FAN OF INCREASED TAXES, PERIOD. SO WHILE I UNDERSTAND THAT THIS IS A PROBLEM, IT'S NEVER MY OPINION AND NEVER MY POSITION THAT THE WAY TO FIX THE PROBLEM IS RAISE TAXES WHETHER THEY BE ANY SORT OF TAX, OCCUPATION OR OTHERWISE. AND I THINK MY VOTING RECORD HAS BEEN PRETTY CLEAR ON THAT OVER THE YEARS. SO I'M NOT A HUGE FAN OF THIS BILL. AND I'M NOT...DON'T HAVE ANY INTENTION OF VOTING FOR IT ANYWAY, WHETHER THIS GETS FIXED, BY THIS I MEAN THE UNINTENDED CONSEQUENCES THAT I FEAR ARE IN THIS BILL, OR NOT. BUT THAT MAY NOT BE THE POSITION OF THE MAJORITY OF ALL OF YOU HERE ON THE FLOOR, I DON'T KNOW. I'VE HAD SOME CONVERSATIONS WITH SENATOR SCHUMACHER OFF THE MICROPHONE BEFORE WE GOT GOING ON THIS BILL THIS MORNING. AND IF HE WOULD, I WOULD LIKE TO ASK HIM A COUPLE OF THOSE QUESTIONS ON THE RECORD IF I COULD, IF SENATOR SCHUMACHER WOULD YIELD.

PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD? [LB70]

SENATOR SCHUMACHER: YES, I WILL. [LB70]

SENATOR McCOY: THANK YOU, SENATOR. AND I APPRECIATE YOU TAKING A FEW MOMENTS SO THAT WE COULD TALK A LITTLE BIT ABOUT THIS. AND I ALSO HAD THE OPPORTUNITY TO SPEAK WITH CHAIRMAN GLOOR AS WELL THIS MORNING. I WANT TO TALK NOT TO SENATOR KRIST'S AMENDMENT, ALTHOUGH I MAY HAVE QUESTIONS ON THAT IN A FEW MINUTES BECAUSE MOST OF MY QUESTIONS HAVE TO DO WITH AM118. IN PARTICULAR, SENATOR, WITH WHAT WOULD BE PAGE 2, LINES 16-19 WHICH IS (5) OF THE COMMITTEE AMENDMENT. NOW UNLIKE SOME OF YOU, I'M NOT AN ATTORNEY, ALTHOUGH I JOKE WITH OUR FOUR KIDS AT HOME THAT I GUESS I GET TO PLAY ONE ON TV, AT LEAST A CERTAIN PART OF THE YEAR. BUT EVEN NOT

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BEING AN ATTORNEY, I HAVE A QUESTION ON THIS, SENATOR. AND YOU AND I HAVE TALKED OFF THE MICROPHONE. WHAT I FEAR WE'RE DOING WITH THIS SECTION OF THE COMMITTEE AMENDMENT IS REVERSING WHAT HAS BEEN THE COURSE BEFORE. AND WE'RE ESSENTIALLY SAYING THAT WE ARE MAKING ALL THINGS LEGAL EXCEPT FOR WHICH A COURT HAS DEEMED ILLEGAL. SENATOR, IS THAT A...DO YOU THINK THAT'S A VALID CONCERN THAT THIS PARTICULAR SECTION OF THE COMMITTEE AMENDMENT POSSIBLY HAS SOME UNINTENDED CONSEQUENCES... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR McCOY: ...THAT DEPART FROM WHAT YOU'RE TRYING TO DO WITH THIS BILL? [LB70]

SENATOR SCHUMACHER: THANK YOU, SENATOR McCOY. THE SECTIONS THAT YOU REFER TO HAVE NOTHING TO DO WITH MAKING SOMETHING LEGAL OR ILLEGAL. IT SAYS WHAT DEVICES THE TAX WILL BE IMPOSED ON. JUST AS WE TAX MARIJUANA BUT NOT MAKE IT LEGAL, THIS IS A SIMILAR VEIN. SO IT DOES NOT MAKE THESE PARTICULAR DEVICES LEGAL OR ILLEGAL. IT SIMPLY WOULD SAY THAT IF THE MACHINES ARE LEGAL, IF THEY ARE LEGAL UNDER 28-1101 OR OTHERWISE SPECIFICALLY MADE LEGAL BY THE LEGISLATURE, THEN THE TAX WILL NOT GO ON THEM. THAT'S NOT TO SAY THAT THIS LANGUAGE COULDN'T BE CLEARED UP TO ADDRESS ANY OF YOUR CONCERNS. [LB70]

SENATOR McCOY: WE MAY RUN OUT OF TIME HERE, SENATOR, BUT DOES THIS BILL WITH THE COMMITTEE AMENDMENT THAT WE HAVE IN FRONT OF US, DOES IT OR DOES IT NOT MAKE THE TAX COMMISSIONER, THE HEAD OF OUR... [LB70]

PRESIDENT FOLEY: TIME, SENATOR. THANK YOU, SENATOR McCOY. SENATORS, THE COOKIES BEING DISTRIBUTED ON THE FLOOR TODAY ARE IN CELEBRATION OF SENATOR SMITH'S BIRTHDAY. HAPPY BIRTHDAY, SENATOR SMITH. SENATOR GARRETT, YOU'RE RECOGNIZED. [LB70]

SENATOR GARRETT: I'D LIKE TO PASS MY TIME TO SENATOR McCOY. [LB70]

PRESIDENT FOLEY: SENATOR McCOY, TIME HAS BEEN YIELDED TO YOU. [LB70]

SENATOR McCOY: THANK YOU, MR. PRESIDENT, AND THANK YOU, SENATOR GARRETT. I APPRECIATE THAT. I'D LIKE TO CONTINUE THE THREAD OF CONVERSATION I WAS HAVING WITH SENATOR SCHUMACHER IF I MIGHT. [LB70]

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PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD? [LB70]

SENATOR SCHUMACHER: YES. [LB70]

SENATOR McCOY: THANK YOU, SENATOR. AS I WAS ABOUT TO ASK YOU, DOES THIS AMENDMENT IN THIS BILL, DOES IT OR DOES IT NOT PUT THE REVENUE COMMISSIONER IN A POSITION THAT THEY'VE NEVER BEEN PUT IN BEFORE? AND THAT IS TO BE THE ARBITER OF WHETHER OR NOT SOMETHING IS LEGAL BECAUSE WE ARE IMPOSING A TAX WHETHER WE'RE SAYING IT'S LEGAL OR NOT WHERE PREVIOUS TO THIS, IT'S ALWAYS BEEN A COURT THAT'S MADE THAT DETERMINATION. IS THAT CORRECT? [LB70]

SENATOR SCHUMACHER: THE COURT MAKES THE DETERMINATION UNDER (1) HERE. [LB70]

SENATOR McCOY: WELL, I UNDERSTAND THAT. BUT YOU'RE ALSO SAYING IN ANOTHER SUBSECTION THAT THE OWNERS OF SUCH DEVICES HAVE TO ESSENTIALLY PROVE THAT THEY'RE LEGAL OR THEY SHOULDN'T BE SUBJECT TO THAT TAX TO THE TAX COMMISSIONER, IS THAT CORRECT? [LB70]

SENATOR SCHUMACHER: RIGHT. THE TAX GOES ON UNDER (1). AND THE TEST IS: DOES IT ACCEPT VALUE, DOES IT PAY OUT MONEY, IS IT PLAYED BY A TOUCH SCREEN OR SOMETHING LIKE THAT, AND HAS IT NOT BEEN ADJUDICATED BY A COURT TO NOT CONSTITUTE A GAMBLING DEVICE? IF IT MEETS THOSE TESTS, IT'S ON. THE TAX IS THERE. THEN, IF SOMEBODY SAYS WAIT A MINUTE, WAIT A MINUTE, I SHOULDN'T BE TAXED BECAUSE MY MACHINE DOESN'T TAKE IN MONEY. IT DOESN'T MEET THE TEST. YOU SHOW THAT TO THE TAX COMMISSIONER. IT'S YOUR BURDEN. THE TAX GOES ON ALL OF THE MACHINES. IT'S YOUR BURDEN TO SHOW THAT IT DOESN'T MEET ONE OF THOSE FOUR STANDARDS. AND YOU SHOW THAT TO THE TAX COMMISSIONER. THE STICKY ONE, WHETHER OR NOT IT'S MORE CHANCE OR SKILL, THAT'S A COURT DECISION. [LB70]

SENATOR McCOY: THAT'S TRUE. HOWEVER, YOU JUST TALKED ABOUT WHAT YOU JUST SAID, OF IT BEING VERY EXPENSIVE TO DETERMINE WHETHER OR NOT SOMETHING IS A GAME OF CHANCE OR A GAME OF SKILL. WE ARE PUTTING A HARDWORKING PUBLIC SERVANT IN THE POSITION OF THE TAX COMMISSIONER, THE HEAD OF OUR REVENUE DEPARTMENT HERE AT THE STATE OF NEBRASKA IN A VERY, IN MY OPINION, UNENVIABLE POSITION BECAUSE WHAT YOU JUST SAID, AND I BELIEVE VERY FIRMLY THIS IS A DEPARTURE FROM WHAT WE'VE DONE IN THE PAST, WE'RE PUTTING THEM IN A POSITION OF HAVING TO MAKE THOSE DETERMINATIONS. NOW, AS YOU

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SAID, TECHNOLOGY CHANGES ON A RAPID SCALE AND AT A VERY RAPID PACE. SO I'M TROUBLED BY THE FACT THAT WE'RE PUTTING ONE PERSON IN CHARGE OF MAKING SURE THAT THESE GAMES ARE OR ARE NOT COMPLYING WITH THE STATUTE. I THINK THIS COMPLICATES THIS GREATLY. AND I DON'T SEE HOW THIS HELPS THE SITUATION AT ALL TO ADDRESS WHAT WE'RE DEALING WITH OUT IN THE PUBLIC WITH THESE GAMES, WHATEVER THEY MAY BE CALLED, HOWEVER THEY WORK. YOU CAN, AS WE'VE DEBATED AD NAUSEAM ON THIS FLOOR SINCE MY TIME, SINCE I'VE BEEN HERE IN THE LEGISLATURE, YOU CAN MAKE ANYTHING LOOK LIKE ANYTHING, ACT LIKE ANYTHING, BEHAVE LIKE ANYTHING. BUT WE'RE STILL MAKING THE TAX COMMISSIONER RESPONSIBLE FOR THAT. THIS TROUBLES ME GREATLY, SENATOR. IT MAY NOT BE WHAT YOU'RE TRYING TO DO. I UNDERSTAND THE SITUATION THAT YOU SEE OUT THERE. BUT I THINK TO PUT A TAX COMMISSIONER IN THIS ROLE IS A DEPARTURE FROM WHAT WE'VE DONE IN THE PAST. [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR McCOY: AND I'M VERY FEARFUL THAT THAT IS...WE'RE GOING TO END UP WITH A RESULT THAT THE LEGISLATURE IS POSSIBLY NOT GOING TO CARE FOR IN THE WAY OF PUBLIC POLICY AND DEFINITELY THE PEOPLE OF NEBRASKA WOULD WONDER WHY WE DID THAT. THANK YOU, MR. PRESIDENT. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR McCOY. SENATOR McCOY, YOUR LIGHT IS NEXT. YOU'RE WELCOME TO PROCEED. SENATOR McCOY WAIVES OFF THAT OPPORTUNITY. SENATOR SCHUMACHER, YOUR LIGHT IS NEXT. YOU MAY PROCEED. [LB70]

SENATOR SCHUMACHER: THANK YOU, MR. PRESIDENT. TO RESPOND A LITTLE BIT TO WHAT SENATOR McCOY HAS JUST SAID, THE TESTS THAT THE TAX COMMISSIONER HAS TO APPLY ARE REALLY VERY SIMPLE TESTS. THE TAX COMMISSIONER LOOKS AT THE DEVICE AND ASKS, DOES IT ACCEPT VALUE? DOES IT AWARD PRIZE? IS IT PLAYED BY A TOUCH SCREEN? HAS IT BEEN ADJUDICATED BY A COURT TO BE OKAY? AND THAT INFORMATION IS BROUGHT TO HIM AT THE BURDEN OF THE MACHINE OWNER, NOT HIS BURDEN. ONCE THE MACHINE OWNER SAYS, LOOK, I SHOULD BE EXEMPTED FROM THIS TAX, IT SHOULD NOT APPLY TO ME, AND HERE ARE THE REASONS WHY, IT EITHER DOESN'T ACCEPT MONEY, DOESN'T PAY OUT, ISN'T OPERATED BY A TOUCH SCREEN OR A MOUSE OR SIMILAR DEVICE; AND I'VE GOT A COURT ORDER HERE SAYING IT'S OKAY. AND I'M PROVING THIS TO YOU. THEN THE TAX COMMISSIONER DOES NOT APPLY THE TAX. THE BURDEN IS ON THE MACHINE OWNER. RIGHT NOW, THE BURDEN TO CONTROL THESE

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MACHINES IS ON THE STATE PATROL, THE ATTORNEY GENERAL, THE COUNTY ATTORNEY. AND THEY'VE GOT TO COME UP WITH THE EVIDENCE BEYOND A REASONABLE DOUBT THAT THE MACHINE IS MORE CHANCE THAN SKILL. AND IF THEY CANNOT, THE MACHINES ARE OUT THERE. THEY MAY BE MORE CHANCE THAN SKILL. THEY MAY BE 100 PERCENT CHANCE. BUT IF THE TAX COMMISSIONER...THE ATTORNEY GENERAL OR THE COUNTY ATTORNEY CAN'T PROVE IT, THEY STAY OUT THERE. THIS IS A VERY STRAIGHTFORWARD WAY TO APPLY TAX LAW. THE TAX COMMISSIONER EVERY DAY DETERMINES WHETHER OR NOT SOMEBODY IS ELIGIBLE FOR AN EXEMPTION FROM ONE TAX OR ANOTHER AND THIS IS NOT ALL THAT UNUSUAL. I WOULD INVITE SENATOR McCOY, I'M WILLING TO SIT DOWN AND WORK WITH HIM IF THERE ARE ANY ISSUES THAT REMAIN UNRESOLVED WITH RESPECT TO LINES 16-19 ON PAGE 2. IF THIS MEASURE IS NOT ADOPTED, THESE MACHINES WILL CONTINUE TO GO UNABATED UNLESS THE STATE IS WILLING TO EXPEND CONSIDERABLE MONEY ON EXPERTS TRYING TO PROVE WHETHER OR NOT SOMETHING IS MORE OR LESS CHANCE. AND ONCE THEY PROVE IT, THE COMPUTER PROGRAM CAN BE CHANGED ALMOST INSTANTLY TO BE A LITTLE BIT DIFFERENT THAN WHAT THEY TESTED AND START ALL OVER AGAIN. AND THEY CAN EVEN BE CHANGED BY USE OF DSL LINES OR WIRELESS COMMUNICATION SO IT ISN'T VERY DIFFICULT TO CHANGE THAT IN A MODERN COMPUTER SYSTEM. THIS IS A SIMPLE, STRAIGHTFORWARD APPROACH TO IMPOSE A HEFTY TAX ON MACHINES THAT ACCEPT MONEY, PAY OUT IN MONEY, ARE INTERACTIVE WITH THE PLAYER, AND THAT HAVE NOT BEEN CLEARED BY A COURT FINDING IN WHICH THE COMMISSIONER AND THE ATTORNEY GENERAL HAVE NOTICE. I WOULD ENCOURAGE THE BODY TO CONSIDER THAT AND TO GIVE THE TAX COMMISSIONER THE ABILITY TO COLLECT THIS TAX AND TO TRY TO BRING SOME SEMBLANCE OF ENFORCEMENT OF THE LAW TO WHAT IS GOING ON. WITHOUT THIS, THESE MACHINES WILL LIKELY CONTINUE TO EXPAND UNLESS CONSIDERABLE RESOURCES ARE APPLIED TO THEM. THANK YOU. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR SCHUMACHER. SEEING NO OTHER SENATORS WISHING TO SPEAK, SENATOR KRIST, YOU'RE WELCOME TO CLOSE ON YOUR AMENDMENT TO THE COMMITTEE AMENDMENT. [LB70]

SENATOR KRIST: THANK YOU, MR. PRESIDENT. AND AGAIN, MY AMENDMENT IS VERY SIMPLE. SENATOR SCHUMACHER PROPOSES THAT THERE WILL BE A 20 PERCENT TAX ON THESE MACHINES. AND I WOULD LIKE TO ACCOMMODATE FOR THE CONSISTENCY WITHIN THE CONSTITUTIONAL AMENDMENT THAT WAS PASSED INITIALLY WHEN THE CITIZENS OF THE STATE OF NEBRASKA WELCOMED SOME GAMBLING INTO THE STATE WHERE THEY APPORTIONED A CERTAIN AMOUNT OF THAT PROCEED TO GO TO THE PROBLEM GAMBLING FUND TO ALLEVIATE SOME OF THE GAMBLING ADDICTIONS THAT WOULD

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EVOLVE. AND I WOULD REMIND YOU, COLLEAGUES, THAT IF WE DO THIS, THAT 3 PERCENT IS NOW AMENDABLE. AND I WOULD HOPE THAT IT WOULD FOLLOW IF SENATOR SCHUMACHER'S 20 PERCENT IS REDUCED TO 10 PERCENT THAT THE APPORTION OF WHAT WE PASS HERE WOULD BE CONSIDERED. AND I'M NOT A MATHEMATICIAN. I CAN'T DO IT THAT FAST. BUT IT WOULD BE A PERCENTAGE WHICH I WILL COME BACK AND DO A FLOOR AMENDMENT IF IT SHOULD HAPPEN THAT WAY. ANYWAY, I'D ASK FOR YOUR SUPPORT ON AM235 TO AM118 PRINCIPALLY BECAUSE AS WE ESTABLISHED GAMBLING, AND IT DOES EXIST IN THE STATE, WE ALSO HAVE ISSUES OR PROBLEMS FROM PROBLEM GAMBLERS THAT NEED TO BE SATISFIED. THIS AMOUNT OF MONEY IS SET ASIDE TO PROBLEM GAMBLING JUST TO REMIND YOU. I ASK YOU FOR YOUR SUPPORT. THANK YOU, MR. PRESIDENT. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR KRIST. SENATORS, THE QUESTION IS THE ADOPTION OF AM235 TO AM118. ALL THOSE IN FAVOR VOTE AYE; THOSE OPPOSED VOTE NAY. HAVE YOU ALL VOTED? RECORD, PLEASE, MR. CLERK. [LB70]

CLERK: 31 AYES, 0 NAYS, MR. PRESIDENT, ON THE ADOPTION OF SENATOR KRIST'S AMENDMENT TO THE COMMITTEE AMENDMENT. [LB70]

PRESIDENT FOLEY: THANK YOU, MR. CLERK. AM235 IS ADOPTED. DEBATE IS NOW OPEN ON LB70 AND THE COMMITTEE AMENDMENT. SENATOR HARR, YOU'RE RECOGNIZED. [LB70]

SENATOR HARR: THANK YOU, MR. LIEUTENANT GOVERNOR. I HAVE TO MAKE A CONFESSION. I'M STILL NOT QUITE SURE WHAT THE HECK THIS BILL IS. I VOTED IT OUT OF COMMITTEE. I LISTENED TO TESTIMONY ON IT. AND I'VE HAD PEOPLE COME UP TO ME AND SAY WHAT DOES THIS BILL DO? WHAT IS THE EFFECT OF IT? AND I'M STILL NOT ENTIRELY SURE. I KNOW IN OUR SOCIETY AS A GENERAL RULE WE BELIEVE SOMETHING IS LEGAL UNLESS WE CREATE A LAW THAT SAYS IT'S ILLEGAL. WELL, WHAT WE'RE DOING HERE, I THINK, IS WE'RE SHIFTING THE BURDEN. WE'RE SAYING THESE MACHINES ARE DIFFICULT. WE DON'T KNOW IF THEY'RE LEGAL OR ILLEGAL. SO INSTEAD OF HAVING LAW ENFORCEMENT WHO HAS TO PROVE THEIR BURDEN BEYOND A REASONABLE DOUBT, LET'S SHIFT IT. LET'S MAKE THE OPERATOR PROVE IT. AND IN ADDITION, THE BURDEN IS LOWER. SENATOR SCHUMACHER, WOULD YOU YIELD TO A QUESTION? [LB70]

PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD? [LB70]

SENATOR SCHUMACHER: YES, I WILL. [LB70]

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SENATOR HARR: THANK YOU. IS WHAT I SAID TO YOU ACCURATE? [LB70]

SENATOR SCHUMACHER: WHAT THIS DOES IS IMPOSES A TAX UNLESS THE TAXPAYER CAN PROVE AN EXEMPTION. [LB70]

SENATOR HARR: OKAY. SO, I THINK THE ANSWER TO MY QUESTION IS, YES, IT'S A SHIFTING OF BURDEN FROM THE STATE TO THE INDIVIDUAL. IS THAT CORRECT? [LB70]

SENATOR SCHUMACHER: FOR PURPOSES OF TAXES, IT FOLLOWS NORMAL TAX LAW WHERE THE TAXPAYER MUST PROVE THE EXEMPTION. [LB70]

SENATOR HARR: WOW. I THINK THIS IS WHEN I NORMALLY IN A COURTROOM WOULD SAY TO YOU, OBJECTION, COULD YOU HAVE THE WITNESS ANSWER THE QUESTION. BUT I TAKE THAT AS A YES. IT IS A SHIFTING OF BURDENS. THAT'S NOT A BAD THING, FOLKS. I'M NOT SAYING IT'S A BAD THING. BUT IT IS A SHIFTING OF BURDEN FROM THE STATE TO THE INDIVIDUAL. AND NORMALLY YOU NEED AN OVERARCHING REASON, I THINK, IF YOU ARE GOING TO SHIFT THE BURDEN. AND I BELIEVE THE REASONING GIVEN...WELL, LET ME ASK THAT. SENATOR SCHUMACHER, WHAT IS THE PURPOSE FOR SHIFTING THE BURDEN. [LB70]

SENATOR SCHUMACHER: THE PURPOSE FOR...FIRST OF ALL, IT DOES NOT SHIFT THE BURDEN FOR CRIMINAL OR SEIZURE PURPOSES. THAT REMAINS ON THE STATE, ON THE PATROL IF YOU'RE GOING TO CHARGE SOMEBODY WITH A CRIME OR YOU'RE GOING TO SEIZE THEIR PROPERTY AND RUN OVER IT WITH A TRACTOR. NO SHIFT. IT DOES FOLLOW TRADITIONAL TAX LAW AND IMPOSES A BURDEN ON THE TAXPAYER TO PROVE THE EXEMPTION. [LB70]

SENATOR HARR: OKAY. AND THE REASONING FOR SHIFTING THE BURDEN IS? [LB70]

SENATOR SCHUMACHER: BECAUSE IT IS A TAX AND THE TAXPAYER CLAIMING THE EXEMPTION SHOULD HAVE THE EXPENSE OF PROVING THAT THEY DESERVE THE EXEMPTION. [LB70]

SENATOR HARR: I GET THAT. AND MAYBE I'M NOT ASKING THE QUESTION RIGHT BECAUSE RIGHT NOW WE COVER THIS. THIS ISN'T A NEW AREA OF LAW. WE CURRENTLY COVER THIS. IF A GAME COMES IN, WE SAY, ALL RIGHT, STATE, YOU HAVE TO PROVE THAT IT'S BAD. AND THAT'S FINE. WHAT WE'RE DOING NOW IS WE'RE IMPOSING A TAX AND THE RESULT OF WHAT WE'RE DOING IS WE'RE SHIFTING THE BURDEN TO SAY, OKAY, OPERATOR, YOU...WE NOW ARE GOING TO DO...TO ENFORCE THIS, WE'RE NOT GOING TO USE OUR

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CRIMINAL CODE. WE'RE GOING TO USE OUR CIVIL CODE. [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR HARR: THANK YOU, MR. LIEUTENANT GOVERNOR. AND WE'RE GOING TO PUT THE BURDEN ON YOU TO NOT PAY THIS TAX IN ESSENCE. AND I COULD SEE A SITUATION WHERE A GAME COULD BE FOUND...BECAUSE OF THE SHIFTING BURDENS, YOU COULD HAVE A SITUATION WHERE A GAME COULD BE FOUND TO BE LEGAL FOR CRIMINAL PURPOSE, BUT THEN WE WOULD STILL PAY THE OCCUPATION TAX. IS THAT CORRECT, SENATOR SCHUMACHER? [LB70]

SENATOR SCHUMACHER: IN CRIMINAL LAW, THERE IS NEVER A FINDING OF LEGAL. THERE IS A FINDING OF NOT GUILTY. [LB70]

SENATOR HARR: OKAY. SO WHAT I'M SAYING IS BECAUSE OF THE DIFFERING BURDENS, YOU COULD FIND WHERE THEY'RE NOT GUILTY AND THEY COULD SAY YOU'RE LEGAL TO OPERATE HERE UNDER THE CRIMINAL CODE, BUT BECAUSE OF THE DIFFERING BURDENS, YOU HAVE TO PAY THE OCCUPATION TAX, IS THAT CORRECT? [LB70]

SENATOR SCHUMACHER: NO, THAT'S NOT. THEY WOULD NEVER SAY YOU ARE LEGAL TO OPERATE. IT'S JUST THAT YOU'VE NOT FOUND TO BE VIOLATING THE LAW. THE MACHINE... [LB70]

PRESIDENT FOLEY: TIME HAS EXPIRED, SENATORS. THANK YOU, SENATORS HARR AND SCHUMACHER. SENATOR BLOOMFIELD, YOU'RE RECOGNIZED. [LB70]

SENATOR BLOOMFIELD: THANK YOU, MR. PRESIDENT. GOOD MORNING, COLLEAGUES. I SUPPORTED THE KRIST AMENDMENT. ANY TIME WE IMPOSE A TAX ON WHAT COULD BE CONSIDERED A GAMBLING THING, I THINK WE NEED TO PUT A SHARE ASIDE TO TAKE CARE OF THOSE PEOPLE. THAT'S WHY I VOTED FOR THAT AMENDMENT. BUT AS I WATCH THIS, WE HAVE TWO OF OUR ESTEEMED ATTORNEYS DEBATING BACK AND FORTH WAY OVER MY HEAD AND WHAT I CAN UNDERSTAND. I THINK IF THIS BILL IS SO COMPLICATED THAT OUR TWO ATTORNEYS CAN'T DECIDE WHAT IT MEANS, WE BETTER PROCEED WITH CAUTION. I THINK SENATOR McCOY HAD THE RIGHT IDEA. LET'S LOOK VERY, VERY CAREFULLY AT THIS. I THINK PROBABLY WHAT I'M GOING TO DO IS SIT ON MY HANDS WHEN WE GET TO A VOTE ON THIS AND NOT VOTE ON IT WHICH IS A POLITE WAY OF SAYING NO. BUT I THINK THIS IS SOMETHING THAT MAYBE NEEDS TO BE STUDIED A LITTLE MORE BEFORE WE VENTURE IN AND PUT LIMITS ON PEOPLE AND CHANGE THINGS THAT JOHN Q.

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PUBLIC ISN'T GOING TO UNDERSTAND. SO I WOULD ASK THAT WE LISTEN INTENTLY AND VOTE CAUTIOUSLY. AND IF SENATOR McCOY HAS ANYTHING MORE TO SAY, I WOULD YIELD HIM THE REMAINDER OF MY TIME. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR BLOOMFIELD. SENATOR McCOY, YOU'VE BEEN YIELDED TIME, ROUGHLY 3:00. [LB70]

SENATOR McCOY: THANK YOU, MR. PRESIDENT, AND THANK YOU, SENATOR BLOOMFIELD. I'M GOING TO FURTHER EXPAND ON SOMETHING THAT I SAID EARLIER, AND REALLY BEING THE TWO REASONS THAT I'M NOT FOND OF THIS BILL. ONE, I FEAR THAT THIS EXPANDS GAMBLING IN SOME WAY. I DON'T KNOW FOR A FACT THAT IT DOES. BUT I THINK THERE'S ENOUGH AMBIGUITY HERE TO GIVE ME CONCERN. AND THE SECOND REASON I DON'T LIKE THIS BILL IS BECAUSE IT IMPOSES A TAX. IT'S A TAX INCREASE. NOW, DON'T GET ME WRONG. I DON'T LIKE THESE MACHINES THAT THE TAX IS BEING PLACED ON. THAT'S MY OPINION. SOMEBODY ELSE MIGHT LIKE THEM. BUT TO ME, IT SEEMS LIKE A POOR PUBLIC POLICY DECISION THAT WE SAY, WELL, TECHNOLOGY HAS GOTTEN SO COMPLICATED, AND THESE MACHINES ARE SO HARD TO FIGURE OUT WHAT THEY DO THAT WE'RE JUST GOING TO THROW UP OUR HANDS AND SAY WE DON'T KNOW HOW TO ADDRESS IT AS LAW ENFORCEMENT, WE DON'T KNOW HOW TO ADDRESS IT IN THE COURTS, WE DON'T KNOW HOW TO ADDRESS IT IN THE LEGISLATURE. SO WE'RE JUST GOING TO THROW A BIG TAX ON IT AND HOPE THEY GO AWAY. NOW, I WOULD DARE SAY IF WE EMPLOYED THAT SAME PHILOSOPHY IN SOME OTHER PART OF PUBLIC POLICY, NO MATTER WHAT YOUR POLITICAL OPINIONS ABOUT TAXATION ARE, YOU'D SAY THAT'S NOT VERY WISE. THAT DOESN'T EMPLOY A WHOLE LOT OF COMMON SENSE. THOSE ARE MY TWO MAIN REASONS I'M NOT FOND OF THIS BILL. I UNDERSTAND, I THINK, WHAT SENATOR SCHUMACHER IS TRYING TO DO WITH THE BILL. I SERVED ON THE REVENUE COMMITTEE FOR TWO YEARS. I KNOW HOW COMPLICATED SOMETIMES THESE PIECES OF LEGISLATION CAN BE TO UNDERSTAND. [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR McCOY: THERE'S FANTASTIC STAFF AT THE REVENUE COMMITTEE, GOOD LEGAL COUNSEL, GOOD ADVICE COMING TO THE COMMITTEE. BUT THIS IS A VERY COMPLICATED PIECE OF LEGISLATION AND I DON'T LIKE IT FOR A NUMBER OF REASONS, NOT THE LEAST OF WHICH IS WHAT I JUST SAID. IT SEEMS TO ME A POOR PUBLIC POLICY DECISION IF WE GO THE WAY OF SAYING WE CAN'T FIGURE IT OUT, SO LET'S JUST TAX IT. IF IT MOVES, TAX IT. I DON'T LIKE THAT. THANK YOU, MR. PRESIDENT. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATORS McCOY AND BLOOMFIELD.

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SENATOR CHAMBERS, YOU'RE RECOGNIZED. [LB70]

SENATOR CHAMBERS: THANK YOU. MR. PRESIDENT, MEMBERS OF THE LEGISLATURE, I HANDED OUT ONE OF MY RHYMES THIS MORNING AND I THINK FROM READING IT IT'S CLEAR THAT I AM NOT A PROPONENT OF GAMBLING. SOMETIMES YOU CAN GET AN IDEA OF WHAT THE NATURE OF A PROPOSAL IS BY THOSE WHO SUPPORT IT AND THOSE WHO OPPOSE IT. THERE'S A VERY ACTIVE, ALERT, AND EFFECTIVE ANTIGAMBLING LOBBY IN THIS STATE. IF YOU LOOK AT THE COMMITTEE STATEMENT, NO MEMBER OF ANY OF THOSE GROUPS SPOKE AGAINST THIS BILL. IT IS NOT UNUSUAL FOR A TAX TO BE LEVIED ON WHATEVER IT IS AND A SYSTEM IS MADE AVAILABLE FOR THE TAXPAYER TO CHALLENGE THE VALIDITY OF THE TAX ON HIS OR HER PROPERTY. BEYOND THAT, THE PERSON COULD MAKE A CHALLENGE TO THE CONSTITUTIONALITY OF THE LAW ITSELF. SO, BY LAYING THIS TAX, I DON'T THINK THE ISSUES THAT SENATOR HARR RAISED WOULD APPLY HERE. YOU HAVE TO KEEP IN MIND THE DIFFERENCE BETWEEN THE CIVIL DEPARTMENT OF LAW AND THE CRIMINAL. AS SENATOR...AND I WILL CALL HIM "PROFESSOR" IN THIS CONTEXT, "PROFESSOR" SCHUMACHER POINTED OUT, YOU MUST HAVE A MARIJUANA STAMP. OTHERWISE, IF YOU'RE CAUGHT, THEN THERE'S AN ADDITIONAL PENALTY FOR YOU NOT HAVING THE STAMP. THE STAMP DOES NOT INDICATE THAT THE STATE APPROVES OF IT. AT THE FEDERAL LEVEL, IF YOU ENGAGE IN ILLEGAL GAMBLING AND YOU DO NOT PAY TAXES ON YOUR WINNINGS, THEY GET YOU FOR TAX EVASION. IF YOU EMBEZZLE OR BY OTHER ILLEGAL MEANS COME INTO A CERTAIN AMOUNT OF MONEY, YOU HAVE TO PAY TAXES ON IT. SO THE TAX SYSTEM THROUGHOUT HISTORY HAS BEEN USED FOR VARIOUS PURPOSES, SOMETIMES TO EXPRESS A MORAL JUDGMENT OF SOCIETY. THE TAXES ON CIGARETTES AND ALCOHOL COULD PROBABLY FALL INTO THAT CATEGORY. ALSO, CONCERNS FOR THE PUBLIC WELFARE, MEANING THAT THIS OBJECT, THIS ITEM, MAY NOT BE SO BAD THAT IT WILL BE BANNED, BUT IT'S GOING TO BE TAXED. WITH WHAT YOU'RE TALKING ABOUT HERE, AS I'VE LISTENED TO THE DISCUSSION, IS A TAX PUT ON A CATEGORY OF MACHINES. ANY INDIVIDUAL WHOSE MACHINES ARE WITHIN THAT CATEGORIZATION FOR THE PURPOSE OF THIS TAX COULD SAY YOU INAPPROPRIATELY INCLUDED MY MACHINE, AND I'M GOING TO SHOW YOU THAT UNDER THE LAW MY MACHINE DOES NOT QUALIFY FOR THE TAX. I HAD A...AND THEN YOU DON'T HAVE TO PAY IT IF YOU WIN. WHETHER YOU WIN OR NOT, IF SOMEBODY WANTS TO CHALLENGE THE LEGALITY OF THAT MACHINE AND IT REACHED THE POINT OF A COURT, THEN YOU ARE LOOKING AT THE CRIMINAL LAW BECAUSE SOMEBODY IS ALLEGING THAT IT... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR CHAMBERS: ...VIOLATES THE STATE'S LAWS AGAINST GAMBLING.

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THAT'S ENTIRELY DIFFERENT. I HAD A CAR, AND IT PAINED ME TO GIVE IT UP, THAT HAD OVER 500,000 MILES ON IT. AND BASED ON HOW I FEEL, THERE SHOULDN'T HAVE BEEN ANY TAX AT ALL BECAUSE THE CAR HAD NO PRACTICAL VALUE. BUT IT WAS NOT TAXED ON THE BASIS OF THE VALUE OF THE CAR FOR OTHER PURPOSES. WHEN YOU PAY TAXES KNOWN AS THE WHEEL TAX IN OMAHA, AND THEN YOU SEE ALL OF THESE POTHOLES, YOU'D WONDER WHERE THOSE TAXES GO. AND IF YOU HAVE POTHOLES ON YOUR STREET, YOU MIGHT SEEK AT LEAST A REDUCTION IN YOUR WHEEL TAX. I WILL STOP, MR. PRESIDENT, AND THEN TURN ON MY LIGHT. THANK YOU. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR CHAMBERS. SENATOR SMITH, YOU'RE RECOGNIZED. [LB70]

SENATOR SMITH: THANK YOU, MR. PRESIDENT, AND GOOD MORNING, COLLEAGUES. I, LIKE SENATOR HARR, I VOTED THIS BILL AND THE COMMITTEE AMENDMENT OUT OF THE REVENUE COMMITTEE. AND LIKE SENATOR HARR, I HAVE SOME RESERVATIONS ABOUT THE BILL AT THIS POINT. I THINK THE DISCUSSION HAS MOVED BEYOND THE ORIGINAL INTENT THAT WE DISCUSSED IN COMMITTEE AND HAS GAINED A CERTAIN DEGREE OF COMPLEXITY. I APPRECIATE SENATOR McCOY LEADING OUT THE DISCUSSION ON THIS. I'M NOT CERTAIN I TOTALLY AGREE WITH SENATOR McCOY ON THE...FROM THE TAX PERSPECTIVE BECAUSE I DON'T SEE THIS AS A TAX IN THAT THE INTENT IS NOT TO GENERATE NEW REVENUE BUT RATHER TO ELIMINATE UNLAWFUL DEVICES. I THINK THAT WAS THE INTENT. BUT I'M GOING PUT THIS IN PRACTICAL TERMS, THAT WE HAD THESE DISCUSSIONS LAST YEAR IN SESSION. SO LET'S SAY AN OWNER OF AN ESTABLISHMENT PLACES AN HISTORIC HORSE RACING GAMING DEVICE AT THEIR LOCATION. WE HAD THE DISCUSSION LAST YEAR THAT THAT WOULD BE AN ILLEGAL, UNLAWFUL DEVICE. MY UNDERSTANDING BEFORE IS THAT THE STATE WOULD DETERMINE THE...WHETHER THAT DEVICE WAS LEGAL OR NOT USING THE STATE'S DETERMINATION THROUGH THE STATE PATROL AND THE ATTORNEY GENERAL'S OFFICE. WHAT WE HAVE NOW IS THAT THE TAX COMMISSIONER WILL NOW BE MAKING THAT DETERMINATION OF LEGALITY OF THE DEVICE. IF I'M MISTAKEN ON THAT, I WOULD LIKE FOR SOMEONE TO PRESS THEIR BUTTON AND EXPLAIN IT FURTHER TO ME. BUT FROM WHAT I SEE IN THE BILL, THAT'S THE PRIMARY DIFFERENCE FROM WHERE WE CURRENTLY STAND IN DETERMINING THE LEGALITY OF A DEVICE AND WHERE THIS BILL IS TAKING US. AND I THINK THAT'S CREATING SOME CONCERN FOR ME. AND WITH THAT, SENATOR CHAMBERS, I SEE YOU HAVE YOUR LIGHT ON. IF YOU'D LIKE MY TIME, YOU CAN HAVE MY REMAINING TIME ON THIS BILL. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR SMITH. ROUGHLY 2:45, SENATOR

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CHAMBERS. [LB70]

SENATOR CHAMBERS: THANK YOU, MR. PRESIDENT. THANK YOU, SENATOR SMITH. WHAT I STILL MAINTAIN IS THAT THIS IS NOT A BILL THAT WOULD AUTHORIZE AN INCREASE IN GAMBLING. A CHALLENGE COULD STILL BE MADE AS TO THE LEGALITY OF ANY OF THESE MACHINES PURSUANT TO THE LAW THAT WOULD PROHIBIT CERTAIN GAMBLING DEVICES. AFTER LISTENING TO SENATOR HARR, IT SEEMED TO ME...AND HE'S HERE. IS HE PRESENT? HE'S HERE. AFTER I USE THIS BIT OF TIME, WHEN MY TURN COMES I HAVE A QUESTION OR TWO I WILL ASK SENATOR HARR. IF WE WERE TALKING ABOUT A CRIMINAL MATTER, THERE'S NO WAY THAT THE ACCUSED CAN BE MADE TO ASSUME THE BURDEN OF PROVING HIS OR HER INNOCENCE. THE STATE MUST PROVE WITHOUT ASSISTANCE OF THE DEFENDANT EVERY ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT. SO THIS IS NOT A SHIFTING OF THAT KIND OF BURDEN. THIS BILL AS I UNDERSTAND IT, AND I COULD BE MISTAKEN, HAS NOTHING TO DO WITH THE CRIMINAL ASPECT THAT MIGHT ATTACH TO ANY OF THESE DEVICES. SO THAT PART OF THE DISCUSSION I'M NOT GOING TO GET DEEPLY EMBROILED IN. THANK YOU, MR. PRESIDENT. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR CHAMBERS. SENATOR BRASCH, YOU'RE RECOGNIZED. EXCUSE ME, SENATOR BRASCH. MR. CLERK, ARE THERE ITEMS FOR THE RECORD? [LB70]

CLERK: I DO. THANK YOU, MR. PRESIDENT. NATURAL RESOURCES COMMITTEE CHAIRED BY SENATOR SCHILZ REPORTS LB164 AND LB207 TO GENERAL FILE. I HAVE A SERIES OF HEARING NOTICES FROM THE NATURAL RESOURCES COMMITTEE AND A HEARING NOTICE FROM THE AGRICULTURE COMMITTEE. YOUR COMMITTEE ON ENROLLMENT AND REVIEW REPORTS LB269, LB94, LB122, LB52, LB260, LB261, LB271, LB142, LB142A, LB160, LB241, ALL TO SELECT FILE, SOME HAVING ENROLLMENT AND REVIEW AMENDMENTS ATTACHED. AND FINALLY, MR. PRESIDENT, AN AMENDMENT TO BE PRINTED, SENATOR CRAWFORD TO LB219. THAT'S ALL I HAVE. THANK YOU. (LEGISLATIVE JOURNAL PAGES 438-441.) [LB164 LB207 LB269 LB94 LB122 LB52 LB260 LB261 LB271 LB142 LB142A LB160 LB241 LB219]

PRESIDENT FOLEY: THANK YOU, MR. CLERK. SENATOR BRASCH, YOU'RE RECOGNIZED. [LB70]

SENATOR BRASCH: THANK YOU, MR. LIEUTENANT GOVERNOR, AND GOOD MORNING, COLLEAGUES. THE AMENDMENT AND THIS BILL HAS DEFINITELY GROWN ARMS AND LEGS SINCE IT WENT TO PUBLIC TESTIMONY. TO GIVE A BRIEF SYNOPSIS OF WHAT TRANSPIRED IF I CAN AND IF I'M BEING

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REPETITIOUS, IT PROBABLY NEEDS TO BE SAID AGAIN. WHEN THIS BILL WAS INTRODUCED, LB70, IT TALKED ABOUT THE MECHANICAL AMUSEMENT DEVICE TAX, WHICH IS ALSO CALLED THE MAD TAX THAT'S BEEN AROUND FOR DECADES AND BASICALLY PLACED UPON THE PINBALL MACHINES WHERE YOU PUT A QUARTER IN AND THE LITTLE SPRINGS IN THE LEVERS AND LIGHTS GO ON AND YOU WIN FREE GAMES OR YOU LOSE. AND, YES, I HAVE PLAYED PINBALL. NOW WHAT'S HAPPENED WHEN WE TALKED ABOUT A NEW TECHNOLOGY THAT HAS COME INTO I BELIEVE IT MUST BE THE BARS. I AM NOT UP TO SPEED ON WHAT'S THERE EVEN THOUGH, YES, I'VE BEEN IN ONE BUT HAVE NOT NOTICED. IT'S A COMPUTER THAT HAS SOFTWARE, THAT PLAYS A GAME, THAT RESEMBLES AND ACTS LIKE A SLOT MACHINE. THAT'S THE UNDERSTANDING, THAT THERE ARE WINNERS, THERE'S CASH PAID OUT, THAT WHAT WE BELIEVE IS AN EXPANSION OF GAMBLING AND SLOT MACHINES WAS TRULY BEING...TAKING PLACE ON THIS GAME, THIS SPECIFIC GAME. AND BY WANTING TO PUT A DECAL BROADLY ON THE GAMES THAT ARE WITHIN THE BARS, WE HAD GREAT CONCERNS OF MANY OF THE ESTABLISHMENT OWNERS, NOT SO MUCH FOR THE DEVICE ITSELF, BUT IT WOULD BRING IN UNDER A NEW UMBRELLA, PINBALL...NOT PINBALL, EXCUSE ME, BUT DARTS AND THE POOL TABLE AND OTHER TRADITIONAL LONGTIME GAMES OF SKILL. AND THEY WERE OPPOSED TO A GAME OF SKILL VERSUS A GAME OF CHANCE. AND FROM THAT, AM118 WAS WRITTEN I BELIEVE THROUGH THE COUNSEL FOR THE REVENUE COMMITTEE AND ALSO COLLABORATED WITH SENATOR SCHUMACHER AND OTHERS. AT THIS POINT, AS THIS BILL HAS COME CLOSER, WE ARE LOOKING CLOSELY AT THE DEFINITION OF WHAT A GAMING DEVICE IS VERSUS WHAT WE ARE INTRODUCING HERE THROUGH AM118. THERE APPEARS TO BE SOME OVERLAP AND SOME GRAY AREAS. I HAVE CONCERNS ABOUT THE GRAY AREAS. I HAVE CONCERNS THAT THE CURRENT TAX COMMISSIONER HAS NOT GIVEN US THEIR OPINION AND THE EFFECT THAT THIS WILL TAKE PLACE ON NOT ONLY OUR ESTABLISHMENTS THAT ARE PRIVATELY OWNED, BUT THE REVENUE DEPARTMENT ITSELF. I'M AT THE POINT WHERE I WOULD LIKE TO SEE MORE TIME AND INFORMATION. I'VE BEEN SPEAKING TO SOME OF MY COLLEAGUES AND I DO UNDERSTAND THAT THE STATE PATROL THAT GOES IN TO ALL THESE BARS AND THEY LOOK FOR THAT DECAL ON THE PINBALL MACHINE WILL NOW BE LOOKING FOR THE DECAL... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR BRASCH: ...POTENTIALLY ON THIS DEVICE. AND AT THAT POINT IF IT'S NOT DECALED, THEY COULD SEIZE IT. AND IF IT HAS A DECAL AND IT LOOKS LIKE, ACTS LIKE IT'S A GAMBLING DEVICE, IT COULD ALSO BE CONFISCATED. I THINK WE NEED MORE CLARITY HERE AS FAR AS THE TAX. WE'VE ALWAYS HAD MECHANICAL AMUSEMENT DEVICE TAX. IF IT'S NOT A

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GAMBLING MACHINE, IT SHOULD HAVE THE SAME TAX IN MY BELIEF THAT THE PINBALL MACHINE DOES. AND WITH THAT SAID, I AM SPEAKING WITH OTHER COLLEAGUES, I WOULD LIKE TO HAVE MORE INPUT BEFORE WE VOTE EITHER WAY ON THIS. THANK YOU, COLLEAGUES, FOR LISTENING AND FOR YOUR THOUGHTS. THEY ARE VERY VITAL. THIS IS AN IMPORTANT BILL AND AN AMENDMENT. THANK YOU, MR. PRESIDENT, AND THANK YOU, COLLEAGUES. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR BRASCH. SENATOR BLOOMFIELD, YOU'RE RECOGNIZED. [LB70]

SENATOR BLOOMFIELD: THANK YOU, MR. PRESIDENT. I WONDER IF SENATOR SCHUMACHER WOULD YIELD TO A QUESTION OR TWO. [LB70]

PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD? [LB70]

SENATOR SCHUMACHER: YES. [LB70]

SENATOR BLOOMFIELD: SENATOR SCHUMACHER, I NOTICED THERE'S A SIGNIFICANT FISCAL NOTE WITH THIS. IT'S NOT HUGE. IT'S APPROXIMATELY \$88,000. I WOULD THINK IF WE WERE LEVYING A TAX THAT WE WOULD HAVE INCOME FROM THAT INSTEAD OF AN \$88,000 EXPENDITURE. CAN YOU EXPLAIN THAT TO ME, WHERE THAT CAME FROM AND WHY IT'S AS BIG AS IT IS? [LB70]

SENATOR SCHUMACHER: I THINK I CAN, SENATOR BLOOMFIELD. AND THANK YOU FOR THE QUESTION. THIS, IN THIS PARTICULAR SITUATION, THEY WOULD PROJECT THAT THEIR COMPUTER, AND THIS WAS...WHEN IT WAS WRITTEN AS A CITY AND COUNTY TAX, THE COMPUTER PROGRAMMING WOULD COST THEM \$80,000. BUT THEN THEY PROJECTED THAT IT WOULD HAVE A REVENUE INPUT INTO THE SYSTEM AND ACTUALLY THEIR NUMBERS ARE REALLY, REALLY HIGH. THAT REVENUE INPUT, IF THEY COULD GUESS AT IT, WOULD BE IN THE MILLIONS OF DOLLARS. I QUESTION THAT PARTICULAR CONCLUSION BECAUSE IF THIS WORKS, THERE WILL BE VERY LITTLE TO TAX BECAUSE THESE MACHINES WILL BECOME UNPROFITABLE AND WILL VANISH. [LB70]

SENATOR BLOOMFIELD: SO YOU DON'T BELIEVE THE \$88,000 TO BE AN ACTUAL OR ACCURATE FISCAL NOTE, IS THAT CORRECT? [LB70]

SENATOR SCHUMACHER: THE \$88,000 COULD BE AN ACCURATE FIGURE. BUT I THINK ALSO THE FLIP SIDE OF IT, THE INCOME FIGURE AS THEY PROJECTED OUT WOULD BE SUBSTANTIAL IF THIS DID NOT WORK AND THESE THINGS CONTINUED TO PROMULGATE THROUGH THE SYSTEM. [LB70]

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SENATOR BLOOMFIELD: OKAY. THANK YOU, SENATOR SCHUMACHER. I KNOW SENATOR SMITH ASKED YOU SOME QUESTIONS OR HAD SOME QUESTIONS. I WILL YIELD YOU THE REMAINDER OF MY TIME TO ANSWER HIS QUESTION IF YOU'D LIKE IT. [LB70]

SENATOR SCHUMACHER: THANK YOU, SENATOR BLOOMFIELD. VERY BRIEFLY, SENATOR BRASCH RAISES THE ISSUE ABOUT A STICKER. THESE MACHINES HAVE STICKERS ALREADY. THEY ARE ALREADY TAXED AT \$35 A THROW, HARDLY ENOUGH TO DETER THEIR EXISTENCE. THEY ALL HAVE A STICKER. THAT'S THE ONLY ENFORCEMENT THAT'S HAPPENING NOW WITH THE PATROL OR THE TAX COMMISSIONER IS THEY'RE LOOKING FOR THE PINBALL MACHINE STICKER. THAT STICKER ON THEM DOES NOT MAKE THEM LEGAL OR ILLEGAL. IT'S SIMPLY A TAX. AND THAT DECAL, THEY ARE COMPLYING WITH. THEY'RE PUTTING THE \$35 STICKER ON IT. THE LAW IS NOT BEING CHANGED WITH REGARD TO WHETHER THESE MACHINES CAN BE CRIMINALLY PROSECUTED. IF THE ATTORNEY GENERAL OR THE PATROL OR A COUNTY ATTORNEY OR A LOCAL LAW ENFORCEMENT WANTS TO GO AFTER THESE MACHINES AND IS PREPARED TO SPEND THE MONEY ON TESTING THE MACHINES AND MEETING THE COURT STANDARDS, THAT'S ALL PERFECTLY INTACT. THE PRACTICALITY IS IT'S EXPENSIVE TO DO SO AND THEY'VE GOT BIGGER FISH TO FRY. SO THIS IS A SIMPLE QUESTION: DO WE WANT TO ENFORCE OUR GAMING LAWS OR NOT? THEY'RE NOT BEING ENFORCED NOW. THIS CHANGES NOTHING. THIS ADDS A TAX COMPONENT TO THE ENFORCEMENT MECHANISM. AND THE BURDEN PLACED UPON THE TAX COMMISSIONER IS VERY CLEAR. IF A MACHINE ACCEPTS VALUE, IF IT PAYS OUT PRIZES, IF IT'S RUN BY A TOUCH SCREEN OR THE LIKE, AND IF IT HASN'T BEEN CLEARED BY THE COURTS, COLLECT THE TAX. THAT'S NOT MUCH BURDEN. AND IF YOU THINK YOUR MACHINE IS AN INNOCENT MACHINE, THEN PROVE IT TO THE TAX COMMISSIONER BY PROVING IT DOESN'T DO ONE OF THOSE FOUR THINGS. AND WHAT IT'S GOING TO BOIL DOWN TO IS THE PEOPLE RUNNING THESE MACHINES ARE GOING TO HAVE TO GO TO THE COURT AND PROVE THAT THEIR MACHINES ARE NOT GUILTY. THAT'S DIFFERENT THAN IN CRIMINAL LAW WHERE IT WOULD BE THE... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR SCHUMACHER: ...STATE'S BURDEN TO PROVE THAT THE MACHINE IS NOT GUILTY. IT'S A SIMPLE PROPOSITION. THESE MACHINES WILL CONTINUE TO SPREAD UNLESS THERE'S SOME ADDITIONAL BUTTRESSING OF LAW ENFORCEMENT SUCH AS THIS TAX PROPOSES. AND IT PUTS AN INTERESTING TWIST ON THINGS BECAUSE THIS IS A CHANCE TO SAY NO TO ILLEGAL GAMBLING IN A LEGISLATURE THAT HAS TRADITIONALLY SAID NO EMPHATICALLY TO IT, DESPITE ARGUMENTS TO THE CONTRARY. A VERY

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SIMPLE PROPOSITION HERE, DO YOU WANT TO TAX THESE THINGS AT A HIGH RATE OF TAX OR DON'T YOU? AND DO YOU WANT TO MAKE IT EASY TO TAX OR DON'T YOU? AND DO YOU WANT TO ASSIST LAW ENFORCEMENT OR DON'T YOU? AND THERE'S NO AMBIGUITY, NO CONFUSION. IN FACT, IF YOU CHECK IN THE LOBBY, THE PEOPLE THAT ARE REPRESENTING THE... [LB70]

PRESIDENT FOLEY: TIME, SENATOR. THANK YOU, SENATORS SCHUMACHER AND BLOOMFIELD. SENATOR CHAMBERS, YOU'RE RECOGNIZED. [LB70]

SENATOR CHAMBERS: MR. PRESIDENT, MEMBERS OF THE LEGISLATURE, I WOULD LIKE TO ASK SENATOR BURKE HARR A QUESTION OR TWO THAT MIGHT CLARIFY MY THINKING. [LB70]

PRESIDENT FOLEY: SENATOR BURKE HARR, WOULD YOU YIELD? [LB70]

SENATOR HARR: YES. I HOPE IT DOES. [LB70]

SENATOR CHAMBERS: SENATOR HARR, WHEN YOU MENTIONED SHIFTING, TELL ME WHAT YOU...WAS YOUR PHRASEOLOGY SHIFTING THE BURDEN OF PROOF? IS THAT WHAT YOU SAID? OR HOW DID YOU EXPRESS IT? [LB70]

SENATOR HARR: I THINK I RATHER INARTICULATELY SAID SHIFTING THE BURDEN OF PROOF. BUT IT DOES SHIFT WHO HAS...YES, I DID SAY THAT. [LB70]

SENATOR CHAMBERS: OKAY, BUT I MEANT...I DON'T WANT TO BE PUTTING WORDS IN YOUR MOUTH. THE IDEA IS THAT YOU FEEL UNDER CURRENT...TELL ME WHAT YOU THINK IT IS THE WAY THINGS ARE DONE UNDER CURRENT LAW NOW IF AN OCCUPATION TAX IS PUT IN PLACE ON ANYTHING. [LB70]

SENATOR HARR: OKAY. SO HOW I THINK IT HAPPENS NOW IS WHAT WE'RE TRYING TO DO AT THE END OF THE DAY IS TO DETERMINE WHETHER THESE MACHINES ARE LEGAL OR NOT, WHICH IS ADMIRABLE AND WE SHOULD BE DOING THAT. THE QUESTION IS RIGHT NOW THE WAY WE DO IT IS WE GO THROUGH THE CRIMINAL PROCESS. AND WE SAY, BURDEN--JUST WHAT SENATOR SCHUMACHER SAID--BURDEN IS ON THE STATE. IT'S EXPENSIVE TO DO. AND YOU HAVE TO PROVE IT BEYOND A REASONABLE DOUBT. AND THAT'S A HIGH BURDEN. IT'S THE HIGHEST BURDEN WE HAVE IN THE LAND. AND IT SHOULD BE FOR A REASON. WHAT THIS DOES IS IT TURNS IT AROUND AND IT SAYS, OKAY, WE'RE GOING TO PRESUME IF IT MEETS THESE VERY SIMPLE CRITERIA, WHICH A LOT OF MACHINES DO THAT HAVE ALREADY PREVIOUSLY BEEN FOUND NOT TO BE...OR FOUND TO BE LEGAL, WE'RE GOING TO TURN AROUND AND SAY, YOU, OPERATOR, HAVE THE BURDEN TO PROVE THAT THIS

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IS LEGAL. AND IF YOU DON'T, IT'S JUST WHAT SENATOR SCHUMACHER SAID, IT'S UNPROFITABLE AND THE GAMERS WILL QUIT. BUT WE HAVE...SO WE HAVE TWO SIDES. WE HAVE, IT'S VERY EXPENSIVE. WE DON'T WANT THE STATE TO DO THIS BECAUSE IT'S EXPENSIVE. WE WANT THE OPERATOR TO DO IT BECAUSE IT'S EXPENSIVE. AND SO YOU'RE SHIFTING THE BURDEN TO THE OPERATOR HAVING TO SAY, HEY, YOU PROVE TO THE STATE OR TO THE TAX COMMISSIONER THAT THIS IS SOMETHING THAT'S LEGAL, SOMETHING THAT WE'VE ALREADY SAID WE DON'T WANT THE STATE TO DO BECAUSE IT'S TOO EXPENSIVE. [LB70]

SENATOR CHAMBERS: SENATOR HARR, HAVE YOU HEARD OF RAIDS BEING CONDUCTED BY WHAT USED TO BE CALLED THE MORAL SQUAD AND BEFORE THERE WERE ANY LEGAL PROCEEDINGS AT ALL OTHER THAN MAYBE A SEARCH WARRANT, AND SOMETIMES NOT EVEN THAT, AND THEY WOULD JUST SHUT THE OPERATION DOWN ON THE SPOT? THEN IF THE ONE SHUT DOWN FELT IT WAS INAPPROPRIATELY DONE, THAT PERSON WOULD THEN MAKE A MOVE IF NO CRIMINAL CHARGES HAD BEEN FILED ALONG WITH THE SHUTTING DOWN. ARE YOU AWARE OF THINGS LIKE THAT HAVING HAPPENED? [LB70]

SENATOR HARR: NO, NOT TO MY KNOWLEDGE. [LB70]

SENATOR CHAMBERS: WELL, I AM, NOT THAT I'M IN THAT KIND OF OPERATION. BUT LET'S TAKE PROPERTY TAX ON A RESIDENCE. IF A PERSON IS OPERATING A HOUSE OF ILL REPUTE, THERE IS NO TAX PLACED ON THAT ACTIVITY BUT A TAX IS PLACED ON THE RESIDENCE, SPEAKING JUST PURELY, IS THAT CORRECT? [LB70]

SENATOR HARR: THAT'S CORRECT. AND THERE'S THE DRUG STAMP AS WELL, SAME SITUATION. [LB70]

SENATOR CHAMBERS: RIGHT. SO WE'RE NOT IN THE REALM WITH THIS BILL OF TALKING ABOUT CRIMES AND PUNISHMENT UNDER ANY CIRCUMSTANCES AS THIS BILL ITSELF IS PHRASED. WOULD YOU AGREE OR WOULD YOU DISAGREE? [LB70]

SENATOR HARR: I WOULD AGREE WITH THAT. [LB70]

SENATOR CHAMBERS: THANK YOU. MEMBERS OF THE LEGISLATURE, THE MAIN THING I WANT TO GET ACROSS IS THAT THIS IS NOT A BILL DEALING WITH CRIMES AND PUNISHMENT. IF A MACHINE IS SEIZED, WHATEVER THE CURRENT LAW IS NOW REMAINS UNCHANGED IF A PERSON IS CHARGED WITH VIOLATION OF THE LAW. NOTHING ABOUT THAT IS CHANGED BY THIS LAW.

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[LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR CHAMBERS: WHEN THEY PUT AN OCCUPATION TAX ON RESTAURANTS IN OMAHA, RESTAURANTS HAD TO COME UNDER THAT LAW. NOW LET'S SAY THAT I SELL FOOD OUT OF MY HOUSE TO HELP THE CHURCH. AND THEY SAID, WELL, WE THINK THAT'S A RESTAURANT SO PAY IT. AND THEY ASSESS SOMETHING AGAINST ME. THEN I SHOW THEM THAT, NO, THAT'S NOT IT. I'M TRYING TO GIVE A VERY SIMPLE EXAMPLE THAT DOESN'T HAVE A LOT OF COMPLICATING FACTORS. I DO NOT SEE IN THIS BILL WHAT THOSE WHO ARE ASKING THE QUESTIONS ARE PRESENTING. SO MAYBE I'M JUST NOT PICKING UP ON IT. THANK YOU, MR. PRESIDENT. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR CHAMBERS AND SENATOR BURKE HARR. SENATOR BURKE HARR, YOU ARE NEXT IN THE QUEUE AND YOU'RE RECOGNIZED. [LB70]

SENATOR HARR: THANK YOU, MR. LIEUTENANT GOVERNOR. SENATOR SCHUMACHER, WOULD YOU YIELD TO A QUESTION? [LB70]

PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD? [LB70]

SENATOR SCHUMACHER: YES, I WILL. [LB70]

SENATOR HARR: OKAY, THANK YOU. WHAT IS IT THAT THE TAX COMMISSIONER LOOKS FOR TO ISSUE THIS TAX? [LB70]

SENATOR SCHUMACHER: THE TAX IS IMPOSED ON MACHINES THAT TAKE IN MONEY, PAY OUT MONEY, ARE INTERACTIVE WITH THE PLAYER, AND HAVE NOT BEEN OKAYED BY THE COURTS. [LB70]

SENATOR HARR: OKAY. ARE THERE CURRENT MACHINES THAT DO THE FIRST TWO THINGS BUT HAVE BEEN OKAYED BY THE COURT? [LB70]

SENATOR SCHUMACHER: THERE IS A MACHINE--THAT THE COURT CASE WHICH BROUGHT THIS ALL TO A HEAD AND CREATED PART OF THIS CONFUSION--CALLED BANKSHOT OR AMERICAN AMUSEMENTS v. THE DEPARTMENT OF REVENUE AND THE CITE ON THAT IS 282 NEB. 908. AND IN THAT CASE THERE WAS A MACHINE THAT HAD THREE LEVELS OF GAMES ON IT. THE COURT, EVEN THOUGH THERE WAS A GAMING LABORATORY THAT SAID ALL THREE WERE MORE SKILL THAN CHANCE, THE COURT WENT THROUGH THE COURT PROCEEDINGS ON IT AND ENDED UP IN A JUDGMENT

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THAT SAID THE TWO...TWO LEVELS OF THE MACHINE WERE BAD AND WERE ILLEGAL AND ONE LEVEL HAD A SUFFICIENT LEVEL OF SKILL TO BE LEGAL. AND THE COURT... [LB70]

SENATOR HARR: OKAY. [LB70]

SENATOR SCHUMACHER: SO THERE IS...THAT MACHINE IS OUT THERE. [LB70]

SENATOR HARR: OKAY. LADIES AND GENTLEMEN, THIS IS...I ADMIRE THE ENDS OF WHAT SENATOR SCHUMACHER IS TRYING TO OBTAIN. I THINK HE'S ABSOLUTELY RIGHT. I QUESTION THE METHOD BECAUSE--THESE ARE HIS WORDS, NOT MINE--THAT CURRENTLY IT'S TOO EXPENSIVE FOR COUNTY ATTORNEYS AND ATTORNEYS GENERAL TO GO AFTER THESE TYPE OF BILLS OR MACHINES. SO HE WANTS TO MOVE THE BURDEN TO THE INDIVIDUAL OPERATOR, THE SMALL BUSINESSMAN TO SAY WE'RE GOING TO IMPOSE A TAX. AND IT'S NOT AS THOUGH THAT'S AUTOMATICALLY ILLEGAL. SO...WE PUT OCCUPATION TAXES ON...WELL, WE PUT TAX, FOR INSTANCE, ON DRUGS. AND WE SAY YOU CAN SELL DRUGS IN NEBRASKA, YOU'VE JUST GOT TO PAY THE TAX. AND IF YOU DON'T, BY THE WAY, IT'S A HUGE FINE. THAT'S NOT THE SITUATION WE HAVE HERE. WE HAVE A SITUATION WHERE SOMEONE COULD BE DOING SOMETHING WITHIN THE BOUNDS OF THE LAW THAT WE'RE PUTTING A TAX ON. AND AGAIN, SENATOR SCHUMACHER'S WORDS, NOT MINE, THAT TAX MAKES THE GAME UNPROFITABLE AND THEY'LL QUIT. SO WE'RE KIND OF...IF YOU'RE AN OPERATOR, YOU'RE IN A CATCH-22 BECAUSE LITIGATION IS VERY EXPENSIVE--SO EXPENSIVE THE STATE, THAT HAS A LOT MORE ACCESS TO REVENUE THAN AN INDIVIDUAL, OFTENTIMES DECIDES NOT TO DO THIS. AND YOU HAVE THE INDIVIDUAL WHO COULD BE DOING SOMETHING THAT, WHILE NOT ILLEGAL, WOULD BE APT TO THE TAX AND THEY'D HAVE TO PROVE AGAIN THAT IT'S NOT...THAT IT IS...THEY'D HAVE TO PROVE THE EXEMPTION. WHAT I'M LOOKING FOR IS A MIDDLE GROUND AND IT'S SOMETHING THAT SAYS, IF THAT OPERATOR...IT'S A SHIFTING BURDEN, OKAY? SO IF YOU HAVE THESE FIRST TWO SITUATIONS THAT SENATOR SCHUMACHER TALKS ABOUT, COLLECTING MONEY AND PAYS OUT MONEY, THEN IT'S PRESUMED TO HAVE THE TAX. HOWEVER, YOU NEED A FAIL-SAFE IN THERE FOR THOSE TYPE OF BUSINESSES THAT SENATOR SCHUMACHER TALKED ABOUT WITH BANKSHOT THAT PROVIDES A WAY FOR THEM TO SAY, HEY,... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR HARR: THANK YOU...WE DESERVE THIS EXEMPTION AND IT AVOIDS THE COST OF LITIGATION. AND THEN IF THEY MEET THOSE CRITERIA AND THE TAX COMMISSIONER SAYS, I STILL THINK YOU DON'T DESERVE THOSE

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EXEMPTIONS, THEN WE GO TO LITIGATION. BUT THE BURDEN IS ON THE STATE AT THAT POINT. AND IT'S EXPENSIVE AND IT'S DIFFICULT. YOU'VE HEARD SENATOR SCHUMACHER SAY THAT. BUT I THINK WE'RE PUTTING THE CART BEFORE THE HORSE AND WE'RE GOING A LITTLE TOO FAR TO MAKE SURE. AND THIS BILL, WHILE GOOD AND ITS VISION AND ITS GOALS ARE GREAT, IT MAY BE A LITTLE OVERARCHING. AND IT MAY REACH A LITTLE TOO FAR AND GO INTO AREAS THAT WE MAY NOT WANT OR NEED IT TO GO INTO. I'M WORKING ON AN AMENDMENT THAT I WILL BE BRINGING FORWARD THAT WILL HOPEFULLY ADDRESS THAT SO WE CAN ADVANCE LB70. LIKE I SAID, I DON'T THINK ANYONE WANTS ILLEGAL GAMBLING IN THIS STATE. THANK YOU, MR. LIEUTENANT GOVERNOR. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR HARR. SENATOR SCHNOOR, YOU'RE RECOGNIZED. [LB70]

SENATOR SCHNOOR: THANK YOU, SIR. I'M NOT A GAMBLER SO I DON'T UNDERSTAND GAMBLING. I HAVE...I GUESS, I HAVE GAMBLED IN THE PAST, JUST PLAYING SOME SLOTS HERE AND THERE. BUT SINCE I DON'T UNDERSTAND THIS, I WAS WONDERING IF SENATOR SCHUMACHER WOULD YIELD TO A QUESTION. [LB70]

PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD? [LB70]

SENATOR SCHUMACHER: I SURE WILL. [LB70]

SENATOR SCHNOOR: COULD YOU...SENATOR SCHUMACHER, THANK YOU. COULD YOU PLEASE EXPLAIN TO ME JUST HOW THESE GAMBLING MACHINES WORK AND WHERE ARE THEY IN NEBRASKA BECAUSE I HONESTLY DON'T KNOW. [LB70]

SENATOR SCHUMACHER: CURRENTLY IN NEBRASKA, THEY'RE APPEARING IN BARS. I PERSONALLY HAVE SEEN THEM AS FAR WEST AS OGALLALA. THEY ARE IN CONVENIENCE STORES, THERE ARE SOME IN COLUMBUS IN CONVENIENCE STORES. I THINK THERE'S BEEN SOME ON TELEVISION THAT THE NEWS MEDIA HAS FOUND. THEY ARE BEING MARKETED BECAUSE RIGHT NOW WHEN A DISTRIBUTOR...AND THESE DISTRIBUTORS ARE NOT LITTLE BUSINESSPEOPLE, THEY ARE PEOPLE OPERATING DISTRIBUTION OF THESE MACHINES OUT OF IOWA AND OUT OF NORTH CAROLINA AND MAYBE OTHER PLACES. THEY GO TO A BAR AND THEY SAY, LOOK, WE HAVE A MACHINE. IT HAS A STICKER ON IT SO IT MUST BE OKAY. THE STATE PATROLMAN WALKS IN, HE LOOKS AT IT AND AT THIS POINT HE DOESN'T GO INTO WHETHER OR NOT IT'S A SLOT-MACHINE-LIKE DEVICE OR NOT. HE LOOKS FOR THE STICKER, AND WALKS OUT THE DOOR. THAT GIVES A SIGNAL TO THE BAR OWNER

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DOWN THE STREET THAT THESE THINGS MUST BE OKAY AND THAT'S WHY THEY'RE PROLIFERATING RATHER FAST ACROSS THE STATE. AND THEY ARE UNREGULATED, NOBODY KNOWS HOW THEY WORK FOR SURE, BUT THEY ARE BEING PLAYED AND PAYING OUT RATHER RESPECTABLE SUMS OF MONEY. SO THAT'S WHERE THEY'RE AT. [LB70]

SENATOR SCHNOOR: OKAY. THANK YOU. IN ONE OF THE TOWNS IN MY DISTRICT OF FREMONT, I SEE THERE'S A BAR THAT DOES KENO. AND I DON'T EVEN KNOW WHAT KENO REALLY IS, BUT DOES THIS FALL IN THAT SAME CATEGORY? [LB70]

SENATOR SCHUMACHER: NO. [LB70]

SENATOR SCHNOOR: AND WHY IS THAT? [LB70]

SENATOR SCHUMACHER: KENO IS...A CITY AND COUNTY LOTTERY ACT SPECIFICALLY AUTHORIZES KENO. IT'S UNDER EXEMPTION FROM THE STATE CONSTITUTION PROHIBITION AGAINST GAMBLING. IT IS HIGHLY REGULATED. THE MACHINES THAT ARE USED THERE ARE PROVEN TO BE GAMBLING MACHINES BECAUSE IT'S EXEMPTED. THIS IS ENTIRELY DIFFERENT. THESE ARE UNREGULATED SLOT MACHINES THAT ARE NOT AUTHORIZED BY LAW AND COULD NOT BE AUTHORIZED BY THE TAX COMMISSIONER OR EVEN THIS BODY UNDER OUR EXISTING CONSTITUTION. [LB70]

SENATOR SCHNOOR: OKAY. AND I DON'T KNOW IF YOU ARE FOR OR AGAINST GAMBLING, BUT WOULD YOU BE OPPOSED TO TAXING ALL OF THESE ENTITIES THEN? [LB70]

SENATOR SCHUMACHER: ALL OF WHAT ENTITIES? [LB70]

SENATOR SCHNOOR: WELL, TO...I GUESS WE'RE TALKING ABOUT THESE GAMBLING MACHINES AND THEN ALSO TO TAX KENO AS WELL. [LB70]

SENATOR SCHUMACHER: OH, KENO IS TAXED. KENO PAYS A HIGHER TAX THAN WHAT'S SUGGESTED HERE. IN MOST OF THE KENO GAMES IN THIS STATE, KENO PAYS A 10 PERCENT TAX TO THE CITY AND A 2 PERCENT TAX TO THE STATE GOVERNMENT. IT'S TAXED ALREADY. [LB70]

SENATOR SCHNOOR: OKAY. THAT'S ALL THE QUESTIONS I HAVE. THANK YOU. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATORS SCHNOOR AND SCHUMACHER. SENATOR McCOY, YOU'RE RECOGNIZED. [LB70]

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SENATOR McCOY: THANK YOU, MR. PRESIDENT. I WOULD GUESS THAT WHEN YOU LOOK AT THE FISCAL NOTE ON THIS BILL THE...WELL, I SHOULD BACK UP. WOULD SENATOR SCHUMACHER YIELD TO A QUESTION, PLEASE? [LB70]

PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD, PLEASE? [LB70]

SENATOR SCHUMACHER: YES. [LB70]

SENATOR McCOY: THANK YOU. SENATOR, WHEN YOU LOOK AT THE FISCAL NOTE ON LB70 AND YOU LOOK AT WHAT THE DEPARTMENT OF REVENUE PROPOSES TO...THAT THIS BILL WILL ENTAIL AS FAR AS COST, IT LOOKS LIKE THAT'S A ONE-TIME...THEY PROPOSED A ONE-TIME COST OF ALMOST \$88,000 FOR IT DEVELOPMENT COST. CLEARLY, NOW THE COMMITTEE AMENDMENT HAS CHANGED THE DUTIES THAT WE'RE PLACING WITH THE DEPARTMENT OF REVENUE. IS THAT A FAIR CHARACTERIZATION? [LB70]

SENATOR SCHUMACHER: THAT'S CORRECT. THE ORIGINAL BILL HAD THE DEPARTMENT OF REVENUE DIVIDING REVENUE AND HAVING TO MAINTAIN RECORDS OF WHICH TOWNS WERE TAXED AND NOT TAXED AND THAT'S BEEN ELIMINATED. [LB70]

SENATOR McCOY: SO THE NEXT STEP TO THAT WOULD BE THAT IF THIS LEGISLATION ADVANCES TO SELECT FILE AND WE HAVE A NEW FISCAL NOTE FROM THE DEPARTMENT OF REVENUE, I WOULD THINK IT'S FAIR, WOULDN'T YOU, THAT IT'S GOING TO BE SIGNIFICANTLY HIGHER THAN JUST SHY OF \$88,000. WOULD THAT BE FAIR? [LB70]

SENATOR SCHUMACHER: I THINK IT'D BE THE OPPOSITE. [LB70]

SENATOR McCOY: HOW WOULD IT BE THE OPPOSITE? [LB70]

SENATOR SCHUMACHER: BECAUSE IN THE ORIGINAL FISCAL NOTE YOU HAD A DETERMINATION THAT THE DEPARTMENT OF REVENUE WOULD HAVE TO KEEP TRACK OF WHICH PARTICULAR TOWNS HAD IMPOSED THIS TAX; THEY'D HAVE TO MAKE SURE THEY WERE COLLECTING IT IN THOSE TOWNS; THEY'D HAVE TO DIVIDE THE REVENUE WITH THOSE PARTICULAR TOWNS THAT IMPOSED THE TAX, WHERE THIS IS A UNIFORM TAX IMPOSED ALL ACROSS THE STATE AND I WOULD THINK THAT IT MAY VERY WELL BE CONSIDERABLY LESS. [LB70]

SENATOR McCOY: WELL, I GUESS I JUST...I UNDERSTAND WHERE YOU'RE

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GOING WITH THAT BUT I JUST DON'T AGREE BECAUSE WE ARE ASKING, AGAIN, THAT THE TAX COMMISSIONER AND THE DEPARTMENT OF REVENUE UNDER AM118, TO BE THE ARBITER OF THE GUIDELINES OF WHAT WE'RE PUTTING IN PLACE. WE'LL FIND OUT, I GUESS, IF THIS LEGISLATION ADVANCES WHETHER OR NOT WHICH ONE OF US IS RIGHT. NEITHER ONE OF US MAY KNOW THE ANSWER TO THAT AT THIS POINT. I WANT TO SHIFT GEARS A LITTLE BIT AND ASK ANOTHER COUPLE OF QUESTIONS, SENATOR, AND I APPRECIATE YOUR INDULGENCE. THE AMERICAN FAMILY TODAY WITH EVERYTHING GOING ON AND ACTIVITIES AND TECHNOLOGY, THERE IS A LOT OF COMPETITION FOR ENTERTAINMENT TIME AND THE USE OF ENTERTAINMENT DOLLARS, WOULD THERE NOT? [LB70]

SENATOR SCHUMACHER: GENERALLY, I THINK THAT'S ACCURATE. [LB70]

SENATOR McCOY: OKAY. SO WHEN YOU LOOK AT WHAT THE TYPICAL NEBRASKA FAMILY OR COUPLE, RETIRED OR NOT, WHATEVER THE DEMOGRAPHICS MAY BE, WHETHER IT'S EATING OUT, WHETHER IT'S ENTERTAINMENT, SPORTING EVENTS, THE ARTS, WHATEVER IT MAY BE, THERE'S A LOT OF COMPETITION IN MY MIND OVER THE SEGMENT OF TIME THAT THE...AND DOLLARS, RESOURCES THAT THE AMERICAN FAMILY UTILIZES--A NEBRASKA FAMILY--FOR THEIR ENTERTAINMENT. AND WHILE KENO MAY NOT FALL WITHIN THE CONFINES OF THIS LEGISLATION, WHEN YOU LOOK AT THE ENTERTAINMENT TIME THAT A FAMILY DEVOTES, THESE GAMES THAT THIS LB70 SEEKS TO REGULATE WOULD BE COMPETITORS WITH KENO ACROSS NEBRASKA WHEN YOU LOOK AT THE ENTERTAINMENT DOLLARS THAT ARE OUT THERE FOR NEBRASKANS. WOULD THAT BE TRUE? [LB70]

SENATOR SCHUMACHER: DON'T THINK SO. AND THE REASON I DON'T THINK SO, SENATOR, IS BECAUSE ODDLY ENOUGH, WHERE THESE MACHINES APPEAR... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR SCHUMACHER: ...WE'VE SEEN AN INCREASE IN KENO SALES. [LB70]

SENATOR McCOY: WELL, THEN I GUESS THE QUESTION WOULD BE THEN WHY THE ANGST OVER THESE GAMES? IF THEY'RE NOT A COMPETITOR TO ANY HIGHLY REGULATED OR NOT OR HIGHLY TAXED OR NOT OR HEAVILY REGULATED, I SHOULD SAY, WHY THE ANGST? BECAUSE IF YOU HAVE ONE SEGMENT OF GAMES OVER HERE THAT ARE HIGHLY REGULATED AND SOME WOULD SAY HIGHLY TAXED AND YOU HAVE ONE SEGMENT OF GAMES OVER HERE WITH NO TAXES AT ALL OR JUST THE DECAL TAX OR WHATEVER IT MAY

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BE, THEN WHY THE ANGST? [LB70]

SENATOR SCHUMACHER: WHY THE ANGST, BECAUSE ONE IS LEGAL AND ONE IS ILLEGAL. [LB70]

SENATOR McCOY: WELL, BUT ISN'T THAT IN THE EYES OF THE BEHOLDER WHETHER ONE IS LEGAL OR ILLEGAL? [LB70]

SENATOR SCHUMACHER: IF YOU READ THE SUPREME COURT OPINION, IT'S PRETTY MUCH IN THE EYES OF THE COURTS. [LB70]

SENATOR McCOY: BUT WE'RE NOW TAKING THIS OUT OF THE COURTS AND PUTTING IT IN THE HANDS OF THE TAX COMMISSIONER. [LB70]

SENATOR SCHUMACHER: NO, WE'RE NOT. IN ORDER TO BE LEGAL, THE COURTS HAVE GOT TO RULE ON THE CLASS OF MACHINE AND THE PROGRAM IN IT SO IT IS IN THE COURTS...IN THE EYES OF THE COURTS. [LB70]

PRESIDENT FOLEY: TIME. THANK YOU, SENATORS McCOY AND SCHUMACHER. SENATOR CHAMBERS, YOU'RE RECOGNIZED. THIS IS YOUR THIRD TIME ON THIS AMENDMENT, SENATOR. [LB70]

SENATOR CHAMBERS: THANK YOU. MR. PRESIDENT AND MEMBERS OF THE LEGISLATURE, THIS IS THE KIND OF DISCUSSION THAT IS WHOLESOME, IT'S HELPFUL, AND RAISES THE KIND OF ISSUES THAT OUGHT TO BE DISCUSSED IN A LEGISLATIVE BODY. THERE ARE DIFFERENCES OF OPINION. AND BASED ON MY LISTENING TO WHAT HAS BEEN SAID, EACH SIDE HAS ARGUED ITS POSITION THE BEST THAT IT COULD AND THEY HAVE BUTTRESSED THEIR ARGUMENTS WITH WHAT THEY CONSIDER TO BE FACTS OR LOGICAL INFERENCES. WHETHER I AGREE WITH EITHER SIDE OR BOTH OF THEM OR DISAGREE WITH BOTH OF THEM IS IRRELEVANT TO WHAT I'M SAYING. THE VALUE IS IN THE DISCUSSION. AND PEOPLE ULTIMATELY, ON A BILL THAT IS DISCUSSED THIS MUCH, WILL MAKE UP THEIR OWN MIND ANYWAY OR HAVE IT MADE UP FOR THEM BY SOMEBODY THEY TRUST AS HAVING MORE UNDERSTANDING THAN THAT PARTICULAR INDIVIDUAL MIGHT HAVE. THIS, TO ME, IS NOT A BILL THAT LEADS TO A GREATER PROLIFERATION OF GAMBLING OF ANY KIND, LAWFUL OR UNLAWFUL. I DECLARED AT THE BEGINNING THAT I COULD BE MISTAKEN, BUT SO FAR THE ARGUMENTS ARE ALONG THE LINE OF ANTIGAMBLING, WHICH IS A POSITION THAT I HOLD. BUT NOT EVERYTHING THAT PERTAINS TO GAMBLING WILL BE SOMETHING I WILL GET DEEPLY INVOLVED IN, WHETHER I LIKE IT OR NOT. THE WORST KIND OF GAMBLING IMAGINABLE, IN MY OPINION, HORSE RACING IS ALLOWED UNDER THE CONSTITUTION. I CAN'T STOP IT. THE KIND OF GAMBLING THAT PROBABLY

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MIGHT GIVE YOU A BETTER CHANCE THAN OTHER KIND OF GAMBLING WOULD BE SPORTS BETTING BECAUSE THERE ARE TWO DIRECTIONS YOU CAN GO ON A GAME AND YOU CAN SELECT EITHER SIDE. BECAUSE THERE ARE TEAMS THAT PLAY EACH OTHER AND ONE IS MUCH STRONGER THAN THE OTHER, THE ODDSMAKERS WILL FIGURE HOW MANY POINTS SHOULD BE ADDED TO THE SCORE OF THE WEAK TEAM TO MAKE THEM EQUAL FOR THE PURPOSES OF BETTING. OR IF YOU WANT TO TAKE IT THE OTHER WAY, HOW MANY POINTS WILL THE STRONG TEAM HAVE TO GIVE UP? AS FAR AS THE BOOKIE IS CONCERNED, THE BOOKMAKER, THE ONE WHO RECEIVES THE BETS, HE IS JUST LIKE SOMEBODY WHO GAMBLES ON THE STOCK MARKET. THAT PERSON GETS HIS OR HER MONEY WHETHER THE STOCK GOES UP OR NOT IF THAT BROKER IS NOT PLAYING THE GAME. IF THE BOOKIE DOESN'T BET, ALL THAT HE OR SHE IS INTERESTED IN DOING IS HAVING AN EQUAL AMOUNT OF MONEY BET ON EACH SIDE; THEN THE BOOKIE GETS 10 PERCENT. IF YOU BET...IF YOU WANT TO WIN \$100, WITH MOST BOOKIES YOU HAVE TO PUT 10 PERCENT MORE THAN WHAT YOU WANT TO WIN SO YOU WOULD WAGER \$110. THAT'S THE BOOKIE'S MONEY THE VIGORISH OR WHATEVER YOU WANT TO CALL IT. SO IF YOU ARE TALKING ABOUT ALLOWING GAMBLING, LET PEOPLE BET ON SPORTING EVENTS. IF NEBRASKA PLAYS WISCONSIN, YOU CAN TAKE NEBRASKA OR WISCONSIN. IF YOU PLAY ODDS AND THE HISTORY OF HOW THESE TEAMS HAVE PLAYED EACH OTHER OR HOW THEY PLAYED OTHER TEAMS, YOU LOOK AT THE POINT SPREAD,... [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR CHAMBERS: ...WHETHER THAT TEAM IS AT HOME, WHAT THE WEATHER CONDITIONS, ALL THIS KIND OF STUFF. BUT YOU DON'T HAVE TO LOOK AT ANY OF THAT BECAUSE IF YOU LOOK AT ALL OF IT, YOU STILL COULD BE WRONG. IF YOU DON'T LOOK AT ANY OF IT, YOU COULD BE RIGHT. GAMBLING IS WHERE YOU TAKE A CHANCE AND YOU BET YOUR HARD-EARNED MONEY ON AN EVENT OVER WHICH YOU HAVE NO CONTROL AND THE OUTCOME IS NOT KNOWN IN ADVANCE. IF YOU SIT DOWN IN A CARD GAME AND THEY STACK THE DECK, THAT MEANS THEY PREARRANGED THE CARDS IN THE DECK ALREADY. SO THE ONE WHO IS SHUFFLING AND DEALING THE CARDS KNOWS HOW THINGS ARE GOING TO BE DONE. THERE IS NO FORM OF GAMBLING WHICH IS FREE OF CORRUPTION AND TILTING IN FAVOR OF THE HOUSE. BUT I DON'T SEE ALL OF THAT IN THIS BILL. I'M GOING TO KEEP LISTENING AND MAYBE SOMEBODY CAN SHOW IT TO ME. THANK YOU, MR. PRESIDENT. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR CHAMBERS. SENATOR SCHUMACHER. [LB70]

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SENATOR SCHUMACHER: THANK YOU, MR. PRESIDENT AND MEMBERS OF THE BODY. FIRST OF ALL BEFORE I BEGIN, OUR FISCAL OFFICE SHOWS NO EXPENDITURES REQUIRED. THAT WAS A REVENUE DEPARTMENT GUESSTIMATE FROM A NOTE FROM THE REVENUE DEPARTMENT. OUR FISCAL OFFICE BASICALLY DISAGREED WITH THE REVENUE DEPARTMENT AS FAR AS THE COST OF IMPLEMENTATION OF THIS THING. THEY HAVE PEOPLE ALREADY THAT ARE AROUND LOOKING FOR THESE STAMPS ON THE MACHINES AND OUR FISCAL OFFICE SHOWS NO EXPENDITURE IF YOU LOOK AT THE FISCAL NOTE. THIS IS A SIMPLE SITUATION AND IT PUTS AN INTERESTING QUESTION BEFORE US. THERE ARE OUT-OF-STATE GAME MANUFACTURERS THAT ARE DISTRIBUTING MACHINES IN THIS STATE THAT IF THE MACHINE WERE PRESENTED TO A COURT, THE COURT WOULD FIND TO BE AN ILLEGAL GAMBLING DEVICE. NOTHING IS BEING DONE TO STOP IT ON A CRIMINAL BASIS LEVEL OR ON A BASIS OF SEIZING THEM AS CONTRABAND--TOO EXPENSIVE FOR THE STATE TO PROVE BEYOND A REASONABLE DOUBT THAT THESE MACHINES ARE ILLEGAL MACHINES, EVEN THOUGH THEY ARE OR COULD EASILY BE PROVED TO BE. SO WHAT WE END UP HAVING IS A CASE WHERE THEY ARE SPREADING. WE CAN STOP THE SPREAD BY IMPOSING THIS TAX OR WE CAN LOOK THE OTHER WAY LIKE THE LOBBYISTS FOR THE MACHINE MANUFACTURERS FROM OUT OF STATE ARE DOING. THE NEBRASKA GAMING INTERESTS AS FAR AS THE PINBALL MANUFACTURERS AND STUFF, WE'VE WORKED THROUGH THIS LANGUAGE WITH THEM AND THEY NO LONGER HAVE ANY HEARTBURN OVER IT. IF WE SAY WE DON'T WANT TO IMPOSE THIS TAX, LIFE WILL STILL GO ON. THE MACHINES WILL CONTINUE TO SPREAD. THERE MAY OR MAY NOT BE COURT ACTION TAKEN. MAYBE THE VERY FACT THAT WE'VE HAD A DISCUSSION HERE WILL GIVE SOME IMPETUS TO THE PATROL OR TO THE ATTORNEY GENERAL OR A COUNTY ATTORNEY TO TAKE ON THE EXPENSE. IT'S A SIMPLE DECISION. IF WE WANT TO SLOW THIS SPREAD OF SLOT-LIKE MACHINES, WE SLOW IT. IF WE DON'T, THEN WE DON'T. AND WE ARE IN THIS QUANDARY BECAUSE WE HAVE NO FLEXIBILITY. WE CAN'T SAY LET'S MAKE THESE MACHINES LEGAL UNDER THESE CONDITIONS AND SET REGULATORY STANDARDS FOR THEM BECAUSE WE HAVE NO AUTHORITY TO DO SO. THE LEGISLATURE SHALL NOT AUTHORIZE GAMES OF CHANCE, PERIOD. THAT'S THE WAY IT IS WITH REFERENCE TO SLOT MACHINES. SO WE'RE STUCK. WE EITHER WAIT FOR THE PATROL TO FIGURE THIS IS WORTH THEIR TIME AND MONEY AND THE ATTORNEY GENERAL AND THE COUNTY ATTORNEYS OR WE TAX IT LIKE THIS BILL PROPOSES OR WE SIT BACK AND YOU SAY, YOU KNOW, WE'RE ALL HAT AND FEW CATTLE BECAUSE WE REALLY DON'T CARE WHETHER THESE THINGS ARE SPREAD ACROSS THE STATE OR NOT. WE DON'T CARE IF THE MONEY GOES TO IOWA AND TO NORTH CAROLINA OR NOT BECAUSE, WELL, WE DON'T KNOW WHY BECAUSE. IT'S A SIMPLE TEST. THE TAX GOES ON IF THE THING ACCEPTS MONEY, PAYS OUT MONEY, IS INTERACTIVE WITH A TOUCH SCREEN

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OR THE LIKE, AND HASN'T BEEN OKAYED BY THE COURTS. SHOW THAT IT MEETS ONE OF THOSE THINGS TO THE TAX COMMISSIONER, VERY LITTLE EFFORT ON THE TAX COMMISSIONER TO CONFIRM THAT ON THE REVENUE AGENT, THE TAX COMES OFF. ON THE OTHER HAND, CAN'T BE SHOWN TO THE TAX COMMISSIONER, TAX STAYS ON. IT'S A SIMPLE STANDARD, NOT A COMPLICATED STANDARD. [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR SCHUMACHER: AND IT'S UP TO US TO MAKE A VALUE JUDGMENT HERE. DO WE IMPEDE THE EXPANSION OF THESE DEVICES WHICH ARE CERTAINLY AKIN TO ILLEGAL SLOT MACHINES OR DON'T WE? LET ME TELL YOU HOW ONE OF THEM WAS DESCRIBED TO ME, HOW THE ELEMENT OF SKILL. THE MACHINE SPINS THE WHEELS. CHERRY ON THE TOP LINE, CHERRY ON THE MIDDLE LINE, CHERRY ON THE TOP LINE. DOESN'T PAY. YOU GOT TO EXERT SKILL AND TAKE YOUR FINGER AND PULL THE TWO END CHERRIES DOWN SO IT MAKES A STRAIGHT LINE. THEN YOU GET PAID. THAT'S THE SKILL INVOLVED. SO WE WANT TO PLAY HYPERTECHNICAL SITUATIONS HERE, FINE. BUT WHAT YOU'LL BASICALLY BE DOING IS SAYING WE ARE GOING TO TURN A BLIND EYE TO THIS SITUATION AND THE BAR OWNER DOWN THE STREET WHO SEES THE GUY UP THE STREET HAVE IT, IS GOING TO SAY, YOU KNOW, THE PATROL LOOKED AT THE MACHINE AND IT'S OKAY. THE LEGISLATURE ARGUED IT AND IT'S APPARENTLY OKAY BECAUSE THEY DIDN'T DO ANYTHING. SO I'M GOING TO PUT ONE IN HERE BECAUSE I CAN MAKE GOOD MONEY ON IT. [LB70]

PRESIDENT FOLEY: TIME, SENATOR. [LB70]

SENATOR SCHUMACHER: THANK YOU. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR SCHUMACHER. SENATOR BURKE HARR, YOU'RE RECOGNIZED. AND THIS IS YOUR THIRD OPPORTUNITY ON THIS AMENDMENT, SENATOR. [LB70]

SENATOR HARR: THANK YOU, MR. LIEUTENANT GOVERNOR. I WAS LISTENING TO SENATOR SCHUMACHER AND, YOU KNOW, HE IS A WILY GUY AND HE'S PRETTY SMART. AND I WAS TRYING TO FIGURE OUT, YOU KNOW, THIS MORNING I DROVE DOWN TO LINCOLN AND I DROVE 75 MILES AN HOUR. AND I HAD TO BE IN THE FAR RIGHT LANE. PEOPLE WERE ZOOMING RIGHT PAST ME PASSING ME BY. AND YOU KNOW WHAT THE STATE PATROL AND THE POLICE DID? NOTHING, ABSOLUTELY NOTHING. THEY WEREN'T THERE TO ENFORCE THE LAW. I MIGHT HAVE AN AMENDMENT ON HERE THAT SAYS, IF YOU'RE ON THE INTERSTATE WHEN SENATOR HARR IS AND YOU PASS HIM, YOU WILL PRESUME TO BE SPEEDING AND THEN YOU CAN APPEAL IT. BUT I WILL PUT A

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TAX ON YOU THAT SAYS, AND YOU WILL PRESUME TO HAVE BEEN SPEEDING IF YOU PASS SENATOR HARR. AND THAT TAX WILL BE SO HIGH THAT YOU WON'T BE ABLE TO AFFORD TO DRIVE. BY THE WAY, IT WILL SAVE A LOT OF MONEY AND WEAR AND TEAR ON OUR ROADS, TOO, BECAUSE THAT'S WHAT WE'RE DOING HERE, FOLKS. WE'RE SAYING, WELL, LAW ENFORCEMENT ISN'T DOING THE JOB THEY'RE SUPPOSED TO DO. AND THESE ARE GREAT PEOPLE AND, YOU KNOW, THEIR BUDGETS ARE SPREAD THIN. I SYMPATHIZE WITH THEM. I SYMPATHIZE WITH WHAT SENATOR SCHUMACHER IS SAYING. AND SO THEY HAVE TO PRIORITIZE. RIGHT NOW, THEY'RE SAYING GAMING ISN'T HIGH, JUST LIKE THEY MAY SAY CATCHING A SENATOR SPEEDING OR NOT SPEEDING IS OR ISN'T HIGH ON THEIR LIST. BUT WHAT WE ARE DOING IS WE'RE SAYING WHAT OTHERWISE IS COMPLETELY LEGAL, WE'RE PUTTING THE BURDEN ON THAT DRIVER--IN MY SCENARIO--TO PROVE THAT, IN FACT, THEY WERE DRIVING 75 OR LESS, WITHIN THE SPEED LIMIT. AND IF THEY DO, FINE. WE'LL GO AHEAD AND EXEMPT THEM FROM THAT TAX. BUT WE'RE SAYING THAT DRIVER HAS TO PROVE THAT THAT TAX DOESN'T APPLY TO THEM, AND I'M NOT SURE IF I'M COMFORTABLE WITH THE PUBLIC POLICY ASPECT OF THAT. AND LOOK, WE USE TAXES ALL THE TIME TO REGULATE BEHAVIOR, WHETHER IT'S TOBACCO TAX, LIQUOR TAX, CONSUMPTION TAXES, EVEN SOME OCCUPATION TAXES. I GET THAT. I DON'T HAVE A PROBLEM WITH THAT. BUT WE'RE NOT SAYING WE'RE DOING IT HERE TO REGULATE AN INDUSTRY OR A BEHAVIOR. WE ARE SAYING IT IS TOO COSTLY FOR THE STATE TO DO IT AND THEIR BUDGET IS TOO THIN, SO WE'RE GOING TO TAKE THAT AND WE'RE GOING TO PUT IT, THAT ONUS, ON THE TAXPAYER. WE'RE GOING TO PUT A LARGE TAX ON THEM THAT BASICALLY RUNS THEM OUT OF BUSINESS. AND WE'RE GOING TO PUT THAT TAX ON THEM AND THEN PUT THE ONUS ON THEM TO PROVE THAT, IN FACT, WHAT THEY ARE DOING IS LEGAL. PHILOSOPHICALLY, I HAVE A PROBLEM WITH THAT. I DON'T HAVE A PROBLEM WITH AM118. I DON'T EVEN HAVE AN "UNDERARCHING" PROBLEM WITH THE POLICY BEHIND LB70. BUT I THINK WE NEED SOME CLARITY SO THAT IF SOMEONE IS OPERATING LEGALLY--WHICH HAS BEEN FOUND TO HAPPEN, BY SENATOR SCHUMACHER'S OWN ADMISSION--THAT THAT PERSON ISN'T...YOU KNOW, WE DON'T THROW THE BABY OUT WITH THE BATHWATER. I'M WORKING ON AN AMENDMENT--AND I'LL WORK WITH SENATOR SCHUMACHER ON IT AND I THINK, YOU KNOW, HE'S A GOOD GUY, HE'LL HOPEFULLY WORK WITH ME--THAT SHIFTS THE BURDEN BACK THAT SAYS, HEY--AGAIN BACK TO MY ORIGINAL SCENARIO--I'M ON THE INTERSTATE AND I HAVE A MECHANISM ON MY CAR WHICH TELLS WHAT SPEED I WAS DRIVING. MOST 18-WHEELERS HAVE THOSE. AND I CAN PRESENT THAT AND THEN AT THAT POINT, THE BURDEN IS ON THE TAX COMMISSIONER TO COLLECT THAT. IT SHIFTS BACK TO THEM TO PROVE THAT THE DRIVER WAS ACTUALLY GOING OVER 75. BUT JUST TO SAY YOU'RE ON THE INTERSTATE AT A CERTAIN TIME AND YOU PASSED A CERTAIN PERSON, YOU MUST BE GOING OVER THE SPEED LIMIT...

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[LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR HARR: THANK YOU...YOU'RE GETTING PEOPLE...THE NET IS TOO BROAD. YOU KNOW, IF WE SAY STATE SENATOR INSTEAD OF JUST BURKE HARR. NOW WE GOT SENATOR CHAMBERS AND WE ALL KNOW SENATOR CHAMBERS DOESN'T SPEED. THOSE OF US WHO DRIVE BACK AND FORTH FROM OMAHA HAVE PASSED HIM SEVERAL TIMES. BUT WE HAVE A STATE SENATOR, NOT JUST BURKE WHO DOES DRIVE 75, NEVER FASTER. SO I WANT TO FOCUS IN A LITTLE BIT, MAKE THIS BILL...THE IDEA, THE INTENT IS GOOD BUT I THINK THE NET IS TOO WIDE. WE NEED TO FOCUS IN A LITTLE BIT AND MAYBE HAVE SHIFTING BURDENS SO THAT WE DON'T CAPTURE PEOPLE WE DON'T INTEND TO. AND I LOOK FORWARD TO WORKING WITH SENATOR SCHUMACHER. THANK YOU, MR. LIEUTENANT GOVERNOR. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR HARR. SENATOR SCHEER, YOU'RE RECOGNIZED. [LB70]

SENATOR SCHEER: THANK YOU, MR. LIEUTENANT GOVERNOR. WOULD SENATOR SCHUMACHER YIELD TO A FEW QUESTIONS? [LB70]

PRESIDENT FOLEY: SENATOR SCHUMACHER, WOULD YOU YIELD? [LB70]

SENATOR SCHUMACHER: YES, I WILL. [LB70]

SENATOR SCHEER: SENATOR, REMEMBERING OR AT LEAST TRYING TO REMEMBER THE TESTIMONY, THE GAME THAT IS TECHNICALLY LEGAL RIGHT NOW, ISN'T THAT EXACTLY WHAT HAPPENED TO IT AS WHAT THE BILL REQUIRED? IT WAS DEEMED THAT IT WASN'T PERMISSIBLE SO THE COMPANY DID INDEED HAVE TO PAY TO HAVE IT TESTED IN TWO DIFFERENT LOCATIONS SO THAT THE STATE WOULD ALLOW IT TO BE A GAME OF SKILL RATHER THAN CHANCE? [LB70]

SENATOR SCHUMACHER: WHAT ENDED UP IN THE GAME THAT'S STILL OUT THERE IS THAT THE PATROL WAS ACTIVELY SEIZING THESE MACHINES. THE COMPANY HAD A REPORT FROM A GAMING LABORATORY THAT IT HAD HIRED THAT SAID ALL THREE GAMES ON THE MACHINE WERE OKAY. THE PATROL SEIZED THE MACHINE. THE COMPANY SAID, ENOUGH IS ENOUGH, WE'RE GOING TO COURT, WE'RE GOING TO GET AN ORDER TO STOP THESE SEIZURES OF OUR MACHINES. THE COURTS GOT INVOLVED, REVIEWED THE SITUATION AND SAID, LISTEN, SIMPLY BECAUSE YOU GOT A LETTER ISN'T GOOD ENOUGH. WE'RE GOING TO, AFTER OUR ANALYSIS--AND BOTH SIDES

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SPENT A GREAT DEAL OF MONEY--WE'RE GOING TO CONCLUDE THAT TWO OF THE GAMES ON THERE ARE MORE CHANCE THAN SKILL AND ILLEGAL AND ONE IS SLIGHTLY MORE SKILL THAN CHANCE AND WE'LL LET IT GO. AND AT THAT POINT, THE MANUFACTURER PULLED THE TWO ILLEGAL GAMES FROM THE MACHINE. [LB70]

SENATOR SCHEER: BUT THE VENDOR DID PAY FOR THAT EXPENSE TO PROVE IT TO THE STATE, DID HE NOT? [LB70]

SENATOR SCHUMACHER: JUST AS THE CASE...AND ANY TAX OR...IN THAT PARTICULAR CASE IT WAS CRIMINAL AND YES, THERE WAS...THE COURT ENDED UP SAYING THAT THE STATE IN A CRIMINAL OR SEIZURE PROSECUTION HAD TO PROVE BEYOND A REASONABLE DOUBT, MAKING IT CLEAR THAT THE BURDEN WAS ON THE STATE. THE ATTORNEY GENERAL ARGUED THE OPPOSITE, THAT IT SHOULD NOT BE THAT STANDARD. THE COURT DISAGREED AND WE ARE WHERE WE'RE AT NOW. TO PUT AN END TO AN ILLEGAL MACHINE THAT'S OUT THERE THAT HAS THESE CHARACTERISTICS, THE STATE HAS GOT TO PROVE BEYOND A REASONABLE DOUBT WITH ALL KINDS OF FANCY TESTING THAT IT'S MORE CHANCE THAN SKILL. AND BY THE TIME THEY GET THAT DONE, YOU SWITCH A NEW PROGRAM OUT AND AWAY YOU GO AGAIN. [LB70]

SENATOR SCHEER: THANK YOU, SENATOR SCHUMACHER. THANK YOU, MR. LIEUTENANT GOVERNOR. I WOULD YIELD THE REMAINDER OF MY TIME TO SENATOR...IF HE WOULD LIKE IT, SENATOR SCHUMACHER. [LB70]

PRESIDENT FOLEY: ABOUT 2.5 MINUTES, SENATOR SCHUMACHER. [LB70]

SENATOR SCHUMACHER: THANK YOU, SENATOR, AND MEMBERS OF THE BODY. I DON'T MEAN TO BELABOR THIS AT ALL. I THINK THAT MOST OF YOU HAVE MADE A DECISION; AND WHEN YOU'VE MADE A DECISION ON THESE KIND OF THINGS, WE SHOULD VOTE AND MOVE ON TO THE NEXT BILL. THERE'S NO NEED TALKING AND TALKING AND TALKING ABOUT IT. I AM OPEN TO DISCUSSING WITH SENATOR HARR AS WELL AS SENATOR McCOY ANY DISCOMFORT THAT THEY MIGHT HAVE. BUT UNFORTUNATELY, RIGHT NOW THE TAX COMMISSIONER CANNOT MAKE THESE THINGS LEGAL. WE CANNOT MAKE THESE THINGS LEGAL. THE COURT HAS SAID THAT IT IS THE ONE THAT DETERMINES WHETHER IT'S LEGAL OR NOT AFTER HEARING BOTH SIDES. AND WE ARE IN A POSITION WHERE WE EITHER IMPOSE THIS TAX AND PUT THE ISSUE BEFORE THE COURT ON A CLASS-BY-CLASS BASIS, WHETHER OR NOT THESE ARE LEGAL OR WE DON'T. IF WE DON'T, I'LL TELL YOU FLAT OUT, THE SIGNAL IS GOING NO GO OUT THAT, HEY, THESE THINGS MUST BE OKAY. AND WE WON'T HAVE ANOTHER CHANCE TO DEAL WITH THIS BECAUSE THIS BILL

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WILL NO LONGER BE HERE TO DEAL WITH IT. NO HARM IN THIS BILL. THIS THING WAS IN COMMITTEE, CAME OUT UNANIMOUSLY FROM COMMITTEE. AND UNTIL THE FOLKS FROM OUT OF STATE SHOWED UP WITH THE LOBBY, IT WASN'T A BIG DEAL. AND WE WERE ALL UNIFORMLY IN AGREEMENT THAT IT WAS A SITUATION WHERE WE SHOULD ASSIST LAW ENFORCEMENT. [LB70]

PRESIDENT FOLEY: ONE MINUTE. [LB70]

SENATOR SCHUMACHER: IT'S NOW IN YOUR HANDS. THANK YOU. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATORS SCHEER AND SCHUMACHER. SEEING NO OTHER SENATORS WISHING TO SPEAK, SENATOR GLOOR, YOU'RE WELCOME TO CLOSE ON AM118, THE COMMITTEE AMENDMENTS. [LB70]

SENATOR GLOOR: THANK YOU, MR. PRESIDENT. THANK YOU, MEMBERS. GOOD DISCUSSION, AS SENATOR CHAMBERS SAYS. LET ME NOT TALK ABOUT THE SPECIFICS OF AM118. SINCE WE'RE GETTING READY FOR A VOTE, LET ME TALK A LITTLE BIT ABOUT PROCESS HERE. WE WERE PRESENTED WITH A BILL; THIS IS THE REVENUE COMMITTEE. THERE WERE PEOPLE IN OPPOSITION WHO WERE LEGITIMATE OPERATORS OF COIN-OPERATED GAMES, MECHANICAL AMUSEMENT DEVICES. AND WE'RE TALKING ABOUT POOL TABLES AND WE'RE TALKING ABOUT PINBALL MACHINES AND THE GOLF MACHINES AND THE DART MACHINES. WE ALL KNOW THESE AND THEY'RE AMUSEMENT DEVICES, THEY'RE NOT GAMING DEVICES. THEY WERE THERE IN OBJECTION. THAT'S THE ONLY PEOPLE WE HEARD OBJECTIONS FROM. SO WE HAD THE HEARING AND AFTERWARDS WE SAT DOWN WITH SENATOR SCHUMACHER, THE REVENUE COMMITTEE SAT DOWN, TOOK A LOOK AT WAYS TO ADDRESS THEIR CONCERNS SO THAT LEGITIMATE OPERATORS WEREN'T OVERLY BURDENED OR PENALIZED IN THIS PROCESS. AND WHAT WE CAME UP WITH WAS AM118. BUT INTERESTING THINGS HAPPEN WHEN A BILL GETS OUT OF COMMITTEE AND THAT IS, MORE PEOPLE--SOMETIMES PEOPLE WHO SHOULD HAVE BEEN PAYING ATTENTION--START PAYING ATTENTION. AND NOW THE PEOPLE WHO ARE IN OPPOSITION ARE, IN FACT, SUPPORTIVE OF THE BILL. AND PEOPLE WHO ARE THE OPERATORS OF THESE GAMES IN QUESTION, GAMING DEVICES THAT WE'RE TRYING TO KEEP PROLIFERATING ACROSS THE STATE, ON THE ONE HAND HAVE SHOWN UP. ON THE OTHER HAND, WE HAVE PEOPLE WHO ARE CONCERNED ABOUT THE EXPANSION OF GAMING WHO ARE CONCERNED THAT THIS MAY BE--MY INTERPRETATION--A TROJAN HORSE IN SOME WAY, SHAPE, OR FORM AND WE OUGHT TO TAKE A LOOK AT LANGUAGE AND ANALYZE IT OR MAKE CHANGES, AMENDMENTS TO EITHER THE COMMITTEE AMENDMENT OR TO THE BILL ITSELF THAT MAKE SURE IT'S NOT A TROJAN HORSE. IT'S NOT A TROJAN HORSE. AT LEAST THE COMMITTEE WOULD NOT HAVE PASSED OUT, I BELIEVE, A BILL THAT WAS A

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TROJAN HORSE. THOSE...BUT WE'LL FIND OUT WHETHER YOU BELIEVE THAT OR NOT IN THE VOTE. AND ON THE OTHER HAND, THE PEOPLE WHO BRING THESE DEVICES IN FROM OUT OF STATE ARE MUDDYING THE WATERS IN WAYS THAT I THINK MAKE IT SOUND A LOT MORE COMPLICATED THAN IT OUGHT BE. WE WILL NOT GET TO THE VOTE ON LB70 TODAY I'M GUESSING, BUT WE'RE CLEARLY GOING TO GET TO THE VOTE ON AM118. IT'S A GOOD AMENDMENT. IT MAKES LB70 AN APPROPRIATE BILL. YOU MAY NOT LIKE LB70, YOU MAY NOT VOTE FOR LB70, BUT YOU SHOULD VOTE FOR AM118 BECAUSE IT MAKES LB70 A MUCH BETTER BILL. NO REASON TO GET NOT JUST THE PEOPLE WHO ARE CONCERNED ABOUT EXPANDED GAMING, NOT JUST THE OPERATORS FROM OUT OF STATE, BUT THE LEGITIMATE OPERATORS WE'RE TRYING TO PROTECT WITH AM118. NO REASON TO GET THREE DIFFERENT GROUPS UPSET WITH US. PASS AM118 AND WE'LL SEE WHERE WE END UP WITH ADDITIONAL AMENDMENTS TO THE BILL ITSELF OR WHERE WE END UP WITH LB70. THANK YOU FOR THE OPPORTUNITY TO CLOSE. [LB70]

PRESIDENT FOLEY: THANK YOU, SENATOR GLOOR. SENATORS, YOU'VE HEARD THE DEBATE AND CLOSING ON THE COMMITTEE AMENDMENTS, AM118. THE QUESTION IS THE ADOPTION OF COMMITTEE AMENDMENTS. ALL THOSE IN FAVOR VOTE AYE; THOSE OPPOSED VOTE NAY. HAVE YOU ALL VOTED? RECORD, PLEASE, MR. CLERK. [LB70]

CLERK: 29 AYES, 6 NAYS, MR. PRESIDENT, ON THE ADOPTION OF COMMITTEE AMENDMENTS. [LB70]

PRESIDENT FOLEY: THANK YOU, MR. CLERK. THE COMMITTEE AMENDMENTS ARE ADOPTED. MR. CLERK. [LB70]

CLERK: MR. PRESIDENT, SOME ITEMS. YOUR COMMITTEE ON GOVERNMENT, MILITARY AND VETERANS AFFAIRS REPORTS LB10 AND LB111 TO GENERAL FILE; LB111 WITH COMMITTEE AMENDMENTS ATTACHED. I HAVE AMENDMENTS TO BE PRINTED TO LB109. A SERIES OF AMENDMENTS TO LB111. REFERENCE REPORT REFERRING CERTAIN GUBERNATORIAL APPOINTEES TO STANDING COMMITTEE FOR A CONFIRMATION HEARING. NAME ADDS: SENATOR GLOOR WOULD LIKE TO ADD HIS NAME TO LB77; SENATOR GLOOR TO LB187. (LEGISLATIVE JOURNAL PAGES 442-444.) [LB10 LB111 LB109 LB77 LB187]

MR. PRESIDENT, SENATOR McCOY WOULD MOVE TO ADJOURN THE BODY UNTIL TUESDAY MORNING, FEBRUARY 10, AT 9:00 A.M.

PRESIDENT FOLEY: THANK YOU, MR. CLERK. SENATORS, YOU'VE HEARD THE MOTION TO ADJOURN. ALL THOSE IN FAVOR SAY AYE. THOSE OPPOSED SAY NAY. WE ARE ADJOURNED.