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Floor Debate
January 11, 2018

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SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the seventh day of the One Hundred Fifth Legislature, Second Session. Our chaplain for today is Senator Williams. Would you please rise.

SENATOR WILLIAMS: (Prayer offered.)

SPEAKER SCHEER: Thank you, Senator Williams. I call to order the seventh day of One Hundred Fifth Legislature, Second Session. Senators, please record your presence. Roll call. Please record, Mr. Clerk.

ASSISTANT CLERK: There's a quorum present, Mr. President.

SPEAKER SCHEER: Thank you, Mr. Clerk. Are there any corrections to the Journal?

ASSISTANT CLERK: I have no corrections this morning.

SPEAKER SCHEER: Thank you. Any messages, reports, or announcements?

ASSISTANT CLERK: Mr. President, I have a Reference report from the Executive Board; a listing of registered lobbyists for the current week; an acknowledgment that various agency reports have been filed electronically and are available to the Legislature's Web site. In addition to that, amendment to be printed to LB548 from Senator Kolterman, and a notice of committee hearing from the Agriculture Committee. That's all that I have at this time. (Legislative Journal pages 275-277.) [LB548]

SPEAKER SCHEER: That you, Mr. Clerk. We'll proceed to the first item on the agenda.

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ASSISTANT CLERK: Mr. President, LB347 introduced by Senator Geist at the request of the Governor. (Read title.) The bill was introduced on January 12th of last year. It was referred to the Transportation and Telecommunications Committee. That committee placed the bill on General File with committee amendments. (AM16, Legislative Journal page 461, First Session, 2017.) [LB347]

SPEAKER SCHEER: Thank you, Mr. Clerk. Senator Geist, you're welcome to open on LB347. [LB347]

SENATOR GEIST: Yes, thank you, Mr. President, and members of the Legislature. The purpose of LB347 is to simplify the licensing requirements for school bus drivers by eliminating the Nebraska school bus permit issued to school bus drivers each year. The school bus permit in Nebraska is a historical document that dates back to before the federal government enacted mandatory commercial driver's license and commercial motor vehicle standards in the 1980s. Nebraska is the only state that issues such a document and the uniform standards which have been adopted have actually rendered this permit obsolete. Under current law school bus drivers are required to make an annual visit to the DMV licensing office and present a completed medical certificate and apply for a school bus permit. On the years between the renewal of their CDL, or commercial driver's license, the examiner checks the medical certificate, administers an eye test which has already been completed as part of their medical certification, and gives an issuance certificate which is then presented to the county treasurer along with a \$7.50 fee and they are issued a permit. The Nebraska Department of Education requires all school bus drivers to provide the medical certificate to the school which makes the requirements of the school bus permit a duplicate effort and an unnecessary cost to the drivers. The Department of Education will continue their authority to regulate school buses and the drivers under its statutes for all things except the issuance of the federally required CDL and endorsements, which will be issued by the Department of Motor Vehicles as part of the overall CDL program in Nebraska. On the year their CDL license has to be renewed, they're currently required to take the written test and also a driving test. The federal law requires all states to comply with the federal commercial motor vehicle and the commercial driver's license standards in order to remain eligible for federal highway funding and Motor Carrier Safety Assistance Program funding. Nebraska has adopted the federal CDL licensing standards for school bus drivers in order to comply with the

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Federal Motor Carrier Safety Improvement Act of 1999. Now, for what LB347 will not do. LB347 will not eliminate the requirement for Level 1 training or Level 2 training. It will not eliminate the requirement for schools to annually check driving records of drivers or eliminate the criminal history records check. It will not eliminate the requirement for annual medical examination; it will not eliminate the requirement for behind-the-wheel training and re-service evaluation, or eliminate the requirements for pretrip inspection by drivers. It will not eliminate the requirement for mechanical inspection of buses or any other safety requirement prescribed by Nebraska administrative code Title 92, Chapter 91. Current provisions in the law for a school representative or others to request the DMV to have a driver retested if they believe they cannot safely operate a vehicle and those requirements are still available and would apply. There is a simple committee amendment, AM16, that Chairman Friesen will explain. I also have AM1513, which changes the operative date from January 1, and I'll explain that when the amendment comes up, but Senator Friesen can explain AM16. I ask for your support for LB347 and I thank you, Mr. President. [LB347]

SPEAKER SCHEER: Thank you, Senator Geist. As the Clerk stated, there are amendments from the Transportation Committee. Senator Friesen, as Chair of the committee, you're recognized to open on the committee amendment. [LB347]

SENATOR FRIESEN: Thank you, Mr. President. This is a very simple committee amendment. It's cleanup language. The committee amendment to LB347 was recommended during the committee hearing by Rhonda Lamb, director of the Department of Motor Vehicles. She pointed out language on page 7 of the bill that should have been stricken in the original bill. The committee amendment deletes that language which is a reference to school bus permits that is no longer needed if we pass this bill. I urge you to adopt the committee amendment. Thank you, Mr. President. [LB347]

SPEAKER SCHEER: Thank you. Senator Friesen. Seeing no one in the queue, Senator Friesen, you're welcome to close on the committee amendment. Senator Friesen waives closing. The question before us is the adoption of the committee amendments to LB347. All those in favor vote aye; all those opposed please vote nay. Have all voted that wish to? Please record. [LB347]

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ASSISTANT CLERK: 36 ayes, 0 nays on the adoption of committee amendments. [LB347]

SPEAKER SCHEER: Mr. Clerk. [LB347]

ASSISTANT CLERK: Mr. President, next amendment was Senator Geist, AM1513. (Legislative Journal page 219.) [LB347]

SPEAKER SCHEER: Senator Geist, you're welcome you to open on your AM1513. [LB347]

SENATOR GEIST: Thank you, Mr. President. AM1513 is also a simple amendment. It changes the operative date from July 1, 2018, to next year, July 1, 2019. [LB347]

SPEAKER SCHEER: Thank you, Senator Geist. Seeing no one wishing to speak, Senator Geist, you're welcome to close on your amendment. Senator Geist waives closing. The question before us is the adoption of AM1513 to LB347. All those in favor please vote aye; all those opposed vote nay. Please record. [LB347]

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of Senator Geist's amendment. [LB347]

SPEAKER SCHEER: AM1513 is adopted. Returning to LB347. Seeing no one wishing to speak, Senator Geist, you're welcome to close on LB347. [LB347]

SENATOR GEIST: Thank you, Mr. President. And just for clarification on AM1513, I believe I misspoke. It was January 1, 2018, to...changing the date, and I believe I said July so I made up my own date inadvertently. So it is actually January, not July. But thank you for...I ask for your support on LB347, your green vote. It came out of committee 100 percent. So, thank you very much, Mr. President. [LB347]

SPEAKER SCHEER: Thank you, Senator Geist. The question before us is the adoption of LB347 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record. [LB347]

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ASSISTANT CLERK: 37 ayes, 0 nays on the motion to advance the bill. [LB347]

SPEAKER SCHEER: LB347 is advanced. Mr. Clerk, next item. [LB347]

ASSISTANT CLERK: Mr. President, the next bill is LB160. The bill was introduced by Senator McCollister. (Read title.) The bill was introduced January 9th of last year. It was referred to the Judiciary Committee which placed the bill on General File with no committee amendments. [LB160]

SPEAKER SCHEER: Senator McCollister, you're welcome to open. [LB160]

SENATOR MCCOLLISTER: Thank you, Mr. Speaker, and good morning, colleagues. I want to thank Chair Lady Ebke and the members of the Judiciary Committee for their unanimous vote to advance LB160 to General File. I should also mention that there was no negative testimony during the course of the hearing. LB160 would add three categories of crimes for which victims are entitled to be notified and informed of the status of the prosecution of the perpetrators for the crimes in question. These three categories are highlighted on handout number one. Crime victims rights are guaranteed by Article I, Section 28 of the Nebraska Constitution. They include the right to be informed about the prosecution of the perpetrator; secondly, the right to be made a personal statement...to make a personal statement about the impact of the crime throughout the criminal justice process; and finally, number three, the right to be present at a trial. LB160 would expand the list by adding to Section 29-119 three new categories of crime for which victims would be granted these rights. They are, number one, third degree assault under Section 28-310, when the victim is an intimate partner. Third degree assault would be added to the list already, which already includes first degree and second degree assault. These three crimes of assault involve intentional or reckless criminal acts that cause bodily injury to the victim. Secondly, third degree sexual assault under Section 28-320, current law already allows victims rights in cases of first and second degree sexual assault, so this would be expanded to include third degree cases as well. Third, domestic assault under Section 28-323. There are three categories of domestic assault. First, second, and third degree, all would be added to the list by this reference. LB160 would add crimes to the list because of the basic nature of the offenses and the harm to the victims are similar enough to justify recognizing these victims also have rights that we should

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protect. There are significant reviser changes in the bill. Highlight number two, or page number two of the handout will show you how we made changes, or the reviser made changes. These changes are necessary. This is a good bill. Again, there is no opposition testimony and I would encourage your green vote. [LB160]

SPEAKER SCHEER: Thank you, Senator McCollister. Senator Groene, you're recognized. [LB160]

SENATOR GROENE: Senator McCollister, would you take a question? [LB160]

SENATOR McCOLLISTER: Certainly. [LB160]

SPEAKER SCHEER: Senator McCollister, would you please yield? [LB160]

SENATOR McCOLLISTER: Yes. [LB160]

SENATOR GROENE: By what method are these victims notified? [LB160]

SENATOR McCOLLISTER: The court does it. The normal process that the court makes those notifications. [LB160]

SENATOR GROENE: How? [LB160]

SENATOR McCOLLISTER: I'm not exactly sure, Senator Groene, whether it's by mail or by telephone. I would guess by mail. [LB160]

SENATOR GROENE: Do you...it isn't by a process served by the sheriff and going to add costs to the sheriff's department, is it? That they have to hand deliver it to the door and get a receipt? [LB160]

SENATOR McCOLLISTER: I'm not exactly sure. Maybe an attorney in the body can help me. [LB160]

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SENATOR GROENE: I wouldn't know. I know there's an awful lot of processes. I'm just looking if there's a cost to the local government. [LB160]

SENATOR McCOLLISTER: Yeah, I understand. [LB160]

SENATOR GROENE: Thank you, Senator McCollister. That's all. I've got nothing against the bill. I'll vote for it. I just want to make sure we're not doing another local mandate down to the local sheriff's department to...you know, they spend an awful lot of time now serving notices and processes directly to the door, and I would like to know if this is going to add a lot more costs. Thank you. [LB160]

SPEAKER SCHEER: Thank you, Senator Groene. Thank you, Senator McCollister. Seeing no one else in the queue, Senator McCollister, you're welcome to close on LB160. Senator McCollister waives closing. The question before us is adoption of LB160 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record. [LB160]

ASSISTANT CLERK: 32 ayes, 0 nays on the motion to advance the bill. [LB160]

SPEAKER SCHEER: LB160 is advanced. Next item, Mr. Clerk. [LB160]

ASSISTANT CLERK: LB198 was introduced by Senator McCollister. (Read title.) The bill was introduced on January 10 of last year. The bill was referred to the Judiciary Committee, placed on General File with no committee amendments. [LB198]

SPEAKER SCHEER: Senator McCollister, you're welcome to open. [LB198]

SENATOR McCOLLISTER: Thank you, Mr. President. Once again, good morning, colleagues. LB198 would repeal the section of state laws that created the Crimes Against Children Fund in 1990. The fund was originally created to reduce expenses incurred by county attorneys in the investigation and prosecution of crimes against children. It was used by...may I have a gavel, please? Mr. Speaker, may I have a gavel? Thank you. It was used by county attorneys when

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consulting with and retaining expert witnesses and for other costs that arose during the course of their efforts to investigate and prosecute these crimes. The fund has not, not, received an appropriation since fiscal year 2003...2004. When the Crimes Against Children Fund was created, the Nebraska Commission on Law Enforcement and Criminal Justice was given the authority to administer it. The commission worked with the County Attorney Standards Advisory Council to develop rules and regulations for the disbursement of the money in the fund and the council made recommendations about awarding the money appropriated to the fund. LB198 would support the Nebraska Commission on Law Enforcement and Criminal Justice's recommendation that Nebraska Revised Statute 81-429.01 be repealed. Thank you, Mr. President. [LB198]

SPEAKER SCHEER: Thank you, Senator McCollister. Seeing no one wishing to speak, Senator McCollister is welcome to close on LB198. Senator McCollister does waive closing. The question before us is the advancement of LB198 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Please record. [LB198]

ASSISTANT CLERK: 34 ayes, 0 nays on the motion to advance the bill. [LB198]

SPEAKER SCHEER: LB198 is advanced. Next item, Mr. Clerk. [LB198]

ASSISTANT CLERK: Mr. President, LB39, introduced by Senator Harr. (Read title.) Bill was introduced on January 5 of last year, referred to Judiciary Committee. The committee reported the bill to General File with committee amendments. (AM133, Legislative Journal page 473, First Session, 2017.) [LB39]

SPEAKER SCHEER: Senator Harr, you're welcome to open. [LB39]

SENATOR HARR: Thank you, Mr. Speaker, members of the body. This bill helps codify on a state level a trend that's going on around the state or, excuse me, around the country and around the world, which is banning the sale of ivory. A lot of people ask me how did I come up with this bill. This bill was bought...brought to me by some constituents who had a real concern regarding this. And there seems to be a trend around the country, and I worry about elephants and probably

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more specifically rhinos are endangered species in this political environment, but this bill simply codifies what we're doing on a national level. And I would ask for your support. There's an amendment coming afterward from Senator Ebke which becomes the bill, and I would ask that you support that amendment. This bill does have the support of the NRA. We have exempted out firearms and knives. If a product is 20 percent or less ivory, that is also exempted. And this we're very specific on the definition of "ivory." It is for elephants, rhinos, and mammoths. This does not include red stag or elk or any other products such as that. So if you have any questions I'm more than willing to take them but, with that, I would maybe wait until Senator Ebke has a chance to introduce her amendment. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr. As the Clerk stated, the amendments are from the Judiciary Committee. Senator Ebke, as Chair, you're welcome and recognized to open on those amendments. [LB39]

SENATOR EBKE: Thank you, Mr. President. AM133 is a white copy amendment to LB39. The amendment then includes all of the aspects as described by Senator Harr in his opening. The amended version of the bill is substantially similar to the introduced copy except that it includes adjustments made by Senator Harr in working with interested parties to accommodate certain concerns, which he has mentioned. The bill was heard by the committee on February 2, 2017, and as amended by AM133, advanced from committee on a vote of 5-3. On behalf of the committee, I would ask for your green vote on AM133. [LB39]

SPEAKER SCHEER: Thank you, Senator Ebke. Senator Erdman, you're recognized. [LB39]

SENATOR ERDMAN: Thank you, Mr. Speaker. Sorry, I was up front there and my legs are kind of short, took me a while to get back here. We had a discussion yesterday, or maybe we had someone discuss with us about bills that shouldn't see the light of day, and that's what this one is. Senator Harr, will you yield to a question? [LB39]

SPEAKER SCHEER: Senator Harr, would you please yield? [LB39]

SENATOR HARR: Of course. [LB39]

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SENATOR ERDMAN: Thank you, Senator. So, who are the constituents that brought this bill to you? [LB39]

SENATOR HARR: They were some young girls at my kids' elementary school. [LB39]

SENATOR ERDMAN: Okay. And so I understand that. I understand it works well when you do things your kids appreciate, and I appreciate that. But we have other things to talk about. I had originally thought last evening that I would IPP this before we started, but I chose not to do that. But I don't see any necessary...any reason that it's necessary we do this. I don't know what else to say. I'm conflicted how things get out of committee. And so I'm voting red, and I would encourage all of you to do the same. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Erdman. Senator Halloran, you're recognized. [LB39]

SENATOR HALLORAN: Thank you, Mr. Speaker. Good morning, colleagues. I'm not profoundly personally knowledgeable about this so I have to seek information from a group that is. So the information I'm giving you is from the Safari Club International, and bear with me a little bit on this. Safari Club International and its members support punishing those who illegally take wildlife and believe those individuals should be penalized to the full extent of the law. However, the solution to poaching will never be found in proposals that punish law-abiding citizens, which LB39 will do. For an effective solution to poaching, Nebraska should look for strategies that combat those who intentionally violate the laws pertaining to the taking of animals. LB39, instead of focusing on poachers, smugglers, and black market profiteers of illicit ivory, targets law-abiding owners of legally obtained ivory. The law prohibits the scale and transfer of legally obtained ivory and would punish hunters who import legally hunted trophies, would punish musicians whose instruments contain ivory, law-abiding gun owners whose antique firearms contain ivory, and the owners of countless items that may feature ivory in small amounts. The bill is based on propaganda rather than fact. Sound scientific principles, not the hyperbole and emotionalism of anti-hunters, should provide the foundation for laws that affect the management and conservation of wildlife. Although anti-hunters may think that it is preferable to influence the public with emotionally based campaigns, what they achieve in the name of conservation often fails to be the best interests of wildlife. LB39 would prohibit the

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purchase, sale, or exchange of ivory from a number of animal species, as Senator Harr pointed out. Neither this bill nor its supporters can explain exactly how such legislation would positively impact these game species. LB39 simply is not necessary because other treaties and laws at the federal level already provide greater and more appropriate protection to conserve the species singled out by this legislation. The Endangered Species Act, the Lacey Act, and the African Elephant Conservation Act are federal laws that already extensively restrict the importation, possession, and trade of endangered, threatened species, including ivory. In addition, Nebraska's state laws already protect local wildlife and prohibit the possession of any animal product from another country where the wildlife is known to have been killed illegally. While there's legitimate concern regarding ivory trafficking throughout the world, the U.S. Fish and Wildlife Service has reported that there is no, I repeat, no significant trade of illegal ivory into this country. And the continued sale of lawful owned ivory in the United States will not increase poaching. This piece of legislation will do nothing, nothing to prevent poaching. With respect to all legally hunted species, LB39 represents a solution in search of a problem. Collectively, the U.S. Fish and Wildlife Service enforcement officers, at the closest designated reentry port, inspect 70 legal hunted species in 2014. Of this number, they seized zero improperly imported, sport-hunted trophies. Every legitimate hunter abhor the act of poaching. [LB39]

SPEAKER SCHEER: One minute. [LB39]

SENATOR HALLORAN: And this principle holds true in the debate over this legislation. Unfortunately, this initiative will do nothing to stop poaching on this distant continent. It will only penalize the law-abiding citizens of Nebraska. Colleagues, we have a tough time regulating activities within our own state and we're trying to regulate an industry in Africa, primarily, that's an important industry, and it's an industry that establishes fees for trophy hunting and those fees go locally to work for prohibiting poaching of animals. That's where the activity should lie. And if we do something like this, it's going to discourage trophy hunting, discourage those fees from being taken at the local level in Africa and actively used to prohibit poaching. Thank you, Mr. Speaker. [LB39]

SPEAKER SCHEER: Thank you, Senator Halloran. (Doctor of the day introduced.) Moving back to discussion, Senator Williams, you're recognized. [LB39]

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SENATOR WILLIAMS: Thank you, Mr. President, and good morning. I have received one e-mail on this piece of legislation from a constituent, and I have taken time to talk to Senator Harr off the mike, so I had asked him if he would be willing to yield to a question directly from one of my constituents. Senator Harr, would you yield? [LB39]

SPEAKER SCHEER: Senator Harr, would you please yield? [LB39]

SENATOR HARR: For Senator Williams, yes. [LB39]

SENATOR WILLIAMS: Thank you, Senator Harr. And you did not have to crawl down from some ivory tower to visit with me, did you, on this legislation? [LB39]

SENATOR HARR: (Laugh) No. No. [LB39]

SENATOR WILLIAMS: The question from my constituent, who has a concern, is she says: I have teeth from elk and red stag. These specific teeth are ivory. If those are made into jewelry, as they often are--rings, necklaces, and the like--will I be able to sell them if I wanted to at some point in time? [LB39]

SENATOR HARR: Under federal regulations, no. [LB39]

SENATOR WILLIAMS: Okay, if we pass LB39, what will change? [LB39]

SENATOR HARR: You'll have a local enforcement mechanism. You know we have a lot of laws out there, a lot of federal regs and...but this isn't something that the U.S. Attorney's Office often takes an interest in. But I do think we need to protect ivory and we want to discourage ivory...illegal ivory sale. This doesn't go after law-abiding citizens. This goes after people who are already violating a federal law. It's just provides a local enforcement for that federal offense. [LB39]

SENATOR WILLIAMS: So under the definition of ivory in your legislation, are teeth from elk and red stag exempt? [LB39]

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SENATOR HARR: Yes, they are. I'm sorry, yes, they are. [LB39]

SENATOR WILLIAMS: So... [LB39]

SENATOR HARR: She...yeah, if it's made from that, she's fine. [LB39]

SENATOR WILLIAMS: That was my question. [LB39]

SENATOR HARR: I apologize. [LB39]

SENATOR WILLIAMS: And so I go back. I think you covered it in your opening that elk, red stag, other things like that do not fall under the definition of ivory under LB39, so she could actually have those... [LB39]

SENATOR HARR: Yes. [LB39]

SENATOR WILLIAMS: ...items that are ivory made into jewelry and sell them and would not have a problem. [LB39]

SENATOR HARR: I apologize. Yes, you are correct. She would not have a problem. [LB39]

SENATOR WILLIAMS: See what happens when I talk to you off the mike? [LB39]

SENATOR HARR: Thank goodness, yes. [LB39]

SENATOR WILLIAMS: I would yield any further time that I have to Senator Harr. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Williams, Senator Harr, 2:10, and you are next so we'll just give you the 7:00. [LB39]

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SENATOR HARR: All right. Thank you, Mr. Speaker. Folks, read the legislation, read the amendment. Before you get up and talk about a bill, I encourage you to read the legislation. Senator Williams and I had a nice conversation. There's a definition in there. I didn't hear his question very well. There was some background noise. But it applies, again, elephants, rhinos, mammoths, that's it, number one. Number two, I don't know where Senator Halloran got that e-mail but that person who sent him that e-mail had not read the legislation or the amendment. There's nothing that prohibits the exchange of ivory, only if it's for profit, number one. Number two, firearms are specifically exempted. Number three, knives are specifically exempted. Read the legislation. Musical instruments, which were brought up in that e-mail, exempted. Folks,...and then to say, well, this will discourage hunting in Africa. Guess what? Read the legislation. It makes reference to federal regs and what does federal regs 50 17.4(e) say? It makes reference that it allows you to bring back trophy elephants as long as they were legally shot and they were done to encourage hunting. The fees are used to encourage hunting and preservation. I appreciate that Senator Halloran said he didn't know much about and I appreciate that he showed he didn't know much about it, but if you have a question come see me. Senator Williams did and it worked out well and we clarified the record. This is not controversial. All we're doing is providing a local mechanism for enforcing a law, a reg that already exists through federal regs, through treaties we've signed with other countries. President Trump in November reaffirmed his support for this ban on ivory. Michael Savage--who thought I would be saying Michael Savage as an authority figure but here I am--says this is a good thing to ban ivory. Laura Ingraham says it's good to ban ivory sales. I'm not going after law-abiding citizens. I'm going after people who already violated federal regs. That's what this bill does. It provides a local enforcement: six months or a \$1,000 fine or both. That's what this legislation does. It's a simple piece of legislation. It is not difficult. It doesn't create any new penalties or new classes of punishment. It just provides a local enforcement. So I would ask for your support on AM133, and if you have questions about it feel free to ask me questions. I can answer them. But I wouldn't cite a third source or, if I did, I'd make sure that that third source has read this specific legislation and knows what is in our legislation. Our legislation is broader than the federal. Okay? By "broader" I mean it excludes more stuff than the federal regulations do. So, I appreciate people getting up to speak on this. If you have questions, let me know. Oh, by the way, antiques was another one that was mentioned it would prohibit. Guess what? Already prohibited. Ours is consistent with what's already there. So thank you very much. [LB39]

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SPEAKER SCHEER: Thank you, Senator Harr. Senator Friesen, you're recognized. [LB39]

SENATOR FRIESEN: Thank you, Mr. President. Would Senator Harr yield to a question?
[LB39]

SPEAKER SCHEER: Senator Harr, would you yield again, please? [LB39]

SENATOR HARR: Yes. [LB39]

SENATOR FRIESEN: I apologize, I've scanned through the bill and I think I've got most of it, but I guess my focus of my question is, if it's already in federal statutes, it is against the law. And then...so what you're saying is, does it allow different law enforcement agencies to come after it or different organizations or why do we need a local law if it's already a federal law? Just explain that process. [LB39]

SENATOR HARR: Okay. First of all, thank you. I want to clarify it's a federal reg, all right? But there are also treaties we entered into with other countries to ban the sale of ivory. What this bill does is provide local enforcement mechanisms. So we have drug laws, federal drug laws, that ban the sale of cocaine, methamphetamines, but you know what? We also have it on the state level. Not uncommon to have local enforcement that mirrors federal law because our U.S. Attorney's Office doesn't cover a lot. And so if we really want effective enforcement, sometimes it's better to have "also"--belt, suspender it and have local enforcement as well. [LB39]

SENATOR FRIESEN: Do you have any kind of a rough idea of how much of this trade happens in Nebraska? [LB39]

SENATOR HARR: Do I? [LB39]

SENATOR FRIESEN: Have they...has there been cases where they've been brought on the federal level where this has come up? Is it a problem here? [LB39]

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SENATOR HARR: Right, chicken and the egg. I don't know because there really isn't a lot of enforcement now because it's only enforced by federal law enforcement at this time. [LB39]

SENATOR FRIESEN: So it's hard to measure if there's been anything done because it's at the federal level. It wouldn't have...it still would have to go through our local courts? [LB39]

SENATOR HARR: No. It would not go...now it would good through local courts. [LB39]

SENATOR FRIESEN: Otherwise it would be in federal. [LB39]

SENATOR HARR: Previously it wouldn't. It would go through your federal courts. [LB39]

SENATOR FRIESEN: Okay. Thank you. Thank you, Senator Harr. I guess I'll read it further. It looks to me like we could enforce everything that we have here already. It's another layer. I'll look at it. I'll...we'll see if it's where we want to go. But I sure haven't...I guess I haven't heard of this problem till now so I'll reserve judgment for now and I'll listen some more. Thank you, Mr. President. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr and Senator Friesen. Senator Schumacher, you're recognized. [LB39]

SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. I apologize, Senator Harr. Tried to just mention...catch him a minute ago but then he was engaged in the discussion with Senator Friesen. Would Senator Harr yield to a question or two? [LB39]

SPEAKER SCHEER: Senator Harr, would you please yield? [LB39]

SENATOR HARR: I will yield to two questions. [LB39]

SENATOR SCHUMACHER: Two and just two? [LB39]

SENATOR HARR: Two. Well, a question or two; I'll go with two. (Laugh) [LB39]

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SENATOR SCHUMACHER: Okay. [LB39]

SENATOR HARR: If you want more, I'll answer more, too, though. [LB39]

SENATOR SCHUMACHER: (Laugh) Oh, okay. Is there an element of knowing in this crime that we are creating? [LB39]

SENATOR HARR: And I hate to answer a question with a question, but in the federal? Are you talking about in mine or on the federal? [LB39]

SENATOR SCHUMACHER: In your...we're creating a crime here in your bill,... [LB39]

SENATOR HARR: Yeah. [LB39]

SENATOR SCHUMACHER: ...a Class II misdemeanor, what is that, six months... [LB39]

SENATOR HARR: Thousand dollar fine. [LB39]

SENATOR SCHUMACHER: I don't want to make this a question because I don't want to use up my two questions. I think a \$1,000 fine and six months in jail, so we're making up a crime where... [LB39]

SENATOR HARR: Or both. Or both. [LB39]

SENATOR SCHUMACHER: Or both. So we're making up a crime we don't have. And the crime is, as I see it, strict liability: It is unlawful to purchase, sell, possess with intent to sell, offer to sell, trade, or barter ivory. My question is, if I am buying something that looks pretty and I buy it, do I have to know that it is ivory before I commit this crime? Or just the fact that I bought this pretty thing that started out...that turned out to be ivory am I guilty? [LB39]

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SENATOR HARR: Well, first of all, this is no different than what we do if a person on the corner says, hey, I got this white powdery substance for you. I'm not going to tell you what it is. Yeah, you're liable if you buy drugs illegally. [LB39]

SENATOR SCHUMACHER: Okay. [LB39]

SENATOR HARR: You're liable if you buy this but you have to be careful. And by the way, there's something out there called judicial...or prosecutorial discretion. [LB39]

SENATOR SCHUMACHER: Well, Senator, we are creating a crime here. And I think you've answered my question. No, you don't have to know. Now what bothers me is Dad used to go to junk sales. He'd run around to the farm sales and they'd...the auctioneer would talk him into buying a box of junk. And often in the box of junk there were things like old clocks. When he passed away I think I got a couple of the old clocks, probably sitting in my attic now. They had some pretty things on them. They might be ivory for all I know. Now I don't know if they're ivory; I don't know if they're not ivory. But this makes me a criminal if they happen to be ivory. And I have to prove, to get out from under this criminal charge, that they're over 100 years old. I don't know they're over 100 years old or if they're 98 years old, and I can't really prove it. And they don't exempt old clocks in here. And so I would think at the very least, in this process, we should insert that you know that you're getting ivory and not happened to have stumbled upon it, because I don't want to get...be a criminal just because I got an old clock in the attic and somehow the police come and the anti-ivory charges. I'm tempted here, and I'll listen to the discussion for just a little bit, to file an amendment requiring that you knowingly know that you're monkeying with ivory, rather than stumble up, either that or require that it not be my burden to show that the thing is 100 years old. I don't know. We don't want to make innocent people into criminals and then say, well, the prosecutor ought to know better. I've got some problems and I think they can be fixed by inserting the word "knowingly" into it, but I'll listen a little bit more to the discussion. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr and Senator Schumacher. Senator Halloran, you're recognized. [LB39]

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SENATOR HALLORAN: Thank you, Mr. Speaker. Would Senator Harr yield to about five questions? [LB39]

SPEAKER SCHEER: Senator Harr, would you, please? [LB39]

SENATOR HARR: I'll go one better and do six. [LB39]

SENATOR HALLORAN: All right, sir. Thank you. No, I don't have that many, Senator. But help me out here a little bit. The intent of the bill is to protect illicit hunting or taking of endangered species. Right? [LB39]

SENATOR HARR: Yeah, it's to discourage the market so that that incentivizes the illegal, yeah, hunting. [LB39]

SENATOR HALLORAN: But ultimately the goal was to protect... [LB39]

SENATOR HARR: Sorry? [LB39]

SENATOR HALLORAN: Ultimately the goal was to protect those animals from being illegally taken. Correct? [LB39]

SENATOR HARR: I care about the elephants and the rhinos and you, my friend. [LB39]

SENATOR HALLORAN: Thank you. I'm glad the rhino has short legs, but...you can refute these figures and you probably have, because you almost always do, have a better grasp of the facts than I do. But since the 1990s, the African elephant population has grown and stabilized at approximately, a broad range, but 420,000 to 650,000--it's probably hard to take a census but that's what they have currently for figures--sustainable use of hunting and the primary reason why southern white rhinos has recovered. Since 1968, South Africa has permitted hunting of southern white rhino, and data indicates that the African rhino specialist group shows that since hunting began, the numbers of southern white rhinos have increased from 1,800 to over 20,000. So I'm not sure that we're looking at fixing something that's not currently a major problem. May

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I ask you a second question? I believe in the testimony on this bill you mentioned that you have a golden eagle, a stuffed golden eagle. [LB39]

SENATOR HARR: I do. [LB39]

SENATOR HALLORAN: Yeah, and I'm sure that, as the law reads, it's a protected and endangered species. [LB39]

SENATOR HARR: It is. [LB39]

SENATOR HALLORAN: But I think the law, as you indicate, and help me out if this is wrong, but that you could prove that the date of this eagle being taken was prior to the established law? Would that be... [LB39]

SENATOR HARR: It's outside the law. Yeah, that's correct. [LB39]

SENATOR HALLORAN: Okay. I just wanted to clarify whether or not you have you have a stuffed golden eagle. But thank you. I'm sure it's a beautiful bird. [LB39]

SENATOR HARR: It's very beautiful. Thank you. It's enclosed in Plexiglas. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr and Senator Halloran. Senator Ebke, you're recognized. [LB39]

SENATOR EBKE: Thank you, Mr. President. A couple of things: For those of you who are newer to the body, you may be quicker on this than I am, but it's always important before you take up a debate on a particular bill to take a look at the committee statement, because when we have a, at least in the Judiciary Committee, when we have an amendment that comes out of the committee, we try to provide a fairly detailed committee statement. So at the bottom of the committee statement on this particular bill we have an explanation of the amendment. It describes what the exceptions are and so forth. I think that's an important thing to keep in mind. I think it's also important to remember that we oftentimes try to harmonize or mirror statutes in

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state law, as Senator Harr suggested, to what's already at the federal level. Whether that's good or not, we can argue about and I would tend to argue, you know, more from a Tenth Amendment perspective. However, we do this and do this with drug laws, we do this with human trafficking, we do this with all sorts of other things out there. And so to suggest that we don't need or shouldn't have a bill in state statute just because it's already covered is probably a little disingenuous. And the Attorney General has cited federal statute as a way of justifying particular state statutes. So, that being said, I would still encourage your green vote on AM133. Thank you, Mr. President. [LB39]

SPEAKER SCHEER: Thank you, Senator Ebke. Mr. Clerk for an amendment to the committee amendment. [LB39]

ASSISTANT CLERK: Mr. President, Senator Schumacher would move to amend the committee amendments. The amendment is currently being put into the system, Senator. (FA88, Legislative Journal page 278.) [LB39]

SPEAKER SCHEER: Senator Schumacher, you're welcome to open. [LB39]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I don't want to kill a whole lot of time on this, but on the other hand I don't want to be a criminal and not at least have the pleasure of knowing I'm a criminal. So my amendment adds one word. It comes before "it is unlawful to," line 14, page 1 of the amendment, to "knowingly" purchase, sell possess with intent, offer for sale, or barter ivory, so that if I know I've got a piece of ivory, that I know I am at risk, and it is up to the prosecutor to prove that I had a dirty mind and I knew I had this piece of ivory before they can come after me. I shouldn't just be charged because somebody says it is ivory and then I have to figure out if I can prove if it was 100 years old and had 20 percent of the value was ivory. I shouldn't have to go through the old stuff that I have and do a lab test to provide the...to let me know if I'm at risk if it's ivory. That should be the prosecutor's obligation to show that I knew that I was possessing ivory. So it's one word. It's simple. It shouldn't mess up the Judiciary Committee's thinking. And it just requires that I know that it's ivory when I possess it or sell it, and that that be the duty of the state to prove. And until then, I am reasonably or I am

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innocent until proven guilty. That's my amendment. Thank you. I encourage your support.
[LB39]

SPEAKER SCHEER: Thank you, Senator Schumacher. Back to debate, Senator Groene, you're recognized. [LB39]

SENATOR GROENE: Thank you, Mr. President. First, in the effort of collegiality, I'd tell Senator Harr I take a little offense to your...not much but a little offense to your comments to Senator Halloran about know what you're talking about, ask the questions, ask me questions off the record. I will let you know that when I stand here and comment, I'm not talking to you. I'm talking to those cameras over there. Senator Halloran's questions to you informed the public, with your answers, to an awful lot of questions that the public probably had. There's more to this debate here than between 49 individuals. The public is watching. The public is listening. Senator Halloran's questions were pertinent and I got a different angle with your answers, Senator Harr, to what I read on the Chamber Viewer. So I have a couple of questions, too. So, Senator Harr, would you be willing to take a couple of questions? [LB39]

SPEAKER SCHEER: Senator Harr, would you please yield? [LB39]

SENATOR HARR: Of course. [LB39]

SENATOR GROENE: Normally, we pass laws here to address a problem. Could you give me an example of a illegal dealer of ivory that you've heard of or law enforcement has talked to you about in the state of Nebraska since the federal law has been passed? [LB39]

SENATOR HARR: The answer is there is not a problem at this time, but the other issue I would bring up is there's no enforcement going on right now either because there's no state enforcement, only on the federal level. [LB39]

SENATOR GROENE: So you're implying that all them state, federal income taxes that I pay and that Nebraskans pay, we get no enforcement in the state of Nebraska for federal laws? [LB39]

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SENATOR HARR: Can you repeat that? There was background noise. [LB39]

SENATOR GROENE: We pay as Nebraskans an awful lot of federal taxes. So you're implying that we get no enforcement to federal laws in the state of Nebraska with the taxes we pay to the federal government? [LB39]

SENATOR HARR: I didn't say that. [LB39]

SENATOR GROENE: You said there's no. You said there was no enforcement. [LB39]

SENATOR HARR: At this time that I'm aware of, correct. [LB39]

SENATOR GROENE: Do you know what (inaudible)? [LB39]

SENATOR HARR: I didn't say there wasn't but...well,... [LB39]

SENATOR GROENE: You said there's no enforcement. Thank you, sir. [LB39]

SENATOR HARR: Okay. [LB39]

SENATOR GROENE: I'm not a lawyer but I did pretty good there (laugh) anyway playing that game. Anyway, this is unnecessary. This is another local mandate. It's another local mandate. Maybe I'm wrong. Somebody can correct me. But the way it works now is if some shady character walks up to me at a swap shop or something, at a swap meet and tries to sell me illegal ivory, I could call my sheriff and he would tell me that's a federal issue; I will get you in contact with the federal agency and I can issue a complaint. Now what happens is my sheriff is supposed to arrest him and instead of going into federal prison he's going to be stuck in, after he get convicted, he's going to be stuck in my overcrowded prisons and my overcrowded courts to do a...to enforce a federal law. I would think--maybe I'm wrong--that the feds would just love us enforcing it, would just love to us fill our state prisons and our county jails with all of these illegal ivory dealers in the state of Nebraska and all these folks who buy a statue of the Virgin Mary that might have been made out of ivory and they don't know it. This is feel-good

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legislation. This is a local mandate, another headache to local law enforcement, that they're going to get phone calls from somebody who's a member of PETA thinking that they've seen something made of ivory and they're going to go have to chase it down. [LB39]

SPEAKER SCHEER: One minute. [LB39]

SENATOR GROENE: This is unnecessary legislation. It's redundant legislation. It's a federal...how many rhinos live in Nebraska? How many elephants live in Nebraska? I'm missing that, too. This will be stopped. If ivory is stopped it's going to be at the borders of the country of the U.S.A., not at the borders of Nebraska. I appreciate Senator Harr's intent. I don't like the slaughter of declining populations of our natural resources, world natural resources and animals, but this is redundant. It's unnecessary in the state of Nebraska. Thank you, sir. [LB39]

SPEAKER SCHEER: Thank you, Senator Groene. Senator Harr, you're recognized. [LB39]

SENATOR HARR: Thank you, Mr. Speaker, Mr. President. So I want to first clarify a lot of the record here. There's a lot of things being thrown around. It's, you know, it's a slow day here today. For the record, it's icy out. School has been canceled. So it's kind of fun to have this debate. I know my kids--I don't know which camera we're on--are at home watching this, so it's kind of fun. They've never...I don't think they've ever watched me. So, first of all, Senator Halloran was reading an e-mail, Senator. He wasn't asking questions. And the person would...it was being read in the record as fact, and a lot of the arguments made in that e-mail were based not in fact of what the law said. So that's what I was trying to clarify. In there it also said the possession of ivory. Possession of ivory is not a crime. All right? This is about the trafficking and sale of ivory. Now, Senator Schumacher's bill goes a step further and says reasonableness of the buyer. Fine. I don't have a problem with that. I hear this is a problem...or a cure in search of a problem. I don't know, maybe it is. Maybe it is, folks, but the fact of the matter is we all...I don't anyone in here who thinks the trade of ivory and the killing of animals for that ivory is a good thing. If someone believes that, stand up, tell us why. Right? This is a misdemeanor, a Class II misdemeanor is to provide a little teeth--no pun intended--to enforcement of a law out there. That's simple. And I get we're trying to spend a little time because there's nothing else to talk about today and that's fine. I'm okay with that. But, folks, this is a simple bill. I know Senator

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Groene is worried about our...at one point he's saying it doesn't...we don't have a problem, we don't need it; and then the other he's saying, hey, we're going to fill our jails, not our prisons, our jails, with this ivory sale. I don't know which way it is. But, you know, if you throw enough things up, maybe something will stick. That's fine. But, folks, again, this encourages conservation. It does not prohibit the possession of ivory. It does not prohibit going to Africa and getting trophy animals. You can still get up to two a year. And I would challenge anyone to say they're more...they want to get more than two. And Senator Halloran was exactly right. Once we started putting some limitations on and having some enforcement, guess what happened? The numbers went up. We all want to preserve these animals. So I don't know, maybe Senator Halloran, will you yield to a question? [LB39]

SPEAKER SCHEER: Senator Halloran, will you please yield? [LB39]

SENATOR HALLORAN: Indeed. As many as you like. [LB39]

SENATOR HARR: Thank you. I think you probably want to, and if I'm putting words in your mouth let me know, but...well, I'll ask it a different way. You want to preserve rhinos, don't you? [LB39]

SENATOR HALLORAN: I believe they should be preserved in a disciplined fashion. [LB39]

SENATOR HARR: All right. And you believe elephants should be preserved, right? [LB39]

SENATOR HALLORAN: I think they should not be hunted to extinction, which they're not. [LB39]

SENATOR HARR: Okay. Thank you. Right, folks? What we're doing is putting some controls on it. Senator Halloran agrees with me. Nobody wants these things poached and so we're trying to get rid of the market. Right? If there's no market for poached rhinos, guess what happens? People don't go out and kill them. That's all this bill does. We can sit and debate this... [LB39]

SENATOR SCHEER: One minute. [LB39]

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SENATOR HARR: ...as long...thank you, debate it as long as you like. I kind of enjoy the debate and the conversation around this. This is a simple bill. I appreciate Senator Schumacher making it a better bill. I want to thank Judiciary Committee for working on this with me to make sure that we don't catch people we don't intend, right? So...and it's not...antiques, by the way, is 1975. So there's varying degrees of how the item is. There's antique sales, which is one, but then there's also a manufacture prior to 1975 when we joined the international treaty. Read the bill. If you have questions, give me a holler and I'll be willing to answer them. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr. And I might note for the record, Senator Harr, that my four-year-old grandson Miller watches us most days as well. Senator Wayne, you're recognized. [LB39]

SENATOR WAYNE: Thank you, Mr. President. I'm not going to sit here and wordsmith. Because we have three rounds of debate, I think we can figure out how to come with a compromise. But I do want to put on the record right now that my issue with this, even with Schumacher's amendment, is that I think it is, one, might be unconstitutional as the burden is on the defendant in this case. It's guilty until proven innocent. And what I mean by that is when you read it, the burden is on the defendant to prove that he falls into one of the exceptions. And that's never been the case in any criminal proceeding and I think there is a fix and we can add a line 15 that says as long as it does not fall into one of the exceptions outlined in subsection (2), (3), or (4). So I think that's something we can work on, but I had to put that on the record. And the other issue is I think this might be unconstitutional delegation of authority by not having the date on which federal regs or federal permits that we are sourcing. But those are things that Senator Harr and I can work out in between this and Select File. But I did want to put on the record that I do think as a defense attorney if I don't speak up, I'm not doing my job, that this creates a burden that is not usually or not that I've seen on any other criminal statute in the state of Nebraska. With that, I'll yield the rest of my time to Senator Harr. [LB39]

SPEAKER SCHEER: Thank you, Senator Wayne. Three minutes, 20 seconds, Senator Harr. You're next in line. Would you like to use that as your closing (inaudible)? [LB39]

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SENATOR HARR: We'll see how things go. So, thank you, Senator Wayne. I'm more than willing to work with you on that. And we'll get, if we like, I'll get an Opinion from the Attorney General. And I probably can think of a couple of examples where we say something is illegal and then we say exceptions and we say if you fit within these criteria, you're not, right? So we'll get back to that. But...and the reg one, we can...that's a simple fix. I appreciate Senator Wayne drawing that to my attention. He's absolutely right on that and we can fix that. So I want to thank Senator Schumacher for bringing this amendment, FA88, to help it seem more reasonable. Folks, again, not illegal to possess ivory--not illegal. Let's walk through this. Maybe it was my mistake on the introduction because I had assumed it is clearer than it is. It is not illegal to own it. If you do own, you can give it to anyone you want. All right? It's not possession with intent to deliver. It's to sell so there's a difference. All right. I can't own drugs. It's illegal to own drugs, and it's a higher felony for...certain drugs and it's a higher felony then to give it away even, not even sell it, but just to give it away. That's not what we're talking about here. This is a completely different animal. You can own it. If you want to give it to your kids, you can give it to your kids. If you have a clock, a watch that has an ivory backing on it, right, they're out there. Again, de minimis, not a problem. We've added reasonableness. Hopefully we will with FA88. Nobody likes the slaughter of animals... [LB39]

SPEAKER SCHEER: One minute. [LB39]

SENATOR HARR: ...for their tusks, period. If they are, I don't know who they are. You shouldn't I should say. This helps prevent that market out there. Senator Groene worries or says maybe, maybe it's not a problem because it's already effective. Good. Then we don't have to worry. But in case it does happen, let's be ready. Let's have our local law enforcement being able to address this issue. And me, I'm a local control person. I don't like to defer everything to Washington and get all my rules and regs from Washington like Senator Groene. But I believe it is wrong and I think we should take control of it on a state level and say it is wrong. And then as a North Star, I look to the federal regs to see how they did it. So I'm not a wordsmith like Senator Groene, but I do believe in local control. Thank you, Mr. Speaker. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr. Seeing no others on the queue, Senator Schumacher, you're welcome to close on FA88. [LB39]

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SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. I'm beginning to like this bill more and more because it was just pointed out to me that this bill protects rhinos/ RINOs. And that there's a small herd of them in this room (laughter) that really need protection. And if people want to eliminate (laughter)...I ask for your support for FA88. It requires that you knowingly know that it's ivory when you possess it or sell it and it's not your burden to prove something is over 100 years old on some old thing that you might have acquired during your lifetime. Senator Harr, as I understand it, is agreeable to the amendment. It makes the Judiciary amendment better. Voting for it doesn't commit you to voting for the rest of the stuff that's up on the board. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Schumacher. The question before us is adoption of FA88. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record. [LB39]

ASSISTANT CLERK: 25 ayes, 5 nays on the adoption of the amendment to the committee amendments. [LB39]

SPEAKER SCHEER: FA88 is adopted. Senator Murante. [LB39]

SENATOR MURANTE: Thank you, Mr. President. Members, good morning. I rise not so much in support or opposition to LB39 but as a point of clarification on the amendment that was just adopted. So, Senator Harr, I'm going to kind of give you a little bit of background and then ask you a couple of questions. Because as you all know, I am not a practicing attorney and the legal world is not something that I have much interaction with. But last year I carried a piece of legislation on behalf of the Attorney General and that dealt with harassment protection orders and seemed like a commonsense idea to me that if before someone could get charged with violating a harassment protection order, we had to demonstrate that they actually knew the harassment protection order had been issued against them. I introduced that bill on behalf of the Attorney General. I think that made common sense to me and that's substantially similar to what Senator Schumacher's amendment proposed to do. Once we got to the Judiciary Committee, that bill ran into some rocky waters, and I got asked a lot of questions that I was not capable of

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answering. So I'm hoping Senator Harr or perhaps Senator Schumacher would be able of answering those questions. So would Senator Harr yield to a question? [LB39]

SPEAKER SCHEER: Senator Harr, would you please yield? [LB39]

SENATOR HARR: Of course. [LB39]

SENATOR MURANTE: Thank you, Senator Harr. So you have a background in the law and you've been, I believe, a prosecutor before. So how does a judge or law enforcement demonstrate that they know that a person who has been in this business of ivory has knowledge that they are violating this law? [LB39]

SENATOR HARR: With the amendment just adopted, the reasonableness? [LB39]

SENATOR MURANTE: Um-hum. [LB39]

SENATOR HARR: Is that what you're asking? [LB39]

SENATOR MURANTE: Yes. [LB39]

SENATOR HARR: Okay. What is reasonable? My definition of reasonable may be different than yours and that is why we have in our great judicial system 12 jurors, right? Why is it 12 jurors? There are 12 apostles. I learned that from...Senator Chambers isn't here today so I thought I'd fill that in for you. However, in this case, folks, it's a Class II misdemeanor so you aren't qualified to have a jury of your peers of 12; you're only entitled to 6. But you would take it to a jury and a jury would decide whether you reasonably knew it or not. I'm sure they probably talked to each other, prosecutor and the defense attorney, beforehand. No different than how do you know possession of drugs? How do I know it was drugs? How did I know when I was in possession of a stolen car it was stolen? Right? We can't just open up someone's head and look and see. So you look at what is around and how they act and what they're doing to develop that intent and also to develop, in this case, the reasonableness. [LB39]

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SENATOR MURANTE: Okay. So the word is I think we attached, I don't think it was reasonable. I think it was just "knowingly," adding the word "knowingly" before the words that were included in the green copy or the committee amendment of the bill. So it's interesting. Senator Chambers, I believe, expressed vehement opposition to the concept that we should expect law enforcement to make standards on whether people knowingly commit a crime or whether they just commit a crime as it related to the bill that was introduced to us by the Attorney General, not to state that he or anyone else has opposition to this. But I think if this is a road we're going down and if this is a policy that we as a Legislature think is perfectly reasonable, that I certainly don't have any problem with it. I don't challenge the policy of adding "knowingly," but I do think that we need to have that conversation more on a universal basis because there has been legislation in this body that was stalled because that particular standard was included in it. So I just wanted to add that to this debate as it relates to other legislation. Thank you, Mr. President. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr and Senator Murante. Senator Friesen, you're recognized. [LB39]

SENATOR FRIESEN: Thank you, Mr. President. Senator Harr, would you yield to a question? [LB39]

SPEAKER SCHEER: Senator Harr, would you yield once again? [LB39]

SENATOR HARR: Yes. [LB39]

SENATOR FRIESEN: So when I'm reading through it now and looking at it more and after hearing some of the discussion, does this mirror federal language or are we adding more to it? [LB39]

SENATOR HARR: So the answer is it mirrors but is not exactly the same. Earlier I stated ours is...it varies. We don't have the same degree of the federal regs. [LB39]

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SENATOR FRIESEN: Like the portion here where it talks about the 20 percent of the value of an instrument, things like that, is that in the federal? [LB39]

SENATOR HARR: So in the federal, they say de minimis. We went with 20 percent just so that we would have a better idea. If you want to go back to de minimis, I'm okay with that. I was just trying to create a higher standard or so there would be more predictability. But I'm open to going to the federal de minimis. [LB39]

SENATOR FRIESEN: I mean it raises some questions in here, you know, if you're going to purchase something then you say it has...if it's less than 20 percent of the value. There's games can be played, I mean, how you determine the value of that. I agree. It's got...if it's a very simple piece of ivory, it doesn't have as much value as an ornately carved piece of ivory. And so a really tiny piece of ivory included in there, the cost of that theoretically could be easily more than 20 percent. [LB39]

SENATOR HARR: Yeah. [LB39]

SENATOR FRIESEN: And yet it's a very small part of the item. Is that...? [LB39]

SENATOR HARR: Yeah. [LB39]

SENATOR FRIESEN: How do you establish... [LB39]

SENATOR HARR: I know it's so hard to legislate common sense. I've tried for seven years to figure out how to do that and, by the way, been very unsuccessful. The idea behind it--and I'm glad I can put this in the record--is what we don't want is the trading and bartering of ivory and someone to say, oh, actually I bought that iPhone. [LB39]

SENATOR FRIESEN: Okay. I'm going to...I want to use my time now a little bit so. [LB39]

SENATOR HARR: Okay. [LB39]

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SENATOR FRIESEN: Thank you, Senator Harr. I guess from my perspective, when you...as we try to make things stricter here and you start to, I guess, limit the availability of ivory that is currently here, in the process of trying to prove that something is 100 years old, there's no documentation with all this stuff. And if you run into the situation where you seize it and now you've lowered the supply, so to speak, you've created more demand for ivory. And I still think it goes back to we shouldn't import it. We, you know, it's a federal, more of a federal...those treaties and laws should be enforced tighter I guess. But when you start to restrict what is here already and there's so many games can be played, how do I determine if it is 100 years old or more or these values and stuff, we restrict the supply or what is available for someone to buy here. And yet we have really, if we restrict that, we've created more demand. That's the way I'm starting to look at this. It just looks to me like we're creating a problem versus fixing one. Thank you, Mr. President. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr and Senator Friesen. Senator Harr, you're recognized. [LB39]

SENATOR HARR: Thank you, Mr. President. I got to clarify the record. It's not 100 years old, folks. That's one part. But it's whether it was manufactured before 1975. That's the question if it's in a situation that Senator Friesen is talking about. Now you can have a raw piece or you can have a crafted piece but that's not going to fit under the 20 percent anyway, so it's 1975 is the magic year. And why is that? How did we happen to come up with that year? What was so great about that year? Was it because a great Nebraskan like Gerald Ford was President of the United States? No. The reason is because that's when we signed an international treaty. What we're doing here, folks, I'm not making this stuff up and the...this has been debated and talked about by people far smarter than me, than I. Look at that! I even use improper language. That's how I am. This has been debated. It's been talked about. There are people that this is their life. They've dedicated their lives to protecting mammoth relics, because mammoths aren't around--if you find one, let me know--elephants and rhinos. These have been generally accepted by my good friend Laura Ingraham, Michael Savage, Donald Trump, down to Communist China. They've all agreed to these standards. And here we are today, a couple of senators trying to debate ourselves having never really researched this area, having read an e-mail from somebody who hadn't read the legislation, trying to figure out what we should or shouldn't be doing. And maybe we have the

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common sense that no one else has. I like to think I'm "Mr. Common Sense." My wife disagrees. But, folks, this isn't rocket science. This isn't rewriting the Magna Carta, the constitution. This is a simple bill. And what we're trying to do is to provide some local enforcement of an international problem. I've yet to hear anyone say they want to or want to encourage the sale of ivory. Why? Because we know that the higher and more sale of ivory there is, the more likely you are to have this poaching that's going on, the less likely you are to have good conservation programs that exist that Senator Halloran showed actually increase the population. Think about that. Africa gained less and less wild land and, you know, we've increased the population. What's that tell you? The law is working. Let's do our little part. Let's go ahead and pass AM133 and then pass the underlying bill, LB39. I'd appreciate your support and again I'll be around for questions. If anyone wants to work with me between General and Select to tighten and make this law better and constitutional, I'm more than willing to meet with them. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr. No one else in the queue. Senator Ebke, you're welcome to close on AM133. Senator Ebke waives closing on AM133. The question before us is adoption of AM133. Please vote aye; opposed vote nay. Senator Harr. [LB39]

SENATOR HARR: Thank you, Mr. Speaker. I would request a call of the house. [LB39]

SPEAKER SCHEER: There's been a request to place the house under call. The question before us, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Please record. [LB39]

ASSISTANT CLERK: 25 ayes, 4 nays to go under call, Mr. President. [LB39]

SPEAKER SCHEER: The house is under call. Senators please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Vargas, could you check in, please. Senator Groene. Senator Clements, could you check in, please. Senator Watermeier, would you please return to the floor. We are under call. Senator Geist, would you please return to the floor. Senator Watermeier, please return to the floor. The house is under call. The house is here and all are present. Senator Harr, how did you want to proceed? [LB39]

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SENATOR HARR: I'll take call-in votes. [LB39]

SPEAKER SCHEER: Any additional votes? [LB39]

ASSISTANT CLERK: Senator Hilgers voting yes; Senator Howard voting yes. [LB39]

SPEAKER SCHEER: Senator Harr. [LB39]

SENATOR HARR: I'd like to change my vote to no. [LB39]

ASSISTANT CLERK: Senator Burke Harr voting...changing from yes to no. [LB39]

SPEAKER SCHEER: Please record. [LB39]

ASSISTANT CLERK: 20 ayes, 14 nays on the adoption of committee amendments, Mr. President. [LB39]

SPEAKER SCHEER: AM133 fails. Mr. Clerk. Raise the call. Mister...Senator Harr, would you like to open on your amendment? [LB39]

SENATOR HARR: Thank you, Mr. President, members of the body. Well, I guess we're going to be here awhile. Folks, this is a consent calendar issue at best. I get what's going on. I'm not...wasn't born yesterday, maybe the day before. That's fine. But let's do the right thing. This is a simple, simple, simple bill. What we are doing is taking what has been agreed to on an international level, has been agreed to on a national level, has been agreed to on a number of state levels, and what we're saying is, folks, we don't like the poaching of animals, we want to protect these animals. Before we had these treaties, these animals were being killed off. I know there's a lot of shows that talk about it. I've seen them. I encourage you guys to see it. We worked hard on this bill. We created...I worked with the NRA. The NRA supports this bill. What we did was we looked and we said, how can we stop the killing of innocent animals for not their meat but for their tusk? Not for any other purpose, they'll shoot them, they'll lay them down dead, and they'll take their tusks off. It's that simple. I'll get up and speak on this once, maybe twice, just to

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have some fun. But this is...this should not be a controversial issue. This is...we aren't doing anything new that hasn't happened already. Maybe I'll try to keep this going until noon since no one seems to want to really have serious conversation about this anyway. But this is a consent calendar bill, folks. You had three people who came in who said, hey, I don't like this because I can't do trophy hunting anymore, and, again, folks, not true, not true, not true. You still can do your trophy hunting. If you want to go over to Africa and go kill these animals, nothing stops you from doing it. You just have to follow the procedures that are there to encourage conservation, that are there to encourage the growth, and to discourage poaching. I have yet to hear anyone get up and say poaching: good. I have anyone up to hear them say the illegal selling of ivory: good. Right? We try to throw stuff up, punch a hole here, punch a hole there, say I'm not sure what this means, I'm not sure what that means, I don't know if we can trust prosecutors, how do we know if they know, right? I prosecuted for a number of years. I never once, in a possession of a stolen car case, in a possession of drugs case, had anyone say to me, I didn't know. They may say it but, folks, it doesn't carry any water, right? You know what you're buying. And if you don't, there are exceptions in there. And if you don't know what you're buying, why the heck are you buying it in the first place? This is not a huge issue. If this goes down in flames, that's fine. We still have enforcement out there. But this is local enforcement. This is local control. I looked at the people who voted against this and it amazes me because when I look at it I go, huh, I thought those were the local control people, I thought those were the people who said get Medicaid...get the federal government out of my Medicaid. Right? Those are the people that don't like these federal mandates. They don't want Washington telling us what to do, folks, so let's take control. Nobody likes this stuff. I like ivory. It's beautiful. But if I'm going to do it, I'm going to get it in a way that's acceptable, that's legal, not...you know, it's unfortunate it is so pretty, but, folks, let's not go and kill animals just for their tusk. Let's make a stand. Let's say...let's do the right thing today. Young kids are at home watching. There's no school today in Omaha. They're watching this. Stand up and show them where you stand, that you say the poaching of elephants and rhinos for your enjoyment and your enjoyment alone, or the person who owns that, is wrong. That's what this bill is about. So thank you very much, Mr. President. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr. Senator Ebke, you're recognized. [LB39]

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SENATOR EBKE: Thank you, Mr. President, just a couple of comments. Whether you like the concept behind this bill or not, let me just suggest to my colleagues that unless you are 100 percent sure that the bill will die, it's very important that you vote for this amendment. The amendment relieved a number of objections to the bill, okay, that were expressed by the NRA and others. It got rid of some of the gun exceptions and so forth. If we vote the bill, the committee amendment down, then what will happen is the bill becomes the issue. And if the bill passes, it will be one that will be objected to. So pass the amendment and then decide what you're going to do on the final vote on the bill as amended. Thank you, Mr. President. [LB39]

SPEAKER SCHEER: Thank you, Senator Ebke. Seeing no others in the queue, Senator Harr, you're welcome to close on your reconsideration motion. [LB39]

SENATOR HARR: Thank you, Mr. Speaker. I was looking at the list and maybe something I didn't address that needs to be addressed. If you have teeth made out of ivory, folks, not illegal, all right? Read the bill, read the bill, read the bill. I'm going to ask for your support and I think I've made all the arguments on it that I need to. If you choose not to, that's fine. I appreciate the time on this and I'd ask for your support. I want to thank Senator Ebke and the Judiciary Council (sic) for their hard work on this. Again, I want to thank those groups that were concerned. I know...I'd heard the university had concerns with this initially until you sat down and talked them and said, this doesn't affect you guys. By the way, they'd be recipients if illegal ivory were seized. It could go to the university. If it used for scientific purposes or educational purposes: not prohibited. Firearms: not prohibited. Knives: not prohibited. Musical instruments: not prohibited. So you can still tickle the ivories if you need to. Folks, simple bill, does the right thing, I encourage everyone to stand up for elephants, for rhinos, protect them. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr. The question before us is the reconsideration of AM133. All those in favor please vote aye; all those opposed vote nay. Please record. [LB39]

ASSISTANT CLERK: 27 ayes, 0 nays on the motion to reconsider. [LB39]

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SPEAKER SCHEER: Reconsider motion passes. We are reconsidering AM133. Any discussion on AM133? We have a closing...seeing none, the question before us is the adoption of AM133. All those in favor please vote aye; all those opposed vote nay. Please record. [LB39]

ASSISTANT CLERK: 25 ayes, 7 nays on the adoption of committee amendments, Mr. President. [LB39]

SPEAKER SCHEER: AM133 is adopted. Moving back to the original bill, LB39. Seeing no discussion, Senator Harr, you're welcome to close on LB39. [LB39]

SENATOR HARR: Thank you, Mr. President, Mr. Speaker. Thank you, everyone. I would thank you for your support on this and ask that you please consider to vote...continue to vote green. Thank you. [LB39]

SPEAKER SCHEER: Thank you, Senator Harr. The question before us is adoption...or the advancement of LB39 to E&R Initial. All those in favor please vote aye; all those opposed vote nay. Senator Harr. [LB39]

SENATOR HARR: Call of the house. [LB39]

SPEAKER SCHEER: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Please record. [LB39]

ASSISTANT CLERK: 31 ayes, 2 nays to go under call, Mr. President. [LB39]

SPEAKER SCHEER: The house is under call. Senators please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Clements, would you check in, please. Senator Linehan, would you please check in. Senator Bolz, would you check in, please. All are accounted for, Senator Harr. [LB39]

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SENATOR HARR: I'll take...let's do reverse order. [LB39]

SPEAKER SCHEER: Roll call, reverse order, Mr. Clerk. [LB39]

ASSISTANT CLERK: (Roll call vote taken, Legislative Journal page 279.) Vote is 19 ayes, 9 nays, Mr. President. [LB39]

SPEAKER SCHEER: LB39 fails, does not advance. Raise the call. Before we get into the items to be recorded, colleagues, just a heads-up for next week. There are a couple things. One, on Thursday we do have the State of the Judiciary that will be presented to us by the Chief Justice. Tuesday we will be starting at 10:00. From Wednesday on, we will be starting then at 9:00 on. And there are no priority bills or other major pieces that I believe will be that contentious that I need to bring forward. We will be just going down General File list on the worksheet. So if you'd like to see what might be coming up, it'll be on this agenda, as well as the rest of General File. Mr. Clerk for any announcements or read-ins. [LB39]

ASSISTANT CLERK: Mr. President, new bills (Read LB982-LB999 by title for the first time.) In addition to that, Mr. President, your Committee on Enrollment and Review reports LB105 to Select File. I have a notice of committee hearing from the Appropriations Committee. New resolutions: LR279 by Senator Quick, pertains to the 130th anniversary of the Great Blizzard of 1888; LR280 by Senator Stinner congratulates Mayor Kent Greenwalt for Citizen of the Year Award. Amendment to be printed to LB310 from Senator Friesen and to LB258 from Senator Hansen. New resolution: LR281CA from Senator Morfeld provides for the placing of an amendment regarding affordable health care as a proposed constitutional amendment. Name adds: Senator Hilkemann to LB690; Senator Geist to LB925. A motion from Senator Kolterman to suspend Rule 5, Section 15(a) to permit the introduction of Request 3736. (Legislative Journal pages 280-286. [LB982 LB983 LB984 LB985 LB986 LB987 LB988 LB989 LB990 LB991 LB992 LB993 LB994 LB995 LB997 LB998 LB999 LB105 LR279 LR280 LR281CA LB258 LB310 LB690 LB925])

And, finally, a priority motion. Senator Quick would move to adjourn until Tuesday, January 16, at 10:00 a.m.

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SPEAKER SCHEER: Thank you, Mr. Clerk. Before we vote on that, I would be remiss not to wish Senator Crawford a happy birthday yesterday. We will not say how old she might have been but we will wish her a happy birthday. Colleagues, you've heard the motion to adjourn. All those in favor say aye. All those opposed say nay. And the ayes have it.