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Transcriber's Office

Floor Debate
March 04, 2019

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SCHEER: I call to order the thirty-fifth day of the One Hundred Sixth Legislature, First Session. Senators, please record your presence. Roll call. Please record, Mr. Clerk.

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

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

CLERK: I have no corrections.

SCHEER: And are there any messages, reports, or announcements?

CLERK: Mr. President, I have neither messages, reports, nor announcements at this time.

SCHEER: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I do propose to sign and do hereby sign LR26. First item, Mr. Clerk.

CLERK: Mr. President, a confirmation report by the General Affairs Committee involving the appointment of Mr. Todd Zohner to the Commission on Problem Gambling.

SCHEER: Thank you, Mr. Clerk. Senator Briese, as Chairman of the committee, you're welcome to open on the report.

BRIESE: Thank you, Mr. President. And good morning, colleagues. I present for your approval today the appointment of Todd Zohner to the Commission on Problem Gambling. The Nebraska Commission on Problem Gambling was established in 2013 with the passage of LB6. The commission aims to counter the negative impact of gambling addiction with effective, evidence-based prevention and treatment services for Nebraskans and their families. Mr. Zohner appeared before the committee via telephone on February 11. Mr. Zohner is a lifelong Nebraska resident and a current resident of Stanton, Nebraska. He has experience serving on additional boards and commissions, including the Stanton County Planning Commission, Meadow Grove Federal Credit Union Board, and the Stanton Economic Development Board. Mr. Zohner shared with the committee his passion to assist problem gamblers and his belief and knowledge about the problems gambling can create in our society. The committee appreciated Mr. Zohner's candor and his enthusiasm to assist problem gamblers. The committee approved the appointment of Mr.

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Zohner unanimously. I urge the body to "support"-- to support the appointment of Todd Zohner to the Commission on Problem Gambling. Thank you, Mr. President.

SCHEER: Thank you, Senator Briese. Seeing no one wanting to speak, Senator Briese is welcomed to close. He waives closing. The question before us is adoption of the confirmation report from General Affairs. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 33 ayes, 0 nays on adoption of the confirmation report.

SCHEER: Confirmation report is affirmed. Next item, Mr. Clerk.

CLERK: Mr. President, the Health and Human Services Committee reports on three appointments to the Rural Health Advisory Commission.

SCHEER: Thank you, Mr. Clerk. Senator Howard, you're welcome to open on your confirmation report from Health and Human Services.

HOWARD: Thank you, Mr. President. Good morning, colleagues. This morning I am bringing you the confirmation of Dr. Michael Sitorius to the Nebraska Rural Health Advisory Commission. Dr. Sitorius is a physician at the University of Nebraska Medical Center, and this position on the board is designated as a representative from UNMC. The committee advanced this confirmation unanimously. Dr. Sitorius graduated from Hastings College for his undergraduate education and received his medical doctorate from the University of Nebraska Medical Center in 1977. He served as the chair of the Department of Family Medicine since 1990. He's also served on the Rural Health Advisory Board for 15 years and his career has been focused on rural health issues such as professional education for rural practitioners, including spending the majority of his academic career training family physicians so they could practice in rural Nebraska to help ensure access to quality care for all Nebraskans. Growing up in Cozad, Dr. Sitorius developed his interest in medicine while cleaning the office of his father, who was also an MD. Watching him practice medicine in a rural area cultivated his interest in rural healthcare. Dr. Sitorius is also active in working toward international access to medicine. For the last 15 years, he's worked on an exchange program with China to build primary care infrastructure to be similar to the family medicine and internal medicine in the U.S. All of these factors make Dr. Sitorius a very qualified candidate to continue his service to the Rural Health Advisory Commission, and I would ask for your positive vote on this confirmation. Thank you, Mr. President.

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SCHEER: Thank you, Senator Howard. Open for discussion. Seeing none, Senator Howard is welcome to-- please proceed Senator Howard.

HOWARD: I apologize. There are two other members of the Rural Health Advisory Commission I would like to advance for their confirmation. Cherlyn Hunt, this is her first full term serving the commission as she was appointed to fill the remainder of a term in 2018, and the HHS Committee approved advancement of her confirmation unanimously. She is currently the executive director of the Christian Homes Care Community in Holdrege and lives in Elm Creek, Nebraska. Before working in Holdrege, she held positions at multiple nursing homes in Kearney. Cherlyn began her service serving residents in nursing homes at the age of 11, when she began volunteering there as a youth, and since that time she began her working career in nursing homes and has held every job, working her way up to the position of executive director. I would ask that you vote to affirm Cherlyn Hunt. And then finally I also have Dr. Kyle Klammer for the Rural Health Advisory Commission and he is serving in the capacity of the medical resident representative. They-- he was also advanced for this confirmation proposal by unanimous vote. He is currently a family medicine resident at the University of Nebraska Medical Center. He's a native of Ainsworth and currently resides in Bellevue. He received his undergraduate degree at Chadron State College and then attended UNMC for his medical degree as part of the Rural Health Opportunities Program. He served for two years on the commission and I would recommend his confirmation today. Thank you, Mr. President.

SCHEER: Thank you, Senator Howard. And I apologize for interrupting your presentation. Seeing no one wishing to speak, Senator Howard is welcome to close. She waives closing. The question before us is adoption of the confirmation report from Health and Human Services. All those in favor please vote aye; all those opposed vote nay. Have all those voted that wish to? Please record.

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SCHEER: Confirmation report from Health and Human Services is adopted. Mr. Clerk, we'll proceed to LB284.

CLERK: Mr. President, LB284 is a bill by Senator McCollister relating to revenue and taxation. (Read title.) Introduced on January 15 of this year, at that time referred to the Revenue Committee. The bill was advanced to General File. There are committee amendments. I also have an amendment to those committee amendments, Mr. President.

SCHEER: Thank you, Mr. Clerk. Senator McCollister, you're welcome to open on LB284.

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McCOLLISTER: Thank you, Mr. President. Good morning, colleagues. As you know, states have been trying for decades to level the playing field between our main street retailers and their competitors who do not have a physical presence in the state: no store, no employees, or no property. First, it was the catalog companies, but since the advent of the Internet they have become now what we refer to as remote sellers. These sellers have had the distinct advantage over our brick-and-mortar retailers for a long time and, of course, that advantage is no sales tax. But no more. Last summer the U.S. Supreme Court ruled, in *South Dakota v. Wayfair*, that states now have been allowed to require remote sellers to collect sales tax on goods into their state under a reasonable legal standard. The South Dakota statute requires remote sellers to collect the tax if they generate more than \$100,000 or make more than 200 individual sales into the state during a single calendar year. The court found this to be a reasonable standard under the U.S. Constitution. As a result, Senator Briese, Senator Linehan, and I all introduced bills this session to incorporate-- incorporate the South Dakota standard into our state laws. Senator Linehan's LB291 was drafted by the Department of Revenue. After hearing these three bills, Senator Linehan agreed that only one bill needed to move forward from the Revenue Committee. We reached a compromise by amending much of Senator Linehan's bill into my LB284. It was then advanced from the committee by a unanimous vote. Thank you, Senator Linehan, for the honor of bringing this bill. Much of the committee amendment, AM392, details with more technical issues, but the original intent of my bill and much of the language has not changed. LB284 incorporates the same legal standard as the South Dakota statute. More than \$100,000 or more than 200 individual sales during a calendar year makes you a retailer under our laws and requires you that you collect and remit the sales tax. My bill also imposes this collection obligation on what we call multivendor marketplaces: think Amazon, eBay, and Etsy. If the marketplace operator exceeds the same threshold through the combined sales of the vendors, then the marketplace is deemed to be a retailer under our law. The marketplace operator must begin collecting and remitting the sales tax on all Nebraska sales for vendors participating in its marketplace. There's nothing unique or uncommon about this provision. Many states have this in statute now or, like us, are in the process of adapting it into the tax codes. I will note, however, that this provision was not in the South Dakota statute at the time of the Supreme Court decision. Therefore, it has not been specifically addressed by the high court. I believe that is why Senator Briese did not include it in his bill. But it's vitally important that LB284, as it's precautionary measure, I included a severance clause. If at some point this type of provision is deemed to be unconstitutional, then we can excise it from the statute while leaving in place the original provisions from the South Dakota law. Finally, LB284 contains the emergency clause, and under the committee amendment sets the operative date as of April 1 of this year. In order to make that deadline, I designed this as my personal priority bill. This is a very important issue that we need to address as soon as possible. I hope that you will give a green vote on this bill and on the committee amendment. I would like to thank our Revenue Committee Chair, Senator Linehan, for working with me on the bill, and I thank you for your support. Thank you, Mr. President.

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SCHEER: Thank you, Senator McCollister. As the Clerk stated, there are amendments from the Revenue Committee. Senator Linehan, as Chair of the committee, you're recognized to open on those amendments.

LINEHAN: Thank you, Mr. President. And good morning, colleagues. First of all, I would like to thank Senator McCollister for prioritizing this bill. I do much appreciate it. I would also like to thank him for the hard work he and his staff have put in on the drafting of this bill and the earlier versions. He's worked on this for two or three years. I appreciate his willingness to work with me in bringing the bill to the floor. Senator McCollister gave you some very good history of this issue. He also explained the basic requirements of the bill. The amendment adds several pieces of my bill, which was originally drafted by the Department of Revenue. First, the original draft of my bill lumped the individual sellers and the marketplace operators together under the definition of doing business in this state. The amendment separates these two groups into their own subsections under the-- this definition. We amend the list of activities that constitute doing business in this state: example, facilitating a sale between the buyer and seller. The definition of gross receipts is amended to include receipts of the marketplace operator. Under the duties and responsibilities of sellers, we added the definition of a marketplace operator. Five, we clarify the timing for these sellers to begin collecting and remitting tax. Once the thresholds are exceeded for the first time, the seller must become licensed and begin collecting and remitting tax on or before the first day of the second calendar month after the threshold was exceeded. Example: A remote seller exceeds one of the thresholds during the month of March. That means the seller must register and start collecting no later than May 1. We changed the operative date from July 1 to April 1 of this year. I'm sure that many of you have questions and I'll do my best to answer them, but I ask that you support the committee amendment and the underlying bill. Thank you.

SCHEER: Thank you, Senator Linehan. Mr. Clerk, there's amendment to the committee amendment.

ASSISTANT CLERK: Mr. President, Senator Linehan would move to amend the committee amendments with AM540.

SCHEER: Senator Linehan, you're-- you're recognized to open on your amendment to the committee amendments.

LINEHAN: Thank you again, Mr. President. This amendment strikes subsection (f) on page 15 of the committee amendment. We've had several stakeholders weigh in on this language. It was intended to balance out the situation where an individual seller and a marketplace operator both collect tax on the same transaction. However, it created more confusion than clarity, so we've taken it out. The Department of Revenue agreed with this because they didn't have it in their--

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they didn't have it in their original draft. I would simply ask that you adopt AM540 to the committee amendment.

SCHEER: Thank you, Senator Linehan. Moving to discussion, Senator La Grone, you're recognized.

La GRONE: Thank you, Mr. President. I just want to-- in a moment I'm going to ask Senator McCollister a question, but I want to walk through the background of what that question is going to be first so he has a-- a chance to understand where I'm going at. Excuse me. And it deals with the Wayfair decision. So it's-- I don't have an issue with-- I-- I think it's important that when we pass a bill like this that does have an impact on interstate commerce, that we make sure we are addressing the constitutionality of that before we actually do take any action. And I disagree with Senator McCollister's statement that the Supreme Court said this type of thing was OK slightly, because that's not exactly what they said. They simply invalidated the physical presence rule. So I'm not saying it isn't constitutional; I just want to walk through the requirements to make sure we're meeting those. So generally, when you-- when a state wants to regulate interstate commerce it can only do so if it does not place-- if it doesn't discriminate against out-of-state individuals or, in this case, businesses, and it doesn't place an undue burden on interstate commerce. Now as that relates to taxes, the court has held, and they reiterated in Wayfair, that any tax has to meet four requirements. First, it must apply to an activity with a substantial nexus to the taxing state. And this is actually the only requirement that the Supreme Court dealt with in its decision. The physical presence rule is a sub-- it was a subset of this nexus requirement, and that's the only thing that the case addressed. Second, the tax must be fairly apportioned. Third, it cannot discriminate against interstate commerce, that being individuals out of state. And fourth, it must be fairly related to the services the state provides. Now again, the-- the first requirement is all that case dealt with. What the-- what the court said in Wayfair is that you no longer have to have a physical presence in the state in order to have a substantial nexus to the state. It then went on to say that the requirements in the South Dakota bill, which are also the requirements in this bill, of I think \$100,000 in-- in business and then 200 individual transactions, meet the substantial nexus requirement. So we know that the first requirement is met, and now I want to get in with Senator McCollister the other three requirements, just making sure that we are doing our due diligence in making sure whatever we pass that regulates interstate commerce is, in fact, constitutional under the Dormant Commerce Clause. So would Senator McCollister yield to a question?

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Yes.

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La GRONE: Thank you, Senator McCollister. I was wondering if you could discuss the other three requirements. And we can take them slowly, one by one, so you have an opportunity to respond to those if that is OK with you. So first, do you think that this-- and this is kind of a general one, but do you think that this tax is fairly apportioned?

McCOLLISTER: I would think so. I'm not a lawyer so I can't judge the-- the constitutional issues as well as some. But we did rely on OpenSky, the Tax Foundation, and of course the Department of Revenue to make sure that we-- we constructed this bill properly.

La GRONE: Thank you. And so now we'll move to the third requirement that it not discriminate against interstate commerce. Does this bill treat out-of-state and in-state businesses the same? And if it does, which I think it does, could you walk us through a little bit how it does so?

McCOLLISTER: Well, in the-- the in-state sellers have to charge sales tax, now the out-state sellers will have to do that as well. And I think that is equal treatment and that is one thing we need to make sure we-- we-- we do under the law. So I-- I believe it does and I haven't seen any reason to think otherwise.

La GRONE: OK, and I would-- I would agree with that assessment. Just to be clear, it does treat out-of-state businesses the same as in-state businesses, what-- which is what the requirement is.

SCHEER: One minute.

La GRONE: Now fourth and finally, and I'll turn my light back on in a second so we can finish this, but is the tax fairly related to the services the state provides? Can you walk that-- through that a little?

McCOLLISTER: Well, obviously, the-- the state, for in-state sellers, you know, we-- we get many service from the state of Nebraska. But the nexus issue, as declared by the Supreme Court, I think resolves that, that issue as well.

La GRONE: Well, this is actually a separate question from the nexus issue. The nexus issue is the first requirement, which everyone is admitting is-- is met. That's what that case was about. But this is the fourth requirement that-- that the tax is fairly related to the services the state provides.

McCOLLISTER: Well, having purchased those items over the Internet or at a main street retailer, the state provides services to its citizens.

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SCHEER: Time, Senators.

McCOLLISTER: So I think irrespective of--

SCHEER: Time, Senator.

La GRONE: Thank you, Mr. President.

SCHEER: Thank you, Senator La Grone and Senator McCollister. Senator Briese, you're recognized.

BRIESE: Thank-- thank you, Mr. President. Good morning, colleagues. I rise in support of LB284 and the amendments. I'd like to thank Senator McCollister and Senator Linehan for their work on this issue. The-- we've been unsuccessful in the past in enforcing-- enforcing the collection of sales tax by remote on-line sellers. This past summer the Supreme Court, in the Quill decision, basically cleared the way for states to require on-line sellers with no physical presence in the state to collect that tax. And really, the benefits of doing so are obvious. First, it can level the playing field between our main street brick-and-mortar stores and their out-of-state competitors. Second, it allows our taxing entities to more effectively enforce collection of taxes that are already owed. And finally, it will expand our sales tax base. Initially, some suggested that this type of legislation was unnecessary. I disagree. First, I believe legislation is necessary to clarify the obligation of remote sellers. Currently, our statutes require a degree of physical presence not typical of many on-line retailers. But regardless of how one interprets our statutory framework, failure to provide clear statutory provisions requiring on-line sales tax collection opens up the state to legal challenges by those affected. Furthermore, we need to ensure that any remote sales tax system be constitutionally sound. And Senator La Grone and Senator McCollister have hit upon that. It needs to be able to withstand a commerce clause challenge, such as the one presented in the Wayfair case, a challenge that it unduly burdens interstate commerce. And that means protecting small start-up businesses by imposing a minimum threshold of business activity before an obligation to collect sales tax ensues. The Wayfair-- in the Wayfair decision, the court, after essentially overturning the physical presence rule of the Quill decision, applied previous case law that asked whether the tax applied to an activity with a, quote, substantial nexus to the taxing state. And the court found this nexus was clearly sufficient, based on the economic and virtual contacts the sellers had with South Dakota. In discussing the constitution-- constitutionality of the act, the Wayfair court noted that the act appears designed to prevent discrimination against or undue burdens upon interstate commerce. In doing so, the court noted that the act applies a safe harbor to those who transact only limited business. And that's what the language of Senator McCollister's bill and these amendments are designed to do: provide a safe harbor to small retailers by exempting sellers with less than \$100,000 in sales or

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200 separate transactions. So I intend to support LB284 and the amendments, but I do have a problem. I've always maintained that any new revenue flowing from post-Wayfair on-line sales tax collection be directed to property tax relief. I believe that's what Nebraskans expect and that's what Nebraskans deserve. Some will suggest, well, we can't come up with a close number on that and it's already in the General Fund. I disagree. If we can't pin down a number, we can sure estimate one. So does this bill direct these dollars to property tax relief? No, and I'd be tempted to oppose this bill for that reason alone. However, this revenue can still be directed to property tax relief indirectly. For example, Senator Lindstrom has a bill he introduced on behalf of the Governor that directs additional aid to the Property Tax Credit Fund. And on the hearing on that bill, Governor Ricketts indicated that, you know, it was essentially his intent that those dollars directed to the Property Tax Relief Fund would funnel on-line sales tax revenue to the Property Tax Credit Fund. And so there is an indirect way of doing it. And there's clearly other mechanisms by which these dollars can go to property tax relief.

SCHEER: One minute.

BRIESE: So I guess-- thank you, Mr. President. So I guess I'm supporting this bill for the reasons I gave earlier, but I will do everything possible going forward to ensure that the new revenue generated by post-Wayfair on-line sales tax collection end up in the hands of our property taxpayers. Thank you, Mr. President.

SCHEER: Thank you, Senator Briese. Senator Brewer, you're recognized.

BREWER: Thank you, Mr. President. I would like to direct a question to Senator McCollister.

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Yes, I will.

BREWER: All right. Let's start the day here with a trip down memory lane. This is your priority bill. Is that correct?

McCOLLISTER: Yes, sir.

BREWER: And a few days ago I had my priority bill. Now I'm not saying that there's any connection between the two, but I think we need to have a discussion. Understand, first off, this bill is not an all-bad bill, so I don't think it's fair to hold your bill hostage just because you made it your purpose in life to destroy my priority bill. But I think we're going to have discussion on

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some questions I asked you last week. One of the things I asked you, and I will ask you every day until you provide it to me, is a copy of the decommissioning plan for wind energy. Do you have that in your possession?

McCOLLISTER: Yes, I do.

BREWER: Good. Bring it to me at your first opportunity. The next question is, the Advantage Act: Are you familiar with the amount of money spent on wind energy through the Advantage Act?

McCOLLISTER: Not specifically, but I know that the-- the sales tax refunds are a part of that.

BREWER: All right. The last question I have on your priority bill is, is there any conduit for it to be given direct connection with property tax relief?

McCOLLISTER: The bill does not contain that clause, but the-- the funds generated by this bill and-- will go into the General Fund which will certainly go into Property Tax Relief Fund. You know, in fact, the money that this bill will generate is already baked into the budget. So you can say that, yes, in as much as the-- the Property Tax Relief Fund gives property tax relief, it does.

BREWER: When you say "it's baked into the budget," is there an amount, because it doesn't leave me with a warm and fuzzy that the money will end up going for property tax relief when there's garden projects and everything else out there that may take a priority over it.

McCOLLISTER: Well, I suggested the Internet-- remote Internet sales tax will generate in the neighborhood of \$40 to \$50 million.

BREWER: Forty to fifty million. All right. Thank you, Senator. Thank you, Mr. President.

SCHEER: Thank you, Senator Brewer and Senator McCollister. Senator Lowe, you're recognized.

LOWE: Thank you, Mr. President. Last year Senator Watermeier's bill I got up and spoke on several times about my concerns of it. The Supreme Court has not passed this legislation yet. Over the summer, that-- that they went ahead and did that. But I also had another concern and that was the thresholds. What happens-- and the thresholds are \$100,000 or 200 sales. Say you're a small business, because that's what this threshold is supposed to take-- take account of, and you

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make 198 sales through the year and it is now November. So you've gone from January to November making your sales, and you've done this in 48 states. What happens now when five, ten more people call you up and say, hey, I want your product? Well, that puts you over the 200-transaction threshold. Who pays for those taxes? Do you go back on those who bought your product or do you take it out of your-- out of your pocket to pay for those, to pay for those taxes? The other way around is if you've sold \$999 in 48 states and you make one more sale in each one of the states. Where does that money now come from to pay those taxes? Do you go back on your accounts and say, hey, I need more money? We went over the threshold. It's not your fault. It's not my fault. I just made another sale. So now you owe more money or I lose all my profit from all these sales. I have a problem with that. Senator McCollister, would you answer a question, please?

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Yes.

LOWE: Senator McCollister, could you come up with an answer for that? How do we gain this extra money for these sales taxes that are now due that were not collected because you did not expect to make so many sales?

McCOLLISTER: Can you repeat the question, Senator Lowe. I didn't hear the last part of your question.

LOWE: OK. If-- if you're a business and you make \$990 or \$9-- \$99,900 in sales and you make another sale for \$101, where does the money come from to pay the sales tax for all the sales prior to that because now you're over the threshold and so each one of those sales would be subject to the sales tax?

McCOLLISTER: It only taxes money going forward. So you-- you do that, that one-hundredth thousand sale, the obligation is-- only goes forward and you're not obligated to pay those other 999 sales in arrears.

LOWE: All right. I'll-- I'll look forward to talking to you about that and see where it's at in the bill. Thank you. Thank you, Mr. President.

SCHEER: Thank you, Senator Lowe and Senator McCollister. Senator Linehan, you're recognized.

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LINEHAN: Thank you, Mr. President. Before we continue this conversation, I would also like to thank the Speaker for getting this bill to the floor and his help in convincing the Revenue Committee we need to get-- get to work and get our job done. I think we all know that this is critically important to this state. As far as where the money goes, there was-- Senator Briese did have it in his bill that it goes automatically to Property Tax Credit Fund. I would have liked to have done that too. According to the Department of Revenue, there's no way to actually track that exactly. But I think the Governor has covered that fairly well in his budget by saying that he wants \$51 million to go to the property tax credit this year and \$51 million to go to the property tax credit next year. So if we can't-- that's according to our fiscal note, that's a little above what we expect to collect on this-- on the sales tax from the Internet. So I think we're-- we're taking the money, like we all want to, or at least most of us, I think, and trying to address our overreliance on property taxes, especially in some of our communities where they are basically paying the whole bill for education out of their property tax base. So I-- other questions, I think Senator McCollister did answer this, but to clarify just again, if there's concerns, once you get to the 100,000, you don't have to collect any of the taxes that would have been collected if you collect from zero. And you, again, I think I mentioned this and I think Senator McCollister did too, you've got basically a month-- or over a month grace period. The month you go over, you have to get license and you have to start collecting the following, well, it was March, if you go over in March, then you have to start collecting, like if you went over this month, today, and this bill was in law, you wouldn't have to start to collect until May 1. And you don't have to go back and worry about any money that wasn't collected previously. So it's all in the future. There's no going back to catch up. So with that, thank you, Mr. President.

SCHEER: Thank you, Senator Linehan. Senator Erdman, you're recognized.

ERDMAN: Thank you, Mr. Speaker. And good morning out there in Angora. It is cold there, I know. I stand this morning to speak about sales tax revenue in '17 when Senator Watermier had LB44. I had asked him if there was a provision for where the sales tax revenue was going to go, and he said there was not. And I had introduced a bill that that, those funds collected, would have went to property tax relief. Bill never got out of committee, but I had been thinking about that for some time. Senator Lowe, I appreciate your-- your comments that you asked that question about what happens to the revenue that you should have collected that you didn't. And I appreciate the answer. But this morning, one thing that comes to my attention, I think we need to speak about, is the city of Lincoln. I read in the Lincoln Journal Star about the city of Lincoln is \$3 million short on revenue from what they projected. And I was wondering if Senator Stinner would yield to a question.

SCHEER: Senator Stinner, would you please yield?

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STINNER: Yes, I will.

ERDMAN: Senator Stinner, I noticed in the article, it said that the forecast for the city of Lincoln was 3.5 percent increase in sales tax revenue and it didn't come in. And they budgeted to spend everything that the 3.5 percent would have raised. So what would you call that, if they make a projection of a 3.5 percent increase and they have spent that same revenue, what is the-- the statement or the issue that you-- or the-- the comment you make about how that's presented?

STINNER: Well, it certainly is a shortfall in projections.

ERDMAN: But don't you normally say when the Forecasting Board forecasts a certain specific amount and then we appropriate all that, that's called structural balance?

STINNER: They would be certainly in a deficit as it relates to the shortfall in revenue versus expense.

ERDMAN: But in their case, they had forecast what they were going to get, just like we do here. And then we call, if we're going to spend everything the Forecasting Board guesses we're going to get, then we spend all that, in Appropriations we call that structural balance. That's all the questions I had for you, Senator. Thank you.

STINNER: Thank you.

ERDMAN: But the point is this, I introduced a bill last week to restrict local units of government to have no more than 50 percent of their annual property tax asking in a cash reserve. The city of Lincoln came in and whined, and I use the word "whined," about the fact that they surely couldn't function on that low of cash revenue. They have \$41 million in a cash fund today, and they're whining about losing \$3 million in revenue from sales tax. And when the question was asked, why do you have the \$41 million in reserve, and they said for emergencies. Oh, OK. So we had a blizzard last week and I would assume that was an emergency: use some cash to clear the snow. Now they're \$3 million short and they got a \$41 million cash reserve. Take the \$3 million out of the cash reserve and move on and stop whining about trying to find another way to raise more revenue. You already have it. You have it in your cash fund. Take it out of the cash fund and use it. So what they do, the community colleges and all these local units of government and cities, they collect a bunch of money and they put it in a reserve that collects like 0.2 percent interest. And the people paying it in have to borrow money at 5-6 percent to pay it in, but they need it. And then they say if we don't have that much revenue we can't be accredited. That's a-- I've never seen anybody show me the fact that that's true, but what they say, it must be true 'cause

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they said it. So I'm a little sick and tired of hearing about the city of Lincoln being short of revenue when they got this kind of a cash reserve. And I know that has nothing to do with this bill, but it aggravates me when I see how they manage their government. Thank you.

SCHEER: Thank you, Senator Erdman and Senator Stinner. Senator La Grone, you're recognized.

La GRONE: Thank you, Mr. President. I'm just going to go ahead and finish up my conversation with Senator McCollister on the constitutionality. But while he's-- before I ask, actually ask him a question, I want to be very clear about why I'm going over these. It's not to insinuate or indicate that I don't think these requirements for constitutionality are met. It's simple because when the courts give us a requirement that you meet these four requirements in order to do X-- in this case, impose this tax-- I think it's important that we have an answer to all of-- all of these points. And I know that Senator McCollister does and I'm just trying to get those on the record. So with that, would Senator McCollister yield to a question?

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Yes.

La GRONE: Thank you, Senator McCollister. We previously covered the first three points about the tax applying to an activity with a substantial nexus, being fairly apportioned and not discriminating against interstate commerce. We're now on the fourth requirement that the tax be fairly related to the services the state provides. I was wondering if you could touch on that a little.

McCOLLISTER: I'm glad you brought that back. Yes, the state does provide services to those remote Internet sellers. Those sellers have access to our legal system if there were a dispute. And also, of course, when they deliver products in the state they use our roads and streets. So the state does provide service even to those remote sellers.

La GRONE: Thank you, Senator McCollister. And again, I think that Senator McCollister has pretty adequately covered those four requirements. Now personally, I actually prefer Senator-- Justice Gorsuch's concurring Opinion in the case which says that there's no such thing as a Dormant Commerce Clause and the Tenth Circuit, I mean, excuse me, the Tenth Amendment allows states to do what they will so long as there's not an act of Congress preventing them from doing so. Would Senator McCollister yield to one more quick question, though, while we're on the topic of constitutionality?

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SCHEER: Senator McCollister, would you yield again?

McCOLLISTER: You bet.

La GRONE: Thank you, Senator McCollister. You indicated during your opening that there was a provision in this bill which you felt needed-- really required the inclusion of the severability clause. Is that correct?

McCOLLISTER: Yes. That's on page 19 of the bill. And it's if the marketplace seller, which wasn't covered in the Supreme Court decision, is found to be invalid, that part of our bill would be severed from the-- from the bill and we could continue on with the taxing of Internet sellers except for those marketplace sellers.

La GRONE: OK. And forgive me, I'm-- and what I'm trying to quickly flip through the bill here, I'm not seeing a definition of marketplace. Oh, I just found it, marketplace facilitator. So this is referring to someone who facilitates a transaction between the sellers and the buyers. Is that correct?

McCOLLISTER: Yeah. And that typically is Amazon and a few other folks that-- that utilize third-party sellers.

La GRONE: OK. And I don't see personally-- I-- I definitely appreciate-- that's all the questions I'll ask you. I definitely appreciate your caution with the severability clause. I don't see any reason that a marketplace seller would be any different than a-- a remote seller in relation to the requirements for-- for a state imposing a tax on interstate commerce. I don't think that actually causes really any difference. So I just thank Senator McCollister for going through these requirements with me. And thank you, Mr. President.

SCHEER: Thank you, Senator La Grone and Senator McCollister. Senator Dorn, you're recognized.

DORN: Thank you, Speaker. Just as a little bit of a point of clarification, I know earlier there was a question about the dollar amount that is in this year's budget. In the preliminary Appropriations Committee report that was all handed out, I believe, last week to everybody, on page 11 it talks about South Dakota and the Wayfair ruling. And it takes about a half a page there to explain the impact of that and how it is calculated and where it might-- might go. And the last sentence in there is based on certain assumptions that they've listed: Sales tax attributed to the Wayfair ruling and included in the current forecast amount to \$9 million in fiscal year 2018-19, \$26 million in

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fiscal year 2019-20, and \$30 million in fiscal year '20-21. Those are the numbers that are in this preliminary Appropriation budget. And just so people, when you're discussing this today or looking at numbers, those are the preliminary numbers that we are using for the budget purposes. And it does go into detail more about how or where those funds are getting used and where they're coming from. Then I have a Senator for-- a question for Senator McCollister if he would answer.

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Yes, I will.

DORN: Yes, thank you. More for clarification than anything, I've had a conversation with some people, and you talked a little bit about a secondary seller, like an Amazon. Amazon, my understanding is, they've been collecting sales tax on things or products that are Amazon. But the secondary seller that they also sell for, when would or how does the \$100,000 amount in here affect them?

McCOLLISTER: Well, you're correct. There's-- Amazon uses what they call third-party or marketplace sellers, and they provide the product to Amazon and Amazon provides the billing and the delivery of those products. And so the \$100,000 and the 200 sales applies to Amazon. And so if a marketplace seller utilizes Amazon's service, you can pretty well be assured that they're-- they need to pay the tax.

DORN: And-- and my understanding is, at least what I've been told by people, is that currently Amazon is not-- have that policy. But this would change that so it would also pick up any secondary seller that would be in any type of business, like going through an Amazon.

McCOLLISTER: Well, Nebraska isn't the only state that's changing its laws to-- to collect tax from Amazon. So I'm-- I'm fairly sure that it's-- it's fairly uniform. And, of course, we would like to implement this, this bill April 1. So, you know, it's fairly soon.

DORN: Yes. Thank you, Senator McCollister. And I will stand in support of this bill.

SCHEER: Thank you, Senator Dorn and Senator McCollister. Senator Groene, you're recognized.

GROENE: Thank you, Mr. President. I will support LB284 and the amendments. It needs to be put in the statute. I don't know how much revenue, nobody really knows how much revenue

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will-- will be generated, so it's a guess. But it's needed before clarification. And it also tie-- state of Nebraska needs to acknowledge the Wayfair case with the sales tax because there's a tie-in with a nexus to the next step that we're looking into, that I was instructed to say, where we can also collect income taxes on those sales into the state of Nebraska on those Internet sales. We can-- it also ties into royalties that franchises collect from fast food or-- or whatever in the state of Nebraska, that we can collect income taxes on those royalties that are paid to the mother company in Chicago or somewhere else. So it all ties together on how we-- we create a balanced tax system. And one more comment, an offshoot of what Senator Erdman said. Folks, if Lincoln is \$3 million short on their 1.5 cents, that means the state is \$11 million short just from the city of Lincoln on-- on sales the tax collections. So look at your budget, and it might be a foreboding. If Lincoln, the center of the universe that has all the farms and kids coming down for state tournaments and basketball games and wrestling tournaments and football, Nebraska football games and you name it, if the rural people are coming into town and not spending money, imagine what the sales tax receipts are in rural Nebraska. We have a problem and it's not over. We have a recession, I call a depression in rural Nebraska in agriculture. This town survives on government and rural Nebraska coming into town and spending their monies. By the way, I am a taxpayer of the city of Lincoln so I got a right to complain about snow removal and potholes. I do own a place here to stay instead of driving home every night for four hours. But this all ties together. We need to collect, make sure everybody is paying the taxes due. This is a good bill. And like I said, it would tie into collecting income taxes into the future from those folks. But good luck, Senator Stinner and Erdman and others on the Appropriations Committee. But I don't think you're done yet cutting. Thank you.

SCHEER: Thank you, Senator Groene. Senator Lowe, you're recognized.

LOWE: Thank you, Mr. President. You know, I got up and spoke a little bit ago about the thresholds, the threshold of \$100,000 in sales or 200 sales transactions. This is supposed to be for small businesses. If you do \$100,000 sales in 50 states, that is no longer a small business. That's a pretty good-sized business. I know my small businesses would have been glad to do half of that, and they were pretty successful. If this is a small sales tax exemption, then it should be less than this. I did get some clarification in the meantime from the last time I spoke to now. So if Senator McCollister would yield me some more time.

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Yes, sir.

LOWE: Senator McCollister, on page 9 of the-- the amendment, the committee amendment, it says: If a retailer becomes engaged in business in this state during a calendar year by exceeding

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one of the thresholds in subsection (2) or (3) of subsection-- or of Section 77-2701.13 for the first time, the retailer must obtain a permit and begin collecting the sales tax on or before the first day of the second calendar month after the threshold was succeeded. Is this the portion that is added that will create that there won't be any retroactivity?

McCOLLISTER: Yes.

LOWE: So you-- they won't be able to go back and collect on the prior sales from this company.

McCOLLISTER: That's correct, Senator.

LOWE: Thank you, Senator McCollister. I appreciate you answering these questions for me. You know, last year I kind of was totally against the bill and this year it's a much better bill. I thank you, Senator McCollister and Senator Linehan, for coming out and making this a better bill. And we do need to hold those who make sales into our state accountable to us. Our brick-and-mortar store are hurting. I don't believe the sales-- this sales tax portion will save a lot of the brick and mortar, because I look up at our pages up here in front. They're all young. I look at some of our senators. They're all young. And they don't do a lot of buying on-line or on-- in brick-and-mortar stores. They go on-line because of the easiness of it. I-- I think we're barking at a tree that doesn't have much fruit. I think we need to be looking at the generation that sits before us and amongst us now and say that if you want your state to succeed, you buy things locally. The local people are the ones who buy your things once you start a business. Somebody in California, in Vermont, in New York or Texas, they won't come and buy your things unless you have an on-line sale. And our downtowns, our businesses downtown will fail if we don't move this way, if we don't stay our course and still support our local businesses. They are the ones that put money in our pockets. They are the ones that support us when our-- our schools need funding. They're the ones that buy the candy from our kids when they go around and-- and sell the things door-to-door to support a local Scout troop or-- or--

SCHEER: One minute.

LOWE: --school or something-- thank you, Mr. President-- or school or something like that. The real problem does not lie in this bill. It is with our attitude that we are-- we are coming up with that is becoming present in all of this as we buy our groceries on-line now from a store not surrounding us, not supporting us. I belong to a group that every year our sales go down as we try to put on a circus, because they have to check with somebody outstate and the answer never comes. Thank you, Mr. President.

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SCHEER: Thank you, Senator Lowe and Senator McCollister. Senator Linehan, seeing no others wishing to speak, you're welcome to close on AM540.

LINEHAN: Thank you, Mr. President. Again, I want to thank Senator McCollister for prioritizing this bill, thank the rest of the Revenue Committee for getting it out of committee and here on the floor so we can move forward, and also thank the Speaker for getting it up. I would appreciate your green vote on AM540 and AM392. Thank you.

SCHEER: Thank you, Senator Linehan. The question before us is adoption of AM540. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record.

CLERK: 44 ayes, 0 nays, Mr. President, on the adoption of Senator Linehan's amendment.

SCHEER: AM540 is adopted. Seeing no one wishing to speak, Senator Linehan, you're welcome to close on AM392. She waives closing. The question before us is the adoption of AM392. All those in favor please vote aye; all those opposed vote nay. Have all voted that wish to? Please record, Mr. Clerk.

CLERK: 43 ayes, 0 nays, Mr. President, on the adoption of committee amendments.

SCHEER: AM392 is adopted. Seeing no one wishing to speak, Senator McCollister, you're welcome to close on LB284.

McCOLLISTER: Thank you, Mr. President. I would like to thank, once again, Senator Linehan for her support on this bill and for many of those of you that spoke this morning to help us establish a good record for LB284. And with that, I would encourage your green vote for LB284.

SCHEER: Thank you, Senator McCollister. The question before us is the advancement of LB284 to E&R Initial. All those in favor please vote aye; all opposed vote nay. Have all voted that wish to? Please record.

CLERK: 44 ayes, 0 nays, Mr. President, on the advancement of LB284.

SCHEER: LB284 is advanced to E&R Initial. Next item, Mister...oh, yeah. Items, Mr. Clerk?

CLERK: I do, Mr. President. Thank you. I have hearing notices from the Appropriations Committee, those offered by Senator Stinner; and from the Government Committee, those signed

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by Senator Brewer. I have a conflict of interest statement to be filed by Senator Wayne. And, Mr. President, an explanation of vote with respect to bills read on Final Reading last week (re: LB82, LB117, LB190, LB11, LB32, LB42, LB56, LB57, LB61, LB63, LB65, LB70, LB75, LB78, LB102, LB115, LB121, LB193, LB194, LB196, LB258, LB259, LB355, LB71, LB122, LB301, LB359, LB7, LB55, LB146, LB154, LB264). That's all that I have. Mr. President, returning to LB318, it was a bill originally introduced by Senator McCollister. (Read title.) Senator McCollister presented his bill last week, Mr. President. He opened on his bill. Senator Brewer then filed a motion to indefinitely postpone. That motion is pending, Mr. President.

SCHEER: Thank you, Mr. Clerk. We'll first have Senator McCollister remind us of LB318's intent, and we will then have Senator Brewer refresh us on his motion. Senator McColl--

McCOLLISTER: Thank you, Mr. President. LB318 is an innocuous bill. It simply harmonizes some of the regulations with regard to product liens, and petroleum product liens in particular. And so petroleum product liens had a different standard and so we're simply harmonizing those statutes to make them all consistent. Thank you, Mr. President.

SCHEER: Thank you, Senator McCollister. Senator Brewer, you're recognized.

BREWER: Thank you, Mr. President. I wish to withdraw that IPP at this time.

SCHEER: Seeing no objections, granted.

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

SCHEER: Turning to discussion, seeing no discussion, Senator McCollister, you're welcome to close on LB318. He waives closing. The question before us is the adoption of LB318 to E&R Initial. All those in favor please vote aye; all opposed vote nay. Have all voted that wish to? Please record.

CLERK: 33 ayes, 0 nays on the advancement of LB318, Mr. President.

SCHEER: LB318 is advanced to E&R Initial. Next item, Mr. Clerk.

CLERK: Mr. President, LB443 was a bill by Senator McCollister. (Read title.) Introduced on January 18 of this year, referred to the Judiciary Committee. The bill was advanced to General File. I have no amendments to the bill at this time, Mr. President.

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SCHEER: Thank you, Mr. Clerk. Senator McCollister, you're welcome to open on LB443.

McCOLLISTER: Thank you, Mr. President. Colleagues, LB443 would recognize the principle that inmates must have a meaningful and confidential access with their counsel. LB443 would extend the existing protection that city and county jail inmates currently have to inmates in the Department of Correctional Services. Last session, I introduced LB776, a bill to provide the Crime Commission with the authority to regulate the cost of telephone calls by inmates to our county and city jails. LB776 was passed by the Legislature and signed into law by the Governor. LB776 provided that fees would not be assessed for calls made by inmates to their attorneys, nor would they be monitored or recorded by jail staff or law enforcement. During the public hearing and floor debate for LB776, members heard numerous reports about calls made by inmates to their attorneys that were improperly monitored and recorded by authorities. Courts have been clear that this is a violation of the Sixth Amendment, right to counsel. After passage of LB776, it is now a violation of Nebraska law. LB443 would provide that inmates be able to contact their attorneys by telephone at no charge to them in the state correctional system. Additionally, their calls would not be subject to monitoring or recording by prison staff or law enforcement. Many of the inmates in our state prisons are indigent. They cannot afford the cost of telephone calls. While the state prison system does not charge excessive and arbitrary fees that some companies have charged in jails, the cost of calls can be a financial hardship when they are directed to inmates' attorneys. LB443 would seek to mitigate the financial hardships by DCS inmates and their attorneys. It's my hope that prisons will allow meaningful telephone access to inmates to their attorneys. This means of communication is much more convenient for all involved. It would reduce attorney travel time, and in person meeting time with clients, which saves money. Since many of these attorneys are appointed at county expense, it would reduce court-appointed costs. Prison staff would undoubtedly spend less time and effort accommodating in-person professional visits by attorneys. We should make sure that such telephonic communication is affordable and protected. LB443 received strong support from the Judiciary Committee on a vote of 7-0 with one member absent and there is no negative testimony during the hearing. Thank you, Mr. President.

SCHEER: Thank you, Senator McCollister. Senator Slama, you're recognized.

SLAMA: Thank you, Mr. President. I rise today in support of LB443. Like Senator McCollister mentioned, LB443 advanced out of committee 7-0 with one member absent. It makes important clarifications on inmate rights with regards to attorney contact and inmate-attorney privilege. We heard testimony that confirmed that there were some improper recordings of inmate conversations with attorneys when meeting with them via videoconferencing or telephone calls. One question I did have about this bill was the fiscal note. So the LFO attached a cost of this bill at around \$25,000. So just to read from the fiscal note, DCS states that in 2018, calls between an inmate and his or her attorney cost \$5,800. If this bill passes, DCS estimates that the cost of

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these calls will increase to \$25,000. Although the cost of inmate to attorney calls increasing from 5,800 to 25,000 seems high, again, this is quoting the fiscal note, the LFO does not have any basis to disagree. If this cost increase does occur as estimated by DCS, they should be able to handle it within their current appropriation. So this would not extend the DCS appropriation at all. The DCS noted in their estimation of cost that LB443 would allow inmates to communicate with their attorneys without a charge or without monitoring or recording. Presently inmates and/or the attorney pay the phone provider for the phone call. NDCS estimates that if LB443 passes, the number of attorney phone calls will increase and the cost the department-- and will cost the department approximately \$25,000. In 2018, there were a total of 16,957 legal calls made, which cost the inmates and/or the attorney approximately \$5,800. And in analyzing this fiscal note, I still think this seems incredibly high and that we're looking at somewhere along the lines of a 500 percent increase in inmates to attorney phone calls. So I was wondering if Senator McCollister would yield to a question.

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Sure.

SLAMA: Senator McCollister, have you received any clarification from either LFO or the DCS on that fiscal note?

McCOLLISTER: Now, we received two fiscal notes, as you indicated. One from the Legislative Fiscal Office and one from DCS and they weren't consistent at all. The Legislative Fiscal Office, which I tend to use more often than the departments, indicated there would be no cost in the-- DCS could easily absorb that cost. In addition, there would be some cost saving, particularly to counties where telephone calls might suffice and thereby avoid a visit by the attorney. So there's cost savings to the counties to be sure and maybe a slight increase to DCS.

SLAMA: That's all I have. Thank you.

SCHEER: Thank you, Senator Slama and Senator McCollister. (Visitors introduced.) Returning to discussion, those waiting in the queue, Senator Albrecht, Friesen, Groene, and others. Senator Albrecht, you're recognized.

ALBRECHT: Thank you, Speaker Scheer. Would Senator McCollister yield to a question?

SCHEER: Senator McCollister, would you please yield?

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McCOLLISTER: Of course.

ALBRECHT: Okay. Picking up off of Senator Slama's questions about this fiscal note, I do believe your bill last year kind of talked a little bit about this as well, and I know at that time there was a little bit of concern about the jails in my district that would be assuming, obviously, some of these costs right now. Who is-- you said the Department of Correctional Services shall have reasonable access to their attorneys, but if the inmate is no longer paying the bill and the attorney isn't paying it, then who would be paying this bill?

McCOLLISTER: Well, as the legislative fiscal note indicated, Senator, the charge, which is de minimis or modest at best when you consider the overall budget of DCS, they would be picking up that expense. But, you know, I think we need to make sure that we understand that inmates need to be given reasonable access to their attorneys. That's guaranteed by the Sixth Amendment.

ALBRECHT: Okay. So walk me through what happens right now with an inmate if they do not have the funding to talk to an attorney, does the attorney right now bill the Department of Correctional Services, or how is that funding taken care of today?

McCOLLISTER: Well, I would guess that-- I'm not exactly sure I can answer the question, Senator, but I would guess DCS affords the inmate some way to communicate with their attorney.

ALBRECHT: Okay. So would you think possibly that the counties would-- would this be an unfunded mandate on the county today for them to be using those services?

McCOLLISTER: Now, as I indicated in my opening that the bill that we had last year for cities and counties passed, so that's no longer the subject of this bill. We're simply looking at the facilities of DCS, the Department of Correctional Services.

ALBRECHT: Okay. So we're not talking about cities and counties within this one, we're just talking about the state Correctional Service facility?

McCOLLISTER: Yes, that's correct.

ALBRECHT: And what kind of budget do they have right now for these kind of fees? Do you know?

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McCOLLISTER: I sure don't. But once again, I'm using the Legislative Fiscal Office fiscal note to indicate that it's a small amount of money, and I believe that to be the case.

ALBRECHT: Well, again, I'll listen to the conversation, but I just feel like the problems that we're having currently trying to fund the department is going to be excessive in allowing these folks to have phone calls and visits. So thank you.

SCHEER: Thank you, Senator Albrecht and Senator McCollister. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. Senator McCollister, would you yield to some questions?

SCHEER: Senator McCollister, would you please yield again?

McCOLLISTER: Certainly.

FRIESEN: So when you're talking, the persons that are allowed this, we're not talking about any county inmates, it's just State Department of Corrections?

McCOLLISTER: Yes, sir.

FRIESEN: Okay. And so is there any definition of reasonable? In the past when we've talked about bills a little bit, and I think this was probably last year or the year before, we've had certain people that just want to call their attorney every half hour every day, twice a day. Is there any-- what is the definition of reasonable? I don't know that I have the answer to this, but if a prisoner requests to make a phone call to their attorney, would they be required to make ten calls in one day if they want to talk to their attorney?

McCOLLISTER: Well, I would guess the attorney would have some reluctance to give unfettered access. I think the attorney at some point would simply refuse to take the calls if it became excessive.

FRIESEN: But it wouldn't stop the prisoner from asking to be taken to a phone to try to make that call.

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McCOLLISTER: Well, I think the DCS would probably have some way to control it if it was excessive. I would encourage them to refuse the prisoner from excessive request to use the telephone.

FRIESEN: Does this bill allow them to develop those rules and regs that would keep it, because in here there's no definition of what is reasonable.

McCOLLISTER: Well, that's an issue that I would be willing to look at and if we want to take a look at that between General and Select, I would be happy to incorporate that into the bill.

FRIESEN: Thank you, Senator McCollister. So this is what I'm a little bit concerned about is that in the past, I mean, you do have-- sometimes you have a prisoner who just wants to get out of his cell, or whatever else, he's going to request to go make a phone call to his attorney. And since there's no definition of what is reasonable here, if he wants to go there four times a day, how can they deny him that because he wants to call his attorney? Now, the attorney obviously can refuse the phone call, but in the meantime, somebody has to go get him out of his cell, take him to a phone, and they have to make that call. And so I am concerned with the amount of time that it takes, and with staffing problems they're already having that we suddenly overload them with even more of this if prisoners continue to suddenly, excessively, ask to speak to their attorney. Because it doesn't say that the attorney has to take the call, it just, I want to go to the phone and I want to call my attorney. Doesn't have to answer the phone. But I get out of my cell. I get to go for a walk. I'm concerned that we need to work on some sort of definition or allow the Department of Correctional Services to develop that criteria. Thank you, Mr. President.

SCHEER: Thank you, Senator Friesen and Senator McCollister. Senator Groene, you're recognized.

GROENE: Thank you, Mr. President. I worked extensively with Senator McCollister on that jail bill last year to clean it up to make sure it wasn't abused, this right and others that were in that bill. But I'm a little bit concerned about this one. There's a difference here, folks. When you're in the city jail or the county jail, you are charged with a crime. You are innocent until proven guilty and you need access to your attorney before your trial comes up. We are talking about the guilty here, the ones who have been incarcerated because they have been charged and found guilty. There is no time here, limit because of a speedy trial that they need access to their attorney. Senator McCollister, would you answer a question?

SCHEER: Senator McCollister, would you please yield?

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McCOLLISTER: Yes.

GROENE: The penitentiary or the state prisons can't monitor or record the phone call?

McCOLLISTER: That's correct.

GROENE: So you've got a drug dealer, runs a pretty good network out there. He has a hard time contacting his boys. He has an attorney. So now he can call him every day and say, deliver this much. You can take a hit on this guy. You do this, you do that, and you give instructions, we run my drug cartel through that lawyer. Could that happen?

McCOLLISTER: Well, under current law, they could do it now. They simply have to pay for the calls. So Senator Friesen's question and your question, which are similar, this right exists for the inmates to make calls to their attorneys.

GROENE: Well, excuse me, but there is new language here, without monitoring or recording by department or law enforcement.

McCOLLISTER: Right. Well, that's what we put into the statute last year if you'll recall.

GROENE: Yes, but that was a little different. They were not found guilty yet. They were free individuals, not guilty until proven. They were talking to their lawyer. We're talking about a convicted individual here who is going to make calls outside the prison without monitoring or recording.

McCOLLISTER: I'm not sure the legal system makes a distinction between those that have been found guilty versus those that are simply accused. They all have the right to contact their attorneys. They have that right under the Sixth Amendment. So the distinction we're simply making in this bill is that they should do it at no cost and--

GROENE: Well, I'll have to look at the old-- thank you. But you've got new language here that says the committed offender and without monitoring or recording by the department or law enforcement. I have a real problem with that who these guys are calling, why they are calling them, and who they're defining as their attorney. And a drug dealer out there that doesn't have a good attorney, running, helping him run his business. Thank you, Mr. President.

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SCHEER: Thank you, Senator Groene and Senator McCollister. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. President. I have a question for Senator McCollister, or two.

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Yes.

CLEMENTS: Thank you, Senator McCollister. I have not studied this deeply. I've not been involved in the Judiciary or Corrections very much, but I was wondering who pays for these phone calls now? How are they paid for?

McCOLLISTER: Senator, the inmates and their families pay for those calls. And I should note that the calls are very small in cost, but it's the inmates and their families. By the way, Senator, I should note that the DCS did not oppose this bill. They came in neutral. Did not even speak at all. So the issue of the financial liability and the cost, I think, is a nonissue, in my view.

CLEMENTS: And the cost of the call, how is the current cost rate set?

McCOLLISTER: Set by the department that regulates such things, all the services for the Department of Correctional Services. There's a body and I've forgotten the name, but I can certainly get it for you.

CLEMENTS: So Corrections is able to charge more or less if they like?

McCOLLISTER: Well, no, the rates are set by this body that talks about whether or not the inmates are treated according to Nebraska statutes. They determine the cost of those telephone calls.

CLEMENTS: Okay. We have a set rate in statute then. Is that what you're saying?

McCOLLISTER: It's not set in statute. This unique body that regulates DCS, they themselves set the rates, so it's not set in statute.

CLEMENTS: Oh, okay, excuse me, an overseeing commission then. Regarding the recording prohibition, is recording allowed now?

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McCOLLISTER: Yes, it is, but not with attorneys. So if an inmate wants to talk to their family or wife or whoever, those calls are recorded and that's entirely proper.

CLEMENTS: But it is already prohibited for the Corrections to record an attorney phone call? Is that right?

McCOLLISTER: Yes.

CLEMENTS: This just restating that, is that what this is doing?

McCOLLISTER: Well, as you recall, when we did the bill last year, that yeah, there was a prohibition against recording the calls, but some counties either on purpose or inadvertently did it. And so I just restated something that somebody-- that we all needed to pay attention to.

CLEMENTS: All right. And regarding the county jails, are counties also now prohibited from having a fee for attorney phone call?

McCOLLISTER: Yes. But they can levy a modest fee, calls to their family members and wives and whoever else. But it's just the calls to the attorneys are required to be at no cost.

CLEMENTS: But this does change, for counties currently can charge for attorney phone call, but this would prohibit them in the future?

McCOLLISTER: Now, last year when we passed the bill, prohibited counties from charging for attorneys.

CLEMENTS: Oh, all right.

McCOLLISTER: But like I say, they can charge for other calls.

CLEMENTS: All right. And how do we verify that it is an attorney that's being called?

McCOLLISTER: Well, the numbers for the attorneys, and this applies for both DCS and the counties and cities, are programmed into--

SCHEER: One minute.

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McCOLLISTER: --the phone system that the jail systems have. And so it's based on the telephone number of the attorney.

CLEMENTS: Oh, I see. So there already is tracking on that basis. Well, thank you, Senator McCollister. I'm very cautious about this bill as well. I think, I'm not sure that it's necessary and I'm not supporting it at this time. Thank you, Mr. Speaker.

SCHEER: Thank you, Senator Clements and Senator McCollister. Senator Brewer, you're recognized.

BREWER: Thank you, Mr. President. A week ago I might not have come to the mike, but for some reason I have been inspired to go ahead and question some issues here. Let's start by asking the question, I'd like to direct a question to Senator McCollister.

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Sure.

BREWER: First off, I guess, the obvious question is who brought you this bill?

McCOLLISTER: Spike from ACLU. I've been working with them on the county bill that we passed last year.

BREWER: All right. Run along those lines, if I'm not mistaken, which you indicated in your opening is that we are currently in violation of the Sixth Amendment. Is that correct?

McCOLLISTER: Absolutely not, no. We want to make sure that we aren't in violation of the Sixth Amendment. We want to encourage counties, cities, and the DCS not to record those confidential telephone calls with their attorneys. No, as far as I know, we are not in violation.

BREWER: So is this more as an effort to help lawyers or prisoners?

McCOLLISTER: Well, the effort is to reduce cost to defense attorneys. Now they often have to come down and actually meet with their clients, and by availing the inmates of this service, they should be able to save some money on the county level.

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BREWER: All right. So we're saving defense attorneys money because they're hard up. All right. Let's take a look at some issues here. Now, I know that it is not common for many in this body to spend much time in the Nebraska State Penitentiary or anywhere else, I was given an opportunity to be on the Prison Task Force. And I guess I was inspired by some of the organizations invited me to be part of their events at the prison, the Lifers, the Native American Club, the Veterans, the Bible study they do out there, the Defy Program. So, I think it's safe to say that I've spent more time in the prison, voluntarily, than probably anybody else in the body here. And my concern is this, that right now the Nebraska State Penitentiary and the Department of Corrections is struggling to meet their requirements and I'm not sure we're helping them by putting additional tasking on them without giving them some resources to help. We need more guards. We need improvements in the facilities, but this isn't the issue. And so when I went and looked at your bill, and if there is anything I've learned from watching Senator Chambers is, that one should read a bill before he votes on a bill or it will come back to bite you. We look on page 2-- I'll give you a chance to get to it here. We'll start with line 3. The obvious question is, if we're going to line through the Department of Correctional Services, why do we line through that? That's a question. Well, it's still rolling. I never unyielded.

SCHEER: One minute. Senator McCollister, I think that was directed toward you.

McCOLLISTER: Oh, well, the line 3 had to do with medical facilities. And I think the desire was to make it more general and apply throughout the state. So I think that was the effort that we outlined in the bill.

BREWER: Okay. With that said-- Mr. President, I'd like to request another question, please.

SCHEER: Senator McCollister, would you please yield again?

McCOLLISTER: Yes.

BREWER: All right. Did we not just, in the previous conversation, talk about how we're not adding any additional requirements on the counties and the cities?

SCHEER: Time, Senator.

BREWER: Thank you, Mr. President.

SCHEER: Thank you, Senator Brewer and Senator McCollister. Senator McCollister, you're next in the queue.

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McCOLLISTER: I waive. Thank you.

SCHEER: Thank you, Senator McCollister. Senator Williams, you're recognized.

WILLIAMS: Thank you, Mr. President, and good morning, again. There has been a lot of discussion concerning LB443 and I certainly am supportive of it, and let me explain a little bit why and a little bit how these costs get shifted. Yes, the people that are in the Pen, whether they be in Tecumseh or DNE or the State Penitentiary here in Lincoln, yes, they are guilty of a crime. But let's not forget that in many cases, they are being charged with other legal actions that they are having to defend themselves from and the majority of them are dealing with court-appointed attorneys, and they're either appointed by the state, if they were charged with a crime by the state, or those attorneys are being provided by the county at the county's cost if they were charged and incarcerated and charged with a crime that affects the county. So when we're talking about reducing fees and reducing the workload, the allowing of these people to use a telephone stops them from-- that attorney from having to make a trip from Omaha to Tecumseh, to meet for five minutes with their client, to sign a document, or those kind of things. And when you go to Tecumseh, it uses a lot of manpower there of people in the prison to monitor the situation, do the searches, line up that, versus a short five or ten-minute phone call that are limited to the attorney. So let's walk through an example of that. Let's assume a person is charged with a state crime and they have a state-appointed attorney and they're in Tecumseh and the state-appointed attorney that represents them is from here in Lincoln. So you have the travel time, and you have all of that, and the state is paying that. The more important one that I want you to think about, because we oftentimes talk about these unfunded mandates, is if those charges are from the county and the appointed attorney is a county-appointed public defender, that person then that's being paid by the county, instead of being able to have a quick telephone call with the inmate, has to make that trip to either Tecumseh or wherever they're incarcerated, costing more money and costing the county that money, not the state that money. So I would argue that these phone calls that may cost the state \$25,000, according to the fiscal note, will actually be saving substantial money for the counties and the state on the appointed attorneys that represent these people. I think again it's important that inmates, just like you and I, have the opportunity for proper representation, and I think LB443 leads us to better representation than they currently have. Therefore, I stand in support of LB443. Thank you, Mr. President.

SCHEER: Thank you, Senator Williams. Senator Bolz, you're recognized.

BOLZ: Thank you, Mr. President. I wanted to very briefly just respond to some of the questions regarding the fiscal note that came up on the floor this morning and share that the agency budget request references access telephones twice. The agency budget request is a part of the budget briefing documents that can be found on the state budget page. I'd be happy to direct you to these

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materials if you need a little direction in terms of finding them. But the agency budget request references their requirements to maintain inmate rights under the U.S. Constitution and state law by providing an inmate calling system for inmate telephone access to courts and attorneys, and then later references that they will provide and maintain inmate rates under the U.S. Constitution and state law to ensure unimpeded access to healthcare services, including ensuring unimpeded access to courts by providing legal reference, library, and avenues of communication, including access to legal visits, telephone, and written correspondence. So colleagues, I guess I don't want us to be penny wise and pound foolish when we think about these kinds of investments. We already have these obligations, those obligations are referenced in the agency budget request. I would also point out to you that the total budget for the Department of Correctional Services is \$215,420,240. So the amount of money that we're spending on the Department of Correctional Services is pretty significant and the potential impact is less than .001 percent of that budget for this bill. So it's the kind of thing that can be absorbed. Now, I'm not questioning anybody's concern about spending any amount of taxpayer dollars. But I am trying to put that in context and argue that, in fact, we are achieving goals already established by the Department of Correctional Services when we pay attention to making sure that people have access to their attorneys. We wouldn't want any of these issues to become larger legal issues and cost more money down the line. So just wanted to make sure that folks were aware of the budget materials existing and available and put it in the context of the budget as a whole. Thank you, Mr. President.

SCHEER: Thank you, Senator Bolz. Senator Brewer, you're recognized.

BREWER: Thank you, Mr. President. Would Senator McCollister yield to a question or two?

SCHEER: Senator McCollister, would you please yield?

McCOLLISTER: Absolutely.

BREWER: All right, let's go back to the bill. Again, whether I like it or don't like the bill isn't the question here. It's if we read the bill and we try and understand why it is structured the way it is, that's the question I was in the middle of when I ran out of time. So let's go back to page 2, line 3. Now, it says the part that's being scratched is, each committed felon to the Department of Correctional Services, all of that is scratched. Why, if it is-- you said it was directing toward medical. It is if you keep reading on the line. But why would you take out the very specific organization that is going to provide these services unless you were to make it a blanket statement for everyone who is incarcerated anywhere in Nebraska?

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McCOLLISTER: Well, Senator, the entire bill is directed to the Department of Correctional Services. So it's redundant to simply refer to it on line 3.

BREWER: All right. Well, I'm not sure I totally agree with that, but I will get another opportunity to talk that one, but while we're on it, let's talk about this. Okay, so the bad thing that's happening right now that caused you to write this bill and champion this bill isn't because you're a lawyer trying to make money, because you're not a lawyer, isn't that correct?

McCOLLISTER: That's true.

BREWER: Good. All right. So you've taken on this bill because right now there's some injustice going on that justifies the effort, the time, and the money that's going to result from this bill. Is that right?

McCOLLISTER: Well, I think we're trying to just make it easier for an attorney and his client to get together. Rather than requiring the attorney to come to the facility, we're simply enabling them to contact by telephone and have brief conversations. I think this is the intent of the bill and I need to also point out that sometimes these inmates are charged with other violations of law while they're in prison. So in those cases, they'll need their attorney for that as well.

BREWER: Well, it's not the prisoner issue that's chewing away at me right now, it's the helping the lawyer part that's grading me pretty raw. But if this bill does not apply-- and let's make sure we get this on the record, that this will not in any way, shape, or form apply to counties or city jails. This is only for the Nebraska Correctional Services.

McCOLLISTER: That's correct.

BREWER: All right.

McCOLLISTER: It's Chapter 83 of Nebraska statute. So that embodies the Department of Correctional Services.

BREWER: All right. Thank you, Mr. President.

SCHEER: Thank you, Senator Brewer and Senator McCollister. Senator Chambers, you're recognized.

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CHAMBERS: Thank you. Mr. President, members of the Legislature, I support this bill. First of all, there is a constitutional protection and a state protection for attorney-client conversations. An attorney should not have to travel long distances to talk to the client when a telephone call will do it. People who are not locked up can have such telephone calls without there being monitoring, recording, and so forth. There were some officials-- I wish I had the article, but anyway, some employees had listened in on a phone call or recorded it or something and because it violated the lawyer-client privilege and led to the accused not having a fair trial, everything was dismissed. This is not a controversial bill. As Senator McCollister pointed out, it's in the area of the law that deals with the Department of Correctional Services, so rather than give the whole title, Department of Correctional Services every time you refer, you just say the department. So in two places, I believe, in the bill you eliminate the full title and substitute the word, department. As for what Senator Groene was talking about, the reason there would be no monitoring, no listening in, it's a lawyer-client privilege that is being protected. That is something which should not be put into this silliness that sometimes is brought up by these people who represent the counties about unfunded mandates and so forth. The huge budget of the Department of Corrections is not going to be affected by \$25,000. Now, the Fiscal Office thought that amount might be high, because prior to this bill, the amount, the cost of these calls was 5,000-something dollars. The mere enactment of this law is not going to cause a 400-fold increase in the number and nature of the calls. But the Fiscal Office said they had no factual basis--I'm paraphrasing--for disagreeing with what was said by the department, but they should easily be able to absorb it. You'll notice, if you read the committee statement, that nobody from the Department of Correctional Services said anything. If it was going to cost them money, if it was going to interfere with the security of the institution, the department would have been there. When you have people on the floor speculating who do not spend a lot of time dealing with these issues, the questions are valid to be asked. But the answers will show, if they're listened to, that there is nothing sinister, there is nothing conspiratorial, and I would have to take issue with my good friend, Senator Brewer, about he has spent more time in that institution without being sentenced than anybody else. I was the one, who when I came here, took on the issue of prison reform. That's what it was called in those days. My work was recognized nationally. There were articles written about it. There were lawyers and judges who applauded it and said that I was going the right direction, I should not be discouraged. They had segregation by race in the Nebraska Penitentiary.

WILLIAMS: One minute.

CHAMBERS: They had segregation by race at the women's prison. These are things that white people don't care about. Legislators don't care about. I had to personally manage to find people who would contribute money to put a pool table at York. I had to get books for them. I couldn't afford to buy them, so what some companies did was to remove the cover or draw a line through it so it could not be resold and delivered boxes of books to the women. Those are things that I

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did. And I could go on and on and on and when people haven't been here long, they're not aware of who did what and why things are like they are. And in fact, I'm going to put my light on and I can wrap it up the next time I'm recognized. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Chambers. Senator Geist, you're recognized.

GEIST: Yes, thank you, Mr. President, and I wonder if Senator McCollister would yield to a question, please?

WILLIAMS: Senator McCollister, would you yield?

McCOLLISTER: Yes, I will.

GEIST: Thank you. This is a part of Corrections I don't know much about and I wondered if you could let me know how this process works. When an inmate makes a phone call, how do we know who they're calling?

McCOLLISTER: Now, once again, the phone numbers for the attorneys are recorded in the system that the DCS uses. They contract with a company to monitor-- at least record the phone numbers that are allowed and then charge for those calls that are outside of the free system.

GEIST: Okay. So when they're charging for the call, once again, sorry for my ignorant questions, but when they're charging for the call, are they just charging, for instance, a long distance call or are they charging the attorney hourly rate?

McCOLLISTER: Well, when a call is made to the attorney, at least under my bill, there will be no charge. But when a call is made to some third party, either the inmate or the family inmate need to have a prepaid card that they can use to absorb some of the cost.

GEIST: Okay. Well, you said there's no charge. Do you mean there is no charge to the inmate? Is that what you're saying, that there is no charge?

McCOLLISTER: Well, as it stands, yes. You can charge the inmate for a call to an attorney. But under the purpose of this bill, that call would be at no charge. But once again, that third party contractor that we have will maintain a system of free phone numbers, or free phone number for the attorney and all other phone numbers will be charge cards.

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GEIST: Okay. So the charge that's on the fiscal note is the charge for the phone call and is that charge for the phone call for the call itself, or is it a charge for the hourly rate of the attorney?

McCOLLISTER: No. Attorney fees are not included in this bill in any way.

GEIST: Okay.

McCOLLISTER: And so the fiscal note-- and once again, there is no legislative fiscal note at all. It's for the calls that are being made to attorneys that are now being charged, and under the purview of this bill would not be charged.

GEIST: Okay. Thank you. That helps clarify for me. I yield the rest of my time, Mr. President.

WILLIAMS: Thank you, Senator Geist and Senator McCollister. Senator Chambers, you're recognized.

CHAMBERS: Mr. President, I'm going to say again, there are things that happened and you new people who come here think that that's the way it always has been because that's the way it always should be. Today you got the pink slip that I was telling you about and look at the amount of money you're getting, not because you senators or any of your complexion did it, somebody who thought it ought to be done did it. I have done the same thing with reference to Corrections, the schools, every area where people were being treated in a way that I thought was unfair, I invited myself into that area. I intruded and that's what I'll continue to do. I don't want this bill to be lost because of other issues. It's not money because Corrections knows that this can be absorbed. It does not create any problem with reference to security. And if Senator Groene and others of his ilk would take time to learn what these issues are, they wouldn't befuddle the members on this floor because you listen to him because he's one of you instead of listening to somebody who knows something. That's what irritates me. And when you start popping up on these issues that I know you have no interest in, then I know your interest is in something else. But there is a real situation that needs to be addressed and this bill addresses it. Look at the pink slip. You want me to get a law and say, we will repeal the statute that I got adopted so that you can no longer get expenses during session? Is that what you want? No, you're willing to accept the results of the hard work, but you hate the one that did it. You will not undertake it now. So just get out of my way and stay out of the way of people who are trying to do something. Limit yourself to what your political party tells you to do. If the Governor appointed you, do what the Governor tells you to do, but don't try to step beyond the realm of knowledge that you have. In football, they talk about players playing within themselves, not playing with themselves for those Christians who have dirty minds, they play within themselves. That means they know what their abilities are and they develop those abilities and they don't try to do things beyond what

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they're able to do because they could hurt the team. There are a lot of analogies in this society that would be instructional if you would pay attention and if you would think beyond the end of your nose. When it comes to trying to get the rights of LGBTQ people, if you could get off the crotch watch, watch your own crotch. Watch the crotches of those you deal with and leave other people alone. If you spent more time with your own business, you wouldn't have so much time to stick your nose in other people's business and you know why I know you don't care? Because you don't show that concern when we're talking about people who need mental healthcare, who need ordinary routine healthcare for themselves and their children. You don't care about that. You talk about being pro-life. No, you're anti-abortion and you want to rule women and control them. And as long as you can dictate to a woman about the thing that is most essential to her, you own her, and that's what the Catholic Church did. There were nuns in orders, orders of nuns who were kept--

WILLIAMS: One minute.

CHAMBERS: --specifically for the purpose of pleasuring bishops, archbishops, and those of higher rank in the Catholic Church. One testified and she's now a Catholic theologian. She was impregnated three times and the priest got her three abortions and the hierarchy knew it. Then they have these fools running around here telling women, you shouldn't get an abortion and there are Catholic priests who got Catholic doctors in hospitals who perform abortions on nuns. That's why I get so upset and irritated. You don't know the meaning of the word "justice." You don't know the meaning of the word "compassion." And you certainly don't know the meaning of the advice to mind your own business. The "Bible" even uses the term, busybodies. Busybodying. But you don't read the "Bible."

WILLIAMS: Time, Senator.

CHAMBERS: Thank you, Mr. President.

WILLIAMS: Thank you, Senator Chambers. You're next in the queue and you may continue. This is your third opportunity.

CHAMBERS: Thank you, Mr. President. I wish you all had left me alone this morning and just looked at what it is that this bill does. Why will not the Department of Corrections be on that committee statement trying to change the bill or opposing it? This facilitates what the Department of Corrections will do. For one thing, you don't have a human being, a person there that you have to watch and take through all your security processes. It's a phone call. Let Senator Groene talk to one of his judges, but they don't want to go to the place where they can get information. They can come in here and fulminate and raise a little dust and you all follow

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through because you're not going to read and pay attention either. This is what I would call a peewee bill. Not that it's unimportant, but it's inconsequential in terms of the issues so many of you all are worried about. It doesn't contribute to big government. It doesn't put in place an undue burden as far as regulation. None of that. And you cannot do away with the attorney-client privilege because that's protected by the law and the constitution. So if that's what's bothering you, you're being bothered about something you cannot have any impact on. Learn the difference between things that are important and things that are not. The expression was mentioned, don't be penny wise and pound foolish. When I take time on this floor, I'm going to make you know why I'm doing it. And I'm going to deal with substantive issues. And while I'm about it, you should hear some of the calls of these hateful Christian patriots who were speaking in behalf of the flag, the profanity, the racism, the threats. That's what America is to them. That's what the American flag means to them. I was at a store called Russ's the other day and some big, old, white guy in camouflage clothes walked by and said, don't get hung by that rag. I said, hey man, that's a good sentiment. I appreciate it. He said, I'd like to do it myself. Well, I said, a lot of people would like to try to do it. And there I was, little me, and big him, and he walked on off. They fat mouth, they are cowards, they are bullies. And that flag, that rag, doesn't mean to other people what it means to you. And not one of you thought you ought to look and inquire into why there's a swastika-shaped building on a naval base in the United States of America. And they have sidewalks shaped like two S's, the SS, that is Nazi. You don't know what the swastika is for? They built the building in the shape of a swastika on an American naval base and you all have the nerve to be here in your pontificating hypocrisy talking about a piece of fabric and cloth, and you don't care anything about what you claim that it represents. And then when somebody speaks, the first thing you say, you ought to go someplace else. Well, I thought that rag dealt with freedom of speech. Huh?

WILLIAMS: One minute.

CHAMBERS: And it has to deal with things other than this trifle, little petty stuff that you talk about. It has to do with those things that infuriate people in the way you're infuriated by me and any black man who has the audacity to speak up or any LGBTQ person who will speak up. That's when you want to squelch it. If they're going along with the party line, Donald Trump, the biggest fool who ever sat in the White House. And nobody on this floor mentions any of the craziness he's putting out there. Rand Paul finally had to say, I'm not going to vote for what this man is talking about. And all on the western front, which is what Nebraska is, quiet. Not a whisper. And you all are going to tell me not to call a flag a rag? That's what upsets you? You ought to be glad I say it because it gets your juices jangling.

WILLIAMS: Time, Senator.

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CHAMBERS: Thank you, Mr. President.

WILLIAMS: Thank you, Senator Chambers. Seeing no one in the queue, Senator McCollister, you're recognized to close on the advancement of LB443.

McCOLLISTER: Thank you, Mr. President, and thank you all for participating in McCollister day in the Legislature. As we have figured out, this is a bill that actually reduce costs, reduce cost to the counties because their attorneys defending these inmates will no longer have to drive to the Penitentiary or whatever facility the person is housed and they can actually just make a phone call. It's a better way to go and actually saves counties money. And we should also note that the DCS took no position on the bill. No position. And the Legislative Fiscal Office indicated that the cost could be easily absorbed by DCS. So I think in a budget of a quarter of a billion dollars, they can absorb that. So with that, my friends, please vote green. And I would ask, Mr. President, if we could have a call on the house.

WILLIAMS: There's been a request to place the house under call. All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

CLERK: 26 ayes, 4 nays to place the house under call.

WILLIAMS: 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 McDonnell, Senator Wayne, please return to the Chamber. The house is under call. All members are present. Senator McCollister, would you like to proceed with a machine vote or a roll call? Roll call vote has been requested in regular order. The question is the advancement of LB443 to E&R Initial. Mr. Clerk.

CLERK: (Roll call vote taken.) 28 ayes, 11 nays, Mr. President, on the advancement of the bill.

WILLIAMS: The bill advances. Items, Mr. Clerk?

CLERK: I do, Mr. President, thank you.

WILLIAMS: Mr. Clerk, we'll return to General File. Raise the call first, sorry about that. Mr. Clerk, we'll return to General file, LB667-- LB627, excuse me.

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CLERK: Mr. President, LB627 is bill by Senator Pansing Brooks. (Read title.) The bill was introduced on January 23 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. At this time I have no amendments pending to the bill, Mr. President.

WILLIAMS: Senator Pansing Brooks, you're recognized to open on LB627.

PANSING BROOKS: Thank you, Mr. President, and members of the body. LB627 is a bill that is near and dear to my heart. It prohibits employment discrimination based on sexual orientation and gender identity. First, I want to say to my friends, constituents, coworkers, and darling family, do not lose heart by-- over the things that you may hear today. Many of us care about you and embrace you. The conservative members of the Omaha and Lincoln Chambers value and respect you, and want you here to work. I apologize in advance for any hurtful or hateful things that you may hear today. The negative voices are holding on to a primitive fear that valuing and protecting you somehow delegitimizes them. Clearly, society is changing. Clearly, Nebraska will ultimately see the light. To my colleagues, if you feel compelled to stand up today and say, I like LGBTQ people, but-- please consider keeping your light off. Whatever follows is hurtful and founded upon a millennia of homophobic rhetoric. My mom used to say, if you don't have anything kind to say, then don't say anything. I would modify her advice and say, if you don't have anything kind to say about a vulnerable group of Nebraskans, please say nothing. Your vote will speak volumes. I am grateful to the many people who went to the hearing on LB627 and made their voices heard. I, too, am one who wants my voice heard because this issue is deeply personal to me, just as it is to our brothers and sisters in Nebraska and across the nation. My son, Taylor, said a rainbow would appear over the Capitol on the day of the hearing for this bill. And my heart melted when someone actually sent me a picture of a rainbow over our Capitol on that day. Well, this morning when I arose, there was a rainbow painted on the wall in my bedroom. I have hope and I am fortified by the divine love surrounding this issue. To be sure, there are many practical reasons to advance LB627, but the extension of love and kindness to a community that has been marginalized is every bit as important. Under LB627, it would be unlawful employment practice for an employer, an employment agency, or a labor organization to discriminate against an individual on the basis of sexual orientation or gender identity. The act applies to employers with 15 or more employees, employers with state contracts, the state of Nebraska, governmental agencies, and political subdivisions. Current law already prohibits discrimination based on race, color, religion, sex, disability, marital status, or national origin. So this is totally consistent with existing nondiscrimination statutes. The bill also maintains the current exemption for religious entities under Nebraska statute 48-1103, and the protections under the ministerial exception pursuant to the recent Supreme Court case, Hosanna-Tabor. This case protects Nebraskans against being fired simply for who they are and whom they love. How twisted and cruel to think that we can judge another's love, yet this is still happening in Nebraska today, even after we have made much progress on acceptance of the LGBTQ community. I will remind this body that this

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same bill has been advanced to the floor of the Legislature before, twice during my tenure, thanks to Senator Morfeld, most recently in 2017 when the Judiciary Committee moved it to General File on a 6-1 vote. This bill made it to the floor in the 2015-16 biennium and became my personal priority bill. While I am enormously disheartened that this bill did not pass, I rejoice with others regarding the strides that the LGBTQ community has made since 2015-16, most particularly on marriage equality. When I prioritized the bill in 2015, it was prior to the Obergefell Supreme Court decision that brought us marriage equality. At that time, Senator Morfeld and I talked to so many of you and you said, just let the Supreme Court decide and once they've decided, then we can move forward and protect the LGBTQ community as far as workplace, once they're able to get married. Well, we're here again and I am asking you to move forward and pass these protections. Today 67 percent of Americans, two-thirds of the country support marriage equality. Times have changed. Thank goodness. And it's making Nebraska's lack of movement on employment discrimination look absurd and archaic. Twenty-one states and the District of Columbia already offer employment protections for their LGBTQ citizens including our neighboring states of Colorado and Iowa. These protections provide competitive economic advantages to states that offer them because they increase the ability of employers to recruit and retain top talent across the country. In turn, it helps states and communities recruit employers to bring local jobs. The Human Rights Campaign provides a list of companies that have nondiscrimination policies. Prominent Nebraska businesses include the Union Pacific, Conagra, TD Ameritrade, and Blue Cross Blue Shield, Mutual of Omaha, Werner Enterprises, First Data, and many others offer this specific protection. Nebraska has one of the lowest unemployment rates in the country at 2.8 percent. While we want low unemployment rates, it can be a double-edged sword. We also want the business community to have trained workers so we can grow our economy, and yes, pay property taxes. We simply need more people to expand our work force. The State Chamber and local chambers across the state continually say the number one business issue is work force development. We had representatives of both the Lincoln and Omaha Chambers and young professionals in the hearing, and they explained why LB627 is crucial for our ability to recruit and retain, both employers and employees. It is clear that we are stifling our state's economy by not providing the basic civil rights protections for all Nebraska employees. When we are competing with our neighboring states for talent, including Iowa and Colorado, which do provide these protections, we can't afford to be a state that tells our young people that they aren't welcome here. Whether they're born here, go to school here, or just looking to make a life for themselves in our great state, we must have an open-for-business sign on our door. Omaha and its quest to compete with other cities enacted a similar nondiscrimination ordinance in 2012. The ordinance is working. Seven years have passed and the city is thriving economically. Churches are growing, and life is good in Omaha. Sincerely held religious beliefs have remained strong, and unaffected. The irony is that those religious beliefs are protected pursuant to the exact law we are seeking to amend here today to provide additional protections for other Nebraskans. It is dumbfounding to me that those who fought to be protected from discrimination for their sincerely held religious beliefs, now see nothing

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inconsistent in their battle to be able to legally discriminate against others. I hope we can do the same thing as Omaha at the state level and that we will become true to our state motto, adopted in 1867, equality before the law. That motto could act as a beacon, a beacon to welcome the young people we need in our state and the businesses we hope to recruit to our communities. To our LGBTQ citizens--

WILLIAMS: One minute.

PANSING BROOKS: --and future citizens let us proclaim, come, we want you here. Help us make Nebraska thrive. Colleagues, the time for adoption of this bill has arrived. I want to personally thank Senator Morfeld and Senator Chambers and many others for their-- for bringing these bills and waging these battles in years past. Finally, I would ask each of you to remember, we are a gathering of souls here, each charged with loving our neighbors as ourselves, casting no stones and fulfilling the law through loving others. We want all hands which can help us make Nebraska grow. We want all people able and willing to be part of our dwindling work force. We want all hearts to make Nebraska strong, no matter the love for which those hearts beat. With that, I ask you to advance LB627 to Select File. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Pansing Brooks. (Visitors introduced.) Returning to debate. Senator Morfeld, you're recognized.

MORFELD: Thank you, Mr. President, and colleagues. I want to rise in support of LB627 and thank Senator Patty Pansing Brooks for introducing this legislation and carrying on the cause and fight that we fought together for the last four years in carrying on a fight that Senator Chambers has fought for, for many years before we were here. Colleagues, I urge you to take a second look at this. I know you probably have heard, you know, a lot of differing opinions on this, some fears and some concerns. That being said, I'll tell you right now that those fears and concerns are unfounded. That if you look just to Omaha, which that metro area, I suppose it's just the city of Omaha, but the metro area is about a third of the population of the state. And particularly, the city, they've had this in place now for several years, and the economy has not collapsed there. There hasn't been frivolous lawsuits, businesses have not gone out of business because they're firing gay folks and being held accountable for it. Things are going well in Omaha. And things are going well in general in Nebraska, but they could be going a lot better. They could be going a lot better because our number one problem in this state is keeping particularly a young and talented work force, a work force in general, but a young and talented work force in the state. And I'll tell you right now that I can name five or six of the people that I went to law school with, and undergrad with, that are never coming back to this state until they have basic protections in the workplace. And if you don't think they exist, I will set up a meeting with them and you, and you can sit down and talk to them. Because they do exist, and we talk about it every year.

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Because they ask me, have you guys passed that bill yet? I can't believe that it's taken four or five years and you still haven't been able to get it passed. Then I have to walk through why. Well, there's a lot of folks that like to create all these kind of, you know, bogey men out there that, you know, there's going to be massive lawsuits, there's going to be all kinds of litigation, businesses are going to have to close their doors. I suppose all of those different arguments were made when we passed the other protections that are currently in statute on the state and federal level. Some of those same arguments, if you look at the transcripts back in the 1960s, came up when we made it so that you couldn't fire someone based on their race. Oh, I have a religious argument, or, oh, I have this kind of freedom as a business owner. Well, no, when you avail yourself of the marketplace, when you avail yourself of the marketplace to make money, you have certain obligations to uphold certain rights and human dignities of other people because you're making money. You're making a profit off it. And not only that, when you discriminate against somebody based on a characteristic that they cannot control, you hurt the marketplace for everyone. Put aside human rights, civil rights, and human dignity. The reason why we make it so that you cannot discriminate against somebody in interstate commerce, based off of their race, their sex, whatever the case, marital status, that's one you choose. You're not even born with that. But the reason why we protect those statuses is because, number one, it upholds the dignity of everyone; number two, it ensures that we have a vibrant marketplace for everyone. But the marketplace aside, I think that it's important to talk about some of the fundamental civil rights issues involved with this. First, I think for anybody who is heterosexual in here, imagine getting married on Sunday and then coming to work, putting down your little picture frame of the person that you just got married to and love, at work, that Monday,--

WILLIAMS: One minute.

MORFELD: --excited about your wedding, excited to talk to your co-workers about who you just married and then your boss calling you in and telling you that you're fired. And then finding out that there's absolutely no recourse for that. They didn't fire you because you got married, they just fired you because they don't like your lifestyle. So you don't have any protection. That happens in the state of Nebraska. And if you don't believe it, again, come on over here. I'll set up a meeting. I'll set up a meeting with an attorney who graduated from a very accomplished law school, was offered a position by a law firm in this state, and then it was rescinded the minute that she asked about same partner benefits-- same sex partner benefits. Or the person that lives in my district that was fired from a fast food restaurant after it came out that he had a boyfriend. That happens in this state. It happens every single month, and it happens in Nebraska. And if you don't think that our young people know it--

WILLIAMS: Time, Senator.

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MORFELD: Thank you, Mr. President.

WILLIAMS: Thank you, Senator Morfeld. Senator Blood, you're recognized.

BLOOD: Thank you Mr. Speaker. Fellow Senators, friends all, I stand in support of LB627 and I want to start out by saying I'm disappointed that everyone is not in this Chamber for this debate. This is an important debate, one that we need to discuss in the open, and not hide away from. I think it's important that we address the many e-mails that we've received. It's time that we get away from theology and we talk about human rights. Many people have reached out to us and said that as Christians they feel they're being discriminated against with this bill. But broad diversity includes both religion and sexual orientation. We're talking about parity. And when you talk about parity in business, you're talking about the principles of parity being low-cost, high-yield investment in major businesses talent as well as in their broader profile as forward-looking responsible businesses, which is exactly what Senator Morfeld was just talking about. We want to make sure, especially that we address this younger generation coming in who is looking for parity in the workplace. We're not asking that Christians subscribe to certain beliefs. We're asking employees and employers to a code of conduct. In my research, I found 2,500 private, public employers that have written policies prohibiting workplace discrimination based on sexual orientation and they're doing that because there's a growing body of law and company policy that says that this protection is needed. Some of the companies that I found were companies where a lot of young people are working, like PayPal in Nebraska, Facebook in Nebraska, Google soon to be in Nebraska, Groupon, American Eagle, Pandora, IKEA, Ben and Jerry's ice cream. And guess what? TD Ameritrade-- so I want to point that out again, TD Ameritrade has this policy. So why wouldn't we as legislators want to foster an atmosphere where people of different backgrounds can work together? That's what we're talking about today. Move away from the theology and let's talk about the human rights because that's what this bill is all about. Employers should have only one question. Are you going to do what you need to do to perform your job? What your beliefs are outside your job is not a concern here. And that's what we're talking about today. Let's talk about parity, let's talk about human rights. Let's talk about how we embrace this younger generation who's looking for employment where people understand that their personal beliefs outside of that office are their personal beliefs. And if we start getting into theology, and people come up, as Senator Pansing Brooks said, and say, hey, I have nothing against this community, but it's against my religion, then we're going to start having some conversations about the people in their office that are cheating on their spouses, that might be stealing from their businesses, that might be cruel to others, because if we want to talk about Christian principles, I guarantee in that office there are many things-- or that business, there are many things we can address around the mike. So let's not go down that path this time like we did the last time. Let's talk about what this bill is about. This bill is about human rights. This bill is about stepping up to the plate and doing what's being done all over the country around us already, and let's put on our big boy pants and help Senator Brooks get this bill to move forward. Thank you.

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WILLIAMS: Thank you, Senator Blood. Clerk, for announcements?

ASSISTANT CLERK: Mr. President, the Government Committee will hold an Executive Session under the south balcony at 11:30.

WILLIAMS: Thank you, Mr. Clerk. Returning to debate. Senator Chambers, you're recognized.

CHAMBERS: Thank you, Mr. President. And every breath you take, every move you make, I'm watching you. Members of the Legislature, these kind of issues are very easy for me to resolve in terms of how I will act on them. Although, you can look at my complexion and see that people of my kind were owned as cows, pigs, chickens, sold, bartered, murdered, raped, burned alive, pregnant women were beaten until the fetus came out, then they stomped it to death. I'm sure these were pro-life people. I'm going to tell you why I say that. That should have filled me with hatred for everything white, and everything not black. I do have a lot of hostile feelings toward those who enslave black people, toward those who today have the same mentality and attitudes. But if a child has a fool for a father, I would not harm the child because the father is a fool. The child is already being punished by having such a father. It is not difficult for me to identify with any individual or any group who is or are mistreated, not because of anything they've done to anybody, but because of what they are or who they are. I get tired of hearing the prayers. You know how I feel about the flag, your flag salute, and you all said it this morning and talked about liberty and justice for all. And you're going to vote for this bill in a way that will deny liberty and justice to your own brothers and sisters. Then you'll get up here piously tomorrow and hypocritically and have somebody pray over you. I don't know if you say that flag salute every day. Doesn't it taste like ashes in your mouth when you get to the part that says, with liberty and justice for all? How about when you take God's name in vain, one nation under God? It's not one nation. And based on what I learned about God when I was a little child and didn't know any better, it certainly is not godly. Indivisible. I read in white people's newspapers how this country is now divided more than it has ever been, and you all make those statements every day knowing they're falsehoods. It's not difficult for you to do things that hurt your brothers and sisters because your conscience is seered and you no longer see them as human beings because they are put on the outer edges. They are put under the underside of the garment. They are treated as things and not people. I identify with their plight, even though I'm sure there are racist members in the LGBTQ community. But if A is a racist, why should I get at B just because B is closer to me or nearer and within my reach? When Cain asked that question to you all's God, am I my brother's keeper? I give an answer that the Christians and religious people do not. My answer is yes, I am, my brother and my sister's keeper. And if God, if a God there be, were talking and he'd say something to me along that line,--

WILLIAMS: One minute.

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CHAMBERS: --it wouldn't be in the form of a question. It would be, Chambers, if I could get those who say they worship me to be as concerned about their brothers and sisters as you are, then we could close churches, we could close mosques, we could close temples, we could close lodge halls, and just let people go about their business, leaving others alone, helping where help is needed. But certainly not putting into the law something as-- that is going to hurt people when it comes to trying to provide a living for themselves and their families. One of the first tenets of Catholic social justice is that a person is entitled to make a living. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Chambers. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. Thank you, colleagues. I have to stand up and speak about this very briefly because for the first time in the history of this bill being debated in this body, you have someone in this body who could be affected by this bill. You have a colleague who could be one of those people affected by this bill, but it's only because I have the privilege of being here on this floor today that that can happen to me. And that's something that I'd like you all to think about. I share a common concern with many of you about the threat of brain drain here in Nebraska. It's a very personal interest for me. I employ 12 young women in our state. I'm a business owner myself and I have a well-invested interest in attracting and keeping young people in our state. And if you ask me why I do the work that I do, that would be the answer because I want Nebraska to be a place where everybody feels welcome, that they can call this place home, that they can have a future here. Many young professionals and creative people are here because they recognize the potential and our increasing diversity, both in culture and in industry, professionally, socially, and they see Nebraska as the best sighting for their own story. The Midwest is full of good people. We're hard workers, we're generous with our time and with our financial resources. We're humble and we're willing to learn. And I think there's a lot to learn about why Nebraska struggles to keep young people here. As a young professional and employer like I said, and as a newly-elected official, I feel like it's important for people like me to work harder for policies that give all people a quality of opportunity here in Nebraska where discrimination against LGBTQ people continues to give us an equal access to the law. I cannot divide my responsibility as a young professional and lawmaker from my responsibility as a citizen, and that is to speak up and do the work and help anybody who just wants the same chance as all of you to build their best life in Nebraska. And colleagues, we have the opportunity to do that today. There's a business case for nondiscrimination employment. That's been made here today. You all know that. You've all been lobbied. You know the reasons, but this is our responsibility and this is an opportunity that we have. I love living in Nebraska. I live here on purpose. I have many friends who have left this state because they don't feel accepted because of the laws that we have here, and they've been punished for that. Like Senator Morfeld was saying, I, too, know people who have left the state for those reasons. We have an engaged and diverse young professional culture, but it's silly for us to talk about in this body, it's silly and ridiculous and laughable and shameful for us to talk about equality before the law and brain drain and talent

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attraction, retention when we don't treat people equally under the law. We just don't. We don't do it here. And it's sad, but a lot of people won't do the right thing until the law requires that they do the right thing. And that's why we 49 lawmakers have that responsibility in Nebraska. So that's all I want to say about that. I think that we have a unique opportunity here. We can make history. This is a real issue that affects people. And with that I'll close. Thank you.

WILLIAMS: Thank you, Senator Hunt. Senator Clements, you're recognized.

CLEMENTS: Thank you, Mr. President. I also agree that every person should be treated with dignity and respect. And I definitely try to do that in my life. I do have problems with this bill, though. First of all, I believe special class protection is unwarranted in this bill. Historically protected class status have been reserved for persons affected by three general characteristics. First, oppression and denial of access to education, economic opportunity, and voting rights. Second, the class possessed obvious identifiable characteristics; and third, the class lacked access to political due process and debate. This bill does not identify that these protections are needed or that these problems exist. Then in Nebraska's Constitution, prohibits restrictions on rights of conscience and religious convictions. The Constitution of the state of Nebraska acknowledges the source of truth in its preamble. We, the people, grateful to almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government as the Constitution of the state of Nebraska. Section 4 of our constitution declares, quote, all persons have a natural and inalienable right to worship almighty God according to the dictates of their own consciences. No person shall be compelled to support any place of worship nor any-- nor shall any interference with the rights of conscience be permitted. Religion, morality and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination, in the peaceable enjoyment of its own mode of public worship, end quote. I believe there's a problem in this bill with violating that clause. When the Nebraska Constitution states that morality is essential to good government, it is referring to moral absolutes and boundaries that do not change over time. The behavior of this bill seeks to protect falls outside those boundaries. This bill would directly interfere with the rights of conscience of businesses and Nebraska employers in direct violation of this constitutional protection. Nebraska voters would have to amend this constitutional-- Nebraska constitutional provision in order for this bill to be constitutionally valid. I believe LB627 violates the U.S. Constitution by prohibiting the free exercise of religion as well. The first amendments of the U.S. Constitution declares Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. LB627 improperly intends to restrict the free exercise of employers' religious beliefs and speech. LB627 properly protects the religious expression of employees, but it fails to protect the sincerely-held religious beliefs of employers. Nebraska statute, Section 48-1101 says, quote, it is the policy of this state to foster the employment--

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WILLIAMS: One minute.

CLEMENTS: --of all employable persons and to safeguard their right to obtain and hold employment without discrimination because of their religion. This protection of employees' religious expression in the Fair Employment Practice Act was adopted because of the U.S. constitutional limitations of state government to interfere with the citizens' exercise of religious convictions. LB627 fails to preserve the free exercise of religion of individuals who manage churches and religious institutions, which would be covered and subject to the act. Also, LB627 fails to protect the free exercise of religious beliefs of private employers such as has happened in other states. One other thing I have a problem with is the definition of gender identity.

WILLIAMS: Time, Senator.

CLEMENTS: Thank you.

WILLIAMS: Thank you, Senator Clements. Senator Halloran, you're recognized.

HALLORAN: Thank you, Mr. President, colleagues, fellow Nebraskans. We went through quite a colorful conversation, Senator Morfeld and I did, I think the last time this bill came to the floor. If I could, first make a comment. I think, Senator Chambers gave me a lesson in perception in what's perceived to be something that may not be something in a recent bill I had in front of Judiciary. And it's-- it's a lesson that I've well-noted. I think perceptions are important. But perception is in the eye of the beholder sometimes, and I think laws and I think Senator Chambers may not agree with this, although this was pretty much his point with the bill I brought before Judiciary was, is that the language in the law has to be very clear and very specific in that we don't have room for ambiguity, we don't have room for perception, we don't have room for something being perceived, something that's not. And so I think the language needs to be cleaned up, needs to be a little bit better defined on sexual orientation. But that being said, if Senator Morfeld would reengage with me on a conversation, I would appreciate that.

WILLIAMS: Senator Morfeld, will you yield?

MORFELD: Yes.

HALLORAN: Senator Morfeld, as I recall, the last time we had this discussion on the floor, I brought up a hypothetical of my applying to your nonprofit for a job. And there were several applicants. And for probably good reasons you may have chose not to hire me, but in the course of-- in course of that, I did not declare to you that I might be gay, and I may, after being turned

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down for possibly very good reasons not to be hired at your nonprofit, I came back and said look, he didn't hire me because I was-- because I was gay. So how would you deal with that case in court, Senator? If you didn't perceive me to be gay and then I came back and said, he didn't hire me because I was gay, how would you or the court deal with that issue?

MORFELD: Well, thank you for the question, Senator. And first, we have several positions open at my nonprofit, I'd love to have you apply.

HALLORAN: That's exactly the script of the last time. That's very good. (LAUGHTER)

MORFELD: Second, just how you-- how you-- you would deal with that instance just like you deal with any other instance of alleged discrimination. So what would happen is you would likely file a complaint first with the EOC, I believe, or state EOC, but the bottom line is, is that there has to be some kind of evidence of discrimination. If you can't produce that, like any discrimination claim, it's going to be thrown out fairly quickly on its merits, whether you're filing on sex discrimination claim, race discrimination claim, or even marital status is covered currently under the statute. You have to have evidence.

HALLORAN: So, I couldn't file a suit against you and it wouldn't be held up in court if I argued that your perception of me was that I was gay and that you didn't hire me?

MORFELD: You could file a suit, but like any suit you have to have some kind of evidence. And if you don't have any evidence of that, then you can't prove your case and it's going to be thrown out.

HALLORAN: That's precisely my point, colleagues, is there may not be evidence, but we're talking about perception in this bill. The other protected classes are very clear and aren't left to any ambiguity. It's really easy to distinguish if someone is of one race or another, one color or another. If that person's handicapped, or if its an age issue, whether that person is old or not, or whether that person has disabilities. Those are all protected classes. But they're very apparent, very obvious.

WILLIAMS: One minute.

HALLORAN: And I think that's the issue we're talking about here is whether my case would be successful in court or not, is not the total issue. The case-- or the point is that there would be legal cost. There would be legal ramifications for me to hire an attorney to take care of that lawsuit, and I believe that's what this is going to open up for many, many employers when the

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perception may not be there on the part of the employer, but ultimately a suit is filed. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Halloran. Senator Geist, you're recognized.

GEIST: Yes, thank you, Mr. President. And I would ask if-- should anyone, anyone, be treated as a second-class citizen? And, of course, we'd say no. I don't think there is a person on this floor or in this state that thinks people should be treated as a second-class citizen, and certainly none of us on this floor advocating for that position. It is the job of us as lawmakers to affirm and uphold constitutionally protected freedoms and not pass laws that intentionally or unintentionally limit those who may exercise constitutional freedoms and fundamental rights. I support laws that don't pick and choose who gets freedom and who doesn't. It's a fundamental American value which I believe is paramount to protect. And thankfully in Nebraska, businesses are free to decide the values they would like to adopt and the missions they seek to advance. Protecting freedom in the marketplace affirms respect for diverse views, builds community, and guarantees an array of choices for everyone. The government and the Legislature should not be dictating to business owners whom they should hire, but should allow business owners to hire the best candidate for the job and for the mission of their particular business. Businesses have the right to be free to run their businesses, their private businesses according to their beliefs and thus contribute to the diversity which is essential to any thriving marketplace. I oppose LB627 because it would undermine the diversity and the tolerance of this great state and would curtail a robust and flourishing marketplace. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Geist. Senator Murman, you're recognized.

MURMAN: Good morning, colleagues, and Nebraska. Today, I stand in strong opposition to LB627. Today, I think about the unintended consequences and risks that business owners across the state will face. LB627 would threaten small business owners with liability for alleged discrimination based on perceived gender. As a body, we talk a lot about growing our state and making sure that people feel welcome here. I've heard the argument that if we don't pass this bill, we will be turning away people who want to work and start their lives here because without this legislation, Nebraska is a horrible place to live. I would beg to differ. According to Forbes magazine, Nebraska ranks among the top five states, best states for business. Six of the ten states in Forbes best business state for business, currently do not have nondiscrimination laws that include sexual orientation and gender identity. As lawmakers, we need to uphold constitutional freedom and fundamental rights. This bill's language is cherry picking who gets freedom and who doesn't. In this body we need to protect all our freedoms. Sadly, across our nation we have seen the victims of such laws. Often they are people of faith who simply want to live, work, and raise their family consistent with their deeply-held religious beliefs. Businesses across the state

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could be at risk for lawsuits if they support causes, candidates, or nonprofits that differ from their beliefs. Nebraska business owners have the opportunity to hire who they think would be the best at the job because our Legislature isn't telling us who we can and cannot hire. Small business is the engine that drives Nebraska's economy. I was a business owner myself, over the last 20 years, running a dairy farm operation. As a business owner, we sought employees who could help us achieve our business goals. Nebraskans value the freedom to peaceably live our lives according to our beliefs and oppose government punishment of fellow citizens who have different views. We need to continue to empower small businesses to succeed and not burden them with additional mandates. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Murman. Senator DeBoer, you're recognized.

DeBOER: Thank you, Mr. President. We hold these truths to be self-evident that all men are created equal, that they're endowed by their creator with certain unalienable rights, and among these are life, liberty and the pursuit of happiness. We hold these truths to be self-evident that all men are created equal. They are endowed by their creator with certain unalienable rights and among them are life, liberty, and the pursuit of happiness. Colleagues, I've been thinking about these words a lot lately. I had a similar discussion a week or two ago and Senator Chambers said that these words are aspirational. I think he's right. I think they are aspirational. I think we haven't gotten there yet. And he says because I'm a young whippersnapper, which I am, that I'm still full of hope, that perhaps we can never get there. And I think he's right there too. Perhaps we can't. But that doesn't mean that I won't fight every day to try to get us there. I'm also reminded of Lincoln's words at Gettysburg when he talked about a nation conceived in liberty and dedicated to the proposition that all men are created equal. He wondered whether such a nation so conceived and so dedicated can long endure. We can say to Lincoln today, we have endured, we are enduring. But we have also learned that the price of democracy is that we are always in a great battlefield of ideas. We do not all agree today, colleagues, not even about what we disagree about. In my fields of philosophy and theology, there are not always readily apparent answers, and so sometimes the best scholarship simply asks better questions, simply says more of what we disagree about. So today I say to you, I do not think we are arguing about whether or not an entire group of people in the state of Nebraska deserves full, free and equal lives. That's not the debate we're having. The founders tell us that those truths are self-evident. And frankly, they're not even relevant. The question we have today is a particularly narrow question. The question is whether or not it is in the best interest of this state for LGBTQ folks to be a protected class for employment purposes. You've heard that the Chambers of Commerce of Omaha and Lincoln support this bill. They say that this will help us to bring companies to Nebraska. We spend a lot of taxpayer dollars every year on just that issue, and this one is free. Some of you know that I have an economics degree from undergrad and that I'm from a small business family. It was a long time ago since undergrad, but I think it's still true today, that the most efficient economy is

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better than an inefficient economy. Discrimination is inefficient. We want the best person for the job to do a job.

WILLIAMS: One minute.

DeBOER: And whenever we consider some aspect of a person that is not their ability to do the job, then we increase the inefficiency in our state. It doesn't make good business sense to have this kind of discrimination, this kind of inefficiency in our system. We've heard that there are safeguards in place. We know that there are for making sure that religious expression is still allowed. We need to make this decision based on the taxpayer money as we are trying to attract businesses to Nebraska and we know that this bill will do that because we've heard that from the biggest chambers of commerce in this state, from Omaha and Lincoln. And we need to make sure that we are looking at how we make the best economy. Thank you, Mr. President.

WILLIAMS: Thank you, Senator DeBoer. (Visitors introduced.) Mr. Clerk.

CLERK: Mr. President, Enrollment and Review reports LB52, LB152, LB186, LB186A, LB214, LB223, LB442, and LB536 as correctly engrossed. Urban Affairs Committee, chaired by Senator Wayne, reports LB476 to General File; LB68, LB96, LB107, LB424, LB445 and LB574 are reported to General file with amendments attached. Senator Bolz would like to print an amendment to LB332. Names adds: Senator Pansing Brooks to LB15; Wishart, LB15; Cavanaugh, LB15; Blood, LB164, Cavanaugh to LB627.

Mr. President, Senator Brandt would move to adjourn the body until Tuesday morning, March 5, at 9:00 a.m.

WILLIAMS: The question is, shall the Legislature adjourn? All those in favor say aye. Opposed? We are adjourned.