

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

April 6, 2000

LB 1004

Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Bromm. Senator Don Pederson, on the Kristensen amendment.

SENATOR D. PEDERSON: Thank you, Mr. President, members of the body. Senator Kristensen, I have a question or a comment. In connection with these convictions, under this enhanced penalty rule, we must show the law of the foreign jurisdiction, if it doesn't show right on the face of the conviction, the nature of the law in the foreign jurisdiction as to the percentage of blood alcohol. Because, under...the way that I understand this law to be, the...we cannot have a conviction enhancement if the violation was of a penalty greater than what Nebraska has. And so there would still be the necessity, not just of the record of the conviction, but also a record of what the law in that particular jurisdiction was at the time of the conviction. Is that correct?

SPEAKER KRISTENSEN: Yes. And I think a classic example of that would be, and the courts are going to have to decide this. We're not legislatively determining what laws count or don't count from other states. But, for example, I don't think you can take behavior in another state that is criminal which, if the same action occurred in Nebraska, is legal, and bootstrap that in and make that activity illegal here. For example, if driving to .08 is illegal in another state but legal in this state, they are convicted in another state of that, if they did the same behavior in this state, obviously, they would not be guilty. So you can't use a conviction from another state because it isn't comparable to our statute. The other portion is, that I do not know the answer to and I assume that this area will be litigated, is in the area of counting prior offenses. If...we count for 12 years, which is longer than most, well, almost any state I'm aware of, that we...I think the average is 5 or 6 years, we're 12 years. If that conviction is not valid in another state because they have a shorter period of time in which to count prior convictions and we have a longer period of time, if that conviction isn't any good in the other state because the time period has run out, can we use it in our state? I don't know the answer to that. This area is so well litigated that that will have to be answered. But there can be collateral