

**THIRTY-FIRST DAY - FEBRUARY 26, 2019****LEGISLATIVE JOURNAL****ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION****THIRTY-FIRST DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, February 26, 2019

**PRAYER**

The prayer was offered by Pastor Paul Moessner, Immanuel Lutheran Church, Bellevue.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Speaker Scheer presiding.

The roll was called and all members were present except Senators Bostelman, Cavanaugh, Howard, Vargas, Walz, and Wishart who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the thirtieth day was approved.

**ATTORNEY GENERAL'S OPINION**Opinion 19-003

SUBJECT: LB 420 – Constitutionality of "Circuit Breaker"  
Providing Refundable Income Tax Credit

REQUESTED BY: Senator Kate Bolz  
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General  
Lynn A. Melson, Assistant Attorney General

**INTRODUCTION**

You have requested an opinion from this office on the constitutionality of LB 420, known as the Property Tax Circuit Breaker Act. In general terms, this bill would provide a refundable income tax credit for certain qualified

taxpayers if the taxpayer's property taxes or rent exceed a certain percentage of the taxpayer's income.

LB 420, § 3(3) defines a "qualifying agricultural taxpayer" as "an individual who owns agricultural land and horticultural land that is located in this state and that has been used as part of a farming operation which has federal adjusted gross income of less than three hundred fifty thousand dollars in the most recently completed taxable year."<sup>1</sup> Section 4(2) then provides that an agricultural taxpayer, who qualifies for an income tax credit under the Act, will receive "a tax credit in an amount equal to the amount of property taxes paid on the agricultural land and horticultural land during the most recently completed taxable year minus seven percent of that taxpayer's federal adjusted gross income." Section 4(5) provides that only one tax credit may be claimed under this section per parcel of agricultural or horticultural land.<sup>2</sup>

LB 420, § 3(4) defines a "qualifying residential taxpayer" as "an individual who owns or rents his or her principal residence in the State of Nebraska and who has federal adjusted gross income of less than one hundred thousand dollars for a married filing jointly taxpayer or fifty thousand dollars for any other taxpayer." Section 5 provides that a residential taxpayer, who paid property taxes on his or her principal residence and who qualifies for an income tax credit under the act, will be eligible for an income tax credit equal to the "amount by which the total amount of property taxes paid on the principal residence exceeds the sum of the amounts calculated in subdivision (3)(b)" of § 5. These amounts are based on specified percentages of the taxpayer's federal adjusted gross income. A residential taxpayer, who paid rent for his or her principal residence and who qualifies for an income tax credit under the act, will be eligible for an income tax credit equal to the "amount by which twenty percent of the total amount of rent paid exceeds the sum of the amounts calculated in subdivision (4)(b)" of § 5. These amounts are again based on specified percentages of the taxpayer's federal adjusted gross income. Subdivision (5) of § 5 also includes maximum income credits or credit caps allowed to qualifying residential taxpayers. Finally, § 5(11) provides that only one tax credit may be claimed under this section per residence.

Your letter states "[B]ecause a circuit breaker affords tax relief to individuals according to income level, we are asking for an Attorney General's opinion as to whether such a policy is in conflict with the

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<sup>1</sup> The bill defines both qualifying agricultural taxpayers and qualifying residential taxpayers as "individuals." As the owners of agricultural and residential properties might be a partnership, corporation, trust or other legal entity, you may wish to use a different term such as "person" to include those other entities.

<sup>2</sup> LB 420 does not address how to treat a situation in which otherwise eligible multiple owners or renters wish to claim the income tax credits.

Nebraska Constitution." Your request does not articulate a specific constitutional provision which LB 420 may contravene. We have previously stated that a general question on the constitutionality of proposed legislation will necessarily result in a general response from this office. Op. Att'y Gen. No. 09008 (April 16, 2008). Therefore, our analysis will discuss generally provisions of our state constitution regarding commutation of taxes, equal protection, special legislation, the uniformity clause and the commerce clause.

## ANALYSIS

### A. Commutation of Taxes.

As a preliminary matter, we note that "[S]tatutes are afforded a presumption of constitutionality, and the unconstitutionality of a statute must be clearly established before it will be declared void." *Gourley v. Nebraska Methodist Health System, Inc.*, 265 Neb. 918, 942, 663 N.W.2d 43, 68 (2003). If LB 420 is enacted, anyone seeking to have its provisions declared unconstitutional will bear the burden of overcoming the presumption of constitutionality.

Nebraska's "commutation clause" is found at Neb. Const. art. VIII, § 4, which provides, in part:

Except as to tax and assessment charges against real property remaining delinquent and unpaid for a period of fifteen years or longer, the Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever . . . .

This office has previously addressed the commutation clause with regard to the constitutionality of refundable income tax credits. In Op. Att'y Gen. No. 18001 (March 21, 2018), we analyzed the constitutionality of two bills which would provide a refundable income tax credit based on a percentage of property taxes paid during the taxable year. As the commutation clause was discussed at length in that recent opinion, we will summarize that discussion here.

The Nebraska Supreme Court has held that the commutation clause "prevents the Legislature from releasing either persons or property from contributing a proportionate share of the tax." *Sarpy County Farm Bureau v. Learning Community of Douglas and Sarpy Clys.*, 283 Neb. 212, 244, 808 N.W.2d 598, 621 (2012). The Court has also held that an act which allowed delinquent property taxes to be paid in installments violated the commutation clause, stating that "the legislature not only shall have no power to release or discharge any one from the payment of his share of

taxes, but a commutation for taxes in any form whatever is prohibited . . . it is quite apparent that the legislature is prohibited by the Constitution from changing the method of payment of any tax once levied." *Steinacher v. Swanson*, 131 Neb. 439, 446, 268 N.W. 317, 321 (1936).

More recently, the Court considered whether the prohibition against the commutation of taxes applied to taxes other than property taxes, and held the constitutional prohibition did not apply to an excise tax. *Banks v. Heineman*, 286 Neb. 390, 837 N.W.2d 70 (2013). Therefore, in Op. Att'y Gen. No. 18001 at 4, with regard to the two bills discussed therein, we concluded as follows:

The income tax credits allowed under LB 829 and LB 947 do not, at least directly, fall within the meaning of "commutation" as defined by the Nebraska Supreme Court. The income tax credits, while determined on the basis of a percentage of property taxes paid, do not alter or change the amount of property taxes paid, nor do they substitute one form of payment of property taxes for another. Further, while the income tax is not an "excise" tax, a form of taxation the Court has specifically recognized is not subject to the commutation restriction, it is not a property tax within the meaning of art. VIII, § 1, and thus is not a tax subject to the prohibition against the "commutation" of taxes in art. VIII, § 4.

Qualification for the refundable income tax credits proposed in LB 420 depends on both the taxpayer's income and the amount of property taxes paid. LB 420, if enacted, would not change the amount of property taxes paid to local authorities. For the reasons discussed more fully in that prior opinion, we reach the same conclusion that the income tax credits allowed under LB 420 do not directly fall within the meaning of commutation as defined by the Court and would likely be found constitutional. However, we also point out, as we did in footnote 2 of Op. Att'y Gen. No. 18001, that "it is possible a court could view the allowance of an income tax credit based on property taxes paid as an indirect attempt to impermissibly commute property taxes in contravention of art. VIII, § 4 . . . ."

#### **B. Equal Protection.**

As your request letter refers to affording tax relief to individuals "according to income level," we include a discussion of equal protection principles with regard to different treatment of taxpayers based on different income levels. The Nebraska Supreme Court has stated that the equal protection clause of Neb. Const. art. I, § 3, and that of the Fourteenth Amendment of the United States Constitution, "have identical requirements for equal protection challenges." *DeCoste v. City of Wahoo*, 255 Neb. 266, 274, 583 N.W.2d 595, 601 (1998). Unless a "fundamental right" or "suspect classification" is involved, the equal protection clause generally allows government to make distinctions among groups and to treat different groups differently so long as there is a "rational basis" serving a legitimate

governmental purpose for such differing treatment. *Le v. Laurrup*, 271 Neb. 931, 716 N.W.2d 713 (2006). Stated another way, the equal protection provisions of the state and federal constitutions generally prohibit improper disparate treatment or improper classifications of people who are otherwise similarly situated.

Specifically with regard to state tax classifications or schemes, "the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). We are not aware of any suspect classification or fundamental rights implicated by LB 420. And, in our view, a rational basis can likely be articulated to justify tax relief for those taxpayers with lower income levels who are most severely affected by property tax increases.

LB 420, § 2 declares the purpose of the Act "is to provide tax relief through a refundable income tax credit for taxpayers with limited income available to pay property taxes." Also, as you state in your request letter, the "circuit breaker [in LB 420] triggers an income tax credit for a taxpayer if property taxes exceed a certain percentage of the individual's income . . . . As income increases, the circuit breaker credit calculation assumes that taxpayers can afford to spend a greater percentage of income on property taxes."

Other jurisdictions have held that providing tax relief to taxpayers according to income level is constitutional. The New Hampshire Supreme Court addressed questions propounded by the state House of Representatives in *Opinion of the Justices*, 111 N.H. 136, 276 A.2d 821 (1971). The court was asked to address the constitutionality of a proposed legislative bill, which, in part, would provide an income tax credit for claimants depending on the amount by which the property taxes or rent accrued on a claimant's homestead exceeded six percent of the claimant's household income. Describing the proposed provision as a system of tax relief for low income taxpayers, the court found that it would not violate any constitutional provision.

The Vermont Supreme Court held that the \$75,000 income ceiling in a Homestead Property Tax Income Sensitivity Adjustment law was constitutional. *Schievella v. Department of Taxes*, 171 Vt. 591, 765 A.2d 479 (2000). This statutory act included a limit on property taxes on homestead property based on income level. Noting that the Vermont constitution's proportional contribution clause imposes the same limits on the state's power to tax as does the equal protection clause of the Fourteenth Amendment of the U.S. Constitution, the court employed a rational basis analysis and stated that "granting tax relief based on the income of taxpayers is not irrational." *Id.* at 593, 765 A.2d at 482.

### C. Special Legislation

There may also be a question whether the provisions of LB 420 establish an unreasonable classification in violation of the prohibition against special legislation in Neb. Const. art. III, § 18. Article III, § 18, provides in relevant part:

The Legislature shall not pass local or special laws in any of the following cases, that is to say:

\*       \*       \*

Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever . . . . In all other cases where a general law can be made applicable, no special law shall be enacted.

The test for determining whether legislation is prohibited as special legislation is stricter than the rational basis test employed in an equal protection analysis. The Nebraska Supreme Court has stated that a legislative act can violate art. III, § 18, as special legislation "in one of two ways: (1) by creating a totally arbitrary and unreasonable method of classification, or (2) by creating a permanently closed class." *Haman v. Marsh*, 237 Neb. 699, 709, 467 N.W.2d 836, 845 (1991). "A special legislation analysis focuses on a legislative body's purpose in creating a challenged class and asks if there is a substantial difference of circumstances to suggest the expediency of diverse legislation." *J. M. v. Hobbs*, 288 Neb. 546, 557, 849 N.W.2d 480, 489 (2014). "Classifications for the purpose of legislation must be real and not illusive; they cannot be based on distinctions without a substantial difference." *Big John's Billiards, Inc. v. State*, 288 Neb. 938, 945, 852 N.W.2d 727, 735 (2014).

As no closed class is implicated by LB 420, the question is the reasonableness of the classifications created, which limit the income tax credits to lower income taxpayers and which limit the income tax credits to residential and agricultural property taxpayers. The language of LB 420, § 2 and your request letter provide some reasons for the difference in treatment according to income level. You have not expressed a legislative purpose in limiting the income tax credits to certain residential and agricultural property taxpayers, while leaving out those business taxpayers who own commercial and industrial property. A court's analysis in a special legislation challenge would focus on the Legislature's purpose in creating a class of taxpayers as expressed in the plain language of the bill or as demonstrated in the legislative record of the bill. While it is possible that there is "a substantial difference of circumstances" that would justify different treatment of the business taxpayers, we must note that a court would employ a more stringent standard when faced with a special legislation challenge.

#### **D. Uniformity Clause.**

Your question about granting tax relief according to income level might also be read to inquire about the application of Neb. Const. art. VIII, § 1. The "uniformity clause" of our state constitution provides that "[T]axes shall be levied by valuation uniformly and proportionately upon all real property and franchises . . . except as otherwise provided in or permitted by this Constitution."

The Nebraska Supreme Court has held that "further reading of article VII, § 1, makes it clear that only property taxes must be uniform and proportionate." *State v. Galyen*, 221 Neb. 497, 502, 378 N.W.2d 182, 186 (1985). A franchise tax based on or measured by the income of a corporation was not a property tax and could not violate the requirements of uniform and proportionate valuation in Neb. Const. art. VIII, § 1. *Anderson v. Tiemann*, 182 Neb. 393, 403-04, 155 N.W.2d 322, 329 (1967). *See also Banks v. Heineman*, 286 Neb. 390, 837 N.W.2d 70 (2013), in which the Court concluded that the scope of the uniformity clause and the scope of the commutation clause are the same such that neither apply to an excise tax.

While we note that the Nebraska Supreme Court has adopted a strict construction of our state's uniformity clause which may lead to a different result, courts of other jurisdictions have held that basing eligibility for an income tax credit on income level does not violate the uniformity clauses in those states' constitutions. For example, the Wisconsin Court of Appeals determined that a particular state statute, which authorized a farmland preservation credit, but limited eligibility for the tax credit by the amount of the claimant's household income, was constitutional in *McManus v. Wisconsin Dept. of Revenue*, 155 Wis. 2d 450, 455 N.W.2d 906 (1990). The Court explained that the purpose of the farmland preservation credit was "to provide credit to owners of farmland which is subject to agricultural use restrictions through a system of income tax credits and refunds . . ." *Id.* at 456, 455 N.W.2d at 908. The taxpayers receiving the credit paid their property tax bill in full and could then apply for a credit against their income taxes if their income did not exceed a threshold amount. The Court held that the law was a relief statute and, therefore, not subject to the uniformity clause of the Wisconsin state constitution. *See also Baker v. Matheson*, 607 P.2d 233 (Utah 1979) in which the Utah Supreme Court held that a legislative act which allowed homeowners and renters to file claims for refunds of state general fund revenue violated neither the state constitution's uniformity clause nor the equal protection clause.

#### **E. Commerce Clause.**

This office has twice in the past year addressed whether legislation proposing an income tax credit based on a percentage of property taxes paid violated the Commerce Clause. Op. Att'y Gen. No. 18001 (March 21, 2018) and Op. Att'y Gen. No. 18004 (September 28, 2018). A portion of our

discussion of Commerce Clause principles relevant to analyzing the constitutionality of such legislation was as follows:

The Commerce Clause authorizes Congress to "regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce." *Oregon Waste Systems, Inc. v. Dep't of Environmental Quality*, 511 U.S. 93, 98 (1994). This "negative command, known as the dormant Commerce Clause, prohibit[s] certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 513 U.S. 175, 179 (1995) . . . . "[T]he first step in analyzing any law subject to judicial scrutiny under the negative Commerce Clause is to determine whether it 'regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce.'" *Oregon Waste Systems, Inc.*, 511 U.S. at 99 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)) . . . . In assessing if a state tax impermissibly discriminates against interstate commerce, a court must consider not only the tax, but also any credits, exemptions, or exclusions.

Op. Att'y Gen. No. 18001 at 5-6.

Under LB 420, a refundable income tax credit may be available to both qualifying agricultural taxpayers and qualifying residential taxpayers. We will address separately those two classes of taxpayers in our discussion of the Commerce Clause. First, a "qualifying agricultural taxpayer" is defined at LB 420, § 3(3) as "an individual who owns agricultural land and horticultural land that is located in this state and that has been used as part of a farming operation which has federal adjusted gross income of less than three hundred fifty thousand dollars . . . ." This language makes no distinction based on residency. As we noted in both of the 2018 opinions cited above, taxpayers subject to Nebraska income tax can include both resident and nonresident individuals and entities. Resident individuals are taxed on their "entire net income," while nonresident individuals are taxed on income "derived from sources within" Nebraska. *See* Neb. Rev. Stat. § 77-2715(1) (Cum. Supp. 2016).

The language of LB 420 pertaining to qualifying agricultural taxpayers refers to taxpayers who own agricultural land in Nebraska, pay property taxes on that land, and engage in a farming operation which includes the use of that land. As was the case with LB 829, which we discussed in Op. Att'y Gen. No. 18001, the bill does not discriminate on its face against nonresidents subject to Nebraska income tax. To the extent that eligibility for the income tax credit is based on paying property taxes on real property in Nebraska and not the residency of the taxpayer, arguably there would be



no potential for improper discrimination against nonresidents who qualify for the "agricultural taxpayer" provisions of LB 420.

Looking at the effects of LB 420 on interstate commerce, and particularly on nonresidents, the question is whether it would negatively impact nonresidents who do not have income sourced to Nebraska and are thus not subject to income tax. They would receive no income tax credit despite paying property taxes in the state. If all taxpayers applying for the income tax credit are subject to Nebraska income tax due to being engaged in a farming operation in Nebraska, then both residents and nonresidents would be able to claim the income tax credit. However, if certain nonresident taxpayers who are eligible for the income tax credit are not subject to Nebraska income tax, as we recommended in Op. Att'y Gen. No. 18001 at 6, "a mechanism should be created to allow the credit to be claimed by those not otherwise subject to Nebraska income tax."

Turning to the provisions of LB 420 pertaining to "residential taxpayers", LB 420, § 3(4) defines a "qualifying residential taxpayer" as "an individual who owns or rents his or her principal residence in the State of Nebraska and who has federal adjusted gross income of less than one hundred thousand dollars for a married filing jointly taxpayer or fifty thousand dollars for any other taxpayer." This language might be said to implicate the Commerce Clause as it limits eligibility for the income tax credit to those taxpayers who own or rent their principal residence in the state. Section 5(2) then provides that the qualifying residential taxpayer must have "resided at the property described in the qualifying residential taxpayer's application for at least six months of the most recently completed taxable year . . . ."

In Op. Att'y Gen. No. 18001 at 7 we discussed a proposed homestead credit that would allow an income tax credit to residents who own a homestead, the term "homestead" generally meaning a residence occupied by an owner from January 1 through August 15 in each year. Neb. Rev. Stat. § 77-3502 (2009). In that opinion we cited three cases from other jurisdictions in which those courts reasoned that a homestead exemption based on ownership and use of the property as a permanent or primary residence, as opposed to the status of the owner as a resident or nonresident, does not violate the Commerce Clause. *See*, for example, *Reinish v. Clark*, 765 So. 2d 197 (Fla. Dist. Ct. App. 2000), in which the court found that a homestead exemption furthered a legitimate governmental purpose, the protection of the primary permanent home. "Like an exemption, an income tax credit based on status as an owner of a homestead, as opposed to resident or nonresident status, would not result in discriminatory treatment which would violate the Commerce Clause." Op. Att'y Gen. No. 18001 at 8.

We cited *Baker v. Matheson*, 607 P.2d 233 (Utah 1979), in section D., above, for its discussion of equal protection principles and the Utah state constitution's uniformity clause. We note here that the Utah Supreme Court, in *Baker v. Matheson*, also discussed whether the Utah law allowing certain homeowners and renters to file claims for refunds of state general fund

revenue, discriminated against nonresidents so as to violate the privileges and immunities clause of the U.S. Const., art. IV, § 2. That clause provides, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States."

The statutes at issue in *Baker v. Matheson* permitted the "owner of a dwelling" to receive payment based on a percentage of the property taxes paid and the "renter of a dwelling comprising a household" to receive payment based on a percentage of the rent paid during the prior year. A "dwelling" meant the "primary residence" of that owner or renter. The Act also required the eligible owners and renters to be a state resident for one year. Yet, the Court found no impermissible discrimination against nonresidents. "However, that requirement is based in part on the necessity of establishing a class of persons who, because of their residency in the State, have experienced the full impact of the evils with which the Legislature was attempting to cope. It was not aimed at excluding citizens of other states from the benefits of the Act." *Id.* at 247.

Similarly, an argument can be made that the income tax credit allowed to residential taxpayers under LB 420 is based on the ownership and occupancy of the property as a primary residence rather than the status of the owner or renter as a resident or nonresident. However, to the extent that an argument might also be made that the language of LB 420 specifically refers to "residential" taxpayers and bases eligibility to claim the credit on residency, demonstrating an intent to discriminate against nonresidents, you may wish to amend the bill to more specifically provide that the credit be based on ownership and occupancy of the property regardless of residency.<sup>3</sup> In addition, it is unclear whether all "qualifying residential taxpayers" would have income sourced to Nebraska such that they would be subject to income tax here. As the income tax credit proposed by LB 420 is refundable, you may wish to create a mechanism to allow the credit to be claimed by those not otherwise subject to Nebraska income tax so as to avoid any potential impermissible discrimination.

### CONCLUSION

Based upon the lengthy discussion of potential constitutional concerns above, we do not believe that LB 420 clearly contravenes any of those constitutional principles. However, in our view, the bill's provisions create some uncertainties as noted in this opinion.

Sincerely,  
(Signed) DOUGLAS J. PETERSON  
Attorney General  
Lynn A. Melson

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<sup>3</sup> Another possible alternative for financially assisting residential taxpayers, which might avoid any constitutional concerns, would be to grant a general homestead exemption under Neb. Const. art. VIII, § 2.

Assistant Attorney General

pc Patrick J. O'Donnell  
Clerk of the Nebraska Legislature

09-618-29

**NOTICE OF COMMITTEE HEARING(S)**

Agriculture

Room 1003

Tuesday, March 12, 2019 1:30 p.m.

Jeremy Jensen - State Fair Board

(Signed) Steve Halloran, Chairperson

**COMMITTEE REPORT(S)**

Judiciary

**LEGISLATIVE BILL 300.** Placed on General File.

**LEGISLATIVE BILL 93.** Placed on General File with amendment.

AM422

1 1. Strike the original sections and insert the following new

2 sections:

3 Section 1. Section 43-1411, Reissue Revised Statutes of Nebraska, is

4 amended to read:

5 43-1411 (1) A civil proceeding to establish the paternity of a  
6 child may be instituted, in the court of the district where the child is  
7 domiciled or found or, for cases under the Uniform Interstate Family  
8 Support Act, where the alleged father is domiciled, by (a) ~~(1)~~ the mother  
9 or the alleged father of such child, either during pregnancy or within  
10 four years after the child's birth, unless (i) ~~(a)~~ a valid consent or  
11 relinquishment has been made pursuant to sections 43-104.08 to 43-104.25  
12 or section 43-105 for purposes of adoption or (ii) ~~(b)~~ a county court or  
13 separate juvenile court has jurisdiction over the custody of the child or  
14 jurisdiction over an adoption matter with respect to such child pursuant  
15 to sections 43-101 to 43-116 or (b) ~~(2)~~ the guardian or next friend of  
16 such child or the state, either during pregnancy or within eighteen years  
17 after the child's birth. Summons shall issue and be served as in other  
18 civil proceedings, except that such summons may be directed to the  
19 sheriff of any county in the state and may be served in any county.  
20 (2) Notwithstanding any other provision of law, a person claiming to  
21 be the biological father of a child over which the juvenile court already  
22 has jurisdiction may file a complaint to intervene in such juvenile  
23 proceeding to institute an action to establish the paternity of the  
24 child. The complaint to intervene shall be accompanied by an affidavit

25 under oath that the affiant believes he is the biological father of the  
26 juvenile. No filing fee shall be charged for filing the complaint and  
27 affidavit. Upon filing of the complaint and affidavit, the juvenile court  
1 shall enter an order pursuant to section 43-1414 to require genetic  
2 testing and to require the juvenile to be made available for genetic  
3 testing. The costs of genetic testing shall be paid by the intervenor,  
4 the county, or the state at the discretion of the juvenile court.  
5 Sec. 2. Original section 43-1411, Reissue Revised Statutes of  
6 Nebraska, is repealed.

**LEGISLATIVE BILL 206.** Placed on General File with amendment.  
AM430

1 1. Strike the original sections and insert the following new  
2 sections:  
3 Section 1. (1) For purposes of this section:  
4 (a) Postsecondary educational institution means the University of  
5 Nebraska, a state college, or a community college;  
6 (b) School-sponsored media means any material that is (i) prepared,  
7 substantially written, published, or broadcast by a student journalist at  
8 a postsecondary educational institution, (ii) distributed or generally  
9 made available to members of the student body, and (iii) prepared under  
10 the direction of a student media adviser. School-sponsored media does not  
11 include any media intended for distribution or transmission solely for  
12 the class in which the media is produced;  
13 (c) Student journalist means a student at a postsecondary  
14 educational institution who gathers, compiles, writes, edits,  
15 photographs, records, or prepares information of a journalistic nature  
16 for dissemination in school-sponsored media; and  
17 (d) Student media adviser means an individual employed, appointed,  
18 or designated by a postsecondary educational institution to supervise or  
19 provide instruction relating to school-sponsored media.  
20 (2)(a) All school-sponsored media are deemed to be public forums.  
21 Subject to subsection (3) of this section, a student journalist has a  
22 right to exercise freedom of speech and of the press in school-sponsored  
23 media, regardless of whether the media is supported financially by the  
24 postsecondary educational institution, supported by the use of the  
25 facilities of such institution, or produced in conjunction with a class  
26 in which the student journalist is enrolled.  
27 (b) Subject to subsection (3) of this section, each student  
1 journalist is responsible for determining the news, opinion, feature,  
2 sports, and advertising content such student produces for school-  
3 sponsored media. This subdivision shall not be construed to prevent a  
4 student media adviser from teaching professional standards of English and  
5 journalism to student journalists or ensuring that school-sponsored media  
6 adhere to prevailing journalistic ethical standards.  
7 (3) This section does not authorize or protect expression by a  
8 student journalist that:  
9 (a) Is libelous or slanderous;  
10 (b) Constitutes an unwarranted invasion of privacy;

11 (c) Violates federal or state law;  
12 (d) Departs from prevailing journalistic ethical standards; or  
13 (e) So incites students as to create a clear and present danger of  
14 (i) the commission of an unlawful act, (ii) a violation of the policies  
15 of a postsecondary educational institution, or (iii) the material and  
16 substantial disruption of the orderly operation of such institution.  
17 (4) A student journalist shall not be disciplined for acting in  
18 accordance with subsection (2) of this section.  
19 (5) A student media adviser shall not be dismissed, suspended,  
20 disciplined, reassigned, transferred, or otherwise retaliated against  
21 for:  
22 (a) Acting to protect a student journalist engaged in conduct under  
23 subsection (2) of this section; or  
24 (b) Refusing to infringe upon conduct that is protected by  
25 subsection (2) of this section or the First Amendment to the Constitution  
26 of the United States.  
27 (6) No publication or other expression of matter by a student  
28 journalist in the exercise of rights under this section shall be deemed  
29 to be an expression of a postsecondary educational institution's policy.  
30 Sec. 2. For purposes of this section:  
31 (a) Public high school means any high school operated by a school  
1 district;  
2 (b) School-sponsored media means any material that is (i) prepared,  
3 substantially written, published, or broadcast by a student journalist at  
4 a public high school, (ii) distributed or generally made available to  
5 members of the student body, and (iii) prepared under the direction of a  
6 student media adviser. School-sponsored media does not include any media  
7 intended for distribution or transmission solely for the class in which  
8 the media is produced;  
9 (c) Student journalist means a public high school student who  
10 gathers, compiles, writes, edits, photographs, records, or prepares  
11 information of a journalistic nature for dissemination in school-  
12 sponsored media; and  
13 (d) Student media adviser means an individual employed, appointed,  
14 or designated by a public high school to supervise or provide instruction  
15 relating to school-sponsored media.  
16 (2)(a) All school-sponsored media are deemed to be public forums.  
17 Subject to subsection (3) of this section, a student journalist has a  
18 right to exercise freedom of speech and of the press in school-sponsored  
19 media, regardless of whether the media is supported financially by the  
20 public high school, supported by the use of the facilities of such  
21 school, or produced in conjunction with a class in which the student  
22 journalist is enrolled.  
23 (b) Subject to subsection (3) of this section, each student  
24 journalist is responsible for determining the news, opinion, feature,  
25 sports, and advertising content such student produces for school-  
26 sponsored media. This subdivision shall not be construed to prevent a  
27 student media adviser from teaching professional standards of English and  
28 journalism to student journalists or ensuring that school-sponsored media

29 adhere to prevailing journalistic ethical standards.  
 30 (3) This section does not authorize or protect expression by a  
 31 student journalist that:  
 1 (a) Is libelous or slanderous;  
 2 (b) Constitutes an unwarranted invasion of privacy;  
 3 (c) Violates federal or state law;  
 4 (d) Departs from prevailing journalistic ethical standards; or  
 5 (e) So incites students as to create a clear and present danger of  
 6 (i) the commission of an unlawful act or (ii) a violation of the policies  
 7 of a public high school that could cause the material and substantial  
 8 disruption of the orderly operation of such school.  
 9 (4) A student journalist shall not be disciplined for acting in  
 10 accordance with subsection (2) of this section.  
 11 (5) A student media adviser shall not be dismissed, suspended,  
 12 disciplined, reassigned, transferred, or otherwise retaliated against  
 13 for:  
 14 (a) Acting to protect a student journalist engaged in conduct under  
 15 subsection (2) of this section; or  
 16 (b) Refusing to infringe upon conduct that is protected by  
 17 subsection (2) of this section or the First Amendment to the Constitution  
 18 of the United States.  
 19 (6) No publication or other expression of matter by a student  
 20 journalist in the exercise of rights under this section shall be deemed  
 21 to be an expression of a public high school's policy.  
 22 (7) Public high schools and student media advisers shall make  
 23 efforts to utilize the resources and programs of state public and private  
 24 universities and colleges and of state professional journalism  
 25 organizations to obtain training and advice on mass media law and ethics  
 26 for student media advisers and student journalists.

**LEGISLATIVE BILL 230.** Placed on General File with amendment.

AM450

1 1. Strike the original sections and insert the following new  
 2 sections:  
 3 Section 1. Section 83-4,125, Revised Statutes Cumulative Supplement,  
 4 2018, is amended to read:  
 5 83-4,125 For purposes of sections 83-4,124 to 83-4,134.01 and  
 6 section 5 of this act:  
 7 (1) Criminal detention facility means any institution operated by a  
 8 political subdivision or a combination of political subdivisions for the  
 9 careful keeping or rehabilitative needs of adult or juvenile criminal  
 10 offenders or those persons being detained while awaiting disposition of  
 11 charges against them. Criminal detention facility does not include any  
 12 institution operated by the Department of Correctional Services. Criminal  
 13 detention facilities shall be classified as follows:  
 14 (a) Type I Facilities means criminal detention facilities used for  
 15 the detention of persons for not more than twenty-four hours, excluding  
 16 nonjudicial days;  
 17 (b) Type II Facilities means criminal detention facilities used for

18 the detention of persons for not more than ninety-six hours, excluding  
19 nonjudicial days; and  
20 (c) Type III Facilities means criminal detention facilities used for  
21 the detention of persons beyond ninety-six hours;  
22 (2) Juvenile detention facility means an institution operated by a  
23 political subdivision or political subdivisions for the secure detention  
24 and treatment of persons younger than eighteen years of age, including  
25 persons under the jurisdiction of a juvenile court, who are serving a  
26 sentence pursuant to a conviction in a county or district court or who  
27 are detained while waiting disposition of charges against them. Juvenile  
1 detention facility does not include any institution operated by the  
2 department;  
3 (3) Juvenile facility means a residential child-caring agency as  
4 defined in section 71-1926, a juvenile detention facility or staff secure  
5 juvenile facility as defined in this section, a facility operated by the  
6 Department of Correctional Services that houses youth under the age of  
7 majority, or a youth rehabilitation and treatment center;  
8 (4) Room confinement means the involuntary restriction of a juvenile  
9 placed alone in a cell, alone in a room, or alone in another area,  
10 including a juvenile's own room, except during normal sleeping hours,  
11 whether or not such cell, room, or other area is subject to video or  
12 other electronic monitoring; and  
13 (5) Staff secure juvenile facility means a juvenile residential  
14 facility operated by a political subdivision (a) which does not include  
15 construction designed to physically restrict the movements and activities  
16 of juveniles who are in custody in the facility, (b) in which physical  
17 restriction of movement or activity of juveniles is provided solely  
18 through staff, (c) which may establish reasonable rules restricting  
19 ingress to and egress from the facility, and (d) in which the movements  
20 and activities of individual juvenile residents may, for treatment  
21 purposes, be restricted or subject to control through the use of  
22 intensive staff supervision. Staff secure juvenile facility does not  
23 include any institution operated by the department.  
24 Sec. 2. Section 83-4,126, Revised Statutes Cumulative Supplement,  
25 2018, is amended to read:  
26 83-4,126 (1) Except as provided in subsection (2) of this section,  
27 the Jail Standards Board shall have the authority and responsibility:  
28 (a) To develop minimum standards for the construction, maintenance,  
29 and operation of criminal detention facilities;  
30 (b) To perform other duties as may be necessary to carry out the  
31 policy of the state regarding criminal detention facilities, juvenile  
1 detention facilities, and staff secure juvenile facilities as stated in  
2 sections 83-4,124 to 83-4,134.01 and section 5 of this act; and  
3 (c) Consistent with the purposes and objectives of the Juvenile  
4 Services Act, to develop standards for juvenile detention facilities and  
5 staff secure juvenile facilities, including, but not limited to,  
6 standards for physical facilities, care, programs, and disciplinary  
7 procedures, and to develop guidelines pertaining to the operation of such  
8 facilities.

9 (2) The Jail Standards Board shall not have authority over or  
10 responsibility for correctional facilities that are accredited by a  
11 nationally recognized correctional association. A correctional facility  
12 that is accredited by a nationally recognized correctional association  
13 shall show proof of accreditation annually to the Jail Standards Board.  
14 For purposes of this subsection, nationally recognized correctional  
15 association includes, but is not limited to, the American Correctional  
16 Association or its successor.

17 Sec. 3. Section 83-4,132, Revised Statutes Cumulative Supplement,  
18 2018, is amended to read:

19 83-4,132 If an inspection under sections 83-4,124 to 83-4,134.01 and  
20 section 5 of this act discloses that the criminal detention facility,  
21 juvenile detention facility, or staff secure juvenile facility does not  
22 meet the minimum standards established by the Jail Standards Board, the  
23 board shall send notice, together with the inspection report, to the  
24 governing body responsible for the facility. The appropriate governing  
25 body shall promptly meet to consider the inspection report, and the  
26 inspection personnel shall appear before the governing body to advise and  
27 consult concerning appropriate corrective action. The governing body  
28 shall then initiate appropriate corrective action within six months after  
29 the receipt of such inspection report or may voluntarily close the  
30 facility or the objectionable portion thereof.

31 Sec. 4. Section 83-4,134.01, Revised Statutes Cumulative Supplement,  
1 2018, is amended to read:

2 83-4,134.01 (1) It is the intent of the Legislature to establish a  
3 system of investigation and performance review in order to provide  
4 increased accountability and oversight regarding the use of room  
5 confinement for juveniles in a juvenile facility.

6 (2) The following shall apply regarding placement in room  
7 confinement of a juvenile in a juvenile facility:

8 (a) Room confinement of a juvenile for longer than one hour during a  
9 twenty-four-hour period shall be documented and approved in writing by a  
10 supervisor in the juvenile facility. Documentation of the room  
11 confinement shall include the date of the occurrence; the race,  
12 ethnicity, age, and gender of the juvenile; the reason for placement of  
13 the juvenile in room confinement; an explanation of why less restrictive  
14 means were unsuccessful; the ultimate duration of the placement in room  
15 confinement; facility staffing levels at the time of confinement; and any  
16 incidents of self-harm or suicide committed by the juvenile while he or  
17 she was isolated;

18 (b) If any physical or mental health clinical evaluation was  
19 performed during the time the juvenile was in room confinement for longer  
20 than one hour, the results of such evaluation shall be considered in any  
21 decision to place a juvenile in room confinement or to continue room  
22 confinement;

23 (c) The juvenile facility shall submit a report quarterly to the  
24 Legislature on the juveniles placed in room confinement; the length of  
25 time each juvenile was in room confinement; the race, ethnicity, age, and  
26 gender of each juvenile placed in room confinement; facility staffing



27 levels at the time of confinement; and the reason each juvenile was  
28 placed in room confinement. The report shall specifically address each  
29 instance of room confinement of a juvenile for more than four hours,  
30 including all reasons why attempts to return the juvenile to the general  
31 population of the juvenile facility were unsuccessful. The report shall  
1 also detail all corrective measures taken in response to noncompliance  
2 with this section. The report shall redact all personal identifying  
3 information but shall provide individual, not aggregate, data. The report  
4 shall be delivered electronically to the Legislature. The initial  
5 quarterly report shall be submitted within two weeks after the quarter  
6 ending on September 30, 2016. Subsequent reports shall be submitted for  
7 the ensuing quarters within two weeks after the end of each quarter; and  
8 (d) The Inspector General of Nebraska Child Welfare shall review all  
9 data collected pursuant to this section in order to assess the use of  
10 room confinement for juveniles in each juvenile facility and prepare an  
11 annual report of his or her findings, including, but not limited to,  
12 identifying changes in policy and practice which may lead to decreased  
13 use of such confinement as well as model evidence-based criteria to be  
14 used to determine when a juvenile should be placed in room confinement.  
15 The report shall be delivered electronically to the Legislature on an  
16 annual basis. ~~and~~

17 (3) The use of consecutive periods of room confinement to avoid the  
18 intent or purpose of this section is prohibited.

19 (4) (e) Any juvenile facility which is not a residential child-  
20 caring agency which fails to comply with the requirements of this section  
21 is subject to disciplinary action as provided in section 83-4,134. Any  
22 juvenile facility which is a residential child-caring agency which fails  
23 to comply with the requirements of this section is subject to  
24 disciplinary action as provided in section 71-1940.

25 Sec. 5. (1) This section applies to placement of a juvenile in room  
26 confinement in the following facilities: A juvenile detention facility,  
27 staff secure juvenile facility, facility operated by the Department of  
28 Correctional Services or by any county that houses youth under the age of  
29 majority, or youth rehabilitation and treatment center operated by the  
30 Department of Health and Human Services.

31 (2) A juvenile shall not be placed in room confinement for any of  
1 the following reasons:

2 (a) As a punishment or a disciplinary sanction;

3 (b) As a response to a staffing shortage; or

4 (c) As retaliation against the juvenile by staff.

5 (3) A juvenile shall not be placed in room confinement unless all  
6 other less-restrictive alternatives have been exhausted and the juvenile  
7 poses an immediate and substantial risk of harm to self or others.

8 (4) A juvenile may only be held in room confinement according to the  
9 following conditions:

10 (a) A juvenile shall not be held in room confinement longer than the  
11 minimum time required to eliminate the substantial and immediate risk of  
12 harm to self or others and shall be released from room confinement as  
13 soon as the substantial and immediate risk of harm to self or others is

14 resolved; and  
 15 (b) A juvenile shall only be held in room confinement for a period  
 16 that does not compromise or harm the mental or physical health of the  
 17 juvenile.  
 18 (5) Any juvenile placed in room confinement shall be released  
 19 immediately upon regaining sufficient control so as to no longer engage  
 20 in behavior that threatens substantial and immediate risk of harm to self  
 21 or others.  
 22 (6) Not later than one business day after the date on which a  
 23 facility places a juvenile in room confinement, the facility shall  
 24 provide notice of the placement in room confinement to the juvenile's  
 25 parent or guardian and the attorney of record for the juvenile.  
 26 (7) All rooms used for room confinement shall have adequate and  
 27 operating lighting, heating and cooling, and ventilation for the comfort  
 28 of the juvenile. Rooms shall be clean and resistant to suicide and self-  
 29 harm. Juveniles in room confinement shall have access to drinking water,  
 30 toilet facilities, hygiene supplies, and reading materials approved by a  
 31 licensed mental health professional.  
 1 (8) Juveniles in room confinement shall have the same access as  
 2 provided to juveniles in the general population of the facility to meals,  
 3 contact with parents or legal guardians, legal assistance, and access to  
 4 educational programming.  
 5 (9) Juveniles in room confinement shall have access to appropriate  
 6 medical and mental health services. Mental health staff shall promptly  
 7 provide mental health services as needed.  
 8 (10) Juveniles in room confinement shall be continuously monitored  
 9 by staff of the facility. Continuous monitoring may be accomplished  
 10 through regular in-person visits to the confined juvenile which may also  
 11 be supplemented by electronic video monitoring.  
 12 (11) The use of consecutive periods of room confinement to avoid the  
 13 intent and purpose of this section is prohibited.  
 14 (12) Nothing in this section shall be construed to authorize or  
 15 require the construction or erection of fencing or similar structures at  
 16 any facility, nor the imposition of non-rehabilitative approaches to  
 17 behavior management within any facility.  
 18 Sec. 6. Original sections 83-4,125, 83-4,126, 83-4,132, and  
 19 83-4,134.01, Revised Statutes Cumulative Supplement, 2018, are repealed.

**LEGISLATIVE BILL 322.** Placed on General File with amendment.

AM271

1 1. Strike the original sections and insert the following new  
 2 sections:  
 3 Section 1. Section 28-1419, Reissue Revised Statutes of Nebraska, is  
 4 amended to read:  
 5 28-1419 (1) Whoever shall sell, give, or furnish, in any way, any  
 6 tobacco in any form whatever, or any cigars, cigarettes, cigarette paper,  
 7 vapor products, or alternative nicotine products, to any minor under  
 8 eighteen years of age, is guilty of a Class III misdemeanor for each  
 9 offense.

10 (2)(a) In order to further the public policy of deterring licensees  
 11 or other persons from violating subsection (1) of this section, a person  
 12 who is at least fifteen years of age but under eighteen years of age may  
 13 assist a peace officer in determining compliance with such subsection if:  
 14 (i) The parent or legal guardian of the person has given written  
 15 consent for the person to participate in such compliance check;  
 16 (ii) The person is an employee, a volunteer, or an intern with a  
 17 state or local law enforcement agency;  
 18 (iii) The person is acting within the scope of his or her assigned  
 19 duties as part of a law enforcement investigation;  
 20 (iv) The person does not use or consume a tobacco product as part of  
 21 such duties; and  
 22 (v) The person is not actively assigned to a diversion program, is  
 23 not a party to a pending criminal proceeding or a proceeding pending  
 24 under the Nebraska Juvenile Code, and is not on probation.  
 25 (b) Any person under the age of eighteen years acting in accordance  
 26 with and under the authority of this subsection shall not be in violation  
 27 of section 28-1427.

1 Sec. 2. Section 28-1427, Reissue Revised Statutes of Nebraska, is  
 2 amended to read:

3 28-1427 Except as provided in subsection (2) of section 28-1419,  
 4 any ~~Any~~ person under the age of eighteen years who shall obtain cigars,  
 5 tobacco, cigarettes, cigarette material, vapor products, or alternative  
 6 nicotine products from a licensee by representing that he or she is of  
 7 the age of eighteen years or over is guilty of a Class V misdemeanor.

8 Sec. 3. Original sections 28-1419 and 28-1427, Reissue Revised  
 9 Statutes of Nebraska, are repealed.

**LEGISLATIVE BILL 390.** Placed on General File with amendment.  
 AM408

1 1. Strike the original sections and all amendments thereto and  
 2 insert the following new sections:

3 Section 1. The Legislature finds and declares that:

4 (1) Our public school children, faculty, and staff are entitled to  
 5 be safe in schools when they attend school and study or work;

6 (2) Schools have an interest in keeping students safe;

7 (3) The interest of schools in keeping students safe may include the  
 8 presence of school resource officers or security guards if a school  
 9 district determines such resources are necessary to keep schools safe;

10 (4) Parents and guardians of students have a vested interest in  
 11 being informed of school discipline matters involving their children and  
 12 to be notified as soon as possible if their children are contacted in  
 13 response to a possible law violation, questioned, searched, cited, or  
 14 arrested by a peace officer working with school officials;

15 (5) A comprehensive and clear memorandum of understanding between  
 16 law enforcement and school officials will delineate the roles and  
 17 responsibilities of school resource officers, security guards, and school  
 18 officials to balance the interests of safety for students and school  
 19 staff in relation to parental rights, student success, and family

20 integrity, with the goal that an increased law enforcement presence at  
21 schools will not result in a disparate impact on students in federally  
22 identified demographic categories; and  
23 (6) Schools have a duty to respond to and manage disciplinary  
24 issues. The primary role of school resource officers and security  
25 officers should be to enhance safety with the understanding that school  
26 resource officers also work to prevent and respond to law violations and  
27 serve as a community resource for students, parents, and school staff.

1 Sec. 2. For purposes of sections 1 to 4 of this act, unless the  
2 context otherwise requires:

3 (1) Department means the State Department of Education;

4 (2) Law enforcement agency means an agency or department of this  
5 state or of any political subdivision of this state that is responsible  
6 for the prevention and detection of crime, the enforcement of the penal,  
7 traffic, or highway laws of this state or any political subdivision of  
8 this state, and the enforcement of arrest warrants. Law enforcement  
9 agency includes a police department, an office of a town marshal, an  
10 office of a county sheriff, the Nebraska State Patrol, and any department  
11 to which a deputy state sheriff is assigned as provided in section  
12 84-106;

13 (3) Peace officer has the same meaning as in section 28-109;

14 (4) School resource officer means any peace officer who is assigned,  
15 as his or her primary duty, to any school district to provide law  
16 enforcement and security services to any public elementary or secondary  
17 school and does not mean a peace officer responding to a call for  
18 service, providing proactive enforcement, providing law enforcement or  
19 traffic direction for a school-related event, or providing temporary  
20 services as a school resource officer when the assigned school resource  
21 officer is not available;

22 (5) Security agency means a contractor that employs security guards  
23 used by a school district; and

24 (6) Security guard means a person who is contracted or employed by a  
25 security agency to protect buildings and people and who does not have law  
26 enforcement authority or the power to arrest under any apparent authority  
27 in the jurisdiction where such person is contracted or employed as a  
28 security guard. A security guard may be an off-duty peace officer.

29 Sec. 3. (1) On or before December 1, 2019, the department shall  
30 develop and distribute a model memorandum of understanding that includes  
31 the policies required by section 4 of this act. Any law enforcement  
1 agency or security agency required to adopt a memorandum of understanding  
2 with a school district pursuant to this section that has not developed  
3 and adopted a different written memorandum of understanding shall adopt  
4 the model memorandum of understanding developed by the department.

5 (2) On and after January 1, 2021, any law enforcement agency which  
6 provides school resource officers and any security agency which provides  
7 security guards to schools in a school district shall have in effect the  
8 model memorandum of understanding or a different written memorandum of  
9 understanding with such school district as adopted by such law  
10 enforcement agency or security agency. Such different written memorandum

11 of understanding shall be substantially similar to the model memorandum  
12 of understanding, shall include provisions in conformance with the  
13 minimum standards set forth in the model memorandum of understanding, and  
14 may include any other procedures and provisions the school district and  
15 the law enforcement agency or security agency mutually deem appropriate.  
16 (3) The superintendent of a school district required to adopt a  
17 memorandum of understanding under this section shall, within three months  
18 after its adoption, provide a copy of such memorandum of understanding to  
19 the department or publicly post such memorandum of understanding on the  
20 school district web site.  
21 (4) On or before January 1, 2021, and each January 1 thereafter,  
22 when any school district required to adopt a memorandum of understanding  
23 under this section has made any change to its memorandum of  
24 understanding, in conjunction with the law enforcement agency or security  
25 agency, in the preceding year, the superintendent of such school district  
26 shall provide an updated copy of such memorandum of understanding to the  
27 department or publicly post such memorandum of understanding on the  
28 school district web site.  
29 Sec. 4. Each memorandum of understanding required by section 3 of  
30 this act shall govern the use of school resource officers or security  
31 guards and shall include, but not be limited to, policies that:  
1 (1) Require each school resource officer or security guard to attend  
2 a minimum of twenty hours of training focused on school-based law  
3 enforcement, including, but not limited to, coursework focused on school  
4 law, student rights, understanding special needs students and students  
5 with disabilities, conflict de-escalation techniques, ethics for school  
6 resource officers, teenage brain development, adolescent behavior,  
7 implicit bias training, diversity and cultural awareness, trauma-informed  
8 responses, and preventing violence in school settings;  
9 (2) Require a minimum of one administrator in each elementary or  
10 secondary school where a school resource officer or security guard is  
11 assigned to attend a minimum of twenty hours of training focused on  
12 school-based law enforcement, including, but not limited to, coursework  
13 focused on school law, student rights, understanding special needs  
14 students and students with disabilities, conflict de-escalation  
15 techniques, ethics for school resource officers and security guards,  
16 teenage brain development, adolescent behavior, implicit bias training,  
17 diversity and cultural awareness, trauma-informed responses, and  
18 preventing violence in school settings;  
19 (3) Ensure records are kept on each student referral for prosecution  
20 from a school resource officer in response to an incident occurring at  
21 school, on school grounds, or at a school-sponsored event and ensure that  
22 such records allow for analysis of related data and delineate:  
23 (a) The reason for such referral; and  
24 (b) Federally identified demographic characteristics of such  
25 student;  
26 (4) Identify school policies that address when a parent or guardian  
27 will be notified or present, in a language that such parent or guardian  
28 understands, if a student is subjected to questioning or interrogation by

29 a school official or by a school resource officer or security guard  
 30 operating in conjunction with a school official;  
 31 (5) Identify the school or law enforcement agency policies that  
 1 address under what circumstances a student will be advised of  
 2 constitutional rights prior to being questioned or interrogated by a  
 3 school official or by a school resource officer or security guard  
 4 operating in conjunction with a school official;  
 5 (6) Identify the school policy required by section 79-262 that  
 6 addresses the type or category of student conduct or actions that will be  
 7 referred to law enforcement for prosecution and the type of student  
 8 conduct or actions that will be resolved as a disciplinary matter by a  
 9 school official and not subject to referral to law enforcement; and  
 10 (7) Identify a student and parent complaint process to express a  
 11 concern or file a complaint about a school resource officer or security  
 12 guard and the practices of such school resource officer or security guard  
 13 with the law enforcement agency or security agency.

**LEGISLATIVE BILL 579.** Placed on General File with amendment.  
 AM345 is available in the Bill Room.

(Signed) Steve Lathrop, Chairperson

#### **COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 224.** Placed on Select File.

**LEGISLATIVE BILL 16.** Placed on Select File.

(Signed) Julie Slama, Chairperson

#### **ANNOUNCEMENT**

The Chair announced the birthday of Senator Gragert.

#### **GENERAL FILE**

**LEGISLATIVE BILL 399.** Senator Chambers renewed his motion, MO13, found on page 570 and considered on page 574, to bracket until June 6, 2019.

Senator Slama offered the following motion:

MO15

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Slama moved for a call of the house. The motion prevailed with 29 ayes, 1 nay, and 20 not voting.

Senator Slama requested a roll call vote on the motion to invoke cloture.

Voting in the affirmative, 42:

Albrecht	Crawford	Hansen, B.	Lindstrom	Quick
Arch	DeBoer	Hansen, M.	Linehan	Scheer
Blood	Dorn	Hilgers	Lowe	Slama
Bolz	Erdman	Hilkemann	McCollister	Stinner
Bostelman	Friesen	Hughes	McDonnell	Williams
Brandt	Geist	Kolowski	Morfeld	Wishart
Brewer	Gragert	Kolterman	Moser	
Briese	Groene	La Grone	Murman	
Clements	Halloran	Lathrop	Pansing Brooks	

Voting in the negative, 3:

Chambers	Hunt	Wayne
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Excused and not voting, 4:

Cavanaugh	Howard	Vargas	Walz
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The Slama motion to invoke cloture prevailed with 42 ayes, 3 nays, and 4 excused and not voting.

Senator Chambers requested a roll call vote on the motion to bracket.

Voting in the affirmative, 1:

Chambers

Voting in the negative, 44:

Albrecht	Crawford	Hansen, B.	Lathrop	Pansing Brooks
Arch	DeBoer	Hansen, M.	Lindstrom	Quick
Blood	Dorn	Hilgers	Linehan	Scheer
Bolz	Erdman	Hilkemann	Lowe	Slama
Bostelman	Friesen	Hughes	McCollister	Stinner
Brandt	Geist	Hunt	McDonnell	Wayne
Brewer	Gragert	Kolowski	Morfeld	Williams
Briese	Groene	Kolterman	Moser	Wishart
Clements	Halloran	La Grone	Murman	

Excused and not voting, 4:

Cavanaugh	Howard	Vargas	Walz
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The Chambers motion to bracket failed with 1 aye, 44 nays, and 4 excused and not voting.

Senator Chambers requested a roll call vote on the Moser amendment,

FA14, found on page 570, to the committee amendment.

Voting in the affirmative, 39:

Albrecht	Dorn	Hansen, M.	Lathrop	Pansing Brooks
Arch	Erdman	Hilgers	Lindstrom	Quick
Bostelman	Friesen	Hilkemann	Linehan	Scheer
Brandt	Geist	Hughes	Lowe	Slama
Brewer	Gragert	Hunt	McCollister	Stinner
Briese	Groene	Kolowski	McDonnell	Williams
Clements	Halloran	Kolterman	Moser	Wishart
Crawford	Hansen, B.	La Grone	Murman	

Voting in the negative, 1:

Chambers

Present and not voting, 5:

Blood	Bolz	DeBoer	Morfeld	Wayne
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Excused and not voting, 4:

Cavanaugh	Howard	Vargas	Walz
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The Moser amendment was adopted with 42 ayes, 3 nays, and 4 excused and not voting.

Senator Chambers requested a roll call vote on the committee amendment, AM286, found on page 507 and considered on page 535, as amended.

Voting in the affirmative, 42:

Albrecht	Crawford	Hansen, B.	Lindstrom	Quick
Arch	DeBoer	Hansen, M.	Linehan	Scheer
Blood	Dorn	Hilgers	Lowe	Slama
Bolz	Erdman	Hilkemann	McCollister	Stinner
Bostelman	Friesen	Hughes	McDonnell	Williams
Brandt	Geist	Kolowski	Morfeld	Wishart
Brewer	Gragert	Kolterman	Moser	
Briese	Groene	La Grone	Murman	
Clements	Halloran	Lathrop	Pansing Brooks	

Voting in the negative, 3:

Chambers	Hunt	Wayne
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Excused and not voting, 4:



Cavanaugh Howard Vargas Walz

The committee amendment, as amended, was adopted with 42 ayes, 3 nays, and 4 excused and not voting.

Senator Chambers requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 42:

Albrecht	Crawford	Hansen, B.	Lindstrom	Quick
Arch	DeBoer	Hansen, M.	Linehan	Scheer
Blood	Dorn	Hilgers	Lowe	Slama
Bolz	Erdman	Hilkemann	McCollister	Stinner
Bostelman	Friesen	Hughes	McDonnell	Williams
Brandt	Geist	Kolowski	Morfeld	Wishart
Brewer	Gragert	Kolterman	Moser	
Briese	Groene	La Grone	Murman	
Clements	Halloran	Lathrop	Pansing Brooks	

Voting in the negative, 3:

Chambers Hunt Wayne

Excused and not voting, 4:

Cavanaugh Howard Vargas Walz

Advanced to Enrollment and Review Initial with 42 ayes, 3 nays, and 4 excused and not voting.

The Chair declared the call raised.

**LEGISLATIVE BILL 309.** Title read. Considered.

Senator Chambers offered the following motion:

MO16

Bracket until June 6, 2019.

Pending.

#### **COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 7.** Placed on Final Reading.

**LEGISLATIVE BILL 55.** Placed on Final Reading.

**LEGISLATIVE BILL 146.** Placed on Final Reading.

ST4

The following changes, required to be reported for publication in the Journal, have been made:

1. On page 1, line 3, "time for acceptance of a" has been struck and "liability provisions for refusal to accept an acknowledged" inserted.

**LEGISLATIVE BILL 154.** Placed on Final Reading.

ST7

The following changes, required to be reported for publication in the Journal, have been made:

1. On page 1, line 2, "and children" has been inserted after "women".

**LEGISLATIVE BILL 264.** Placed on Final Reading.

(Signed) Julie Slama, Chairperson

**COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 116.** Placed on Select File.

**LEGISLATIVE BILL 145.** Placed on Select File with amendment.

ER37

1 1. On page 1, line 2, strike "section" and insert "sections 30-4020 2 and"; and in line 4 after the semicolon insert "to harmonize provisions;" 3 and strike "section" and insert "sections".

**LEGISLATIVE BILL 384.** Placed on Select File with amendment.

ER39

1 1. On page 2, line 24, strike "their" and insert "its".

**LEGISLATIVE BILL 660.** Placed on Select File with amendment.

ER38

1 1. On page 3, line 23, after the first "the" insert "executive"; and 2 in line 25 after "the" insert "executive".

**LEGISLATIVE BILL 660A.** Placed on Select File.

**LEGISLATIVE BILL 486.** Placed on Select File.

(Signed) Julie Slama, Chairperson

**NOTICE OF COMMITTEE HEARING(S)**

Government, Military and Veterans Affairs

Room 1507

Wednesday, March 6, 2019 1:30 p.m.

LB211

LB163

LB83  
LB711

Thursday, March 7, 2019 1:30 p.m.

LB267  
LB336  
LB543

(Signed) Tom Brewer, Chairperson

**ANNOUNCEMENT(S)**

Priority designation(s) received:

McCollister - LB284  
Erdman - LB483

**GENERAL FILE**

**LEGISLATIVE BILL 309.** The Chambers motion, MO16, found in this day's Journal, to bracket until June 6, 2019, was renewed.

**SENATOR HUGHES PRESIDING**

Pending.

**COMMITTEE REPORT(S)**

Revenue

**LEGISLATIVE BILL 477.** Placed on General File.

**LEGISLATIVE BILL 512.** Placed on General File with amendment.  
AM423

- 1 1. Strike original sections 12, 15, and 26 and insert the following
- 2 new section:
- 3 Sec. 24. Sections 14 and 26 of this act become operative for all
- 4 taxable years beginning or deemed to begin on or after January 1, 2018,
- 5 under the Internal Revenue Code of 1986, as amended. Sections 15, 16, 17,
- 6 and 27 of this act become operative for all taxable years beginning or
- 7 deemed to begin on or after January 1, 2019, under the Internal Revenue
- 8 Code of 1986, as amended. The other sections of this act become operative
- 9 on their effective date.
- 10 2. On page 36, line 28, strike "77-414,".
- 11 3. Renumber the remaining sections accordingly.

(Signed) Lou Ann Linehan, Chairperson

**NOTICE OF COMMITTEE HEARING(S)**

Revenue

Room 1524

Wednesday, March 6, 2019 1:30 p.m.

LB720  
 LB419  
 LB413  
 LB417  
 LB613

(Signed) Lou Ann Linehan, Chairperson

**COMMITTEE REPORT(S)**

General Affairs

The General Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Todd Zohner - Nebraska Commission on Problem Gambling

Aye: 8 Arch, Blood, Brandt, Briese, Hunt, Lowe, Moser, Wayne. Nay: 0.  
 Absent: 0. Present and not voting: 0.

(Signed) Tom Briese, Chairperson

**AMENDMENT(S) - Print in Journal**

Senator Geist filed the following amendment to LB142:  
 AM49

1 1. Strike the original sections and insert the following new  
 2 sections:  
 3 Section 1. Section 60-3301, Revised Statutes Cumulative Supplement,  
 4 2018, is amended to read:  
 5 60-3301 For purposes of sections 60-3301 to 60-3311 and section 6 of  
 6 this act, the following definitions apply:  
 7 (1) Automated driving system means the hardware and software that  
 8 are collectively capable of performing the entire dynamic driving task on  
 9 a sustained basis regardless of whether it is limited to a specific  
 10 operational design domain, if any;  
 11 (2) Automated-driving-system-equipped vehicle means a motor vehicle  
 12 equipped with an automated driving system;  
 13 (3) Automated driving system manufacturer means the manufacturer of  
 14 the automated driving system;  
 15 (4) ~~(3)~~ Conventional human driver means a human person who manually  
 16 exercises in-vehicle braking, accelerating, steering, and transmission

17 gear selection input devices in order to operate a motor vehicle;  
18 ~~(5)~~ ~~(4)~~ Department means the Department of Motor Vehicles;  
19 ~~(6)~~ ~~(5)~~ Driverless-capable vehicle means a motor vehicle equipped  
20 with an automated driving system capable of performing all aspects of the  
21 dynamic driving task within its operational design domain, if any,  
22 including achieving a minimal risk condition, without any intervention or  
23 supervision by a conventional human driver;  
24 ~~(7)~~ ~~(6)~~ Dynamic driving task means all of the real-time operational  
25 and tactical functions required to operate a motor vehicle within its  
26 specific operational design domain, if any, excluding the strategic  
27 functions such as trip scheduling and selection of destinations and

1 waypoints;  
2 ~~(8)~~ ~~(7)~~ Minimal risk condition means a reasonably safe state to  
3 which an automated driving system brings an automated-driving-system-  
4 equipped vehicle upon experiencing a performance-related failure of the  
5 vehicle's automated driving system that renders the vehicle unable to  
6 perform the entire dynamic driving task, such as bringing the vehicle to  
7 a complete stop and activating the hazard lamps;

8 ~~(9)~~ ~~(8)~~ On-demand driverless-capable vehicle network means a  
9 transportation service network that uses a software application or other  
10 digital means to dispatch driverless-capable vehicles for purposes of  
11 transporting persons or goods, including for-hire transportation,  
12 transportation for compensation, and public transportation; and  
13 ~~(10)~~ ~~(9)~~ Operational design domain means a description of the  
14 specific operating domain in which an automated driving system is  
15 designed to properly operate, including, but not limited to, roadway  
16 types, speed range, environmental conditions such as weather and time of  
17 day, and other domain constraints.

18 Sec. 2. Section 60-3304, Revised Statutes Cumulative Supplement,  
19 2018, is amended to read:

20 60-3304 Before an automated-driving-system-equipped vehicle may  
21 operate on the public roads of this state, (1) the vehicle manufacturer  
22 as defined in section 60-1401.24 and the automated driving system  
23 manufacturer shall provide evidence to the department of ability to  
24 respond to damages for liability in the amount of at least five million  
25 dollars, to include minimum coverage of one million dollars per vehicle  
26 per occurrence, and (2) a person shall submit proof of financial  
27 responsibility satisfactory to the department that the automated-driving-  
28 system-equipped vehicle is covered by insurance or proof of self-  
29 insurance that satisfies the requirements of the Motor Vehicle Safety  
30 Responsibility Act.

31 Sec. 3. Section 60-3308, Revised Statutes Cumulative Supplement,  
1 2018, is amended to read:

2 60-3308 (1) Automated-driving-system-equipped vehicles and automated  
3 driving systems are governed exclusively by sections 60-3301 to 60-3311  
4 and section 6 of this act. The department is the sole and exclusive state  
5 agency that may implement sections 60-3301 to 60-3311 and section 6 of  
6 this act.

7 (2) The state or any political subdivision shall not impose

8 requirements, including performance standards, specific to the operation  
 9 of automated-driving-system-equipped vehicles, automated driving systems,  
 10 or on-demand driverless-capable vehicle networks in addition to the  
 11 requirements of sections 60-3301 to 60-3311 and section 6 of this act.

12 (3) The state or any political subdivision thereof shall not impose  
 13 a tax or other requirements on an automated-driving-system-equipped  
 14 vehicle, an automated driving system, or an on-demand driverless-capable  
 15 vehicle network, where such tax or other requirements relate specifically  
 16 to the operation of automated-driving-system-equipped vehicles.

17 Sec. 4. Section 60-3309, Revised Statutes Cumulative Supplement,  
 18 2018, is amended to read:

19 60-3309 Nothing in sections 60-3301 to 60-3311 and section 6 of this  
 20 act shall be construed to require the State of Nebraska or any political  
 21 subdivision thereof to plan, design, construct, maintain, or modify any  
 22 highway, as defined in section 60-624, for the accommodation of an  
 23 automated-driving-system-equipped vehicle or a driverless-capable  
 24 vehicle.

25 Sec. 5. Section 60-3310, Revised Statutes Cumulative Supplement,  
 26 2018, is amended to read:

27 60-3310 Nothing in sections 60-3301 to 60-3311 and section 6 of this  
 28 act shall be construed to provide greater liability than is already  
 29 allowed under the Political Subdivisions Tort Claims Act or the State  
 30 Tort Claims Act.

31 Sec. 6. Whenever a conventional human driver is in a motor vehicle  
 1 during its use, the conventional human driver shall be deemed to be in  
 2 control of the vehicle's operations, unless the automated driving system  
 3 is engaged.

4 When the automated driving system of the automated-driving-system-  
 5 equipped vehicle is engaged at the time of a crash or collision, the  
 6 automated driving system manufacturer shall be deemed to have been  
 7 operating the vehicle unless the system has been modified by a third  
 8 party.

9 Sec. 7. Original sections 60-3301, 60-3304, 60-3308, 60-3309, and  
 10 60-3310, Revised Statutes Cumulative Supplement, 2018, are repealed.

### GENERAL FILE

**LEGISLATIVE BILL 309.** The Chambers motion, MO16, found in this  
 day's Journal, to bracket until June 6, 2019, was renewed.

### SPEAKER SCHEER PRESIDING

Senator Chambers moved for a call of the house. The motion prevailed with  
 16 ayes, 1 nay, and 32 not voting.

Senator Chambers requested a roll call vote on the motion to bracket.

Voting in the affirmative, 1:

Groene

Voting in the negative, 45:

Albrecht	Clements	Hilgers	Lindstrom	Quick
Arch	Crawford	Hilkemann	Linehan	Scheer
Blood	DeBoer	Howard	Lowe	Slama
Bolz	Dorn	Hughes	McCollister	Stinner
Bostelman	Geist	Hunt	McDonnell	Vargas
Brandt	Gragert	Kolowski	Morfeld	Walz
Brewer	Halloran	Kolterman	Moser	Wayne
Briese	Hansen, B.	La Grone	Murman	Williams
Cavanaugh	Hansen, M.	Lathrop	Pansing Brooks	Wishart

Present and not voting, 3:

Chambers Erdman Friesen

The Chambers motion to bracket failed with 1 aye, 45 nays, and 3 present and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:

MO17

Reconsider the vote taken to bracket.

Pending.

### **COMMITTEE REPORT(S)**

Enrollment and Review

**LEGISLATIVE BILL 254.** Placed on Select File with amendment.  
ER40

- 1 1. In the B. Hansen amendment, AM384, on page 1, line 16, after
- 2 "tribe" insert an underscored comma; and after line 25 insert "and".
- 3 2. On page 1, strike beginning with "amend" in line 1 through
- 4 "section" in line 5 and insert "adopt the Fair Chance Hiring Act".

**LEGISLATIVE BILL 361.** Placed on Select File.

(Signed) Julie Slama, Chairperson

**NOTICE OF COMMITTEE HEARING(S)**

Appropriations

Room 1524

Tuesday, March 5, 2019 1:30 p.m.

Agency 48 - Coordinating Commission for Postsecondary Education

Agency 50 - Nebraska State College System

Agency 83 - Community College Aid

Room 1003

Wednesday, March 6, 2019 1:30 p.m.

LB174

LB446

LB703

Agency 78 - Nebraska Commission on Law Enforcement and Criminal  
Justice

Agency 21 - State Fire Marshal

Agency 35 - Liquor Control Commission, Nebraska

Agency 76 - Indian Commission, Nebraska

Agency 40 - Motor Vehicle Licensing Board, Nebraska

Agency 24 - Motor Vehicles, Department

Thursday, March 7, 2019 1:30 p.m.

Agency 81 - Commission for the Blind and Visually Impaired

Agency 82 - Commission for the Deaf and Hard of Hearing

Agency 67 - Equal Opportunity Commission

Agency 68 - Latino-American Commission

Agency 70 - Foster Care Review Board, State

(Signed) John Stinner, Chairperson

**AMENDMENT(S) - Print in Journal**Senator La Grone filed the following amendment to LB309:

AM471

1 1. Insert the following new sections:

2 Section 1. The state shall annually reimburse counties for costs3 incurred in the operating budgets of county courts, including supplies,4 court costs, attorney's fees, and equipment, including computers.5 Sec. 2. The state shall annually reimburse counties for costs6 related to district courts, including expenditures for:7 (1) Law clerks and bailiffs, including their health and dental8 insurance;9 (2) Appointment of counsel;



- 10 (3) Law library costs; and  
 11 (4) Supplies and equipment, including computers and furniture.  
 12 Sec. 3. The state shall annually reimburse counties for costs  
 13 incurred in the operating budgets of juvenile courts, including for:  
 14 (1) Bailiffs, file clerks, part-time receptionists;  
 15 (2) Appointment of counsel;  
 16 (3) Evaluations; and  
 17 (4) Supplies.  
 18 Sec. 4. The state shall annually reimburse counties for costs  
 19 incurred in providing courtroom facilities for county, juvenile, and  
 20 district courts, including the costs for utilities and custodial  
 21 services.  
 22 Sec. 5. The state shall annually reimburse counties for costs  
 23 incurred in providing courtroom security for county, juvenile, and  
 24 district courts, including for sworn deputies, civilian security  
 25 officers, and security equipment.  
 26 2. Renumber the remaining sections accordingly.

Senator La Grone filed the following amendment to LB309:  
 AM477

(Amendments to AM471)

- 1 1. Insert the following new section:  
 2 Sec. 7. Section 24-350, Reissue Revised Statutes of Nebraska, is  
 3 amended to read:  
 4 24-350 The judge of the district court may, if the business of the  
 5 court requires, appoint a bailiff or bailiffs. In counties having more  
 6 than sixty thousand inhabitants, bailiffs shall be appointed and shall  
 7 hold office for a term of one year unless sooner removed by the  
 8 appointing judge. In counties having not more than sixty thousand  
 9 inhabitants, the appointment shall continue only so long as is necessary.  
 10 ~~Bailiffs shall receive for their services either (a) an annual salary in~~  
 11 ~~an amount to be fixed by the county board, payable in monthly~~  
 12 ~~installments from the county general fund, or (b) a per diem in an amount~~  
 13 ~~to be fixed by the county board, payable monthly from the county general~~  
 14 ~~fund.~~  
 15 2. On page 1, line 26, after "sections" insert "and correct the  
 16 repealer".

**UNANIMOUS CONSENT - Add Cointroducer(s)**

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

Senator La Grone name added to LB147.  
 Senator Albrecht name added to LB462.  
 Senator Hunt name added to LB611.

**VISITOR(S)**

Visitors to the Chamber were Katie Ziegler from the National Conference of State Legislatures; and members of the AFL-CIO from across the state.

The Doctor of the Day was Dr. Dale Agner from Papillion.

**ADJOURNMENT**

At 11:48 a.m., on a motion by Senator Linehan, the Legislature adjourned until 9:00 a.m., Wednesday, February 27, 2019.

Patrick J. O'Donnell  
Clerk of the Legislature