

January 9, 1990

LB 141, 742, 1061-1077

Haberman, would you record your presence, please. Thank you. Senator Bernard-Stevens, Senator Goodrich. Senator Wehrbein, would you record your presence, please. Thanks. Senator Schmit. We're looking for Senator Goodrich and Senator Schmit. I understand Senator Goodrich will be here in a moment. Senator Schmit, would you like to record your presence, please. Thank you. And Senator Goodrich is here. Ladies and gentlemen, the question is the adoption of the committee amendments. A roll call vote has been requested. Mr. Clerk, please.

CLERK: (Roll call vote taken. See page 238 of the Legislative Journal.) 23 ayes, 14 nays, Mr. President, on adoption of committee amendments.

PRESIDENT: The committee amendments are not adopted. Do you have anything else on it, Mr. Clerk?

CLERK: Mr. President, yes, I do.

PRESIDENT: The call is raised. Did you wish to read something in, Mr. Clerk, while we're at it?

ASSISTANT CLERK: Yes, Mr. President, new bills. (Read LBs 1061-1077 by title for the first time. See pages 239-43 of the Legislative Journal.)

PRESIDENT: Mr. Clerk, anything further on 141?

CLERK: Mr. President, I do. I now have a motion to the bill by Senator Moore. Senator Moore would move to indefinitely postpone LB 141. Senator Abboud, as introducer, has the option to lay the bill over, Mr. President.

PRESIDENT: Senator Abboud, what do you lay?

SENATOR ABOUD: Lay the bill over.

PRESIDENT: Lay it over?

SENATOR ABOUD: Yes.

PRESIDENT: Okay, it will be laid over. We'll move on to LB 742.

CLERK: Mr. President, 742 was a bill that was introduced by

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LB 678, 678A, 720, 720A, 742, 1034, 1049-1079

Mr. President, I have a hearing notice from the Government, Military and Veterans Affairs Committee, for the Business and Labor Committee and for the Retirement Systems Committee, all signed by their respective Chairs.

Mr. President, Enrollment and Review reports LB 678 to Select File, E & R amendments; LB 678A, Select File with E & R; LB 720, Select File with E & R and LB 720A, Select File with E & R also, all signed by Senator Lindsay. (See pages 265-66 of the Legislative Journal.)

And I have a reference report, Mr. President, referring LBs 1049-1079. (Also LB 1034. See page 265 of the Legislative Journal.) That is all that I have.

SPEAKER BARRETT: Thank you, Mr. Clerk. Those in favor of the motion to recess until one-thirty please say aye. Opposed no. Ayes have it, motion carried, we are recessed.

RECESS

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you, sir. With a quorum present, we will proceed back to our discussion of LB 742 at which time we were discussing the committee amendments to LB 742. We will return to the speaking order. Correction, we're on a motion to advance the bill. The speaking order beginning with Senator Dierks, if you would care to discuss the motion to advance the bill to E & R, Senator Dierks, followed by Senators Landis, Moore, Smith, Schmit and Bernard-Stevens. Senator Dierks.

SENATOR DIERKS: Thank you, Mr. Speaker and members of the body, I just rise to support Senator Robak's LB 742. I think that... I think these people have a track record that is good and I think we need to honor that. I believe that we do allow people on our roads sometime that maybe shouldn't be there. I don't know how we can stop some of that, but this is some legislation that will allow people to drive again that their track record is proven, they can handle this situation. And they have been kept from this right by the bureaucracy and I think it's time for the bureaucracy to give the right back to them. So I would support 742 and I would urge other people here to do the same thing.

bills or wants a lot of bills, but this is the system. You know, clearly it says here that that bill belongs in Transportation. Now we are either going to abide by the rules or the whole system goes to pot, as far as I am concerned. I realize there is a lobby group out there that wants this bill go to Judiciary. It does not belong in Judiciary, clearly does not belong in Judiciary. Jack Rodgers put it in Transportation and then it was changed by the Reference Committee. So it clearly belongs in Transportation, and I just urge you to rerefer that bill to Transportation.

PRESIDENT: Thank you. Senator Chizek, please.

SENATOR CHIZEK: Well, obviously, I disagree with Senator Lamb, and I think the realities are simple to grasp. The public has demanded that government act on the problems of drug abuse, and they rightly...and rightfully so, in my opinion. And I think these problems are multifaceted, multidefinitional, if you will, and in short, there is an overlap, and not pieces that have any connection with each other. The public is not failing to see that alcohol abuse is a part of the fabric of the problem. Response is being made to that which the public sees and demands a response to. One response is Senator Langford's LB 846 addressing suspension of driver's license for drug related offenses. Another response, colleagues, is Senator Abboud's LB 927. Other responses are Senator Pirsch's LB 976 and LB 977. Another response is Senator Lynch's LB 1062. Finally, there is LB 1114. Whether each and every sentence of these bills represents the best that we can do is a question for review in the next few weeks, colleagues. Today I think it is important that we see they share a common element of that being a response, that they share one common element in approach, specifically, cementing these suggestions with criminal penalties. All, including LB 1114, were assigned to the Judiciary Committee. At first blush, LB 1114 might, in fact, not seem to belong in this group, but its proposal to lower the level at which a person is considered legally intoxicated is, in effect, a proposal that goes to the abuse of a drug constituting a crime against society. It may even be considered, and I stress, not by its words by themselves but by their effect, to be a newly defined crime, again, one piece of the main is at were, which is the final reason why the bill should remain in Judiciary. As we respond, we need to see what the public sees. The view and the review of the issue must not be piecemeal. We must ask ourselves the logic of expected responsible hearings

before a single committee of LB 846, of LB 927, of LB 976, of LB 977, LB 1062, but advocating, advocating a piece of responsibility posed by 1114 elsewhere. I would like us at least to keep pace with what the public sees and knows is common sense, a virtue which my colleague, Senator Lamb, would in the first...be one of the first in line to defend. In that spirit, I would ask respectfully that we not be so eager to dispose of the motion that you approve it, and I respectfully ask for your defeat of the motion.

PRESIDENT: Thank you. Senator Peterson, please, followed by Senator Beck and Senator Labedz.

SENATOR PETERSON: Mr. President, and members, I rise to support the motion to refer this back to Transportation. That is where Dr. Rodgers "invidiously" said it should belong, by the statutes, the chapters and everything, and we, Senator Chambers, of course, is always in that committee trying to get a lot of things moved over to Judiciary, and I get offended a lot of times when I am sitting there referencing when this happens. And this is what happened, and from like Dr. Rodgers said, and he has expressed it to the committee time and time again, you know, this is where these bills should go, but it happens every once in awhile within that committee, especially with Senator Chambers, that this is where he wants it to go to Judiciary, and I get a little fed up with that, and I think that if anybody knows where they should go it should be Dr. Rodgers because he has done this for a number of years. So I would request that you, like you colleagues of mine, that you refer it back to Transportation where it was originally put by Dr. Rodgers. Thank you.

PRESIDENT: Thank you. Senator Beck, you are next, but may I introduce some guests, please, in the south balcony. From around the state, we have 30 members of the Nebraska Speech, Language, and Hearing Association and they are composed of members all over the state. Would you please rise and be recognized by the Legislature. Thank you for visiting us this morning. We should also recognize our physician of the day, comes from Senator Wehrbein's area. Dr. Gary Rademacher of Nebraska City, would you please rise so we can recognize you. Dr. Rademacher, we appreciate your services today. Thank you. Senator Beck, please.

SENATOR BECK: Thank you. Mr. President, and members of the

February 16, 1990 LB 163, 164A, 226, 260, 457, 571, 838
846, 866, 880, 958, 1003, 1019, 1028
1039, 1062, 1103, 1106, 1113, 1184, 1205
1215, 1229

Senator Hartnett. (See pages 846-48 of the Legislative Journal.)

Judiciary reports LB 838 to General File; LB 880, General File; LB 846, indefinitely postponed; LB 1103 and LB 1205, indefinitely postponed.

I have amendments to be printed to LB 866 by Senators Lamb, Haberman, Rogers and Crosby. (See pages 848-50 of the Legislative Journal.)

Mr. President, priority bill designations. Senator Labeledz has selected LB 457. Senator Hartnett for Urban Affairs has selected LB 1106, LB 1229; Senator Conway, LB 260; Senator Bernard-Stevens, LB 1062; Senator Beck, LB 958; Senator Rod Johnson, LB 1019; Senator Haberman, LB 1039, as one of the Retirement Systems priority bills. Senator Hall's Revenue bills are LB 1028 and LB 1215; Senator McFarland, LB 226; Senator Hefner, LB 571; and Senator Chizek's personal priority, LB 880, and Judiciary Committee's, LB 1003 and LB 1113.

Mr. President, Revenue Committee gives notice of hearing. And one new A bill, LB 164A by Senator Ashford. (Read by title for the first time as found on page 850 of the Legislative Journal.)

And, finally, Senator Scofield has amendments to LB 1184 to be printed. (See page 851 of the Legislative Journal.) That's all that I have, Madam President.

Madam President, when we left LB 163, the Enrollment and Review amendments had been adopted. Senator Johnson had an amendment to the bill that had been adopted. Senator Morrissey had amendments. Senator Hefner had his first amendment adopted. The bill was bracketed, Madam President. I now have pending Senator Hefner's amendment. Senator, this amendment is on page 599 of the Journal. I believe...it's AM2141, Senator, the biodegradable. Right. Okay.

SENATOR LABEDZ: Senator Hefner, on the amendment.

SENATOR HEFNER: Mr. President and members of the body, you will find this amendment on page 599. And what this would do, this would add a tax or a fee on disposable diapers...on nondegradable disposable diapers at the rate of 10 cents per dozen. The tax would be collected by the Department of Revenue

February 27, 1990

LB 445, 662, 854, 923, 945, 976, 1023
1042, 1057, 1062, 1146, 1147, 1151, 1212
LR 233

SPEAKER BARRETT: Thank you. Shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 18 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, record your presence, please. Those outside the Chamber, please return. Senator Lynch, please. Senator Nelson, please. Senator Haberman. All members return to your seats for a roll call vote. The question again is the indefinite postponement of the resolution. Mr. Clerk, please call the roll.

CLERK: (Roll call vote taken. See pages 998-99 of the Legislative Journal.) 17 ayes, 19 nays, Mr. President.

SPEAKER BARRETT: The motion fails. The call is raised. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I do. Your Committee on Urban Affairs reports LB 945 indefinitely postponed, and LB 1057 indefinitely postponed, those signed by Senator Hartnett. Judiciary Committee reports LB 445 to General File; LB 854 to General File; LB 976 to General File; LB 1023, General File; LB 1042, General File; LB 1147, General File; LB 1212, General File; LB 1062, indefinitely postponed; LB 1151, indefinitely postponed, those all signed by Senator Chizek as Chair of the Committee. (See pages 999-1003 of the Legislative Journal.)

Mr. President, I have a series of amendments to be printed. Senators Lynch and Wesely have amendments to LB 923, Senator Conway to LB 1146, and Senator Scofield to LB 662. (See pages 1003-07 of the Legislative Journal.)

Mr. President, Senator Hall would like to announce that the Revenue Committee will meet at one o'clock this afternoon for their hearings as opposed to one-thirty. Revenue Committee, one o'clock, as opposed to one-thirty. That's all that I have, Mr. President.

SPEAKER BARRETT: We are back to the motion to advance the bill or the resolution. I have only one light. Senator Landis, would you care to....

SENATOR LANDIS: If we wish to run over it, I will be happy to

challenge? If not, Senator Hall.

SENATOR HALL: Thank you, Mr. President, members. First of all, the issue before us is a motion to overrule the Chair. The amendment that Senator Hefner offers deals with a totally different section in the bill before us, in LB 315, clearly pointed out by the Speaker, clearly ruled to be not germane to the committee amendments before the bill. Senator Kristensen talks about whether or not the amendment that Senator Hefner offers is germane to the statute that he tries to amend. Clearly, it is, but that statute isn't part of LB 315. It doesn't even come close. So I mean the argument that Senator Kristensen makes is a good one in confusing the issue. It clearly is germane to the definitions in the section that he talked about and Senator Hefner has before the bill. But that is not the sections of statute that 315 deal with. Secondly, Senator Coordsen talks about the issue with regard to drug testing and whether or not an individual should be able to collect unemployment benefits. He has an amendment to Senator Hefner's amendment. I have an amendment up there, because if we're going to talk about drug testing, I've got the contents of LB 1062 to add to this bill as well, which deals with drug testing, and what is drug testing, what constitutes drug testing, and what premise do you use to determine whether or not an individual has been determined to have drugs or alcohol in their system to disqualify them from these benefits. Maybe it is a good time to begin discussion of this topic at three-forty this afternoon. I don't have any problem with it. But the question before us right now is the motion to overrule the Chair with regard to the ruling on germaneness. Clearly, as you can see, the sections aren't the same. It was not ruled to be germane on the committee amendments, which dealt with nothing more than the table. This deals with disqualification issues, two sections away. I would urge you to move to overrule the Chair. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. The question before the body is, shall the Chair be overruled? Those in favor of overruling the Chair please vote yes, those opposed vote no. A majority of those present necessary to overrule, that magic number is apparently 17. Have you all voted?

SENATOR HALL: Probably going to need to do this anyway. I would ask for a call of the house and a roll call vote on the motion.

such a matter as the Legislature or the administration may direct. Thank you.

SPEAKER BARRETT: Do you have an amendment on the desk, Mr. Clerk?

ASSISTANT CLERK: Mr. President, Senator Hall would move to amend the Hefner amendment.

SPEAKER BARRETT: The Chair recognizes Senator Hall.

SENATOR HALL: Thank you, Mr. President, members, the amendment that I offer is the...in the form of LB 1062 as amended by committee amendments. It, if you'll open your bill books to that piece of legislation, it deals with the issue of drug testing and the committee amendments allow for the, I think, clarification of some of the issues that the original bill left out and the bill as it was introduced by Senator Bernard-Stevens, Senator Lynch and Senator Rod Johnson deals with the basis of how we determine the testing, and it deals with the...basically the state of the art testing with regard to these types of procedures for determining whether or not an employee is found to be, I guess, under the influence of alcohol or a drug. And if you look at the committee amendments it has a number of things in there that harmonizes the language with regard to the 1062 change. Basically what it does is it takes and makes it reflect federal statutes that add the definition for the term Medical Review Officer. It also directs reference to the federal regulations and allows for those same types of cutoff standards to be determined by the medical officer and it deals with the issue of allowing each employer to implement an administrative cutoff for the presence of the chemical being tested for. So in other words, it does give some latitude to the employer. And finally, the committee amendments allows for a procedure called spiking, implemented for the laboratory quality control process and basically what that does is allow for the procedure to meet those federal and state standards. The bill as it was introduced to the Judiciary Committee and was advanced to the floor with no dissenting votes, changes the definition of alcohol and provides for the testing of those procedures. It provides that the employer pay those types of tests specifically the blood test or when a breath test device is used. I think the way the bill, or the way the current law stands, there is a question or at least there is a vagueness as to who must pay...who pays for such confirmation with regard to

the test. I think that it is in the best interests of the employer that they pay for those tests and it provides for the criteria in determining to what extent certain privacy issues should be maintained for that person who is giving the test sample. Specifically, this deals not only with the issue of personnel matters, personnel policies, but also with individuals of the same gender. It provides, and I can go through again with you just as easily as you can read it, so I won't, the procedures that have to be met in order for the determination of the level, blood level, a content of either an alcohol or a drug procedure that is nothing more than a standard of measure.

SPEAKER BARRETT: Senator Hall, please. (Gavel.) Proceed.

SENATOR HALL: Thank you, Mr. President. And clearly LB 1062 in its amended form I think is a very good piece of legislation and it is applicable to this bill at this time now that we're dealing with the issue of denial of benefits based on the presence of alcohol or drugs in an individual's system because once you make that determination, once you look at the issue of denial based on these procedures or these findings, you then have to have a measure or a basis by which those findings are determined. All 1062 does, all my amendment does is allow for a standard of measure, a procedure by which those determinations must be made so that...because it is difficult, to be very honest with you, to argue against the idea or the concept of denying someone unemployment benefits because they were drunk or drugged on the job. It is very difficult to argue that, but it is not difficult at all to argue that there has to be some sort of uniform standard of measure that must be used by all employers before that determination can be made. My amendment to Senator Hefner's amendment, the inclusion of the amended form of LB 1062 allows for that standard of measure. I would urge the adoption of the amendment to the amendment. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. We are discussing the Hall amendment to the Hefner amendment. I have a number of lights on which I'll go through if you'd care to speak to the amendment to the amendment. Senator Chambers, followed by Senator Hefner.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, before I speak in support of Senator Hall's amendment, I have to address a comment to Senator Coordsen. Senator Coordsen, I hate that the first time that you really listened to me and adopted a

officer, I wouldn't run my business that way.

SENATOR CHAMBERS: No, no, I'm not talking about what you would do. This amendment allows disparity in treatment. Do you think that is fair? That is what I am asking you.

SENATOR HEFNER: No, I don't think that is fair.

SENATOR CHAMBERS: Do you see where that could be done under this amendment that is being offered?

SENATOR HEFNER: Are you talking about the Hall amendment?

SENATOR CHAMBERS: No, no, the one that Senator Hall's amendment is trying to amend, the one that allows the discharge of an employee for drug use.

SPEAKER BARRETT: Time. Would you like to answer...

SENATOR CHAMBERS: I'll put my light on again. That's okay because it might be too difficult to answer just like that.

SPEAKER BARRETT: Thank you. Senator Hefner, your light is on next if you would care to have the floor.

SENATOR HEFNER: Mr. President and members of the body, I support the Hall amendment. Senator Hall, does this have the committee amendment in?

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Senator Hefner, the original amendment that I offered did not. I offered, as I stated, LB 1062 in the form that the committee amendments amended it. It is currently...that is the way I have offered it to the Clerk. I tore out the two pages that were the committee amendments and offered them up there. It is being put in white copy at the bill drafters. We should have it before it comes to a vote, but that is exactly how I would offer the amendment.

SENATOR HEFNER: Okay, Senator Hall, I don't have any problem with your amendment. I support that amendment. And also, Senator Chizek was asking me if my amendment as amended by the Coordsen amendment whether it would conform with the feds, and I have a note here, Senator Chizek, have a note here from the

reason won't use this as a tactic to discriminate and thus disqualify an employer, you're not living in the world that I know that exists out there for working men and women in this state and all over the country. I cannot accept the amendments at all until that is clarified and I will vote for Senator Hall's amendment because I think it makes a bad amendment better, but I still have that main problem and if any of you would read that and tell me how that is clear, I'd be glad to listen. Thank you.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, followed by Senator Chizek.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, imagine my surprise today when a priority bill that I have that just came out of committee now is being offered by someone else as an amendment to another bill that I thought I wouldn't have much discussion on, but such has been the nature of my tenure in this particular session. Things happen when I least expect it and I suppose that happens to most people. So what I intend to do is I don't know what the body is going to do with this particular amendment, I'm going to simply discuss the reasons why the bill, LB 1062, was offered in the first place and try to point out some of the problems that we have out there, and again, I want to emphasize to the body that I did not offer this particular amendment to be a part of it. This is something that just has happened and so I need obviously to comment on it. One of the problems that I have with LB 1173 which is the amendment that Senator Hefner has pending, is that I'm in a dilemma. I agree with Senator Hefner and others when we say that we want to send strong messages, there is no reason for business necessarily to pay unemployment compensation if someone deliberately used drugs and what have you. Then on the other side I have kind of a problem about the kind of testing that we have, and I think I'd like to ask Senator Hefner some questions if he's here, otherwise I'll need to go with Senator Coordsen, I guess, if Senator Hefner is not here.

SPEAKER BARRETT: Senator Coordsen.

SENATOR COORDSEN: Yes.

SENATOR BERNARD-STEVENS: Senator Coordsen, to your knowledge, what companies are testing for drugs at this time in the State of Nebraska besides the trucking and the railroad industries

that are under federal mandate, federal mandated testing?

SENATOR COORDSEN: To my knowledge, I can't answer that question. We have not asked that particular question.

SENATOR BERNARD-STEVENS: Okay, to your knowledge, are there a lot of companies in Nebraska that are doing random testing that have various policies on that or is this kind of a new area that we're beginning to get into?

SENATOR COORDSEN: Because of the cost of the test as mandated to be a legal test, I doubt that there are very many of the companies in Nebraska except perhaps some of the largest ones.

SENATOR BERNARD-STEVENS: Correct. I would intend to agree with that, Senator Coordsen. Members of the body, what I think we have to understand is that in Nebraska we've got, and in all states of the United States for that matter, there is a deep concern about drugs and alcohol in the workplace as there is deep concern with drugs and alcohol in any place, but what we do not have in Nebraska and what we do not have in states is a clear-cut procedure of how to test. We have certain industries that are coming under, that are under and implementing now, federally mandated drug testing and there are some problems with fairness at that which LB 1062 is going to try to address, but companies within Nebraska for the most part do not (a) have a procedure, (b) do not know how to implement a procedure that they may want to do and they're not really sure legally of what they can and can't do, and there certainly isn't a due process for any employee. And it kind of boggles my imagination that the Legislature would pass something like 1173 when we do not even have any procedures or we don't even know whether the testing and the accuracy being done now is reasonable and fair, just and accomplishes what we want to do. It seems to me that we have to get into the testing procedures example. Some questions I would liked to have asked Senator Hefner, but he is not here at this particular point is...

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...what about the accuracy of the drug testing that we have out there? What level, what administrative level are we going to go to? Are we going to a .04 cutoff or are we going to a .00 cutoff? Is there any cutoff that the State of Nebraska is going to adopt as its cutoff as to whether

least one amendment filed that will bring discussion to a different level on the floor. And I don't know whether I would rather have that discussion take place now on LB 315 or at the time and in the proper order that LB 1062 would come up. So I'm kind of in a bind. But, nonetheless, here we are on LB 1062 as an amendment and I will go ahead and discuss some of the things that I think the body might want to know before they make a decision on this amendment. Part of the problems that we have, certainly that my staff and I have had when we get into drug testing is the tremendous complexity of the drug testing arena. The type of testing that needs to be done in order to ensure privacy, confidentiality and also to assure accuracy is very, very complex. I'm sure the trucking industry, the motor carriers, the railroads would be the first ones to tell you that the manuals are very, very thick of all the federal mandated guidelines that needs to be done. Once you understand what you need to do, what you have to do or can do legally, then you need to implement that system and the implementation of a fair drug testing is not easy. It's not easy at all. For example, you need to have a bluing agent or some of type of agent so that you can tell whether or not if they have used water from the faucet or from the urinal that might be in there. Have they used any of that water to try to dilute the sample that has been taken if we're looking at a urine sample? We need to have temperatures taken because the body fluids are such... a certain temperature, obviously, plus or minus, whatever the leeway would be on the temperature. And if you don't have an accurate temperature taken, obviously, you don't know if you have a fair and accurate sample. Plus the test has to be done or the approval or the observation of the test and/or the temperature must be made so many minutes afterwards and if they're not aware of that procedure, then the whole thing, the whole test may be for naught. And it's very difficult and it's not easy, and in some cases very, very expensive for small businesses to follow all of the guidelines. The problem that we come up with, ladies and gentlemen, is that sometimes the technology is not there to give you the accuracy that we may put in certain bills, particularly if we're looking for a zero, zero, zero, zero, point, zero, zero cutoff. And there are many labs in the State of Nebraska who, quite honestly, and they're good intentions, will not do well and will give you a positive reading. One of the things that LB 1062 did and, first of all, it mandates nothing particularly, it doesn't mandate any business has to do drug testing, but it did say and would say, if the body would agree to it here or at another time, that what testing was done needed to be done

accurately to protect both the employer and the employee. There is nothing more harmful to an employer than having someone terminated because of an inaccurate test because of the expense of the legalities that it's going to ensure...or ensue. Maybe ensure was a Freudian slip. (Laughter.) Senator Warner picked that one up right away.

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: It would be very difficult for the employer and certainly for the family and the reputation of the employee to be terminated without benefits with the Hefner amendment and the test ended up to be negative. What LB 1062 did, besides putting in what procedure needed to be done, as basic a procedure as possible, it also said that if, in fact, a positive test came back from the lab, that there would be a second test, if the employee asked for it at the time, that would be more accurate, that would confirm, hopefully, beyond reasonable doubt, whether the test was, in fact, a positive or negative test for drug and/or alcohol abuse, particularly drugs in this case. So it's a question of fairness. I don't mind that we test for drugs. In fact, I think it's a necessary thing to do. I don't want people working that are incapacitated or have not...or cannot fulfill their function.

SPEAKER BARRETT: Time.

SENATOR BERNARD-STEVENS: But we need to make sure it's fair and that's what LB 1062 attempts to do. Thank you.

SPEAKER BARRETT: Thank you. Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker, and members, I was one of the Judiciary Committee members who listened to the public hearing and the testimony on LB 1062. Many of the things that were brought out in the hearing were very good. Everybody thinks that drug testing is maybe a big city or a larger town's problem, it is not. Certainly, there are numbers of companies, businesses, throughout the state who, in the coming months and days, will be looking at drug testing and they're going to be faced with the problem, how do we do it? What are we going to do and how are we going to keep from getting ourselves into legal troubles? How are we going to keep from violating people's rights to privacy, people's rights for their job employment and how are we going to keep ourselves out of court?

I think Senator Bernard-Stevens has brought a bill that will assist employers not only of large companies but of smaller businesses into a procedure on how to do it. The amendments that were added were also very much agreed upon by the committee. There were additional amendments that were a point of contention. The controversial amendments are not before us at this point in time. I think it's appropriate for this body to look at LB 1062. We have companies in Senator Scofield's...she isn't around here, maybe I can get away with saying someplace outside of Omaha and Lincoln, but we have some companies in central Nebraska who, because of productivity, have gone to random drug testing. These aren't major, major corporations but, quite frankly, they were suffering some loss of productivity and they have done random testing and they found major problems within their own company. They need direction. They need some clarification on due process procedures. I think that LB 1062 provides that for them. This is a bill which I think that we should look at seriously. I know Senator Bernard-Stevens' surprise that probably struck him yesterday when he realized his priority bill might take a metamorphosis and evolve into another bill but I do think he has a bill that is worthy of our consideration and discussion. I do think there is additional amendments which will be coming that we should look at a little closer. But, certainly, I would lend my support to LB 1062 as a member of the committee. Thank you.

SPEAKER BARRETT: Thank you. Senator Hefner, followed by Senator Bernard-Stevens.

SENATOR HEFNER: Mr. President and members of the body, I think that this amendment is a good amendment. I think it adds to the amendment that I presented. And the reason that I presented my amendment to this bill, because I felt that we had to take at least a small step this year in trying to provide for a drug-free workplace in Nebraska. And I realize that maybe I didn't go into the testing procedures as far as I should have but, Senator Bernard-Stevens, I think that your bill addresses a lot of the problems that we have there. But, yes, employers do provide work for a lot of people and I do not think that when an employee is convicted of illegal drugs, the use of illegal drugs, that we should use unemployment compensation to pay them. But Senator Coordsen has provided another fund that we can use, so we're not denying those employees those benefits and I think this is a plus. So I'm going to work for...or I'm going to vote for Senator Hall's amendment which is...which is the bill,

LB 1062.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, again, just a moment, I won't take most of the time. Senator Hefner, I appreciate your comments. Senator Coordsen has made some kind comments towards the bill. I think it does cover some of those areas that we need to look at in the State of Nebraska. And, to be quite honest with you, I think we're going to have to look even further down the line as to the procedures that we're looking and to make sure that we not only have drug testing taking place but it's also fair and equitable. And this bill will go a long way in helping that but we still have a long ways to go, and we still have a lot of work to be done at this particular point and I, obviously, support the Hall amendment and hope the body does as well. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion on the Hall amendment? Senator Hall, would you care to close?

SENATOR HALL: Mr. President, I would just move the adoption of the amendment. I think it's been clearly addressed by members of the body. I appreciate Senator Hefner's endorsement of it. Clearly, all it does is establish a burden of proof, if you will, so that there is a standard that is set, used and established for this type of testing. It also requires the test be paid for by the employer which is where I think the burden should lay. With that, I would urge the adoption of the amendment to the Hefner amendment. Thank you.

SPEAKER BARRETT: Thank you. The question is the adoption of the Hall amendment to the Hefner amendment to LB 315. All in favor of that motion vote aye, opposed nay. Record.

CLERK: 22 ayes, 0 nays, Mr. President, on adoption of Senator Hall's amendment to Senator Hefner's amendment.

SPEAKER BARRETT: The amendment to the amendment is adopted. Back to the Hefner...correction, an amendment on the desk, Mr. Clerk.

CLERK: Mr. President, Senator Chambers would move to amend Senator Hefner's amendment.

CLERK: Mr. President, Senator Bernard-Stevens would move to amend Senator Hefner's amendment. (See page 1051 of the Legislative Journal.) Senator, I have AM2743 in front of me.

SPEAKER BARRETT: Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, and this amendment should take about a minute, I hope. Basically, when I was working with people on the bill, LB 1062, there is some clarifying language that certain groups would like to have in. It doesn't change anything of the amendment that we agreed to on LB 1062 earlier by Senator Hall. It doesn't make any substantive changes. It simply does the following: On one section it says, it will add and include sound testing procedures which are properly implemented and properly communicated will better serve the employer and the employee. And on another section, it will simply add collection and testing procedures shall protect individual privacy, ensure accountability and integrity of specimens, require confirmation of all positive screening tests, mandate the use of approved laboratories, provide confidentiality for test results and medical histories, and ensure nondiscriminatory testing methods. I don't think there are any problems with that since it is clarifying, and so I would ask simply for the adoption of the amendment.

SPEAKER BARRETT: Thank you. Discussion, Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. Speaker. Only to support the adoption of this amendment.

SPEAKER BARRETT: Thank you. Other discussion? Seeing none, Senator Bernard-Stevens waives closing. The question is the adoption of the Bernard-Stevens amendment to the Hefner amendment. All in favor vote aye, opposed nay. Record.

CLERK: 18 ayes, 0 nays, Mr. President, on adoption of Senator Bernard-Stevens' amendment.

SPEAKER BARRETT: The amendment to the amendment is adopted.

CLERK: Mr. President, Senator Wesely would move to amend the Hefner amendment. (See page 1051 of the Legislative Journal.)

SPEAKER BARRETT: Senator Wesely, to open on your amendment.

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SPEAKER BARRETT: Thank you. The amendment is withdrawn.
Mr. Clerk.

CLERK: I have nothing further pending to Senator Hefner's
amendment, Mr. President.

SPEAKER BARRETT: Back to the Hefner amendment to the bill, any
discussion? Senator Hefner.

SENATOR HEFNER: Mr. President and members of the body, I move
for the adoption of my amendment as amended and I will just go
over it briefly. It says an employee is denied unemployment
benefits for using illegal drugs, and then we amended it with
the Coordsen amendment which says that we will pay benefits from
a contingency fund if they enroll in a rehabilitation program.
And we also adopted the Hall amendment, which was LB 1062, and
that deals with the testing. I think the amendment now is fair
and reasonable and I will certainly work with anybody that I can
to see that this is a fair and reasonable amendment.

SPEAKER BARRETT: Thank you. Is there discussion on the Hefner
amendment as now amended? Seeing none, those in favor of the
adoption of the Hefner amendment please vote aye, opposed nay.
We are voting on AM2508. Have you all voted? Have you all
voted? Senator Hefner.

SENATOR HEFNER: Mr. President, how many are excused?

SPEAKER BARRETT: Fifteen at the moment.

SENATOR HEFNER: Do we have a committee meeting now at the
present time?

SPEAKER BARRETT: We have a committee out but they are excused
officially.

SENATOR HEFNER: I would ask for a call of the house.

SPEAKER BARRETT: Thank you. The question is, shall the house
go under call? Those in favor vote aye, opposed nay. Record.

CLERK: 20 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please

SENATOR COORDSEN: Thank you, Mr. Speaker. No, I am not a lawyer and I am not going to say that I know a great deal about this particular amendment. And at this time, I think I will let that lawyer that Senator Wehrbein is asking for answer the questions with regard to this amendment. Thank you.

SPEAKER BARRETT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President. I don't pay much attention to lawyers. I rise in support of Senator Chambers' amendment although I would rise in opposition to Senator Wehrbein's amendment, and I do that, it is an amendment that he brings to the proposal that I offered in the form of LB 1062 to the bill, and I would do so based on asking the question, why is it needed? Why is there an exemption needed for railroads? If you look at what the bill says, it talks about a federally mandated or regulated, the amendment, federally mandated or regulated drug and alcohol testing program, why should we allow our provisions in statute that we find that make sense for people with regard to being eligible or ineligible for unemployment be regulated by a federal statute? Now that, to me, clearly doesn't make any sense. It looks like we are letting the feds determine what our standards are going to be. And let's take it one step farther and ask the question, why, why do we need this? I guess I would refer you to the federal regulations with regard to prohibitions on the drug and alcohol testing programs for the railroads, and I am just quoting here from the statutes, 21-19,101, subpart (b), prohibitions, then it goes to the prohibitions with regard to what cannot be, you know, the blood alcohol, having a .04 percent or more alcohol in the blood, under the influence or impaired by any controlled substance, defines controlled substance which includes cocaine, codeine, stimulants, minor tranquilizers, hallucinogens, other drugs known as PCP, LSD, blah, blah, and then under subpart (c) it says, railroad rules. It says nothing in this section restricts a railroad from imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes. That is currently in federal statutes, and there really is no reason for this amendment that I can see, because if the railroads want to right now, they can go ahead and have a complete ban, and to what extent does that impact this measure that we have before us which is eligibility or ineligibility to collect unemployment

benefits? I see none, and even with the Chambers amendment, I would argue that you don't need the amendment to the bill. There has to be a reason for it and I mean outside of saying, well, they are covered under a federally mandated program, that is okay. I mean it is only, if you read the amendment that Senator Wehrbein has handed, if the employer applies the procedures. Well, what if the employer doesn't apply the procedures, do we go out and check it? It is a federal program, they are not going to be covered if we adopt this amendment. Who guarantees that those procedures are being applied to those individuals in their work force that aren't covered under the current federal program? I see no need for it and I would oppose the Wehrbein amendment even with the adoption of the Chambers amendment to it because I just think that this is our bailiwick in which to set the ground rules, not the federal government's, and I think that we would be giving them the ability to jump in even into our unemployment regulations with regard to eligibility and ineligibility, and I think that is a poor standard to bring into this section of statutes and into this bill. I would urge you to reject the Wehrbein amendment.

SPEAKER BARRETT: Thank you. Further discussion on the Chambers amendment to the Wehrbein amendment. Senator Nelson, would you care to discuss it, followed by Senators Hefner, Bernard-Stevens, Abboud, Chizek, Kristensen, and Wehrbein. Senator Nelson.

SENATOR NELSON: Mr. Speaker, and members of the body, in the first place, I want to commend Senator Wehrbein for biting into this not having heard LB 1062. He maybe has more nerve than I'd have. I am not an attorney so I can't tell you that exactly that I have all of this correct. However, I am a lay person and I am also familiar with the operation of the railroads and so on and so forth, and this was where it was originally brought. Senator Hall alluded...I have mixed emotions on this. In the first place, I have a little problem in I probably could support this amendment of Senator Wehrbein's, in the discussion on LB 1062, the railroads were preempted under the federal I believe sometime around January 1st of this year as to regulations. Well, then, whether the state should preempt or the federal should preempt, I am well aware that the railroads operate in 16 or 19 states, and I can see a monumental problem for them if the 16 or 19 states have individual alcohol and drug testing rules and regulations, and I don't think that calls for efficient operation of the railroads and, frankly, I don't

material in the trucking industry or in the railroad industry, and the accident that could incur because of the make-up, the physical make-up of the employee at that point is going to be certainly a local hazard, except a provision directed at a local hazard that is consistent with this part, and that does not impose an undue burden on interstate commerce. And what that basically is saying is that we, in the Nebraska Legislature, or any state governmental body, can pass a regulation, and you can't preempt federal law, except if you do something that is consistent with what we have, which we are doing, and if it doesn't...if it doesn't infringe upon interstate commerce, that is okay. And what I would put to you is that the LB 1062, which was agreed upon by the body earlier today, is not an infringement or an undue burden on interstate commerce at all. All it basically tells the railroad organization is that, listen, you are going to have to do a little bit of testing procedures with this group, and you can handle that. It is not big. It is not terrible. You have got the people. You have got the organization. It can be done. There is no need for preemption. I'd like to also talk about a concept I am having a little problem with in regards to the railroads, and I know they are out there lobbying very heavily, and they are very sharp, much sharper than I, and very convincing. One of the things I have a problem with is the railroads which has caused a lot of problems for the State of Nebraska. And I am not going to railroad bash now and talk about whether they should have been paying their taxes, whether they are being helpful to our local subdivisions, because that is the 4-R Act and those things have passed us and we are trying to go on from that point. But we have had some problems, obviously, and what they are able to do in one aspect, they are able to take a federal law and go to each state individually and get things worked out differently for them. They may have a 25 percent agreement with the State of Nebraska and they are going to deal that with their taxes, and they may have some other agreement with the State of Wyoming or the State of Kansas, wherever they are going to make a separate agreement, and they may have 20 different agreements, or five or six different agreements. Yet when we come to this one, the railroads are saying, you know, if we have a small change in Nebraska and a small change in Kansas, and a different set of standards then in Illinois, or whatever, that makes it more difficult for us. I relate that to, for example, a multinational corporation. A multinational corporation may be in 10 or 15 different countries. In each of those countries, they have a different currency, they have different banking

So I would urge the body to reject the Chambers amendment, and attach the Wehrbein amendment onto the bill. Thank you.

SPEAKER BARRETT: Thank you. Senator Kristensen, on the Chambers amendment. Senator Kristensen on the Chambers amendment, followed by Senator Wehrbein.

SENATOR KRISTENSEN: I see Senator Chambers isn't here. I was going to ask him a series of questions about his amendment and I guess I will wait until he comes back to do those specific ones. I would like to talk directly to Senator Wehrbein's amendment and the need for preemption. I think that it is appropriate to put in some amendment and some language for preemption, and one of the things that we will talk about is what actually is the effect of those, and we can talk about practical effects all day. I think what we need to look at is the policy, if you have a company who is operating under a stricter federal sense, shouldn't we allow them and shouldn't we keep them into that federal system which would be stricter than our state system. Our state doesn't talk about who should be tested and who shouldn't. Our law right now under LB 1062, as we know it, is going to be a procedures, which is fine, which I think is a good deal for us to have some sort of, if you are going to test, here is how you do it procedures. I see Senator Chambers has come back in. Senator Chambers, could I ask you some questions on your amendment?

SPEAKER BARRETT: Senator Chambers, would you respond.

SENATOR KRISTENSEN: I was buying a little time until you got back in.

SENATOR CHAMBERS: The amendment as it is up there or what I was talking about before.

SENATOR KRISTENSEN: Which one are you serious about? Let's talk about the one you really want to run with.

SENATOR CHAMBERS: Okay, yes, I don't want the railroads exempted.

SENATOR KRISTENSEN: Okay.

SENATOR CHAMBERS: Let me make something clear based on the way the amendment is drafted. It was brought by the railroads but

SENATOR MORRISSEY: My question is, what is your problems with this amendment?

SENATOR BERNARD-STEVENS: The Chambers amendment or the Wehrbein amendment?

SENATOR MORRISSEY: Both, both. Quickly now.

SENATOR BERNARD-STEVENS: I can't do quickly, and I am going to have to take at least a minute, you know that.

SENATOR MORRISSEY: Take a minute.

SENATOR BERNARD-STEVENS: Okay. In essence, one of the things that we have is in the bill that we had, LB 1060 that was agreed to, LB 1062, whatever number it was, we have a policy set up that would test on the state level.

SENATOR MORRISSEY: Right.

SENATOR BERNARD-STEVENS: Okay, one of the things we did two or three years ago, we passed another bill that said in Nebraska that if there is alcohol content, for example, found in the urine but not in the blood that it doesn't apply, you cannot terminate the employee because of that. One of the things that would happen with the Wehrbein amendment, number one, if you look at LB 1062 that was passed, the railroads would have to do nothing different to my knowledge under LB 1062 than they do under the federal but what does happen, if they are exempt from the state regulations at this point, then they do not have to abide by the 562 and the other policies that they are now doing that we are working so well with, and it does cause problems on that other end.

SENATOR MORRISSEY: Okay, so how are these employees, what are they subject to, the employees that aren't covered by the federal regs, what then...what testing standards are they subject to?

SENATOR BERNARD-STEVENS: On the railroads...

SENATOR MORRISSEY: Railroad employees...

SENATOR BERNARD-STEVENS: On just a regular employee in the

we should reject the amendment that he's offering, because even the railroad representative was not able to tell me that they would agree to an amendment that I had suggested, which is this, if the railroad is under a standard of testing that is more stringent than that required by the state now, would they...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...co-sponsor with me an amendment that made their standards the state standard, and the representative couldn't say that they would agree to that for sure.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Did he....Mr. President, did he withdraw his amendment?

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: That's my intent, to withdraw my amendment.

SPEAKER BARRETT: Thank you. The amendment is withdrawn. Then we are back to the Wehrbein amendment. Senator Hall.

SENATOR HALL: Thank's, Mr. President, members. Senator Chambers, would you respond to a question?

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Yes, I can.

SENATOR HALL: Were you at the hearing on LB 1062, which is the portion of the bill that Senator Wehrbein would amend?

SENATOR CHAMBERS: I don't remember for sure.

SENATOR HALL: Okay.

SENATOR CHAMBERS: We've had a number of those bills. I was at an Executive Session and, to be honest, I don't even remember for sure what bill it was on, but we talked about this amendment that Senator Wehrbein is offering.

SENATOR HALL: That was my question, is this the first time it's come up, or has it been dealt with in Judiciary Committee

before?

SENATOR CHAMBERS: Was this in the Judiciary Committee or the Labor Committee?

SENATOR HALL: Judiciary.

SENATOR CHAMBERS: (Laugh.) Okay, then...

SENATOR HALL: Senator Chambers, thank you for all your help. (Laughter.) Since nobody from the Judiciary Committee is here, maybe they're having a hearing. I don't know. Mr. President, members, my point is that at least it was talked about in Judiciary Committee it sounds to me. And that's what I thought, based on just looking at the witness testimony sheet, the folks from the railroads did testify in a neutral capacity, and probably addressed this issue, I would think. It did not come out as an amendment to the bill in the committee amendments to LB 1062. And I think that probably the bill did come out unanimously, so there was not clearly a lot of opposition or at least there wasn't much support either for this concept that was brought to the Judiciary Committee in the amendment that Senator Wehrbein has before us. Clearly, I don't think there's a need for it. When you look at the federal statutes, when you look at what we currently have in law, and when you look at the way the bill is drafted to date, there is no question as to who would be covered as it is currently written. If you adopt the Wehrbein amendment, there are all kinds of questions as to who would fall through the cracks, who this bill would apply to, and who it would not. Can I get a hammer, Mr. President, please.

SPEAKER BARRETT: (Gavel.) The house will please come to order.

SENATOR HALL: Thank you, Mr. President. Remember one thing, that as I think Senator Morrissey stated, even though he stated it, I think, in jest, this bill deals with unemployment benefits, and the way you are eligible or ineligible for those benefits. Some of the language that I think Senator Wehrbein offers in his amendment referenced federal statutes that deal with a different type of testing with regard...has nothing to do with unemployment, but yet a standard that we are going to take, transpose and put into our section of statutes that deals with qualifications with regard to unemployment. I don't think that is proper just on its face, let alone the language, the ambiguity that it brings to the bill that we have before us. I

would urge you to reject Senator Wehrbein's amendment. Thank you.

SPEAKER BARRETT: Thank you. Further discussion on the amendment. Senator Hannibal, followed by Senator Abboud. The discussion is on the Wehrbein amendment to LB 315. Go ahead.

SENATOR HANNIBAL: Mr. Speaker, members of the Legislature, I rise to support the Wehrbein amendment. I'm going to try, I have been off the floor this morning, and so I missed some of the discussion of what went on with 315. But I understand we're really talking about not so much 315 but LB 1062 that was amended into LB 315. And Senator Wehrbein's amendment is going as an amendment or applied to LB 1062. What Senator Wehrbein is asking us to do is exempt out those federally mandated industries, interstate industries from the state law, if they are already under federal law. And there has been a lot of discussion as to how this applies. And it's true that the federal mandates apply to safety sensitive positions. And what they are saying is you will have these testing procedures in place for your safety sensitive positions, and you shall follow those. And those are preemptive of any kind of state law, in other words, no law that we can put on the books will preempt that kind of system that has already been done for safety sensitive. So 1062 is going to be talking about nonsafety sensitive positions. And what is happening is 1062 is going to set a different set of standards for those nonsafety sensitive positions, as it does for the safety sensitive positions. What the railroads are trying to do here is say, we would like to use the same standards for the safety sensitive positions and carry those same standards to the others. And that, to my mind, is laudable and it's certainly reasonable, and it seems to make a lot of sense that you have one policy go throughout the operation. What the arguments that I hear is that we shouldn't do that, because we want to test all of our employees, as Senator Chambers was saying, doesn't hold because we're not saying that. Nothing in the federal law says we're going to have to test anybody. Nothing in the state law says you have to test anybody. They're only saying that if you decide to test, then you must follow these procedures. Now, what happens if this amendment doesn't go on, what can U.P. or the other railroads or the other truck industry, what could they do? They can stay with the federal regs and just simply elect not to test any other employees. That could happen, if we don't put this amendment on. To the credit of the railroads, I believe, they

are saying we do want to carry this more consistently, we'd like to have our policy, and as a matter of fact they have already set a policy in place that says we're going to carry this policy throughout the organization. That is to their credit. They don't have to do that. If they are then bogged down by 1062, and have a different set, and as a matter of fact, as I understand it a lesser degree of testing stringency than they already have in place, they could, I don't know what they will do, but they could just say we're not going to test anybody other than our safety sensitive people that the feds mandate us to do. Now, if you're looking for equalization and treatment for drug testing and protection of rights for drug testing, it seems to me that you're making a major step backwards by encouraging a company to not test people that they would like to carry it to. They will test what they have to, and they can elect not to test anybody else. If they have this amendment in, this amendment says the same thing, you don't have to test anybody else, you still only have to test your safety sensitive people in this manner. You don't have to test any other employees. But it says, if you do want to test other employees, you will do it by the same set of stringent guidelines that you're testing the safety sensitive employees. Now it makes sense to me. I don't know what the other transportation industry situation is. I don't know how that will be affected. There could be something that I'm not aware of, and I certainly would stand corrected if I'm proven wrong. But the way it appears to me it's a fairly simple choice. If you don't adopt this amendment, you are allowing the railroad industry to just simply take a step backwards and accomplishing less than you really are purporting to try to do. I would recommend that we adopt the amendment. I'd recommend as long as we're going to have LB 1062 in there we ought to take advantage of an entity that wants to carry it throughout their whole organization on equal terms and be done with it.

SPEAKER BARRETT: Thank you. Discussion continues. Senator Kristensen, followed by Senators Hall, Lynch, Bernard-Stevens and Abboud.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members. I rise again to support the Wehrbein amendment, and I would offer this as maybe a possible solution of something we should do at this point in time. There has been some question as to the delegation violation and thus making this amendment somewhat unconstitutional. I happen to disagree with that view, but I

solid waste, and I want to get my teeth into something like that. So, based on Senator Morrissey's face, I would...well not all of his face, but on his expression, I would agree with him that we should try to wrap this up, adopt the Wehrbein amendment and move the bill to Select. Thank you.

SPEAKER BARRETT: Thank you. Senator Lynch.

SENATOR LYNCH: Mr. President, members, I feel I should stand up because it's my bill you're talking about, LB 1062. Haven't said anything yet, and with all due respect I voted against the Speaker's decision, if you remember I was one of some that did, regarding the germaneness of the original amendment. I did, to be completely frank, to sort of see what happens kind of a thing, because now we're talking about a drug standards bill. I guess we're talking about it, and it may or may not be germane because it is now part of 315. But 315 is a bill that simply deals with unemployment benefits. The amendment, with the drug testing bill, simply provides the standard. To be completely frank, this is how things get out of hand, when we begin to talk about conditions and circumstances for people to be eligible for unemployment and it's reduced itself to this. I'm not quite sure how we cure it. I'm not really sure whether or not the amendment, offered by Senator Wehrbein, is really important at this point in time. I really don't think it's necessary to be in there at this point in time on General File. I would agree with Senator Hefner who has compromised and worked with a lot of different people and points of views on this floor at the present time to move this bill along. I would also then, because of that, suggest we accept the good advice of Senator Lindsay, and vote against the Wehrbein amendment, give us a chance to see, in a better way than we've been able to understand so far, other than just because we introduced as an amendment a drug testing bill, we have to crank in all of this kind of language which has nothing to do, in effect, with the unemployment concept of the original bill, and try to sort out what really is necessary and important. Maybe with another amendment somewhere along the line, and especially and hopefully on Select File, get at the real business and the original intent and purpose of 315. So I would respectfully suggest we not take action, either not vote or vote no on the Wehrbein amendment at this time.

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you. I totally concur, obviously, with Senator Lynch. I would like to make a couple of points in response to Senator Hannibal. Just so the record is at least clear, the body may not be clear but at least hopefully the record will be after we're finished. The administrative cut-off that we have right now in 315, as amended, for state people, not under federal man...federally mandated drug testing, is simply going to be what the employer and the drug testing lab come to an agreement on. In my judgment what they will do is obviously the drug testing lab will say, this is the accuracy, we can get it down, accurate to this level, beyond that we can't be accurate. And that will be the level that they set it on. I'm speaking particularly on the alcohol, on the alcohol. And, quite honestly, that was one of the reasons for LB 1062, because some of the standards that I, personally, Senator Hannibal asked me am I against the 0.0 cut-off, and no, I'm not. Only thing I'm against is that we can't accurately at times, with the equipment that we have, we can't accurately say whether it's 0.00. It's very inaccurate. And if we're going to terminate somebody on a standard, let's make sure that we can really, accurately judge that standard. And right now we can't. So, hopefully, on the record at least we understand that in this particular bill what we have now, that we've agreed to now, would be an agreement between the testing lab and the employee. And, by the way, if this testing lab, in the future, can get its accuracy down to 0.00, that's where it will be. And I do want to make one other response to something that Senator Hannibal said, because it did strike a cord. And I respect Senator Hannibal a great deal, and the body is going to miss him a great deal when he's gone. And I teased him that he was gone this morning and look what all these things happened, you don't dare leave and go to Appropriation Committee, or at least don't come back so you don't know what happened. But one of the things Senator Hannibal said is that the railroads, and he's right, I'm not saying he's wrong in this regard. The railroads, if we pass the bill without the Wehrbein amendment, if we pass the bill the railroads could say, for the most part, that because the testing is going to be a little bit different, we may only be accurate to .01 and we wanted to do .00, we're not going to test these other people. And they could do that. But I would put to you that if the Railroad Association of the state...that run and operate in the State of Nebraska, and who haul tremendous amounts of material, some hazardous, through the State of Nebraska, would decide in their corporate headquarters that

possess controlled substances in the work place will also be disqualified from any unemployment. This amendment was amended to provide that for those that are fired for possession, use or failure or refusal to pass a test would be given a window of opportunity to receive unemployment, if they entered an approved drug treatment program. This bill also includes LB 1062, which is a further definition of our drug treatment procedures in Chapter 48. It's nobody's pet. The reason for the bracket motion, as that has been expressed to me by those who oppose the drug treatment or the disqualification section, that they would rather see the bill die than have that particular section added into law. There are others who do not want an increase in unemployment without the disqualification section. And there are those that do not like the inclusion of 1062 in this measure. We have a bill that, if enacted, on January 1, 1991, would grant to people who are unemployed, if their qualification wages would place them in that position, a \$10 increase in the weekly benefits, followed by another \$10 increase on January 1, 1992. But it would also provide that those who were fired for possession or use or refusal would be disqualified from benefits, benefits that in some cases they can attain after the seven to ten week disqualification period for people who are fired. Series of amendments that could take the rest of the afternoon.... We have a bill, and you're going to have to make a choice, I think, on this bracket motion on whether you think that a bill that provides benefit increases for all of those people who are legitimate employees, who were laid off through no fault of their own, or for people who quit or are fired for various and sundry reasons and are found to be disqualified from benefits for those reasons, for a period of seven to ten weeks, and then if they're still unemployed can begin to draw whatever employment that they are entitled to, or with the defeat of this bill we would not increase the benefits for legitimate workers. And, in doing so, we would not provide a hurdle to jump through for those that are found to be disqualified because of drug use, nor would we provide an incentive for people to enter drug treatment programs. Less than 300 people in the State of Nebraska, last year, were disqualified, under the gross misconduct section of statute, from accruing benefits. I don't know what percentage of them might have been for drug use, possession or refusal, probably not very many, some percentage of less than 300. And, in trying to protect those who use illegal substances, we are willing to deny increased benefits to those who are laid off, then let it be so. It's my opinion that we should make that decision now rather than later this

SPEAKER BARRETT: Thank you. The Chair is pleased to note that we have additional Girl Scouts in our south balcony, 51 Girl Scouts from the western part of the state, from Lexington, Sidney, Chadron, Rushville, North Platte, Stapleton and other points west. Would you people please stand and be recognized by your Legislature. Thank you, we're glad that you could take the time to visit with us. The Chair recognizes Senator Bernard-Stevens for further discussion.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, members of the body. I'm not going to add too much to what Senator Hall and Senator Lynch said. But I would hope that, if Senator Coordsen does not withdraw the bracket motion, which I don't know if he's going to do or not, I suspect he's going to want it to go to a vote, that we'd vote it down, I guess I'd say temporarily. And I'd like to give the body at least one chance to do something on the workmen's compensation on LB 315, because obviously it got bogged down. One of the things that bogged it down was priority bill that I had, LB 1062. And I'd like to remind the body that I was not the one that put...that moved to put 1062 on this bill, but I got kind of stuck in that mode and there it was. What I will do is my amendment is first, and I just had a small, technical amendment. I'll ask the body's indulgence and I'll substitute Senator Lynch's amendment which would strike, in a sense...in essence, all of the amendments that were put on 315, with the exception of the original 315 with the committee amendments. In essence, LB 1173, which was added on by Senator Hefner, and all the amendments thereto, and LB 1062, which is Senator Lynch's and my priority bill, would be then deleted. And we give the body one chance, if they wanted to take it, one chance of at least passing something for workmen's compensation, which I think the body, on a straight up vote, would want to do. I would be quick to add, however, that I agree with Speaker Barrett, that we cannot take a lot of time, because we have so many other priority bills that may not be gotten to, of course, some of them I'd rather we not ever get to. But, nonetheless, if that be the case, if we would agree to the Lynch amendment, but more amendments would be filed and more amendments would be filed at that point, I'd be the first one, myself, to bracket...to put a motion to bracket until April 9th. So I don't want to spend a lot of time on the bill. I think we need to bracket it, if in fact we're not going to take it...seriously move it seriously on its way. But I do want to give the body a brief chance, one chance I guess, to get 315 in its original form with the committee amendments so that we might be able to

do something at least on workmen's comp before everything slips through our fingers and we end up doing nothing. And, with that, I give up the rest of my time.

SPEAKER BARRETT: Thank you. Senator Coordsen, for what purpose do you rise?

SENATOR COORDSEN: Thank you, Mr. Speaker. I rise reluctantly to honor the request of my colleague to say that although I'm very serious about this bracket motion I would withdraw it at this time and refile after the Bernard-Stevens amendment, should that become necessary.

SPEAKER BARRETT: Thank you. It is withdrawn.

ASSISTANT CLERK: Mr. President, the next amendment is from Senator Bernard-Stevens.

SPEAKER BARRETT: Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Mr. President, I'd like to ask the indulgence of the body and substitute for my amendment the Lynch amendment.

SPEAKER BARRETT: If there are no objections, so ordered.

SENATOR BERNARD-STEVENS: Thank you, members of the body. The Lynch amendment that we now have, actually I guess it's the Bernard-Stevens amendment, but it is the Lynch amendment that was filed. And the Lynch amendment, basically, strikes AM2508 and all amendments to AM2508, and AM2996 and all amendments thereto. In other words, when Senator Hefner offered LB 1173, there were amendments offered to that as well, that would be stricken. Senator Hall offered an amendment which was the Lynch bill, that was my priority bill, LB 1062, and there were amendments offered thereto on federal preemption and other things. Those...that part would be stricken as well. And, in essence, what we would have then is a clean 315 with the committee amendments that were adopted to 315. We would then have a shot at advancing 315, hopefully, by voice vote, even on Select File, and we can go very, very quickly on that. I wanted to give the body a chance to do that, otherwise we'd get absolutely nothing on workmen's compensation. I understand both of the...all of the amendments that were on the bill were worthy goals and worthy ideals. But they are certainly something that

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LB 1055, 1062
LR 239, 402

least say that we're going to address the issue...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...of gambling somewhat uniformly. They shouldn't always be tied together probably. I would argue that three years from now when the racing industry is back here you're going to see a totally different racing industry and it's going to take on a new shape and a new form in three short years from now. But what we will allow it to do through the passage of this bill is to come back and make a case. They may come back and make a case to continue the way we have allowed it to operate or it may not be there to operate at all. I don't think there is going to be much in between. But, in any case, we have taken the first step to allow all these various operations of gambling to be addressed at once and I think that's a good precedent to set. I think LB 1055 as currently been amended makes good sense and sends a message to all those folks out there that we feel you do good work but we're going to address you in a uniform basis at least as much as is possible. I would urge the advancement of the bill.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 1055 to E & R Initial. All in favor vote aye, opposed nay. Have you all voted? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, if we're going to weight these votes, shouldn't the vote of two senior members be worth about 30 of just ordinary senators?

SPEAKER BARRETT: Please record.

CLERK: 28 ayes, 4 nays, Mr. President, on the advancement of LB 1055.

SPEAKER BARRETT: LB 1055 is advanced. Matters for the record.

CLERK: Mr. President, new resolution, LR 402 by Senator Dierks. (Read brief description of LR 402. See page 1646 of the Legislative Journal.)

Amendments to be printed by Senator Smith to LB 1055, Senator McFarland to LR 239, and Senator Hefner to LB 1062. (See pages 1646-48 of the Legislative Journal.)

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LB 662, 866, 1062, 1141

(LB 662); the second to Senator Coordsen (LB 1141). (See pages 1669-81 of the Legislative Journal.)

Mr. President, Senator Coordsen would like to add his name to LB 1062, and Senator Lamb to LB 866...Senator Haberman to LB 866, excuse me. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you, sir. The call is raised. The Chair recognizes Senator Morrissey.

SENATOR MORRISSEY: Yes, Mr. President, and members, thank you, and to again emphasize so there will be no confusion, I will do this like we do on the railroad, and we do it this way not because we are stupid or need the practice but because so there will be absolutely no misunderstanding. I move that we adjourn until eight, e-i-g-h-t, a.m., tomorrow, Thursday, March 29, 2-9.

SPEAKER BARRETT: Thank you. Those in favor of that motion say aye. Opposed no. The ayes have it. Motion carried. We are adjourned.

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suspend the rules and overrule the agenda. That is fine. I can live with that. But what Senator Chambers has done is he has taken the first rule of debate and he has used it to his advantage because what he has done is he has defined the terms, he has used his position to say these are the definitions, folks, and we are going to play by this. He has said this is an abortion vote. If that be the case, then I guess I am in what we might call deep trouble and, in my opinion, that is not what that vote was. It was a procedural vote. As you all know, we all have the ability to vote any way we want to on a procedural motion for whatever purposes we might have. Maybe it is LB 854, as Senator Labedz has so forthrightly stated on her behalf, maybe it is another bill down the agenda on Select file, maybe it is another bill on General File, or one that is on Final Reading. Whatever the purpose, we each have our own reason for voting the way we did on those proposals, but don't let Senator Chambers define the terms for you in terms of what that vote was. It clearly, Senator Schmit, was not my masochistic tendencies that got me to vote with Senator Chambers. If you look what you are going to be doing in terms of this next vote, what will happen is we will move these bills off General File, all nine of them, and you will move them behind all the bills that are currently on Select File. So they will go off the list being second from the very top of General File, very likely we could have been to LB 854 by now, with some of the amendments I understood were on LB 976, and be debating that bill presently, which I have no problem that I would like to be able to do. But with this motion, we are going to move them to the bottom of Select File. They are going to fall behind the approximately 15, 17 other bills. Instead of being second from the top on General File, which we would go back to after the one-thirty proposal, which I am not going to support either, excuse me, Mr. Speaker, but I am not, that motion, they are now going to be ranked about 18th and 19th and that is the way they will come in order. That is exactly what we are doing. That is exactly where we will be. That is what the vote on this proposal will do. You will take, if you think it is an abortion issue, or if you think it is a LB 1062 issue, or if you think it is a radioactive waste disposal issue, or in Senator Lamb's case, if you think it is a pride of authorship issue, that is where it is going to be when it comes to Select File, and all you do is you delay the inevitable. You, basically, put off the debate until Select File. That is fine. I don't have any problem with that. You are not going to change the outcome.

April 3, 1990

LB 854, 866, 866A, 976, 989, 989A, 1062
1062A, 1151

adopt Senator Labedz's motion, the issue will not be completely laid to rest but it will come closer to having...Senator Schmit is messing with me, it will come closer to having been laid to rest than if we don't. If we don't...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...defeat Senator Labedz's motion, then other things will be set in motion which will lead us to who knows where. The Far Side cartoon that was handed around might carry a hint of it, but I hope, indeed, that you will vote for this reconsideration motion.

SPEAKER BARRETT: Thank you. The question is the adoption of the reconsideration motion of the vote taken on the previous motion. Those in favor please vote aye, opposed nay. Record.

CLERK: 4 ayes, 26 nays, Mr. President, on the motion to reconsider.

SPEAKER BARRETT: Motion fails. Have you items for the record?

CLERK: No, I do not, Mr. President.

SPEAKER BARRETT: Next motion, please.

CLERK: Mr. President, Senators Labedz and Schmit would move to suspend Rule 6, Section 3, Rule 7, Sections 3 and 7, and place LB 976, LB 854, LB 1062, LB 1062A, LB 1151, LB 989, LB 989A, LB 866, and LB 866A on Select File without amendment or debate.

SPEAKER BARRETT: Senator Labedz, please.

SENATOR LABEDZ: Thank you, Mr. Speaker. I certainly will not go into a long, lengthy discussion on the motion to adopt the motion that I have up there, which is to suspend the rules with no further amendments or debate. And it will require another 30 votes, and then we can go on to Final Reading. Or, I should correct myself, Mr. Speaker, we will go on to your motion to suspend the rules with no further amendments or debate and read all the bills on Final Reading. And, as I said before, I have at least 40 or 50 amendments on some of the bills on Final Reading, but I will vote in the Speaker's favor to read the bills without further amendments or debate. And I will relinquish the rest of my time to Senator Schmit, and hopefully

April 4, 1990

LB 854, 866, 866A, 976, 989, 989A, 1062
1062A, 1151

Chambers motion to return all bills on Select File to General File? Senator Chambers, any further statement? Thank you. The question is the return of bills on Select File to General File. Those in favor vote aye, opposed nay. Have you all voted? Senator Chambers. Thank you. Have you all voted? Please record.

CLERK: 1 ayes, 15 nays, Mr. President, on the motion to return the bills to General File.

SPEAKER BARRETT: The motion fails. Next item.

CLERK: Mr. President, I now have a motion to overrule the Speaker's order and consider a motion by Senator Chambers to return specified bills to General File. That motion is to return LB 976, LB 854, LB 1062, LB 1062A, LB 1151, LB 989, LB 989A, LB 866, and LB 866A.

SPEAKER BARRETT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, before I begin, there might be a question as to whether this is a reconsideration, so the person that wants to raise the issue, I will let them raise it, but these are the bills that were included in the package yesterday that were all advanced to Select File on one vote without amendment or discussion.

SPEAKER BARRETT: Thank you.

SENATOR CHAMBERS: And, Mr. Chairman, before I go into my opening, I will go ahead and we can dispose of the question that Senator Bernard-Stevens wants to raise.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker. I am going to raise the question and ask for a ruling. I would assume that this would be a reconsideration motion then of what we did yesterday. Is that the Chair's understanding as well?

SPEAKER BARRETT: Senator Chambers, have you any comment?

SENATOR CHAMBERS: Well, it really wouldn't be that because it is not saying vote again on what was done yesterday. That action was done. This is taking it back. I had misunderstood

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LB 431, 854, 976, 1054, 1055, 1062, 1090
1124, 1221
LR 239

unusual thing yesterday. We went ahead and moved nine or so bills without any debate and without any further amendment, controversial bills at that on General File, moved them to Select File, and I think we all knew what was going on that day. But what we did yesterday, in essence, I think as a body was decided that we could do this to the rules because of the situation that we are in in order to get some things done, and I want to try to give the body at least a chance to do the same thing today. I am not trying to do as others, I am not trying to say I don't want an abortion fight today. I am ready for an abortion fight today. I am ready for it now. I am ready for it an hour from now. I am ready for it at four o'clock, and I am ready for it at 11:59 tonight. It doesn't bother me when we are going to have that fight and I want to have that fight. What I am also suggesting, though, is that we have a chance now in the beginning to say as we did yesterday that there are some things we, as a body, can do that will not jeopardize the fight that is to come, but we can do these things today. I am suggesting to you that I am not trying to put off the fight. I am, in fact, trying to give the body an opportunity to at least say when the fight is going to take place. What my amendment would do, what my motion would do, excuse me, would change the agenda in the following way, and it is not a major change so it's easy to follow. If the motion is agreed to, we will simply jump to item six and item seven on the agenda. Those are bills on Final Reading that need to come back for specific amendment. I know Senator Hall has an interest in LB 1090. I know on item seven, if I understand that motion correctly, it is on the low-level nuclear waste, LB 1054, that needs to come back for a specific amendment. After we take care of item six and seven, which will take some time, I am then proposing that we go back to Select File, right at the top of Select File. I am also going to suggest, and actually it is not a suggestion, it is in my motion, I want you to know also what I have done. I have also said that if you look at Select File, we have got LB 431, which, Senator Wesely, regardless of what we do today, that will be the first bill up and there is going to be an attempt and an amendment on that one, I know. LR 239CA, I don't know what is going to happen. Originally I had heard from Senator Withem that there is a motion filed, and I believe it was filed, to have a discussion whether or not the body wants to bracket LR 239CA. If you go down with me on the Select File list, LB 1055, LB 1221, LB 1124 are gone. We passed them yesterday. Which brings us to LB 976 and LB 854. Beneath LB 854 is a bill, LB 1062 which I, myself, in discussion with Senator Lynch, I

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LB 854, 1062A, 1062

SPEAKER BARRETT: Time.

SENATOR McFARLAND: And those are the primary reasons for the abortion decision. It is a post birth control type of decision that is made.

SPEAKER BARRETT: Thank you. Mr. Clerk, you have a priority motion.

ASSISTANT CLERK: Mr. President, I do.

SPEAKER BARRETT: Do you have something for the record first, Mr. Clerk?

ASSISTANT CLERK: Yes, I do, Mr. President. Senator Warner would give notice to the Appropriations Committee that they will meet tomorrow at noon in Room 1003. I have amendments to LB 1062A and LB 1062 to be printed from Senator Schmit. The priority motion, Mr. President, is to adjourn until nine o'clock tomorrow morning. That is from Senator Chambers.

SPEAKER BARRETT: Thank you. The question is adjourning until tomorrow morning at nine o'clock. All in favor vote aye, opposed nay. Have you all voted on the motion to adjourn? Have you all voted if you care to vote? Record.

SENATOR LABEDZ: I would like to have a call of the house.

SPEAKER BARRETT: A call of the house has been requested. Shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 25 ayes, 3 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Please record your presence. Those members outside the Legislative Chamber, return, please, and check in. Senator Schmit, would you check in, please. Senator Pirsch, please check in. Did you request a roll call, Senator Labedz? You requested a roll call. Thank you. Members, return to your seats please. (Gavel.) Mr. Clerk, would you call the roll on the motion to adjourn.

CLERK: (Roll call vote taken. See pages 1910-11 of the Legislative Journal.) 20 ayes, 26 nays, Mr. President.