

You look alike, that's what threw me. Senator Lynch, would it be okay with you if we go ahead? We're waiting for Senator Schmit only. Would it be agreeable with you if we go ahead without him, or do you wish to wait?

SENATOR LYNCH: Go ahead and proceed.

PRESIDENT: Okay. The question is the adoption of the Withem amendment. Did you wish a roll call vote, Senator Lynch? Roll call vote? Okay. Mr. Clerk.

CLERK: (Roll call vote read as found on page 194 of the Legislative Journal.) 27 ayes, 17 nays, Mr. President, on adoption.

PRESIDENT: The Withem amendment is adopted. The call is raised. Did you have something for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, new bills: (Read LBs 1017-1020 by title for the first time. See pages 194-95 of the Legislative Journal.)

PRESIDENT: Ladies and gentlemen, I've been handed a note by Speaker Barrett. Senator Don Thompson of McCook, Nebraska, Speaker Emeritus of the Nebraska Unicameral passed away in McCook, Nebraska, yesterday afternoon at 4:00 p.m. His funeral is scheduled for Wednesday, January 10 at 2:00 p.m. at the Peace Lutheran Church in McCook, Nebraska. The Herman Funeral Home in McCook is in charge of arrangements. Memorials may be sent to either the Peace Lutheran Church or the Herman Funeral Home in McCook, Nebraska. Do you have some new bills, Mr. Clerk?

CLERK: Mr. President, (Read LBs 1021-1030 by title for the first time. See pages 195-97 of the Legislative Journal.) That is all that I have at this time, Mr. President.

PRESIDENT: I have a note here that there is a group visiting us today from Burke High School in Omaha. Is that group here? Perhaps they have not come in yet. I'll announce them when they do come in. Senator Coordsen, we're about ready to begin the festivities of bringing the Governor here. Would you have a motion, please.

SENATOR COORDSEN: Thank you, Mr. President, members of the body, I move that a committee of five be appointed to escort the

January 9, 1990

LB 259, 845, 972, 973, 993, 1014-1048, 1057-1059
LR 236

Haberman.

SENATOR HABERMAN: Mr. President, I move to recess until 1:30 p.m.

SPEAKER BARRETT: Mr. Clerk, would you care to read anything in before we vote on the motion to recess.

CLERK: Mr. President, new bills. (Read LB 1057-1059 by title for the first time as found on pages 232-33 of the Legislative Journal.)

A series of requests to add names, Senator Beck to LB 1026, Senator Kristensen to LB 1035, Senator Conway to LB 993, Senator Wahrbein to LB 973, Senator Wehrbein to LB 972, Senator Weihing to LB 845.

(Reference Committee Report referring LBs 1014-1048 and LR 236 appears on pages 233-34 of the Legislative Journal.)

Mr. President, explanation of vote offered by Senator Kristensen. (Re: LB 259.) That's all that I have.

SPEAKER BARRETT: Thank you, Mr. Clerk. A reminder especially to committee chairs. Committee chairmen, please take note. If you are planning hearings, public hearings next Tuesday, notices of that fact should be filed with the Clerk today. File the notice of public hearing today if you are planning to begin hearings next Tuesday. Those in favor of the Haberman motion to recess until one thirty say aye. Opposed no. Carried. We are recessed.

RECESS

SPEAKER BARRETT PRESIDING

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

SPEAKER BARRETT: Thank you. Any messages, reports, anything for the record, Mr. Clerk.

CLERK: One item, Mr. President, I have a hearing notice from the Banking Committee for hearings scheduled on Tuesday,

February 15, 1990 LB 313, 690, 903, 937, 988, 1020, 1113
1173

to General File, that is signed by Senator Wesely. Transportation Committee reports LB 690 to General File, LB 937 General File with amendments, LB 988 General File with amendments, LB 1020 General File with amendments, 11...those are Transportation bills, those are signed by Senator Lamb. Business and Labor reports LB 1173 to General File with amendments. That is signed by Senator Coordsen. Judiciary reports LB 1113 to General File. That is signed by Senator Chizek. And Retirement Systems Committee reports LB 903 to General File. That is offered by Senator Haberman. (See pages 823-29 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. Speaker. I would move at this time for the advancement of LB 313 as amended.

SPEAKER BARRETT: Thank you. Senator McFarland, on the advancement of the bill, please.

SENATOR MCFARLAND: Begrudgingly, move for advancement, Mr. Speaker.

SPEAKER BARRETT: Thank you, discussion, further discussion? Senator Morrissey.

SENATOR MORRISSEY: Thank you, Mr. Speaker and members, I really...I don't know if I can begrudgingly move for advancement. I know the people that were part of the compromise are saying we need the 10, if we can get only 10, we'll take it. If that's the only crumb we're going to give them...I don't know, I just don't know whether I can vote for it or not. I agree they are in trouble when...you're really in trouble when you have to swallow what these folks are having to swallow and accept this \$10 amendment, or \$10 increase, a dollar something per day. And I'm still considering and I'd like to get some feedback from the body, I guess, on my amendment to issue this in a separate check. I really do think it would be good for all of us, politically, to let the folks know how generous we have been to them, let them know, because, like I said, these people are liable to blow that ten bucks, two gallons of milk, two boxes of corn flakes, ten bucks right down the drain, and they're liable to blow it and not realize that we gave them this increase, not realize that the Nebraska Legislature and the

February 16, 1990 LB 159, 163, 594, 656, 854, 989, 1018
1020, 1072, 1073, 1099, 1146, 1153, 1179
1221, 1222

problem. Thank you.

SENATOR LABEDZ: Thank you, Senator Wehrbein. Senator Schmit. Senator Schmit, on the Hefner amendment. Mr. Clerk, do we have anything for the record before we adjourn?

CLERK: Madam President, your Committee on Banking, Commerce and Insurance whose Chair is Senator Landis, to whom was referred LB 1072 instructs me to report the same back to the Legislature with the recommendation it be indefinitely postponed; LB 1073, General File, with amendments; LB 1153, General File with amendments. (See pages 851-52 of the Legislative Journal.)

Madam President, a couple of announcements. The Revenue Committee will meet in Executive Session; Revenue Committee, Executive Session in Room 1520 upon adjournment; Revenue upon adjournment in Room 1520.

Mr. President, a series of priority bill designations. Senator Wesely has selected LB 989; Senator Lamb, LB 1020 as one of the Transportation Committee priorities; Senator Lynch, LB 1146; Senator Nelson, LB 656; Senator Abboud, LB 1018; Senator Lowell Johnson, LB 594; Senator Hannibal, LB 1221; Senator Schmit, LB 854 as his personal priority, and LB 1099 and LB 1179 as committee priorities.

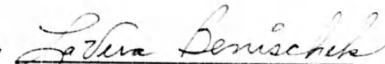
Mr. President, Senator Beyer would like to add his name to LB 159, an amendment; and Senator Beck to LB 1222. That's all that I have, Madam President.

SENATOR LABEDZ: Thank you, Mr. Clerk. Senator Langford, you have a motion up at the desk to adjourn. Would you like to make that motion, please.

SENATOR LANGFORD: Madam President, I move we adjourn until Tuesday, February the 20th at 9:00 a.m.

SENATOR LABEDZ: Thank you, Senator. We are...all those in favor say aye. Opposed. We are adjourned.

Proofed by


LaVera Benischek

SPEAKER BARRETT: Call is raised. Chair recognizes Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members of the body. I wish I didn't have to stand up and do this. But, by popular demand, I will. (Laughter.) I've never done this before, and I think it's interesting that it comes at a time...and I'm afraid what I thought would happen did happen, and we're faced with a bill, it's 2:01 p.m. on March 22nd, and there is 13 amendments behind us. And we've got a problem that many of you probably, well maybe most of you don't know about yet, but let me tell you about it. And I think Senator Warner probably struck that stroke of conscience in my mind that generates me to do this right now. The Supreme Court, about 10 days ago, struck down our drunk driving laws in one area, and that's with urine testing. And, as you know, if you're arrested for drunk driving you are brought into a police station and you are given some options. And the first option is that they can give you a breath test. And, if they have a breath machine, they can require you to use it. There are many counties and jurisdictions, police departments that do not have these machines. If that is true, you then, as a defendant, get two choices, you can either have a blood test, or you can have a urine test. So you get your choice in those counties or jurisdictions or areas where they do not have a breath machine. The Nebraska Supreme Court, and I don't...I think I've got the case sitting right here, it came down March 9th, 1990, case by the name of State v. Donaldson, said that the urine tests were inherently unreliable for alcohol. They threw out and, in fact, suggested...two of the judges suggested that we just eliminate urine altogether as a testing measure and a per se measure for violating the law. What's happening at the present time in areas where they don't have a breath machine, the defendant, if they're sharp enough or lucky enough to choose urine, aren't going to be prosecuted. They get...the law enforcement gets one test to do. If the defendant is either smart enough or lucky enough to choose the urine, there is no way you're going to be able to convict them. They're going to walk away free. And I'll bet you, I'll bet there are already letters been out there saying, you defendants, or you possible people choose urine tests because you're not going to get prosecuted for drunk driving. We can't let that happen. We absolutely cannot let that occur. We've got to be able to tighten that up. I introduced LB 1020 this year, it went through committee without a problem. It was made a transportation committee priority bill

and is sitting up here as a priority. LB 1020 attacks the drug problem. It was a bill that I originally introduced as part of an idea to help give law enforcement more tools to take drug and drunk drivers off the road. What I am moving to do is to substitute LB 1020 for 799 and solve several of our problems. And the first one of those problems is when you go up and have an arrest made and an officer will ask you for that, he has to have some probable cause, usually I pick out a senator's name, but this is too serious, so I won't pick out any. Okay, Senator Conway, you volunteered, I'll do you. Senator Con...ch, this could be close to home. (Laughter.) Senator Conway is driving, and let's say that he's weaving all over the road, the officer stops him. He can't just give him a test, he's got to have some probable cause, he's got to smell alcohol, he might see a fifth of whiskey between the guy's legs in his lap or something. He has the right to ask him for a test to do so. Let's say Senator Conway...I really hate doing that to you, I don't think that is wise. You take the defendant down to the station and you test them, and what happens? They turn out to be .05, they haven't violated the law, got to turn them loose, right? But the officer knows something is wrong, he knows that he's been weaving all over, he's wiped out a couple of signs up on the sidewalk, and he's slurring his speech, he's staggering all over the road, what's his next best guess? Probably some drugs. Maybe he finds a little bit of drugs in the car after they go back and search it or something. Under our implied consent laws you only get one test. What LB 1020 would do and what I'm proposing that we do to try to settle this matter is to put LB 1020 into 799. And it will give an additional test for drugged drivers. The second thing that it does is it goes and wipes out that choice provision of using urine or blood, and just takes that completely out. If you look in your bill books and pull out LB 1020 you'll see where we do that, if I can find it real quick as I'm talking, we do that on page 16 of LB 1020. We wipe out that choice provision. This will solve our problems with the Supreme Court, and will keep our drunk driving laws intact. During the interim, if people want to go and reexamine how we may be able to salvage urine testing for drunk driving, I think that's a wise thing we can do. But, quite frankly, if this Legislature doesn't do anything in the next nine days, you're going to give a license to people to drive while they are intoxicated, choose that urine test, and there is not a thing we can do about it, there is not a thing a prosecutor can do about it, there is not a thing a judge is going to do about it. And our law enforcement are going to...it's a hole, and it isn't a

SPEAKER BARRETT: I'm sorry.

SENATOR KRISTENSEN: My amendment places...

SPEAKER BARRETT: You're asking for adoption of your amendment.

SENATOR KRISTENSEN: That's right, yes.

SPEAKER BARRETT: Thank you. Senator Hall, would you care to discuss that matter? Your light is on.

SENATOR HALL: Thank you, Mr. President, members. Would Senator Kristensen yield to a question?

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Yes.

SENATOR HALL: Senator Kristensen, is it my understanding that your amendment would then become 799?

SENATOR KRISTENSEN: Yes.

SENATOR HALL: In its entirety?

SENATOR KRISTENSEN: Yes.

SENATOR HALL: So you would strike the contents of 799 and state, in its place, LB 1020.

SENATOR KRISTENSEN: Yes.

SENATOR HALL: Okay, thank you. Mr. President, members, the one thing about the amendment is it is clearly germane. (Laugh.) So we can't do that, but we'll try. Senator Kristensen, would you respond to another question? You stated about the provision that deals with, on page 15 of 1020, the issue of the test and the refusal to submit. Can you explain to me what the difference...what change that makes from our current statute?

SENATOR KRISTENSEN: Well, it's an evidentiary ruling, and if you are in court, and I'm trying to convict you for drunk driving, even though I don't have a test, because you can do that, and I've done that on occasion where the person is so intoxicated, I mean they are falling down, they've run into

March 22, 1990

LB 799, 1020

SENATOR CONWAY: Senator Kristensen, not seeing your amendment, in terms of clarification I went to LB 1020 to look at it. In the amendment do you include all of the committee amendments?

SENATOR KRISTENSEN: No, I do not.

SENATOR CONWAY: It is just the green copy as it was printed?

SENATOR KRISTENSEN: Yes.

SENATOR CONWAY: Then you mentioned the Supreme Court situation on the choice of the urine test. You dealt with that by striking the urine option in each case throughout?

SENATOR KRISTENSEN: What I did to solve the urine case, and quite frankly it wasn't because I knew the Supreme Court was going to do that, that was already stricken in 1020 as drafted originally. And you'll find that on the top of page 16, the first three lines there where it says that when the officer directs the test shall be of a person's blood or urine, such person may choose whether the test shall be blood or urine. I strike that out. So it was already in 1020, there was nothing I had to add. LB 1020 was ready to go and happens to solve the problem that the Supreme Court had.

SENATOR CONWAY: There are other places, such as on page 15, line 13, where they run the litany of the test and they keep throwing in the "or urine", "or urine" as we move through that, whether it be their choice or whether it be demanded of them. I believe the Supreme Court's position on urine was it's not a measure of impairment, that the amount of alcohol in one's urine has little or nothing to do with the impairment. I believe that was kind of the discussion that they dealt with. So would not taking urine out in and of itself, since it's not considered to be reliable, be a safer way to go? Granted, I can see the loop hole, by leaving it in they say you have the choice, I'm going to take urine because I know urine isn't valid. Why do we even have urine enclosed or incorporated at all at that point?

SENATOR KRISTENSEN: That's going to take me a little more time to explain. I'll gladly do it.

SENATOR CONWAY: Do it on my time, if I have it, please.

I'm not as adamant against it as I am 799 in its currently unamended form. The...but I do believe that these aren't just things we come in and we do willy-nilly without talking about how the system works and whether or not it impacts the system. Senator Kristensen stated that in his conversation with Senator Conway that this is a tool that the courts and the prosecutors feel they need. That's difficult to argue against. We are, as has been stated, at the tail end of the session, we are amending one bill into another. There are going to be other bills that don't get an opportunity to even be addressed, let alone offered as amendments to other bills. You're dealing with a whole new area in terms of the drug testing, the evidentiary procedure that is laid out in LB 1020 through the Kristensen amendment. It isn't exactly something that has been around for a long time. But I know that the issue is new and the issue of someone driving under the influence of drugs is not something that our laws currently address. I intend to vote no on the procedural issue. And the issue of the evidentiary aspect of the amendment is one that I may offer an amendment to address that. The balance of the amendment, I guess, the urine issue, with regard to the question of its validity, how the courts have dealt with that in terms of throwing it out, or not allowing the test to be evidence, I can't argue with that, it's difficult to. But you are dealing with a new aspect. This is not something that has been through the system before. You are changing the procedure. That part of the proposal, as well as the procedural issue, is one that I don't agree with.

SPEAKER BARRETT: Thank you. Senator Kristensen, it appears that there are no other lights on. Would you like to close?

SENATOR KRISTENSEN: Yes, I would, Mr. Speaker and members of the body. I wish I had the burning "vengent" voice of a Senator Warner, or the window-rattling voice of George Coordsen, both who stand up and say, well, shucks, I'm just a farmer and I can't give a speech very well, but that the place just drops absolutely silent when they speak. And, unfortunately, the only experience I have right here is one that I'm not real pleased that I have to come up and take a bill that Senator Beyer has worked long and hard for. And I think he deserves our thanks and his staff for the work they have put into this bill. But, if we don't do something, you're letting one of the largest tragedies occur, and that is let drunk drivers go who we apprehend and who we know are guilty and who have over the legal limit in their body, but because they are either lucky enough or

on those individual rights. We just shouldn't do that. With that, Mr. President, I would withdraw the remainder of the amendments that I have to the bill, because they are not applicable.

SPEAKER BARRETT: Thank you. They are withdrawn. Have you anything else on the bill, Mr. Clerk?

ASSISTANT CLERK: Mr. President, the next amendment that I have is from Senator Peterson, and Senator Peterson would move to add the emergency clause.

SPEAKER BARRETT: Senator Peterson, please.

SENATOR PETERSON: Be very brief, Mr. President and members. I thank Senator Beyer with all amendments up there to relinquishing to let Senator Kristensen add LB 1020 into this bill and make it the bill. Without the E clause we go for about three months without...before it becomes law. I think it's so critical that this be added to correct the problem we have out there. And I, like several on the floor here, would certainly like to see tougher DWI laws than what we have. It kind of irks me that some of these people that get brought in and try to be fined and that, get off with some little technicality. But I would ask your indulgence to add the E clause so it becomes effective as quick as the bill is signed. And, if Senator Kristensen would like a little of my time, I'd relinquish it to Senator Kristensen.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members. It pays to have a little wisdom and legislative experience, and that is exactly what Senator Peterson is exhibiting. I hadn't thought about the emergency clause and I'm the one that stands up and says there is a crisis. I thank you, Senator Peterson, for your experience and I appreciate you coming over and saying something. We need the emergency clause, otherwise you're going to spend those three months with drunk drivers using the loop hole that's been created, and it's certainly something we don't want to foster and encourage. And, with that, I just want to say thank you to Senator Peterson. And this is just as essential as the bill that we placed into effect a few minutes ago. Thank you.

committee priority bills. This one, LB 1020, changed provisions relating to driving under the influence of alcohol and drugs. We certainly don't want to end the session without at least being able to pass LB 1020, which I totally and strongly support, and then we have LB 1229, which is Senator Scofield's local option municipal economic development act, that also is very important to Senator Scofield, Senator Peterson and Senator Schellpeper. I think most of the bills on the committee priority bills are bills that are vitally important. And, if we don't get to them today, which I'm sure we will not, I strongly urge the members of the Legislature to allow 30 votes to be shown on the board so that we can not only discuss these nine bills on Select File, we're not making the motion to send them to Final Reading, we are saying they should go, they are senator priority bills. They haven't been heard. And I understand, Senator Chambers, you mentioned LB 908 as your priority bill, well I want to also mention the fact that LB 769 is my priority bill and it is not listed in those nine. In both cases, those two bills failed to advance and LB 9...of course LB 769, I got to mention this, never came to a vote for advancement. LB 908, Senator Chambers' bill, did have a vote and it failed to advance, and that's the reason it's not on the General File, 1990 senator priority bills. I often have told the Speaker, and as I show you here, there are 20,000 signatures in this list...

PRESIDENT: Excuse me, Senator. (Cavel.) Let's hold it down, please, so we can hear the speakers. Thank you.

SENATOR LABEDZ: ...of people in the State of Nebraska that are anxiously waiting for at least one abortion bill to be discussed, and that is LB 854. It's never had a chance or a vote to advance, and I think it's a very important bill and you do, too, and so do these 20,000 people. I am willing to vote to suspend the rules on Final Reading so we can read the bills without further debate or amendment. As you know,

PRESIDENT: One minute.

SENATOR LABEDZ: I have several amendments on LB 1059 and a few others, and I will be most happy to withdraw...not withdraw my amendments, but to vote with Senator Barrett and suspend the rules to permit Final Reading of bills without further amendments, motion or debate. We are just asking these nine bills to be advanced to Select File, because they are senator priority bills and they haven't had a chance. Thank you.