

January 11, 1990

LB 1114-1117
LR 8

voted? Please record. A record vote has been requested.

CLERK: (Record vote read. See pages 285-86 of the Legislative Journal.) 8 ayes, 21 nays, Mr. President, on the adoption of the amendment.

SPEAKER BARRETT: The motion fails. For the record.

CLERK: Mr. President, new bills. (Read LB 1114, LB 1115, LB 1116, and LB 1117 by title for the first time. See pages 286-87 of the Legislative Journal.) Finally, Mr. President, a hearing notice from the Health and Human Services Committee, signed by Senator Wesely as Chair. That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. The Chair notes that Senator Lowell Johnson has a very special guest under the north balcony, leaning against a post, Miss Natalie Johnson from Carlsbad, California, Senator Johnson's granddaughter. Natalie, would you please wave so we can welcome you. Thank you. We're glad you're here. Mr. Clerk, the next amendment.

CLERK: Mr. President, Senator Chambers would move to amend. Senator, I have your amendment, page 2, line 1, after the word "appeal" or is it just insert? After the word "appeal"?

SENATOR CHAMBERS: Right, insert, right.

CLERK: Insert "cases of felony and".

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, to put this into perspective, this amendment is designed to reinstate the right of those involved in felony cases to have an appeal to the Supreme Court, as is the case right now with the Constitution. If you're following at all, on page 1 of the original LR 8, the green copy, you will see at the bottom of the page, in line 15, the words "cases of felony", which has been stricken. With my language, we would have this, and it goes from page 1 to page 2, "in all cases of felony and capital cases", it would then bring us back to the point that Senator Kristensen pointed out this morning when I had the broad version of this amendment that would have allowed all criminal cases, even those that are as insignificant in the minds of some people

January 17, 1990

LB 163, 821, 822, 823, 824, 825, 826
827, 828, 829, 1102-1135, 1158-1161

PRESIDENT NICHOL PRESIDING

PRESIDENT: (Microphone not activated) ...pastor at UN-L, and now is pastoral associate at Trinity Lutheran Church here in Lincoln. Would you please rise for the invocation.

DR. NORDEN: (Prayer offered.)

PRESIDENT: Dr. Norden, thank you for being with us again, we appreciate it. Come back again. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Thank you. Do you have any messages, reports or announcements this morning?

CLERK: Mr. President, Reference Report referring LBs 1102-1135, as well as three gubernatorial appointments to the appropriate standing committees for hearing. (See pages 348-49 of the Legislative Journal.)

Received a report from the Department of Roads filed pursuant to statute, Mr. President. That's all that I have.

PRESIDENT: Would you like to introduce any new bills, or would you not like to?

CLERK: Mr. President, I'm sorry, I do have some other items. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 821 and recommend that same be placed on Select File; LB 822, LB 823, LB 824, LB 825, LB 826, LB 827, LB 828, and LB 829, all on Select File, some of which have E & R amendments attached, Mr. President. Now, that's all that I have, Mr. President. (See pages 350-51 of the Legislative Journal.)

PRESIDENT: New bills, please.

CLERK: Mr. President, new bills. (Read LBs 1158-1161 by title for the first time. See page 352 of the Legislative Journal.) That's all that I have at this time, Mr. President.

PRESIDENT: We'll move on to General File then, LB 163.

January 17, 1990

LB 259, 272A, 969, 987, 1041, 1114, 1170-1180
LR 241

CLERK: (Read roll call vote. See page 365 of the Legislative Journal.) 27 ayes, 13 nays, Mr. President, on the motion to suspend the rules.

PRESIDENT: The motion fails. The call is raised. Do you have anything for the record, Mr. Clerk?

CLERK: I do, Mr. President. Yes, I do, Mr. President. Mr. President, a notice of hearing from the Natural Resources Committee, signed by Senator Schmit as Chair. (Re: LB 969, LB 987, LB 1041. See page 365 of the Legislative Journal.)

I have amendments to be printed by Senator Haberman to LB 259. (See page 366 of the Legislative Journal.)

I have a motion from Senator Lamb regarding LB 1114. That will be laid over. (See page 366 of the Legislative Journal.)

Mr. President, new constitutional amendment, LR 241CA offered by Senator Hall. (Read brief description. See pages 366-67 of the Legislative Journal.)

Mr. President, new bills. (Read LBs 1170-1180 by title for the first time. See pages 367-70 of the Legislative Journal.) That is all that I have, Mr. President. Yes, sir. Mr. President, I guess a reminder, excuse me, Reference Committee at three-thirty. Reference Committee at three-thirty in Room 2102. That is all that I have, Mr. President.

PRESIDENT: Thank you. Senator Jacky Smith, would you like to adjourn us until nine o'clock tomorrow morning, please?

SENATOR SMITH: Mr. Speaker, I...I don't know what to say. Vote to stay here? I would like to ask that the body be adjourned until nine o'clock tomorrow morning.

PRESIDENT: Thank you. You've heard the motion. All in favor say aye. Opposed nay. We are adjourned until nine o'clock tomorrow. Thank you.

Proofed by:

Arleen McCrory
Arleen McCrory

the Power Review Board, and I would so move.

PRESIDENT: Any further discussion? The question is the adoption of the suggestion of the confirmation report. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

PRESIDENT: The confirmation report is accepted. Move on to number five, motions, Mr. Clerk.

CLERK: Mr. President, Senator Lamb would move that LB 1114 be rereferred from the Judiciary Committee to the Transportation Committee. Senator Lamb's motion is found on page 366 of the Journal, Mr. President.

PRESIDENT: Senator Lamb, please.

SENATOR LAMB: Mr. President, and members, I don't know how many people we have here but, nevertheless, I am thoroughly convinced that the Reference Committee made an error in referencing 1114, which has to do with DWI. It changes the intoxication level from the present .10 to .08, clearly a DWI issue, and DWI bills have always gone to Transportation Committee, and I would submit for your consideration the Standing Committee system, the referencing of bills, the interim study dated August-November, 1985 on page 85 of that document. It spells out where all the bills, where they go, and that is at the time when we changed from the old system to the new system. Transportation, here is what it says: motor vehicles, highways and bridges, railroads, common carriers, telecommunications, and DWI. Then a later work, also from the Research Division, dated September, 1989, the title of this is the Referencing of Bills to Standing Committees of the Nebraska Legislature. On page 34, Transportation, the whole list, motor vehicle related, highway related, railroad related, common carriers related, and, number five, DWI. Now the bill is an act relating to alcohol; to amend the sections; to change the amount of alcohol in a person's blood, breath, or urine necessary for such person to be considered under the influence of alcohol; clearly a DWI bill. It belongs in Transportation. You know, I really don't care about a lot of bills in Transportation. We don't have a lot of bills but, you know, I am not one of those that needs a lot of

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

body, I, too, would rise and ask that you would look at the logic of the situation, and that historical precedent, this bill, 1114, which does drop the blood alcohol concentration level should be rereferenced to Transportation. I talked with Dr. Rodgers, and that was his final word on it, said that it should be. It does not, it does not in any way create a new offense. It does not create a newly defined crime. It simply should go to Transportation. As in the past the commercial trucker blood alcohol level bill that had to meet federal regulations and was dropped to .04, that was considered a DWI bill, this is the same kind of bill, and as in the past, it should return to Transportation. And when we are talking about the realities of the public, and so forth, and so on, we have to realize that those bills are working with controlled substances. There is a difference, and I would just respectfully ask the members of the body, in order that this bill might have a complete and total hearing, when you look at the number of bills that are in Judiciary and the number of bills that are in Transportation, allow that bill, this is a public forum, the public hearing process has been developed so that bills might go forward and their merit then be decided on the floor of the body. This is a short session. We are on our forty...I think we have 49 days left. I would like for that to happen to this bill and I am not asking anything that is not outside of historical precedent here in the body. And I think if we look at it logically and we count the number of days, we count the number of bills, we look at historical precedent, there is no other place for this bill to go but in Transportation. And so I would ask that that would happen, that if this bill is not proven to have merit, although the public does seem to support it at this time very strongly, then those of you in the body then can vote it out, but I would like to see it go to Transportation so that it might have the hearing that has been done as history has provided. Thank you very much.

PRESIDENT: Thank you. Senator Labeledz, please, followed by Senator Chizek and Senator Baack.

SENATOR LABEDZ: Thank you, Mr. President. As Chairman of the Exec Board, I feel it my responsibility to rise in support of the Exec Board's position on rereferencing LB 1114 to the Judiciary Committee. In committee, Senator Chambers made the motion to rereference it. It was seconded, and it received five votes, Senator Baack, Senator Chambers, Senator Rod Johnson, Senator Labeledz, and Senator Schmit voted with Senator Chambers.

He did make a very convincing argument there about crime and punishment, and DWI, as far as I am concerned, and the reason I voted with Senator Chambers, it is a criminal offense, and whenever you change any part of a criminal offense or even the penalty or the fine, whatever it is, or no matter what it is, as long as it is a criminal offense and there is a penalty, I believe it should go to the Judiciary Committee. I wasn't there the following day and Senator Lamb did appear to again try to rereference it back to Transportation Committee, and that also failed on a 3 to 4 vote. So I rise to urge the members now to stand by the Referencing Committee and do not rereference the LB 1114 back to Transportation. I am sorry that Senator Chambers isn't here. I don't often agree with Senator Chambers and very seldom vote with him, but he was very convincing in his arguments, and I know that he understands the law a lot better than I do. Fortunately or unfortunately, I am not an attorney. I would have preferred that Senator Chambers was here representing the Exec Board in telling you why the reasons that the majority of the Exec Board did vote to rereference LB 1114. Thank you.

PRESIDENT: Thank you. Senator Chizek, please, followed by Senator Baack, and Senator Rod Johnson. Senator Baack, please.

SENATOR BAACK: Yes, Mr. President, and colleagues, I rise in opposition to this motion as a member of the Referencing Committee. We have looked at this a couple of times already, as Senator Labedz has said. We referenced it first to Judiciary, and then we had...and Senator Lamb came in, made his appeal to rereference it to Transportation. We left it in the Judiciary Committee and I think we did so for basically one reason. What this does is this makes something criminal that is today not criminal. What it does is it says that if...because today if you are a .08, that is not criminal today. At .1 you are criminal. This takes it down to .08, so we are making something criminal that is not criminal today, and that was the argument that Senator Chambers made. I think it is a very persuasive argument. That is what we are doing with this. So I think it belongs in the Judiciary Committee. I know that Jack Rodgers makes recommendations to the Referencing Board, but those are purely that, recommendations. It is up to the board to make the decision. We do not have to follow what he gives us. We are the deciding board, and in this case, we decided that it should go to the Judiciary rather than Transportation. We have discussed it twice. We left it at the same place both times. I

would ask the body to not support this motion and leave the bill with the Judiciary Committee. Thank you.

PRESIDENT: Thank you. Senator Rod Johnson, please, followed by Senator Wehrbein and Senator Nelson.

SENATOR R. JOHNSON: Mr. President, and members, like Senator Baack, I, too, voted to rereference the bill to Judiciary based upon many of the compelling arguments that Senator Chambers and Baack stated during the Executive Board meeting, and as Denny has said, we don't always agree with what Mr. Rodgers brings to us as recommendations for committee referencing, and if we did, there would be no reason for a Referencing Committee report every day that we have been meeting. I might also add that as Chairman of the Agriculture Committee, if you look under the issues that are to come to the Agriculture Committee, many times those issues don't end up in the Agriculture Committee, and one that comes to mind is ethanol issues. You look under the subject matter that should be covered in Agriculture, one of the listings is ethanol or gasohol, but it does not...in fact, we have very few bills that have been referenced to Agriculture in that area, and many of those bills end up on Natural Resources. I don't make a big fuss about it. I happen to be on that same committee anyway so I get my shot at them either way, but the Exec Board and Mr. Rodgers don't always agree and that sometime we disagree on where these bills should go, and it is in a very open process. I would say that there is a concern that if it goes to Judiciary that means that the bill is dead. My hope is it will get a fair hearing as all bills do, and I think that that concern should not be, I think, exercised here today because we do have a personal priority bill status, which senators, even if they get their bills out of committee late, still have a chance to get their bills up under the priority bill system that we have. So I am sure Senator Chizek and the Judiciary Committee will give this bill a fair hearing and I plan on not supporting the rereferencing of the bill as I did not do the other day.

PRESIDENT: Thank you. Senator Wehrbein, please.

SENATOR WEHRBEIN: Yes, Mr. President, and members, I guess I disagree. I believe it should go to the Transportation Committee and my primary reasons, I have heard the arguments, we are talking about whether it makes it a criminal offense to go from .10 to .08, but the point is it is not illegal to be drunk

in Nebraska, it is only illegal to be drunk in Nebraska, in my observation, is while you are driving. And so you can be .10, you can be .15 sitting in this room, perhaps, and be legal, but you can't be if you are in a car. So what we are talking about is what comes under the Transportation's jurisdiction, or maybe a golf cart, as Senator Abboud says. But the point is, it is only illegal to be .10 now when you are in an automobile, and that is what this bill faces. It doesn't talk about the drug problem, wherever else you may be. I can understand Senator Chizek's comments about that it is part of a larger issue and that is true, but here we are only talking about drivers' licenses, as I understand it. Driver's license standards fall under the Transportation Committee; .10 dropping to .08 is a standard that is met while you are driving an automobile and that is all. It has no bearing anywhere else. If you are in an automobile, you are in transportation. To me it is logical that this falls under that standard.

PRESIDENT: Thank you. Senator Nelson, please, followed by Senator Beck and Senator Wesely.

SENATOR NELSON: I call the question, please.

PRESIDENT: The question has been called. Do I see five hands? I do, and the question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 28 ayes, 1 nay to cease debate, Mr. President.

PRESIDENT: Debate has cease. Senator Lamb, would you like to close on your motion.

SENATOR LAMB: Yes, Mr. President, and thank you. You know, unfortunately, this bill has got caught up in the argument as to which committee it has the best opportunity to advance, and that is unfortunate because I am not thinking about that. I am thinking about the system. I have pointed out to you that it is very clearly stated in our research documents that DWI bills go to Transportation, as well as where every other type bill goes. So if we are getting away from that system, we are headed toward chaos. We are headed toward chaos. And I have a whole list here of DWI bills that have come to Transportation Committee. I could list those. Senator Chizek in his presentation did not, did not hold up this document which states where each bill goes, the description of the bill and where they go, and it clearly

states in there DWI goes to Transportation. As I mentioned before, you know, I have no interest in the bill. My interest is in the system. I am sorry that some people have gotten into this debate on the basis of which committee will this bill have a better chance to survive. That is not the issue. The issue is, are we going to stay with the rules or are we not going to stay with the rules? I hope that you will vote to stay with the rules and rereference this, as Dr. Rodgers has recommended, and I would give the rest of my time to Senator Beck.

PRESIDENT: Senator Beck, please.

SENATOR BECK: Thank you, Mr. Chairman, and thank you, Senator Lamb. I just want to reiterate Senator Lamb's argument that if we have rules, we spent a great deal of time in the beginning of our session determining the rules for this session. We are all to abide by those. This bill shouldn't take on an emotional cast. It is a bill...I probably feel more emotional about it than anyone because I am one of the sponsors of this bill, but I do believe that we need to follow the rules. I look at the past. I know that the blood alcohol level bill for commercial truckers, which in a sense is the same thing, was referenced to the Transportation Committee, as many other bills, all other bills it seems up to this point have been sent. And so I would just respectfully ask the body to consider the rules and our relationship to those rules and our relationship under those rules and rereference this bill back to its original spot in Transportation, as Dr. Rodgers and others have indicated it should be. Thank you very much.

PRESIDENT: Thank you, and the question is Senator Lamb's motion to rerefer LB 1114. All in favor of the Lamb motion vote aye, opposed nay. Have you all voted? Senator Lamb. The question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

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

PRESIDENT: The house is under call. Will you please record your presence. Those not in the Legislative Chamber, please return so that we may continue with the business of the day. Senator Byars, would you record your presence, please. Thank you. Senator Nelson, Senator Ashford, would you record your presence, please. Senator Landis, please. Thank you. We are still looking for Senator Hefner. Ladies and gentlemen, the

question is the Lamb motion, and a roll call vote has been requested. (Gavel.) Will you please hold it down so that the Clerk can hear your response, please. Thank you. Mr. Clerk.

CLERK: (Roll call vote taken. See page 425 of the Legislative Journal.) 22 ayes, 21 nays, Mr. President, on the motion.

PRESIDENT: The motion fails. Anything for the record, Mr. Clerk?

CLERK: Not at this time, Mr. President.

PRESIDENT: Okay, we'll move on to Select File. Number 534. The call is raised. Ladies and gentlemen, if we could have your attention for just a moment, the Speaker has a message for you.

SPEAKER BARRETT: Thank you, Mr. President and members. For your general information the committee chairs had a quick meeting this morning, and let me share two or three dates with you for future planning. Priority bill deadline, again let me refresh your memories, February 16, that's a Friday. Priority bill deadline. Having said that, don't hesitate to name your priority bills prior to that, your personal and committee priorities as well. Get them out as quick as possible. One comment made at the meeting this morning with reference to whether or not we do have a rule pertaining to this matter, and we do, it's in five, rule five, all committees, all committees shall schedule priority bills for public hearing ahead of all unscheduled nonpriority bills, unless of course the person or the committee feels otherwise. There is some wiggle room, some leeway. But, nevertheless, name them as quickly as you can and schedule them for public hearing ahead of all unscheduled nonpriority bills, if possible. A number of you are asking about consent calendar this session, I don't know. At this point all bets are off. Any questions? We plan to end our hearings, at this point, on the 23rd, Friday the 23rd. We'll be on the floor full days the 26th.

PRESIDENT: That's February?

SPEAKER BARRETT: Yes. That is going to create a bit of an inconvenience on one and perhaps two committees. We'll hope to work out those inconveniences when the time comes. If there are no questions, thank you, Mr. President.