

January 5, 1989

LB 81-160
LR 1-2

being here and thank you for your services. We also have guests of Senator Rod Johnson under the north balcony. We have Omer Troester of Hampton, Nebraska. With him is an exchange student, Alberto Porras of Costa Rica. Would you gentlemen please stand up and be recognized. Thank you for being here. We also have, over under the south balcony, a former member of this Legislature, Senator Tom Fitzgerald, would you please stand up and wave your hand. Thank you. Please welcome Senator Fitzgerald back. Thank you, Tommy. Mr. Clerk, back to the reading.

CLERK: (Read LB 81-98 by title of the first time. See pages 61-67 of the Legislative Journal.)

PRESIDENT: We'll stand at ease for some 15 minutes or half an hour while we get some of the work caught up up here in front. So be at ease, please, for a while. Thank you.

EASE

CLERK: Meeting of the Health Committee, under the north balcony, right now. Health Committee, north balcony right now.

SPEAKER BARRETT PRESIDING

SPEAKER BAPRETT: Additional bill introductions, Mr. Clerk.

ASSISTANT CLERK: (Read LB 99-150 by title for the first time. See pages 67-76 of the Legislative Journal.) That's all I have at this time, Mr. President.

SPEAKER BARRETT: More bill introductions, Mr. Clerk.

CLERK: (Read LB 151-160 by title for the first time. See pages 76-79 of the Legislative Journal.) Mr. President, in addition to those new bills I have new resolutions. (Read LR 1-2 for the first time. See pages 79-81 of the Legislative Journal.)

Mr. President, in addition to those items I have a series of announcements. Mr. President, there will be a meeting of the Executive Board today at three-fifteen for purposes of referencing. Executive Board, three-fifteen for referencing.

Mr. President, Senator Rod Johnson would like to have a meeting

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LB 58, 84, 98, 102, 140, 141, 241-266

CLERK: Mr. President, new bills. (Read titles for the first time to LBs 241-266. See pages 112-18 of the Legislative Journal.)

Mr. President, in addition to those items, the Rules Committee would like to announce that Senator Carson Rogers has been selected as Vice-Chair of the committee.

Mr. President, Revenue Committee will be or are...is conducting a meeting underneath the south balcony.

Mr. President, the Judiciary Committee will conduct an Executive Session upon recess on the south side of the Chamber; Judiciary upon recess. And Transportation will meet in the lounge upon recess...or, Senator...I'm sorry, Senator Lamb, do you want that this afternoon, Senator? I'm sorry, Transportation upon adjournment this afternoon in the Senators' Lounge; Transportation this afternoon.

Mr. President, Government Committee has selected Senator Bernard-Stevens as Vice-Chair.

Mr. President, Senator Conway would like to add his name to LB 140 as co-introducer; Senator Beck to LB 102 and to LB 141; Senators Smith and Hartnett to LB 58; Senator Hartnett to LB 98; Senator Rod Johnson to LB 84.

Mr. President, the last note is a Reference Committee meeting at two-thirty this afternoon in Room 2102; Reference Committee at two-thirty in Room 2102. That's all that I have.

PRESIDENT: Senator Emil Beyer, for what purpose do you rise?

SENATOR BEYER: Mr. Speaker, a point of personal privilege. I hope that the senators have noticed that we have a familiar face back in the Legislature and that's our Page Supervisor, Kitty Kearns. We're glad to have her back and we've missed her and we wish her good health from now on. (Applause.)

PRESIDENT: Thank you. Ladies and gentlemen, would you please listen as your Speaker speaks.

SPEAKER BARRETT: Thank you, Mr. President, and members, just a reminder to committee chairs, committee clerks, if you plan to have a hearing next week, I believe the first day would be the

March 8, 1989

LB 141, 161, 333, 379, 457, 742

time by title. See page 1027 of the Legislative Journal.)

Ag Committee reports LB 161 to General File with amendments, that is signed by Senator Johnson; Banking Committee reports LB 333 to General File with amendments, and LB 457 to General File, those signed by Senator Landis as Chair; Transportation reports LB 141 to General File with amendments, and LB 742 to General File with amendments, those signed by Senator Lamb. (See pages 1028-29 of the Legislative Journal.)

Mr. President, Senator Baack gives notice of cancellation of hearing. That is all that I have at this time, Mr. President.

PRESIDENT NICHOL PRESIDING

PRESIDENT: We will move on to LB 379.

CLERK: Mr. President, LB 379 was introduced by Senator Hartnett. (Read title.) The bill was introduced on January 12 of this year, referred to Education. The bill was advanced to General File. I have no amendments to the bill, Mr. President.

PRESIDENT: Senator Hartnett.

SENATOR HARTNETT: Yes, Mr. President, members of the body, this would give school districts authority to invest school district funds in repurchase agreement. Current law allows school districts to invest school funds in the securities under the prudent man rule, and really what it does, it is kind of a clarifying law is that large school districts that receive large amounts of money can invest it within a...before a seven-day period of time and that is really what it does. Some of the attorneys for some of the larger school districts feel that this has to be clarified, and with that, I would ask for the advancement of the bill, unless there are some questions.

PRESIDENT: Senator Elmer, please. No? Okay, did you wish to close?

SENATOR HARTNETT: (Mike off) ...kind of a clarifying.

PRESIDENT: Okay, the question is the advancement of the bill. All those in favor vote aye, opposed nay. It looks like I need a little help, ladies and gentlemen. Record, Mr. Clerk, please.

the reimbursement for these individuals, but in terms of fairness, it is probably not a bad way to do, and I hope Senator Warner can talk a bit about the time commitments that these people have in that regard.

SPEAKER BARRETT: Senator Hall. Any other discussion on the advancement of the bill? Senator Warner, any closing.

SENATOR WARNER: Well, Mr. President, members of the Legislature, Senator Wesely inquired as to the time and I did have a document that I was visiting with him which there was some estimates and it's a page and a half of description of the kinds of meetings in addition to the regular board meetings, but the other meetings that they, from time to time, are expected to attend. There was an estimate at the end of this document that they would anticipate, would conservatively say a board member for Nebraska Public Power District spends a minimum of the equivalent of five working days per month which would not include travel time. Of course, in their case, that is a statewide board and I suspect some of them, at least every time there is a board meeting, as a practical matter, that could be as much as a day lost each way, depending on the method of travel and time in which the meeting was held. But I do think that an adjustment which was last made in 1978, some, what, 12 years, 12 or 13 years ago, when this goes into effect, is not an unreasonable adjustment. It may seem large because it is...and it is a percentage at the moment, but when you view the time frame that has elapsed since it was last adjusted, why then I would not consider that as a significantly high percentage. I'd move the bill be advanced.

SPEAKER BARRETT: Thank you. The question is the advancement of 730 to E & R. All in favor vote aye, opposed nay. Record, please.

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB 730.

SPEAKER BARRETT: LB 730 is advanced. LB 141.

CLERK: LB 141, Mr. President, introduced by Senator Abboud and Senator Beck. (Read title.) The bill was introduced on January 5, Mr. President, referred to the Transportation Committee. The bill was advanced to General File. I have committee amendments pending by the Transportation Committee.

(See page 1028 of the Legislative Journal, First Session.)

SPEAKER BARRETT: Transportation Committee Chairman Lamb, will you handle the amendments.

SENATOR LAMB: Mr. President, and members, LB 141 is a bill which pertains to drunk driving, and the amendment waters it down just a little bit. The committee amendment provides that rules of the road shall apply to the operation of vehicles on public highways except that careless, reckless, and willful reckless driving and driving under the influence of alcohol or drugs, and implied consent to submit to a chemical test shall apply to the operation of motor vehicle on public highways or anywhere throughout the state except private property which is not open to public access. And the intent of that is to exempt, for instance, the driveway to your home. Mr. Chairman, I would move the adoption of the committee amendment.

SPEAKER BARRETT: Thank you. Discussion on the committee amendments to LB 141. Senator Hall, Senator Abboud on deck.

SENATOR HALL: Thank you, Mr. President, and members. Senator Lamb, would you yield to a question?

SPEAKER BARRETT: Senator Lamb, would you respond?

SENATOR HALL: You know, Senator Marsh told me a long time ago on this floor that we yield to no one, but would you at least respond, and could you give me the definition of private property which is not open to public access. The committee amendment uses that term specific.

SENATOR LAMB: Well, we struggled with that problem. We struggled with that problem, and, you know, I don't have a good definition. I don't know if anybody has a good definition.

SENATOR HALL: Okay, at least you are honest.

SENATOR LAMB: But the intent of the legislation is to apply to a public parking lot, such as at a grocery store, but not to your own private driveway.

SENATOR HALL: But my...say, for example, I own the corner lot that I happen to live on and my driveway is a point in which many people use to turn around, that is public access, and I

don't barricade it once I move my car in or out every day, couldn't the term public access allow then for a officer, the City of Omaha Police Department, if I was outside washing my car, as an example, got into, was in full control of it, but also while I was doing that had been imbibing alcohol at the same time, turn the car on and was in control of that vehicle, would then, under this definition, the DWI laws of the state apply?

SENATOR LAMB: That is not the intent of the committee.

SENATOR HALL: I know it is not the intent.

SENATOR LAMB: And you know you are free to post your driveway that it is, you know, not public property, to make it absolutely and completely clear.

SENATOR HALL: And we have a lot of those, is your driveway posted?

SENATOR LAMB: My driveway?

SENATOR HALL: Just out of curiosity.

SENATOR LAMB: Nobody can find it anyway, so it doesn't matter.

SENATOR HALL: Oh, for purposes of this discussion, it clearly matters, Senator Lamb, but that is all right. Thank you very much. Ladies and gentlemen, I would just raise the issue that I understand the intent, and I think the intent as it relates, and I think Senator Abboud will speak to this afterwards, to public parking lots and many of you have read the paper and heard about the problem that the City of Omaha has, oftentimes, on Dodge Street west of 72nd Street, but that we don't limit it to that, and by passage of this definition of what private property is without having, as Senator Lamb put it, a good definition of what is private property not open to public access, I would think that you then are opening the laws, and liquor laws, and if that is the will of the body, fine, so be it. But we are treading on new ground because you are taking the laws that...say someone had a private lake, for example, and it had a road around it. The DWI laws, even though that it is clearly private property, they would be subject to the same type of laws, even though they didn't want anybody being on there, didn't want other drivers on their property, the same driving

while intoxicated laws, maybe that is appropriate, but it clearly is more than just a simple little bill. It is a clear public policy issue and a shift over into the private property areas that folks like Senator Lamb I think would be very protective of in other areas of law enforcement. And so with that, clearly know that this is not just limited to parking lots of large shopping centers on West Dodge Street. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Abboud, followed by Senator Hannibal.

SENATOR ABBODD: Mr. President, and colleagues, this bill was brought on behalf of the City of Omaha in response to a couple of Nebraska Supreme Court cases. In 1986, the Nebraska Supreme Court, in State v. Goltzert, stated that drunk driving is only an offense if it is done on a public highway. Now a little bit earlier, in an earlier decision by the Nebraska Supreme Court, in State v. Carroll, it stated that drunk driving is an offense on private property as well as on the public highways. So there has been some inconsistency as far as when drunk driving laws apply and when they shouldn't apply, and I think clearly the Legislature, in looking to its drunk driving statutes, provided that when an individual is driving an automobile, and while he is driving that automobile, he has a chance of killing someone or injuring someone or maiming someone as a result of their driving ability, the state discourages that type of action. What this particular bill does is clarify the Nebraska statutes in dealing with these types of offenses. The particular committee amendments that we have been discussing are a view of not wanting to intrude on, I suppose as Senator Hall stated, someone's personal right to drive drunk on their private property in comparison to the danger of injuring someone while they drive in public in a road that has public access, and that is where the distinction is. So for purposes of establishing a record here, if, for example, as in the case that could have occurred to me, I lived in an apartment complex, Applewood, up until a little less than a year ago, and in that apartment complex, we had a bar, and it was rather a large complex, and someone could drive from the bar drunk or recklessly endangering other people's lives and not have any fear of being ticketed for that action since it was on private property. But, clearly, there was public access there. There were thousands of people that lived in that apartment complex, or hundreds of people, and that was really the idea behind it, or someone is driving in a

reckless manner, a drunken manner, while they are shopping at Westroads and they crash into someone's car or kill someone as they run them down, clearly, this is when it should apply. Now if that individual goes and gets into his car and he is intoxicated or drives recklessly through his backyard or up and down his driveway, we are making a decision here that says that that is their prerogative because it is not endangering other individuals. Now my druthers would have been that if you get in an automobile, you shouldn't be drunk, and that is what I brought in, a bill, to the particular, Transportation Committee, I said, you get into an automobile, you are driving a motor vehicle, you shouldn't be driving a motor vehicle in an unsafe manner. The committee chose to state that you can't drive that automobile in a manner that violates state statute where there is public access on that highway, and I am willing to agree to that particular amendment. The City of Omaha is willing to agree to that amendment. The Department of Motor Vehicles is willing to agree to that amendment, and we stand by to support the bill in its amended version.

SPEAKER BARRETT: One minute.

SENATOR ABOUD: I think it is...it deals with the problem where there has been probably not a lot of inconsistency. I think they prosecute under the statute as they see it stands now, but I think it is a matter of public policy that at a time when we are trying to discourage drunk driving or driving in a reckless manner, that we should also discourage them when they are driving in an apartment complex or a shopping center. It is just good public policy. I urge the adoption of the amendment.

SPEAKER BARRETT: Thank you. Senator Hannibal.

SENATOR HANNIBAL: Thank you, Mr. Speaker, and members. I rise with questions about not the intent of the legislation but the actual drafting of the committee amendment, and I, in many ways, I commend the committee for trying to narrow this down. I realize that the green copy did not have this limitation dealing with public access to private property, and the committee was trying to, it appears, to find a way to narrow this down to address the true problem, as Senator Hall and Senator Abboud suggested, that we do have in Omaha and I suspect other places around the state as well. However, notwithstanding that, I do raise the same kinds of questions that Senator Hall has raised and I do also appreciate the candor that Senator Lamb answered

Senator Hall. But just because there is an intent to try to address a problem with language doesn't mean that this is the proper solution, and I am very concerned about what this might mean, and unless I am mistaken the legal counsel was telling me that this wouldn't necessarily apply just to a car. It could apply to a tractor, some kind of a tractor that Senator Lamb would be possibly driving around his 50,000 acre ranch and having the time to have a couple of beers, or whatever, and theoretically or legally this could be reason for him to fall under these provisions. And while I understand the intent of the legislation, I am very concerned about the drafting language, and I had asked Senator Lamb and his counsel if there would be a way to come up with a better definition that we could agree upon. And I am probably going to support this bill with these amendments at this stage, but I would have to reserve any final support until we could have some kind of a better definition as exactly how this language should appear in our laws, and failing that, I would not be able to support this on Final Reading.

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

SENATOR CHAMBERS: Yes, Mr. Chairman, and members of the Legislature, I think there has been an adequate raising of the questions relative to the language in the committee amendment, but what has to be taken into consideration is that there are other offenses that by this language are incorporated into this kind of legislation, and I would like to ask Senator Abboud a question or two, if I may, because he is the chief sponsor of the bill.

SPEAKER BARRETT: Senator Abboud, would you respond.

SENATOR ABOUD: Yes.

SENATOR CHAMBERS: Senator Abboud, the way the committee amendment is drafted, careless driving, reckless driving, willful reckless, and the other things mentioned in the committee amendment, also are lumped together with this driving under the influence, correct?

SENATOR ABOUD: Yes.

SENATOR CHAMBERS: And if you will turn to the existing language

in the green copy to page 4, are you there with me?

SENATOR ABOUD: Yes.

SENATOR CHAMBERS: In line 11, the words, and it continues into line 12, "has committed a moving traffic violation", since careless driving and these other infractions are covered by this legislation on private property also, a person could commit one of those violations or be suspected of having committed one, and then would kick in the language on page 3 where a person could be subjected to a test for the content of alcohol in his or her blood or urine, would you agree with that?

SENATOR ABOUD: Could you run that by me one more time, Senator Chambers?

SENATOR CHAMBERS: Okay, are you aware of the language on Channel (sic) 3 that would strike "upon a public highway" with reference to the chemical test or the breath test and refusal to take the test will result in your arrest? Are you aware of that existing in the present law? If you want to see the part about the arrest, if you turn to page 4, in line 13, "Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content", and so forth, "shall be placed under arrest." Any person who refuses to submit shall be placed under arrest. So the way this bill that you have now has tied in those other offenses, if you are suspected of driving carelessly on private property, an officer, without having probable cause, just for committing the other violation authorizes him to compel you to submit to these tests, and if you know you haven't done anything with reference to alcohol and on that basis you refuse to take the test, you shall be placed under arrest." There is no discretion on your part to refuse to take the test or to agree to take it, would you agree to that?

SENATOR ABOUD: That is the way the current statute is.

SENATOR CHAMBERS: Thank you, and members of the Legislature, when Omaha comes in here with bills such as this or any other political subdivision, they usually have one thing in mind, and in Omaha they might be thinking about a narrow area of west Omaha, but this legislation applies throughout the state, and vehicle, the word that we are using is vehicle, not the term motor vehicle. A vehicle includes snowmobiles, tractors, in

fact, any self-propelled vehicle not on rails or water. So any self-propelled vehicle, these riding lawn mowers that they use on golf courses or that people use in their yard are vehicles, the snowmobile, the tractor, the combine, all of those things. If somebody owns a car lot, it is his or her own lot. The public, obviously, has access to it, and if he or she has had a hard day and sits in there and drinks on his or her own property, you don't have to be driving the car, you would be in physical control of the vehicle.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: Then you are subject to this law. You can be convicted under this law of drunk driving sitting in a vehicle on your own lot if you sell new cars or used cars, or in your automobile showroom. That is open to the public. Vehicles are driven into and out of that facility. For the sake of Omaha, it might be tempting to pass a bill like this which is a very, very poor piece of drafting and a very poor public policy. Omaha needs to learn how to deal with its problems and it should not distort the law that applies throughout the state in order to touch Omaha because, in fact, it does apply to farmland. If you have a road and you allow people to drive through it, the public has access, so if you were sitting on your tractor driving down that road,...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...and you drive carelessly, which means you endanger a piece of your own property, you come under this law and can be convicted and made to take the alcohol test.

SPEAKER BARRETT: Senator Hall, further discussion, followed by Senator Schmit.

SENATOR HALL: Mr. President, and members, again, I raise the same issue with regard to the inability of the committee amendments, and I clearly do not blame committee members or counsel because I think they have done as good a job as you can with legislation of this type that tries to broaden a law as the green copy of the bill originally did. And I think if you were going to try to narrow it down, the committee amendments are the best that, as Senator Lamb responded, they could possibly do, but it does, I think without having any kind of special background, allow the interpretation to include the things that

have been mentioned by others as well as something as simple as a golf cart which would be considered a vehicle. It is on private property and many of them have been known to carry alcohol beverages. Some of them are not operated that well. They are operated on private property, they would be subject to the driving while intoxicated laws of the state under this bill as it would be passed. Clearly, as Senator Abboud has stated, that is not the intent, but that is not the point here. The point here is that the application of this law would be appropriate in that case, and that is something that I think we have to concern ourselves with as often as we can when we push legislation through here sometimes as fast, sometimes not so fast, as we do, and the idea is to solve a problem. as Senator Chambers has mentioned and I did earlier, that I think is a problem for merchants in a particular area of west Omaha but would impact individuals across the state and could go so far as to, basically, put in statute an act or a policy that has taken place in the Omaha area, and that is that it is not unusual for an individual who does not feel that they are capable to drive home to, basically, go out to the parking lot and sleep it off in the car. Well, under this law, that individual would be ticketed, could be ticketed for driving under the influence because under the definition they would be in control of that vehicle, and that is really the kind of situation that has led to the introduction of this legislation. There are two conflicting statutes, as Senator Abboud pointed out, and this bill was introduced to clarify those. Well, it clearly clarifies it in favor of those individuals who have no intention of driving on or being in the public roadway. They have, in many cases, taken steps to ensure that they are not, whether they are on their property, whether they are in some kind of activity, simple as a golf game, but yet would be subject to these laws. If that is the intent of the legislation, whether it was the purpose for introduction or not, it clearly is going to have that application once it has been passed. I appreciate the work that Senator Lamb and the committee has done on the bill but I don't know that you can even make the case that it makes a bad bill better because this is a very broad application of the driving while intoxicated laws and I think it would not be proper at this time for the Legislature to advance this measure.

SPEAKER BARRETT: Thank you. Before recognizing Senator Schmit for further discussion, the Chair is pleased to note that Senator Schellpeper has some very special guests under the north

balcony. Senator Schellpeper's sister-in-law, Vivian Gardels of Norfolk, and his nieces, Ann and Barbara. Would you people please stand and be recognized. Thank you, we are pleased to have you with us. Senator Schmit, further discussion, followed by Senators Abboud, Chambers, and Moore.

SENATOR SCHMIT: Senator Abboud, I have a question if you would, please. It is always easy to arrest a single individual sitting in their driveway but I guess my question pertains to what happens with the so-called tailgate parties at the football games where you have hundreds if not even perhaps thousands of persons who have gathered in a sense of conviviality and partying and who from time to time have been known to take a drink, are you going to be out to arrest those individuals or to inspect them or to advise them, or will you ignore them and concentrate on Senator Hall, who is going to be sitting in his driveway meditating about whether or not he is going to finish mowing his lawn?

SENATOR ABBODD: Senator Schmit, I believe that this just deals with the situation where they are driving a motor vehicle, not out on the tailgate sipping beer, so they have to be driving the motor vehicle in order to be ticketed.

SENATOR SCHMIT: In other words, the vehicle has to be in motion?

SENATOR ABBODD: That is the way I view driving.

SENATOR SCHMIT: Well, you know, Senator, that isn't the way it is right now. That is not the way it is right now. If an officer suspects an individual who is parked and having control of the vehicle and decides to challenge that individual's sobriety, they can do so even though the individual is not moving the automobile. That is the law right now. Are you going to change that part of the law so that it actually has to be moving?

SENATOR ABBODD: Well, the section of the statute states driving, so that is the way I viewed it.

SENATOR SCHMIT: Let me give you an actual experience. A person that I knew went to visit his girl friend and she wasn't home. He had taken a 12-pack of beer along and so he had a couple of beers. He probably had more than he thought he had. Anyway

after having had a number of beers, he decided to take a nap on the seat of the pickup, and the officer came along, rapped him on the soles of his feet, took him down and arrested him and charged him and he was convicted on DWI. Now that vehicle was parked, he had not moved it after having consumed any beer, but, nonetheless, the keys were in the switch and he was involved and he was convicted of DWI. Now if you can do that, an individual sitting on the tailgate of a station wagon at the stadium is certainly involved more so in control of the vehicle than an individual in the case that I have just described. So I want to be sure, Senator, that the law is applied equitably across the board, and I think in the interpretation we have described that everyone of those tailgate parties is going to be suspect, and is going to be a prime source of attention of law enforcement. So I would like to have you comment a little further on that because I know what the law is as of now.

SENATOR ABBODD: Well, Senator Schmit, you have been in the system a lot longer than I have and I understand your grave concerns in regards to these tailgate parties, and it certainly would not be my intent that if someone is drinking a beer while sitting at one of these parties or sitting in the automobile that that individual be ticketed. It is my concern that these people be discouraged from driving while they are intoxicated or driving recklessly, and if you, in your wisdom, see an amendment that would be able to clarify this problem that you've raised, if it is a problem, I don't see it as one, but if you see it as a problem, I would be happy to look at it and add it onto the bill to clarify this problem, if you say it is a problem as it exists right now in the definition of what is, in fact, driving while intoxicated or driving recklessly.

SENATOR SCHMIT: Then I want to make it clear for the record, Senator Abboud, it is not your intent to in any way discourage the tailgate parties at the football games at the University of Nebraska, that you, in fact, do not want to infringe upon the rights of the public...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...to have such parties and that it is not your intent to discourage the consumption of alcohol at those parties but that they are to be immune from arrest in this particular instance. If that is not your point of view, then I guess I would have to have you comment further on it, and I would

suggest that you might want to put an amendment in the bill that says Senator Abboud does not view tailgate parties as being covered by this section of the law, but I don't know if you can do it or not either.

SPEAKER BARRETT: Senator Abboud, further discussion.

SENATOR ABOUD: Okay, Mr. President, and colleagues, it is clearly the intent of this particular bill that these individuals that are driving in parking lots or driving in apartment complexes should not act in a manner that endangers other people's lives, and for that matter, if an individual is sitting in their driveway, a private driveway and he sits there and he gets drunk, intoxicated, and begins to drive his automobile around in that driveway which is not open to public access, then this bill does not restrict it. In much the same manner as if someone is sitting in their automobile and he sits there and becomes intoxicated or, for that matter, begins to drive around in a reckless manner in that private area that is not open to public access, then they should not be ticketed as well. But as far as the concern that I have as well as the City of Omaha, the Department of Vehicles, their concern is that we have people out there that are driving intoxicated or driving recklessly, and endangering other people's lives. Now a number of these driving laws, they are very technical in nature. I have represented individuals that I felt were clearly not guilty involving the manner that they drove, but when you are getting into a question with these statutes, the amendment that was offered by the Transportation Committee, I think it is fairly clear. It is about as clear as we are going to get. I am open, though, if another member feels they can help clarify this situation with an amendment, the amendment was not drafted by me. The amendment was drafted by the Transportation Committee to deal with a particular problem. I would be open to that particular amendment to clarify the situation, and I think my intent is clear. I think the City of Omaha's intent is clear, and drunk driving is not a problem just in one particular portion of the state. It is everyone's concern, and when an individual drives in a reckless manner, it is a statewide concern, and I would hope that we could resolve this to hopefully save some lives of people on the highway and avoid endangering other people's lives because a law like this isn't on the books. Thank you.

SPEAKER BARRETT: Senator Chambers, followed by Senator Moore.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, one of the serious problems we are confronted with now is an overbroad law. There have been a number of cases which discuss such laws and they will say words to the effect that you spread a very wide net, and in the process of drawing in some who may, indeed, have committed conduct that is not allowable, you draw in a lot of others who have not, those against whom it is not intended that the law should operate, but because of the language in the law, it will encompass anybody who fits that definition or finds him or herself in those circumstances. The discretionary enforcement of the law is a terrible thing when you have a law as broad as this that could allow in the case that Senator Schmit gave discretionary or discriminatory enforcement. If you came upon one of these tailgate parties and you saw people in gray suits and blue shirts and purple ties, such as my good friend Senator Scott Moore is wearing, you would probably hesitate, if you are a law enforcement officer, because you would say, now, these are not the people to mess with. But then on the other hand, if you saw a group of people dressed in the way that I am, and they might say, uh huh, we have got some people who are Crips dressed in blue, sweatshirt on, looks rough and tumble, probably a thug, may be on his way from robbing a bank, if he has just robbed one, we don't have anything on him but we can get him because on this property there are people in that group who are drinking. And they round up everybody and then start administering the tests, and if there are people, who, in fact, are rough and tumble and feel they have a right to be on their property because let's make it the parking lot of one of these car dealers or a grocery store, and the owner of the store is out here with these people, then they feel they have a right to be there and should be left alone. So when the officer or officers approach this group in an aggressive manner, as they will tend to do toward people dressed in the way that I am, these people, if they are not Mickey Mouse, are going to stand up for themselves, and what should not have happened at all in terms of a contact between the police and citizens is going to escalate into something beyond all reason, something that Senator Abboud does not intend for his bill to trigger. But when you have police of the stripe and variety that drive cars and function in Omaha, you don't need this kind of broad, overbroad legislation to invite conflict, to invite confrontation, to invite selective discriminatory enforcement of the law. In this instance, the problem is not in the black community. It is in the white community, and since it is in

their community, they are entitled to make the whole law throughout the state accommodate a small geographic area in west Omaha habituated by people whose parents cannot control them. They do terrible things. They've threatened people who drive by. They drink. They engage in drugs. They sell drugs. They have groups that clump together, and in short, their conduct fits every definition of gang activity, but they are never described as gangs, never, despite the fact that the conduct is the same. So it is not conduct that these laws go after, it is the individuals who engage in that conduct, and there is a selective type of law enforcement, even beyond those things that I have said. Our job and role as legislators, our job and our role are to craft careful criminal statutes, and this is a criminal statute.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: The cardinal rule is that the statute first must clearly define the conduct that is prohibited so that a person will know in advance whether what he or she is doing will run him or her afoul of the law, and with the discussion that we have had here, with Senator Abboud, whose bill it is, we are not sure what conduct would run somebody afoul of the law, and if those who make the law don't know, how about the citizen who is neither a lawyer or a lawmaker. As they say in cases where each side will bring experts, if the doctors disagree, what is to become of the poor lay person who is a juror, and today we happen to be the doctors, and we disagree. I think it is a very broadly and poorly drawn bill and I think the subject does not lend itself to more careful drafting. By trying to incorporate it into the existing law, we commit the offense that Jesus said don't do.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: Don't put...

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: I would give the balance of my time to Senator Chambers to finish that eloquent sentence.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: I am not going to finish that on your time,

but I will give another example. Don't put new cloth in an old garment, because when the new cloth is washed and it shrinks, it will not only shrink, it will tear away from the old. So when we have a situation of a body of law and we try to incorporate into that another piece of law that is of a different genus or a different species than the law onto which we are trying to graft it or engraft it, then we come up with these kinds of problems. One aspect of the law can stand on its own. This other aspect, the new, may or may not, but when we try to bind the two, it won't work. If I were a chemist, I could explain that an emulsifier is used to allow oil and water to be combined, but not being a chemist, I can't explain it. All I can do is to state it. We don't have an emulsifier in this instance. We are trying to mix oil and water. We are trying to put new wine in old bottles, and, yes, Senator Scott Moore, I had to finish it because you gave me the time. And in the same way that that was given as an example to elucidate a profound truth, I am using it today to elucidate a truth which is not so profound but which can prevent a lot of harm and mischief to ordinary, unsuspecting citizens. I don't drink any alcoholic beverage, never have sipped or tasted an alcoholic beverage in my life, and I have been on this planet a long, long, long time. I am not sympathetic or protective of those people who drink, have their faculties impaired, and then drive vehicles of any variety. I would not even like to see them drive these vehicles in their own driveway, because though they may not endanger the public at large, they may have small children. The fool may endanger himself or herself, and I am concerned about that, too. But when we have a bill of this kind which attempts to establish a crime, and that is what this will be, a criminal statute, and it is so vague and indefinite and broad, every kind of warning bell and light should go off in our collective mind and we should say that no small problem in Omaha justifies us in enacting, with full knowledge of what we are enacting, a poor piece of legislation such as this. Not one time have you heard me attack or criticize Senator Abboud because I know what he is trying to do. But I do criticize the City of Omaha. There is always an attempt to get the State Legislature, through some police power, to handle the problem that parents cannot or will not deal with. That is what the problem is on West Dodge in Omaha. There are scads of young white people who attend the best of schools, who don't have to go on the street to buy drugs if they don't want to because they can go right to the medicine cabinet and get all the drugs that they want, who can get all the alcohol that they want. We should not deal with their problem in this way, and

while I have this moment, I have to express my concern about the Governor's heavy-handed attempt to deal with the drug problems, and the reason I think that is hypocritical and ill-advised, when she had that shindig the other night and had to get a waiver so that alcoholic beverages could be served on state property, and alcohol is the most abused drug in this society, it leads to more deaths, more injuries, more broken families, than all of the illicit drugs put together, and there were children on the premises, and she goes for that, and then wants to come in here and give a State of the State message and say, we have got to get the drug users off the street and give a message to our children. What will they learn? From what she says or from what she does?

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: They had to give some of these youngsters a different type or different color armband so that they would not be served alcohol because they were underage. So in the presence of the most abused drug, we have children and we have the Governor, the Chief Executive Officer of this state, who says that this is the year of the family, creating an environment where the most abused drug is served in the presence of our young children, and the only way it can be served is to get a waiver to do away with the very wise policy enacted by the Legislature, that you cannot serve alcoholic beverages on state property. Now, what kind of messages are we giving? We can talk tough in a political year and say I mean this, build more jails and lock people up, but the reality is that we don't genuinely care and we will not go after the causes but only symptoms. This bill is going after symptoms and it is doing it in a way that will not be effective.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: I think it would tread on unconstitutional ground.

SPEAKER BARRETT: Senator Lindsay, on the committee amendments, followed by Senator Beck, Abboud, and Haberman.

SENATOR LINDSAY: Thank you, Mr. President, members. I think my comments, I guess, are addressed to both the bill and the committee amendments primarily because I don't think that this bill can be really straightened out enough to make it a decent

bill. The problems that we've heard, or the intent, I guess, is good. There are some problems out there at Westroads, which is the primary thrust of it. But I think we're pretty much hunting squirrels with a howitzer here. We're going to shoot a lot more than what we're looking for. The key thing to remember here is that we're not talking about driving. Under DWI statutes we're talking about actual physical control. I think Senator Schmit's example is valid, that we are...that you can have tailgate parties that are busted for DWI. I think Senator Hall's example is valid, that if you're driving a golf cart on a...at a country club, you can get busted for DWI. I think that Senator Chambers' example, that if somebody leaves the house and is sitting out in the car, listening to the radio, you can get busted for DWI. I think the problem with the bill is that it diminishes the importance of the DWI statutes. Let's keep the...a good law, I guess, the DWI law, let's keep that in force. What we're trying to get at is the people who are going out and jeopardizing other people's lives. I don't think that we want to come down with DWI penalties on these other situations. It may correct the minor problem, but it will cause major problems in the process. I'd urge the body to defeat the committee amendments and also to defeat the bill.

SPEAKER BARRETT: Thank you. Senator Beck.

SENATOR BECK: Thank you, Mr. President and members of the body. I co-sponsored or assisted Senator Abboud in this bill. And I would urge the body to support the amendments and to support the bill at least onto the next phase or round of debate to see if amendments that would help or assist in alleviating what problems they see. I look at this bill not as a bill that would affect merchants, particularly. I look at a bill where people would be on private property driving some kind of vehicle, licensed or unlicensed, and would hurt or maim or injure an innocent party whose also on that private ground. And I think that we need to look at that. No one wants to infringe on other people's private rights, certainly I don't. I don't want mine infringed upon. But by the same time I don't think that we should be responsible and allow something, an inconsistency in the law, to affect lives of young people and/or children who are totally unsuspecting of the condition of that person on the private property. Often times we've seen people in residential areas driving without any care on their property, only to find out later that they were in a drunken state. In my neighborhood there are a lot of children and young people who cut across

yards. And when I looked at this bill I didn't look at it as a bill to help particularly businessmen or anyone else, although that's fine, I guess, if it does, if it's within the realm of the law. I looked at it as other individuals who are unsuspecting totally of what can happen and then are hurt, maimed in very severe ways, as has happened, on private property. And I looked at this bill as a way to take care of that definite problem. And I think that having said that, and having supported Senator Abboud in his intent, that surely as a body we can look at this and improve it. So I think it should be passed on to the second stage of reading. And, with not saying any more, I think I'd like to give the rest of my time to Senator Haberman, if he would like to have that time. Senator.

SPEAKER BARRETT: Senator Haberman, approximately two and a half minutes.

SENATOR HABERMAN: Well, Mr. President and members of the body, I would like to call to your attention the committee statement that was issued with this legislation. Now the proponents of this bill was the City of Omaha, the Lincoln Police Department, the Red Willow County Attorney, the Department of Motor Vehicles, and the Nebraska Council on Alcoholism and Drug Education. There was one opponent, just one opponent, and guess who that was? That was the Nebraska Criminal Defense Attorneys Association. So you had one opponent, and you had all of those proponents. I think it's good legislation. What people don't understand, maybe they understand it but they don't want to accept in their mind is that alcohol is a drug, no matter how you cut it, no matter how you look at it, it's a drug. So everybody goes off on these big tangents and says we have to hire more patrolmen, we have to hire more investigators, we have to do something about this terrible drug program. But nobody, no one has said alcohol is a drug and we should put this much emphasis on alcohol. So I would like to have you consider,...

PRESIDENT NICHOL PRESIDING

PRESIDENT: One minute.

SENATOR HABERMAN: ...when you vote on this amendment and on this bill, that alcohol is a drug, it should be treated just as the drugs that are in the press today and the pushers that are in the press today and support this issue when it comes to alcohol. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Abboud, please.

SENATOR ABOUD: Mr. President, colleagues, I think we've had a good discussion of this proposal. I think the only thing you really have to remember, at least from my perspective on the whole issue, is that we have individuals out there that are driving drunk, are driving recklessly in parking lots, in shopping centers that are hurting other individuals. Now, if there are other proposals out there that could clarify it further than what the Transportation Committee did, I would be happy to look at them as I'm sure Senator Lamb would be. But I'm afraid that there really isn't any other way to make it any clearer than what we have here. There is no doubt in my mind that this is a very clear amendment, that the bill is very clear in what it's attempting to do. And it's unfortunate, I think, that the same people on this floor that are offering criticism for this particular bill, for the most part, offer the same criticism toward any other type of drunk driving bill that has been carried on this floor as well. There is a difference of opinion as to whether or not we should have tough drunk driving laws. And the people that don't think so would just as soon not have laws any tougher than what they are. Now, we're not changing any of the standards, we're not changing any of the structural, major changes with drunk driving. We're just saying that if you're driving drunk in Gateway Shopping Center and you plow into someone else's car that you can be ticketed. And I don't think that's that bad of a rule. The same applies if you're out driving drunk or in a reckless manner in some apartment complex. The bill is clear as to what it's aimed at. I think the Transportation Committee spent a great deal of time analyzing this particular issue. In conclusion I'd like to say that this is really a statement as to how we feel about the drunk driving laws. And if your belief is that they help to reduce the amount of carnage on our highways, then I would support this amendment, and I would support the bill. If you don't think they reduce and save lives, then might as well just go ahead and start the erosion of all our drunk driving laws. Thank you.

PRESIDENT: Thank you. Senator Schellpeper, please.

SENATOR SCHELLPEPER: I'll call the question.

PRESIDENT: Call the question. Do I see five hands? I do, and

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the question is, shall debate cease? All those in favor vote aye, opposed nay. We're voting on ceasing debate, if you care to vote. We're voting on ceasing debate, if you care to vote. Record, Mr. Clerk, please.

CLERK: 25 ayes, 2 nays, Mr. President, to cease debate.

PRESIDENT: Debate has ceased? Senator Lamb, would you like to close, please.

SENATOR LAMB: Yes, Mr. President, members. I think this has been a helpful and interesting debate. And I guess my recommendation at this point is that this is a better proposal than we have in statute now. I don't know if it's perfect. Probably it is not perfect. And I would submit to you that very few bills that we advance out of this Legislature are perfect. This committee amendment is an effort to clarify the problem that has been described here. If, as this bill travels on down the legislative path, someone comes up with a better definition that should be inserted in there, I'm sure we will certainly seriously consider it. But we have what we have now, which I submit is better than present statute and that we go with what we have now and hope that we come up with a better solution. As Senator Abboud says, I'm not sure we will. The committee spent a lot of time on this issue and this was the best description that we could arrive at. So my recommendation at this point is to adopt the committee amendment.

PRESIDENT: Thank you. The question is the adoption of the committee amendments. All those in favor vote aye, opposed nay. Senator Lamb.

SENATOR LAMB: Mr. President, members, there are 17 people not on the floor, so I'd move for a call of the house and a roll call vote.

PRESIDENT: Thank you. The question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 17 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please return to your desks and record your presence. Those not in the Chamber please return to the Chamber and record your presence. Senator

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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

call? All in favor vote aye, opposed nay. Record.

CLERK: 12 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Those outside the Legislative Chamber please return. The house is under call. Senator Langford, please check in. Senator Lindsay, Senator Goodrich, Senator Elmer, Senator Haberman, Senator Abboud, Senator Chambers. Senators Landis, Lynch, and Chambers, please. Senators Goodrich and McFarland, the house is under call. Senator Hefner, only Senator Goodrich.

SENATOR HEFNER: Roll call vote.

SPEAKER BARRETT: Roll call vote has been requested. Members, return to your seats please for a roll call vote. The question, of course, is the adoption of the Hefner amendment. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See pages 749-50 of the Legislative Journal.) 25 ayes, 4 nays on adoption of the amendment, Mr. President.

SPEAKER BARRETT: The Hefner amendment is adopted. Senator Korshoj, would you care to adjourn us after the Clerk reads some matters into the record, please.

CLERK: Mr. President, amendments to be printed to LB 163 by Senators Johnson and Schimek. Urban Affairs Committee reports LB 853 to General File, LB 944 to General File with amendments, and LB 1106 to General File with amendments. Those are signed by Senator Hartnett as Chair. Senator Abboud has amendments to LB 141; Senator Kristensen amendments to LB 159; and Senator Pirsch amendments to LB 159. Mr. President, a new A bill, LB 1047A. (Read for the first time by title.) That is offered by Senators Wesely and Smith. (See pages 750-64 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Korshoj, please.

SENATOR KORSHOJ: Mr. Speaker, I move we adjourn until tomorrow morning, February 13 at nine o'clock.

SPEAKER BARRETT: Thank you. You have heard the motion to