

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

January 27, 1989

LB 58, 115, 138, 142, 159, 175, 225
256, 261, 283, 284
LR 20

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to the George W. Norris Legislative Chamber on Friday, January 27th. Chaplain of the day, Pastor Jerry McInnis of Trinity United Methodist Church in Lincoln. Reverend McInnis, please.

REVEREND McINNIS: (Prayer offered.)

SPEAKER BARRETT: Thank you, Reverend McInnis. We hope you will be able to come back again. Roll call, please.

CLERK: There is a quorum present, Mr. President.

SPEAKER BARRETT: Thank you. Any corrections to the Journal?

CLERK: (Read correction as found on page 458 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Any reports, messages, or announcements.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 256 and recommend that same be placed on Select File; LB 175, LB 261, LB 115, LB 283, LB 284, LB 58, and LB 142, all reported to Select File, some having E & R amendments attached. (See pages 458-60 of the Legislative Journal.)

Mr. President, your Committee on Judiciary, whose Chair is Senator Chizek, reports LB 159 to General File, and LB 138 to General File with amendments, both signed by Senator Chizek. (See page 460 of the Legislative Journal.)

Judiciary offers notice of hearing, Mr. President; and LR 20 is now ready for your signature, Mr. President. That is all that I have.

SPEAKER BARRETT: Thank you. And while the Legislature is in session and capable of transacting business, I propose to sign and I do sign LR 20. *tem 5, Mr. Clerk.

CLERK: Mr. President, I have a motion from Senator McFarland to rerefer LB 225 from the Urban Affairs Committee to the Education Committee. Senator McFarland filed his motion yesterday. It is found on page 451 of the Journal.

February 14, 1989 LB 159
 LR 30

New resolution, Mr. President, offered by the Speaker, LR 30. (Read brief explanation of LR 30. See page 734 of the Legislative Journal.) That will be laid over.

And, Mr. President, received a report, the biennium report from the Nebraska Public Transportation System Programs from the Department of Roads. That will be on file in my office.

One announcement, Mr. President. The General Affairs Committee will meet in Executive Session underneath the north balcony at nine-thirty. General Affairs, north balcony, nine-thirty. That's all that I have, Mr. President.

PRESIDENT: Okay, we'll move on to General File, LB 159.

CLERK: Mr. President, 159 is a bill introduced by Senator Conway and others. (Read title.) The bill was introduced on January 5, referred to Judiciary, Mr. President. The bill was passed over, Mr. President, on January 31. I have a motion from the principal introducer at this time to bracket LB 159 until March 2, 1989, and that's offered by Senator Conway, Mr. President.

PRESIDENT: Senator Conway, would you like to speak to us about that, please.

SENATOR CONWAY: Yes, sir. Thank you, Mr. President, and members, LB 159, as most of you are well aware, is the so-called tort reform bill that we passed last year that was ultimately vetoed then by the Governor and we have reintroduced that bill in the form by which it was passed last year back to the body. It went to the committee and was sent out...back out to the floor. There is some negotiation going on relative to some technicalities that many of us believe would make the bill better, more palatable for those who are going to be affected by it to the greatest extent. And those negotiations have not been finalized as yet and that's why I'm asking for the bracket for March 2nd, asking for those 10 working days for us to finish that negotiation so that when we bring it to the body that we will be in a better position to offer the best bill that we can to this group. So I would ask that the body support the bracket motion to March 2nd.

PRESIDENT: Are there any objections? Senator Ashford.

SENATOR ASHFORD: I'm going to say a few things about this if I could, Mr. President. I don't want to belabor the point. If the principal introducer wishes the bill to be bracketed, then, in all likelihood, it should be bracketed. When I heard this morning that there was an effort going to be made to bracket the bill my initial reaction was to oppose it and my initial reaction was maintained by me until about five minutes ago. The history of this bill is, as many of you know who have been in the body for the last two years, has been a very, very trying and difficult one. This piece of legislation came out of the very heated dispute over LB 425 which occurred in the 1987 session of the Legislature. And, as you may recall, LB 425 was a very complex piece of legislation that totally changed our tort law in Nebraska and had included in it some provisions which were extremely unnecessary, which were, quite frankly, an assault on the way the judicial process has been dealing with tort law for the last 100 years in the State of Nebraska. And after that assault was beaten back by the Legislature in 1987, Senator Conway and I discussed a way of trying to resolve what was at that time believed to be the two biggest problems with the legislation...or with the tort law in Nebraska, that being the slight gross negligence standard and the joint and several liability question or the deep pocket issue. And after spending, quite frankly, all of the summer between the 1987 and 1988 session, Senator Conway and I came up with what last year was LB 1178. LB 1178 is a clean piece of legislation. It deals very effectively with the question of joint and several liability. It is a model act which is designed to balance the interests of the victim of a negligent act and the interest of the...in common parlance, the deep pocket defendant. And the compromise was worked out with judges, law professors, with the insurance industry, with everyone that we could think that had...could I get a gavel, Mr. President. (Gavel.) It was worked out with just about everybody that we could think of that had anything to do with the administration of the tort system in the State of Nebraska, contrary to LB 1148...or LB 425 in 1987, which was put together by a group of business...a business group, without even consulting the Judges' Association or the Trial Bar. Now, we come to 1989 and, as you recall, LB 1178 was approved by the Legislature with a vote of 33 to 10.

PRESIDENT: Senator Ashford, excuse me again. (Gavel.) Let's have it quiet so we can hear the speaker, please.

SENATOR ASHFORD: LB 1178 was approved by the Legislature with a

vote of 33 to 10 and subsequently vetoed by the Governor after the session was over last year. And Senator Conway and I decided that we would reintroduce LB 1178 and have done so in the form of LB 159. LB 159 is, with a few slight technical changes, the same bill as was passed by the Legislature with the 23-vote majority in 1988. And what is very interesting to me is in spending three months of the legislative session last year trying...after working all summer, working with all of the interested parties in this type of legislation, I heard absolutely nothing from the insurance industry, from the political subdivisions, from the Nebraska Chamber of Commerce Association or anybody that would indicate to me that there was any opposition to the introduction...reintroduction of LB 1178 until just before the hearing on this bill when there was a news letter sent out by the Chamber of Commerce group to businesses throughout the state making allegations which are simply and utterly ridiculous about the effect of this bill. Now we could keep this bill bracketed or we could pass over it for the next 20 years. There is no perfect way of solving the problem of tort litigation. But, at some point in time, this body needs to come to grips with a system that needs to be changed.

PRESIDENT: Time.

SENATOR ASHFORD: And this...thank you.

PRESIDENT: Go ahead and finish your sentence.

SENATOR ASHFORD: Well, I have a few...no other lights on, I don't suppose.

PRESIDENT: Yes, there are.

SENATOR ASHFORD: That's all I have.

PRESIDENT: Let me ask you a question, sir. Were you objecting to the bracketing of the bill?

SENATOR ASHFORD: Well, I hadn't come to that yet. I haven't decided.

PRESIDENT: Oh. I thought I had missed something. Senator Barrett, please.

SPEAKER BARRETT: Thank you, Mr. President, and members, I have

come to a decision and the decision, Senator Ashford, is to vote...or is not to vote on the motion to bracket. I think most of the members of this body know how I feel about bracketing bills. We have already bracketed one bill until the 22nd of this month. We aren't quite a third of the way through the session. A bill the size of LB 159 can very well go a long way toward plugging up the pipeline. One of my concerns is just that. Senator Ashford spoke eloquently with regard to the time spent on the clone to this bill last session. Time was spent during the summer, this past summer. Considerable amount of time has been spent already this session. This bill was placed on General File January 27th. It was passed over four days later for the first time. There was a request to hold the bill on General File and I agreed with that request. The following day one of the principal introducers said that the amendments, which have been referred to, have been prepared or are being prepared, should be on the agenda next week. That was last week. Last week, two of the principal introducers agreed that it could be placed on the agenda this week. Yesterday I asked one of the principal introducers if the bill was ready to go. He replied in the affirmative. If the body votes to bracket this bill, I can understand but I have no serious reservation at this point but I am suggesting to the body that a problem is building and, in my opinion, this Legislature is being teased and played with. If this bill is bracketed to March 2nd, as the motion calls for, it would be my hope that the bill can be voted up or down on March 2nd without any further games being played. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Ashford, then Senator Chizek.

SENATOR ASHFORD: I appreciate Senator Barrett's statements and I know this bill is being very, very heavily lobbied. But I would ask you when you just discuss this with the lobbyists if they have any factual material to back up the allegations that they are making about this bill. They had an additional six to eight months to take aim at this bill and now they're coming unglued on this thing in the last two months...last month. They never talked to me about it over the last seven months, not once was it ever brought up to me that there was a problem. The only conversation I had on this bill in the interim was a discussion with Gene Welch, a defense attorney from Omaha, who said there are a couple technical problems that I have with the bill, but otherwise I'm not going to object to the bill, I'm not going to object to the bill. There are a few technical problems with

reallocation and reallocation comes into play when joint and several...when there is a determination of fault made and you find that there is a defendant that does not have any assets and you go back against the other defendants and reallocate the negligence or the fault of the defendant who has no assets back against the other defendants and the plaintiff. There is a...there are a few problems with that that can be ironed out extremely easily on Select File. This bill is not the evil bill that is being suggested it is by the lobby out there. They have no idea what they are talking about. None. This bill will not increase insurance claims. This bill will not increase litigation. This is the kind of changes in the tort...change in the tort law that has occurred in every other state in the United States and I think any group of interested parties that were really interested in changing some legislation for the better would consult with the principal sponsors of that bill and say, we think it ought to be changed. But to come out here and to assault this bill that passed with 33 votes last year is inappropriate. It is absolutely inappropriate. There are two or three amendments that are easily understandable that could go on on Select File and should go on on Select File that I agree with, that ease some of the concerns of the business community. But to get together out there and say, don't vote for this bill because this is for the lawyers is bunk. It is bunk. This bill is not for the lawyers. This bill if for good, sound administration of justice and I will tell you what. You ask them...go ask them out there, the business community, and you ask them, is this a better bill for you on joint and several liability? And every single one of them will have to say unequivocally, yes, it is a better piece of legislation for the business community. I really believe strongly in this bill. It should be advanced to Select File. It is good, solid legislation and there is no reason to bracket it. There is no reason to bracket it. It is...I don't care what the trial lawyers say, I don't care who any...what anybody says about this bill, it is a good, sound bill that should be advanced to Select File. It had 33 votes last year. Could we please ignore silly general statements by people who have no knowledge of what they're talking about? And if we don't do that, then we, as a body, have lost control of a piece of legislation that we have dealt with for two years. Let's us keep control and I pledge to you that I will work on this thing.

PRESIDENT: One minute.

SENATOR ASHFORD: I will work on this thing between now and Select File and I will attempt to ease the problems which are easily identifiable and can easily be changed. The bill should not be bracketed. The bill should be advanced to Select File today. Thank you.

PRESIDENT: Thank you. Senator Chizek, please.

SENATOR CHIZEK: Mr. President and colleagues, this kind of legislation we have dealt with for about three years, as many of you know. The bill, LB 159, was a bill basically the same as the bill that Senator Ashford said was passed last year. However, the Judiciary Committee staff has been working not just with the business community, not just with the trial attorneys, for about seven days we have been deeply involved in trying to reach an agreement on this particular piece of legislation. Now I can guarantee you if we can't deal with LB 159 and get some degree of compromise and that's why the bracketing motion was offered, if we can't get some degree of compromise, then I can assure you, colleagues, year after year after year we will be dealing with this kind of legislation until it's running out your ears. I think we're close. Senator Conway has offered the bracket motion and I support it. Thank you.

PRESIDENT: Senator Conway, would you like to close on your motion to bracket, please.

SENATOR CONWAY: Mr. President and members, I appreciate Senator Ashford's comments. I offered the bracket motion with the idea that there were some minor adjustments that we would buy just enough time to finalize that and possibly satisfy those who are concerned. Like I say, it's up to the body the extent to which they would like to have the bill in that particular form if, in fact, there is an agreement. I do firmly believe that if we bracket it for March 2nd, that that is a final date, as Speaker Barrett alluded to. If the body sees fit to run the bill today, then that's certainly the body's determination. But, at this point, again, I had agreed to buy that much time if the body so concurred, but I do appreciate Senator Ashford's comments. This bill was advanced, sent to the Governor last year and was vetoed. We had 33 votes at that point. There is a change in the makeup of the body that there are some people here today that were not a part of the discussions and the debate that was held on this bill over the last two years and that may put them in a bit of a less comfortable situation. But I offered the

bracket motion and I will allow that to be addressed in that fashion. If that is...if there is a decision not to advance...or to approve of the bracket motion, then we will deal with the bill. But I do appreciate Senator Ashford's comments because there was a great deal of truth there. This has not been an easy bill to run. It's not an easy bill to understand and many of the people at the point of not understanding it have talked against the bill or have found some new strength based upon the Governor's veto and decided that there might be a little more in it for them by virtue of that veto and that probably put us into another negotiating stance but it's...this bill at this point, I think, does belong to the body to make that final determination of what we ought to do. Like I say, as primary introducer, I have agreed to set with the bracket for March 2nd, which is about 10 working days, to iron out any difficulties and at that point we'll run whatever we come up with. So, with that, I encourage the body to accept the bracket and we'll go from there.

PRESIDENT: Thank you. On this vote, the majority of those voting will prevail and the question is, shall the bill be bracketed until March 2, 1989? All those in favor of the bracketing of it please vote aye, opposed nay. Please vote if you care to. Maybe I'll get to vote. Senator Conway.

SENATOR CONWAY: Possibly, in light of the precedence and the other interest in this particular bill, it might be best to have us all check in and have a roll call vote.

PRESIDENT: Would you like to...you're not asking for a call of the house?

SENATOR CONWAY: Yes, call of the house. Check in and then do a roll call.

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

CLERK: 21 ayes, 1 nay, Mr. President, to go under call.

PRESIDENT: Thank you. The house is under call. Will you please record your presence. Those not in the Chamber, please return to the Chamber. Please look up to see if your light is on. Senator Landis. We're looking for Senator Landis. And

here he is. For those of you who just came in, the question is, shall LB 159 be bracketed until March 2, 1989? All those in favor will reply...did you ask for a roll call vote, Senator Conway...will vote affirmative and objection negative. Mr. Clerk.

CLERK: (Roll call vote read. See pages 735-36 of the Legislative Journal.) 16 ayes, 19 nays, Mr. President, on the bracket.

PRESIDENT: The motion fails so the bill is not bracketed. Now, do you have anything on it, Mr. Clerk? The call is raised, to start with.

CLERK: Mr. President, I have nothing on the bill.

PRESIDENT: Okay, Senator Conway on the advancement of the bill.

SENATOR CONWAY: Mr. President and members, the decision is to take up the bill and I think, given what Senator Ashford has already alluded to, we will discuss the bill and my preference at this point then would be to move the bill over to Select File, naturally. In its present form, there has been no agreed upon amendments to date. Hopefully, we will have those amendments offered on Select File. This bill, again, is a bill that we approved as a body last year with 33 votes. It had been ironed out and the bill in its current form is exactly the same bill that we passed on Final Reading last year. So there is really...by moving it over in Select File, we are not particularly out of line with this body's decision of last year. What I think we can do at this point and my pledge to those who on inside or outside of the glass would be to continue to negotiate during the time period between General and Select File to work with any individuals who have meaningful amendments that might be necessary to make the bill even better, anything that they have come up with over the last year that would be a position in such a way that the changes that we're making in our tort litigation would be more valuable to all parties concerned. I know there may be some people in the body that have some apprehensions based on the information that they have been given. But I think we can move it over on Select File and have the debate with any amendments on Select File rather than not advancing the bill at this point. If we don't advance the bill at this point, we have basically thwarted any more movement in this area and I think it would be extremely important that we

move it over there. We will have enough time then to address any particular amendments that someone brings that this body thinks would be beneficial to the outcome of this bill and we would spend it there. Not to advance it, basically, is...would be a process of not affirming what we did last year and I think the body, as a group, felt last year was the right thing to do. We had a very delicate balance with that bill and in a process by which we negotiated both sides, we had very technical expertise in helping us put this bill together when...last year when we brought in the dean of the law school and Chief Justice Krivosha who did the drafting on the bill. We came up with a bill that we think will fit very well but, like I say, there has been some new found strength by virtue of the Governor's veto on the part of people who probably thought that they had negotiated away a little bit more than what they found totally necessary relative to their own self-serving perspective on how changes in our law should come about. But I would appreciate it very much if the body does not want to bracket to honor Speaker Barrett's desire not to bottle up the system, let us progress normally but we will have that opportunity at Select File to debate any amendments that will be put on the desk at that time. At this time, the bill is in its purest form just as it was passed by this body last year. There has been no changes to it. The green copy this year, literally, is the gold copy of last year. So we're not reaching out into a very dangerous category if we had confidence in what we did last year as a body, but I am very amenable to discussing between General File and Select File what amendments may come forward and would pledge myself to listen to all considerations and those that we agree to between now and Select File we will...I will certainly argue for on Select File for those meaningful amendments that may come forward. But, in the meantime, I hope the body does not simply thwart the concept by not advancing it to Select File since that was your choice.

PRESIDENT: Thank you. Senator Ashford, please, followed by Senator McFarland.

SENATOR ASHFORD: Thank you, Mr. President, and members, I just want to reiterate one point and I don't think we need to belabor the bill too much at this point because I think there will be some changes on Select File that most everyone can agree to and will help the bill and make the bill possibly more clear in some areas. But remember that the bill...the changes that are being suggested to the bill are changes which were not brought to me ever, first of all, and are now being suggested within the last

30 days. If we had had...if there had been problems with the bill that passed with 33 votes last year, it would seem to me that those individuals who were concerned about those problems would have brought those to me at some point in the interim. But let me just go over generally what the bill does and I'm going to start...talk about the two general categories of the bill now and I would be happy to answer any questions. But, first of all, you all know about the problem of the deep pocket and the deep pocket problem is...arises out of a case where there are two or three or four, more than one defendant in a case and the plaintiff obtains a judgment against...for the amount that he is plaintiff, let's say a \$100,000, and let's say there are two defendants in this case. One of the defendants has no assets and let's suggest that both those defendants are 50 percent responsible for one-half of the \$100,000. But under the law as it is now, the plaintiff can look to any...each of the two defendants, any of the two defendants for the whole \$100,000 amount and then the plaintiff can choose in most cases the deep pocket or the defendant that has more assets or greater insurance coverage and then it's incumbent upon that defendant who pays the whole amount of a judgment to then go back and try to collect from the other defendant that has no assets. And this has been a significant problem for the defense area, for the insurance industry and for others who are forced to go back and try to collect an amount of 100 percent of a judgment from another defendant in what's called in the law contribution. We changed that system in this bill at the request of the insurance industry and the business community. And what we have done is said that the plaintiff...if the plaintiff is negligent, if the plaintiff has a degree of fault of let's say even 1 percent, and that's not much negligence, if the plaintiff has any negligence at all, the plaintiff can only recover against a particular defendant damages equal to the fault attributed to that defendant. If you have a 30 percent defendant, the plaintiff can recover 30 percent of \$100,000 or \$30,000. All right, now the idea there is to amend joint and several liability to make joint and several liability in ninety...in 99 percent of the cases joint and several liability is abolished. Don't let anybody out there tell you that joint and several liability is not abolished. It is abolished. It is abolished. There...we made a policy judgment in the committee last year on 1178 and it was carried forward this year that if the plaintiff has no negligence at all, which is a rare case, if the plaintiff has no negligence at all, then the plaintiff can go back against any defendant, okay, against any defendant, can choose the

defendants...

PRESIDENT: One minute.

SENATOR ASHFORD: ...that he wishes to recover against, but only in the case where the plaintiff has no fault. That's the joint...that's the joint and several liability section. It is...it, essentially, in most case, and I have been trying cases for 15 years, in most cases joint and several liability is out the window. There is a reallocation formula if you have a no-asset defendant, but, remember, that the negligence of the plaintiff goes into the computation. The negligence of the plaintiff goes in the computation in reallocating. If you have a defendant who is 30 percent negligent, there is a reallocation of that 30 percent back against the other defendants but also against the plaintiff. There cannot be a more fair way of dealing with that kind of circumstance and that does come about. But, again, in most cases, in most cases, and I...joint and several liability is gone,...

PRESIDENT: Time.

SENATOR ASHFORD: ...over.

PRESIDENT: Thank you. Senator McFarland, please.

SENATOR MCFARLAND: Thank you, Mr. President. Fellow senators, last year this bill passed in the waning days of our legislative session on a vote, as I understand it, of 33 to 10. It was the product of hard negotiations, the product of a long Judiciary hearing where I was a part of that. It was the product of a lot of discussion and debate and expressions of concern. It was a bill that was...had been...had had a lot of attention paid to it and it was an effective compromise among the various interests. It was not exactly as I would have drafted the bill had I been the introducer or had I been the one to put it out onto the floor of the Legislature, but it seemed to me that after all of those discussions and all of those negotiations, it was an acceptable bill and it was a good bill. It was passed and, as you know, there were 33 members of this legislative body who voted in favor of it. It was vetoed after we had adjourned. There was no chance for us to override that veto and I'm going to suggest to you that had we had the days...extra days in session: that that veto would have been overridden, been overridden easily. We had 33 votes on Final Reading and there

were even six people who did not vote, who were either absent or did not vote that day. And I suspect that that...that it would have easily had 30 votes to override the veto, it would be the law of this state today had the timing been different. Nothing has really changed in the way of the judicial system or in the way of how the tort claims are filed or litigated or anything like that. The bill, in my view, is an improvement over the present system and it should be enacted. And I don't think there is any real reason that we should be talking about bracketing it or talking about negotiating further or talking about revising the bill in some way because it was an acceptable bill last year, it is an acceptable bill this year. And contrary to Senator Conway, I would be very dubious of any amendments that will be offered to this bill. And I would be very dubious of any senators who change their vote on this bill as a result of any amendments or as a result of amendments not getting added, because we, as a legislative body, are the 49 people who are supposed to vote on a bill. We are the ones that make the ultimate decision on whether legislation is good or bad or should be amended or should stay the same. We are the people that have that responsibility that has been given to us by the voters in our state to pass good legislation. And while I can appreciate special interest groups and various lobbying groups for having input and making suggestions and trying to work out compromises, it is us who make the final decision. And so I would just ask you to advance this bill on General File, to be very dubious about any amendments that will be added because I will...I, as a member of this body, will be very interested to see if there are any amendments offered, because the effect of the bill is good and I think if it had been approved last year, if it had not been vetoed or if we would have had the chance to override the veto, we would be sitting here today congratulating ourselves for the effective piece of legislation that we had passed, that had been hammered out, that had been a product of this Legislature in its deliberative processes.

PRESIDENT: One minute.

SENATOR MCFARLAND: So I would encourage all of you to advance it today, view very carefully any amendments that are going to be added, view very carefully any lobbying that is done to you on this bill. Keep in mind that you have a responsibility not only to the lobbying groups and the various special interests that are interested in this bill, you have a responsibility to the public that elected you and to the people that will be

affected by this bill. And I hope that you will conclude that this bill, without any substantial changes, should be passed again by this Legislature, should be voted upon by us on General, Select and Final Reading, advanced to the Governor for her signature and, hopefully, she will have reconsidered her position and will sign the bill. And if she doesn't, I hope we pass it in time that we have the chance to override that veto if it should occur. But it is a good legislation and I encourage all of you to stay the course, be consistent in your vote that you cast last year and to pass this legislation. Thank you.

PRESIDENT: Thank you. Senator Conway, would you like to close on the advancement of the bill.

SENATOR CONWAY: Thank you, Mr. President, and members, as I have been listening to other speakers, I have been going around the floor talking to certain individuals and there are people that are not comfortable with the bill, naturally, part of the typical...a bill of this magnitude we would spend a lot more time sharing with people what's entailed, who is involved, what are some of the complaints against the bill. What I am asking the body to do at this point in time, and by possibly putting it on the record, hopefully, it will mean something, if we could move the bill over onto Select File, we could put ourselves in the situation where I am not going to look at that vote count as meaning anything and, hopefully, the media and the lobby and no one else will either. What we are simply doing is saying, ordinarily this type of bill...I came in this morning and offered a bracket...ordinarily this type of bill would be debated on General File. We would have amendments in front of you. You could accept or reject those amendments. And, basically, moving over to Select File sometimes is at that point nothing more than a fine tune. What I am simply asking you to do in this situation is to move the bill over on Select File and we will have our typical General File debate and we can stage it on Select File just as easily as we could have today. Like I say, your agreeing to move it over to Select File is nothing more than giving us an opportunity to have the amendments in front of you, have the lobby communicate with you whether or not these amendments are satisfactory to them or not. It's not a vote for the bill at this point. I will not perceive it as that way and I don't think any of the other introducers of the bill and the people involved will. I think you can tell people that simply the amendments were not ready. The time frame was such that the bracket that I had proposed did not settle with the

body at this particular point in time. And, like I say, I respect the Speaker's position in that regard. But to simply move it over on Select File it will be a one-time, knock-down, drag-out debate with the amendments and we will go with it there. I would like to take any additional time I have and give it to Senator Ashford.

PRESIDENT: Senator Ashford, you have a little over two minutes.

SENATOR ASHFORD: I'm sorry, I didn't hear you, Mr. President.

PRESIDENT: You have a little over two minutes.

SENATOR ASHFORD: Mr. President and members, I would like to answer Senator Beyer's question about some of the opposition that he has been reading about. And I think a lot of it comes about in the area of reallocation and that's when there...as I said, there is a no-asset defendant and then you reallocate that negligence back. That's one of the concerns that was raised by the Bar Association and it's a procedural matter that I think needs to be changed in the bill, will be changed in the bill. And then there is another...there is another concern on a...that's been brought up by some of the business community. I think it's their only concern that I know of is if you have negligence, a defendant who is...has a small degree of negligence, are they going to be at some point on reallocation responsible for the full amount or a greater amount than what is reasonable? And that's a concern and that's a concern that we're addressing for Select File. I think what's going to happen here is if we don't pass this bill is we're going to be giving up a...and I don't know what people are telling you, but the information that's being disseminated from the Chambers of Commerce Association here in Lincoln is wrong. This bill will help the business community, especially as amended or I wouldn't be supporting it. And I think, one last point, Bill Barrett asked me to move this bill today and in deference to Bill Barrett I am doing it. He's right, the process needs to keep going. It would be a shame to give two years of...I could have bracketed this bill today but I did not do it. I fought hard that it not be bracketed out of respect for the Speaker and out of respect for the process. And if I can't prove to you that on Select File that this bill makes sense for the business community of the State of Nebraska, then vote against it and I expect you to vote against it.

PRESIDENT: One minute.

SENATOR ASHFORD: But there's a lot of good in this bill. There's a lot of good in this bill for the process. I have taken a big risk here because I've spent two years on this thing and I could have easily had it bracketed and moved on March 2nd on General File but I didn't do it because Bill Barrett asked me to and I think the process deserves to be honored here and that we don't keep...we don't keep putting bills off and putting bills off. I agree totally. But this bill doesn't...is not worthy of a no vote on General File because we're going to clear up some problems. You have got to trust me on this. We're going to clear up some problems on Select File that are very, very important to some people and I'm very much aware of those problems. So please move this bill on to Select File. Give Gerry and I an opportunity to show to you that we have got something here that is really positive for the business community and the legal process.

PRESIDENT: Time.

SENATOR ASHFORD: Thank you.

PRESIDENT: The question is the advancement of the bill. All those in favor vote aye, opposed nay. Senator Conway.

SENATOR CONWAY: Mr. President, I think that we will probably be straggling along for some time, to save the time why don't we have everybody come in and do a roll call vote. So call of the house and a roll call vote, please.

PRESIDENT: Call of the house has been requested. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 19 ayes, 1 nay, Mr. President, to go under call.

PRESIDENT: The house is under call. Please record your presence. Those not in the Chamber, please return to the Chamber. Please look up to see if your light is on. Thank you. Senator Coordsen, will you record your presence. Thank you. Looking for Senator Chambers, Senator Hall, Senator Lamb, Senator Lynch. Now we're looking for Senator Hall and Senator Chambers. We're looking for Senator Hall. Okay, if you will please return to your seats, please. The question is the advancement of the bill. Roll call vote has been requested.

Mr. Clerk.

CLERK: (Roll call vote read. See page 736 of the Legislative Journal.) 15 ayes, 19 nays, Mr. President.

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

CLERK: Yes, Mr. President, I do. Your Committee on Transportation whose Chair is Senator Lamb reports LB 101 to General File with amendments attached. Signed by Senator Lamb as Chair. (See page 737 of the Legislative Journal.)

I have notice of hearing from the Natural Resources Committee, signed by Senator Schmit as Chair. That's all that I have, Mr. President.

PRESIDENT: Move on to LB 502.

CLERK: Mr. President, 502 was a bill introduced by Senator Elmer. (Read title.) The bill was introduced on January 18, referred to Natural Resources, advanced to General File. I have no amendments to the bill, Mr. President.

PRESIDENT: Senator Elmer, please. Just a moment, Senator Elmer. (Gavel.) Shall we hold it down so we can hear the speakers, please. Senator Elmer.

SENATOR ELMER: Thank you, Mr. President, and members, LB 502 is a bill brought forth by the irrigation districts. Originally, when the Nebraska Uniform Budget Act was passed it was implied that public power districts and irrigation districts were exempt from the act, since they levy no direct tax dollars. In a court case, courts ruled that public power districts were subject to submit the budgets to the state auditor and from that the auditor has implied that the irrigation districts should also be a part of the act. Now, irrigation districts are much like a small business. They have 10 to 20 employees. They levy use fees on the people that use the services that they offer and irrigate their districts. If they were subject to this act, it would require that they go to much more legal lengths with auditors and accountants, add to their costs to submit their budgets to the state auditor. The auditor requires that this budget be submitted by August 25th of each year. And, of course, irrigation districts being very seasonal in their

February 14, 1989 LB 48, 88, 159, 265, 281, 292

shall debate cease? All those in favor vote aye, opposed...record, Mr. Clerk, please.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

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

SENATOR LAMB: Mr. President, members, I might just comment further on Senator Chambers' question as to whether this would affect tickets that have already been issued. It is my understanding that this does not become an issue until the individual, who has been assessed the points and has had the license taken away, challenges this in court. So this bill would affect those challenges that come about after the bill is effective, the effective date of the bill, which is three months after the Legislature adjourns. It does not have an E clause. So it would affect the tickets that are issued before the effective date of the bill, but it would affect only those appeals that come about after the bill does become effective. I hope that is clear, that the tickets could be issued previous to the effective date of the bill, but the appeals, it would apply only to those appeals which come about after the effective date of the bill. I'm comfortable with the bill. I think it is a step in the right direction. I did not think that the rights of the people are being jeopardized and I would ask that the bill be advanced.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 27 ayes, 7 nays, Mr. President, on the advancement of LB 281.

PRESIDENT: LB 281 advances. Anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, I have amendments to be printed, Senator Chambers to 281; Senator Chizek to LB 265; Senator McFarland to LB 159; Senator Bernard-Stevens to LB 48. (See pages 739-42 of the Legislative Journal.)

Revenue Committee reports LB 88 indefinitely postponed; LB 292,

January 18, 1990

LB 37, 50, 159, 259A, 409, 422, 465
503, 503A, 543, 662, 742, 953, 1220-1242
LR 8, 244, 245

not, the question is the advancement of the A bill. All those in favor vote aye...say aye. Opposed nay. It is advanced. Mr. Clerk, do you have anything for the good of the cause?

CLERK: Mr. President, I do. Mr. President, your Committee on Retirement Systems, whose Chairperson is Senator Haberman, to whom was referred LB 953, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File. That is signed by Senator Haberman. (See page 397 of the Journal.)

Mr. President, I have a series of hearing notices from Judiciary Committee, Appropriations Committee, Health and Human Services and Revenue, all signed by the respective chairs.

Mr. President, Senator Kristensen has amendments to LB 159 to be printed. Enrollment and Review respectfully reports they have carefully examined and reviewed LB 37 and recommend that same be placed on Select File; LB 742, LB 662, LR 8CA, LB 50, LB 543, LB 422, LB 409, LB 503, LB 503A, and LB 465 all to Select File, some of which have Enrollment and Review amendments attached. (See pages 398-408 of the Legislative Journal.)

Mr. President, new bills. First of all, Mr. President, two constitutional amendments, LR 244, offered by Senator Schmit. And LR 245 offered by Senator Hefner. (Read brief summary of resolutions. See pages 408-11 of the Journal.)

Mr. President, new bills. (Read LBs 1220-1242 by title for the first time. See pages 411-17 of the Legislative Journal.)

Mr. President, reminder, Reference Committee will meet at three-thirty today in Room 2102, Reference Committee at three-thirty in 2102. A final reminder, Mr. President. Chairmen's meeting tomorrow morning at nine...I'm sorry, at eight-fifteen in Room 2102, Chairmen's meeting, eight-fifteen, in 2102. That's called by the Speaker. That is all that I have, Mr. President.

PRESIDENT: I understand that we have 434 new bills introduced this year. This is the last day, of course. So you might be interested in that. Senator Baack, you're close to your microphone, would you like to adjourn us until nine o'clock tomorrow morning, please.

E & R amendments to LB 829.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: I have nothing further on that bill, Senator.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 829, as amended, be advanced to E & R for engrossment.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. Senator Lindsay, how's the baby?

SENATOR LINDSAY: The baby is just fine.

PRESIDENT: Thank you. We ready to move on?

CLERK: Yes, sir, Mr. President.

PRESIDENT: We'll move on to General File, LB 129. LB 159, excuse me. Mr. Clerk.

CLERK: Mr. President, 159 was a bill that was introduced by Senators Conway, Ashford, Lindsay, Chizek, Abboud, Chambers, Nelson and McFarland. (Title read.) The bill was introduced on January 5 of last year, Mr. President. At that time it was referred to the Judiciary Committee for public hearing. The bill was advanced to General File. The bill was discussed by the body on February 4 of last year, Mr. President. I do have amendments.

PRESIDENT: Since there are amendments, Senator Conway, did you wish to explain the bill briefly to us first. Is that your plan? All right, please.

SENATOR CONWAY: Mr. President and members, LB 159 is...everyone in this body is somewhat familiar with by virtue of the fact that it was on General File last year. We had some limited discussion and on the given day of the vote it failed to advance at that point with a sufficient number of votes to move it on to Select File. We're back today to rediscuss that bill and in anticipation that with additional discussion and additional information that the members of the body will have the

information that is necessary to at least move it over to Select and in some cases questions that may be left still unanswered we will allow those members the opportunity to have those questions answered between now and Select File. The history of LB 159 goes back about five to six years really, or more than that if we talk about various pieces of the legislation in the concept at hand. About five years ago we had LB 425. LB 425 was known as the project justice tort reform type of bill that was introduced by myself, was sponsored and endorsed by I believe 90 different organizations at the time. It included many provisions that people were concerned with to try to make Nebraska more responsive to our economic development activities, more responsive to people who are...received injuries and are victims of various accidents and happenings in the state and also be fair with respect to how we unravel the costs and allocate those costs to the persons who caused injury. It started off with several areas and we had frivolous actions as a consideration. We had corporate director liability. We talked about the various nonprofit liability concerns. We talked about joint and several. We talked about accountants liability and other professional liability factors in that bill. As that bill went to advance it was really too much at one time for, I think, the body to absorb, it was too much of a change for many people and so the following year I introduced several bills and we broke down the provisions within LB 425 into several provisions, no longer having a coalition specifically of all these organizations alike but we forwarded those bills. Almost every one of those provisions of LB 425 is now in our statute books as we were able to look at them one at a time, directors and officers liability, frivolous lawsuits and the like. That brought us down to the final bill which was LB 1178 which basically pitted the concept of slight gross with the concept of joint and several liability. Compromises were made and very difficultly fought over, working out and hammering out between all of the principles what would be fair on both ends, how we could indemnify a victim of an accident and by the same token how we could be the fairest as fair could be with respect to the individuals who ultimately would have to pay for the damages that were caused by them or at least were judged to be of their direction. That was LB 1178. LB 1178 marched through this body on General File. LB 1178 received...advanced 26-0; Select File 1178 advanced 28-3. On Final Reading LB 1178 was passed by this body 33-10. At that point it was at the end of the legislative session and the Governor vetoed 1178, I think basically under some ill advice, but she vetoed 1178. We had already adjourned

and gone home for the year so there was no chance for an override. In the Governor's veto message I was somewhat disappointed in, in that it very simply read and I quote, "I have not been persuaded of the need for the change", signed, the Governor. They gave us very little direction in terms of what concerns she might have had. As we forwarded that concept, since that was the turn of the session, I reintroduced LB 1178 intact and it is now called LB 159. It had a public hearing. During that interim and since the Governor's veto, a few people fell off the bill and through the course of this debate today I think several people are going to explain why some people fell off the bill, why there has been a lot of misinformation on the situation and why we ended up in a bit of a stalled situation last year. Part of it was some confusion with respect to Nebraska Bar Association, where they stood on the bill. There is some amendments pending that I believe have been filed that we'll be discussing in a little bit that clarify any procedural techniques within the bill that the Nebraska Bar had and will, I believe, take them no longer out of a position of opposition because of the procedural entanglements. But as we proceed with the debate I hope we have a full and active debate because this piece of legislation really has never had that. We've had debates on procedural activities and on little cliques within the bill but we've never really debated the bill in terms of where we are and I hope as we proceed through that factor today we will get to that. I think we will also talk about some of the people who are out in the lobby who still do not like the bill and possibly some of the reasons why. We hear allegations made that are very simple and I think many of those people think that we are that simple that we are going to fall into the trap of someone saying, oh, this type of legislation would be more costly and to have any one of those people describe how it will be more costly, they run out of steam. It's just simple phrases that have knocked the bill. We have statements made that this bill may possibly create more litigation. There is no way under any legal theory and anyone who works in the business that can describe to you how we would have more litigation. Anytime there is a personal injury of consequence where if someone has suffered serious damage and someone is responsible for that damage, there is litigation now. That doesn't change. You've got to have more accidents to have more litigation. People have a tendency to use those simple phrases and, like I say, some of you I think maybe have caught on to them, but I think between now and Select, if you advance this bill I would like those people to step forward and explain how you have more litigation,

how you have more cost. I have information here and throughout the course of the debate as I punch in again and talk specifically on the bill, I think I'm going to be describing to you some statistics that prove otherwise. This type of technique is going to provide an opportunity for a lot of claims to be settled early, not have to go through the complete litigation which is expensive for both parties. It is going to be fairer to the injured in terms of the indemnification and in many cases it's also going to be fairer to the person who ultimately is going to be the defendant in the case and ultimately receive judgment. In fact, if we look at that very seriously you're going to see a whole lot of people in our business community and for economic development purposes. I think maybe the cornerstone of this is maybe my involvement. I was the one that introduced and championed through many of these other areas for the very purpose of positive economic development. Why would I abrogate that goal and responsibility when it comes to this position. I still believe this is a major piece of our court system that could fit into play and work better for the long-term best interest economic development in the state. And so with that, Mr. President, I will relinquish the microphone and hope for an active debate.

PRESIDENT: Thank you. We have an amendment, Mr. Clerk.

CLERK: Mr. President, I do. Senator McFarland, you had an amendment, Senator, printed last year. I have a note here that you wish to withdraw, but...

SENATOR MCFARLAND: I would like to withdraw it, Mr. Clerk, thank you.

PRESIDENT: Okay, it is withdrawn.

CLERK: Mr. President, Senator Kristensen would move to amend the bill. Senator Kristensen's amendment is on page 398 of the Legislative Journal.

PRESIDENT: Senator Kristensen, please.

SENATOR KRISTENSEN: Thank you, Mr. President and members. This is probably the most difficult set of amendments that I have had to present to this body and it's been after a great amount of thought and soul-searching that I do so. When this bill was in committee, I passed. I was not voting to advance this bill out

of committee. Last year when it was on General File I did that as well, not out of any political reasons, but out of the reasons that I was just not sure where I was at on this bill and I wanted to spend some more time. Through the summer I have spent a lot of time looking at comparative fault. I think as a member of the Bar Association and serving in this Legislature I have some duty to perhaps speak on the issues that I'm most familiar about. And through this whole period of time the Bar Association last year had a position of opposition to this bill for a number of reasons, those mainly being procedural reasons, not all of them being substantive because this is not just a lawyer's bill. Obviously whenever there is a lawsuit or an injury there is lawyers on both sides and I don't buy into the theory that the lawyers create the lawsuits. If they do we ought to find those people and toss that out of the profession. What they do is represent people who have been injured or there have been breaches of contract or they defend the people who have caused those actions or who have alleged been caused. That's the reason this bill becomes so difficult. There is not one side, there is not one set of lawyers that represent both sides. And the Bar Association took on an extensive study of this bill and came back with some recommendations and what they did is they took four lawyers who represent people who get sued, the defense lawyers, and they took three lawyers who are plaintiffs lawyers who generally represent those who do the suing. And they had a committee and they looked through the amendments and tried to see if there were some things that they could do to make this bill better and they have done so and they have submitted their recommendations. I have agreed to explain those amendments to you this morning and that's the reason that I rise to do so. If you look at page 398 you will see in the Journal the beginning of the amendments. These are the famous Bar amendments that have moved this bill from a position of opposition to no position by the Bar Association. They have no problems procedurally how this bill goes. They have left any support that we may do for us in the Legislature for us to decide whether this is good public policy or not. The first part of the amendments clarify that we're going to have jury trials when there are multiple defendants. In other words if there is an accident that occurs and I'm going to sue someone and there is more than one defendant, we call those multiple defendants and often could be included a city, a county or a school, any political subdivisions. If a school or a city are the only ones who are the defendants, there will not be a jury trial. If there are multiple defendants and a political

subdivision is included but there are other private people there will be a jury trial and this is primarily the way it is in statute right now but this will clarify that to make sure that that continues. The additional Section 13, if you follow down on line 13 of the amendments, this is a new section that is going to allow a defendant to bring in another defendant. For example, if I would sue Senator Korshoj for something that he had done and he would say, well, that certainly isn't all my fault, Senator Carson Rogers was part of the problem as well, this is going to allow Senator Korshoj to bring Carson Rogers into the lawsuit. And the reason he would do that is that maybe he has more facts or knows something about it. It keeps us from filing multiple numbers of lawsuits, so we get all the lawsuits into one case because the last thing we want to do is have a case from I to Senator Korshoj and then a case from I to Senator Rogers. That would just be two additional suits. We don't want to do that. This would allow all into one. A new Section 14 is relatively simple. That allows us to join any number of parties that would be relevant to the case. That really is the way the law is right now in the State of Nebraska, but this would clarify that. Section 16 is new. All we really do is call it the Political Subdivisions Tort Claims Act and it changes the name and refers that act to it. That is a housecleaning part of this. There is a third part of the amendment I want to skip over to where we stop calling people defendants and we make them a party. That may be legal mumble jumble, but it's very important because sometimes the parties aren't just the defendants. They also could be the person doing the suing and this would have some effect on how the reallocation procedures that Senator Conway, I am sure, will explain to you in a little bit, how they will work and we want to make sure that all parties are included, not just the defendants. One of the last recommendations and one of the things that are important is to move the date of...the effective date of this legislation on and currently it sets it March 1, 1990. We realize that that date is not going to work and will not be effective. This would extend it to March 1, 1991. The reason that is effective and something we need is that you need to give people some time to prepare for the change in our tort system and that change is going to take at least nine months to educate not only the members of the Bar Association, but various plaintiffs and insurance carriers that the system has changed to give them some time to do some research and get their cases filed under the old system, if they want to be in with the old system or wait if they want to file under the new system. By and large, the major

objection and the things that have changed my position and my mind have been those of additional court time. Is this really going to burden the court system? Is this going to cause us a tremendous amount of new litigation? And I think Senator Conway was correct. People are going to sue if they think they have a cause of action. They're not going to come back and say, oh my, the law is all stacked against us, we're not going to sue, that's not in reality what happens at all. What happens in reality if they feel they've got some injury or some claim, they're going to file their suit. This is not going to add more additional people filing their lawsuits. Now to be truthful with you, where do I think the increased amount of time may occur? It may be in the appellate level to begin with. People may appeal their...those judgments in those cases in order to determine what the law is interpreted by the Supreme Court. Anytime we have a switch in law the Supreme Court obviously is going to take a look at that and try to interpret some provisions of the law if they feel they are unclear. I don't think that that is a reason not to adopt this legislation. With that, those are the Bar amendments. Most of them are cleanup amendments. Most of them take and try to harmonize this bill with what we have for existing rules and regulations in statutes of procedures. I don't think substantively the Bar amendments make great and major changes. With that, I would be happy to answer any questions and I would urge the adoption of the amendments. Thank you.

PRESIDENT: Thank you. Senator Ashford, do you wish to speak on the Kristensen amendments?

SENATOR ASHFORD: I'll speak on the bill.

PRESIDENT: All right. Senator McFarland, on the Kristensen amendments? Senator Korshoj, on the amendments? Senator Landis, on the Kristensen amendments? Senator Korshoj, did you wish to speak on the Kristensen amendments?

SENATOR KORSHOJ: No, leave my light on.

PRESIDENT: All right. Senator Landis. Excuse me, let us get you turned on first. Now try it.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature, this issue is technical and it is easy to tune out. It is easy just to go out to the lobby and look out there and

count the number of your friends on one side, the number of friends on the other, make up your mind because it's just awfully technical. I want to spend just a moment to talk about some of the basics that are in this bill and that are amended quite appropriately by the Kristensen amendments which I will be supporting. At the heart of LB 159 is the tort system and we use that phrase with really a limited understanding of what it means. A tort is not a criminal wrong, it's a civil wrong between two individuals where one has been injured by the careless behavior or another. And if you go into court and you want to prove a tort, if you want to prove negligence you prove four things. You prove that there was a duty between the two parties such as inviting somebody onto your place of business, such as inviting them into your house, such as knowing that you're sharing the streets with them and you need to have the duty to be a safe driver on the streets with them. That is the first thing you have to prove. The second thing you have to prove is if there is a violation of the duty of care that a reasonable person wouldn't do. In other words, you have to be unreasonable in some way, careless in some way that a prudent person wouldn't be, that a prudent person would have careful and avoided, but that there has been an act of carelessness that a prudent person wouldn't do. The third thing you have to prove is that this imprudent careless act is the reason that you suffered an injury. And the fourth thing you have to prove is the injury or the amount of damages you've suffered. If you can prove that they have a duty to be careful, that they failed to be as careful as a reasonable person would be, that that carelessness hurt you and that you have damages, you're entitled to recovery. Now you're not recovered...you don't get a recovery because of a punishment, but only as a compensation for your injury at the hands of their carelessness. You know, we bump into each other and we say, excuse me, pardon me, and we go our merry way. Somebody is not looking in the hall, they bump into you and we say, that's okay, it's an accident, and we do that as a kindness. On the other hand when we're on the street and through some carelessness they strike you and injure your car and break your leg, we don't say oh, that's okay, I know you didn't mean it, too bad, it was a careless act, but I'm sure you didn't intend to do it and walk away from it. No, the carelessness there is so important that we place some responsibility for it and we get a compensation for that carelessness when we're injured by it. What 159 attempts to do is to draw reasonable rules for when we will receive money for our damages when we are injured by somebody else's carelessness.

Now there are people who oppose LB 159 because it changes the rules somewhat and under the rules they have been able to do some careless things without paying for it. They have been able to injure people, create dangers, find that individuals are injured and then walk away from it. For example, a woman out riding a horse...

PRESIDENT: One minute.

SENATOR LANDIS: ...she happens to be on a highway. A car speeding over the limit comes over the hill, is not capable of stopping the car within their range of vision, strikes the woman, strikes the horse, injures both, woman doesn't get a dime. Why? Well, we have a rule that says, if she was more than slightly negligent and the driver was not grossly negligent then she can't recover because she has some portion of responsibility. The jury was prepared to give her money, the trier of fact was, the court said, no, you can't. Why? Because Nebraska has a law against it, has a rule against it. It's the slight gross rule. LB 159 changes that slight gross rule. The Kristensen amendment makes clear the ways in which we will move into a more appropriate, more rational form of tort system allocation for losses. The amendments are appropriate, they are well drafted, they come with the oversight of a Bar committee in their drafting. I urge you to adopt them. I urge you to examine carefully 159. At its heart, is a very simple principle. People who are careless...

PRESIDENT: Time.

SENATOR LANDIS: ...and injure others should pay for the damages that they create. LB 159 exonerates that principle and that's why it's a good bill.

PRESIDENT: Thank you. Senator Haberman, please.

SENATOR HABERMAN: Mr. President, I would like to divide the amendment, do Sections 12, 13 and 14 as one, do it first; and Section 16, number two; and the rest, 12 through 6 as one, number three.

PRESIDENT: Senator Haberman, if I could have your attention a moment. As I understand, on the amendments of 159 of Senator Kristensen's, the first part would include Section 12, 13, 14, and that would take you through line 6 on page 3, right?

SENATOR HABERMAN: Yes.

PRESIDENT: The second section would be Section 16, which would be on page 3 from line 6 through line 19.

SENATOR HABERMAN: Yes.

PRESIDENT: All right. The third part would be from line 20 on that page to the end of the amendments. Is that correct?

SENATOR HABERMAN: That's correct, Mr. President.

PRESIDENT: Okay, do you want to take the first section first?

SENATOR HABERMAN: Twelve, 13, 14 first would be fine if they want to do that first.

PRESIDENT: All right. We will divide it that way so our discussion from now on will be, for those of you who are interested, the first page, the second page and through line 6 of the third page. Okay, you want to speak about that, Senator Haberman?

SENATOR HABERMAN: Go right ahead.

PRESIDENT: Okay. We are to Senator Pirsch. Did you wish to speak about the first section of those amendments?

SENATOR PIRSCH: Yes. I do have some questions of Senator Kristensen if he will yield.

PRESIDENT: Senator Kristensen, please.

SENATOR KRISTENSEN: Yes.

SENATOR PIRSCH: Senator Kristensen, we are saying that if only public entities are defendants that we will not allow a jury. Is that correct?

SENATOR KRISTENSEN: Yes, that has been the law for some time.

SENATOR PIRSCH: Okay, and this will not change.

SENATOR KRISTENSEN: Right.

SENATOR PIRSCH: But they are still involved. They are not taken out of any liability?

SENATOR KRISTENSEN: Yes. Right.

SENATOR PIRSCH: In Section 13, which is a new section, we are talking about the third party plaintiffs and third party defendants but there actually can be fourth party defendants and fourth party plaintiffs?

SENATOR KRISTENSEN: No, Senator Pirsch, there can't. What we have...and if I could...if I would have a blackboard, I could do a lot better job.

SENATOR PIRSCH: Uh-huh.

SENATOR KRISTENSEN: Would you mind if I take a little time here?

SENATOR PIRSCH: No, I wish you would.

SENATOR KRISTENSEN: If not, I'll share back with you.

SENATOR PIRSCH: Uh-huh.

SENATOR KRISTENSEN: If I sue you, for example, and I want to gain some money out of you and you say, well, it isn't all my fault, Senator Byars was partly at fault too, but I haven't sued him, I have just sued you.

SENATOR PIRSCH: Right.

SENATOR KRISTENSEN: You are able to bring him in as a third party.

SENATOR PIRSCH: Okay.

SENATOR KRISTENSEN: He is what you call a third party defendant.

SENATOR PIRSCH: Now, as I understand, everyone that has anything to do with this suit has to be named at the beginning and that's understandable if you have to assess percentage of blame or fault. Is that correct?

SENATOR KRISTENSEN: The law wants to...

SENATOR PIRSCH: Later on down the line you can't bring in someone or can you?

SENATOR KRISTENSEN: It depends on what type of lawsuit it is. There could be some very complex lawsuits where I want to sue people one at a time. Now you, as a defendant, might want to bring everybody in at once so we only have one trial. The law would like to promote that, yes, so we don't have multiplicity of suits. The law really encourages getting everybody put into one.

SENATOR PIRSCH: So, really, then this puts the nexus on the defendant to get everyone in possible to share that liability with them.

SENATOR KRISTENSEN: That's right, but it also is a good move for the defendant to maybe get out of liability, saying, I'm not the one to blame, you've got the wrong guy, it's Senator Byars, for example. He's to blame and not me. It might be a defensive move on your part as well.

SENATOR PIRSCH: Okay. Thank you. I'm glad that you explained that this was a committee of the Bar that did try to do something to improve LB 159 and that...and that you stated the Bar Association still though does not support LB 159 and that they are letting the Legislature make this kind of radical change in our legal system. Thank you.

PRESIDENT: Thank you. Senator Ashford, did you wish to speak about the first section of the amendment?

SENATOR ASHFORD: Yeah, briefly, Mr. President, just to respond to Senator Pirsch. At the time that LB 1178 was passed by the Legislature, there was...and after the veto, there was some concern raised by defense attorneys on the issue of third party practice and that's what Senator Pirsch was talking about. She was asking Senator Kristensen about the third party practice to make sure that when we implemented comparative fault that the concept of third party practice, the concept of bringing in all the necessary parties to a lawsuit was, in fact, preserved in this bill. In fact, LB 1178, in my opinion, probably did do that but in order to satisfy this defense Bar, in essence, we made...the Bar Association got together and made some changes to

the bill to satisfy that concern. It is...that's specifically in response to that point. I might make a little point about the Bar Association Committee. The Bar Association Committee was made up of both plaintiff's lawyers and defense lawyers and also lawyers...the Chairman of the committee, for example, Rick Spellman from Kutak-Rock I don't believe really is involved in this kind of litigation at all. So he was, for the most part, an objective chairman. It is not true that the Bar Association, I suppose, technically does not...they did not vote to endorse this legislation but 1178 had caused them some concerns technically and they voted not to support 1178. What they did is they adopted or accepted the changes brought to them by the Bar Association Committee and felt that that was a significant improvement to the bill. I think it's probably pretty appropriate that the Bar Association would take somewhat of a "neutral" position here. They're certainly not opposing LB 159. What they're saying is this is a change in our system. We have suggested to you some changes that will procedurally make this bill a better bill, in our opinion, and then it's up to you to make that decision. But we, as the Bar Association, are not opposed to it. And I think that's pretty significant. And when the Governor vetoed the bill, there was opposition by the Bar Association. In fact, there was rift in the Bar Association between the plaintiff's lawyers and the defense lawyers and that rift was basically mended as a result of the changes to LB 159. So in response to the concerns that Senator Pirsch is making, a radical change, not really. This is not really a radical change. Nebraska is the only state left, the only state left in the United States that has not adopted a form of comparative fault. Why do people adopt comparative fault legislation? They do it, not so it's easier for plaintiffs, not so it's easier for defendants, it's so it's easier for people, the population, the average citizen on the street, to understand the tort system. That's why we're doing this and that's why 49 other states have adopted this. The slight gross standard makes no sense. Senator Landis gave an example of a case where a plaintiff was not able to recover because of the slight gross standard. I will give you an example on the other side where juries may really like a plaintiff, really like a plaintiff and say, I really like this plaintiff and I don't care what the negligence of this plaintiff is, I'm going to find for this plaintiff and not only...and their three defendants, and not only am I going to find for the plaintiff, I'm going to find for the plaintiff in the amount of a million dollars and I'm going to require each one of those defendants to pay a million dollars...

PRESIDENT: One minute.

SENATOR ASHFORD: ...under joint and several liability, that's the law. What this change says is, no, jury, you can't do that, you can't do that. And this is an important point, everyone. You can't do that under comparative fault. You have to allocate to that plaintiff the degree of fault that you determine is that plaintiff's degree of fault. And you can't just willy-nilly enter a verdict for a million dollars against the defendants. This is...so not only does this protect victims or plaintiffs but it also puts a basic fairness into the system that does not now exist. That's why 49 percent...or 49 states have adopted it, not because it's a boon to lawyers, not because more lawyers will get more business, that's hogwash. That's absolutely hogwash. The lawyers are coming to this body because they work with the system every day and it doesn't work. Thank you.

PRESIDENT: Thank you. Senator Landis, your light is on, did you wish to talk to this part of it? Okay. Amendments.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, I would like to tell you about some of the kinds of results that we're talking about here in this bill and what's at stake and, first, of course, LB 159, but in making the 159 appropriately well drafted that lawyers will not have questions about its interpretation. In 1947, in this state, a man brought a sample case to a hotel, asked that they put it in the hotel vault. The hotel put it in their vault, didn't lock the door of the vault, didn't put it under lock and key, didn't have a system for releasing items like a checking system of a card or a note or a number. The guy comes back at the end of his time, asks for his sample case back. The hotel doesn't have it. It's either gotten up, walked out, somebody else has picked it up, it's been stolen. The guy says, I want my sample case, it's very, very valuable. Hotel says, it's gone, I'm sorry. Too bad, it's an accident, but it's not our responsibility. He goes to court and sues, wants the value of his very valuable sample case. Gets nothing. Why? Because of the slight gross rule. The court in 1947 said, you know what, he didn't tell them that he had a valuable sample case, he just handed it over without telling them. Threw the case out completely. The guy didn't get a dime. Why? The slight gross rule. Nineteen fifty-five, a guy is outside a bar, breaks up a fight between two people who are fighting. In the scuffle to separate the two, he happens to

knock one of them down. That guy goes inside and gets a gun, comes back out. The guy who has broken up the fight realizes he ought to get out of there, gets into his car, starts to drive away; is hailed to slow down and stop by the person coming out of the house. The guy is yelled at. He pulls over. He stands up, gets out of his car and is shot by the fellow with the gun. He suffers injuries, sues for recovery for his injuries. The Nebraska Supreme Court doesn't give him a dime, throws it out. Slight gross, he shouldn't have stopped. It was too bad he got shot but he shouldn't have stopped. Slight gross rule. Another example of the slight gross rule. A driver goes on to an unmarked road under construction. The barricades which are normally put up are not there, through the negligence of the construction company. The guy drives on to this muddy road, realizes that he is on a road that's under construction, does a U turn, is driving down the road, falls into a muddy crack, injures his car, sues the construction company for not giving him notice that he was on an unpaved, unconstructed road that was at that time not open to the public. The guy didn't recover. Why? Slight gross. Peter Kiewit Company didn't pay a dime for that one. Why? Because of the Nebraska rule, the slight gross rule that said, you know, he should have known he was driving on a road that was under construction. The juries never got to weigh the negligences of the two parties because of a rule that in 1910 Nebraska adopted which almost every other state has abrogated because it's simply unfair. It says that you can be more careless than somebody else, injure them, cause them damage and walk away scot-free.

PRESIDENT: One minute.

SENATOR LANDIS: And who is out in the lobby? People who want to retain that authority, that power. It's a lot cheaper when you can be careless and cause injury and not have to pay for it. Of course, you want to keep that kind of favoritism. Of course, you want to keep the rule where it is. Now there is a reason why you don't see a lot of citizens down here. None of you know when a tort is going to happen to you. None of you know that, when one of these situations is going to occur. There isn't an association of people who are about to suffer civil injury. There is no way to know when you're going to be the victim of an accident. We don't have an association of accident victims. We do, by the way, have associations of criminal victims who have been down here and Carol Pirsch has demanded over and over again and this body has given relief for criminal victims...

PRESIDENT: Time.

SENATOR LANDIS: ...and we have special programs for them. Civil victims aren't organized but the people who have insurance premiums to pay certainly are well organized. The companies who don't want to pay those claims certainly are well organized. They know when they have the upper hand in the law and, of course, they don't want to let go of it. The Kristensen amendment is good bill drafting. It needs to be adopted and this bill needs to be advanced.

PRESIDENT: Thank you. Senator Kristensen, please, followed by Senator Smith and Senator Conway.

SENATOR KRISTENSEN: I would call the question.

PRESIDENT: The question has been called on the...do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. We're voting on ceasing debate. Mr. Clerk, record.

CLERK: 21 ayes, 4 nays to cease debate, Mr. President.

PRESIDENT: Debate has not ceased. Senator Smith, please, followed by Senator Conway. Okay, Senator Conway, on the first section.

SENATOR CONWAY: Mr. President and members, like I say, the amendment, the single amendment that Senator Kristensen brought before us, I think, could have been addressed in a singular fashion rather than broken down into three divisions and I am happy to see some of the debate on the bill for fear that some procedural happening may come about that the bill was never discussed, has this never been discussed before. I voted for ceasing debate on that particular provision and believe and then wholeheartedly support as a long-term introducer of this bill that has carried many numbers of the years that these Bar amendments, if you would like to describe them as that, are technical amendments that simply address a procedural process that allow the judicial system to more expeditiously address this bill if it were to be passed. So regardless of what a person's feeling may be on the bill, I would like to think that this body has the wherewithal to try to make it the best possible bill with respect to the fact that if it is passed,

that it should give the judicial system a clean shot at what's going on. I will continue though at this time to talk about the bill because I think that's really what we're dealing with and I appreciate the examples that Senator Landis has presented because I think, in many cases, we have been whipsawed by the lobby on rather simple explanations of it costs more, you know, it's the old tastes good, less filling kind of argument and then we never get into the crux of what we're really talking about. So Senator Landis's examples of things that have happened in the past, and these are the examples as I...that I heard were actual cases in the State of Nebraska relative to the inability for an injured person to even find himself in front of a jury of his peers by virtue of the slight gross provision. But I guess what I would like to do for a moment is profile the lobby. Who is really working against the bill? Most of you have received letters or have seen things from the State Chamber and/or the Lincoln Chamber. Read what they say. They say they would not support something that would increase the numbers of lawsuits in the State of Nebraska. Again, if you rationally look at that, tell me how this would increase the number of lawsuits. As a matter of fact, if you could get an out of court settlement by virtue of putting some people's feet to the fire with respect to the fact that they may have to share in some of their own losses relative to the proportion of contribution, that is going to help people say, I think I would rather settle than have my determination of fault brought up to such a high level that I don't recover as much as I might otherwise. The other side might hunker down and say, if I can prove the slight gross situation, I may get away scot-free. They're putting all their eggs in one basket and good insurance theory relative to the underwriting of the actuarial side of what goes on here across the nation doesn't pan out with this respect. But if you look at the Chamber of Commerce...I have talked to many, many, many businesses in this regard and they say, well, you know, we've got a couple of major players in this business, primarily the Nebraska insurers who have taken on the cause, and I believe...wholeheartedly believe that that cause on their behalf is forwarded simply because of a member or two and the average business is sitting out there not really knowing what's being played out. If we look at other lobbying entities, the cities, cities are out there. Cities really don't even like being a part of anything now. They're still living back in the old sovereign immunity days that there should...they should not be responsible for any of their activities. So any movement to make them responsible is actually bothersome to them. We also

look at another major player in the lobby and I am sure many who have been touched upon have been the railroads. Under our current system, the railroads in Nebraska have a unique opportunity. The injuries that are caused and that they would get tangled up in would be a grade crossing accident. Under slight gross case law, many cases in Nebraska say that if someone disregards a notice that a train is coming, that that is certainly under case law beyond slight and, therefore, the case is not going to go anywhere, if we look at that kind of an entanglement. What we have, in most cases, if you look at that lobby, is a very self-serving group of people that is very narrow...

PRESIDENT: One minute.

SENATOR CONWAY: ...leaving, as Senator Landis said, the typical victims behind because these people are not victims as yet and so, therefore, they don't even know that they have that exposure. If we look at the whole concept from an insurance perspective, I have statistics here that show that Nebraska has a very low premium standard compared to national statistics with the term...with respect to insurance premiums. Now why is Nebraska low? People say, well, if it's not fixed don't broke it. We are low because we would actuarially be low no matter how you rate us. Look at our surrounding states, many of them are lower than we are and they have comparative negligent standards. We are very low because we're not particularly a litigious area in our agrarian communities. We are very low by virtue of the attitude that we have towards taking care of business and being insured and not having as much under and uninsured personnel out there. We have lots of reasons for being actuarially below.

PRESIDENT: Time.

SENATOR CONWAY: But...time, you say, sir?

PRESIDENT: Pardon me?

SENATOR CONWAY: You said time?

PRESIDENT: Yes, that's what I said.

SENATOR CONWAY: I'm sorry, I'll pick it up later.

January 19, 1990

LB 87, 159, 163, 163A, 220, 240, 257
313, 315, 397, 399, 486, 488, 488A
756, 856, 911, 963, 1002, 1026, 1033
1037, 1050, 1051, 1090, 1108, 1109, 1141
1168, 1181, 1190
LR 239, 240

PRESIDENT: Okay. Thank you. Senator Ashford, you are next, but may I introduce some guests under the south balcony, please. We have from District 22, which is Senator Robak's district, Dianne Foltz of Platte Center and Betty Grant of Columbus, Nebraska. With them are three AFS students, Jean/David Miquel of Paris, France, and Patty Cervantes from Bolivia, and Shane Walker from Australia. Would you folks please stand and be recognized. Mr. Clerk, you have something for the record?

CLERK: I do, Mr. President, very quickly. Enrollment and Review reports LB 163 to Select File, LB 163A to Select File, those signed by Senator Lindsay as Chair. Agriculture Committee, whose Chair is Senator Rod Johnson, reports LB 856 to General File. (See page 429 of the Legislative Journal.)

Mr. President, Senator Coordsen, as Chair of the Business and Labor Committee, has selected LB 313 and LB 315 as the committee priority bills for the year. And Enrollment and Review reports LB 87, LB 220, LB 240, LB 257, LB 397, LB 399, LB 486, LB 488, LB 488A, LB 756 all correctly engrossed. Those signed by Senator Lindsay as Chair. (See pages 430-33 of the Legislative Journal.)

Mr. President, notice of hearings from the Education Committee and from the Natural Resources Committee, signed by the respective chairs. (Re: LB 1190, LB 1181, LB 1168, LB 911, LB 1050, LB 1090, LB 1033, LB 1037, LB 963, LB 1026, LB 1108, LB 1109, LB 1141, LB 1002, LB 1051, LR 239 and LR 240.) And Senator Haberman has amendments to be printed to LB 163. That's all that I have, Mr. President. (See pages 433-34 of the Legislative Journal.)

PRESIDENT: Senator Ashford, did you wish to speak on the first set of Kristensen amendments?

SENATOR ASHFORD: I call the question.

PRESIDENT: Oh, you call the question. The question is, shall debate cease? All those in favor...Do I see five hands, first? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. What do you think, Senator Ashford? Record, Mr. Clerk.

CLERK: 16 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate does not cease. Senator Ashford, followed by Senator Korshoj. No, you called the question, didn't you, Senator Ashford. So, Senator Korshoj.

SENATOR KORSHOJ: Mr. President and members, I don't know what I'm going to say because I don't understand the bill and I did not get lobbied by these business people, they've talked to me. But I was on Judiciary when this bill was heard, February 26, 1988, which was the original 1178, and it's still the same bill. And I talked to a guy who testified, after he had testified. I have never talked to him since, a Mr. Fred Kauffman. I'm going to use some of his statements. I hope he's a credible lawyer. I do not know the man, and maybe I'm coming from off the wall. He said, first of all, I don't think legislation ought to be passed, if there is no need. He said it was an innovative bill in 1913, when it came in. He said, it has worked, I think, relatively well. There may be injustices, but he thinks it can be resolved with a stroke of the pen. Whether it can or not, I do not know. But as he spoke against the bill at this time the Oakland-Craig School District had a lawsuit that was pretty well considered they were not at any fault, but they were the only people on the scene when a pickup drove into the middle of a bus and got a big lawsuit. So I ran out in the hall, after he testified, and I said, if we pass this bill, will this solve the Oakland-Craig problem? Would they then not be liable for, it was a twenty some million dollar lawsuit, and he said, this bill would absolutely not change that particular case. And I know that is just one case. I really don't know about the credibility of this man. I wish I would have called him in the meantime and asked him. I was going to ask Ernie, who is not here right now, in questioning Mr. Kauffman they were running out of time. He said he had several other problems, and Ernie requested that he would write them problems down and forward them to Ernie. And I wonder if he ever done it and if the committee would share whatever those problems were, because I think, if there were problems, we should hear what those problems are. Now, I see the Chamber of Commerce and these business organizations who represent, well I guess literally hundreds of thousands of people are against it, maybe it's for their pocketbook. But those that were really for the bill, if you read it's NATA, Nebraska Association of Trial Attorneys, Nebraska Association of Trial Attorneys, so forth and so on. And I think if you ask the public, and I have nothing against trial attorneys, their opinion would be that the trial attorneys are thinking not so much of the public as they are the trial

attorneys. Also, I asked this Mr. Kauffman, will this really cut down lawsuits? And he told me, no. I don't have that in writing. He said he thinks it would probably create more lawsuits. I don't know if it would or not, I really don't know, have no idea. Also it was stated, and not by him, that this would probably turn over 100 years of case law, that this is a new, totally new ball game. I don't know if that's true or not either. I mean if somebody has a case and trying to decide, do I want to sue, or don't I want to sue, if there is no case law you're going to sue, aren't you? Wouldn't that create more lawsuits? In the bill...

PRESIDENT: One minute.

SENATOR KORSHOJ: ...on page 11, and, Senator Kristensen, maybe, it says there that you get your share of fault if somebody...it's uncollectible, in other words, judgment proof, then they come back and reassess you that share. Would that be constitutional, after they make one judgment then come back and say, well now you pay more because I can't collect the other?

SENATOR KRISTENSEN: Yes, I think it is constitutional. I don't think it denies you any guaranteed rights as long as the Legislature establishes the procedure for collecting judgments.

SENATOR KORSHOJ: Yeah, well I didn't know. This was my own question.

SENATOR KRISTENSEN: Yeah.

SENATOR KORSHOJ: I thought, if you're only so guilty of a certain percent, how can you get a bigger percent? I don't understand that that would be totally fair.

SENATOR KRISTENSEN: Would you like me to expand on that? I don't want to take on your time.

SENATOR KORSHOJ: Yeah, I'm down to nothing. Take nothing and we'll quit.

SENATOR KRISTENSEN: Okay. Real quickly, what happens is that if somebody has...is judgment proof, we have two defendants and it's I and Senator Smith here, and she's 45 percent negligent and I'm the other 45 percent negligent, and you can't collect part of her judgment, it isn't fair that...since we acted

together, for example, you can't come back and collect from me totally. Today we have that. That's the old joint and several liable. If you're partly liable for what happened in the activity that we did together, if you can't collect from her, that's my problem for having some joint activity with her. And so it does...you know, there has always been that issue of law that says why should you, as the person who suffered injury, not collect for your injuries just because somebody else didn't have any money. You know as long as there was somebody else that was partially to blame. ..

SENATOR KORSHOJ: So, that hasn't been changed in any way, so to speak, so to speak.

SENATOR KRISTENSEN: Well, it changed the fact that you...how you go back and do it. Procedurally it changes how you do that. Today, if you couldn't get it from her, you're going to come after me. All this does is you're going to share partly in this now because your 10 percent comparative fault.

SENATOR KORSHOJ: Okay, thank you.

PRESIDENT: Thank you. Senator Abboud, please, followed by Senator Landis.

SENATOR ABOUD: Question.

PRESIDENT: Question has been called. Do I see five hands? I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Senator Abboud.

SENATOR ABOUD: Mr. President, I'd like a call of the house, and I'll take call in votes for (inaudible.)

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

CLERK: 14 ayes, 0 nays to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence. And Senator Abboud has agreed to accept call in votes on ceasing debate. Please return to your desks, if I could has you to do that, and record your presence. (Gavel.) Please return to your desks and record your presence. We're

under call. The question is ceasing debate and we're accepting call in votes.

CLERK: Senator Peterson voting yes. Senator Scofield voting yes. Senator Hartnett, you had voted yes, Senator. Senator Rogers voting yes.

PRESIDENT: Record, Mr. Clerk.

CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Kristensen, would you like to close on the first section of the amendments? Call is raised.

SENATOR KRISTENSEN: Thank you, Mr. President and members. To briefly close and to put this into perspective where we're at with the amendments, these are the first amendments on page 398. These are Sections 12, 13 and 14. These are not substantive changes. These are the result of the Nebraska Bar Association study that are the recommendations that would make this bill procedurally work easier and better. Whether you're for or against the bill, I would think that you would have to recognize that these amendments would make the bill better no matter what happens to it on its final vote to move or not. They do deal with multiple defendants, allowing for joinder, to make sure that we get all the proper parties into one lawsuits, so you don't have a multiplicity of suits and would allow defendants to bring in other defendants who might share in the liability. That has really always been the purpose of the Nebraska statutes and civil procedures, to make sure we get all the lawsuits into one. And I would urge the adoption of this section of the amendments. Thank you.

PRESIDENT: Thank you. The question is the adoption of the first section of the Kristensen amendments. Is there any question about which that involves? If not, all those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of the first portion of Senator Kristensen's amendment.

PRESIDENT: The first section is adopted. We'll move to the second section of the Kristensen amendment. Senator Kristensen, did you wish to talk about the second section?

SENATOR KRISTENSEN: Thank you, Mr. President. The second section here, which is all of Section 16, and you'll see that on page 399, this truly is what I would count as bill drafting changes. I don't think that they are particularly substantive. It really puts the political Tort Claims Act into effect with this bill and refers back to it. It does make reference to if only public entities are the defendants they shall be heard to the court without a jury. That's what the law is and that, for example, if we're only suing cities and schools you don't necessarily want to put them to a jury because of the nature of saying, well they've got all the money anyway. There is always a tendency to show more sympathy towards those people, and we have not done that. But we want to make sure that that doesn't happen under this bill. And this is not a particularly...of all the three sections, this probably does the least. I'd urge its adoption. Thank you.

PRESIDENT: I'll continue with the lights that I have on. Senator Landis, did you wish to talk about this second section?

SENATOR LANDIS: Sure, that's why my light is on. You bet.

PRESIDENT: Okay.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, the Kristensen amendments are technical in nature and are meant to effectuate the underlying policy of 159. They are appropriate, they come to us from the drafting, basically, and suggestions of a Bar Association committee who oversaw the analysis of 159. And as Senator Lowell Johnson reminded me, it is important to remember that the Bar Association, while at one time negative on the technical insufficiency of the bill to make clear how it was going to be carried out, is now neutral because the bar has been persuaded that, in fact, these amendments do make the principle now understandable and workable, and yet, of course, they divide as to whether or not it's a good decision to make or not. There are lots of plaintiff's lawyers, there are lots of defendant lawyers. Among them, by the way, Senator Korshoj quoted him, one of the best in the state, Fred Kauffman, an excellent lawyer with a fine reputation, and a defendant's lawyer representing some very excellent and well-heeled defendants. Fred, I think by the way, gave some valuable testimony. Many of his arguments at the time of that hearing have been overcome by some of the Bar Association amendments that are in question before us.

However, I would like to put myself at odds with Mr. Kauffman's characterization. Frank, when he said, you know, I just...if there are injustices, I don't know what they are. Now, I've been reading a couple of cases from Nebraska law. All the examples I've given you are from Nebraska law. Let me give you another one from 1984. Twelve-year-old kid up climbing in a tree, comes in contact with a poorly insulated electric line in a badly maintained tree, both of which are the property of the Omaha Public Power District. Kid gets zip, nothing, kid shouldn't have been in the tree. Gets electrocuted but doesn't get a dime for the badly maintained electrical wire or the ill-kept tree because the kid was partially negligent. Now, Fred Kauffman says that isn't an injustice, the kid never got to go to the jury, that he never got his day in court, that the judge threw the case out. I don't think that's justice, I think that's an injustice. I think he should have had his day in court. Supreme Court threw that case out, said that constituted less than gross negligence on the part of OPPD. Now, think about it. Whose going to be out in the lobby? Twelve-year-old kid named Suarez or OPPD? Yes, it's true, NATA is out there, you're right, because there isn't an association of 12-year-old boys who get electrocuted climbing in somebody else's tree, they don't have a membership organization; OPPD does, the Omaha Bar Assoc...I'm sorry, the Omaha Chamber of Commerce, the Lincoln Chamber of Commerce certainly do and they're out there. I tell you what, if in fact that rule or the rule about the guy who gets shot because he stops his car, after having broken up a fight, doesn't get a dime, if those don't strike you as being just, if there is a little sense, there is a question in your mind and you can't explain to me why that is fair, I tell you what, we've got an hour here, just one by one go out there, pull Barbara Botsch aside, walk up to Coach Jennings, check John Goc from the City of Lincoln, or Jerry Prazan, you look them in the eye and say, wait a second, why shouldn't the kid get to go to court? Why shouldn't this be able to go to the jury? Tell me why it was just that he never got a chance to go to the jury? And hear what you get. I don't think that job has been done by the people in this room, and I don't think that's what they've told you as to why...

PRESIDENT: One minute.

SENATOR LANDIS: ...what's good or bad about the bill. But there are people who suffer injuries, whose stories are not being told and this bill, while people make a bunch of bogus

arguments about whether it will make more lawsuits or less, whether it will settle case law. The question is, is our law just, that's the issue. And, if you're proud of that record of our recent cases, then you'll be happy to vote against this bill. I'm not, that's why I vote for this bill. But most important, I want an explanation for why those are just results and why that's fair and why those people should suffer those injuries just because they're not organized, they don't have a voice and unfortunately happen to be represented by lawyers, when they come down here, who are the subject of a certain amount of prejudice and bias, and they happen to run up against some people that we all happen to like in the business community who are very well organized and very well-heeled. I want an answer as to why that is just. I don't hear it in the lobby and I don't hear it on the floor, and I didn't hear it in the hearing or the record of it, and I want it in the record. I want to hear why these results are fair...

PRESIDENT: Time.

SENATOR LANDIS: ...because I don't think they are.

PRESIDENT: Thank you. Senator Hannibal, please, followed by Senator Ashford.

SENATOR HANNIBAL: Mr. President and members of the Legislature, I want to speak on the issue for some...probably not the best reasons, but I think important reasons. And I realize we're talking on amendments, and I'm going to speak to the issue as opposed to an amendment, which I will support, because I think it is important that somebody suggest that we're having a picture painted here that isn't entirely true. Senator Conway and Senator Landis have been making some very good arguments. Senator Conway wanted to profile those that were lobbying the issue, and pointed out their obvious bias, and I agree with that. Senator Landis has pointed out some very horrible tales of some people who probably have suffered some injustice, and it would be very difficult to argue against that. I would point out in both of those cases I have some other opinions, however. One...Senator Korshoj did have an opportunity to talk a little bit about the other side, and I applaud him for that, because if we're going to profile the lobby, which we do on occasion in here, if we're going to profile them, let's profile both sides. Obviously the business interests would like not to have lawsuits against them. Obviously business interests would like not to

have to pay claims. But just as important is the lobby on the other side, NATA, as pointed out by Senator Korshoj. Who gains and who wins with passage of this bill? It's perceivable that the business interests would lose if there are more lawsuits filed, and I think there will be either more lawsuits filed, or at least more lawsuits contested, more settlements, and that could probably hurt the business interests. And it's also just as true that the people who make the money when we're in litigation, when you've got a plaintiff versus a defendant, are the NATA association people. They're going to make money on this, if they have more lawsuits filed, and they win, if they're going to have more settlements settled, they won't have to go to court, and believe me there will be a business cost associated with it, whether you go to court or not, if your chances are there, it's a business decision. There will be more settlements outside. And I think if we're going to talk about it, let's at least understand that both sides out there have financial interests in that, both of them do. Senator Landis has pointed out some fairly, fairly explicit stories, and I cannot argue with those stories, I don't know all the cases to them. But I'd also point out to you, especially those of you who have been here for a number of years and have served on committees that deal with fairly sensitive issues, that we do get confronted a lot of times with stories we have callously come to call horror stories. And horror stories exist in every area of our endeavors, whether you want to talk about the optometrist/ophthalmologist issue or any health care issues, mental retardation, mental health, who gets injustice by our system, there is no question that there is injustices in our system. And it's great to point out those kinds of injustices, and if we can correct them, let's do it, that's what we're about. But the question is, are you correcting all the injustices and causing no more? The answer is, I don't know. I think there are tremendous merits to this bill on both sides. My only purpose in standing up here is saying, if we're going to paint a picture, let's paint the real picture. Senator Schimek and I were talking what we're really about is trying to make a decision on what is best for the people of the state. And, as a matter of fact, I agree with her on that, and I agree with her on the other thing that she said is very few of us really know what the ramifications of this bill are all about, and that's unfortunate, because we're being called upon to make that decision. I honestly don't know which is right for the State of Nebraska. I am skeptical, and yet it sounds eminently thin.

PRESIDENT: One minute.

SENATOR HANNIBAL: I've heard both sides of the arguments out there. I understand them, they make good cases, as good lobbyists always do, and on a debatable issue. But let's make sure we keep the picture clear in here as who the winners are and who the losers are. And both of them are standing out there and they're both financial. It's good for us to try to determine what is right for the State of Nebraska. If you're comfortable with how you feel on that, great, I'm not yet.

PRESIDENT: Thank you. Senator Ashford.

SENATOR ASHFORD: Question.

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

SENATOR ASHFORD: Mr. President.

PRESIDENT: Senator Ashford.

SENATOR ASHFORD: I would ask for a call of the house and would accept call in votes.

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

CLERK: 14 ayes, 0 nays to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please return to your seats and record your presence. Those not in the Chamber, please return to the Chamber and record your presence. Call in votes are authorized. Senator Haberman asked for a roll call vote. Sergeant-at-Arms, please round up the troops. Senator Kristensen, for what...oh, you want to close? Yeah, you can't...we have to have a roll call vote on ceasing debate first, then you may close. Please record your presence, if you haven't done so. Senator Robak, Senator Nelson, Senator Landis. We're looking for Senator Moore, Senator Hefner, Senator Baack, Senator Beck, Senator Byars. Looking for Senator Moore, Senator Eernard-Stevens, Senator Landis. Now we're looking for Senator Moore. Senator Haberman, may we go ahead? Okay. The question

is, shall debate cease. A roll call vote has been requested. Mr. Clerk.

CLERK: (Roll call vote taken. See page 436 of the Legislative Journal.) 34 ayes, 3 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Kristensen, would you like to close on the second section of your amendments.

SENATOR KRISTENSEN: Yes, Mr. President. Thank you.

PRESIDENT: The call is raised. However, it would be nice if more of you would stick around.

SENATOR KRISTENSEN: Real briefly, most of the speakers on this amendment all spoke to the bill. Again, these are amendments that were done pursuant to the bar study. These are the bar amendments that make procedural cleanup parts to this. This particular section deals with the district courts being under the political subdivisions Tort Claims Act, and merely will allow that jury trials will not be given to public entities, which we've always had that as the law in this state. This merely puts that into this bill to make sure that that's absolutely clear. And I would urge the adoption of this cleanup amendment. Thank you.

PRESIDENT: The question is the adoption of the second section of the Kristensen amendments. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 2 nays on adoption of the second portion of Senator Kristensen's amendment, Mr. President.

PRESIDENT: The second section of the Kristensen amendments are adopted. Now we're on the third section. We'll pick up where we left off. Senator Conway, did you wish....Senator Kristensen, did you want to open on the third section of your amendments?

SENATOR KRISTENSEN: Just very briefly. These are the last amendments which substitute the word "party" for "defendant". It also moves the effective date of this bill back from March 1, 1990, to March 1, 1991. And it also provides that the end for individuals and parties that can have a release or a covenant not to sue or some other agreement, that that will dismiss the

entire case, and it will circumvent the reallocation procedures. Basically these again are the ending of the cleanup amendments that the Bar Association has outlined, which are procedural amendments and are not major, substantive changes.

PRESIDENT: Thank you. Senator Conway, please.

SENATOR CONWAY: Mr. President, I'd like to call the question.

PRESIDENT: Did you say call the question? Okay. Is there any objection? Okay, we'll go ahead with a few of them, so we have both sides, Senator Conway, but thank you. Senator Pirsch. Senator Pirsch.

SENATOR PIRSCH: Am I next?

PRESIDENT: Yes.

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I do have a question on the release covenant not to sue or similar agreement of Senator Kristensen, if he would yield.

PRESIDENT: Senator Kristensen.

SENATOR KRISTENSEN: Yes.

SENATOR PIRSCH: Senator Kristensen, we are adding a second part to Section 7, and both deal with the release covenant not to sue or similar agreement, and it looks like one is the...a person liable shall discharge that person, and the other one is a person liable shall preclude that person. Now is that when a settlement is made before the case goes to trial for other parties, is that why we have to add the "preclude"?

SENATOR KRISTENSEN: Yes, in other words, if you enter into an agreement...

SENATOR PIRSCH: This is before any action has been taken.

SENATOR KRISTENSEN: Right, well, the lawsuit would get filed, but before you go to trial.

SENATOR PIRSCH: Right.

SENATOR KRISTENSEN: So you'd enter into an agreement not

to...well, we'd enter into our agreement to pay whatever sum...

SENATOR PIRSCH: Right.

SENATOR KRISTENSEN: ...we thought was appropriate to settle the case. If I was suing you, I would sign a release.

SENATOR PIRSCH: We settled, in other words.

SENATOR KRISTENSEN: Right, we settled.

SENATOR PIRSCH: And then the other is the discharge, which is after the case is settled. Is that the difference between the two?

SENATOR KRISTENSEN: Can you tell me what page of the bill you're reading on, real quick, Senator Pirsch.

SENATOR PIRSCH: Well, Section 7, which will be the first...

SENATOR KRISTENSEN: Okay.

SENATOR PIRSCH: ...part of Section 7, which is the old language in the bill, talks about the agreement entered into by claimant and a person liable shall discharge that person from all liability, but shall not discharge any other persons. What we are saying in the second part or what your amendments would make the second part of that section is that released covenant by a claimant and a person liable shall preclude that person from being made a party. So, as I get it, that's before there is any judgment, and the other discharges you during the judgment. Is that correct?

SENATOR KRISTENSEN: No, I think both of them, both of them deal with settlements before hand. And what we do, the bill, as drafted, says shall discharge, this now says shall preclude you from making...being a party of any action pending, that's, dragging it back in.

SENATOR PIRSCH: Right, so you would not go into the action then, because you've already settled. But...

PRESIDENT: Excuse me, Senator Pirsch, Senator Pirsch. (Gavel.) Please hold it down so those discussing the subject can hear each other. Thank you.

SENATOR PIRSCH: But then at the end of both sections, if any, shall be concerned in accordance with Section 4, which is the final agreement of settlement. Now, how long can a case go on with those who settle right away, or those who wait until it goes into court? When does the liability for your part ever end?

SENATOR KRISTENSEN: If you...if you...

SENATOR PIRSCH: If you don't make a settlement or indeed you aren't called in until later.

SENATOR KRISTENSEN: If you don't make a settlement and you go to court, you're there for the whole period of time. I mean you're there through the trial, through...

SENATOR PIRSCH: Okay, and it's gone to court,...

SENATOR KRISTENSEN: Okay.

SENATOR PIRSCH: ...then how long is the liability for other parts, or those who might be included in the action? How long can that be again brought into?

SENATOR KRISTENSEN: Oh, can we bring them back into another suit?

SENATOR PIRSCH: Right.

SENATOR KRISTENSEN: Okay,...

SENATOR PIRSCH: Or into the same suit.

SENATOR KRISTENSEN: Once you've had a lawsuit and you've been...and your fault has been determined, and there has been a judgment entered in to you, they can't sue you again for those actions. Now if there is a different cause of action,...

PRESIDENT: One minute.

SENATOR KRISTENSEN: ...they can. If you settle, it's the same way. Once you settle, they can't come back and resue you on the same matters. That's the reason you'd want to settle.

SENATOR PIRSCH: Well, it says, it shall be a basis for that person's dismissal, but the person's fault shall be considered in accordance with Section 4 of this act. So, even if you settle before or if you are made to settle within the court, I'm trying to see that it still will be decided at the end of the decision. And even if you have settled ahead of time, you still will have to pay in accordance to your percentage of fault. Is that not correct?

SENATOR KRISTENSEN: No, that is not correct.

SENATOR PIRSCH: Okay.

SENATOR KRISTENSEN: If you settle, you're going to get your percentage and the amount you settle for is then going to go back into the reallocation or into the determination of fault.

SENATOR PIRSCH: Okay. So you'd be better off settling then ahead of time, and then that's done with, and that goes into the final judgment, so yours is already then determined by your settlement before...

SENATOR KRISTENSEN: That's right.

SENATOR PIRSCH: ...and then the rest of them pick up what you...

PRESIDENT: Time.

SENATOR PIRSCH: ...what you did not.

SENATOR KRISTENSEN: They share in the rest of it, they share in the rest of the pie, whatever you didn't settle for. That's what (inaudible.)

SENATOR PIRSCH: No matter what your percentage?

SENATOR KRISTENSEN: Right, well that's...that percentage would figure in later,...

PRESIDENT: Time has expired.

SENATOR KRISTENSEN: (Interrupted.)

SENATOR PIRSCH: The percentage would figure in later for what?

SENATOR KRISTENSEN: Reallocation purposes, if a part of it was uncollectible.

SENATOR PIRSCH: I see.

SENATOR KRISTENSEN: Yeah.

SENATOR PIRSCH: Okay, thank you.

PRESIDENT: Thank you. Senator Abboud, please. Senator Abboud.

SENATOR ABOUD: Pass.

PRESIDENT: Senator Korshoj.

SENATOR KORSHOJ: Mr. Speaker and members, I want to clear up something that maybe as I read it it didn't come out right because Senator Landis made it sound like that I had said that that Fred Kauffman had said that there were no injustices. So here is what he said, there may be injustices, and I think that issue could be resolved by a very few strokes of the pen and change that and have the problem solved. He does think there could be injustices. Which, to put it in simple terms, if your car isn't running right, and you go in the garage and they say, well, you got a plug or two that's not working, you don't overhaul the car, you change the plugs. And I can't see why, if there are some injustices, it can't be addressed by changing the whole system. I don't know, I'm...honest to God, I don't know. And I haven't been whipsawed by the lobbyists, because they knew I was against it after the hearing. I talked to them, but there's been no banging away at me. I just think we're really jumping off into a major change. And I know this doesn't have much to do with the amendment. He says, wrong page, maybe can't find it, but I've got five minutes. He says, I foresee multiple tiers of litigation, backlogs and unnecessary use of the courts which, if there are social changes, we need very brief amendments to existing statutes could create that. That's where I'm coming from. If anybody wants the rest of this time, because the next person might call the question. I'll just give the next person the time. Brad. Senator Ashford, the rest of my time.

PRESIDENT: Okay, you have three minutes.

SENATOR ASHFORD: Thank you, Mr. President. And I'd like to, first of all, I'll get to the point, but I'd like to thank Senator Hannibal for his statements. I think he's raised a good point, that this...these issues are of great important and they need to be discussed. And I also appreciate Senator Korshoj's reference to the Fred Kauffman testimony. Mr. Kauffman is a lawyer for insurance interests, that does not necessarily mean that what he says does not have some validity and does not need to be discussed, as Senator Hannibal rightly says. But I would suggest to you that in order to answer those questions the only place we can find answers is to look to those states, in fact every other state in the union that has adopted comparative negligence. To answer your question, Senator Korshoj, first, can these changes be made with little amendment? I think the answer is absolutely not. I think if we did have a system of comparative negligence, then yes, we could go in and fine-tune that system, if there were problems in the reallocation formula, or if we wished to change the percentage of fault in order for a plaintiff to recover, we could change those. But, no, when you have slight gross, as Senator Landis pointed out, the problem with slight gross is that there are significant injustices. And so what we need to do when we change slight gross is develop a system that is also fair to defendants as well as plaintiffs. And that's what we've tried to do by abolishing...adopting comparative negligence and abolishing joint and several liability. So we're abolishing the situation where a defendant can be held liable for the full amount of a judgment, the million dollar example. So that's what we're trying to do here, we're trying to have it a balanced approach in this thing. Now I think what we need to do in answering Fred Kauffman, first of all, Senator Kristensen has gone through in his amendments...

PRESIDENT: One minute.

SENATOR ASHFORD: ...many of the concerns that Fred Kauffman raised. The Fred Kauffman letter was before the Bar Association Committee when they made the suggested changes in the bill. So I think we can go through that point by point, or we can look at those amendments and compare those to the letter. I think you'll find that a lot of the changes have been made. But in conclusion, Victor Schwartz was the law professor, the gentleman that came and testified about comparative fault, in fact he came representing the insurance companies at the time of the hearing on LB 159. Here's what he says about excessive litigation, Senator Korshoj, and this guy is objective, he doesn't represent

plaintiffs of defendants, he says that critics also contend that comparative negligence creates administrative problems, that it discourages settlement and the courts will have an even greater flood of litigation than they do now. This contention is refuted by a careful study conducted by the Columbia University project for affective justice in cooperation with the Arkansas Bar Association of the experience in Arkansas before and after the state adopted comparative negligence.

PRESIDENT: Time.

SENATOR ASHFORD: Settlements occurred with the same degree of frequency, under comparative, as under the contributory negligence rule. The point is that, as Senator Hannibal rightly makes, is if we're going to change the system is it going to be fair to everybody. I would suggest that Senator Landis has made a good case that slight gross is not fair to the plaintiffs.

PRESIDENT: Time.

SENATOR ASHFORD: So if we're going to change that, if by changing it are we going to increase the litigation as...increase the litigation on the other side, as a trade-off. The answer is no.

PRESIDENT: Time.

SENATOR ASHFORD: The answer is no. It has not been the experience in other states. Thank you.

PRESIDENT: Senator Ashford, you may speak on your own time now.

SENATOR ASHFORD: I'd call the question, Mr. Speaker.

PRESIDENT: 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. We're voting on ceasing debate. Record, Mr. Clerk, please.

CLERK: 28 ayes, 2 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Kristensen, would you like to close on your third section of your amendment.

SENATOR KRISTENSEN: Thank you, Mr. President. In response to

Senator Pirsch, and I was just down there trying to explain to her a little bit, even having to admit to her that I was slightly in error on one of the examples I gave to her. I want to go back and address, briefly, what she was discussing, and that was the matter of when one party will settle. If you have two defendants and one party settles, the jury is still going to look at both defendants and make some allocation of percentage of fault between the two of them. And if the one party has already settled and contracted out, he can't be hit for any more, even if the jury says he was 90 percent liable, he's still going to only be hit with what he settled for. So, in that effect, the other part of it then becomes uncollectible to the plaintiff. If he took that gamble and settled with the first defendant, and the second defendant went to trial and they didn't find him negligent at all, the plaintiff made a bad deal. The plaintiff threw the dice and missed. What this really does is it moves back the effective date to the first of March, 1991, allows us plenty of opportunity to implement this system. And, quite frankly, these are the amendments. I think that the amendments are not the controversial part of this bill. The bill itself is the part where you're going to want to get up and talk and you're going to want to ask questions about how and why the bill works, and I encourage you to do that. At this point, these amendments are the procedural changes. These are the things that will make the bill run. If you don't like the bill, but if it passes without these amendments, you're really not going to like it. You need these amendments to make the bill at least procedurally work. And, with that, I would ask you to look at some of the comments that we're going to make after the amendments get on because that is really the meat of this bill. And, with that, I would urge the adoption of these last cleanup amendments. Thank you.

PRESIDENT: Thank you. The question is the adoption of the third section of the Kristensen amendments. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the third portion of Senator Kristensen's amendment.

PRESIDENT: The Kristensen amendments are all adopted now. Now we're back on the advancement of the bill. Senator Kristensen, did you wish to speak on that? Okay. Senator McFarland, please, followed by Senator Smith.

SENATOR MCFARLAND: Thank you, Mr. Lieutenant Governor and fellow senators. There has been a lot of conjecture on the floor today, and there's been a lot of statements and seemingly contradictory testimony about the merits of this bill. I'm going to try to keep it fairly simple as far as my arguments in favor of the bill.

PRESIDENT: Senator McFarland, may I interrupt you a minute.

SENATOR MCFARLAND: Sure.

PRESIDENT: (Gavel.) Could we hold it down so we can hear the speakers, please. Thank you.

SENATOR MCFARLAND: Thank you very much. The simple fact of the matter is that I think 48, possibly 49 states have passed some type of comparative fault legislation. Almost every other state in our United States has passed a comparative fault bill similar or in some...at least in philosophy similar to the bill we're considering today. We, as a state, are far behind the times as far as how we handle civil litigation with respect to personal injury claims. The slight gross negligence standard is a standard of the past, it is a standard of the 1910, the 1920 era. In the past 50 to 60 years almost all the states in our United States have went to a comparative fault standard, and the reason is because the comparative fault standard is much fairer, both for plaintiffs and defendants. We ought to be embarrassed by the fact that in 1988, 33 of us voted in favor of this, almost exact bill, 33 people, in 1988, said, yes, this is good policy, this is a good way to improve the system of civil litigation in our state. And then we have a veto of that legislation after the session is over, so we can't even come back and override that veto. The veto was a mistake. The embarrassing thing is that now we come back with the same bill last year, and I think there were not 25 votes to get it advanced past General File. The embarrassment is that it shows how uninformed and uneducated a number of senators are on this issue. We owe a duty to the people we represent to be educated and informed on these issues. I think if any one of you who, and I don't think you have to be a lawyer to understand the issues involved here. If any one of you would just sit down and read the issues on your own, study what has been done in other states, ask yourself why have the overwhelming majority of our states and the other states in the United States passed a form of comparative fault liability you would come to the answer

that, yes, they passed it because it is fair, it is simpler, it is more just than the standard that we deal under. The standard that we are...we have here in Nebraska is outdated, we're in the dark ages as far as civil litigation in this area is concerned. If you consider that, think about why all the other states have been in favor of this type of legislation, I think you can only reach a conclusion that this comparative fault standard would be a drastic improvement over the standard we have here in Nebraska today. I think it would be fair for all parties concerned and I would urge you, if you don't know, if you're uninformed, think about that result and vote for the bill, and at least get it on Select File so that when you come back to Select File you can read about it and not just listen to the people or the lobbyists who try to pull you one way or another, sit down, look at the information you have in your files and read about it, and I think if you do you'll find out that it is a fair and equitable system, and it's one that we should have in Nebraska, we should have had it many years ago. Thank you.

PRESIDENT: Thank you. Senator Smith, please, followed by Senator Pirsch.

SENATOR SMITH: Thank you, Mr. Chairman. Members of the body, to a degree Senator McFarland is right. We are, many of us, uninformed. But, Senator McFarland, I take offense at your inference that we just, you know, that we're not making any effort to try to know what's going on here and so that's the reason why we should vote for this bill. I think that we need to ask questions. I will tell you that it's very difficult for those of us that are not attorneys to be able to ask the kinds of questions we should be asking those of you that are strongly standing on the floor supporting this bill. As attorneys you're in a position, yes, to be able to understand this issue a lot better than we are. But I can tell you something else, when I look at this sheet, the committee statement, I can see that the proponents of the bill were the trial attorneys, and the opponents of the bill were the defense attorneys. So it may have something to do with which side of the issue you stand on and where you represent whether you support this bill or not, not just whether you're a stupid other senator in the body that doesn't know anything. And I would be willing to debate some other issues that I don't think you're very well informed on any other time than this right now. I'm not here to debate whether I'm smarter than you are or not. What I'm here to do is try to figure out the answers to this problem that has been brought to

us by the piece of legislation that we're being asked to support. So I'm going to try to ask a few questions. And, yes, I have been talked to by a few people about their concerns. Here's a concern that I do have, though, and some of this has come out to me in the course of listening to the debate on the floor here. Senator Hannibal made some very good statements, I thought. One of the points that was brought out is we're talking here about doing the best job we can to represent the people of the state. The people of the state are not only the plaintiffs, they are the defendants. And so it behooves us to try to be fair for all sides of the issue, not just the side you happen to be on. And so what I'm going to do is try to ask you a question here about the fact that if we had, not you. I would like to ask Senator Ashford, if we had a situation where you had a plaintiff who was, and I'm going to use some percentages here, because my understanding is that up to 49 percent you can be a...you can take the...you can bring the case in. Okay. Let's say, for the sake of making it easier we'll make all these be round figures and I'm going to say 40 percent, the plaintiff was 40 percent to blame in the case that he's bringing, that he's filing suit for, and that there were three defendants that were named, they each were 20 percent at fault, if two of those defendants, let's say, were...let's say they were bankrupt, they just didn't have the resources to pay their share, the burden, in my understanding, goes to the remaining defendants to pay the cost, right?

SENATOR ASHFORD: That's a good question, Senator Smith, and the answer is correct, in that situation where you have...when you're trying to allocate default you would allocate...actually it wouldn't go all to that 20 percent defendant. It would be allocated between the 40 percent plaintiff and...

SENATOR SMITH: The plaintiff, okay.

SENATOR ASHFORD: Everybody would take a....Everybody would take a proportionate share...or the...

SENATOR SMITH: The ones that can, the ones that are bankrupt don't take any share, in my understanding.

SENATOR ASHFORD: That's correct.

SENATOR SMITH: All right, now, all right, so let's say that this defendant now has 60 percent that he's going to take the

blame for, do you think that's fair, Senator McFarland, when the plaintiff was 40 percent to blame. Just answer me yes or no.

SENATOR McFARLAND: I think it's incorrect the way it's been answered.

SENATOR SMITH: Oh, see, now...so I'm ignorant, so I...but now whose going to tell me the answer to this? We have two attorneys here that disagree.

SENATOR McFARLAND: Can I respond, am I on?

PRESIDENT: Yes, please do.

SENATOR McFARLAND: My understanding is...

SENATOR SMITH: Briefly, please.

SENATOR McFARLAND: ...if you had a \$100,000 judgment...

SENATOR SMITH: No, I want you to use the percentages I was talking about.

SENATOR McFARLAND: The plaintiff is 40 percent responsible...

SENATOR SMITH: Yes.

SENATOR McFARLAND: ...he actually forfeits \$40,000, he doesn't reccver it. One plaintiff...one defendant is 20 percent responsible and the others don't have enough money to pay, then that \$40,000 that is unpaid would be apportioned between the responsible defendant and the plaintiff. And since the plaintiff was twice as responsible as the 20 percent defendant of that other \$40,000 that would be unpaid, it would be split up two to one, plaintiff would have to, in effect, forfeit two-thirds of that \$40,000.

PRESIDENT: One minute.

SENATOR McFARLAND: The defendant that was 20 percent would have to pay the additional third of that \$40,000.

SENATOR SMITH: So they'd split the difference between the ones that were not, that could not pay their share.

SENATOR MCFARLAND: It should be pro-rated according to their fault.

SENATOR SMITH: Okay, now then I have another question. Is it possible, and thank you for that clarification then. Do you agree with him on that?

SENATOR ASHFORD: Pro-rata, so it would be...

SENATOR SMITH: All right.

SENATOR ASHFORD: The plaintiff would take (inaudible) 40 percent.

SENATOR SMITH: So he's correct.

SENATOR ASHFORD: Yes.

SENATOR SMITH: Okay, now let me ask you another question and that is, if the...can't, at the same time, since the plaintiff is more at fault than the person that he's suing, in effect, the individuals, not collectively but individually more at fault for what occurred, can they be in a position of suing him?

SENATOR ASHFORD: Sure.

SENATOR SMITH: So are we opening, is that presently...

SENATOR ASHFORD: Sure, and that's the law as it stands today, that in...in that scenario that you've raised, which is a good example, it's an excellent example, the scenario that you have raised the plaintiff would bring the action. And, if it's that close a case, where you have three defendants like that that are 20, 30 percent negligent, in almost all cases you're going to have a counter suit or a counter claim by those defendants back against the plaintiff. So then it would be no different, Senator Smith, than what we have now as far as the case would go the same way. But when the jury makes its determination as to fault and damages it would have that different standard or that allocation standard rather than slight gross.

PRESIDENT: Time.

SENATOR ASHFORD: That's, basically, how it would work. A different appli...a different standard is applied, the case is

tried the same way.

PRESIDENT: Time.

SENATOR SMITH: Thank you.

PRESIDENT: Thank you. Senator Pirsch, please, followed by Senator Elmer.

SENATOR PIRSCH: Thank you, Mr. President and members of the body. Now, I get a chance to address the bill. And, first of all, I have a disclaimer. I want to tell you I'm not a trial attorney and I'm not a defense attorney. But I have certainly heard a lot of testimony on tort reform in my ten years on the Judiciary Committee. And quite frankly Senator Conway's original LB 425 was what I thought to be a good beginning to tort reform. And, you know, we started tort reform, or started talking about it in the first place because of the double digit inflation rates, of escalating insurance premiums, a whole lot of factors that caused us all to become alarmed, as we are now, with the health care costs and the rising insurance for health care. But as Senator Conway pointed out, we pulled sections out of LB 425 and it was a very lengthy and multifaceted bill. And as we pulled them out, the Legislature passed those. And I think that was tort reform, and I supported them. Nebraska started, as I hope you have handouts, being the leader in this slight versus gross, which is really one of the first comparative faults that came into existence, I believe, in 1913, and I may stand corrected. At that time people were just out, if they had fault. But we were the leader, in 1913, to establish that slight versus gross. And juries now use some sort of percentage deciding simply to determine if the damages claimed are so many dollars then did the plaintiff's negligence, indeed, contribute to the tort; and, if so, how much to determine if their contributory negligence was slight. Or, was it to the degree that it might be as much, indeed, as the defendant's. As Senator Smith pointed out, indeed, if we change this that plaintiff might have more negligence than any of the individual defendants. The jury also will have to determine what percentage of the tort claim is the defendant's negligence. And then they have to determine if that defendant's negligence was gross, and what that gross contribution amounted to. There is so much to talk about on this issue because it is a complicated issue. And I really appreciate the members being willing to talk about this and to ask questions and to debate

it. Sometimes the more complicated the issue the faster we want to get rid of it. But I think we should think and we should talk about this. I have questions, and perhaps Senator Kristensen would be agreeable again...

PRESIDENT: Senator Kristensen.

SENATOR KRISTENSEN: Yes, Senator Pirsch.

SENATOR PIRSCH: Senator Kristensen, one of the questions that has been ar...has arisen is, how workmen's comp would fit into the scheme, and if, indeed, a workmen's compensation was part of the settlement then how can you go back and reallocate, or how can a jury determine that that workmen's compensation was indeed...should be this percent?

SENATOR KRISTENSEN: Senator Pirsch, I'm going to be real candid with you. I don't know how worker's compensation...

PRESIDENT: One minute.

SENATOR KRISTENSEN: ...fits into this.

SENATOR PIRSCH: Okay. That was a question brought up by this Mr. Frederick Kauffman in his letter. And he brought up quite a few points, and Senator Korshoj has attributed some. We did have in front of our Judiciary Committee, and...How much time do I have? We had a fellow who, Victor Schwartz, who was the...

PRESIDENT: Time.

SENATOR SMITH: Okay.

PRESIDENT: Thank you. Senator Elmer, please.

SENATOR ELMER: Thank you, Mr. President. Been following this thing as closely as I can, not being an attorney. And talking about this percentages of negligence has kind of been going through my mind. And I'd like to ask Senator McFarland possibly a question or two, if he's here, or, Senator Kristensen, if he's here, a couple of questions. Are they gone?

PRESIDENT: Which one did you wish to ask?

SENATOR ELMER: Senator Kristensen is coming.

PRESIDENT: Senator Kristensen, please, would you respond.

SENATOR ELMER: Okay. Senator Pirsch and Senator Smith talked about this a little bit. But taking a possible scenario of something that could happen, say a mother picks up her children after school and is on her way home and she's driving down the highway at...within the speed limit, and a motorcycle rider slides across the highway in front of her, and she, in avoidance of this motorcycle, goes off the road and hits a utility pole, kills one of her children. She brings an action against the motorcycle driver for forcing her off the road, and names as party to this suit the city, because the light pole was there. And jury assigns maybe 5 percent responsibility to the city, because of the light pole, and 95 percent liability to the motorcycle rider and awards them \$500,000. Okay, in trying to get the 95 percent of that from the motorcycle rider they find he is incompetent, he's drunk, he has no insurance, he's been living in a tent under the railroad bridge and has no financial capability. What does that do the city and it's light pole?

SENATOR KRISTENSEN: You're asking me if they cannot collect the debt from the motorcycle operator, and he was 95 percent liable, the plaintiff had no contributory negligence at all.

SENATOR ELMER: None at all.

SENATOR KRISTENSEN: Okay. It would be the same as if we...if it had happened under the current lawsuit system we have today.

SENATOR ELMER: Which is?

SENATOR KRISTENSEN: Which is that the first defendant, which would have been the city or the county, whoever, would be liable for the entire amount of the judgment, up to the amount of their cap, and they have a liability cap for their protection, so they don't have tremendous amounts of awards.

SENATOR ELMER: So, because that motorcyclist, you know and really that light pole being there, a very, very small part of it, but they're going to end up paying to the maximum.

SENATOR KRISTENSEN: ...of their cap, right. Same as they would today under our current system.

SENATOR ELMER: That sounds like neither system would be fair. Thank you.

PRESIDENT: Thank you. Senator Abboud, please.

SENATOR ABOUD: Question.

PRESIDENT: Question has been called. Senator Haberman. You object?

SENATOR HABERMAN: We have not had possibly three, basically two people ask questions, and there are some of us that have questions we'd like to ask, I have not personally spoken on the issue, so I would like to have a little more debate.

PRESIDENT: All right. I'll allow some more speakers then. Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President. I'll just make a brief couple of points. I think, first, Senator Pirsch asked the question about workmen's compensation. And I'm not going to go into the formula now, but I can go over it with Senator Pirsch. But, generally, there is a...the workmen's compensation allocation is part...or the workmen's compensation issue is covered under the reallocation formula. For example, if you were to have an employer that would be 40, 50, 60 percent negligent, that negligence of the employer goes into the formula to determine the percentage of fault or damages paid out by the other defendants and by the plaintiff or the allocation to the plaintiff. So the workmen's compensation...or employer would not...his negligence, his or her negligence or its negligence would be part of the formula. And it would help or benefit the other two defendants or other one defendant, because the negligence of that workmen's compensation employer would be allocated. I can show you the formula later. But, basically, it is covered. And on the issue of Victor Schwartz, I think that it's....And I believe Senator Pirsch brought up the issue of insurance rates. We can....Victor Schwartz, who is really the only objective expert that we have in this debate, he was brought to the...to Nebraska by the State Chamber. And here's what he says in his book about insurance rates, the critics of comparative negligence contend that it will be too costly, because it will push insurance rates to extraordinary heights. The North Carolina study discussed in Section 2.4 of his...referring to 2.4 of his book, and the Arkansas study,

mentioned above, as well as a most painstaking survey conducted by Professor Cornelius Beck, of the University of Washington School of Law, refute this supposition. The effect of comparative negligence on insurance rates has been minimal. I would also point out that the Iowa experience, which had pure comparative negligence, and then a modified comparative negligence system, has lower insurance rates than in Nebraska. And then, finally, talk to your business constituents. Have their insurance rates gone down or not risen extensively in the last three years, four years, because we have slight gross? I think the answer is no, their insurance rates have gone up significantly. The answer is there is no evidence at all concrete that insurance rates are affected one way or the other, whether or not Nebraska has comparative negligence. Thank you.

PRESIDENT: Thank you. Senator Haberman, please, followed by Senator Conway.

SENATOR HABERMAN: Mr. President, members of the body, I would like to ask some questions of Senator Ashford, please.

PRESIDENT: Senator Ashford, please, would you respond.

SENATOR HABERMAN: Senator Ashford, I'm going to try to phrase these questions so we can save some time, so that you can give a yes or no. My first question is, you have stated or eluded to that the purpose of LB 159 was to make the tort system in Nebraska a fairer system, did you not?

SENATOR ASHFORD: That's the reason for bringing it, yes.

SENATOR HABERMAN: Yes. Then let me ask you this, under the proposed system, if you had a person suing three defendants...

SENATOR ASHFORD: Yes.

SENATOR HABERMAN: ...the jury would allocate the percentage of fault between all four people. Is that right?

SENATOR ASHFORD: That's correct.

SENATOR HABERMAN: So, suppose the jury found that the plaintiff was 40 percent negligent and each of the three defendants were 20 percent negligent, the plaintiff would recover. Is that right?

SENATOR ASHFORD: The plaintiff would recover something.

SENATOR HABERMAN: Is that right, he would recover?

SENATOR ASHFORD: Something.

SENATOR HABERMAN: So under this new fair system a plaintiff could be twice as negligent as any one of the defendants and still recover. Is that right?

SENATOR ASHFORD: Something, a little bit, it would be...

SENATOR HABERMAN: But is that right?

SENATOR ASHFORD: Recover something, yes.

SENATOR HABERMAN: Okay. Now, suppose further that two of the three defendants were judgment proof, now that's lawyer legalese, so I'll explain what it is. It means that if somebody doesn't have any money and you can't collect, or they're in bankruptcy, they're called judgment proof. Suppose further that two of the three defendants were judgment proof, how much could that plaintiff collect from the last remaining defendant, who is only half as negligent as the plaintiff?

SENATOR ASHFORD: Is that a question, or...

SENATOR HABERMAN: Well, yes. How much could the plaintiff collect from the last remaining defendant who is only half as negligent as the plaintiff?

SENATOR ASHFORD: Senator Haberman, let me ask you, I can't answer that yes or no. Let me answer it this way, very briefly, in that case you would have...you go back to is the law as it is today, except that the plaintiff's negligence would also be put into the calculation. So today the defendant pays the whole...that defendant would pay the whole thing.

SENATOR HABERMAN: Wait a minute, Senator Ashford.

SENATOR ASHFORD: No, I'm answering your question.

SENATOR HABERMAN: No, you're not. I'm saying, how much could that plaintiff collect? Ten percent, 20 percent or nothing?

SENATOR ASHFORD: I guess I didn't follow your...it would be, if it's \$100,000 you take the 40 percent off, that's 60, then there would be a reallocation as to those three defendants, I'd have to work out the calculation, but it would be less than 60,000.

SENATOR HABERMAN: All right, I think I understand now, Senator Ashford. Under your new fair system everybody could collect from everybody, regardless of fault, and the attorneys take a percent from whomever is left, is that correct?

SENATOR ASHFORD: I guess, I'm not...so...I mean.

SENATOR HABERMAN: Senator Ashford, you've been a gentleman and answered my questions, I'd like to thank you very much.

PRESIDENT: Thank you. Senator Conway, please.

SENATOR CONWAY: Mr. President, I'd like to call the question now, please.

PRESIDENT: 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, 0 nays to cease debate, Mr. President.

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

SENATOR CONWAY: Thank you, Mr. President and members. In closing I would like to be brief and then share a final minute or so for Senator Abboud, who has a couple of points he would also like to make. I think we go back to this issue, as Senator Pirsch aptly pointed out, back in the 425 era, as we talked about those kinds of things, we have accomplished many things in the area of tort reform. This was one of those things that was on the table. But as we processed through that in order to be fair, and what was on the table at that time was the joint and several question, which was an attempt to abolish it at that time. Through legal theory, through the help of Dean Perlman at the law school, through the help of the Chief Justice of the Supreme Court who had just retired at that time and who also helped us on that, Norm Krivosha, and through other theorists working in theory they convinced me that there was no way that

we could adjust the joint and several in dealing with allocations and not go back and deal with the slight gross provisions. One of the rules that I came into this and entered into this from the very beginning, again with the perspective of economic development in the best interests of all Nebraskans, was that we could not and should not structure ourselves in such a way that if someone truly was injured and had a recoverable situation that they would be left holding the bag and not get anything. This is where the joint several concept came in in terms of the reallocation. Under current law, if we have the so called deep pocket, the deep pocket we usually think of at the time is usually also a minimal contributor to the happening from the defendants side, a 10 percent, or someone who is very low, that person, under current law, is usually identified by the plaintiff's attorney and the plaintiff to say there is the person who has the money, we want the entire judgment paid by that person. Naturally, they're going to name the person who they realize that they can collect from. Then it is that person's responsibility to go back and file additional suits against his co-defendants to try to recover the amounts that he should not have lost. If you look at the inequity of the situation, if someone has a case, if they get past the slight gross standard that we have, if they have that case, they now collect 100 percent of the loss, even if they contributed a great deal themselves. Now, what is slight and what is gross? It's a subjective opinion currently on the part of a jury or on the trier of fact that their slight addition on the part of the injured, that their contribution is slight. Well, what is that? Is that 10 percent? Is that 20 percent? It's still a subjective opinion. And I think it was pointed out very aptly by Senator Landis, that trier of fact is going to look at that. And if we have someone, an atrocious situation in some cases, and we have a deep pocket over here, that subjective decision, in many cases, as we look at the joint and several side, someone may end up paying the whole load, even though that person was a major contributor, and therefore we have an injustice on the side of that joint and several. So the bringing of these two issues together in a more fair process, to the best of our ability, was what our intention was. And we worked, and we worked and we worked, and there was compromise and there was both sides gave up a great deal in many cases, because the old issue, if you remember, was both sides wanted just their side and not have to deal with the other side. And we used to have bills introduced with those singular fashions, do away with slight gross. Business community would come in and say, do away

with joint several. We found, as we tried to dismantle joint several, that there were many positions where if, in fact, you could not reallocate, given that empty pocket, then the injured party was going to walk away with nothing, and therefore we needed to make sure that a truly injured party is compensated, only to the extent that someone else caused them injury, and subtract whatever they contributed. And that's where we are. I think it's a fair and honest bill.

PRESIDENT: One minute.

SENATOR CONWAY: I think it will support the business industry much better, once they sit down and analyze it, and as we compare it to what's happening in other states than what a lot of the principles who are out here working the other side of the issue portray. I'd like to give the rest of my time to Senator Abboud, please.

PRESIDENT: Senator Abboud, please.

SENATOR ABOUD: Yes, Mr. President, colleagues, I'd like to just focus in on one particular point that occurred to me last year. We had two bills before the Judiciary Committee last year. One of them, actually there was similarity in only one instance, LB 443, Senator Robak's bill last year dealing with rape. It was fascinating to me that in this United States we were the last state to provide for corroboration, which means that if someone is raped that that individual, additional evidence has to be presented. You don't just rely upon that person's word. Nebraska was the only state in the nation that was...had a law like that. And, unfortunately, we're the last state in the nation that has this kind of a system of negligence. And maybe in 1910 or 12, whenever that law was passed, it was breaking law, breaking new ground. But we're currently behind the times. How does that happen? I don't know. But it was fascinating to me last year that we allowed a woman to be raped and then require that woman to come up with some additional evidence in order to prove her case. I think it's time for a change and I urge the body to move LB 159 onto Select File. Thank you.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor vote aye, opposed nay.

SENATOR CONWAY: Mr. President.

January 19, 1990

LB 159, 567, 567A, 769, 851, 900, 915
957, 964, 966, 968, 994, 997, 1010

PRESIDENT: Senator Conway.

SENATOR CONWAY: Given the nature of the dinner hour and the like, and I'm sure some people had commitments that are...they are waiting in the wings in their offices, I'd like to have a call of the house, please.

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

CLERK: 22 ayes, 3 nays, Mr. President, to go under call.

PRESIDENT: Okay. The house is under call. Please record your presence. Roll call vote has been requested in reverse order...in regular order, excuse me. So please look up to see if your light is lit, illuminated. Senator Haberman, would you record your presence, please. Thank you. We're looking for Senator Bernard-Stevens and Senator Dierks. Sergeant-at-Arms, how you coming with Senator...Well, there is Senator Bernard-Stevens. Senator Dierks. There he is. Ladies and gentlemen, the question is the advancement of the bill. Roll call vote has been requested in regular order. Will you please hold down the conversation so the Clerk can hear your response. Mr. Clerk.

CLERK: (Roll call vote taken. See page 438 of the Legislative Journal.) 25 ayes, 16 nays, Mr. President, on the advancement of the bill.

PRESIDENT: The bill is advanced. Mr. Clerk, do you have anything good for the cause?

CLERK: Mr. President, your Committee on Urban Affairs, whose Chair is Senator Hartnett, to whom was referred LB 851, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File; LB 957, General File; LB 964, General File; LB 966, General File; LB 968, General File. Health and Human Services Committee, whose Chair is Senator Wesely, reports LB 900 to General File; LB 915, General File; LB 994, General File; LB 997, General File; and LB 1010, General File. Senator Withem has amendments to LB 567 and LB 567A; Senator Smith to LB 769. And I have notice of hearing from Transportation Committee, Government Committee,

January 23, 1990

LB 159, 259, 259A, 534, 601, 730, 769
818-820, 1088

PRESIDENT: Yes, Senator Bernard-Stevens, we're back to your amendment.

SENATOR BERNARD-STEVENS: I guess I'd like to have a clarification in my mind and, Senator Chambers, I guess I'll ask you a question if I may.

PRESIDENT: Senator Chambers, please.

SENATOR BERNARD-STEVENS: Senator Chambers, I guess mentally I need to toughen up a little bit. The vote that we just took, was that the reconsideration on your motion to override the Chair in regards to ceasing debate, or was that the vote as I think it was in order to allow senators to divide the question?

SENATOR CHAMBERS: Yes, what you said the second time. That vote was on the original.

SENATOR BERNARD-STEVENS: That's what I thought. Okay, at least I'm still with it. Mr. President, at this point I'd like to do what Senator Lindsay basically has asked to do in a different manner. I move we adjourn.

PRESIDENT: Before we take that motion, Mr. Clerk, do you have some things for the record so that we can continue with that?

CLERK: Mr. President, I do. I have...Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 159 and recommend that same be placed on Select File. (See page 470 of the Legislative Journal.)

Mr. President, I have notice of hearing from the Retirement Systems Committee. That is signed by Senator Haberman.

Enrollment and Review reports LB 259, LB 259A, LB 534, LB 601, LB 730, LB 818, LB 819, LB 820 as correctly engrossed. (See page 470 of the Legislative Journal.)

Mr. President, in addition to those items, your Committee on Banking, Commerce and Insurance to whom is referred LB 1088 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File. (See page 471 of the Legislative Journal.)

morning, a lot of my friends and a lot of my constituents watch us on Channel 32 in Lincoln. I want everyone to know here, there, I'm not angry with anyone. I know some people get angry with me because of the way I vote on certain things. I had a lot of people angry with me last Friday on LB 159, the tort reform bill. I've had several into my office and on the phone already on that bill. So, no matter what I do, there is somebody out there that doesn't like it. But I really mean that when I say I'm not angry because I think on this particular issue and others like it, the emotional issues that have to do with life and health, if we cannot visit and talk to each other and discuss them without recrimination, then we lose our dignity and the respect of our constituents. So I'm trying very hard not to be angry, and I really don't feel that way. I'd like to point out to you, and I know you've all been involved, every single organization I have ever belonged to argues, at one time or another, the boards and so on, argue about the rules, and they argue about the bylaws, they want to change them, whatever comes along they want to discuss them. That's the American way of life going way back to the old town hall, which is...the town hall method is still used in New England. So, as far as I'm concerned, if you want to argue about the rules from now until April 9th, I guess that is your privilege. But for me, the underlying rule is that you may vote against or for those rules. That is the basic premise of our freedom that we can be for or against. So for you to tell me that I can't vote against a rule or for it, you're contradicting yourselves when you say that. I would hope eventually that we might talk about the bill, or even about the amendment, because I have a lot of questions on the amendment. Obviously, I'm never going to get to ask them. I would like to ask Senator Bernard-Stevens one question, if he would yield to me. I see he's up at the Speaker's....Well, I'll talk about something else, and then I'll ask Senator Bernard-Stevens my question. One of the things that Senator Bernard-Stevens said this morning in chastising the Legislature is that those of us who are pro-life, if you want to use that expression, and I am, I always opt for life, and I think the young girls and boys, as I talked about the other day, need our help, our respect and our love. And I don't care if they come from a poor family, a rich family, or whomever, they need someone to help them. And so some of my questions were directed to the part in the amendment where he speaks about an adult family member, but what he said was those of us who are on this bill do not vote for the bills that help with prenatal nutrition and parent care. I, for one, always vote for those bills. I

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

February 13, 1990 LB 42, 159, 163, 520, 913, 1107, 1172
1184, 1201
LR 240, 254, 255

little slower than what the original bill proposed.

PRESIDENT: Thank you. Mr. Clerk, do you have something you'd like to read in at this time?

CLERK: I do, Mr. President. Very quickly, two new resolutions. (Read brief descriptions of LR 254 and LR 255. See pages 770-71 of the Legislative Journal.)

Mr. President, Government Committee reports LB 1107 to General File with amendments, LB 1172 General File with amendments, those signed by Senator Baack. Education reports LB 913 indefinitely postponed, LB 1201 indefinitely postponed, LR 240CA indefinitely postponed, those signed by Senator Withem. And Government reports LB 1184 to General File with amendments. Amendments to be printed to LB 520 by Senator Schellpeper, Senator Kristensen to LB 159 and Senator Beck to LB 163. That's all that I have, Mr. President. (See pages 773-77 of the Legislative Journal.)

PRESIDENT: Thank you. Senator Haberman, you are next followed by Senator Schmit.

SENATOR HABERMAN: Mr. President, members of the body, in my 12 years in the Legislature I have had very, very, very few occasions to agree and be on the same side as Senator Chambers, so this is a new for me. I do agree with Senator Chambers' amendment, cutting the 7 percent to 5 percent as this would still end up a 53 percent increase in 11 years. Although I do not subscribe to some of the other thoughts that Senator Chambers had about judges, I would like to put in the record that I do subscribe to his amendment in cutting the 7 percent to 5 percent as a 53 percent increase in 11 years is a considerable amount of increase and I do support that part of his amendment. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Schmit, please, followed by Senator Chambers.

SENATOR SCHMIT: Mr. President and members, you know I always wish some time that I could be on an issue that is riding the wave of popularity. It seems to me like I'm either ahead or behind of the power curve all the time. One of my concerns many years ago, and Senator Chambers addressed that concern with me, was the drug problem. You go back and check the record, it was

February 13, 1990 LB 159, 163A, 624, 642, 862, 923, 943
976, 1010, 1086, 1090, 1091, 1141, 1171
1180, 1195, 1197, 1238
LR 239

PRESIDENT: Mr. Clerk, do you have anything for the record?

CLERK: Mr. President, I do. A reminder, the Speaker would like to have a meeting of Committee Chairs tomorrow morning at eight-thirty, Committee Chairs tomorrow morning at eight-thirty in Room 2102.

Mr. President, your Committee on Education whose Chair is Senator Withem reports LB 1086 to General File, LB 1090 General File with amendments, LB 1195 General File, those signed by Senator Withem, and LB 1180 indefinitely postponed, LB 1197 indefinitely postponed. Urban Affairs reports LB 943 indefinitely postponed, LB 1171 indefinitely postponed, signed by Senator Hartnett. Banking reports LB 624 to General File, that signed by Senator Landis. (See pages 779-80 of the Legislative Journal.)

Mr. President, a series of priority bills designations. Senator Wesely as Chair of Health and Human Services selects LB 923, Senator Withem selects LR 239CA, Senator Warner selected LB 1141. General Affairs Committee selected LB 862 as one of its priority bills, that's offered by Senator Smith. Senator Dierks has selected LB 1238.

I have amendments to be printed to LB 163A by Senator Schimek. (See page 781 of the Legislative Journal.)

A confirmation report from the Education Committee. That is offered by Senator Withem.

A series of adds, Mr. President. Senator Weihing would like to add his name to LB 642, Senator McFarland to LB 1010, Senator Lowell Johnson to LB 976 and Senator Pirsch to LB 1091 and Senator Warner to LB 159, AM2372. That is all that I have, Mr. President. (See page 782 of the Legislative Journal.)

PRESIDENT: Thank you. Senator Moore, please.

SENATOR MOORE: Yes, Mr. President, I move we adjourn until 9:00 a.m., February 14, Valentine's Day.

the stirrup, drug along the rails, the rail line. Then we become back to our liability issue and Senator Conway's LB 159, then third party and even the maker of the rails and so on. But what I'm saying is the final word, and the word was said to me yesterday if that horse trainer had had workmen's comp, as he is supposed to have had and did not have, Arlene, you must enforce that or do something about it. It, frankly, would have or could have wiped, since it went back then to, well I just as well say it, Fonner Park, back to their workmen's comp and their insurance and so on, it could have wiped Fonner Park out entirely. So I want to tell you, workmen's comp is not necessarily an issue just for the working people, it is a benefit to the business people. And I'm just using that as an exact example what could happen or could happen to many. And that workmen's comp is also, I don't care whether it's construction industry or whatever, it works both ways. And so I'm just offering that to you that it is not only just working people, it is to an advantage of the business people, too.

SPEAKER BARRETT: Senator Morrissey, please.

SENATOR MORRISSEY: Question.

SPEAKER BARRETT: Question has been called. Do I see five hands? I do. Shall debate now cease? All in favor vote aye, opposed nay. Record, please.

ASSISTANT CLERK: 25 ayes, 0 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Hall to close, please.

SENATOR HALL: Thank you, Mr. President and members. Nineteen seventy-three, 1973 was the last time that the floor was changed on this proposal. And it was changed by 20 percent, it went from \$40 to \$49. In 1973 I was a junior in high school. Senator Hefner was a young man. (Laughter.) Senator Haberman had his hearing (laughter), and Senator Warner was only ten years in the body. That's a long time ago, ladies and gentlemen. That's a long time ago. Lot of things have changed since then. Also, in 1973 the state's minimum wage was \$1.50, \$1.50, and \$49 was well above two-thirds of the state's minimum wage. All this amendment does is bring us to slightly under two-thirds of the state's minimum wage. It takes what was in law 17 years ago and it puts it into effect, makes it applicable

February 14, 1990 LB 42, 159, 313, 642, 851, 856, 857
874, 893, 901A, 957, 960, 964-966, 984
997, 1044, 1064, 1080, 1090, 1161, 1184
1193, 1232
LR 11

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

CLERK: Mr. President, I have a priority motion by Senator Langford, that's to adjourn the body until February 15, 1990. I assume that's nine o'clock, Senator. I do have some items.

SPEAKER BARRETT: Anything for the record, Mr. Clerk?

CLERK: Yes, I do, Mr. President. I have amendments to be printed to LB 42 by Senator Baack. (See pages 793-94 of the Legislative Journal.)

Mr. President, Enrollment and Review reports LB 1064 to Select File with Enrollment and Review amendments. LB 851, LB 856, LB 857, LB 874, LB 893, LB 957, LB 964, LB 966, LB 984, and LB 997 are all reported correctly engrossed. Those are signed by Senator Lindsay as E & R Chair. Banking Committee reports LB 1161 to General File with amendments, and LB 1193 as indefinitely postponed, those signed by Senator Landis as Chair of the Banking Committee. (See pages 794-96 of the Legislative Journal.)

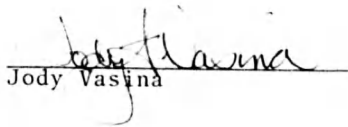
I have a new A bill, Mr. President. (Read LB 901A by title for the first time. See page 796 of the Legislative Journal.)

Mr. President, I have a confirmation report from the Health and Human Services Committee, that is signed by Senator Wesely as Chair. I have a series of priority bill designations. Senator Schellpeper selects LB 1080; Senator Crosby, LB 965; Senator Scofield, LB 1184; Senator Richard Peterson, LR 11CA; and Senator Withem, Education Committee priorities are LB 960 and LB 1090.

Mr. President, Senator Abboud would like to add his name to LB 1044, Senator Crosby and Chambers to LB 642, Senator Elmer and Peterson to LB 159 and AM2372, and Senator Morrissey to LB 1232. I believe that's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. The motion before the house is one to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. Ayes have it, carried, we are adjourned. (Gavel.)

Proofed by:


Jody Vasina

February 15, 1990 LB 42, 50, 143, 159, 240, 240A, 259A
350, 350A, 465, 692, 742, 844, 866
905, 919, 1080A, 1082, 1141, 1183
LR 8, 239, 256

CLERK: (Roll call vote taken. See page 830 of the Legislative Journal.) 2 ayes, 28 nays, Mr. President.

PRESIDENT: The motion fails. Anything for the good of the cause, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, Senator Kristensen has amendments to be printed to LB 159; Senator Withem to LB 259A. (See pages 830-32 of the Legislative Journal.)

A new resolution, LR 256 by Senators Wesely, Withem, Bernard-Stevens. (Read brief explanation. See pages 832-33 of the Legislative Journal.) That will be laid over.

An announcement from the Speaker regarding afternoon sessions next Tuesday, Mr. President; a reminder of the membership. Confirmation report from the Nebraska Retirement Systems Committee. That is offered by Senator Haberman.

Bills have been presented to the Governor, Mr. President, as of 10:43 a.m., those read on Final Reading this morning. (Re: LB 50, LB 143, LB 240, LB 240A, LB 465, LB 350, LB 350A, LB 692, LB 742.) LR 8 presented directly to the Secretary of State.

A new A bill, LB 1080A by Senator Schellpeper. (Read for the first time by title. See page 834 of the Legislative Journal.)

Mr. President, Revenue Committee reports LB 844 to General File, LB 919 to General File, LB 1183 General File, and LB 1082 as indefinitely postponed. Those all signed by Senator Hall.

Mr. President, priority bill designations, Senator Byars has chosen LB 905; and Senator Lamb LB 866.

Mr. President, Education Committee, whose Chair is Senator Withem, reports LB 1141 to General File with committee amendments attached, signed by Senator Withem; and Education Committee reports LR 239CA to General File with committee amendments attached. (See pages 834-36 of the Legislative Journal.)

Finally, Mr. President, Senator Rogers would like to add his name to LB 866; and Senators Weihsing, Goodrich, and Coordsen to

amendments to LB 159. That is all that I have, Mr. President.

PRESIDENT: Senator Wehrbein, would you like to adjourn us until tomorrow at nine o'clock, please.

SENATOR WEHRBEIN: Yes, Mr. President, I move we adjourn until tomorrow morning on Friday until nine o'clock.

PRESIDENT: You have heard the motion. All in favor say aye. All in favor say aye. Opposed nay. We are adjourned. Thank you.

Proofed by:

Arleen McCrory
Arleen McCrory

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

PRESIDENT: Thank you. The question is the advancement of the A bill. All those in favor vote aye....Oh, excuse me. The question is the adoption of the Scofield amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

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

PRESIDENT: The Scofield amendment is adopted. Senator Scofield, on the advancement of the bill.

SENATOR SCOFIELD: I would move the bill.

PRESIDENT: Thank you. The question is the advancement of the bill. All those in favor say aye. Opposed nay. It is advanced. Anything for the record, Mr. Clerk, at this time?

CLERK: I do, Mr. President, thank you. I have a hearing notice from Natural Resources for gubernatorial appointment. (See page 1080 of the Legislative Journal.)

Senator Coordsen has amendments to LB 1080 to be printed in the Journal. (See pages 1080-83 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: Very good. We will move on to LB 159, please.

CLERK: Mr. President, 15 the first order of business are Enrollment and Review amendments.

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 159.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. They are adopted.

CLERK: Mr. President, the first amendment I have to the bill is by Senator Kristensen.

PRESIDENT: Senator Kristensen, please.

SENATOR KRISTENSEN: Thank you, Mr. President, and members, I

have the first amendment of several here. To begin this, I would like to yield the first four minutes of my time to Senator Conway, please.

PRESIDENT: Senator Conway, you may have four minutes.

SENATOR CONWAY: Thank you, Mr. President, and members, as you are well aware by now, LB 159 we have been talking about for about four years. It's had different numbers over time. It's had some technical adjustments and the like. Many people worked very hard on this and I guess to some extent...to some extent, I'm somewhat disappointed in working a bill that two years ago was negotiated out. Senator Ashford and I were on opposing sides that at one time sat down and brought both sides together, developed an agreement that where everybody gave and everybody received what I think that at that time they believed was right. That was LB 1178. LB 1178 then was passed one of the last days of the session, found its way down to the Governor's office and was vetoed and due to that veto then that gave one side of the issue, I think, a new found strength saying, gee, we probably would not have had to given up as much had we known the veto was there, so, therefore, that balance is now back in our court. And so then came 159 and 159 then was exactly the same bill as LB 1178. With a few technical amendments, we have since amended the bill to include any concerns that the Nebraska Bar Association had and brought us down to this point of looking at legislation now with the two sides that originally agreed no longer in agreement even though it was the same issue that we had before us two years before. What we have attempted to do in moving LB 159 and seeing what goes on outside of this body with respect to letter writing campaigns, straw men being raised and so forth is it's been somewhat disappointing for me to see how that particular operation can kick into play. One of the strongest points that I would like to raise and one of the things that I'm sure many of you have heard from from a lot of your constituents and nonconstituents that were engaged in a letter writing campaign was associated with insurance premiums and, to some extent, this boils down to insurance. And we talk about how, by taking our situation where we deal with slight gross and do not have a comparative negligence standard like all the other 49 states in the nation, that would have a terrible effect on our insurance premiums. I have here the last edition of Best Insurance Review and there are several states who have the comparative negligence standard that we're proposing in legislation. Iowa, being one that's almost identical, has an

average \$80 annual premium less than Nebraska does, yet the discussion is made that our premiums would go up. If you look at this kind of statistical information, you will see that the actual insurance premiums may go down. What that basically tells you is there is two things that are happening, as you compare Nebraska and Iowa in that premium differential, where theirs is less than ours. There's only two things that can happen and that would be that there is a great deal of profitability differential, that \$80 is ending up in someone's pocket...

PRESIDENT: You have a minute left.

SENATOR CONWAY: ...or the inefficiency in the way the Nebraska companies are litigating these claims is costing the ratepayers \$80. There is no other justification for that differential. So, as people raise those issues in terms of what's going to happen with insurance premiums, you're going to find that by virtue of a more efficient system, by people settling out of court for lesser amounts, that you're going to find a situation where the premiums ultimately would, in fact, go down rather than raise, as being contended by many of the people who are fighting the bill. I was reading a letter not long ago and a person was against 159 and was complaining about the joint and several provision and, as I set out the scenario, what they were complaining about is the system that we currently have. The system in the bill, I think, is a step in the right direction and hope some day we will be able to adopt this for the betterment of all of your constituents throughout their paying premiums and who have need for protection from liability claims. With that, thank you, I give the time back to Senator Kristensen.

PRESIDENT: You have six minutes left, Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. President. Thank you, Senator Conway, for yielding the time back to me. I am sure, for most of you, it's a relief at the present time because LB 159 probably will not visit you again this session. It probably is a dead issue for the rest of this year. I'm sure that it may be introduced again next year. However, you will see that I have printed several amendments in the Journal and those amendments were done for a variety of reasons, but one was to try to bring the parties together to try to fashion some bill that is politically plausible but yet practically would work.

Proreform isn't just a buzz word for a group or an association to earn fees and it's not the death knell for business and certainly changing our laws and determining fault isn't an antibusiness attack. In fact, many times businesses are the ones who are the plaintiffs who are trying to sue for their injuries and their damages and our system of justice isn't there just to allow people to go into court to make money. It's a peaceful way of settling our disputes. And I share Senator Conway's frustration that LB 159 will not be a reality this year. I would pull all of my amendments at this point. I think that you will see comparative fault come again in a different form. And it's one that you should welcome to come. It's not a self-serving, self-doing organization of businesses and people and associations of lawyers and so on trying to just change the system for a system of change. Our system of slight gross is like an old car, it still gets us where we want to go but it doesn't get us there very well. In fact, people are suffering because of the slight gross system and in a few years you will see a change from slight gross to comparative fault. And, with that, I would yield my remaining time to the other co-sponsor, Senator Ashford.

PRESIDENT: Senator Ashford, you have four minutes left.

SENATOR ASHFORD: Thank you, Mr. President, and members, I started out working on this subject long before I was in the Legislature, during the campaign and then after I was elected and spent two years with Senator Conway working on it and forging a compromise with the insurance industry and the business community to adopt a standard that would be fair to all parties. And, as Senator Conway has rightly said, that was LB 1178. And I remember distinctly my conversations with Farmers Mutual from Lincoln and we had a couple of very heated discussions about how we were going to make this work and really struggled with the issue. And we came up with a compromise which was the 49, 51 percent compromise that was sort of the centerpiece of LB 1178 and I remember shaking hands with those people at that time, feeling like we had really done some work in a positive way for the State of Nebraska. And I guess being a freshman senator and being rather naive in the process, I felt and accepted that agreement and that understanding as being a binding one. But I have learned a great lesson here. I have learned a tremendous lesson and have gotten a great education in how this process actually works, that each year is a new game and what was said the prior does not carry over to the next

year. I think Senator Conway and I were extremely concerned with how both sides of this issue viewed it. We were concerned about how the insurance industry was looking at it. We were concerned about how the business community was looking at it, but we were also concerned about how victims were treated under our tort law. And I think everyone was fairly...that looked at the bill would admit to us that, yes, victims in a lot of cases were uncompensated in Nebraska and that we needed to adopt...we needed to adopt a system that would compensate victims and at the same time protect the interest as best we could of all the parties to a legal civil action. And we carved out a compromise which, quite frankly, could not have been written any more fairly than what this compromise...in the way this compromise was written. If a plaintiff was negligent, his or her negligence was deducted from the award that he or she would receive. There is no more...

PRESIDENT: One minute.

SENATOR ASHFORD: ...fair way that you can write a piece of legislation dealing with the tort law than that way. But I have learned in this case and in the case of the NRA that all that needs to happen is a few letters need to go out giving broad generalizations about the impact of a piece of legislation and then that impact translates into votes against these kinds of measures. Again, I would just say in conclusion that I respect the insurance industry, I respect their views. I know they come from a...their views come from years and years of experience and I certainly respected their views when we forged the compromise, which was LB 1178, and took their views into consideration when we made that compromise. And so I also respect the small business community in this state and I have worked with them on many other measures and will continue to do so. I guess this was just too big a change. I guess this was just too much to ask of this body or of the people of the State of Nebraska. I still believe absolutely, sincerely that it was the only fair way, the best way to deal with this extremely complex problem. Just because lawyers favored it, there was a lot of opposition to it and that's unfortunate, because we, as lawyers,...I know I've practiced law for 15 years and I know how hard it is to get...

PRESIDENT: Time.

SENATOR ASHFORD: ...money for victims in Nebraska. It's

extremely difficult. It is not a tremendous...but like why would I come to the Legislature? I needed to make extra money, you know. It's an extremely difficult process to go through the court system in our state and receive a judgment for a victim of an automobile accident or some other kind of...of action in our state.

PRESIDENT: Time.

SENATOR ASHFORD: So I guess I brought with me that viewpoint, as well as an understanding of the concerns of small business in the insurance industry. I know we had the right compromise. I believe it was the best thing to do. It just wasn't to be and for that I'm sorry, but...for the citizens of the state. And, hopefully, next year or years after we can look at this again and come back with something that makes sense for all of us. Thank you.

PRESIDENT: Senator Ashford, you are the next light that is on, if you would like...

SENATOR ASHFORD: Thank you, Mr. President. I don't have anything really further to say other than to, I guess I would...did want to thank Senator Conway for all his hard work and for Senator Kristensen for working with the Bar Association and coming up with the amendments. I would add that the Bar Association did put together a committee that worked over the summer to clear up some of the problems that the Governor had and some others had with the terminology in LB 159 and the way it worked. And that Bar Association committee was made up of defense lawyers and plaintiffs' lawyers and the Bar Association, itself, removed its opposition to LB 159 and I thought we had made tremendous progress. Senator Conway and I were brutal enemies when this thing started. We were absolutely opposed on this issue and we sat down and with representatives, as I said, of both industries, with representatives of the lawyers, both defense lawyers and plaintiffs' lawyers, and we had some pretty strident sessions. And I learned, as I said before in my opening remarks, I learned a lot about the system. I gained a lot of respect for my friend, Senator Conway, and his ability to see both sides of an issue. I just feel very badly that we have this...after four years of work that we're not going to have a vote on this issue because I think the citizens of the State of Nebraska are losers here and I think the process is a loser. But that doesn't mean that we can't come back and that we won't

try again and that we don't have a lot of respect for everybody concerned, because we do, and I do. They're all good people with a lot of well meaning views and intentions here and this just wasn't to be and I appreciate you giving me the time to give my remarks on this. Thank you.

PRESIDENT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. President. At this point in the proceedings, I would pull all the amendments that I have currently on file with LB 159.

PRESIDENT: Okay, they're all withdrawn. Do you have anything else on the bill?

CLERK: Mr. President, the next amendment I have is signed by Senator Haberman and a number of members.

PRESIDENT: Senator Haberman, are you going to handle that? You want to withdraw your motion? Do you have anything else on it, Mr. Clerk?

CLERK: Yes, sir, I do. Senator Warner, I understand you...Senator Warner.

PRESIDENT: Senator Warner.

CLERK: ...want to defer, Senator. Is that correct?

SENATOR WARNER: It could be passed over temporarily.

PRESIDENT: They are passed over temporarily.

CLERK: Mr. President, the next motion I have to the bill is an amendment by...is an amendment by Senator McFarland.

PRESIDENT: Senator McFarland.

SENATOR MCFARLAND: Thank you, Mr. President, colleagues, this thing has come up rather quickly. This morning I learned that 159 had been discussed, that there was a lot of confusion and a lot of disagreement and an inability to work out a compromise on the particular provisions of 159 and, for that reason, that the bill was likely going to be passed over. So I talked with Senator Ashford at lunch today. We, as many of you know, we

sometimes run together down at the stadium, and I was talking to him. I said it was too bad that a bill, 159, like this that is up before the body has to be passed over because there is so much legislation pending and so we were thinking, is there something that we could use as 159 as a mechanism for some good legislation? And we thought about a number of bills. We discussed a number of them. One of them that we did discuss and that Senator Ashford and I agreed about was the sports agent bill that I have had before the Legislature for several years. This bill has been advanced out of Judiciary before. It was advanced last year on a vote of five to one and it is a bill that was sponsored by me. It is a bill to address the problem that we have had with sports agents in our state for several years. At the hearing last year, we had several people support it. Coach Osborne came down and supported the bill. Coach Devaney has been in support of it. We have had...Senator Hefner and Senator Chizek have been supportive of it. It is a bill that we advanced this year earlier on General File on a 26 to 10 vote. The debate took some time because at that time there were a number of amendments pending by Senator Chambers. At the present time, LB 224 is on Select File but it has 11 amendments pending. All of the amendments are amendments to strike portions of the bill. As I recall, I don't think any of the 11 amendments pending are amendments to add to the bill or contribute to the bill in any way. We had amended it on Select File to satisfy all the concerns that have been raised by...some had been raised by insurance company about just the language of the bond that's required and we addressed that concern. Some had been concerned about the misdemeanor penalty that was there. We addressed that concern. It is a bill that I don't know of anyone really objecting to at this time except primarily Senator Chambers. And so over the lunch hour when we ran we decided, rather than let 159 just be passed over, that it could be used as a vehicle for some good legislation and legislation that is needed. The bill, LB 224, just basically would create the Athlete Agents Registration Act and it would require sports agents who recruit athletes in Nebraska to register with the Secretary of State, to post a bond, to be subject to the regulations of the Secretary of State and to provide specific information about their business and to address all the problems that occur. Some of you may be aware that there have been recent problems with sports agents in Nebraska and I guess there was recent publicity about Colorado football players flying into Nebraska to be entertained and one of the Colorado players allegedly was...sexually assaulted a student or an 18-year-old

woman here in Lincoln and there have been charges pending. The whole business of sports agents has been a very corrupt and troublesome business, particularly for athletes at Nebraska and also at other colleges within our state. So what I am proposing, I am sure you probably remember the debate we had on the bill, what I am proposing is to, in effect, strike all the provisions of 159, so-called gut the bill, and add the LB 224 to it. And I am having copies of the amendment...if you want to look at what LB 224, just look at it in your bill book. I have the Pages photocopying the amendment now and getting 60 copies, but it isn't back yet. I will be glad to distribute it. I expect it any minute, and I would appreciate your vote on it. I think it is a good bill. It's one the university supports. It's one that in the past has always been supported. I don't think we have had any really opponents ever testify against the bill. The only spokesperson who has really been against it has been Senator Chambers and he has had a long-standing policy against it. It is something that just come up today. It is rather abrupt. I would appreciate your help and I would yield the rest of my time to Senator Ashford.

PRESIDENT: Senator Ashford, please.

SENATOR ASHFORD: Yes, thank you, Mr. President, and members. Senator McFarland has worked for four years on this bill and he is going to be leaving the body at the end of this term, and we did have a conversation about this bill over lunch, and I mentioned to him that I had worked on this tort legislation for four years as well, and I know how hard it is to work on something so long and then not have it come to anything. I have an opportunity, if the voters return me here next year, to maybe talk about torts again. Senator McFarland will not have that opportunity for his sports agents bill. I think, also, Senator McFarland has had vast experience in this area. Could I have a gavel, Mr. President, please?

PRESIDENT: (Gavel.) Please, let's hold it down so we can hear the gentleman speak. Thank you.

SENATOR ASHFORD: Senator McFarland has the unique background, having been a pro football player, I think he is the only one in this body that was a pro football player, except for Senator Landis, that brief career...yeah, he tried and we all were behind him, but Senator McFarland has the unique perspective in this area. And the sports agent area is a matter, is an area

that has been legislated on in other states, and I think we have the unique opportunity with Senator McFarland to give him an opportunity to pass a piece of legislation which is extremely important to him and which...and a piece of legislation that he has a lot of knowledge on, and I know the coaching staff at the university supports this, as do coaches around the country support this type of legislation. I know this is a little bit out of the ordinary. I know this procedure is not exactly appropriate, but I do think that Senator McFarland has worked hard on this legislation. I think he deserves an opportunity to have his bill passed onto Final Reading and have an opportunity to be voted on on Final Reading. I am real serious about this. I really think he has worked hard on it for a number of years and I support him in this, and I hope you will, too, by voting on the bill on Select File, voting for the bill on Select File, and giving Senator McFarland an opportunity to get this bill passed this session. With that, I urge the body to...and I guess Senator McFarland is absolutely right, we have debated this numerous times before. I doubt if we need a lot of discussion on it. I think most of you have made up your minds on it. I would urge you to bring this matter to a vote quickly. Let's vote it ahead to Final Reading and see if we can get this passed for Senator McFarland and for the State of Nebraska. Thank you.

PRESIDENT: Thank you. May I introduce some guests of Senator Korshoj, please, Lyle and Trudy Truhlsen from Blair, Nebraska. They are under the south balcony. Would you folks please stand and be recognized by the Legislature. Thank you for visiting us today. Mr. Clerk.

CLERK: Mr. President, I understand that Senator McFarland and Senator Moore would like to suspend Rule 7, Section 3(d) to permit consideration of Senator McFarland's amendment.

PRESIDENT: Senator McFarland, on the suspension of rules.

SENATOR MCFARLAND: Thank you. Senator Moore and I have just been visiting and he brought it to my attention, of course, that this amendment is, in effect, not germane because it does deal with a different subject area than the comparative fault bill, 159. It really has to do with registration of sports agents. It deals with a legal issue in some respects but, yet, it is not germane enough to I don't think be classified as a germane amendment. So he and I jointly have filed this motion to

suspend the rules, to suspend the germaneness rule to allow the amendment to be added, and perhaps he would like to express his view on it, so I would yield the rest of the time to Senator Moore.

PRESIDENT: Senator Moore, please, on the suspension of rules.

SENATOR MOORE: Yes, I visited with Senator McFarland and informed him that nothing against the intent of his amendment but in no realm of the imagination was it germane to the bill, and as we get into the waning days of the session, I think it would at least be proper to, when you are doing something of this magnitude, we should file the proper rule suspensions, so you take 30 votes to suspend the rules, and then gut the bill, and I just...Senator McFarland is willing, instead of going through the germaneness challenge, to do it this way, and I would urge the suspension.

PRESIDENT: Thank you. Senator Smith, please, followed by Senator Pirsch, on the suspension of rules.

SENATOR SMITH: Mr. President, and members of the body, I am...this morning I felt like 163 was becoming a Christmas tree, right now I am trying to figure out what in...and I would, except for the fact that I am trying to be a lady, I am going to say what in the heck is going on with this bill. I don't know what is going on here exactly. Now we have a motion to, what did I just hear as I walked back in, a motion to suspend the rules to do what?

PRESIDENT: There was a motion to suspend the rules to get around the germaneness ruling.

SENATOR SMITH: To do what?

PRESIDENT: Well, so that you'd suspend the rules and take the bill and gut the bill, if you so desire, so that you could put Senator McFarland's bill into this bill, and gut the bill as it sits now. So we are talking on the suspension of the rules at the moment.

SENATOR SMITH: Well, this is really, really interesting. This body has degenerated to the point where it makes me wonder why I am here. I think I will join Frank. I am just trying to get some clarification here. I am just going to be very candid,

which some people don't like, but I tend to be, because I think it is the only way I can deal with an issue. I have been hearing by the grapevine all day that LB 159 was going to be pulled off of the agenda this afternoon and it was going to be, basically, we weren't going to be dealing with this bill for the rest of the year. We have an amendment up there which Senator Carol Pirsch and myself thought we were introducers of with a lot of other people who cosigned on. That amendment was just pulled without Senator Pirsch or I either knowing about it until after the fact. Then I go out and I talk, in the rotunda, and I talk to some other senators here who are saying the reason we have to do this is because we have to get to the kill motion, which does not take precedence. Now I have a question for Senator Doug Kristensen. Could I speak with you, please.

PRESIDENT: Senator Kristensen. Would you go back and face the music, please?

SENATOR KRISTENSEN: Yes.

SENATOR SMITH: Senator Kristensen, in my conversation with you, was I just told before I went outside in the rotunda and missed this other next motion that we needed to pull all of the amendments, that was the purpose for doing this, because we had to get to the kill motion?

SENATOR KRISTENSEN: That is correct.

SENATOR SMITH: There is a kill motion on this bill?

SENATOR KRISTENSEN: Yes.

SENATOR SMITH: When does the kill motion take or come up?

SENATOR KRISTENSEN: I believe it would come right after Senator McFarland's amendment that he filed.

SENATOR SMITH: Okay, so what we have right now is we are dealing with the McFarland amendment, which in my understanding is a different bill, which will gut this bill, which will...why do we need the kill motion, then?

SENATOR KRISTENSEN: What is happening is that Senator McFarland, Senator Smith, has a bill that is a favorite of his. He would like to see that bill come into 159 since 159 isn't

going to have anything in it anymore. His attempt to suspend...

SENATOR SMITH: Senator Kristensen, all right, in other words with McFarland's motion, we...

SENATOR KRISTENSEN: If you will let me finish...

SENATOR SMITH: Well, you weren't by your mike, go ahead and finish. I will be listening.

SENATOR KRISTENSEN: Well, okay, you were talking and I wanted to make sure you could hear this. What is going on is he is trying to put his bill into 159. He is doing that by suspending the rules to bring in his sports agents bill in here. Now that is his prerogative to do. I happen not to think that is the correct thing to do. I think that is inappropriate to do, but that is his prerogative to do if he feels so inclined to do it.

SENATOR SMITH: All right, just a minute, Doug, what I am asking you is the order of the filing? Was his amendment filed before your kill motion was filed?

SENATOR KRISTENSEN: I didn't file a kill motion. Senator Moore filed the kill motion. It was filed prior to Senator Moore's kill motion.

SENATOR SMITH: All right, so now the point we are at is that we are not dealing with 159 at all?

PRESIDENT: One minute.

SENATOR SMITH: We are dealing with Senator McFarland's bill. If that fails, we have a kill motion on this bill?

SENATOR KRISTENSEN: Yes.

SENATOR SMITH: All right, that dissolves a lot of my perplexity, and so at this point in time, we won't reintroduce our amendment then, maybe. Thank you.

PRESIDENT: Thank you. Senator Pirsch, please.

SENATOR PIRSCH: I may not have red hair but I am hot, also. I will not support this and I will support the kill motion, and I have a bracket motion, also, if, indeed, this truly is a

legitimate effort to do a favor for another senator, and not just to wiggle through the process. Senator McFarland, I am sorry. I am not going to vote to suspend the rules because, first of all, as Senator Kristensen pointed out, I think this is inappropriate and I would feel better if things were done as they are supposed to be done in this body.

PRESIDENT: Thank you. Senator Crosby, please.

SENATOR CROSBY: Thank you, Mr. President, and members. I am not angry with anybody. I will say, though, I was a little confused there for a few minutes but I stayed in here and listened and read and tried to keep up. I did ask Senator McFarland to be sure before I went for his amendment that he wasn't going to amend the protocol bill into it, too, because then I wouldn't vote for it, Jim. But the other thing, I just want to say this about LB 159 as it was in its original form. I have had more pressure on that bill from both sides this year than I have had on the abortions bills, believe it or not. Because on the abortion bills, people on either side, we can sit down and talk, listen to each other, and try to understand, but on this bill, when you get a bunch of lawyers, in particular, arguing about a bill and half of them are on one side and half of them on the other, whatever the percentage, you really have a donnybrook, because when the lawyers can't agree, where are we? So I was relieved today when someone said, well, we are not going to have LB 159 today. We are not going to have to talk about it. Here we are talking about it. So I hope it doesn't come back, I hope they all get together during the interim and bring something back that both sides can agree on because...but it does seem to me that sometimes we are asked on the floor of the Legislature to solve the problems that a professional group can't solve among themselves. The other thing, as I end up here on LB...on the number, the bill number, I would like to be sure that if the people who are for LB 159 will maybe remember that I voted for it, if I end up doing that, and those who are against it will remember that I voted for it, but it wasn't the bill they thought it was originally. Thank you.

PRESIDENT: Thank you. Senator McFarland, followed by Senator Lamb and Senator Ashford. (Gavel.) Please, let's hold the conversation down. It is getting difficult to hear.

SENATOR MCFARLAND: For those who weren't here, and I explained it initially, I hope to clarify. What I am doing is proposing

to gut the bill, put my bill in its place. It is something that has been done several times in the time that I have served here. I remember Senator Vard Johnson doing it a lot of times on Select or General File, particularly if there was an A bill that was not being up, that was not coming up...

PRESIDENT: Excuse me, Senator McFarland. (Gavel.) Please, let's hold it down. It is very difficult to hear, please. Thank you.

SENATOR MCFARLAND: When an A bill is not coming up or not going to be used, what has been done in the past is that the bill has been gutted and another bill substituted in its place because of the position. After this morning, my understanding was that LB 159 was going to be passed over. It is here, ready to be advanced to Final Reading. It is a bill that I think is meritorious, that has a lot of support, and it is a bill that has not...I don't think anyone has ever testified against it in the years we have had it before Judiciary. The process that I am using I guess most recently comes to mind is what was done last year with LB 272A. LB 272A was an A bill that was not going to go anywhere. They didn't need the appropriations for that particular bill. So as a result, the bill was gutted. We substituted the Commonwealth bill, the motion to suspend, substituted the Commonwealth, American Savings, State Securities bill in its place. The motion was to suspend. There were 30 votes. It was done directly, just as I propose to do it here, and then the bill was considered and not voted upon, and it is still pending on the Final Reading. That is the process. It is not a novel process in here. It is something that has been used before, not a lot of times, but it is something that has been done when there is a bill that, obviously, is not going to go anywhere from where it is at. Talked about it with both of the sponsors of the bill, Senator Ashford and Senator Conway. I talked with Senator Kristensen about it. I talked with who had the amendments. I talked to Senator Warner and I talked with Senator Pirsch about it. And this is where we are at. I am asking that you suspend the rules to allow it to be considered. That if you don't like the bill in and of itself, then you can vote it down. You know, if you don't like the amendment, you can vote it down. It is an amendment that we have discussed before. I think it is a good piece of legislation. If it is not discussed today and not put on, it will not be considered. It is one of those bills that will not be there. It is something that we did not consider until after

this morning's session because my understanding up until about eleven-thirty today was that we were going to go with 159 to see if it advanced or not. But the decision apparently was made that there wasn't sufficient support for 159, that there was a general disagreement about the policies of 159, and for that reason, I ask that the rules be suspended. It is being done in a direct way. It is being done in a way that other bills have been done in the past, and if you look at the bill and remember the consideration of it, I think you will find that it is a very meritorious piece of legislation. I would ask for the consideration of it. If, in fact, it gets on on Select File, you have until Final Reading, if you have any questions or uncertainties about the bill. Even though it has been debated a lot, you can come, we will be glad to visit with you, glad to tell you the merits of the bill, who testified for it, explain the provisions of it, if you haven't read the bill,...

PRESIDENT: One minute.

SENATOR McFARLAND: ...and at that point, you can make a decision whether or not on Final Reading to vote it up or down and there can be, you know, the debate on Final Reading can be the decision maker as to whether the bill should pass or not. It is not something I have plotted out or schemed out for days or something like that. It is something that just came up and it is a good bill. And Senator Ashford and I thought about it and we thought about a lot of bills that could have been put on, but this was the bill that seemed to have the least opposition, the most support from everybody, and a bill that was worthy of consideration. And as I said, Coach Osborne has testified in favor of it. The Athletic Director has sent letters. Chancellor Massengale, who I think has been in favor of it, the university, and a lot of the coaches have been in favor of it, and recent events have shown that we need some way to try and regulate sports agents in our state because the problem is getting worse.

PRESIDENT: Time.

SENATOR McFARLAND: And if they continue to operate as they do, unbridled by any rule or regulation within the State of Nebraska, we will never...we are going to have a problem that is going to hit one of our college athletes and it is going to cause a lot of problems with ineligibility and things like that in the past, and we have been dangerously close...

PRESIDENT: Time.

SENATOR MCFARLAND: ...to having problems like that in the past. I don't want to have those problems in the future. I just respectfully ask that we suspend the rules, consider the amendment. I will be glad to answer any questions and we can vote it up or down. Thank you.

PRESIDENT: Thank you. Senator Lamb, followed by Senator Ashford, please.

SENATOR LAMB: Question.

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: 25 ayes, 1 nay to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator McFarland, would you like to close on your amendment, please?

SENATOR MCFARLAND: Yes, I would be glad to. This is a joint motion to suspend the rules to allow the sports agent bill to be considered. It is simply that. As I said before, it is something that has been done with other bills in here on I'd say four or five occasions that I can remember, since I have been here in the Legislature. LB 159 is not going anywhere. This bill I think is a good bill. We have discussed it before. It has been amended before. I think it is worthy of consideration. If it is not onto this amendment, it is setting on Select File but I have talked with the Speaker and my understanding is it will never get up again. I mentioned in the previous statement that there were, I think, eleven amendments by Senator Chambers that were on the bill. He had proposed those amendments when we discussed this on General File. He had made a motion to kill the bill with the idea of laying it over so that we could discuss the eleven amendments and maybe consolidate them or work on the bill and see if we wouldn't have to prolong the debate on it. The motion was made to kill. We laid it over. My expectation was the bill would come back on the schedule again. It never did come back on the schedule again. I asked Speaker Barrett about it about two weeks ago, and I asked before I considered a priority bill, I said, will this bill get up again?

He said he didn't think it would. Now, Senator Chambers and I had a brief discussion about the eleven amendments. I told him I did not agree with all of them. There were some, such as striking the intent language to the bill, which wouldn't have changed the substance of the bill, I thought we might have been able to work through, and if you strike the intent language, the bill is still...the substance of the bill is still the same. That and some other amendments would not have bothered me, but the other amendments where you are striking major sections of the bill I did not agree with. We visited briefly on it. My expectation was to visit again at some time if it came up. As I said, this particular proposal and thought did not occur to me until after I heard today at eleven-thirty that 159 was not going to advance. I just ask the courtesy of suspending the rules, allowing the amendment to come up as is, to adopt the Athlete Agents Registration Act. I think if you have talked to any of the people who advocated its passage, I think you see the need for it. It has been passed in a number of other states. It has been effective in a number of other states, and you may recall the recent publicity about Johnny Rogers, who was trying to recruit, apparently recruit an athlete in Houston, the Heisman Trophy winner of last year, and he apparently talked to his mother at the Heisman Award ceremonies, and the State of Texas has a bill similar to this, not identical, but similar, and they were able to say this is not appropriate trying to talk with an athlete if you are not registered in the State of Texas, which Johnny Rogers and his associates were not registered in Texas, and so they apparently fined him, as I understand it, \$10,000, or the company \$10,000, to try to bring this whole practice under some kind of regulation and control because it has caused a lot of athletes significant problems. They sign with sports agents. They jeopardize their eligibility. They end up losing a lot of money to some unscrupulous, very unscrupulous people. We have had that happen here in Nebraska. We have come dangerously close to having some athletes lose their eligibility. I think it is a good bill and we have had lots of people in support of it. I'd ask that you just suspend the rules, consider the bill, and, you know, vote it up or down on its merits at that time. LB 159 was not going anywhere, was going to be passed over. It seems to me that this is an appropriate way to use it to get some good legislation passed that may not have been considered otherwise. Thank you.

PRESIDENT: Thank you. That was the closing and the question is the suspension of the germaneness rule. All those in favor vote

aye, opposed nay.

SENATOR McFARLAND: Request a call of the house and a roll call vote.

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

CLERK: 14 ayes, 0 nays to go under call, Mr. President.

PRESIDENT: The house is under call. Please return to your seats and record your presence. Those not in the Chamber, please come back to the Chamber and record your presence so that we may move on. You have asked for a roll call vote, is that correct, Senator McFarland? Regular order. Looking for Senator Scofield, Senator Bernard-Stevens, Senator Smith, Senator Moore, Senator Byars, Senator Schmit, Senator Rod Johnson, Senator Korshoj, Senator Labedz, Senator Morrissey, Senator Ashford, Senator Chizek. We are still looking for Senator Bernard-Stevens, Senator Chizek, Senator Labedz, and Senator Korshoj. Senator Chizek, Senator Korshoj, and Senator Labedz. It looks like we are all here except those that are excused. Senator Labedz, please record your presence. Thank you. Okay, the question, ladies and gentlemen, is the suspension of the germaneness rule, and a roll call vote in regular order has been requested. Will you please hold the conversation down so the Clerk can hear your response. Mr. Clerk.

CLERK: (Roll call vote taken. See page 1084 of the Legislative Journal.) 17 ayes, 24 nays, Mr. President.

PRESIDENT: The motion fails. Do you have anything else on the bill? The call is raised. Mr. Clerk.

SENATOR McFARLAND: I would just ask for a germaneness ruling on the amendment.

PRESIDENT: Just a moment, Senator McFarland, please.

CLERK: Mr. President, I have a motion on the desk from Senator McFarland. Senator McFarland would move to suspend the rules and require that LB 159 be voted upon on Select File without any consideration of further amendments or any other motions.

PRESIDENT: Senator McFarland.

SENATOR MCFARLAND: Explanation, it would almost be tempting to vote on this to suspend the rules on 159 in its present form, because I think 159 in its present form is still a good bill. This was a bill that was passed two years ago, as you may recall, with 33 votes and was vetoed, and this is a bill that has been advanced on General File I think with, I forget the number of votes, but as I recall the vote earlier, there were a lot of votes on it. When Senator Ashford and I talked about this noon, one of the thoughts I had was, hey, don't just pass over this bill gracefully, I mean, make senators vote on the bill, and if there are some senators who change their votes, they ought to be called into question and ought to be asked to explain why they would change their vote on this bill because we think the real lack of support for this bill that apparently exists is not a result of the merits of the bill but more of a result of lobbying that has gone on. That could have been done and we could have tried to force everyone or I would have tried to force everyone to vote on the bill, but thought rather than do that and rather than have the bill go down in flames or try to chastise senators who may switch their vote or who have never been consistent on this bill, we thought, well, why not take a situation where the bill is not going to advance, but is in a position to be used as a vehicle for other good legislation, why not use it as a vehicle for this particular bill? We considered many other bills possible. My apologies for not addressing this issue earlier and doing it with a little more notice. I think the lack of notice caused a lot of uncertainty and a lot of apprehension and distrust. I tried to be as forward and direct as possible. I did contact the sponsors of the bill. I thank Senator Ashford and Senator Conway for allowing it to be considered in this method. I also thank Senator Kristensen for his at least withdrawing the amendments, he was going to do it anyway. I appreciate that maybe he thought this was an inappropriate way to do it but that is his perfect right to vote that way, and as it is all of your perfect right to vote not to suspend the rules. That is your legitimate option. But anyway, I wanted to have the chance, I think this athlete agents bill would have been an excellent bill. I don't know if we can amend it, if there are any bills that are germane that may be advanced and be used as a vehicle to which we could attach this bill. I may try it again. In the interim, I would hope that you review the consideration of the bill because it is a good bill, and would have been worthy of passage and enactment, and I think

that in future years if we do not enact something of this nature, we are going to be suffering the consequences of a lot of embarrassment when athletes at UN-O or at Creighton or at Nebraska or anywhere else suddenly lose their eligibility because we have not addressed the problem and tried to regulate and restrict sports agents within the State of Nebraska. And it may not happen next year, but in two, three, four, five years, if legislation like this is not enacted, we may be looking back on this day and saying, why didn't we vote this legislation in? We could have prevented a problem, prevented a great embarrassment and the loss of eligibility of an athlete or athlete eligibility to compete in sports. I appreciate the situation here. It was rather quick. I appreciate the fact that it came on rather quickly and I wasn't able to explain it as best I could. Had I known about this bill, LB 159, status ahead of eleven-thirty this morning, I would have made those kind of arrangements and notified you of what exactly I was going to do. I apologize if there was any misunderstanding and I appreciate the fact that at least I was given the opportunity to have it considered. And with that, I would just withdraw the motion to suspend, and I guess we can go on with whatever was intended with this bill anyway. Thank you.

PRESIDENT: The amendment is withdrawn.

CLERK: Mr. President, the next motion I have with respect to LB 159 is a motion to indefinitely postpone. That is being offered by Senator Moore. Senator Conway, as the introducer, has the option to lay the bill over, Mr. President.

PRESIDENT: Take it up?

SENATOR CONWAY: I think we will lay the bill over, Mr. President.

PRESIDENT: Senator Conway, did you say you wish to hold the bill over?

SENATOR CONWAY: Yes, sir.

PRESIDENT: Then it will be held over. Mr. Clerk, anything for the good of the cause? We will move on to LB 520.

CLERK: Mr. President, 520 is on Select File. I do have E & R amendments pending. First order of business are E & R