

January 9, 1989

LB 267-278
LR 4

Transportation Committee will meet in Executive Session upon adjournment.

Reference Committee, now, in 2102.

SPEAKER BARRETT: Thank you. The Legislature will continue to stand at ease while the Referencing Committee meets. We are not adjourned.

EASE

SPEAKER BARRETT: Announcements, bill introduction.

CLERK: Mr. President, a series of announcements. First of all, Executive Board would like to announce the makeup of the Building Maintenance Committee. Senator Conway has been selected as Chair with membership consisting of Senator Beyer, Senator Korshoj, Senator Scofield and Senator Warner. And with respect to the Education Commission of the States, which is also an Executive Board appointment, Senators Baack, Dierks and Withem have been selected to serve.

Mr. President, announcement from the Speaker, and that is that there will be a Committee Chairpersons meeting on Wednesday morning at eight-fifteen in Room 1517; Committee Chairpersons meeting at eight-fifteen Wednesday morning in Room 1517, as offered by the Speaker.

Mr. President, I have received a Reference Report referring bills up through 237. (See pages 122-25.)

Mr. President, new bills. (Read LBs 267-278 by title for the first time as found on pages 125-28 of the Legislative Journal.)

Mr. President, I have a new resolution by Senator Bernard-Stevens, LR 4, asking the Legislature to approve a gift from the Nebraska Game and Parks Foundation to the Games and Parks Commission of certain real estate located in Lincoln County. That will be laid over, Mr. President. (See pages 128-29 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Transportation Committee for Tuesday, January 17. That is signed by Senator Lamb as Chair of the Committee.

PRESIDENT NICHOL PRESIDING

PRESIDENT: (Mike not activated.) ...George W. Norris Legislative Chamber. We have with us this morning as our Chaplain of the day, Pastor Steve Fenton of the Garden View Assembly of God in Lincoln. Would you please rise for the invocation.

PASTOR FENTON: (Prayer offered.)

PRESIDENT: Thank you, Pastor Fenton. We appreciate your being here this morning. Thank you. Roll call, please.

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

PRESIDENT: Any corrections to the Journal this morning?

CLERK: I have no corrections, Mr. President.

PRESIDENT: Any messages, reports or announcements?

CLERK: Mr. President, your Committee on Government, Military and Veterans Affairs whose Chair is Senator Baack to whom was referred LB 1009 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File with committee amendments attached. That is signed by Senator Baack as Chair. Senator Hartnett as Chair of Urban Affairs gives notice of hearing, Mr. President for Tuesday, January 30, Tuesday, February 6 and February 13. That is signed by Senator Hartnett. And Senator Withem has amendments to be printed to LB 610, Mr. President. And I have reports from the Lower Loup Natural Resources District regarding payment of attorney fees. That is filed pursuant to statute. I have an interim study report filed by the Retirement Systems Committee, signed by Senator Haberman as Chair. And Senator Weirbein has selected LB 269 as his priority bill, Mr. President. (See pages 463-66 of the Legislative Journal.) That's all that I have.

PRESIDENT: (Gavel.) If I could have your attention for just a moment, please. Senator Landis has some guests in the south balcony. We have 26 students and sponsors from the Fairview Christian School, grades 7 through 12 in Lincoln, Nebraska. Would you folks in the south balcony please stand so we may recognize you. Thank you for visiting us today. Move on to

January 30, 1990

LB 269, 520, 520A, 567, 567A, 888, 917
946, 954, 1046, 1050, 1085
LR 248

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Good morning, ladies and gentlemen. Welcome to this, the 18th day in the Second Session of the Ninety-first Legislature. The Chaplain of the day, Pastor Chris Anderson, from Glad Tidings Assembly of God, here in Lincoln. Pastor Anderson.

PASTOR ANDERSON: (Prayer offered.)

SPEAKER BARRETT: Thank you, Pastor Anderson. Roll call.

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

SPEAKER BARRETT: Thank you. With a quorum present, are there corrections to the Journal?

CLERK: I have no corrections, Mr. President.

SPEAKER BARRETT: Any messages, announcements, or reports?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 520 and recommend that same be placed on Select File, LB 520A Select File, LB 567, and LB 567A all on Select File, some having E & R amendments attached. (See pages 560-62 of the Legislative Journal.)

Health and Human Services Committee, whose Chair is Senator Wesely, reports LB 888 to General File, LB 917 to General File, LB 946 General File, LB 954 General File, LB 269 General File with amendments, LB 1046 General File with amendments, LB 1085 General File with amendments, those all signed by Senator Wesely as Chair. Mr. President, Education Committee reports LB 1050 to General File. That is offered by Senator Withem as Chair of the Education Committee. (See pages 562-63 of the Legislative Journal.)

I have appointment letters from the Governor that will be referred to Reference Committee for referral to Standing Committee for public hearing. An Attorney General's Opinion addressed to Senator Hartnett. (See pages 563-65 of the Legislative Journal.)

And, finally, Mr. President, LR 248 is ready for your signature,

February 6, 1990

LB 269, 990, 1029, 1084
LR 249

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us this morning Reverend Harland Johnson for our invocation. Would you please rise.

REVEREND JOHNSON: (Prayer offered.)

PRESIDENT: Thank you, Harland Johnson, for your appropriate message. We appreciate it. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Thank you. Do you have any corrections to the Journal?

CLERK: No corrections, Mr. President.

PRESIDENT: Any messages, reports or announcements?

CLERK: Mr. President, Government Committee, whose Chair is Senator Baack, reports LB 1084 to General File; LB 990, indefinitely postponed; and LB 1029, indefinitely postponed, those signed by Senator Baack. (See page 667 of the Legislative Journal.)

Mr. President, I have four appointment letters from the Governor. Those will be referred to Reference for referral to the appropriate Standing Committee. That's all that I have, Mr. President.

PRESIDENT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 249. We'll move on to General File. LB 269, Senator Wehrbein's bill.

CLERK: Mr. President, 269 was a bill introduced by Senator Wehrbein. (Read title.) The bill was introduced on January 9 of last year, Mr. President. At that time, it was referred to the Health and Human Services Committee for public hearing. The bill was advanced to General File. I have committee amendments pending by the Health and Human Services Committee.

PRESIDENT: Senator Wesely, for the committee amendments.

SENATOR WESELY: Thank you, Mr. President, members. The...LB 269 is a bill introduced by Senator Wehrbein making adjustments in the Clean Indoor Air Act. The bill was heard, and Senator Wehrbein did bring back amendments to the committee that mostly made technical changes in wording in the bill. It does change, if you look on the committee statement, that good faith effort by an employer, officially "allows for compliance" would be deleted, making a little higher standard there. But, otherwise, I would consider these amendments mostly technical in nature. So I would move for their adoption.

PRESIDENT: Any further discussion? If not, the question is the adoption of the committee amendments. All those in favor vote aye, opposed nay.

SENATOR WEHRBEIN: Mr. Speaker.

PRESIDENT: Senator Wehrbein.

SENATOR WEHRBEIN: I'd ask for a call of the house.

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

CLERK: 7 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence. The house is under call, will you please record your presence. Will you please record your presence. Thank you. Those not in the Chamber, please return to the Chamber so we may proceed. Senator Bernard-Stevens, Senator Scott Moore, Senator Emil Beyer, Senator Robak, Senator Carson Rogers, Senator Smith, Senator John Weihing, Senator Kristensen. Senator Owen Elmer. Senator Wehrbein. Okay. Ladies and gentlemen, if I could have your attention. We're voting on the adoption of the committee amendments, and call in votes have been requested.

CLERK: Senator Goodrich voting yes. Senator Weihing voting yes. Senator Hartnett voting yes. Senator Kristensen voting yes. Senator Beyer voting yes. Senator Peterson voting yes. Senator Beck voting yes. Senator Bernard-Stevens voting yes.

PRESIDENT: Senator Scott Moore, we're looking for you. Senator Goodrich, would you record your presence, please. Thank you.

CLERK: Senator Rogers voting yes.

PRESIDENT: Record, Mr. Clerk, please.

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

PRESIDENT: The committee amendments are adopted. Senator Wehrbein, would you like your opening statement, please.

SENATOR WEHRBEIN: Yes, Mr. Speaker and members.

PRESIDENT: The call is raised.

SENATOR WEHRBEIN: Thank you. Just to start out with, I know many of you wonder why I'm particular in carrying this bill. And I ought to probably start out by saying that this is called the Nebraska Clean Indoor Air Act and is no way intended to be anti-smoking. I understand it's interpreted to be that way. It's not interpreted to be anti-business, and there are those that are interpreting it that way. But this bill does nothing more than to carry on from the place that we're at now in our present regulations in law. It simply adds to it some penalties for failure to enforce these laws, if it is done. In a lot of ways, it can be seen as many to be pro-business, because it more clearly defines the rights of smokers and nonsmokers alike. I've passed around to you a list of a lot of the organizations that are in support of this because, in the real world today, in the business world today there are many that would prefer a smoking policy, and there are many that would prefer a no smoking policy. This simply is going to put in the law what defines that, where that line starts, in this case 15 or more employees you must have a policy. If you're under 15 you do not need to define smoking and no smoking. You may have it all smoking, if you so desire. If you're over 15, you will need to define a smoking/no smoking area, just as it is today, it's just simply that there is no enforcement in the laws today. Now it's also intended to be quite modest. It's much more modest or moderate than it's been in the past. If you read down the outline of the bill, it says that there is no structural changes, costing any money or necessary for compliance. Now I admit that this might be open for conjecture, but it's not the

intent that this would be a major expenditure for those that would need to do something to comply. It amounts to a best effort. If you have...those, as I said before, those that have 15 or more employees are the ones that would be affected, they must develop a smoking policy. An employee can designate their area nonsmoking, which an employee can do now. Fifty percent of the cafeteria, lunch room and lounge space must be nonsmoking. This, in all practical effect, is what it is now. If you're under 1200 square feet, which is the present law, you do not have to have that. You can designate the whole area smoking, if you so desire. So it has no impact under 1,200 square feet and under. Bars and restaurants, in spite of what you've been led to believe, are not affected by this. There is a present policy now, that policy will continue. The only way they would be impacted on this is if they had 15 or more employees, then they would be required to have a smoking policy and to have a defined nonsmoking area. The one thing it does is makes it clear that you cannot penalize nonsmokers who require a nonsmoking work area. This might be an area that is a bone of contention in the law, but, to me, this...a nonsmoker should have rights as well as a smoker, and it should not be an issue as to whether they have a right to exert that influence or to assert their authority in this area. This simply says that they may do so, that they will not be penalized if they do, they will not be ostracized if they do, and, in a lot of ways, I think it ought to make for a more compatible work place, because the employer now may be reluctant to have a definition of a smoking/no smoking area, not sure whether he will have the back of the law behind him. Even though he has many requests for this, they're not sure whether they really should or shouldn't do it, or if they do, will I have a suit. This simply says that they will be, with 15 or more employees, need to have a definition of a smoking policy and should feel comfortable in providing an area. And that, if a nonsmoker does raise the issue, they have every right, just as a smoker has today, to smoke, a nonsmoker would have the right to have a smoke-free work place. Now I've not gone into all of the areas of the passive smoke, in some ways I consider this almost aside of the point, because many have made other issues out of this. But we have a lot of research, especially since 1986, showing the affects of passive smoke on others. And we know that we have a declining amount of smokers in the United States today. It seemed logical to me when I took the bill that if 25, even if 27 percent are smokers, then the other 72 to 75 percent that are nonsmokers ought to be sure that they have a right to some clean air, too. As I said, it's not

intended to be confrontational. And I would submit to you that, in a way, this should reduce the confrontational aspects of a smoking/no smoking policy in business today where people are working. By being aware of the rules, no smoker, I know, wants to impinge upon other areas...other person's property or their place, their work place, their time, even their air. And, if they know what the rules are, I think it would really be clearer for all. So I see this as a positive move forward. I consider this a pro-active step forward. We know what happened in the air-line industry now in the last actually few months where smoking was banned entirely on airliners. We're moving into an area where it just seems to me that nonsmokers ought to have every right that a smoker today is entitled to. That's all I would submit to you that this bill does. And I would welcome any questions on this as the debate continues.

PRESIDENT: Thank you. Senator Crosby, please.

SENATOR CROSBY: Thank you, Mr. President and members. I just have a couple of comments and one question. The first comment is it does seem to me that, from my point of view, I have had no calls, no letters in particular from people who would be employees of a place complaining about any disputes about where and when you can smoke. I'd like to emphasize the fact that I do not smoke and I never have. I'm just one of those lucky people, I guess, that didn't ever take it up, so I don't have to fight that particular habit. I do have other vices. But, at any rate, I want to ask Senator Wehrbein if he would yield for one question.

SENATOR WEHRBEIN: Yes.

SENATOR CROSBY: Please.

SENATOR WEHRBEIN: Yes.

SENATOR CROSBY: Have you had a lot of employees tell you that they're having a problem in their workplace?

SENATOR WEHRBEIN: I have not had a lot. I have had some come to me, especially since I've had the bill, giving me cases. I have letters in my file of cases where they have had problems with smoke and have been afraid to request to do anything about it, realizing that they had some rights, but they were unable to exert enough influence to change the policy.

SENATOR CROSBY: Okay, thank you. That...see, as I say, I haven't had a lot of calls in that. What I have had calls about and letters is having to do with smoke areas in restaurants, and this bill does not have anything to do with restaurants. It takes the restaurants out of it, as you see on the sheet that was passed around. So, I have had mixed feelings about this bill from the very beginning because I understand all the problems with people absorbing other people's smoke. I understand that. And I know that that is definitely a health problem. But it seems to me that everybody I have talked to, smokers and nonsmokers alike, is that people these days, there has become such an awareness in our country and in our state that there is a problem, that the average person respects the smoker or the nonsmoker and tries to work with...I think they try very hard to work with each other. You know a lot of homes that you go to have a little sign, thank you for not smoking, or an office, thank you for not smoking. And you see people in the State Capitol, gathering in little corners to smoke, because you can't smoke just anywhere that you want to, except I guess on the floor of the Legislature. So, (laughter) I still don't know how I am going to vote. I voted for the amendments, but I continue to be concerned about pressure on small businesses, and this is what this looks to me and, to me, 15 employees is not very many, that is a small business. So I do think you should be careful in pushing penalties and rules and regulations and other things like that that make small busi...make it more difficult every day to operate in a small business. So, thank you.

PRESIDENT: Thank you. Senator Schellpeper, you're next. But may I make a couple of introductions, please. Our doctor of the day is Dr. Richard Hanisch of St. Paul, Nebraska. He's under the north balcony. Would you welcome him again. Thank you. And our Assistant Sergeant-at-Arms, if you'll observe him today, he is very proud looking. I understand that he became a grandfather last night, has a seven pound boy, and his name is Bill Tallichet, and I understand that both mother and grandfather are doing well. So congratulations. Senator Schellpeper, please, followed by Senator Hefner.

SENATOR SCHELLPEPER: Thank you, Mr. President and members. This is a bill that's real hard to talk against and real hard to vote against. But, if you will look at what the bill actually does and how it affects small business, I think it's a bill that

you probably almost need to vote against. Like I said, it's very hard to get up and talk against this bill. But the small businesses, it's a...we're taking away another one of their rights. And I think that we need to let the small business operate themselves rather than to dictate another thing that's going to be another hardship for them. I have never smoked in my life, and I guess it just doesn't affect me. But, in fact, I don't have any vices, as far as that goes. (Laughter.) But I think that we need to let the small business run their own business, and that's why I said it's so hard to talk against this bill. But we're taking away that one right. I think we need to really watch that. So I think that, when you vote on this bill, you need to really consider that. Thank you.

PRESIDENT: Thank you. Senator Hefner, please, followed by Senator Elmer and Senator Wehrbein.

SENATOR HEFNER: Mr. President and members of the body, I would like to ask Senator Wehrbein a question.

PRESIDENT: Senator Wehrbein.

SENATOR WEHRBEIN: Certainly.

SENATOR HEFNER: Senator Wehrbein, how does that affect us here in the Chamber?

SENATOR WEHRBEIN: It would not affect it here in the Chamber, we're not a business.

SENATOR HEFNER: There's more than 15 employees here.

SENATOR WEHRBEIN: We're not a business here. This operates under separate rules of government entity.

SENATOR HEFNER: Okay. Would you support an amendment then, if I offered it, to ban smoking in this Chamber?

SENATOR WEHRBEIN: Not necessarily, no.

SENATOR HEFNER: Okay. What's the difference between a public place and a business? Why are you just picking on a business?

SENATOR WEHRBEIN: I'm not really picking on a business. There are defined areas here, smoking and no smoking, that is all that

this bill calls for in a business. If I'm a nonsmoker working in a small business, in this case defined as 15 or more, I would have an opportunity to have...I would be able to have a nonsmoking workplace, a smoke-free workplace as well as it could reasonably be devised.

SENATOR HEFNER: Okay. You don't believe that we should have a special smoking place then here in the Chamber.

SENATOR WEHRBEIN: Well, it's my understanding that we do have an informal area of smoking and nonsmoking within this north balcony versus south balcony, underneath each one, for example.

SENATOR HEFNER: Okay. Thank you, Senator Wehrbein. I just feel that if we're going to impose this on business, why then we should probably impose it upon ourselves, too. So that's all I have to say at this time.

PRESIDENT: Thank you. Senator Owen Elmer, please.

SENATOR ELMER: Thank you, Mr. President. I have a problem with this particular bill and its threshold at 15 employees. Having operated a small business that had, at times, as many as 30 employees, we worked together very well, kind of like just an expanded family the way things worked together. When your business grows to maybe 100 or 150 employees it's no longer that type of a relationship between the employer and the employee. I would suggest that if this bill were to be advanced, we should have a threshold of somewhere around, oh, 75 or 100 employees, where the employees do need a stronger voice against a...or to negotiate with management that is stratified and does not have as much interaction or sociability between them, and that's the extent of my comments so far. Thank you.

PRESIDENT: Thank you. Senator Wehrbein, please, followed by Senator Dierks.

SENATOR WEHRBEIN: Yes, Mr. President, members. Once again this is not different from what the present policy is really in the work place, except for the fact that it requires a written policy. It makes everyone certain of what the rules really are. Part of the confrontational prospect...in the work place today is people being uncertain as to where smoking and nonsmoking. And, as a result, in many cases the nonsmokers are afraid, not afraid perhaps but uncertain as to whether they should exert their

rights for a nonsmoking policy. I've strong support for this, not only from large businesses, but small businesses. I think it's significant to show that the associations and businesses, in most cases, have taken a neutral stance on this because they have many that are impacted positively on this, some, obviously, they feel they're impacted negatively. But I would submit that this is really a case of being able to have a smoke-free workplace for those that want it, or for those that require it for one reason or another. They should not be intimidated by some other employees or others in the workplace without...and have fear of reprisal, fear of being fired. This simply says that they have a right to exert that, that there are...that the employer needs to make a good faith effort at reasonable cost. And I would emphasize the reasonable cost. And I'll admit I cannot define exactly what reasonable cost is, but it's an effort to make a good faith effort to make it only at a moderate cost. And I would challenge those that say a lot of money is necessary to implement this bill. That is not the intent, I will state that for the record. It is not the intent of this bill for small employers to spend a lot of money. That is not, again, the intent. The intent is for it to be only reasonable, only an effort to be made so that those nonsmokers may have their rights allowed, that they may be working in a smoke-free workplace and have every entitlement to it, just as a smoker. I really don't quite understand why there are those willing, so willing to assert that if smoking is a right of the smoker, then certainly a smoke-free atmosphere ought to be the entitlement of a nonsmoker. They should be equal. And this is an attempt not to put one over the other but to at least make them equal. And I would submit that today many nonsmokers feel that they are not in an equal, smoke-free atmosphere.

PRESIDENT: Thank you. Senator Dierks, please, followed by Senator Wesely.

SENATOR DIERKS: Mr. President, members of the body, I am standing in support of this legislation. I think that people haven't even addressed the main issue here, and that is the issue of public health, the health of your person, health of your body. This is the thing that we're concerned about. And I don't think anybody can really talk about this issue without being concerned about the public health part of it, and we haven't really heard much about that. We're more concerned about the rights of individuals. But I think the right of their ability to live in a healthy atmosphere is probably far and

above those other rights. If this is depressing or oppressing to small business, I'm sorry. But I think that we need to be aware of the health factor involved. So I'm standing in support of this legislation, I urge your support also. Thank you.

PRESIDENT: Thank you. Mr. Clerk, I understand we have a....

CLERK: Mr. President, Senator Hefner would move to amend the bill. (Hefner amendment appears on page 670 of the Legislative Journal.)

PRESIDENT: Senator Hefner, please.

SENATOR HEFNER: Mr. President and members of the body, this is the do as I say, not do as I do amendment. I feel, if we're going to put restrictions on businesses, why then we should also put businesses...put restrictions on here in the Legislature. This amendment says, and it's a new section and I just passed it out to you, "It is hereby declared to be the policy of the Legislature that no person shall smoke in the George W. Norris Legislative Chamber." And then it states a penalty, and the penalty is about like in the rest of the bill. And I'm not anti-smoking. I don't smoke myself, and it doesn't bother me to have my neighbors smoke. So I'm not doing it for that reason. But I...the reason I'm doing this is because I had a lady call me the other day and she said, Senator Hefner, she says, you want to impose restrictions on us out in the business world but, she says, you don't want any restrictions on yourself. She says, I was standing out in the Rotunda the other day looking in, and she says, I couldn't believe how many of the senators were puffing away. And I said, well, I know that. I says, we do have a few that smoke. And she said, well, why don't you do it yourself then? And I said, well, I'm not a smoker. And I realize there is a lot of awareness on smoking in today's world. The airlines are imposing it, and that doesn't bother me at all. Some businesses are imposing it. When I walk into a restaurant now some of them ask, do you want smoking or nonsmoking? And I usually tell them, well, I'd rather have nonsmoking, but it doesn't really bother me that much. But I just feel that, if we do it to businesses, well, then we ought to do it for ourselves. If we want to be leaders in the State of Nebraska, then we should lead. We should say, we'll impose those restrictions on ourselves if we're going to impose them onto you. And this is why I'm offering this amendment.

PRESIDENT: Senator Wesely, did you wish to speak about the Hefner amendment? All right. Senator Wehrbein, on the Hefner amendment.

SENATOR WEHRBEIN: Yes, Mr. President and members. I'm opposed to the Hefner amendment. The reason is that it doesn't face the issue that I'm talking about. It just says that no person shall smoke in the George Norris Legislative Chamber. My bill does not say that no one shall smoke. It simply says that, if you have over 15 employees, you will have a smoking/no...a smoking policy and you will have divided area for smoking/no smoking. And the...this well could be divided here, and that would be under the rules of this. I think it makes sense. But to totally ban it here, my bill doesn't say that it be totally banned, and I don't think that this is proper to say that it would be totally banned in here. Mr. Speaker, I also would question the germaneness of this amendment.

PRESIDENT: Thank you. I'll rule that it is germane. Smoking is smoking.

SENATOR WEHRBEIN: I'll accept that for now. Were you through, Senator Wehrbein? Okay. Senator Chambers, on the Hefner amendment.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, it's not often that Senator Hefner and I see eye-to-eye. But, for whatever reason, on occasion there are times when our paths will converge and our minds will mesh. If this body can ban styrofoam cups which, in and of themselves, are not a health hazard, but it's been established that smoking is, not only to the smoker but to those who are in the vicinity and can absorb smoke and be a beneficiary, or a victim, if you will, of the detrimental effects of smoking, Senator Hefner's motion is in order, not in the sense of just being germane, but in the sense of being logical, reasonable and designed to advance the health of every person who will be in this Chamber. Now I have never been one to tell people how to select a poison or which poison to select. But, if it comes to that person having selected a poison and wants to share it with me against my will, then it becomes a different matter. I'm going to say what people often say in settings such as this, some of my best friends smoke. As a matter of fact, the drug czar, William Bennett, has a habit that's so bad he cannot shake it. He's addicted to cigarettes while telling everybody else what a terrible problem drugs are

and that they must be fought, but he cannot control his own nicotine habit. Let him have that habit, let him be paid a very large salary to tell others to do what he himself cannot do. Senator Hefner's motion, the amendment that he offers does, in fact, set a tone. This is more meaningful than that resolution on the styrofoam cups. What I said at that time, that was a tempest in a styrofoam teacup, and it had no impact on the environment of substance. But this is a motion which, if adopted, will have substantial impact, and it will carry meaning, and it will be in the form that is enforceable and done in the way that the Legislature should act. It is made a part of a law, that is our function, and if we really mean to be serious about an issue such as this, as the Legislature seemed to be telling the public it was serious about styrofoam cups, Senator Hefner's motion should be adopted. And I will vote in favor of it.

PRESIDENT: Thank you. Senator Smith, please. Okay. Senator Wesely, did you wish to speak on the Hefner amendment? Senator Wehrbein, did you wish to speak on the Hefner amendment?

SENATOR WEHRBEIN: Just simply, Mr. President, members, just simply to say I, personally, would support an amendment like this if it was to do as Senator Chambers framed the question, and perhaps as Senator Hefner. On the other hand, it's not my intent of this bill to go beyond what we have said. And I go back to the fact that under the law, as I am proposing in 269 without the amendment, it is the intent that business can divide an area into smoking and no smoking. It does not ban smoking completely. It doesn't allow business to do that. So I feel by having an amendment on this, as acceptable as may be to many, does not really contribute to the bill. It may send a message that is more correct, this amendment, I won't argue that. But to reiterate my point, my point is that my intent is not to try to drive a wedge between smokers and nonsmokers per se, it is simply to have the clean air available to a nonsmoker as they may so desire. And if you can divide a room, such as this, in half, for example, then that is perfectly adequate. We don't have to ban it in the whole area. I think that would be consistent with what this bill is attempting to do to business. So, on that basis, I will oppose the amendment.

PRESIDENT: Thank you. Senator Hefner, did you wish to close on your amendment?

SENATOR HEFNER: Mr. President and members of the body, I didn't want to take too much time on this amendment because I realize it's a far-reaching amendment. But, Senator Wehrbein, if you were serious, why you certainly could amend this amendment that we'd have a section here. Also, by banning smoking in this Chamber, we don't say that a senator or an employee couldn't go to their office and smoke. This would just be in the Chamber. And the reason I brought this up is because this lady called me and she said, well, how come you're putting restrictions on some of the rest of us when you don't want restrictions on yourself? Like I said, this is the do as I say, not do as I do amendment. If we want to be leaders, then we should be able to live by some of those restrictions we put on other people. Like I said before, I'm not anti-smoking, it doesn't bother me. I don't smoke myself, but I just think that we need to call this to our attention. And this is what I'm doing with this amendment. I'd appreciate your support, and I guess that's all I have to say at this particular time.

PRESIDENT: Thank you. The question is the adoption of the Hefner amendment. All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 10 ayes, 8 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The Hefner amendment is not adopted. Back to the advancement of the bill. Senator Wesely, followed by Senator Landis.

SENATOR WESELY: Thank you, Mr. President, members. I would rise in support of the bill and encourage you to vote for it as well. I know that there are some who very strongly oppose this legislation, and I understand that they have that opportunity and respect their right to do so. But there is also an understanding I think most of us would have that the majority of people in this state would support this legislation. The majority of people in this state do not smoke. The majority of people in this state, taking any opinion poll that you want to look at, have indicated their desire to have some provision to protect the rights of the nonsmoker in the work environment. We passed this legislation back about 10 years ago, in '79-80, but we did not provide for the enforcement of the act in the business setting. The establishments that are under the provisions of this act, passed 10 years ago, do not necessarily

have any sort of enforcement provision that has made it a workable piece of legislation. So what we have found is a problem that's been long-standing, for 10 years we've said we've got an act but we can't really deal with the provisions of the act. And so I think Senator Wehrbein has come forward now and proposed a way in which we can come forward and deal with this in a reasonable fashion. Now I understand there are some businesses that are concerned. But we did sit down, in the Public Health and Wel...the Health and Human Services Committee, and work out amendments that have dealt with a lot of the concerns of businesses. Now there remains those that represent the tobacco interests, the smoking interests, they do not like the legislation, I understand that. But you've got to think beyond the lobbying force and beyond those individuals that have a very vested interest in this and think about the broader expanse of people in this state. And there what you find is a great support for this sort of legislation. Yes, there are many people very concerned about protecting the rights of the smokers, and they do have rights under this legislation. It's just that those nonsmokers out there that for so long have suffered, under a situation that we thought we'd solved ten years ago, have put demands on this Legislature to deal with this problem now for some time, and I think we need to listen to those voices, though they aren't very well organized. Though they don't really have a lobbyist down here representing them, they nevertheless deserve to be heard. Now, in addition, I think, as Senator Dierks said, there are public health considerations that need to be followed. The public health would dictate that some measures to restrict smoking is wise. Yes, individuals that smoke endanger their own health, but it's also known that in certain environments and in closed settings that smoke will affect others around them. Senator Conway and his environment right around him right now is polluting the air, and Senator Baack could die from it some day, and Senator Nelson. We probably wouldn't be that concerned. But I care a great deal about (laughter) Senator Baack and Senator Nelson, so we want to make sure that they have a clean environment. Senator Conway, he can do what he wants to, but, for those around him, we need to look out for their interests. Right now we're not doing that, and I think legislation to protect those interests makes sense. Now this Chamber is a very large Chamber, it's a situation that is different than an enclosed setting in a work environment where you simply can't escape the smoke. Here when Senator Hannibal lights up I just kind of move away a little bit. But I can't move far because Senator Warner

is behind him and so I just put up with it. But, nevertheless, it seems to me (laughter) that some situation like this in different work environments has caused great conflict and friction. This bill would create a mechanism to resolve that, a policy would be required, that policy would have to be posted and in that fashion we would have an understanding between both smokers and nonsmokers how, in the work environment, we would go ahead and enforce this legislation. So I, personally, think it's been worked out to a point that is very reasonable. And, despite protest to the contrary, I think it's a piece of legislation that needs to advance and be passed.

PRESIDENT: Thank you. Senator Owen Elmer, please.

SENATOR ELMER: Thank you, Mr. President. Senator Wehrbein, would you yield to a question, please?

PRESIDENT: Senator Wehrbein.

SENATOR WEHRBEIN: Yes.

SENATOR ELMER: When we adopted the committee amendments, did that affect in any way the business acting in good faith toward this?

SENATOR WEHRBEIN: No. It really clarified the 1,200 square foot, which took precedent, the 15 employees or 1,200 square foot. It clarified an area in there that was not too clear.

SENATOR ELMER: So, what you're saying is, if a small business proceeds along a line to work with these employees in good faith, this law would not be applied to them?

SENATOR WEHRBEIN: That's right, and they would not be required to spend only reasonable cost. And I would say in a small business that would be a very, very, very modest amount. So I don't want to mislead you, but...

SENATOR ELMER: Okay, so, for example, a small business had, say, 25 employees and all the employees got together and they said, we don't think that this is necessary for us in our workplace, would that business still have to go ahead and do it?

SENATOR WEHRBEIN: If you said all, that means all, they would...only thing they would have to do is say smoking is

allowed in this entire establishment. But it would have to be 25 employees, in this case. If one wanted a smoke-free workplace, they would have more entitlement under this bill. They would be able to demand that they have a smoke-free workplace in their particular area as long as it could be arrived at on a reasonable cost. Well, it...not necessarily cost, but they would...it would be very modest.

SENATOR ELMER: Okay. Given those answers, I still am feeling that we need to apply this to much larger businesses than this would apply to. Thank you.

PRESIDENT: Thank you. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. President. Members of the body, if I had my druthers, there wouldn't be any smoking, period. I don't happen to like smoking. But we live in the real world, and the real world says that we just made a statement up there...by the way, the vote was taken on the Hefner amendment, which was exactly what he said, it wasn't do as I do, it was just do as I say. And now I dare any of you on this floor to support this bill after that amendment was rejected by the body. I don't see how any of you could have the nerve to sit here and give a green light to this bill, if you weren't willing to support saying that we'll do the same thing. The reality of it is we can't do the same thing, I don't think. And when you look at small businesses which are having financial problems surviving right now, we've been doing all these things in the state the last few years trying to help our small businesses survive, this is one more measure in which what we will be doing is placing additional burdens, additional restraints and taking away the right of a small business owner. I have a few questions I would like to ask you, Senator Wehrbein, if I might.

SENATOR WEHRBEIN: Yes.

PRESIDENT: Senator Wehrbein.

SENATOR SMITH: On page 5 and 6 of the bill, even though we've been talking about the fact that it's not going to place any burden on the employer and that there wouldn't be any financial costs involved, et cetera, the way the bill reads, looking at lines 21 through 25 on the bottom of the page, "Any employee in the place of employment shall have the right to designate his or her immediate work area as a nonsmoking area and to post the

same with an appropriate sign or signs, the style of which may be determined by the employer." Then it says, "If due to the proximity of the smokers, size of the work area or poor ventilation, such designation does not eliminate the effects of the smoke on the employee's health, the employer shall make additional accommodation by expanding the size of the work area." Now, what if there is no other place that that person can be? And it goes on to say that he could be relocated. Well, what if you only have a small, and I mean literally a small business here, where you don't have any other place you can put this employee? Does that mean then that you have to build an extra room for this person, because where else are you going to put them, if you can't...I mean, there is no other place to relocate them. The next question I have is, down on page 6, where we're getting down to line 17 through 19, where Section C is, "In any dispute arising under the smoking policy, the health concerns of the nonsmoker shall be given preference." And I understand this is a bill aimed at, you know, for support of those kinds of folks, which I happen to be one, by the way. But I guess a question that comes to my mind is even over the wishes of the employer, let's say you have a business where you have no space that you can move anyone and you have two people that must work together, one smokes, the other does not smoke, the way the bill is written it appears that the nonsmoker takes preference, and she or he can force the employer, who may happen to prefer to smoke himself or herself, to do whatever the wishes of that person are concerned. Is that right?

SENATOR WEHRBEIN: I guess that's the way the bill would be interpreted. And I guess I would remind you that if you take that example to its ultimate, right now the smoker is exerting their rights over the nonsmoker. So I guess this simply reverses that, and I guess that's where you have to decide where you'd be.

SENATOR SMITH: Okay, I guess I'd be to the side that says I think what we're already doing is placing a lot of restrictions on employees, private people who have their own businesses, who are paying the person who may be putting them in a position of creating a dispute in the office or in the business, and yet they're the person that is paying them. The other thing that I would ask you is, could you clarify 15? And that is the way the bill reads, am I correct, that there are 15 employees or more.

SENATOR WEHRBEIN: Yes.

SENATOR SMITH: Okay, how is 15...how is that total counted? Is that full-time employees, part-time, what?

SENATOR WEHRBEIN: I think that would be total employees, part-time and full-time.

SENATOR SMITH: So it's part-time included, so that does not mean necessarily that you have a business that even is of the caliber that has what you would usually think of as 15 employees on force all the time.

PRESIDENT: One minute.

SENATOR SMITH: It would include anyone that works with that business, whether they're there some of the time, or not, or may have different responsibilities that are not really a part of doing the business itself. That's still the total 15, if there's...

SENATOR WEHRBEIN: No, as long as they are employed.

SENATOR SMITH: It could be a very small business.

SENATOR WEHRBEIN: Yes, as long as they're employed. Right. I'd like to ask...answer your first question a little bit.

SENATOR SMITH: All right.

SENATOR WEHRBEIN: You answered one about reasonable...

SENATOR SMITH: I think I'm going to run out of time. I'd like to just finish this and would you put your light on, maybe you would respond. I'd appreciate that. Okay, I just would like...and if I have time, I'll give it to you. But I just, I guess in closing what I would like to say is that I feel that this has to be a fairness, we have to come down to some kinds of fairness issues. And this really becomes, to me, an unfair issue as far as going beyond what's fair on the part of what we're requiring for small businesses. And I go back to what we just did here on the floor, as a body, and being unwilling to impose those same kinds of restrictions on ourselves. So how can we ask small businesses to be put into this position now, in addition to the other things that we've placed them into a position of being required to comply with?

PRESIDENT: Time.

SENATOR SMITH: Thank you.

PRESIDENT: Senator Langford, please, followed by Senator Wehrbein.

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

PRESIDENT: Okay. Senator Wehrbein, did you want more time than your closing? If you do, you may have it. Yes, but there are no other speakers, other than you, and if you'd like an extra five minutes, you may have it. You're willing to close now? All right, fine. Thank you, Senator Langford. Senator Wehrbein for closing.

SENATOR WEHRBEIN: First of all, answering the questions that Senator Smith raised, going back on page 5, and I did mislead Senator Elmer a little bit because I said modest cost, which we did have originally in discussion. But it says in line 11, "to the extent...maximum extent possible, except an employer shall not be required to incur any expense to make structural or other physical modifications in providing these areas". This, in essence, is what we have today. And so I guess I'm a little perturbed because there is a big smokescreen, pardon me for the pun, going on about this bill. This is not any different than we presently have. In nearly all the cases, it simply adds some enforcement to the bill. We are stating that an employer must make a good faith, those are my words, it's implied in the bill, to provide a smoke-free area for a nonsmoker, if they request it. They must have a smoking policy. And a lot of this is smokescreen, we're not doing anything different. Going back to what...the inconsistent message some of you see in this Chamber, we could simply amend this bill, perhaps I should, to say that one side is nonsmoking, the other side is smoking. That would meet the qualifications of this bill, as I see it. And so what Senator Hefner's bill said is no one shall smoke in here, period. This policy doesn't say no one shall not smoke, it simply says that there will be a smoking policy designated, there will be a smoking...no smoking designated for those over 15 employers...employees. So I don't....I submit to you that you're getting a smokescreen, that you're getting around the bill. It is no more detrimental today to a...in this bill to smokers than it is today, except that it does put some

enforcement in it, and it does give some nonsmokers the right to speak up without worrying about being fired. It does give some employers the right to assert themselves in this particular area of a smoking policy without fear of reprisal by others in their company. It says that they can make a smoking policy, and it will be backed up by state law. It says that they can do what many others are doing now but are apprehensive that they have gone too far in asserting their rights in the workplace. This simply says they may assert their rights in the workplace and have a smoking policy, and define where it is. And I guess I'm saying that over and over again because I think you need to understand that. And there are those in the lobby that are saying that this gets into the areas that we're not into now, that is not true, at least it's not intended to be that way. It's simply intended to be a very modest approach to give nonsmokers the right to have a smoke-free atmosphere in their working place. It seems like that's only the human, natural thing to do, that they should have the rights that a smoker has. If the smoker wants to cloud up the work space they have, so be it. Well, let's say a nonsmoker has the right not to have smoke in their work space, that's what it's saying. And we're sending a message via this...by state law that this is a reasonable thing to do, the departments of health can enforce this and that there will be some progress in clean air within the workplace in businesses in Nebraska. I don't think it should necessarily be considered adverse to small business. There are many, many small businesses, as well as many, many large businesses that are in support of this. I'd ask you to read down the list of businesses that support this across the state, especially in the metropolitan areas. It's a fact of life today, it's an idea whose time has come, if you will, that we recognize the detriment of passive smoke and that people ought not have to breathe in passive smoke, if they don't desire to. I would remind you, health experts say, with some confidence, 3,000 to 15,000 premature deaths each year...

PRESIDENT: One minute.

SENATOR WEHRBEIN: ...are the result of passive smoke. That's quite a few to be captive inhalers of passive smoke from someone else. And if we talk about individual rights, it seems to me that a nonsmoker ought to be able to have as many rights as a smoker, that's simply all that this bill is attempting to accomplish.

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

SENATOR WEHRBEIN: (Response inaudible.)

PRESIDENT: Okay. Senator Wehrbein has requested a call of the house and a roll call vote. The question is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 13 ayes, 1 nay to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence. Those not in the Chamber, please return to the Chamber and record your presence. Several of you have not recorded your presence, please do so. We're looking for Senator Goodrich, Senator Haberman, Senator Robak, Senator Bernard-Stevens. Senator Rod Johnson, would you record your presence, please. Thank you. Please return to your seats, ladies and gentlemen, so we can begin. Please return to your seats. We're looking for Senator Bernard-Stevens and Senator Hartnett. Senator Wehrbein, we can't seem to locate Senator Bernard-Stevens nor Senator Hartnett. Do you wish to wait for them? Okay. The question is the advancement of the bill. Roll call vote has been requested. Mr. Clerk.

CLERK: (Roll call vote taken. See page 671 of the Legislative Journal.) 16 ayes, 23 nays, Mr. President, on the motion to advance.

PRESIDENT: LB 269 fails to advance. Anything for the record, Mr. Clerk?

CLERK: Yes, I do, Mr. President.

PRESIDENT: The call is raised.

CLERK: Mr. President, your Committee on Agriculture, whose Chair is Senator Rod Johnson, reports LB 1005 to General File with committee amendments attached. And, Mr. President, Natural Resources Committee gives notice of hearing for Friday, February 16, signed by Senator Schmit. That's all that I have, Mr. President. (See pages 671-74 of the Legislative Journal.)