able to assist other agencies, other investigating committees, other individuals who are involved. I have pledged my cooperation to some of them with whom I have visited. I know that Senator Chambers feels the same way. I know that other members of the committee feel the same way. I hope that we are all pursuing the same goals, same objectives and that we can work together. I want to say again that this committee will act with propriety, honesty and integrity. We intend to obtain the best counsel we possibly can and we intend to protect the rights of the innocent and to pursue those who might have been less than innocent. Mr. President and members, I ask for a positive vote on the resolution.

PRESIDENT: That was the closing. The question is the adoption of the resolution. All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please. Record, Mr. Clerk, please.

CLERK: 32 ayes, 0 nays, Mr. President, on adoption of LR 5.

PRESIDENT: The resolution is adopted. You have some new bills, Mr. Clerk.

CLERK: Mr. President, I do. New bills. Mr. President, Senator Labedz would like to have a meeting of the Reference Committee now in the Senate Lounge. Referencing Committee in the Senate Lounge, Mr. President, right now. Senate Lounge for Referencing Committee. New bills. (Read by title for the first time LBs 341-355 as found on pages 183-87 of the Legislative Journal.)

PRESIDENT: We will be at ease for a few minutes for referencing and receiving a few more bills.

EASE

PRESIDENT: (Microphone not activated) and capable of transacting business. I propose to sign and do sign LR 3. Would you like to continue, Mr. Clerk, please.

CLERK: Yes, Mr. President, thank you. New bills. (Read by title for the first time LBs 356-372 as found on pages 187-91 of the Legislative Journal.)

Mr. President, I have a new resolution offered by Senator Hall.

LB 416, LB 502, all correctly engrossed, all signed by Senator Lindsay as Chair. (See page 829 of the Legislative Journal.)

Senator Landis has amendments to LB 361; Senator Nelson to LB 357. (See pages 830-31 of the Legislative Journal.)

Mr. President, Senator Warner would like to announce the room changes for hearings scheduled for March 1 and March 3.

Mr. President, the Natural Resources Committee reports LB 339 to General File with amendments, LB 730 to General File with amendments; Urban Affairs Committee reports LB 444 to General File with amendments; Banking reports LB 482 to General File, LB 64 indefinitely postponed, LB 559 indefinitely postponed, LB 782 indefinitely postponed; and General Affairs reports LB 371 to General File with amendments; all signed by their respective Chairs. (See pages 831-34 of the Legislative Journal.)

Mr. President, new resolutions, LR 34 offered by Senator Weihing. (Read brief explanation.) LR 35 by Senator Rogers. (Read brief explanation. See pages 835-36 of the Legislative Journal) Both of those will be laid over, Mr. President.

Mr. President, Senator Schellpeper has amendments to LB 357 to be printed. (See pages 836-39 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: Senator Robak, would you like to adjourn us until tomorrow at nine o'clock which is February 23rd.

SENATOR ROBAK: I move that we adjourn until tomorrow, February 23rd, at nine o'clock.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. You are adjourned until tomorrow at nine o'clock.

Proofed by: Sandy Ryan
Sandy Ryan

afternoon's work on senator priority bills, the Chair is very pleased to announce that in the north balcony we have some guests of Senator Schmit, 34 fourth graders from Yutan Elementary in Yutan with their teachers. Would you people please stand and be recognized. Thank you for visiting with us this afternoon. Mr. Clerk, first bill.

CLERK: Mr. President, LB 371 is offered by Senator Ashford. (Title read.) The bill was introduced on January 11, referred to General Affairs, advanced to General File. I have committee amendments pending by the General Affairs Committee, Mr. President.

SPEAKER BARRETT: Thank you, sir. To the committee amendments, Senator Smith, please. (Gavel.)

SENATOR SMITH: Thank you, Mr. Speaker. Members of the body LB 371 was sponsored by Senator Ashford. It puts in the statute language which regulates the termination, expiration and renewal of distribution agreements between beer suppliers and beer wholesalers. It puts specific requirements on both wholesalers and suppliers in the performance of the franchise agreement and it governs how the franchise may be transferred. The committee amendment is very simple in that it adds to the definition sections, the definitions of control of a wholesaler's business which is a definition that was intended to be included but was not. It's very simple. It simply states, control of a wholesaler's business shall mean that combination of ownership interests which legally or in partial (sic) effect has the power to determine the policies under which the wholesaler's business shall be operated and shall include, but not be limited to, any change of ownership by 25 percent or more interest in the wholesaler's business or any change in the form of business entity being utilized by wholesaler, including, but not limited to, a change from a sole proprietorship to a corporation. That's the extent of the amendment and I would ask for the adoption of the committee amendment.

SPEAKER BARRETT: Thank you. Any discussion on the committee amendments as offered by Senator Smith? If not, Senator Smith, anything further? Thank you. The question is the adoption of the committee amendments. Those in favor please vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of

General Affairs Committee amendments.

SPEAKER BARRETT: The committee amendments are adopted. To the bill as amended by the committee, Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President, members, this bill, LB 371 is the result of a considerable amount of work by the wholesalers in the State of Nebraska and certain brewers who worked together over a long period of time to come up with what is the Franchise Practices Act, LB 371. LB 371 is designed to regulate the termination, expiration, and renewal of distribution agreements between beer wholesalers and beer suppliers and it does several other things. The bill is quite lengthy. It is a balanced piece of legislation that deals with the rights of wholesalers and the rights of brewers in their relationships which are mainly contractual relationships that currently exist. One of the missions of the bill and one of the issues that I was most concerned with is the protection of local businesses or local wholesalers which have developed businesses in the State of Nebraska throughout the State of Nebraska over several years. What this bill does amongst other things is to provide adequate protection for those wholesalers in their relations with brewers. It provides for the criteria for termination and protects the investment of businesses which, quite frankly, play a significant role in many communities throughout the State of Nebraska. And going through a couple of the points, one of the concerns that had been mentioned was that there had been difficulty in the past with some of the wholesalers and their ability to pass on their business to family members and that...there is a provision in the bill which sets forth the criteria that a family member or relative would...must meet, but sets those criteria out plainly and succinctly so that a family which has invested a significant amount of money can see that investment passed on. It also, it does impose restrictions on breweries, but it does also impose significant restrictions on wholesalers. It has criteria that deals with the requirements that wholesalers devote their efforts, that the efforts that are required by their agreement with the brewers. It sets out criteria for sale and delivery of product within designated territories and it also talks about the obligations of wholesalers on the transfers of their business which protects the interests of the brewers as well. The other issue that was of interest to me and is set out in the bill is the protection for the consumer which is the, in my opinion, the ultimate purpose of the bill and that is to make

certain that we have a steady stream of product that conforms with rules and regulations of both the...of the breweries as well as of the State of Nebraska in dealing with beer product. It creates an orderly market, meaning that one of the concerns that has been brought to me by the consumers in this area and retailers is, through the retail market, is how are we going to ensure that our...that we have a wholesaler that will service our territory in a proper way in our area? And this bill will, as far as can be done I think in legislation, preserve continuous service by maintaining markets. You will not have the situation, hopefully, where a large brewer would select maybe that Omaha as the location for its only wholesaler in the State of Nebraska and that you would not have the kind of penetration in greater Nebraska that is necessary to service the retailers in that area. The bill is quite lengthy and somewhat involved. It is needed legislation and it, as reflected by several court cases throughout the country on this subject, it will decrease the necessity for any litigation in this area which is in franchise cases can be extremely costly and time consuming. It provides provisions for arbitration and other easier methods of dealing with problems that come up between brewers and wholesalers. The bill, as I mentioned earlier, does have requirements set out for...to protect the interests of the retailer. It, for example, requires that the equipment that is utilized be maintained and clean, the product to be rotated and that dated products be removed from the shelves. It also regulates that the relationship to some degree between the wholesaler and the retailer, so that there would be a prohibition against selling beer to a retailer who does not have a location within the wholesaler's market, which is certainly a consumer issue and an issue for the orderly regulation of the product, and also requires that a wholesaler shall not sell beer to a retailer who the wholesaler reasonably knows does not have a location within the wholesaler's territory except for temporary service. So we have orderly markets preserved. We have service preserved throughout the State of Nebraska. Consumer interests are taken care of in this bill. I appreciate Senator Smith's and her committee's work on this bill. I appreciate Senator Haberman in his decision to make this his priority bill. It was extremely helpful to the wholesalers and others and consumers who are interested in this piece of legislation. Thank you for your indulgence and I would encourage that this bill be moved on to Select File. Thank you.

SPEAKER BARRETT: Thank you. An amendment on the desk,

Mr. Clerk.

CLERK: Mr. President, the first motion I have is to indefinitely postpone the bill. That is offered by Senator Hall. Senator Ashford as principal introducer would have the option to lay the bill over, Mr. President.

SPEAKER BARRETT: Senator Ashford, your wishes, please.

SENATOR ASHFORD: How many people are here? No, we'll take it up now, Mr. Speaker.

SPEAKER BARRETT: Take the bill up now, or the motion, excuse me. Senator Hall.

SENATOR HALL: Thank you, Mr. President and members. It is with much difficulty that I rise and offer this motion to indefinitely postpone LB 371, both because Senator Haberman has offered it as his priority bill and Senator Ashford brought it to General Affairs Committee that I happen to sit on and I even voted to advance this out of committee. If you look at the committee statement, I will up front admit to that. Every once in a while when we are here there are times when I guess we turn our head, maybe we hold our nose and we vote for something that possibly we think in our gut that we shouldn't have or very likely should have questioned a little more. I confess to the fact that LB 371 is one of those provisions that falls in that category or under that definition for me. The...I missed much of the committee discussion because of introducing other bills that same day, but I didn't have the opportunity, and I guess I would like it at this time, but I didn't have the opportunity to hear for the short time I was there any good reason as to why LB 371 is needed. I passed out for you a copy of Nebraska statutes 87-402. It is the Franchise Practices Act. This is something that was passed by the body in 1978 and what LB 371 does is strikes that out of the statutes and replaces it with the bill as it is before the body. Now I got to thinking about the fact that I didn't say anything on 371 when it was before the General Affairs Committee, and I had some time the other day, we were on Final Reading, pulling a bill back and amending it, and I had some time to sit and think about the bill while we were finishing up Final Reading and I said, I probably should address that issue, and with that, I did not, I apologize. The kill motion was not printed nor the amendments that follow if the kill motion should fail, but I didn't expect the bill to be

up today as well. I don't even think in Senator Ashford's opening on the bill that he dealt with the issue of the need for LB 371. What LB 371 does is it basically not only puts into stone what the beer wholesalers have with regard to their current operation with the three tier system, it puts it in stone, it wraps it in concrete and then it encases it into steel. It is one of the most, I guess, latent pieces of class legislation that protects a specific industry in this state, probably more than any other that we have. And I would like to have you just take a look at what I passed out for you. The reasons that...some of the reasons that Senator Ashford laid out with regard to the issue of adopting LB 371 were that it allowed for orderly markets, service in the industry, quality kinds of control issues and things like that. Well, I would ask you to take a look at the first page of that Franchise Practices Act, it would be 887 as is listed there and under Terms, defined, it issues, lays out there for you what specifically is covered under this act. It was passed just 11 years ago and it reads there, a franchise shall mean a written arrangement, a written arrangement. Remember that because this bill has in it a provision that allows for oral arrangements to be held under law. It says a written arrangement for a definite or indefinite period, in which a person grants another person for a franchise fee, a license to use a trade name, trademark, service mark, or related characteristics in which there is a community of interest in the marketing of goods or services at the wholesale, retail, by lease, agreement or otherwise, and any arrangement, agreement or contract, either expressed or implied, for the sale, distribution, or marketing of beer or nonalcoholic beverages at the wholesale, retail or otherwise. It goes on to list a number of things. You turn to the second page, 888 as it is handed out there, and you go down to Franchise; termination, cancellation, or failure to renew; notice; when; good cause. It shall be a violation of sections 87 blah, blah, blah, for any franchisor directly or indirectly through any officer, agent, or employee to terminate, cancel, or fail to renew a franchise without having first given written notice set forth...setting forth all the reasons for such termination, cancellation, or intent not to renew to the franchisee at least sixty days in advance of such termination, cancellation, or failure to renew. These protections for the franchisee are there. They are currently in law. What LB 371 does, and I'll get into that if the kill motion should fail, goes even farther to protect this industry, protect those franchise wholesalers. The bill itself, and I would ask you to walk through the bill if you can, if you

have time, while we're discussing this kill motion, and look at some of the things that it allows for. It allows for two different types of determination on sale of the business. In other words, there is one set of criteria that has to be met if you're going to sell...if Senator Hannibal, for example, wanted to sell his beer distributorships to me. But if Senator Hannibal wanted to sell it to his brother, there would be a totally different set of criteria that could be met. Those, of course, that stay within the family as written in LB 371 are much less. Those criteria don't have to be the same even though we're dealing with the issue of liquor here and the fact that we have clearly stated that it can be a problem. Senator Hannibal's brother could be a felon and it would not apply in this case. In my case he would not...if I were a felon, he could not sell it to me. I mean those are the kinds of things that LB 371 hides in the language that is underlined in it and it's just one of those bills that sneaks in every year that we pay little attention to because the industry has signed off on it, the lobby is supporting it and I think we don't often take the time to look at it. But when it raises its head in a priority bill status, it was one of the bills as I went through the list and said there at least, at least should be some amendments to it, and I don't blame Senator Smith and the committee because I'm a member of that committee. It's just I did not take the time then to go through it prior to discussing it in Exec Session and I'm taking the time on the floor here today to do that. The kill motion is one that I intend to follow through with. I think the bill is not needed. I'll wait to hear Senator Ashford's response to that because I see no reason why there needs to be further protections for this industry when we have a franchise act that allows for the protections that Senator Ashford stated that the bill currently has as drafted. I don't see why the statutes need to be changed, the whole franchise act completely wiped out through the passage of LB 371 as written needs to take place at this time. There is no good cause. I have not heard of any problems that have arisen with regard to beer franchise holders. I've not heard where any wholesaler has had their parent company come down and say, if you do not shape up, that we are going to pull your franchise. I have heard nothing of the kind that would lead me to believe that a total restructuring of the franchise act, a total rewrite as provided by LB 371 needs to take place. And with that, Mr. President, I would offer the kill motion so that Senator Ashford can explain the need for LB 371. Thank you.

SPEAKER BARRETT: Senator Ashford.

SENATOR ASHFORD: Thank you. I guess I have several responses. One of the first ones would be that this bill has been introduced for three months now, or two and a half months now. It went through a committee process and none of...there was absolutely no issue raised at that committee hearing by anyone. There was a small issue raised by Mike Kelley, lobbyist for some retailers and I think we've talked about that with him and I believe, and satisfied him, having to do with rotation of product. The whole area of franchise law throughout the country has undergone a significant amount of change in the last 20 years and, in fact, franchise...if there is any area of law that has undergone more change, I don't really know what it is. For years and years franchise law was basically handled through the common law, that contractual arrangements were entered into between auto dealers, for example, and their franchisee or licensee. Agreements were entered into between suppliers of all kinds of products and what is very interesting about the franchise law is that in many cases and what is the most telling problem for me, especially under the common law, is that most franchisors do not locate in Nebraska. Most franchisors are large corporations located some place else other than Nebraska and the law, the common law as it developed, especially in the federal courts, in many cases was very, very protective of the franchisor. If you go back to the...many Supreme Court cases in the twenties and in the thirties that developed out of the automobile franchise arrangements, the tremendous power placed in the hands of the Ford Motor Company, the Chrysler Auto Corporation in basically...in dictating to independent business people in local areas who put significant investments. One of the interesting things about franchises, if you've ever read an agreement, and I have done quite a bit of work in the franchise area, if you've ever read an agreement, a franchise agreement, it is a very long, complex document and I'm specifically familiar with the franchise law in respect to auto dealers. And I'll tell you, I would hate to invest hundreds of thousands of dollars that these franchisees invest with the kind of security that is provided in most of those franchise agreements. And under the common law most of those franchise agreements were iron-clad and they were primarily enforced against the small independent, in this case, Nebraska franchisee, and I have many examples of ca...we can go through cases I've had where franchisees have lost substantial investments because of a

determination made unilaterally by a franchisor that there is some cause for a particular determination or decision to terminate a franchise. I, having read this statute initially, it makes very good light...and I do invite you to look through this and go through the provisions because it is a balanced piece of legislation. It sets out specifically what the rights and obligations of the parties is in order to make sure that in Nebraska we don't have the problem that has occurred in the airline industry and in the rail industry where we have markets that no longer have...the bus, the bus industry...

SPEAKER BARRETT: One minute.

SENATOR ASHFORD: ...where we have industries that do not have service maintained and there is no more and there are cases in Nebraska on the liquor industry and the regulation of the industry, the police power of the state to regulate this industry. It is important that the state be involved in this process so that markets can be maintained, so that wholesalers have a right to have their rights protected and, more importantly, so the consumer has a steady and good product delivered in a reasonable way throughout the State of Nebraska. This bill does that and I invite you to read it. It's a good piece of legislation and one...another...a very good reason for passing it, if you look in the arbitration provisions, it's a way of solving problems in an inexpensive way. I'm sorry Senator Hall didn't bring any of these problems to my attention before this time. This is a total, complete surprise to me, which is fine, I guess...

SPEAKER BARRETT: Time has expired.

SENATOR ASHFORD: ...but with that, I would urge again that this kill motion be defeated. Thank you.

SPEAKER BARRETT: Thank you. To discussion on the motion to indefinitely postpone, Senator Haberman, followed by Senator Hall.

SENATOR HABERMAN: Mr. President and members of the body, the way we're starting out on this bill I think Senator Hall is turning into a Grinch. I mean, this is not nice at all, what he is trying to do. Well, let's do it this way. Senator Hall has...alludes to that this bill is a horror chamber of bad things, that this bill is class legislation and it puts things

into cement, we don't need the bill and, oh, he has raised many, many questions to get your attention and has wrung his hands and said, we shouldn't have this thing and that he has a series of amendments that are going to improve the bill. Well, let's do this. Let's do not kill the bill and then let's listen to Senator Hall's amendments and see exactly what they do. He says they are fairly simple, they clean the bill up, so let's do not kill the bill, let's listen to his amendments, let's see where he is coming from and decide on them when the vote comes. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Hall, followed by Senators Ashford and Smith.

SENATOR HALL: Thank you, Mr. President, members. The...I guess I still haven't got an answer to my question. My question was, why do we need 371? Senator Ashford spoke to the issue of franchise law and how it has been changing over the last 10 to 15 years and I guess that's why we enacted the franchise act back in 1978 to provide for those protections. That, as far as I know, is still on the books and I don't know that there have been any cases in Nebraska with regard to beer wholesalers that either affect the airline industry, the service that is provided to them, common law or some of the other things that he alluded to in his response to the kill motion. Again, I apologize for the fact that this came up as quickly as it did. I left without the agenda last night and I apologize to Senator Ashford publicly for that, but the fact of the matter is the bill is before us. And I still don't know why...I guess I haven't heard the answer to the question as to why 371 is so pressing that it becomes a priority bill unless there are examples of misuse, fraud, some kinds of problems that have affected or impacted the industry in the last year that we need to address and that are this urgent. This is a bill that does a number of things that just are not, as I stated earlier, something that I guess have been brought to everyone's attention. Senator Ashford addressed the arbitration procedures. In 1987, we adopted the Uniform Arbitration Procedures here in the state for contract situations that LB 371 specifically deals with. I guess why did we adopt that in 1987 if we're coming back now and in the franchise act putting together specific arbitration procedures strictly and solely for beer wholesalers, and the procedures with regard to their contracts? It doesn't make any sense to have a set of rules that applies to everyone else except for the beer wholesalers. That's one of the amendments that I offer, to

strike that provision out of the bill. One of the other things that I'm going to offer because I have a funny feeling my kill motion is not going to go, but we're going to talk about the issue of whether or not an agreement should be enforced if it is an oral agreement, because if you read LB 371, the bill allows for enforcement of an oral agreement. Senator Ashford is an attorney and I know that he would think twice about taking a case and defending an oral agreement or an oral contract, if you will, as LB 371 would provide for if it's passed as it is currently written. The other issue with regard to statements of financial interest as it is listed in LB 371, the bill prohibits suppliers, that's the franchisee, from requiring financial, or excuse me, the wholesaler, the parent company from requiring financial statements from the distributor as a condition of continuing the agreement. In other words, the distributor could be in a world of hurt, they could be going bankrupt, but with the passage of LB 371, the parent company, Anheuser Busch, for example, is prohibited from requiring financial statements from those distributors as a condition of continuing their agreement, or their contract.

SPEAKER BARRETT: One minute.

SENATOR HALL: So in other words, as far as they know, they could be in all kinds of trouble. There could be all kinds of...we could have a Franklin Credit Union kind of situation going on in that franchise, but the parent company cannot ask, under the auspices of their contract, for financial statements. That is something that LB 371 would exclude from their agreement. Another issue requires that the agreements in the contract, as I stated earlier, with regard to the sale, sets up two different criteria, one for family members and one for anyone else. That is another amendment that I offer that strikes that issue that says if you're going to sell this business, if you're going to sell the franchise, that you sell it to everyone on equal terms and that they all meet the same criteria. We require that these...

SPEAKER BARRETT: Time has expired. The member from the 6th District, please, Senator Ashford.

SENATOR ASHFORD: I think it would be very helpful to go through the franchise act, 87-406, and for each of you if you have any...if you're listening to Senator Hall at all in this, and it's hard to respond because he has not pointed out anything in

the current act that does not need refinement or amendment, but if you'll look, for example, at...or why we shouldn't refine or amend ambiguous language, for example, 87-405, which deals with transfer or assignment of interests in a franchise, if...I invite you to read it and tell me if you don't believe that that is open-ended, is ambiguous and is not of need of definition. I think that if you look at Section...and again, going back to what I...it's very difficult to respond here because I don't know what Senator Hall is getting at and he hasn't indicated to me what it is he's getting at, and if he has a problem, for example, with a different standard for family members, we're talking about franchises that are owned by individuals, interests that are the result of substantial investments, why there should not be some accommodation in the statutes made for that individual and his right to sell or transfer. What we're talking about is a problem that is a very difficult one and let's talk about the family problem for a second. Oftentimes what the...and the problem that exists is that a franchisor will in effect say, we're not going to allow you to transfer this to your family member, but we want...and they have somebody else that they want to bring into that particular district or into that particular area. So what they will do is they will arbitrarily, and there is nothing in the franchise act that exists today to protect that local Nebraska wholesaler, there is nothing there to protect that local Nebraska wholesaler from this happening because...and that would be that the franchisor says I don't like your son or your daughter, I don't want them running this, we want somebody else, we can make a better deal. For example, one of the better deals that you often hear about is maybe the franchise fee wants to...they want to increase the franchise fee or they want to carve out a different territory or they want to talk about different product, and they use that as a negotiating tool in order to gain benefits or contractual rights and you don't have the equality of bargaining, the equality of negotiation that is so important in these kinds of transactions. So the family member provisions are there for a purpose. I don't see any reason why we should not protect local businesses with the kind of investment that they have made in their efforts to...and there are reasonable standards in the bill as it relates to family members. If the franchisor has a good reason to not to want that transfer to take place, they can establish that and give a reason for it and enforce it, enforce those reasons. But I think there is a good public policy behind maintaining that continuity of ownership and not creating an imbalance in the negotiations between the parties. But if you

look at some of these sections, I invite you to look at this franchise act. It's vague, it's ambiguous. What we're doing by this in this bill is we are establishing criteria that are succinct, that are detailed, that are balanced, that are the result of work between the individuals who are engaged in this kind of business, reflecting the business that is being...

SPEAKER BARRETT: One minute.

SENATOR ASHFORD: ...undertaken. So again, the family member thing I think is very valid. It's an excellent provision. It should not be changed. There are reasons for it. I guess if we go with the amendments, apparently Senator Hall is very serious about this and I'll be happy to stand here all afternoon and talk about it. It's unfortunate we didn't have some idea before this as to what specific problems he has. It sounds as if some interest is very upset all of a sudden and I'd be interested to know who that is.

SPEAKER BARRETT: The member from Hastings, please, Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker, members of the body, as Chairman of the General Affairs Committee, I'm taken by surprise as Senator Ashford on the procedure that we're going through right now on the IPP motion and the...my understanding is that there are a number of other amendments to follow. And I just...some questions that raised in my mind as to the intent or the purpose of what we're going through, Senator Hall, and I don't expect you to answer. I'm just saying that some questions are being raised in my mind. You know, in looking at the bill, for instance, I can't find the concern that he has raised about becoming oral versus written. We haven't been able to locate that. I, for the edification of the members of the body, have had distributed a copy of the committee summary of what the bill contains because I think right now everyone who is sitting here is at a loss. This was a bill which we thought had been worked out in the committee. We had no objections to the bill especially from Senator Hall in the committee, and until noon today when we checked, there was nothing on the bill up at the desk, and so now this comes as a surprise plus the fact that we don't know what the amendments are or how they are going to impact on the bill. So I have a little concern here that we're turning this into another second hearing on the bill because I don't know what the intent or the purpose is and what these

changes that are going to be proposed will do. With that, I just felt that it was my obligation, as chairman of the committee, to rise to state my concerns. Thank you.

SPEAKER BARRETT: Thank you. Senator Hall, Senator Ashford next.

SENATOR HALL: Thank you, Mr. President, members. Again, the issue I guess...I would ask Senator Ashford to yield to a question.

SPEAKER BARRETT: Would you respond, Senator Ashford.

SENATOR ASHFORD: Sure. This reminds me of my...yes, I will.

SENATOR HALL: Senator Ashford, you asked...you stated that the issue with regard to accommodation for family members is an important one. Can you...and you also stated, you used the example that manufacturers will bring someone else in to, I guess as a threat with regard to their contracts or things like that. Can you tell me how many times has that happened in the State of Nebraska?

SENATOR ASHFORD: I'll tell you, it's happened in my practice twice and...

SENATOR HALL: How many times has it happened in the State of Nebraska?

SENATOR ASHFORD: Oh, Tim, let me ask to answer the question. It has happened in my practice twice and what happens is, to answer your question, is that the manufacturer will come in and say we're not going to allow you to transfer it to your family member. It's a substantially...you have an investment of a half a million dollars, all of a sudden it is worth nothing or worth 25,000 or worth...if you restrict...if you come in and terminate that ability, you are appreciably depleting the value of that asset.

SENATOR HALL: Senator Ashford, has there ever been a case in Nebraska where a franchisee...

SENATOR ASHFORD: Yeah, but...

SENATOR HALL: ...has ever...

SENATOR ASHFORD: ...I'm sure there has.

SENATOR HALL: ...well, can you point it out? You stated that there were a number of them and I guess my question is, has there ever been a case in Nebraska where a franchisee...

SENATOR ASHFORD: Yes.

SENATOR HALL: ...had their franchise stripped...

SENATOR ASHFORD: Yes, there has.

SENATOR HALL: ...and received...in the case of a beer wholesaler...

SENATOR ASHFORD: Yes.

SENATOR HALL: ...and they never received any money for that?

SENATOR ASHFORD: Well, I don't know about that, Senator Hall, we're not talking about never received any money for it, but if you're in negotiations for...with a large franchisor from outside the State of Nebraska and they come in and tell you they are not going to allow you to transfer this to your relative and after maybe 30 years of trying to build up an investment.

SENATOR HALL: Thank you.

SENATOR ASHFORD: Yeah, I'm not going to sit here and talk about individual cases. I mean, I can go...

SENATOR HALL: Thank you, Senator Ashford. The issue is that Senator Ashford...(recorder skips) were individual cases and there may very well be in some other franchise situations. But I don't think there has ever been one with regard to a beer franchise where an individual has (a) had their franchise stripped and then not received any remuneration for that, it just doesn't happen. See, the fact of the matter is, is that the whole system is, of the three tier system with regard to liquor, is set up so that there is an imbalance, there is an imbalance for everybody who is outside of it. There is no equality of bargaining with regard to any aspect of that chain when you go from the manufacturer to the wholesaler to the retailer. They are all separate and distinct. They have walls

that have built up around them through the three tier system that we have in the state. There, in my opinion, is no need for LB 371 to basically sweeten the ground that lies between those walls from the wholesaler to the retailer so that the wholesaler has the, I guess, every lollipop that is available whereas the manufacturer or the retailer do not have some of those same provisions. This is strictly a bill to enhance the wholesalers of this state, plain and simple, that's all it does. It doesn't do anything to enhance the law as it is in this state. What it does is continue to provide more of a protective environment for those wholesalers to live in, and it is the type of bill that...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...I think we need to take a look at and that's why I offer this kill motion to it because it could very easily slide across without a dissenting vote, without any discussion other than the adoption of the committee amendments, and what it does, it enacts into law provisions that protect a certain group of individuals and a certain industry, probably more...make the correlation that it's the beer wholesaler's 775, if you will. Doesn't cost the state anything, but it provides the same types of benefits...that you could make an analogy to the fact that it provides the same kinds of benefits and protections that were provided in that piece of legislation a couple years ago. Mr. President, I would urge the adoption of the kill motion.

SPEAKER BARRETT: Thank you. Senator Ashford, with...I'm sorry.

SENATOR ASHFORD: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Those in favor of ceasing debate please vote aye, opposed nay. Have you all voted? Record.

CLERK: 28 ayes, 0 nays to cease debate, Mr. Clerk.

SPEAKER BARRETT: Debate ceases. Senator Hall, would you care to close?

SENATOR HALL: Thank you, Mr. President, members. Again, the motion is a kill motion on Senator Ashford's bill that Senator Haberman has designated as his priority bill. It is serious business. The kill motion is there because, if you'll take the time to look at 371, it is a provision that allows for a group

of individuals, specifically beer wholesalers, to have their cake and eat it too, have their cake and eat it too, have their cake and eat it four times. It is the type of thing that I would think, you know, the chamber of commerce would come in kicking and screaming that it is protectionist legislation and that we should not be endorsing this kind of thing. And we talked about other types of franchise operations. Look at the committee statement. The only people that are interested in this legislation are the beer wholesalers. They are the only people that testified for the measure. It is serious business on their part because it's a big bill and it just about squeaked through and I guess at this point in time I'm going to rein it in and I don't feel bad at all about spending a little time discussing priority legislation that is of this magnitude. With that, Mr. President, I would urge the adoption of the kill motion.

SPEAKER BARRETT: Thank you. You've heard the closing. The question is, shall LB 371 be indefinitely postponed? Those in favor of that motion vote aye, opposed vote nay. Have you all voted? Record, please.

CLERK: 1 aye, 23 nays, Mr. President, on the motion to indefinitely postpone.

SPEAKER BARRETT: Motion fails. Next motion, Mr. Clerk.

CLERK: Mr. President, Senator Hall would move to amend. Senator, I have your amendment, amendment numbered number one. (See FA82 on page 1261 of the Legislative Journal.)

SENATOR HALL: Thank you, Mr. President.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Mr. President and members, this is basically a technical amendment. If you would open the bill to page 11, it strikes the "the" on line 14 through "situated" on line 15. It would strike this language. The similarly situated on page 14, excuse me, on page 11, line 14 it strikes the "the" on line 14 through "situated" on line 15. So it strikes this language. It strikes "the similarly situated". And on page...this is basically a technical amendment. I think that there was just a drafting error in the bill and there is no substantive issue here at all. On page 23 then also, it strikes the...on line 13,

it strikes the word "Nebraska". Page 23, line 13, it strikes the word "Nebraska". And the reason for that is is that there is an issue here with regard to the...several places in the bill it refers to qualifications requirement or required for a similarly situated beer distributor. In these two places, the reason for striking it is that the language comes out different. All we do here in this amendment is allow for the...a unity of the language so that it is clarified that it talks about similarly situated qualifications and...in the first case, and in the second case it talks about similarly situated Nebraska distributors. So what I do is I strike the language in both cases so that there is continuity there and that it is something that is not of any magnitude at all. With that, Mr. President, it's just basically a technical correction.

SPEAKER BARRETT: Discussion on the Hall amendment, Senator Elmer, with Senator Ashford on deck.

SENATOR ELMER: Thank you, Mr. President. You know starting in about August of this last summer, the beer wholesalers and the franchisors or the brewers have gotten together over a number of long, arduous sessions, talked about these problems and worked them all out to everyone's satisfaction. They carefully have written this bill. We haven't had any problem with it until suddenly we have all these amendments before us. And I would like to say that it's been well worked out, it's been looked at, it's been read and reread and underscored several times since we've even heard it in committee. And I don't think that all of these little amendments will have any impact on whether we pass the bill or not. I think we're wasting a lot of time. Thank you.

SPEAKER BARRETT: Thank you. Senator Ashford.

SENATOR ASHFORD: Briefly, I don't see any reason for either amendment. If you look at paragraph 19, simply is, not simply is, but is a part of the section that deals with what prohibition is against, what a supplier shall do and it talks about a supplier shall not withhold consent or approval of the transfer or unreasonably delay for a period of sixty days or more after receipt of all material information reasonably requested by the wholesaler, a response to a request by the wholesaler for any transfer of a wholesaler's business if the proposed transferee meets the similarly situated reasonable qualifications required by the supplier for...okay, the point is

I think you've got to leave, and you've got to leave Nebraska in as well because what we're trying to do here is deal with standards of conduct that are...are Nebraska standards. We don't want, and it gets back to the point that I was making earlier on. We're dealing with franchisors who come here from outside the State of Nebraska and impose standards of conduct which we don't approve of in the State of Nebraska. So I think that the, or may not approve of, and I think that, therefore, we must use the Nebraska language and we must use similarly situated. If Tim's point, Senator Hall's point is that it is slightly redundant in that sentence, I see to some degree the redundancy, but I don't see how it all hurts the bill and it just emphasizes the point and that is that the conduct to be...the standardized conduct to be applied is Nebraska's standards of conduct and that is consistent with case law when you apply standards of conduct to actions taken by an industry. So I would...I think it should be defeated for those reasons. Thank you.

SPEAKER BARRETT: Thank you. Senator Smith.

SENATOR SMITH: Call the question.

SPEAKER BARRETT: That won't be necessary, yours was the last light. Thank you. Would you care to close, Senator Hall, on your amendment?

SENATOR HALL: Thank you, Mr. President, members, again, the amendment is very simple and I think it does need to be adopted because what you do is you have two separate definitions with regard to similarly situated on the one hand, a similarly situated distributor, and then we come back later on in the bill and we talk about a Nebraska distributor. Now, I guess what is the difference between similarly situated in Nebraska, in many cases they can be different. Are we dealing only with Nebraska distributors? I guess then another way to offer this amendment will be to offer Nebraska at the front end as opposed to striking it on the back end if that is what we are referring to is Nebraska distributors. But clearly there is a, not a redundancy, but a discrepancy with regard to the reference to distributors in this case. There is a vague and open and broad kind of interpretation that could be granted on the one end, some of the same problems with the franchise act as Senator Ashford would have us believe, but on the back side of the amendment where we deal with, on page 23, specifically calling

it Nebraska distributors, we narrow that down and I think that in both cases they should be treated the same, so if this amendment should fail, I think we need to come back then, and I think it sounds like Senator Ashford would be receptive to that, but that we spell out that we're talking about Nebraska distributors and only Nebraska distributors because I don't quite understand what the definition of a similarly situated. Similarly situated could mean many, many things and what we do by striking those is take that ambiguity out of LB 371. I would urge the adoption of the amendment which I think is basically a technical amendment and Senator Ashford has alluded to that, whether he agrees with it or not. Thank you, Mr. President.

SPEAKER BARRETT: Thank you, and the question is the adoption of the Hall amendment to LB 371. All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 4 ayes, 14 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails. Next item.

CLERK: Mr. President, Senator Hall would move to amend. Senator, I have your amendment to strike Section 20 from the bill. (See FA83 on page 1261 of the Legislative Journal.)

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Thank you, Mr. President and members. The issue here is found on page 28 of the bill. It would strike Section 20 of the bill which is the arbitration procedures and it's just...it's very simple. It's about six lines and it reads that a wholesaler may not waive any of the rights granted in sections 1 to 22 of this act and the provisions of any agreement which would have such an effect shall be null and void. Nothing in such sections shall be construed to limit or prohibit good faith dispute settlements voluntarily entered into by the parties. So in other words, if you...it's okay, we will...you can't waive your rights unless you do it so on a voluntary basis with regard to the contract agreement. Now this is a substantive amendment. If you remember back in, I guess it was 1987, we passed the Uniform Arbitration Act and it allowed for contract procedures to be dealt with all on the same basis. What we do by allowing Section 20 to remain in this bill is we say that not so in this case, not for this group of individuals.

They are going to play by a different set of rules and that is an issue that I think very much needs discussion with regard to this bill. This is not something that I think goes by with a...with two lights and then a call for the question. This would allow for a different set of rules. When we had LB 661 a couple years ago that Senator Barrett along with Senator Warner authored and came to the Business and Labor Committee, that allowed for the State Employees Bargaining Act. Okay? And that arbitration issue was addressed in that bill. This is something that through the passage of 371 we allow for this group of individuals in their contracts to be treated differently than anyone else as the statutes of the state would provide. And I think that that is something that merits discussion and I would ask Senator Ashford in his response to this why the need for a different set of rules as opposed to the uniform arbitration procedures that we currently have in statute. Why have this binding type of language in LB 371 with regard to these contract situations in the case of beer wholesalers? I guess if there is a good reason we can fully expect to see these types of amendments crop up again and I thought the reason we got away from that when we passed that act was that there was a situation where we didn't have control, we didn't have oversight with regard to what was going on. There was different rules based on whatever the game was and, in this case, the language that we have in Section 20 of LB 371 takes us a step back instead of allowing us to continue as we had and as it was laid out in the Uniform Arbitration Act. So without striking this, you need to fully know that you are setting up a situation where the beer wholesalers and their contracts will be dealt differently than every other section of statute as it exists when we're talking about the Uniform Arbitration Act, and with that, Mr. President, I would urge the adoption of the amendment.

SPEAKER BARRETT: Thank you. Before recognizing Senator Ashford, the Chair has an announcement of interest to all members of this Legislature. Today is Senator Schimek's birthday and Pages will soon be handing out treats in honor of Senator Schimek's birthday. Happy Birthday. Senator Ashford.

SENATOR ASHFORD: I'm trying to understand exactly what Senator Hall is getting at and I will try to answer his specific question and leave it at that. Section 20 is, in my opinion, the best...one of the better parts of the bill. I think it...what it does is establishes that the public policy included in LB 371 cannot be abrogated by contract and this type of

provision is consistent with other statutes that deal with...well, I think labor relations, quite frankly, Senator Hall mentioned labor relations is a good analogy. We have LB 661, we have the Commission of Industrial Relations legislation and dealing with contracts between employer and employee groups and the parties cannot abrogate those provisions by contract. Obviously if we put into statute public policy, those provisions should not be abrogated by contract. As far as the second sentence, nothing in these sections shall be construed to limit or prohibit good faith dispute settlements, is a very important provision. I think the language speaks for itself. It just...it simply...and I would hope that, and I favor arbitration generally. I was a co-sponsor of the arbitration act and of LB 661 last year. I think that this provision simply emphasizes that the parties deal in good faith. It's just that it is hard to argue this point because it is so obviously a good provision, so I would ask that the amendment not be attached. Thank you.

SPEAKER BARRETT: Thank you. Senator Hall. (Gavel.)

SENATOR HALL: Thank you, Mr. President, members, again, I go back to the issue of the arbitration procedures and the act that we adopted as a body. Senator Landis authored that legislation. We had, as I stated, LB 661 before us, the Employees Bargaining Act that dealt with all the state employees and we had that included in the bill. And Senator Barrett, Senator Warner co-sponsored that bill as principals, and it came to the Business and Labor Committee and we struck that provision from the bill specifically because of the passage of that act that was intended to be the procedure by which all types of contracts were to be measured. It was supposed to be, in other words, the rules that these contracts played by and as a body it was unanimously adopted. And Senator Landis worked long and hard to see that that came to fruition, and what we are doing now by leaving Section 20 which is Section 19 in the green copy, what we are doing now is we are heading back down the path of saying that except in this case. And I think the body clearly needs to understand and know full well what they are doing because this is not something that I was aware of or it is not something that was made clear to me in the committee hearing. It is an issue that needs to be addressed, agree with it or disagree with it, you need to know what you're voting for. And what you're doing here is you're saying we're setting these folks out away from the system or the rules that we provide for everyone else who

deals in the same manner, who deals with contracts in a similar manner. In other words, we're saying...not only are we saying that it is okay for them to have a different set of rules but we're saying that the rules that we have provided with regard to our state employees are good enough to be governed by this, but when they are dealing with their contracts and their issues with regard to the manufacturers and the wholesalers, they can be dealt with in a different manner altogether. And I think that that is bad public policy. I think it is exactly the reason why the Uniform Arbitration Act was passed and I don't think that this issue is going to go away because what is going to happen is once the trickle starts and the floodgates are opened you're going to see everyone else come back in and say we think that our group should be dealt with in a different manner, that we should have the ability to set our own rules and regulations and we will have destroyed the idea and the impetus behind the Uniform Arbitration Act. Mr. President, I don't think that is something that this body wants to do, at least I hope it's not because this is a very substantive issue. It's an amendment that very few people I think are listening to, but it's an amendment that says we did not make a mistake a few years back when we adopted LB 71 and that act that would streamline the way contracts and negotiations are dealt with. I think it's poor public policy to move away from that and I would urge the body not to do that.

SPEAKER BARRETT: Senator Ashford.

SENATOR ASHFORD: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Those in favor of closing debate please vote aye, opposed nay. Shall debate cease? Record, please.

CLERK: 25 ayes, 5 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate closes. Senator Hall, would you care to close?

SENATOR HALL: Yes, I would, Mr. President, thank you. The, again, the amendment is the one that would strike Section 20 and Section 20 appears as Section 19 in the green copy because of the amendments.

SPEAKER BARRETT: Senator Hall. (Gavel.) Proceed.

SENATOR HALL: Thank you, Mr. President. Section 19 of the green copy is the arbitration procedures that go for about four pages in the bill and these are the provisions that these contracts would be dealt with. In LB 71, as I stated earlier, Senator Landis worked long and hard to have the Uniform Arbitration Act put into place and what you're doing here by leaving Section 20, Section 19 in the green copy, in LB 371 is you're starting down the path of moving away from that. You're saying we'll allow for different rules to be set up for different groups of people when they deal with their contracts. I don't think that that is good public policy and I think if we pull it out of our own procedures when we deal with our state employees in LB 661 as we did a couple years ago, I think that it is not time at this point for us to allow basically seven or eight people, seven or eight wholesalers in the State of Nebraska, beer wholesalers, to have their own set of rules by which that they can determine what they feel is a way that they should negotiate. I think you will see other folks begin to...the laundry list will start, we will see more and more folks start down the path of separate rules that they play the game by and we will be no better off prior to the passage of LB 71 in 1985, '86, whatever it was, and I think that that is very bad public policy for us to adopt especially in this bill as it is laid before us in the franchise act. I think that that is a provision of the bill that very few people were aware of. I'm not so sure all that many are aware of it right now, but it is a provision that I think the bill that it tries...the things that Senator Ashford says the bill tries to provide for would still be provided for without Section 20. It is the...not necessary to ensure some of the things that he alluded to as the reasons for introduction of LB 371. We still have the Uniform Arbitration Act on the books, and if we begin down this road without allowing for it to be eroded away as you would in this bill, I think we would be much better off. The beer wholesalers would still be protected and everyone would play by the same rules. With that, Mr. President, I would urge for the adoption of the amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Hall amendment to LB 371. All in favor vote aye, opposed nay. Have you all voted? Record. Senator Hall.

SENATOR HALL: Mr. President, I would like a record vote on this issue.

SPEAKER BARRETT: A record vote has been requested.

CLERK: (Record vote read. See pages 1262-63 of the Legislative Journal.) 12 ayes, 21 nays, Mr. President.

SPEAKER BARRETT: Motion fails. Next item.

CLERK: Mr. President, if I may read some items for the record.

SPEAKER BARRETT: Proceed.

CLERK: Judiciary Committee reports LB 627 to General File, LB 594 to General File with amendments, LB 396 indefinitely postponed, LB 512, LB 526, LB 547, LB 712 all indefinitely postponed, those signed by Senator Chizek as Chair. (See page 1263 of the Legislative Journal.)

Senator Dierks has amendments to be printed to LB 49, Mr. President. (See pages 1263-64 of the Legislative Journal.)

Mr. President, Senator Hall would move to amend LB 371. (Hall amendment appears on page 1264 of the Legislative Journal.)

PRESIDENT NICHOL PRESIDING

PRESIDENT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President and members. The third amendment here I would like to ask the body to refer to page 3 of the bill, Section 4, line 7 through 11. I'll just read it to you. It's very short. Agreement shall mean any agreement between a wholesaler and a supplier, whether oral or written, by which a wholesaler is granted the right to purchase and sell a brand or brand of beers sold by a supplier. What my amendment would do is rewrite that five lines so that an agreement shall mean any written agreement between a wholesaler and a supplier by which a wholesaler is granted the right to purchase and sell a brand or brand of beers. All it does is strike the language that refers to an oral agreement. I don't understand why it is there. I don't think it should be there. I think at least the agreement should be required to be in writing not only for the manufacturer's benefit, but for the retailer's benefit and I think that an explanation as to why we allow for an oral agreement, we just allowed for a separate group of arbitration

procedures in Section 20 of the bill, but yet I guess they are going to arbitrate an oral agreement that they have. I think if the body is determined to say that this should be something that they should have the ability to have a different set of rules by which to handle their contracts, that's fine, but in no way should that be, I think, something just for protection of both sides involved, the manufacturer and the wholesaler, that an oral agreement is one that should be in statute. It just...it does not make sense to me and I don't have a clue as to why the provision is in LB 371. With that, all the amendment does is strike the reference to an oral agreement and...between the wholesaler and the supplier. With that, Mr. President, I would urge the adoption of the amendment.

PRESIDENT: Senator Ashford, please.

SENATOR ASHFORD: Very briefly, Mr. President, it's important that we not adopt this amendment. We're not putting oral agreements into the statute. We're not giving them the force and effect of law per se. What we're doing is, and granted, most of these agreements are written and not oral, but you don't want a situation to arise where a franchisor and a franchisee enter into an oral agreement and not, without terms and conditions set out that could in some way abrogate this statute, that it could some way get around the statute. So it's even more important when you have an oral agreement that the terms and conditions of the public policy contained in LB 371 be in force and effect. Otherwise you could get around or abrogate the intent of the whole law by simply entering into an oral agreement. So that's the...you don't want to take oral agreement out. You want to leave that in so that you can't...a franchisor cannot get around what we are intending to do in LB 371. I think it's that simple.

PRESIDENT: Thank you. Senator Wesely, please.

SENATOR WESELY: Thank you, Mr. President, members, Senator Hall, I appreciate what you're doing. I've had to do this on occasion myself in trying to rise and raise some questions, and, frankly, most of us, as you can guess, have felt that the bill was probably in shape to advance today and are kind of caught by surprise and are fairly neutral on what is being discussed here. I'd like to make a suggestion in good faith. I think bringing these amendments has served a purpose. I know several of us have talked about the fact that we're looking at the bill and we

hadn't before, but to take any further time, I think many of us feel very reluctant at this stage on General File, not having had a chance to look at these amendments, not having had a chance to see if there could be any discussion leading to some compromise, maybe the better course of action would be to allow the bill to move forward and to take those amendments and to see if there...that some discussion could provide some fruitful results instead of continuing down the path that we're going. You've made the point. I've gotten the message, I think others have as well and we'd like to proceed with other issues and at the same time recognize that you're raising legitimate points. I don't know what more to say and this isn't the way to even say it, but I'd like to ask your help in perhaps expediting this issue a little bit. And I know, I just talked to Senator Ashford and I know he is willing to sit down and talk, but at this stage and at this time, it seems like a very difficult thing to do and we just can't sort through these amendments in the circumstance that we're in, so I'm just suggesting that this may be not a very fruitful use of our time and I'd like to ask for the chance to proceed.

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

SENATOR HALL: Thank you, Mr. President and members. The...and, Senator Wesely, I appreciate your comments. I'd be more than happy to bracket the bill for a week and work out agreements while the bill is still on General File, but if I advance it over to Select File and agree to do that without any amendments, and I think many of these are...I think they are all good amendments. I think they are all justified and none of them are frivolous in any manner. But the issue of passing the bill over without any amendment would then, I guess, leave me at a disadvantage and I would be more than happy to bracket the bill today for a week, try to work with Senator Ashford and Senator Haberman and others on some of these issues that I have and move on to other business and come back and hopefully have one amendment that includes some of the provisions that I've offered here today. If that's not something that Senator Ashford is amenable to, I guess then we continue on. But with regard to the issue before us, what we're dealing with here is a definition of what an agreement is. This bill spells out the definitions for an agreement. All I am doing is taking oral out of the definition of agreement. So all you do, you strike that out of there. Everybody knows that they are playing the rules

of a written agreement. I don't know why there would be a problem with regard to having agreements in writing. I mean, it smacks of something that must be hidden, something that needs to be hidden, something that folks do not want other people to know about when you place in statute the definition, and you do place in statute the definition of what an agreement is. It does not circumvent the provisions in LB 371. What you do is you spell out specifically in the definition as laid out in Section 4, that an agreement is one that is in writing and not an oral agreement. Both sides should be interested in having the agreements in writing so they understand, can go back and look. I mean, if we're going to pass these on to family members and provide for that, the agreement might be made by Grandpa, he dies, the son doesn't know anything about the oral agreement that was agreed to. How do you enforce that? Who is right? Who is wrong? I guess then you go to the arbitration factor in LB 371 and you thrash it out according to that as it's laid out. I think that this amendment, at the least, is one that I guess for our own interests we ought to adopt. It is one that just says, in all due respect, the good public policy to protect both the wholesaler and the retailer, excuse me, the manufacturer and the wholesaler, that this ought to be in writing. It is just simply not something that we should endorse to the definition process that an agreement is one that is an oral agreement. It in no way would allow for the circumvention of LB 371 as Senator Ashford has offered it. I mean, the idea behind this bill as it has been touted, is one that both sides agree to. Well, they ought to agree to put the agreements in writing so that everyone knows what is being agreed to. It is basically a clarification of a definition section. I think we need to have written agreements in this area and the reference to oral agreements is the only thing that this amendment would strike. I would urge the adoption of the amendment.

PRESIDENT: Senator Ashford, please, followed by Senator Chambers.

SENATOR ASHFORD: Question.

PRESIDENT: The question has been called.

SENATOR HALL: (Mike not turned on immediately.) ...I mean there has only been, to date, Mr. President, four different people speak on the bill. Senator Chambers would like to speak. I think we ought to give him that opportunity.

PRESIDENT: Let me check to see how many have been for and against.

SENATOR HALL: (Mike not turned on immediately.) ...proponent. That's what I'm saying. There has only been four people talk on the bill all together, amendments and all. Some new blood would be in order.

PRESIDENT: We'll go on for three more speakers. That's how many lights are on. I don't know if that's a good way to do it, but we'll go on through Ashford, Senator Chambers and Senator Hartnett, then we'll quit. Senator Ashford, please...Senator Chambers, please. Senator Ashford has spoken, Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would just like to comment on our procedures before I start. The Chair cannot limit us to three speakers and say we'll stop then. We'll go on until we cease debate or until people stop speaking. I understand what you mean. You were informing us that there are three speakers. I don't think you meant to say that after those three have spoken that's the end of it because more lights may come on, and if we haven't called the question, then we continue. I just thought for those who are not very attentive, I'd make that clear, Senator Wesely.

PRESIDENT: That's fine, Senator Chambers. Now there are five, so... I just came on fresh so I'm in good shape.

SENATOR CHAMBERS: The light draws...well, anyway, Senator Ashford, I'd like to ask you a question.

SENATOR ASHFORD: Whatever.

SENATOR CHAMBERS: Okay, Senator Ashford, most of that was off the mike so you'll hear only mine and you'll read only mine when we get to the transcript. But, Senator Ashford, how does a person establish even the existence of an oral agreement? I'd like you to answer that question, please.

SENATOR ASHFORD: In a court of law, it would be the testimony of either party can establish an oral agreement, can establish a prima facie case of an oral agreement.

SENATOR CHAMBERS: Senator Ashford, a prima facie case can be

rebutted, so how do you establish the terms of an oral agreement?

SENATOR ASHFORD: Through the testimony of one of the parties to the oral agreement. I wish I could amplify my answer.

SENATOR CHAMBERS: Okay, that's...you'll have time when you close. My time is limited. Senator Ashford, in order for there to be a necessity to establish an agreement and the terms of it, there would have to be a dispute, wouldn't there?

SENATOR ASHFORD: That's correct.

SENATOR CHAMBERS: So if we can envision as a Legislature that disputes may arise...

SENATOR ASHFORD: Not necessarily a legal dispute but there would have to be some dispute.

SENATOR CHAMBERS: Right, a disagreement as to the meanings of a term, whether there was even an agreement, whether I'm bound by what you say I am and so forth.

SENATOR ASHFORD: Right.

SENATOR CHAMBERS: If we as a Legislature can envision that such differences of opinion may arise, why is it not prudent to require these agreements to be in writing, and don't take all of my time?

SENATOR ASHFORD: Okay, the problem is, if you'll look at Regney, Inc. v. Shasta Beverages, which is a 1983 case under the old franchise act, you'll see that oral agreements are...what the law says, what the case is, is franchise agreements are not required to be in writing. So it is necessary that we include oral agreements in the statute so that they be covered by the terms of the statute.

SENATOR CHAMBERS: But, Senator Ashford, the point I'm making is that when we're legislating on the question, why should we not require them to be in writing?

SENATOR ASHFORD: You know, that's a public policy question. If you want to raise that in another amendment, fine. This amendment doesn't do that though.

SENATOR CHAMBERS: So then an amendment that would say all agreements between the parties involved shall be in writing.

SENATOR ASHFORD: That's a public policy question that should be debated by the body but this amendment doesn't get to that point.

SENATOR CHAMBERS: But if the amendment that Senator Hall is offering goes to the amendments to the definitional section, then wherever the term agreement appears in the bill, it would be defined by the definition.

SENATOR ASHFORD: It would be but this case law would still be extant, it would still be in force and effect.

SENATOR CHAMBERS: No, Senator...

SENATOR ASHFORD: Well, I disagree with you.

SENATOR CHAMBERS: Thank you, Senator Ashford, that's why we need things in writing, so that we can resolve these things. A statute, members of the Legislature, which is constitutional overrules a case to the contrary. The Legislature legislates for the state and has plenary power to do so and is the only body of government with the exceptions noted in the Constitution, such as a gubernatorial veto...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...to legislature. So if we want these agreements to be in writing, we simply put that in the definitional section and wherever that term appears in the bill it would mean that the agreement must be in writing because that's the definition and any case decided before that would have to take second place to that particular definition. But Senator Brad Ashford knows very well that the statute of frauds was designed to prevent, in cases of real estate and transactions above a certain amount, the very kinds of issues that arise when one person attempts to defraud another or through an honest mistake, will try to rewrite an agreement or maybe the two parties never had a meeting of the minds in the first place. When it's reduced to writing, what is within the four corners of that document stand and a court can read it and whatever is in there that is not ambiguous, that is not

overreaching can be enforced as the agreement and I think Senator Hall's amendment will do exactly that.

PRESIDENT: Thank you. Senator Hartnett, please, followed by Senator Hall.

SENATOR HARTNETT: Mr. President, I also serve on the General Affairs Committee and this bill came before us and not very much opposition I might... I guess I have, with Senator Hall's opening remarks, one of the areas that caught me was the word "oral", agreement is oral. I guess maybe that is fine, but I guess maybe there is some case law but, and Senator Ashford said to me maybe we need to change it some place else, but I guess the word "oral" bothers me in agreements. I think it...because we're talking about, maybe talking about megabucks and an agreement is oral, maybe that is all right, but I think sometimes we should have things in writing. So I think that...I think the discussion is good on this particular thing or if we're changing substantially because in the old agreement there was not the idea of, was simply written rather than oral so I have some...whether this is the right way to do it in this particular amendment, I think we need to be more clarifying than we are right now. Thank you.

PRESIDENT: Thank you. Senator Hall, please.

SENATOR HALL: Thank you, Mr. President, members, the issue is one clearly of the definition of what an agreement is and if oral agreement appeared any place else in the bill I would have struck it. It does not. It appears in the definition section and that's what we're dealing with here when we address the issue on page 3 of LB 371. We're talking about line 7, Section 4, and it says agreement shall mean any agreement between a wholesaler and a supplier, whether oral or written, by which a wholesaler is granted a right to purchase and sell a brand of beer or beers sold by a supplier. First of all, who would agree to grant the right to purchase and sell a brand or brand of beers on an oral agreement? I guess I question the real reason behind having that in there. I mean I don't understand where any manufacturer or any wholesaler have an agreement based on a handshake, so to speak, where they do not have...I can't imagine Augie Busch and one of the Hermans agreeing to have their distributorship, their manufacturing distributorship on the basis of the fact that they chatted over lunch. You can't convince me that there isn't another reason

for having that in there, otherwise, why do it? It only makes sense when you're dealing with the definition section of the bill to require that the agreements be in writing. I mean otherwise you get into the issue again, I said, of enforcement and what happens when one party that was party to that oral agreement is around, is alive and living and the other party is not there to refute it? Who wins, I guess, in that case? Well, I guess if you ask an attorney, I would want to be the attorney I guess that represented the living party with regard to that oral agreement. I don't understand the problem with changing the definition so that when we deal with agreement as it relates to LB 371, agreement means a written agreement and not an oral agreement because no place else in the bill does oral agreement jump out at you. It's only in the definition section and we strike that so that when we're talking about agreements in this language, in this bill, we're talking about written agreements. It's a very good and very valid amendment to the bill. I would urge its adoption.

PRESIDENT: Thank you. Senator Wesely, please. Senator Wesely. Okay, Senator Ashford is following that so we'll call on you, Senator Ashford.

SENATOR ASHFORD: Do I get my time after that or...

PRESIDENT: No, he gave you his time.

SENATOR ASHFORD: Oh, I don't get two in a row?

PRESIDENT: No. Not unless somebody objects.

SENATOR ASHFORD: I would have called the question, I'm sorry, but I have to respond because the problem, the reason you cannot strike this from the bill is because you have agreements out there that may be oral or may be written and you do not want to be in a situation where you pass a law that would not have or have questionable effect on oral agreements that are out there. You've got oral agreements out there. You want those oral agreements to comply with the public policy that is in the act. Now if you want to talk about agreements going forward that must be in writing, then what you have to do is you have to put an amendment in there that says all agreements pursuant to this act between a franchisor and franchisee shall be in writing from this point forward, but you can't go back and take oral out when you may have agreements out there that are oral that you want

this act to apply to. So I think the thing to do...this is kind of a...this process is just not in the best interests of legislating. I mean if we have a problem, then we ought to take a look at it but this...it...you have to...it is not to amend this particular provision. That's not the way to do it. It would have to be done in another way.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, it's such a pleasure to debate a bill with Senator Ashford because he is so sincere and so earnest in his presentation, and in some cases "Ernestlike" but in this instance he is not. Here's what I would say about what he just mentioned in his comments. We are not enacting legislation to follow what is in existence now if what is in existence now is questionable. If there are legitimate oral agreements out there, when this bill passes, put those terms in writing, but what often happens when you have these types of arrangements where one which is powerful is in a position to overreach the other, that powerful one doesn't want anything in writing. Senator Ashford mentioned you can establish by prima facie case the existence of an oral agreement. The powerful overreacher can alter the terms as he or she pleases as each new eventuality arises. If it's in writing, then the weaker of the two is in a position to say this is what I agreed to and this is what I want to hold this individual to. When you allow the existence of oral agreements you have, in effect, no agreement at any given point in time other than what the more powerful of the two parties wants to say the agreement is. So if we require these arrangements to be in writing, both parties know what they are signing their name to. In the event of a dispute, that document is offered as evidence of the agreement. Even then the court will allow the weaker party to establish by evidence, if he or she can, that there was such overreaching that you have what is called an adhesion contract and it will be rescinded by the court. It will be erased because the parties did not negotiate from a position of equal strength, so that is the kind of thing we're talking about now and there can be no legitimate reason not to require that these agreements be in writing. If the one who is the powerful party is not trying to overreach, why not put the agreement in writing? They probably would establish a standard type of agreement anyway. If they're in the practice of overreaching through oral agreements, then they would have to be careful of how they write that because if it's what is called a

boiler plate contract where the weaker party has to accept all or nothing and things in that contract would be detrimental to the weaker, that kind of contract can be set aside too. I never knew I'd see the day when Senator Ashford would be on this floor recommending that the Legislature pass a bill in behalf of adhesion contracts, boiler plate contracts, unconscionable overreaching of the weak by the strong. Senator Ashford, this is one of the most highly regulated industries because of the nature of the product so let me ask you this question if I may. Senator Ashford, why can these people that you represent and who are out in the lobby puffing and panting, or wherever they are, why are they so opposed to putting down in writing what they agreed to?

SENATOR ASHFORD: I have no idea because I haven't asked them, but here is your problem with this...

SENATOR CHAMBERS: My problem?

SENATOR ASHFORD: ...if you want to know the problem...

SENATOR CHAMBERS: Okay.

SENATOR ASHFORD: ...here it is. If you, first of all, contracts of adhesion are not enforceable, number one.

SENATOR CHAMBERS: Right.

SENATOR ASHFORD: Number two, if you have an oral contract and you require it to be in writing under this statute and it is not put in writing, the contract is then void.

PRESIDENT: One minute.

SENATOR ASHFORD: And then you have a problem with...you have a result that is not intended.

SENATOR CHAMBERS: All right, let me ask this.

SENATOR ASHFORD: You have a franchisee...

SENATOR CHAMBERS: Okay, you answer the question, why should not the oral contract that exists now, if it's a fair contract, be reduced to writing? What would...

SENATOR ASHFORD: It should be, it should be reduced to writing but you don't want to be in a situation where you void these contracts and you have franchisees out there with no rights if they don't have a written contract and that is not the result you want.

SENATOR CHAMBERS: Do you think those people would be unaware that a bill of this magnitude was passed affecting their interests and they would not know about it?

SENATOR ASHFORD: I don't know whether they would or wouldn't, but we don't want to do that if you're going...what you may want to do is put them in writing going forward, but you don't want to affect past contracts that way.

SENATOR CHAMBERS: Then anybody could come forth ten years from now and say, well, this oral contract I have was written before the bill was passed and you have no way of establishing it was.

SENATOR ASHFORD: Yes, you have ways of establishing by the facts and the circumstances behind the arrangement.

SENATOR CHAMBERS: Senator Ashford, are you being argumentative? (laughter)

PRESIDENT: Senator Hall, please, followed by Senator Ashford.

SENATOR HALL: Thank you, Mr. President and members, the issue of whether or not a contract needs to be written I think is laid out as you follow the definition section of the bill. I'd like you to turn to Section 15 on page 6 of the bill, okay? And here we talk about what a supplier shall and shall not do, and it says a supplier shall not, and it has (1), it says the supplier shall not fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains the entire agreement with the wholesaler and designates a specific exclusive sales territory. So in other words, the definition section contradicts itself because on the one hand when we talk about agreements in the definitions we say an agreement can be an oral agreement or a written agreement. And then we move to Section 15 and we talk about what the supplier shall not do and the supplier is the guy who gets it from the wholesaler or gives it to a wholesaler, supplier shall not fail to provide each wholesaler of the supplier's brand or brands with a written agreement which contains the entire agreement with the

wholesaler and designates a specific exclusive sales territory. So in other words it is...the bill itself, the way it is drafted, isn't even consistent from the definition section to what is required under Section 15 on page 6. It says at that point in time that we will require an agreement to be in writing, but under the definitions we're going to allow for an oral as well as a written agreement. It clearly makes no sense for oral agreements to be allowed under that definition section, especially when you follow through to Section 15 and finish up and see that a supplier shall not fail to provide a written agreement which contains the entire agreement with the wholesaler and designates a specific territory, lah-de-da-da-da. It is an amendment that basically says, we don't, you know...oral, what good is an oral agreement? I mean you know it might make great hay in a court of law, I don't know, but it does not belong under the definition section of LB 371 and my amendment would strike that. The bill itself, if you move farther down, says we want them in writing. It only makes sense to strike the provisions that I offer in this amendment out of the definition section to LB 371.

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

SENATOR ASHFORD: 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. We're voting to cease debate. Record, Mr. Clerk, please.

CLERK: 26 ayes, 2 nays, Mr. President, to cease debate.

PRESIDENT: Senator Hall, would you like to close, please?

SENATOR HALL: Thank you, Mr. President, members, again, the amendment is one that deals with striking oral agreements as part of the definition of what an agreement is. It does not do anything to the fact that written agreements would be kept in place under Section 4 of the bill on page 3. It just changes the definition so that oral agreements are not recognized. The bill itself does not recognize them for the supplier and that's a key to remember, that it does not recognize them for the supplier when it says on page 6 that a supplier shall not fail to provide a written agreement which contains the entire

agreement with the wholesaler. I mean that, in itself, clearly spells out that the definition of an oral agreement should be stripped from the bill. There has been good discussion. An oral agreement in no way can, I think, be defended especially unless the two parties who specifically made that agreement are available at the time and I think that this amendment clarifies that, not only to the extent that we would require that the agreements be in writing, but it clarifies it to the extent that Section 15 of the bill on page 6 allows for only a written agreement that the supplier must supply. And with that, I would urge the adoption of the amendment.

PRESIDENT: Thank you. The question is the adoption of the Hall amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk. Mr. Hall, Senator Hall.

SENATOR HALL: I would ask for a record vote on this issue.

PRESIDENT: Okay, a record vote has been asked for.

CLERK: (Record vote read. See pages 1264-65 of the Legislative Journal.) 14 ayes, 17 nays, Mr. President.

PRESIDENT: Motion fails. Anything further on the bill?

CLERK: Mr. President, Senator Hall would move to amend the bill. (Hall amendment appears on page 1265 of the Legislative Journal.)

PRESIDENT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President, members. This is the amendment that deals with the issue of family members and the designation that they would be provided, under the bill, with regard to the transferring of a distributorship. This is a...found on page 3 of the bill, 3 and 4 of the bill, and it is one that is very simple to take a look at. It allows for a designated family member shall mean the spouse, child, grandchild, parent, brother or sister of a deceased individual who owned an interest in a wholesaler who inherits the deceased individual's ownership interest under the terms of the deceased individual's will, who has otherwise succeeded the deceased individual in the wholesaler's business, or who inherits such ownership interest under the laws of intestate succession of this state. With respect to an incapacitated individual being

an ownership interest in a wholesaler, the term shall mean the person appointed by the court as the conservator of such individual's property. The term shall also include the appointed qualified personal representative and the testamentary trustee of a deceased individual having an ownership interest in a wholesaler. So in other words, it can mean a whole group of people that would have the ability to transfer a business to the...a laundry list of folks who fall under the category of designated member. It means spouse, it means child, it means grandchild, you can designate your parent, your brother, your sister. It also has the emergency clause. Has anybody flipped to the last page and noticed that this bill has the emergency clause? And I guess if...I...I just...I didn't think about that until right now when I was looking at this provision. Is there a...never mind. The transfer issue is one that I think needs to be addressed because in the bill we allow for the transfer to take place with regard to those designated members, of family members or whoever falls under that requirement, differently than we do for other individuals who might be in the process of purchasing this wholesaler's license. You turn to page 24 of the bill, we then go into, on line 7, it says the supplier shall not interfere with, prevent, or unreasonably delay the transfer of the wholesaler's business, including an assignment of the wholesaler's rights under the agreement, the oral agreement I guess in this case, if the proposed transferee is a designated member or if the transferee other than a designated member meets the reasonable qualifications required by the supplier for Nebraska wholesalers. So in other words, you have a list of reasonable qualifications for other folks that would purchase that wholesaler's operation, but if it is a family member and it's a broad definition of family member, it is called designated person in this case, if, and they can be a number of different people in this case, they do not have to meet any criteria. So even though the argument is made on one hand by Senator Ashford with regard to the just previous amendment dealing with oral contracts and agreements, we now allow for basically no say by the supplier with regard to a transfer from a one family member to another. Those agreements will pass on whether they are oral agreements now, because we've rejected that amendment...

PRESIDENT: Half a minute.

SENATOR HALL: ...or written agreements, those transfers of contract will take place whether the supplier has anything to

say about it or not and they don't. They clearly can just circumvent the supplier altogether and this is a provision that, again, the argument will be that they have a considerable investment and that is true, but there has never been, and I don't think Senator Ashford can point out, a situation here in Nebraska where a distributorship has changed hands because the language in LB 371 is not adopted. It is interesting that it is before us today as an issue that requires the emergency clause, and I would like Senator Ashford to address that issue as well. I would urge the body to adopt the amendment that basically brings into line the transfer of these distributorships on a uniform basis and treats everyone the same. I don't think that there would be any problems with family members meeting these criteria because the criteria spelled out as a designated member are those that require a family member to have been in operation in the business. So I think to strike this provision that says family members are treated differently, we don't do it for anybody else, we don't do it for any other franchisee, but yet we're going to do it for beer distributors. I guess I need to know why. Other franchisees have huge investments in their businesses as well. Why don't we allow for them to transfer from family member to family member. Do they have contracts that don't allow that, I guess, and aren't those contracts negotiable? Maybe they have written contracts as opposed to oral agreements. I would urge the adoption of the amendment.

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

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I would like to ask Senator Ashford a question because I'm going to admit that this is an area that I don't have a lot of expertise in. Senator Ashford, with the failure of Senator Hall's amendment to have been adopted which now allows written and oral agreements, and then I want to bring it to what we're talking about with reference to these designated members. At that Section 15 on page 6 that Senator Hall was reading from which requires a written agreement which contains all the terms, then in line 13 it says, any agreement which is in existence on the effective date of this act shall be renewed in a manner consistent with Sections 1 to 22 of this act.

SENATOR ASHFORD: Right.

SENATOR CHAMBERS: Okay, so that means if it's an oral

agreement, does that mean it's renewed as an oral agreement or now in accord with Section 15 which requires a written agreement.

SENATOR ASHFORD: Okay, I think the point is that if you take oral...your point...if you take oral agreement out, I believe what it means is that you can...is that you would not be required to comply with the later sections of the statutes as they relate to new agreements. The point is there are oral agreements out there, Senator Chambers, that need...no...

SENATOR CHAMBERS: Here is my question.

SENATOR ASHFORD: ...there are oral agreements out there that need to be covered by the act.

SENATOR CHAMBERS: But here is the question I'm asking you. Assume the existence of oral agreements because I don't want to get into that as an argument, this section says that the agreements must be renewed pursuant to Sections 1 through 22. In the definitional section, you can have oral agreements.

SENATOR ASHFORD: Right.

SENATOR CHAMBERS: Section 15 requires it to be in writing.

SENATOR ASHFORD: Correct.

SENATOR CHAMBERS: Which one prevails since they contradict each other?

SENATOR ASHFORD: They don't contradict each other in my opinion.

SENATOR CHAMBERS: Okay, then how do you renew the oral agreement?

SENATOR ASHFORD: In writing pursuant to Sections 1 through 22.

SENATOR CHAMBERS: And at what point do you renew it?

SENATOR ASHFORD: After the passage of the act.

SENATOR CHAMBERS: So then if we had adopted Senator Hall's amendment and done away with oral agreement, those oral

agreements that were in existence at that time would have to be put in writing?

SENATOR ASHFORD: No, I don't agree with you.

SENATOR CHAMBERS: Thank you, Senator Ashford. Members of the Legislature, if you read the transcript to this, you're going to see that there is some confusion on the part of the introducer of this bill, but the question that is really going through my mind, and I'm going to ask Senator Ashford this one. It talks about passing on the ownership interest of this person in his or her will or the laws of intestate succession will apply. What is it that is being passed along?

SENATOR ASHFORD: The franchise agreement.

SENATOR CHAMBERS: Does a person have to hold a liquor license to have a franchise?

SENATOR ASHFORD: I believe so.

SENATOR CHAMBERS: Does the statute allow a liquor license to be inherited or passed on?

SENATOR ASHFORD: You know I really don't know what the law is on that.

SENATOR CHAMBERS: It doesn't. It is a privilege and it is not inherited...

SENATOR ASHFORD: There would have to be another application made I believe, but I'm not sure about that.

SENATOR CHAMBERS: So then if a person were to try to utilize the benefits of this bill, he or she would have to comply with the statutes relative to liquor licenses.

SENATOR ASHFORD: I'm sure that's correct.

SENATOR CHAMBERS: Could a child have a liquor license?

SENATOR ASHFORD: I don't believe so.

SENATOR CHAMBERS: Could a child under this bill have the interest of the one who held this right and died?

SENATOR ASHFORD: I suspect that the ownership could descend to a child but there would have to be...under the liquor license statute, there would have to be someone else as the designated manager of the business in order to get the license, but that's different.

SENATOR CHAMBERS: Why?

SENATOR ASHFORD: Why?

SENATOR CHAMBERS: Why would that be necessary?

SENATOR ASHFORD: Because the liquor laws require it and...but there are two separate issues.

SENATOR CHAMBERS: What do the liquor laws require?

SENATOR ASHFORD: If you show me the liquor laws I can...I'm speculating that what you would do would be have a manager who would qualify, but the ownership interest of the franchise could be transferred to a child. I'm sure that's correct.

SENATOR CHAMBERS: Why couldn't the child manage?

SENATOR ASHFORD: Because I'm sure the liquor laws would require someone of age to manage.

SENATOR CHAMBERS: Am I my father's child? We don't say anything about age. Do you all see what we are dealing with here? People assume certain things. Child simply means the relationship that you have to a parent. Methuselah lived to 969 but he was Mr. Methuselah's son, Mr. Methuselah's child. This bill, I think, has some provisions in it that are not clearly understood by the body, but since Engineer Ryan is at the throttle, got his hat turned backward, it's going to roll. There are...Senator Ashford speculates about the existence of oral contracts, he says that when this bill takes effect they have to be reduced to writing.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Time. Senator Ashford.

SENATOR ASHFORD: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. Shall debate cease? Those in favor vote aye, opposed nay. We're voting on ceasing debate. Have you all voted? A call of the house has been requested. Shall the house go under call? Those in favor vote aye, opposed nay. Record.

ASSISTANT CLERK: 15 ayes, 3 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Members outside the Chamber, please return to the Chamber. Unauthorized personnel, please leave the floor. Senator Landis, please. Senator Schimek, please. Senator Byars, please. Call in votes have been authorized. Call in votes are authorized. The question before the body is ceasing debate.

ASSISTANT CLERK: Senator Dierks voting yes. Senator Wesely voting yes. Senator Coordsen voting yes. Senator Conway voting yes. Senator Rogers voting yes. Senator Peterson voting yes. Senator Langford voting yes. Senator Schellpeper voting yes. Senator Goodrich voting yes. Senator Lindsay voting yes.

SPEAKER BARRETT: Record, please.

ASSISTANT CLERK: 26 ayes, 1 nays, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Hall, would you care to close, and the call is not raised.

SENATOR HALL: Thank you, Mr. President. The issue here is one of an amendment that would allow for the transfer of these distributorships to be uniform, one that the same provisions would apply for what is called a designated member in the bill as it would for any other individual who was purchasing this type of an operation. And nowhere else do I know of in the statutes that we specifically spell out a provision for what amounts to family members to be given a special designation with regard to who shall assume a business. There are a number of businesses, a number of franchises that are regulated by the statutes in this state, but yet only these will allow for a transfer to take place without any input on the part of the manufacturer and the supplier. The bill reads, consent or approval from the supplier shall not be required for any

transfer of the wholesaler's business to a designated member or any transfer of less than control of the wholesaler's business. It goes on to say, though, that the wholesaler shall give the supplier written notice of any change in ownership. I guess you supply written notice so that they will know who to talk to about the oral agreement that they have entered into. It is just one of the problems that I think LB 371 has and I would urge the body to bring the bill into compliance or into a uniform compliance with regard to the transfer of these types of businesses. I would urge the adoption of the amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Hall amendment to LB 371. All in favor vote aye, opposed nay. Have you all voted? Record, please.

ASSISTANT CLERK: 8 ayes, 26 nays on adoption of the Hall amendment, Mr. President.

SPEAKER BARRETT: Motion fails. The call is raised. Next motion.

ASSISTANT CLERK: Mr. President, Senator Hall would move to amend. Senator, this is amendment number six. (Hall amendment appears on page 1266 of the Legislative Journal.)

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Mr. Clerk, I would ask you to please let the body know that we did skip amendment five so that I am not trying to belabor the issue. The...this again is a substantive issue and it deals with what is the supplier shall do and, excuse me, what the supplier shall not do. Okay? And bear with me because, again, this just points out how the bill was drafted and how I guess what the type of protective legislation that this is. Okay, it says that a supplier shall not, on Section 15, page 6, and then it lists one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen different things that the supplier shall not do in relation to the distributor, or the wholesaler, and this amendment is the amendment that deals with, on page 8 of the bill, number 9, it says, the supplier shall not require a wholesaler to submit audited profit or loss statements, balance sheets or financial records as a condition of renewal or continuation of an agreement. In other words, we put into statute the fact that that supplier, Anheuser Busch,

Miller Brewing Company, Heilemans, cannot require through the passage of LB 371 a wholesaler to submit a profit and loss statement, a balance sheet or financial records as a condition of renewal or continuation of agreement. So in other words, we're saying, we're placing into statute the fact that they don't have to show their books to the other partner in that agreement, and I guess if they have an oral agreement, it doesn't matter, they probably don't care about books, they just do everything over the phone. I mean that's the extent that this bill goes to and you ought to look at those 19 different provisions in there that the supplier shall not allow for, and we addressed one of them in an earlier amendment and you failed to adopt that. What we're stating here, and what we're adopting into statute is that the Anheuser Buschs of the world can't say let us see how you're doing, let us see your records. We're not sure we want to renew your contract because we think on basis of your...of what you have ordered from us that your profits are not there, that you're doing a bad job, we want to look at your performance. When we pass 371 as it is written without this amendment, we place into statute the fact that they can't ask for that. They can't ask for any financial information with regard to renewal of a contract. Now is that what we're here to do? Is that would our public policy statement is going to be through the passage of LB 371? Are we going to protect those wholesalers to the point where we say you don't have to show your books? I mean that is what the bill is written to do. That's exactly to the extent that it takes it. It says not only are we going to protect you, we're going to protect you to the point that you don't have to open your books to the people that you're in a contract with. Now, ladies and gentlemen, that is ridiculous. You step over the bounds of reality, I think, when you put that kind of language, that's a fairly...I can't think of a civil word to use, so I won't use it, but a pretty blatant attempt on the part of the lobby to say we're going to handle this situation. We're going to handle it in the form of legislation that says we, as wholesalers, don't have to do anything and we're going to show you, supplier, we're going to put it into statute through the form of LB 371. We don't even have to show you our books. When it comes time to renew our contract, we'll pick up the phone and call each other back and forth, but we don't have to say whether we're losing money or making money and that in itself is a provision with regard to renewal of our contract. It doesn't apply and we'll show you in the statutes where we've got it passed in the State of Nebraska that it doesn't apply. I think that is terrible public policy.

It's part of a contract that we, as legislators, should not be entering into. It should not be part of LB 371 and I would urge you to strike it from the bill in this amendment. Thank you.

SPEAKER BARRETT: Discussion on the Hall amendment, Senator Ashford.

SENATOR ASHFORD: Senator Hall is closer to correct with this amendment than the other ones, but I think that...the financial information that is being requested or may be requested by a brewery may be, or is delivered and there is nothing in the act that would prevent that information from being provided. All the provision talks about are audited financial statements and profit and loss statements. The...going through an auditing procedure for the renewal of a franchise agreement is an expensive proposition and all we're talking about is audited. I have no objection to delivery of financial information as part of the process of renegotiating a renewed agreement, but we're talking about audited financial statements.

SPEAKER BARRETT: Thank you. Senator Hall, followed by Senator Lamb.

SENATOR HALL: Thank you, Mr. President, members, the issue of close I guess is relative. It's like, in this case it would apply. We'd be talking about grenades and it would count because you're talking about...I mean what other kind of statement would you given, an unaudited statement I guess or a profit and loss statement, a balance sheet or financial records of any kind at all. When you don't adopt this amendment, what you say is that they're not required and the supplier, the folks who make the beer and sell it to the distributors are...can't require that as a provision of the contract. We're saying, we're taking contractual provisions and putting them into law. We're laying out the scope that that contract can entail, scope it can cover, what can be in there and what can't and one of the provisions that can't be in there with regard to renewal, and this really only applies to the renewal, is that you can't require financial statements of any kind, profit and loss statements, anything at all that deals with basically the financial status of the operation when it comes to renewal. Now is that good public policy? I clearly don't think so. I think it is, you know, Senator Ashford is even a little squeamish on this one because he admits that I'm close I guess. But it is not something that I think we want to put into statute. I mean,

ladies and gentlemen, think about it. Ay-yi-yi, are we going to...I mean, I guess, you know, with the State of Nebraska when it goes into contract with some kind of entity to provide services in the area of, say, Department of Public Institutions or Department of Social Services, would they ever even consider entering into a contract without having the provisions to look at what kind of financial situation, what kind of financial makeup that provider has? I think...I know not. It is not even a question of thinking, I know not, and that they would not even consider that. They would first take a look at the financial stability of that operation as one of the criteria for determining whether or not to enter into that contract. What we're saying here is that we are outlawing that, is what we're doing. We're just basically outlawing that in the case of these agreements in these contracts between two entities, the supplier of beer and a wholesaler distributor of beer and that is not something I think we should put into statute. I would urge the adoption of the amendment.

SPEAKER BARRETT: Thank you. Senator Lynch, followed by Senator Withem.

SENATOR LYNCH: Mr. President and members, I have a question of Senator Ashford, if I could.

SPEAKER BARRETT: Senator Ashford, would you respond.

SENATOR LYNCH: Senator Ashford, based on what Ay-yi-yi Hall just mentioned, regarding the page 8, Section 9, I was kind of curious how you interpret a couple of other sections based on what he just mentioned and as they relate to Section 9. Ten, for example, says that...

SENATOR ASHFORD: Which one is that?

SENATOR LYNCH: Page 9, Section 10, line 4, It says they cannot coerce, compel, or require a wholesaler to provide or divulge information regarding individual accounts. Section 11 says they can't use the threat of losing or withholding its credit. Apparently they give credit to the wholesalers as a means of compelling the wholesaler to standards of performance that relate to credit. You know, they can't withhold delivery, apparently, based on that credit. Section 13 requires a wholesaler by any means directly, they cannot require them to participate and contribute to any advertising, to any fund

controlled that has to do with advertising. Fourteen has to do with willfully discriminate. What I'm concerned with, Senator Ashford, is I'm curious about, it almost appears that there is some real rascals involved in the business, that we'd have to put into the statutes paragraph after paragraph regarding what they cannot do. Coerce is used quite a bit even on the top of the page on page 8.

SENATOR ASHFORD: Is that a question?

SENATOR LYNCH: Senator Hall's amendment simply relates to paragraph 9, but in answering my question, if you can talk to 10, 11 and 12 and how they relate to Section 9 I'd appreciate that.

SENATOR ASHFORD: Well, first of all, Section 9, I think that we are protecting, clearly, we are protecting local businesses from possibly there are rascals in the brewery business, I don't know. But...and I don't know every fact situation that brought about these particular sections, but the...as far as Section 9 is concerned, for a small supplier or wholesaler, it is onerous to pay 20 or $25,000 for an audited financial statement, and I think that that is the reason why we have audited in there. As far as the other sections, I think that, again, we are making a public policy decision on protecting local Nebraska businesses from these various problems, threats, coercions. To me, in reading them objectively and fairly, I think that they are reflective of concerns and I'm not trying to double-talk, I'm just...they are concerns here and discrimination and withholding of credit and there may be credit arrangements that are made. I don't see that as being...maybe you're not suggesting it is contrary to public policy. I don't see that as being contrary to public policy to try to protect our local businesses.

SENATOR LYNCH: Well, I still have...hopefully, I have just a second left, Mr. Chairman, on my time. Do you think then if we establish policy as it applies to a distributor, a wholesaler, I guess that same policy should apply between a wholesaler and a retailer? In other words, could we amend the bill to suggest the same kind of discrimination, coercion, fair play, mandating of advertising, all the rest should apply between the wholesaler and the retailer.

SENATOR ASHFORD: Well, that's another matter and I didn't...maybe that is the problem with...that's why we're

having this debate on the bill. I mean, that it involves the retailer and I'm sympathetic to retailers. I didn't certainly bring this bill to the body because I wanted to discriminate against retailers. My particular experience has been with wholesalers and out-of-state franchisors and having some control over what...

SPEAKER BARRETT: One minute.

SENATOR ASHFORD: ...out-of-state businesses do. So if there is a problem with retailers, it ought to be brought to the attention of the committee and we ought to deal with them in the committee process.

SPEAKER BARRETT: Senator Withem.

SENATOR WITHEM: Yes, Mr. Speaker, Senator Ashford, I hate to do this, but I'm going to have to ask a question or two, too, if you would not mind responding. A few years ago I got involved in some legislation dealing with franchise agreements and have done some reading about how...done some reading about how potentially corporations that engage in franchise agreements with local businessmen sometimes mistreat them and the purpose of this, I assume, is to protect our local wholesalers from being mistreated by large corporations on the outside. Is that the general intent of what this is dealing with, this section particularly?

SENATOR ASHFORD: Yes.

SENATOR WITHEM: Okay. By the same token, I guess I can see the other side of the argument that an individual invest a lot of money into a brewery, produces a product and does not choose to distribute that product themselves, but chooses to enter into an agreement with a local business, a franchise agreement for that business to do the distribution. That's what we're talking about here, isn't it?

SENATOR ASHFORD: Yes.

SENATOR WITHEM: Okay. Does not...I guess my question particularly relating to this situation, if a wholesaler is on shaky financial terms, potential of not being able to buy the gasoline to go into the trucks to carry the product to the retailers, potential of not being able to pay the electrical

bill to keep the refrigerators going to keep the beer cold, doesn't the...isn't this one of those things that the manufacturer ought to be able to know, ought to be able to find out?

SENATOR ASHFORD: And I think they can get monthly financial statements and I think...and that's fine, there is no problem with that, but the problem is with audited, you don't need audited financial statements.

SENATOR WITHEM: Okay. So your question is on the auditing itself, the auditing provision itself.

SENATOR ASHFORD: Yeah...

SENATOR WITHEM: Not on the financial statement.

SENATOR ASHFORD: ...make...if you supply a financial statement that is incorrect, that's fraud even if it is audited or not audited.

SENATOR WITHEM: Okay. So in number 9, the term...I guess I read this, you can't require a wholesaler to submit audited profit and loss statements, you can't submit those. You can't force them to submit balance sheets and you can't force them to submit financial records at all.

SENATOR ASHFORD: Audited profit and loss statements, balance sheets or financial records.

SENATOR WITHEM: So our question is, I guess it's kind of an English teacher sort of thing, but it's a fairly critical one here is, does the word in your opinion, is it your intent that the word "audited" modifies not only profit and loss statements but also audited balance sheets and audited financial returns?

SENATOR ASHFORD: Yeah, they can certainly get financial information but I don't think they need to be required to have audited financial information.

SENATOR WITHEM: Do you think that is clear with the wording of the bill and the legislative intent here?

SENATOR ASHFORD: Well, we can make it clearer between now and Select File.

SENATOR WITHEM: Okay. Thank you, Senator.

SPEAKER BARRETT: Senator Ashford.

SENATOR ASHFORD: Yes.

SPEAKER BARRETT: Would you care to discuss?

SENATOR ASHFORD: No, I'd call the question.

SPEAKER BARRETT: The question has been called. Five hands? I do. Shall debate cease? All in favor vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: Debate ceases. Senator Hall, for closing.

SENATOR HALL: Thank you, Mr. President, members. The issue, again, is simply whether or not we place into statute the fact that between two parties who basically make money off of each other, that we will require that no financial information need to flow from the wholesaler to the supplier, and this is clearly, having laid it out so far, clearly a wholesalers paradise with regard to LB 371 and I think that the least we should do is pro...not that I am out to protect big business in every way, but I think it does not make sense in any form or fashion for a legislative body to say through a bill such as we have before us that one party in a contract can...is not able to ask for financial data, financial statements, balance sheets, financial records, audited or unaudited, and that's the way it reads in the bill, doesn't...the issue is not whether they're audited, and I guess if they're unaudited, they probably aren't worth the paper they're written on, that it is a situation where we are saying that those cannot be required between parties in a contract. We're placing that in statute with regard to the distributor and the wholesaler. That's not our job. That's not what we're here to do. I would urge the body to adopt the amendment that would strike that provision, just one of the 19 that are listed in LB 371. Thank you, Mr. President.

SPEAKER BARRETT: Thank you and the question is the adoption of the Hall amendment, number six, to LB 371. All in favor vote aye, opposed nay. Voting on the adoption of the Hall amendment.

Have you all voted? Record. Senator Hall.

SENATOR HALL: I would ask for a record vote.

SPEAKER BARRETT: A record vote has been requested, so be it.

CLERK: (Record vote read. See page 1267 of the Legislative Journal.) 12 ayes, 21 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails. Next item.

CLERK: Mr. President, Senator Hall would move to amend.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Mr. Clerk, which amendment are we...?

CLERK: I have number seven in front of me, Senator.

SENATOR HALL: Mr. Clerk, I would respectfully withdraw that amendment.

SPEAKER BARRETT: It is withdrawn.

CLERK: I have number eight in front of me now, Senator. (Hall amendment appears on page 1267 of the Legislative Journal.)

SENATOR HALL: I would like to deal with that amendment. Mr. President, the amendment is simple. It strikes one word. On page 6, line 12 it strikes the word "exclusive". And if you'd open your bills to page 6, 371, on line 12 we're dealing with a supplier shall not again, and it fails to provide each wholesaler of the supplier's brand or brands with a written agreement which contains the entire agreement with the wholesaler and designates a specific exclusive sales territory. This is just, excuse me, redundant language because the exclusive issue of a sales territory is spelled out in our three-tier system as we have it in the state today. As you all know, we have the manufacturer or the supplier, as it will, who is the first part of the tier. Then you have the wholesaler, or the distributor. As it's laid out there in statute, they have exclusive franchise to sell the product in a franchised area. There is no need at this time, I don't think there is any need for the bill, but there is no need at this point for the issue

of an exclusive sales territory. That is something that is spelled out in the three-tier system and it, again, is basically a technical amendment, has no impact with regard to the bill and I would urge the adoption.

SPEAKER BARRETT: Thank you. Discussion on the Hall amendment number eight. Senator Abboud followed by Senator Lamb.

SENATOR ABBOUD: Pass.

SPEAKER BARRETT: Thank you. Senator Lamb.

SENATOR LAMB: Question.

SPEAKER BARRETT: The question has been called. Are there five hands out there. There certainly are. Shall debate cease? Those in favor vote aye, opposed nay. Voting on ceasing debate. Have you all voted? A call of the house has been requested. Shall the house go under call? All in favor vote aye, opposed nay. Record.

ASSISTANT CLERK: 11 ayes, 2 nays to go under call, Mr. President.

SPEAKER BARRETT: Motion prevails, the house is under call, members please return to your seats and record your presence. Are you authorizing call in votes? Call in votes have been authorized and the question before the body is ceasing debate.

ASSISTANT CLERK: Senator McFarland voting yes. Senator Conway voting yes. Senator Pirsch voting yes. Senator Dierks voting yes. Senator Withem voting yes.

SPEAKER BARRETT: Record.

ASSISTANT CLERK: 25 ayes, 0 nays to call the question, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Hall, for closing on your amendment.

SENATOR HALL: Thank you, Mr. President, members, this again is just the striking of the term "exclusive" as it is laid out in the bill, as I stated on page 6. It is clearly stated in the three-tier system that we have that there is an exclusive

franchise which is under a franchised area. It is redundant at best and I would urge the adoption of the amendment.

SPEAKER BARRETT: Thank you. You've heard the closing, and the question is the adoption of the Hall amendment number eight to LB 371. All in favor vote aye, opposed nay. Record, please.

CLERK: 7 ayes, 25 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails. Next item.

CLERK: Senator, I have amendment number nine.

SENATOR HALL: Mr. Clerk, would you read that amendment, please?

CLERK: Senator, this is the amendment that reads on page 20 strike lines 12 through 25, on page 20 of the bill strike lines 12 through 25 and on page 21 strike lines 1 through 25.

SENATOR HALL: Mr. President, or excuse me, Mr. Clerk, I will bring that back on Select File but I will withdraw that amendment at this time.

SPEAKER BARRETT: It is withdrawn.

CLERK: Your next amendment, Senator, is to strike the emergency clause.

SENATOR HALL: Thank you, Mr. President and members. This is an issue that I would hope the body would clearly listen to. I don't often, well, I never offer frivolous amendments. I think all the amendments that were offered here today were substantive in nature and I...

SPEAKER BARRETT: Excuse me, Senator Hall, the call is raised.

SENATOR HALL: ...appreciate the body's tolerance, but this is a bill that has had little or no discussion and it has, to date, raced through the body but it slowed down here today. This amendment strikes the emergency clause, and I'll just read you the top of the bill. It says, an act relating to beer distribution; to amend sections, revised statutes of Nebraska, state intent, to define terms, to prohibit certain acts by suppliers and wholesalers, to provide for certain notices, to

provide requirements for distribution agreements, to provide for arbitration of disagreements, to provide for applicability, to provide for the enforcement of agreements, to harmonize provisions, to provide severability, and to repeal the original section and declare an emergency. Article III, Article III, Section 27 of the Nebraska Constitution provides for the issue of an emergency clause and it is on page 14 of the Constitution, as it is laid out in your black book, and it says that no act shall take effect until three calendar months after the adjournment of the session at which it passed, unless in case of emergency, to be expressed in the preamble or the body of the act, the Legislature shall, by a vote of two-thirds of all members elected otherwise direct. And then it goes on to say that all laws shall be published in such manner as the Legislature may provide. The issue here is one of where is the emergency and I would hope that the body would carefully consider the fact that LB 371 has the emergency clause and question the need for it. There is a good reason for having emergency clause. We do it at times because of problems that arise, bills that we've passed that had unforeseen implications because of a problem that we're facing down the road, or the ability to get something to prevent a problem from occurring and that is why the emergency clause is there. It makes good sense to have it, but it should be something that is used rarely and used only in the case of an emergency. LB 371, first of all, you know in my opinion, I don't feel it's necessary. I don't think a very good case other than the case made by the lobby has been made to advance the bill and the tack that I have taken today with regard to the amendments, I hope at least I have raised some concern. It clearly hasn't raised enough to feel that the bill needs to be amended, but hopefully that discussion will take place between now and Select File. But there clearly is no emergency with regard to this. There is no emergency and no need to pass LB 371 with the emergency clause, and if there is, it wasn't stated at the public hearing. It hasn't been stated today and I would urge the body to strike that emergency clause and protect that piece of the legislative process that I think should be protected and kept for special situations. LB 371 is clearly not a special situation. It's not one that we need to rush into. If the decision of the body is to advance it, fine, and to pass it, fine, but show me where the emergency exists. Show me the burning controversy over whether or not it's an oral or a written agreement; show me the burning controversy over whether or not it can be passed to one family member in a different manner than it is passed to someone who is

purchasing it from the outside; show me the burning controversy over the issue with regard to setting up a totally different set of arbitration rules and regulations that these...this small group of individuals function under. It's not there, and we shouldn't have the emergency clause on this piece of legislation. I'd urge the body to adopt this amendment and it...I...I would urge the body to adopt this amendment. Thanks, Mr. President.

SPEAKER BARRETT: Thank you. Discussion, Senator Ashford.

SENATOR ASHFORD: I'll leave this decision up to the body. I think that...sort of the last chapter in sort of an unfortunate afternoon. I guess this body has in the past made decisions on emergency clause based on their own ideas of what is appropriate and I'll leave it to them to make this decision, make it's own decision. Thank you.

SPEAKER BARRETT: Thank you. Senator Abboud.

SENATOR ABBOUD: Question.

SPEAKER BARRETT: That won't be necessary. There are no other lights. Senator Hall, any closing comment?

SENATOR HALL: Mr. President, only that this is a very serious amendment and I think the issue of the emergency clause should be kept for very serious situations, times when it is needed. There has not been a case presented at any point in the life of this legislation that justifies the emergency clause as a piece of this legislation. I would urge the body to adopt the amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Hall amendment. All in favor vote aye, opposed nay. Senator Hall.

SENATOR HALL: Mr. President, I would ask to expedite things for a call of the house and a roll call vote on this issue.

SPEAKER BARRETT: A call of the house has been requested. Mr. Clerk, clear the board. Those in favor of going under call please vote aye, opposed nay. Record.

CLERK: 14 ayes, 8 nays to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please record your presence. Those outside the Chamber, please return and check in. The house is under call. Senator Lamb, please, Senator Hannibal, Senator Wesely. Senator Bernard-Stevens, please record your presence. Senator Labedz, please record your presence. Senator Ashford, would you please record your presence. Senator McFarland, please. Members, please return to your seats. The house is under call. Senator Haberman, would you record your presence, please. Senators Goodrich and Hefner, the house is under call. Senator Hall.

SENATOR HALL: Who is absent?

SPEAKER BARRETT: Senators Goodrich and Hefner.

SENATOR HALL: Senator Goodrich and Hefner. Since this is just my amendment to strike the emergency clause, I would say that it's okay to go ahead and call the roll.

SPEAKER BARRETT: If members would return to their seats for a roll call vote, we'll proceed. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See pages 1267-68 of the Legislative Journal.) 15 ayes, 29 nays, Mr. President, on the motion.

SPEAKER BARRETT: Motion fails. The call is raised. Is there anything further on the bill, Mr. Clerk?

CLERK: Mr. President, Senator Chambers would move to amend the bill. (Chambers amendment appears on page 1268 of the Legislative Journal.)

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, this is an amendment that is being offered for the sake of presenting some consistency in the bill. On page 6 in line 10, after "written", insert the words "or oral". The first version of the amendment that I offered was going to cause the definitional section 4 which defines agreement so that it means written or oral, I was going to say that does not apply to Section 15 so that you wouldn't have the conflict of requiring a written agreement, but further down language that says that the

existing agreements must be renewed pursuant to sections, and then it gives them, which would include the definitional section. So, if you read the bill without my amendment, it could mean that the oral agreement must be renewed as an oral agreement in accord with the definition in Section 4. So what I want to do is just add this language so that this provision, Section 15 that deals with agreements, will contain the same parallel wording as the words in the definitional section. So I think that for consistency sake we ought to adopt this amendment. When Senator Hall tried to strike the word "oral" from the definition, Senator Ashford opposed it. Senator Hall said that may make good lawyer...well, I won't say what he said because I don't remember exactly, but it may make good lawyer dollars but it doesn't make good legislative sense. That's what I will say. We should have a definition, then it should apply wherever the word being defined appears in the bill. The definition of agreement includes an oral agreement. The only other place in the bill where we talk about agreement requires a written agreement, but it also goes on to say that any agreement in existence at the time of the effective date of this bill must be renewed pursuant to the sections in this bill. So oral can be renewed as an oral agreement, written as written, and if oral agreements are good enough now, and Senator Ashford says they are, they should continue to be good enough. So I'm offering this amendment which will bring consistency, and if Senator Ashford is opposed to it, I would like him to have all the opportunity he needs to do so, so having offered the amendment, I will end my opening and see what he says.

SPEAKER BARRETT: Senator Ashford, about three minutes. Correction, two minutes.

SENATOR ASHFORD: I'm opposed to the amendment. The reason that we have the words "written" and "oral" in the definition section, as I've said now four or five times, is because we are dealing with all agreements that are now in effect, whether they be written or oral. Senator Chambers makes a point, but the way to handle it is not to amend by inserting the word "oral". The way to amend is in the definition section which I'll be happy to do on Select File by simply saying that except where an agreement is designated as written or oral. I know this sounds confusing, but you do not, we do not want to be in a position, and the bill does not intend for there to continue to be oral agreements provided. In dealing with oral agreements here, we're dealing with it in two ways, one, oral agreements that are

now in effect, the bill is affecting those agreements and requiring them to be in writing. The agreements that we're talking about in Section 4 are to be written agreements. We don't want them to be oral. We want them to be written, so we cannot add oral to that. But, Senator Chambers has brought up another technical point which I will be happy to deal with on Select File by adding a phrase to the definition section. It is not the point that Senator Hall brought up and so this...by my point here is not inconsistent with my argument on that and I'm sorry to be so confusing, but I understand what he is saying. It should not be dealt with in the way he is suggesting.

SPEAKER BARRETT: Thank you. Senator Hall. Senator Hall. Senator Ashford, your light is next, would you care for additional time?

SENATOR ASHFORD: If you go...well, I'd call the question.

SPEAKER BARRETT: Certainly. Senator Chambers gave his remaining time to Senator Ashford. That was the opinion of the Chair. The Chair made a mistake when I said there was two minutes left. Did you yield your time, your remaining time to Senator Ashford? I'm sorry, I misunderstood.

SENATOR CHAMBERS: Okay.

SPEAKER BARRETT: I'm sorry.

SENATOR ASHFORD: Then is it my time then?

SPEAKER BARRETT: Yes. Senator Hall is not on the floor, it is now your time if you'd like to take it.

SENATOR ASHFORD: And then who is after me?

SPEAKER BARRETT: Senator Chambers.

SENATOR ASHFORD: I would call the question.

SPEAKER BARRETT: I thought Senator Chambers was yielding his time, as I said before. I'm sorry about that misunderstanding. That was my error. This time is yours. You have called the question, Senator Ashford. Are there five hands? There are. Those in favor of ceasing debate, please ote aye, opposed nay. Have you all voted? Record.

CLERK: 15 ayes, 15 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate does not cease. Senator Hall, would you care to discuss the amendment?

SENATOR HALL: Thank you, Mr. President and members. The issue here that Senator Chambers addresses clearly points out some of the problems with LB 371 and the ambiguity that it contains, I mean the issue that the intent for introduction of the bill was to correct that same type of ambiguity that is currently in the franchise act and I would say that had we adopted some of those amendments that were laid out there earlier, that we might have cleared some of that up. But what has happened is that today we have danced to the tune of the lobby and it has prevented us from penetrating LB 371 in any form or fashion. We have not been able to, even though clearly and I think concisely pointed out problems with the bill, been able to get an amendment adopted because the lobby would not like to see that happen. And I mean it is in many cases, and specifically this one, the bill contradicts itself. Senator Chambers' amendment would clarify that in a similar fashion that I tried to earlier. It's not the same amendment but it is a similar type of correction with regard to the issue of oral versus written contracts and I would urge the body to adopt the Chambers amendment to the bill.

SPEAKER BARRETT: Senator Chambers, please, followed by Senator Ashford.

SENATOR CHAMBERS: Mr. Chairman, I'd like to ask Senator Brad Ashford a question.

SPEAKER BARRETT: Senator Ashford.

SENATOR CHAMBERS: Senator Ashford, how long have you been a practicing attorney?

SENATOR ASHFORD: When I first...

SENATOR CHAMBERS: If he doesn't understand that one, he is not going to understand the question, the main one, but I'll ask it again. How long have you been a member of the bar?

SENATOR ASHFORD: Oh, 15 or so years.

SENATOR CHAMBERS: Okay, now if a client came to you...

SENATOR ASHFORD: Doesn't show sometimes, but...

SENATOR CHAMBERS: Yes, it does. If a...

SENATOR ASHFORD: Being a member of the bar does not necessarily equal anything, not like Senator Chambers. I mean, I would attest...

SENATOR CHAMBERS: Okay. If a client of yours came to you and he said, Attorney Ashford, I want to retain you to advise me on this agreement I'm about to enter with this manufacturer. He wants to allow me to sell his brand and he wants to assign me a territory and he wants it to be an oral agreement. What do you advise me to do, and there are hundreds of thousands of dollars involved.

SENATOR ASHFORD: Under the law, the way it is now or under this statute?

SENATOR CHAMBERS: Under the law or this statute.

SENATOR ASHFORD: Under this statute I would tell him it would have to be in writing.

SENATOR CHAMBERS: Okay. Now, so we can take it a step at a time, Brad, this law is not in effect so that we can deal with what we face right now. Without this law, what would you advise me?

SENATOR ASHFORD: I would advise it to be in writing, but...

SENATOR CHAMBERS: Why?

SENATOR ASHFORD: Why, because the terms and conditions are clear and both parties know what the agreement is.

SENATOR CHAMBERS: Thank you.

SENATOR ASHFORD: But often...

SENATOR CHAMBERS: That's all, you answered the question. Thank you. Members of the Legislature, any person would know that an agreement of this kind should be in writing. Those people out

in the lobby gave Senator Ashford one of those boiler plate bills with provisions in it that make no sense, that are contradictory and go against the practices of good business that even a person like myself who am not a businessman would never agree to. His advice would be that the agreement be in writing. Anybody who is entering one of these agreements would want it in writing. The only one who would stand to profit by it not being in writing is one who wants to be in a position to manipulate the agreement. So the only kind of agreement we could have that is not in writing now would be the kind that a person would enter into against good legal advise, against sound business practices so that the stronger could manipulate the weaker. But here is what Senator Ashford has told us, I think, that to do what I am trying to do to bring about consistency should be done in the definitional section. Senator Hall tried to do that and Senator Ashford said he tried to do it the wrong way. So, I offered language to try to bring consistency between the definitional section and the text of the bill. Maybe what should have been done, and I thought about doing this except that with the high paid lobbyist drafting this bill, who am I to tell them a better way to do it, but usually when we talk about definitions and words, we say the words shall have the meanings in words to this effect. For purposes of this bill, the definitions found in these sections shall be used unless the context indicates otherwise or requires otherwise or otherwise requires. They could have done that and we wouldn't have had all this discussion. But you've got these geniuses out there making all this money and they can now go to the people who hired them and say, see, I really earned my money. You see how hard it was to get that bill to move. It wasn't hard to get the bill moved because the skids were greased and it was going to move because of who is pushing the bill. That will happen more times before this session is over, but I just want to take the opportunity to show how Senator Hall has, in a yeoman fashion, tried to demonstrate that these bills have infirmities but the body has been conditioned to let the bill go in the form it is offered and these matters are not corrected because they have been instructed in the body...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...not to amend the bill in any fashion. So I'm offering these words of amendment and you can accept them or reject them. You can amend the definitional section, you can amend any part of it you want to or don't amend it. It's on

record where I stand and th. s about all that I need to distance myself from this bill and the way it is written.

SPEAKER BARRETT: Senator Ashford, please.

SENATOR ASHFORD: The language that Senator Chambers wants to...or add by adding oral is an inappropriate amendment. It should not be added to the bill because it would be totally inconsistent with what the bill is trying to accomplish. After a full afternoon of debate, they have raised an issue on the definition section which is now, finally, after nine amendments which to me make some sense and should be looked at. I've read the bill totally before this time. I've had experience in franchise law, that's why I took the case. If there are lobbyists and if this bill is greased, then it's greased, I don't know. It doesn't...I haven't...I don't have any comment on that or I don't particularly care. I read the bill, I understood it. I believe it's proper and appropriate to handle franchise law in statute rather than case law. I said that at the beginning of this presentation. But after nine amendments or ten amendments now, Senator Chambers has brought up a point which is totally different from the point that Senator Hall brought up in his initial amendment and it may be that we need to add a phrase to the definition section. But I'll tell you what, if, after ten amendments in five hours of debate, we're down to one phrase added to one section, I don't think that the bill is badly drafted. This bill is identical or very close to a Minnesota law which has withstood a court test in the district court, Federal District Court of Minnesota in the Eighth Circuit. It's an area of law that I am familiar with, maybe I shouldn't continue to say that because maybe I have proven to you that I'm not, but I do understand it and I believe that it's appropriate to handle relations between, in this area through statute, not with inconsistent case law. Again, many of us have bills that lobbyists are on both sides of on, or one side or not involved in at all. I wished I'd had some lobbyists helping me on the semiautomatic rifle bill yesterday, I guess. But I really believe in what I'm doing or it wouldn't be before the body. Senator Chambers is an excellent senator. He knows about the process and he knows about statutory language and it's helpful that we finally have gotten something that maybe needs to be added to the bill but it was done, I believe, in a constructive way and I'm taking it in a constructive way and I will be happy to deal with it between now and Select File, and had it been brought to me before this time, I would have dealt

with it at that time. I try to be fair with the bills that I introduce and I try not to be...clobber people over the head with them. But in any event, the amendment that we're talking about should not be adopted. It opens up the bill and so I would ask that it not be added on. Thank you.

SPEAKER BARRETT: Thank you. Senator Labedz, followed by Senators Lamb and Hall.

SENATOR LABEDZ: Call the question.

SPEAKER BARRETT: The question has been called. Five hands? Those in favor of ceasing debate please vote aye, opposed nay. Please record.

CLERK: 26 ayes, 0 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate ceases. Senator Chambers, for closing.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, what Senator Ashford has acknowledged and what I've tried to demonstrate, initially by trying to help Senator Hall get at least one of his amendments adopted, even though I supported others, that which has been demonstrated is that there is more than one way to skin a cat. If you have two provisions in statute and they don't agree with each other and you try to create consistency, then you're going to either make proposition A consistent with proposition B or you're going to make proposition B consistent with proposition A. It doesn't make sense to have both of them there, when to have both of them, you're saying contrary things. Senator Ashford said this bill is similar to a bill in the State of "Meningitis". (laughter) Senator Ashford is numb. That does not necessarily mean that it is a good bill, so however he wants to bring about the consistency is fine with me. The bill will still not be good. The fact that he has come to see that there is an inconsistency that needs rectification somehow does not say that the other amendments offered by Senator Hall were not valid. It has gotten through to him that the inconsistency in the bill now cannot be rationalized away. To argue against the amendments of Senator Hall is simply to say you have a difference of opinion, but it's not to say that Senator Hall's amendments are not justified, that they lack merit and that they should not be added to the bill. It happens that it came on a day and on a bill when the work had been done before the actual legislation

came before us and, Senator Ashford, that's why there could be no adoption of other people's amendments. If you hadn't given permission for there to be an amendment to the bill of the kind that I'm talking about, wherever you place the amendment, that would not be adopted. And to prove it, when we get on Select, tell them you don't want the amendment, you'll take the bill just the way it is, you read it over, you talked to those who support it and the amendment is not necessary and I'll bet you that is what is going to happen on Select and we can get the the transcript of today to show it. The word will come down that there doesn't need to be any amendment because to allow one might open it up for others. So I'm still suggesting that we adopt my amendment, although if you do, if you adopt that amendment, it will be consistent, but it will be the funniest thing that has happened in the Legislature this session. (laughter) I yield.

SPEAKER BARRETT: Thank you. And the question is the adoption of the Chambers amendment. Those in favor vote aye, opposed nay. Have you all voted? Record.

CLERK: 2 ayes, 23 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails.

CLERK: Senator, did you want that other amendment that you had here then?

SPEAKER BARRETT: It is withdrawn.

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

SPEAKER BARRETT: Thank you. The question is the advancement of the bill. Any discussion? Senator Hall.

SENATOR HALL: Thank you, Mr. President, very briefly, I just, believe it or not I'm not going to vote to advance the bill. I think the bill will advance and I fully expect that to happen, but I do hope to work with Senator Ashford between now and Select File on at least some of the amendments that I think were very much issues that probably the body rejected because they hadn't been talked about prior to discussion here on General File. Again, it goes back to the fact that I was unaware that the bill was coming to the floor today, and I apologize for

that. I don't apologize for the fact that I offered them, that we spent some time discussing legislation. That's what we're here to do. But with that, I'm going to vote at this time not to advance the bill and hope that we can work out some of these issues between now and Select File. Thank you, Mr. President.

SPEAKER BARRETT: Senator Chambers, followed by Senator Ashford.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, to be very brief, I'm going to look at whatever Senator Hall and Senator Ashford may be able to come up with. I'm uncomfortable talking on this bill because on liquor issues I'm opposed to liquor, I really am. And to try to bring equity between two of those forces that are maybe fighting each other on it, it's difficult for me because if I say like somebody said, a plague on both their houses, but there is an issue here of how we're going to legislate and the kinds of principles we're going to put in place through the laws. When we talk about restricting certain types of activity, giving an apparent advantage to some over others, then there are some points that I have to try to make. But if you want to wipe out the wholesaler, wipe out the manufacturer, wipe it all out, I don't really care about that. So that is not what I am that concerned about. If there is some way that the manufacturer could beat all of these wholesalers and then others catch the message and maybe they won't deal with them, fine, so that is not what has motivated me today. I'm not concerned for the retailer, I'm not concerned for the wholesaler, I'm not concerned for the manufacturer. I'm concerned about the process by which we are legislating and I also will not vote to advance the bill.

SPEAKER BARRETT: Senator Ashford.

SENATOR ASHFORD: I'd just ask that the bill be advanced.

SPEAKER BARRETT: Thank you. Senator Landis.

SENATOR LANDIS: I just want to tell Senator Chambers that a plague from both your houses comes from Romeo and Juliet in which the prince tells the Capulets and the Montagues, who were warring, to stop fighting, and that in this case the wholesalers and the retailers has neither produced Romeo nor Juliet in LB 371.

SPEAKER BARRETT: Thank you. Any other discussion? If not, I

presume we are ready to vote on the advancement of the bill. Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 30 ayes, 2 nays, Mr. President, on adoption of the motion to advance LB 371.

SPFAKER BARRETT: LB 371 is advanced. Messages on the President's desk.

CLERK: Mr. President, an announcement that Revenue Committee will meet in executive session tomorrow at one-fifteen in Room 1520; Revenue Committee tomorrow, Room 1520 at one-fifteen.

Business and Labor gives notice of confirmation hearing, or a report on the confirmation hearing, I should say.

Amendments to LB 89 by Senator Chambers, LB 250 by Senator Schimek, LB 224 by Senator McFarland, LB 335 Senator Hall, LB 811 by Senator McFarland. (See pages 1269-71 of the Legislative Journal) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Schellpeper, would you care to.do the honors?

SENATOR SCHELLPEPER: Sure would. I would move that we adjourn until 9:00 a.m., tomorrow morning, March 22.

SPEAKER BARRETT: You've heard the motion to adjourn until tomorrow morning. Those in favor say aye. Opposed no. Carried we are adjourned.

Proofed by: LaVera Benischek
LaVera Benischek

SENATOR LINDSAY: Mr. President, I would move the adoption of the E & R amendments to LB 449A.

SPEAKER BARRETT: Shall the E & R amendments to 449A be adopted? All in favor say aye. Opposed no. Carried, they are adopted. Senator Lindsay, on the advancement.

SENATOR LINDSAY: Mr. President, I move that LB 449A be advanced, as amended.

SPEAKER BARRETT: Shall the bill, as amended, be advanced? Those in favor say aye. Opposed no. Carried, the bill is advanced. Any messages on the President's desk?

CLERK: Mr. President, I do. I have amendments to be printed, from Senator McFarland, to LB 224; Senator Withem to LB 371; and Senator Withem to LB 569. That's all that I have, Mr. President. (See pages 1302-03 of the Legislative Journal.)

SPEAKER BARRETT: Thank you, sir. Senator Korshoj, would you care to adjourn us until tomorrow morning.

SENATOR KORSHOJ: Mr. Speaker, I move we adjourn until nine o'clock, a.m., March 23rd.

SPEAKER BARRETT: Thank you. You've heard the motion to adjourn until tomorrow morning at nine o'clock. All in favor say aye. Opposed no. Ayes have it, carried, we are adjourned.

Proofed by: Marilyn Zank
Marilyn Zank

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. For this afternoon's business, Mr. Harland Johnson with the opening prayer.

HARLAND JOHNSON: (Prayer offered.)

SPEAKER BARRETT: Thank you, Harland, very much. Roll call.

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

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

CLERK: No corrections, Mr. President.

SPEAKER BARRETT: Any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 183A and find the same correctly engrossed, LB 574 and LB 574A, all correctly engrossed, those signed by Senator Lindsay. (See page 1336 of the Legislative Journal.)

Mr. President, your Committee on Enrollment and Review reports LB 371 to Select File, LB 89 and LB 89A all to Select File, some having E & R amendments attached. (See pages 1330-36 of the Legislative Journal.)

Mr. President, I have two Attorney General's Opinions to be inserted in the Journal. (One re: LB 490. See pages 1340-41 of the Legislative Journal.) And that is all that I have, Mr. President.

And, Mr. President, I have amendments to be printed from Senator Lamb to LB 285. (See page 1342 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. A couple of announcements, guests, which we presently have with us under the south balcony; Senator Korshoj has from Herman, Nebraska, Garnet Johnson visiting with us. Garnet, would you please stand and take a bow. Thank you. And a guest of Senator Hartnett, also under the south balcony,

SENATOR LANDIS: The question is the advancement of LB 566. Those in favor vote aye, those opposed vote no. Upon the completion of this vote, the Clerk will read into the record those items that are necessary and then we'll entertain a motion to adjourn. It would be painful to think that a call of the house would be necessary to dispose of this matter at this late hour. If you're in the Chamber, please return to your chair and vote one way or the other on the advancement of 566. The Clerk will record.

ASSISTANT CLERK: 27 ayes, 0 nays on the advancement of the bill, Mr. President.

SENATOR LANDIS: Motion is advanced and the bill is advanced. Mr. Clerk, read into the record those items you have before us.

ASSISTANT CLERK: Mr. President, I have a new resolution, LR 67 by Senator Wesely. (Read brief description. See page 1416 of the Legislative Journal.)

Amendments to be printed from Senator Rod Johnson to LB 78; Senator Chambers to LB 399; Senator Chambers to LB 220 and Senator Hall to LB 371. (See pages 1416-21 of the Legislative Journal.) And that's all I have, Mr. President.

SENATOR LANDIS: Thank you, Mr. Clerk. The Chair recognizes the distinguished senator from northeast Nebraska, Frank Korshoj.

SENATOR KORSHOJ: Mr. Chairperson, I move that we adjourn until April 3rd at 9:00 a.m.

SENATOR LANDIS: You've heard the motion. Those in favor say aye. A machine vote has been called for. Those in favor vote aye, those opposed vote no. Somebody must have heard about a party. I've got a whole sheaf of bills. Just wait for a second and I'll go down to my office and get them and we can stay in session. The Clerk will record.

ASSISTANT CLERK: 23 ayes, 1 nay on the motion to adjourn, Mr. President.

SENATOR WITHEM: Certainly.

SENATOR HABERMAN: Senator Withem, did you receive a copy of a notice that the Revenue Department had sent to all of the entities?

SENATOR WITHEM: I received it. I saw that on Friday, yes.

SENATOR HABERMAN: I believe that notice explains exactly the intent of the legislation, but you have no problem with it, is that correct?

SENATOR WITHEM: Yeah, I have no problem with the intent of the legislation. I understand the intent of the legislation.

SENATOR HABERMAN: Okay, so as I understand it then, you and Senator Lamb or somebody is going to get together and change the language if it needs to be changed.

SENATOR WITHEM: Only if it absolutely needs to be. I don't want to bring the bill back unless we have to.

SENATOR HABERMAN: That will be fine. Thank you, Senator Withem.

SPEAKER BARRETT: Any other discussion? Anything further? On the motion then to advance the bill, those in favor say aye. Opposed no. Ayes have it, carried, the bill is advanced. LB 371, Mr. Clerk.

CLERK: Mr. President, on 371 I have E & R amendments first of all, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 371 be adopted.

SPEAKER BARRETT: Shall the E & R amendments to LB 371 be adopted? Those in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, I now have an amendment to the bill from Senator Withem. Senator, your amendment is on page 1303 of the

Journal.

SPEAKER BARRETT: Senator Withem.

SENATOR WITHEM: Is this the amendment that I filed on my own, page...? If it is, I'm going to withdraw that. Senator Hall has asked me if I'd carry a series of amendments that he has to the bill, not a series, a single amendment that he has on the bill. Senator Haberman, don't look at me that way, I'm sorry.

CLERK: So you want to withdraw this one, Senator?

SENATOR WITHEM: Yeah, I withdraw the one published under my name.

SPEAKER BARRETT: It is withdrawn.

CLERK: Mr. President, Senator Withem would offer the H 11 amendment found on page 1416 of the Journal.

SPEAKER BARRETT: Senator Withem.

SENATOR WITHEM: Yes, Senator Hall asked me to carry these. He left with the assurance that he has visited with the sponsors of the bill and the folks in the industry that are concerned about passage of this bill and that there is nothing in these that are of any controversy, at least with those individuals. They deal with some of the points that were raised on General File when Senator Hall and Senator Ashford were having a lengthy discussion about the bill. They do, basically, three things. Number one, there was evidently some discussion on the bill that there was a difference between...some cases we made reference in the bill to similarly situated wholesalers. In other places in the bill we had similarly situated Nebraska wholesalers and that was a conflict in the bill. Senator Hall's preference was to go with similarly situated...General File, he has agreed to clarify, for purposes of clarification in the bill, to go to similarly situated Nebraska wholesalers. That's for purposes of clarification of the bill that the standard by which we will be judging will be other wholesalers in the State of Nebraska, not other wholesalers in our nation. Secondly, we made reference, and this is how I got involved in this, I made the mistake of paying attention during one of these amendments and offered what I thought was a good argument on the floor and then offered an amendment in the Journal to clarify the point. There is a point

in there indicating that a beer manufacturer cannot ask for audited financial statements and other financial data if you read it that way. What the second part of the amendment does, item 2 on page 1416, clarifies that the word "audited" describes all three pieces of this information, not just the first in the series. It's pretty much clerical. Then Senator Hall goes on to say, a supplier may require profit and loss statements, balance sheets or financial records which are certified by the wholesaler or an officer thereof. In other words, they don't have to be audited but they will be certified as being true. The concern that Senator Ashford said about changing this...striking this language entirely was that they don't want to have to go through audited financial statements on a monthly basis. This clarifies that point that these financial statements need not be audited but that the supplier may require a profit and loss statement. And then the rest of it is primarily renumbering until you get down to point 6 on page 1416 where we strike language. The bill had specific arbitration provisions that would define conflicts that arise in the relationship when problems would come into play between the supplier and the wholesaler. Striking this language makes the Uniform Arbitration Act, which this Legislature passed a couple of years ago, apply in these situations. Those are basically the three things that the Hall amendment does. I would urge you to support the Hall amendment and add it to this bill. I will attempt to answer any questions that anybody may have.

SPEAKER BARRETT: Thank you. Discussion of the Hall amendment as offered by Senator Withem. Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the body, Senator Withem did his usual excellent job of explaining the amendment and I would like to inform the body that I do support the amendment and urge you to vote to adopt the amendment. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Further discussion? Seeing none, Senator Withem, anything further?

SENATOR WITHEM: No, maybe I ought to reread them after Senator Haberman agrees with them, but other than that I would urge you to adopt the Hall amendments.

SPEAKER BARRETT: Thank you, Sir. Those in favor of adopting the amendment please vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Hall's amendment as offered by Senator Withem.

SPEAKER BARRETT: The amendment is adopted. Anything further?

CLERK: Nothing further on the bill, Mr. President.

SPEAKER BARRETT: Senator Withem, anything further on the bill? Are you handling it for...

SENATOR WITHEM: No, I should not be handling it. Maybe Senator Haberman would be a more appropriate person to handle it. I don't know if he has anything on it. I'd yield my time to Senator Haberman.

SPEAKER BARRETT: Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the body, I ask for the advancement of LB 371.

SPEAKER BARRETT: Thank you. Any other comments? If not, those in favor of the advancement of the bill please say aye. Opposed no. Ayes have it. Carried. The bill is advanced. Next bill, Mr. Clerk.

CLERK: Mr. President, the next bill is LB 89. The first item I have are Enrollment and Revue amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 89 be adopted.

SPEAKER BARRETT: Shall the E & R amendments to the bill be adopted? Those in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, Senator Withem would move to indefinitely postpone the bill. Senator Lynch would have the option to lay the bill over, Mr. President.

SPEAKER BARRETT: Senator Lynch, what are your wishes?

SENATOR LYNCH: I'd be willing to lay it over, Mr. Chairman.

PRESIDENT NICHOL PRESIDING

PRESIDENT: Ladies and gentlemen, welcome to the George W. Norris Legislative Chamber. We have with us this morning as our Chaplain of the day Dr. Paul Lundell of the Dundee Presbyterian Church in Omaha. Would you please rise.

DR. LUNDELL: (Prayer offered.)

PRESIDENT: Thank you, Dr. Lundell. We appreciate your message this morning. Roll call, please. Record, please.

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

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

CLERK: No corrections, Mr. President.

PRESIDENT: Good. Any messages, reports or announcements?

CLERK: Mr. President, Enrollment and Review reports LB 77, LB 371, LB 592, LB 643, LB 714, and LB 781 as correctly Engrossed. Enrollment and Review also reports LB 99, LB 323, LB 143, LB 213, LB 381, LB 423, LB 509, LB 793, LB 605, LB 135, LB 324, LB 756, LB 206, LB 669, LB 486, LB 487, LB 487A, LB 488, LB 488A, LB 228, LB 228A, LB 627, LB 508, LB 722, and LB 566 to Select File, some of those having Enrollment and Review amendments attached. (See pages 1533-40 of the Legislative Journal.)

Mr. President, Senator Warner would like to print amendments to LB 247 in the Legislative Journal. That's all that I have, Mr. President. (See page 1540 of the Journal.)

PRESIDENT: Okay. We'll move on to LR 70.

CLERK: Mr. President, LR 70 has been offered by Senators Ashford and Moore. It's found on page 1476. (Read brief summary of resolution.)

PRESIDENT: Senator Ashford, please.

SENATOR ASHFORD: Thank you, Mr. President and members. Last year we passed legislation which authorized the profession of

SPEAKER BARRETT: The resolution is adopted. Members, please return to your seats for Final Reading. To our friends in the balconies, we are about to proceed into Final Reading which is the final time the bill is considered by this Legislature and constitutionally we are required to read every bill in its entirety. The Clerk will, very shortly, start reading the bill and the vote will be taken for the final time in order to either pass it into law or not pass it into law. Members, return to your seats for Final Reading. (Gavel.) Members, please take your seats for Final Reading. Please read LB 77, Mr. Clerk.

CLERK: (Read LB 77 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 77 pass? Those in favor vote aye, opposed nay. Record, please.

CLERK: (Record vote read. See page 1630 of the Legislative Journal.) 40 ayes, 0 nays, 9 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 77 passes. LB 371 with the emergency clause attached.

CLERK: (Read LB 371 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 371 with the emergency clause attached become law? All in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: (Record vote read. See page 1631 of the Legislative Journal.) 40 ayes, 1 nay, 2 present and not voting, 6 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 371E passes. LB 592.

CLERK: (Read LB 592 on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 592 become law? Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: (Record vote read. See page 1632 of the Legislative

Journal.) 32 ayes, 7 nays, 3 present and not voting, 7 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 592 passes. LB 643E.

ASSISTANT CLERK: (Read LB 643E on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 643 with the emergency clause attached pass? All in favor vote aye, opposed nay. Have you all voted? Please record.

ASSISTANT CLERK: (Record vote read. See page 1633 of the Legislative Journal.) The vote is 42 ayes, 1 nay, 6 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 643E passes. LB 714E.

ASSISTANT CLERK: (Read LB 714E on Final Reading.)

SPEAKER BARRETT: All provisions of law relative to procedure having been complied with, the question is, shall LB 714 with the emergency clause attached become law? All in favor vote aye, opposed nay. Have you all voted? Record.

ASSISTANT CLERK: (Record vote read. See page 1634 of the Legislative Journal.) The vote is 41 ayes, 0 nays, 2 present and not voting, 6 excused and not voting, Mr. President.

SPEAKER BARRETT: LB 714E passes. Anything for the record, Mr. Clerk?

CLERK: Mr. President, one item. Senators Haberman and Hall have amendments to be printed to LB 325. (See page 1634 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. And while the Legislature is in session and capable of transacting business I propose to sign and I do sign LB 643, LB 592, LB 371, LB 77, LB 714. To General File, Mr. Clerk, LB 84.

CLERK: Mr. President, LB 84 was introduced by Senator Lamb with Senators Conway, Haberman, Beck, Korshoj, Rod Johnson and Carson Rogers added as co-introducers. (Read.) The bill was introduced on January 5, Mr. President. It was referred to the

the revenues are at that point. There will be plenty of time to introduce legislation to remedy the situation. With that, Mr. President, I would ask that the amendment be adopted.

SPEAKER BARRETT: Thank you. Question is the adoption of the Lamb amendment to 84A. Those in favor vote aye, opposed nay. Record.

CLERK: 27 ayes, 2 nays, Mr. President, on adoption of Senator Lamb's amendment.

SPEAKER BARRETT: The amendment is adopted. On the bill, Senator Lamb, would you care to move the A bill?

SENATOR LAMB: I just move that the A bill be advanced, Mr. President.

SPEAKER BARRETT: Any discussion? Seeing none, those in favor of that motion vote aye, opposed nay. Record.

CLERK: 26 ayes, 3 nays, Mr. President, on the advancement of LB 84A.

SPEAKER BARRETT: LB 84A is advanced. I'd like to ask your cooperation in addressing the next two bills. Mr. Clerk.

CLERK: Mr. President, LB 747 was introduced by Senator Chizek. I do have a motion to indefinitely postpone, as offered by Senator Hall. Senator Chizek would have the option to lay the bill over, Mr. President.

SPEAKER BARRETT: Senator Chizek, your pleasure.

SENATOR CHIZEK: Lay it over.

SPEAKER BARRETT: It shall be laid over. Thank you. Anything for the record?

CLERK: Mr. President, bills have been presented to the Governor that were read on Final Reading this morning. (LB 77, LB 371, LB 592, LB 643, and LB 714.) Senator Withem has amendments to LB 84 to be printed; Senator Hannibal would like to add his name to LB 739 as co-introducer. That's all that I have, Mr. President. (See pages 1637-38 of the Legislative Journal.)

Morrissey's amendment.

PRESIDENT: The Morrissey amendment is adopted. Do you have anything for the record, Mr. Clerk?

CLERK: Not at this time, Mr. President.

PRESIDENT: Okay.

CLERK: Mr. President, Senator Dierks would move to amend the bill.

PRESIDENT: Senator Dierks, please.

SENATOR DIERKS: Mr. President and members of the body, I would move that we adjourn until tomorrow morning at nine o'clock.

CLERK: Mr. President, some items for the record, yes, thank you. A communication from the Governor to the Clerk. (Read. Re: LB 77, LB 371, LB 592, LB 643, and LB 714. See page 1736 of the Legislative Journal.)

A study resolution proposed by Senator Goodrich, LR 78. (Read brief explanation.) Senator Landis has amendments to LB 423 to be printed, Mr. President. (See pages 1736-37 of the Legislative Journal.) That is all that I have.

PRESIDENT: The motion is we adjourn until tomorrow morning at nine o'clock. All those in favor say aye. Opposed nay. You are adjourned until nine o'clock tomorrow morning.

Proofed by: LaVera Benischek

the vote portrayed was the fact that there is more than just frustration with the process. There is frustration with the expenditures and how they have been handled in LB 812. You have not heard a word really about any of the other projects in LB 812 until just now. Virtually, no explanation or discussion of those issues until right now because the bill didn't have the E clause on it. And now they become the bait by which you are asked to jump on the hook with regard to advancing the bill with the E clause. I didn't hear one thing that Senator Hannibal talked about in his explanation that was of emergency nature. And many times we put the E clause on bills because it is an expedient thing to do. I can think of one, for example, that I talked about at least for a half a day on LB 371, had the E clause on it. What good reason was there for an E clause on that bill? Nobody seemed to know the answer to that question. The fact of the matter is that the vote has been taken and the decision has been made with regard to whether or not it passes. It passes, it just has to wait for probably 60 to 90 days with regard to when those contracts, or what Senator Hannibal talked about, can be let. All that work can be done up to point in time. Anybody that we're dealing with on a contractual basis will be more than willing to wait for the money to roll in. And I can't imagine that at this point...although maybe we are, maybe we're paying them up front, I mean, maybe that's the way we do it. Maybe we...as soon as the bill is going to be signed, we're going to cut checks to all these contractors, I don't know. But I have to think that what this situation is is just one of expediency and let's get this puppy out of the way and maybe the...the stench will go with it when we get done advancing it. I would urge the body to reject the reconsideration motion because I don't think there has been any good argument for it and I would urge you to do that at this point.

PRESIDENT: Thank you. Senator Withem, please, followed by Senator Moore and Senator Warner.

SENATOR WITHEM: Yeah, I probably can add very little to what Senator Hall had to say and I will probably take five minutes not adding much to what he had to say, because I share...I share his frustrations. The process is just so predictable, so predictable that people that have been around a while could almost...could have almost written this scenario a month ago that members would have a concern about something in an appropriations bill. They would badger away. They would