will meet for a brief Executive Session, in Room 1003, upon recess to select a Vice-Chair. Appropriations Committee upon recess in Room 1003 by the Appropriations Committee.

Mr. President, I also have the Committee on Committees report as offered by Senator Lowell Johnson and the Committee on Committees. Also an acknowledgment, Mr. President, that Senator Beyer has been selected...Senator Emil Beyer has been selected as Vice-Chair of the Committee on Committees.

PRESIDENT: The Chair recognizes Senator Lowell Johnson. Could we have your attention for just a moment, please. (Gavel.) Could we have your attention just a moment, ladies and gentlemen. If we could have your attention just a moment, we won't request your attention too long today, but Senator Lowell Johnson has an announcement.

SENATOR L. JOHNSON: Mr. President and members of the Legislature, your Committee on Committees met yesterday, and after careful deliberations completed the committee roster, which you find on your desks, which has been placed there by the Clerk. The report was unanimously adopted by the Committee on Committees, and I, therefore, move at this time that it be accepted and approved by the Legislature.

PRESIDENT: Is there any discussion? If not, the question is the adoption of the report. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 28 ayes, 0 nays, Mr. President, on adoption of the Committee on Committees report.

PRESIDENT: The report is adopted. Back to you, Mr. Clerk. We're ready for the introduction of new bills. Mr. Clerk.

CLERK: Mr. President, new bills. (Read LB 1-80 by title for the first time. See pages 44-61 of the Legislative Journal.)

PRESIDENT: If I could have your attention just a moment, please, we'll introduce a couple of guests. Over under the north balcony, our first doctor of the day for this year is Dr. Dale Michaels of Lincoln, Nebraska. He's from Senator Warner's district. He's here to take care of us on behalf of the Nebraska Academy of Family Physicians. So would you welcome Dr. Michaels. Would you please stand, Doctor. Thank you for

the Executive Board will meet in...the Reference Committee will meet in Room 2102 at three-fifteen today for purposes of referencing bills, Reference Committee at three-fifteen.

Mr. President, new bills. (Read LBs 161-189 by title for the first time. See pages 82-88 of the Legislative Journal.)

Mr. President, in addition to those items, I have requests from Senators Chambers, Nelson, Schellpeper, Hefner, Lamb, Crosby and Hartnett to add their name to LB 48 as co-introducer; Senator McFarland and Schellpeper to LB 52 as co-introducer and Senator Carson Rogers to LB 84 as co-introducer. (See page 88 of the Legislative Journal.)

PRESIDENT: No objections, so ordered.

CLERK: Mr. President, an announcement from the Agriculture Committee and signed by Senator Rod Johnson, the Ag Committee has selected Senator Owen Elmer as its Vice-Chairperson. Mr. President, I believe that is all that I have.

PRESIDENT: Ladies and gentlemen, we're about to start the proceedings for the afternoon, and we're very grateful to have with us Father Dawson this afternoon for our invocation. Would you please rise for Father Dawson.

FATHER DAWSON: (Prayer offered.)

PRESIDENT: Thank you, Father Dawson. Please feel free to stay with us as long as you like. We're privileged to have with us this afternoon the Nebraska National Guard who will present colors. Would you please rise.

PRESENTATION OF COLORS

PRESIDENT: Ladies and gentlemen of the National Guard, we appreciate your being with us and presenting the colors today. If I might say a word to those who will be escorting the folks in today, it will be necessary that we do it a little bit different than we usually do it. When one group of ushers brings in their group, please bring them up onto the stage and then retire back to your seats until the inauguration proceedings are over with and then I will call you back one group at a time to take your group back, because if we should all come in and all stay up here on the podium, we wouldn't have

SPEAKER BARRETT: Senator Korshoj.

SENATOR KORSHOJ: Mr. Speaker and members, I totally agree that we need to save as many lives as we can. Tim has already alluded to the fact that it's too late after they get in the bar. I think you're going the wrong place. And, Jacky, I'll tell you how you can save lives and lots of them, and I'm serious about this, have Department of Revenue send out to every retail merchant in the State of Nebraska that sign when they send...they've got the sales tax list, mandate them to put it up, let them read about it before they get in the bar. You would do some good and I would support that. When they are in the bar you might save one life, and bless you, I'm all for that. But let's go, let's let the...let's let them read about it when they go to the grocery store. Mandate them to put that sign up. It's that important to me I would also support the appropriation for it. If every store you go in this sign is posted, like we have to post our sales tax certificate, people are going to see it and think about it. You're going to get damn little thinking going in a bar, some, but not much. If you are really serious and not trying to say it's your duty as a bartender to get this message across, after they are already in the bar, it's after the fact. And I would, if mandated, be glad to put one up in my place of business, but you'd cover the whole state and you would have awareness like you could never get any other place. I'm through, thank you.

SPEAKER BARRETT: Thank you. The question before the body is the indefinite postponement of LB 70. Those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 4 ayes, 26 nays, Mr. President, on the motion to indefinitely postpone.

SPEAKER BARRETT: The motion fails. Anything to read in, Mr. Clerk?

CLERK: Mr. President, I do. Your Committee on Health and Human Services, whose Chair is Senator Wesely, reports LB 353 to General File; LB 48, General File with amendments; LB 231, General File with amendments; LB 273, General File with amendments; LB 366, General File with amendments. Those are all signed by Senator Wesely. (See pages 474-77 of the Legislative Journal.)

amendments to LB 48 in the Journal. (See pages 492-95 of the Legislative Journal.) That is all that I have at this time, Mr. President.

PRESIDENT: Fine, shall we go on to LB 221, please.

CLERK: Mr. President, LB 221 was a bill introduced by Senator Weihing and Senator Baack. (Read title.) The bill was introduced on January 9, referred to the Banking, Commerce, and Insurance Committee, advanced to General File. I do have Banking Committee amendments pending, Mr. President. (See page 446 of the Legislative Journal.)

PRESIDENT: Senator Landis, are you going to take up the amendments first?

SENATOR LANDIS: Yes.

PRESIDENT: All right, Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, LB 221 is a bill that makes clear how cities will be able to determine the securities that they may invest their surplus capital in, and the problem was brought to us by Senator Weihing and Senator Baack because the statutes are now unclear. They are unclear for a very interesting reason. In 1961, we passed a provision that says cities may invest in the same things that the Board of Lands and Funds can invest in, and we haven't changed that provision. In the intervening years, however, the Board of Educational Lands and Funds have had their list of approved investments done away with and their money has been invested by our State Investment Officer. The State Investment Officer, when they were first created as an entity, was given a list of appropriate investments to make. Since those early days, the investment officer's responsibility has changed and we have substituted what is called the prudent man doctrine, although now should probably be called the prudent person doctrine. The prudent person doctrine is found in our statutes in 77-1243, I think the number is, and it says, basically, that investments will be done with an eye toward security, that somebody with special skill, special knowledge, and exercising all of that skill, would make an investment of public funds. In other words, it requires a lot of skill and an eye towards making sure that your portfolio is secure, but that it is largely a matter of the freedom of the market that one can take advantage of in

have a prescription under Medicaid, and the pharmacist says, can we substitute, it would save you money, and they have to go back to the doctor to get permission. It is all kind of a problem right now, and this would allow it to be automatically substituted through a generic drug use. In addition, the Ritalin that is under this Schedule II is a narcotic that is sometimes used and abused as a street drug. By allowing generic substitution, you have, instead of a clearly identifiable Ritalin brand name street drug, you have a generic substitute and you can't identify whether or not, in fact, it is Ritalin. There is a chance that we can cutoff some of the utilization of Ritalin illegally in our state by having the generic drugs utilized. I think that is a good thing as well. So this piece of legislation should be advanced and I would ask your support for its advancement, and I would answer any questions if there are any on the legislation.

PRESIDENT: Any further discussion? If not, the question is the advancement of the bill. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 353.

PRESIDENT: LB 353 is advanced. LB 48, please.

CLERK: Mr. President, LB 48 was a bill that was introduced by Senator Dierks, Chambers, Nelson, Schellpeper, Hefner, Lamb, Crosby, and Hartnett. (Read title.) The bill was introduced on January 5, referred to the Health Committee for a hearing, advanced to General File. I have committee amendments pending by the Health and Human Services Committee, Mr. President. (See page 474 of the Legislative Journal.)

PRESIDENT: Senator Wesely, are you going to take the amendments? All right.

SENATOR WESELY: Thank you. Mr. President and members, the Health and Human Services Committee did hear LB 48. LB 48 was introduced by Senator Dierks and Senator Schellpeper, on the committee, Senator Chambers, Nelson, Hefner, Lamb, Crosby and Hartnett. The bill deals with a subject that has been before this Legislature before and the committee dealing with the question of smokeless tobacco and its free distribution. The bill calls for banning the free distribution of smokeless

tobacco. The committee only needed to have technical amendments to the bill. They would insert "smokeless" in front of tobacco products where listed to make it clear that we are not dealing with all tobacco products but only with smokeless tobacco products, and in addition in the definition of distribute, we add an "or" to the definition to make it clear on what is included under the definition of distribute. So with that I would ask for the committee amendments to be adopted, Mr. President.

PRESIDENT: Senator Nelson, did you wish to talk about the committee amendments?

SENATOR NELSON: I could wait for the bill but I might add that it is a little technical amendment and it was added so that for sure the bill only addresses smokeless products and not other tobacco products.

PRESIDENT: Thank you. Did you wish to close on that, Senator Wesely? The question is the adoption of the committee amendments. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

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

PRESIDENT: The committee amendments are adopted. Senator Dierks, would you like to explain your bill, please?

SENATOR DIERKS: Yes, sir. Mr. President and members of the body, LB 48 was introduced again this year. This has been before the body in the committee for several years, and last year we finally got it out of committee, but it was a short session and we didn't have time to address it. This year we got it out of committee early. It is a very simple bill. The bill does one thing, mainly, and that is to forbid the free gift of smokeless tobacco to anyone in the State of Nebraska. Admittedly, we are aiming at the youth because once the youth are tempted and have been given these free samples, they become addicted and they go ahead and use it then the rest of their lives. It is impossible to regulate by age because of a number of things, one of them being the use of machines that you can buy these products from, although you can't at this time buy smokeless tobacco. It seems to be legally difficult to control at the age of 18 years and under. So the bill actually calls

for banning the free distribution of these smokeless tobacco products regardless of age. There can be no reason, I can see, to object to this legislation because what we do is we provide some reasonableness as far as the health concerns for our youth are concerned and we do realize that these products are not only addictive and carcinogenic, they cause premature death of people of our state, and I see that there can be no legal or moral objection to this particular bill. I think the legislation is pure and simple. It simply says the tobacco companies cannot give this sampling out and it is going to provide some penalties for that. I think the first offense penalty would be like a $500 fine, and each offense after that would be from 600 to 1,000, and each separate gift of this tobacco...free sampling, each separate free sampling would constitute a separate offense. I have no difficulties with the legislation. I think it is extremely valid, and I think it is very important for the youth of our state, and I would urge your passing this bill on to Select File. Thank you.

PRESIDENT: Thank you. Mr. Clerk, you have something on the desk.

CLERK: Mr. President, Senator Bernard-Stevens would move to amend the bill. The amendment is found on page 492 of the Journal.

PRESIDENT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. I am just taking a minute to get a copy of the Journal. Mr. President, members of the body, Senator Dierks and I are going to have a slight disagreement on this particular bill and I hope others in the Chamber will as well. Let me give you a little history of the bill, if I can. Last year I sat on the Health and Human Services Committee. I was privileged to serve with Senator Wesely and others on that committee, and I was, in a way, sometimes disappointed I am not on that committee because of the tremendous things they try to do in the health area. But this bill did come up last year as Senator Arlene Nelson's bill on smokeless tobacco, and the intention of the bill at that point was, and what we were led to believe at that particular point, that we wanted to stop minors from obtaining the free samples and becoming addicted to nicotine and tobacco products. And one of the things that was given to the committee was that at the State Fair, in fact Senator Schellpeper on the committee and

Senator Lynch on the committee and Senator Wesely can verify what I say, is that at the State Fair there was a terrible problem of minors obtaining large quantities of free sampling and that brought about the bill. The industry came in and the industry said we do not want to give to minors. We have policies against that, and which we told the industry, well, you either need to put up or shut up. You need to either say you don't want to give to minors and do something about it, or we are going to pass this piece of legislation, and it did come out of committee last session, and it came out of the committee with a couple of understandings among the committee members. Number one, it was not a priority in the short session and, number two, it would not be brought up because of the lateness of the bill being reported, but it was a message to the tobacco industry and the smokeless tobacco industry, in general, that if they did not clean up their act as they said they wanted to do, this bill would come up again. Now what happened was the industry did go back and the industry did, in fact, clean up their act. Last year, there was not one, that I am aware of, major reported conflict at either county fairs, and the State Fair, naturally, took care of its own problem, there was not one major incident that occurred that had to do with minors obtaining sampling. The industry made some major changes in its sampling booths. Now again I would like to go on record, I do not support the tobacco industry. I do not smoke myself. I do not support smokeless tobacco. It is a dangerous and a terrible cancer-causing product. I want to be on record saying that. But on the other hand, what happened was the industry came back to the committee, came back to the Legislature this year and said, look what we have done, we have cleaned up our act, and nothing bad happened in regard to minors that I am aware of in the State of Nebraska. The industry went one step further this year. The bill came back, Senator Dierks picked up the bill again in all good conscience, and I know he has good conscience and good faith in the reasoning behind this bill. It was reintroduced again, and the tobacco industry, basically, said, I thought we got this taken care of. So the tobacco industry said, okay, okay. They came back this year and said, we are willing to take a position that we have never taken before in the State of Nebraska, and we have fought traditionally throughout the United States. We are willing to put tougher sanctions on giving away of samplings. Not only are we not giving away samplings now to minors, we are willing to put tougher restrictions and tougher standards on anyone in our industry who does, number one. Number two, we are willing to

also put some responsibility to the minor who takes sampling that is caught. If we are really serious, the tobacco industry said to themselves about stopping minors, which we are, we are going to support tougher restrictions on our own people and the minors that are, in fact, taking free samplings. And, in fact, that is what the amendment that I am proposing does. It takes many of the restrictions that have been given...taken in California and added, against the tobacco industry's wishes, but in Nebraska the tobacco industry is not only saying, please, do so, the tobacco industry offered the amendment in the committee, which I was disappointed the committee did not feel worthy enough to take up those particular amendments. The tobacco industry not only is willing to support the California type amendments in Nebraska, but they have added tougher standards even than California in regards to stopping minors from getting addicted to this product. That is what the amendment does. What I am saying to the body, if our real intent is to stop minors and our youth from becoming addicted to a tobacco product, then this amendment will do us well and good to adopt. If we are just taking a shot at a tobacco industry, which we may not, or we may or may not support and we want to attack an advertising way the tobacco industry can do so to adults, if we want to say we don't want you to advertise a product we don't like to adults, and we don't really care about the minors because they are going to be able to get the tobacco anyway with the passage of this bill, then go ahead and pass the bill as it is. This bill, if not amended, will simply say to a legitimate company, whether we agree with the product or not, we do not want you to advertise in sampling forms to adults. We don't believe that should be done. Now, ladies and gentlemen, members of the body, Mr. President, adults are going to smoke tobacco if they so desire. It is a legitimate legal product. Adults are going to buy and young people are going to obtain, and with the bill as it is now, nothing can stop that and there will be no harsher punishments for those minors who are smoking or who are using smokeless tobacco. The amendment I am proposing recognizes the fact that we have a social problem and we need punishments, we need restrictions, we need tougher standards, not only to protect our youth, but also to protect an industry's right to advertise. Now if we, as the Legislature, want to get into private enterprise, the economic system, fine, let's do that across the board, but I don't believe we want to do that. I believe what the body wants to do is to put in restrictions to help our minors not only kick a habit but to stop them from forming one, and that is what these amendments will do, and I

urge the body's adoption of the amendments. Thank you, Mr. President.

PRESIDENT: Thank you. May I introduce some guests, please, under the north balcony, Senator Dennis Byars has Vern Shamburg from Fairbury. Would you please stand, Vern. Also, from Scotts Bluff County, we have Mike Martens, Larry Evans, and Roy Brethoun. Would you folks please stand and be recognized. Thank you. Senator Wesely, did you wish to talk about the Bernard-Stevens amendment?

SENATOR WESELY: Yes, Mr. President and members, I would rise in opposition to the Bernard-Stevens amendment and in support of the bill. I do know that there are legitimate concerns that Senator Bernard-Stevens is raising. There are two elements to this amendment. Let me try and explain. The first deals with the effort to gut the bill and put in a different approach to dealing with this matter and not allowing or, at least, discouraging the free distribution to minors. That is element one of the amendment. Element two of the amendment deals with the question of minors in possession and purchasing tobacco products and having that as a crime that it is presently is not the case. That issue came up in the committee and it was considered, and I think, legitimately, it is an issue we need to look at, what penalty should there be for these young people to have in possession these products. And, of course, that could be added to this legislation without gutting the primary thrust of it which is to stop the free distribution of these products. It is a complicated issue, though, and it is one that I would think we need to discuss between now and Select File, and Senator Dierks has some legitimate concerns about that additional amendment. Senator Lynch, I know, is interested in it. Senator Scofield has mentioned it to me. That is something we can talk about. I would ask, though, at this time that you reject the Bernard-Stevens amendment because of the other part of the amendment, and that deals with gutting the free distribution prohibition. What they try and do under this amendment is to say that they are going to try awful hard not to let these free products go into the hands of young people. They will ask for your age when you send in a clip-in coupon and that should take care of the matter, and if you are not the right age, they won't send it free to you. Well, that is not going to get the job done. How are they going to check the age on these individuals? How are they going to be sure that these individuals are not under age. I don't think there is any way

they are going to be able to do that. The only way you are going to stop the distribution of these products to our young people is just stop the free distribution of these products, period. That is the way it has got to be done. Now I know that encompasses more than our youth but you are not going to be able to distinguish or enforce or carry out any other mechanism, I think, and if you look at this amendment, you will see why I say that. And I won't go into this particularly, but it does talk about if they just ask you for the age of the purchaser when they send in the coupon that that will constitute an honorable effort to try and check their age. My interpretation of this is it is nothing more than tokenism. So if you really want to get at the problem, you don't want to support that amendment, I feel. Now, you do encompass more than youth in this ban. You encompass everybody and older consenting adults, you would say, well, maybe we ought not to stop their right to get this free product, but the thing you have to keep in mind with smokeless tobacco is it is addictive. What we are doing is we are allowing an addictive and dangerous product to be given to people, as a promotion, with the potential of those people harming their health, potentially losing their lives. That is the health risk involved here. Now that is why they like the free promotions, because if you get the product and you use the product and you don't know about the product, you get hooked on the product and then you buy the product and you get hooked some more, and pretty soon you are using it, and pretty soon some of these people are going to end up with oral cancer, and in some cases, some people are going to die. Nine thousand deaths in this country have resulted from oral cancer on an annual basis. I think we ought not to be in the business of promoting an addictive, dangerous product by free distribution, and that is why I am willing to say, I know we are focusing in on the youth, if we could just target the youth, I would feel better about it because I think adults have the right to make up their own mind, but I can't see how we can get that done and at the same time many adults don't realize the addictive, dangerous nature of this, and I don't feel so bad about stopping the free distribution, because I think in the end it is in the best interest of the state, the public health of the state, and I am willing to support the bill because of that. Now we have seen a lot of testimony in hearings, and you haven't even begun to see from the distribution of materials what this thing can do. We had a hearing a couple of years ago, and Senator Nelson remembers this. We had a slide presentation that had literally people leaving the audience because they were ill from watching

the slides and the presentation of what can actually happen, and this can all be brought back, and if you would like to, we can set up a room and you can all be brought in and shown some of this, and you will be disgusted by it. It is an awful thing that happens through smokeless tobacco. I don't think you need that. I think you understand by now, after several years of discussing this issue, how terrible this product is...

PRESIDENT: One minute.

SENATOR WESELY: ...to young people and to anybody who uses it, the potential destruction it can bring to those individuals. We don't need to do that. Maybe some of you feel that it is not as bad as it sounds, and maybe we can bring those slides out again. I don't think that is the way to go. I think we are all at the point now where we all know we need to do something. It is what is best to stop this activity. I know we are focusing in on our youth. I think the bill in its current form is a good way to deal with the problem. I would ask you to reject the Bernard-Stevens amendment, to consider some other suggestions perhaps at a later date on Select File, but to gut this bill at this point is the wrong thing to do. If we want to do something about the problem, this is the bill to do it with.

PRESIDENT: Thank you. Senator Nelson is next, followed by Senator Dierks. However, let me introduce a couple of guests of Senator Coordsen, please; Joe Hergott of Gilead and Charles Schultz of Fairbury, under the north balcony. Would you folks please be recognized. Thank you. Senator Nelson, please.

SENATOR NELSON: Mr. Speaker, members of the body, I, too, oppose adoption of this amendment. It is just another way to get around the bush and make the people believe that we are doing something, we are addressing the problem. I have been on this issue for four years and, trust me, promise me, we will clean up the act. Yes, we agree that there are problems there, but just trust me, I will take care of it and the problem will go away. The problem is not going away. The only thing that I know of is that they discontinued it at the Nebraska State Fair by the decision of the board. Two years ago, to my knowledge, and there are probably more now, there were 33 county fairs, agricultural shows, plus agricultural shows, and so on and so forth, and rodeos that this junk was given away to people, and very, very easy for kids to go by and grab a package and go. This particular amendment does nothing but try to put it on the

backs of the kids. I noticed that, "For the purposes of this subsection, appropriate efforts to ascertain the age of a purchaser shall include, but not be limited to, a request, a request for the purchaser's birthdate." We had an amendment presented to us in the committee hearing the other day and, again, it did nothing but put it on the backs of the kids, and I am afraid that my good friend Bernard-Stevens and myself, our paths will cross and cross very sharply on this particular issue. I might tell you that one of the testifiers came in the other day and I will speak on this, the problems of cancer and so on, and it really stuck in my mind, how much money do you get from tobacco products or this company in your rodeo at North Platte, Nebraska. I believe the answer was somewhat less than $10,000. Okay, the next question was, and how is that received, in caps, golf fees, and so on and so forth. At what time does this body consider $10,000 to a rodeo, financial amount, that pittance amount when it comes to our kids and our health. We are spending millions and millions and millions of bills in tobacco related causes and this is one of them, particularly the incidence of oral cancer is so strong, but back to my point. Okay, we got $10,000 from it. Just this last week a number of we senators took the opportunity to go to Beatrice, Nebraska. There are kids down there and men and women that have to require 24-hours a day coverage at the cost of 40, 50, 60 thousand dollars a year each, and then we actually stoop so low, really, to say we can't ban this. We are going to give it to our kids. We don't care because the tobacco company or the industry is coming along and supporting us by five or ten thousand dollars. We have to buckle into them. I am kind of like Nancy Osborne says. I shall quote from her. "I can't believe the Legislature would not support a bill that would do as much harm as this product." Children believe it will do no harm supposedly because we adults give it to them. We allow them to pick it up and give it to them, and as you know, these samples are milder and sweeter to get them addicted, and then they go into the stronger product. Also, do you know that this tobacco, in some of it, has a roughening, an abrasive agent in it, that simply roughens the mouth and the tongue and so on, so that the body digests it. This is something else from the Nebraska Department of Health, Facts about Smokeless Tobacco. "Tobacco contains cancer-causing substances known as nitrosamines, four of which are tobacco specific, as well as many others not specific to tobacco alone."

PRESIDENT: One minute.

SENATOR NELSON: "The nitrosamine content in snuff ranges from 5,200 to 141,000 parts per billion." Now listen to this, "Nitrosamines in bacon, a by-product of curing, are limited by FDA to only 5 parts per billion." Just think of it, we eliminate bacon at only 5 parts, and we turn our back to a product like this distributed and given to our kids. And two wrongs don't make a right. If we give it or the kids pick it up, so what, we couldn't stop them from that. We tested the constitutionality I don't think it has ever been challenged, but it is patterned after Minnesota. I have a ruling from the Attorney General last year that the bill was...there was nothing wrong with it, and it is primarily the same bill. I, also, in addressing the amendment, I notice that on page 2, then, when they went on Section 3, "Evidence of distribution of smokeless tobacco products to the general public shall be prima facie evidence of distribution for promotional purposes." There was a reason they took that out. I urge the body to reject this amendment. It is just a way of beating around the corner to kill the bill.

PRESIDENT: Thank you. Senator Dierks, then Senator Hall.

SENATOR DIERKS: Thank you, Mr. President, members of the body. I was very happy to hear Senator Bernard-Stevens at one point during his testimony say that we should support the bill as is. There were a few other adjectives around that but that is what he said, and I am glad the teacher of the year agrees with me on that. The amendment, as introduced, would put the onus on some of the teachers out there. If they found these youth on their school yards with tobacco in their possession, it would be their responsibility to report these youth because they would be guilty of a misdemeanor, and the teacher, I think, would be just as guilty if she didn't report that youth. For your information, we have had an Attorney General's Opinion rendered on the bill as introduced last year, which is, essentially, the same bill we have introduced this year, and the Attorney General's opinion was it was constitutional. So we are not operating from the dark, constitutionally. We need to remember, also, that what we are after is stopping the addiction, and we stop the addiction by keeping it from the youth. Once the youth have sampled this stuff, they are hooked. We, in no way, restrict trade. This is not antitrust. There is nothing about this that says the tobacco industry can't go ahead and sell their products. It just says they cannot give them away to the

citizens of our state, and there again we are aiming primarily at the youth. I have to tell you a story, a story about Sir Winston Churchill. Sir Winston was quite a drinker, you know, and one of his adversaries was a Lady Worthington, I believe, I don't remember her name for sure, but let's call her Lady Worthington for purposes of the story, and they were at the same party one day and Sir Winston had gotten drunk, and Lady Worthington came up to Sir Winston and said, Sir Winston, you are drunk, you are terribly drunk, you are abominably drunk. And he looked at her and he said, Lady Worthington, you are ugly, you are terribly ugly, you are abominably ugly. Tomorrow I will be sober. And tomorrow, with this attachment, this bill will still be ugly. Thank you.

PRESIDENT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President and members. Senator Dierks, I like your story, and with or without the amendment, the bill may be ugly tomorrow, who knows, but anyway I rise in support of Senator Bernard-Stevens' amendment to the bill, because I think if you read the bill and listen to what the proponents have said so far, they don't jive. I mean the bill says that...it lays out that the people that are going to be prohibited from using the product are going to be adults. There is no provision in here that gets, I think, to the issue of children as all the proponents said they would like to see happen. Senator Bernard-Stevens' amendment does that. We have heard time and time again that we want to keep it from the youth, and that this is a bill that is primarily directed at the youth, but yet without adopting the Bernard-Stevens amendment, you don't achieve that. There, currently, in statute is no provision that makes it a crime for a young person to have in his or her possession tobacco, and if the issue is one where this is an evil, it is something that is addictive, something that is a threat to one's own life, then there should be provisions in law, like we do with things such as alcohol, that requires a penalty for those individuals who have it in their possession and who are underage. You don't have that in LB 48 as it is drafted. It is not there, and there is not a provision in law right now that allows for that. There is a provision that allows for a penalty for someone who sells it to a minor, but should a minor have a package of cigarettes or a can of chewing tobacco or pouch of chewing tobacco in their possession, that is not against the law. There is no provision that prohibits that. There is no penalty provided for that action.

What Bernard-Stevens accomplishes through his amendment is just that. That is prohibited. Yeah, there has been some talk about the way the amendment is drafted in regard to requests for a birthdate in terms of mail-in certificates and things of that nature. All of you have seen in the newspaper or in magazines, whatever, requests for your birthdate on various types of things with regard to whether it be a sample of tobacco, whether it be a sample of alcohol, whether it be X-rated, R-rated material. In other words, when we deal with pornography, we will take one's word for it when they mail in that they are of age, but when we deal with smokeless tobacco or tobacco products, we are going to say that, no, that is not a fair and accurate justification, or fair and accurate identification for those people, that we are going to require a more stringent examination, a more stringent test for those people to pass in order to make them eligible to receive that, and I don't think that makes any sense at all. Well, we are outlawing everything this year. We are outlawing the alcohol, tobacco. Senator Chizek through his bill would outlaw necking in the park, and we laid that one over, but...

SPEAKER BARRETT PRESIDING.

SPEAKER BARRETT: One minute.

SENATOR HALL: ...LB 138 would have, I think, outlawed that if I read it correctly. Now, Senator Arlene Nelson, I have...well, necking, I guess I am showing my age even though I am accused of being young. Senator Arlene Nelson, I have no...I don't care what happens to the rodeo to be honest with you. If they lose the $10,000, that is fine. That is not an issue for me. The issue is, do you achieve what you intend to achieve through LB 48, and I don't think you do. You don't get the job done unless you adopt the Bernard-Stevens amendment, and that allows for a penalty to be there. It allows for possession to be, basically, an infraction and that is what we should do. We do it in the case of alcohol. We have heard testimony in just the last couple of days with how difficult it is, and you talk about how this is addictive. Yesterday in General Affairs, we heard about near beer and the problems that that has caused. So we put that back under the control of the Liquor Commission, where it belongs. We had inadvertently did that and it caused a problem.

SPEAKER BARRETT: Time.

SENATOR HALL: Well, if you want to do this, you want to correct the problem, you need to adopt the Bernard-Stevens amendment to provide for penalty. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, continued discussion on your amendment, followed by Senators Moore, Landis and Wesely.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. Mr. Speaker, members of the body, just a couple of things to reiterate and I can't really say it much better than Senator Hall did. I always enjoy debate sometimes because each side can take little bits and pieces of what the other person says and fit it right into what they wish to do. It is true, that, yes, I was Nebraska teacher of the year, Senator Dierks, and it is also is true that I was in the top four of the country in that period of time as well, and I think the reason I say that is not because I want to pat myself on the back because it simply may mean that they made a poor decision that particular year, but I think what I am trying to get across is that I think I have proven through actions many, many times that the people that are closest to my heart are the children of our state. There is nothing I believe more in than helping children of our state, whether it is to relieve themselves of an addiction to any drug and/or tobacco or alcohol, or to help teenage pregnancies, or to help them in suicidal tendencies, when the pressures seem to be so great, I am there. I want to help them. That is what my amendment does as well. If we vote for LB 48 in its present form, we do nothing but pat ourselves on the back and say, gee, look what we did for our children on stopping smoking and chewing tobacco, but, my friends, the bill will do nothing. The children who are using smokeless tobacco will continue to use it. This bill will not stop it. There will be no sanctions. There will be no penalties. The companies, if this bill passes, will still sell smokeless tobacco to adults, and children will obtain it as they do cigarettes today. Anybody who has been in the school will know that it is against the law for minors to smoke cigarettes, and yet many times in our public schools, which I am opposed to, by the way, we have specific areas set aside so students can smoke. In fact, if you go to any given school, just look across the street in the bushes or wherever there is some type of enclosure they can get out of the wind, and you are going to find girls, young men, young women smoking, and it is against the law. This bill will not stop it. What I

am trying to do with my amendment is say if we truly want to put some other pressures to bear to have an impact on our young, then what we must do is put (A) further restrictions on the companies that may, in fact, be giving free samples to our youth, and which the companies know they dare not do that. The companies are trying themselves to stop giving free samplings of all of their employees (sic). In fact, the bill came up a little faster than I anticipated. I thought tort reform would be there. If the bill would have come up tomorrow, I would have had a letter on your desk from one of the highest officials in the smokeless tobacco industry stating that they would, in the State of Nebraska, even put an advertising campaign together for all public schools in all states Nebraska showing why it shouldn't be done and showing the benefits of why the amendment that I am proposing is, in fact, the best thing for them. They support stricter restrictions, if you wish. Now, Senator Nelson, I do have to comment. I do take a little personal offense, not much, because I know you seriously believe in what you are trying to do and your heart is in the right place, but I do take a little offense when, in fact, there is a veiled innuendo that a rodeo in North Platte, Nebraska receives eight to ten thousand dollars from the smokeless tobacco industry for the rodeo, and without sampling, I am going to lose my little rodeo and that will hurt Nebraskaland Days. I do get a little irritated about that and I will try to keep my voice under control. I don't sell out for $10,000 for anything, if it is dealing with our youth, period. What I am trying to say is that this bill, if we are truly trying to support and help our children, needs the Bernard-Stevens amendment to do so, and I will be quite frank with you. I think if the bill, LB 48 passed, I still think the Copenhagen Skoal Company would be in Nebraskland Days rodeo because it is a good way for them to advertise their product to the highest users of their products, that being adults, and that would not stop. The Bernard-Stevens amendment puts further restrictions where no restrictions have gone before. The Bernard-Stevens amendment has gotten the tobacco industries, themselves, to produce further restrictions on themselves in an area regarding minors. The Bernard-Stevens amendment also puts some responsibility to the minors involved for the first time.

SPEAKER BARRETT: Time.

SENATOR BERNARD-STEVENS: I hope we support the Bernard-Stevens amendment, if we truly want to help our young people of this

state. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. The gentleman from Stromsburg, Senator Moore.

SENATOR MOORE: Question.

SPEAKER BARRETT: The question has been called. Do I see five hands? I do. The question before the body is whether or not debate shall cease. Those in favor of ceasing debate vote aye, opposed nay. Shall debate cease? Have you all voted? Record, please.

CLERK: 29 ayes, 12 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate does not cease. To the amendment, Senator Landis, followed by Senators Wesely and Nelson.

SENATOR LANDIS: Thank you, Mr. Speaker and members of the Legislature. Senator Bernard-Stevens, perhaps you can go through the amendment with me. I will tell you that I am not...I am someplace in the middle here. I am trying to figure out what is right. It seems to me that Section 3 is a claim that manufacturers won't have a promotional offer unless they have a designation that the offer is not available to minors, right? You can't have a promotional offer unless you make it clear that the offer is not open to minors. The second one then, Section 3, subsection (2), is, if you are going to have a mail-in or a telephone request, you have got to make an effort to identify their birthdate, and if you don't do that, then there is a crime?

SENATOR BERNARD-STEVENS: That is correct.

SENATOR LANDIS: Okay. Number three, if you are going to distribute these samples, they have to be done at least two blocks away from school age areas, clubhouses, and youth centers. If you are closer than that, it is against the law?

SENATOR BERNARD-STEVENS: That is correct.

SENATOR LANDIS: And, number four subsection is that if you distribute any advertising, you can't do it on an unsolicited basis through the mail. If you do, you have a crime, right?

SENATOR BERNARD-STEVENS: Correct.

SENATOR LANDIS: All right, now the argument for the Bernard-Stevens amendment has been this attacks the issue of smokeless tobacco for kids. If you listen to those four, however, there is not a prohibition against giving a sample to a minor. Read the amendment. There is not a prohibition in any of those four sections against giving a sample to a minor. It says you can't have a promotional campaign that doesn't put on the face of it that it is not open to minors. In other words, at the stand that hands out samples, they have got to put up a notice that says, not available to minors. Minors don't come here. If you come here, we are not supposed to give it to you. But if a minor comes and says I would like a free sample, as I read subsection (3), it says if I have simply said this offer is not available to minors but I, in fact, give them a sample, I have not committed a crime, and I do want to give you a chance to see if that is correct or not, because if there is some language there, I want to know what it is, Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Senator Landis, and it may not be in the section that you would like, and if you would like to add it to Section 3, that is fine. I go to Section 7, lines 1 through 5, and I am on page of the Journal, 494, and I am going 1 through 5 at the bottom, "Any person who sells, gives, distributes as defined in section 2 of this act, or furnishes in any way, any tobacco in any form whatsoever, or any cigarettes, or cigarette paper, to any minor under eighteen years of age, shall be guilty of a Class III misdemeanor for each offense."

SENATOR LANDIS: And that person happens to be the local person who is standing there hired by a firm to pass out the samples?

SENATOR BERNARD-STEVENS: That would be any person who is in violation of giving a sample or a product to a minor.

SENATOR LANDIS: Right, and isn't it quite common that what you have here is you have a local person or if we...it is like a person who sells the cigarettes at a store, it is not the Raleigh Company that is guilty of selling the tobacco to the minor, it is the store owner who is selling the tobacco to the minor, as in this case, it would be the probably local person who is manning the booth for the company passing out the

samples. That is the person who is criminally liable?

SENATOR BERNARD-STEVENS: In some cases, that is correct. In other cases I am more familiar with, the company themselves comes in with their people in order to sell their product on that particular event, and it would be a person, not only of the company but representing the company.

SPEAKER BARRETT: One minute.

SENATOR LANDIS: Okay, it seems to me that if what we want to do is have a level of responsibility for manufacturers, there is another additional element of manufacturer responsibility that is not present in the Bernard-Stevens amendment, although I did hear some openness on that point. I will tell you my difficulty and that is as I look at the Bernard-Stevens amendment, I think the mail-in is still a problem, and it seems to me that the manufacturer is not made responsible for the act of giving a sample, or getting a sample into the hands of kids. That is a problem for the Bernard-Stevens amendment. On the other hand, if I look at 48, I have to confess this simply outlaws all samples that are given whether it is to an adult or to a child. I admit to the notion that it is a mistake to have a free sample given to a child.

SPEAKER BARRETT: Time.

SENATOR LANDIS: Our remedy here seems to be to say there will be no free samples for anyone and, unfortunately, we permit the risk of tobacco for adults. I think it is a little overreaching as well. I guess I am someplace in the middle and scratching my head.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Very briefly, Mr. Speaker, I would again rise in support of the bill as it is currently standing and oppose the Bernard-Stevens amendment. Following up on Senator Landis's concerns, I think rightfully there is a concern here about how we address this issue. I tried to say that the reason this is broader than probably that the issue at hand is how do you enforce it, how do you carry it out by doing the sort of things Bernard-Stevens says. How do you check the age? How do you make sure that kids don't get it? And because of the fact that the committee found that that is very hard to enforce, they have

tried in some ways to do that, it is already illegal to distribute this to these kids, and they are still getting it. It, obviously, is not working right now. A minor adjustment is being proposed here is a step forward but will not solve the problem. If you want to get to the problem, the best thing we can think of is to just do away with the free samples, and it also serves a public function more than our youth in that adults then don't have the free samples to get to be addicted to and, thus, end up with cancer and other forms of disability, in fact can die from it. The thing I really want to get up for, though, is on the Lynch handout that came around. I don't know who prepared it but there is some inaccuracies that I wish to address. Number one, it talks about this has nothing to do with minors, it deals only with adults. That is simply not true. This amendment bans the giveaways to everybody and that includes minors and adults, and it doesn't just deal with adults. It isn't not affecting minors. That is absolutely wrong and I hope if you read that you don't have the impression that this bill doesn't affect minors. It is a falsehood that ought not to be taken up by anybody on this floor. In addition, at the bottom of this it talks about, additionally, as you will learn, the smokeless tobacco industry has cooperated totally with the committee and the Legislature the last few years, especially to address any legitimate problems with the distribution of the product. Those of you who have been on the committee, Stan Schellpeper, and Senator Nelson, and others that are there, know that that is not true. This bill has been before us a number of years. The smokeless tobacco industry has come in and fought it very hard, and that is fair. That is what they ought to do. They don't like the bill, and we have tried to work with them and they have tried to work with us to some degree, but, in fact, what we have found is that when we have said we are concerned about something, they have turned right around and kept right on doing it. When we said the State Fair ought to stop the distribution of this activity, as Senator Schellpeper tried to do something on the Fair Board, I was there and many others were there that saw kids coming up and grabbing these smokeless tobacco samples right off of the table, after we had two years of hearings on this issue, after we had fought in this Legislature to try and do something about it. After the smokeless tobacco industry said, we are going to stop this problem, we don't want this. We want to see our kids kept away from smokeless tobacco, and there they were, down at the State Fair passing it out as people grabbed not one but pocketfuls of smokeless tobacco as they were teenage kids obviously underage.

And we came into the hearing last year and Senator Schellpeper and I said, we saw this happening, and the representative for the smokeless tobacco people said, well, I know that they stopped it. We said we would stop it. I am sure that we stopped it. I can't believe that you saw this or that you would be saying this but, you know, I guess we will take your word for it. Well, absolutely, they should take our word for it. It isn't until this session, after several years of working on this, that the industry has finally come back with a so-called legitimate alternative. In my estimation, it is inadequate. It is a legitimate alternative. I think you could vote for it and say, well, we are doing something, but is it enough? It is not enough. But to talk about that industry cooperating fully and totally with us is wrong. They have finally come around because there are many of you on this floor that have expressed a desire to see something done about this problem. Because of you, you have seen the industry come around at least a little bit. I hope you will stick with the bill. Maybe we can come a little farther. Don't adopt this amendment. Adopt the bill and advance it at this point. If you feel uncertain about it, more negotiation can occur, but to give in at this point is wrong. I think that we have seen some effort here, some movement here. Let's continue down the direction that Senator Dierks is trying to take us and I think it is the right way to go, and I hope some of the inaccuracies are now corrected on the record.

SPEAKER BARRETT: Senator Nelson, please, followed by Senator Dierks.

SENATOR NELSON: Mr. Speaker, members of the body, there is one other point on this amendment that I want to call to your attention, and that is Section 5, "No county, city, or village shall adopt any ordinance or regulation inconsistent with sections 1 to 4 of this act or sections 28-1418 and 28-1419." In essence, that would prohibit any city also banning the free giveaway. I will just open up to a book furnished to me by the tobacco industry, Nebraska Health Department, shows the cities in California alone on this one page that prohibit the distribution of tobacco. I know where Senator Hall is coming from, Senator Bernard-Stevens. It was maybe discovered here that Nebraska has no law. It was brought out in the hearings the other day that there is any penalty against a kid using smokeless tobacco. I guess maybe when the laws were made, they probably didn't think that how horrible it is. Let me point to you Senator Lynch's amendment to some of the fallacies in this

amendment. The purpose of LB 48 is to keep tobacco products from minors. It does not do that in any way, shape, or form. I have to very much disagree with that. It is aimed at minors, and as the Minnesota law, as adults, too. What does LB 48 do? It actually outlaws one adult from giving a smokeless tobacco product, snuff, chewing to another. As presented, it has nothing to do with minors. A fallacy. ATV ads, second arguments used in committee to support LB 48, ATV ads pushing smokeless tobacco are offensive. There are no TV ads. Do you know whey there are no TV ads? Because they are outlawed on the national basis because they are...smokeless tobacco is harmful. That is why they are not on TV. All right, another one, fact, there are no smokeless tobacco products sold anywhere in the United States via vending machines and definitely none sold that way in Nebraska. I don't know about Nebraska, a vending machine, I can't tell you that. Let me show you, I just opened up the tobacco book, Utah is one state that addressed vending machines. Here is another one, New Hampshire, vending machines again, so another fallacy. Anyway to strike the bill, anyway to harm it, and anyway to...we have suffered from this for four straight years. Let me tell you testimony from the American Lung Association, a gentleman here, smokeless tobacco is not a safe alternative to smoking. For three years I chewed tobacco, three years, and yet in that short time, I watched my cheeks balloon and inflammation. My gums recede and bleed and I experienced leukoplakia. That is cancer forming, precancer, leathery white patches inside the mouth into oral cancer in 5 percent of all diagnosed cases. Still today my lower lip hangs at an unnatural slope as a constant reminder of my addiction. An addiction it is, and even as I watched in the mirror, as my face progressively deteriorated, I wrestled with giving up my chew. Senator Wesely and members of the Health and Human Service, it scares me, it scares me to think that if an educated, health conscious person, like myself, can be drawn into the use of these products, then the health of our impressionable youth and other members of our society is at a genuine risk. And that is exactly right. Grand Island High School Band, free smoking, now they have picked up smokeless tobacco. I can give you a little comment from a student from Grand Island High School. Sickening when you walk into a study hall and there is someone spit on the floor and next to your desk, spit all over the floor in the boys bathroom. I personally think it is one of the largest spreaders of communicable diseases. It is hard for me to contain myself. Senator Stevens got a little high-toned in his voice a few

minutes ago.

SPEAKER BARRETT: One minute.

SENATOR NELSON: I will have to tell you what one of the testifiers said to me during the hearing. Who is that testifying? And I had to say that is a state senator, and he is also a school teacher, and his wife is also in medicine, and yet here he is supporting smokeless tobacco. I couldn't hardly believe it. It was a little difficult for me to bring that point out but it is the truth, and I want to give you something else. This is a study in Colorado. There were 1,119 patients in this study. Ten percent of them admitted to using smokeless tobacco, 117 patients. Of that, 57 or almost half of them had some effects of that smokeless tobacco, and 50, or 42.7 of those kids, high school kids, had leukoplakia, 42 out of 100, 50 out of the total of 117, and yet we are going to cave in on an issue this important.

SPEAKER BARRETT: Time. Senator Dierks, please. Senator Dierks moves the previous question. Five hands, please. I do. Those in favor of ceasing debate please vote aye, opposed nay. Record.

CLERK: 26 ayes, 1 nay to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Bernard-Stevens, would you care to close on your amendment?

SENATOR BERNARD-STEVENS: Oh, I think I probably do. Senator Wesely gave a nice, a good explanation I think of some of the things that happened two years ago. If I were to ask Senator Wesely if after the incident that occurred at the State Fair two years ago, if the same incidences of which the tobacco industry was, in fact, appalled had happened, if the same incidents happened again last year, he would say no. If I would ask Senator Wesely that two years ago we were having some problems of kids receiving samplings, which we did, and if I would ask him if there was a major concern that existed in the state last year, he would be saying, not that I am aware of. The point I am trying to get across is the tobacco industry has done itself, I suppose in its own self-interest, it knows that if it continues to give free samplings to minors that the writing is on the wall of what will happen to the tobacco industry. In fact, it is on the wall anyway what is happening to the tobacco

industry. The arguments that Senator Wesely mentioned about adults, the Senator Lynch's handout on it appears to adults, I suspect, I highly suspect that of all the sampling, if you take the percentages of adults that are receiving samplings to minors that are receiving samplings, the minors are a far, far, far minority. LB 48 is going to the heart of an industry's selling a product to consenting adults, a product, Senator Nelson, that I do not agree with, but I protect the right of a free enterprise system from needless, though well-meaning government interference. A couple of other points I would like to make on the bill. Senator Landis I think pointed out some good, good points. In his middle position, I think it did a little bit to confuse some but, nonetheless, I think he was saying some very valid points, and part of the reasons why I have been really concerned with the bill all along. On the one hand if we go with LB 48 without the Bernard-Stevens amendment, we are not going to do anything in regards to minors smoking cigarettes or tobaccos, and I find it interesting that we are looking at smokeless tobacco. Why not go ahead and put in the amendments for cigarette machines as well. All cigarette machines that are in any bowling alley in the entrance way, any cigarette machine that is simply outside in a drive-in that anybody can come in and put money in and pull out and get the tobacco product that is a minor, let's go the whole way on tobacco industry. Let's shut down the minors. I wish we could. I don't think this body would do that because it would violate certain standards of free enterprise systems and regulation. Maybe we would, and maybe that is an amendment that should be offered, but we are picking on a one particular industry and I understand Senator Nelson's feelings on this, and Senator Dierks. They are very well-meaning. I wish I could be with them on this. I wish I could be with them on this because I wish that their bill would stop cancer in our youth. I wish that this bill would stop minors from smoking tobacco products or using smokeless tobacco. I wish to God their bill did that.

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: And I look at the pictures of the gentleman, of the young student that is chewing tobacco and has the cancer that has formed in their teeth and I want to cry because I have said that is so senseless in our society that we do that. I wish to God LB 48 would stop that. I wish I could support it to stop it but it will not. All we can do and the best that this body can do is to say we have a societal problem

that this body cannot solve through legislation, though Senator Wesely would try. We have an amendment that I am proposing that can say we are concerned with our young. We do want to stop sampling to our young and we hope that we can get the message across to our young, please, do not smoke cigarettes, tobacco products and use smokeless tobacco.

SPEAKER BARRETT: Your time has expired.

SENATOR BERNARD-STEVENS: If we can get it across as a nation, as a society, if people in here can also put themselves to the same test, we might get somewhere. The bill will not get us any closer. My amendment will take us a small step and I will regrettably say, it is an unfortunate small step but a small step is better than none.

SPEAKER BARRETT: Time has expired.

SENATOR BERNARD-STEVENS: Thank you, Mr. President.

SPEAKER BARRETT: Thank you. The question before the body is the adoption of the Bernard-Stevens amendment to LB 48. Those in favor please vote aye, opposed nay. Have you all voted? Please record.

CLERK: 17 ayes, 23 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is not adopted. Messages on the President's desk.

CLERK: Mr. President, unanimous consent request from Bernard-Stevens to add his name to LB 521; Senator Pirsch to LB 441.

Your Committee on Education, whose Chair is Senator Withem, reports LB 357 to General File with amendment. Notice of hearing from Natural Resources, signed by Senator Schmit. Senator Hefner has amendments to LB 127 to be printed; Senator Barrett to LB 283; Senator Chambers to LB 165; and Senator Hall to LB 48. (See pages 523-25 of the Legislative Journal.) That is all that I have, Mr. President.

SPEAKER BARRETT: Senator Goodrich, would you care to adjourn us.

PRESIDENT: All right, we'll move on to LB 48.

CLERK: Mr. President, LB 48 was a bill introduced by Senator Dierks and Senators Chambers, Nelson, Schellpeper, Hefner, Lamb, Crosby and Hartnett. (Title read.) The bill was introduced on January 5 of this year, referred to the Health Committee for hearing. The bill was advanced to General File, Mr. President. On January 31, yesterday, the Legislature adopted committee amendments as offered by the Health Committee. I have a series of amendments pending, Mr. President.

PRESIDENT: Okay. Senator Dierks, if it would be okay, we'll go back to your bill. You can recap it as it stands now, and I want to say to you that in a few minutes, and I don't know how few minutes, we're going to have some special guests coming from Russia and we may break into the middle of your bill, so if you would understand that and if you would allow us to do that, we'll do that because of these special guests and I don't know what their timetable is, so don't be surprised. Is that agreeable with you? And we'll go back to your bill and you can recap it at this moment.

SENATOR DIERKS: Yes, Mr. President, that's very agreeable with me.

PRESIDENT: Thank you.

SENATOR DIERKS: You want a recap?

PRESIDENT: If you would like to at this time so that we can pick up, some perhaps were not here when we finished yesterday with your bill.

SENATOR DIERKS: Okay. Mr. President, members of the body, LB 48, as you know, is the smokeless tobacco bill. It was introduced to this body, I think this is the fourth time or maybe fifth. This is the first time it has actually made it to the floor. It is a total ban of the distribution of smokeless tobacco products to the people of this state. It does not interfere with the free trade. It does not stop the companies from selling the product. It just simply says you cannot give it away in this state of ours. We are trying with this bill to protect the health primarily of the youth. I understand there are several amendments up there. I understand there is even a

kill motion. Yesterday we got through a motion that would change the thrust of the thing and put the burden of liability, share the burden of liability with the youths who are actually receiving this product or anybody else for that matter, along with the tobacco industry. I think that the amendment was not passed, it was defeated, and so today we're starting over again. The purpose of the bill as I see it is very simple. It's a matter of coming up with some method of helping with the health of the youth of our state versus the greed of the tobacco industry. I think it is all that simple. I don't see any middle ground. I don't see any reason for us to even talk about other things. We're going to pursue the bill. We're going to try to get it passed as it is, get it passed intact. The amendments, as I understand, deal mostly with the age and trying to restrict the distribution to minors. We all know that this is not effective. It hasn't worked before. It has never worked in the history of this state and we can't make it work now. This type of legislation as we've introduced is very effective today in the State of Minnesota. It was challenged. It passed the challenge. It is also effective in Utah, the total ban of the smokeless tobacco products. We have had an Attorney General's Opinion that says that the bill is okay and I think that this probably brings you pretty much up to date. Thank you.

PRESIDENT: Thank you. Mr. Clerk, do you have any amendments?

CLERK: Mr. President, the first motion I have is to indefinitely postpone LB 48. It is offered by Senator Bernard-Stevens, Senator Dierks...

PRESIDENT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Mr. President, I'll withdraw that motion at this point so that we can discuss the amendments pending, but I'll probably be filing the motion again later on today.

PRESIDENT: Okay, it is withdrawn.

CLERK: Mr. President, the next amendment I have is by Senator Hall. Senator Hall's amendment is printed on page 525 of the Legislative Journal.

PRESIDENT: Senator Lynch, you're going to handle the Hall

amendment, is that right?

SENATOR LYNCH: Yes, Mr. President and members, since Senator Hall can't be here today, I told him I would be glad to discuss this amendment for him. What it simply does is strike in the bill language that has to do with everybody and simply puts in "minor". I know Senator Dierks and others who support this, and I support the concept as well, are primarily concerned with minors. I think it is important to have then in the bill language that would obviously identify who this bill would apply to. I think the concern generally for minors in the use of this product is obvious. I also very strongly feel, and I should point this out to you now, that I think kids that do this and have possession of it should be responsible for their own actions as well. I passed out for you an article that was in Sunday's World-Herald. It had to do with tickets issued to minors for possession of alcohol. You might have gotten it by now. I just want to point out to you that, in fact, kids are ticketed. They are not supposed to have alcohol, they are not supposed to be in possession and they are cited for it, and that is as it should be, but also they ought to be cited when they have smokeless tobacco in their possession as well. And why not? We're not penalizing the kids at all. Nothing is changing except making the kids responsible for their own actions as they should be. You know as you know or maybe don't know as well, too, I think the concern for the minors not only involves smokeless tobacco, but, by the way, if you know who to write to you can get drug stimulants through the mail. They don't ask you how old you are. You can get guns. I don't know what they call a handgun, but you can buy a gun if you want to if you write to the right person. You can get a firearm. If you want alcohol, there is an 800 number you can call. I know people that sell vodka, for example, and they will send you samples of this through the mail. So I think the issue as it applies to in the legislation that has to do with mail order is an important and reasonable problem that applies in the case of this bill to smokeless tobacco. But I would like to see somehow an amendment or a separate bill with the mail order thing taken out or as part of the issue, a legislation developed that would provide for minors in possession of not only smokeless tobacco, but minors in possession of firearms, drugs, stimulants and alcohol as well. All of us sometime have to be accountable for our own actions. It is never too early to start when you're a minor. I talked about this in committee and I want you to know that I understand the seriousness of this kind of a habit. If you were

a plumber's helper like I was for five years with a guy who chewed tobacco, chewed cigars, you'll know how tough it can be when you clean the tubs out that they use for targets. Believe me, I have no problem with the issue, but let's be serious about what we want to accomplish, that's all I am saying. And I think the amendment that I provide makes a lot of sense. It provides "minors", it provides "minors". Now if you want to keep everybody else from smoking tobacco, then that is what the bill says. Nobody can give them free samples, period. I guess you'd have to think about when you want to extend the bill to include everybody, I guess you can do the same thing then with drug stimulants, firearms and alcohol too, but that is another issue as well. So simply, the amendment defines, in fact, the intention of the writers of the legislation and provides "minors". Minors is defined in the statute, so there is no confusion about who they are, and it seems to me to purify the bill and make it obvious what we're trying to accomplish.

PRESIDENT: Thank you. Senator Nelson followed by Senator Dierks.

SENATOR NELSON: Mr. Speaker, members of the body, I object to the amendment. The amendment, again, dilutes the bill. Of course, we are directed at minors but we are no way that are we able yet to differentiate between a minor, 12, 13, 14-years-old, or 16-years-old obtaining the smokeless tobacco. It is fine to stand up here and say, yes, and they do arrest minors for alcohol and so on. I have a letter from, I mentioned yesterday, and incidentally, a very top-notch student in Grand Island High School. I asked him. He was over selling from church, some church material the other day, and he gave me the estimation that 65, 67 percent of the boys sometime or another in a month's time would chew tobacco at high school since they eliminated cigarettes. He...I asked him for a letter, I think he provided 60 percent, but I think the habit is so terrible and so dirty and the boy's bathroom, his figures were probably exaggerated. I believe statistics will show you more like 23 percent, and what we are, again, if we limit this to minors, Minnesota, Utah, and incidentally, in my notes from last year, there are four other states to be added to the '88 tobacco legislation, New York, Texas, Florida, Hawaii and, of course, California joined those, too. So Nebraska is not alone. I object, there is nothing wrong with the original bill as we had it in the first place. Of course, we are more concerned about minors. It's kind of like Nancy Osborne said, I just cannot believe the

Legislature and where they are coming from and anyone that sees, if I see Bill Nichol standing there in front of that booth and I'm coming along and my 9-year-old grandson, I'd say, well, hey, Bill is a pretty nice little Joe. I can't see anything wrong with it if it he is handing it out to me or letting me have it, gosh, there can't be anything wrong with that, and that's the way the kids think and it simply is to ban all distribution of smoking, handing out the free gifts because in no way have we been able to control the kids in not getting it. And after this I will also tell you that...maybe I'd just as well, my time right now. This information is, in 1989 information, cancer statistics for Nebraska, 132 new cases of oral cancer among males per year in Nebraska. Oral cancer deaths in Nebraska, 1986, 51 deaths; 1987, 38; 24 are male, 17 female, 25 male, 13 female. It is simply...this amendment, again, is just another way to dilute the bill and make it so it isn't as strong as it is and I also, if you will notice the first words on this amendment. You go down to the bill, line 6, page 2, it strikes the words "impractical and ineffective" and puts in there that the age related restrictions on the promotional distribution of tobacco products is effective. I very much object to that statement. Thank you.

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

SENATOR DIERKS: Mr. President, members of the body, evidently this bill has...the introduction of this bill has caused a considerable amount of ire on the part of the tobacco industry and I don't know that I've seen as much activity in the Rotunda this year as I have this morning with people lobbying against the bill. I have some problems with that because the bill, as I stated before, is a very simple bill. It just says we aren't going to give this stuff to anybody in our state and it can only be construed to be a healthful measure. And the only other side of the issue is that the tobacco industry doesn't like that. They even sent out across the state to all the newspapers, a mailing, and I see that the World-Herald printed that on January 20. Part of it reads, Senator Dierks and others like him, I'm not sure what others like him means, but are engaged in a misguided attempt to do away with a legitimate and time-honored product. They are calling this Copenhagen a legitimate and time-honored product. This is a product that causes the addiction of our youth. It causes cancer in our youth. It causes the premature death of people that are

involved with it. It also causes high blood pressure, it causes heart problems and they call this legitimate and time-honored product that myself and others like me are trying to do away with. Then to add a little bit of fire, or fuel to the fire, they say, why doesn't he go after cheese, soap, cigarettes and toothpaste, just to say a few, you know, because they are equating their product with these products and there is absolutely no comparison. We aren't talking about anything at all like they are referring to in this article. I'm amazed at the efforts that the tobacco industry is bringing here, but maybe it's not so amazing when we look at the amount of money that they have spent in the last few years in promoting this product. I have a report here from several sources. One is from the Nebraska census, one is from the behavioral risk factor survey and it says that there were 130 new cases of oral cancer among males last year in Nebraska. It also says that the oral cancer deaths in Nebraska in 1986 there were 51 deaths from oral cancer. In 1987 there were 38 deaths from oral cancer. These are the things that I'm trying to get at with this bill and all the amendments in the world are not going to make it any better. All the amendments that are brought here are brought here by the tobacco industry, the people that are spending, as I have in this report, advertising expenditures for smokeless tobacco products, $80 million in 1985. You think that isn't important to that industry? In 1987 after the TV ban, they still spent $67,000, $14 million in free samples. You think that isn't important? Four million dollars in distribution and promotional products, $15 million in public entertainment, $15 million this industry supplied to the drag races, the rodeos, public entertainment in this nation. Only one reason they did that, the one reason was to promote their product and to hook some other people, get them addicted to their product. This United States will look back on these days, some day, and they will say, what were we thinking of? We subsidize a tobacco industry that causes the death and the poisoning of our own citizens. What kind of business is that? Are we living in the Dark Ages? I submit that we're out of the Dark Ages today and it is time for us to come to grips with it and provide the same kind of legislation that they provide for in Minnesota. They feel strong enough about this in Minnesota that they have banned it there, total ban on distribution of smokeless products in Minnesota, total ban of smokeless products in the State of Utah. Let us take the lead with these other states in this nation. Let us go along with them and provide this same sort of health regard for our youth. Thank you.

PRESIDENT: Thank you. Senator Schellpeper, please, followed by Senator Bernard-Stevens.

SENATOR SCHELLPEPER: Thank you, Mr. President and members. I just want to add a few things. I noticed that the State Fair has been mentioned several times in this debate and I did want to mention that we did work with the smokeless tobacco industry and they agreed voluntarily not to appear out there, and I want to commend them for that. We were having a lot of problems out there and they did come out and say that they would not appear out there anymore which we had a hard time really keeping them from actually doing that. This is a very touchy subject because we're dealing with health and I think we need to probably start out by trying first with the minors or the youngsters. They always say that you learn by doing, and if we can keep this product away from the minors, I think eventually it will grow into the adults. This amendment, even though it doesn't go far enough, is a step in the right direction. I really want to see the bill as it was presented, but if we can't get anything we at least need to get something like this amendment. I know I'm being kind of wishy-washy here but I just want to get something to protect the minors because I think we need to start there first. But I think that if we can get this bill, it will definitely help down the road. Thank you.

PRESIDENT: Thank you. Senator Bernard-Stevens, followed by Senator Haberman.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body, I'm just going to take a minute because I will have another amendment pending that will speak to the issue a little bit more clearly. In speaking with Senator Hall yesterday, I just want to kind of make it clear what the amendment is trying to do and I'm, again, speaking for Senator Hall on this, so I hope I say it correctly on his behalf. We heard a lot of discussion yesterday, and by the way, this amendment was thought up and instituted by Senator Hall and we talked about it later. A lot of discussion yesterday on we want to stop the addiction process to our youth, to the minors. And there is a lot of discussion about we want to stop the oral cancer and it begins with the young and there is a lot of truth to that. What Senator Hall basically is saying with this amendment is if that is, in fact, what we want to do, then let's go ahead and change the bill to reflect that. So if the Hall amendment is agreed

to, just so everyone is clear on it, if the Hall amendment is agreed to, what LB 48 would then do would be to stop sampling, make it illegal and to sample any product in the tobacco area on smokeless tobacco in regards to minors. Okay, now I'll be very frank with the body. If you agree with the Hall amendment that would stop sampling to minors, what you will be doing is agreeing to what already is the law in the State of Nebraska. And I think Senator Hall offered the amendment simply to get the body to focus on the attention is what we are talking about on LB 48 does not deal with minors because if you change the bill to deal totally with minors, it is the law in the State of Nebraska today. So there must be something else we're talking about and that is what we were trying to get across yesterday but in some of the confusion the point was not made as clear as possible. So hopefully that clarifies what the Hall amendment does. If you agree with the Hall amendment, the bill will stop sampling to minors, period. It would allow the companies to sell to consenting adults or to sample to consenting adults, and that is the nature of the Hall amendment and it deals, if you're concerned with the minors, then you'd want to support that particular amendment. Thank you, Mr. President.

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

SENATOR HABERMAN: Call the question.

PRESIDENT: The question has been called. Do I see five hands? I don't. Now I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 17 ayes, 5 nays to cease debate, Mr. President

PRESIDENT: It fails. Senator Haberman, or let's see, we'll go on to Senator Wesely next. Senator Moore.

SENATOR MOORE: Mr. President, members, I rise I guess to support the Hall amendment in some ways, even though for me personally, it was exactly backwards of this that I learned my lesson not to chew tobacco. Maybe we should make it mandatory that everybody 16-years-old chew tobacco because when I was 16 out at the State Fair I got ahold of a plug, chewed it, swallowed it, got violently ill and haven't chewed it since. And so in some ways maybe we're working backwards on this, but I think what we really need to deal with is deal with the minors.

That is where the concern is. That's what Senator Hall's amendment would do. In some ways it is almost deja vu as we talk about this whole issue, because if you go back to a little bill we debated at length last year dealing with motorcycle helmets, a lot of it with the same arguments. I'm of the opinion you cannot eliminate all risk in society, but I am of the opinion you can do what you can when people are at a young and impressionable age to prevent them from getting bad habits and then when they are of legal age they can make a decision for themselves. I think the Hall amendment strikes at the heart of that. It does not just try and...you know, in some ways the bill, the next step is just overall prohibition of smokeless tobacco, cigarettes and alcohol for that matter. We already had the eighteenth amendment once and it didn't work but I guess I am willing to try what Senator Hall is attempting in his amendment to at least make it perfectly clear that it is illegal to distribute these samples to minors and I would support the Hall amendment.

PRESIDENT: Thank you. Senator Wesely, I didn't see you in the back of the room. We'll come back to you.

SENATOR WESELY: Thank you. Mr. President, members, again, I would rise in opposition to the amendment. It only puts in place what is already the law. It's there to make a point, you know, that already you're not supposed to be distributing to the minors, so we understand that. Right now you're not supposed to be distributing to the minors, but what is the problem? The problem is you can't stop it because of the free distribution and the system that they have set up. Until you completely ban the giveaways, you're not going to be able to stop the giveaways to the kids. I think that is really where we're at, and in addition, I know we're just focusing in on the youth and their addiction and what can happen there, but I'm concerned about our older citizens as well, those that are above age and don't recognize perhaps the addictive quality of this substance. I don't feel so bad about the idea of not allowing the free giveaways of these to those people as well. Now I know we're focusing on the youth, that's really the highest priority and I know we all feel that adults should be able to decide for themselves what is best. I agree with that by and large. But we decided on the helmet issue, for instance, that it was in the best interests of the adults to have helmets on motorcycles, we thought that. I think it is in the best interests of adults not to chew tobacco and I think the use of free sampling ends up

addicting these people, maybe without their knowledge and then they get hooked and they start buying it and using it and eventually in many cases they end up with some sort of cancer, perhaps a loss of life. Now in my estimation it is good public health policy to recognize that on occasion our adults are subjecting themselves adversely to health risks and sometimes we take steps to try and diminish that. We're not stopping them from buying the product. They still have that right. If they want to go out and try it and like it, they can do that, but as far as the free sampling, I think it's the wrong thing to do and it ought not to be continued and I just feel that way very strongly. I oppose the amendment and I'd offer the rest of my time to Senator Dierks.

PRESIDENT: Okay, Senator Dierks, you have about three and a half minutes on his time, on Wesely's time.

SENATOR DIERKS: Thank you, Senator Wesely. Mr. President, members of the body, I just have to tell you what this amendment does. This amendment just guts the bill. It leaves the statutes exactly as they are today without the passage of this bill. So, in essence, it does what the tobacco industry has been after all the time, killing the legislation. They want nothing to do with this. All we're talking about is greed on the part of the tobacco industry. That's the whole essence to the problem. If we adopt this amendment, it just leaves it exactly as it was today. What we have done in committee, what we have done yesterday on the amendment is done for naught because this amendment that we're talking about today will leave it exactly as it is right now. We have in the statutes that it is illegal to pass this stuff out to minors. It doesn't work. It has not worked and all the promises in the world by the people that they are not going to come back to the State Fair does not mean that that is going to happen. We have to go with total ban if we're going to be effective because it is not effective today. How is anybody going to be able to look at a youth and tell whether he is 18 or not? And how is anybody going to be able to look at a youth and ask him if he is 18 and know he is not lying? There is only one thing we can do if we're going to be effective with this type of legislation, and that is to pass it as the bill was introduced. This amendment guts the bill. It just absolutely puts it back like it was, and if we adopt this amendment, the message we're sending to the youth of this state is we really don't care. We really don't care if you want to go out and get yourself afflicted with oral

cancer because that is just what we're telling them they can do. We don't care if you want to become addicted to this stuff...

PRESIDENT: One minute.

SENATOR DIERKS: ...another addiction. We all are abhorred with the tales of drug abuse that is so rampant in our state and it isn't as bad here as it is other places but it is happening and we all know that. We keep reading about the drug busts. We have a chance today to do our own little thing about addiction. We have a chance today to tell the people in this state that we are against these vices that control the minds and bodies of our youth. We have a chance today to vote against addiction, to vote against poisoning our youth, to vote against their being able to use these carcinogenic subjects. We cannot support this amendment. I think it would be a travesty for us to allow this amendment to pass. To tell you the truth, I'm not really getting tired about talking about this. I think it is one of my pet pets today and has been all session and I guess that I'm a little disappointed in all the amendments that are coming up here. I'm disappointed because I think that I can see the power of the tobacco industry at work and it bothers me that they would try to continue to keep our youth in their bondage. So I would urge that we defeat this amendment. Thank you.

PRESIDENT: Thank you. I think we'll break in, Senator Dierks, on your bill for a moment, and Treasurer Frank Marsh has some special guests and, Treasurer Marsh, if you'd have your guests come out on the south side of those pillars and line up so that we can see them well, and if you would take Senator Scofield's microphone, perhaps you could tell us a little bit about them so that we will know...we will break precedent here a little bit with...and...wherever you think it is good, Frank, for us to see them well.

FRANK MARSH: I think they are assembled in the back of the Chamber at this particular time. This is a group of people that have come on the People to People...excuse me, on the Friendship Force Program to Nebraska from Tadzhikistan in the U.S.S.R. and we've had a tour of the building this morning and so on. As you can see, I've been presented with the national colors and the costume and so forth of that particular area. It's a very unusual area and I'm going to just ask all of you to do your own geographical research on the location of it, but we are highly honored really that these 13 people have come from halfway

around the world from the USSR in order to visit Lincoln, Nebraska, and I know that you would want to give them a good legislative welcome. (Applause) Just a second, we have a little footnote here. Of this group, four of these people, and I will have you introduce who they are, four of these people are a member of the Supreme Soviets of the Republic of Tadzhikistan of the Soviet Union. So they are the equivalent of the...from the legislative body of the Unicameral or actually, of their legislative body in the State of Tadzhikistan, the Republic of Tadzhikistan. So if you would, would you please introduce those who are the members of the Supreme Soviets of the State of Tadzhikistan, and I also think that there are two candidates for...running for the next session of the Supreme Soviets of the State of Tadzhikistan.

INTERPRETER: (Introduced visitors from the U.S.S.R.)

FRANK MARSH: Thank you, Lieutenant Governor, for this break in the tradition of the use of the Chamber and so forth. We deeply appreciate your courtesy extended today, and thank all of you for the attention given this particular group. This is one of the ways in which we make peace, not war. Thank you. (Applause)

PRESIDENT: Treasurer Marsh, we very much appreciate your doing this today for us, and on behalf of the Legislature, the entire body, would you kindly thank the group for coming to see us in action and we appreciate your bringing them. Thank you, folks, and good luck to you on the rest of your journey.

FRANK MARSH: Thank you.

PRESIDENT: We're back on the Hall amendment. Senator Nelson is next. If we could have you come back to your seats, perhaps the friends that are visiting want to visit, want to observe us more. If so, fine, if they choose to leave, very good, but anyway we'll go back to business if you'll return to your seats please.

SENATOR NELSON: Mr. Speaker, members of the body, I will make this very, very brief. Senator Dierks said it exactly right. This amendment would do nothing but be status quo as we have it right now. It does not work. Senator Haberman introduced legislation last year banning...make the penalty for minors in cigarettes and snuff and it simply would gut the bill. It's

just another way for the tobacco industry, with their millions and millions and millions of dollars, to defeat our kids and that's simply what it does. So I urge you to defeat the Hall amendment and let's proceed with the bill as it is. It's a good bill that has stood the test and there is no other way that we can handle it, so you have to vote your conscience and do as you please. With that, that's all I have to say.

PRESIDENT: Thank you. Senator Dierks, please, followed by Senator Bernard-Stevens and then Senator Abboud. Okay, 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 on ceasing debate. Record, please.

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

PRESIDENT: Debate has ceased. Senator Lynch, would you like to close on the Hall amendment, please?

SENATOR LYNCH: Mr. President and members, this is difficult, there is no doubt about it. However, I think this is one of those emotional issues that you have to have the utmost and deepest respect, that demands that you have the utmost and deepest respect for its introducer such as Senator Dierks and Senator Nelson and others. I have no problem with that at all. What is interesting about it is though, that almost all the dialogue we've heard this morning has to do with youth. We have to protect our youth. What the amendment does is simply indicate and enforce the existing law which says that minors cannot, in fact, be sold this product and, in fact, minors will be responsible for their own actions. I don't know how often as adults we assume we have to be responsible for others and we should in some cases, but how often do we ever think about imposing our will but at the same time saying we'll let you off the hook to those that we impose that regulation on. In this case, we do. We just simply say to kids, who will have the kind of product that has been mentioned and debated now for so long that it's okay if you've got it, we'll let you get away with it, but on the other hand we want to make sure that the law does not specify and provide that, in fact, as minors you should not have this product in your possession. It's way out of proportion at this point in my opinion. The amendment specifies that those people that we would like to protect. It seems to me that based on that, you've heard an awful lot about what does or doesn't exist. It is my understanding, and I stand corrected if I'm

wrong, that Utah is the only state in the country that has a total ban. Minnesota may have just recently accomplished that, I'm not quite sure. But on the other hand, we want to be careful that we actually accomplish what we intend, no more or no less. I think the amendment as offered simply does that and I would ask on behalf of Senator Hall your support for this amendment.

PRESIDENT: Thank you. The question is the adoption of the Hall amendment. All those in favor vote aye, opposed nay. Have you all voted that care to? Record, Mr. Clerk, please.

CLERK: 10 ayes, 18 nays, Mr. President, on adoption of the amendment.

PRESIDENT: The amendment fails. Do you have anything else, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, Senator Bernard-Stevens would move to amend the bill. (Bernard-Stevens amendment appears on pages 545-47 of the Legislative Journal.)

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body, the last amendment by Senator Hall was simply a point that was trying to be made, that if we were truly interested in just stopping the sampling to minors, then we'd want to accept the amendment that Senator Hall had, and as I pointed out to the committee, if we would have agreed to the Hall amendment, we would have agreed to what is already statutory law now. Right now as of today, as we speak for the most part, it is against the law for minors to obtain tobacco in any form and use it. What I attempt to do with this amendment, and to be frank with the body, it is basically...it is very similar to the amendment yesterday with some expansionary language in the intent. It did take out in the sections toward the end that part having to do with telephoning because the tobacco industry in general does not use that form. So that was taken out to make it a more complete and different amendment at some point. Quite honestly there has been a lot of confusion on this and I don't want to take a lot more of the body's time because there are so many other issues that are also very, very important that this body needs to spend some time on as well. We have talked about the millions of the tobacco industry and, "Cap", I don't know about you but I'd put "Tuffy Tooth" against the tobacco industry any day. I think "Tuffy Tooth" would probably come out on top. No

one would disagree with that. But there are a lot of clouded issues that began to develop yesterday. We had people talking about helmet laws; we've had people talking about legislating safety and morality; we had people talking about teachers, that it is going to fall on the burden of the teachers to enforce these things and I don't blame the body for getting a little bit confused on what the Bernard-Stevens amendment and what the bill is actually trying to do on LB 48. I think I can simplify things very quickly for the body. I hope to be able to, and then hold my peace and let the body vote and decide which way it wants to go and go with the wishes of the body. The issue is very, I think, simple. We have an industry, in this case it is the tobacco industry, and I feel uncomfortable in this position I might add because I don't necessarily support, in fact, I don't support the product of this industry. I do not support that product personally. But we have an industry who is saying to the Legislature of the State of Nebraska, we don't want our product going to minors as well. We want stiffer sanctions against us. We're willing to go stiffer sanctions against us. We're willing to go into a more of an advertising campaign to stop minors from developing an addictive habit. And I have, and I would pass out, but I think the body understands it just as easily without having more things cluttering their paper, I have advertisements that have been put in newspapers throughout this area. I have advertisements from the tobacco industry that was put in school papers in the Voice of the Nebraska Association of School Boards warning minors not to do tobacco, smokeless tobacco because it is harmful and cancer causing and habit forming. In fact, just as an aside, the Nebraska Association of School Boards in their report or in their magazine called the Voice, refused the tobacco industry's ad that warned minors not to use smokeless tobacco because it was harmful to their health and I have a letter that says they refused that ad which I thought was interesting. Okay? The point is we have an industry that is saying we do not want our products to go to minors and we want to increase the sanctions to keep that from happening, but please, they say, give us the right in a capitalistic American free enterprise system, give us the right to market our products to adults, to consenting adults. And, members of the body, that is, in fact, the issue here. One other comment and then I will hold my peace or at least try to and hopefully we can get to a vote on the bill and on the amendment. The comment is about LB 48, if it passes without the Bernard-Stevens amendment, what do we have? Right now in the State of Nebraska, colleagues, we have a law that prohibits

minors from using tobacco in any form and it is a Class V misdemeanor right now, and that doesn't change within my bill. Right now in the State of Nebraska we have a law against giving samples products to minors and it is a Class III misdemeanor right now. LB 48 does not change that except that it deals with adults because we're not going to let adults do that. My point is, you and I, whether we smoke or not, do not want our youth to be addicted by smokeless tobacco. It is a society's dilemma as students are taught not to go into smoking and yet they walk by a faculty lounge that reeks with smoke; as the Legislature grapples with the problems of tobacco, and yet many of us are on the side or in our offices smoking at that particular time. Teachers and people h ve seen students that smoke and they do not enforce the laws we have now because society has been unable to grapple with that. The best education, the best we can do for our young people is to educate them, tell them what is happening and one of the real positive things that has come out of this discussion, and hopefully the agreement of my amendment, is we have some young people now that have sent us letters saying, please, support LB 48 and they show "Tuffy Tooth" and they show all the little cartoons they have drawn and that is marvelous. I support it because we are beginning to talk about the issue to our young and form the attitudes in the minds of our young and that is where we will be successful. LB 48 will not change anything in regards to the problem that faces our society in smokeless tobacco and oral cancer. The dentists that have called me have said, please support LB 48 because it will stop our young being addicted and getting cancer. I asked them, have you read the bill? Do you understand the consequences and what we're really talking about, and they say, no, quite honestly I haven't read the bill, but I was told I need to call my senator and this bill would help us stop cancer in young. There has been a lot of lobbying, Senator Dierks, on both sides I suspect. But the real lobby effort is right here, not outside the door. We make the final decisions and I implore to the body, the decision we make today is simply, are we going to allow an industry to advertise or market their products to adults, and also at the same time with my amendment, put stiffer requirements and punishments on those people who are giving those samples illegally to minors, which is the law now, or are we going to simply go with LB 48, pat ourselves on the back, tell ourselves we did something to stop cancer when, in fact, we did nothing at all because, ladies and gentlemen, colleagues, I've been around young people a long time. Passage of LB 48 as it now stands without the Bernard-Stevens amendment,

unfortunately, will have no effect. Those children, our children will, if they have the right motive or the wrong motives, if they have the wrong guidance, will choose to smoke, will choose to do smokeless tobacco regardless of what we do here today and that is the simple point of it. Thank you, Mr. President.

PRESIDENT: Thank you. Mr. Clerk, we have an amendment to the amendment.

CLERK: Mr. President, Senator Elmer would move to amend the Bernard-Stevens amendment. (Read Elmer amendment. See page 547 of the Legislative Journal.)

PRESIDENT: Senator Owen Elmer, please. Just a moment, we don't have you on yet. Try us now.

SENATOR ELMER: Thank you, Mr. President and members. In reading Senator Bernard-Stevens' amendment at the end of Section 1, it states no county, city, or village shall adopt any ordinance or regulations inconsistent with Section 1 to 4 of this act and Sections 28-1418 and 28-1419. My point here is that that particular language would make it impossible for any city or municipality in our state to make any changes less restrictive, more restrictive or in any other way that would affect the dispensing or giving away of tobacco in their municipalities. And I would say that we should allow these cities or municipalities to pass ordinances that are more restrictive than this act would allow. In other words, if a city wished to ban the giving away of smokeless tobacco products to anyone within their city limits, they could do so if this amendment is adopted that I'm offering. And it would simply change "inconsistent with" to "less restrictive than", so it would say no county, city, or village shall adopt any ordinance or regulation less restrictive than Sections 1 to 4 of this act. I'd ask for your adoption of this amendment to the Bernard-Stevens amendment. Thank you.

PRESIDENT: Thank you. I have several lights on but I don't know if any of you wish to speak about the Owen Elmer amendment to the amendment. If you do, please raise your hand so I may call on you. If not, the question is the adoption of the Owen Elmer amendment to the Bernard-Stevens amendment. Owen Elmer...oh, Senator Stevens.

SENATOR BERNARD-STEVENS: Mr. President, just a quick note. I've discussed this with Senator Elmer and I think it is an excellent amendment and I would certainly be in support of the adoption of this amendment.

PRESIDENT: Okay. Senator Owen Elmer, would you like to close? Okay, the question is the adoption of the Owen Elmer amendment to the Bernard-Stevens amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 16 ayes, 0 nays on adoption of the amendment to the amendment, Mr. President.

PRESIDENT: The Owen Elmer amendment to the amendment is adopted. Now we're back to the Bernard-Stevens amendment and I have Senator Dierks on next followed by Senator Schmit.

SENATOR DIERKS: Mr. President and members of the body, I'd like to assure Senator Bernard-Stevens that I am not confused about the issue here. I want everybody to understand that I am not confused about what we're doing and I sincerely hope that no one else is confused. The issue is not confusing in the least. The issue is very simple. The issue is, do we allow the tobacco industry to continue to enslave the people of our state with their promotion of smokeless tobacco products or do we not? Or do we bow to the greed of the tobacco industry? This is the issue. It's very simple. It is not confusing. There is nothing about this that is confusing. If there is confusion, it is because of all the amendments that are being brought up here and these amendments are meant to do that very thing. The amendments are very well orchestrated, they are meant to confuse the issue. Don't let it happen. The issue is very, very simple and straightforward. I'd like to just read a few of the people who are supporting this legislation and I think it's impressive: The Nebraska Dental Association, the Nebraska Hygienists Association, the Nebraska Laboratory Technicians Association, the American Cancer Society, the Nebraska Dental Assistants Association, the Nebraska State Education Association, this is the NSEA, the Nebraska State Department of Education, the Nebraska Council of School Administrators, the Nebraska Association of School Boards, the Creighton University School of Dentistry and the College of Dentistry at the University of Nebraska Medical Center. Now, that, to me, is a very impressive group of people who support this legislation as I brought it who do not support the amendments that people are trying to confuse

this issue with. Please do not be confused. This issue is extremely simple. Keep that in your mind. Thank you.

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

SENATOR SCHMIT: Mr. President and members, I have not spoken on this issue and I know absolutely nothing about it which makes me as well qualified to address it as anyone. I just want to point out that one of the things you learn around this place after 15 or 20 years is that if you want to be successful on this floor you seek out a little narrow area that is kind of in a minority position and you attack it with both guns and both barrels and you go at it full throttle and pretty soon you whip this thing into line. Now I don't know anything about the smokeless tobacco industry, but I would estimate that there are many, many times as many dollars spent on other kinds of tobacco, including some of that which I use occasionally, as there is on smokeless tobacco. But you never want to attack the cigarette industry because they are powerful. You never want to attack the cigar industry. Those high-priced cigars can generate opposition. Besides, if you attacked and were successful in destroying the cigarette industry, you destroy one of the best sources of revenue the State of Nebraska has notwithstanding the fact that there are deep concerns about the cancer causing problems with the cigarettes. So what do you do? You seek out the smokeless tobacco industry which has become a giant and you just take off after it full throttle and pretty soon you have it painted up there with a great big image as being the most terrible thing you can imagine. And after a while that gives those of us who are afraid to fight the cigarette industry, we're afraid to fight the cigar industry, gives us some little bit of satisfaction where we've struck a blow for health and safety and protection of the children. I was just going through the newspaper here. There is an ad in there for cable TV. I might happen to personally think that the trash that comes in at my house on cable TV is a darned sight more destructive to children than someone who might possibly give away free samples of smokeless tobacco to an adult. But that is going to run in the newspaper. Every week we see huge ads touting the benefits of the various kinds of tobacco. But we are saying the one really evil method of advertising where you just give away a sample is evil, shouldn't be condoned, threat to society, threat to health. You know after a while you wonder about the hypocrisy of the whole thing. I don't know

what possesses certain people to use smokeless tobacco, makes no difference to me. But it would seem to me that if you're going to ban one form of advertising for one type of tobacco you ought to ban it for the entire gamut, make it illegal to give away a cigarette, illegal to give away a cigar, illegal to give away anything to anybody and make it all go through the newspapers. We learned this morning that one newspaper in this state is too powerful for the Legislature to control, so make it all go through the newspaper and then, of course, it's going to be fine. The newspaper industry was able to successfully convince the public and the Congress that it was evil to advertise tobacco on television. Talk about a coup, talk about who controls what to put the whole Congress in your pocket, my gosh. So today we're going to strike a blow for health and safety of kids by outlawing a couple of adults exchanging a sample of snuff, couldn't care less. Probably put a lot of other stuff in your mouth that hurts worse and drink a lot of it that is worse, but, no, zero in on the straw man, use your elephant gun, destroy it, wipe it out and then walk away victorious. I respect Senator Dierks. He is a fine legislator. I respect his goals, his principles and I congratulate him for many things he undertakes. But I don't really think, Senator Dierks, that this bill is quite that all important. We spent a lot of time on it. If it becomes law and it is no...there is no better enforcement of it than there is with some other bills, I don't know what you have accomplished except that you may have made it impossible for one industry to compete with another. I would suggest if you want to pursue this line of reasoning, then we ought to pursue all advertising of all tobacco products because all of it, including the cigar in my pocket, is probably detrimental one way or another to the health...

SENATOR LAMB PRESIDING

SENATOR LAMB: Thirty seconds, Senator.

SENATOR SCHMIT: I would suggest that you ought to adopt the Bernard-Stevens amendment and then go ahead with the bill. Thank you.

SENATOR LAMB: The Chair recognizes Senator Nelson.

SENATOR NELSON: Question.

SENATOR LAMB: The question has been called for. Do I see five

hands? Yes, I see five hands. All those in support of calling the question vote aye, those opposed no. Have you all voted? Record, Mr. Clerk.

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

SENATOR LAMB: Debate is ceased. Senator Bernard-Stevens, to close.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. And for those members that are listening on the units, I'll be asking for a call of the house here so we can be sure and get a vote on this particular matter with as many people here as possible but I will not do so simply so they can hear my closing. I'll wait till after the closing before I do the call of the house. I'll just take a...two minutes, if I can, or hopefully even less because I think the body has heard quite enough in arguments on both sides. I think the body has been lobbied hard enough on both sides and I think we're ready to make whatever decision this body cares to make. We've had a lot of emotion at times and that's what some of these issues are when we get to issues such as prayer in the public schools or abortion or cancer and health in our young. Sometimes we get a little emotional and a little personal and I know that happened a little bit yesterday and I want people to know that I certainly have no hard feelings for that which was stated yesterday in the midst of emotion. However, I think the mood is a little bit less emotional right now and I think the mood of the Legislature is, let's look at the issue, try to ferret out all the emotional parts and see if we can get down to the guts of the bill. And I really can't say it much better than my friend Senator Schmit did, is that if we truly think that passage of LB 48, as it is, is going to really solve or really help in the enforcement area, in the areas of oral cancer and minors smoking, then you want to support LB 48 but I think we'd be sadly mistaken. Unfortunately, we'd be sadly mistaken. With the Bernard-Stevens amendment, what we're doing is we're saying we can take a first step here today. We can make it be a little, even more tougher for the industry to give out samplings. We have basically forced the industry to say, yes, we support that, and I have in my hand a letter from the president of the companies that would be saying that not only will they support it and do they support it, but they will be putting in an extensive advertising campaign to make sure that the minors are understandable to the question of what smokeless tobacco can cause, and they will do that. And, in

fact, they will do that regardless of what happens here today. They are committed in stopping our young from smoking or from chewing the smokeless tobacco. The Bernard-Stevens amendment in short says, we will have more extensive penalties for those that give away free samples, which is right now against the law, we will have more extensive penalties on that, we will make sure that there is a dual responsibility with the minors which is already now in the law and we will at the same time close a loophole that has been in our law for a long time with the Bernard-Stevens amendment which I'm surprised hasn't been mentioned. Members of the body, it is now current y, according to Nebraska statutes, not illegal for a minor to purchase tobacco, or smokeless tobacco at this point. It's against the law to use, but it's not against the law to purchase. In the Bernard-Stevens amendment, that is taken care of. In fact, it's interesting, it was the tobacco industry that is so evil that found that loophole and said you need to close that, State of Nebraska, because that is a glaring loophole and it is in the Bernard-Stevens amendment. We can take a first step, a better step in helping our young kick and not begin a habit of smokeless tobacco. We can do something for oral cancer here today, and by doing something for our youth, for the society, we can do so by supporting the Bernard-Stevens amendment. Thank you, Mr. President.

SENATOR LAMB: The motion is the adoption of the amendment by Senator Bernard-Stevens. Those in support vote aye, those opposed no. Have you all voted? The motion is a call of the house. Those in support vote aye, those opposed vote no. Record, Mr. Clerk.

CLERK: 25 ayes, 1 nay to go under call, Mr. President.

SENATOR LAMB: The house is under call. All unauthorized personnel please leave the floor. Please record your presence. Senator Landis, for what purpose do you rise?

SENATOR LANDIS: Only for a point of information, not about the issue at ha' '. Since it will be just a few seconds before we do anything wi this anyway, I'd like to inform the body that I'm passing around today an outline of a 300 page bill that will be coming up for special order on Friday. It's LB 92. To give you advance notice and a chance to look at the provisions, I've included one page in which summarizes the process that brought the bill about and on the other nine or ten pages a section by

section analysis of everything that is in the bill. But I thought with a couple of days advance notice you might have a chance to prepare and at least feel comfortable when the bill comes up for special order on Friday and that is the purpose of the memorandum.

SENATOR LAMB: You are out of order, Senator Landis.

SENATOR LANDIS: Am I? Thanks.

SENATOR LAMB: Senator Ashford, Senator Beyer, Senator Chambers, these are some of the people that we're looking for at this point. Senator Lindsay, Senator McFarland. Please come to the Chamber and record your presence. The house is under call. I believe Senator Bernard-Stevens has indicated that we can begin the roll call, Mr. Clerk. In reverse order, there has been a request for reverse order.

CLERK: (Roll call vote taken. See page 548 of the Legislative Journal.) 20 ayes, 18 nays, Mr. President, on the adoption of the amendment.

SENATOR LAMB: The amendment is not adopted. Mr. Clerk, do you have some items?

CLERK: Yes, Mr. President, I do. Mr. President, Senator Abboud and Lowell Johnson, or, I'm sorry, Senator Abboud would like to add his name to LB 116; Senator Lowell Johnson and Beck to LB 325 as co-introducers. (See page 549 of the Legislative Journal.)

Senator Landis has amendments to LB 92 to be printed. (See pages 549-50 of the Legislative Journal.)

Business and Labor reports LB 176 to General File with amendments. That is signed by Senator Coordsen. Education reports LB 140 to General File with amendments, LB 336 General File with amendments. Those are signed by Senator Withem as Chair. (See pages 550-51 of the Legislative Journal.) That is all that I have, Mr. President.

SENATOR LAMB: Senator Chizek, would you care to offer the motion to recess for lunch?

SENATOR CHIZEK: You don't want to come back after lunch. I

page 559 of the Legislative Journal.) That is all that I have, Mr. President.

PRESIDENT: We'll move on to LB 48, please. Where were we, Mr. Clerk?

CLERK: Mr. President, LB 48 was a bill that was introduced by Senator Dierks and Senators Chambers, Nelson, Schellpeper, Hefner, Lamb, Crosby and Hartnett. It relates to smokeless tobacco. The bill was introduced on January 5 of this year, referred to the Health Committee, advanced to General File. Committee amendments were adopted on January 31. The bill was discussed on January 31 as well as yesterday, Mr. President. I have pending to the bill an amendment from Senator Abboud.

PRESIDENT: All right, Senator Abboud, on your amendment, please.

SENATOR ABBOUD: Mr. President, colleagues, I wish to withdraw the amendment until Select File.

PRESIDENT: It is withdrawn. Do you have anything else on it, Mr. Clerk?

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

PRESIDENT: Senator Nelson, your light was on. Okay. Senator Dierks, I guess we're ready to discuss, if anything, about the advancement of the bill.

SENATOR DIERKS: That's interesting. Mr. President and members of the body, I am a little further relieved. I would like to tell you that I was approached by a lady yesterday in the hallway of the Capitol that would like to have had her organization as one of those who was favoring the legislation. When I mentioned some of the groups that were, the teachers' association, the American Cancer Society, the Medical Association, the Dental Association, of course, the dental hygienists and the dental assistants, all those people who were so generous with their time at the hearing and came to testify in favor of the bill, this lady was not at the hearing but she wanted to indicate their support. She is an Executive Director of the State Parent Teachers Association and I appreciate that. I think that it indicates a little more the broad base of support that this legislation has. I think we've discussed this

legislation long enough. Everybody knows the pros and cons of it. I am willing to attempt to get this bill advanced and knowing that I'm going to probably deal with some more amendments at Select File, but the only thing that I'd ask for you to remember is that we're dealing here strictly with the issue of the health of the people of this state. It's just that simple an issue. We're not...we are not trying to do anything that is immoral, illegal or...the whole thing is very simple and very pure and it is difficult for me to understand opposition to this bill. The only way that I understand it is I understand the greed involved with the tobacco industry and the chink we're putting in the door as far as they are concerned is to the giving away of these products. So without any further discussion about this, I'd just like to urge that we go ahead and advance the bill to Select File. Thank you.

PRESIDENT: Mr. Clerk, I understand we have a motion on the desk.

CLERK: Mr. President, Senator Bernard-Stevens would move to indefinitely postpone the bill.

PRESIDENT: Senator Dierks, you have the right to take it up now or tomorrow, or later I should say.

SENATOR DIERKS: Well, I think we'd better take it up.

PRESIDENT: All right. Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body, just so the body understands my intention on this particular matter on this bill today, I don't think there would be any problem parliamentary and I think I understand the parliamentary rules as well as most in the body to be able to take up an awful lot of time on the floor today, if not the entire day wasted on a bad bill in my opinion, LB 48. I'm not going to do that, however. I did file my motion to indefinitely postpone to create a brief discussion and I hope others will participate, and I'm basically going to make a couple points to the body that I hope they kind of take a moment to listen to if at all possible. One of the things that we have here and, again, I wish it wasn't me necessarily speaking on this since I've been in the forefront of it and I hope that others will take part as well. One of the things that we had is that LB 48, I think many of you know, got carried away, way beyond the

intent of what LB 48 was going to do. One of the things that happened is that if we passed LB 48, we'd set up a relatively hypocritical situation, if not ludicrous situation, where I could have a can of chewing tobacco in my back pocket and I would not be able to give it to any of you here because that would be a free sample, but if I had a cigar I could go ahead and do that. If I had some cigarettes I could go ahead and give you a free sample of that. That would be no problem, but we're just doing it on smokeless tobacco and we're saying that not only are we going to set up this ridiculous situation, but we're also saying that we're doing something to stop cancer when it doesn't change any of the statutes. It won't stop anybody from chewing and it won't change anything that society has at this point. All the other things kind of got mixed up. It also sets up a kind of ludicrous situation where under certain circumstances the most regulated industry in our state, the alcohol industry, they can, in fact, still give samples out under certain circumstances and yet we're not going to attack that one, we're going to specialize this thing here. I'd also like to point out to the body, and, again, if I could have partial attention, a lot of things were stated a few days ago about an AG Opinion on the constitutionality of the bill last year and, consequently, LB 48 of which there has not been an AG Opinion made on 48. I did a little research last night and I'd like to assure "Cap" Dierks that I did the research because I wanted to know. There are three questions that were asked in the AG Opinion by Senator Nelson one year ago on LB 861. The questions were relatively broad, asking if it was unconstitutional. They talked about the commerce clause which is kind of a joke in law school, if anybody knows that everything is trying to be covered under the commerce clause. They talked about the First Amendment which is a legitimate question and they talked about Article III, Section 18 of the Nebraska Constitution. And there was an AG Opinion based on those limited and narrow questions saying that they didn't think there was any problem. However, I think the body should know on record is that the request was not an accurate request. A proper and accurate AGO request re constitutionality should have been requested, we should have requested a complete constitutional analysis under both federal and state constitutions. Although there may be plausible arguments as to why LB 861 or LB 48 today might violate the First Amendment or Article III, Section 18, and even though a host of laws have been held unconstitutional under the broad face of the commerce clause, it is simply not an accurate analysis of

constitutionality if the request is this limited as it was last year, and may I remind, there has not been a request this year on the broad base state and federal constitutionality of taking a industry and regulating and stopping a market activity of which it is a legal product to sell and not doing it on any...to any other corporation or company. That has not been done until this morning of which I've asked the Attorney General's Office to look at this situation. What I am going to ask the body to do, in all deference I am not going to continue with my indefinite postpone motion. I will withdraw it at some point this morning. I am not going to stop a vote and try to amend and amend and take the body's time one further day in trying to keep the bill on General File. What I will be asking the body to consider is to not to advance, not to kill the bill, do not...I'm not asking anyone to vote against and kill LB 48. What I am asking the body to do is not to advance the bill to Select File and in my hopes we have the following situation. We have an industry that is bending over backwards and going further than they've ever gone before in trying to negotiate a good compromise and we have another side that is simply refusing to do so. And what I'm afraid of is we're going to lose out in the long run to make some good, solid contributions and gains, we're going to lose that. I would like to be able to have some time to get these two parties together to see if they can work out a reasonable and, in fact, positive steps in order to really do something to stop oral cancer in this particular society. May I point out the body again that LB 48 will not stop anyone from chewing tobacco. LB 48 will not stop our young from chewing tobacco. We have done nothing with LB 48 except take a small step what we are able to get the industry to do and to give and to give and take in a negotiated environment is far greater and better for what our society needs at this point than what LB 48 will do. I would like some time to be able to do that. I would also tell the body that if getting the two sides together, and I'll be quite honest with you, I've approached the introducer of the bill and in typical fashion we have simply refused to do anything along this line and I don't blame Senator Dierks for doing that. I suspect I may be doing the same if I were in his position, but nonetheless, an intransigent position of, no, we will not try to do anything that might improve the bill and that is discouraging. I would give this body my certain word and I think I could speak for the others that would be against the bill in this point that if nothing could be worked out between now and some time next week when it would be coming up again on General File, I would not stop it from going

to Select File. I would not file any motions whatsoever. In fact, I will not stop it today from going on to Select File. I cannot speak for Select File, however. I would hope that the body would take some time and say the issue has gotten a little out of line; let's not pass the bill on to Select File yet; let's keep it alive; let's don't kill it and let's see if we can get these two groups together to really create a bill and a law that can really do something to help stop the nicotine addiction that can come with smokeless tobacco so that not only Senator Nelson and her good intention is going to be met, not only are my good intentions going to be met and that both...those both are to stop people from using smokeless tobacco, but we can also make some positive steps in the laws that we have in this state to truly do something that is beneficial for the kids, children, and adults...

PRESIDENT: One minute.

SENATOR BERNARD-STEVENS: ...for the State of Nebraska. So I am asking people after I withdraw my motion, which I will do so at a later time, I'm asking people to seriously consider not voting for the advancement, you don't have to vote nay, you can simply not vote so we don't have the votes for advancement so we can force, basically, both sides to sit down and see if we can work out something that truly is a workable, beneficial thing for all people. And I think I have enough integrity in the body to know that I don't need to say that you can trust me to do that because I give you my word that is exactly what we want to do. And I thank the President and the body.

PRESIDENT: Thank you. Senator Nelson is next followed by Senator Dierks and Senator Wesely. Senator Nelson, please.

SENATOR NELSON: Mr. Speaker, as you might know, I'm very much against indefinitely postponement. Let's move along on the bill. Every tactic possible has been tried. I have never seen the lobbying...well, maybe a couple instances, down here in four years' time that has taken place and the facts that are twisted and stirred around as on this particular bill. I don't blame the tobacco industry. That is their industry like each and every one of us have our own particular interests. But, again, I want to call to your attention in the very minimum, when we talk about it ridiculous, we have gotten to a ridiculous situation on this bill. For four years I have heard, give me, yes, I'll work with you, I'll do anything, I will do this, I

will do that and it has gone on for four full years. We're going on to the fifth year. Many, many schools are wise today. They are banning smoking at school. What do the kids do? They pick up this habit. It has gotten worse and worse in the last four years. I guess I have to reiterate, Nancy Osborne, Tom Osborne wanted to come in both years and testify on this bill. He did not have time. His wife came in, very, very well. She says, I absolutely cannot understand that legislative body down there giving in to a cause like this that is doing so much harm, so much concern to our people and to the kids and then they buckle in to the tobacco industry. I cannot understand it. You should have heard Steve Johnson, the Nebraska Coaches Association, the same thing right down the line. If any of you look at the bill as Senator Dierks alluded to, look at the supporters of this legislation, then go down to look at the opponents. Just look at the list, if it means anything to you. I have a little problem. Senator Lynch, he is very much for the helmet law and worked hard not to have it applied to the 18-year-olds. Here we are, we're back here then...it's okay on this. I don't see a lot of difference, there is a difference, and I supported the helmet law 100 percent. But all I am saying is that they have not done a thing, it has all been promises. We went through the constitutionality of it. Minnesota has this same law and it's just another way to try to trick you in to listening and try to trick you in to, again, killing the bill. And, with that, I hope that you vote against the indefinitely postpone. One other thing that I want to mention, too, is in the testimony it was brought out to us, a 1980 almanac, Douglas County was one of the worst counties in the United States on smokeless tobacco, chewing the smokeless tobacco, and the incidents of oral cancer. I think that we've heard enough on this bill. We've tied the body up parts of three days now and if we let this happen to very many bills we're not going to get too many out today, so I hope you vote to move the bill to not to postpone the bill.

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

SENATOR DIERKS: Thank you, Mr. President and members of the body. I, of course, oppose the IPP motion. The game continues to be played. We are still opting to waste time and throw doubts, put up a smoke screen, if you pardon my pun. Senator Bernard-Stevens says that the issue has gotten out of line. That could very well be. If it got out of line and it wasn't

because of anything that I did, I'll assure you. It's all because of the efforts of the tobacco lobby and I take serious objection to that because like I said to begin with, this thing is strictly an issue of the health of our youth and versus the greed of the industry. And, to me, I still feel that we have one issue at hand and we need to take this issue to the vote and find out just exactly where our support is. The...it was said that Senator Bernard-Stevens had requested a broad opinion from the Attorney General and then he in the same voice said he had a narrow opinion requested from the Attorney General and I'm kind of wondering what the difference is. We had an Attorney General's Opinion that said everything was just fine. I think maybe, again, it's just more smoke screen and I'd like to urge that we not let ourselves get involved with the cloudiness of the issue and keep in mind that what we're trying to do is prevent the addiction of our youth, the cancer causing problems that our youth can get into, their health in general, the health that can be destroyed with heart problems, with circulatory problems, with lung cancer, the immature death of the people of our citizenry. I'd like to, at this time, give the rest of my time to Senator Wesely.

PRESIDENT: Senator Wesely, you have almost three minutes.

SENATOR WESELY: Thank you, Mr. President, members, just in two seconds, Senator Bernard-Stevens talked about an AG Opinion request to clarify the constitutional questions. There was a request last year on a similar bill. The request was returned with an AG Opinion saying there is no constitutional problem here. That was followed up by the committee when we had this legislation. The same issue was raised in the hearing. I requested on behalf of the committee an Attorney General's Opinion. It is not yet back. It should be back within the week. I'm talking about next week sometime. I don't anticipate any change in their attitude that there is no problem constitutionally with this bill. It's another issue being raised but, frankly, I don't think it's a legitimate issue. We'll see. If the Attorney General comes back and has a different version of the problem, you know, we'll take a look at it but for...Senator Bernard-Stevens talking about making this request and having you hold up until we hear back, there is no need to do that. We've already made the request, they are already looking at it. We'll hear back in time for discussion on Select File to know how the Attorney General feels about this issue. I don't think that is an issue that ought to persuade

you one way or the other at this time.

PRESIDENT: Thank you. Senator Wesely, you're up now on your own time followed by Senator Pirsch, Senator Schmit, Senator Lynch. Senator Wesely.

SENATOR WESELY: Question.

PRESIDENT: The question has been called. Do I see five hands? One, two, three, four, five. I do. The question is, shall debate cease? All those in favor vote aye, opposed nay. We're voting to cease debate. If you care to vote, please do so. Have you all voted that care to? Record, Mr. Clerk.

CLERK: 24 ayes, 10 nays to cease debate, Mr. President.

PRESIDENT: We'll not cease debate. Senator Pirsch, you're up next followed by Senator Schmit and Senator Lynch.

SENATOR PIRSCH: Thank you, Mr. President. I haven't spoken on this issue and I feel like I need to explain, perhaps, my position in my votes on this bill. I did support the Bernard-Stevens amendments because I felt that in tightening the criminal provision and putting in purchase and possess, that we were indeed making it stiffer and perhaps more effective. I do not, however, want to see LB 48 indefinitely postponed and, in fact, I'm at the point now where I would like to see it go on to Select File and at that point perhaps there can be some amendments that can be agreed upon by both sides, but it might be one of those issues that...and there is a hidden agenda also that I'm not aware of, that can be worked out on Select. But we've spent three days now on LB 48 and I really think that is too much time to spend on it, but I do not want to indefinitely postpone it. I think we should advance it and then bring amendments on Select. Thank you.

PRESIDENT: Thank you, Senator Pirsch. Senator Schmit, followed by Senator Lynch, then Senator Conway.

SENATOR SCHMIT: Mr. President and members, I'd like to ask Senator Wesely a question if he'd yield, please.

PRESIDENT: Senator Wesely, please, would you respond?

SENATOR WESELY: Certainly.

SENATOR SCHMIT: Again, Senator Wesely, I'm not familiar with the bill, but does the bill do anything other than to prohibit the distribution of samples of smokeless tobacco between adults? Does it do any more than that?

SENATOR WESELY: Right now you're not supposed to distribute to minors or, you know, free or samplings.

SENATOR SCHMIT: I know.

SENATOR WESELY: So really at this point, the bill would stop the free distribution, period, to adults, legally, but, you know, illegally there is some distribution going on now to minors.

SENATOR SCHMIT: Well if it is being done illegally now, it can be done illegally in the future also, right? But it is illegal now to distribute it to minors, is that right?

SENATOR WESELY: Right. It's in the bill if you look later on in the sections...you aren't supposed to sell or distribute, I mean...

SENATOR SCHMIT: So then what the bill does now is it says you cannot distribute smokeless tobacco to adults, samples?

SENATOR WESELY: Right, to adults, to anybody.

SENATOR SCHMIT: Is it legal to distribute samples of cigarettes to adults?

SENATOR WESELY: I am sure it is, yes.

SENATOR SCHMIT: Is it legal to distribute samples of cigars, God forbid, to adults?

SENATOR WESELY: I believe so. I think you've gotten a few. (laughter)

SENATOR SCHMIT: I've got one right now, Senator. I guess my question is then, what is the difference between banning the distribution of one form of tobacco as a sample as opposed to another? If you could answer that question for me, please.

SENATOR WESELY: It is a good question and a legitimate one, Senator Schmit. I think perhaps because of the appeal of smokeless tobacco to our youth, that makes it especially of concern and the fact that the distribution has ended up going to some youth even though it is not supposed to that has led to this bill.

SENATOR SCHMIT: Then if we really want to try to limit the appeal of smokeless tobacco to kids, maybe we ought to try to have the Congress prohibit the use of it by major league ballplayers because most of them have got a chaw of tobacco in their mouth when they are on the TV, right? Wasn't that a lot more appealing, do you suppose?

SENATOR WESELY: That's a problem.

SENATOR SCHMIT: You know, when I was a youngster which was quite a while back, a lot of the fellows on the threshing crew would chew tobacco. They had a chaw of tobacco like that, and one of my good friends one time a couple years older than me was going to be a big shot and so he asked for a chaw of tobacco and the hired man accommodated him. Well, first he got white and then he got green and then he vomited for about a day and a half. He's 63-years-old today and he's never touched tobacco since. It might be that there is something to be said for it, Senator, in that regard. But I think the principal point I want to make here is this, and that is that if you want to ban the distribution of samples of tobacco across-the-board, then you've got some legitimate reason for the bill, but to zero in on one kind as opposed to another doesn't really make any sense to me and I come back to what I have said earlier. Why is it that we always try to pick on one small portion of an industry, be it whether it is taxes, be it whether it is gambling, be it whether it is tobacco, whether it is alcohol, we pick on the...we're like chickens in the barnyard. We pick on the least likely one to fight back, the least capable one to fight back and we say, boy, we scored a big victory. There are many, many times as many kids out there puffing on cigarettes and I don't suppose any of them started just voluntarily, someone enticed them or gave them a sample or gave them a cigarette. If you want to go across the board, Senator, I'll support the bill, but I am fed up and I am opposed to this selective type of legislation which says we're going to single out the one who can't fight back the least...

PRESIDENT: One minute.

SENATOR SCHMIT: ...and we're going to make an example of that one. You know, if we were to do the same thing to cigarettes you're doing here, there would be an uproar and as I said earlier, probably some of it would come from state government because we use that revenue so dramatically here in state government. But, once again, for some unknown reason we decided that this is terrible and we're going to strike it from the record. I think it's wrong. I think that we ought to just stand up and be counted, let's take it all off and I'll support that. Let's ban the distribution of any free samples of tobacco, I'll support that, but I will not support one which is selective. Thank you.

PRESIDENT: Thank you. Senator Lynch, please, followed by Senator Conway, Senator Bernard-Stevens, Senator Moore, Senator Nelson, Senator Abboud, Senator Dierks, Senator Beck and Senator Wesely. Senator Lynch, please.

SENATOR LYNCH: Mr. President and members, all I'd like to say is I don't know if we should ever on this floor compare one concept that is included in a previous bill with this bill and vice versa. You know, if we wanted to turn this into kind of a Peyton Place argument I guess, we could look at senators who say this is life-saving but vote against pro-life issues. People that vote against motorcycle helmets, but support this because it saves lives and I don't know where you'd begin or where you'd end with that argument but nobody every gets anywhere with those things so that should not and isn't the issue and I don't think we should bring in any of those other so-called life saving issues into this one unless we've been completely consistent, including supporting Senator Chambers' abolition of the death penalty. If you want to get that far with it and carry it that far, which gets a little silly, doesn't it, after a while? So let's leave those issues out of it, first of all. Secondly, I was at the hearing where Senator Osborne's (sic) or Coach's Osborne's, I guess we could call him Senator, when Coach Osborne's wife did testify that she thought this was very important and should, in fact, be adopted. However, I asked her the question in the committee, what kind of a policy her husband, Coach Tom, had and his policy is that they show a picture, but then if you chew, that's okay. So the point is, and also I talked to some other coaches and they don't really have a policy. In other words, they don't want to make kids

responsible for their own actions. They don't want to say, yeah, this is life-threatening, if you chew you're off the team or you're suspended for a year; no, they don't want to do that, but they want the Legislature, and when she says, Coach Osborne's wife says, or anybody else says, the Legislature should be ashamed because they don't do this, shame on you. Look at your own self first. See how you've applied the same standards you expect us and other people to apply to other people, and if you don't apply it to yourself, don't talk to us about it. That kind of hypocrisy bothers me. Right now we have a policy in the state that it's against the law for them to give this to minors. We don't have in this state a law that prohibits...that penalizes kids who have smokeless tobacco. We have a law that says you can be fined and ticketed and cited if you have possession of alcohol or if you illegally have guns or if you're driving your car in a wrongful way, we have all kinds of things that apply to kids for that, but not for this. They say, we don't want to do that because we're only penalizing the kids. There again, I say there is an obvious inconsistency. It's a terrible habit. Everybody might agree to that, some maybe more than others. However, it seems to me that, you know, I have mixed emotions about indefinitely postponing because to prohibit, to make the law stronger and apply penalties, it would be fine with me if they give it to kids, and to make sure that where this product is distributed they take all precautions to make sure that it never happens that it gets to kids. But the best bill would be that we keep what we've got, we establish some penalties that make sense and we make sure the kids are also responsible. We had a couple amendments that tried to do that and for some reason they didn't want to even consider those. So maybe...I'm not sure what I'm going to do. I might vote against indefinitely postponing with the hope that the bill won't move today and with, in fact, the hope that the well-meaning people on both sides of this issue get together and maybe hopefully discuss some of the things I mentioned, overcoming the obvious hypocrisy that is developing now on the floor.

PRESIDENT: Thank you. Senator Conway, please, followed by Senator Bernard-Stevens.

SENATOR CONWAY: Thank you, Mr. President and members. I have not been up on this issue at all up until now and a couple of points that I think are very appropriate to consider, and I think that Senator David Bernard-Stevens has offered a very

appropriate opportunity for all of us to take on this particular issue. It seems as though it's literally gotten out of hand. As far as facts are concerned, I've heard people say this is literally the same law they have in Minnesota and yet I receive information that says the only law similar to this in the nation right now is the State of Utah. So the facts are being twisted and used in various fashions that make one question where this thing is really headed. I think David has made a legitimate argument in his discussions and in his offer that he made to the body and that offer being that let's not advance this bill at this point in time. Let's put some pressure on both sides, both the side that would like to see this particular bill literally die in one fashion or another. The other side that has been working on this, and I know Senator Nelson has worked on this for at least a couple of years and maybe three now. I think her concerns and Senator Dierks' concerns are very legitimate, that there are health problems, there are situations where our youth are being involved. But by the same token, does this particular statute, this particular bill as it is written, really going to accomplish anything or is it going to be somewhat of a bogus attempt to make it look like we did something when, in fact, we haven't done anything? If we want to follow up on Senator Lynch's points, making the fact that we really haven't accomplished anything. It's somewhat ludicrous as we approach this particular attempt in technique. I think that if we did not advance this bill, and, again, I'm not raising to support the indefinite postponement, I would like to see us follow up on Senator Bernard-Stevens' advice, back off the bill, let it set there for a little bit, bring both sides together, give both sides an opportunity to give some serious thought to what would be the most appropriate technique. As we know, that most controlled substance we have in the state, being alcohol, does not have a proviso in it that does not allow a sample or a reduced price or discounted technique for their promotion and advertising. We do not apply this to any other thing. We're simply using it against the smokeless tobacco category. The thing has almost come up at a level of a witch hunt. Gee, we're going to accomplish something when, in fact, we really have not done a lot of things that we thought we were going to accomplish. Simply taking this particular technique out of the process is just not going to accomplish the concern we have for the health, the concern we have for the youth, the concern we have...if, in fact, all of the arguments that are made for how terrible this product is were legitimate, then I would say that Senator Dierks and Senator Nelson should be pushing a complete

abolishment of this particular product, but instead, they have focused on a way that it's only simply by virtue of a specific technique of promotion and I think by virtue of that particular technique some work needs to be done on this statute so that we spend more time developing a statute that we can all be proud of instead of something that seems to be divisive in the body more than anything else. If I have any remaining time I would like to offer it to Senator Scott Moore.

PRESIDENT: You have a little over a minute.

SENATOR MOORE: Yes, it won't take me just a minute to say what I have to say and I'm glad that a few minutes have passed since I heard Senator Nelson speak the first time when I was...my blood pressure got a little high, but the one thing I'm a little upset about, Senator Nelson, is you're accusing those of us who are voting against this bill of caving in to the lobby when all the lobbying I've gotten on this bill has been from the self-righteous people who think that if you pass this bill, you'll solve all the problems with the tobacco industry in the world and that is not the case. I mean I've had a dentist call me and you've talked about Nancy Osborne. I've had the coaches call me, that's the people I'm hearing from. The tobacco industry has never talked to me on this bill and part of the reason they have is they know I'm fairly consistent. When I talk about I want government off my back, I don't pick and choose when I want it on my back. I think that is the way it should be and with that, that's probably all I'd better say right now.

PRESIDENT: Thank you. Senator Bernard-Stevens, followed by Senator Moore.

SENATOR BERNARD-STEVENS: Mr. President, I withdraw the IPP motion at this particular time.

PRESIDENT: It is withdrawn. Do you have anything else on the bill, Mr. Clerk?

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

PRESIDENT: I have several lights on. We're back on the bill. Please let me know if you wish to talk about the advancement of the bill. Senator Bernard-Stevens, you're up first.

SENATOR BERNARD-STEVENS: Just a brief comment and we'll move on to the other business we have on General File that has been needing to get...to be gotten to for two days now. All I'm asking the body to do is I do not want this bill killed because we have a chance now to really do something for the citizenry of this state in regards to cancer, oral cancer and tobacco products. All I'm asking to do, and members of this body who have been here for quite a while I think understands how this works. Sometimes to get two groups together, and, again, I asked Senator Dierks very politely today if he would hold off until Wednesday of next week so that we'd have a chance to get the two groups together and he simply refused, saying I don't want to talk, I don't want to do that. Even if it was to the point where we could come to a better bill that would really help the youth of our state. There is an intransigence, they do not want to talk. What I'm asking the body to do is not to vote against the bill. Maybe you just don't want to vote on this particular one so we don't have 25 votes to advance. That makes both sides a little nervous and it puts a little hammer out there saying that you'd better talk, the body is tired of this nonsense of both these groups going at it at this particular bill. We want you to get together and come up with something that can really be effective that both can agree to. I give you my word, as it comes up on General File next, if it does not advance today, that I will not fight it on General File. I will let it go its natural course. I cannot say what would happen on Select File, but I think it is a reasonable approach to try to get this issue solved so that we can do something for cancer and for oral cancer and our children and also the adults. That is the intent, that is from me from my heart saying that's what I want to do, if we can do so. And I ask the body's indulgence to allow this process to truly work to see what we can come up with. Thank you, Mr. President.

PRESIDENT: Thank you. Senator Nelson, followed by Senator Abboud.

SENATOR NELSON: I shall make this as brief as I possibly can. I, too, am getting very tired of this and I think it's senseless to be on one bill like this this long. May I relate to you, I think I was questioned on the Minnesota law. The promotion or distribution and it is in their Section 325F.77, subsection 3, Legislative Intent: Because the state prohibits both the use of tobacco products by minors, and the furnishing of tobacco products to minors, and because of the enforcement of an

age-related restriction on the promotional distribution of tobacco products is impractical and ineffective, it is the intent of the Legislature to control the distribution of these products and discourage illegal activity by prohibiting all promotional distribution, except as allowed in this section. Prohibition: No person shall distribute smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products suitable for making smoking, except that single serving samples of tobacco may be distributed in tobacco stores. This is the Minnesota law, and I will give you the Utah if you want it. The only difference is, is in their subsection 4, Prohibition: No person shall distribute smokeless tobacco products or cigarettes, cigars, pipe tobacco, or other tobacco products suitable for smoking, except that single serving samples of tobacco may be distributed in tobacco stores, and ours is different in regards to the smokeless tobacco. With that, I hope that you don't...you advance the bill. We're playing games that I've never heard or seen here and move it on to Select File if that's what they want, but this is patterned after that law.

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

ASSISTANT CLERK: 27 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Dierks, would you like to close on the advancement of the bill?

SENATOR DIERKS: Yes, Mr. President, members of the body, Senator Schmit is gone. I believe he made the suggestion in some of his rhetoric this morning that we were picking on the weakest or the people who can fight the least. I have a lot of problem with that. I don't gather that in my dealings with what has been going on here. I think that we have some facts. In fact, one is this legislation is substantially the same as that of Minnesota. It does ban the promotional distribution of tobacco products. With this legislation we do accomplish something and I have heard it said we accomplish nothing with it. We do accomplish something with this legislation. We actually stop the tobacco companies from distributing this product. It's just as simple as that. You can't argue with it.

The law says they can't do it. That's what the bill says they can't do and they will be subject to penalties by doing it. There is no cloudiness about that issue. It's all cut and dried. And as to Senator Schmit's request that we would run the entire gamut of cigarettes, tobacco, cigars, whatever, I'd be most willing to do that. As a matter of fact, that amendment came on here the other day and the reason we objected to that amendment is we knew that wouldn't fly at all. That was an amendment the tobacco industry brought to us. They wanted us to put that up here because they knew this body wouldn't accept it. I'm striking out for the smokeless tobacco ban this year. This is the thing that we really need to accomplish in this state. If we're going to send a message to the people, to the citizenry of Nebraska that we are interested in helping our citizens in helping to fight this addictive, cancer-causing product from being given promiscuously to anybody in this state, we've got to support this legislation. I have problems with the industry. Senator Moore has suggested that the tobacco lobby has worked relentlessly, but that he hasn't been contacted by them. I agree, they have been working relentlessly. Why they have skipped Senator Moore, I don't know. I don't think there are many people that they haven't skipped. And as far as them being the weakest link, there is absolutely no truth to that. They are one of the strongest lobbies we've ever run into. This activity in that Rotunda has been unbelievable the last two days. The bill is in excellent condition. It doesn't need negotiation. The bill is very simple, very straightforward. It says simply we are going to not allow these people to give this tobacco to our youth, to all of our citizens and I'd like to dwell on that point a minute because everybody is saying, well, you're talking about the youth all the time, that you are banning this distribution to all citizens. I think that it is understood that when they distribute these products, their target is the youth of Nebraska. We know that it's not possible to control it by age. We know we can't control it by year 18 or year 21. That is in effect right now and it hasn't worked. If we can control it at all, it is going to have to be done by a total ban and these are the people we're really driving at. We're driving at the youth, the people who are one-time users and then become addicted.

PRESIDENT: One minute.

SENATOR DIERKS: I would just urge your support of this legislation. I think we owe it to the people of this state, we

owe it to the citizens, we owe it to the youth. We owe it to these people to help take away the temptations that allow these youth to become addicted to a terrible habit, one that causes cancer, there is no question. It causes illness, it causes sickness, it causes addiction, there is no question. Please support this legislation. Thank you.

PRESIDENT: You've heard the closing. The question is the advancement of LB 48 to E & R Initial. All those in favor vote aye...a call of the house has been called for. The question at the moment then is, shall the house go under call? All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 21 ayes, 3 nays to go under call, Mr. President.

PRESIDENT: The house is under call. Will you please record your presence. Those who are not present, please return to the Legislative Chamber and return to your seats so that we may have your attendance recorded. Thank you. Please look up on the board to see if your light is burning, or illuminated I guess I should say. Senator Chambers, would you...Senator Chambers...thank you. Senator Pirsch, Senator Rod Johnson, Senator Landis. Senator Kristensen, would you push your green button, please. Oh, it is? It doesn't show on the board here, I'm sorry. Okay, we'll try to remember that. We're all here that have not been excused. The question is the advancement of the bill. A roll call vote. No, we have not had a roll call vote, okay. Senator Dierks. Okay. We will have a roll call vote requested by Senator Dierks and it will be in reverse order. Mr. Clerk.

CLERK: (Roll call vote taken. See pages 559-60 of the Legislative Journal.) 26 ayes, 12 nays, Mr. President, on the advancement of LB 48.

PRESIDENT: The bill advances. We'll move on to LB 231. The call is raised.

CLERK: Mr. President, LB 231 was a bill introduced by Senator Chizek. (Title read.) The bill was introduced on January 9, referred to the Health Committee, advanced to General File. I have committee amendments pending by the Health Committee, Mr. President.

PRESIDENT: Senator Wesely, do you want to take the committee

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us this morning as chaplain of the day, Pastor Wayne Hineman of the Rosemont Alliance, in Lincoln, Nebraska. Would you please rise for the morning prayer.

REVEREND HINEMAN: (Prayer offered.)

PRESIDENT: Thank you, Pastor Hineman. We appreciate your coming out on this cold morning to have our invocation. Thank you. Roll call, please.

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

PRESIDENT: Any corrections this morning?

CLERK: No corrections, Mr. President.

PRESIDENT: How about messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 48 and recommend that same be placed on Select File; LB 231 Select File with amendments, LB 273 Select File with amendments; LB 366 Select File, LB 56 Select File, LB 127 Select File, LB 167 Select File, LB 184 Select File with amendments, LB 185 Select File; all those signed by Senator Lindsay as Chair of the E & R Committee. (See pages 577-78 of the Legislative Journal.)

I have an Attorney General's Opinion addressed to Senator Haberman regarding LB 804. That will be inserted. (See pages 578-59.)

Gubernatorial appointment to the Power Review Board. That will be referred to Reference Committee. A report, Mr. President, from the Nebraska Energy Office required by statute. That will be on file in my office.

Mr. President, LR 22 is ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 22.

CLERK: That is all that I have at this time, Mr. President.

Legislative Journal.) 26 ayes, 14 nays, Mr. President, on the advancement of LB 116.

PRESIDENT: The bill advances. The call is raised. Mr. Clerk, for the record.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 342 and recommend that same be placed on Select File with E & R amendments and LB 344 Select File with E & R amendments. Those are signed by Senator Lindsay as Chair. (See pages 593-95 of the Legislative Journal.)

Education Committee reports LB 250 to General File with amendments. That is signed by Senator Withem. (See page 595 of the Legislative Journal.)

Health and Human Services reports LB 157 to General File, LB 360 General File, LB 520 General File. Those are signed by Senator Wesely as Chair. (See page 595 of the Legislative Journal.)

Government Committee reports LB 340 to General File with amendments attached. That is signed by Senator Baack as Chair. (See pages 595-97 of the Legislative Journal.)

New A bill, LB 92A by Senator Landis. (Read by title for the first time. See page 597 of the Legislative Journal.)

And, Mr. President, Senator Coordsen would like to add his name to LB 603 and to LB 289; Mr. President, Senator Smith to LB 325 and Senator Byars to LB 732. (See page 597 of the Legislative Journal.)

In addition to those items, Mr. President, I have a series of amendments to be printed to LB 48 from Senator Moore. (See pages 597-600 of the Legislative Journal.) And that is all that I have, Mr. President.

PRESIDENT: Senator Beck, would you like to say something to us?

SENATOR BECK: Yes, Mr. President, I would. I move that we adjourn until next Monday morning at nine o'clock and that is February 6.

PRESIDENT: Thank you. You've heard the motion. All in favor

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 209 as amended be advanced.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. May I introduce a guest, please, of Senator Hefner. We have Mr. Art Anderson of Bloomfield, Nebraska. Would you please stand, Mr. Anderson. Thank you. Mr. Clerk, anything for the record?

CLERK: Yes, Mr. President, thank you. Your Committee on Appropriations gives notice of hearing for March 7...I'm sorry, for February 24. That's signed by Senator Warner. A location change for Appropriations hearings on March 1, also offered by Senator Warner.

Mr. President, General Affairs Committee offers LB 703 to General File; LB 777 to General File; LB 780 to General File. Those are signed by Senator Smith as Chair of the Committee.

Agriculture Committee reports LB 37 to General File with amendments; LB 120 to General File with amendments. Those are signed by Senator Johnson as Chair. (See pages 678-79 of the Legislative Journal.)

Mr. President, your Committee on Banking, Commerce and Insurance whose Chair is Senator Landis reports LB 77 to General File with amendments; LB 311, General File with amendments; LB 350, General File with amendments; LB 598, General File with amendments; LB 692, General File with amendments, and LB 597, General File with amendments. Those are signed by Senator Landis as Chair. (See pages 679-82 of the Legislative Journal.)

Your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning as of 11:30 a.m. (Re: LB 57, LB 94, LB 97, LB 126, LB 133, LB 229, LB 230, LB 233, LB 251, LB 255, LB 295, LB 58, LB 70, LB 115, LB 142, LB 156, and LB 256.)

Mr. President, Senator Moore would like to print amendments to LB 48. (See page 682 of the Legislative Journal.)

And, Mr. President, Senator Weihing would like to add his name to LB 521 as co-introducer. That's all that I have, Mr. President.

is just a technical amendment that puts the original language back in. The way that it was drafted they found out that maybe a lawyer could read that the public power districts could cross the interstate with the ATVs and they did not want to do that. So it just puts the original section back in that they cannot cross the interstate with an ATV for the public power districts.

PRESIDENT: Any further discussion? If not, the question is the adoption of the Schellpeper amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Schellpeper's amendment to the bill.

PRESIDENT: The Schellpeper amendment is adopted.

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

PRESIDENT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that LB 114, as amended, be advanced to E & R.

PRESIDENT: You have heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 48.

CLERK: LB 48, the first order of business, Senator, I have no E & R. Senator Moore, I understand, Senator, you had 12 amendments. Well, first of all, Senator Moore, you had 12 amendments. Senator, I understand you wish to withdraw those.

PRESIDENT: They are withdrawn.

CLERK: Mr. President, in that event, Senator Moore would move to amend. Senator, I have AM0261 in front of me. (Read the Moore amendment as found on page 697 of the Legislative Journal.)

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Mr. President and members, we are back to that all-important, all-revolving issue of smokeless tobacco that so far has taken up a good deal of our time this session. As you could tell from what the Clerk just mentioned, I had filed

12 amendments to this bill to maybe just display my protest of some things that were going on in this bill. Hopefully, maybe we could sit down and start talking about the pros and cons and the middle ground on this bill in a rational way. Well, those...we have talked. It seems unfortunate we have not found any middle ground or any room to compromise on this bill. It is not my intent as at the beginning of every session I always introduce a cloture rule, it's not my intent to filibuster, and because of that I did withdraw those 12 amendments. I have three amendments that I'm going to offer probably and then we're going go back to the big amendment that Senator Bernard-Stevens is offering. The first amendment...and all three of these amendments are designed to kind of point out what I think are some very basic flaws in LB 48 as written, and try and point out some of the...I hesitate to use the word, but in many ways maybe the hypocrisy of the body on this issue. You look at this, do you really want to do what LB 48 is trying to do? And those are the things I'm trying to point out. The first amendment which, unfortunately, was not one of the 12 that I printed, this amendment quite simply, if you want to grab your bill, on page 2...I've got to find it now, on page 2, line 13, subsection (1), where it says, distribute shall mean give smokeless tobacco products to the general public at no cost or a nominal cost. My language is strictly simply strike the words "nominal cost" there. The reason with that being is that I don't know...let's say you can't give them away free but how are you ever going to define what a nominal cost is? How are you going to say if there is a sale on chew, or a sale on snuff, are you going to come in and say that that's a nominal cost less than what the market value is? I don't think you really want the words "nominal cost" in there. Obviously, the reason I introduced this amendment is, as I mentioned last week when I stood up, it seems like there's a variety of people in this body that sit here and say, we want government off our backs, we don't want government involved in business, but all of a sudden you turn around and say, we want government on our backs in a big way under this bill and that's...not only that, we want to directly control business on the price that...on the price that you offer for a can of smokeless tobacco. I just don't think there's good people philosophically that are voting for this bill that really want to do that and I want to point it out. Now some of the people have asked me, why did I file 12 amendments to the bill.. to this bill? Why did I get so upset and why does LB 48 make any difference to me whatsoever? Well, the reason is and it's kind of like a bill we had last year. I sat here on

General File debate, I sat here with my mind, basically, I mean, basically, I was against the bill for principle reasons but I really wasn't that fired up about it until I had the time to speak with some representatives from the dental association in the back that, basically, just were so insulted by the fact that there may be another side to the story. I mean...and then when a variety of senators supporting this bill, basically, labeled all of us that had a different opinion as immoral, bought and paid for by the tobacco industry, tools of John DeCamp, another lobbyist, I mean, I just started to get a little bit bothered by the...I used the word self-righteous then and I guess in some ways I hesitate to use that word again but the problem I have, in this body nothing, very few things are black and white. There are two sides to every story and when people on this...in this body get to the point where they feel so strongly, feel so strongly and so sincerely that they just refuse to look at the other side and throw a variety of stones at people that are offering a viable amendment and a viable alternative and start insulting those people, that insults me as a student of this body for a number of years and I guess I got upset and I said some things I probably shouldn't have said a week ago. But the reason I filed those 12 amendments and I'm filing these amendments today is that there is a middle ground in this amendment, there is some things we can do that will accomplish the things that Senator Dierks and Senator Nelson want to do, maybe not quite to the same degree, but if you really want to attack minors, I think the Bernard-Stevens amendment which is going to be offered in a little bit, you can do that without penalizing some 45-year old guy that has a can of Skoal worn through his back pocket, that attends a boat, sports and travel show down at Pershing Auditorium, why is he...why are you going to deny him the opportunity to have a free sample when he attends that show at Pershing Auditorium? I think that's going a little bit too far. And for those of you that talk about...talk about don't want government involved in a lot of things, you're going to say that that guy that's 45 years old, is an adult, can't have that right? I mean, that's fine, if you want to do that, that's fine, but I don't think I want to do that. I do want to attack minors. That's why I have not voted for the kill motion on this bill. I have...I voted to...I did not vote to advance the bill but there is a middle ground. I do not want this bill to die. I want to use this opportunity, since the tobacco companies are finally in the place, the bill is moving, Senator Dierks has got the tobacco companies' attention, I think we all do, we ought to use this opportunity

to make a good bill that really affects the minors. Now, this amendment, as I have said, is dealing with nominal cost. I would like to discuss that a little bit. I really...the point I want to make is that if you want to affect the minors, let's do that, but don't adopt some bill that doesn't really do that much for the minors, does do something against the tobacco companies but just so you can go home and beat your chest and say, look what we did to stamp out snuff. If you pass this bill, you have not done a whole lot and I don't think we deserve to...I mean, I don't think that we should pass this bill in its present form and then pat ourselves on the back saying we have done great things when we haven't done that much. I think there's some other things that we can do that we can do better. With that, that's my opening on my amendment.

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you. Discussion on the Moore amendment. Senator Landis. Thank you. Senator Dierks, followed by Senator Bernard-Stevens.

SENATOR DIERKS: Mr. Speaker and members of the body, I guess maybe I should respond to that amendment. If Senator Moore wants to call me self-righteous, I guess that's his privilege and I don't mind that label because I think that the bill sometimes should demand some self-righteousness. The motion is not...is not acceptable if...you know, a judge will decide whether we can have nominal fees or not and you could allow...if you strike the nominal fee thing, you could allow someone to sell the stuff for a penny a can. You've eliminated the...you've eliminated the purpose of the bill, so it has no merit. I just oppose the amendment completely. And I...if I understood Senator Moore right, he said that I was attacking minors and he didn't want to...or he wanted to attack minors and that's just the exact opposite of what this bill does. It does not attack minors. It's there to offer some support to the youth of our state. And I don't really believe that the bill was in danger of dying and he said he was trying to keep it from dying. I think the bill was very healthy and moving along very well. I would like to remind the body that it is not me who is tying up this legislation. The legislation is sailing along just fine. The proponents of the amendments are the ones that are tying up this legislation and tying up this legislative body. You know, you need to remember some of the facts about what we're doing here. Our purpose is to help the youth of this

state, and when people tell me that, well, why don't we put an age limit on of 18 years or 21 years? We already have that, you know, that's already in place. I don't...I don't believe that it really matters whether you have it on 18 years, 21 years or 40 years, that it's not enforceable. It hasn't been in the past and it won't be now. If we put a total ban on the giveaway of this product, then it's enforceable. This bill, regardless of what you've heard, is exactly the way that it should be. It needs no amendments and I want you to know right now I'm going to oppose all amendments because they do nothing but gut the bill in some senses and in other senses they take the penalties away from the tobacco industry and put them on the youth of our state. I think that is an attack on our youth and I don't believe we need to put up with that. The lobby effort on this bill has been somewhat amazing to me. I...like Senator Moore said, I got the attention of the tobacco industry and maybe that's well. I guess maybe I don't mind that. Sometimes I think that it's been overdone. I appreciate the work that's been done out there. I appreciate especially the work that's been done on my behalf on this bill. And, at this time, I'm just going to oppose this amendment. Thank you.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Mr. President, I yield my time to Senator Moore so we can expedite matters a little faster this morning.

SPEAKER BARRETT: The Chair recognizes Senator Moore. The amendment offered by Senator Moore is withdrawn. Mr. Clerk.

CLERK: Mr. President, the next amendment I have is by Senator Moore. I have AM0315 in front of me, Senator. (The Moore amendment appears on page 697 of the Legislative Journal.)

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: I would like to ask unanimous consent to substitute Senator Bernard-Stevens' amendment for that amendment.

SPEAKER BARRETT: If there are no objections, are there objections? Seeing none, so be it.

CLERK: Mr. President, in that event, the amendment I have

before me is Senator Bernard-Stevens'. I have AM0274 in front of me, Senator. (The Bernard-Stevens amendment appears on pages 697-700 of the Legislative Journal.)

SPEAKER BARRETT: Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, and members of the body, I think we're well familiar with LB 48 and I want you to know that it's not my intention nor has it been my intention to stall the bill to keep the body from ever voting on it. In fact, one of the things that I did early this week was to ask Senator Dierks and Senator Barrett, Senator Moore and myself to meet in the Speaker's office to see if we can find a common ground and a way to help the bill move. And I think we did not find the common ground because, as Senator Dierks says, he will not agree to any amendment, regardless of the content, to his bill. But we did find common ground on how to make the bill move and I think this is the important amendment as to whether or not the bill...which form the bill will take. And I suspect the bill will move rather quickly after this amendment is either agreed to or not agreed to, depending on the will of the body. Members of the Legislature, I want to take just a second and be as unemotional as I can and talk to you about my amendment on a handout that was given to you. Hopefully, I have talked with you about it, and if not, the handout will be on your desk on Points to Ponder, LB 48. First of all, let me tell you an interesting process that has developed. If you love your grandmother, love your children, hate disease and love this country, you should support LB 48, we have been told, because it is the good side, it's the good force. If you hate your grandmother, want your children to die of disease and do not support the country, you want to support the Bernard-Stevens amendment because he is the spokesman for the evil empire, the evil forces out there, that which causes addiction and death of society and that is the choice we have been given. An interesting thing happened on the way to the Legislature this morning. Last night, for the first time, I got a chance to speak with one of the leadership of the Nebraska Dental Association up in my office at ten-thirty in the evening. And the most fascinating thing happened to me that evening, last night, because for the first time the gentleman and I went through my amendment and for the first time he saw my amendment and said, I did not realize that's what your amendment did. I assumed that since the tobacco industry was somewhat behind it, it was evil, it was possessed, it was malignant, it was going to

die, we had to stomp it and kill it. An amazing thing when the major group that is supporting good has not even had the courtesy to look at the amendment and say whether it was good or not, and I find that quirk in the process disturbing. LB 48, on my amendment, colleagues, the handout tries to tell you I cannot argue good versus bad on the floor. If you have the mind-set that you want to do good, thus support the amendment and you want not to do evil and you support not the Senator Bernard-Stevens amendment, I cannot fight that with words on the floor. I hope that reason, logic and facts put in front of you that this body will do what it usually does and that is do the right thing. LB 48, the amendment that we are now talking about does the following. On my handout, if you would just take a moment of your time, there are six points that we have been consistently talking to that the Dental Association and Senator Dierks and Senator Nelson and I have been trying to improve upon to stop cancer and to stop our youth from being addicted to the product. I would like to tell you and go through what LB 48 does and what my amendment does so you can see a clear depiction of the two. Number one, according to Nebraska law, sampling is illegal in tobacco products to minors. Neither my amendment nor the bill would change that. It's going to be illegal. Point two, if a minor illegally receives a sample, he or she can be charged with a Class V misdemeanor. The law also says, by the way, that if the minor charged with the illegal substance of getting a sample, if you wish, the minor may have the charges dropped if they say who the person was that gave them the substance. Cap's bill, LB 48, would not change that. My bill would change it in a very minor way. We would still keep it a Class V misdemeanor but we would say, boys and girls, I'm sorry, we must take some responsibilities as well. On alcohol, we have MIP charges, we have penalties against alcohol. On drugs, we have laws too. We are not, in my amendment, going to drop the charges if they tell us who, in fact, gave it to them. We will, at least, make them responsible up to the Class V misdemeanor for their actions and children need to learn to be responsible for their actions in a way that is not harsh. A Class V misdemeanor is not overly harsh. It's the least penalty we can do. And you certainly do not have to have the maximum. Point three, what about the person that deals? What about the person who actually gave the illegal substance? It's a Class III misdemeanor right now. Cap's bill will not change that. I will add one thing. Not only is it a Class III misdemeanor but, as it is now, if I gave 15 illegal samples out and I was caught, I would be charged with one Class III misdemeanor. Under the

bill...the amendment that I will put in that is before us now, you will be having to pay a fine for each illegal sample that was given. If I give out 50 illegal samples and I'm charged with a Class III misdemeanor, the fine that is given will be multiplied by the number of samples given that could be documented in the court of law, it would be whatever the amount times 50 or a 100 or 15 or six. And it puts a tremendous deterrent, financially, on the person who would, in fact, give a product of that nature to our young. Point four, and one of the most important points, members of the Legislature, right now if a child goes into a store and says, I would like to buy, please, some Copenhagen. And the store manager laughs and says, son, I think you are a little young for that, it's against the law. And he says, I know it is but my dad's right over there, I would like to buy it for my dad. He told me to come in and get it for him. You know what, members of the body, that can happen. And with Cap's bill that can still happen because it is not illegal in this state for a minor to purchase or to possess tobacco products. It is only illegal to use it. Let me give you another example. I am a school teacher and proud of it, but when you are in the schools, there is smoke everywhere at places and times on the streets...or on the school grounds and the Dental Association, in a recent legislative memo, said go by your next junior high that you go and look at all the tobacco and we have to stop that, support 48. And, my friends, LB 48 does nothing to stop that because the only thing that teachers can do is hide in the bushes, and I am not exaggerating, Senator Crosby, you know this is true, you have to hide in the bushes or sneak around in the lavatory, waiting to see that puff of smoke arise so you can say, aha, I caught you, you're using it, come with me, Johnny; come with me, Mary Beth, we're going downstairs to the principal's office. My amendment...excuse me, Cap's bill, unfortunately, does not change that at all. My amendment would. I tell the Nebraska Dental Association, you want to get into the schools, you want to help our minors, then support, for gosh sakes, my amendment because now if a kid is going down with a can of Skoal in his back pocket in the schools, you can't do anything because it is not against the law to possess.

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: With my amendment, it will not only be against the law for them to purchase it in a store so they can't buy it for their dad, they can't even have it on their body because the substance is so abusive and addictive we don't want

it on their bodies and we will have a statute that can help the schools. If they choose to enforce it, it will give them something to choose to do. And, my friends, that is something that Cap's bill cannot and he says will not do because he will not agree to any amendments to his bill. My amendment will do that. I have one final thing to say in the 15 seconds I have and that's on couponing. Cap's bill will ban couponing because the Dental Association does not want people to write in and get free coupons, free samples in the mail. My amendment, ladies and gentlemen, please understand, my amendment will make it illegal ever again in this state for any person ever to receive a free sample of tobacco or smokeless tobacco in the mail...

SPEAKER BARRETT: Time has expired.

SENATOR BERNARD-STEVENS: ...adult or minors they will not. And I thank you, Mr. President.

SPEAKER BARRETT: Thank you. Discussion on the amendment. Senator Landis, followed by Senators Moore, Dierks and Withem.

SENATOR LANDIS: Mr. Speaker and members of the Legislature, I have been silent on this issue, listening to both sides, reading the amendments, doing my best to pick through them, and it's been like dancing in a minefield to try to do that. A couple of first comments, number one, I think the withdrawal of the 12 amendments showed good judgment. I want to thank Senator Moore for doing that. Number two, I do think that there's been a good faith attempt to try to identify middle ground. I do think there's been an attempt to try to make an accommodation to legitimate interests and that deserves to be thanked. And I think David Bernard-Stevens deserves that. Number three, I have an admonition to Cap Dierks and that is that the language in the amendments which outlaw the purchase, by kids, of tobacco products is a good piece of work. If Cap Dierks wants to get at this thing, he ought to reach in there to the DBS amendment and grab that section out and take it. He ought to also reach in there and grab the amendment section that has to do with the sale or the sampling to kids and put that in his bill as well, because that language is better than existing law which, at this point, Cap is silent on. Those out of the way, how do I feel about the amendment versus 48? And this is my thought. We can try to achieve a system, as David has tried to do here, that stops the samples for kids and allows it for adults. His argument is, let's get to the evil that we know is there, let's

keep it free for those situations where we think it should be legitimate. My difficulty is this, that a mechanism that's structured that way is unlikely to be successful. The monitoring of the coupons, the monitoring of the two-block limit around youth club houses and schools, come on, who's going to do that? That's not really an effective scheme for organization. The monitoring of the samples, it's left at this point to catching them after it's been done and using the criminal system to punish through sanctions. I think that's a "cows out of the barn" kind of approach. It seems to me...thank you, "horses out of the barn", Frank, I appreciate the agricultural correction on your part. In other words, it's a post hoc attempt to sanction wrongs once they've occurred and the problem is that the system constructs a pretty involved series of wrongs that somebody is going to have to sit out there and monitor to catch the mistakes that are made and it's just bloody unlikely. It's just not going to happen. It's so complex and so structured that it really doesn't work. What you can't do, I don't think, is construct a bill that gets at the evil of youth and only youth and have much chance of success at keeping free samples out of their hands. So the problem becomes, do we have a bill that's too weak because it's post hoc, it uses criminal sanctions, it involves a lot of oversight and structure that I don't think is going to really be there, which is the amendment, or one that, frankly, is too strong, covers the evil but also transactions you and I might agree make at least some amount of sense and that is that adults be free to receive free samples? Under normal circumstances, in the transactions of goods I would pick the former, pick one that's too weak, identify the evil, catch the evil, punish the evil and the evil only. But in the area of alcohol and in the area of tobacco, I think it's fair to reverse that presumption, and it's fair to say if it takes banning free samples for adults to get a legitimate system that will ban free samples for kids, I have to take a few of the doves with the crows, I will outlaw both of them at the same time. If I have to choose, I want a workable system that stops free samples rather than the complex structure in the DBS amendment. Now, do we allow promotions to be regulated in this fashion? Sure, we do. Can't advertise liquor on TV. They can't...I mean, they can, but they can't drink it. We have warnings on packages. We don't allow, for example, "freefers" in bars anymore so that you can get actually alcohol at a nominal rate to entice people in.

SPEAKER BARRETT: Thirty seconds.

SENATOR LANDIS: We can regulate promotion. I think David raises the fair question, you're getting more than the evil that you have claimed for in the bill and I say, you're right, we are but that's the only way, realistically, in my mind, to stop free samples for kids. And, unfortunately, we're cutting out for the doves as well as the crows here but it's got to be done to have a workable system to ban free sampling.

SPEAKER BARRETT: Time has expired.

SENATOR LANDIS: I don't think this involved structure in the amendment is a workable system to stop free samples for kids. So I'm going to vote against the amendment and for the bill.

SPEAKER BARRETT: Thank you. Senator Moore, followed by Senators Dierks, Withem and Conway.

SENATOR MOORE: I move we adjourn until Monday morning, February 13th.

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

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 56 and find the same correctly engrossed; LB 127; LB 167; LB 184; LB 185; LB 231; LB 366, all correctly engrossed.

Revenue Committee reports LB 426 to General File with amendments; LB 643, General File with amendments and LB 361, General File with amendments. (See pages 700-03 of the Legislative Journal.)

Senator Wesely has amendments to LB 208 to be printed. (See page 704 of the Legislative Journal.)

Series of adds, Senator Haberman to LB 760; Senator Hefner to LB 714; and Senator Hefner to LR 2.

Mr. President, unanimous consent that Banking Committee will change their hearing room for next Monday's hearing to the East Chamber. That's all that I have.

SPEAKER BARRETT: Thank you. Before calling a vote on the motion to adjourn, ladies and gentlemen, the Chair wants to exercise the privilege of announcing the fact that Ed Howard of

PRESIDENT: LB 321 passes. LB 322.

ASSISTANT CLERK: (Read LB 322 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 322 pass? All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote. See page 717 of the Legislative Journal.) The vote is 39 ayes, 0 nays, 10 excused and not voting, Mr. President.

PRESIDENT: LB 322 passes. LB 353.

ASSISTANT CLERK: (Read LB 353 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 353 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote. See page 718 of the Legislative Journal.) The vote is 38 ayes, 0 nays, 1 present and not voting, 10 excused and not voting, Mr. President.

PRESIDENT: LB 353 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 43, LB 80, LB 82 with the emergency clause, LB 106, LB 113, LB 166 with the emergency clause, LB 171, LB 172, LB 194 with the emergency clause, LB 200, LB 296, LB 321, LB 322, and LB 353. We will move on to Select File, LB 48.

CLERK: Mr. President, LB 48 is on Select File. The body considered it briefly on Friday. At that time, Mr. President, Senator Bernard-Stevens had offered an amendment to the bill. The amendment is found on page 697 of the Journal.

PRESIDENT: Senator Bernard-Stevens, do you want to recall for us what your amendment is, please?

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members of the body. Briefly recall the amendment, and I'll be up front with the body. I'm having a little trouble, in my own mind,

whether I want to bring my amendment to a vote because I look at the people that are gone today, and of the 12 people, there are 7 people that were gone at the time that we'd be voting and have voted consistently in favor of the amendment. Since we were looking at very close votes either way on that, I suspect what I'm going to do is withdraw the amendment, let the bill move on to see if, in fact, there are 25 votes to move it on. I suspect there may or may not be 25 votes to move it on, and then of course put the body on notice that on Final Reading I will certainly be making a motion to send it back to Select File for the purpose of offering my amendment at some point. I don't see...I don't see it much benefit to the body to debate a long time on an amendment that most of the people that are in favor of the amendment are, in fact, gone. So I'd put the members on notice of my intention at this point. If I could have a Page, please. Members of the body, one of the things that you've had handed out to you is something I was aware of over the weekend that would be coming to this body, and that would be a handout passed out by Senator Dierks. And the handout would be talking about the process of which on college campuses the smokeless tobacco industry would hand out samples and try to get people addicted, if you wish, or at least a point where they like the products enough to be able to sample it. And what was going to happen here this morning is a very fascinating attempt on either...on any side, but in this case by the Dental Association and Senator Dierks, to try again to break it into a...from a logical standpoint to an emotional one. And I don't blame Senator Dierks for trying to do that, because I suspect that's the best way that they feel that they can win, by changing it to an emotional one. Before we get to Senator Dierks' handout, and before I probably withdraw my amendment, again waiting to see if we have enough members here to vote on that, I would like to point out to you some statistics that I received this morning from the Department of Health. And I think it really brings this issue down to where the meat of the coconut is, so to speak, as former Senator Marvel liked to say. We're talking about trying to help minors, we are told, and adults, we are told, in oral cancer. And the Dentist's Association, as many of you know, have their hands in everyone's mouths. We put our foot in our mouths, they put hands in mouths. And they see the oral cancer and they want to stop it. And bless their hearts for trying to do so and bringing us a bill that we can, in fact, do something to help stop cancer. But I want the body, if they could, I know we're tired of this bill, but if they could just take a minute, a Page is handing out some statistics. And, if

you don't have it, I'll give them to you. The Department of Health reported to me this morning that in the State of Nebraska there are 2,290 statewide smoking related deaths in 1988; 2,300, approximately, smoking related deaths in 1983. Of that circulatory was 954 of them, people that had difficulty smoking related because of circulatory, and they died. We had 793 people die of cancer because of smoking related activity. Members of the body, please pay just a little bit of attention on this section. In the State of Nebraska 1988, 793 people died because of smoking related activities. Of that 793, only, and I say only because even this is too much, and even this is tragic, only 38 people of the 793 died of oral cancer, only 38 of 2,290 were affected, we think, by oral cancer. Of those 38 it was not possible, according to the Department of Health, to verify whether it was purely smokeless tobacco, whether it was alcohol related, or smoking pipes, cigarettes, cigars and other tobacco products. What I'm trying to get across is LB 48, LB 48 tries to ban sampling of smokeless tobacco. My point to you, members of the body, is that is a noble cause. But the effect of a sample, we don't even know, if an adult gets a sample, how many of them would have been addicted because of the sample. We don't know how many adults may have gotten a sample and may never have smoked it again and/or chewed it, in this case on chewing tobacco, because they couldn't stand it, we don't know that. What we do know is that people have a smoking habit that the Bernard-Stevens amendment is trying to make a broader, a broader scope. The Bernard-Stevens amendment is saying I agree with the dentists, I agree we need to stop as much as possible free sampling. And the Bernard-Stevens amendment does that by saying never again will anyone, adult or minor, receive a free sample in the mail. And that will go to minors and adults. A minor can't put their name on a piece of paper saying, yes, I'm over 18, and it is sent out in the mail. That will never happen again. But the other thing the Bernard-Stevens amendment does, members of the body, is talk specifically to minors in relating to the 2,300 people who died last year because of smoking, smoking related deaths. We are saying that we are...this stuff is so bad that we do not want minors to be able to purchase and/or possess. Now some people have argued, would teachers be really nervous with this, because they were going to have to enforce this. Nonsense. Teachers have to enforce all sorts of things now, drugs within the school, alcohol within the school, and smoking or chewing in the school, if they are using it. This would be another tool to help teachers, if they decided to do so, to say, listen, this stuff is so bad, Johnny, you can't

even have it on your person. The Bernard-Stevens amendment appeals to 2,290 people who died and another 2,300 or so that may die this year, and we're saying let's go the whole gambit here, let's do something that does more than just smokeless tobacco. And LB 48 deals only with a small portion of 38 people who, again I say, unfortunately, tragically, needlessly died because of oral cancer due to smokeless tobacco. And again I say, of the 38 we can't even verify how many of them are directly related to smokeless tobacco. The Bernard-Stevens amendment does more for minors, does more for the people of this state in regards to needless cancer through smoking than LB 48. And in all their good intentions, the dentists see oral cancer and they wanted to stop that. The Bernard-Stevens amendment went one step further and said let's hit the whole spectrum. And when the dentists, that I have talked to over the weekend, every dentist I have talked to, when they understood the Bernard-Stevens amendment, said I don't know why we're not supporting your amendment, Senator. And I said, that's a very good statement, I don't know why either. But the bureaucracy of the Dental Association has made a stand. The bureaucracy has made a stand and they have now committed themselves so much that they find themselves incapable of reversing, even though it is a better amendment. One of the things that Senator Dierks and Senator Nelson, and I have it in the transcript for anyone who wishes to verify it, they said this is a bill that relates to minors. Members of the body, if you have adults now sampling, we do not know how much of that goes down to minors, and even passing and saying you can't sample, we still don't know how many minors will be able to receive smokeless tobacco. In theory it does a token thing. What the Bernard-Stevens amendment does is we say we know, number one, that we can't get anything through the mail anymore, and that can be measured. And we know that we don't want them even to have it on their bodies, where now they can and we can't do anything about it. And that can be measured. We can truly do a small step. And I admit, both bills are small steps. The Dierks bill, LB 48, is a very small step dealing with a small portion of 33 out of 2,300 people. And the Bernard-Stevens amendment is a small step for trying to do something and deal something with cancer for all people, adults and minors, for all people who are affected by smoke related deaths. One of the things that happened last week, and I'll be concluding with this, I suspect, if you remember what we came to was a feeling of, if you support your children and do not like cancer and disease, support 48. If you hate your children and want your grandmother's apple pie to rot

and your grandmother to die of disease, you'd want to support the Bernard-Stevens amendment. And I hope we've kind of gotten through that smoke. I hope we've gotten through the smoke.

PRESIDENT: One minute.

SENATOR BERNARD-STEVENS: It is smoke, and the Bernard-Stevens amendment is clearing the air of that smoke, clearing the air because that smoke in the air will cause all of us to choke, cause all of us to cringe, and cause all of us to get a little bit of sickness curselves. The Bernard-Stevens amendment is an amendment that is tough, that is against cancer, and it's for the people of this state, and still maintains the rights of adults of this state until we are brave enough to ban the whole product nationally. It is something that can be done and would be a positive step for this Legislature to say, thank you, dentists, for bringing this bill; thank you, Senator Bernard-Stevens, for adding this amendment that strengthens the bill; we thank you and the people of this state, chokingly, will thank you as well until we get them to kick that habit as well. Thank you, Mr. President.

PRESIDENT: Time. Thank you. Senator Dierks, please.

SENATOR DIERKS: Mr. President, members of the body, this reminds me of Yogi Berra's famous statement, looks to me like deja vu all over again. I want to assure you that the Dental Association did not bite on this amendment. They have not agreed to any part of this amendment, that did not happen. That assertion was made last Friday, but you may rest assured that did not happen, the dentists had nothing to do with this amendment. And I have not agreed with any part of this amendment. Some of you have been told that. That didn't happen. At this point we're really not concerned about youth going into tobacco stores and buying for their parents, that isn't the thing that we're trying to do or stop with LB 48. You all received a copy of a handout that I gave to you this morning that I think is fairly revealing. If you'd open that, please, and go to what they call page 4, P 4 on the top, and a question mark, why the college market. It says, our efforts in implementing a successful college marketing program will help ensure U.S. Tobacco's continued strength in the moist, smokeless market for years to come. And it says, statistics indicate that the largest single area for growth is in the 18 to 34 age group, therefore they call it very important because you see they're

like 11 million college students that are currently in that age group. Then if you see, in the next paragraph, success in reaching the college students today will determine the continued popularity and growth for our producers in our adult market segments tomorrow. And then in the next paragraph, achieving these goals will require strong consumer sampling efforts. Success in this area can only be achieved with an aggressive, efficient program. And then, if you go to the next page, which is page 5, it says, your first and foremost responsibility as a college representative, talking to the student who is going to do this, is consumer sampling. All activities on and off campus will focus on sampling. And then over on page 6, when you look at goals, it says, number one, create new users of U.S. Tobacco smokeless products. Number two, enhance the image of U.S. Tobacco and its product on campuses. And down where it says objectives, number one (a), the number one priority of all college reps is consumer sampling. And number one (b), sampling should be conducted at social events, fraternity parties, student unions and wherever students congregate. Then on page 1, I guess, at the top, the next page anyway, (d), it says promotional activities should be conducted to further create brand awareness and new consumers. You can see from this document, which we received from the Center for Disease Control, the purpose of the smokeless tobacco industry. Their sole purpose is to gain addiction on the part of our citizens. LB 48 does do just that, it's very simple. LB 48 does three things, number one, it prohibits the free distribution of smokeless tobacco products to anyone. Number two, it requires the Attorney General to file action for injunctions, and it assigns civil penalties for violations. I think that is an important thing you have to remember. We need to be involved more with...or less with criminal penalties as far as the industry is concerned, because they don't...that doesn't apply.

PRESIDENT: One minute.

SENATOR DIERKS: The bill is aimed at regulating the industry. I'd like you to see another sample that just came by my desk this morning. It came addressed to the American Cancer Society for all...of all things, and it is a...not a sample of smokeless tobacco, but it refers to cigarettes. I guess maybe it's somewhat brazen, there's a coupon in there that you can send back and get another free sample of cigarettes. How are you going to control that by an age group? Anybody can send that in and they can get it from their father's mail box when they get

home from school, before their father gets home from work. I think we have to just remember four things that we're trying to control here. One is addiction, two is cancer, carcinogenic problems; three is dental caries, decay of teeth; and also we're trying to prevent early death of our citizens.

PRESIDENT: Time has expired.

SENATOR DIERKS: Thank you.

PRESIDENT: Thank you. Senator Bernard-Stevens, followed by Senator Moore, please.

SENATOR BERNARD-STEVENS: Mr. President, again so the body knows, I'm now withdrawing my amendment. The reason I'm withdrawing the amendment is because the number of people that are absent that I know would be voting on the side of the amendment. I'm withdrawing it at this time with the understanding that if the bill moves, and I suspect and I hope that it will not, but if the bill moves that it will be reoffered then at another time when all members are here. So at this time, Mr. President, I withdraw my amendment.

PRESIDENT: It is withdrawn. Do you have anything else, Mr. Clerk?

CLERK: Mr. President, the next amendment I have is by Senator Moore. Senator Moore's amendment is on page 682 of the Journal.

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Yes, Mr. President. This is the amendment I'd really like to run because it would, in many ways, point out the double standard we're going to use. This would outlaw the sampling of all tobacco products. But I think for a variety of reasons there is no reason to run this amendment. But there is one thing I want to get on the record. Senator Dierks, would you yield to a question?

PRESIDENT: Senator Dierks, would you respond, please.

SENATOR DIERKS: Yes, I will.

SENATOR MOORE: Just so I get the procedure down here and on the record. You have a motion to suspend the rules after my

amendment, correct?

SENATOR DIERKS: That's right.

SENATOR MOORE: If I pull my amendment, will you pull yours and we can vote on the bill?

SENATOR DIERKS: Well, there is still another motion to suspend after mine.

SENATOR MOORE: We'll pull....I'm assuming that....We need Bernard-Stevens to answer yes to that question, too.

SENATOR BERNARD-STEVENS: Senator Dierks, I just caught the last glimpse of that. I think the question was, is there going to be any amendments offered after this, and not certainly by myself. So my understanding is, if Senator Moore withdraws his amendment, we will get to a straight up or down vote on the bill. Let's move on with the understanding of what may happen later on.

SENATOR MOORE: Well, providing the fact that I'm assuming, if I pull my amendments, there won't be any further amendments on the bill, I pull this amendment.

PRESIDENT: It is withdrawn. Do you have anything else, Mr. Clerk?

CLERK: Mr. President, Senator Dierks has the next motion to the bill. Mr. President, Senator Dierks would move to suspend Rule 6, Section 5, Rule 7, Section 3, and vote on the advancement of LB 48 without further amendment or debate.

PRESIDENT: Senator Dierks, please.

SENATOR DIERKS: Okay, let's just withdraw the motion.

PRESIDENT: It is withdrawn. Do you have anything else, Mr. Clerk?

CLERK: Senator Bernard-Stevens, may I assume likewise with yours, Senator?

PRESIDENT: It is withdrawn.

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

PRESIDENT: Okay, now we're on the advancement of the bill. Senator Dierks.

SENATOR DIERKS: Mr. President and members of the body, I suspect that we might have a little difficulty having enough people here to make this work. But I don't want to belabor the body any more. I only ask you to....Is this closing, or is this...

PRESIDENT: No, this is not closing. This is not closing.

SENATOR DIERKS: I just remind the body again we're trying to do a very simple thing with LB 48, only that we're trying to limit the free sampling of smokeless tobacco to our citizens.

PRESIDENT: Senator Dierks, excuse me. (Gavel.) Could we hold it down, please. Could we hold it down. There is entirely too much noise, especially under the north balcony. Thank you, Senator Dierks.

SENATOR DIERKS: You're welcome. I'd like to remind the body that we do have an Attorney General's Opinion on LB 48. And the Attorney General's Opinion says it's A-Okay, no problems. I'd like to also remind the body that we have circulated a little clipping from the Lincoln Star, which was printed last Friday, I believe, or maybe Thursday, on tobacco regulation urged by government...or presidential commission, saying that we should be looking at a tobacco free society by the year 2000. I think that everything is pointing toward that. We can here, today, take that first step toward helping with that tobacco free society. By doing this we're not only helping the youth of our state, we're helping many of the adults. The four things again I'd like to remind you of is that nicotine use does cause dental caries, it does cause cancer, oral cancer, it does cause early death of our citizens and it is addictive. With that, I'd like to go on to discussion on the bill.

PRESIDENT: Senator Bernard-Stevens, please, followed by Senator Wesely.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, members. I will not take much further time because we have so many other things to do. I will say that I would ask all members to think

very carefully, because some times we get on Select File and we say, well, we'll just go ahead and move it to Final and we'll go from there. Each time you move a bill on its way it obviously gets a little bit closer. And obviously we do have some technical problems, well, we have some major problems on the Bernard-Stevens amendment that we would like to solve. And the Bernard-Stevens amendment would do that. What I would respectfully ask the members of the body to do, that if you were going to support the Bernard-Stevens amendment and you were also going to support the bill, of course if you weren't going to support the bill that is fine, but if you were going to support the Bernard-Stevens amendment, I would respectfully ask that you would consider voting no on the advancement and/or not voting on the advancement, because I'd like to remind at least the new members of the body that it does take 25 votes in order to advance. If it does not advance all that would happen is that we would again have a vote when it comes up again on Select File on the Bernard-Stevens amendment, we would vote on that quickly, one way or the other, up or down, and then the bill would be on its way. On Final Reading it would be basically the same process. I would ask the members not to advance the bill simply because we deserve, as a body, spending this much time to vote on the Bernard-Stevens amendment with as many people as possible. I understand, I was speaking with the Speaker, that there is no real day you can have all people here. And I understand that. The motorcycle helmet bill, last year, was a classic example where one side didn't have enough so they moved to reconsider, and then the other side didn't have enough, and we did that all the time. But in this particular case, the numbers of people that are absent that are on the Bernard-Stevens amendment truly does make a significant difference. Otherwise, if there were two or three people, I wouldn't be making this request because that is about as good as you can get on any day. I respectfully ask the members to not vote for advancement, or voting no and/or simply not voting, and we'll get to this then at a later time. I thank the Chair and would like to make, I guess, one other comment. Reminding the people of the Bernard-Stevens amendment. It is very crucial that we understand that we are dealing with...I would like to deal, in my amendment, which we do, with cancer across the board on smoking related. I don't want to focus on the small portion of the 38 people of 2,300 that died in this state. I don't want to have a specific bill just for that group. I would like to have a bill not only for that group but for the other 2,300, as well, including the minors. And I think if the dentists would

get out of the politics and the emotion of it and look at what the Bernard-Stevens is trying to do, we can look them square in the eye and say, how could you, as dentists, support LB 48 when you had an option that would deal with all smoking in all areas of cancer. We can look them square in the eye and say, if you wanted to do something on cancer, then, by golly, you had a chance and you blew it because you had fun playing politics. But I believe in the wisdom of this body, and I believe we will get something done for cancer, for our children, and for our people in this worthy cause. So I ask you not to advance the bill and/or not vote. Thank you, Mr. President.

PRESIDENT: Thank you. I'd like to introduce a special guest of Senator Labedz, over under the south balcony. We have Sir Jeet of New Deli, India, who is Director of International Marketing. Would you please welcome Sir Jeet. Thank you for being with us. You came a long way to visit. We appreciate your being here. Thank you. Mr. Clerk, you have something on the desk?

CLERK: Mr. President, Senator Landis would move to indefinitely postpone LB 48. Senator Dierks would have the option to lay the bill over, Mr. President.

PRESIDENT: Senator Dierks, would you like to take it up, or wait?

SENATOR DIERKS: Mr. President, members of the body, I believe I'll take it...I'll lay it over.

PRESIDENT: Okay. It will be laid over. You can see the Speaker as to when it will be laid over until when. Okay, shall we move on, Mr. Clerk, to LB 273.

CLERK: Mr. President, LB 273 is on Select File. The first order of business are E & R amendments.

PRESIDENT: Senator Hall, would you like to help us out on that please?

SENATOR HALL: Mr. President, I would be glad to. Mr. President, I move the E & R amendments be adopted.

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

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

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

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

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

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

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

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

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

Revenue Committee reports LB 88 indefinitely postponed; LB 292,

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

CLERK: 25 ayes, 0 nays, Mr. President, on the advancement of LB 187A.

PRESIDENT: LB 187A advances. May I please introduce the doctor of the day. We have Dr. Richard Hanisch of St. Paul, Nebraska. I believe this is in Senator Rogers district. Dr. Hanisch, would you stand up so we may see you, please. He must be out taking care of somebody. Thank you. Mr. Clerk, something for the record, please.

CLERK: Mr. President, your Committee on Agriculture, whose Chair is Senator Rod Johnson, reports LB 39 to General File with committee amendments attached. (See page 750 of the Legislative Journal.)

Mr. President, Enrollment and Review reports LB 238 correctly engrossed, and LB 344 correctly engrossed.

A new resolution, LR 31 by Senator Schimek and other members. (Read brief explanation. See pages 751-52 of the Legislative Journal.) That will be laid over.

An Attorney General Opinion to Senator Wesely regarding LB 48, and an Opinion to Senator Morrissey with respect to the Low-level Radioactive Waste Compact Commission, LB 763. That is all that I have, Mr. President.

PRESIDENT: Thank you. We will move on to LB 556.

CLERK: Mr. President, LB 556 was a bill that was introduced by Senator Abboud. (Read title.) It was introduced on January 18, referred to the Judiciary Committee, advanced to General File. I do have Judiciary Committee amendments pending, Mr. President. (See page 562 of the Legislative Journal.)

PRESIDENT: Senator Chizek, please.

SENATOR CHIZEK: Well, Mr. President and colleagues, the committee amendment is on page 562 of the Journal. The committee amended it to ensure that the language that governs

to LB 336 by Senator Withem. Senator Hall has amendments to LB 704 to be printed, Mr. President. (See pages 798-99 of the Legislative Journal.)

Education Committee gives notice of change of location for a hearing on February 28. That is offered by Senator Withem.

Judiciary Committee whose Chair is Senator Chizek reports LB 87 to General File, LB 220 to General File, LB 234 General File, LB 372 General File, LB 399 General File, LB 401 General File, LB 558 General File, LB 592 General File, LB 73 indefinitely postponed, LB 351 indefinitely postponed, LB 400 indefinitely postponed, LB 684 indefinitely postponed, those all signed by Senator Chizek as Chair. (See pages 799-800 of the Legislative Journal.)

Revenue Committee whose Chair is Senator Hall reports LB 714 to General File with amendments and LB 762 to General File with amendments, both those signed by Senator Hall as Chair of the committee. (See pages 800-03 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: Thank you. Now we'll move on to LB 48, please.

CLERK: Mr. President, the Legislature last considered LB 48 on February 13. At that time Senator Landis made a motion to indefinitely postpone the bill. That motion is pending.

PRESIDENT: Senator Landis, please.

SENATOR LANDIS: Mr. President, members of the body, over the weekend I've had a chance to think about it and I've come to the conclusion that it must have been a moment of delusion on my part. I don't know why I offered that motion. I certainly want to withdraw it now.

PRESIDENT: It is withdrawn.

CLERK: Mr. President, the next amendment I have to the bill is offered by Senator Bernard-Stevens. The amendment is on page 740 of the Journal.

PRESIDENT: Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. President and members

of the body, I think we're well aware of what the amendment is. It's on page 740. I would like to take just a minute to review the body on what happened last time so that we can get perspective as we move forward to hopefully Final Reading and passage of the bill as amended. Not too long ago, a few weeks ago, Senator Dierks, myself, Speaker Barrett, Senator Moore and I think that might have been the group at some point, came to an agreement and the agreement was that I would pull whatever amendments I had except the major one which is before us today, and Senator Moore would pull his amendments so that there would be no more delaying on LB 48 and the body could take its time debating the one amendment and then get the bill, vote on the bill and the amendment up or down, one way or the other. And it was my intent not to delay the body any further on a bill which, on the realm of importance of some of the major legislation we have, is not certainly one of the high-ranking ones of the session, yet it has taken an exorbitant amount of time. Unfortunately, what happened was when the bill came up last week, we had a major...well, not a major storm, but we had a storm come through and there were a lot of people particularly in support of my amendment from the Omaha area who were unable to make it at the time of the voting of the amendment. Therefore, I chose to go with the agreement. I chose to say, listen, I agreed that we would not delay the body any more, I don't have the votes on my amendment at that point because the people simply weren't...were unable to be here because of the storm, therefore, I withdrew my amendment, allowing the bill to come up face to face with the body and saying I'm not delaying it any further, let us get a vote on LB 48. And Senator Dierks had his shot right then and there, a vote on Select File, no other amendments on his bill. Senator Dierks chose, or maybe I should rephrase that, Senator Landis chose to help LB 48 by making a kill motion and, surprisingly, it was laid over. Consequently, LB 48 is again with us today. Now at that particular point be...having it laid over, I again then said, okay, apparently the negotia...the deal is off, we're not going to move this bill through and we're going to delay the body even further so I went ahead and offered my amendment one more time. This amendment has only been voted on in the body one time on General File. There were people absent. Twenty people voted in favor of my amendment, 18 voted against at that point. So the amendment has always had a majority of those voting and it has not been voted on since that time, and since that time, there have been some, what I would call, substantial changes to make the amendment even more appealing to the body. In just a very

brief discussion of the amendment, LB 48 is attempting to do an admiral goal. It is attempting to stop young people and old people, adults if you wish, from using smokeless tobacco. By doing so, the authors of LB 48 have stated that we're not going to ban the product, we're not going to make it illegal to buy, we're simply going to say that companies offering smokeless tobacco as a product cannot give out a free sample. That's it. It will also ban couponing so that you cannot mail a coupon and get a free sample in the mail. And in essence, that is what LB 48 does in its present form. I don't know about members of the body and the people in your district, but I know the youth in the District 42 that I'm at and the young people that I'm aware of that chew smokeless tobacco are going to choose smokeless tobacco regardless of if you ban a free sample to an aduit. The point is, is after LB 48 passes in its original form, it will still be a legal product for adults to buy. Minors, many times, look as if they are over 18 years of age. It is not against the law for a minor to purchase and possess smokeless tobacco or any tobacco product according to LB 48. My point is that passage of LB 48, regardless of what the Dental Association has in its zealousy towards this bill, regardless of what they've told their membership, LB 48 will not stop young people from getting smokeless tobacco from adults who can legally buy it on the market. LB 48 will not stop young people from being able to buy, purchase and possess smokeless tobacco. The key here now is, it is against the law for them to use it, so if we sneak around in the bushes and find them using it or look for that telltale spit, we might be able to track it tc the mouth of the person that is doing it and now we can do something.

PRESIDENT: Senator Bernard-Stevens, may I interrupt a second. The lights have been coming off and off and I really don't know how much time you've used, but I think it's about nine minutes.

SENATOR BERNARD-STEVENS: I was counting, it was seven.

PRESIDENT: Oh, is that right?

SENATOR BERNARD-STEVENS: Yes.

PRESIDENT: Shall we split it?

SENATOR BERNARD-STEVENS: I'll buy that.

PRESIDENT: Go ahead, please.

SENATOR BERNARD-STEVENS: My amendment would basically make some, I think, substantial changes in the bill to make it better. My amendment says, let's don't fool ourselves. Adults, if we're going to allow them to buy the product, they should be allowed to receive a free sample of their own choosing if they so desire. That will have no effect on young people because they will get the product regardless because it is on the market. What I say is, let's make the penalty stiffer for those people giving samples or giving the product illegally to minors. Let's make the penalty stiff enough that they will really look and think twice and my amendment does that. My amendment says for each sample given there will be a Class III fine misdemeanor, for each sample, not just for each activity. It also says the following: Let's go one step further. Let's go to the public schools, and the Dental Association has a big handout they, on green paper, they sent out saying, go by the schools and look at the terrible smoking problem. I agree. LB 48 does nothing for that, for the smoking problem, because it is dealing with smokeless tobacco. My amendment would because people die every day of cancer from smoking. My amendment would say it will be illegal for a minor to buy and possess, and if a student or person within a school or someway downtown has a can of Copenhagen or Skoal in their back pocket or cigarettes in their pocket or hidden somewhere that I can find...I can see that where they are, I now can say, son or gal, that's illegal. You cannot have that on your person and it can be confiscated or I can go ahead and charge them with a Class V misdemeanor by turning it in to the authorities if I so desire. If you want to do something for our kids, let's go a little step further and the Bernard-Stevens amendment, that's the only first time I've said the name Bernard-Stevens amendment, so I'll try not to do that as much, for those who are counting it.

PRESIDENT: One minute. One minute according to your time.

SENATOR BERNARD-STEVENS: The amendment offered at this particular time will go the extra step to help truly stop minors from smoking of all products because it is bad. I might also point out that there is one...that I checked with the teacher association because there is a rumor out there saying it would be impossible for a...too big a burden for teachers to handle, and I've been assured that they have no problem on enforcing of LB 48 as I would like to amend. Thank you, Mr. President.

PRESIDENT: Thank you. Mr. Clerk, we have an amendment to the amendment.

CLERK: Mr. President, Senator Dierks would move to amend the Bernard-Stevens amendment. (Dierks amendment appears on page 803 of the Legislative Journal.)

PRESIDENT: Senator Dierks, please.

SENATOR DIERKS: Thank you, Mr. President and members of the body, in a spirit of compromise I've been accused of being rather stiff-necked about this, so in a spirit of compromise, we've come up with an amendment that would allow the possess and purchase language that Senator Bernard-Stevens is trying to...by the way, what are we supposed to call this amendment now? B.S. amendment. (laughter) I was just kind of wondering how we were supposed to talk about this. I was reminded of another little saying that Yogi Berra had, it went something like this when they asked him about this particular fun place he went to eat, he said, oh, he said, nobody goes there anymore, it's too crowded. I have a feeling that this bill has become pretty crowded with amendments and I guess I'm disappointed about that. I thought we had some sort of an agreement that we were not going to do that, but... The amendment that I'm introducing that is an amendment to the amendment of the B.S. amendment, just puts the language "possess and purchase" back in the bill, and I think that this should offer some indication that we're looking at the spirit of compromise. I would like to see that the amendment is adopted. It strikes much of the rest of the amendment which, in effect, guts my bill to begin with, so if you have any questions about the amendment I'll be glad to try to answer them to you. I think I look on it as a compromise amendment. Thank you. Sure, I have time, I'll give it to Senator Landis.

PRESIDENT: Senator Landis is third, all right. That's fine. Senator Landis.

SENATOR LANDIS: Thank you. I'm trying to make sure that I've pieced this thing together and maybe we ought to do this together because we're looking at the amendment to LB 48, but actually they are amendments to the Bernard-Stevens amendment, and if I've got this right what it does, it leaves 48 in its current form. It strikes from David's amendment the portions

about coupons and two blocks away from the schools, but it acknowledges what I think, by the way, David has done a good public service for all of us in doing, and that is in calling to our attention the need for a criminal statute on possession and purchase of smokeless tobacco or all tobacco items by kids. And what "Cap" is doing with this amendment as far as I can tell by trying to piece it together, he is taking those criminal provisions for kids who are purchasing or possessing tobacco products or for sellers of them who are doing it to kids and putting them into his bill, but turning down the rest of the Bernard-Stevens amendment. That, by the way, is a goal that I initially on General File thought was an excellent idea and I intend to support this amendment. I think that "Cap" is right on the basic issue. If you have a form of sampling that is out there and it is available to adults, it is going to be available for abuse. You can't have it both ways. We can't police it so carefully to make it work. If you're going to have free sampling, kids are going to get it through the free sampling method. Better to do away with free sampling, even though it does curtail free samples to adults, because I think you're going to be able to get to and stop the free samples for kids. At the same time, I think David has done a nice job in saying, wait a second, our existing statutes are a little inadequate here, we ought to have a provision that says you can't sell to kids and, kids, you can't buy or possess. "Cap" has reached into the Bernard-Stevens amendment and found those sections and are putting them into 48. I think that is appropriate. I intend to support this amendment. With it, I am then prepared to support 48 and I hope that the rest of you will as well.

PRESIDENT: Thank you. Senator Moore, did you wish to speak to the...okay, to the Dierks' amendment.

SENATOR MOORE: Mr. President and members, first off, I want to make it clear that this is not quite what I'd call a compromise by any way, shape or form. If Senator Dierks is trying to lead you to believe that, and once again, well, I'd better not say it that way, then he is misleading you because it's sure not...it's far from a compromise. If Senator Dierks would answer a few questions for me, please.

PRESIDENT: Senator Dierks.

SENATOR DIERKS: Yes.

SENATOR MOORE: First off, you introduced this amendment this morning. We always get into arguments about we've never seen it, we don't know what you're doing. You've chastised me for doing the same thing on this very same bill. Secondly, when we sat and talked in a room, you said you would never want to do this. You didn't want to put the burden on the youth, right?

SENATOR DIERKS: Yes.

SENATOR MOORE: Did you change your mind on that?

SENATOR DIERKS: Yes.

SENATOR MOORE: Okay. That's all I want to say to Senator Dierks. Now this whole issue, it's one of those issues that I don't understand why I, myself, make the mistake of getting involved in it. It's just like last year with a little innocuous bill Senator Lynch had on helmets. I don't know why I got involved in that one. This is more of the same. The reason I got involved in this bill is, to begin with, when we debated this bill the first time, Senator Dierks pulled me aside and said, hey, I've got a bill coming up dealing with the sampling of tobacco. The aim of the bill is to get at minors chewing tobacco. I said, that sounds like a fairly good idea, I'll look into that. I looked at the bill and realized that not only did it ban sampling to minors, it banned sampling to adults and some adult like me or Senator Dierks for that matter, you know, I guess...like I said on the last time we debated this, if some adults going to the Boat, Sports and Travel Show, why can't he get a free sample of tobacco? That's my problem. That's why...that's my problem with the bill. That person should be allowed to do that. This amendment will not allow that person to do that. Now the reason I got involved in this bill is because in this body when one side of an issue gets so wrapped up in the personalities and when one side of an issue gets to the point where they refuse to even respect the other side of the version of the story, they refuse to even listen to the other side of the story and resort to name calling and vicious accusations, if you're opposed to them, it upsets me. That's why I got upset on General File. That's why I'm still upset today after I got several letters from my dentist calling me names that I read yesterday. I didn't care about it over the weekend. I got mad again yesterday and I'm mad again today. Now the last time we debated this amendment Senator Dierks passed out this college representative manual. This thing, it

insults me that this is even passed out on the floor of the Legislature. There is no documentation to it. It is just one more scare tactic the proponents of LB 48 have used. There is no documentation of this whatsoever. As far as I know, Senator Dierks' aide could have done this on his P.C. the night before he passed it out. There is no documentation whatsoever in this. After I read this, I called up Nick Buoniconti. We're buddies now after I got so mad, I mean, got involved in this issue. Now we talk somewhat regularly. But I called him up, what is the tobacco industry doing? Do they really try and snare these minors in to using your products? And he said, for a matter of fact, we're spending a lot of money trying to educate the minors. Now I have passed out to you a number of things that the smokeless tobacco industry is using. If they are so evil, why are they doing this? To begin with, for the record, advertisements in the January 7, Lincoln Star, January 6, Daily Independent, look at these things, what does it say? Smokeless tobacco is an adult custom, has been ever since the industry was founded more than 200 years ago. As a matter of fact, the code of smokeless tobacco industry sets 18 years as a minimum age for purchase of smokeless tobacco products. They are spending their money trying to educate the youth. On The Voice, the NSEA publication, I read this, believe it or not, regular basis, but an advertisement in the September Voice, NSEA Voice, The 4th "R", "Responsibility, when my students ask me about smokeless tobacco, it is my responsibility to set them straight: Smokeless tobacco is not for kids. I tell them, 'Grown-ups make decisions on information, not because someone says, 'Here, try this'."

PRESIDENT: One minute.

SENATOR MOORE: Spending their money on that and there is a couple of other things. The one thing I really want you to look at is this one, "taking our responsibility seriously". Read this, this is adult products' responsible marketing by the Smokeless Tobacco Council, this is what they really use, not this undocumented scare tactic, this is what they really use to tell people how to market tobacco. And once again, product...read the first page, product sampling is a legitimate promotional technique whereby free samples of a commodity are offered to consumers for distribution of either trial samples or dealing with coupons. Go to the second page, all the...don't give it to minors. Now, Senator Landis is right. The only way you're truly going to do away with all sampling to minors is to

ban all free sampling. Now I think you re killing a fly with a sledge hammer if you do that, because you have denied me the right to have access to a free sample, and that just bothers me and that is why I am opposed to the amendment. Now, like I said, I don't know why I get involved and why I get so riled up about this. It is one of those things I was just...I was an old lazy dog on the porch and "Cap" Dierks and Arlene Nelson and the dentists threw one too many stones at me and got me riled.

PRESIDENT: Time.

SENATOR MOORE: And I think it's only fair that we really do look at the other side, something the dentists have never done. Look at the Bernard-Stevens amendment. Defeat Senator Dierks' amendment. We know it's not...

PRESIDENT: Thank you. Senator Smith, please. Did you wish to talk about the Dierks amendment? Okay. Senator Landis. Okay. Senator Dierks.

SENATOR DIERKS: Mr. President, members of the body, I just guess I'm a little bit puzzled about the presentation by Senator Moore. We've offered an amendment that they have been fighting so hard to get attached and all of a sudden the amendment isn't palatable. That's a little difficult I guess for me to understand, but nevertheless, we think that what we've done is really in the spirit of compromise, try to come up with an amendment that will satisfy the opposition to the bill and still it doesn't hurt the bill. It makes the bill a little stronger we think and we certainly are willing to try the amendment up or down, the amendment to the amendment up or down. Is there further...are there further lights on, Mr. President? One? You know...

PRESIDENT: Senator Dierks, I should say that I think there is one. All of the lights are off at the moment but I only have record of one more.

SENATOR DIERKS: Okay. I just wanted to go over some of the basics of the bill in the first place. We haven't done that for a little bit. Senator Moore attempted to a little bit ago. The validity of the report that was handed out to you the other day, there is no problem with that. That's a document from the government. It's...actually we got it from the Center for Disease Control. There is no problem with the validity of that

amendment. You should know that the purpose of the legislation to begin with is very, I consider very honorable. It does only one thing. It stops the tobacco industry from giving free samples of smokeless tobacco to the citizens of Nebraska and that, in effect, helps to reduce the amount of oral cancer that we see. It helps to reduce the amount of addiction to an addictive product that we see and we're all very familiar with the problems of addiction in this state whether it be nicotine, alcohol or controlled substances. If this...this is just one little way for us to say, hey look, folks, we're going to try to help the citizens of this state and this bill, LB 48, the way it is drafted, would do that and I have no problem with this amendment to Bernard-Stevens amendment because I think that we still strengthen the bill and provide, like I said, a spirit of compromise. Thank you.

PRESIDENT: Senator Bernard-Stevens, then Senator Nelson.

SENATOR BERNARD-STEVENS: Thank you, Mr. President. Members of the body, I think I'm starting to get upset. I haven't gotten there yet, but I think I'm getting there. Now when I went to Political Science classes and I took Political Science 101, one of the key things they like for you to do in those classes, they like you to memorize terms. One of the terms that I needed to memorize at some point was the term "compromise", and I loved that term compromise. I've been trying to compromise with Senator Dierks since the day this bill was incepted and I got nothing. I got a response from the Dental Association, from Senator Dierks, no, sir, no amendments, take it or leave it, and a funny thing happened on the way to Select File and Final Reading. They didn't have the votes. A funny thing happened when they came up last time to pass it, straight shot from Select File to Final Reading, we laid it over. Why? They were afraid they didn't have the votes. So now we get to the word compromise. I always thought compromise was a middle ground found between two opposing sides. I was never in negotiations with this amendment to the amendment. I know Senator Moore wasn't in negotiations with the amendment to the amendment. The only thing I see a compromise here is between Senator Dierks and Paul O'Hara and the Dental Association. They've compromised among themselves. I find it fascinating because, it's a corny phrase, but doggone it, we were in the room with Senator Barrett, and Senator Dierks, in that room, stated that he would allow my amendment to get a straight shot, complete, as is, if we would pull all of our amendments away and give him a straight

shot on his bill after my amendment had a straight shot and, by golly, that's exactly what we did. And so what do we have now, Senator Dierks? I like Senator Dierks, I like what he does. Geez, I hate for Senator Dierks to be mad on me, you know, I don't like that either, but now what do we have? We have an amendment now that says, you know, Senator Bernard-Stevens, you had some darn good points in that amendment you had. We've been saying how bad it has been for all this time, but you know, there were some darn good points in there and I think I'd like to have some of those. Members of the body, you can have those points by giving the amendment a straight shot without this amendment. This amendment guts the basic amendment that I have and takes one little piece of frosting that's "mmmmm" good and it is good, but you can have that little bit of frosting in my amendment as well. The other thing I'd like to mention to Senator Landis just in passing, Senator Landis, you're not quite correct. That two-block radius section of the amendment that was previously in is not in there anymore, that part was stricken.

PRESIDENT: One minute.

SENATOR BERNARD-STEVENS: Members of the body, what I would like to say, with the "Cap" Dierks amendment to the amendment, you can have the same thing by voting for my amendment. What you will not have is the following: You will not have an adult's right to take a free sample from an industry whose product is not banned. You will not have anything in regard to couponing where minors will now have a coupon and will go to a retailer and be able to have to show age. My amendment will stop coupons from mailing samples to minors. My amendment will stop minors from being able to purchase and buy. You have all the icing on the amendment and this amendment to the amendment not only is against a word of discussion that we had on Senator Dierks, and I take that personally...

PRESIDENT: Time.

SENATOR BERNARD-STEVENS: ...but it's not a reasonable course for this body to go and I urge you, please, not to support the amendment to the amendment and give the amendment that is pending a fair and free shot. Thank you.

PRESIDENT: Okay, thank you. May I introduce some guests please before Senator Nelson speaks. In the north balcony we have

70 students from Westside High in Omaha. They are on a field trip, and also Senator Goodrich and Senator Ashford are both senators in that district and they are here for a hearing today and we welcome you. Would you folks please stand. The...I'm looking for the...Mr. Joe Higgins is their instructor. Would you folks please stand and be recognized. Thank you. We also have 15 journalism students from Kearney State College with their instructor Beth Barrett in the east balcony. They are guests of Senator Langford. Would you folks please stand. And lastly but not leastly, Senator Korshoj has 47 Extension Group people from Washington County and they are in the north balcony and also in the south balcony. Would you folks please stand and be recognized. Thank you, all of you, for visiting us today. Senator Nelson, please. Okay, Senator Nelson, just a moment. You are the last light that I have on. Now all the lights have come off and on. Is there anyone else that wishes to speak on this matter, that is on the Dierks amendment to the Bernard-Stevens amendment? Anyone else, because the lights are off? If not, thank you, Senator Nelson, we'll...did you want to speak?

SENATOR NELSON: I'll take advantage of it if it is the last light on here. I didn't intend to, but I truly feel that this debate has gone on after day after day, hour after hour, anything at all to muddy the waters, anything at all to defeat the purpose of the bill. Simply, Senator Stevens amendment would have gutted the bill entirely, the Section 1 I am supporting in compromise and all of you know the problems with the smokeless tobacco, the oral cancer, the high school kids getting worse instead of better and right on down the line. So in the effort of compromise, I support Senator Dierks' amendment to the amendment.

PRESIDENT: Senator Dierks, would you like to close on your amendment to the amendment?

SENATOR DIERKS: I would. Mr. President, members of the body, I guess I'm a little bit concerned that there is so much querulousness on the part of this thing. I really felt that I had a valid amendment to the amendment. I had listened to what the amendment had done. There were parts of it that I didn't like, but I felt that there was a part of it that we could accept and that's what the amendment to the amendment does. It makes that part acceptable. If we vote the amendment without this amendment to the amendment, what you do is actually gut

LB 48. So with this amendment to the amendment it makes the bill at least more appetizing to the introducers of the original bill. So I would urge your support of the amendment to the amendment and then we'll get on to voting on the bill. Thank you.

PRESIDENT: The question is the adoption of the Dierks amendment to the Bernard-Stevens amendment. Now we're going to have to have a roll call vote. (Gavel.) We're going to have a roll call vote in the regular order on the Dierks amendment to the Bernard-Stevens amendment. Mr. Clerk.

CLERK: (Roll call vote taken. See pages 803-04 of the Legislative Journal.)

PRESIDENT: Record, Mr. Clerk, please.

CLERK: Mr. President, I have to verify. (Read record vote.)

PRESIDENT: Simple majority on this.

CLERK: Senator Schellpeper...

PRESIDENT: Excuse me, it isn't either, we're on Select.

CLERK: I had you as yes, Senator. (Completed record vote.) 19 ayes, 21 nays, Mr. President, on adoption of Senator Dierks amendment to the Bernard-Stevens amendment.

PRESIDENT: The Dierks amendment fails. Back to the Bernard-Stevens amendment. I have no lights on. I don't know if they'll come on. We're back to you, Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, and I hope...and I thank the body for allowing at least the amendment to get a straight shot on approval. I will take just a brief moment to tell you what the amendment does and hopefully we'll just get to a vote one way or another on the amendment so we can move on to other items. My amendment would do the following: It would maintain the right for an adult to receive a sample from a legal entity, since we do not seem fit to ban the entity. My amendment would do the following in regards to young people. It would say, we do have a smoking problem in our schools. We do have something that we have to work with as a society with our young people. My amendment would put in a law that says

that it will be illegal for young people to buy and purchase, whereas now it's only against the law for minors to use. So if a student is going down a school hallway and you see a can of Skoal in the back pocket again, now the faculty or someone can say, son, or, gal, that is against the law, you need to give that to us. It's a small step but nonetheless, a step that cannot be taken at this particular time. My amendment also deals with adults and youths in regards to couponing because as it is now, you can write your name on a coupon, say that I'm 18 years or older, send it away and get a free sample in the mail. My amendment would make it illegal for any free sample of smokeless tobacco to be sent in the mail ever again in the State of Nebraska. An adult and/or minor, if they wanted to put their name saying they are over 18 years of age will have to go to a retailer and show proof. Now an adult to do that, to get a free sample, I suspect he's going to buy...he wants it enough, he's going to buy it anyway or go, but a young person now cannot receive it in the mail without taking the risk of a Class V misdemeanor because they will not have the proper identification. They must have proper identification. This is as stiff as we go on alcohol and even pornography in those particular areas. My amendment also addresses the whole concept of cancer. The Dental Association, bless their hearts, are trying to do their best that they can with the oral cancer that they see every day, and through their bill that they have pushed, they are going to accomplish some of that, particularly if my amendment is agreed to. But the one thing the Dental Association has been quietly very silent on, and that is the other 2,300 deaths in this state that occurred because of smoking related cancer that was due to cigarettes, cigars and whatever else smoking you might be able to get into. They were dealing with, and again, I'd like to point out to the body, and, Senator Beck, listen carefully now on these statistics now, okay, in the State of Nebraska last year 2,300, actually 2290, 2,290 people were documented as being killed by smoking related symptoms. Of those 2,290 people who died of smoking related causes, 38 last year died of oral cancer, 38 only and that is 38 too many. Senator Conway, I heard that, you know. Thirty-eight too many died of oral cancer. Of the 38 we do not know in the Department of Health of the State of Nebraska how many of those were actually due to smokeless tobacco. They don't know. It could have been cigars, it could have been cigarettes, it could have been smokeless tobacco, it could also have been alcohol. So LB 48 deals with a small, small portion, where LB 48 as hopefully amended deals with a broader scope

picture as well as helping our minors as much as possible. It also stiffens the penalties for...

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: ...those people who would abuse the substance and give it to minors. Mr. President, I think the body is well aware of what the amendment does, by now. I'd be certainly free to answer any questions anyone has, otherwise, I would urge the body and hope that the body would agree to the amendment and the bill move on for final passage. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Discussion on the Bernard-Stevens amendment to LB 48, Senator Moore, followed by Senators Nelson and Dierks. Senator Nelson, please.

SENATOR NELSON: I really don't have a lot to add. I don't want to carry this on any longer than we have, and as I said, this amendment still doesn't stop the free giving away to the youth and everyone has to make up their mind how they want to support the bill or if they do or if they don't and, in essence, guts the bill. And with that, I'm ready to take a vote. I'll turn it over to Senator Dierks if he wants any more of my time.

SPEAKER BARRETT: Senator Dierks, yours is the next light.

SENATOR DIERKS: Thank you, Mr. Speaker and members of the body, I only want to reiterate one thing, that is that the amendment that you're voting on guts LB 48. It removes all the language we've worked for. It reduces the amount of work we've been through in committee and on General File and so far what we have done on Select File. And I have a little problem with some of the explanations, especially this business about oral cancer and he says only 38. That "only" kind of strikes me as a little bit strange for describing the number of deaths that occur in this state and even if only one of those were due to smokeless tobacco, why, the one that we could prevent by not allowing the distribution of these free products would be ample reason to pass LB 48. I object to the amendment. I think it just guts LB 48, so with that, I'd like to urge your defeat of this amendment. Thank you.

SPEAKER BARRETT: Thank you. Because of the electronic malfunction, is there anyone else that would care to speak to the amendment? May I see your hand if you want to speak? Seeing none, Senator Bernard-Stevens, are you prepared to close on your amendment?

SENATOR BERNARD-STEVENS: Yes, and I will delightfully close on the amendment. Members of the body, there are some good things in the amendment that can help the people of the State of Nebraska in regards to cancer. There are some things in the amendment that can help protect our youth, particularly in the purchasing and in the possessing. Those things cannot be found in the bill as it now reads. The amendment strengthens the bill. The amendment will assure the bill's passage and the amendment will get us also onto other things of equal importance if not more importance as General File and Select File continue on. I urge the body to consider that when the amendment and if the amendment is agreed to, we can go back to the dentists who have called all of us and say because of your efforts, because of your efforts in committee in pushing the bill, you have done something not only for oral cancer, but all cancers. You have done something for minors in the state where before the bill didn't. Now through the amendment process and the procedure of the Legislature, it now is included. You've done a good thing for the State of Nebraska. You can all hold your head high. And to Tom Bassett and to other people in the Dental Association and the President-elect, Jim States, from my hometown, North Platte, they have done a good job, and with this amendment, their bill will be stronger and we can all be proud of what we did in a small way for cancer and our youths. I urge the body to adopt the amendment as it is now presented. Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you. A call of the house has been requested. I see five...five hands? Those in favor of the house going under call say aye. Opposed no. The ayes have it, the house is under call. Members, please report to your seats. Those outside the Chamber, please return to the Chamber. Because of the necessity for voice voting, the Chair would urge you to stay close to the Chamber, stay in your seats if at all possible. We'll be going through this drill for the rest of the morning. Members outside the Chamber, please return to the Chamber, the house is under call. Senators Chambers and McFarland, the house is under call. We have a request for a roll call in reverse order which will be honored. Senators

McFarland and Chambers, please report to the Legislative Chamber. While we're waiting, the Chair wishes to announce that for those of you who like to plan ahead, tomorrow the body will be considering our first priority bill of the year, LB 183, the "choice bill", will be on the agenda tomorrow. Also, perhaps tomorrow or the following day the ag land valuation will be special ordered, LB 361. Senator Chambers is on his way. Will members please return to their seats, the house is under call. We're voting on the Bernard-Stevens amendment to LB 48. Mr. Clerk, please call the roll in reverse order.

CLERK: (Roll call vote taken.) 21 ayes, 25 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails. The call is raised.

CLERK: Mr. President, the next amendment I have to the bill is by Senator Moore. Senator, I have AM224 before me.

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: I want to move to AM0309.

SPEAKER BARRETT: Senator Moore, if you want to move to AM309, are you withdrawing the other amendments that you have filed?

SENATOR MOORE: I'd like to substitute that one first, if...unanimous consent.

SPEAKER BARRETT: Senator Moore asks unanimous consent to withdraw and substitute. Is there an objection? Senator Dierks. Senator Dierks, proceed.

SENATOR DIERKS: Yes, I object.

SPEAKER BARRETT: Thank you. Mr. Clerk.

CLERK: Senator, I have AM224 before me.

SENATOR MOORE: Senator Dierks, you evidently don't want me to go to the final amendment.

SENATOR DIERKS: I don't object if you want to withdraw the 10 or 12 you have before you get to the final amendment.

SENATOR MOORE: Pull all 12 and we'll go to number 13 then.

SPEAKER BARRETT: If there are no objections...

CLERK: AM309. Mr. President, I have AM309 before me. (Amendment is found on pages 682 and 805 of the Legislative Journal.)

SPEAKER BARRETT: Senator Moore.

SENATOR MOORE: Mr. Speaker, members of the body, you know I'm not of mind to sit here and actually waste our time on amendments I'm not serious about, so this is the one amendment that I am serious about. This is the amendment that will simply ban the sampling of all tobacco products. If that is what you want to do, let's don't pick out smokeless tobacco, let's go for the big boys and get them all. If you...you know, let's do that. If you're serious about it, if you really want to save lives, if you really want to do all these things, let's go for this amendment. And I guess I'm anxious to hear what everybody has to say on this amendment, so I won't talk anymore at this time.

SPEAKER BARRETT: Thank you. May I see a show of hands of those who wish to speak to the amendment offered by Senator Moore. Are there hands? Senator Chambers, Senator Dierks. Anyone else? Senator Schmit. Anyone else? I have speakers Chambers, Dierks, Schmit and Bernard-Stevens. Anyone else? Senator Chambers, proceed.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, my name is on this bill as a co-sponsor, but I have not said anything on it thus far and I have really enjoyed watching Senator Moore as he pointed out earlier who always brings a cloture rule, carrying water, licking spittle and boots for the tobacco industry. And I notice that there has been no great outcry by the media or anybody else about the wasting of time because a multibillion dollar industry is the one pulling the strings and calling the shots on this one. But Senator Moore's thirteenth amendment, you know that was the one attached to the Constitution in which I take particular interest if anybody has a sense of history. But there is also a phobia, triskaidekaphobia, for people who fear the number 13. There are some hotels where they don't have a thirteenth floor. It will go up to 12 and then it skips to 14 so the 13 is not listed on

the elevator because there are people who are superstitious. Senator Moore is not superstitious, but even if he were, he wouldn't have much choice about offering this amendment because Senator John is in full cry. He has booted, spurred and mounted and riding Senator Scott Moore. But Senator Scott Moore is young, strong, vibrant. Look at those shoulders. Look at power, power incarnate, waiting to be ridden and John DeCamp is doing that job. Nevertheless, this is a good amendment that Senator Moore offered. I don't play cards, but I've heard the expression of overplaying your hand. Maybe that is what the tobacco industry is doing with this amendment. Nevertheless, I think it should be taken seriously and I am going to vote in favor of it. I do see nicotine as a drug. All forms of tobacco can produce addiction and there are many people addicted to tobacco. There are thousands of people who die annually from tobacco caused and related diseases, so I will support this amendment and I will also support the bill. I hope there are enough voters to put this amendment on the bill and then pass the bill.

SPEAKER BARRETT: Thank you. Senator Dierks.

SENATOR DIERKS: Yes, Mr. Speaker and members of the body, I'm glad that we've gotten down to the nitty-gritty of the amendments that Senator Moore has. My feelings about the amendment that he offers are...well, they're mixed. I appreciate what he is trying to do and I really don't have that many problems with it except I think we'd have difficulty getting that amendment passed, getting the bill passed with that amendment. I'd like to give the rest of my time to Senator Wesely.

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members, I just wanted to rise and let you know, on this amendment there was no reference to it in the public hearing. The Health and Human Services Committee did hear LB 48. I don't feel at this time with the substance of the issue that we ought to proceed on it, that it deserves separate attention. It is similar in scope, but at the same time, I don't think we gave adequate notice for people to be involved in the process, and so I would oppose the amendment with the understanding that that issue can come back and we could have a hearing and we can look at the issue in follow-up to LB 48. But at this time I feel it's inappropriate

to proceed.

SPEAKER BARRETT: Thank you. Senator Schmit, please, Senator Bernard-Stevens on deck.

SENATOR SCHMIT: Raise a question from Senator Wesely. Are you telling me, Senator Wesely, that the rest of the tobacco industry is uninformed as to what has been taking place with LB 48 and are not aware of the consequences of this amendment?

SPEAKER BARRETT: Senator Wesely.

SENATOR WESELY: Would you...no.

SENATOR SCHMIT: Answer yes or no, Senator Wesely.

SENATOR WESELY: Possibly.

SENATOR SCHMIT: I think Senator Wesely knows full well that the tobacco industry is fully aware of this situation and that they are well aware that the industry has, for years, given out samples and has used the sampling system and has, in fact, relied heavily upon it. In order to try to separate one from the other, Senator, you would have to be infinitesimally excellent at splitting hairs. If you can say it is acceptable to give away a cigar sample or a cigarette sample but it is not acceptable to give away a sample of smokeless tobacco, then I think that you demonstrated even greater agility than I have seen you demonstrate many times in the past, though you've been pretty good at it, but I would think this is going to bring out the best in you. And so I support the amendment and I think that there ought to be strong support for the amendment. If we are really interested in public health, if we are interested in doing that which Senator Dierks wants to do with his bill, I'm going to support this amendment. I don't see how anyone could not support this amendment and still support the bill. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, on the Moore amendment which, incidentally, is found on page 682 in the Journal, page 682.

SENATOR BERNARD-STEVENS: Mr. President, members of the body, is Senator Moore...would you yield to a question at this point? Senator Moore, as you're going to the microphone, the question I

have, I just want a clarification for myself. Your amendment basically would say that LB 48 as it now stands, smokeless tobacco, you cannot give a sample to an adult or a minor; your amendment would say we're going to cover all the tobacco industry, cigars, cigarettes and so on. Is that correct?

SENATOR MOORE: Yes, all tobacco products.

SENATOR BERNARD-STEVENS: Okay. Mr. Speaker, members of the body, I rise in support of the Moore amendment and I would suspect that the Dental Association would be right behind me in that support. I'm kind of surprised that Senator Dierks is not right behind me in that support because of the hypocrisy that the body is, in fact, engaging in and probably would have gotten me onto the bill in the very, very beginning. The hypocrisy is in my view, and it is just in my view, that you have an industry whose product we don't like so all of a sudden we're going to say that they can't give away a sample. Now, members of the body, also understand what LB 48 does. LB 48 says, you know, there is an industry we don't like of their product; not only are we going to say that they can't give a free sample and supposedly that means that people won't get it now, but it also says that they can't sell below nominal costs. An industry that we don't like the product, we're going to say you can't sell for one-cent sale, you can't have a cent below nominal costs. Where are we going to draw the line? Where is pornography in here? Where is some of the illegal things that are in society in here? We're picking on one particular thing because we don't like it. That's not good policy. Now good policy would be what Senator Moore I believe is trying to do, say, okay, if it's a bad substance because it is causing bad things to happen to good people, let's don't be hypocritical here and take a small portion that affects maybe 38 out of 2,300, let's cover all 2,300. If cigarettes are bad, then let's keep it from illegal sampling for going on from cigarettes. So if Senator Schmit has a cigar and he wants to give someone a cigar on the legislative floor, that's illegal. If somebody has a pipe and they are going to share...Senator Landis is going to share some of his tobacco and his pipe with a member of the body or someone else, let's make that illegal because we know that that practice could cause and probably does cause cancer. Let's be up front and do it right. But Senator Dierks is saying, I don't know if I want to do that because it may kill the bill. I have a hard time with that, ladies and gentlemen, people here in the body, I have a hard time. Let's go ahead and pick on a little guy, a

smokeless tobacco little guy, and ignore the big guys because we're scared to death of the big guys. Let's go for it if that's what we want to do. Have the courage and go for it. Senator Dierks is saying, well, that may defeat the bill, not if the body stands tough. Let's go for it but let's don't do the hypocrisy of saying, patting ourselves on the back and say, boy, did we do a good job. We smeared that little guy, we just clobbered him, and we took a small portion of 38 people and we helped them, we think, maybe, though we'll never be able to document any of it and we're going to let all the other ones go and we'll pat ourselves on the back and the Dental Association will say proudly, we pushed forth, we got it, it didn't do anything but aren't we happy. Let's go for it. Let's do it all. Senator Moore has the right idea. I hope the body has the courage to do so. Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you. I'm pleased to take a moment to introduce some guests of Senators Wesely and McFarland. We have in the north balcony 45 students, a ninth grade Government class from Lefler Junior High School with their teacher. Would you people please stand and be recognized. Thank you. We're glad to have you with us. Any other speakers on the Moore amendment? May I see hands of anyone else that might want to speak to the amendment. Senator Hall. Anyone else? Senator Hall, proceed.

SENATOR HALL: Thank you, Mr. President and members. I rise in opposition to Senator Moore's amendment. I have been supportive of Senator Bernard-Stevens' efforts with regard to amending the bill, but at this point, since the body has determined that that was not an appropriate measure for the bill, I do not think that Senator Moore's amendment which would, in my opinion, make a bad bill worse, Senator Moore, is the way that we should go. What we are, in essence, trying to do is basically...I guess amend the bill as Senator Chambers stated so that it will not pass. I don't think we should pass the bill whether the amendment is adopted or not, so with that, I just...I feel that the issue is only compounded because, Senator Moore, I'm not so sure that the amendment, (a), won't be adopted and the bill, (b), won't be passed because I think the mind-set of the body with the rejection of Senator Bernard-Stevens' amendment is one that this train is rolling and there is no way to stop it, so it doesn't matter how many cars you put on it at this point, it is going to pass. So the amendment that you offer that includes all form of tobacco I think is...although it clearly is a legitimate argument that let's be consistent, let's outlaw the distribution

of any type of tobacco, I think it is an amendment that won't have the effect that you may think it will have. We may very well end up banning all forms of tobacco and I guess if that is your intent, then go ahead and do it, but I tend to oppose the amendment because I feel that, as well as the bill, that it is bad public policy to tell the folks out there what they can and cannot do as adults. And with that, Mr. President, I would urge the rejection of Senator Moore's amendment.

SPEAKER BARRETT: Thank you. Anyone else? Senator Dierks.

SENATOR DIERKS: Call the question.

SPEAKER BARRETT: The question has been called. Do I see five? Five hands please. Do I see them? Thank you. Those in favor of ceasing debate say aye. Opposed no. The ayes have it, motion carried. Debate ceases. Senator Bernard-Stevens...excuse me, Senator Moore, would you care to close?

SENATOR MOORE: Mr. President and members, we sit here I find, as I knew I would, the debate on that amendment very interesting. Senator Dierks is afraid it will kill his bill. Senator Wesely, I would be more than willing to rerefer this bill to committee if you'd vote to do so but I don't think you really want to do that. You know, it is one of those things where this amendment makes a lot of sense. Senator Chambers thinks Senator DeCamp pulls my strings. If former Senator DeCamp was pulling my strings, we'd have never got this amendment because the tobacco industry obviously doesn't like it. The fact of the matter is that I won't vote for this amendment like I would the original bill. I'm one of those people that thinks if you're of legal age and you can...just like you sample cheese and sample other things, you can have a sample of tobacco. But I guess at the risk of playing Russian roulette, let's have a vote on this amendment.

SPEAKER BARRETT: Thank you. You've heard the closing. It will be again necessary for a voice vote. We've had a request for reverse order again. Mr. Clerk, please proceed with the roll call in reverse order on the Moore amendment.

CLERK: (Roll call vote taken. See pages 805-06 of the Legislative Journal.) 20 ayes, 19 ayes, Mr. President, on adoption of the Moore amendment.

SPEAKER BARRETT: The motion fails. Mr. Clerk.

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

SPEAKER BARRETT: Senator Dierks, on the bill.

SENATOR DIERKS: Mr. Speaker, members of the body, could I consider this a closing? I'd like nothing better than to get this bill voted up or down today. I think we've spent plenty of time on it. We've talked about all the pros and cons. We know all the ifs and ands. There is nothing left that we have to talk about. Anything that I say is repetitive. It just takes our time. The only thing I'd like to remind you of is this bill and it's the way it was introduced and it was passed in committee, and the way it was passed through General File, the way it looks at you right now. This bill does exactly what we asked it to do in the first place, to prevent the gift of smokeless tobacco to the people of this state. That is the only thing we're asking. We're asking that we do this for the following reasons. Number one, smokeless tobacco is an addictive product, it causes addiction of our youth, it causes addiction of our citizens. Number two, it is cancerous, it is carcinogenic, it causes lip and mouth and tongue cancer. We know that. There is no question about that. If we can stop that from happening to one or two people in our state a year, we've done them a favor with the passage of this bill. Number three, it causes dental caries which is a relatively side effect, but it does do that. We need to consider all the pros about this legislation. There really is nothing about it that you can find that should be distasteful, pardon the pun. Thank you.

SPEAKER BARRETT: Thank you. Discussion on the advancement of the bill, Senator Bernard-Stevens followed by Senators Moore, Dierks and Schmit.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, and I don't intend to take the body very much longer. Philosophically, I have no problems with what Senator Dierks is trying to do. In fact, it is very laudable and it is a very good attempt of trying to do something that is good. Philosophically, however, the approach is bad policy and I don't know if the body is...sometimes we get in the mood to pass something to get it moving that we'll go ahead and vote to get it out of the way

even though it is bad policy and we'll kind of ignore those things that will come back to haunt us sometime. I think this is one of those. Twenty people at least had the courage to say that we should cover all tobacco products and I suspect another few that were not voting wanted to but they felt a little pressure not to. But the body made a decision and the decision is we're going to be totally discriminatory. The majority of the cancer deaths in this state is caused by pipe, cigars and cigarette smoking. That is the majority of the smoke related deaths in this state as of last year, those figures from the Department of Health. What the body is saying is that we don't have the courage to take the bull by the horns and really do something. What we're going to do is take a small group, because we don't like the product, that we don't have the courage to ban, by the way. Oh, gosh, no, let's don't ban it, let's let people have it, let's let the adults buy it, let's let the little guys go into the closet and and steal it from their dads, let's let them go ahead and die of cancer, let's don't stop it, and we're going to call it good. If you're going to try to do something that's real good, then let's do something that is positive, positively going to affect the people that smoke and the people that chew chewing tobacco. Members of the Legislature, do you seriously think in all good conscience, do you seriously think that if I am a minor and I see the cowboys in the rodeo and I see the Walt Garrisons at the display and I see the Nick Buonicontis and I see the baseball players a spittin' and a chewin', do you really think that if it is a legal sample to buy and adults will buy it, do you really think that minors are not going to get it if they want to? If the answer is yes, then you must really think that minors do not get porncgraphy. Then you must really think that minors do not get drugs that you can only get on prescription because they are not supposed to, we said they couldn't, they can't get a free sample, so they're not supposed to. LB 48 is, in its intent, good, but in all practical reasons we're saying that here is a product we don't have the courage to ban, but we're going to allow adults which is the majority of the population to buy, and by some miracle, kids won't get it. Ladies and gentlemen, may I remind you, minors in this state, it is now illegal for them to have a free sample and they now are getting it. It is currently illegal in this state for people, for minors to smoke cigars, cigarettes and chew tobacco. It is illegal, but it is being done...

SENATOR LABEDZ PRESIDING

SENATOR LABEDZ: One minute, Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: ...isn't it? Pardon?

SENATOR LABEDZ: One minute.

SENATOR BERNARD-STEVENS: I was just on a roll.

SENATOR LABEDZ: No.

SENATOR BERNARD-STEVENS: (laugh) Thank you, Senator Labedz. Members of the body, LB 48 in all its good intentions does not do anything to help except a prayer and we can say those every day. God help those...no, Senator Kristensen, God help those who have become addicted by tobacco products, but this bill will not do anything except set a policy philosophically that an industry whose product we do not have the courage to ban, we will philosophically say that, marketing, you can't go to adults, that, marketing, you cannot have a sale, that, marketing, you can't have a coupon but we're going to allow every perverse industry in the state to do so.

SENATOR LABEDZ: Your time is up, Senator.

SENATOR BERNARD-STEVENS: And that is not good policy.

SENATOR LABEDZ: Your time is up.

SENATOR BERNARD-STEVENS: Thank you, Senator.

SENATOR LABEDZ: Thank you. Senator Moore.

SENATOR MOORE: Would Senator Dierks yield to a question?

SENATOR LABEDZ: Senator Dierks, would you yield to a question? Thank you.

SENATOR MOORE: Senator Dierks, is your purpose in LB 48 to get after the smokeless tobacco industry or to protect minors from chewing tobacco?

SENATOR DIERKS: Both, yes, both, yes.

SENATOR MOORE: Well, then the second question, why is it as you

voted no on my last amendment, why is it you have a problem with just smokeless tobacco?

SENATOR DIERKS: Am I still on? Senator Moore, the amendment that you had which I find...well, it's foolish that we're talking about it because it has no bearing on the thing, but we hadn't discussed this in committee. It didn't have a fair hearing. The rest of the tobacco industry was not able to respond to the charges or whatever you want to call it.

SENATOR MOORE: Okay.

SENATOR DIERKS: Next year we'll probably do that.

SENATOR MOORE: This is my time. Would you be in favor of returning this bill to committee to have a hearing on that subject?

SENATOR DIERKS: Absolutely not.

SENATOR MOORE: Okay, I just wanted to get that on the record to make sure you weren't. Now I have risen in measured anger more than once on this issue and I apologize for that. I have some other amendments I could file to string this thing out but I won't do that. We've spent more than enough time on a relatively minor issue. As I said before, the only reason I've got so deeply involved in this is that I have great concern when this body simply overlooked reasonable amendments just for the sake of winning the battle, and the people that are pushing this bill, the only thing they want to do is totally outlaw free sampling. They were really out to get free sampling of smokeless tobacco. If they were really out to get...attack the problem of smokeless tobacco in minors, they would have embraced the Bernard-Stevens amendment. If they were really after the tobacco industry as a whole, they would have embraced my amendment, but it seems like for whatever reason, reason has been overcome by personalities on this issue and I think that's too bad. Now, as someone...I've had a couple of letters from dentists in my district talking about my arrogance on this issue and how it is attributed to my extreme youth, but I guess I'll use a quote from Winston Churchill that says, my arrogance only extends as far as what I believe to be right. Now I think I don't believe it's right that we kill a fly with a sledge hammer and do away with all free sampling. Unlike maybe some people in this body, I do want to attack the issue of minors chewing

tobacco, but Senator Dierks and the proponents of this bill have made this an all or nothing issue. Either we're going to ban all free sampling or we're not. They don't really want to get at minors, they want to get at the smokeless tobacco industry and I ask you to look at the personalities involved here and ask yourself why is it an all or nothing issue? And I think you'll see the answer for yourself. I urge you to defeat this bill.

SENATOR LABEDZ: Thank you, Senator Moore. Senator Dierks.

SENATOR DIERKS: I'd call the question.

SENATOR LABEDZ: A request has been made to call the question. Do I see five hands? I see five hands. All those in favor of calling the question vote aye, opposed nay. How about a show of hands? All those in favor, a show of hands. Voting nay, a show of hands. Cease debate. Debate is ceased. Senator Dierks.

SENATOR DIERKS: Madam Chairman and members of the body, I'm very relieved that we're finally to the point of closing on this bill on Select File, realizing full well that we still have to deal with it on Final. Number one, I can't let it go unsaid that I am after the tobacco industry, that's not my purpose. My purpose really is, number one, protecting the youth of our state. That has to be number one. And the reason for that, you all know very well. If the tobacco industry in our state is going to be attacked along with that, then so be it, but we need to do something to keep addiction from our youth and this is the bill that will do it. With that, I'd just like to close. I'd like to ask for a call of the house and a vote on reverse order, roll call vote, reverse order. Thank you.

SENATOR LABEDZ: Thank you, Senator Dierks. The machine is still out of whack so we're going to have to have a roll call vote in reverse order as requested by Senator Dierks. Mr. Clerk, proceed. Call of the house first. The house is under call. Do I see five hands? All those in favor of going under call say aye. Nay. The house is under call. Will all unauthorized personnel please leave the floor. Those senators that are in their offices, please return to the floor and record your presence. We're looking for Senator Hefner, Wesely, Senator Pirsch, Senator Schmit, please return to the Chamber. Senator Chambers, Senator McFarland, Senator Lindsay, the house is under call. Senator Dierks. We're looking for Senator McFarland. Senator McFarland, would you please return to the

Chamber. The house is under call. Mr. Clerk, as far as I can see I think we're all here. Would you proceed with the roll call vote in reverse order.

CLERK (Roll call vote taken. See page 806 of the Legislative Journal.) 30 ayes, 16 nays, Mr. President, Madam President, on the advancement of LB 48.

SENATOR LABEDZ: LB 48 is advanced. Do you have anything to read in, Mr. Clerk, before we proceed to the next bill and before Senator Barrett returns to the Chair?

CLERK: Madam President, actually I can...I'll defer for a moment, thank you.

SENATOR LABEDZ: Okay, Senator Lamb, just a moment.

SENATOR LAMB PRESIDING

SENATOR LAMB: The call is raised. Next bill, Mr. Clerk.

CLERK: Mr. President, LB 158A, I have no E & R amendments. I do have an amendment to the bill from Senator Labedz. The amendment is found on page 728 of the Journal.

SENATOR LAMB: Senator Labedz.

SENATOR LABEDZ: Thank you, Senator Lamb. This amendment was brought to my attention by the Fiscal Office after Douglas County informed them that there may be an increased cost to the county. The additional cost would be to accommodate seven digits in the county's data processing system for motor vehicle registrations and motor vehicle tickets and warrants. The Supreme Court is required to share the cost which the county may incur. The estimated cost is $10,000 so I am offering this amendment to LB 158A. Thank you.

SENATOR LAMB: The Chair recognizes Senator Moore. Is there any discussion on the amendment by Senator Labedz? If not, is there any close, Senator Labedz?

SENATOR LABEDZ: Senator Lamb, I waive closing. I urge the advancement of the amendment to LB 158A.

SENATOR LAMB: The motion is the adoption of the amendment by

PRESIDENT NICHOL PRESIDING

PRESIDENT: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. We have with us this morning as our chaplain Reverend Harlan Johnson. Would you please rise for the invocation.

REVEREND JOHNSON: (Prayer offered.)

PRESIDENT: Thank you, Reverend Johnson. I was waiting for the line, on time to be here for the morning invocation. Thank you very much for being with us and your thoughtful prayer. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Thank you. Any corrections this morning?

CLERK: Mr. President, I have no corrections.

PRESIDENT: Do you have any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review reports LB 48 as correctly engrossed; LB 158A, correctly engrossed; LB 277A, correctly engrossed; and LB 298, correctly engrossed, those signed by Senator Lindsay as Chair. (See pages 817-18 of the Legislative Journal.)

Notice of hearing, Mr. President, from the Transportation Committee, that's offered by Senator Lamb as Chair. Communication from the Governor to the Clerk. (Read communication regarding LB 56, LB 127, LB 167, LB 184, LB 185, LB 366, LB 195, and LB 165. See page 819 of the Journal.)

Mr. President, that's all that I have.

PRESIDENT: Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LR 31.

CLERK: Mr. President, I do have another item, forgive me. LR 33, offered by Senator Beyer. (Read brief synopsis of the resolution. See pages 818-19 of the Journal.) That will be laid over.

those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on pages 940-41 of the Legislative Journal.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 398 passes. LB 458.

CLERK: (Read LB 458 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 458 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on page 941 of the Legislative Journal.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 458 passes. LB 459.

CLERK: (Read LB 459 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 459 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on page 942 of the Legislative Journal.) 46 ayes, 0 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 459 passes. I understand we're skipping LB 499. We'll jump to LB 48.

CLERK: Mr. President, I have a motion on the desk. Senator Schmit would move to return LB 48 to Select File for a specific amendment, that amendment being to strike the enacting clause.

PRESIDENT: Senator Schmit, please.

SENATOR SCHMIT: Mr. President and members, I'm going to offer this motion and I will tell you now that I'm going to withdraw it when I finish making a couple of points and allow you to vote

as you would vote anyway. But I just think it is important that this Legislature recognize that from time to time, for whatever reason, we introduce into this body and sometimes pass into law bills which are specifically designed to limit or to influence, adversely, usually, one portion of an industry or an industry. Many times in the time I've served here I've questioned as to why we introduce a bill that is pointed toward just one particular type of enterprise and allow others to continue to exist. First, I want to say that I commend the dentists for their interest in this effort to try to curb the use of tobacco. That's a very laudable goal. And I suppose that I would be even more laudatory in my comments if I thought they were going to extend that to the use of all tobacco, because I think that we all know that tobacco has, in many instances, been the cause of death of some people because of cancer. It's kind of interesting, however, that every effort we have made in this body to try to expand the bill to prohibit the free dispensing of all tobacco products has been met with total blank wall resistance. At the present time, I want to point out that this bill does not make it illegal for minors to purchase and to possess any kind of tobacco. Present law allows them to purchase and to possess. It is illegal for myself to sell to a minor. We all know, however, that many tobacco items are dispensed by machine and it is impossible to enforce the dispensing of that product through a machine. So what we are doing is that we are passing a bill which makes it illegal for two adults to exchange a sample of one kind of tobacco, particularly smokeless. It also, more interestingly, makes it illegal for that tobacco product to be sold at what is called a nominal price. I question, very sincerely, whether or not that is constitutional. I do not believe it is. By some strange quirk of fate, we do have on the statutes a minimum price bill for tobacco. And I would suggest that the passage of this bill will probably precipitate, and I may even participate in that, a challenge of the minimum pricing law for tobacco products. I recall the absolute horror that faced this body several times when there was an effort made to provide a minimum price for agricultural products and the continuing admonition about the free enterprise system and how it ought to be allowed to work. But in the case of tobacco, we are saying that you cannot even sell it for a nominal price. If, for example, my friend in Cliff's Smoke Shop has a sample of smokeless tobacco or has a supply of smokeless tobacco on hand and it's not moving, it is illegal for him to lower the price to a point where it will move, which is an age-old American principle of business, and it

is, of course, totally illegal for him to give it away. It amazes me, you see, that we have said time after time on this floor that we want to stop the children's use of smokeless tobacco. I have no real concern about that goal. How then, I ask you, do you stop the children using smokeless tobacco by banning the free exchange of it between adults? It is almost as if you were to try to stop teenage pregnancy by banning sexual practices between consenting adults. I don't think that would a be very good system for stopping teenage pregnancy. One more point I'd like to make is the fact that the bill does not prohibit the possession of tobacco or smokeless tobacco by a youngster, does not make it possible, of course, for a school official, for example, to confiscate the product. So I suppose a youngster is just going to carry it around in their shirt pocket or their hip pocket and play the macho image and never touch it. I'm curious, you know, why sometimes we do things that are foolish in this body when we know it to be foolish and we know that in the event that it does become law we will find ourselves coming back here again in the future and having to rectify that. Someone told me, well, we just want to pass it and put this issue to rest. Well, ladies and gentlemen, I can assure you that the passage of a foolish bill never puts the issue to rest, because the time will come when we will be called upon to rectify the error. Those who do not choose to use tobacco have every right not to use it. Those who want to discourage the use of it by youngsters have every right to want to discourage the use of it. But there comes a time in this country when adults ought to have the right to make the decision as to whether or not they want to have a free exchange of a product. I could go into other kinds of examples, but I'm not going to do so at this time. But I think it's of interest to me that this bill is designed, as I said earlier on this floor, so that we can go back to our communities and say, well, we struck a blow against cancer by stopping the distribution of smokeless tobacco to children. Ladies and gentlemen, the bill does not do that, does not do that. The bill stops the distribution, free distribution, or the sale for a nominal price of smokeless tobacco to adults. Now if that is an indication of how you're going to get at the distribution to children, then I would suggest that the same "correlary" could be carried over into many other areas. And there are businessmen on this floor today who have been voting for this bill and I can predict that the time will come when the same theory will be carried out in order to limit some other legitimate business. If you want to ban all tobacco products, go ahead and try it. If you want to ban the

give-away of all tobacco products, go ahead and try it. It was obvious on this floor that there is no desire to do that, and the reason we do not do it is because we are cowards. We do not choose to take on the cigarette industry, the cigar industry, the giants of the industry where 95 percent of the product is used. So we pick on, as I have said earlier, the weakest chicken in the barnyard, and then we can go back home and boast about our accomplishments. Ladies and gentlemen, I do not want to singly pick out any legislator, don't do that, never have and never will. But the bill is not a good bill, it does not do what you want it to do. And so I would suggest that you give yourself one more thought about the bill before you vote for it. If you really feel that two adults, two 21-year-old, or two 40-year-old, or two 60-year-old adults do not have enough common sense to make the decision as to whether or not they ought to give away or exchange a sample of smokeless tobacco, if you think the Legislature needs to regulate that,...

PRESIDENT: One minute.

SENATOR SCHMIT: .. then vote for the bill. If, on the other hand, you think that that weighty decision can be left up to the individual, that we have enough common sense to decide whether or not we want to exchange a tobacco product, or accept a tobacco product, or sell it for a nominal price, if you can tell me what that is, then I think you'd have to vote against the bill. Mr. President, I ask permission to withdraw my motion.

PRESIDENT: It is withdrawn. Do you have anything else on it, Mr. Clerk?

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

PRESIDENT: Okay, read the bill, please. Oh, Senator...okay.

CLERK: (Read LB 48 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass? All those in favor vote aye, opposed nay. And we have a request for a roll call vote in the regular order. Mr. Clerk.

CLERK: (Roll call vote taken. See page 943 of the Legislative Journal.) 27 ayes, 16 nays, Mr. President, on the Final Reading passage of LB 48.

PRESIDENT: LB 48 passes. LB 61.

CLERK: (Read LB 61 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 61 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on page 944 of the Legislative Journal.) 45 ayes, 0 nays, 4 excused and not voting, Mr. President.

PRESIDENT: LB 61 passes. LB 176.

CLERK: Mr. President, I have a motion on the desk. Senator McFarland would move to return LB 176 for an amendment.

PRESIDENT: Senator McFarland, please.

SENATOR McFARLAND: Thank you, Mr. President. I put in this motion for purposes of clarifying the intent of the amendment that was added to the bill. This is a bill that I introduced at the request of the Nebraska Equal Opportunity Commission to clarify some language concerning the definition of disability. The Nebraska Chamber of Commerce and Industry suggested an amendment to the bill that was adopted by the Labor Committee and is included in the bill at this time. That amendment, I'll just read it to you, said disability shall not include an addiction to alcohol, controlled substance or gambling which is currently being practiced by the employee, and then it goes on, for purposes of this subdivision does not reasonably preclude shall mean that an employer shall not be subject to more than a de minimis expense. There have been...a few senators have asked me, well what is meant by that amendment as far as a de minimis expense? I'll read you intent language that was provided and that I have drafted and prepared. It says when a person who meets the other criteria of disability under the statute has filed the complaint with the Equal Opportunity Commission, it is the intent of this bill that the commission will look at the expense or accommodation or adjustment that would be needed that would not reasonably preclude the specific person from doing his or her job. Determining de minimus expense would be done on a case-by-case basis. It is not the intent to increase barriers

2 present and not voting, 4 excused and not voting, Mr. President.

PRESIDENT: LB 502 passes. While the Legislature is in session and capable of transacting business, I propose to sign and do sign LB 391, LB 398, LB 458, LB 459, LB 48, LB 61, LB 176, LB 298, LB 327, LB 349, LB 416 and LB 502. May I introduce some guests, please, of Senator Hefner. Under the south balcony we have Mr. and Mrs. Darrell Henry of Coleridge, Nebraska. Would you folks please stand and be recognized. Thank you for visiting us today. Mr. Clerk, something for the record?

CLERK: Mr. President, your Committee on Education reports LB 226 to General File with amendments, signed by Senator Withem. Agriculture Committee reports LB 49 to General File with committee amendments, signed by Senator Johnson as Chair. That's all that I have, Mr. President. (See page 950 of the Legislative Journal.)

PRESIDENT: Thank you. We'll move on to Select File. LB 408.

CLERK: Mr. President, the first bill on Select File, LB 408. The first order of business are E & R amendments.

PRESIDENT: Senator Moore, please.

SENATOR MOORE: Mr. President, I move we adopt the E & R amendments to LB 408.

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

CLERK: Mr. President, the first amendment I have to the bill is by Senator Barrett. Senator, I have AM306, it's on page 692 of the Journal.

PRESIDENT: Senator Barrett, please.

SENATOR BARRETT: Thank you, Mr. President and members. Yes, this little amendment is on page 306 or rather 692 in the Journal. It affects only the exchange program, Mr. President. The original bill put a limitation on which would have prevented an exchange student from attending a high school within 150 miles of his own school. We heard from a superintendent in Columbus who said we may have some students who would like to go

adopted...or, excuse me, as amended be advanced.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 354.

CLERK: LB 354, Senator, no amendments to the bill.

PRESIDENT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 354 be advanced.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. LB 354A.

CLERK: On 354A, Senator, I have no amendments to the bill.

PRESIDENT: You've heard the motion...Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 354A be advanced.

PRESIDENT: You've heard the motion. All in favor say aye. Opposed nay. It is advanced. Mr. Speaker, did you wish to say something about the time of the meeting tomorrow morning before we adjourn?

SPEAKER BARRETT: Thank you, Mr. President, just a reminder that we will convene at eight o'clock tomorrow morning for the purpose of reading, I believe it is LB 92, the big bill. Thank you. Eight o'clock, tomorrow morning.

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

CLERK: Mr. President, I do. Senator Rod Johnson would move that LB 161 be placed on General File pursuant to Rule 3, Section 19, and that will be laid over.

Your Enrolling Clerk has presented to the Governor as of eleven-o-five this morning bills read on Final Reading this morning. (Re: LB 391, LB 398, LB 458, LB 459, LB 48, LB 61, LB 176, LB 298, LB 327, LB 349, LB 416, LB 502. See page 956 of the Legislative Journal.)

Banking Committee reports LB 542 to General File with amendments

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us this morning as our chaplain of the day Reverend Steve Janovec of the People's City Mission in Lincoln. Would you please rise for the convocation.

REVEREND JANOVEC: (Prayer offered.)

PRESIDENT: Thank you, Reverend Janovec. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Thank you. Any corrections to the Journal this morning?

CLERK: No corrections, Mr. President.

PRESIDENT: Do you have any messages, reports or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 147 and recommend that same be placed on Select File; LB 147A, Select File.

Mr. President, Enrollment and Review reports LB 154, LB 360, LB 360A and LB 441 as correctly engrossed, both those items signed by Senator Lindsay as Chair of the Enrollment and Review Committee. (See pages 1003-04 of the Legislative Journal.)

Mr. President, communications from the Governor. (Read communications regarding signing of LB 391, LB 398, LB 458, LB 459, LB 48, LB 61, LB 176, LB 298, LB 327, LB 349, LB 416, LB 502, LB 92 and LB 92A. See page 1004 of the Legislative Journal.)

Mr. President, an appointment letter from the Governor appointing Ms. Kathy Campbell to the Child Abuse Prevention Fund Board. That will be referred to Reference. (See page 1005 of the Legislative Journal.)

I have a report from the Job Training area for the Department of Labor, Mr. President. That will be on file in my office. (See page 1005 of the Legislative Journal.)