

January 19, 1989

LB 36, 38, 648-661

SPEAKER BARRETT: Thank you. On Senator Johnson's motion to advance the bill, is there discussion? Seeing none, Senator Rod Johnson, anything further? The question is then the advancement of LB 36 to E & R Initial. Those in favor vote aye, opposed nay. Voting on the advancement of LB 36. Have you all voted? Record, please.

CLERK: 30 ayes, 0 nays, Mr. President, on the advancement of LB 36.

SPEAKER BARRETT: LB 36 is advanced. New bills, Mr. Clerk.

CLERK: Mr. President, new bills. (Read title for the first time to LBs 648-661. See pages 309-12 of the Legislative Journal.)

SPEAKER BARRETT: Mr. Clerk, proceed to LB 38 on General File, please.

CLERK: Mr. President, LB 38 offered by Senator Rod Johnson. (Read title.) The bill was introduced on January 5, referred to the Agriculture Committee, advanced to General File. I have no amendments to the bill, Mr. President.

SPEAKER BARRETT: (Gavel.) Senator Rod Johnson, to present LB 38.

SENATOR R. JOHNSON: Mr. Speaker and members, again, another housekeeping bill, this time for the Department of Agriculture. Covers three basic areas in the statutes that affect the department. The first area in Section 1 of the bill affects definitions as it relates to the Nebraska Poultry Disease Control Act. Sections 3 through 5 deal with the Manufactured Milk Act and this might be one of the more controversial areas of the bill. In Section 4, it amends the law to require new permittees who run dairies to have hot and cold running water in the milkhouse as of October 1 of 1989. This might be controversial. However, the dairymen have come in and testified in support of the bill and feel that any new construction of a dairy house should incorporate both hot and cold water for sanitation reasons. Finally, in Section 6, it approves new rules and regulations that will be adopted by the state veterinarian as it concerns the Nebraska Swine Brucellosis Act. Again, most of this is technical. The hot and cold running water in the dairy house is an area that does have some concern,

SPEAKER BARRETT: The house is under call. Members, please check in, return to your seats, and those outside the Chamber, please return and record your presence. Senator Kristensen, please. The house is under call and I would advise members they are to be in their seats when the house is under call. Senator Warner, the house is under call. Senator Haberman. Senator Lamb, would you please check in? Senators McFarland and Peterson, the house is under call. Please report to the Chamber. Senators Haberman, McFarland and Peterson, the house is under call. Senator Haberman, would you record your presence? Senator Warner, would you record your presence, please? They are all present and accounted for. The question is the adoption of the amendment to the amendment. Those in favor vote aye, opposed nay. Have you all voted? Have you all voted? A roll call vote has been requested. Mr. Clerk, on the amendment to the amendment.

CLERK: (Roll call vote taken. See page 2106 of the Legislative Journal.) 21 ayes, 24 nays, Mr. President.

SPEAKER BARRETT: The motion fails. Senator Bernard-Stevens, for what purpose do you rise?

SENATOR BERNARD-STEVENS: Just a point, Mr. President. I would like the ruling, I believe I would like to suggest and ask that the Lindsay amendment be divided.

SPEAKER BARRETT: We are back to the Lindsay amendment. What...where would you expect the division, Senator?

SENATOR BERNARD-STEVENS: I don't have a copy right in front of me, but the last line where it repeals, that would be one section and the other part would be the first section. Yes, paragraph...I have it now. We'd have just simply paragraph one would be one section and Section 2 would be the other one.

SPEAKER BARRETT: Inasmuch as there are only two sections, the division is obvious. Do you prefer to start with Section 1 or Section 2, I presume Section 1? Thank you. Mr. Clerk, have you matters for the record? The call is raised.

CLERK: Mr. President, Banking, Commerce and Insurance Committee reports LB 656 to General File with committee amendments attached. That is signed by Senator Landis as Chair. Amendments to be printed by Senator Landis to LB 525; Senator

February 16, 1990 LB 159, 163, 594, 656, 854, 989, 1018
1020, 1072, 1073, 1099, 1146, 1153, 1179
1221, 1222

problem. Thank you.

SENATOR LABEDZ: Thank you, Senator Wehrbein. Senator Schmit. Senator Schmit, on the Hefner amendment. Mr. Clerk, do we have anything for the record before we adjourn?

CLERK: Madam President, your Committee on Banking, Commerce and Insurance whose Chair is Senator Landis, to whom was referred LB 1072 instructs me to report the same back to the Legislature with the recommendation it be indefinitely postponed; LB 1073, General File, with amendments; LB 1153, General File with amendments. (See pages 851-52 of the Legislative Journal.)

Madam President, a couple of announcements. The Revenue Committee will meet in Executive Session; Revenue Committee, Executive Session in Room 1520 upon adjournment; Revenue upon adjournment in Room 1520.

Mr. President, a series of priority bill designations. Senator Wesely has selected LB 989; Senator Lamb, LB 1020 as one of the Transportation Committee priorities; Senator Lynch, LB 1146; Senator Nelson, LB 656; Senator Abboud, LB 1018; Senator Lowell Johnson, LB 594; Senator Hannibal, LB 1221; Senator Schmit, LB 854 as his personal priority, and LB 1099 and LB 1179 as committee priorities.

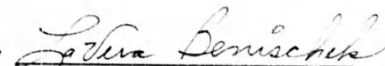
Mr. President, Senator Beyer would like to add his name to LB 159, an amendment; and Senator Beck to LB 1222. That's all that I have, Madam President.

SENATOR LABEDZ: Thank you, Mr. Clerk. Senator Langford, you have a motion up at the desk to adjourn. Would you like to make that motion, please.

SENATOR LANGFORD: Madam President, I move we adjourn until Tuesday, February the 20th at 9:00 a.m.

SENATOR LABEDZ: Thank you, Senator. We are...all those in favor say aye. Opposed. We are adjourned.

Proofed by


LaVera Benischek

February 20, 1990 LB 656, 662, 771, 939, 1055, 1079, 1183
1187, 1202, 1221, 1236

PRESIDENT: The bill is advanced. You have an amendment on 915, so we'll not take it up. Something for the record, Mr. Clerk?

CLERK: Mr. President, I have a confirmation report from the Banking, Commerce and Insurance Committee, that's signed by Senator Landis. Revenue Committee reports LB 1202 to General File; LB 939, General File with amendments; LB 1055, General File with amendments; LB 1079, indefinitely postponed. Those signed by Senator Hall. Health and Human Services Committee reports LB 1187 to General File. That is signed by Senator Wesely. I have a series of amendments to LB 1221 by Senator Withem; Senator Smith has amendments to LB 1236; Senator Nelson to LB 656; Mr. President, Senator Wesely to LB 662. And, Mr. President, finally, an announcement from the Speaker. (Re. LB 771.) And that's all that I have, Mr. President. (See pages 874-79 of the Legislative Journal.)

PRESIDENT: Senator Rogers, you haven't said much today. Would you like to adjourn us until tomorrow at nine o'clock.

SENATOR ROGERS: Mr. Speaker, I move we adjourn until tomorrow morning at 9:00 a.m., February 21st.

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

Proofed by:

Debbie Smith
Debbie Smith

voted? Please record.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 594.

SPEAKER BARRETT: LB 594 is advanced. LB 656.

CLERK: Mr. President, 656 was a bill originally introduced by Senator Arlene Nelson.

SENATOR ASHFORD: I just have a quick point of personal privilege if I could, Mr. President.

SPEAKER BARRETT: State your point, Senator Ashford.

SENATOR ASHFORD: Well, I just would like to, before we go any further, to congratulate my car mate, Senator Chizek, on the birth of a new granddaughter, eight pounds, one ounce, to Mary and Tony. So, with that, congratulations.

SPEAKER BARRETT: Thank you, Senator Ashford. Congratulations, Senator Chizek. Point well taken. Mr. Clerk.

CLERK: LB 656, Mr. President. (Read title.) The bill was introduced on January 19 last year, Mr. President; at that time, referred to the Banking Committee. The bill was advanced to General File. I have committee amendments pending by the Banking, Commerce and Insurance Committee.

SPEAKER BARRETT: The Chair recognizes Senator Landis on the committee amendments.

SENATOR LANDIS: Thank you, Mr. Speaker, and members of the Legislature, what's going to happen this morning is I am going to offer the committee amendments. Senator Nelson has some amendments to the committee amendments that she has worked on over the summer with the Attorney General's Office. If they are adopted, then I believe there will be a motion then to adopt the committee amendments as amended. That's what I would anticipate happening today. LB 656 was brought to us by Senator Nelson to respond to a growing body of evidence that there are abuses in the campground membership program that's held in different parts of the state for different other campgrounds. We had a number of interested parties before us at the committee hearing, including Senator Nelson, including the Protection Division of

the Attorney General's Office, Denise Frost; including the President of the Better Business Bureau, Phyllis Chambers. We also had a couple of people who had been victimized in these exchanges. We had the Director of the Real Estate Commission and we had representatives of a couple of the campgrounds saying that they were trying to clean up their act in their industry. The committee amendments originally changed the measure from its original introduction form to a form that paralleled the Iowa law. As a matter of fact, there is a body of thought that says we have problems in Nebraska because Iowa legislated in this area and the bad guys just simply crossed the river and came to work for some of the Nebraska campgrounds. The committee amendments change some definitions, provide for some prohibited practices in connection with the offering, sale or lease of an interest in a membership campground, prohibit false or misleading advertisements, require campgrounds to be registered with the Real Estate Commission, require membership operators to sell only upon registration with the Real Estate Commission, providing that certain kinds of transactions shall be exempt from registration, provide for the effectiveness, the date of effectiveness of registration, a method for denial, suspension or revocation of the kinds of registrations that would be authorized by the bill, a registration fee, etcetera, etcetera. For the most part, these amendments parallel, as I say, the Iowa suspension, actually registration system, and then Senator Nelson has a series of amendments that she would like to offer which make some additions to this based on her study of other states that have acted, including Oregon, and the suggestions of our own Attorney General's staff. One of the most revealing things which you have available to you is the list from Paul Quinlan of the kinds of abuses that have occurred. For example, one of the complaints registered was of a mother who was kept at a campground for four hours until they reluctantly agreed to purchase a membership with a promise that this amount could be refunded if they changed their minds. Later, when there was an attempt to refund or ask for a refund they were threatened with a lawsuit. Another one argued that...or pointed out that they had been offered a prize notification if they toured the campground. They toured for a couple of hours and actually got a piece of junk not worth \$2, rather than the \$40 camera that was promised. A third set of complainants purchased memberships without a clear understanding of the costs involved. They were 77 and 70. There were in poor health. The couple were exhausted after a two-hour tour in the heat. They were told they had the right to cancel. They tried to cancel and they

were threatened with a lawsuit. They wound up making payments out of their grocery money and when told that they had prizes that they had won, were informed that they had \$198 shipping charge for the prizes that they had won. Deceptive prize notifications for another complainant. A sixth complainant toured the campgrounds believing that they had won a Chevy Blazer or 5,000 bucks. When they got done they had a veneer grandfather clock out of particle board that was worth less than \$30. Another couple wanted assistance in selling their membership, something that they had been told that they would be able to receive. They couldn't get the promised assistance in selling their membership. An eighth complainant pointed out that the prizes that they had been promised while touring had not been sent. It took a lengthy correspondence to happen. Well, I can tell you this that Paul Quinlan sends us not six or eight but 35 such complaints in this material which Senator Nelson has passed out. The committee, in advancing this bill unanimously, was entirely persuaded there were a series of commercial abuses going on, that people were being high pressured, that there was a series of sales practices that were deceptive, that were misleading, and that special legislation was necessary to effectuate an end to this. I would move the adoption of the committee amendments. I will tell you, however, that I also intend to support the committee amendments, amendments to the committee amendments suggested by Senator Nelson following this introduction. And, with that, Mr. Speaker, I will close on the committee amendments and I will be happy to answer questions, although the next order of business should be the amendments to the amendments.

SPEAKER BARRETT: Thank you. Mr. Clerk, an amendment on the desk.

CLERK: Mr. President, Senator Nelson would move to amend. You will find the amendment in your bill books. It's AM2015.

SPEAKER BARRETT: The Chair recognizes Senator Nelson.

SENATOR NELSON: Mr. Speaker, members of the body, I think the order is to adopt the committee amendments because my amendment then is an amendment to...am I right? Mr. Clerk, wrong?

SPEAKER BARRETT: We will proceed on your amendment to the committee amendments.

SENATOR NELSON: All right, thank you. Thank you, then. What...Senator Landis has done a very good job of explaining what brought this bill along in the first place. It was brought to my attention about two years ago that this was happening in the state and even though these campgrounds are not in my particular area, people in my area were getting, so to speak, taken by these campgrounds. A campground membership is simply a campground that is operated and provides facilities for people that have purchased these campgrounds. Now, this does not include KOAs and other campgrounds where anyone may camp just for paying a daily or weekly fee. One of them particularly that was brought to my attention is connected with a coast-to-coast campground. Purchasers contract by really buying right out to use the facility, somewhat maybe like a health center or a fitness center. And much of the same thing is true in their contract as should be true in the membership campgrounds. You're not purchasing a specific site or cabin, you're just purchasing a membership. I became aware when an elderly couple in Grand Island, and Senator Landis alluded a little bit to them, a couple years ago, she has multiple sclerosis, she has had it for thirty some years. So they stopped in, got the free literature and so on. What they have to do is weekly they made trips from Grand Island to Omaha for treatment for her multiple sclerosis. They felt that...and how they got sold on it somewhat a little bit in the first place that they had a pickup and a small trailer that she couldn't stand to come clear back to Grand Island but maybe they could go to Omaha to the doctor and then she could come back to Yutan and rest and then make the rest of the trip back to Grand Island. It was a very hot afternoon. Make the story rather short if I can. They limit them to two hours. While she went to the bathroom, they enticed her husband into signing the contract. She said that he had never done anything in his life like that before. And anyhow when she got back to the business office, the contract had been signed. Well, he thought that it was for \$995. They made their trip on to Omaha that night, stayed in a motel west of Omaha and she got out the contract and found out that it said \$2,995. So she was just so shook. She said I usually let him do the talking because of my multiple sclerosis, I get nervous. She called VISA back and she called the campground on their number and told them that they definitely didn't want to go through with it and to stop the VISA payment. The gentleman there blew his stack, threatened us and said that he would sue us for all we were worth. I told my husband about the phone call. We both were scared out of our wits. After some discussion, my husband

felt we should let the VISA go through even if it meant to live...nothing to live on. Well, in the meantime, overnight, the next morning, they had sold that contract to a bank in Omaha, so they, in essence, were out of it and the bank in Omaha is the one that then they had to deal with. A long story short, then they were to pay \$144 a month to the bank in Omaha with a lien on their house and with a lien on their car and a lien on their trailer. And so then they were advised and they went to the county attorney and he said they couldn't do anything about it, that they had to make payments and they did make payments of \$55 or \$53 out of their grocery money. This family was so strapped she had bunion trouble. They had \$27 one month to live on and, in essence, then the VISA money came out of money that they had inherited, \$5,000, and that money came out of their burial money then. And I can go on with story after story. The moped that they got, they have had three motors in it, not one of the motors has run. They had to pay \$198 to get it, that is to buy the windshield and the knee guards and so on and so forth, as you know, and then the camera. So then just yesterday a girl came in my office from another campground. She filed bankruptcy in a way to get out of it, as advised by her attorney. She filed February the 5th. I asked her, why did you go in, a young girl? There is a college officer here, people from the air force base. Anyhow, her contract, she did pay a little bit down, was for originally less than \$3,000 and then with the finance, a service charge on it for \$749, the contract grew to \$3,239 but she is now being sued for \$4,057. And I asked her why she signed the contract. And she said, well, you had to sign the contract before you got the free gift, which she thought it was a VCR camera. She looked at it and she said it was a pile of junk. Well, they wanted \$45 for it and she refused. Well, she thought I'm clear sailing because I signed the contract and I have a weakness of buying things right at the time, then I think of it in two or three days time and I get out of it or so on, and I think how dumb or stupid I was. So, anyhow, she did and she didn't...then she saw the camera and she said it wasn't even worth the \$45, so she didn't assume that they would carry the contract through because she said my credit is no good, absolutely not. And she makes less than 15,000 a year, but, anyhow, now she had to take bankruptcy to try to get out of it. I can go on and on and on. So the amendments are quite complicated. We worked on them last year; more and more instances over the summer, and we worked very close with the Attorney General's Office. So, with that, at this time I would just ask for the adoption of the original committee amendments

and then if you folks want to be bored, I will go through the other amendments with you.

SPEAKER BARRETT: Thank you. Discussion on the amendment to the committee amendments offered by Senator Nelson. Senator Elmer, would you care to discuss the amendment to the amendments?

SENATOR ELMER: Just to comment about the bill and the amendments. Last summer, out of curiosity, when I noticed that this legislation was pending, Donna and I had received an...my wife and I had received an invitation to look at one of these proposed membership camping things to see what sort of an operation it was. That was out near Weeping Water. The things that these people are saying about how the salesmen and how the thing operates are absolutely true. This regulation needs to be there. Toward the end of the interview and the tour, and I revealed who I was, they quickly got me out of there without any obligations. I strongly support this legislation.

SPEAKER BARRETT: Thank you. Senator Landis, followed by Senator Korshoj.

SENATOR LANDIS: Ooh, that's an exciting story, the undercover sting operation. I love that. That sounds great. I...my only experience is by looking through the Attorney General's handout, the real estate handout, and the testimony that we had, but it confirms everything that Senator Elmer was talking about. I support the committee amendments and I support these amendments to the amendments and I hope that we can advance the bill today.

SPEAKER BARRETT: Thank you. Senator Korshoj.

SENATOR KORSHOJ: Mr. Speaker and members, Senator Nelson, could I ask you a couple of questions?

SPEAKER BARRETT: Senator Nelson, please.

SENATOR NELSON: Certainly.

SENATOR KORSHOJ: Where is that amendment printed or where...what is the amendment?

SENATOR NELSON: All right. There are two amendments...it's in your bill book, your green bill book, the amendments. It was...

SENATOR KORSHOJ: The committee amendments, but you have an amendment to the amendment.

SENATOR NELSON: All right. It's also in your green book here, should be.

SENATOR KORSHOJ: Okay.

SENATOR NELSON: Mine is in there, 656. The second amendment is LB...or is amendment 2015 and it should be in your book. It was in mine, in 656 right there.

SENATOR KORSHOJ: Okay. These horror stories you're telling us, there's three campgrounds in Nebraska, are they all three "guilty"? Or are we just shooting at one campground? What's the...

SENATOR NELSON: No, we're shooting at three that I know of in the hearings and so on and from the people contacted, the Real Estate Commission. See they're really...it doesn't come under deceptive trade practices. There's just...it's a gray area, there's just no way to...but they are saying there is a possibility of six. I have heard of five that we're talking about. But I have...this one that I just mentioned is one campground. The one that I alluded to at first, the elderly couple in Grand Island, that is another campground, and then I have in my files from another one. So what I'm talking about is three of them that I know of.

SENATOR KORSHOJ: Yeah, it's not just one then?

SENATOR NELSON: Not just one, huh-uh. And, in fact, the contract with the elderly people, I can't say but it would seem that they didn't even initial right down the line things that they said that they heard of. As she said, it shot our marriage. It's just absolutely disgraceful the things that they got into. I will admit that most of these people stop by with the idea of getting something for nothing and we don't get something for nothing in this day and age.

SENATOR KORSHOJ: What do you get? Nothing for something?

SENATOR NELSON: Nothing for something sometimes, you've got...they get worse than that. And, incidentally, the lobbyist for one of the campgrounds, we worked through a lot of this last

year and any campground that I would say that is operating legally has agents that are qualified and so on, there is nothing in here that should hurt them in the least. It's just asking them to run a good...a good business and there has to be some teeth in the law because of what's happening. And, as I say, it's not happening just to the elderly, it's happening to people your age.

SENATOR KORSHOJ: That old?

SENATOR NELSON: So the need is so great. I could bore you for another two hours of incidents that are almost unbelievable.

SENATOR KORSHOJ: Thank you. I will listen. That's all.

SPEAKER BARRETT: Senator Hartnett, please.

SENATOR HARTNETT: Mr. Speaker, members of the body, Senator Nelson, I guess I...there are...how many campgrounds is there like this in the state? Maybe I should ask Senator Landis or someone. You know, is there three...you were saying to Senator Korshoj three.

SENATOR NELSON: Three main ones and I understand that there are maybe two others that would come in under this. You see, the main one or both of these, one of them particularly is connected with coast to coast membership where people are enticed that when you travel all over the United States you can stay in these parks. Well, for a dollar a night, but you have to send to Denver to get stamps ahead of time, a dollar apiece, and also then that they have to pay \$144, and I think it's the same on the two campgrounds that I know of, or \$36 a month for yearly membership dues. Well, of course, these people are so teed off that they don't pay the membership dues and so they aren't even allowed on the grounds.

SENATOR HARTNETT: So there's just, you think, basically three.

SENATOR NELSON: Basically, three, but there could be...and last summer, if I remember, there was supposedly five and the Real Estate Commission says a possible six, and, of course, they're the ones that have gotten the contacts and the Attorney General's Office.

SENATOR HARTNETT: Thank you.

SPEAKER BARRETT: Any other discussion? Senator Nelson, would you like to close?

SENATOR NELSON: No, I just move for...just a minute, Mr. Speaker, are we speaking now to my amendment to the original committee amendments? Don't we have to adopt the committee amendments and then...because mine is amendment...

SPEAKER BARRETT: We are now in the process of your closing on the adoption of your amendment to the committee amendments.

SENATOR NELSON: Oh, all right. All right. Thank you, Rex. If you folks want, I will gladly go down through my amendments and exactly what they do, but I'm not sure that you want me to bore you. If you want me to go down just some very short changes, what they do is it explains what a campsite is, facilities, persons, sale, Section 3. A lot of these are the same as the Iowa law and when you talk to Iowa they tell us that it must be strengthened over and above what theirs was. Section 4 provides for prohibited practices in connection with and offering the sale. Section 5 is for application for registration with the Real Estate Commission. Essentially, Section 5 is the same as Section 4 in the original. Section 5 also contains a controversial requirement for a financial statement and this is one place that the Real Estate Commission is absolutely insisting that we keep in the bill some type of information as to what the financial basis of these campgrounds are. Section 6 provides for certain exemptions from registration under this act. Section 7 provides for the effectiveness of the registration. Eight is circumstances under which the Real Estate Commission may deny an application. Nine is registration fees which is \$300. Incidentally, this bill is a little revenue gainer instead of a loser. And licensing of the operators has been a concern. But they have to have them licensed, the Real Estate Commission, or they have no teeth in the act. Oral misrepresentations would be a violation of the Membership Campground Act. And financial disclosure, now I understand that there may be, from my aide, from some talk out in the lobby, that there could be a little question on the financial contract and if there is, we will address that on Select. Section 14 is registration, again, of the salespersons. Section 17 prohibits untrue and misleading advertisements. And another thing, one section addresses the print so that it isn't in such a fine, narrow print and so small that they can lay their hand on it

before the people read it. It has to be double spaced. It has to be out there where they can see it. I could bore you. I guess what I want to say probably in the end is I have learned around here occasionally a senator will say, trust me, and if you want me to bore you with a lot more time, I will go down to more specifics. But we have worked very close with the Attorney General's Office, the Real Estate Commission and I feel that we have worked out the best bill and a reasonable bill and yet not to be overly restrictive. And, with that, I just move for the adoption.

SPEAKER BARRETT: Thank you. The question is the adoption of the Nelson amendment to the committee amendments. All in favor vote aye, opposed nay. Record, please.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Nelson's amendment to the committee amendments.

SPEAKER BARRETT: The amendment is adopted. Back to the Banking Committee amendments as now amended. Senator Landis, you opened a moment ago, anything further?

SENATOR LANDIS: Mr. Speaker, I will just close by saying that the amendments basically become the bill. A few of the provisions that I had previously mentioned you all know but I will make mention of a few more that I didn't so that you will know what's in the bill. As I said, it provided for procedures for registration of sales persons and membership contract brokers. It provides procedures for cancellation of membership contracts. It allows for the method to establish trust accounts registered by the Real Estate Commission to hold these monies, to provide that membership camping contracts shall be not considered subdivisions or series, partitions or condominiums or securities and to provide criminal penalties for sanctions of this act. It's also important to note that with the adoption of the committee amendments...amendment by Senator Nelson, that the Attorney General's Office is vested with the power to make a civil penalty of up to \$10,000 for violation of the act. I move the adoption of the committee amendments.

SPEAKER BARRETT: Thank you. Any discussion? If not, the question is the adoption of the committee amendments to LB 656. Those in favor vote aye, opposed nay. Record, please.

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of the

February 27, 1990

LB 656
LR 233

committee amendments.

SPEAKER BARRETT: The committee amendments are adopted. On the bill, Senator Nelson, please.

SENATOR NELSON: I believe I have explained the bill enough and if you want more horror tales, I can tell them right down the list. There is a case that's in court right now, I think in Douglas County, and I won't speak to that because it's in court, of a young family being sued for membership. It's just simply that the method used to entice these people a free cheap gift and then a very high...one couple, an insurance salesman from Grand Island, again, Senator Korshoj's age or younger, said that he could see how young people would be enticed. The only way that they could get away from the salesman was simply to roll their car windows up, put the car in gear. He just hung onto the side of the car so he could see. I know the couple in Grand Island was so ashamed that they just would not even tell their kids what happened and eventually to pay the bank off in Omaha, I did, I tried to get legal fees, help on them with that and their income was a few dollars over and it just happened to be he did a little bit of small engine repair and put them \$700 over on their homestead exemption. You just can't believe it. And...but, as I say, they have taken their burial fund money and now they're paying a sister-in-law back by the month to try to get out of it. And I can go on and on. But there is need. We have gone over and over again, the Attorney General's Office, it's not something that I put together myself, but the bill is really needed. It's consumer protection.

SPEAKER BARRETT: Thank you. Any discussion on the advancement of 656? Seeing none, those in favor of the advancement of the bill please vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 27 ayes, 0 nays, Mr. President, on the advancement of LB 656.

SPEAKER BARRETT: LB 656 is advanced to E & R. LR 233CA.

CLERK: Mr. President, LR 233CA was a resolution introduced by Senators Coordsen and Korshoj. It's a resolution to propose an amendment to Article III, Section 10 of the Nebraska Constitution. The resolution was introduced on January 3 of this year. At that time, it was referred to the Government, Military and Veterans Affairs Committee. The resolution was

March 1, 1990

LB 369, 369A, 571, 594, 656, 980
LR 264

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

SENATOR HANNIBAL: On the advancement of the bill, Senator Lamb.

SENATOR LAMB: Well, Mr. President, I would only say that I think this bill is in great shape now. There are only eight bills in it. Originally there were going to be 10, but two of them advanced on consent calendar, so I would ask that the bill be advanced.

SENATOR HANNIBAL: There are no other lights on, Senator Lamb. Would you care to close? Senator Lamb waives closing. The issue before you is the advancement of LB 369. All those in favor say aye. Opposed nay. It is advanced. Anything for the record, Mr. Clerk?

CLERK: I do, Mr. President. Your Committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 571 and recommend that same be placed on Select File, LB 594 Select File, LB 656 Select File, with E & R attached. (See pages 1112-18 of the Legislative Journal.)

Mr. President, a new resolution, LR 264 introduced by Senators Schmit, Landis and Wesely. (Read brief description. See page 1118 of the Legislative Journal.) That will be laid over.

Senator Lamb has amendments to LB 980 to be printed. (See page 1119 of the Legislative Journal.)

Mr. President, a new A bill, LB 369A offered by Senator Beyer. (Read by title for the first time. See page 1118 of the Legislative Journal.) That's all that I have, Mr. President.

SENATOR HANNIBAL: Thank you. Senator Weihing, for what purpose do you rise?

SENATOR WEIHING: Mr. President and members of the Legislature, I move that we adjourn until Friday, March 2, tomorrow morning, at 9:00 a.m.

SENATOR HANNIBAL: Thank you. You've heard the motion. All those in favor say aye. Opposed nay. We are adjourned.

Proofed by: Debbie Smith
Debbie Smith

10230

March 7, 1990

LB 656, 960A

CLERK: LB 960A, Senator, I have no amendments to the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 960A be advanced to E & R for engrossment.

SPEAKER BARRETT: Any discussion? If not, those in favor of the adoption of the E & R amendments please say aye. Opposed no. Carried, they are adopted. LB 960A is advanced, Mr. Clerk, sorry. We'll roll over LB 1090. The next bill, Mr. Clerk. We'll roll over LB 571, Mr. Clerk. We will proceed to LB 656, and the next bill, 315, we will roll over as well. But, at this point, let's address 656.

CLERK: Mr. President, 656, the first order of business on 656 are E & R amendments, Mr. President.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 656.

SPEAKER BARRETT: Any discussion? If not, those in favor of the adoption of the E & R amendments say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, Senator Landis would move to amend the bill. (Landis amendment appears on pages 1243-45 of the Legislative Journal.)

SPEAKER BARRETT: Senator Landis, please, for the purpose of an amendment.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. You'll find this amendment...I asked that it be published in the Journal. Perhaps it was, perhaps not. Mr. Clerk, is there a page listing on it?

CLERK: Senator, it has not been published.

SENATOR LANDIS: Thank you. In that case, let me describe to you the amendment. And, if I could have a Page, I'll do my best to get copies in your hands. I mistakenly thought that you'd be

able to turn in your Journal to find it. This is an amendment that uses a...some provisions of a related subject that had a public hearing before the Judiciary Committee. And I checked with the members of the Judiciary Committee upon introducing it, to tell them and affirm with them that it was a measure that they endorsed in the committee. It was not reported out, however, because of the overwhelming workload of that committee. LB 656 aims a level of regulation at camp grounds, because there is a record of abuse in this area. On General File you'll recall that there were about 30 examples of abuse that have occurred, that we have documentation of in our Attorney General's office, of the way in which these sales practices or commercial transactions occurred. The Attorney General, at the same time as asking for this specific form of regulation set forth, also asked for adjustments in our Uniform Deceptive Trade Practices Act, which responds to this same general area, but not with respect to one individual industry, but for all commercial transactions. We have a series of prohibited acts which merchants may not enter into without running afoul of deceptive trade practices. And the Deceptive Trade Practices Act has a couple of different forms of enforcement. One of them is criminal, one of them is civil. One of the difficulties is, however, that our criminal statutes in the area are misdemeanors, by and large for the most part, and, secondly, that there is no way of aggregating the amount of damage so that the Attorney General can threaten a penalty sufficiently powerful to offset the inducement of profit that a deceptive practice may mean for a merchant. So, in the amendment, there are two changes. First, that the statute of limitation on the Unfair Deceptive Trade Practices Act, with respect to civil litigation, be raised from one year to four years. Our normal standard of statute of limitations for a contract case is four years; for a tort case is four years.. These are the standard statute of limitations for differences between consumers and merchants when there is some kind of claimed fraud in a contractual relationship. In other words, removing from the too tight standard that currently applies in the Attorney General's office to the normal standard for contractual problems, four years. The second change allows, on the civil side, for the Attorney General to request an administrative penalty to be issued by the court in those cases where the court finds deceptive trade practices have occurred. And that is a \$2,000 per violation administrative penalty. That can be requested by the AG's and it can be granted in the discretion of the court. Let me tell you the process that a merchant would go through, if

faced with one of these situations. The Attorney General would call them up, or write to them, complaining of a specific practice and giving them notice that they were in violation of the Unfair Trade Practices Act. If there was no response, the Attorney General then goes to the court and asks for a temporary restraining order to stop these practices. When that happens, the judge says, have you given notice to the offending party, and the Attorney General must answer, yes, we have. At that point the court can order the temporary restraining order. In the event the temporary restraining order is effectuated, or actually at any time once the complaint has gone forward, the merchant can come forward and say, wait a second, let's not go to court, I will agree to stop doing what you complain of, you don't go forward with your action, we'll stop the behavior, we'll voluntarily agree to stop doing this deceptive practice. If they come forward and the Attorney General is given those assurances, they write up a voluntary assurance. The law now says, if the voluntary assurance is given and accepted by the Attorney General, the Attorney General may not then go in on any past practice from that merchant and claim damages or go forward with a case. In other words, they don't go to court. It's settled, no court action. But, if the merchant refuses to make that voluntary agreement, they then go to court and there is a trial on whether not there has been a commercially unfair deceptive trade practice, the kinds of acts, by the way, that Senator Nelson wants applied to campgrounds. If the complaining merchant has not been willing to give a voluntary assurance, resists it in court, the court can then exact certain kinds of penalties. To our existing penalties this adds the administrative penalty of \$2,000 per violation. Is there a problem in the State of Nebraska with unfair deceptive trade practices? Yes, as a matter of fact Senator Chizek will recall the public hearing in which the Attorney General came forward and identified a \$900,000 scam in which people were advertising for a cream that was to enlarge the male member's size. Okay? This was a cream, which when applied, had near magical results in enlarging a portion of the male anatomy. Nine hundred thousand dollars (laughter) of willing purchasers in the nation sent to a small mailing box, in Lincoln, the amount of money necessary to purchase this magical cream. The cream was supposedly authorized by an institute which does not exist. It was attested to by a nurse who said, I worked for this company not because of the money but because of what it did for my husband, and is justified by the claim of a doctor who doesn't exist. The only thing that exists in this state is a 3 by 5

mailing box in one of our post offices to accept this money coming in. Well, I'm sorry, Senator Kristensen, it doesn't work, and I'm sure that you will be disappointed to know that. (Laughter.) The Attorney General complained that there was not adequate remedy that would be sufficient in its cost to deter this kind of behavior, and that it is necessary to add to the unfair deceptive trade practices this kind of administrative penalty to take the profit out of fraud. That's why I offer its adoption to LB 656.

SPEAKER BARRETT: Thank you. Senator Dennis Byars is pleased to announce that he has a guest under our south balcony. Denise Durflinger from Fairbury. Denise, would you please stand and be recognized. Thank you, welcome to your Legislature. Discussion of the Landis amendment? Senator Nelson, followed by Senator Kristensen.

SENATOR NELSON: Mr. Speaker, I'm almost afraid to discuss it. (Laugh.) I told Senator Landis he could not amend my bill unless he explained to the body why he needed this bill and the amendment. (Laughter.)

SENATOR LANDIS: Heed, that's...(Laughter.)

SENATOR NELSON: I knew I'd stick my foot in one place or the other, and when I get finished here I'm going to give Senator Lindsay some of my time. I have no objection to this amendment. Senator Landis did a very good of explaining it, and it is needed. The Attorney General's office talked to us about it. We did hear the...we did hear the bill in Judiciary, and I think in the matter of essence of time we didn't act on it. I happen to have had a little more experience at home when we had the tanning salon and the pictures taken. We called it the "peeping Tom" bill. So, in essence, we had a little more experience in the deceptive trade practice, and it didn't apply in that case, I found out. So I'm not going to say any more because I'll put my foot in my mouth. I have no objection to Senator Landis' bill, and I do see this as another need that we do need to address. With that, I'll give Senator Lindsay the rest of my time.

SPEAKER BARRETT: Senator Lindsay, can you top this? (Laughter.)

SENATOR LINDSAY: Originally I thought I could, Mr. President,

but in deference to the demeanor of the body, I think I'll just let the rest of my time go.

SPEAKER BARRETT: Thank you. Senator Kristensen, do you dare?

SENATOR KRISTENSEN: Absolutely, Mr. Speaker. I could...we had a good time with you in committee. However, before we have a little more fun with you, there are some serious things that I would like to get into the record from you. And I think it's important. This is a good piece of legislation and it is one that we did hear in Judiciary, and it's a definite problem. Senator Landis, in your amendment it talks about violations and penalties of \$2,000 for each violation. Could you, for the record, tell us, does that go for each individual ad, or if it...

SPEAKER BARRETT: Senator Landis.

SENATOR KRISTENSEN: ...if it...does it go just towards the specific violation? In other words, they came into the State of Nebraska and advertised in one newspaper, is each sale of maybe a tube of this wonderful foot medicine going to work, or could you put into the record for us what the violations are in for? Is it individual sales, or is it a one-time penalty?

SENATOR LANDIS: Thank you. There are two parts to this answer. First, the answer is that it is for each, individual violation, in this case each individual sale. The rationale being you must be able to have a penalty that so takes the profit out of the fraud that it is sufficient to deter further behavior. If, in fact, you can make \$1,000 and pay a \$5 fine, you'll keep doing the same business. Secondly, I want you to remember that only the Attorney General can bring these kinds of actions, and the Attorney General can only bring these kinds of actions after they've given notice to the wrongdoer, given them a chance to stop, or held out the opportunity for a voluntary assurance in which, in the event the merchant will do it, wipes the slate clean for all past practices so long as you then give the assurance that they won't do it in the future. But, if the merchant won't do either of those things, and they insist on these fraudulent actions, then a per violation, per sale, or act of deception would be at risk of this kind of penalty.

SENATOR KRISTENSEN: Thank you. Part of the problem has been that, if we adopt Senator Landis' amendment and not the bill

that he had in Judiciary, is we take out the criminal sanction here. In other words, if it's a big, big fraud, and you just had a one \$2,000 penalty, it becomes the cost of doing business. And what we want to do is prevent that from becoming a cost of business and take out each individual violation and act. In other words, I think these tubes, I suppose I should hesitate to mention the name of the product that you have so eloquently endorsed, but these tubes were only worth about 29, 30 dollars apiece, is that correct?

SENATOR LANDIS: (Mike not activated immediately.) ...of \$29.95, and the identity of the cream, for those of you who are taking notes and want to rush to the druggist to see if it's there, is Virilene, Virilene.

SENATOR KRISTENSEN: And, Senator Landis, we do thank you for bringing a sample of that to Judiciary Committee for us to see. The size of my feet went from an eight and a half to a 13 almost overnight. And I (laughter) thank you for bringing this. And, in all sincerity, I think it is a valid amendment and one that we should adopt. Thank you.

SPEAKER BARRETT: Senator Abboud.

SENATOR ABOUD: Yes, Mr. President. Senator Landis, would you yield to a question?

SPEAKER BARRETT: Senator Landis.

SENATOR ABOUD: Senator Landis, in order for this civil action to take place, do they have to receive notice?

SENATOR LANDIS: Yes, they do in that the...in the request for the temporary restraining order it is a rule of the court that they ask the notice be given. That's prior to the cause of action itself. Secondly, even in the cause of action, if you proceeded that far, there is notice requirement in the grant...in the subpoena, if you will, of the summons, if you will, to come to court. And all during this time the voluntary assurance option exists for the merchant.

SENATOR ABOUD: Could you run through a scenario for me. You talked about use of the subpoena as notice, let's say...could you just give an example of what you mean by notice, is it a certified letter, or is it just a subpoena, or what?

SENATOR LANDIS: Sure, sure. It would run along this line, let's say...let's take the Virilene cream situation where you find 900,000 bucks going through this post office box with these clearly fraudulent claims. First, you identify the box holder, and you say, here's a fraudulent act. You're in violation of the Unfair Deceptive Trade Practices Act, I'm the Attorney General, I'm capable of taking these issues to court, we ask you to cease and desist. We give you notice that we think you're...that you're in violation.

SENATOR ABBODD: That would be in the form of a letter?

SENATOR LANDIS: That would be in the form of a letter. Following that time, if there is no coming forward to make a voluntary assurance, you would then make an application to the court for a temporary restraining order. Upon going to court, asking for the court to order the merchant to stop, the court would say, have you given notice? And, as one of the rules of the court, the Attorney General needs to be able to reply, yes, we have, so that the first step is met. So there is the second step, that the court oversees this notice process. Third, if the temporary restraining order is not enough and you go forward with a cause of action, there would be, as a plaintiff in this case, the Attorney General, you would serve the papers on the defendant and the defendant would be given notice of the alleged acts that are regarded as being in violation of the statute. And you are given notice at that time to come forward and defend yourself in court. Up until that time, and even during the pendency of the action in the court room, up until the time when the court says, bang, you're guilty, pay the money, up until that moment the merchant is capable of saying, I will stop. And, if they say that, and the Attorney General is given sufficient assurances they can accept, then it washes all past practices out.

SENATOR ABBODD: Okay. I haven't seen a copy of the amendment yet, so I just wanted to make sure that that was, in fact, included in the amendment to LB 656. Thank you very much.

SPEAKER BARRETT: Further discussion on the amendment? Senator Landis, would you care to make a closing statement?

SENATOR LANDIS: Mr. Speaker, members of the Legislature, this is not an action which is brought just because it might be a

good idea, but because there is a history of fraudulent behavior here which the Attorney General, when trying to stop it, could not find sufficient remedy in our statutes to bring it to an end. And I have deleted in this amendment some of the criminal provisions, because I have the hope that by narrowing it to this I've picked the most important remedy to ask the body to add to 656. I urge its adoption. Thank you.

SPEAKER BARRETT: Thank you. The question is the adoption of the Landis amendment to LB 656. Those in favor please vote yes, opposed no. Record.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Landis' amendment.

SPEAKER BARRETT: The amendment is adopted.

CLERK: Mr. President, Senator Nelson would move to amend the bill. (Nelson amendment appears on page 1245 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Nelson.

SENATOR NELSON: Mr. Speaker, I have a very small amendment. It was a concern of the lobbyist for a couple, two, three of the...or one of them, I guess, of the camp grounds. And we have tried to make this bill so that it accomplished what we needed to, and yet was not overly restrictive and still didn't put the camp grounds out of business, or that they could work with. This was brought to us, and it is satisfactory with me. I didn't have it printed. It's very...a very small amendment. It's found on page 10, lines 13 and 17, of the amendment 2015. Simply, what it would do is we would re...add the word "public accountant", so that when they had their books audited they would not necessarily be restricted to a CPA. It would read, on line 12, financial statement for the most recent fiscal year, audited by an independent certified, and we would add, "public accountant". After the word "independent" insert "public accountant", and on audited financial statement for the most recent fiscal quarter. And that's all it would do. And then on page 28, there was a concern that maybe 30 days time, from the time that they ask for a license, when the camp grounds, I understand that they some times hire professional companies to come in for these promotions. Maybe that is what the problem is. But there are college kids that are selling these camp

March 7, 1990

LB 656, 1019

ground memberships. And, originally, we had 30 days that it would give the real estate commission to approve them or not to approve them as a licensed person to sell these memberships. We have cut that down to seven days as a compromise, that is seven working days. And that should give the real estate commission enough time and still the kids that want to work in the business and sell them would have the full summer then to do that. That's all that the amendment will do.

SPEAKER BARRETT: Thank you. Is there discussion? Any discussion on the amendment offered by Senator Nelson? If not, those in favor of its adoption please vote aye, opposed nay. Please record.

CLERK: 25 ayes, 0 nays, Mr. President, on adoption of Senator Nelson's amendment.

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: Thank you. Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 656, as amended, be advanced to E & R for engrossment.

SPEAKER BARRETT: Thank you. Is there discussion? Seeing none, those in favor of the motion to advance LB 656 to E & R engrossing say aye. Opposed no. Carried, the bill is advanced. Rolling over LB 315 to LB 1019, Mr. Clerk.

CLERK: Mr. President, 1019, the first order of business on the bill are Enrollment and Review amendments.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 1019.

SPEAKER BARRETT: Any discussion? Shall the E & R amendments be adopted to LB 1019? All in favor say aye. Opposed no. Carried, they are adopted.

CLERK: Mr. President, Senator Wesely would move to amend the bill. (Wesely amendment appears on pages 1245-47 of the

March 12, 1990

LB 571, 656, 688, 880, 923, 960, 960A
1031, 1080, 1080A, 1094, 1184, 1184A

Warner and the Appropriations Committee, because of a variety of circumstances, the right people were not there at any given time, doesn't really mean that it might not have passed out of the appropriations process. You can do what you want. I have not went around and counted noses on this issue. I have an abiding faith in the members of this body to do what's right. It's up to you. I would move the advancement of the amendment.

SPEAKER BARRETT: Thank you. And the question before the body is the adoption of the Coordsen amendment to the committee amendments to LB 1031. Those in favor of that motion vote aye, opposed nay. Senator Coordsen.

SENATOR COORDSEN: Yes, since most of us are here, a quick call of the house and roll call vote.

SPEAKER BARRETT: Thank you. Shall the house go under call? All in favor vote aye, opposed nay. Record, please.

CLERK: 24 ayes, 1 nay, Mr. President, to go under call.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Senator Warner, please check in. Senator Chambers, the house is under call. Senator Schmit, please. Senators Hall, Rod Johnson, Schmit and Chambers, the house is under call. Senator Coordsen, you are ready to proceed with a roll call? The question is the Coordsen amendment, the adoption of the Coordsen amendment. Members, please take your seats for roll call vote. Mr. Clerk, proceed with the roll call.

CLERK: (Roll call vote read. See pages 1308-09 of the Legislative Journal.) 22 ayes, 16 nays, Mr. President, on the adoption of the amendment.

SPEAKER BARRETT: The motion fails and the call is raised. Anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 571 and find the same correctly engrossed; LB 656, LB 688, LB 880, LB 923, LB 960 and LB 960A, LB 1080, LB 1080A, LB 1094, LB 1184, LB 1184A. (See pages 1309-1312 of the Legislative Journal.)

March 13, 1990

LB 551A, 656, 843, 843A, 1031, 1059, 1059A
1063A, 1141, 1244

that we can do a lot to help these children in their classrooms and stir continued interest in the Legislature and in the legislative process, and perhaps give a lot of people, including civic clubs and others, a deeper understanding of our process, what we go through and how we labor in the vineyards. And so, as I said, we can do it all in-house. There will be an oversight committee. And I have no doubt that the video production will be an enormous hit, and I would urge the body to adopt the amendment. Thank you.

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

CLERK: 25 ayes, 9 nays, Mr. President, on adoption of Senator Barrett's amendment.

PRESIDENT: The amendment to the amendment is adopted. Something for the record, Mr. Clerk, please?

CLERK: Yes, Mr. President, I do have some items for the record. Senator Nelson has amendments to be printed to LB 656; Senator Schmit to LB 1031; Senator Warner and Withem to LB 1141. Enrollment and Review reports LB 1059, LB 1059A, LB 1244, LB 843, LB 843A, LB 551A, LB 1063A all to Select File. (See pages 1333-39 of the Legislative Journal.)

Mr. President, the next amendment to the committee amendments I have is offered by Senator Withem. (Withem amendment appears on page 1339 of the Legislative Journal.)

PRESIDENT: Senator Withem, please.

SENATOR WITHEM: Mr. President, members of the body, this is an amendment somewhat similar to the last one dealing with our legislative process. Increased appropriation to the Legislative Council to the tune of \$20,000. The purpose of this is to fund ongoing telecommunication, actually it says television, maybe it should say telecommunication, if people are interested in changing that, we can do so, if this gets adopted, with another amendment or a Select File amendment...televise legislative hearings. Over the past year we have had two major interactive teleconferences with legislative leadership hearing people testifying on issues of concern to the public, we questioning

March 19, 1990

LB 656, 965, 1032, 1236

PRESIDENT: LB 965 passes with the emergency clause attached.
LB 1032, with the emergency clause attached.

ASSISTANT CLERK: (Read LB 1032 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1032 pass with the emergency clause attached? All in favor vote aye, opposed nay. Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote as found on page 1414 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 1032 passes with the emergency clause attached.
LB 1236, please.

ASSISTANT CLERK: (Read LB 1236 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1236 pass? All those in favor vote aye, opposed nay. Record, please.

ASSISTANT CLERK: (Read record vote as found on page 1415 of the Legislative Journal.) The vote is 46 ayes, 0 nays, 1 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 1236 passes. It's my understanding we're jumping over LB 571, going to LB 656.

CLERK: Mr. President, with respect to LB 656, the first order of business, Senator Nelson, you had an amendment printed, Senator. I understand you wish to withdraw that amendment, is that correct?

SENATOR NELSON: Correct.

PRESIDENT: It is withdrawn.

CLERK: Mr. President, Senator Nelson would move to return the bill for a specific amendment. (Nelson amendment appears on pages 1415-16 of the Legislative Journal.)

PRESIDENT: Senator Nelson, please.

SENATOR NELSON: Yes, that amendment, I couldn't get it printed in time, and it has been passed out on your desks a few minutes ago. Last...on Select File I added an amendment which I thought would make it easier for the campgrounds in the audit requirement. And in that I put in public accountant or certified public accountant. And the people more knowledgeable, I guess, than I, is a nice way to put it, or in the Rotunda inform me that, of which I agree, that a public accountant cannot give an audited return. There are also, as I found out, a group of public accountants that are somewhat grandfathered in. And this amendment then was brought to me by the representatives of the public accountants, as well as the representatives of the CPA. I would call it a technical amendment. And what I'm doing is I'm striking the part of the amendment that was passed that says audited by an independent public accountant, or a certified public accountant, or an unaudited financial statement, as it is mostly technical. But what I'm doing then is substituting on page 10, line 22 through 25, this language, "Financial statements of the membership camping operator in a form acceptable to the commission", and that would be the real estate commission, "and prepared in accordance with generally accepted accounting principles, which statements shall include a financial statement for the most recent fiscal year and a financial statement for the most recent fiscal quarter. The commission may require an audited financial statement if the commission is not satisfied with the reliability of the submitted statement and the ability of the membership camping operator to meet future commitments." And, with that, I just move for the adoption of the amendment.

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

SENATOR HABERMAN: Senator...Mr. President, members of the body, Senator Nelson, what's the penalty, if this is not done?

PRESIDENT: Senator Nelson, please.

SENATOR NELSON: You mean if the financial statement is not provided by the camping ground operator, is that it?

SENATOR HABERMAN: And if it's not approved, sure.

SENATOR NELSON: They would not have a permit to operate the camping ground. They would not be allowed to operate the

camping ground to sell the memberships. That is one of the problems, the real estate has been able to...

SENATOR HABERMAN: No, wait a minute, wait a minute, wait a minute.

SENATOR NELSON: All right.

SENATOR HABERMAN: That's in the bill? That penalty is in the bill?

SENATOR NELSON: I believe so.

SENATOR HABERMAN: Are you sure?

SENATOR NELSON: Well, it was last year, I'll have to look again. There are some...well, I think we did take the penalty out, because they thought the penalty was too stiff and...

SENATOR HABERMAN: Well, if we took the penalty out, what good is the amendment?

SENATOR NELSON: The amendment, before they can receive a permission to operate, and I guess then...all right, all right, then we have to go back to the Attorney General's Office to prosecute.

SENATOR HABERMAN: Thank you, Senator Nelson.

SENATOR NELSON: Thank you.

PRESIDENT: Thank you. Senator Schmit, please.

SENATOR SCHMIT: Well, Senator, it's been a long time since this bill was heard in committee. I recall some of the problems that were explained. I do have a constituent that operates a facility in my district, and they find a lot of difficulty with this. But I do not know if my constituent is one of the targets for this bill or not. But I guess in order that we know a little bit more about what we are voting upon here, has the real estate commission found serious problems in this area, and have there been a lot of complaints from this type of activity or not?

SENATOR NELSON: Can I respond?

SENATOR SCHMIT: Yes, please.

SENATOR NELSON: Yes, I believe last year I think, and we were provided...apparently you maybe missed it when we discussed it before on General File or Select File. If I recall, 33 complaints just last year, mostly...well, all the way from bankruptcy cases caused and I think if that many cases are brought to the Attorney General's attention, think of the number of cases otherwise. And, Senator Schmit, I don't think, to my knowledge, that you have any campground in your area. I'm assuming you have a KOA, and they are not strictly membership, they are open to the public, and that is...that type of campground would not be affected by this. I can...if you want me to go on down through some of them, a young girl came in. I think there are five campgrounds affected in Nebraska, primarily three. And from the elderly, and not necessarily the elderly, registrar at one of the colleges, I can go down...people from SAC Air Force Base were thinking that they were buying something, getting a free cheap gift of a camera or maybe a moped that will never run, or they thought the contract was \$900, it turned out to be 320...\$995. There is \$144 a year membership. You can't get into the grounds. It's just...I can go down through the complaints. I think Senator Landis read them off. Under the discussion, the little girl came in my office about ten days, two weeks ago, had to take bankruptcy, a \$4,029 lawsuit filed against her, another lawsuit is in Douglas County. I can go down the list. People...it's the advertising, they were enticed into, you know, a free gift. They should have probably, in most cases, known better. What the bill does is it strengthens it, it makes the little fine print a little bigger, it explains what they have to provide, that they have to provide the buildings that they say they're going to provide, and so on. Incidentally, too, the fine is the Attorney General sees civil penalty of not more than \$10,000 for each membership campground in the district of the Lancaster County Court. So there is a penalty in the Attorney General's office, I worked with your time.

SENATOR SCHMIT: Well, thank you, Senator Nelson. I guess I'll probably support the amendment. I do not believe I will support the bill. Every day I receive material in the mail, and I read material in newspapers that entice persons like myself, of very little ability to resist sales persons, into spending money. I do not know just exactly what we have to do here to protect it.

I am strongly in opposition to deceptive advertising, and I hope that we have adequate statutes on the books to prevent that. But I am somewhat apprehensive about bills which target a particular, single entity, such as the campground facility, because I think it may be a little bit of an overreaction, I'm not sure,...

PRESIDENT: One minute.

SENATOR SCHMIT: ...I hope not. In any case, I would suggest that we all read this bill very carefully before it comes up. I thank Senator Nelson for what she's trying to do, but I want to make it very certain, that I think that we may be using a four pound sledge to swat a fly. And, if we're going to bear down on one area, insofar as deceptive advertising is concerned, I am sure there are many other areas out there that we could address. I just want to call your attention to the fact that this body, a week or so ago, passed, without a dissenting vote, LB 1183, which makes it a felony not to pay...for a corporation or company not to pay their taxes on time. And each day you don't pay your taxes is a separate offense. And so I just want to caution you that it might not be a bad idea to read this bill very carefully. And, if you have questions afterward, check with Senator Nelson who has done a lot of work on this bill.

PRESIDENT: Thank you. Senator Nelson, please, followed by Senator Landis and Senator Chambers.

SENATOR NELSON: I want to respond to Senator Schmit. I didn't realize that Woods Landing is in your district. Do you go clear to Yutan? Well, I have to apologize? I...boy, you're bigger than I thought. (Laughter.) Senator Schmit, I honestly think that you would be very embarrassed if I showed how some of the elderly and not necessarily all the elderly, and I can tell you a case of a multiple sclerosis victim in our area, this was brought to my attention, they thought they were signing something \$995, we only stay \$1 a night, and some of the gifts and so on that tried to entice them. And the Attorney General's Office, if you want me to, I can provide any number of outright being misled, deceptive advertising and salesmanship. They hire firms to come in to handle their selling, they are offered gifts that are absolutely nothing, and some of the cases the gifts are not provided. So, if Senator Landis wants the rest of my time, he can have it. And I can provide all of this information for you.

PRESIDENT: Thank you. Senator Landis, please.

SENATOR LANDIS: Thank you, Mr. Speaker, members of the Legislature. It should not be lost on us this morning that we're talking about not just one or two isolated circumstances here. This isn't a case where one constituent gets burned, comes to you, wants retribution for the other side, wants you to write a bill to punish the person who they felt took them to the cleaners. There is clearly, as established by our public hearing in Banking, Commerce and Insurance, a course of conduct out there of very severe trade deceptions. It's out there. These include such things as misrepresentations about what the kinds of gifts are, unwilling or unsuspecting individuals being forced to pay large sums for postage and handling to get these items, which are never known to them before they come, the not showing of the full body of the contract while they then get the signature of the individual, but most importantly what happens is that the verbal commentary by the salesman is different than what is in the contract. Now, you might think there would be a very easy form of remedy for that. And, in fact, if this was the sale of a good, the Uniform Commercial Code calls these things express warranties. If I'm selling you a good, under the Uniform Commercial Code, and I make a verbal statement about the quality of that good, the pricing of that good, the financing arrangements of that good, and that oral expression between us, even though it's not in the contract, is part of your reason for signing the contract, the UCC says that's an obligation, it's an express warranty. And, if you say it, no matter whether it's in the contract or not, it's binding. The trouble with the UCC in this situation is it doesn't cover these kinds of contracts. The UCC applies to the sale of goods, it does not apply to the sale of services, which is what this campground membership is. So, if I give you a contract and I tell you what's in the contract, or I say, I'll tell you what, it's not there in the contract, but you can have three days to go home, think it over and call me back, and if you don't like it, I'll rip it up. Now, if I'm the seller of a car, that statement is binding. If I'm the seller of a refrigerator, that statement is binding, under the Uniform Commercial Code. It is not binding for the salesman of a camp membership, and we have dozens, and dozens of pieces of evidence that say this is what's happening. People walking out and saying, listen, if you don't like it, call me back in a week and I'll rip it up. Except they call them back in a week, they've changed their mind, they say, you've got a

contract, sorry, see you in court, send in your check. Arlene Nelson is on the side of constituents and individuals who will have to go in and fight for a couple thousand bucks to undo a nine or eight hundred dollar contract. It just doesn't make sense. What you're going to do is, if you leave things the way they are, you're going to force people to spend good money after bad to get out of contracts that were fraudulent to begin with. We need this piece of legislation, we need it this year. It's time to pass this measure.

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

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I want to read a letter that I received this morning. It's from an elderly lady in Verdon, Nebraska. Dear sir, during the last of November, first of December, 1987, we received several calls from a representative of Sycamore Springs of Sabetha, Kansas. On December 18, 1987, we agreed to talk to them. We were presented a pretty picture of their facilities and proposed improvements. We agreed to purchase a membership only after they emphasized that it could be sold back to them after one year, if we were not satisfied. They stated that only a few memberships were available so as to protect the facility from overcrowding. They stressed that the membership would be easy to resell, as there were plenty of buyers. Also discussed at our initial meeting was the inheritance of the membership. I have six children and the representative assured me that all six of my children would inherit a lifetime membership. As my husband and I are on Social Security as our only income, we are ages 68 and 75 respectively, we would never have purchased this just for ourselves. At a later date we were informed that only one of our children could inherit our membership. I asked about selling our membership and was told that it had to be converted to a "centennial" membership. So, on March 16, 1989, two of their representatives visited our home in Verdon, Nebraska. They persuaded us to convert to a centennial membership. On September 10, 1989, Thousand Adventures called a meeting at Sycamore Springs, Kansas. They wanted to sell shares of Sycamore Springs to the members. We had several questions, but they evaded actually answering any of them. We sensed that they were in trouble, so we agreed to forfeit all money paid to date just to terminate our membership. But they will not agree to a termination. Thousand Adventure has sold our membership papers to the Norwest State Bank, Post Office Box 187, Weeping Water,

Nebraska 68463. We feel we have a misrepresentation case against this company. I would appreciate any help on this matter. I will look forward to hearing from you. Then, this last paragraph, enclosed please find a copy of the letter I sent to Thousand Adventure, Post Office Box 301, Blair, Nebraska 68008, and a clipping from the Falls City Journal on this case. The Falls City Journal article talks about a consent decree entered into between the Attorney General of Kansas and this Blair, Nebraska company because of the misrepresentation, the promising of gifts that were never delivered, the false statement that these memberships could be resold. I've had other complaints of this kind brought to me by the elderly. And I sensed that the opposition to this bill is coming from senators who've talked to some of these operations and these outfits. They're outside the law. They trick the elderly. And I think it is a sad state of society when we can have so much evidence brought to us showing the corruptness, the dishonesty and the deliberate mistreatment of these older people. They are stressed out, anyway. The two that I received this letter from are on Social Security. I'm sure the representatives of this tricking scheme knew that they were on Social Security. And since their whole approach is that of hustlers, barracudas, sharks, piranhas, wolves, coyotes, vultures, thank you Senator Chizek, I don't think we, as a legislative body, have an obligation to protect or be sympathetic to that type of operation.

PRESIDENT: One minute.

SENATOR CHAMBERS: I would like to see something in the nature, Senator Hefner, of a bill that people, from time to time, have opposed of mine. Now, my bill would abolish the death penalty, if there were a justifiable application of it. This might be one of those, but since I'm opposed to the death penalty under all circumstances, Senator Haberman, I see him smiling under the balcony over there, I would have to oppose it in that case, too. But to make a point, I'm saying that it's difficult for me to see why we will continue to sacrifice older people and those who may not be too sharp in reading contracts and recognizing these shams. We have an obligation to protect them as much as we possibly can. And, if Senator Nelson's bill is a step in that direction, I see no reason to oppose it, Senator Hannibal, how about you?

PRESIDENT: Thank you. Senator Schmit, you are next. But may I

introduce some guests under the south balcony. There are a party of nine leaders from Bulgaria, students of the U.S. Government, and they are sponsored by the United States Information Agency. Will you students please stand and be recognized. Thank you, we welcome you and we hope you have a happy stay here. Thank you very much. Senator Schmit, please, followed by Senator Nelson and Senator Goodrich.

SENATOR SCHMIT: Mr. President, members, far be it from me to attempt to stand on this floor and defend deceptive advertising practices. I've bought enough used automobiles and used farm equipment, I've signed enough contracts at my age to know to read the contract. I think that anyone ought to be protected from deception and outright lies. What I think also is if you get to be an elderly person, as Senator Chambers very touchingly refers to us, by that time you ought to have lived long enough, read enough contracts, dealt with enough salespersons to know a little bit about what you're doing. And certainly there are opportunities for deception, we have it in every day activity. Might even say a little deception takes place once in awhile on this floor. Happened to me on a bill of my own that I didn't read thoroughly enough. But the point is this, that insofar as this particular activity is concerned, if there is skullduggery going on, and Senator Nelson has pinpointed some of it, and she can take a bill like this and prevent that from harming someone, I'm in favor of it. What I want to be sure of is that we have just not, as we have so oftentimes on this floor, singled out one industry, and that we're going to correct all this deceptive advertising, while at the same time we allow it to continue in many other areas of business. I would just suggest that perhaps, I don't know how much of a violator my constituent happens to be. Far be it from me to think that my constituent is anything other than an honorable business person. If Senator Nelson has evidence to the contrary, I'm glad to look at it. I only met the person for the first time in my life here a few weeks ago. And I do not intend to stand here and try to defend unscrupulous activities. I just want to say that when we address this issue I'm sure there are many legitimate entities out there who will find themselves being penalized because of the unscrupulous operators. There ought to be a way to do it without penalizing those legitimate businesses who are performing a service. I'd just like to suggest also it is so easy to talk about someone going into bankruptcy because of a \$4,000 contract. Ladies and gentlemen, anyone who goes into bankruptcy on behalf of a \$4,000 contract had no darn business

signing the contract in the first place. That person had ought not to have been involved, they ought to have looked at the contract. Many contracts, of course, contain fine print and need to be read in their totality. I can mention a number of other contracts, including the insurance contracts, real estate contracts, all of them. Contracts are a very serious business, and to attempt to shift the responsibility away from the person who signs a contract may not be doing that person any favor. So I'd suggest that while we pursue this remedy provided by Senator Nelson, and it may be a desirable one, we recognize that the responsibility for signing...for knowing what is in the contract rests with the individual who reads the contract.

PRESIDENT: Thank you. Senator Nelson, you're next, but may I introduce some guests, please, of Senator Korshoj. In the south balcony, we have 26 fourth graders from Walthill School with their teacher. Would you folks please stand and be recognized. We appreciate your visiting us today. Senator Nelson, please.

SENATOR NELSON: I was going to call the question, but I really feel bad that Senator Schmit apparently did not hear the original discussion when we discussed this bill. I have worked all summer and last year with the Attorney General's Office, and with the real estate commission, and I'll guarantee you, and I know Senator Schmit, he would in no way try to protect an operator such as we have found here, if he actually took the time. And it's not only the elderly, as I mentioned, I have as a registrar of one of the colleges, people from SAC Air Force Base, they found out after they bought the membership they still had to pay \$144 a year to get on the grounds. One couple, and this is patterned after Iowa, and incidentally their lobbyist has approved this bill. We have taken out anything, any operation that is a viable operation would have no problem abiding by these amendments. Iowa are telling us that you must strengthen that more than what you have now. And we have tried to be very considerate. And I just, knowing Senator Schmit, in no way would he want to protect this type of operation. And what they were doing is getting them to sign the contract one night, and they were impossible to back out. One couple in Grand Island, she has multiple sclerosis, went to Omaha to the doctor and thinking, well, we can come back to the campground, as I said, thought they were signing a \$900 contract, actually took their burial money. What they do is they resell these contracts immediately to a bank, so there is no repercussion to come back. And they had a lien put on their house, a lien put

on their car. And it is not only the elderly. And some of the gifts turn out to be absolutely nothing, or a moped, a \$195 freight, outright fraud in advertising. And I certainly would provide that to Senator Schmit. And I don't blame him for trying to protect his client, but I know Senator Schmit better than that. And he simply would not do that.

PRESIDENT: Thank you. Senator Goodrich, please.

SENATOR GOODRICH: Mr. President, members of the body, would Senator Chambers yield to a question, please.

PRESIDENT: Senator Chambers, please.

SENATOR CHAMBERS: Yes, I will.

SENATOR GOODRICH: Senator Chambers, there is a preponderance of this sort of thing going on right now, and I didn't quite catch the name of the outfit that you were referring to.

SENATOR CHAMBERS: It's called Thousand Adventures, Inc.

SENATOR GOODRICH: And where are they located?

SENATOR CHAMBERS: They have a post office box in Blair, Nebraska.

SENATOR GOODRICH: Have you been able to identify any officials of that company?

SENATOR CHAMBERS: Since I just got the letter today, I haven't had that opportunity, but I intend to do it. But Senator Nelson is indicating that she might be able to help us in answering that particular (interruption).

SENATOR GOODRICH: I'll get to her in a moment. One last question to you, what did you say that name was? There was a lot of conversation on the floor, I couldn't hear it.

SENATOR CHAMBERS: Thousand Adventures.

SENATOR GOODRICH: Out of Blair, Nebraska, a post office box.

SENATOR CHAMBERS: Right, and I would call them by a different name, but you didn't ask me what I would call them. So I will

just leave that. (Laughter.)

SENATOR GOODRICH: I think you and I both agree on that. Now, will Senator Nelson agree to answer a question?

SENATOR NELSON: Sure.

SENATOR GOODRICH: Senator Nelson, I think we ought to expose this sort of thing any time we get a chance. And I would like to know, if you have the name of any officials of this particular company.

SENATOR NELSON: Yes, I do. The one girl that...Thousand Adventures is one that was brought into my office about ten days ago. The little girl, I asked her, I said, how's come you signed the contract? She thought she was going to get a VCR camera. Well, you had to sign the contract in order to get the camera. Well, when they went to hand her the camera, it was just a bunch of cardboard and they wanted \$45, I don't know, charges or freight, and she wouldn't accept it. But she...her...she didn't even have full-time employment, and I said, why did you do it? Senator Schmit is right there. So, she understood that you had to make at least \$15,000 a year to be accepted for a contract, and she paid on it, I think, 22 or 23 hundred, and then there was \$749 service charge, it got up to 3,200.

SENATOR GOODRICH: But what was the name of the officials?

SENATOR NELSON: It was Thousand...I don't have it right square in front of me. I guess I can look in my file, if you want me to. But it is Thousand Adventures. And, as you say, maybe that isn't even the correct name. But I can provide it to you, I have the lawsuit and the papers in my file.

SENATOR GOODRICH: Thank you.

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

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, since the Falls City Journal was perceptive enough or concerned enough to print an article, I would just like to read a bit from it. And the Attorney General's last name is spelled S-t-e-p-h-a-n, for the sake of the transcribers. And this

article was published in the Falls City Journal, February 2nd of this year. And they took it from the Sabetha Herald. "Attorney General Robert T. Stephan and his office have entered into a consent judgment with a company who operates a campground resort, called Sycamore Springs near Sabetha. In the consent judgment, filed in Shawnee County District Court, Thousand Adventures, Inc. of Blair, Nebraska, has agreed to resolve consumer complaints received by the Attorney General's Office and to stop misrepresenting certain aspects of its membership contracts to consumers. Attorney General Stephan said he received 23 complaints from consumers across the state who were not allowed to resell their contracts with the company, as promised, or who said the company made misrepresentations to them during its solicitation. Stephan said, Thousand Adventures, Inc. violates the Kansas Consumer Protection Act by telling consumers it would resell contracts or buy back memberships without disclosing certain conditions and limitations." And it goes on to mention some of the specific things that are done in promising or offering gifts which were not as represented. But, in response to something Senator Schmit said, I have to make a few comments. In Iowa I heard statements from their Attorney General, and others who are concerned about consumers, telling especially the elderly to beware of those who are going to flood the area with contracts to do repairs on their roofs and other damage that they suffered as a result of this group of storms that recently struck Iowa. They said what these rascals will do is get these elderly people to pay, up front, then disappear. We all know that the elderly are vulnerable, we know that they are easy prey. For us to disregard the reality that we know exists is not righteous. If Senator Schmit has a business operation in his district, I can understand him, if he has no reason to think to the contrary, to feel that they're legitimate and on the up-and-up. But, if they are a part of an operation which is known universally for engaging in fraud and using misrepresentation and high pressure tactics to befuddle, then exploit the elderly, we have an obligation, as a legislative body, to step in and provide protection for those people. And I would tell Senator Schmit this, if we're going to expect elderly people with no training in contracts to understand contracts and be able to look behind the representations of companies and hold these elderly people responsible, then why do we have laws to protect banks against fraud? Shouldn't banks, with all their high-powered lawyers, with all their trained people be able to look out for their interests and not be defrauded? But I haven't heard Senator

Schmit say these banks ought to look out for themselves. I haven't heard anybody, other than myself, say when merchants are careless enough to accept these checks from people without adequate verification, then it's their loss. I haven't heard that. We have, in the law, requirements and machinery for the county attorneys throughout the state to help these careless merchants. If those people who operate gas stations along the highway don't have sense enough to require payment prior to the pumping of gas wind up with an individual pumping gas and running, we have the State Patrol, whom Senator Haberman was just speaking for, race at breakneck speed down the highway trying to catch these people to make up for the carelessness of these business people. So then, after we have built a net of protection around all these bigshots,...

PRESIDENT: One minute.

SENATOR CHAMBERS: ...around all of these lawyers, around all these trained people, to protect them when they are careless and slipshod, we're going to turn around suddenly and take a lot of elderly people, who may not be educated, period, and say they better learn how to read these contracts, they better read the small print and things of that nature. I cannot buy that, I cannot accept it, I think it is unconscionable. The most recent scam that I saw I read about yesterday in the paper where some baseball team, which has trouble selling season tickets because they always lose, said that this fellow called Ernest, not the one speaking, was going to be available for people to take pictures with him. When the public got there,...

PRESIDENT: Time.

SENATOR CHAMBERS: ...there was a five foot tall cardboard cutout of this individual, and they were outraged. But, if people had read the small print, they would have seen that he was not going to be there. But nobody condemned these people for not reading the small print. They condemned that big operation for using small print and deliberately misleading the public.

PRESIDENT: Thank you. Senator Ashford, you are next. I don't see you. (Laughter.) Senator Lynch, would you...

SENATOR LYNCH: Question.

March 19, 1990

LB 656

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

SENATOR GOODRICH: Hello, hello, hello.

PRESIDENT: Record, Mr. Clerk, please.

CLERK: 32 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: Debate has ceased. Senator Nelson, did you wish to close on the return of the bill?

SENATOR NELSON: I believe we've had enough discussion. I just move to return it to E & R. Or, wait a minute, I think when I spoke the Speaker...is it possible to put this right back on Final Reading? I don't think so.

PRESIDENT: No, you're not going to read it today.

SENATOR NELSON: All right.

PRESIDENT: You probably wish to advance it, but....

SENATOR NELSON: (Laughter.) All right, I move to return it to E & R.

PRESIDENT: Okay, the question is, shall the bill be returned to E & R? All those in favor vote aye, opposed nay. Record, Mr. Clerk.

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to return the bill.

PRESIDENT: The bill is now returned. Senator Nelson, do you wish to talk now about your amendment?

SENATOR NELSON: I think the amendment has been explained. I thought I was doing a kind little thing and simply helping out the camping ground operators instead of having a certified CPA have to do their financial statement. Sometimes you can be too kind and get your ears knocked down. So, I guess that's what happens.

PRESIDENT: Thank you. Senator Lynch, please. There are no

other lights on. So the question is the adoption of the Nelson amendment. All those in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: 35 ayes, 0 nays on adoption of Senator Nelson's amendment, Mr. President.

PRESIDENT: Senator Nelson's amendment is adopted. Senator Nelson, would you like to move to advance it?

SENATOR NELSON: I'd just move to advance the bill.

PRESIDENT: The question is the advancement of the bill. All those in favor say aye. Opposed nay. It is advanced.

CLERK: Mr. President, Senator Abboud would move to return the bill to Select File for specific amendment. (Abboud amendment is on pages 1416-17 of the Legislative Journal.)

PRESIDENT: Senator Abboud, please.

SENATOR ABOUD: Mr. President, colleagues, the amendment is in front of you, 3054. Actually, it's a part of...it's a bill that was advanced unanimously out of the Urban Affairs Committee, LB 908. It deals with the elderly in regards to the city of a first class may provide funding for services to meet the needs of the elderly persons. This particular proposal was brought to me on behalf of the first class City of Ralston who provided money for a senior citizen center that was involved in a lunch program, and they found that there was no enabling legislation to allow them to do this, so they came to me with the bill. It was noncontroversial. There were no opponents to it. I would urge the adoption of this amendment to the bill.

PRESIDENT: Thank you. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. President. Members of the body, this bill was heard in Urban Affairs Committee and there was a concern, particularly my own. But there has been an Attorney General's Opinion, and I want this stated for the record that my understanding of the bill is that communities may provide funding for centers, as they determine that they would like to do that. In other words, it's not anything that is mandatory, it's something that they may do. It has nothing to do with aging program services. This is a separate issue, and I just

want it very clear that communities may make that choice, they are not obligated to in any way, but they may do that, if they so designate. Thank you.

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

SENATOR CHAMBERS: Mr. Chairman, members of the Legislature, I'd like to Senator Abboud a question.

PRESIDENT: Senator Abboud, please.

SENATOR ABOUD: Yes, Senator Chambers.

SENATOR CHAMBERS: Senator Abboud, in the constitutional sense of germaneness, is it your understanding that this amendment could be added to this bill without it resulting in two subjects being contained in one bill?

SENATOR ABOUD: Well, that's my belief.

SENATOR CHAMBERS: And this isn't to use trickery on my part, have you checked it with anybody, like the Attorney General?

SENATOR ABOUD: Well, that particular opinion didn't deal with it. We added the severability clause onto this amendment just to protect the other bills that are a part of LB 656 already.

SENATOR CHAMBERS: Thank you. Members of the Legislature, the way the Supreme Court will construe a statute is to make as much of it....First of all, the presumption is that a statute passed by the Legislature is constitutional. If it deals with one subject matter, and there are some portions of it that are not constitutional, and those portions were not the incentive for passing the bill, then those portions will be eliminated and the court will preserve what it can. But, if that unconstitutional provision was the basis for the enactment of the legislation, the whole bill is struck down. When it comes to two subjects in a bill, I don't think the severability clause will work because the Constitution prohibits putting two subjects in a bill, and I think that would cause the bill, itself, to be struck down. So, before I would vote to add this amendment, with which I have no disagreement as far as the contents of it, from what I see in looking at it, I'm not going to vote to add it to this bill because I think 656 is too important in what it does. Now, if

Senator Nelson has no concerns, I'm not going to do anything to try to hold up 656. But I cannot vote to add this amendment which could result in two subjects being in the bill. Right at this moment, having just gotten the amendment, I cannot honestly say, one way or the other, but there is a question in my mind.

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

SENATOR PIRSCH: Thank you. Question for Senator Abboud.

PRESIDENT: Senator Abboud, please.

SENATOR PIRSCH: Senator Abboud, this is strictly permissible for the city of the first class. But was there not some kind of concern afterward that the Eastern Nebraska Office on Aging is actually meeting those kinds of needs of the senior citizens in our Eastern Nebraska Office of Aging?

SENATOR ABBODD: I think, I think the funding itself is available through that agency. And I would think that a city would just prefer to go through that agency. But some cities across the state, actually a large majority of first class cities, are currently doing this. And I don't know why they would want to use their funds. But, you know, it's available, they're doing it right now, and...

SENATOR PIRSCH: Um-huh.

SENATOR ABBODD: ...that's what at least the city in my district will do if this should pass.

SENATOR PIRSCH: Was this kind of, though, to force cities to do it? I mean, would they have any obligation over and above the Eastern Nebraska Office of Aging support?

SENATOR ABBODD: No. No.

SENATOR PIRSCH: Okay. Thank you.

SENATOR ABBODD: Um-huh.

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

SENATOR NELSON: Mr. Speaker, Senator Abboud did bring this to me. My not having sat in on the original hearings and so on, I did understand sometimes again, if there was any possibility that this may or may not be unconstitutional. I would...I agreed to have Senator Abboud have this discussed or put on it. I will leave it up to the body. But, again, I have reservations and counsel that knows more than I. I certainly don't want anything on my bill that would give my bill an opportunity to be questioned whether or not it was constitutional. And so I will let Senator Abboud handle it from here. I graciously left Senator Landis on his deceptive trade practice bill, which certainly related to the campground, and I'm very cautious about another amendment being put on my bill that could be ruled unconstitutional, or that there was some concern about it. So I will let Senator Abboud handle it from here. But I certainly don't want anything else on that bill.

PRESIDENT: Thank you. Senator Smith, please.

SENATOR SMITH: Thank you, Mr. President. There seems to be a dialogue just between about three or four of here on the floor, but I want to make something else clear for the record. Senator Pirsch, you are correct in the fact that this, in my understanding, this community could have gone...elected to have gone through the process of contracting with an area agency, the Eastern Office in this case, to have received this same service. And they would have then been required to participate by paying a percentage of, or contributing a share of the cost to support their own program. This is the way I would prefer, myself, to see them go. And I would correct Senator Abboud when he says that a majority of the cities are doing it this way. That's not correct. The majority of the cities that are providing senior centers and senior center services across the State of Nebraska are doing so through contract with area agencies on aging across the State of Nebraska, which is to me the proper way to do that. You know we have...I guess I believe myself, personally, that we have too much need in our communities for the funds that we have there for other kinds of business concerns, community services that are provided for all of the people of a community to designate some of those funds to go strictly for one segment of the population, which is what they are asking us to be able to do here. Now, if it weren't for the Attorney General's Opinion I'll tell you right now I'd be up here fighting this bill in the form of an amendment being attached to Senator Nelson's bill. I probably will not vote for it, but it is, by the Attorney

General's Opinion, correct that they can do this, if they would elect to do so. But I just want to make it clear that you were right, they could elect to go through the process of contracting to get this same service, but they would be paying a part of it. The seniors themselves would be assisting and paying for the services they'd be receiving, instead of just giving this...having this handed to them. Thank you.

PRESIDENT: Thank you. There are no other lights on. Senator Abboud, do you wish to have this your closing, or did you wish your own time before closing?

SENATOR ABOUD: Mr. President, I have a couple of comments, first. The...this particular situation, because it affected the cities, and I think a large majority of the cities actually are currently providing some sort of funding, whether it be a lunch program, whether it be a shuttle bus service, whether it be some sort of funding, giving money to a senior citizens group for Christmas, supplying copying machines for a group, these are all a part of providing services to the elderly. Now, there is no doubt that a city, they are like any other body. They are looking to keep their budgets tight, and any place they can look where they can get another organization to provide funding, they surely will do that. This is a good bill, and I think that it's a bill that will find a home someplace. There were a number of bills dealing with this particular subject matter earlier. A lot of them were on consent. There is not a lot of homes for it right now. Senator Nelson agreed to allow this amendment to be added. And at the time I was going to add it on Select File, but we were waiting for that AG Opinion, which there was no doubt in my mind it was constitutional, but we waited, it came back around on Final Reading. It looked like a nice little bill that was noncontroversial. I remember last year I had a bill dealing with sudden infant death syndrome, and Senator Hartnett was nice enough to let me attach that particular amendment to his bill dealing with foster care review, which subsequently was vetoed. So I (laugh) always trying to find these bills that appear noncontroversial. This bill looked noncontroversial until this round of debate. And it's not my intention in any way to muddy the water. Senator Nelson has a very good bill here. The amendment added by Senator Landis strengthened the bill to make it even better. And, if there is any hint that this bill could be struck down because of this particular amendment, I would not like to see that happen. So at this particular time, Mr. President, I would like to withdraw this

March 19, 1990

LB 571A, 656, 1064, 1094
LR 305-309

particular amendment to the bill.

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

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

PRESIDENT: May I introduce some guests please in the south balcony, guests of Senator Rod Johnson. We have 55 members of the Central City Junior Police Patrol. Would you folks please stand and be recognized by the Legislature, all of you. Thank you for visiting us today. We'll move on to LB 1094 for Final Reading. Mr. Clerk.

CLERK: (Read LB 1094 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1094 pass? All those in favor vote aye, opposed nay.

(Machine malfunction. Some debate lost. Record vote on the passage of LB 1094 can be found on pages 1417-18 of the Legislative Journal. 40 ayes, 2 nays, 5 present and not voting, 2 excused and not voting. LR 305-309 introduced. See pages 1418-22 of the Legislative Journal. LB 571A read by title for the first time. See page 1422 of the Journal.)

PRESIDENT: (LB 1064.) Senator Peterson.

SENATOR PETERSON: I wanted to substitute that other amendment ten...3027.

PRESIDENT: Pardon me? Senator Peterson is asking for a substitute motion. Is there an objection? Senator Wesely.

SENATOR WESELY: I object.

PRESIDENT: You object. Which amendment is next then, Mr. Clerk?

CLERK: Mr. President, Senator Withem would move to amend the bill. (Withem amendment is on page 1366 of the Legislative Journal.)

PRESIDENT: Senator Withem, please.

March 20, 1990

LB 571, 656, 953, 1031, 1221

CLERK: Those will all be referred to the Executive Board. (See pages 1511-23 of the Legislative Journal.) LB 656 and LB 953 are reported correctly engrossed, those signed by Senator Lindsay as Chair of E & R.

Madam President, amendments to be printed to LB 1221 by Senator Withem; Senator Haberman to LB 1031; Senator Landis to LB 571. (See pages 1523-25 of the Legislative Journal.)

Madam President, the next amendment I have to the bill is by Senator Schellpeper and Dierks.

SENATOR LABEDZ: Senator Schellpeper.

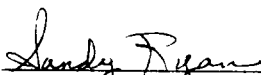
SENATOR SCHELLPEPER: Madam Chairman, I would move to adjourn until 9:00 a.m., March 21st.

SENATOR LABEDZ: Anything else to read in, Mr. Clerk?

CLERK: Not at this time, Madam President.

SENATOR LABEDZ: A motion has been made to adjourn until tomorrow morning at nine o'clock. All those in favor say aye. Opposed. The ayes have it.

Proofed by:


Sandy Ryan

April 3, 1990

LB 656, 1146, 1184, 1184A

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1184 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 1832-33 of the Legislative Journal.) 40 ayes, 6 nays, 1 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 1184 passes with the emergency clause attached. LB 1184A with the emergency clause attached.

CLERK: (Read LB 1184A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1184A pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See pages 1833-34 of the Legislative Journal.) 38 ayes, 5 nays, 4 present and not voting, 2 excused and not voting, Mr. President.

PRESIDENT: LB 1184A passes with the emergency clause attached. LB 656.

ASSISTANT CLERK: (Read LB 656 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 656 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 1834-35 of the Legislative Journal.) The vote is 41 ayes, 0 nays, 5 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 656 passes. LB 1146 with the emergency clause attached.

ASSISTANT CLERK: (Read LB 1146 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1146 pass with the emergency clause attached? All those in favor vote aye, opposed

April 3, 1990

LB 42, 42A, 642, 656, 799, 866, 880
880A, 953A, 1004, 1004A, 1019, 1019A, 1059
1059A, 1064, 1064A, 1080, 1080A, 1113, 1113A
1136, 1146, 1184, 1184A, 1222A
LR 418

CLERK: (Read LB 1222A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is shall LB 1222A 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 1847 of Legislative Journal.) 44 ayes, 0 nays, 2 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 1222A passes. Do you have something for the record, Mr. Clerk?

CLERK: Mr. President, I do, a new resolution by the Judiciary Committee, (LR 418.) a study resolution. Enrollment and Review reports LB 1064 and LB 1064A as correctly engrossed, both signed by Senator Lindsay as Chair; and LB 1059 and LB 1059A is correctly enrolled. Enrollment and Review reports LB 1113 and LB 1113A to Select File, signed by Senator Lindsay. Amendments to be printed by Senator Hartnett to LB 953A, Senator Hall to LB 866. And, Mr. President, a confirmation report from Transportation Committee signed by Senator Lamb as Chair. That's all that I have, Mr. President. (See pages 1847-52 of the Legislative Journal.)

PRESIDENT: While the Legislature is in session, capable of transacting business, I propose to sign and do sign LB 880, LB 880A, LB 1004, LB 1004A, LB 1080, LB 1080A, LB 1184, LB 1184A, LB 656, LB 1146, LB 42, LB 42A, LB 799, LB 1019, LB 1019A, LB 1059A, LB 1059, LB 1136, LB 1122, correction, LB 1222, and LB 1222A. We're ready to go. Mr. Clerk, do you have something on the desk?

CLERK: Mr. President, motion pending from this morning was one offered by Senator Chambers and that motion was to overrule or change the Speaker's agenda to permit consideration of a suspension motion relating to LB 642.

PRESIDENT: (Gavel). Could we have your attention so we can hear the speaker? Senator Chambers, please.

SENATOR CHAMBERS: Thank you. Mr. Chairman and members of the Legislature, this is a continuation from what I was attempting

April 9, 1990

LB 220, 220A, 315, 369, 369A, 551, 551A
571, 56, 720, 720A, 799, 851, 896
923, 953, 958, 960, 960A, 980, 980A
994, 994A, 1018, 1063, 1063A, 1064, 1064A
1080, 1090, 1136, 1146, 1184, 1184A, 1244

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber for the last day of the Second Session of the 91st Legislature. We're especially happy to have with us this morning our own Harland Johnson for our prayer of the morning. Would you please rise?

HARLAND JOHNSON: (Prayer offered.)

PRESIDENT: (Gavel.) Thank you, Harland, and may I say, on behalf of all the members of the Legislature, we have truly appreciated your prayers during the session. They have been very meaningful because you understand us so well, so thank you again. Roll call, please.

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

PRESIDENT: Thank you. Any corrections to the Journal?

CLERK: No corrections this morning, Mr. President.

PRESIDENT: Any messages, reports, or announcements today?

CLERK: Mr. President, a series of messages. First, communications from the Governor. Engrossed...well, before that, Mr. President, bills read on Final Reading as of late last Thursday were presented to the Governor on Thursday evening as of 8:15 p.m. Communications from the Governor, Mr. President, and I might indicate to the members that copies of messages I have received have been distributed and you should have a copy on your desk. Communications to the Clerk: Engrossed LB 1080, LB 1184, LB 1184A, LB 656, LB 1146, LB 799, and LB 1136 were received in my office on April 3 and signed by me on April 6 and delivered to the Secretary of State. Sincerely, Kay Orr, Governor. (See Message from the Governor as found on page 1985 of the Legislative Journal.) A second communication: Engrossed LB 220, LB 220A, LB 315, LB 369, LB 369A, LB 551, LB 551A, LB 571, LB 720, LB 720A, LB 851, LB 896, LB 923, LB 953, LB 958, LB 960, LB 960A, LB 980, LB 980A, LB 994, LB 994A, LB 1018, LB 1063, LB 1063A, LB 1064, LB 1064A, LB 1090, and LB 1244 were received in my office on April 3 and signed by me on April 7, delivered to the Secretary of the State. Sincerely, Kay Orr, Governor. (See Message from the Governor as found on page 1985 of the Legislative Journal.) In addition to those items,