

January 19, 1989

LB 94, 247, 570, 576, 683-808

as yet, please contact Joanne immediately. If you don't have the bill that you are expecting, please contact the Bill Drafters Office immediately. Mr. Clerk.

CLERK: Mr. President, for the record, I have received a reference report referring LBs 496-599 including resolutions 8-12, all of which are constitutional amendments.

Mr. President, your Committee on Banking, Commerce and Insurance to whom we referred LB 94 instructs me to report the same back to the Legislature with the recommendation that it be advanced to General File with amendments attached. (See pages 320-21 of the Legislative Journal.)

Mr. President, I have hearing notices from the Judiciary Committee signed by Senator Chizek as Chair, and a second hearing notice from Judiciary as well as a third hearing notice from Judiciary, all signed by Senator Chizek.

Mr. President, new bills. (Read LBs 683-726 by title for the first time. See pages 321-30 of the Legislative Journal.)

Mr. President, a request to add names, Senator Korshoj to LB 570, Senator Smith to LB 576, Senator Baack to 570 and Senator Barrett to LB 247.

SPEAKER BARRETT: Stand at ease.

EASE

SPEAKER BARRETT: More bills, Mr. Clerk.

ASSISTANT CLERK: Thank you, Mr. President. (Read LBs 727-776 by title for the first time. See pages 331-42 of the Legislative Journal.)

EASE

SPEAKER BARRETT: More bill introductions.

ASSISTANT CLERK: Thank you, Mr. President. (Read LBs 777-808 by title for the first time. See pages 343-50 of the Legislative Journal.)

CLERK: Mr. President, I have reports. Your Committee on

February 10, 1989      LB 35, 36, 38, 42, 44, 45, 51  
53, 60, 79, 110, 123, 140, 168  
169, 189, 190, 207, 408, 607, 610  
708, 775  
LR 2, 29

for the record, Mr. Clerk, at this time?

CLERK:      I do, Mr. President. Mr. President, your Committee on Judiciary whose Chair is Senator Chizek reports LB 42 to General File; LB 44, General File; LB 708, General File; and LB 110 as indefinitely postponed. Those are signed by Senator Chizek.

Mr. President, Revenue committee whose Chair is Senator Hall reports LR 2CA to General File; LB 607, General File with amendments; LB 775, General File with amendments. Those are signed by Senator Hall. (See pages 690-91 of the Legislative Journal.)

Health and Human Services Committee whose Chair is Senator Wesely reports LB 610 to General File with amendments. (See page 691 of the Legislative Journal.)

Mr. President, Report of Registered Lobbyists for this past week as required by statute. (See page 692 of the Legislative Journal.)

I have amendments to be printed to LB 408 by Senator Barrett.

Mr. President, communication from the Governor to the Clerk. (Read communication regarding signing of LB 35, LB 36, LB 38, LB 53, LB 79, LB 123, LB 190, LB 51, LB 60, LB 189, LB 207, LB 45, LB 168 and LB 169. See page 693 of the Legislative Journal.)

Mr. President, your Committee on Enrollment and Review reports LB 140 to Select File with E & R amendments attached. (See page 693 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: We'll move on to LR 29, please.

CLERK:      Mr. President, LR 29 was offered by Senator Langford. It's found on page 656. (Read resolution.)

PRESIDENT: Senator Langford, please.

SENATOR LANGFORD: Mr. President and colleagues, I offer this resolution with a great deal of joy because this gentleman plays cards and plays golf with Jack, my husband, every day, practically, in the summer. He has been instrumental in the

of government the opportunity to enter into the same kind of obligation as our counties, cities, and villages. It has worked out very well since they have been given that system. And so I move that we accept this bill, LB 692, and in the future it can be of significant benefit to our taxpayers.

SPEAKER BARRETT: Thank you. The question is, shall LB 692 be advanced to E & R Initial? Those in favor vote aye, opposed nay. Have you all voted? Record, please.

ASSISTANT CLERK: 26 ayes, 0 nays on the advancement of the bill, Mr. President.

SPEAKER BARRETT: LB 692 is advanced. LB 708, Mr. Clerk.

ASSISTANT CLERK: LB 708 was introduced by Senator Chambers. (Read title.) The bill was read for the first time on January 19 of last year. It was referred to the Judiciary Committee which reports the bill to General File, Mr. President.

SPEAKER BARRETT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, since there were no committee amendments, I would like to go through the bill first, and then I have some clean-up amendments to offer, but I think it should be clear what the bill is designed to do. I will state it as briefly and succinctly as I can, then I will elaborate from the bill, itself. There is a set of circumstances existing in big-time intercollegiate athletics which is created by NCAA rules, which are very unfair. The NCAA behaves in a way that would make the fascist countries seem like paragons of democracy, but we have a set of circumstances where universities in order to be members of the NCAA, and they must be a member if they want to participate in intercollegiate athletic activities in this country or any of its possessions, they accede to these rules, and one of the rules places a limit on the amount of a Pell Grant that a participating athlete can receive. That limit is \$1,400. The Pell Grant is \$2,100. It is a federally financed administered program and the basis for receiving one is need. So it has to be clear in everybody's mind that we are talking about assistance based on established demonstrated need. The NCAA and universities, recognizing this status of such a player, has decided to impose a rule saying that the needy athlete can receive \$1,400 of this \$2,100. A nonathlete similarly situated, even on scholarship, can receive the full

\$2,100. What becomes of the overage? It goes into the Athletic Department's budget. What the university down here has indicated is the following: There is a total amount based on tuition costs at the University of Nebraska, which a scholarship athlete can receive. So what the university says is we allow that athlete, if qualifying for the full \$2,100 of the Pell Grant, to actually receive it. Then we reduce the assistance given by the university to accommodate that amount that the player would receive if he got the full amount of the Pell Grant. Now that is so much chicanery. When a person goes to a university and obtains a scholarship, he or she does not receive actual cash dollars. The presence of that student does not reduce the actual money that the university has in its coffers. But the Pell Grant poses a different situation. That is actual money that comes to that individual. The Pell Grant is designed to benefit the person, the student, that is, and not the institution. By the sleight-of-hand rules of the NCAA, \$1,400 of it is made available to the student and the other \$900, or the other \$900 will go, because I think the Pell Grant has been increased, will go to the school. So they make a paper transaction to cause it to appear that the player is getting the full benefit of the Pell Grant, but when there is an actual cash amount over the \$1,400 of the Pell Grant that the player gets, that cash goes to the university and, in fact, increases the actual dollars that the Athletic Department has to spend. I gave you a handout, and on the front of it, you will see an article from the NCAA News about comments made by Senator Claiborne Pell, whose bill it was that created the Pell grant, and he says, or the first paragraph of that article says, Senator Claiborne Pell told the NCAA Council April 19th, this is in 1988, that "an athlete's federal financial aid package should not differ from that of an equally deserving student who does not play sports", meaning there should not be discrimination based on the status of an individual as an athlete or nonathlete. If you go over to the third column of the article as it appears on this paper, you will see that that Division I(a) of the NCAA voted to permit needy student athletes to retain up to \$1,400 of the Pell Grant for which they qualify. If they receive up to \$1,400, what becomes of the difference? The school keeps it. The second page of this handout is a letter from Bob Devaney and the underlying part of it says that he and Osborne, Coach Osborne support allowing players to keep the full amount of the Pell Grant. The third item is from the Chronicle of Higher Education and it points out again that nonathletes may receive \$2,100 a year under the federal program



whereas the athlete receives only \$1,400, and at the bottom of the first column in that article are these words, "Many college football coaches favor eliminating the NCAA's cap on Pell Grant money. If that is the way they feel, why is the cap not eliminated? Because the NCAA is made up of a majority of smaller schools. These schools count on that extra Pell Grant money that the player cannot receive to supplement their athletic budgets. They frankly acknowledge that without taking that money that should go to the individual, their athletic departments would go under." But it seems to me that if the federal government were going to do its job, it would look into a situation which has a student qualifying for \$2,100 of federal aid receiving only \$1,400 of it and an institution taking the remainder. The Pell Grant program is not designed to be aid to institutions but aid to individuals, and under the NCAA rules, the aid is going to the institution. Now to go into some of the bill, the provisions, and I do want this into the record, there are some findings which explain the relationship between universities and colleges and the NCAA. Those findings state the eligibility requirements for receiving a Pell Grant, and the requirement that the player accept less. Here is the first part of the bill that actually would be operative law. It is on page 3, and if you disagree with this, you will disagree with the bill. "No college or university shall adopt, promulgate, or enforce any rule or regulation that requires a student to forego, relinquish, waive, or surrender a portion of a financial aid grant made available to financially needy students by federal law solely on the basis of or as a condition to participation by such student in an intercollegiate athletic program." What that says is that if you are an athlete and you want to participate in a sanctioned activity of the university, you have to agree as a condition of participation to give up assistance made available to you by the federal government. If you are a music student, there is no requirement on you that you do that. If you are an art student, English, journalism or any other area of study, if you are a student in any of those areas, this condition is not imposed on you. So I feel that this Legislature has the responsibility to enact laws to prevent unfair discrimination against any individual or group of individuals. Athletes are the most abused, set-upon, exploited group of people in this society. This Legislature did vote to enact a bill that under certain circumstances would allow a stipend to go to the athletes. The Governor vetoed it. There are people who don't want the athletes to receive any compensation or aid despite the millions of dollars they

generate for this university every year. And then on the other hand, they want to require these athletes to give up assistance they are entitled to based on need. So you don't want to pay them and you don't want them to receive the aid that is available through the federal government to help them in this hellish condition that NCAA rules and a weak university system allows them to be brought under. My obligation, and I feel the obligation of the Legislature,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...is to enact laws that will prevent that kind of discrimination. As we proceed during the discussion, Senator McFarland has promised to explain a letter that was written by the university dealing with nonscholarship athletes, and I think it is unfair how they are being dealt with and the university should not treat these young people in that fashion. But I will not go into that aspect of it until he explains the letter that was written. But here is the choice, either the law is going to protect all students similarly situated from discrimination, or the Legislature is going to refuse to enact a law because it feels bound by unfair rules of the NCAA. When I have a chance to speak again, I will explain other provisions of the bill that are designed to prevent the NCAA...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...from doing anything to the university for obeying this law.

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

ASSISTANT CLERK: Yes, Mr. President, Senator Chambers would move to amend his bill.

SPEAKER BARRETT: Senator Chambers, on the amendment.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, there is some provisions in the bill that I would like to have stricken, then the discussion can be on the bill, itself. In a provision of the bill that would allow a fine to be imposed on the NCAA for taking action against the university for complying with this law would make such action by the NCAA a felony. I want to strike the reference to a felony and just leave the fine

there because a fine can be imposed without requiring that a felony be found. So I want to strike that language, and on page 6, a measure of damages that was put in the bill was similar to that in another bill, and that measure would constitute punitive damages which would not be allowed under the law of Nebraska, so that would be the amendment, and I hope you will adopt it to strike that language. But while I have an opportunity, there are a couple of things that I would say on the bill in connection with those punishments, those penalties. At the bottom of page 4, once it is found that the university would be in violation of this law by withholding money from a student or a student feels the university is in violation, that student or somebody on that student's behalf could file a complaint with the Attorney General. The Attorney General would be required to conduct an investigation and render a finding. If he found, if he or she found that there was no violation of the law, that ends it. If it is found that there is a violation, within three days of that finding, the Attorney General would have to issue a directive to the university to turn over to such aggrieved student the amount of aid that student is entitled to receive, and that money would have to be turned over within 30 days of the issuance by the Attorney General of that finding. Then if the university was to be approached by the NCAA because the university is complying with this law and allowing these students to receive the full amount of aid they are entitled to based on their qualification for it, the bill says that no association, no intercollegiate athletic association, which would be the NCAA, shall impose or threaten to impose any penalty on any college or university for complying with this act. In addition to a fine being imposed on the NCAA for doing that, a cause of action is created in the bill that would allow the university to go to court and to seek an action at law, or in equity to make sure that this law is complied with. When you go into equity, you can seek an injunction and there is not a judge in the land, there is not a court in the land that would require the university to comply with a NCAA rule, rather than the law of the land. And the NCAA could not take negative action against the university. They want to impose, the NCAA, to give you an example, a random testing rule on all colleges and universities, and they have voted to allow that, but they said it cannot apply either in the State of Washington or California because that state, whichever of the two it is, has a law prohibiting such testing. So the state law does not have to bow to a NCAA rule, and the NCAA cannot take action against the universities in that state for not complying

with its rule because the law of the state is paramount. There are a lot of statements made by coaches, athletic directors and others, the statements of which...the statements that they make are in all sincerity made. They believe the NCAA is more powerful than the Legislature. They believe the NCAA is more powerful than the courts, and the NCAA, itself, believes that, but the fact is whenever the NCAA has come against a state law, the state law has not been brushed aside. The NCAA has to take low. What I would like to see is a law at the federal level to either abolish the NCAA or greatly restrict the kinds of things that it is able to do because what that association does is harm students. They are really athletes, misnamed students, but to make everybody feel less uncomfortable here, I will call them students. Every rule, every law, every piece of legislation that the NCAA has enacted that mentions an athlete in any way is designed to hurt or restrict that athlete, either by denying him or her a benefit that every other student enjoys or imposing a burden that no other student not an athlete would tolerate. The way we could get rid of all of these NCAA rules, even the kind that I am talking about, is to impose them across the board on all students. Not one member of this Legislature would agree that for a reason not applicable to all students certain students at the university could not get student education opportunity grants or any other grants. None of us would agree to allow a student to be humiliated in front of a class and have his or her grades and academic standing revealed to the public, and we talk about privacy rights. But an athlete must agree to give up these privacy rights in order to participate in intercollegiate athletics, and that is why you will read about their failing grades on the SAT, and any other test including academic work at the school that he or she attends. Look at these young Pages who go to school. Do you think they would stand in front of a class because a professor said stand up and be reamed out, up and down, up one side and down the other, for flunking this test? But you will watch football games and you will see a coach maybe grab an athlete in the face mask, shake him, hit him in the face with the football, kick him. No other student would tolerate that and it wouldn't be tolerated for any other student. Why for the athletes? Because they are not deemed human beings. They are serfs. They are indentured servants. They are commodities. They would have a better chance of having rights that should be accorded to them as human beings by moving under the commerce clause, the Interstate Commerce Clause, than they do as human beings. We can talk about the Fourteenth Amendment for other people. We can talk

about due process, equal protection of the law, all these concepts and apply them to other students and assure them rights, but not the athlete. The athlete, the revenue-generating athletes do something that nobody else connected with an institution of higher learning will do, and in the case of Nebraska, Oklahoma, and the other football factories, they are institutions of higher earning, they generate revenue rather than consume it. They generate revenue rather than consume it. Twelve million dollars, twelve million dollars in less than a year, they give countless hours of joy and pleasure and sense of being and self to people in this state. We don't want to pay them for that, but any other student at that university can be on a work-study program. The athlete cannot. Can accept money from anybody in any amount, even if you are on scholarship, the athlete cannot. Can be required to spend more time outside the classroom than in it on nonacademic work, they cannot put that requirement on any of you, but on the athlete they do. If there is a conflict between practice and a course that the athlete wants to take, the course has to be dropped so that practice can be attended. They couldn't do that to any of you. These athletes have been cut out as a group and put aside for every manner of discriminatory unfair treatment. You would not dream of applying NCAA rules across the board on all these other students. The injustice of it would immediately be seen and the students themselves would be in an uproar. But since we have these players who are risking serious injury, life threatening injury, permanently enabling...unabling, disabling injuries, they get nothing. They don't have to...if a student falls down the stairs because he or she is careless, they just tell you to be careless, but...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...for an athlete, they build flak jackets so when they have broken ribs they can still play. They build lightweight splints so if they have broken fingers or broken wrists or twisted muscles, they can still play. They have heavy drugs that they can inject into joints and muscles so that when undergoing excruciating pain, they can still play. If you look at the equipment they wear and the rules that are enforced, it is an inherently life threatening dangerous game and some helmet makers have gone out of the business because of the large losses brought against them as a result of football sustained injuries. These players die participating in this activity, and after all of these things are made known, we are going to say that federal

programs that provide assistance for them to go to school must be foregone in order to participate in an activity of this kind.

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: What I want to say is that what I am really speaking for at this time is the acceptance of my amendment that would remove the language that I touched on briefly.

SPEAKER BARRETT: Thank you. Discussion on the Chambers amendment? Senator McFarland, would you care to discuss the amendment?

SENATOR MCFARLAND: Thank you, Mr. Speaker, I would. The amendment, if I can refocus the discussion, the amendment, as I understand it, strikes the reference to felony, and clarifies the penalty provisions, and Senator Chambers has introduced that for that purpose, and I am fully supportive of that. I would like to take a little time now to address the bill, itself, some of the consequences of the bill, and some of the aspects of the bill that need to be considered. I was the only member of the Judiciary Committee who voted against this bill coming out of committee. It was voted out on a vote of 7 to 1. I am not in the habit of defending the NCAA. They are not necessarily one of my favorite institutions. They do do some very beneficial work, I think. I think that generally college sports is a good program in our society. There are abuses within those programs and within that institution. The thing that I want to clarify and the issue that causes me concern with this bill are the ramifications of it. I have passed out a letter that I received from Vice-Chancellor, Jim Griesen, at the University of Nebraska. I had inquired from him what was the status of the NCAA rules with regard to this particular issue. The issue, as I understand it, right now is that for the Pell Grant for the scholarship athlete there is not a great deal of risk for the university and the Athletic Department. What would happen if this bill became law would be that for the scholarship athlete receiving a Pell Grant, the university would allow that Pell Grant to be received in total as required by the LB 708, but what would then happen would be that there would be a reduction in the additional aid that the athlete would get so that the athlete would not get in excess of \$1,400 beyond room, board, books, tuition, and fees. That, for the scholarship athlete, there is no problem. The bill, if passed as amended, would create a problem, however, for what they designate as the

recruited nonscholarship athlete, and it would put the university in direct confrontation with the NCAA over this issue. At the present time, if you look on page 2 of the letter that I have handed out from Vice-Chancellor Griesen, it talks about a recruited nonscholarship athlete, and that the recruited nonscholarship athlete has three options; one, the recruited nonscholarship athlete who gets an additional financial aid can either accept that financial aid with the understanding that he or she may not participate in varsity competition, or, two, decline the award so that he or she will be able to engage in varsity intercollegiate competition, or, three, accept the award and then gain Athletic Department agreement to count the individual as a scholarship athlete, and it is important to notice that this third option is really not a realistic option, particularly in basketball and football because they are already at their limits of 15 scholarships for basketball...

SPEAKER BARRETT: One minute.

SENATOR McFARLAND: ...and 95 for football. So under the present situation, the recruited nonscholarship athlete really has one of the two options. If the bill passed in its present form, it would force the university to violate the NCAA rule that says that you cannot have a varsity athlete who is...and try to count that as a nonscholarship athlete who is receiving that type of financial assistance and it would, thereby, by violating the NCAA rule, put the university in a direct confrontation and put the university in a real dilemma. The dilemma which I will try to explain when I get a chance to speak would be that it would force the university either to comply with state law, violate NCAA rules and be subject to sanction by the NCAA, or to comply with NCAA rules and then...

SPEAKER BARRETT: Time.

SENATOR McFARLAND: ...violate state law, and I will try to explain this further when I have an additional chance.

SPEAKER BARRETT: Thank you. Discussion of the Chambers amendment. Senator Crosby, did you care to speak to the amendment? Thank you. Senator McFarland, did you care to speak to the amendment? Your light is next. Thank you. Senator Chambers, there are no other lights. Would you care to close?

SENATOR CHAMBERS: Mr. Chairman, the bill does need to be



discussed because we are dealing with a complex system. The issue, itself, is not complex but the system created by the NCAA and the university's complicity in that system do combine for complexity. The issue is simple. Should a student be required as a condition of participating in a university activity be forced to give up assistance that no other student would have to give up, impose conditions on these people that are not imposed on other students. When I offered my bill to pay players, there were editorials indicating that Nebraska would be deemed a football crazy state and so forth. Contrary to that reaction, that bill, even though the Governor vetoed it, led to discussion all over the country and athletic directors, coaches, editorial writers, and others came out and have continued to come out in favor of paying the players, whether they call it pay, a stipend or whatever. So the people who indicated what the reception would be simply don't understand this particular issue and this area of human endeavor, but I do say that Nebraska can, indeed, be called a football crazy state if the Legislature, having had brought to it a discriminatory situation, will say we will let that discrimination stand because it is more important that Nebraska play football than that the students' rights be protected. It is an issue. It is a conflict. It is a clash of ideas, and we have to decide which is more important, the Legislature upholding the right of these students to be treated as all other students, or to turn our back on that type of discrimination and say that football is more important. As I told Senator McFarland, in a conflict between the NCAA and any institution, whether it is a college or university, I am anti-NCAA and pro-college, pro-university, no matter what. But when it comes to a combine of the NCAA and an institution against the rights of a player, I am pro-player all the way, no matter what and anti-NCAA/institution. These players have nobody protecting their rights. One of these other students could go to court and have something done if denied aid. The athlete cannot, and you all can sit comfortably with that kind of circumstance. I have heard senators on this floor speak about various incentive programs to help the students who need to go to school, and those are worthy goals, worthy programs, and in some cases, they have been voted up. But when we have a program that is not going to take any money out of the pocket of the taxpayers of this state to help players who demonstrate a need, they don't get it but every other student would. We have got 100 students qualified for this aid, 90 of them are nonathletes, 10 of them are athletes. The 90 get it, the 10 don't, and since the 10 are few in number and they do serf work,



s-e-r-f, indentured servant work, their rights don't need to be protected, their rights don't need to be guarded. The university, as an institution, is more important than the players. I disagree. The aspect that Senator McFarland talked about, and he will get the opportunity to discuss it further because there are some things he and I have to get clearly into the record,...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...applies only to the revenue generating sports. The NCAA applies these kind of restrictions only to the athletes who participate in football and basketball. Some of you all asked me why do I say pay only the football players? Because the NCAA has set them aside for a special kind of discrimination. The amendment does only one thing. It strikes language, but there are two elements of language. It would correct the measure of damages and it would also eliminate all reference to a felony having been committed should the NCAA violate this bill. I don't want it to be a criminal statute so I want that language stricken and I hope you will adopt the amendment. Then the bill would be in the form that all discussions from here on would deal with.

SPEAKER BARRETT: Thank you. You have heard the closing and the question is the adoption of the Chambers amendment to LB 708. Those in favor of that motion please vote aye, opposed nay. Record, Mr. Clerk.

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

SPEAKER BARRETT: The amendment is adopted and the Chair is please to take just a moment to introduce some guests of Senator Scofield underneath the north balcony. Wendy McCarty of Grand Island, Marilyn Retzlaff of Palmer, and Collette Shanghnessy of St. Paul, welcome to the Legislature, ladies. The ladies are representing the Central Nebraska Council on Alcoholism and promoting the Healthy Husker Campaign. Also in our south balcony, we have 40 seventh graders from Aquinas of David City as guests of Senator Schmit with their teacher. Would you folks please stand and be recognized. Thank you. We are pleased to have you with us. Mr. Clerk, is there anything further on the bill?

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

SPEAKER BARRETT: Thank you. Senator Chambers, we are on the bill as amended.

SENATOR CHAMBERS: Yes, Mr. Chairman, so that the discussion can proceed, I will move that LB 708 be advanced to E & R Initial. My comments, oh, that is right, I am making a motion so I get 10 minutes. There are some things that need to be in the record on this because although members of the Legislature don't recognize the significance of it, whenever this Legislature does something, it is picked up in other parts of the country. The Legislature is watched. I have been called about front page articles on things this Legislature has done, even on LB 397 when there was maybe a two-inch column in some of the papers here, and I think that might be because there is a difficulty on the part of editors acknowledging that something so significant can be done by somebody for whom they have so much contempt. But, nevertheless, this area of big-time college athletics is causing considerable attention to be paid to it around the country. Recently the NCAA signed a multiyear billion dollar contract with the networks for covering basketball and a debate arose as to whether or not that money should be divided among the various conferences, the schools, or just how, but not one word about anything out of that billion-plus dollars for the players who make it all possible. In football, there are multimillion dollar contracts that have been made between the college system and the networks, but not one word about what goes to the players. So what I would want Senator McFarland to discuss, when he speaks again, is how this bill relative to the Pell Grant aspect would impact on these nonscholarship athletes. If he is coming this way, I will ask him but I didn't want to ask him while he was up at the front. Senator McFarland pointed out that based on the letter, a copy of which you have been given, nonscholarship athletes who have been recruited would be affected by this bill because if they receive aid then they would have to be counted against the total number of scholarships allowed for the school. Since the school has met its quota of scholarship aid to be granted, they cannot give that player any aid without violating NCAA rules. They cannot allow that player to receive federal financial aid without violating NCAA rules, but rather than speak about general federal financial aid, I want to ask this specific question. On this category of nonrecruited player who wants to participate at the varsity level, would he be allowed, and we can say he, in

this case, because this applies to football, would he be allowed to accept the full Pell Grant or any part of it?

SPEAKER BARRETT: Senator McFarland, would you care to respond?

SENATOR MCFARLAND: I think I understand the question. If you look on the first page of the letter, it says for the recruited athlete. It can be a non...recruited nonscholarship athlete, if they accept any financial aid, which would include the Pell Grant, they could not participate in athletic competition on the varsity level unless they are counted as a scholarship athlete. They can participate as freshmen or as redshirts, or whatever, intermural, club competition, B team, but they could not participate on the varsity level.

SENATOR CHAMBERS: Members, I wanted that in the record so that you would see this bill with reference to the Pell Grant aspects will impact on the university, also, despite what they have said in this letter. They are not clear...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...of the entanglements that would result if this bill is passed, and I don't want to soft-pedal what this bill does. It would put the university on a collision course with the NCAA, but in the process of creating that collision course, I want the issue clearly drawn, the issue of what we are dealing with here, that this Legislature is going to agree that students can be compelled to give up something to which they are entitled in order to participate in a university sanctioned function. What some of these students ought to do but they won't because of the club held over them by the Athletic Department is sue the university charging that they are being denied equal protection of the law. They are being made to give up something that the other students are not being made to give up in order to participate in a university activity. Since my time is up, I won't try to start on another aspect of the issue.

SPEAKER BARRETT: Thank you. Senator Crosby, would you care to discuss the bill?

SENATOR CROSBY: Thank you, Mr. Speaker, and members. Yes, I would like to talk...to speak to the bill. I am supportive of the bill even though I think all of us are still living back in the good old days when football and all the sports, we had a

romantic idea about them from the movies and from our own experiences, the exciting movie where a player throws a pass and runs down and catches it himself and so on, and fur coats, and chrysanthemums, and dinner at the club or at home afterwards. We still like the idea of collegiate football and other sports. It has changed since the good old days and that is only, how many years ago, forty, thirty-five? Bobby Reynolds whom I always thought of as Mr. Touchdown, USA, and Johnny Novak, and a lot of those players who were still members of a college football team. So I guess I am going to have to give up that romantic idea because all of us who have that feeling about, and football seems to be the paramount sports, but there are a lot of young men and women involved in these sports that are subject to the NCAA rules. So we have to give up that romantic image. I always have resisted the idea of their having any income, but support and assistance so they can complete their education is something else again. And this idea of their not being able to receive...if they receive the full benefit of the Pell Grant, then they reduce the other benefit of the scholarship, I agree, that is not fair because you wouldn't do that to any other student, as far as I know. It is very complicated as far as the recruited and the nonscholarship students and the scholarship students. I won't speak to that but I do think we have to realize what pressure some of these young people are under, especially the football players, the temptations they have for someone to support them on the side, and that is against the rules. As I understand it, during the holidays a friend of mine said they were having some Chinese students come for dinner because they were so far away from home and so on, and they could invite the Chinese student for dinner, but they could not invite a football player for dinner. That, to me, is going a little too far with not being able to show a social courtesy to a young man who is a long way from home, whether he lives in China or wherever he lives. So I am supporting this bill and I hope the rest of us will, too, and my only question, and I am concerned about this, and I did talk to Senator Chambers. I will talk to Senator McFarland, too. I do think we have to be careful of putting the university crosswise with NCAA, but at least maybe this will send a message. I have one other thing. In the student newspaper this week, there was a flyer with coupons for Amigos, the Mexican food restaurant, and on the other side of the coupon is an article about their, Amigos, student tuition employment program. It is called STEP. The young woman that they feature is a member of the National Honor Society, a cheerleader. She is in her third year with Amigos

and for two years she worked during high school gave her tenure in this program. In her first semester, she will receive a check for 35 percent of the tuition, \$216.30, in addition to her hourly wages. I doubt very much that any athletes would be able to participate in that kind of program even if they had the time to work. So there is another good example of what other students can do and the kind of assistance they receive but the athletes are left out of it. So thank you very much. I will support the bill.

SPEAKER BARRETT: Thank you. A very special guest of Senator Langford under our north balcony, Admiral L.A. Snead, retired, from Palm Beach Garden, Florida. Admiral Snead. Thank you, sir. We are glad to have you with us. Further discussion on the advancement of the bill, Senator McFarland, followed by Senator Chambers.

SENATOR MCFARLAND: Senator Crosby, I still long for those romantic college days, of college sports, when you'd catch a touchdown and the cheerleaders would come out and congratulate you and all that. It never happened to me when I played but I still had that aspiration. I don't know, I suppose those days are gone. The thing I would like to do in speaking to the bill, itself, is try to put the issue in its proper context and explain the ramifications of it. For the scholarship athlete, if this bill passes, the Pell Grant does not create a situation where the university would have to violate NCAA rules, because what they would be able to do would be able to, for the scholarship athlete, give the full amount of the Pell Grant, reduce, for the excess over \$1,400 above room, books, board, tuition, and fees, reduce any overage of that and so that the athlete would comply with the NCAA rules. Where the conflict and the confrontation would have to occur if the bill passed is with the recruited nonscholarship athlete. Right now, my understanding is there are about three or five, three to five athletes each year who want to participate in varsity competition who do not have a scholarship and yet they have financial need that would allow them to accept financial aid in the form of a Pell Grant or some other grant. For those people under present NCAA rules, they have the choice, realistically, the two choices I pointed out at the top of page 2 of this letter from Vice-Chancellor Griesen. Either they accept the nonathletic award and then decide to forego their varsity competition, or they decline the award and participate. As an example, just for an example, maybe there is a third team place

kicker at the university who is probably not going to play very much at all unless one of the other place kickers gets injured or has a bad streak and goes into a slump. That player may likely not be on scholarship. Maybe all he can do is place kick. But he qualifies for financial assistance. Under the present system, he either can decline the financial assistance and go ahead and take his chance at some...he might get a chance to kick an extra point in a few games, or if the two people ahead of him get hurt or go into a slump or something, he might become the kicker, or he can just decline, or he can accept the award, financial aid, and go ahead and just say, well, I would only probably get to kick in a few games anyway, I am really not getting that much benefit out of it, I will just forego the participation. If an athlete is playing a lot and it really looks like he is going to play a lot of football or basketball or whatever, most likely he will be given a scholarship, like I was given a scholarship. I was a nonscholarship athlete initially, but then once I showed that I could play at the university and I earned a starting position, then I was given a scholarship so there was no problem that occurred. Now what would happen if the bill passes is that by state law in the situation of the nonscholarship athlete who is recruited, and most all of them are, most all of them get some kind of inducement or encouragement to come to the university. Even I did when I was a walk-on. They said we don't have a scholarship to offer to you but we think you can play and we'd sure appreciate it if you tried out for the team.

SPEAKER BARRETT: One minute.

SENATOR McFARLAND: For those type of situations, for the recruited nonscholarship athlete, the law, 708, if passed, would require the university to allow that player to participate and also require that that player received the financial aid. To comply with that state law, it would violate the NCAA rules. With a violation of the NCAA rules, you put the university in the dilemma of being subject to possible severe sanctions. For example, I could see if Nebraska complied with the state law that the NCAA might take away five scholarships for the next year, or require the student to be counted as a scholarship athlete and take away those scholarships. There could be all kinds of negative consequences. What you would be setting up with the passage of this bill would be that type of confrontation...

SPEAKER BARRETT: Time.

SENATOR McFARLAND: ...and you would be setting up most likely a lawsuit about which no one would be sure of the consequences of the decision. I will try to elaborate on this further.

SPEAKER BARRETT: Senator Chambers, please, followed by Senator Bernard-Stevens.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, Senator McFarland is giving some very clear and precise statements with reference to the bill, what it says, what it does, and the set of circumstances that will be created if it passes, and I am saying that if worse comes to worst, based on the scenario laid out by Senator McFarland, I have no objection to that occurring. I want that to occur. I want us to come face to face as policymakers with the situation where we say a private association demands that we allow discrimination against our students in a state supported institution. That is what we are faced with. Let those in the football world worry about those ramifications. Do we enact a law or fail to enact it when we see clear discrimination based on the inconvenience caused to those who are discriminating? Suppose, Senator Jacky Smith, there were a situation where they said that if a young woman at the university wants to study art and she is entitled to a Pell Grant, the only way she could study art is either to agree to pose for the class or give up her Pell Grant. She shouldn't have to do either one. There shouldn't even be a choice there. If you are entitled to the aid, you should just get it. That is the way it should be with these athletes. Why put them in a situation where they are on the horns of a dilemma, which means that either way you go you are hurt? We are a Legislature saying that kind of situation should be created for our students at a state supported school, and we are worried about inconveniencing those who are doing the wrong. We are turning the victims, which are the players, into the bad people. They are to be punished with the complicity of this Legislature because they want to participate in an activity that is made available by this state supported school that we appropriate money for. We appropriate money for the purpose of discrimination. And because it would inconvenience the discriminators, we don't want to correct the discrimination. Senator McFarland already stated that even if you are talking about these players who have not been given a scholarship but they were recruited, they also...they cannot accept any of the



Pell Grant. The only way they can qualify for the Pell Grant is to show that they are needy. So here you have got a person who has established financial need recruited by the university to come to play football but not given scholarship assistance. The university wants to use them. Then if they come to the university and give up that aid and they are still needy, and they are a part of the university's program, and because they are needy, and that was established and known by the university in the first place, they accept some money from somebody like me. I buy them a shirt. I buy them some clothes. I take them out to eat regularly, and the NCAA finds out about it. Those bureaucrats, who because the players make so much money have gotten loans over \$100,000 at low interest or no interest, are going to come against these players and enforce with a vengeance these rules that say if you accepted a shirt from Chambers, you violated the NCAA rule and you will lose your eligibility and the school goes on probation. Why should anybody be surprised? You knew you had a needy student here in the first place. You knew he was needy, and you made him forego the assistance that any decent person would try to help him get. You require him to give it up. Then when he behaves as a needy person and accepts something from somebody to meet that need, he loses his eligibility and all value to the university, then you will see the editorial writers, the people writing to the Public Pulse, and voice from the grandstand condemning that player for hurting the university's program...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...but never looking at the lack of ethics in a university system that would put these young people in those kind of impossible situations. How ethical is a university when it does that? How can they presume to teach courses on ethics? Ethics in engineering, ethics in business, why not some ethics in how the students, themselves, are treated if they happen to be athletes? Who cares about the athlete except when they are scoring touchdowns and giving pleasure to everybody and an occasion to drink, an occasion to wager. They are viewed as commodities and things to be used by others, then discarded. I see them as people, and I see the category we are talking about now as people in greater need than the others. These players are not only treated different than other students, they are treated different than other athletes.

SPEAKER BARRETT: Time. Further discussion, Senator



Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker. I will give whatever time I have to Senator Chambers.

SPEAKER BARRETT: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, I get very exercised when this subject comes up. They cannot speak for themselves, they dare not sue the university. They are denied all kinds of rights that are taken for granted by others, and denied redress. Remember, the category of students that Senator McFarland talked about who were recruited but not given a scholarship are covered by NCAA rules, but those rules don't apply to all athletes, and I would like to ask Senator McFarland a question. As he comes back to the microphone, I am going to say a couple more things. There are revenue generating sports and nonrevenue generating sports. The vast majority of violations of rules when it comes to recruiting and paying players occurs in the revenue generating sports because the money is so good. Senator McFarland, when we are dealing with that category of athlete that you mentioned who are the recruited but nonscholarship, isn't it true that those NCAA rules denying aid to those athletes applies to only those in football and basketball?

SPEAKER BARRETT: Senator McFarland, please.

SENATOR MCFARLAND: In all honesty, I really don't know. The basketball and football are the revenue generating sports. I am wondering if it wouldn't apply to baseball as well, and I am not absolutely sure. I'd need to clarify and look at that.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, in talking to Mr. Griesen, he pointed out, and you will see on page 1 of his letter, that football and basketball are the sports covered by what we are discussing here today. If it is a bad thing to allow needy students who happen to be athletes to receive this aid, why don't they take a hockey player and put him under the same rule. They don't do it because hockey doesn't make money. It doesn't apply to tennis players, doesn't apply to golfers, doesn't apply to swimmers, doesn't apply to those who participate in track, applies to none except football and basketball, which are the only two sports that have resulted in multimillion dollar network contracts. Football and

basketball, the moneymaking sports. We cannot sit around here and pretend we are talking about amateur athletics or extracurricular activities. We are talking about multimillion dollar entertainment businesses and the players who make it all possible are the only ones who benefit not at all. When those of you who follow Nebraska wherever they go to play in whatever bowl it is, do you think that the airlines don't make money, that the bus companies that may charter buses don't make money, that the facilities in the town where the game is played, their hotel, their motel, their restaurateurs don't make money. In Lincoln, how about those who have parking lots, those who have the stores, the retail stores, the theaters, everybody makes money. Where do you think the pay for the coach comes from? Where do you think the pay for the Athletic Director comes from? The team doctors, where does that come from? How about all of these sports writers, sports broadcasters, whether on radio or television, where do you think the money comes from that justifies their existence and their salaries? It comes from the backs of these players. There is no other student...

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: ...who is told that he or she cannot enter his or her profession until they have given four years to the university without graduating, I might add. Only football players, only football players, and now they cannot even receive the federal aid that is there. And if this bill, as Senator McFarland indicated, may affect as he says only two or three players, those only two or three mean something to me, and he is not saying they are not that important, he is saying that is not a problem of great magnitude in terms of numbers. But if we are denying basic rights whether the number would be one person or a thousand, those affected are equally affected and damaged to the same extent. LB 708 is a good bill, 708 is a fair bill. It is a just bill, and it will do something to help the most disadvantaged group who can appear on any college campus...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...anywhere in this country.

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

CLERK: Yes, sir, excuse me. I have a priority motion. Senator McFarland would move to adjourn until February 2, 1990 at

February 2, 1990

LB 187, 399, 465, 708, 821-829, 980  
LR 249

SENATOR HANNIBAL: Motion passes. Senator Chambers, please.

SENATOR CHAMBERS: I move adoption of the amendment as discussed.

SENATOR HANNIBAL: Any discussion? Any closing, Senator Chambers? Motion before you is the adoption of the amendment. All those in favor vote aye, opposed nay. Record, Mr. clerk.

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

SENATOR HANNIBAL: Motion is adopted. Senator Chambers.

SENATOR CHAMBERS: I move that LB 465 be readvanced to E & R for engrossing.

SENATOR HANNIBAL: Any discussion? All those in favor say aye. Opposed same. It's readvanced. Mr. Clerk.

CLERK: Mr. President, may I read some items for the record? Mr. President, your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning as of 10:45 a.m. (Re. LB 821, LB 822, LB 399, LB 823, LB 824, LB 825, LB 326, LB 827, LB 828, and LB 829.)

I have an amendment to be printed by Senator Moore to LB 187. Senator Lamb designates LB 980 as one of the Transportation Committee's priority bills. And, Mr. President, new resolution, LR 249 by Senators Scofield and Dierks. (Read brief summary of resolution.) That will be laid over, Mr. President. That's all that I have, Mr. President. (See pages 646-48 of the Legislative Journal.)

SENATOR HANNIBAL: We'll proceed to General File, LB 708.

CLERK: Mr. President, 708, I believe, was discussed yesterday by the Legislature. (Read title.) The bill was introduced last year, Mr. President, referred to Judiciary, advanced to General File. Yesterday there was an amendment to the bill by Senator Chambers that was adopted. I now have pending, Mr. President, an amendment to the bill by Senator McFarland. (McFarland amendment appears on page 648 of the Legislative Journal.)

SENATOR HANNIBAL: Senator McFarland, you wish to run your amendment at this time?

SENATOR MCFARLAND: Yes, I do, Mr. President. For those of you who were here...were not here yesterday, I'd like to review, briefly, this bill. This is a bill that was advanced out of Education Committee on a 6 to 1 vote. I was the only...Judiciary, thank you, Judiciary Committee. I was the only dissenting member at that time. It is a bill that deals with a problem concerning financial aid to athletes and discriminatory effects that some of the NCAA rules have upon the distribution of that aid, specifically with respect to Pell Grants, which are federally administered aid to students, and also with other types of institutional aid, work study, loans, programs of academic grants and so on. The NCAA rules require that an athlete who is on scholarship cannot receive more than \$1,400 in excess of room, board, tuition and fees and books. As a result of that when a needy athlete, financial need, receives a Pell Grant and he or she may also be on scholarship, there is a limitation of \$1,400 above the scholarship. Well, the Pell Grant now, I believe, is up to \$2,300 maximum. So in theory an athlete on scholarship who received a Pell Grant for \$2,300, plus a full scholarship, would be in excess of the NCAA rule limiting it to \$1,400 above the room, books, tuition, board and fees. There is also a problem with the nonscholarship athlete that we talked about yesterday, because under NCAA rules if there is a nonscholarship athlete who is recruited or encouraged to attend the university or any other athletic program in our state, if that athlete receives academic aid from the institution, then the NCAA rules require if he or she is in varsity competition, in contrast to freshman competition, if he or she is in varsity competition and receives aid, then that person must be counted as one of the scholarship athletes in that sport. The problem is that at the University of Nebraska and elsewhere usually most athletic programs are at their full limit of athletic scholarships so it sets up a circumstance where the nonscholarship athlete has two options. He or she either decides to forego the financial assistance so that he or she can participate in that varsity sport or he or she then has to decide to forego the participation in the sport and then accept the financial aid. That is a very unfair situation. I don't think there is any disagreement about that and I don't think there is any disagreement among Senator Chambers, who has introduced the bill, among the athletic department at the University of Nebraska, among faculty, among people generally.

The question is this bill prohibits that kind of action being taken against an athlete. It prohibits the University of Nebraska from, in effect, abiding with NCAA rules that may be unfair. It sets up a dilemma because...for the university because it forces the university, if this bill is passed, to either abide by state law and violate NCAA rules and risk possible sanctions, or it requires the university to abide by NCAA rules and, in effect, violate the state law which would be this bill if it passed. What this amendment does is try to at least, assuming if the bill passes, the amendment would allow the university to comport with NCAA rules while they may not be comporting with the law itself, state law itself, and yet not be subject to the fine that is set up in the bill as it is right now in Section 8. If you look at Section 8, the specific language says that a college or university that violates the provisions of Section 6 of this act shall be guilty of a felony and subject to a fine of not less than \$25,000 for each violation. What my amendment would do is strike that language. The felony language has already been stricken by Senator Chambers' amendment yesterday. This would strike the entire Section 8, including the \$25,000 fine against the university. The effect of it would be that if this Section 8 is stricken, that the language in the other sections of the bill specifically prohibit, for example, in Section 2 that a college or university shall...no college or university shall adopt, promulgate or enforce any rule or regulation that requires a student to forego or relinquish, waive or surrender a portion of financial aid grant made available to the financially needy by federal law, solely on the basis of or as a condition to participation by such student in an intercollegiate athletic program. That language is still in the bill. This amendment would, in effect, give, I guess, allow a situation where the NC...or where the university could still comport with NCAA rules, not be in compliance with this bill, if it passes, and set up a lawsuit kind of situation where the Attorney General, I think according to this bill, would then have to bring an action against the university and probably the NCAA to enforce the provisions of this bill. With the penalty provisions in it, it would really cause the university a great deal of difficulty trying to comport with NCAA rules because of the fine provisions. The difficulty, of course, that the university will...and athletic department would find themselves in, if this bill passes, is that you have a state law and you have NCAA rules directly in conflict with one another. The university, as a member of the NCAA, is obligated to comply with the NCAA rules. The

university, as an educational institution in our state, is also obligated to comply with state law. It puts them in a real dilemma. This amendment would at least allow them to resolve that dilemma initially by comporting with NCAA rules, not risking the possible sanctions against them by the NCAA, at least initially, and then allow the Attorney General to then have to bring an action to try to force the NCAA and the university to comply with this loss if it does pass. I think the amendment doesn't really take away from the purpose that Senator Chambers is trying to address. The purpose that he is trying to address, I think, is...in a way it's a...it is a reasonable one, is to try and eliminate this discriminatory practice. The problem is that it puts the university and the athletic department in a real bind and risks...it subjects them to potential sanctions of the NCAA. So I would urge your adoption of this amendment which would strike the fine provisions against the university for any violation. Thank you.

SENATOR HANNIBAL: Thank you, Senator McFarland. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, Senator McFarland and I have been discussing this bill continuously since yesterday and I agree with the amendment. What the amendment will...first of all, the language currently in the bill would subject the university to a \$25,000 fine should they violate this law, as written, by withholding aid from one of these students in a discriminatory manner. My intent is to stop what the NCAA is doing. So Senator McFarland's theory, and I tend to agree with it, is that if we remove this language that would impose a penalty on the university and direct the penalty provisions to the NCAA, we free the university from fear of being sanctioned should they try to create a situation where there can be a lawsuit. Now I will say that in simpler terms if I can, but I wanted that in the record for anybody who would read it. If we remove the penalty provision, the university would be presented with a choice between two things, comply with LB 708 or...and face sanction by the NCAA perhaps; or they could give the aid and risk the student...wait a minute. If they give the aid, they would violate NCAA rules but comply with the law. If they withhold the aid, then the student, under the provisions of the bill, could go to the Attorney General who would then initiate action and tell the university, give this aid to the student because it is required under the law and he is entitled to it.

The university, if they wanted to have a lawsuit, would refuse to comply with the Attorney General's order. Then, based on the duty placed on the Attorney General, he would initiate action of some kind in court to require the university to comply. At that point, all of the issues, the conflict between the NCAA rule and the law could be brought into play. To facilitate that type of scenario, I am willing to drop this penalty provision that exists in the law now that would be aimed at the university. That way there is no impediment to the university deciding which course it wants to pursue. I would choose to have them pursue the course of granting the aid to the student and making the NCAA take a move or attempt a move against the university. Now there was one time Senator Terry Carpenter gave me a compliment. He said that he had watched me set land mines in succession and then watch them go off in succession. We now have in place LB 397 which creates a due process that the NCAA must follow before it can impose sanctions on the university. If the university, recognizing a discriminatory situation, says the law tells us we cannot discriminate anymore and we're going to obey the state law, the NCAA would say, all right, then we're going to sanction you under our rules. I don't think there is a court in the land that would say that it is in accordance with due process to punish somebody for obeying the law. You cannot punish somebody for obeying a valid law and be in compliance with due process. Due process requires fairness. It requires rational action. But even without LB 397, built into LB 708 is all of the machinery necessary for the university to protect itself from improper imposition of a penalty by the NCAA. It would be a very regrettable set of circumstances to say that a rule of a private association has more stature than a state law.

SENATOR HANNIBAL: One minute.

SENATOR CHAMBERS: It does not. The fear that some people have is that the NCAA will be offended if we try to stop discrimination that we see actually occurring. I am going to talk about some of these things and break them in smaller bites so that I can be clearer than perhaps I am now. But I'm trying to give a context in which I can offer my support for Senator McFarland's amendment by acknowledging that it will not take away from the main thrust of the bill and it will make it easier for the university to be in a posture to have a lawsuit brought, whichever way they decide to act, than would currently be the case with the penalty language. So the only penalty language being struck from the bill is that that would relate to the

university for violating a provision of this law. The way to seek enforcement of this law by the student would be to seek a civil action and we're not talking about...

SENATOR HANNIBAL: Time.

SENATOR CHAMBERS: ...criminal punishments at all.

SENATOR HANNIBAL: Senator Nelson, on the amendment or on the bill.

SENATOR NELSON: The bill, please.

SENATOR HANNIBAL: Thank you. Senator Schmit, please, on the amendment. Senator Schmit, please. Senator McFarland, your light is on.

SENATOR McFARLAND: If there are no other lights on, could I just close on the amendment at this time?

SENATOR HANNIBAL: There are no other lights on other than Senator Nelson who is not going to speak on the amendment, and Senator Schmit who is not here, so I would recognize you to close on the amendment.

SENATOR McFARLAND: Just briefly, I would urge you to adopt the amendment. It does strike the penalty provision, the \$25,000 fine, if the university would choose to abide by NCAA rules and not comply with the particular language of the act. And I think that Senator Chambers said he is agreeable to it. I think it's a...it allows the university and somewhat limits a little bit of the pressure that would be put upon them by this bill. I would urge you to adopt the amendment.

SENATOR HANNIBAL: You have heard the closing on Senator McFarland's amendment to LB 708. The issue before you is the adoption of the amendment. All those in favor vote aye, opposed nay. Please vote if you care to. Have you all voted? Record, Mr. Clerk.

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

SENATOR HANNIBAL: The amendment is adopted. Mr. Clerk.



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

SENATOR HANNIBAL: Senator Chambers, on the advancement of the bill.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, if anybody has questions on this bill, I wish you would feel free to ask them because we need a solid record on this, and I think there is something I should bring to your attention. First of all, I don't know who from the athletic department of the university might be speaking against this bill, but I got a call yesterday from Jim Moore who is in the Assistant Secretary for Post Education Department of the U.S. Department of Education. They became aware of what we're talking about through an Associated Press article and the Department of Education is very concerned about this practice, not only of UN-L but schools around the country. And the thing that was emphasized is that when a person qualifies for one of these grants, the only one who can manipulate or change it is the federal government. The NCAA, the university and nobody else has the right to manipulate these types of grants and there should be none of this money that in any way goes to the university for any purpose. The money is given directly to the individual student. There are federal criteria which must be met, and once having been met, they are not to be manipulated by anybody at the state level or the NCAA; that if, because of another source of assistance, a person would not be qualified for the full amount of the Pell Grant, any amount over that for which the person qualifies is deemed by the federal government to be an overpayment and is to go back to the federal government and not be used by the athletic department or anybody else. This bill might put Nebraska in a position to protect itself because we would have a procedure by which the university could cease, based on a requirement of the law, discriminating against these students. If the NCAA attempted a sanction, the law provides a protection for the university against that. This law will not have any impact on anything done by the federal government and I would not attempt to restrain the federal government from doing anything. So the failure to enact a law like this would indicate several things. And I would argue this to the Department of Education because I told them I intend to talk to them more and I will give them any views that I have. First of all, the University of Nebraska does, in fact, reach out to encourage players to come here who cannot receive a scholarship because the quota has been met. Secondly, they

discriminate against these players in the granting of aid that is available to all other students. That discrimination is admitted by the university. The university, in a letter to Senator McFarland, has put in writing their admission of this discrimination and I sent a copy of that to the Department of Education yesterday. The Legislature, as a result of this discussion, knows about the discrimination. Nobody has refuted the discrimination. Next, if the Legislature refuses to act on this bill to prohibit the discrimination, the Legislature as a state, acting for the state, condones the discrimination, ratifies the discrimination and supports it. Then an argument could be given in general terms about the overemphasis on football in this state. The Legislature, knowing that its young people are being discriminated against at the university, are so locked into the football mentality, the football win-at-all-costs syndrome, that it will allow discrimination that it knows about to occur. It's kind of ironic that we just dealt with LB 465 because it also is an antidiscrimination bill dealing with those who have AIDS. The Legislature has an obligation to enact antidiscrimination legislation.

SENATOR HANNIBAL: One minute.

SENATOR CHAMBERS: Even Senator McFarland, or I should say also Senator McFarland acknowledges the discrimination as existing. What additional argument is needed? The only thing that anybody could offer against this bill is the idea that even if discrimination is necessary to make the Nebraska football program go, discrimination against these students is the price that has to be paid. And never again can anybody say that Nebraska does not have the win-at-all-cost mentality. There are not other schools around the country who say they favor a formalized practice of discrimination in order to win. Now they might practice it but they don't come out as blatantly as those people at Nebraska who are speaking against this bill would be doing. So if they persuade enough of you to vote against this bill to defeat it, naturally I would bring it back. But since there is a national discussion under way now about the discriminatory activities, and I handed you an article from the Chronicle of Higher Education related to this very subject,...

SENATOR HANNIBAL: Time is up, Senator Chambers.

SENATOR CHAMBERS: ...the discussion will not be terminated...

SENATOR HANNIBAL: Time.

SENATOR CHAMBERS: What time is it? It's eleven thirty-three, Mr. Chairman.

SENATOR HANNIBAL: That was not a question, Senator Chambers. Thank you. Senator Nelson, please.

SENATOR NELSON: Mr. Speaker and members of the body, Senator Chambers said to me yesterday, Arlene, how's come you're so quiet today? I did a little of my homework over last evening and now I suppose Senator Chambers wishes I would keep quiet. But I heard this bill in Judiciary Committee, too. It is very complicated and I am not saying in any one sense of the word that Senator Chambers has not presented it very well and that there is a problem with the Pell Grants. And I wondered what brought this on and trying to understand where we're at. And I don't think that there is hardly anyone else in the body that maybe understands it any better than I, excepting maybe Senator McFarland and Senator Chambers. So, in visiting yesterday when a group of us went to Omaha, and so on, I realized that there was a lot of misunderstanding and that the senators were not exactly sure of what we were doing on this bill and how we would be...would or would not be jeopardizing the university. For the record, in the Judiciary Committee I did choose not to vote because at that time I felt like I didn't know enough probably as many times. What I found out is that this bill somewhat goes back to Jerry Tarkanian of the University of Nevada and they're having trouble with the NCC...or the NCAA, but also by their troubles and their problems, I'm afraid that we are going to penalize the University of Nebraska by the rules and regulations of the NCAA and maybe get ourselves into something deeper than what we as a body realize that we're doing. I think that by passing this bill at this point we would be making public policy that, at least for myself, and I think a lot of us do not fully understand the implications of this bill. And to put the program under the sanction of the NCAA at this time, in effect, I'm afraid that we would be hurting the university. And let me make this point to you. At this time, we're not under that sanction and our boys are not perfect. None of us are perfect. I'm not saying that our football boys would have some of the same problems that the University of Oklahoma has encountered but we could very well have those same kind of problems and then we would be sanctioned against us and also we could lose bowl games, we could lose many, many things, as all of you know, in

the football program. Again, I want to reiterate I certainly am not saying that Senator Chambers is wrong at all and that these students should be...the Pell Grant should be available to them. One of the big concerns I found out is the recruiting of the nonscholarship athletic and that we would not be able to reduce the amount of money that we gave them, the institutional aid, if we also applied the Pell Grant, and there is a real problem in that one section of the bill. So I guess what I want to say, maybe I ought to explain or reiterate a little bit more on the recruited nonscholarship athlete in either football, basketball or other sports programs and for them to accept the reward the university would either be over on the money and they would have to make the choice whether to accept it or not to accept it and it would probably lead, may or may not, to a decline in the awards that the university could give for the scholarship money. So I guess what I'm saying, hopefully, in a nutshell is that this bill, unless the rest of you understand it a lot better than I do, and I did some homework on it,...

SENATOR HANNIBAL: One minute.

SENATOR NELSON: ...I feel that the best thing to do at this point would be to hold this bill over and study it through the summer. Chancellor Massengale is President of the...Chair of the Council on the NCAA and he could bring staff together this summer and, hopefully, find out that we would understand it. If LB 708, at this time, was enacted, it would force the university to violate the NCAA rules and would jeopardize the university ability to participate. I think Senator Chambers made the remark to the Chronicle of Higher Education that he's been interested in this issue for a number of years, and I commend him on it, that he needed something to keep the issue going while the Legislature is in session and would like to talk more about the bill. I am very willing to accommodate him and I will be willing to introduce a resolution or ask...work with Senator Chambers or Senator McFarland to do that very same thing. But unless...

SENATOR HANNIBAL: Time.

SENATOR NELSON: ...you folks understand it better and are very confident in your vote, I think that it would be a serious thing to the university to put them in a position that they could not protect themselves or that would jeopardize them in any way.

SENATOR HANNIBAL: Time is up.

SENATOR NELSON: For that reason, I will be offering a resolution for a study this summer.

SENATOR HANNIBAL: Thank you, Senator. Senator McFarland, please.

SENATOR MCFARLAND: Thank you, Mr. President. Fellow senators, I would like to respond briefly to a lot of things Senator Chambers has said because I do not agree with him on a lot of those things. It certainly isn't a win-at-all cost attitude at the university. I am a product of that program and I have been around the program for a number of years. It is an excellent sports program. It is one of the finest college football, basketball programs that we have in the country with respect to playing by the rules, to having an interest in seeing that students get a college education, having an interest in students and athletes after they are finished. We can be proud of the record that has been established by the athletic department at the university, particularly when we compare it to some of the scandals that have occurred to other schools...at other schools, some of the suspensions that have occurred, some of the firings of coaches and all of those other things. We are justifiably proud of that program. So I don't agree with a lot of the broad characterizations that Senator Chambers has made. What I do agree with him on, and I think...I think the athletic department at the university also agrees with him on is that there is a problem with the NCAA rules as it restricts...as those rules restrict the amount of financial aid that athletes can get. There is a problem with respect to the Pell Grants. There is a problem with respect to institutional aid that goes to nonscholarship athletes. It's not fair. It's not right. The problem is how to address that problem and do you address it by passing a law like this one that would set up a direct confrontation and would engender a court case to try to resolve the issue? There is a certain uncertainty of what would happen legally. I am not sure what would happen. I'm trying to...I read the Tarkanian case last night. I'm trying to read more. There would be problems in that you...if the university was required to violate NCAA rules and the NCAA imposed sanctions like not allowing us to participate in the bowl game or taking away some scholarships, what would be the legal remedy available to the university? What would be the relationship between the university and the NCAA? I think that this position is phrased

very well in the letter that Senator Chambers distributed yesterday. It was a letter to him by the Athletic Director, Bob Devaney. And Coach Devaney said in the letter, and I'm reading directly from it, he says, both Coach Tom Osborne and I are in agreement that the athletes should get the full Pell Grant. The problem is that we will have to get NCAA approval which a lot of Division 1(a) schools are trying to get done. I might add that Nebraska has been trying to get the NCAA rules changed on that issue. This is the problem and the uncertainty that Coach Devaney refers to. He says, Senator Chambers, we are trying to put pressure on the NCAA during the next meeting but there appears to be a lot of opposition. I, personally, agree with you that we should be able to help the college athletes more than we do, but our problem is to try to work through the NCAA to avoid serious sanctions that would badly cripple our athletic department. That's the dilemma that this bill would place the university in. The university and the athletic department do not agree with the NCAA rules. As a matter of fact, they're trying to change the NCAA rules. This bill, if passed will put state law in direct opposition to NCAA rules. It will set up a lawsuit. If we knew the results of the lawsuit and we knew that Nebraska and the university and the athletic department would not be subject to sanctions from the NCAA,...

SENATOR HANNIBAL: One minute.

SENATOR McFARLAND: ...it would...I would wholeheartedly endorse the legislation and say pass it. But I have to confess reservations because I don't know what would be the effect and what would be the consequences. It seems to me there are two things that I would like to see done. One, I would like to see some kind of thorough legal analysis done on what would be the consequences of passage of this law. Perhaps we could get the university legal counsel to do it, or perhaps a law professor. Senator Chambers asked me who would be a good person to do it. There is a professor at Duke University who has done a lot of sports law work, who I know is an authority in the area. There are others.

SENATOR HANNIBAL: Time.

SENATOR McFARLAND: And the other thing, I suppose, is what Senator Nelson suggested, is that the interim study could be done. I know it would prolong it a year. I am uncomfortable that some athletes may be affected this year if we delay it

another year.

SENATOR HANNIBAL: Your time is up.

SENATOR McFARLAND: But an interim study would examine all those issues. Thank you.

SENATOR HANNIBAL: Thank you, Senator McFarland. Senator Dierks, please, followed by Senators Beyer, Schmit, Chambers, Nelson and Crosby.

SENATOR DIERKS: Mr. President and members of the body, I would like to ask Senator Chambers a couple of questions, please.

SENATOR HANNIBAL: Senator Chambers, would you respond?

SENATOR CHAMBERS: Yes, I will.

SENATOR DIERKS: Senator Chambers, with regard to scholarship athletes, doesn't the university currently provide the full Pell Grant but reduces the amount of the athletic scholarship?

SENATOR CHAMBERS: That's what they say. But I believe, in effect, they are reducing the value of the Pell Grant to the player; or they are allowing the player more in the way of aid than the Pell Grant would allow and an overage in the Pell Grant results and it should go back to the federal government. They have tried, in a number of ways, to make it appear that they're doing what you have asked me so I'm saying the university says that what you indicated is what they're doing.

SENATOR DIERKS: Then does this bill address that? Does this change that any way?

SENATOR CHAMBERS: If what they say is true, no, it wouldn't change that at all with reference to the scholarship athlete.

SENATOR DIERKS: You can have the rest of my time if you would like.

SENATOR CHAMBERS: Oh, thank you. The other category, so that I won't argue the point further that Senator Dierks raised, is the person who is recruited to come and participate in the program. That person is not allowed to receive any aid. That person in that category, undeniably, is discriminated against and that

category is the one that the university has admitted in their letter that they discriminate against. For Senator McFarland to say that Nebraska has a great football program, I have to ask, what is being taught to those players who are told they must be discriminated against for the welfare of the program? The interests of the athletic department must be elevated above the interests of the student. Having a football team that can win is more important than having laws and policies governing a university that prohibit discrimination against some of the students. Now it's unquestionably true that football at the university is an integral part of the offerings of that university. To say that a student must agree to be discriminated against in order to participate in that university activity is unfair. It is unconscionable, it is immoral. If that kind of condition were placed on any other student participating in any other program at the university, there would be an uproar. But the athletes are traditionally set aside for various types of discrimination. I would like to ask Senator Nelson a question or two if I may.

SENATOR HANNIBAL: Senator Nelson, would you respond?

SENATOR NELSON: Sure.

SENATOR CHAMBERS: Senator Nelson, are you aware that the program over there, in fact, does discriminate against a category of the athletes?

SENATOR NELSON: I think that is a concern. I certainly...my whole concern is, Senator Chambers, is are we moving too rapid and are we...

SENATOR CHAMBERS: Oh, no, are you aware...

SENATOR NELSON: Yes.

SENATOR CHAMBERS: ...are you aware that the discrimination exists?

SENATOR NELSON: I guess I probably would call it a discrimination. I can see the difference in the scholarships.

SENATOR CHAMBERS: Okay, now are you in favor of the university having an official policy of discrimination such as that which, in the letter to Senator McFarland, Vice Chancellor Griesen



admits exists right now? Are you in favor of that policy of discrimination?

SENATOR NELSON: I'm not saying the policy doesn't exist right now but I am saying that legally, and so on, and with the other implications of the athletic program we don't have all of this worked out that may put in jeopardy the rest of the programs at the university.

SENATOR CHAMBERS: Well, you're jumping ahead, Senator Nelson, what I'm asking you. Do you favor the continued existence of that discriminatory policy? Do you favor it?

SENATOR NELSON: I guess I would have a hard time saying yes or no. I favor let's study it and see where we're at and how far we are discriminating or if there is some other way that we can handle it.

SENATOR HANNIBAL: One minute.

SENATOR CHAMBERS: With whom did you talk from the university who filled you in on the information that you shared with us this morning?

SENATOR NELSON: I am a member of the Judiciary Committee and I did do some telephone calling at the university to see what the implications of this bill is.

SENATOR CHAMBERS: And with whom did you talk?

SENATOR NELSON: I spoke with Tom Krepel and had a meeting with him earlier in my office in regards to another education bill. And, at that time, I took the opportunity to ask him and tried to educate myself a little bit better. We discussed a bill in education yesterday on...

SENATOR CHAMBERS: Okay, but on this particular bill Tom Krepel told you what?

SENATOR NELSON: He had great...Tom Krepel doesn't say that there may not be some discrepancy or problems there, but he can foresee down the road that maybe we're moving too fast and, as I suggested before, let Chancellor Massengale bring this up to the NCAA and discuss it and see if it could be worked out over the interim or over the summer.

SENATOR CHAMBERS: Okay, but the understanding...

SENATOR HANNIBAL: Senator Chambers, your time is up.

SENATOR CHAMBERS: Oh.

SENATOR HANNIBAL: Senator Dierks' time is up that you were using. Senator Beyer, please.

SENATOR BEYER: Mr. Speaker and colleagues, I've got a couple of questions I would like to ask Senator Chambers, if he would yield.

SENATOR HANNIBAL: Would you yield, Senator Chambers?

SENATOR CHAMBERS: Yes, I will.

SENATOR BEYER: Senator Chambers, you made mention of the fact that the money over and above what the athletes are allowed in the Pell Grant goes back to the university and you clarify in what way, shape or form you think it goes back. Or what do they do with that money?

SENATOR CHAMBERS: Well, Senator Beyer, what I indicated in response to a question from Senator Dierks that for the purpose of this discussion I will accept what the university says, that they start the aid package for the student by including the full Pell Grant, then they build on top of that institutional aid until they have reached the limit allowed by the university...by the NCAA. But there have been articles, numerous articles about colleges that have to supplement their athletic budget by the amount above the \$1,400 allowed by the NCAA to go to a player who receives a Pell Grant.

SENATOR BEYER: You're not saying then that the university is using it for some other purpose? Or are you saying some universities are, the difference?

SENATOR CHAMBERS: I believe that UN-L is doing it, too. Because here is what you have to understand. When a person gets a scholarship based on institutional aid, there is not actual money that goes to that player. When the amount of a Pell Grant that a student can receive is determined by the federal government, a check is cut representing actual cash. In some

cases, it is sent directly to the student, in others it's sent to the university and the student draws down from that until the amount is gone. The NCAA says that the maximum amount that a player on scholarship can receive from the Pell Grant is \$1,400. They said, based on what Senator McFarland told us, that next year or two years from now, whenever it is, they will be allowed to receive \$1,700 of that amount and the Pell Grant total will be raised from 21 to 23 hundred dollars. So if the schools are, in fact, giving the player the full amount of the Pell Grant, there is no need to have a \$1,400 cap imposed by an NCAA rule. Why have a cap on the amount they can receive if they're, in fact, receiving the full amount?

SENATOR BEYER: Yeah, but if they take that money and put it back into a scholarship fund to help more, that's kind of my understanding of what's going on with that money, that it's going back into a scholarship fund.

SENATOR CHAMBERS: But it's not...but under the federal requirements it's not to go into a scholarship fund to help others, it's to go directly to the student who qualifies for that amount. So if it's used for any other purpose, whether a scholarship fund to help others or the administration and operation of the athletic department, it violates the federal rules and this is what the Department of Education wants to look at, the U.S. Department. And they have investigators, they can get all the documents, they can conduct audits and they can find out what the real circumstance is. And, based on that being possible, I had said I would accept the story that the university gave in their letter to Senator McFarland, that they start the student's aid package from the point of the \$2,100 Pell Grant...

SENATOR BEYER: Uh-huh.

SENATOR CHAMBERS: ...in disregard of the \$1,400 cap that the NCAA puts on it, and they build from that. There are others who will look to see exactly what is being done there. But when we get to the nonrecruited...or the recruited nonathlete, there is no question that they denied them aid, period. They have to agree to give up the aid that they're entitled to receive as a condition of participating in the program and that is the part that, beyond question, is discriminatory and unfair. They have established that they're needy, in the first place. Being needy and least able to bear this kind of discrimination, the

university says, if you want to participate in this football program, you have to agree that you will get none of this aid. That is patently unjust and that is one of the things that I'm emphasizing in this discussion.

SENATOR HANNIBAL: One minute.

SENATOR BEYER: Okay, I will have some questions later then. Thank you.

SENATOR HANNIBAL: Thank you, Senator Beyer. Senator Schmit, please. Senator Schmit, please. He doesn't happen to be here. We'll move on to Senator Chambers then.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, let me tell you why the universities become parties to the enforcement of NCAA rules. They agree contractually to make the NCAA rules the rules that govern their own program. No illegal contract can be enforced. If there is a provision in a contract that requires discrimination and discrimination is against the law, that provision of a contract couldn't be enforced anyway. So the university could argue that they are being asked to enforce a nonenforceable discriminatory contract. And since the provision is not enforceable, it could not be a basis for the NCAA to impose a sanction on the university. What I'm having a great amount of difficulty dealing with is that we're talking about an educational institution, a state-funded educational institution practicing discrimination and I hear all of this concern expressed about the welfare of the athletic department. It has a wonderful program based on discrimination, rooted and grounded in discrimination. I will tell you a simple way the university can avoid this problem. Just stop going out and recruiting these players to come to the university when you can't give them a scholarship and don't put them in a position of being coaxed here, then told that they have to give up aid that they're entitled to receive as a condition to participation. But if LB 708 were to be enacted in its present form, without the penalty provision, because it was removed, the university is in a situation to challenge this whole thing in court and there is machinery in the bill to protect the university and I should make some of that clear how it would happen. The bill makes it unlawful for the NCAA to threaten or impose a sanction on the university for complying with this law. This law would be the law of the state. If the NCAA attempted to impose a sanction on the university for obeying the law, then

the university has a cause of action at law if it wanted to seek damages, or in equity if it wanted to seek an injunction that would prohibit the NCAA from imposing such a sanction. Those at the university know this. Tom Krepel knows this. And when I find out who these other people are at the university, who are misrepresenting this bill, then I'm going...I'm going to be frank with you, I'm going to do what I can to hurt the university. I'm tired of this blindsiding, this underhanded dealing with me. I have communicated with the counsel for the university. He is a vice-president. His name is Richard Wood. I have dealt with him above the table and aboveboard with all of these people. Nothing has been said to me during the time that this bill came out of committee and now other than Chancellor Griesen having a meeting with me in my office where he pointed out the groups of students that are discriminated against. He said that this January they were going to try to change the NCAA rule so that that discrimination would be wiped out. They were unsuccessful in doing that. Now there are people calling Arlene Nelson and others and misrepresenting this bill by saying it has something to do with the Tarkanian case in Nevada. LB 708 has nothing to do with the Tarkanian case, nothing whatsoever. Whoever told her that told her a lie. And I cannot fault Senator Nelson for believing them because she has no reason to think people from the university will lie. But this bill has nothing to do with the Nevada situation. LB 397 that dealt with due process grew out of that case and I, frankly, acknowledged it and discussed it.

SENATOR HANNIBAL: One minute.

SENATOR CHAMBERS: But to indicate that this bill in any way relates to the kind of problems that existed at Nevada-Las Vegas, that resulted in an attempt by the NCAA to impose sanctions, is totally and absolutely false. And when the university comes over here for its budget, then I am going to get them, and I mean it. I have not lied about the university or any of these other things that I deal with. If I don't like a bill, I say I don't like it, but I don't tell lies about what the bill does. And anybody on this floor is entitled to believe that information coming from the university is not a lie. Now they can express a difference of opinion, but a lie is inexcusable and it's a different type of cat. And I'm glad that Senator Nelson did not remain silent because she has revealed to me the kind of things that they are saying to others. And had she not spoken, there would be people accepting that but it

would not be out in the open. But back to the bill itself...

SENATOR HANNIBAL: Time is up.

SENATOR CHAMBERS: Oh. When I speak again I will get to the bill itself.

SENATOR HANNIBAL: Thank you, Senator Chambers. Senator Schmit, please, followed by Senator Nelson.

SENATOR SCHMIT: Mr. President and members, I apologize. I have missed most of the debate on the bill and I may ask some questions which have already been answered. But Senator McFarland raised the question of whether or not the passage of this bill would place the university between...in the position of either having to disregard a Nebraska statute or an NCAA rule. And I'm not so sure just how that NCAA rule applies but I sometimes find myself in a situation on this floor where, in the areas of agriculture, we are tempted to pass legislation relative to environmental issues and other issues which are in direct conflict with some of the requirements perhaps of the federal farm program and thereby making a...putting a farmer in a position where he would have to violate either one of those rules and regulations which has the force of law at the federal level or else a state statute. I do not know the, because I have absolutely no experience in the area of the university and the NCAA, but I would like to know if Senator McFarland, if he would explain again in some detail just exactly how this places the University of Nebraska in a position of either having to disobey a state statute or an NCAA rule and what the consequences of that would be. Would you do that, please, Senator McFarland.

SENATOR MCFARLAND: Yes, I will try to as quickly as I can, Senator Schmit. The bill, itself, says that no college or university shall adopt or promulgate or enforce any rule that would require a student to forego financial aid grant made available to the financial aid students by federal law, solely on the basis of or as a condition of participation by such student in an intercollegiate athletic program or sport. The problem, the primary problem is with regard to the nonscholarship athlete. If there is a nonscholarship athlete who has been recruited or encouraged to come to the university and he or she is eligible for financial aid, if he or she accepts that financial aid, then one of two things must happen.

Either he or she must be counted as a scholarship athlete for varsity competition and in most cases that is impossible because the university usually has its full limit of scholarships. Or the option then is to accept the aid and not be able to participate in the sport. I suppose the other option would be to forego the aid. That is what NCAA rules require. That is unfair to that athlete. That is unfair to that student. But to comply with those NCAA rules, the athletic department or the team or the coach has to say, look, we can't count you as a scholarship athlete, we're at our limit; you either have to accept this aid and not participate or you have to reject the aid in order to participate. That's the hard reality. It doesn't happen in a lot of cases, I'm told maybe three, four or five people per year at most, but that's what happens. To comply with NCAA rules, in effect, you disadvantage the student. It's something the university doesn't like but it's something, as a member of the association, they have to abide by. If this law passes that prohibits this type of enforcement of this NCAA rule or compliance with this NCAA rule, then you get the direct confrontation between state law if this bill passes and the NCAA rules as they are implemented.

SENATOR HANNIBAL: One minute.

SENATOR McFARLAND: I guess that's the problem that occurs, that's the dilemma that it puts the university in. The question is, do you want to try and remedy it through, as the university tries to do, through the NCAA rules which is sometimes a long and arduous process, or if this bill is passed, then you set up the direct confrontation, you set up a court case and you set up some uncertainty as to what will be the consequences. My understanding is the university is concerned about any type of court case, that they don't want to have a direct confrontation that could result in possible sanctions against them. They would rather do it through the NCAA and try to get the changes made there.

SENATOR HANNIBAL: Thank you. Mr. Clerk, I understand we have a priority motion before us.

CLERK: Mr. President, I do. I have a motion from Senator Langford to adjourn till Monday, February 5 at nine o'clock.

SENATOR HANNIBAL: Before we entertain that motion, do you have anything for the record, Mr. Clerk?

that is building a waste facility in Senator Baack's district that was interested and was under the impression that the hearing was going to be the 16th, and so to accommodate them, I could probably change my schedule, but I think it is more important to accommodate them at this point, and give them a fair opportunity to comment on this bill. So I would certainly encourage your support on the suspension motion. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Anything further, Senator Schmit?

SENATOR SCHMIT: Nothing further, Mr. President.

SPEAKER BARRETT: Thank you. The question is, shall the rules be suspended to permit consideration of a hearing cancellation and reset new hearing outside the seven day deadline? All in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 30 ayes, 0 nays, Mr. President, on the suspension of the notice of hearing rule.

SPEAKER BARRETT: Motion prevails. Mr. Clerk, proceed to General File, LB 708.

CLERK: Mr. President, 708 was a bill introduced by Senator Chambers. (Read title.) The bill has been discussed, Mr. President, on General File. Amendments to the bill by Senator Chambers and Senator McFarland have been adopted. Senator, do you want to offer your amendment? Mr. President, Senator Chambers would move to amend the bill. (See page 663 of the Legislative Journal.)

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, I wish Senator McFarland were here. He and I have been talking back and forth about this bill ever since it has come before us and he has problems with the current system and he has questions about the impact of the bill. The problem that he says he sees with the current system, and if he is listening, he can confirm the correctness with how I am representing his position, that the rule that my bill would address is unfair, that it does improperly deny aid to these students who should receive it. The university feels that the rule is unfair and the university does not like the rule, but there are questions about what the impact of this bill would be. There has been a suggestion that



an interim study be undertaken. When we have had interim studies about other subjects which had a higher profile than this one, there often is very sparse, if any, participation by the public and even the parties who may have a direct interest. What my amendment will do, and I discussed it with Senator McFarland, it seemed to put him a bit more at ease but I don't know what his position ultimately will be on the bill. It would set the effective date for this bill at July 1st, 1991. That would be after an additional NCAA conference. If the bill is on the books, it would put Coach Osborne and Athletic Director Devaney in a stronger position to talk to the NCAA. I did talk to Coach Osborne Friday, he was in Chicago, and he said at that time he was going to run the matter past Dick Schultz, who is the Executive Director of the NCAA. He reiterated to me what has been his consistent position, that he has desired that the athletes be able to receive the full Pell Grant. He also would like to see the other athletes who are recruited but not on scholarship able to receive some aid, and I think you all may be aware of a position he took publicly a few weeks ago saying that he supports a stipend for the players. There is no question about the position of Coach Osborne in terms of trying to find a way to do more for the players. There is no question about my desire to do that. So he and I are not at odds with regard to that. What I am trying to do with this bill is eradicate a discriminatory administration of aid. I have written a letter to the chancellor with a number of questions, and I have handed a copy of the letter to all of you, and what may interest most of you is that I committed a typographical error in the word "Chancellor" in the salutation. It comes out "Dear Cahncellor", C-a-h-n, and my seatmate, Senator Baack, was delighted to call that to my attention, but one of the crucial points in the letter, and I think all of the questions have a purpose in focusing on the nature of the discrimination that exists right now against some players, but question 10 asks this question, if the aim of the university is education and being a student is paramount to being an athlete, how can it be educationally justifiable and morally defensible to institutionalize a discriminatory rule that requires a student to give up education aid as a condition to participation in athletics? The other questions are of a similar tenor, so what I am going to ask that you do is adopt this amendment that would make the effective date of the bill July 1st, 1991, that is July 1st of next year.

SPEAKER BARRETT: Thank you. For purposes of discussion, Senator McFarland, Senator Morrissey on deck.

SENATOR MCFARLAND: Thank you, Mr. Speaker. It is true, this bill has been discussed thoroughly and I have had a lot of discussion with Senator Chambers, and I have had a chance to visit briefly with Coach Osborne and talked with a few of the administrators at the university. It seems to me there are actually various alternatives that can be taken with this bill and we have decide in this Legislature where we want to go with it. The first alternative we were talking about Friday was the idea of possibly advancing the bill on General File and trying to see if there were 25 votes to advance it with the understanding that some type of legal analysis or legal opinion would be sought so we would know for sure whether this bill, if passed and enacted into law, would jeopardize the university in its relations with the NCAA. The second approach that we were talking about and which I was leaning toward at the time was to delay the bill, maybe not consider it this year, to specify an interim study be conducted, and in that interim study, the goal would be to have university representatives here, to have persons perhaps from the Department of Education, and I had assumed Senator Chambers was talking about the Federal Department of Education, to perhaps even have representatives from Washington who dealt with this issue with respect to Pell Grants and financial aid, and with the idea that the NCAA representatives, who are headquartered in Kansas City, would also appear and discuss the issue. That was the hope that an interim study would be directed at, one, focusing on whether the bill is in proper form, whether you should, if you are going to pass a bill of this nature, whether it would be drafted in any particular way to avoid any possible sanctions being imposed on the university, and the idea that there would be a full and thorough discussion. What Senator Chambers is proposing by this amendment is to delay the effect of the bill until July 1, of 1991. My understanding of his reason for proposing this amendment in this fashion is to allow the bill to be passed with the hope that it would be signed by the Governor, and then an interim study would be perhaps taken more seriously by all the parties concerned. I am sure that if this bill is passed in its form and is signed by the Governor, it would certainly place a time restriction and certainly bring the issue to a focus. I am not sure whether that would have the necessary intended effect, if the effect is, if the intended goal is to try and resolve the situation with the help of the NCAA, the university, and under the auspices of the Legislature's interim study hearing type of procedure. I am torn. I am really debating what is

appropriate, what would not be appropriate, trying to determine my own vote on this issue.

SPEAKER BARRETT: One minute.

SENATOR McFARLAND: I plan to vote for the amendment. I am not...then I am trying to determine whether I am going to vote to advance the bill to Select File or not. I am apprehensive about it. I don't think there is any disagreement as to whether the problem exists. I think there is agreement in the Legislature, there was certainly an agreement in the Judiciary Committee, and there's certainly an agreement with the university and the Athletic Department that this situation under the present NCAA rules is unfair, particularly to some of the nonscholarship athletes who are trying to participate in the sports program and may have to forego some financial assistance in order to do that. The question is, how do you best remedy that? Do you remedy it by passing a bill making it a confrontation? Do you remedy it by perhaps having an interim study trying to resolve it? Do you remedy it by advancing it and having a thorough legal study before Select File.

SPEAKER BARRETT: Time.

SENATOR McFARLAND: There are a lot of alternatives and maybe we can discuss it further.

SPEAKER BARRETT: Senator Morrissey.

SENATOR MORRISSEY: Yes, Mr. Speaker, and members, I rise in support of Senator Chambers amendment and the bill. One thing I have noticed has been lacking is input from the NCAA. Everyone here, Senator Chambers has made the case. The university has acknowledged, Senator McFarland has acknowledged that there is a bad situation exists here, that some people are being discriminated against, and the NCAA simply sits back in their little ivory tower and smiles down upon us and refuses to participate in this process. I would bet money that they knew this bill was coming up in Nebraska and they knew this bill was having a hearing in Nebraska, but they didn't see any importance in sending a representative from their group to testify one way or another on the bill. We must have their input on this if we are going to solve this dilemma. One way to do it, and in my mind a good way to do it, is to adopt Senator Chambers amendment so it can become a point of discussion in the next NCAA

convention. We have a lot of problems with different types of group that have some sorts of strange powers over different groups in this state, but we can't really affect them. We can't pass a law and it doesn't seem like that we can really touch these folks. The NCAA is one of many of these groups, and if they continue to ignore problems like this, it is to their own detriment, and I think if we pass Senator Chambers amendment, and then go ahead and pass his bill, it will force them to address this issue in their next convention and make their case, why have they refused to address it in the past, and what is wrong with these nonscholarship athletes receiving some sort of grants-in-aids if, indeed, they are deserving. They shouldn't be forced to make this choice. These folks are probably a lot of people that don't get a lot of show time on Saturday afternoon, do a lot of hard work, get beat up on the scout team and other things, and I think they are deserving. If their financial status says they should deserve this aid, I think that just because they want to go out and work their tails off in some sort of sport that they shouldn't be allowed to get it. I think it is a very discriminatory situation and I think we can address that for not only the kids in our state but across the nation. Thank you.

SPEAKER BARRETT: Thank you. Senator Landis, discussion on the amendment, followed by Senator McFarland.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, let's try to lump together what we know and distinguish it from that which we are uncertain of in this area on LB 708. There is no disagreement on the floor that the practice complained of is discriminatory. Senator McFarland, in his concerns for the bill, makes no case that the practice is one that he approves of, that it is not in the public record a defense of the discriminatory practice of the NCAA. That is not where the issue lies. So let's put on the known quantity the fact that the practice that we are complaining here is discriminatory on its face, and it serves to discriminate against athletes in the granting of aid. Now let's look whether or not we will or will not be in compliance with NCAA rules should the bill pass and we act accordingly. Well, we don't know. We have rumor, suspicion, guess, prognostications, odds, that is it, but we do not know. On the other hand, I am sure that many of us are thinking, well, wait a second, I don't want even a cloud or a shadow to fall on our athletic programs, but I think it is fair for us to ask ourselves the questions, why must we comply with a

rule that we know is unfair? Why should we feel compelled to discriminate at the hands or orders of the NCAA? Nothing, it seems to me, should bind this sovereign body and this state from being made a party at the orders of another to discriminate. Believe me, we have enough failings of our human spirit to be bigots on our behalf, or discriminators on our behalf, or people subject to prejudice on our own behalf, that we shouldn't have to, as well, say, oh, no, I know it, I recognize it, I know it is discrimination, but I am not...and I wouldn't do it if it were just up to me, but, gosh, the NCAA makes me do it. It is just not a high enough standard. If the NCAA said, listen, you can't use players of an Indian origin, if you do, you are out of compliance, that would be okay with us. We would sit by idly and say, well, gosh, that is the NCAA rule. I am sorry you can't give scholarships to Methodists, anybody else but not Methodists. We would say, fine, I guess it is a NCAA rule, we wouldn't want to be out of compliance. I guess we wouldn't stand up for that principle. We wouldn't do it, I hope, I hope. Senator Chambers says, listen, I will give you a gracious out. It seems to me a little too gracious of an out to place us at direct loggerheads by putting this off in this effective period, but I will not allow us to accept as our working principle that we will, under the orders of the NCAA, discriminate against our own students, and that is the principle we should acknowledge and accept. Senator Chambers amendment probably makes sense. In a political sense, it gives us a little time, but there should be no compromise here. We should be in control of this situation and nothing, including the power of the NCAA to sanction us, should force us into the position of discriminating against our own students, and their well-being, and their availability for grants-in-aids to get a good education. Compliance isn't worth it. Senator Chambers works hard so we don't have that conflict, but if that conflict comes, that is fine. Count me among those who says compliance is not a higher virtue than to remove discriminatory obstacles...

SPEAKER BARRETT: One minute.

SENATOR LANDIS: ...from students who deserve and should get fair treatment and equal access to grants-in-aids for education. I will support the amendment and the bill. I would urge you to do the same.

SPEAKER BARRETT: Thank you. Senator McFarland.

SENATOR MCFARLAND: My colleague from Lincoln explains his position very clearly, as he usually does. The discriminatory effect of the bill is...or of the practice, I should say, by the NCAA, is that it puts the nonathlete and the athlete and treats them differently if they happen to receive financial aid or are eligible to receive financial aid. For the nonathlete, he or she can receive as much financial assistance as necessary, no restrictions are applied at all. For the athlete who is a nonscholarship athlete, then he or she must make a choice of whether to accept the financial aid and not participate in athletics, football or basketball, or make the choice to go ahead and participate in athletics, and then have to forego the financial aid, and I don't think that is a fair situation. The question is the uncertainty of the results of passing a bill like this, and the effects and problems that it may engender. Again, it gets to how you want to remedy the situation. I should interject here that I am not a great supporter of many of the NCAA's activities and their rules. I will give you what I hear as their rationale for the rule. Their concern apparently is that there are a lot of large institutions who have a lot of financial aid to dole out, so the University of Southern California and the Miami University, Texas University, large institutions, I think it probably would include Nebraska as well, have financial aid packages to give, whereas the more moderate size or smaller universities may not have that. So you have Arkansas A & M, and you have Texas A & I, and you have Abilene Christian, and various other schools do not have the financial aid maybe that the larger universities would have. The concern the NCAA has, and part of their rationale for the rule is that if, in fact, you allow schools to give aid to athletes, that it could be abused in the larger schools, the University of Southern Cal, or Miami, or whoever, could then circumvent their scholarship limits by saying we have a lot of financial aid available, we can't give you a scholarship, young man or young woman, but you come to our school and we will structure it so that you get financial aid. This idea of the NCAA is that that would put the smaller schools like Abilene Christian or Arkansas A & M at a competitive disadvantage in recruiting players because they want to recruit them to their schools as well, and they want to recruit them and offer them scholarships and so on. That is the idea, and there is some logic in it, although the practical effect is very harmful, particularly for the students we have at the university. The concern I have is the consequences. We don't know what the consequences would be in passing this type of legislation. We

don't know the possible effects. It would certainly bring a confrontation between the NCAA and the state law. It would put the university in perhaps an insoluble dilemma of obeying NCAA rules and violating state law, or...

SPEAKER BARRETT: One minute.

SENATOR MCFARLAND: ...obeying state law and violating NCAA rules. That is the dilemma that would be created. The question I guess we have to address is how best to resolve it. Can we resolve it through an interim study where all parties would have to get together and then they would discuss the issue and maybe come up with a plan of dealing with the matter? I realize that interim studies are often the kind of burial grounds for a lot of controversial bills. I hope and trust that that wouldn't happen if we had an interim study on this subject. I trust it would go before our Judiciary Committee, and Senator Chambers is on it, I am on it. We have, I think, some very good members who are on it and understand, have heard these debates on these particular issues before. Whether it can be done in that manner or whether, in fact, as Senator Landis says you should pass the bill, put the effective date...

SPEAKER BARRETT: Time.

SENATOR MCFARLAND: ...a year in advance and then have the interim study at that time.

SPEAKER BARRETT: Thank you. Senator Chambers, there are no other lights on. Would you care to close?

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, what we are voting on now is the amendment that would delay the date, and I agree with Senator Landis, but this is an issue where there should not be compromise because the acknowledgement has been made. I could argue more forcefully if Senator McFarland was in support of the discriminatory rule but he is not. I could argue if he said the rule is not discriminatory but he acknowledges that it is. The problem that I have is how a Legislature, in the face of acknowledged, recognized discrimination which is harmful to our students is going to sit back and continue to allow that to happen. The reason I don't want to have just an interim study is because the NCAA can do with a vengeance what Senator Morrissey has already sketched out that they have done so far. They sit back and they mock because



they have intimidated the Legislature again into a position of failing to do its duty. Since this is a vote on the amendment, I am going to terminate my closing at this point so we can at least get a vote on it, and I would like to remind us that the bill usually comes up near the noon hour, so although we have discussed it several times, it hasn't been just on and on and on. It just happens to fall at that time because of the other business. So the roll of the dice. But I hope that you will vote to adopt this amendment.

SPEAKER BARRETT: Thank you. The question is the adoption of the Chambers amendment to LB 708. Those in favor vote aye, opposed nay. Voting on the amendment. Have you all voted? Record, please.

CLERK: 26 ayes, 1 nay, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: The amendment is adopted. To the bill as amended, Senator Chambers, do you care to make a statement?

SENATOR CHAMBERS: Mr. Chairman, in view of the hour, I am going to make the motion that it advance, but what is the Chair going to do in terms of how long we will be here this morning?

SPEAKER BARRETT: I am sorry, Senator Chambers.

SENATOR CHAMBERS: How long does the Chair envision that we will be here this morning?

SPEAKER BARRETT: I would hope that we could dispose of this bill one way or the other.

SENATOR CHAMBERS: Oh, all right. Now that the amendment has been added to the bill, it would delay the effective date. I don't feel good about having done that but the issue is very important. I don't want the Legislature, through inaction to lose the high ground altogether. What I hope we will do now is advance the bill. Only when the bill or a bill of this kind begins to move through the process does the university, itself, even take it seriously. I have not been contacted by anybody other than Coach Osborne and that was Friday when there were others than myself speaking in behalf of the bill. If we advance it to Select File, Senator McFarland would have time, if he wants to at that point, to try to obtain his legal analysis.



But no matter who analyzes the bill, I can tell you what they are going to have to come up with; first of all, that the bill says in simple terms, there can be no discrimination against athletes in the granting of aid simply because they are athletes. The bill prohibits the NCAA from threatening or imposing a penalty on the university for complying with this bill. If the NCAA violates this bill by threatening or imposing a penalty, it is subject to a \$25,000 fine. Furthermore, a cause of action is created for the university so that even before the NCAA would impose a punishment, the university could go into court, and under the cause of action created by the terms of this bill seek an injunction that would prohibit the NCAA from imposing a punishment. If the NCAA would go into court to try to dissolve such an injunction, its argument would be similar to the following, the NCAA does, in fact, have a rule that discriminates against a category of students in a way that others are not discriminated against who are similarly situated, and the NCAA is asking this court to uphold that discriminatory rule and allow us to punish the university for obeying an antidiscrimination law that was passed by the Legislature. I don't think even the NCAA is that silly, and I will tell you why I say that. I have mentioned it before, the NCAA adopted a rule requiring drug testing of athletes. The State of Washington or California has a law in place prohibiting such testing. The NCAA has said that the universities and colleges in that state do not have to test their athletes because there is a law prohibiting it. So those schools are all out of compliance with an existing law...rule of the NCAA right now and they are not sanctioned, and they are not sanctioned because there is a state law. The law of the state is paramount to any rule of any private association. LB 397 that was passed by the Legislature and signed by the Governor has brought the NCAA within the realm of state law.

SPEAKER BARRETT: One minute.

SENATOR CHAMBERS: It is subject to the laws of our state and the provisions of our Constitution that guarantee due process. Nobody has been able to successfully argue that discrimination is consistent with due process. So if the basis on which the NCAA would try to impose a sanction is a rule that discriminates, their case on its face has to fall because such a presentation violates the principle, not only of due process, but equal protection of the law. It is a serious matter and I regret that there are members of the Legislature more concerned

about whether or not the NCAA is going to scowl at the university than they are about doing justice to our students who are invited to this university supposedly to get an education, but when they come here, then because the interest of the...

SPEAKER BARRETT: Time.

SENATOR CHAMBERS: ...Athletic Department are contrary, they have to be subjected to discrimination in the obtaining of aid. I hope you will advance the bill.

SPEAKER BARRETT: Senator McFarland, on the motion to advance.

SENATOR MCFARLAND: Thank you, Mr. Speaker. The issue, it seems to me, is really one of trust. Do you trust the university and the administration, Athletic Department, and possibly the NCAA to participate actively in an interim study, if we have one, with the idea of trying to address the inequities created by the present NCAA rule with regard to the financial aid for athletes of the university. If you have that element of trust, then it seems to me that you really don't need to pass a law this year, if it is not going to take effect until next year anyway. You could have the interim study and try to address the issue before the Judiciary Committee, and see what the best alternative would be as far as addressing this particular problem. If you lack trust in the university and the NCAA and the Athletic Department and you think that there needs to be some kind of pressure exerted in order to get active participation in an interim study type of approach, then I think Senator Landis and, perhaps, Senator Morrissey have a basis of saying, well, we should pass the bill since it doesn't take effect for one year. It will make people set up and take notice that this is a serious issue, that the Legislature is concerned about it, and we want to compel them here to be here. That is really an issue at hand. My concern, as I have stated before, is that if this bill gets into effect and the confrontation occurs, you may have consequences that you never intended. You may have a situation where the NCAA, in effect, takes scholarships away from the university, or you have a court case that would say to the university, okay, you can allow the financial aid for athletes and obey the state law, but you have to decrease your scholarships as a result of that. I am a little concerned about that. The intended effect may be that you would actually harm the university and athletes who might want to attend the university because scholarships could indirectly be limited

because of it. My inclination is to respect and have a certain element of trust that the people who say they will actively participate in an interim study will do so. For that reason, I don't plan to support the bill at this stage. You will have to judge that on your own. Do you think it is necessary to pass a bill not to take effect for a year in order to get a valid interim study, or do you have a faith in the legislative process and a faith that the people in the university and Athletic Department, possibly the NCAA, will participate in an interim study to try and resolve this issue. I suppose that is your own judgment. For me, I am just a little too concerned and I am not sure of the consequences of it. I am not sure all the legal ramifications have been explored at this time. Thank you.

SPEAKER BARRETT: Thank you. Senator Chambers, would you like to close?

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, the issue is not simply one of whether you trust the NCAA to participate in an interim study. The issue is whether or not the Legislature is going to condone and endorse known and recognized discrimination. That is the issue. That is what it has been. That is what it will continue to be. So I am going to ask that you do vote to advance this bill and, Mr. Chairman, with the few people who are even present, can I ask...Mr. Chairman, can I ask how many are gone?

SPEAKER BARRETT: Mr. Clerk. Twelve are excused at this point, Senator Chambers.

SENATOR CHAMBERS: I am probably going to have to sacrifice my priority designation but I see the issue as being that serious. I am going to...I have no choice other than to take a vote, so I will ask for a call of the house, so those who still are here at least will be in their seats.

SPEAKER BARRETT: Thank you. The question is, shall the house go under call? Those in favor vote aye, opposed nay. Record.

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

SPEAKER BARRETT: The house is under call. Members, please record your presence. Those outside the Legislative Chamber, please return. The house is under call. Senator Landis, please check in. Senator Abboud, Senator Ashford. Senator Scofield,

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LB 164, 520A, 708, 1004, 1032

the house is under call. Senators Schellpeper and Elmer, the house is under call. Senators Schellpeper and Elmer, please report to the Chamber. Senator Chambers. A machine vote has been requested. The question is the advancement of LB 708 to E & R initial. All in favor vote aye, opposed nay. Have you all voted? Roll call has been requested. Mr. Clerk, proceed.

CLERK: (Roll call vote taken. See page 664 of the Legislative Journal.) 18 ayes, 9 nays, Mr. President, on the motion to advance.

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

CLERK: Yes, Mr. President, I do. Mr. President, Natural Resources gives notice of cancellation and resetting of a hearing, signed by Senator Schmit as Chair. LB 1032 has been selected as one of the Speaker's priority bills.

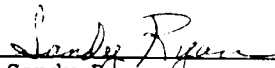
Senator Rogers has amendments to LB 1004; and Senator Schellpeper to LB 520A. (See page 665 of the Legislative Journal.) Mr. President, Senator Abboud would like to add his name to LB 164 as co-introducer. That is all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Schimek, please, would you care to adjourn us.

SENATOR SCHIMEK: Yes, thank you, Mr. President. I move we adjourn until tomorrow morning at nine o'clock.

SPEAKER BARRETT: Thank you. You have heard the motion to adjourn until nine o'clock tomorrow. All in favor say aye. Opposed no. The ayes have it, carried. We are adjourned.

Proofed by:

  
Sandy Ryan

don't, as a rule, they don't really do anything except cause bad feelings. My thought in service in this Legislature is that every person in this Legislature is a friend of mine. It is a brother or sister of mine.

PRESIDENT NICHOL PRESIDING

PRESIDENT: One minute.

SENATOR McFARLAND: They, as persons, are equally worthy in God's eyes and in my eyes. If there has been any time that I have resorted to a personal attack on a senator and it has been interpreted that way, then it is something that I should be criticized for, but I can tell you my intent has always been to try to stick to the issue, if any criticism was leveled, to criticize as a group. I think we would all be better off with that, and if occasionally a senator resorts to personal and demeaning attacks, I think we should remember that that person may have been subjected to them in the past. They may have been ridiculed. They may have been demeaned. They may have been chastised. They may have been made fun of. They may have been hurt. It is a natural tendency to resort in kind, but when I am treated in that manner, as much as I would like to respond in anger, I, so far, have been able to restrain myself and I think it is an appropriate and a dignified way to conduct oneself in the Legislature. Thank you.

PRESIDENT: Thank you. Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman, and members of the Legislature, Big Jim was cookin'. He was cookin' 'cause he had been stung, and he didn't even hear what I said, but in case some of you are not perceptive, I am the one about whom he was speaking. And I did hark back to a bill of mine which I had amended after having discussions with Senator McFarland, to make... I am talking about LB 708... to make it possible for the university to have a lawsuit without being exposed to a penalty, I removed the penalty pursuant to Senator McFarland's amendment. I supported it. Then I put a delayed date for it to take effect after discussions with Senator McFarland. Then for the first time what to my wondering ear should come but a statement against the bill by Senator McFarland, for the first time when it came a motion to move the bill. Had I known that was going to be his position after numerous discussions with the Athletic Department personnel, I certainly would not have agreed to amend the bill

February 16, 1990      LB 42, 708, 923, 931, 1153, 1172, 1210  
1211, 1244, 1245  
LR 233

linear would be based on pipes, and we are talking about pipes, 260 feet of those or less would be exempted from the license, businesses working in those. For 160 square feet or fewer, you would be exempted from the license for those businesses doing those asbestos projects. And, in addition, we dealt with the committee amendment and the E clause has been added, and I'd ask very much for the advancement of the bill.

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

CLERK: 26 ayes, 0 nays, Mr. President, on the advancement of LB 923.

PRESIDENT: LB 923 is advanced. Do you have anything for the record, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Thank you. I have a Reference Report referring LB 1244 and LB 1245. That is offered by Senator Labedz as Chair of the Reference Committee.

Mr. President, priority bill designations, Appropriations Committee chaired by Senator Warner selected LB 1210, LB 1211; Senator Chambers has selected LB 708; Government Committee has designated LB 931 and LB 1172; Speaker Barrett has selected LB 1153; Senator Coordsen, LR 233CA.

Mr. President, committee hearing notices from Appropriations Committee and from the Business and Labor Committee, signed by their respective Chairs. That is all that I have, Mr. President.

SENATOR HANNIBAL PRESIDING

SENATOR HANNIBAL: Thank you, Mr. Clerk. Before we move on to General File, LB 82 (sic), I would like to take this opportunity to inform the body that Senator LaVon Crosby has in the south balcony 13 Girl Scouts and their leader from Calvert School in District 29. Would you girls all please rise and let us welcome you to the Legislature. Thank you for joining us today. Mr. Clerk, LB 42.

CLERK: Mr. President, LB 42 involves judicial salaries. The bill has been discussed on two occasions. I have pending,

February 26, 1990      LB 164A, 260, 313A, 708, 736, 980A, 1032  
1090, 1100, 1159, 1236  
LR 241, 257

and nonsmokers have a right to resent it." I do hope that this resolution will receive all of the votes present on the floor, Senator Goodrich said he will not vote for it, so I'll say, with the exception of the one who has expressed opposition to what the resolution attempts to do.

SPEAKER BARRETT: Thank you. You've heard the closing. And the question is the adoption of LR 257. All in favor of that motion please vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on adoption of LR 257.

SPEAKER BARRETT: LR 257 is adopted. The Chair is pleased to note that Senator Wehrbein has 15 guests in our south balcony from Elmwood High School. Fifteen seniors are visiting with us this morning along with their teacher. Would you people please stand and be welcomed by your Legislature. Thank you. We're pleased to have you with us. Proceeding to the record, Mr. Clerk. Have you anything to read in?

CLERK: Mr. President, I do. Thank you. Some amendments to be printed to LB 708 by Senator Chambers. Enrollment and Review reports LB 1090, LB 1032, LB 1236, LB 164A, LB 313A, and LB 980A to Select File some of which have E & R amendments attached. General Affairs Committee, whose Chair is Senator Smith, reports LR 241CA to General File; LB 736, indefinitely postponed; LB 1100, indefinitely postponed; LB 1159, indefinitely postponed, those signed by Senator Smith. That's all that I have, Mr. President. (See pages 979-80 of the Legislative Journal.)

SPEAKER BARRETT: Thank you. Item 6, Mr. Clerk, LB 260 on General File.

CLERK: Mr. President, LB 260 was a bill introduced by Senators Conway, Baack and Schmit. (Read title.) The bill was introduced on January 9, last year, Mr. President, at that time referred to the Revenue Committee for public hearing. The bill was advanced to General File. I do have committee amendments pending by the Revenue Committee, Mr. President. (Standing Committee amendments are on page 724 of the Legislative Journal for the First Session, 1989.)

SPEAKER BARRETT: Senator Hefner, would you please handle the

SENATOR CHAMBERS: Well, what my intent language says is that there should be no discrimination. If the NCAA rule you are talking about says...I meant, does not involve discrimination, and my intent language forbids discrimination, why are you opposed to my language that forbids discrimination?

SENATOR GOODRICH: The net effect of your amendment says...it leads us, rather, to the position that any scholarship aid that is given to a recruited scholar...to a recruited athlete, whether he has come in on an athletic scholarship or not, if he just comes in, he plays athletic football or varsity football, in other words, or varsity basketball, either one, if he receives this other aid that we are talking about, then he must be counted, and by counting him, which we have no choice but to do, then it puts us over the 95 limit, and that, in turn, puts us in violation of the NCAA. I am suggesting that it would be better for us not to put your amendment on yet, take it off, and we will work with the rules and regs, like they say, through NCAA, and then come back and do it if you want to.

SENATOR CHAMBERS: Okay, I have another question. Senator Goodrich, are you aware that that letter from Chancellor Massengale is relative to an opinion I sought from the Attorney General on LB 708 substance?

SENATOR GOODRICH: Yes.

SENATOR CHAMBERS: Then why did you say it as though it applies to this amendment that I am talking about in the intent language? There is no connection. The Attorney General's Opinion wasn't requested on this intent language and the letter from Massengale does not deal with this intent language. So why would you read a letter as though it applies to this?

SENATOR GOODRICH: Because they are...that establishes that the university is working on the NCAA to get the rules changed which, in turn, is what we are after right now.

SENATOR CHAMBERS: Thank you, Senator Goodrich. Members of the Legislature, I have a bill, LB 708, which would change the law. It would be a substantive change in the law. Intent language in a budget bill states the intent of the Legislature but it does not amend any statute. I made it clear that I am opposed to this kind of discrimination. The fact that 26 members voted to