

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

January 25, 1989

LB 13, 18, 19-32, 89, 114, 122, 165
168, 169, 177, 221, 254, 646, 742

SENATOR LINDSAY: Mr. President, I move that LB 168 be advanced as amended.

SPEAKER BARRETT: Shall 168 be advanced? Those in favor say aye. Opposed no. Carried. The bill is advanced. LB 169.

CLERK: LB 169, Senator, I have no amendments to the bill.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 169 be advanced.

SPEAKER BARRETT: You have heard the motion to advance 169. Those in favor say aye. Opposed no. Carried. The bill is advanced. Thank you. Messages on the President's desk.

CLERK: Mr. President, your Enrolling Clerk has presented to the Governor bills read on Final Reading this morning as of 11:11 a.m. (Re: LB 13, LB 18, LB 19, LB 20, LB 21, LB 22, LB 23, LB 24, LB 25, LB 26, LB 27, LB 28, LB 29, LB 30, LB 31, and LB 32. See page 445 of the Legislative Journal.)

Mr. President, your Committee on Government, Military and Veterans Affairs reports LB 165 to General File with amendments; LB 177 to General File with amendments; LB 254 General File with amendments, all signed by Senator Baack as Chair. Banking Committee reports LB 221 to General File with amendments, that is signed by Senator Landis. Transportation Committee reports LB 114 to General File with amendments; and LB 122 as indefinitely postponed. Those are all signed by Senator Lamb as Chair. (See pages 445-446 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Government, Military and Veterans Affairs Committee. That is signed by Senator Baack.

Mr. President, Senator Hartnett would like to have an Executive Session I believe in the Senators Lounge upon adjournment; Urban Affairs Committee, Senators Lounge upon adjournment.

Mr. President, Senator Crosby would like to add her name to LB 89; Senator Smith to LB 646; and Senator Labeledz to LB 742. That is all that I have, Mr. President.

March 8, 1989

LB 141, 161, 333, 379, 457, 742

time by title. See page 1027 of the Legislative Journal.)

Ag Committee reports LB 161 to General File with amendments, that is signed by Senator Johnson; Banking Committee reports LB 333 to General File with amendments, and LB 457 to General File, those signed by Senator Landis as Chair; Transportation reports LB 141 to General File with amendments, and LB 742 to General File with amendments, those signed by Senator Lamb. (See pages 1028-29 of the Legislative Journal.)

Mr. President, Senator Baack gives notice of cancellation of hearing. That is all that I have at this time, Mr. President.

PRESIDENT NICHOL PRESIDING

PRESIDENT: We will move on to LB 379.

CLERK: Mr. President, LB 379 was introduced by Senator Hartnett. (Read title.) The bill was introduced on January 12 of this year, referred to Education. The bill was advanced to General File. I have no amendments to the bill, Mr. President.

PRESIDENT: Senator Hartnett.

SENATOR HARTNETT: Yes, Mr. President, members of the body, this would give school districts authority to invest school district funds in repurchase agreement. Current law allows school districts to invest school funds in the securities under the prudent man rule, and really what it does, it is kind of a clarifying law is that large school districts that receive large amounts of money can invest it within a...before a seven-day period of time and that is really what it does. Some of the attorneys for some of the larger school districts feel that this has to be clarified, and with that, I would ask for the advancement of the bill, unless there are some questions.

PRESIDENT: Senator Elmer, please. No? Okay, did you wish to close?

SENATOR HARTNETT: (Mike off) ...kind of a clarifying.

PRESIDENT: Okay, the question is the advancement of the bill. All those in favor vote aye, opposed nay. It looks like I need a little help, ladies and gentlemen. Record, Mr. Clerk, please.

January 9, 1990

LB 141, 742, 1061-1077

Haberman, would you record your presence, please. Thank you. Senator Bernard-Stevens, Senator Goodrich. Senator Wehrbein, would you record your presence, please. Thanks. Senator Schmit. We're looking for Senator Goodrich and Senator Schmit. I understand Senator Goodrich will be here in a moment. Senator Schmit, would you like to record your presence, please. Thank you. And Senator Goodrich is here. Ladies and gentlemen, the question is the adoption of the committee amendments. A roll call vote has been requested. Mr. Clerk, please.

CLERK: (Roll call vote taken. See page 238 of the Legislative Journal.) 23 ayes, 14 nays, Mr. President, on adoption of committee amendments.

PRESIDENT: The committee amendments are not adopted. Do you have anything else on it, Mr. Clerk?

CLERK: Mr. President, yes, I do.

PRESIDENT: The call is raised. Did you wish to read something in, Mr. Clerk, while we're at it?

ASSISTANT CLERK: Yes, Mr. President, new bills. (Read LBs 1061-1077 by title for the first time. See pages 239-43 of the Legislative Journal.)

PRESIDENT: Mr. Clerk, anything further on 141?

CLERK: Mr. President, I do. I now have a motion to the bill by Senator Moore. Senator Moore would move to indefinitely postpone LB 141. Senator Abboud, as introducer, has the option to lay the bill over, Mr. President.

PRESIDENT: Senator Abboud, what do you lay?

SENATOR ABOUD: Lay the bill over.

PRESIDENT: Lay it over?

SENATOR ABOUD: Yes.

PRESIDENT: Okay, it will be laid over. We'll move on to LB 742.

CLERK: Mr. President, 742 was a bill that was introduced by

January 9, 1990

LB 187, 514, 742, 851, 856, 908, 957
964, 966, 968, 1004, 1005, 1078, 1079
LR 8

Senator Robak, Moore, Schmit, Chizek, Elmer, Withem, Korshoj, Smith and Ashford and Labedz. (Read title.) The bill was introduced on January 19 of last year, at that time it was referred to the Transportation Committee for public hearing. The bill was advanced to General File. I have Transportation Committee amendments pending, Mr. President.

PRESIDENT: Senator Lamb, are you going to take those?

SENATOR LAMB: Mr. President, members, LB 742, a bill introduced by Senator Robak, and it has to do with changing the eyesight requirements for drivers licenses. The committee amendments are minor. There are two of them. On page 2, line 19, strike "or" and insert "and"; and then on page 3, line 7, strike "the applicant"...the words "the applicant has". These are merely...

PRESIDENT: Senator Lamb.

SENATOR LAMB: ...drafting errors that were...

PRESIDENT: (Gavel.) Senator Lamb, could I interrupt you?

SENATOR LAMB: Yes.

PRESIDENT: I hate to interrupt you in the line of thought, but I've just been notified there is a bomb threat and you're all supposed to evacuate the building. Okay.

SENATOR LAMB: What if we don't?

PRESIDENT: Mr. Speaker, Speaker Barrett. Would you like to read some things into the record while we're waiting for the bomb to go off?

CLERK: Mr. President, very quickly, I have a designation of priority bill by Senator Schimek for LB 514. I have notice of hearing for the Urban Affairs Committee. And notice of hearing from the Agriculture Committee. (Re: LB 851, LB 856, LB 908, LB 957, LB 964, LB 966, LB 968, LB 1004, and LB 1005.)

New bills. (Read LB 1078 and LB 1079 by title for the first time. See page 244 of the Legislative Journal.)

Mr. President, I have in addition to that amendments to printed by Senator Lynch to LB 187, and Senator Lindsay to LR 8CA;

January 10, 1990

LB 37, 37A, 742

you wanted to discuss the bill. Thank you. Any discussion on the advancement of the bill? If not, those in favor of its advancement please vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: 25 ayes, 0 nays on the advancement of the bill, Mr. President.

SPEAKER BARRETT: LB 37 is advanced. Moving then to LB 7...Senator Johnson, you had some discussion on the A bill.

SENATOR R. JOHNSON: Yes, Mr. Speaker, members, the easiest way to expedite the matter is to simply move to indefinitely postpone LB 37, as the Clerk has told us, 37A, I am sorry, so I would move to indefinitely postpone LB 37A.

SPEAKER BARRETT: Any discussion on the motion to indefinitely postpone the bill? If not, those in favor of its adoption please vote aye, opposed nay. Please record.

ASSISTANT CLERK: 25 ayes, 0 nays on the indefinite postponement of LB 37A.

SPEAKER BARRETT: LB 37A is indefinitely postponed. Moving to the next bill on General File, LB 742, Mr. Clerk, please.

ASSISTANT CLERK: LB 742 was introduced by Senator Robak and a number of other members. (Title read.) The bill was read for the first time on January 19 of last year. It was referred to the Transportation Committee. That committee reports the bill to General File with committee amendments, Mr. President.

SPEAKER BARRETT: Senator Lamb, would you discuss the amendments, please.

SENATOR LAMB: Yes, Mr. President, since we were so rudely interrupted yesterday, LB 742 is a bill which was introduced by Senator Robak and it has to do with vision requirements for drivers' licenses and the committee amendments are minimal. We have...if you will notice in the committee statement, we're changing some words. On page 2, line 19 strike "or" and insert "and". This was a drafting error. Also on page 3, line 7 strike the words "the applicant has". They are just redundant. Those two are insignificant drafting errors. Then the emergency clause is the other part of the committee amendment and that is

all there is and I move that the committee amendment be adopted. I would also recommend that the bill be eventually advanced.

SPEAKER BARRETT: Thank you. Discussion on the committee amendments, Senator Smith. Thank you. Senator Crosby. Thank you. Any discussion on the adoption of the committee amendments? If not, those in favor please vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: The amendments to the bill are adopted. To the bill as amended, Senator Robak, please.

SENATOR ROBAK: Thank you, Mr. President, members of the Legislature. LB 742 is a simple bill, just simply clarifies the current law that requires the Department of Motor Vehicles to adopt rules requiring both a minimum acuity level of vision and a minimum field of vision. These minimal levels can be met by using bioptic or telescopic lenses in addition to eyeglasses or contact lenses. Several years ago the Department of Motor Vehicles did permit applicants to use bioptic and telescopic lenses to meet vision standards. The administration changed and, therefore, there came a change of rules on this matter. In other words, the legislation is now necessary because the administration changed their rules and not because the Legislature changed the law. This administrative policy change has affected hundreds of Nebraskans who relied on their ability to drive to raise their family and make a living. These people had no accidents or citations and they lost their driving privileges simply because a new administration and a new administrator did not believe in the use of bioptic lenses or telescopic lenses. Current law, in Section 60-407 provides that adequate vision standards to obtain a driver's license are to be established by the Department of Motor Vehicles. If an examiner believes that the applicant fails to meet the standard, the applicant can present a statement from an optometrist or a doctor that the Department of Motor Vehicle standards are met, however, the vision standards cannot be met using bioptic or telescopic lenses. Bioptic telescopes are telescopes that are mounted on a pair of glasses. They look like a jeweler's magnifier. This amount of magnification varies from person to person. Low level drivers are taught to use, taught to look through their telescope when they need to see detail, otherwise

they look through their regular glasses. As of 1989, 27 states license bioptic drivers. The Pages are passing out a description of the use of bioptic telescopes for drivers from the American Optometric Association. They are also passing out another handout prepared by the Department of Motor Vehicles that describes in detail the vision standards of all the states and specifically the requirements of the 27 states that license bioptic or telescopic lenses. In 1988, the Legislature addressed this issue in an amendment to LB 1008 brought by Senators Johanns, Withem, Schmit and others. However, Governor Orr vetoed that bill because minimum vision standards was stated. Specifically, the standards specified in LB 1008 were deemed to be unsafe by the American Medical Association. In contrast, LB 742 continues to delegate the responsibility of adopting visual acuity standards through the Department of Motor Vehicles. However, LB 742 reinforces in statute that a bioptic or a telescopic visual aid can be used to meet the necessary visual acuity standards. These drivers who would meet the requirements using bioptic or telescopic lenses would have to renew their driver's licenses annually. In addition, like all other applicants the low vision drivers would have to prove their ability to drive to an examiner. They would have to prove their competence to drive. In summary, this bill is brought by a group of long-term drivers who have been caught, they just have been caught in an administrative knothole. When they went to renew their driver's licenses over the last several years they found they were ineligible to even take a driver's test. Most of them have driven for years without accidents or incidents. They are really safe drivers, they are just like you and me, they depend on their driving ability for their independence and this bill would restore their privilege to drive. I ask your support of this measure. Thank you.

SPEAKER BARRETT: Thank you. Discussion on the advancement of 742, Senator Haberman, followed by Senators Smith, Crosby and Wesely.

SENATOR HABERMAN: Mr. President, members of the body, Senator Robak, would you yield for three questions, please?

SPEAKER BARRETT: Senator Robak, would you respond?

SENATOR ROBAK: Yes.

SENATOR HABERMAN: The first question, Senator Robak, is that

you made the statement and we read that the Governor did veto this bill in '88. Have you talked to the Governor to see what she would do to the bill if it was passed this year?

SENATOR ROBAK: No, I have not.

SENATOR HABERMAN: Do you have any indication as which way or what the Governor would do?

SENATOR ROBAK: Since this...LB 742 will delegate the responsibility to the Department of Motor Vehicles rather than to a doctor or an optometrist, I would hope that she would allow the bill to pass.

SENATOR HABERMAN: If it was vetoed by the Governor, would you ask for an override?

SENATOR ROBAK: Yes, I would.

SENATOR HABERMAN: Thank you, that's...the second question is, on the board of the Department of Motor Vehicles is an optometrist and I understand the optometrist supported the change in the rules and regulations and then on the other side of the coin we have optometrists that are supporting LB 742. Could you tell us what the reason were, or why he objected, the optometrist that is on the board, or why he supported the rule change?

SENATOR ROBAK: It is my understanding that the standards that were specified there were deemed to be unsafe by the American Medical Association.

SENATOR HABERMAN: Are they still deemed unsafe by the American Medical Association?

SENATOR ROBAK: This bill would allow the Department of Motor Vehicles to set the standards, so it really doesn't matter.

SENATOR HABERMAN: I have one more question. These same questions were discussed between myself and a constituent this morning and he called me and asked me to support the legislation and I said I would like to have some answers to some questions and I told him what they were. And he agreed that, ask the questions to see what the answers were, so that's why I am coming at you. You have a passout that says the reasons to vote

for the bill is that 2,700 people are directly at risk if this bill doesn't pass. However, the fiscal note said that 200 people will be affected. Now, Senator Robak, if it is 2,700 people instead of 200 people, I think we should change the fiscal note because it is going to cost a lot more money to implement 742 for 2,700 people instead of 200 people.

SENATOR ROBAK: There is an estimated 2,700 Nebraskans that are considered low vision people, not low vision drivers.

SENATOR HABERMAN: Will the bill have...will LB 742 have an impact on 200 people or 2,700 people as far as getting a driver's license? That is the issue of getting a driver's license.

SENATOR ROBAK: It could possibly impact more than that.

SPEAKER BARRETT: One minute.

SENATOR HABERMAN: Senator Robak, I'll have to give you a compliment. You're very, very good at answering questions and I will accept your answers and thank you, Mr. President.

SPEAKER BARRETT: Further discussion on the bill, Senator Smith.

SENATOR SMITH: Thank you, Mr. Speaker, members of the body, I would just rise to support Senator Robak's request as proposed to you in LB 742, and there are a number of reasons why I think that we should all be supportive of it. For one thing, I think that this bill really comes out to be a fair solution to a problem that is impacting a number of responsible citizens and it will correct what has turned out to be rather an injustice to a number of folks that has been imposed upon them by the Department of Motor Vehicles and it will allow for the recognition of professional expertise as in a judgment regarding the capacity of those persons to be able to drive on our highways and whether or not they can do that safely. It really is a nonrevenue bill for the discussion that we just heard between Senator Robak and Senator Haberman, it does impact on about 200 people at this point in time. Probably, if we're talking about 2,700 people who are afflicted with this vision problem in the State of Nebraska, right now we're looking at 200 people that are actually, have made the request as far as drivers are concerned. And it does pertain only to their ability to obtain and hold a Class A driver's license, and that

would be for cars and light vehicles, not for large trucks and et cetera. At the present time a majority of other states do allow folks that have to utilize bioptic lenses to drive on their highways and I can tell you that if you're like I am, you have all received a number of phone calls and a multitude of letters from folks asking for this opportunity which I don't think is asking too much. I join her in asking for your favorable consideration of LB 742. These folks have shown themselves to be responsible drivers and it's not asking for anything that is out of the ordinary. These people have to rely upon their driver's license, just like we do, to be able to get around, to be independent, to get to work and so on. So please join me in supporting Senator Robak's request. Thank you.

SPEAKER BARRETT: Thank you. Senator Crosby, followed by Senator Wesely.

SENATOR CROSBY: Thank you, Mr. Speaker. To lead off, I want to assure Senator Robak that I am supporting the bill at this stage and will vote to advance it. However, not all of the optometrists think it's a good bill, and if you will remember your hearing, there were people who opposed it and most of my phone calls and so on have been from those people. I've had very little from the people who are involved, directly involved, wanting the licenses. I do have great sympathy for those people that all of a sudden they were not able to drive. One of the questions that I want to ask has to do, one of the optometrists that has talked to me several times about the bill, and he testified at the hearing, he favors granting the licenses to certain individuals but thinks this bill has a flaw in it because it does not require special training for applicants who depend on the telescopes to meet the vision requirements. If an amendment of some kind were brought to this bill on Select File, Senator Robak, would you just answer my quick question? If we brought an amendment requiring training and we just have this in the works so I can't tell you, would you at least look at it in the meantime? Would you talk to us about it?

SPEAKER BARRETT: Senator Robak.

SENATOR ROBAK: Yes, we'd be...

SENATOR CROSBY: All right.

SENATOR ROBAK: ...willing to work with you, looking at it.

SENATOR CROSBY: That was the one big concern. And one of the things that he told me that I thought was interesting is that when you use the telescopic lens, I think I understood him correctly, the side vision is not always there, so I think there are more problems here than we just think of in general sight when we wear glasses with bifocals and even there, when you get your bifocals the first time you have a little problem being able to look correctly at certain things and steps and that kind of thing. The other thing that I would just share with you since we had an awful lot of talk this morning about self-discipline, because I thought this was a good point that the optometrist made, that since we do have a driver's licensing law on the floor of the Legislature right now, that we might consider other driving hazards to be restricted such as fuzzy dice and other paraphernalia in your...that obstruct your vision, tinted read and side windows, pets on drivers' laps, young children not properly restrained, I know we have some legislation coming up on that; cellular telephones, ear phones, drinking cups, styrofoam or otherwise, eating food, applying makeup, combing hair while you are driving. So I just add that into my little dissertation here because...not to get away from the subject, but these people who...and it ties in because these people who do use the telescopic lens do have good driving records and I'm sure they are very attentive on the road and don't have all these other things that would obstruct their view. So I do support you now, and we'll bring something to Senator Robak in the meantime. Thank you.

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

SENATOR WESELY: Thank you. Mr. Speaker, members, this piece of legislation is a close call. I think it's a very difficult piece of legislation and deserves some discussion. I sat on the Transportation Committee when the bill was first brought to us and I worked a little bit on the issue through that, and also as a Chairman of the Health Committee I've worked a great deal with different individuals involved. And what you find is slightly over half the states do allow for this type of bioptic lenses to be utilized in drivers' licensing, but also close to half the states don't. It is not a clear cut issue. The question involved in, are we taking an extreme safety risk here or not by allowing these individuals to drive? They did have that right, they did drive. I think their record is probably pretty good.

On the other hand, those that are experts in this field, optometrists, have come to me and said that this type of lens is a very narrowing vision impact, that you can see terrifically straight ahead but you cannot see to the sides and that there is going to be times when, obviously, as you are driving you need to have that peripheral vision and that you may, in fact, by allowing this type of driving license to be utilized, there may be accidents down the road, people hurt and concern is being expressed to that degree. So I have struggled a bit with the issue, trying to figure out what the best solution is. I think Senator Crosby raised a good point, that the training I think would be helpful and I think at least we ought to have some training requirements before you go forward in allowing these individuals to drive. But I, for one, until those training requirements are adopted, feel I cannot support the bill because of the concerns that have been expressed to me by individuals I respect and trust. Their judgment indicates to me that there are sufficient medical reasons to not advance the bill without proper safeguards in place and, at this point, I'm not sure that they are there. And so I raise those concerns. I anticipate the bills advancement. I know there is a lot of concern and support for it, but in my good judgment and in my conscience I don't feel I can vote for it at this time. But, Senator Robak, I understand you'll be working with Senator Crosby on amendments and perhaps those will ease my concern and so I hope that you will seriously look at that. I think that would be helpful.

SPEAKER BARRETT: Thank you. Senator Lynch.

SENATOR LYNCH: Question.

SPEAKER BARRETT: Senator Lynch, there are a number of lights on. I think I will not recognize it at this point, but thank you. I appreciate that. Senator Schimek.

SENATOR SCHIMEK: Mr. Chairman and members of the body, I, too, would like to support this bill and am certainly sympathetic to those people who have not been able to drive over the past couple of years on our roads. I would like to echo what Senator Wesely said, that this is a difficult bill and if you have looked over the information that Senator Robak has given us, you will see that a number of states around us, directly surrounding us do allow the bioptic licensing and there are several states around us that don't. And it would be possible if we did not have this legislation that a Nebraskan could go to another state

and get licensed in another state and, indeed, I think that is what has happened at least in one or two instances. They are driving with a license from another state. So that is an added little problem. I guess, Senator Robak, I would like to mention a study that a constituent sent me and it was done out in California, and then I would like to ask you a question about that study. This one was done on the rate of accident rate of drivers in California and the group, the whole group consisted of 229 drivers as opposed to a sampling of 21,000 drivers. And the two-year total on fatal injury accident rate of the bioptic group were normalized to the age, sex distribution of the comparison sample. What the study says is that normalized accident rates for bioptic drivers were significantly greater than the corresponding rates for comparison drivers, and then it goes on to talk about it and analyze it a little bit more. I'm wondering if you have done any research in this area, question number one, and if we should be looking at California's experience, their recommendation after that study that they go ahead and continue to license bioptic drivers, but with greater use of license restrictions and more stringent postlicensing control. What kind of controls are built into this legislation? Should we be looking at what Senator Crosby suggested, perhaps more of a training period for bioptic drivers? I guess I'm kind of wondering what thoughts you might have in this regard.

SPEAKER BARRETT: Senator Robak.

SENATOR ROBAK: What year do you have that California report?

SENATOR SCHIMEK: This was published in 1983.

SENATOR ROBAK: Yes, I did do some research on that and we have the report in 1983 from the California Department of Motor Vehicles and they say they have the lowest...bioptic, telescopic drivers have the lowest accident rate of any handicapped or high risk driver.

SENATOR SCHIMEK: Do you have anything outside of California? Is that...? That's not comparing with the population in general.

SENATOR ROBAK: Now, what was the question?

SENATOR SCHIMEK: Well, Senator Robak, you've got figures there that do not compare with the population in general, and that's

what I guess I was getting at.

SENATOR ROBAK: It should be in the handout, but I think the bottom line here that we have to remember is that the examiner would be the bottom line there. The examiner would give the...deny or grant the applicant a license. It would be left up to the examiner.

SENATOR SCHIMEK: Thank you. I guess...

SPEAKER BARRETT: One minute.

SENATOR SCHIMEK: I guess I need...

SENATOR ROBAK: And would have to have them renewed annually, also, instead of every four years.

SENATOR SCHIMEK: And that would be one of the kinds of controls they were talking about in that study, so that would be a kind of a safeguard.

SENATOR ROBAK: That's in LB 742.

SENATOR SCHIMEK: Right. I guess, Senator Robak, I'm inclined to support the bill. I think that we definitely need to have some kind of legislation, but I am a little bit concerned about that safety factor and I would like to...I guess I would like to hear that issue addressed by anybody else on this floor. Thank you very much.

SPEAKER BARRETT: Thank you. Senator Dierks, please.

SENATOR DIERKS: Mr. Speaker, I would like to move that we adjourn for lunch.

SPEAKER BARRETT: Recess, I believe.

SENATOR DIERKS: Recess, sorry. Recess till one-thirty.

SPEAKER BARRETT: Until one-thirty. Anything for the record?

CLERK: Mr. President, I do, two new bills. (Read LBs 1096-1097 by title for the first time. See page 264 of the Legislative Journal.)

Mr. President, I have a hearing notice from the Government, Military and Veterans Affairs Committee, for the Business and Labor Committee and for the Retirement Systems Committee, all signed by their respective Chairs.

Mr. President, Enrollment and Review reports LB 678 to Select File, E & R amendments; LB 678A, Select File with E & R; LB 720, Select File with E & R and LB 720A, Select File with E & R also, all signed by Senator Lindsay. (See pages 265-66 of the Legislative Journal.)

And I have a reference report, Mr. President, referring LBs 1049-1079. (Also LB 1034. See page 265 of the Legislative Journal.) That is all that I have.

SPEAKER BARRETT: Thank you, Mr. Clerk. Those in favor of the motion to recess until one-thirty please say aye. Opposed no. Ayes have it, motion carried, we are recessed.

RECESS

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Thank you, sir. With a quorum present, we will proceed back to our discussion of LB 742 at which time we were discussing the committee amendments to LB 742. We will return to the speaking order. Correction, we're on a motion to advance the bill. The speaking order beginning with Senator Dierks, if you would care to discuss the motion to advance the bill to E & R, Senator Dierks, followed by Senators Landis, Moore, Smith, Schmit and Bernard-Stevens. Senator Dierks.

SENATOR DIERKS: Thank you, Mr. Speaker and members of the body, I just rise to support Senator Robak's LB 742. I think that... I think these people have a track record that is good and I think we need to honor that. I believe that we do allow people on our roads sometime that maybe shouldn't be there. I don't know how we can stop some of that, but this is some legislation that will allow people to drive again that their track record is proven, they can handle this situation. And they have been kept from this right by the bureaucracy and I think it's time for the bureaucracy to give the right back to them. So I would support 742 and I would urge other people here to do the same thing.

Thank you.

SPEAKER BARRETT: Thank you. Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, if I thought that the record had been shown as well as Senator Dierks claimed that it was, I would feel a little better, but if, in fact, there is evidence that bioptic drivers in Nebraska are as safe as other drivers, it has yet to be presented. I know there are some national statistics that have been relied upon but even they do not say that bioptic drivers are as safe as other drivers. They say that among handicapped drivers or disabled drivers they are the least dangerous of that body of the driving public. But if there is before us, as Senator Dierks just indicated, there was evidence, a track record here of proven safety, I don't know of it and maybe we need to have that and maybe that can allay my fears. What has been placed on our desk are two important documents which I hope you had a chance to take a look at. They come from the proponents of the bill. If you take a look at the bottom of the fourth paragraph of this statement from the American Optometric Association, look at the last sentence of the fourth paragraph because it describes how a bioptic lens is used. Used in this manner, says the last sentence, the bioptic telescope has been used effectively for daytime driving by many visually impaired individuals in the United States. Compare that, by the way, with the other piece that was given to us by Senator Robak. If you'll take a look at the list, of the 27 states that allow bioptic lens drivers to drive, five of them limit it only to daylight. In other words, less than a majority of states permit nighttime bioptic driving. As a matter of fact, 20, what, 22 states don't allow it at all but five states make special rules that do not permit bioptic driving at night. Why? Because the Optometric Association over here tells you that the lens is effective during the daytime. Now these are the supporting documents for the measure. The supporting documents say bioptic lens is good in the daytime and in a variety of states don't permit bioptic lens driving at night. They also in other states have geographic limitations, they have speed limitations. In other words, bioptic lens driving is not, on its own, permitted to stand quite commonly in other states on exactly the same turf with other driving. It's allowed, but with reasonable limitations. What I have yet to hear is a discussion of what reasonable limitations there might be. One is contained in the bill, an annual review. I hope I have that correct. And that is at odds with a normal driver who

gets a four-year period between an annual review, but most states require a road test, many of them do. This bill does not. In other words, I assume that a bioptic lens driver runs...it does? If it is, I do not see it on the face of the measure. It permits it but does not require it. In other states it is required. What my suggestion is is this, that while there is reason to permit bioptic lens driving to occur, this bill represents a blanket permissive piece of legislation that does not attempt to draw sound lines, one of those being daylight driving; a second one being, perhaps examination of what kind of review there is. Notice, for example, this bill says you get your eyes tested but if you don't get it tested and you don't succeed at the state examination...

SPEAKER BARRETT: One minute.

SENATOR LANDIS: ...you get to go to your own optometrist or ophthalmologist for a review and can bring in a certificate for them. I wonder if we don't have the prospect of some shopping between optometrists or ophthalmologists to get your certificate. I think that is entirely possible. In other words, this bill goes after a reasonable problem but with too expansive of a response. It should be limited to daylight, there should be a road test; we should be able, if necessary, to add additional limitations to a driver's license that would be warranted in this situation whether it happened to be a geographic location as used in other states or the requirement of training if these are novice bioptic lens drivers. In other words, we have not done our homework to refine this bill to the place that it should be refined. Now this bill is going to move today and it's going to go to Select File. I know that.

SPEAKER BARRETT: Time.

SENATOR LANDIS: I just know the lay of the land. I'm going to vote against the bill because I don't think it's ready. I do think this body, however, between now and Select File should make its will known, that reasonable limitations should be drawn and added to the bill on Select File. Thank you.

SPEAKER BARRETT: Senator Moore. Senator Moore, on discussion of the advancement of the bill. Senator Jacklyn Smith, please.

SENATOR SMITH: Thank you, Mr. Speaker. Senator Landis, I do think that you probably raised some concerns that we haven't

discussed prior to this time and, you know, maybe your discussion on reasonable limitations is something that could be discussed with Senator Robak and on Select File, but keeping in mind that you just told us that, what, five states have incurred limitations such as you're talking about so there has to be I think a little bit more...I need to have more justification than just saying because five states have said that this is why we should then look with great concern in that area. Because one of the things that I can tell you and this is in response to something that Senator Crosby raised this morning when she talked about the fact that they had ophthalmologists or an opnthalmologist that testified in opposition to this bill when it...were you the one that...optometrist, excuse me, have an article here which was copied which was in my file when that occurred and it is titled, doctors favor special lenses. And then it goes on and it gives some of the testimony of an optometrist at the hearing who testified on behalf of them and said I don't think the use of telescopic lens would present a threat to the public of Nebraska and then he goes on to say that citizens who use them had the lowest accident rates of all, as Senator Landis brought out, handicapped drivers and that there was testimony I think from Mr. Kunz at that time who represented the optometrists association in favor of. And I guess another thing that when we talk about the safety features of the bill in addition to the fact that we have the annual license review and renewal process that they have to go through, we're talking here about people who have been drivers for a period of years in many cases and who have by their accident record shown that they are responsible drivers. We also had the vision specialist as a part of the bill who will be helping to make that determination as to whether or not they really can drive on the highways. I can read you a few excerpts from some of the letters that I have received here and this is an example. This person says, permission to drive under this bill will derive from the expert opinion of the state ophthalmologists and optometrists. We feel this authority should rest with medical professionals and not with administrative personnel. Another one says, I'm a licensed bioptic driver in the State of Nebraska. My driving record is unblemished. A licensed ophthalmologist has certified that my visual acuity is adequate for driving purposes. My license is essential to me, both professionally and personally. So these are the things that we have to balance, folks, when we're looking at this whole piece of legislation, the fact that some provisions have been made to assure safety and the welfare of all of the public on the roads and also for the fairness as far

as these people are concerned. So those are the things we'd like to have you look at. Thank you. I'd like to, I don't know who is up next, but if Senator Robak would like to have the remainder of my time, you're welcome to take that, Senator Robak.

SPEAKER BARRETT: Approximately two minutes.

SENATOR ROBAK: Thank you, Senator Smith. Senator Landis, in answer to some of your concerns where you said that drivers are going to be trained, they have to drive to prove their driving ability in LB 742. That is one of the stipulations, they have to drive just like any other driver. They must drive to prove their...they have to drive before the examiner. And the bottom line there again is that the examiner would deny or grant the license and not a doctor or optometrist's statement, it would be the examiner. And authority would be given to the Department of Motor Vehicles there in this instance. The one the Governor vetoed was the one that had the standards set by the doctor or optometrist with a certificate saying that they were able to drive.

SPEAKER BARRETT: Thank you. Have you finished?

SENATOR ROBAK: Thank you.

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

SENATOR BERNARD-STEVENS: Senator Robak, would you yield just to a quick question?

SPEAKER BARRETT: Would you respond, Senator Robak?

SENATOR BERNARD-STEVENS: And I'll give you an out, I think, by the way I ask the question, so it should be a relatively friendly one. You mentioned in your opening that the 2,700 Nebraskans who could be affected by the bill were able to have their license until a new administration came along and, obviously, we're talking about the Orr administration and Department of Motor Vehicles and then they changed the law. In many cases, but not in all cases, and there's your cut, in many cases, but not in all cases there is a rationale for change. Do you know if there was any real rationale and, if so, what was that rationale for making the change on the licensing procedure?

SENATOR ROBAK: The new administrator did not believe in the use of bioptic or telescopic lenses, to my opinion.

SENATOR BERNARD-STEVENS: And it's that simple?

SENATOR ROBAK: Yes, yes.

SENATOR BERNARD-STEVENS: Okay.

SENATOR ROBAK: There was a change of administration and then they changed the rules and their policy. We did not change the law. There has never been a law in statute.

SENATOR BERNARD-STEVENS: Okay, thank you. Mr. President, that is all I have. Thank you.

SPEAKER BARRETT: Thank you. Further discussion, Senator Withem, followed by Senators Lynch and Robak.

SENATOR WITHEM: Yes, Mr. Speaker, members of the body, thank you for the opportunity to speak on this. I'm sorry I was not here earlier this morning when it was first introduced. Maybe a lot of this has been covered, but if it isn't...hasn't, I'd like to share with you some of the background on this type of legislation. Along about the time this gentleman by the name of Mr. Kennedy came to his position in the administration and I think probably to, you know, characterize it as the Orr administration might be somewhat unfair to the Governor. I don't think she had any direct actions involving this. But about the time he became director of the particular division over there that he did, he interpreted the rules and regulations and the law to not grant him the ability to grant these waivers that he had before, I think was, you know, the technical justification that he used. I think Senator Robak's discussion of the motivation is probably accurate but his technical rationale was that he just did not read the statute to grant him the authority to give waivers. Prior to that time these people had been driving, I guess, is the key point. A number of us in here began getting contacted. I was one, I know both Senator Robak and her predecessors up in Columbus were contacted, Senator Schmit. Other people were contacted by individuals who had been lifelong safe drivers, did, in fact, have some problems with the vision requirements that currently existed, but they had driven for years and years without accidents, without

problems, that there was no difficulty that had been demonstrated. Merely by a...merely by a new interpretation by a division head in the Department of Motor Vehicles, we had these people have their lifestyles altered considerably. So we come in with legislation, I think Senator Johanns also was involved in this particular piece of legislation. We did get involved. We had legislation that did, in fact, pass a couple of years ago, was vetoed as legislation that sometimes passes after we've gone home does get vetoed, and then we came back last year and we had a variety of approaches. This is an approach Senator Robak brought in. I brought in a different approach that would have dealt with this waiver procedure in statutes and this is the bill that is here today. It's not that big a deal. As I understand it, we are not putting unsafe people onto the highways. What we're doing is putting, allowing people that have been able to drive, have been able to meet these vision requirements through previous interpretation of the statutes to continue their lifestyle as they have in the past. I can recall a few years ago getting somewhat upset when it looked like what we were doing was altering the statutes to put new people out on the road that hadn't been able to meet the standards before. My understanding is this doesn't do that. This is a bill that allows those people who were driving prior to this new interpretation of the statutes the right to continue to do that, and I think that is the fair, just thing to do. Too often in here I think the power of government shifts away from those of us that make the laws to those who interpret the laws. I'm speaking with a little more emotion than I might otherwise because this morning I found out that the same department, this Department of Motor Vehicles is doing the same sort of thing in another area that affects the way people do their jobs and carry things out. I think it is perhaps a department of state government that interprets its ability to interpret rules and regulations somewhat broader than they should, that they tend to override legislative intent more often than they should and I think that not only is this is a good bill for the purpose of affecting those people who drive using the use of bioptic lenses, it's also a good bill to...

SPEAKER BARRETT: One minute.

SENATOR WITHEM: ...establish the fact that the Legislature is the body of state government that is to be making laws and not the Department of Motor Vehicles.

SPEAKER BARRETT: Senator Lynch. Question has been called. Do I see five hands? I do. The question is, shall debate cease? Those in favor vote aye, opposed nay. Have you all voted? Please record.

CLERK: 18 ayes, 9 nays, Mr. President, to cease debate.

SPEAKER BARRETT: Debate does not cease. Continuing the voting (sic) order, Senator Beyer, please, discussion on the advancement of the bill, followed by Senators Landis, Schimek and Haberman.

SENATOR BEYER: Mr. Speaker and colleagues, I guess I have heard this same bill for several years on the various committees and Senator Withem did give a scenario as to how this come about. This did come about through the Department of Motor Vehicles several years ago when they made that determination, but if you go and look at the Nebraska Department of Motor Vehicles, their vision standards survey that was handed out to you, it will tell you what states say yes and the testimony seems to be that the majority of the states are saying yes to it. But if you look down to the restrictions that are given by the yeses and also the fact that they only have one or two drivers, it's pretty hard to state any kind of an example of what has went on. The one state, Maine, has got 13 users and three of them have had fatal accidents, so it brought about a moratorium which was just removed. And it says presently only two bioptic users are licensed. So, you know, there is not a whole lot of testimon...or facts, I guess, one way or another as to whether they are safe or aren't safe. The thing that does concern me and I guess it is a concern with everybody, if you don't wear your glasses and you're supposed to while you drive or if they don't wear the bioptic lenses when they drive, just how safe are they? I think Senator Landis made a good point when he said maybe we should restrict it to nighttime (sic) driving and maybe he's got that coming up with some of his discussion, but I still remain opposed to it and will vote no on it, so thank you.

SPEAKER BARRETT: Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I know that the patience of the body is running out on this issue and I'll just take a brief amount of time. There were a couple of things said in defense of the bill that I wanted to respond to because I'm not sure that they accurately characterized what is

in the bill. I understood Senator Robak to say that a driving test is required in the bill. I think that was what I heard. When I look in the bill I see page 2 and it says that the applicant shall satisfy an examiner that they can operate a driving vehicle. That is basic law right now. How many of you have actual road tests when you go back though? In fact, it is a hit or miss proposition, isn't it? They don't test everyone. There is not, if I am mistaken, I want you to read me the sentence because if it's there, I sure want to make sure I get it right. There is no sentence in this bill that says in your annual review you will drive a car and show an examiner. That is not in this bill. Now, it does say that they will satisfy an examiner, but that doesn't require a test. If the examiner doesn't ask for you to drive, then the examiner could be satisfied and that is different than a mandatory test. I want to distinguish those situations. This bill does not require a mandatory test. If I'm mistaken, I want chapter and verse read to me. Secondly, Senator Withem said what this bill does is put drivers back on the road. We would call that a grandfather clause, wouldn't we, where you had a preexisting right taken away and then it was...then those people who had it were given it back? This bill is not a grandfather clause. Senator Withem misstates this bill if he says this only applies to previously acceptable drivers. These are to be the standards from hence forth, not just the drivers of the past. In other words, new untrained people who have not had experience, who have no driving record would be able to qualify under this bill. This is not a grandfather clause. I reject the characterization that this only puts back on the road people who have good driving records. Number one, we don't know that they have good driving records other than the ones you have contacted, and I can sure understand why they would, but we don't have a body of evidence that says that. As a matter of fact, we have a body of evidence that says something different than that. Secondly, it does not apply just to those experienced drivers, it applies to all new drivers. What I am saying to you is this. If you want bioptic lens driving, which I think is reasonable, there should be reasonable limitations. If you are a new driver, there ought to be some training. If you are a driver with...I think daylight driving limitations seemed reasonable. I think a mandatory testing seems reasonable. That is all I wanted to say, and that is that I think there are some characterizations about this bill which are not accurate reflections of what is actually in the bill. This is no grandfather clause and this does not require mandatory testing. Reasonable limitations should be added to

this bill and then it should be passed.

SPEAKER BARRETT: Senator Schimek, please.

SENATOR SCHIMEK: Mr. Chairman and members of the body, I'll be brief. I would just like to say to Senator Robak that I want in the worst way to support this bill. I am going to support it on General File. I think that Senator Landis has raised some additional points to those that were raised earlier this morning and I would just encourage the Senator and others who are interested in this particular bill to go back and see if we can't come up with a few additional safeguards to be written into this bill. And with that, I would like to yield the rest of my time or give the rest of my time to Senator Crosby.

SENATOR CROSBY: Thank you, Senator Schimek. I just wanted to clarify one thing for Senator Smith. What my question this morning had to do, some of the optometrists think that there should be a provision that people who start using telescopic lens should have training in using to be sure that...that is the only thing that I was questioning, and our office will work with Senator Robak to be sure that something like that comes about. Thank you.

SPEAKER BARRETT: Thank you. Senator Haberman, on the advancement of the bill.

SENATOR HABERMAN: Mr. President, members of the body, I had the opportunity over the noon hour to gather some additional information pertaining to LB 742 and I was told that at the present time there is a case in the federal courts that has been filed in Omaha pertaining to this issue. So that raises the question to me, should we be trying to decide this now and influence the decision of the courts? I also was informed that back in possibly 1970 or 1978, and we are searching for the Attorney General's Opinion that stated words to the effect that the authority given to the medical profession in this bill is unconstitutional as you cannot give a medical profession or entities such as that the authority to direct a state agency or to direct the motor, the vehicle motor department of Nebraska. So I bring these two issues up to show that possibly we have some more information to gather on this legislation and quite possibly we should not advance the bill or lay it over to another time. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Smith. Senator Jacklyn Smith, followed by Senators Moore and Lynch.

SENATOR SMITH: Thank you, Mr. Speaker. I'd like to have a conversation here with Senator Landis, if I might. Senator Landis, would you look, and I'm serious about this, would you look on pages 4 and 5 of the bill because I'd like to have you...I'm just reading this bill through again and can you, if you will quickly just read through, starting on line 6, section (b), all the way down to section (c) there.

SENATOR LANDIS: Let me see if my characterization agrees with yours. The Department of Motor Vehicles could require people who have defects to be tested at any time if they have reason to suspicion that they can't drive well. It is an act of discretion by the department that the department could exercise. Is that a characterization you agree with?

SENATOR SMITH: Do you agree with that? Okay.

SENATOR LANDIS: That is what I see when I read that.

SENATOR SMITH: All right, so that is how I read it also, and so I guess what I am trying to say here is that they already have the capability to require them to take the driving test.

SENATOR LANDIS: If I could just briefly respond. Number one, it is a discretionary act that is not mandatory and, secondly, if they start doing this, if I understand correctly, Ron Withem is going to be in here arguing that the Department of Motor Vehicles is doing too much legislating and not listening to our orders. If we think it's fair, I think we ought to put it into law that there is a mandatory road test.

SENATOR SMITH: Okay, now then look back on page 3, at the part we discussed a little while ago when I pointed out to you where it says, I guess starting on the bottom of page 2 where it says if a vision aid is used by the applicant to obtain the vision requirements pursuant to this section, the operator's license to the applicant shall be restricted to the use of such vision aid when operating the motor vehicle. If the applicant fails to meet the vision requirements, the license examiner shall require the applicant to present an optometrist's or ophthalmologist's statement certifying the vision readings the applicant has obtained when testing the applicant within 90 days of the

applicant's license examination. If such vision reading meets the vision requirements prescribed by the department in such rules and regulations, then the vision requirements shall have been met for purposes of this section. Can't that be construed to mean that if the bottom line, as she said, is that if they...the person who is doing the testing feels that they have not met the requirements set out by the rules and regs of the department, then again, the bottom line is that they can reject them?

SENATOR LANDIS: No, I don't think that is a fair characterization, but I do think...let me just counteroffer what I think it says. The department does get to set the standards. Once those standards are set you may meet those standards either by an examination before the Department of Motor Vehicles in one of their eye testing places or, in the alternative, a note from your doctor that indicates that in the doctor's office you've taken those and met those standards which the department has absolute power to create.

SENATOR SMITH: Okay, now wait a minute. It says if the applicant fails to meet the vision requirements, the license examiner shall require them to present an ophthalmologist's statement. So evidently in my interpretation they have already tried to meet the requirements by taking the test and they have not met their...what they interpret to be the requirements, so now they are saying it's okay now, if you want to contest this, then you bring me a statement from an ophthalmologist or an optometrist.

SENATOR LANDIS: Right. You go to DMV, you fail the eye test, you go to your own doctor. If your own doctor's test will say you have met the requirements, you can get licensed.

SENATOR SMITH: Then you bring it back to them, don't you?

SENATOR LANDIS: Right. And that's sufficient.

SENATOR SMITH: And then they determine whether or not it meets requirements.

SENATOR LANDIS: No, no. If the requirements are met, this indicates that they get their license. In other words, if your doctor will say you meet the standards that you couldn't prove at the Department of Motor Vehicles you could prove, you get

your license. That's the way I read it.

SENATOR SMITH: Okay.

SENATOR LANDIS: And if it doesn't say that, I'm (interruption)...

SENATOR SMITH: Okay.

SENATOR LANDIS: ...some clarification.

SENATOR SMITH: Okay, thank you. And I'll relinquish the rest of my time to Senator Lamb.

SENATOR LAMB: Yes, Mr. President. You know, I'm surprised that this bill has taken so long because this does what was common practice up until just recently. It was the way the motor vehicles was interpreting the law. We've got people that have driven with these lenses for years and years and years with no problems and then suddenly because of a change of personnel in the Department of Motor Vehicles, then...

SPEAKER BARRETT: One minute.

SENATOR LAMB: ...it's no longer possible. Other states are doing it. I think we're making a mountain out of a molehill. In committee, we heard people say that it's common practice in other states. We heard people testify that they have driven with these devices for years. It's not endangering the people and I guess I'm just amazed that there is so much opposition or conversation, I should say, about the bill. I would hope that we would advance it.

SPEAKER BARRETT: Thank you. Senator Moore.

SENATOR MOORE: Yes, Mr. Speaker and members, I share Senator Lamb's frustration over this bill. It appears that, you know, Senator Schimek and Senator Landis and Senator Wesely and Senator Crosby, the Lincoln area senators and Senator Haberman choose to take a lot of time with this bill and that is perfectly within reason. I know that they have some concerns even though they have yet to convince me that they are valid concerns. I know Senator Haberman and others have tried to use the old smoke screen argument of planning seed of doubt. I don't think those...some of those concerns have been valid. I

think Senator Landis has some points of view that maybe deserve some consideration. He has yet to convince me that they are worthy of that, but they are definitely valid. I urge us to advance the bill and give the balance of my time to Senator Schmit.

SPEAKER BARRETT: Thank you. Senator Lynch. I'm sorry, Senator Schmit, approximately four minutes.

SENATOR SCHMIT: Mr. Speaker and members, I agree with what Senator Moore has said and particularly Senator Lamb and others and Senator Robak. I'm amazed also that this bill takes so much time. There has not been a problem, there was never a problem with these drivers on the road until there was a change in the Department of Motor Vehicles. Something which ought to have been taken care of by a phone call has become a major point of contention and a major point of division on this floor. I don't believe that any of us had tried to promote those individuals who are not safe on the highway and Senator Landis raises the question as to whether or not they are required to take a driving test. It is my understanding that the drivers' license examiner can require that which he deems necessary to convince him or her that a person is safe on the highway. If they cannot meet that kind of examination, that person will be denied a license. We have every reason to have confidence in those examiners. I have not found them to be persons who have wantonly allowed people to drive on the highway and I have from time to time had them come to me in regard to a constituent who wanted to drive and told me very frankly that the person would be contacting me to get him a driver's license. And I have always said, you know, the final decision rests with the examiner. If that person thinks that one of us is not qualified to drive, then we ought not to drive. These individuals themselves would not want to drive if they were not qualified. And there was a question on the floor as to the peripheral vision of these individuals and I want to point out again, at that time I said that is easily solved by turning their heads, the same as the rest of us do, and it isn't quite the same thing and I don't want to be facetious about it, but the point is this. These people are responsible people, they have a responsible driving record. You can pick any one of us out and the older I get, the more cognizant I am of my vulnerability. But I would hope that my good friend, Senator Haberman, would recognize that also. Rex, we're not getting any younger. The point I want to make is that these people have a legitimate,

rightful reason to drive. Driving is not a privilege, but they have a rightful reason to drive and they have a reason why they have a right to drive and they have not been flagrant in their abuse of the privilege, and any reasonable examination, they will not object to. But it should not be an arbitrary and capricious decision by an individual who works for the State of Nebraska, and I get completely bent out of shape frequently because individuals who are our hired people, they are our hired men and women, consistently come back to me and say, well that isn't what the law says, when I sometimes wrote the law, I wrote the statute. And I'm getting tired of it and I'm getting aggravated and I'm going to be more so as time goes by because there isn't any reason why one individual can arbitrarily decide that a group of people no longer can drive and...

SPEAKER BARRETT: One minute.

SENATOR SCHMIT: ...get away with it and I don't think any of us should allow it to happen. Senator Landis, any reasonable requirements, I will agree to, they will agree to, and you are right to ask for it and you are always a fair person and an understanding person. But the capricious denial of the license should not be allowed by this Legislature. Thank you.

SPEAKER BARRETT: Thank you. Senator Lynch.

SENATOR LYNCH: Mr. President, members, I called the question twice, you wouldn't listen to me so now you are stuck, I'm going to say something. First of all, I'd like to mention that fair and honorable and well-spoken Senator Landis missed the mark when he referred to what he thought Senator Withem meant. I haven't talked to Senator Withem about this but, as I understood Senator Withem, he mentioned simply a category of people in the context that these are the group of people that a bureaucrat with a stroke of a pen decided was no longer going to drive. And probably that bureaucrat used the general counsel in his own department because they all have lawyers, some coming out of their ears, to give them advice on whether to do this or not. So I don't think anything about grandfather was mentioned, or mother, for that matter. And so that is not in question at all. What concerns me about this is why pick on these people? These people are willing to take a test and probably have the ability to drive qualified by when they drive, daytime or nighttime, but we're not talking about other people who are not even considered at all. And I don't want to suggest we do that

either. But, for example, borderline Alzheimers who have eye problems; borderline Parkinson disease folks; people that just get old and can't remember. I could go on and on with a whole litany of people who probably should be qualified to drive, but aren't. So why are we spending all of this time picking on those that want to drive that can wear glasses to do it adequately, they are willing to take an examination and do it and I think we should build into it reasonable guidelines as to how it should be accomplished and those people affected by this law are willing to do that. This is a reasonable law and it's silly, if not stupid, that we have to take the time like we have today to override some decision by a bureaucrat who should have asked somebody who passed the laws in the first place whether they thought it was right or not, causing us to take this time. I think it's an unfortunate exercise we're going through. We're serving nobody's best interests at all and I think we ought to get on with the vote and pass the legislation.

SPEAKER BARRETT: Thank you. Senator Lamb, followed by Senator Haberman. Senator Lamb. The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President, members of the body, I have located, I shall be passing out to you, as soon as it is copied into 55 copies, the Attorney General's Opinion that was issued on this specific question and bill that it is indeed unconstitutional to grant the authority to the medical profession to make this decision. So I would ask you to do whatever you have to do and, as soon as I get those 55 copies, I'll pass it out so you can read it yourself. I'm sorry I can't read one to you, but that is exactly what it says, so I'll pass them out. Thank you.

SPEAKER BARRETT: Further discussion, Senator Schmit.

SENATOR SCHMIT: Would Senator Haberman yield to a question? You mentioned the court case and I'm sorry I was not listening now. Was that what you were referring to just now?

SENATOR HABERMAN: Senator Schmit, I was told during the noon hour that a court case has been filed in federal court by two citizens to have the federal court rule that they could indeed be given drivers' licenses with these special lenses.

SENATOR SCHMIT: Well, what...I guess I don't know what possible reason that would have for us to hold up on the passage of this

bill. Is the court going to be better able to determine the qualifications of these two particular drivers than the license examiner who has them physically in front of him?

SENATOR HABERMAN: No, but, Senator Schmit, it might save another court case.

SENATOR SCHMIT: Okay, thank you, Senator.

SENATOR HABERMAN: I've heard you address here before on this floor, Senator Schmit...(interruption)

SENATOR SCHMIT: Wait a minute, Senator, I'm on my time...(interruption)

SENATOR HABERMAN: ...because something is in the court, maybe we should back off and wait a few...oh, am I using your time?

SENATOR SCHMIT: No, no, no.

SENATOR HABERMAN: Oh, that's all right, go ahead.

SENATOR SCHMIT: Push your button. Push your button, Senator.

SPEAKER BARRETT: Senator Schmit, this is your time, your floor.

SENATOR SCHMIT: Yes, thank you, Mr. Speaker, I'm glad you're on my side. I need the help. I just want to say this. Senator Haberman is saying there is...two people have filed in the federal court. Now I have a high respect for the judiciary, as I'm sure we all do, but I am sure that the judiciary are not going to say, we're going to let that person drive even though the drivers' license examiner says no. I'm willing to let the examiner be the final determinant and I think the people who use these additions to their spectacles are willing to do that also. I don't think we need to wait for any federal court decision and I think that we can resolve the issue here. We say, okay, if they meet the certain standards, they can drive and that ought to be good enough. There is no reason for us to harass and impugn the ability of these individuals. Senator Lynch, I think, raised an excellent point. There are many individuals, I have a relative who is an epileptic. That person has to subject themselves to certain restrictions if they have a seizure because if they go seizure free for a year, they are not restricted in their driving capacity, notwithstanding the fact

that there is still always that possibility of a seizure and so that individual and those persons who have that affliction have to live with it. There is a certain risk involved and the department understands that, we understand it, the highway patrol understands it, the drivers' license examiner understands it. Those are restrictions. Very few of us are perfect drivers in every way and shape, therefore, I would suggest these persons have demonstrated their capacity to drive, their careful driving record and their willingness to subject themselves to examinations and certifications that they can drive, that ought to be good enough. Thank you.

SPEAKER BARRETT: Senator Lynch. Senator Lynch again moves the previous question. Five hands, please. Do I see five hands to cease debate? Thank you. The issue is not debatable. Do you wish to cease debate or not? Those in favor vote aye, opposed nay. Please record, Mr. Clerk.

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

SPEAKER BARRETT: Debate ceases. Senator Robak, would you care to close on the advancement of LB 742?

SENATOR ROBAK: Yes, thank you, Mr. Speaker, and members of the Legislature, in closing, I would just like to state that the only thing that the bill is stating in reference to the handout that Senator Haberman passed out on the floor is that the doctor can measure whether the driver has met the Department of Motor Vehicle standards. A doctor can measure whether the driver has met that. He doesn't set the standards. And in closing also, I'd like to say that those of us here today, we can get in our cars and we have the privilege to drive home. We can get in our cars and we can drive to work tomorrow morning, these people do not. They can't even take the test to drive and those of us that aren't driving under suspension, when the Legislature ceased last May I was down to two points because I paid my speeding tickets rather than fight them in court, as some senators do. So I was down to only two points, but I have had some of them reinstated, but I still have my privilege to drive. These people don't have their privileges to drive, and we should realize that they are required to do that too. Thank you. I move the bill.

SPEAKER BARRETT: Thank you. You've heard the closing. The question before the body is the advancement of the bill to

January 10, 1990

LB 662, 742, 1098
LR 238

E & R. Those in favor please vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 32 ayes, 4 nays on the advancement of 742, Mr. President.

SPEAKER BARRETT: LB 742 is advanced. For the record.

CLERK: Mr. President, new resolution, LR 238 by Senator Chambers. (Read brief description. See page 269 of the Legislative Journal.) That will be laid over.

Mr. President, hearing notice from Health and Human Services and from Education and Revenue, signed by their respective Chairs.

And, Mr. President, new bill. (Read LB 1098 by title for the first time. See page 270 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Moving to the next bill on General File, Mr. Clerk, LB 662.

CLERK: Mr. President, 662 was a bill introduced by Senator Scofield and Chizek, Coordsen, Wesely, Landis, Barrett, Pirsch, Labedz, Baack, Smith, Moore and Bernard-Stevens. (Title read.) The bill was introduced on January 19 of last year, Mr. President. It was referred to the Health and Human Services Committee for public hearing. The bill was advanced to General File. I do have committee amendments pending by the Health and Human Services Committee.

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

SENATOR WESELY: Thank you, Mr. Speaker. If I could, I'd like to ask that the committee amendments be divided into two parts. There are two distinct sections and I'd like to take them up individually if you don't mind.

SPEAKER BARRETT: Mr. Clerk.

CLERK: Senator, just so I know, just divide them where they...

SENATOR WESELY: There is two new sections, take the first...

January 18, 1990

LB 37, 50, 159, 259A, 409, 422, 465
503, 503A, 543, 662, 742, 953, 1220-1242
LR 8, 244, 245

not, the question is the advancement of the A bill. All those in favor vote aye...say aye. Opposed nay. It is advanced. Mr. Clerk, do you have anything for the good of the cause?

CLERK: Mr. President, I do. Mr. President, your Committee on Retirement Systems, whose Chairperson is Senator Haberman, to whom was referred LB 953, instructs me to report the same back to the Legislature with the recommendation it be advanced to General File. That is signed by Senator Haberman. (See page 397 of the Journal.)

Mr. President, I have a series of hearing notices from Judiciary Committee, Appropriations Committee, Health and Human Services and Revenue, all signed by the respective chairs.

Mr. President, Senator Kristensen has amendments to LB 159 to be printed. Enrollment and Review respectfully reports they have carefully examined and reviewed LB 37 and recommend that same be placed on Select File; LB 742, LB 662, LR 8CA, LB 50, LB 543, LB 422, LB 409, LB 503, LB 503A, and LB 465 all to Select File, some of which have Enrollment and Review amendments attached. (See pages 398-408 of the Legislative Journal.)

Mr. President, new bills. First of all, Mr. President, two constitutional amendments, LR 244, offered by Senator Schmit. And LR 245 offered by Senator Hefner. (Read brief summary of resolutions. See pages 408-11 of the Journal.)

Mr. President, new bills. (Read LBs 1220-1242 by title for the first time. See pages 411-17 of the Legislative Journal.)

Mr. President, reminder, Reference Committee will meet at three-thirty today in Room 2102, Reference Committee at three-thirty in 2102. A final reminder, Mr. President. Chairmen's meeting tomorrow morning at nine...I'm sorry, at eight-fifteen in Room 2102, Chairmen's meeting, eight-fifteen, in 2102. That's called by the Speaker. That is all that I have, Mr. President.

PRESIDENT: I understand that we have 434 new bills introduced this year. This is the last day, of course. So you might be interested in that. Senator Baack, you're close to your microphone, would you like to adjourn us until nine o'clock tomorrow morning, please.

January 26, 1990

LB 163, 359, 662, 720, 742, 871, 1022
1063, 1070

open to it certainly. In fact, it used to become an issue in confirmation, as I recall, on some of the various appointed boards as to which side they were on. I think, as I've said several times now I guess, that it's important to retain that responsibility with an elected official who does not initiate them, but only has that review authority to say no to a particular contract and I think that protection ought to be there for the state as well as for the employees who are covered by those plans.

PRESIDENT: Thank you. Senator Warner was closing on the indefinite postpone motion and the question is, shall LB 359 be indefinitely postponed? All those in favor vote aye, opposed nay. Simple majority. Have you all voted? Record, Mr. Clerk, please.

CLERK: 18 ayes, 2 nays, Mr. President, on the motion to indefinitely postpone the bill.

PRESIDENT: LB 359 is indefinitely postponed. Mr. Clerk, anything for the good of the cause?

CLERK: Yes, Mr. President, I do. Senator Wesely has amendments to LB 720 to be printed, and to LB 742. Senator Rod Johnson has amendments to LB 163 and Senator Labedz to LB 662. (See pages 542-45 of the Legislative Journal.)

Health and Human Services Committee reports LB 871 to General File, LB 1022 to General File, LB 1063 and LB 1070 to General File, those signed by Senator Wesely as Chair. (See page 545 of the Legislative Journal.) I believe that's all that I have, Mr. President.

PRESIDENT: Senator Emil Beyer, would you like to adjourn us until Monday, the 29th of January at nine o'clock, please.

SENATOR BEYER: How about adjourning sine die? No, I would move that we adjourn until nine o'clock on Monday.

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

Proofed by:


Sandy Ryan

introduced and there was a considerable amount of discussion. Although my bill was killed, many of the things that was in my bill has been incorporated here and I think that it's a fine compromise, one that I'm comfortable with even though my bill is not reflected here and has been disposed of. Otherwise, I think that Senator Lynch has a bill that has been well thought out and certainly is one that I'm comfortable with, particularly coming from somebody who had a, what I would say, a companion or a comparison bill in effect at the time. So I would also urge the adoption and moving this bill along. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Anything further, Senator Lynch? Thank you. The question is the advancement of 551 to E & R. All in favor vote aye, opposed nay. Voting on the advancement of the bill. Have you all voted? Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the motion to advance LB 551.

SPEAKER BARRETT: Motion prevails. The bill is advanced. To Select File, Mr. Clerk.

CLERK: Mr. President...

SPEAKER BARRETT: Excuse me, proceed.

CLERK: The first order, LB 742. I have Enrollment and Review amendments pending, Mr. President.

SPEAKER BARRETT: Senator Hall, would you handle the E & R amendments, please.

SENATOR HALL: Mr. President, I'd move the E & R amendments to 742 be adopted.

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

CLERK: Mr. President, the first amendment I have to the bill is by Senator Wesely. The amendment is on page 543 of the Journal.

SPEAKER BARRETT: The Chair recognizes Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker, members. This amendment would restrict the use of these bioptic lenses to daylight hours. The discussion we had on General File concerned a number of different restrictions other states had in place that did allow for the use of bioptic lenses. One of those dealt with training and testing that Senator Crosby was interested in and then the other one dealt with the question of daylight restrictions that Senator Landis and I were interested in as well. And so the concept would be to allow these individuals with some restrictions of the use of bioptic lenses to drive and certainly it would make some sense looking at what other states have done to limit this to daylight hours. This is an inconvenience I know to these people, but in terms of safety it would very much improve, I think, concerns that some of us have about the safety of the measure, so I would ask for the adoption of the amendment.

SPEAKER BARRETT: Thank you. Discussion, Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, if you'll remember, the material handed out by Senator Robak on General File, the material from the optometrists themselves indicated that these mechanisms or devices were effective, but specifically related to the daylight hours and it was because of that that a number of states have made exactly this exception. I support the amendment and I hope the body will as well. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Wesely, any closing? Thank you. The question is the adoption of the Wesely amendment to LB 742. All in favor vote aye, opposed nay. On the amendment to 742. Have you all voted? Have you all voted? Record, Mr. Clerk. Senator Wesely. Excuse me, a request for...?

SENATOR WESELY: Call of the house.

SPEAKER BARRETT: Call of the house. The question is, shall the house go under call? All in favor vote aye, opposed nay. Record.

CLERK: 15 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to the Chamber, record your presence. Unauthorized

February 6, 1990

LB 164, 663, 742, 1059, 1064, 1140, 1238
LR 251

personnel please leave the floor. Senator Lamb, Senator Abboud, Senator Morrissey, please. Senator Moore, the house is under call. Senator Goodrich, please report your presence. Senator Schmit, please check in. Senator Goodrich, please. Senators Chambers and Moore, the house is under call. Senator Moore, would you check in, please. May we proceed, Senator Wesely? A request for a roll call vote in reverse order and the question is the Wesely amendment to LB 742. Mr. Clerk, proceed.

CLERK: (Read roll call vote. See pages 681-82 of the Legislative Journal.) 15 ayes, 17 nays, Mr. President.

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

CLERK: Mr. President, priority bill designation by Senator Wesely for the Health Committee, LB 1064.

Mr. President, new resolution offered by the LR 232 Special Committee. It is signed by Senators Schmit, Baack and Lynch. (Read brief description of LR 251CA. See pages 682-84 of the Legislative Journal.) That will be referred to Reference Committee.

Mr. President, Senator Withem would like to add his name to LB 1140; Senator Dierks to LB 1238, Senator Dierks to LB 1059 and Senator Beck to LB 164. (See page 684 of the Legislative Journal.)

Mr. President, Senator Scofield has amendments to be printed to LB 663. (See pages 684-85 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Senator Landis, your light is on.

SENATOR LANDIS: Let ask what's on the...the board reveals that there is an amendment. Is there an amendment for the body...

SPEAKER BARRETT: No.

SENATOR LANDIS: It's just the bill, right? Let me take just...

CLERK: I have an amendment to the bill.

SPEAKER BARRETT: I'm sorry, we're between amendments.

February 7, 1990

LB 542, 742

that reason, taking that 30 or 40,000 times each of the six years, there is additional cost to the Medical Center and, really, they are getting no benefit for it. It's a good bill. I would ask that the bill be advanced to Select.

SPEAKER BARRETT: Thank you, sir. Any discussion on the advancement of the bill? If not, those in favor of the advancement of LB 542 to E & R Initial vote aye, opposed nay. Shall LB 542 be advanced? Record, Mr. Clerk.

CLERK: 26 ayes, 0 nays, Mr. President, on the motion to advance LB 542.

SPEAKER BARRETT: LB 542 is advanced. The Chair is pleased to note that our doctor of the day, under the north balcony, is Dr. Barry Hoover from Lincoln. Thank you for being with us, Dr. Hoover. (phonetic) Mr. Clerk, proceeding to Select File, LB 742.

CLERK: Mr. President, 742 was discussed yesterday. E & R amendments were adopted. I now have pending an amendment to the bill by Senator Robak. (Robak amendment appears on page 700 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Robak.

SENATOR ROBAK: Thank you, Mr. Speaker. The amendment to 742 is on page 2, line 4 and on page 4, line 22, it is just technical clarification, strike "shall be measured" and insert "may be obtained".

SPEAKER BARRETT: Any discussion? If not, those in favor of the adoption of the Robak amendment to 742 please vote aye, opposed nay. Have you all voted? Record, please.

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

SPEAKER BARRETT: The amendment is adopted.

CLERK: Mr. President, Senator Crosby would move to amend the bill. (Crosby amendment appears on pages 700-01 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Crosby.

SENATOR CROSBY: Thank you, Mr. Speaker and members. My amendment has been passed out to you, number AM2431, having to do with LB 742. I am for this legislation, I want to make that clear to start with, that I'm not trying to stop the legislation. The only thing that I have added to it in this amendment, two things. The person who renews...this on page 1, has to demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (2) of Section 60.4,114. On page 2 we have added, only at the discretion of the examiner, "except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license." And the second addition to the bill in this amendment is on page 3, section 2, we insert on page 2, line 23, after the period, "any such person shall be required to appear annually before an examiner to demonstrate his or her ability to drive and maneuver a motor vehicle as a condition of renewal of his or her operator's license." In this particular group of people they have a unique...

SPEAKER BARRETT: Excuse me, Senator Crosby. (Gavel.)

SENATOR CROSBY: Thank you. In this particular group of people you have a unique eye problem, sight problem and it seems only fair that they should be required to, every year, to demonstrate that they are still seeing as they were the year before. I...one optometrist in particular is particularly interested in testing and being shown how to drive and when they use the bioptic lens, so I think these two things, having to appear annually and having to demonstrate his or her ability to drive will correct any problems and I think it's a help to those drivers too to have that confidence each year, that they are still able to function and that their eyesight hasn't changed. I know most of them probably have annual eye checks and that kind of thing, but I do think for the safety of everyone on the road that this amendment would be very helpful to this bill and I urge you to vote for it. Thank you.

SPEAKER BARRETT: Thank you. Discussion on the Crosby amendment, Senator Robak.

SENATOR ROBAK: Thank you, Mr. Speaker and members, I would like to thank Senator Crosby for working with me on this amendment

and this bill, and Senator Wesely for working with us on this bill also. I support Senator Crosby's amendment. I'd like to explain though why I opposed Senator Wesely's amendment yesterday and it was the fact that I object to a blanket denial to these applicants to get a driver's license because one or two may be qualified to drive at night, and this would deny those one or two persons the right to, the privilege to get a driver's license at night, so it is left to the discretion of the examiner in the long run anyway to deny or grant that driver's license. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Crosby, would you care to close?

SENATOR CROSBY: Thank you, Mr. Speaker, no, I don't think I need to say anything further, just ask you to vote for the amendment. Thank you.

SPEAKER BARRETT: Thank you. The question before the body is the adoption of the Crosby amendment to LB 742. All in favor vote aye, opposed nay. Please record.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of Senator Crosby's amendment.

SPEAKER BARRETT: The amendment is adopted.

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

SPEAKER BARRETT: The Chair recognizes Senator Wesely. (Wesely amendment appears on page 701 of the Legislative Journal.)

SENATOR WESELY: Thank you. Mr. Speaker, members, in recognizing yesterday we had the amendment up that I offered to require that these bioptic lenses only be utilized during daylight, as you recall in the discussion we had found a number of states that had taken that step. Senator Robak has objected to that based on the blanket restriction to not allow outside of daylight. What this would do is instead of shall be restricted to daylight, they may be restricted to daylight hours by the director. I think that's very appropriate. These are very limited vision individuals and I understand the desire that they have to drive, but at the same time we have to understand the desire of the public to be safe and to have individuals on the

road that are able to drive safely, and to balance off those two concerns this would allow the director under certain circumstances to restrict to daylight only and it seems to make sense to me and I haven't had much of a chance to talk to Senator Robak about it, but I would encourage support for this amendment. I believe that it would make the bill palatable and with it we could proceed with the legislation.

SPEAKER BARRETT: Senator Hall, would you care to discuss the amendment?

SENATOR HALL: Thank you, Mr. President, members. Senator Wesely, would you yield to a question?

SPEAKER BARRETT: Senator Wesely, would you respond.

SENATOR WESELY: Sure.

SENATOR HALL: Senator Wesely, how does this differ from the amendment that you offered yesterday?

SENATOR WESELY: Well, yesterday I said they could only drive during the daylight. This says that they may be restricted to only daylight.

SENATOR HALL: And who would make that restriction?

SENATOR WESELY: The director.

SENATOR HALL: And what criteria would the director use in order to make that distinction?

SENATOR WESELY: I guess in the testing and the application process they would have to determine who would have the ability to drive at night and who would not.

SENATOR HALL: So in other words, this individual could pass the test, be eligible to drive, but if the director found it were then his or her purview to say I don't think that these individuals should be allowed to drive at night, could "blanketly" then limit these individuals to daytime driving. Is that correct?

SENATOR WESELY: I don't know about "blanketly". It would be on a case by case basis.

SENATOR HALL: But if they had made that determination they felt they should be limited to daytime driving then they could very well, with this amendment, limit those individuals to daytime driving.

SENATOR WESELY: Yeah.

SENATOR HALL: Thank you. Mr. President and members, I would rise to oppose Senator Wesely's amendment. I see no problem with the amendment that was just adopted that was offered by Senator Crosby and was endorsed by Senator Robak in this bill. I don't think that there is a problem with these individuals meeting the criteria that is laid out in the bill especially with the Crosby amendment that requires the annual testing and review. I have not...I happen to know a couple of people who use bioptic lenses and drive and in most cases, clearly, probably not all, as many of us here have problems with seeing from time to time for various reasons, they do a good job of maintaining their license, maintaining the rules of the road and know that they have a problem in this area. I mean, the bioptic lenses give them the opportunity to be mobile. They are people who without this, I think we would again be discriminating against these individuals and, as you know, many other states, even though there are a couple as Senator Wesely rightly pointed out, who do limit to daytime driving, the vast majority of states do not have that limitation. I would urge you not to adopt Senator Wesely's amendment because then what you have done is basically placed the ability for this decision, you've taken it away from the driving examiner and you've given it to whoever the Director of the Department of Vehicles may very well be, not saying that they would have a predetermination on how this might be handled, but clearly you have circumvented the whole intent of Senator Robak's bill because you've now then placed it, the issue of whether they drive during the day, only in the hands of one person who could very well not be trained in this area at all. I would urge you to reject Senator Wesely's amendment. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Robak, discussion?

SENATOR ROBAK: Thank you, Mr. Speaker and members. I also oppose Senator Wesely's amendment. I would like to leave it as written right now. 742 does allow the discretion of the examiner to deny or grant a driver's license and this blanket

denial could just limit one or two people that perhaps could be qualified to drive at night and it would be up to the examiner in that case. Thank you.

SPEAKER BARRETT: Thank you. Senator Moore.

SENATOR MOORE: Yes, Mr. Speaker and members, I, too, rise to oppose Senator Wesely's amendment. With the Crosby amendment just adopted, these people have to come in every year, take the test and prove that they can drive. I think that was a fair, a fair and rational amendment. Now, Senator Wesely has given it the old college try to try and slow this bill down and he has the right to do that, but the fact of the matter is, if you adopt Senator Wesely's amendment, you're right back in the problem that got us here. To put it quite bluntly, the reason this bill is introduced is because of a basically, in several people's opinion, a bureaucratic decision and with LB 742 we're saying we respect your decision, but we're going to legislatively overrule that saying these people should be allowed to drive. The DMV doesn't want them to. Now Senator Wesely, with his amendment, is trying to put that right back in the hands of the bureaucracy on whether or not these people should be able to drive and when they should be able to drive by putting the word "may" in. Now we defeated the word "shall" yesterday. I think as Senator Wesely well knows, given the DMV's track record on this issue, a "may" is as good as a "shall" and I think we should defeat it again. Thank you.

SPEAKER BARRETT: Thank you. Any other discussion? Senator Wesely, would you care to close?

SENATOR WESELY: Yeah, I certainly enjoyed the comments of Senator Moore and Senator Hall and Senator Robak, I don't know who else, who all opposed... Senator Smith would, if she had the chance, would oppose this amendment. I've got to tell you, it was a trick question. They already have the authority to do this, so I withdraw the amendment.

SPEAKER BARRETT: Thank you. Mr. Clerk, anything further?

CLERK: I have nothing further, Mr. President.

SPEAKER BARRETT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that LB 742 as amended

be advanced to E & R for engrossment.

SPEAKER BARRETT: You've heard the motion to advance LB 742. Those in favor say aye. Opposed no. Ayes have it, motion carried, the bill is advanced. LB 567.

CLERK: 567, Mr. President, I have E & R amendments.

SPEAKER BARRETT: Senator Lindsay, please.

SENATOR LINDSAY: Mr. President, I move that the E & R amendments to LB 567 be adopted.

SPEAKER BARRETT: Any discussion? Seeing none, those in favor of the adoption of the E & R amendments please say aye. Opposed no. Carried, they are adopted.

CLERK: I have nothing further on the bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 567 as amended be advanced to E & R for engrossment.

SPEAKER BARRETT: Is there discussion? If not, those in favor of the advancement of the bill say aye. Opposed no. Ayes have it, motion carried, the bill is advanced. LB 567A.

CLERK: 567A, Senator, I have E & R pending.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move the adoption of the E & R amendments to LB 567A.

SPEAKER BARRETT: Shall the E & R amendments be adopted? All in favor say aye, opposed no. Carried, they are adopted.

CLERK: I have nothing further on the bill, Senator.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Mr. President, I move that LB 567A as amended be advanced to E & R for engrossment.

February 12, 1990 LB 350, 350A, 542, 551, 567, 567A, 602
663, 692, 742, 851, 856, 857, 858
874, 875, 891, 893, 896, 902, 906
907, 918, 924, 930, 940, 957, 964-966
969, 970, 974, 983, 984, 997, 1013
1016, 1017, 1043, 1044, 1118

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Ladies and gentlemen, welcome to the George W. Norris Legislative Chamber and a new day in the Second Session of the Ninety-first Legislature. Our Chaplain of the day is Father Mitch Lindeman of St. Matthews Episcopal here in Lincoln. Father Lindeman.

FATHER LINDEMAN: (Prayer offered.)

SPEAKER BARRETT: Thank you, Father Lindeman, pleased to have you with us. Roll call.

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

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

CLERK: Mr. President, I have no corrections to the Journal.

SPEAKER BARRETT: Are there any reports, messages, or announcements?

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined engrossed LB 350 and find the same correctly engrossed, LB 350A, LB 567, LB 567A, LB 663, LB 692, and LB 742, all reported correctly engrossed, those signed by Senator Lindsay as Chairperson of the Enrollment and Review Committee. (See pages 726-27 of the Legislative Journal.)

Mr. President, Enrollment and Review reports LB 551 to Select File with E & R attached, LB 542, LB 602, LB 858, LB 875, LB 891, LB 1013, LB 983, LB 906, LB 907, LB 984, LB 856, LB 851, LB 957, LB 964, LB 966, LB 997, LB 857, LB 874, LB 893, LB 918, LB 930, LB 970, LB 940, LB 902, LB 974, LB 1016, LB 1017, LB 969, LB 896, LB 965, LB 924, LB 1118, LB 1043, LB 1044,

February 15, 1990 LB 350, 350A, 465, 692, 742

Record, Mr. Clerk, please.

ASSISTANT CLERK: (Read record vote. See page 812 of the Legislative Journal.) The vote is 41 ayes, 0 nays, 1 present and not voting, 7 excused and not voting, Mr. President.

PRESIDENT: LB 465 passes. LB 350.

ASSISTANT CLERK: (Read LB 350 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 350 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote. See page 813 of the Legislative Journal.) 41 ayes, 0 nays, 1 present and not voting, 7 excused and not voting, Mr. President.

PRESIDENT: LB 350 passes. LB 350A.

CLERK: (Read LB 350A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 350A pass? All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote. See page 814 of the Legislative Journal.) 42 ayes, 0 nays, 7 excused and not voting, Mr. President.

PRESIDENT: LB 350A passes. LB 692, please.

CLERK: (Read LB 692 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 692 pass? All in favor vote aye, opposed nay. Record, Mr. Clerk, please.

CLERK: (Read record vote. See pages 814-15 of the Legislative Journal.) 41 ayes, 0 nays, 1 present and not voting, 7 excused and not voting, Mr. President.

PRESIDENT: LB 692 passes. LB 742 with the emergency clause

attached.

CLERK: (Read LB 742 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 742 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote. See pages 815-16 of the Legislative Journal.) 39 ayes, 3 nays, 1 present and not voting, 6 excused and not voting, Mr. President.

PRESIDENT: LB 742 passes with the emergency clause attached. Now we'll go back up and catch LR 8CA.

CLERK: Mr. President, I have a motion on the desk. Senator Chambers would move to return LR 8 to Select File for a specific amendment, the purpose being to strike the enacting clause.

PRESIDENT: Senator Chambers, please.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, in honor of this occasion, I'm wearing a black tee-shirt to symbolize mourning because some rights of the public are about to be buried. Written across the front of it is an appropriate statement, the first thing we do, let's kill all the lawyers. That is from il Henre VI. Some people say the second act of Henry VI, but I like it the way that I said it. Since yesterday before the Judiciary Committee, Congressman Hoagland came and I had the opportunity to dine on poached congressman under glass, I'm in a much mellower mood this morning. I want to be kinder and gentler so, Senator LaVon Crosby, what I want to do is amend this shirt. As you all know, we're all opposed to mob violence and I'm strongly opposed to the death penalty, so the first amendment to my comment is this. We'll half kill some of the lawyers. Do you feel better, Senator Crosby? She said, not much. The reason I don't like this bill, I have stated a lot of times, is because the public is being deprived of a right to appeal to the Supreme Court which they have had since the beginning of the Constitution of this state. I'm not going to take a lot of time, but I wanted to have...express my opposition to this proposal at every opportunity, as I indicated that I would. That having been done, it not being likely that I can change any minds, I will ask, Mr. Chairman, to withdraw that

February 15, 1990 LB 50, 143, 240, 240A, 350, 350A, 465
663A, 692, 742, 1244, 1245
LR 8

takes 30 votes to do this at this time, and then we can go ahead and schedule the hearing and the hearing will be February 26, which is a week from Monday, should these bills be allowed to be introduced. Thank you.

PRESIDENT: Any further discussion? If not, the motion is to allow the introduction of the two bills. All those in favor vote aye, opposed nay. Requires 30 votes. Record, Mr. Clerk, please.

CLERK: 32 ayes, 0 nays, Mr. President, on the introduction of the new bills.

PRESIDENT: The new bills are introduced.

CLERK: Mr. President, new bills. (Read LB 1244 and LB 1245 by title for the first time. See page 820 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and do sign LB 50, LB 143, LB 240, LB 240A, LB 465, LB 350, LB 350A, LB 692, LB 742, LR 8CA. (See page 820 of the Legislative Journal.) We'll move on to General File, A bills, LB 663A.

CLERK: Mr. President, 663A offered by Senator Scofield. (Read title.)

PRESIDENT: Senator Scofield, please.

SENATOR SCOFIELD: Thank you, Mr. President and members. You will recall this is the bill that creates the Juvenile Services Act. The vast majority of the \$581,000 figure in this bill for fiscal year '90-91 and the \$565,928 figure for '90-92, the vast majority of those two fiscal notes are grants that would go out to communities to help them set up alternatives for juvenile incarceration, diversionary processes, if necessary, facilities to incarcerate juveniles. There is...the other piece of this that you need to know about is simply the administrative costs and the primary expenditure here is the \$28,000 figure for a juvenile coordinator with some secretarial support and some start up costs for the office. You will recall we made the decision to put this under Probation so that that could work more closely with the judges to help us solve that problem. It would be my intent that that juvenile coordinator position would

February 15, 1990

LB 42, 50, 143, 159, 240, 240A, 259A
350, 350A, 465, 692, 742, 844, 866
905, 919, 1080A, 1082, 1141, 1183
LR 8, 239, 256

CLERK: (Roll call vote taken. See page 830 of the Legislative Journal.) 2 ayes, 28 nays, Mr. President.

PRESIDENT: The motion fails. Anything for the good of the cause, Mr. Clerk?

CLERK: Yes, Mr. President, I do. Mr. President, Senator Kristensen has amendments to be printed to LB 159; Senator Withem to LB 259A. (See pages 830-32 of the Legislative Journal.)

A new resolution, LR 256 by Senators Wesely, Withem, Bernard-Stevens. (Read brief explanation. See pages 832-33 of the Legislative Journal.) That will be laid over.

An announcement from the Speaker regarding afternoon sessions next Tuesday, Mr. President; a reminder of the membership. Confirmation report from the Nebraska Retirement Systems Committee. That is offered by Senator Haberman.

Bills have been presented to the Governor, Mr. President, as of 10:43 a.m., those read on Final Reading this morning. (Re: LB 50, LB 143, LB 240, LB 240A, LB 465, LB 350, LB 350A, LB 692, LB 742.) LR 8 presented directly to the Secretary of State.

A new A bill, LB 1080A by Senator Schellpeper. (Read for the first time by title. See page 834 of the Legislative Journal.)

Mr. President, Revenue Committee reports LB 844 to General File, LB 919 to General File, LB 1183 General File, and LB 1082 as indefinitely postponed. Those all signed by Senator Hall.

Mr. President, priority bill designations, Senator Byars has chosen LB 905; and Senator Lamb LB 866.

Mr. President, Education Committee, whose Chair is Senator Withem, reports LB 1141 to General File with committee amendments attached, signed by Senator Withem; and Education Committee reports LR 239CA to General File with committee amendments attached. (See pages 834-36 of the Legislative Journal.)

Finally, Mr. President, Senator Rogers would like to add his name to LB 866; and Senators Weihsing, Goodrich, and Coordsen to

February 21, 1990 LB 50, 143, 240, 240A, 350, 350A, 465
642, 692, 742, 1148, 1200

PRESIDENT NICHOL PRESIDING

PRESIDENT: (Microphone not activated) ...George W. Norris
Legislative Chamber. We have with us this morning for our
invocation our own Senator Carol Pirsch. Would you please rise.

SENATOR PIRSCH: (Prayer offered.)

PRESIDENT: (Gavel.) Thank you, Senator Pirsch. We appreciate
that very much. Roll call, please. Mr. Clerk, please.

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

PRESIDENT: Any corrections to the Journal today?

CLERK: No corrections, Mr. President.

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

CLERK: Mr. President, your Committee on Government, Military
and Veterans Affairs, whose Chair is Senator Baack, reports
LB 1200 to General File; LB 1148 as indefinitely postponed.
Those are signed by Senator Baack.

Mr. President, a communication from the Governor to the Clerk.
(Read communication regarding signing of LB 50, LB 143, LB 240,
LB 240A, LB 465, LB 350, LB 350A, LB 692 and LB 742. See
page 882 of the Legislative Journal.)

Mr. President, a series of appointments letters from the
Governor: Those will be referred to Reference.

I have an Attorney General's Opinion addressed to Senator
Schmit, Mr. President. And that's all that I have.

PRESIDENT: We will move on then, ladies and gentlemen, to our
General File and LB 642.

CLERK: Mr. President, LB 642 was a bill that was introduced by
Senators Ashford, Weihsing, Chambers and Crosby. (Read title.)
The bill was introduced on January 19 last year. At that time,
it was referred to Judiciary. The bill was advanced to General
File. I do have committee amendments pending by the Judiciary
Committee, Mr. President.