

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

March 13, 1989

LB 49, 85, 137, 146, 178, 179, 215
293, 345, 377, 387, 424, 434, 463
515, 555, 617, 669, 685, 710, 799
LR 27, 28

Without any further discussion, I believe we should just go ahead and try to advance this bill. Thank you.

SPEAKER BARRETT: Thank you. Any discussion on the advancement of the bill? If not, the question is the advancement of LB 49 to E & R Initial. All in favor vote aye, opposed nay. Shall LB 49 be advanced? That is the question. Record, please.

CLERK: 27 ayes, 0 nays, Mr. President, on the motion to advance LB 49.

SPEAKER BARRETT: LB 49 is advanced. The Chair is pleased to announce that Senator Moore has some eighth graders from Emmanuel Lutheran in York. I believe there are 12 of them in the north balcony, with their teacher. Would you folks please stand and be recognized. Thank you for being with us. Also, Senator Sharon Beck has a special visitor from District 8 this morning, Dr. Paul Paulman, who is here today as doctor of the day. Please welcome Dr. Paulman. Anything for the record, Mr. Clerk?

CLERK: Mr. President, I do, thank you. Retirement Systems reports LB 137 to General File with amendments. That is signed by Senator Haberman. (See pages 1076-77 of the Legislative Journal.)

Transportation Committee reports LB 424 to General File with amendments; LB 799, General File with amendments; LB 146, indefinitely postponed; LB 434, indefinitely postponed; LB 515, indefinitely postponed; LR 27, advanced to the floor, and LR 28, advanced to the floor, all of those reports signed by Senator Lamb as Chair of Transportation. (See pages 1077-80 of the Legislative Journal.)

Natural Resources Committee reports LB 617 to General File; LB 710 to General File; LB 293 to General File with amendments. Those are signed by Senator Schmit as Chair. (Journal page 1080 shows LB 293 as indefinitely postponed and LB 387 as indefinitely postponed.)

Judiciary Committee reports LB 215 to General File; LB 377, General File; LB 669, General File; LB 555, General File with amendments; LB 685, General File with amendments; LB 85, indefinitely postponed; LB 178, indefinitely postponed; LB 179, indefinitely postponed; LB 345, indefinitely postponed; LB 463,

January 22, 1990

LB 240, 567, 769, 799, 830, 842, 857
874, 893, 918, 930, 933, 940, 941
970

Mr. President, amendments to be printed. I have amendments to LB 240 by Senator Baack; Senator Haberman to LB 567; and Senator Emil Beyer to LB 799. (See pages 453-58 of the Legislative Journal.)

Mr. President, I have a confirmation hearing report from the Natural Resources Committee. That's signed by Senator Schmit. (See page 459 of the Legislative Journal.)

Government Committee reports LB 830 to General File; LB 857, General File; LB 874, General File; LB 893, General File; LB 918, General File; LB 930, General File; LB 933, General File; LB 970, General File. Those are all signed by Senator Baack.

Natural Resources Committee reports LB 842 to General File; LB 940 to General File and LB 941 to General File. Those are signed by Senator Schmit as Chair.

Finally, Mr. President, I have amendments to be printed from Senator Scofield to LB 769. (See pages 459-461 of the Legislative Journal.) That's all that I have, Mr. President.

PRESIDENT: The motion is to adjourn and a machine vote has been requested. All those in favor vote aye, opposed nay. Until nine o'clock tomorrow morning. This will take a simple majority. Have you all voted? Record, Mr. Clerk, please.

CLERK: 21 ayes, 7 nays, Mr. President, on the motion to adjourn.

PRESIDENT: We are adjourned until nine o'clock tomorrow. And it's been a very enjoying morning. Thank you.

Proofed by: Arleen McCrory
Arleen McCrory

February 16, 1990

LB 313, 663A, 799, 896A, 902A, 1004A, 1064A
1136, 1219, 1241

PRESIDENT NICHOL PRESIDING

PRESIDENT: Welcome to the George W. Norris Legislative Chamber. We have with us this morning our own Reverend Harland Johnson. Would you please rise for the invocation.

HARLAND JOHNSON: (Prayer offered.)

PRESIDENT: Thank you, Harland Johnson. We appreciate you again. Roll call, please. Record, Mr. Clerk, please.

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

PRESIDENT: Do we have any corrections to the Journal today?

CLERK: No corrections, Mr. President.

PRESIDENT: How about messages, reports, or announcements?

CLERK: Mr. President, Enrollment and Review reports LB 663A, LB 896A, LB 1004A, LB 1064A, and LB 902A to Select File, as well as LB 313 to Select File with E & R amendments attached. (See pages 838-39 of the Legislative Journal.)

Mr. President, I have received a series of priority bill designations; Senator Landis has selected for the Banking, Commerce, and Insurance Committee LB 1241; Senator Beyer, LB 799; and Senator Landis personal priority or LB 1136.

An Attorney General's Opinion addressed to Senator Lowell Johnson on LB 1219. (See pages 839-41 of the Legislative Journal.)

Two reports, Mr. President, the first from the Nebraska Energy Office, and a second, Mr. President, received from US Ecology regarding notice of final selection. Both of those will be on file in my office.

PRESIDENT: Is that all? Thank you. We will move on to the confirmation report of Senator Haberman's.

CLERK: Mr. President, your Retirement Systems Committee chaired by Senator Haberman offers a report found on page 833 for Ms. Connie Witt to the Public Employees Retirement Board.

February 26, 1990 LB 81, 315, 799, 956, 1050
LR 257

SPEAKER BARRETT: Thank you. Senator Weihsing, as the birthday boy, would you care to recess this body until 1:30 p.m.

SENATOR WEIHSING: Mr. President and members of the Legislature, I move that we recess until 1:30 p.m. today.

SPEAKER BARRETT: Thank you. You have heard the motion to recess until one-thirty. All in favor say aye. Opposed no. Ayes have it. Carried. We're recessed.

RECESS

SPEAKER BARRETT PRESIDING

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

SPEAKER BARRETT: Thank you. Have you anything for the record?

CLERK: Mr. President, Enrollment and Review reports LB 81 correctly engrossed, LB 956 correctly engrossed, and LB 1050 correctly engrossed. Mr. President, Senators Lindsay and Morrissey have amendments to LB 315 to be printed. (See pages 985-87 of the Legislative Journal.)

And, finally, LR 257 is ready for your signature, Mr. President.

SPEAKER BARRETT: And while the Legislature is in session and capable of transacting business, I propose to sign and I do sign LR 257. Returning to General File, Mr. Clerk, LB 799.

CLERK: LB 799, Mr. President, introduced by Senator Beyer. (Read title.) The bill was introduced on January 19 last year, at that time referred to Transportation. The bill was advanced to General File, Mr. President. I do have committee amendments pending by Senator Lamb's Transportation Committee. (See page 1078 of the Legislative Journal, First Session.)

SPEAKER BARRETT: The Chair recognizes Senator Beyer for the purpose of introducing the amendments.

SENATOR BEYER: Mr. Speaker, and colleagues, after the hearing on LB 799 in committee, the committee discussed and then come up

with the amendments. What the amendment does is strikes all references to testing for the presence of intoxicating drugs. There was concern from the law enforcement officers and the Department of Motor Vehicles regarding whether or not definite levels of drug intoxication were possible and there was a problem as how to perform the testing. So this was deleted from the bill. The amendment also amends Section 60-424 which provides that the Director of Motor Vehicles shall revoke a license for the period of time prescribed by the convicting court. The committee amendment provides an exception allowing for revocations made by the department pursuant to the administrative procedure enacted by LB 799 to exceed a period of revocation ordered by the court. Sections 3 and 4 of the bill dealt with procedures for drug testing and so are not needed since we have removed drugs from the bill. Section 60-424 had to be amended since the revocation periods in LB 799 do not agree with those authorized by the court. So with that, I would ask your adoption of the committee amendments.

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

CLERK: Mr. President, Senators Lindsay and Hartnett would move to amend the committee amendments. (See AM2682 on page 988 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President, and members. This amendment to the amendments would, basically, incorporate LB 1020 into the bill. LB 1020 was advanced out of Judiciary Committee and I believe on a...excuse me, LB 1046, I wasn't...it would incorporate LB 1046 into the bill. LB 1046 was advanced out of Judiciary Committee, or, excuse me, not even 1046, LB 1042. It was advanced out of Judiciary Committee, I know that because I was there. The bill, basically, would allow depositions in the case of Class W misdemeanor. A Class W misdemeanor is a DWI. This simply would allow that a deposition be taken with permission of the judge. It is not a mandatory deposition, anything like that, but in the case of a, for example, where there is an expert witness being used to determine whether the, for example, Intoxilyzer was working accurately or was accurately taking the blood alcohol level. What this would do is allow a deposition be taken of an expert so that the parties could adequately prepare for trial. It would work both ways. It is not...either the prosecuting

attorney or the defendant can request the court to allow the taking the deposition. You notice that it is LB 1042 and it is exactly as it is written, it is how the amendment is written. So I would urge the adoption of the amendment to the committee amendments.

SPEAKER BARRETT: Thank you. Senator Hartnett for further discussion on the amendment.

SENATOR HARTNETT: Mr. Speaker, and members of the body, what this bill does, I brought it to the Judiciary Committee, and most county attorneys allow this right now to be taken. Some do not, so it just provides some statewide uniformity. And I think we had a bill earlier to add another court of appeal. I think this would simply help speed up the process as far as getting through the judicial system. So it permits evidence to be tested before the trial and so it simply would help speed up things, so for that reason, I would support the amendment to the amendment.

SPEAKER BARRETT: Thank you. Further discussion? Senator Lindsay, any closing comments? Thank you. The question before the body is the adoption of the Lindsay-Hartnett amendment to the committee amendments to LB 799. Those in favor vote aye, opposed nay. Record.

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

SPEAKER BARRETT: The amendment to the amendment is adopted. Back to the committee amendments, any discussion? Senator Beyer, would you care to make a closing statement.

SENATOR BEYER: I would just move that we adopt the committee amendments as amended.

SPEAKER BARRETT: Thank you. The question is the adoption of the committee amendments to 799. Those in favor vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: The committee amendments are adopted. Senator Beyer, on the bill, please.

SENATOR BEYER: Well, Mr. Speaker, and colleagues, we are all well aware of the terrible cost in terms of human tragedy caused by driving under the influence of alcohol. We are also well aware of the backlogs in our court systems which cause the wheels of justice to move very slowly. The average time from the arrest for driving under the influence until a license is actually suspended can run from anywhere from a three months to a six to an eight months delay. Driving a motor vehicle is a privilege, not a right, and as such, each of us has the responsibility to make sure that by exercising this privilege, we do not cause harm to others. Those who drive under the influence of alcohol are a danger to each and every one of us and our families, and it is my belief that a swift and sure suspension of driving privileges would tend to defer those to whom the privilege of driving is important. A diagram of how the proposed administrative process would work under LB 799 has been prepared and passed out to each of you, and also a comparison of how the current administrative process for implied consent hearings would compare with the procedures outlined in LB 799. Briefly, this is how administrative process under this bill would work. An officer who had reason to believe that a person was operating a motor vehicle under the influence of alcohol would request that person to submit to a test to determine their blood alcohol content. If a person refuses to submit to the test or if he or she is determined to be legally intoxicated, the officer would then immediately impound the driver's license of that person. The officer returns the ticket issued which serves as a temporary license and advises the driver that their license will be revoked and that such revocation will be effective 30 days from the date of arrest unless a request for a hearing is filed with the Department of Motor Vehicles within 10 days. The officer is then required to send the driver's license to the Department of Motor Vehicles with a sworn statement indicating that the driver either refused to take a chemical test or failed it. In an effort to make sure that the administrative hearings are held in a timely manner, the bill requires an administrative hearing to be held within 20 days of the request, and a decision must be rendered within seven days of the request...of the hearing. The periods of revocation are one year for the first offense, three years for the second offense, and five years for the third offense. Let me emphasize that this bill provides only for administrative revocation of driving privileges and has nothing to do with the criminal sanctions which may be imposed by the court when the

court date is due. With that, Mr. Speaker, I have an amendment that we have to clarify one point that was brought up to me by the law enforcement officials; that on page 13, line 23...or, Pat, should I go ahead with that or do you want to...

CLERK: Your amendment is on page 458 of the Journal, Senator.

SENATOR BEYER: Okay, what it does is on page 13, line 23, and page 15, line 3, strike "three" and insert "seven". With that, I would urge the adoption of the amendment at this time.

SPEAKER BARRETT: Thank you. Is there discussion on the Beyer amendment to the bill? Senator Hall, on the amendment.

SENATOR HALL: Well, Mr. President, only that I guess, since I wasn't aware of the amendment, what, if Senator Beyer would explain the amendment. I understand strike three and insert seven but for what purpose?

SPEAKER BARRETT: Senator Beyer, please, would you respond?

SENATOR BEYER: Mr. Speaker, yes. What it was is we had three days in there that the law enforcement officers had to report the...send the license into the Department of Motor Vehicles. They did not believe they could, in all cases, get that done in three and they requested the seven day. So it is just an extension from three to seven to return the license to the Department of Motor Vehicles.

SENATOR HALL: Okay, Mr. President, and thank you, Senator Beyer, I would rise to oppose the amendment because, and I am going to oppose the bill because I appreciate the amendment that Senator Lindsay and Hartnett tacked on to the bill, it is probably the best part of the bill at present, but what the amendment, if I understand it correctly, and I just looked at the bill after lunch, the amendment would reduce the amount of time or it would increase, I guess, the amount of time the arresting officer would have to forward the operator's license, but there is no increase in the amount of time that that individual who would refuse a test and, granted, I don't make any defense for someone who refuses to take the test who clearly is intoxicated, but in this case, we, basically, we are going to give the arresting officer additional time. We are going to increase the time that they have to submit that license from three to seven. Now it would seem to me that if they revoke

someone's license, that is a very clearly a simple thing, they put it in their pocket, and they go back to the station, and they send it in that night before they leave their shift, or that afternoon. It doesn't seem to me that...we are making accommodations for the arresting officer but yet we are limiting, we are giving that individual, if you look at the bill, you pull them over, they have got only 10 days in which to file with the Director of the Department of Motor Vehicles whatever we call it here. It is a claim that they were not under the influence, and then if they don't do that, there is an automatic, automatic rejection of their license. I mean their license is revoked after 30 days. We have nothing that, I mean, comes close to this and what you are basically doing with this bill is you are taking the whole issue of DWI out of the court system and making it an administrative procedure. You are taking the whole policy of driving while under the influence out of the hands of the court and you are turning it over to the Department of Motor Vehicles. And Senator Beyer said that there is a backlog in the courts, and clearly I would argue that he is right there, but if you want to talk about having attorneys jump at the chance to defend some of these people and having the system break down, I would argue that what you will have is you will have a system that will now become two-prong, one that involves an administrative procedure, and the other where these same individuals will, because for whatever reason they did not file this petition, end up with their license being revoked after 30 days, jump into the court system through some kind of effort to block that from happening, and you are going to see I don't think a lessening of the pressures on the court but an increase in that area.

SPEAKER BARRETT: One minute.

SENATOR HALL: And, you know, the purpose I guess for the bill, the need, I mean outside of the argument that, well, the courts are backlogged, I mean I think you can refute that by just saying you are going to continue to have it backlogged. You are going to probably compound it with this bill, I would argue, and I think that there hasn't been a good reason for why the current system we have in place doesn't work. I know in Douglas County alone there are over 3,000 DWI arrests each year, and those are working their way through the system. Granted, the system isn't perfect, but to change it, take it out of the court system, and put it into an administrative system that is governed solely by the Department of Motor Vehicles and the Director, thereof, even

to the point where they can, if I read the bill right, toward the back, they can assign someone to handle that and make those decisions, I think is clearly a serious policy change for this body to be addressing today, and I would hope that we would, after a nice lunch, wake up and take a look at what LB 799 does because this is a big change with the committee amendments that strike...if you look at the one liner on it, it deals with drugs. If you read the bill after the committee amendments, it only deals with the issue of alcohol and driving while under the influence.

SPEAKER BARRETT: Thank you. Senator Wesely, do you care to discuss the amendment? Thank you. Senator Bernard-Stevens, on the amendment.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker. I would have to concur, I think, with Senator Hall on this particular aspect for some of the same reasons but a little bit different reasons in regards to the procedure as outlined in the bill. I think three would be much better than what Senator Beyer is trying to do on seven. But, Senator Beyer, would you yield to a question on the procedure so that I can clarify a couple of things in my mind.

SPEAKER BARRETT: Senator Beyer.

SENATOR BEYER: Yes.

SENATOR BERNARD-STEVENS: Senator Beyer, my understanding is if a person is arrested, they do a test and it comes out positive and/or they refuse to do a test, that they would then have 10 days to file a petition for a hearing, is that correct?

SENATOR BEYER: Yes, the arresting officer, who would issue them a 30-day temporary, why he would have 10 days then in which to ask for a hearing.

SENATOR BERNARD-STEVENS: Okay, I am just trying to do some simple mathematics and it is crude and simple which is why I am going to ask you to clarify it for me. If a person then waits and files the petition on the tenth day after the arrest, which would be legal under the law, that is ten days gone. Then if in my understanding, the administrative agency then, Department of Motor Vehicles, in this case, would then have 20 days before...they would have to have a hearing within 20 days. All

right, so my mathematics says if I wait until the tenth day, then the Department of Motor Vehicles, which is also going to be backlogged on a lot of these cases because they are going to be handling all of these, waits 20 days, I am looking at 30 days minimum at that point before a day can even be...before I may even have a hearing. Then if I understand the bill correct, they have to make a decision within seven days. So, in essence, that person is going to have their license revoked for at least seven days before they even have a hearing even though the hearing may find them capable of maintaining their license, is that correct? Okay. I guess I always sometimes have a little problem with when we start dealing some specific days that things have to be done, particularly if we are asking somebody to file a petition because they think there has been a mistake made, and they want to fight that, but in the process now, they could actually lose the license before the hearing which could show their innocence to be held, and I always have problems when we take something away before we have given them a chance to have their hearing, for the most part. And I am still kind of troubled by that and it is either now or at another time, if you could kind of speak to that to ease my feelings on that, I would be much appreciative on that. Thank you, Mr. Speaker.

SPEAKER BARRETT: Thank you. Senator Beyer, the floor is yours.

SENATOR BEYER: Well, I guess we are discussing the amendment yet as far as that goes on the bill. I have no problem with the three day. Senator Bernard-Stevens made some good points on the time element that could elapse and that might have to be addressed, but Senator Hall said that we are making some drastic changes. We would be approximately the 29th state to make these changes. They have been made. They have all been upheld constitutionally by all the courts where it has been filed, that these do not violate the provisions of the U.S. or individual state Constitutions. So with that regard, we can either go with the seven day or stay with the three, as far as the amendment goes. I introduced that because the law enforcement officers thought they needed that extra time. On Senator Bernard-Stevens point, that is something that we probably will have to address and that will come out a little later as to reasonings on it. With that, I would urge your adoption of the amendment as presented.

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

SENATOR HALL: No.

SPEAKER BARRETT: Thank you. There are no other lights. For the purpose of discussing the adoption of the amendment, Senator Beyer, did that constitute your close? Thank you. The question is, then, the adoption of the Beyer amendment to LB 799. All in favor vote aye, opposed nay. Voting on the Beyer amendment.

SENATOR BEYER: I hate to have to extend...get everybody back here but we might have to if we can't...there is one more. If we get one more vote, we wouldn't have to work on that. Still need one more vote, I guess...there it is.

SPEAKER BARRETT: Record please.

ASSISTANT CLERK: 25 ayes, 2 nays on the adoption of the amendment, Mr. President.

SPEAKER BARRETT: The amendment is adopted. The Chair is pleased to note that Senator Lowell Johnson had some guests in our south balcony a few minutes ago, they have now left the Chamber, 26 fourth graders from North Bend Elementary with their teacher. Back to the bill as amended. Senator Wesely, followed by Senator Hall.

SENATOR WESELY: Thank you. Mr. Speaker, members, this piece of legislation, as Senator Hall said, is one that I think is more important than we give due credit to at this point, and so a little discussion is in order. I think anything we can do to stop drunk drivers is something to be supported up to a reasonable limit. There may be certain considerations that we have to keep in mind to be practical, or what have you, and keeping that in mind, I want to point out to you that just, I think it was last year or the year before Senator Hall and I dealt with this issue of refusal of taking the test, and we had a situation where the penalty had been reduced from one year to six months and I wanted to raise it back up to one year because too many people were not taking the test, were refusing the test, and, thus, not getting convicted of drunk driving, and not having an adequate penalty to deter them from that. Senator Hall and I sat down with that legislation and came up with a compromise that ended up being I think pretty good and is wiped out by this bill, and so I raise concern about trying to change a procedure that we just adopted that has been working, I think,

to our satisfaction, and that procedure was that, yes, we did raise the penalty to one year that you would withdraw a person's license for refusing the test, but you gave the option to that individual to come back within a reasonable period of time and plead guilty or no contest to a guilty verdict and, thus, bypass the refusal penalty of one year and get the conviction under our statutes and suffer the penalty under the conviction of DWI. The idea was that the reason we want people to take the test is to be able to find that they are, in fact, drunk and driving, and then we can penalize them on that side of the law as severely as we possibly can to try and again stop that practice, to stop that individual from doing it again. And when they don't accumulate DWIs, when they never get past the first or never get to the first, they end up without having adequate penalty. So I talked to Fred Zwonechek not too long ago, who said that that change that Senator Hall and I had agreed to had made some great impact and that we had seen a real drop in refusal to take the DWI test. And now I understand what this bill does is not allow for that option, to not allow an individual who refuses to take the DWI test and then to plead guilty, to not allow that to then wipe out that implied consent penalty, and to encourage that action, I think we need to look at that particular issue. In addition, I know it does take up a number of other items dealing with immediate revocation of license, and there is some virtue, I think, to anything we can do to drive home the point that drinking and driving is not tolerated by our society, and so I would at least consider an option in that direction, and I think pretty likely support it. But I think at this point I am raising some issues and I think Senator Hall is raising some legitimate issues about a major change here, and I think we probably need to spend a little more time refining and fine tuning this issue and, hopefully, take this piece of legislation and improve upon it. I am merely raising that issue as a forethought that we need to have further discussion and perhaps an amendment. I am not ready to prepare or offer one at this time, but I think if the bill does advance, I will be working on one for Select File.

SPEAKER BARRETT: Senator Hall, please.

SENATOR HALL: Thank you, Mr. President, and members. Again, I rise in opposition to the bill because I, to date, have not heard outside of the fact that there are 29 other states who currently follow this procedure any basis for a change in our current system. What you are doing is you are taking the

current system of arrest, test, arrest, the criminal procedure, the judicial procedure, and you are stripping that out of the court system, and you are giving it over to the Department of Motor Vehicles and the director for that, whoever that may be. Now, granted, you know we all talk about how the courts are clogged, and it is nice, well, and good, but I also think that an individual who not only relies on their license for a day-to-day basis but possibly for a living should have the ability to go to court to decide that decision, and not leave it up to a bureaucrat. In this case, the individual who makes that decision, if you look at page 20, it is the director who makes the decision to revoke or not to revoke that operator's license or driving permit. And if you look earlier back, and I think it is, I can't find it right now but I will, it is page 16, "The director shall make a determination of the issues within seven days from the conclusion of the hearing." Okay. Senator Bernard-Stevens pointed out the issue of the ten day of filing, the hearing shall be held within 20 days, the 30 days at that point are up. The 30 days are up. The director doesn't have to make a determination for another week, and you have already lost your license. The individual has already lost their license and no determination has yet come down with regard to whether or not they have been found guilty or innocent by, you know, a person who happens to be the Director of the Department of Motor Vehicles. Now it says, "The director shall adopt and promulgate such rules and regulations as he or she deems necessary to insure that the hearing will proceed in an orderly manner." What does that say? It says nothing. It says that the director can, basically, not allow an individual whose license, very likely their livelihood, is on the line, not even allow them the opportunity to speak at one of these hearings. The director shall adopt and promulgate such rules and regulations as he or she deems necessary to insure that the hearing will proceed in an orderly manner. Boom! You are guilty. That is an orderly a manner as we can deal with it. Maybe, if that is the area or if that is the tack that this legislation is trying to take, maybe that there should be no hearing. Maybe it should just be automatic. Maybe if that is the intent of this legislation, and that is what I think it is, is to not allow any individuals their day in court because that is really what it does. It takes it out of the court system, it makes an administrative function out of it, and it says, you are at the mercy of the Director of the Department of Motor Vehicles. Now, I, there is no love lost and I do not stand here and defend an individual who refuses to take the test, but as Senator Wesely pointed out

earlier, last year I think we worked out a very good proposal that, as Fred Zwonechek has stated, works, but yet we come in with a proposal that totally rewrites the operation of how we deal these individuals who refuse to take the test, and shift that burden of proof onto the individual. They are the ones who now have to file the report. We just adopted an amendment that gave the arresting officer an extra four days...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...in which to, basically, mail a license into the department, but yet we are going to deny that individual, if they haven't filed their petition within ten days, when they have been told this at the time of arrest. What about this scenario? What if an individual is drunk, they refuse to take the test, they are given the warning by the arresting officer, I mean the fact of the matter is they probably don't even know what is being said to them, or it is very likely that they wouldn't. Well, when they wake up in the morning, they don't remember it, but yet the argument could be made that they have been given due process. I think not. I think that this bill has a tremendous number of problems and I apologize for not taking a look at it prior to this, but I am going to take a look at offering some amendments because it looks like the bill has a lot of support, and I don't think that there has been much discussion to date on it, and I would urge you to reject the advancement at this time. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens, please, followed by Senators Hartnett and Haberman.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, and members of the body. Senator Beyer and I were chatting just briefly and he and the department, I think, are aware of the time frame difficulties and they will be working on some amendments, if not on General File, on Select File to try to alleviate that. My understanding is they still need to be within the 45 day period in order to still qualify for 408 funding at the federal level. So I guess it is just a matter of whether they are going to extend it on the front end or on the back end. That is yet to be seen, but I do have some other questions I think I would like to ask, and I think I would like to ask Senator Lindsay if he would yield to some questions, so I can get the answers at least on the record.

SPEAKER BARRETT: Senator Lindsay, please.

SENATOR LINDSAY: Sure.

SENATOR BERNARD-STEVENS: Senator Lindsay, not being an attorney in this particular area, I want to make sure that at least I understand it correctly. If, in fact, that a police officer, and, gosh knows, the majority, the vast majority are good police officers, but if a police officer, for example, decides that they want to test someone for a breath test for whatever reason they stopped them, and its refusal, what would happen in that particular case?

SENATOR LINDSAY: The person would be charged most likely with DWI with refusal to submit. Under the current law, those two charges then would go...would be forwarded for prosecution. The person would get a trial date, would either plead to one or both, or would go to trial, be convicted on one or both, or be acquitted. After the conviction and upon sentencing, then the suspension for one or both of the charges they are being convicted of along with the jail time, along with the fine, would then be imposed.

SENATOR BERNARD-STEVENS: Okay, and, also, now if the person is ultimately acquitted, what is the time frame approximately for that to happen between the time of the arrest and the approximate time of the acquittal? What are we looking at timewise?

SENATOR LINDSAY: We are looking at, at least in Douglas County, the arraignment is anywhere from two to four weeks after the time of the incident, and the trial then is usually four to six weeks after that. I think a minimum would be getting you to trial, an absolute minimum, would be six weeks. The norm would be closer to around two months to ten weeks.

SENATOR BERNARD-STEVENS: Okay, thank you, Senator Lindsay. I think one of my concerns with the bill, besides the numbers which I understand can be worked with and dealt with through the amendment process, and I have no problems with that, certainly, if it can be done properly, I think the problem that I have is for the person who is cited for refusal to take the test, and as Senator Lindsay at least mentioned in Douglas County, and I know that differs throughout counties in the State of Nebraska, but in Douglas County, you may be looking at two months or so, and

that is beyond 60 days, and it is very possible that the person could be acquitted of that particular charge. But the way I understand it and I guess this might be a questions for Senator Beyer, the way I understand it, the Legislature passes 799, that even though the person may be acquitted within a 60 days to 70 days, this particular bill, if we pass it, would be within 30 to 45 days, the person would lose their license, by Nebraska statute, they would lose that for one year, is that correct? Yes, Senator Beyer is shaking his heard correct that that is true, and I guess I have kind of a problem with that because we are setting up potentials where people are losing the license for at least a year before they have been found guilty, and in some cases, you are going to have cases tried where they are going to be acquitted or the cases or charges will be dropped, but, yet, because of the administrative procedures we have here, because of the failure to take the test, for whatever reason, they will have by the Department of Motor Vehicles decision lost their license for one year.

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: I don't see anything in the bill that would remedy that. So here sometimes you will have a case where a person is arrested, goes through the whole procedure, acquitted or charges dropped. They did not do anything illegal and yet their license was lost for a year with no way of getting that back at that point, and I do have some concerns about the process that we are beginning to set here, even though I understand certainly the motive behind it. Maybe if Senator Beyer, if he wishes to take some of my time or on his closing or some other time, wants to respond to that, I would be much appreciative, and he can have whatever time I have remaining.

SPEAKER BARRETT: Fifteen seconds.

SENATOR BEYER: I will wait.

SPEAKER BARRETT: The Chair recognizes the gentleman from Bellevue, Senator Hartnett.

SENATOR HARTNETT: Mr. Speaker, members, if I could ask Senator Beyer a question.

SPEAKER BARRETT: Senator Beyer, would you respond?

SENATOR BEYER: Yes.

SENATOR HARTNETT: It seems like with this bill, 799, that a kick...it starts operating when a person refuses to take the test, I am stopped for DWI and I refuse to take a test, how often does that occur in actual practice, do you know, Senator Beyer?

SENATOR BEYER: LB 799 kicks it in whether they refuse or whether they take the test and are tested, either way.

SENATOR HARTNETT: Either way?

SENATOR BEYER: Right now, it is an implied consent. If they refuse to take the test, their license is suspended administratively.

SENATOR HARTNETT: So, regardless, if I am stopped for DWI, whether I take the test or not take the test...

SENATOR BEYER: Or take the test or not take the test, and if you take the test and you are over .10, your license will be suspended, which goes back to a little bit of what Senator Bernard-Stevens said. It is...you have broken the law when you are tested over .10.

SENATOR HARTNETT: But what if I am below it, if I have refused to take the test, I get my license...

SENATOR BEYER: You get your license suspended but there is no proof whether you were or were not below,...

SENATOR HARTNETT: I see.

SENATOR BEYER: Under the implied consent. When you take the test, they would not arrest you if you were not over .10, so there would be no arrest. So it is really when I refuse to take the test, then I start losing it, but this bill kicks in the process here?

SENATOR BEYER: Well, that is already in law now.

SENATOR HARTNETT: Is it? Okay.

SENATOR BEYER: Implied consent.

SENATOR HARTNETT: Thank you.

SPEAKER BARRETT: Thank you. the Chair is pleased to pause for a moment and recognize some guests of Senator Rogers under the south balcony, Sylvia Fowler from Arcadia and Tammy Morrow Julesgard from Scotia. Would you folks please stand and be recognized. We thank you. We are glad to have you with us. Senator Haberman, further discussion, followed by Senators Warner and Hall.

SENATOR HABERMAN: Mr. President, and members of the body, maybe we are looking at this all wrong. Possibly we should consider the parents who have had members of their family killed by a drunken driver, or a person under the influence of drugs. Maybe we should talk to some of those fathers who have two or three children to raise and the mother was killed due to DWI or influence of a drug. Or we can turn around the other way and talk to the mother who has lost a father of her family. You can't bring a life back. You can't do that. Drunken drivers and people under the influence of drugs kill all ages of people and they do it all of the time. Now if this legislation, and you can quibble over the time limits, whether they refused it or didn't refuse it, you can talk about that all you want to, but if the legislation passes and it saves one life, just one, it is well worth it. It is well worth it. Now maybe it could be the purpose for this legislation is that I understand in one county in the State of Nebraska, when a person is arrested for DWI, and possibly even convicted for DWI, they are put on probation. They go through a program. They don't lose their license. Possibly it belongs in the Department of Motor Vehicles because the courts have become very, very lenient. Plea bargaining has become a matter of life. Hardly anyone gets the sentence that they started out because it is plea bargained. So all we are saying is if someone refuses to take the test, their license is revoked for 30 days unless they put some steps into the procedure. Now what is wrong with that? At least when this person was stopped and if they were under the influence, they were stopped and they won't drive anymore and save that one life. So I would say this, if there seems to be a problem or with the number of days, fine, advance the bill, work out a compromise on Select File, but I, personally, think we need the legislation. We need stricter laws. We need them to be enforced, and if they are going to be enforced faster and quicker in the Department of Motor Vehicles, so be it. Maybe that

is where they should be. So with those remarks, Mr. President, I ask for the support of LB 799. Thank you.

SPEAKER BARRETT: Thank you. Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I would rise to support the amendment as well, and the bill, as it will be amended. We tend to forget from time to time when we have these kinds of pieces of legislation, it will be said, I suspect, a number of time that the driving is a privilege, it is not a right. We tend to forget from time to time that if you are stopped for possible DWI, you had a choice. You didn't have to drink before you got in the car. You certainly are not being put in any one...in any kind of a jeopardized position legally or in any other fashion that they didn't put themselves in. It is just that simple and we all know it. If there is to be an error, let the error be on the side of the people who are innocent and may be injured or killed. That is where the error ought to be on their side, not on the side of the person who chose voluntarily to become intoxicated to the point where they impaired their driving skill. We all know very well that the current system varies from judicial district to judicial area. In some cases it is severe, in other cases it is imposed in a much lighter fashion, but there is no question what direction the public wants this public policy to go, not only in Nebraska, but nationwide. And they do not want people who are impaired through the consumption of alcohol to be on the roads, it is that simple. And I would urge that we not become overly concerned with what normally one would argue are some rights that the drunken driver should have preserved, but never forget that they impose that upon themselves. It is their choice. Let's protect those innocent people, even if it means some slight lack of justice for someone who chose to drink. Let's protect the rest of the people from that person's indiscretions, and not be too concerned, because the minute we set up a system that takes care of everyone of those possible few instances where someone may be unjustly accused, we all know we have opened the door for a whole series of others to get by, get out, get around the restriction because of a potential loophole that was put in because someone thought there might be an injustice. It is simple to avoid arrest for this case, very simple, and I would urge the body to adopt the amendment.

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

ASSISTANT CLERK: Mr. President, Senator Lindsay would move to amend the bill. (See FA377 on page 989 of the Legislative Journal.)

SPEAKER BARRETT: The Chair recognizes Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President, and members of the body. This amendment is fairly simple. What it would do is on page 13, line 14 of the bill, after "days", it would insert "and shall impose the following penalties:." It just simply inserts the language for first, second, and third convictions for refusal to submit. And then it also, on page 20, line 25 after "permit", it inserts the language, and this is in the event that the director finds that there was no refusal, "and shall release the person from custody and refund the fine." All this is doing is putting into effect the other half of what we are doing. Right now the penalty for refusal to submit is you lose your license. What we are doing is putting the other half of that penalty that you also have under current law, and that is the imprisonment, 7 days imprisonment on first conviction and a \$200 fine; second conviction, 30 days imprisonment and \$500 fine, et cetera. Let's just put that in. If it is good to take these actions swiftly and certainly without trial, let's do it. Let's don't go halfway. Let's do the whole thing. Let's impose these sentences now, rather than letting somebody be outside of jail when he should be in jail, or get away with not paying a fine when they should be paying a fine, or when they are driving when they shouldn't be driving. All this does is simply imposes those penalties and we can cure the problem, very easily. If we find that there was no refusal, the director is simply going to release that person from custody, and simply going to refund that fine. It is just putting into statute what we are trying to do except we are going all the way with it. We are including all those penalties on there. I would urge you to adopt the amendment.

SPEAKER BARRETT: Thank you. Discussion on the amendment offered by Senator Lindsay. Senator Hall, your light is on. Would you care to discuss the Lindsay amendment?

SENATOR HALL: Thank you, Mr. President, and members. I rise in support of Senator Lindsay's amendment because, basically, what Senator Lindsay is saying is that if you pass 799 even in its present form, without the Lindsay amendment, you, in effect,

wipe out the DWI laws. You are taking that law which we currently follow which is in place in the statutes and you put into place a system that overrides that, an administrative procedures system that overrides it, that says you no longer need to have the DWI law in place. And Senator Lindsay, I think, very honestly and forthrightly has put up an amendment that just, basically, shoves over the balance of the DWI statute into LB 799. He put the penalty, the conviction, the imprisonment, and the fine altogether, and by adopting his amendment, at least you are being honest about what the attempt is to do through the bill. Senator Warner talked about there might be an injustice or a slight lack of justice, and, Senator Warner, I would not disagree. I have personal experience with DWI drivers, and have had family members who have spent months in the hospital because of somebody who was driving while under the influence. One of them still has, who happened to be an all-American cross-country, still has a leg that is put together with tinfoil and wire but he gets around real well. That is not the point because at where does that slight lack of injustice stop. If you start here, if you start with everybody that we want to put the red A on their forehead in the DWI, or put the DWI stamp on their forehead, if you begin here, where do you stop? Where does that slight lack of justice end? At what point do we say, well, no, we no longer, now we are going to apply full justice to this instance. Yet maybe that is what folks across the country think is right. Maybe that is how they feel, that we should be tougher. We should not have any sympathy for these people. But my understanding is that is not what this country was built on, that everybody had the right to due process, everybody had the right to have their day in court. Maybe those individuals who are driving under the influence deserve everything they get, and I would agree with you there, but that is not what this bill says. It doesn't say that someone, as you stated, impaired, driving while impaired, and those were your words, and they are I think very carefully chosen. That is not what this bill says. I can be totally sober, totally without any impairment, and refuse to take that test. Why? Who knows. Maybe I don't understand the law, maybe the officer, and I would agree with the statement that someone made that they are 99.9 percent of them fine individuals, maybe that officer is hassling me on something else and he says you have to take this breathalyzer test. I refuse to take it because it is clear that I am not intoxicated, it is clear I haven't been drinking, it is clear that he is hassling me on something else, or I got pulled over for another infraction.

But according to the way this law is drafted and the way LB 799 would pass into law, I would lose my license for at least a year, and it is totally at the discretion of the Director of the Department of Motor Vehicles. Senator Warner makes the case that some jurisdictions deal with this issue differently than others. So now you are just going to narrow it down to one individual and let them make the call. It is like playing baseball, instead of having four umpires out there, you have one guy behind home plate. Sometimes he sees what is going on at second and third base and sometimes he doesn't, and if you have a Director of the Department of Motor Vehicles who happens to agree with your point of thinking with regard to how DWI transactions ought to be handled, then it is okay, but if that director, who is appointed, who is a bureaucrat, says I don't think that this is a problem and routinely says, no, we are going to give everyone back their license because we don't think due process has been afforded here, then watch folks come back and change the law and see how it is handled at that point. Because then once we have achieved the jurisdiction that is uniform and everyone is treated the same across the state, if we don't like it, then it will no longer pass muster, and then we will no longer think that it is the right and proper way to do things. Ladies and gentlemen, I think this bill needs a lot of attention. I think the first point we need to begin with is the amendment that Senator Lindsay offers, because once you do this,...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...and adopt his amendment, then you can, basically, take and wipe out the DWI statutes because what you have done is you clearly cleared the court system of any DWI cases. What you will have is due process, and I think in civil rights cases it will clog the courts for years far into the future with this kind of a proposal that we have before us. Thank you, Mr. President.

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

SENATOR CROSBY: Yes, Mr. Speaker, thank you. Mr. Speaker, and members, the Lindsay amendment, I wish I could see it in print. Do you think that is possible, I don't know where he is, because I tried to make some notes and understand what you are trying to do. But this whole discussion concerns me because...thank you,

okay, I see what he is adding, fine. The whole discussion concerns me because Senator Warner and Senator Haberman both said it better than I can, but it just seems like every time an issue of drunk driving or drugs or whatever we talk about, we immediately start defending the person who has gone out and driven while under the influence. We don't talk a whole lot about the victims. There are at least two cases in Lancaster County that I know of within the last two or three years that were in broad daylight where a driver had had the license suspended, and then was under some kind of appeal, and so on in the courts, and was out driving again while drunk, caused fatalities right in the City of Lincoln with head-on crashes. What it does to those families we all know, terrible, and the people who speak against this bill can make up all kinds of little vignettes about, well, maybe I wasn't under the influence but I don't want to take the test, and I didn't know that you are supposed to take the test. It is right in the driver's manual. When you go to get your driver's license, you are supposed to look at the driver's manual and be able to answer the questions, and it is in there. The implied consent law is in the driver's manual, because you had better know those answers, it pops up on those questions quite often. So I really do think that we work too hard at protecting the people who are breaking the law. And if this will help to deter people from drinking and then go out and driving, or help the patrol and the law enforcement officers to get their work done within a certain length of time, and speaking of that, on the prior amendment, if a patrolman is clear out in the western part of the state, 400 miles or so from Lincoln where he has to turn the license in, normally, I am sure I am correct on this, they send it in by registered mail. If this happens on Saturday night, the first time he can mail it is on Monday. By the time they do that and with the way the post office works, it could be another two whole days after Monday before the license gets here to Lincoln, so I don't think the time element, the seven days, is too much at all. I think that is a good leeway there for them to be able to get all of that done. There is a simple way to avoid being arrested or having the problem that this particular law would put into effect, a very simple way. You just simply do not drink, you don't take drugs, and if you do, you don't drive. Thank you.

SPEAKER BARRETT: Thank you. Senator Lamb.

SENATOR LAMB: Yes, Mr. President, and members, I rise to

support the bill but oppose this amendment. This amendment guts the bill. This is a cleverly designed amendment which would make the bill unconstitutional, if I am understanding the amendment correctly, and that this would give the agency, the Department of Motor Vehicles, the right to impose criminal penalties which is unconstitutional. This is just a method of those people who oppose this bill of killing the bill. So if this gets on, the bill is just as good as dead because it is unconstitutional. An agency cannot impose criminal penalties. And, also, I would like to express my support for the bill without this amendment on there. It is, as some other people have said, Senator Haberman, Senator Warner, Senator Crosby, we could nit pick this to death, you know, but the basic down-to-earth fact is whether or not you want to reduce drunk driving. Do you want to reduce drunk driving? Do you want to continue to let people who should not be driving drive while drunk? That is it. That is it in a nutshell, and we can talk about the rights of the driver, but that should come second to the rights of those people to live that are going to be affected by this drunk driver. So I just urge you people to vote against the amendment and then adopt the bill.

SPEAKER BARRETT: Thank you. Further discussion on the amendment? Senator Rogers, would you care to discuss the amendment, followed by Senator Beyer.

SENATOR ROGERS: Yes, Mr. Speaker, and members, I really want to address the bill, but in case I don't get a chance, I oppose the amendment, also, and I haven't asked these particular people but the two ladies that you just introduced, Mr. Speaker, one of them lost a daughter or a sister. The driver continued to drive for seven months. I would truly hope that this bill would take care of that possibility. I mean we have been nit picking, some of the lawyers, Senator Haberman mentioned it, and Senator Warner. I don't think we are taking the rights away from anyone. I mean, like Senator Crosby said, the implied consent law still applies in this state, so I strongly would ask you to defeat the amendment but support the bill.

SPEAKER BARRETT: Thank you. Senator Beyer, followed by Senators Warner, Bernard-Stevens, and Langford.

SENATOR BEYER: Well, Mr. Speaker, and colleagues, I also would oppose the amendment. Like Senator Lamb says, it does gut the bill. I guess some of the senators arguing for the amendment

and maybe against the bill are stating that we are taking away rights from these people. Driving is not a right, it is a privilege. It is something that is altogether different than a lot of our other rights, and I think that is what you have to look at. If it is going...if you want to oppose it philosophically, I guess you are going to oppose it, but I think you want to look on the fact that maybe the next time the drunk driver out there hits your family or somebody involved with your family and everything, I think probably you would look at it in a different aspect. So I would oppose the amendment and still support the bill. Thank you.

SPEAKER BARRETT: Thank you. Senator Warner.

SENATOR WARNER: Well, Mr. President, I pushed my button when I heard the amendment, although I haven't seen it, but I would just re-echo what I heard Senator Lamb indicate, if as the amendment was explained is what it does, I rather suspect that is exactly what it does is gut the bill, and I would hope we turn it down.

SPEAKER BARRETT: Thank you. Senator Bernard-Stevens.

SENATOR BERNARD-STEVENS: Thank you, Mr. Speaker, and members of the body. I hope the body doesn't take my comments in the improper way than what they are being offered for. I certainly want to do everything that I can to get drunken drivers off the road. I remember an incidence that happened in my district about a year ago where a friend of mine's wife was killed by a drunken driver who was in his fourth drunken driving accident. And I think almost everyone in the body can have some type of personal experience dealing with drunken driving. So if there is anyone in the body, I will rephrase that, I don't think there is anyone in the body who wouldn't do anything that they could, if it is a reasonable thing, to stop drunken driving. I am convinced of that and I certainly am one of the members of the body that would be in that category. I only bring out some thoughts for people to think about on such bills, and I very well may be supportive of the bill. But some things I want us to think about, I hear Senator Crosby and other people in very good faith and with very large doses of sincerity say that we need to do everything possible, and I understand that, but let's go ahead then and go into another area that all of us want to do something, let's go into drug abuse. Are we, as a body, then willing to say, on rights of the abuse, are we willing to say

let's go ahead and allow illegal search and seizures, because let's do anything we can, even if it means stepping on some of the rights of those few? Let's be concerned about the victim, let's be concerned about the youth of our country, let's go ahead and do away with illegal search and seizure so that they can do it illegally so we can get the evidence, so we can put these people behind bars. Do we want to do that? And I don't think members in the body are willing to do that, but if you say that, no, I wouldn't be willing to do that, what you are saying is that you are willing to protect the rights even of those who may be guilty because there are rights that we all must try to save for all people, because someone who is not guilty could be violated. Senator Sam Ervin, one of the old champions of the Legislature...of the legislative system, senator from North Carolina in the United States Senate said to me one day, he said, one thing you need to remember, son, and that is sometimes you have to let a few of the people get away in order to maintain the liberties and rights of the majority. He says it is a sad fact, but to maintain our liberties and rights, you have to be willing to do that. And then we have LB 799, a bill that everyone wants to support including myself because we want to do something for drunken drivers, we want to get them all off the road. But how far are we going to go, and what do we justify that? These are just questions I think the body needs to think about at some point. I also want to bring out another particular view. Sometimes I get the feeling that if we don't do this particular bill, then we are not going to do anything at all. There is no other thing to do, and that is not true. There are lots of avenues available to the Legislature. For example, there is a bill in Judiciary Committee now that talked about the DWI. It is a bill that I introduced to try to get drunken drivers off the road. It would create a whole new statute so you would have vehicular assault because now you have an area, if this bill wouldn't pass, now you have an area, right now, today, where if I'm a drunken driver and I am involved in an accident and someone is killed, I could be charged with vehicular homicide or possibly assault, if I have a very strange case and an aggressive prosecutor Senator Kristensen was pointing out to me before, but in most cases, you are just going to get vehicular homicide if the person dies.

SPEAKER BARRETT: One minute.

SENATOR BERNARD-STEVENS: If the person doesn't die and they are severely harmed for life, severely disabled for life, maybe the

whole family is severely disabled, we, in this body, can only go DWI, that is it. But we can, as a body, rewrite and create another tier, vehicular assault with a Class IV felony or whatever we want to do. There are things we can do. So I would hate people voting on a bill thinking that this is one thing we can do and this is all. There are other things that we can do, and what the body needs to look at, I think, is this the one thing we really need to do? Is this something that overall balances what we want to accomplish? And I just have some real philosophical questions with it. On the one side I want to do everything to get these people off the road because the next person that dies could be my son. On the other hand, we have certain rights and principles that we have to balance, and these are not easy questions.

SPEAKER BARRETT: Time.

SENATOR BERNARD-STEVENS: And I thank the body for their attention.

SPEAKER BARRETT: Senator Langford.

SENATOR LANGFORD: Mr. President, I call the question.

SPEAKER BARRETT: Senator Langford moves the previous question. Do I see five hands? I do. Shall debate now cease? All in favor vote aye, opposed nay. Record, please.

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

SPEAKER BARRETT: Debate ceases. Senator Lindsay to close.

SENATOR LINDSAY: Thank you, Mr. President, and colleagues. This amendment is not going to go. I think we all know that. That is not the point of the amendment. I think Senator Lamb said the intent is to gut the bill. That is not the intent because the amendment is not going to go. We know that. The intent is purely to slow us down, hopefully make us think a little bit about what we are doing. What we are doing is we are starting that slow process of crumbling away our ages-old theory of innocent until proven guilty. And while we don't think it is that big a deal, Senator Warner referred to it as a privilege. Well, there are cases that have held that it is a little bit more than a privilege, in fact that there is a liberty interest in it, that there has to be something a little bit more than

arbitrary action by the state to take it. But, regardless, it is that chipping away that we are starting at now that just because you are stopped you are going to lose your license, and you can say it is because you refuse to submit, you can say it is because you chose to drink, but that is not the case. You can be stopped for DWI without having had a drink ever in your life, because when you are stopped, the police officer doesn't know where you have been or know what you have had to drink or tested what was in your glass. The police officer just stops you for some reason and a lot of times those reasons may not be justified. They may not amount to probable cause, and yet what we are going to allow is a person's driver's license be taken away. And in a case, for example, of a trucker, we are taking away their livelihood on a case that ultimately may get thrown out. Not thrown out for technical reasons or anything like that, but get thrown out simply because the evidence isn't there. We are putting the burden now onto the citizen to prove that I have the right to keep my license because some police officer said I didn't take a test. Rather than making the Director of Motor Vehicles, making the State of Nebraska prove that somebody has violated a law, we are saying, citizens, now you have to prove you are innocent. Now you have to prove you complied with the law. I don't think that is a good policy, constitutional or unconstitutional. It is just simply not good policy. I can't remember who it was that once said that we are not going to lose our rights in a revolution. We are not going to lose our rights from one fell swoop. Our rights are going to be lost inch by inch, going to be crumbled away. Our country couldn't stand for people to take away our rights all at one time. They will be taken away little by little by little. Senator Haberman talked in support of this bill and against the amendment, yet the other day we heard him talking so vehemently against gun control. But think about it, what is the next step? Is the next step that anytime a crime is committed with a gun, do we take the gun away now for a period until you can prove to the government that you should be entitled to have it back. What about other crimes with cars? Do we take the car away until you can prove to the government that you are entitled to have your car back? What about any crime you can think of? Do we start taking away rights or privileges or whatever until we can prove that we are fit and competent to handle those rights or handle those privileges? I don't think it is good policy. I don't think this bill should go. I don't think the amendment is going to go, but I hope we will talk, we will sit down and think about what we are doing. I withdraw the amendment.

SPEAKER BARRETT: Thank you. It is withdrawn. Mr. Clerk, an amendment.

CLERK: Mr. President, Senator Bernard-Stevens would move to amend the bill. (See FA378 on page 989 of the Legislative Journal.)

SPEAKER BARRETT: Senator Bernard-Stevens, please.

SENATOR BERNARD-STEVENS: Thank you, Mr. President, and members of the body. Senator Beyer, I think the amendment is one that you might be able to agree to. I am not sure but I will try to explain it. It is one that I just wrote up here so there is not a copy of it, so I will do the best I can. One of the things that would help me measurably to support a bill that in my heart I want to support as much as possible is the amendment that I have pending. And, quite honestly, I haven't had a lot of time to evaluate the pros and cons. It may be an amendment that the members of the body will discuss and will say, no, no, that is not a good thing, and that is fine. But I think we, at least, need to discuss the idea, and that is as following: My amendment would basically say and does say that irregardless of what the Department of Motor Vehicles does in its decisions on the suspension of the license, that if there is a case pending, if there is a case pending, that such actions will not apply until after the case has been decided, or, in other words, until we know whether the defendant is innocent and/or guilty. If the case finds the defendant acquitted or the case is dropped or... I guess those would be the two, if its case was dropped, such actions of the agency shall not apply. If in the case that it is found guilty, then, obviously, such actions of the agency would apply. And I guess what I am trying to get around is that of the person who is found innocent and yet has been punished before that decision has been rendered down. In other words, he has to prove the innocence because we have shown him guilty before the facts are before the jury. And, also, the amendment would basically say that the Department of Motor Vehicles, if a particular case that they have is going to court, they could make their decision to suspend the license for one year or three years or five years, depending upon where we are in that cycle of LB 799, but the actual revocation of that license cannot take place until after the decision of the courts. And I thought that amendment, at least, should be offered so we could have some discussion on that purpose, no matter what the body does is

fine, but I think we need to at least have that concept before us. Thank you.

SPEAKER BARRETT: Discussion on the amendment offered by Senator Bernard-Stevens. Senator Haberman, Senator Nelson, next.

SENATOR HABERMAN: Mr. President, and members of the body, the remark was made and the senator indicated that maybe this isn't the bill, possibly this isn't the method we should take. We should take more time, look at other legislation. Well, I would like to tell the body that you have to start somewhere. You have to start somewhere, and then you build on that one little item such as 799. When you start to build a house, you start on the foundation, and then you add to the house. So 799 is a start. Now as far as the amendment is concerned, what we are talking about is if someone refuses to take a test, if they refuse to take a test, well, it doesn't take a very intelligent person to refuse to take a test, and if they refuse to take the test, there must be a good reason. Possibly, they know that they are under the influence, so they are going to refuse to take the test. Now we are supposed to wait until we have a trial on the issue of whether they refuse to take the test. Well, folks, they either refused to take it or they didn't refuse to take it. The law officer would have not taken the action he gets to take underneath this legislation unless the person refuses. I can't understand why the big hang-up. Are you trying to indicate that the law officer is going to go around and everybody they stop say you refused to take the test, boom, you are on probation? You know better than that. We have better law officers than that. So, really, I can't see the badgering of this bill. I really can't. I don't understand it. And the fact that you have to have something so some people can get away, that is not very good, fellow senators, as the person who gets away can kill somebody, and the person that they kill, they can't get away. They are dead. So I ask you to support...to oppose the amendment, support the bill. Thank you, Mr. President.

SPEAKER BARRETT: Thank you. Senator Nelson, followed by Senators Warner and Hall.

SENATOR NELSON: Mr. Speaker, and members of the body, I have no qualms with basically behind the bill, or the idea of the bill, or anything else, or if anyone is killed or hurt, and so on. I do have to relate an incidence that happened in my own family

years ago, and I can't forget this. When you talk of law officers and someone being accused at the time and so on, and in this case, it's usually refuse the test, it seems to me like it should be cold black and white, but many, many years ago my mother was driving down South Locust Street, a very, very windy night. I guess as the good Lord happened, I was going up and she was coming home from work at the hospital, and she had sat there, she said, it seemed to her like five minutes with her turn signal on waiting to make a left hand turn. Well, about a quarter of a mile south from her a kid and his wife driving way too fast, and she had sat there for sometime waiting to make the left hand turn on traffic, and she made the turn and he was coming with such force and speed that he clipped her bumper, and just luckily enough I stopped, and I just happened to realize that it was my mother sitting there. So, anyhow, he told the law officer that she didn't have her turn signals on and so on, and the first thing I got there, I said, well, Mom, did you have your turn signals on. And she said, well, yes, I did. I think I sat here five minutes with them on, and in the meantime, the officer had written her out a ticket for improper turn and I don't know what else, and, honestly, he scared the poor old lady so that if had told her she was dead drunk, she would have probably signed it and said yes. He just petrified her at the time, and as I said, the good Lord took care us, that I came along at that time. So I went back to the kid in the car and I said, did you see her turn lights on, and he said she didn't have them on. And his wife said, yes, she did, she had them on for sometime sitting there. So then I turned to the officer and I asked him his badge number, and I said, why did you say that and why did you put that down on the papers. And he said that is what I was told. I said, in other words, you didn't do your job for checking out whether she had them on or anything else, you just took the statement from the kid that was driving the car, and he said, yes. He says I put down what I was told, and my comments to him, and I never forgot it, any darn fool could tell you anything and you would put it down as justifiably in the court of law, and look what you would have done to her if I hadn't of accidentally come along. And that incidence, and so when you talk about charging someone, and we learn in Judiciary there is a difference in tests and some are reliable. This seems like a cut and dried case to me but I just want to tell you that all law officers and so on sometimes are not as conscientious as the other, and I don't know as we based on those rare incidences that we should protect the people that are drunk and driving, but had I not come along, my mother would

have really been charged for something that she was absolutely innocent of. So I keep thinking of that in my mind.

SPEAKER BARRETT: Senator Warner, please.

SENATOR WARNER: Mr. President, and members of the Legislature, I'd rise to oppose the amendment at least as it was described. As I understand it, the process would go ahead unless there was a case filed and, obviously, or a case pending, rather, and, obviously, all you would have to do is whatever it cost to file a case, \$14 or 16, it would be just the same as have no law at all because everybody would find some lawyer that would file a case for whatever the fee is, and then it becomes pending, and then you ask for a continuation for the next five years, or however long they do it. It is another process, obviously, to make an act ineffective and for no purpose. I hope the amendment would be withdrawn.

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

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

SPEAKER BARRETT: Senator Beyer, please.

SENATOR HALL: Senator Beyer, the issue, there have been a number of issues that have been raised, I think legitimately all of them, at least the ones that I have I have tried to raise legitimately about the impact the bill would have. Would you be willing to sit down, because I have no intention of drafting any amendments that I don't have time to sit down and run through the bill and make sure they are properly put together, but I do want to take a look at some of the provisions of the bill, specifically, that time frame issue, so that an individual would not, and which I see Senator Bernard-Stevens attempting to do through his amendment, would not, basically, be found guilty without ever having a decision come down, that being one of them; a couple of other areas that, you know, I have raised with regard to what constitutes I think a very substantial change in our DWI process, would you be willing to sit down between now and Select File and go through that? I mean we may have to agree to disagree but I would...I don't want to waste any more of the body's time and I don't surely have the amendments that I think are proper drafted at this point, and I would just like

to, you know, ask if you would be willing to talk about some of these issues between now and Select File?

SENATOR BEYER: If we advance the bill?

SENATOR HALL: Correct, correct.

SENATOR BEYER: Well, as I told you before, there is one area that we know we have to make a change and, you know, I would be willing to look at any other of the areas of some points that have been raised, but also the fact that, you know, we still have...I think something has to be done and I think that is kind of in agreement with about everybody. You know you don't always get everything right the first time. We tried and that is what we are working at, but, yes, we could look at that.

SENATOR HALL: Okay, I appreciate that because I clearly do not support the concept that the bill purports, the change, but I also know when the train is on the track, and if the track happens to be headed south instead of north, you had better get out of the way, and today is one of those days I am going to get out of the way. But that is only so that I can live to fight another day, and that will be Select File. I intend to sit down with Senator Beyer and his staff, and go over, Senator Lamb and the Transportation staff, and look at some amendments that hopefully will correct some of these problems. I, myself, may never support the concept because of what I see as an administrative function that clearly belongs in the courts. But with that, I appreciate Senator Beyer's willingness to work on this and I also appreciate Senator Bernard-Stevens' attempt to clarify the language in the bill but I think it is one that is going to have to take some time to sit down and look at the bill as it already has been amended a couple of times through the committee amendments and the Lindsay-Hartnett amendment in a white copy so that we know what we are dealing with. With that, thank you very much, Mr. President.

SPEAKER BARRETT: Thank you. Senator Beyer, would you care to discuss the amendment?

SENATOR BEYER: Well, I would stand and oppose the amendment. In talking with Senator Bernard-Stevens, basically, that goes back to the status quo that we are in already. It doesn't gut the bill but it doesn't do anything to the bill because that is, basically, the process that is in process now. A lot of it goes

to the fact that those that have some money can forestall things and make it...stretch it out quite awhile. Those that don't have the money, they go to court and it is adjudicated as soon as they can get into court. There are some of those that will get an attorney that will carry it on and on, so they would keep their license for that time and would still be out there driving. Granted, I also understand that this is not going to take all of them off the street, even if they do lose their license. They are still going to be out there and drive, but if there are some areas, if we could...if Senator Bernard-Stevens, when he gets up here, and he has disappeared now, would withdraw his amendment and we could go ahead and move the bill, I will work with both him and Senator Hall and see if we come up with some consensus. If we don't, I guess we will fight it out another day.

SPEAKER BARRETT: Senator Lamb.

SENATOR LAMB: Well, Mr. President, and members, I was hoping Senator Bernard-Stevens would withdraw his amendment by this time but I think it is worse than Senator Beyer has indicated, because as I understand the amendment, it would do away with the administrative revocation of license that we have now. So we would, in effect, be going backward. We would be going backward, and as Senator Warner mentioned, it would throw it completely into the court system which means delay after delay after delay, and so I strongly recommend that this amendment by Senator Bernard-Stevens be rejected.

SPEAKER BARRETT: Senator Langford, please. Senator Langford, on the amendment.

SENATOR LANGFORD: Call the question.

SPEAKER BARRETT: That won't be necessary. I believe Senator Bernard-Stevens is the only other light on. Would you care to close, Senator, on your amendment.

SENATOR BERNARD-STEVENS: Thank you. Senator Lamb, I could have gotten to the point of trying to withdraw it except I can't get the floor because everyone wanted to speak, and that is how it goes. So, we will start from there. I am going to at the end of this closing withdraw the amendment simply because I am convinced now, talking to members of the body, that the body yet does not understand what my amendment is trying to do, and that

Senator Hall had a good suggestion that maybe a group of us can get together and try to hammer this out. But I want to try to clarify something for the body before we get off of this and we go onto other issues so that we can maybe have a mind-set when we get back to it on Select File, and that is, number one, in talking to the prosecuting attorneys that are here within the body, they are going to tell you that one out of 20, or excuse me, about one out of 20 or one out of 30 or one out of 18 of the cases they have had of DWI actually go to court, actually go to court. So for people who stand on the body and say this amendment guts the bill and is status quo is nonsense, because if it is one out of 20, 19 of those people who do not go to court will have their license revoked for one year by 799 through the exact procedure that Senator Beyer has. One of those 20 is saying I think I have gotten a raw deal, I am challenging this, not in the petition process of DMV, but in the court system. And it is that one individual or two that I am saying we should at least wait until the court decides whether they are guilty or not before we, as a state, decide they are guilty before that time. Senator Warner says if there is a good attorney that the attorney will let his client know that, listen, if you want to keep your license for another three months, we will go ahead and file in court because Bernard-Stevens says by his amendment that if there is a case pending, then they can't do anything to you through DMV. Think about that people. The only person who is going to file against me if I am a drunken driver is the county attorney, and he is going to file charges if he thinks he can get me. If I am guilty and he has a case, he will file. I, if I go to an attorney, I am not going to file a case against myself. It doesn't happen that way and it's not going to happen that way. So it's clear to me that we're not really clear on what we're trying to do on this amendment and I will withdraw it as soon as I'm finished here, not because it's a bad amendment, but I think we're really confused on where we're going and I think we need to set down with Senator Beyer and get these things worked out. But before I withdraw it I do want to emphasize the fact that you need to go and check with your county attorneys and people and say, how many DWIs actually go into the court system? And if it is one out of 20 or one out of 10 or one out of 15, then what we're saying is, Senator Beyer's bill of 799 will cover each and every one of those cases that are not going to court, the 19 of the 20, and the Bernard-Stevens amendment will protect the one person who is going to court who is saying, I think I've been unjustly accused and it seems ludicrous for the state to

give to a department the right to punish before the courts have found them guilty. And with that explanation, I'll withdraw the amendment to have further discussions with Senator Beyer. Thank you.

SPEAKER BARRETT: It is withdrawn. Back to the advancement of 799. Is there discussion? Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President. I...my mind is working with all sorts of funny little amendments to put on, but I'm not going to offer them in light of Senator Hall's comments and discussion with Senator Beyer about attempts to work this out, and it may not be able to be worked out, but it's worth a shot I guess. I do have a problem with the concept. I can't vote for the bill at this time. I may never be able to vote for the bill, but again, I would just stress before we go to a vote to ask you to think about what you're doing and make sure we understand what we're doing. If we think it's good policy to abrogate the presumption of innocence, then go ahead and vote for the bill. If we think we should still stick with the innocent until proven guilty standard, then vote against the bill. I think that is what it comes down to even though it may be taking away a privilege instead of taking away a right or taking away a license instead of putting somebody in jail, we're still talking about that presumption that we have based our entire government upon for the past 200 years. Let's not take a step away from it. Let's vote against the bill.

SPEAKER BARRETT: Thank you. Other discussion? Seeing none, Senator Beyer, would you care to make a closing statement?

SENATOR BEYER: Well, Mr. Speaker and colleagues, I think the discussion today has been good. Been a lot of points brought out on both sides. Hopefully, you will look at my side of the bill and agree with it, but also by the same token, I know that legislation is an act of compromise and I am willing to work with Senator Bernard-Stevens and then Senator Hall and Senator Lindsay if he wants to get involved to see if we can work out the areas in disagreement. Hopefully, we can come up with something because, basically, the thing I think that all of them have stated is we need to get the drunk driver off the road. It's just that the process that we arrive at to do that, and I know that...I agree, 799 is a tough approach but drunk driving is a very serious crime and, you know, if you go to that fact that we have to do something and what it is we will try to work

out over the period of time, we will not push it on Select File, let's see what we can do and, hopefully, we can come out with something that will be agreeable; if not, I guess we'll battle it out when we get to Select File. With that, I would urge your advancement of the bill.

SPEAKER BARRETT: Thank you. The question is the advancement of LB 799 to E & R Initial. All in favor vote aye, opposed nay. Have you all voted? Record, please.

CLERK: 29 ayes, 2 nays, Mr. President, on the advancement of 799.

SPEAKER BARRETT: LB 799 is advanced. Do you have any matters for the record?

CLERK: Not at this time, Mr. President.

SPEAKER BARRETT: Thank you. Proceeding then to LB 571.

CLERK: 571 offered by Senators Hefner, Korshoj and Dierks. (Read title.) The bill was introduced on January 18, Mr. President, referred to the Judiciary Committee for public hearing. The bill was advanced to General File. I have committee amendments pending by the Judiciary Committee.

SPEAKER BARRETT: Senator McFarland, are you handling the committee amendments on the bill?

SENATOR MCFARLAND: Yes, I am, Mr. Speaker.

SPEAKER BARRETT: Proceed.

SENATOR MCFARLAND: Thank you. LB 571 is a bill dealing with steroids and the abuse that has gone on with the use of steroids by high school students, college students and so on. The original bill provided for a Class IV penalty for prescribing, possessing, administering or delivering steroids for body-building purposes. The amendment is for the committee amendments is quite extensive. It really strikes the original sections and, basically, what it does is several things. One, it removes growth hormones from the bill itself. It mandates Department of Health create an education program concerning steroid use and it lessens the penalties for persons under 18 and allows educational institutions to administratively

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to the George W. Norris Legislative Chamber and this the 36th day in the life of the Second Session of the Ninety-first Legislature. Our Chaplain of the day, Pastor Scott Pixler, Campus Minister of the Independent Christian Churches at the University of Nebraska, Lincoln. Pastor Pixler.

PASTOR PIXLER: (Prayer offered.)

SPEAKER BARRETT: Thank you, Pastor Pixler. We are pleased to have you with us. Roll call.

SENATOR WEIHING PRESIDING

SENATOR GOODRICH: Mr. President,

SENATOR WEIHING: Record, Mr. Clerk. Senator Goodrich, are you requesting the attention of the Chair?

SENATOR GOODRICH: I sure am. I fully realize the Chair hasn't made any rulings yet, but we want to challenge the Chair anyhow. This is pick on John day.

SENATOR WEIHING: And what do you challenge the Chair on?

SENATOR GOODRICH: We haven't figured that out yet. We are just going to challenge the Chair anyhow.

SENATOR WEIHING: I move that you are out of order, Senator Goodrich.

SENATOR GOODRICH: Okay.

SENATOR WEIHING: Are there any corrections to the Journal?

CLERK: Mr. President, I have no corrections this morning.

SENATOR WEIHING: Any messages, reports, announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 260 and recommend that same be placed on Select File, LB 260A Select File, and LB 799 Select File, those all signed by Senator

March 6, 1990

LB 226, 678, 799, 1031, 1059, 1063A, 1146
LR 269

have something for the record, please?

CLERK: Mr. President, I do. Amendments to be printed to LB 1146 by Senator Lynch; Senator Warner to LB 1059; Senator Lindsay to LB 799; Senator Wesely and Senator Lamb to LB 678; and Senator Smith to LB 1031. (See pages 1185-95 of the Legislative Journal.)

A new resolution, Mr. President. (Read brief summary of LR 269. See page 1184 of the Legislative Journal.)

New A bill, 1063A, by Senator Crosby. (Read LB 1063A by title for the first time. See page 1184 of the Legislative Journal.) That's all that I have, Mr. President.

SPEAKER BARRETT: Thank you. Proceeding then to General File, LB 226.

CLERK: LB 226, Mr. President, was a bill introduced by Senator McFarland. (Read title.) The bill was introduced on January 9, Mr. President, referred to the Education Committee. The bill was advanced to General File. I do have Education Committee amendments pending: (Standing Committee amendments appear on page 950 of the Journal for the Thirty-Eighth Day, First Session, 1989.)

SPEAKER BARRETT: Senator Withem, please, for the committee amendments.

SENATOR WITHEM: Let me get this straight, we are still in session, is that correct? Is that what's going on here. Excuse me, I was tied up with the other bill, and let me do a little quick scattering. Yes, Senator Bernard-Stevens said I should just say they're technical in nature, please go ahead and support them. Okay, here we go, here we go. LB 226 is a bill brought to us by Senator McFarland dealing with a Unicameral Scholars Academy. Its purpose of it is to promote gifted students, give gifted students in our state a greater degree of enriched experience during the summer months. The committee amendments will require that teachers serve on the advisory committee, be certified in teaching the gifted, require the parent on the advisory committee to be the parent of a gifted student, changes the date for reappointment of advisory committee members from July 1 to October 1, deletes the provision that selection of students shall be based on

March 14, 1990

LB 799, 1031, 1059
LR 239

and say, is this the direction we want to continue to go? And I think not. And I think the real reason, obviously, for the amendment that was filed today is to try to plead one more time that the Historical Society realize the damage that is being done daily. And I understand the theory that short-term gains sometimes can be made and short-term battles and immediate battles may be won, but you may lose the war, and I think all sides need to look at that because in that particular scenario no one wins. But I would like to also throw out one other thing. If the argument is, as Senator Baack implies and that I think is correct as well about the issue of state agency on the lawsuit, and if the courts would rule that it is, in fact, not a state agency, my, my, doesn't that get interesting? I wonder if we would even have a lawsuit filed on behalf of some taxpayer or some entity saying that the state has illegally given taxpayers' money, that we have taxed and given it to a private institution. I think that's one of the reasons why we have LR 11CA in front of us, to allow permission for entities to do just that, because it certainly is against the law now. And I hope the Historical Society understands that, that it's putting the state in a very difficult situation to the point that if they are not an agency, then the funding question becomes even more of an issue and it's not even based upon LB 340 anymore, it's based on constitutionally what can we do. And our hands will be...we'll have to play our cards and we'll be forced to do that which I think the Historical Society would find very damaging and not in its best interests. If, in fact, they rule it's a state agency, I suspect next year when the biennial budget comes through, there's going to be a great difficulty in the society being able to get the funds that it needs. And we have a scenario that is before us that could be solved so easily but we have a lot of pride and ego and we need to get those players out and the reasonable players in so that we can together move forward. And, with that, Mr. Speaker, I withdraw the amendment.

SPEAKER BARRETT: It is withdrawn. Have you matters for the record, Mr. Clerk?

CLERK: Mr. President, I do. I have amendments to be printed by Senator Beyer to LB 799; Senator McFarland to LR 239. And, Mr. President, I have amendments from Senator Withem to LB 1059. (See pages 1371-73 of the Legislative Journal.)

And, finally, Mr. President, a motion to reconsider the vote on the Kristensen amendment that was taken earlier today. That's

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LB 551A, 799

However, in the first and beginning next year and the first part of the year there is a \$98,905 General Fund expenditure to support the cost for developing the administration for this responsibility, which will be recovered and returned to the General Fund through the fee schedule as soon as those schedules and those fees are established. I would move for the adoption of this amendment to the A bill.

SENATOR LABEDZ: Any discussion on the amendment? Senator Lynch, there are no further lights, would you like to close? Senator Lynch waives closing. All those in favor of the amendment vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

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

SENATOR LABEDZ: Senator Lindsay.

SENATOR LINDSAY: Madam President, I move that LB 551A, as amended, be advanced to E & R for engrossing.

SENATOR LABEDZ: You heard the motion. All those in favor say aye. Opposed. It is advanced. Mr. Clerk, LB 799.

CLERK: Madam President, LB 799, I have E & R amendments pending first of all, Senator.

SENATOR LABEDZ: Senator Lindsay.

SENATOR LINDSAY: Madam President, I move the adoption of the E & R amendments to LB 799.

SENATOR LABEDZ: You heard the motion. All those in favor say aye, opposed. They are adopted.

CLERK: Madam President, the first amendment I have to the bill, Senator Beyer, Senator Lindsay, you passed yours over for the time being, is that right? Senator Beyer, I now have your amendment, Senator, and that is found on page 1371 of the Journal.

SENATOR LABEDZ: Senator Beyer.

SENATOR BEYER: Madam Speaker and colleagues, when we discussed

this bill on General File it was advanced to Select File. There was some discussion that I would meet with the people and try and work out some of the concerns they had. We did address some of those concerns. I've never heard back from any of them yet, so we did go ahead and draft up an amendment and filed it. What this amendment does, does three things. One of the things we discussed was that DMV didn't think they could get the hearing held within the 30 days that's in the bill, so we went and changed that, added the 10 days to make it a 40 day request which keeps us within line of what the federal says we have to do. We changed the time period for revocation of the driver's license on first offense from one year down to six months. The revocation period for refusal to take the test remains as one year as is currently in the implied consent law. Then we inserted language to say that if a person has had his or her license revoked administratively and subsequently is found innocent by a court of law, the license will be restored by DMV without payment of the reinstatement fee of \$50. So with that I would urge your adoption of these amendments. Thank you.

SENATOR LABEDZ: Mr. Clerk.

CLERK: Madam President, Senator Lindsay and Beyer would move to amend Senator Beyer's amendment. Senator, I've got AM3086 in front of me. (Amendment appears on pages 1581-82 of the Legislative Journal.)

SENATOR LINDSAY: I think for the record, I don't think Senator Beyer is on that amendment.

CLERK: Okay.

SENATOR LINDSAY: Unless he'd like to jump on now, that's... Thank you, Madam President, members of the body, what this amendment would do is to change the Beyer amendment would accomplish six items. First, is that it would...if you recall, let me bring you back up I guess a little bit on the bill itself. The bill itself would suspend drivers' licenses from the time of the arrest regardless of whether a conviction has occurred at the ti...well, actually, a conviction would not have occurred at that time. It's an immediate suspension of driver's license, or impoundment I should say, then an administrative revocation procedure following that. What this amendment would do is add to the Beyer amendment so that it would strike the provisions regarding suspension of license for failing a

preliminary test. I'm sure you're all aware that there are two different types of tests that are given on a DWI. One is a hand-held, referred to, called an alcosensor, (phonetic) which just gives you three indications of a pass fail or a warning. It's a red, green or yellow light. It would eliminate any question as far as suspension for failing that particular test. The second test that is given is the one that we generally hear about and that is the Intoxilyzer, if it's a breath test, or the blood test or the urine test. It would strike that, any suspension for failing that preliminary test. Second, it would strike that part of the bill which suspends the license for failing that chemical test. What this would do is makes the intent then to force that that test be taken. It would not revoke the license for...if somebody goes along with what the law requires of them and that is to take that test. If it results in a failure, then that should shift you over to the criminal system and let the criminal system handle the case as we do with, as we do right now with DWI's. What this would do is it adds the incentive to take that breath test or that blood test. Number three, back in 1987, Senator Lamb, Senator Wesely and Senator Hall got together and were able to come up with a compromise on an administrative revocation proceeding that would require the Director of Motor Vehicles to dismiss administrative proceedings upon receipt of a certified copy of a guilty plea to the underlying charge of drunk driving. This would reinstate that compromise and I think which would be good policy. In that manner, if the courts have got the case, they've already received a guilty plea. The court is required, it's a mandatory suspension of license on conviction for either DWI or for refusal to submit and under either case the court must suspend the driver's license. So that suspension is already taken care of through the criminal system and there is no need for the administrative proceeding. They reach that compromise and this would reinstate that compromise. Number four, it takes out that part of the bill that prevents the court from granting a stay on appeal. I think...I'm not sure that we can take that power away from courts. I'm not sure if they wouldn't just stay the enforcement of the act if they couldn't stay that part of it. I think they do have that inherently, courts have that authority to grant stays pending appeal. Number five, it would require the Director of Motor Vehicles to have a hearing within 20 days of the filing petition. Senator Beyer has expressed a concern that there is a delay between the time that the license is revoked, or excuse me, the time the stop is made, the person is charged with DWI or with refusal. This would just require that

the Director of Motor Vehicles have a hearing within 20 days of the filing of the petition so it wouldn't extend that out for months and months. And finally, number six, that it allows the changes from 10 to 15 working days from the date of arrest to file a petition appealing the matter to the Director of Motor Vehicles. I would urge the adoption of the amendment. Would be open for any question.

SENATOR LABEDZ: Senator Beyer.

SENATOR BEYER: Madam Speaker and colleagues, a couple questions of Senator Lindsay. Senator Lindsay, are these the amendments that you originally filed as an amendment?

SENATOR LINDSAY: No, no.

SENATOR BEYER: We have not seen these amendments. You've stuck them in and...

SENATOR LINDSAY: No, they are...

SENATOR BEYER: ...nobody has seen them or...

SENATOR LINDSAY: I have copies here. No, they have...I think I'm being honest as far as what the effect is. I don't think I have hidden anything. I've got copies here, but, no, this was not printed in the Journal so, no, you have not seen them.

SENATOR BEYER: Well, I think I would rise to oppose those amendments at the present time. I just passed out a letter that I had received from the Department of Transportation stating that we are eligible to some funds if we pass the bill as is. It says down there, as has been amended. Of course, this was earlier. But there is available over 500,000 a year over a five-year period that we would be eligible for, but Senator Lindsay's amendments would take out that eligibility portion of it for us, if I understand it rightly, because this has been upheld that it is constitutional in other states. He is basically saying it's suspect with the courts and that's been proven wrong by the cases that have been held in other jurisdictions so I would oppose it at this time. Thank you.

SENATOR LABEDZ: Senator Hall, on the amendment to LB 799.

SENATOR HALL: Thank you, Madam President, members, I rise to

support Senator Lindsay's amendment to LB 799. The...and just to clarify a little bit, I think, Senator Beyer's opening statement because I was one of the individuals who discussed this bill on General File and as well as Senator Lindsay and Senator Wesely because 799 is a radical change from a proposal that was passed, the implied consent issue that we dealt with just last year, and Senator Wesely and I, along with others, worked extremely hard on that. What 799 does is totally restructure all of that and the single purpose for doing that, the single purpose for doing that because if you talked to Fred Zwonechek, he will tell you that the change in the law is working extremely well and Senator Wesely will attest to that as well. But the single purpose for changing the law that we currently have in place is what Senator Beyer continues to reference is approximately half a million dollars in federal funds that are required to be used and solely used for alcohol and drug education. Now that is a very fine purpose, ladies and gentlemen, and I am one of the proponents of that here on the floor and when we deal with the budget year in and year out, but the fact of the matter is, is we have a system that currently is working. It does not allow for the automatic revocation or in other words, guilty until proven innocent, which is what this bill becomes. It says you're guilty until you're proven innocent, not the other way around which tends to be the way we've always treated any other crime. And because we don't have an automatic revocation provision in our law, we are not eligible for these funds. Now, is there any guarantee that the funds are going to come down? I don't know. They're there right now and I...you know, the more funds that are available for this type of a purpose, the better, but at what cost to us as a state? I mean, what we are doing here is we are abdicating our legislative authority to the federal government in this case, an agency of the government, the Department of Motor Vehicles, who says that in order to be eligible for these types of funds you have to have these certain laws in place. Now that happens from time to time, but in no case has it ever been put into place, has Department of Transportation ever said or any other agency that I can think of that you have to have a guilty until proven innocent law put in place in order to get funds. And at that point in time, ladies and gentlemen, those dollars that flow from the states to the federal government I think become too expensive to accept and Senator Beyer thinks otherwise and that's really all that this boils down to. What price are you willing to pay, how far are you willing to bastardize your system in order to accept \$500,000 in federal

funds? I don't think it's worth it. I don't think you should think it's worth it either. What Senator Lindsay does is try to bring back to the bill, if something is going to pass, and I've got some amendments up that all of them are legitimate and deal with legitimate issues, it is not my intent to badger the bill with frivolous amendments, but there are issues in this legislation that need to be dealt with one at a time. And I've got three amendments up there currently that deal with those when we get to them because there is others, I think at least three other senators who have amendments as well. This is a serious piece of legislation. it is not just something that...

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: One minute.

SENATOR HALL: ...deals with drunk driving and making it tougher. It deals with a number of different things not the least of which is a current law that we have in statute that works and works extremely well. What Senator Lindsay does is try to retain much of that current statute that Senator Beyer's bill would wipe out. There are a number of things and the Beyer amendment deals with some of those, but to say that the people that were interested in this did not get back to Senator Beyer as he did in his opening, is not accurate. It is not accurate. The accurate thing to say is that there was no way that these two sides could agree on anything in LB 799 and to be quite honest with you, once we made the major change that we did last year in the implied consent, no one thought, and you've got a system that is working that Fred Zwonechek says is working, that I think...

SPEAKER BARRETT: Time. Senator Beyer, on the amendment to the amendment.

SENATOR BEYER: Well, just a couple points, and Senator Hall just said that Fred Zwonechek said that it is not working. In 1988 there were 840 persons revoked, 78 reinstated. In '89 it was completely reversed. There was 412 revoked and 574 reinstated, basically because of that that they could go in and plead guilty and go ahead and get their license back. So the implied consent and the bill as it is is not working. But based on what Senator Lindsay is trying to do, he basically is gutting the bill and putting it back to what we have right now. And, yes, we accept federal funds. We accept federal funds in

about everything we do anymore, and it is a way to help prevent it. After all, basically, what we're after is to get the drunk driver off the road and prevent the deaths. In the other, what is it, 27 states that have got this law in effect, that all showed a reduction in drunk driving deaths and I think that that means that it has been working and it will work here. I guess here we're arguing a livelihood for the defense attorneys. They are unhappy with it and they don't like it because at the present time some of them will go and ask for continuances and everything and drag these out in courts for a long period of time and I think that's the wrong impression that we need to give to people. I think we need to get them initially right away and go ahead and let them go on through the court system at that time. But all the statistics, administrative per se laws do more than get us federal funds. The purpose of the bill is to remove drunk driving from the road and this has been done in other states where the administrative law, per se laws, have been enacted. So I think that that is proof that it does do the job and with that I would urge your defeat of the Lindsay amendments.

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

SENATOR LAMB: Yes, Mr. President and members, I rise to oppose the amendment by Senator Lindsay and the question really is very simple. Is driving a right or is it a privilege and most of us believe it's a privilege which should be shared by all people and we should not be at risk because we have drunk drivers on the road. And Senator Lindsay and Senator Hall don't agree, and they would relax the restrictions we have at this point. I don't think that's what this Legislature wants to do. I don't think that's what the people of the State of Nebraska want to do. I think we should adopt Senator Beyer's amendment without further amendment and go on from here trying to protect the citizens of the state from drunk drivers.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Thank you, Mr. President, members, again, I rise in support of Senator Lindsay's amendment to the bill. And probably the best argument for supporting Senator Lindsay's amendment and opposing 799 in even the amended version which is a better version but it clearly is still a poor piece of legislation in my mind, is exactly what Senator Beyer just said.

The statistics that he gave you were that in 1988 there were approximately 80 licenses that were revoked, 80. In 1989 there were 500 plus guilty pleas. In other words, those people pleaded guilty. Now, once they pleaded guilty to the crime and you take those individuals, you put that on the record, they go to court, they serve whatever time or give them whatever penalty, whatever fine that the court determines is appropriate based on the law, what more do you want? What more do you want? What Senator Beyer wants to do is, he said, get those drunks off the road, and that is not...and then Senator Lamb says that that's not something that I want to do. That's not true, that's not true. And if you can prove...Senator Beyer says that there has been a reduction in deaths in some of these 29 states that use this law currently, when I would argue in the State of Nebraska from '88 to '89 there has been a reduction as well and we're looking those numbers up right now, since the implied consent law was put into place. What you want, what the argument was all the time is these people don't ever plea. We want to get it on the record, we want them to plead guilty and that's exactly what we did with that law when we passed it. We got those people on record, we got them to plead guilty. We got them into treatment programs, we got the points taken off their license. We put stiffer penalties in place for those folks who were not just first offenders, but second and third. We have some of the toughest drunk driving laws for multiple offenders in the country in this state. We have a good system that is in place. What Senator Beyer will do through the passage of 799, outside of pick up \$500,000, I think is throw the system into havoc. When he says that it is something that the defense attorneys don't want, ladies and gentlemen, this type of legislation makes defense attorneys salivate at the pocketbook. This is exactly the kind of thing that is going to throw these cases which currently are being pleaded, they are currently just taking their medicine. They are pleading guilty, they are being found guilty. It's running through the system. The difference, as Senator Beyer pointed out, was under 100 to over 500 guilty pleas in one year's time because of that change in law. But what you'll do is when you pass the Beyer legislation, although it sounds great and we're going to get those drunks off the road, you are going to see every single one, not every single, but virtually every single one of these cases appeal. They are going to tie up the court system like nothing has ever tied it up before. That is plain and simple what is going to happen with the passage of this law if it should take place without some type of change, and the Lindsay amendment is the first good

change to be proposed because it is the first one in line. It is clearly just not true that this is going to have any kind of impact, but a very good monetary one on what the defense attorneys say about the drunk driving laws because this will throw a monkey wrench into a system that, through Senator Beyer's own admission, has quintupled the number of guilty pleas in the last two years since the passage of that law. That is exactly what it does. You're going to go back from 500...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...to 100. You're going to go absolutely in reverse. You're going to think because you pulled that license away for 30 days or six months or a year or whatever it ends up being, that that is going to take care of the problem. Ladies and gentlemen, those people are going to continue to drive. Taking away that plastic card doesn't keep them off the road. They are going to continue to drive if they're going to keep their jobs. You're not going to correct the situation. Now we get them into court, now we get them to plead, now we get them into treatment programs, now we put them on probation, we make them go to class, that won't happen under this law. You're going in reverse. You're going backwards instead of forwards. You're putting your emphasis on the wrong side and it just won't work. You're going to be back here in a couple years to change it unless you look at some of these amendments...

SPEAKER BARRETT: Time.

SENATOR HALL: ...instead of just blindly pushing the button.

SPEAKER BARRETT: Thank you. Senator Lindsay, followed by Senator Bernard-Stevens.

SENATOR LINDSAY: Thank you, Mr. Speaker. Could I ask Senator Beyer a couple of questions?

SPEAKER BARRETT: Senator Beyer, would you respond?

SENATOR LINDSAY: Senator Beyer, if I'm reading correctly, I think you had a handout that said we get about \$500,000 a year for five years from the federal government. Is that correct?

SENATOR BEYER: Mmm, hmm, yes.

SENATOR LINDSAY: Where does that money go, to what fund in the state here?

SENATOR BEYER: Basically it is to be used for the...to help prevent drunk driving, for education, I believe.

SENATOR LINDSAY: Does it go to enforcement at all? Do you know?

SENATOR BEYER: It's...the money would be spent on DWI prevention activities only. It is limited to what it can be spent for.

SENATOR LINDSAY: What is prevention?

SENATOR BEYER: I have no idea as to how that's determined by the tech...

SENATOR LINDSAY: What about...I think in your talk, when you first talked, you were talking about problems with...is the problem that we've got a delay that these people are still out there driving while their attorneys are asking for continuances of a trial?

SENATOR BEYER: Basically, on the ones that have been tested, yes. That's the problem. The implied consent is working and Senator Hall misquoted the figures that I gave you because he said that there was 78. That is all that was revoked earlier.

SENATOR LINDSAY: Okay.

SENATOR BEYER: That's the biggest problem we've got, is that they hold those licenses, they get continuances as long as they can.

SENATOR LINDSAY: Okay, and that's the problem is that these people are getting their licenses, they're not having those penalties imposed and they are able to put off their conviction for months.

SENATOR BEYER: Yes.

SENATOR LINDSAY: Okay. Can the court, do you know, does this Legislature have the authority to prevent a court from granting stays on appeal?

SENATOR BEYER: I don't believe it does.

SENATOR LINDSAY: Thank you, Senator Beyer. I think there is...the important thing here is I think Senator Hall has said it and I think we said it at General File is this is an important piece of legislation. It's...we can't take it lightly. We're going to get \$500,000 a year. What a bargain for chipping away rights from our citizens. It just doesn't seem right to me to be able to do that. Let me point out what is going to happen in actuality, when we take this away from the abstract and put it in the concrete. This is an actual case that happened, I believe it happened in Omaha and I believe Judge Troia is the one that threw out the case on a refusal. Officer arrests a suspect for DWI, takes him to the hospital, says I want to draw your blood for DWI. He says, no problem, draw all the blood you want. They go to the hospital. The hospital says, sign this release of liability. He looks at it, it releases the hospital from everything. They can cut his arm off if they want and he has released them from liability. He says, I'm not going to sign this. If I'm infected from a needle that may have been used on somebody who has had contact with AIDS, if the doctor misses my vein and injects something in there by mistake, if a whole host of things that happen in any medical malpractice case, and they do happen, if any of those things happen he has released them from liability. He refused to sign the liability form, but said, take all the blood you want. The officer says, you've refused the implied consent. You've refused to allow us to take your blood because you wouldn't release somebody completely from liability if they screw it up. That's the kind of effect we're going to have and from that point on, from the time that he does that, even though the judge has said, you can't do that, we can't impose that kind of liability on somebody, or thrust that kind of release on somebody, from that time on that license is suspended. He has paid the price for that. Now I don't know what that guy did for a living, but let's move that kind of scenario on to some of these other cases. Let's talk about truck drivers. Let's talk about somebody who is a commercial truck driver. They're out of business, not convicted, but they're out of business. Let's move that on to a salesman who has to drive from store to store selling whatever they're selling, selling products to a drug store.

SPEAKER BARRETT: One minute.

SENATOR LINDSAY: They're out of business and no conviction, and yet they may end up being acquitted. But you can't go into your employer and say, well, look, I lost my license for a couple of days because some policeman told me to sign a release form at a hospital, can you give me two, three, four weeks off? It's not going to happen. We are going to...the practical implications are, for this 500,000 bucks that we're going to receive every year, maybe, for five years, we're going to be forcing some of our citizens into that kind of a situation. And if we talk about any abstracts, let's get drunk drivers off the road, that sounds great, but let's move it down to the concrete. Let's put names on those faceless people and let's find out if we're willing to vote to do this to people. I don't think we are. I think these amendments will soften up the bill a little bit. I still agree with Senator Hall that it's not a good bill either way, but let's at least soften the impact on them a little bit so that we're not doing what I think we're trying to do to our citizens. I'm going to urge you to adopt the amendments.

SPEAKER BARRETT: Thank you. Senator Pirsch, further discussion.

SENATOR PIRSCH: Thank you. I have some questions for Senator Lindsay. Senator Lindsay, it's hard to say in such short time what your amendments really would have the effect of. But I see on page 10 it strikes all the new language, on page 11 strikes all the new language, on page 12 strikes all the new language, and 13 strikes all the new language. And I guess what do we have left after you strike...

SENATOR LINDSAY: Those...what the new language that is being stricken there is the language dealing with DWI, not refusal. The language, as you notice, if you look at any of these, if we could just go to whatever the first one is, page 10, lines 19 through 24, the reason it strikes new language, and there is quite a bit of it to be stricken, is because we're striking out all that express language dealing with the...

SENATOR PIRSCH: With the alcohol...

SENATOR LINDSAY: ...with the alcohol, right.

SENATOR PIRSCH: ...ten-hundredths of one gram.

SENATOR LINDSAY: Right, and that's the first...

SENATOR PIRSCH: So...

SENATOR LINDSAY: That's the first thing I'd mentioned, that it does strike that part of the bill which suspends the license on failure to pass the test. It leaves it in on the refusal to submit to the test.

SENATOR PIRSCH: Okay. I have another question. Senator Beyer, in his amendment, talked about extending the period of time of a hearing from 30 to 40 days, because they needed more time. And your amendment is saying, if no hearing is held within a 20-day period, the matter shall be dismissed.

SENATOR LINDSAY: Um-huh.

SENATOR PIRSCH: Now, does that mean then that there will not be sufficient time to prepare, which is the reason they extended it to 40 in the first place, and after 20 days that will be automatically dismissed? What protection do you have?

SENATOR LINDSAY: See, I'm not sure that's the sole reason for extending it to 40 days. Now, part of the problem is, but I guess that's not going to be around anymore, is that the 1987 compromise between Senators Hall, Lamb and Wesely, which said if you plead guilty the administrative proceeding is forgotten about, and it's dismissed and you move on and just handle it in the criminal court. What the intending to move that to 40 days is you can be...within 40 days you are going to have an arraignment. An arraignment is generally when you'll make your plea of guilty and take your lumps. And the idea was to extend it from, I'm not sure why the extent (sic) was from 30 to 40, I was not involved in that. But my guess is that's why. If there is another reason to allow more time to prepare, then maybe that is the case. What the intent of the amendment was, it shortens that time. If that's Senator Beyer's concern, to have that hearing quickly, let's put it within 20 days. The preparation will actually take place during those 15 working days before...when the client first comes to the lawyer, says I want to appeal this, you have 15 days to file a petition so there's still roughly the same time. It shifts that from before the filing of the petition or excuse me, from after the filing of the petition to before the filing of the petition.

SENATOR PIRSCH: Okay, thank you. I guess I'm concerned that the matter would be dismissed if we cut this off at a shorter period than the department could prepare for. And I have a lot of reservations on this amendment on such short notice.

SPEAKER BARRETT: Senator Lamb, followed by....Question has been called. Do I see five hands? I do. Shall debate now cease? Those in favor vote aye, opposed nay. Have you all voted? Record, please.

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

SPEAKER BARRETT: Debate ceases. Senator Lindsay, to close.

SENATOR LINDSAY: Thank you, Mr. President. Members, I'm just going to again summarize what...and try to answer some of the questions that have come up. The first question has been asked a couple of times. Does the amendment leave in the ability of the officer to take the license immediately? And the answer is, on a DWI, no, on a refusal, yes. That's the intent, to force people into taking that test. And they know they immediately lose their license if they refuse to submit to the breath test. So that is what the amendment, the first part of the amendment would do, is to withdraw. And then Senator Pirsch went into it a little bit, to take out language dealing with the DWI. On a refusal they will lose a license immediately. Like I say, I don't like it, but that's what the amendment would do. It does allow, on a plea, if our intent is to prevent the continuances, to impose a sentence right away, that Senator Beyer is concerned with, the part that reinstates that compromise from '87 would take care of that. If we have a plea of guilty, there is a mandatory suspension through the courts, so this would allow that suspension to take place immediately upon the plea of guilty. There is no reason at that point to have the administrative revocation proceeding. It would allow that to continue. And that compromise would be reinstated. It takes out a part of the bill that I think, that in my question by Senator Beyer he said, I don't know that this Legislature has the authority to prevent a court from granting a stay of appeal. The bill does do that. This would take that out. I think the court would take it out, anyway. But it does take that out specifically. And then it gets down into the question that Senator Pirsch and I, I guess, were just discussing, and that is the question of the time for the petition. As the bill stands, if the petition is filed, if the petition is filed, if the

accused cannot get a hearing date within that time, the license is gone. Now,...and then what we do is we shift to the state, it makes the state...it's great if the state can start delaying these hearings. And it makes the state...you can keep a license arbitrarily by just delaying the hearing. What this does is requires that a hearing be held within 20 days. I can assure you that the department can prepare within 20 days for a case, all they have to do is bring their one witness who was at the...who happened to be at the site. And we are doing this, as you all know, on the testimony of one police officer. I can assure you the department can have that police officer there to testify. They always seem to be able to do it for court. I can't get cases dismissed because a police officer won't show up. But, second, it allows the accused 15 working days, instead of the 10 days that are in the bill itself, to file that petition. The reason for that is a lot of times people will put off going to see their lawyer. This allows that deadline is going to pass before they even get a chance to get in to see the lawyer. So it gives them 15 working days to do that. That is what the amendment to the Beyer amendment will do. I would urge the adoption of the amendment.

SPEAKER BARRETT: The question is the adoption of the Lindsay amendment to the Beyer amendment to LB 799. All in favor vote aye, opposed nay. Have you all voted? Have you all voted? Senator Lindsay.

SENATOR LINDSAY: Mr. President, I'd ask for a call of the house and accept call ins.

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

CLERK: 26 ayes, 1 nay, Mr. President, to go under call.

SPEAKER BARRETT: The house is under call. Members, please return to your seats and record your presence. Members outside the Chamber, please return. The house is under call. Call in votes will be accepted.

CLERK: Senator Conway voting yes. Senator Labedz voting yes. Senator Scofield voting yes. Senator Baack voting yes. Senator Crosby changing from yes to no.

SPEAKER BARRETT: Record. I'm sorry, do not record, Mr. Clerk.

Call in votes are still being accepted. Senator Bernard-Stevens, please.

CLERK: Senator Hefner voting no.

SPEAKER BARRETT: Senator Weihing, please check in.

CLERK: Senator Chambers voting yes.

SPEAKER BARRETT: Senator Byars, please check in. Senators Moore, Haberman, Rod Johnson, the house is under call. Call in votes have been authorized. Senator Lindsay.

SENATOR LINDSAY: Mr. President, I'd ask for a roll call vote. Who's missing right now?

SPEAKER BARRETT: Senators Moore and Haberman.

SENATOR LINDSAY: Let's just go ahead.

SPEAKER BARRETT: Thank you. The question is the adoption of the Lindsay amendment to the Beyer amendment to LB 799. A roll call has been requested. Mr. Clerk, proceed.

CLERK: (Roll call vote taken as found on pages 1582-83 of the Legislative Journal.) 26 ayes, 15 nays, Mr. President, on the amendment to the amendment.

SPEAKER BARRETT: The amendment is adopted. The call is raised. Back to the Beyer amendment, as amended. Any discussion? Senator Hall. Thank you. Senator Warner.

SENATOR WARNER: Mr. President, members of the Legislature, I would urge the body to reject the amendment as amended. What this body historically does is you pass something to keep the drunks off the road, and then you make damn sure there is a hole in it that they can drive back into the road with. And that's where this bill is headed, and we all know it. And if you don't understand it, why that's nevertheless the direction it goes. The process is always the same, attempt to use the process to avoid a judgment, not to assist. It's no different now. Just know what you're doing, because what you're doing is exactly what happens most of the time. There are other amendments to make it even less effective. And, if this one wouldn't have worked, there would have been more. And I appreciate that those

who make their living need all the tools they can to get clients. But somewhere along the line you start to think about the poor people who were killed, you ought to, you ought to think about the fact that you drink voluntarily, nobody pours it down your throat. If you want the opportunity to help make our highways safer, if you want the opportunity to save some lives, then I urge you to reject this amendment as it now stands, because it's been gutted.

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

SENATOR BEYER: Well, Mr. Speaker, I think Senator Warner voiced it a lot better than I can. I would urge at this time that you do reject the...my amendment as it has been amended now. It basically guts the bill, guts the intent of it, will leave these people drive until they do go to court. Sometimes they will be involved in more than one incident. And it gives them more protection for those people than it does for the people that are out there having to face them, you, me, every one of us has to think about the time that one of those people could run into us, or into our family and kill our families as well as anybody else. It seems that this Legislature today is going on record in favor of that. So, with that, I would urge your rejection of the amendment as amended. Thank you.

SPEAKER BARRETT: Senator Hall.

SENATOR HALL: Thank you, Mr. President, members. I rise in support of the amendment after it's been amended by Senator Lindsay, because basically what Senator Warner said. The amendment that we just adopted does not gut the bill, it does not gut or allow individuals to continue to drive drunk. If that were the case, where are the folks that were clamoring to have this bill pass? This bill is left over from last year. Senator Beyer picked it as his priority. Where is the cry and the hue with regard to the problems on the road? As a matter of fact, alcohol related deaths from 1988 to 1989 went down 8 percent in the highways of Nebraska. Much of that has to do with implied consent law that we passed during that time frame. In no way did we gut anything. What we did is retain a provision in our drunk driving law, one of the strictest in the country, especially when you get into multiple occurrences, which it should be. We retained a provision that is currently working and working well. The only reason this bill was

brought, the only reason it was brought is because there are \$500,000 out there of federal monies to be waved in front of the nose of people who say, well, we should do whatever it takes to garner those funds. Well, ladies and gentlemen, I would argue that we should not, that we shouldn't just bend over and have the federal government make us bow at their feet for half a million bucks, to change a system that we put in place, we worked very hard over, we struggled over a couple years ago, and put into place a system that is currently, I think, working and working well. I stated on General File on this provision that I have personal, firsthand experience with drunk drivers. I mean I know full well what can happen to individuals that are family members with regard to this. But, again, that doesn't mean you throw out your whole system of justice in order to protect a few. Yeah, I'd like to protect Jeff and Jim. I wish they hadn't been in the hospital for months. I wish the one wouldn't have his leg still wired up. He was an All American in cross-country, and he can still beat me with a wire in there. But the fact of the matter is every once in a while in a system like ours a few guilty people have to go so that the free people are allowed to be free, except when it comes to drunk driving. And that has traditionally been the case. We have always said, no, in this instance we're going to put on the white coats and the white hats and we're going to say nothing, absolutely nothing comes in the way of getting those drunks off the road. And not one person in this body can prove that LB 799, prohibition or any other law that you can enact will do away with drunk driving. Ladies and gentlemen, it won't happen, it won't happen, but yet that's what we pontificate about here on the floor. We don't worry about whether the laws are appropriate, whether they work and whether they provide justice for those individuals who aren't guilty. We will go ahead and pass the 799 that says, you're guilty. Doesn't matter if ultimately we find out through the courts that you weren't guilty, you're guilty from that moment until you can prove yourself innocent.

SPEAKER BARRETT: One minute.

SENATOR HALL: That's reverse justice, at least the way I learned it. It's not supposed to work that way in this country, but in this one section of statute, in this one area we do that. Why didn't we do that when we were dealing with the bill right before this on child sexual harassment, child sexual crimes? Why didn't we put the provision in that said you're guilty until

proven innocent? Why didn't we do that for those people whose names have been bandied about with regard to the Franklin issue? We wouldn't dream of doing that, but somebody who could be a drunk driver could be, and under this section, if you were to pass it in the form without the Lindsay amendment, anybody could be a drunk driver. It depends on one person's judgment, up or down, and they're guilty at that point in time that that individual makes that decision.

SPEAKER BARRETT: Time.

SENATOR HALL: If we applied that to the Franklin case, ladies and gentlemen, you'd see some of these same people pontificating in a different way.

SPEAKER BARRETT: Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President and members, Senator Warner has suggested that for 28 years he's been passing bills to get drunk drivers off the road, that every time we try to do one, we put in tools to help lawyers in their profession. I suggest to you that the tool that the lawyers need to defend their clients is the Constitution. The tool that a lawyer needs to defend his client are those presumptions that have been ingrained in our minds since we were in grade school that in this country, at least, somebody is innocent until proven guilty. Those are the things that lawyers use, and you may dislike lawyers in that I hear lawyer jokes all the time, and I see where lawyers are way down on the list of who is to be commended and who is not to be commended and nobody likes lawyers, and that's all accepted because nobody goes to a lawyer unless you've got a problem. It's a bad experience to go there. You've got to pay to get yourself out of a problem, but lawyers are the ones who help you assert your rights. If you don't assert your rights, nobody is going to assert them for you unless you get the help from the lawyer. So, yes, there are tools that are being put in there to help lawyers, not to help lawyers make money, it's to help lawyers protect rights. Now we can strip those out of there and you're not going to make lawyers go broke. I'll guarantee you there's a couple of lawyers behind the glass here who are going to take this case up and challenge the constitutionality of it, and they're not going to do it for free. Lawyers will continue to make money regardless of whether we feel that it's necessary to protect constitutional rights. We're not going to be hurting them. The

only people we're going to be hurting by passing this bill, frankly, I think in its amended form or not, are the people it's going to impact. And it's not going to impact the guy that's been convicted 15 times of drunk driving and is still out on the road. It's not going to impact the guy that's already been in accidents, killed 15 or 20 people in a bus or whatever that was down in Kentucky. This is going to impact on your sons, on your daughters, your grandkids, yourselves. I'm not going to ask for a show of hands, but I would venture to say there's a lot of people in here who may have been out and had to, to the Nebraska Club and had one drink or two drinks and not gotten drunk, and not gotten drunk. But that's not what this bill does. This bill says if you're close it counts. The Intoxilator has been proven in court time after time after time to have an error margin. You get out there and you may be at .08, you may be perfectly capable of driving, but because a policeman, but because somebody who may not like your attitude or because somebody who may not like the fact that you're a state senator says, I think you're drunk, this Intoxilator says that you're pretty close, we're going to charge you. You know you're innocent and you go to court and you prove you're innocent. Actually in court we still have the Constitution and the state can't prove you're guilty, but it doesn't matter. How are you going to get back and forth from Lincoln to Hastings or Lincoln to Waverly or Lincoln to Omaha or Lincoln to Kimball or whatever it might be? You're not. You don't have a license. You don't have a license for that entire period until you can go prove that you're innocent. To me, that's not the American way. That's not what I was taught when I went to grade school. I don't think we ought to be taking those rights away. I think this amendment will soften the blow of this bill. To me, I'm willing to sacrifice the \$500,000 that the feds will say to do as you're told. I don't think we should be imposing this on our citizens. I suggest that we advance...that we adopt the amendment and get to debate on the bill.

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

SENATOR LAMB: Question.

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

CLERK: 27 ayes, 2 nays to cease debate, Mr. President.

SPEAKER BARRETT: Debate ceases. Senator Beyer, would you like to close on the adoption of your amendment?

SENATOR BEYER: Mr. Speaker and colleagues, very brief, both Senator Hall and Senator Lindsay said we're looking at the dollars. When I introduced this bill I did not even know about the dollars. That is something that is secondary to...that come in. The bill was introduced basically to help get these people off the roads, so that was the reason that I carried it, so I guess I take a little exception to that. It has been proven in the other states that it is a reduction by having this even over and above what we have with our implied consent, and our implied consent does not take the license away. They still have that in their hand until they have their hearings. We have also that the 40-day period of the temporary license until they have their hearing on their license, but their license is physically removed. I guess basically what I am saying is I think that we should do away with the amendment, my amendment as amended, completely reject it and then go ahead and argue on the bill. And the constitutionality part, every state so far that has this, they have had their court hearing and it has all been ruled constitutional. So with that I would urge your rejection of the amendment as amended at this time.

SPEAKER BARRETT: The question is the adoption of the Beyer amendment as amended to 799. All in favor vote aye, opposed nay. Voting on the adoption of the amendment. Have you all voted? Record.

SENATOR LINDSAY: Ask for a record vote.

SPEAKER BARRETT: Record vote has been requested.

CLERK: (Read record vote. See pages 1583-84 of the Legislative Journal.) 21 ayes, 17 nays, Mr. President, on adoption of the amendment.

SPEAKER BARRETT: Motion fails. Next amendment.

CLERK: Mr. President, the next amendment I have to the bill is by Senator Warner. (Warner amendment appears on page 1584 of the Legislative Journal.)

SPEAKER BARRETT: Senator Warner, please.

SENATOR WARNER: Mr. President, members of the Legislature, when I first came to this body I was told that timing is everything and this is bad timing. (laughter) The motion I have filed will strike from the bill an amendment that was adopted the other day that permits a deposition to be granted, I believe, as I understand, by a judge to be taken by someone who is charged with DWI. As it was brought to me, it was brought on a couple of bases. The first basis and my first conversations on this bill, or on this amendment, was with Lancaster County Attorney, County Attorney's Office, but the first concern that they expressed was one of cost, and I assume they thought that might appeal to me. And I can understand that in the event, and it wouldn't necessarily happen, but I can understand that if there are many times that a deposition is to be granted and has to be done that this takes, obviously will take the time on the part of law enforcement personnel, the police officers, the county attorney who has to be there, others who might be involved in the proceedings that was appropriate to take a deposition, and this could obviously tie up the officer's time. I was reading, because there is a bill that was the same, as I understood that...as this amendment when it was attached to 799. As I recall from reading some of the material from Omaha, for example, that most of the arrests occurred between 4:00 p.m. and 7:00 a.m. in the morning, so it is mostly night shifts, and that most of the time I gather that these depositions are most likely to be taken between eight and five in the day, 8:00 a.m. to 5:00 p.m., so you're bringing in officers on their on off duty time usually. I know in Lincoln's case where they are brought in on their off duty time, under their negotiated contracts they have a minimum of four hours for which they need to be paid. One can make a case, most certainly, that it adds to the overload of work for those on the law enforcement side or increases the cost because of additional people that may be needed. But it seemed to me that there also had to be other reasons than just a cost factor, obviously, and it seems to me that there are. As I understood this, and I freely admit I'm in an area that I'm not an expert in, but as I understood the amendment that permitted the deposition as in the case of a misdemeanor which I'm not aware where that, or at least I am told that in other like cases that would not, is currently not necessary. And while I find it hard to argue that it's necessary in a case of DWI when in some other areas, unless, of course, unless, of course, the purpose is to provide another tool for delay which is, in fact, is the history, another tool

for delay in order to make it less likely for the person able to be charged. And then I can see the benefit of the deposition. I'm told, at least in Lancaster County, that all of the information, entire files, are provided to the defense attorneys and to the individual so every bit of information that is going to be used is available for them to know, and it seems that that is or ought to be more than adequate to provide the defense with the necessary information that might be needed. It is my belief that this amendment ought to be taken off that was attached. I understand at some places in this state it is done as a matter of fact, probably where the load is lighter, but maybe they have fewer people but nevertheless, it comes out the same, but in the more populated areas then it becomes, in my opinion, another tool to utilize to avoid prosecution and to delay it. I think it's unnecessary, inappropriate and I would urge that you support an amendment to strike a provision that a deposition may be given by the judge in every DWI because I think the odds are that it will be misused far more than any other thing.

SPEAKER BARRETT: For purposes of discussion, the Chair recognizes Senator Hall, followed by Senators Hartnett and Lindsay.

SENATOR HALL: Thank you, Mr. President and members, I rise to oppose Senator Warner's amendment and the reason for that is, is that if you read the amendment, if you read what was adopted on General File with regard to the provision that allows for the deposition to be taken, what you see is that it is not mandatory that the deposition be taken, that the court may allow for that to take place. The court may allow for that to happen. Throughout the two pages of the section, the court may order the taking of the deposition when it finds the testimony of the witnesses to fall within four different criteria...excuse me, two different criteria, if the material is relevant to the issue and if the assistants to the party in preparation of their respective cases that falls in either one of those categories. And then they have to allow the order, it will include the time and place, it will be the proceedings, it will also take into effect that it only can be used solely against that individual when they are a witness in the case that they took the deposition on, the deponent. Ladies and gentlemen, all it says is that if you are going to let one individual, and this is exactly what 799 does, if you're going to let one individual be judge and jury, not only judge and jury, but accuser, judge and jury, and that's exactly what happens when you say we're going

to revoke that individual's license on the spot, that individual who does that, patrolman, officer, whatever, and I firmly believe they use good judgment. But it doesn't always happen. When you allow them to be judge and jury, they ought to be able to answer questions as to why they feel they made that decision, and that's all a deposition is. And, again, it is not something that is mandatory, it is something that the judge may let the defense use, may. That's the key word here, ladies and gentlemen. It is not an issue that is forced on the court. The court won't have it forced on them and they don't, and in this case if they feel that those depositions are nothing more than delay tactics, I guarantee you the judges will say we're not going to allow it to happen, we're not going to do it. We are not going to provide the ability for you to delay. It just isn't going to happen. What is wrong with allowing an individual who is defending themselves to basically, through their attorney, ask their accuser what happened and why they made that decision? What is wrong with that? Where does that strike against any other ability we have in our judicial system to face your accuser? This is by far one of the things in the bill that at least allows for some fairness, and it allows it only if the court says it's necessary and appropriate. Then they may allow for that deposition to take place. They establish where and when, they establish that it can only be used when that deponent is a witness in the case. It is clearly safeguarded. It is clearly not mandatory. It is clearly something that says you can't misuse it. There is no way the way it is drafted it can be misused unless the court itself allows for it to be misused.

SPEAKER BARRETT: One minute.

SENATOR HALL: And if what we're saying here by striking it is that the court itself will misuse this deposition provision, then I guess, ladies and gentlemen, there is nothing that we can pass as a law that, in this area, that we can bind the court to, ever. Our argument then, I guess, if you adopt the Warner amendment, is that we can't trust the court. I don't believe that. I don't believe the court is going to clog their own system. I don't believe the court is going to let attorneys use the deposition as a delay tactic. It won't happen. They can't afford it. As Senator Warner clearly pointed out, it currently happens in other parts of the state. It doesn't happen in Lincoln and Omaha and all it does boil down to is money, time and money. They don't want to spend the time and money to give

the individual who is accused an opportunity to ask some questions, take a deposition which would save possibly a trial, if it got that far, down the road.

SPEAKER BARRETT: Time.

SENATOR HALL: That's where the real money is.

SPEAKER BARRETT: Thank you. Senator Wehrbein announces the fact that he has 30 fourth graders in our south balcony from Weeping Water, Nebraska, with their teacher. Would you folks please wave and be recognized by the Legislature. Thank you. We're pleased to have you. Discussion on the Warner amendment, Senator Hartnett.

SENATOR HARTNETT: Mr. Speaker and members of the body, I rise to oppose this amendment. This bill was heard, was LB 1042 which was heard by the Judiciary Committee this year, was advanced to General File with seven favorable votes and no negative votes. And like Senator Hall has said, is simply permissive legislation. The courts may request, the courts may order the taking of deposition. It doesn't require, it does not require, simply permissive. It also allows both sides to take deposition, not one side, allows both the prosecution and the defense to take it. And I think different than Senator Warner, that it probably has very limited application. Probably the only time it will be called is if there is a question about the chemical test as the testimony was given on the bill in favor of the proponents of the bill. And like Senator Hall said, it would provide statewide uniformity. Some counties allow this right at the time, and so it really makes a difference where you're at in the particular state whether you get the same treatment, that's all it would do. And rather than increase the cost, as Senator Warner says, I think it would cut down the cost. Some of this can be done ahead of time. If a deposition is taken, the only thing it requires is attorneys and the witness, and I think that you will not call the policeman because you know where he stands on the particular thing, so I think rather than it may drop a court case, so I really think that it would save the cities' money and the counties' money, and this is a serious crime. DWI is a serious crime. Could be prison, conviction, could be imprisonment and loss of driver's license and so with this reason I simply rise to oppose this amendment.

SPEAKER BARRETT: Thank you. Senator Lindsay.

SENATOR LINDSAY: Thank you, Mr. President, I'd like to address some of the issues that are brought forth in this amendment, just from my experience handling some, I guess not only DWIs, but some other cases, too. First, we talk about the question of delays and continuances and all that, believe me, if this bill passes there is apparently no incentive for these continuances, this is going to correct that. By taking away their licenses, people are going to want to go to trial right away, so I don't think that is valid if we intend to pass the bill. More importantly, we're not going to have this big rash of depositions because depositions, pure and simple, cost money. You've got to pay the attorney to go take the deposition, you've got to pay a court reporter to go take the deposition, you've got to pay for the transcript. If you're taking a deposition of an expert, you've got to pay for that expert's time. You really can't take an expert's deposition in a case like this, I wouldn't think, for under 500 bucks. So people aren't just going to be doing it left and right. We're not going to eat up all that time of these police officers as has been said because it costs the defendant, and unless the defendant has a great deal at stake, they have to gauge...the attorney has to gauge whether or not it is going to do any good. But we have to have that right available in those cases where it is going to do some good. Trial by ambush has been over a long time ago. We don't throw people in jail because people hid information from them before they went to trial. It just doesn't happen. Well, in that frame of mind, and I'm not saying that this would put trial by ambush back in, but I am saying that depositions are accepted in serious crimes. I think we run into a little logical problem here, that if we take away the rights to deposition, we are by implication saying DWI is not serious. It is not serious enough to warrant some of these protections. I think it is a serious crime. I'm not arguing against that. We should get drunk drivers off the road, but we shouldn't strip away rights and we shouldn't make it easier to prove the case for the state and things like that just to do that, we still have to defend the individual's rights. Number two, Senator Warner has mentioned that you can get the information, that the prosecutor's office will share all the information with you, and I have...I've had cases down here on that type of a case and the city prosecutor has provided me copies of that information. That doesn't happen everywhere and I can guarantee you it doesn't happen in Omaha. In Omaha in the city prosecutor's office, you are entitled to

see the information. You're not entitled to photocopy it. You're not entitled to have them photocopy it for you and pay for it. You're entitled to look at it there in their office and take notes. You can dictate from it if you'd like but it doesn't allow you to really check it out because that's all you're doing is dictating it. You can glance at it a little bit. If you're there near closing time, you're going to watch it until they're ready to go. The information is not available everywhere. It is in Lancaster County, it isn't in Douglas County and I would venture to guess that the bulk of the DWIs are back in Douglas County. I think we're going to have a windfall here for the state and its political subdivisions today. They're already going to get \$500,000 from the federal government, but not only that, we're going to save some time on overtime for police. We're just making a killing and all we have to do is give up a few rights. It just seems to me that when it rains it pours and we're coming down a little bit too hard I think. Let's allow it, let's allow depositions to be taken in these cases because I think these fears are unjustified. You don't use depositions to delay it. If you're really into delaying a case, that's not the way you do it. Depositions cost too much money. These depositions are used, I mentioned earlier, the Intoxilyzer has erroneous readings quite often because of the way it is used. You need an expert to prove that.

SPEAKER BARRETT: One minute.

SENATOR LINDSAY: The expert witness, you have to depose in order to know how the testimony is going to come out. You have to depose the state's expert witness and what we're not reading in here is that the state is entitled to depose the defendant's expert. This does work both ways, and I think, as Senator Hartnett and Senator Hall have suggested, it's permissive. This is not a mandatory thing. Every case you're not entitled to take depositions. You have to go to the judge and say, can I take a deposition? And, if it's used for the purpose of continuing a case or of delaying a case, the judge is going to say, no, you had the opportunity to take that earlier, you should have taken it then; we're going to go to trial as scheduled. This will not result in delays, it will not result in these increased costs. It will only result in stripping away the ability to prepare adequately to defend somebody against what is potentially a career-ending, or at least life-disrupting conviction. I'd urge that the amendment be rejected.

SPEAKER BARRETT: Thank you. Senator Lamb, followed....Question has been called. Do I see five hands? I do. Shall debate now cease? All in favor vote aye, opposed nay. Please record.

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

SPEAKER BARRETT: Debate has ceased. Senator Warner, to close.

SENATOR WARNER: Well, Mr. President, members of the Legislature, I'd urge that you would adopt the amendment. The argument was put forth that this is only permissive, which it is probably the misleading part of it. It's misleading because at least it's been suggested to me, and I obviously have never been in court or as an attorney, but I am told that it's rather routine to have a deposition, if you request it. It's routine for a court to grant it, so that it becomes available, even if it's not needed, and maybe it's only one of price, if you can afford it, as suggested, you buy it. Of course there is another high percentage of fees, might be public defender's case, which you'd probably pay for it on both sides then, not that it should be denied because it's a public defender case, but certainly there would be possibility there it would seem to me. We know that law enforcement is probably understaffed, and underfinanced, and overworked now. And if this additional time, and I'm convinced it is primarily for the purpose of delay, if this additional time and expense is to be eaten up, all it means is you do not have law enforcement on the street, or you do not have the lab technician doing the work, or the others who might have been involved in it. Now, if it's true that the number of successful have substantial...that the number of DWI have been successful it's substantially increased, then I would begin to wonder if this amendment wouldn't be a way to help bring them back down to the old number as another gimmick to be used. And then there really is a very serious question is why pick out DWI and not any other series of misdemeanors that are also serious, certainly serious for the person involved? And you can't come up with the rationale to pick out DWI as the only one to pick out, you just simply cannot do it, with the exception, of course, if it's to be utilized for delay then you certainly can. Knowing that a lot of times just because of time maybe the deposition won't be able to be done, it will be stays and continuances, there is no doubt about that. If there's anything that makes the public angry it's the constant delays which constantly occur, and the courts always grant, virtually. All

we're doing with this is providing another opportunity for the same old story. I would urge you take...strike this amendment from the bill and allow a system that is adequate, protects rights now, doesn't add the burden to the cost of government, and doesn't result in another obstruction to providing safe roads.

SPEAKER BARRETT: Thank you. You've heard the closing, and the question is the adoption of the Warner amendment to LB 799. Those in favor of its adoption please vote aye, opposed nay. Have you all voted? Senator Warner.

SENATOR WARNER: Mr. President, I regretfully, due to your admonishment the other day but nevertheless would ask for a call of the house and I suspect a roll call vote, please.

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

CLERK: 21 ayes, 1 nay to go under call, Mr. President.

SPEAKER BARRETT: The house is under call. Members, please return to your desks and record your presence. Those members outside the Legislative Chamber, please return and check in. Senator Warner. Senator Ashford, Senator Landis, Senator Moore. Senators Chambers, Pirsch and Scofield, please report to the Legislative Chamber. Senator Pirsch, please check in. Senator Warner, may we proceed with a roll call?

SENATOR WARNER: Yes.

SPEAKER BARRETT: Thank you. Members, please take your seats for a roll call vote. The question is the adoption of the Warner amendment to LB 799. Mr. Clerk.

CLERK: (Roll call vote taken as found on pages 1584-85 of the Legislative Journal.) 18 ayes, 16 nays, Mr. President, on the amendment.

SPEAKER BARRETT: Motion fails. Next amendment.

CLERK: Mr. President, the next amendment I have is by Senator Kristensen.

SPEAKER BARRETT: Call is raised. Chair recognizes Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members of the body. I wish I didn't have to stand up and do this. But, by popular demand, I will. (Laughter.) I've never done this before, and I think it's interesting that it comes at a time...and I'm afraid what I thought would happen did happen, and we're faced with a bill, it's 2:01 p.m. on March 22nd, and there is 13 amendments behind us. And we've got a problem that many of you probably, well maybe most of you don't know about yet, but let me tell you about it. And I think Senator Warner probably struck that stroke of conscience in my mind that generates me to do this right now. The Supreme Court, about 10 days ago, struck down our drunk driving laws in one area, and that's with urine testing. And, as you know, if you're arrested for drunk driving you are brought into a police station and you are given some options. And the first option is that they can give you a breath test. And, if they have a breath machine, they can require you to use it. There are many counties and jurisdictions, police departments that do not have these machines. If that is true, you then, as a defendant, get two choices, you can either have a blood test, or you can have a urine test. So you get your choice in those counties or jurisdictions or areas where they do not have a breath machine. The Nebraska Supreme Court, and I don't...I think I've got the case sitting right here, it came down March 9th, 1990, case by the name of State v. Donaldson, said that the urine tests were inherently unreliable for alcohol. They threw out and, in fact, suggested...two of the judges suggested that we just eliminate urine altogether as a testing measure and a per se measure for violating the law. What's happening at the present time in areas where they don't have a breath machine, the defendant, if they're sharp enough or lucky enough to choose urine, aren't going to be prosecuted. They get...the law enforcement gets one test to do. If the defendant is either smart enough or lucky enough to choose the urine, there is no way you're going to be able to convict them. They're going to walk away free. And I'll bet you, I'll bet there are already letters been out there saying, you defendants, or you possible people choose urine tests because you're not going to get prosecuted for drunk driving. We can't let that happen. We absolutely cannot let that occur. We've got to be able to tighten that up. I introduced LB 1020 this year, it went through committee without a problem. It was made a transportation committee priority bill

and is sitting up here as a priority. LB 1020 attacks the drug problem. It was a bill that I originally introduced as part of an idea to help give law enforcement more tools to take drug and drunk drivers off the road. What I am moving to do is to substitute LB 1020 for 799 and solve several of our problems. And the first one of those problems is when you go up and have an arrest made and an officer will ask you for that, he has to have some probable cause, usually I pick out a senator's name, but this is too serious, so I won't pick out any. Okay, Senator Conway, you volunteered, I'll do you. Senator Con...ch, this could be close to home. (Laughter.) Senator Conway is driving, and let's say that he's weaving all over the road, the officer stops him. He can't just give him a test, he's got to have some probable cause, he's got to smell alcohol, he might see a fifth of whiskey between the guy's legs in his lap or something. He has the right to ask him for a test to do so. Let's say Senator Conway...I really hate doing that to you, I don't think that is wise. You take the defendant down to the station and you test them, and what happens? They turn out to be .05, they haven't violated the law, got to turn them loose, right? But the officer knows something is wrong, he knows that he's been weaving all over, he's wiped out a couple of signs up on the sidewalk, and he's slurring his speech, he's staggering all over the road, what's his next best guess? Probably some drugs. Maybe he finds a little bit of drugs in the car after they go back and search it or something. Under our implied consent laws you only get one test. What LB 1020 would do and what I'm proposing that we do to try to settle this matter is to put LB 1020 into 799. And it will give an additional test for drugged drivers. The second thing that it does is it goes and wipes out that choice provision of using urine or blood, and just takes that completely out. If you look in your bill books and pull out LB 1020 you'll see where we do that, if I can find it real quick as I'm talking, we do that on page 16 of LB 1020. We wipe out that choice provision. This will solve our problems with the Supreme Court, and will keep our drunk driving laws intact. During the interim, if people want to go and reexamine how we may be able to salvage urine testing for drunk driving, I think that's a wise thing we can do. But, quite frankly, if this Legislature doesn't do anything in the next nine days, you're going to give a license to people to drive while they are intoxicated, choose that urine test, and there is not a thing we can do about it, there is not a thing a prosecutor can do about it, there is not a thing a judge is going to do about it. And our law enforcement are going to...it's a hole, and it isn't a

hole where we can just back something in, it's a semi, we can just drive right through it. It's intolerable and we can't let it happen. I was going to run LB 1020 on its own, I was going to try to find this and put it under some other area. Quite frankly, after seeing...Senator Beyer has gone to a tremendous amount of work for his per se law. I think we all owe him that gratitude. His staff has worked very hard on it. But when I see all those amendments, I see all the haranguing we're going to have, and I see the urgent need for LB 1020, I've got to do something that is unusual and something that I wish I didn't have to do. But, Senator Beyer, I think at this time I've got to do this. I'd like to just be able to add it onto your LB 799 and go that way. Unfortunately I think I read the board up there, and 1020 is too important for me, at this point, that we can't, we can't allow drunk drivers to continue to drive on the roads, choose your own test and get out of it. And I think that the defense lawyers are not going to like this bill, particularly, because there is another provision that I want you to be aware of that is in there. And they may try to take it out. I would hope that they would not. It's on page 15 of LB 1020, and it talks about if you refuse to submit to a chemical test that that is well of an evidence for a trial for drunk driving. Right now, if you're arrested for drunk driving, and you refuse that test, in some courts in this state the prosecution can't even enter that into evidence that you refused. Some courts you can, there is a disagreement, depending on which jurisdiction you're in. This is something that I think as a prosecutor I always wanted to have, because it's relevant. If somebody refused to take that test, the jury ought to be able to know that when you're prosecuting them for drunk driving. And, if that becomes offensive to the defense lawyers, I'm sorry. I think this is just something we ought to do. And, with that, I would ask for Senator Beyer's indulgence. I think valor, at this point, should be put aside and we should run with this amendment and do our best to strengthen the drunk driving laws that we have at this time and salvage them, and then let's get to work on your per se law for next session. With that, I would urge the adoption of this amendment, and be happy to answer any questions.

SPEAKER BARRETT: Senator Kristensen, I believe you were asking that it be substituted. Is that....

SENATOR KRISTENSEN: No, Mr. President, my amendment is...

SPEAKER BARRETT: I'm sorry.

SENATOR KRISTENSEN: My amendment places...

SPEAKER BARRETT: You're asking for adoption of your amendment.

SENATOR KRISTENSEN: That's right, yes.

SPEAKER BARRETT: Thank you. Senator Hall, would you care to discuss that matter? Your light is on.

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

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Yes.

SENATOR HALL: Senator Kristensen, is it my understanding that your amendment would then become 799?

SENATOR KRISTENSEN: Yes.

SENATOR HALL: In its entirety?

SENATOR KRISTENSEN: Yes.

SENATOR HALL: So you would strike the contents of 799 and state, in its place, LB 1020.

SENATOR KRISTENSEN: Yes.

SENATOR HALL: Okay, thank you. Mr. President, members, the one thing about the amendment is it is clearly germane. (Laugh.) So we can't do that, but we'll try. Senator Kristensen, would you respond to another question? You stated about the provision that deals with, on page 15 of 1020, the issue of the test and the refusal to submit. Can you explain to me what the difference...what change that makes from our current statute?

SENATOR KRISTENSEN: Well, it's an evidentiary ruling, and if you are in court, and I'm trying to convict you for drunk driving, even though I don't have a test, because you can do that, and I've done that on occasion where the person is so intoxicated, I mean they are falling down, they've run into

signs so they've had an accident, and quite frankly they just refuse the test.

SENATOR HALL: So, Senator Kristensen, in other words, if...say if I was just in a bad mood and I refused the test, does that then become evidence for purposes of a conviction?

SENATOR KRISTENSEN: For conviction of drunk driving, yes. Now, it isn't a presumption, the jury will weigh that. This says the jury will get that evidence to weigh. You'll stand up in trial, as a defendant, and say this is the reason I didn't do that, it had nothing to do, I wasn't covering anything up, basically this is an evidentiary point of relevance and materiality.

SENATOR HALL: But yet the fact is that it still weighs on whether or not the jury would believe me.

SENATOR KRISTENSEN: Yes, it's evidence they'll consider, exactly.

SENATOR HALL: So in other words, then the argument is going to be why didn't I, if that was the case, why didn't I submit to the test. Correct?

SENATOR KRISTENSEN: Certainly that would...that could become an issue, yes.

SENATOR HALL: I mean, if you were the attorney, wouldn't you ask that question? And what...

SENATOR KRISTENSEN: I'd use it in closing argument, yeah.

SENATOR HALL: Yeah, you probably would save it, it would be the best one. Thank you. Mr. President and members, I rise to oppose Senator Kristensen's amendment. And as much on the fact that it is...it clearly is an eleventh hour issue. I understand the importance of it, the fact that it was placed as a priority by the Transportation Committee. But it is...runs in a totally different vein than the arguments we're having on LB 799, to a great extent, although it does deal with the same subject matter. But the issue of the refusal to submit, which would then be allowed under...for no matter what the reason, you basically, I guess, convict yourself by refusing to submit. And that's fine, if everyone knows that that is the law, and clearly ignorance of the law is not an argument, I guess, or is not a

defense. But the fact of the matter is that now you're placing into law a chemical test that nobody has been asked to take before, that you then say is refusal, basically, can be brought into court as...for evidentiary purposes. And more than likely,...

SPEAKER BARRETT: One minute.

SENATOR HALL: ...unless you can come up with a darn good argument as to why you didn't take it, even though it's a new test, it's a chemical test as opposed to the breathalyzer, or the blood test, the urine test, and it is for chemicals, which, as Senator Kristensen presented it, is...has a totally different effect on an individual, one where they may pass a normal test but yet still be impaired, if that were the case. And in the case of an individual who was not impaired, it still would not show up on the standard test. You allow for, I guess, a lead pipe cinch case for the prosecuting attorney, for the county attorneys out there. They, basically, can save a lot of time and money by just...

SPEAKER BARRETT: Time.

SENATOR HALL: ...pointing to this statute. I would urge you to oppose Senator Kristensen's amendment, because it is a totally different issue and it is a totally different bill.

SPEAKER BARRETT: Senator Warner, followed by Senators Beyer and Conway.

SENATOR WARNER: Mr. President, I'd rise to urge your support of Senator Kristensen's amendment. The rumor was, I suspect it wasn't a very casual rumor, it seems everybody I talked to knew about it, but the theory was that 799 is not going to go anywhere. It's got I don't know how many amendments filed up there, but many. You know, there is no way to toughen drunk driving laws. It's just simple, just is no way to do it. So all we're talking about now is saving at least what we've got, that's all we're talking about, saving what we have and a little bit more, to get drug impaired people off the road, too. You know, ask yourself what is wrong, what's wrong with getting people off the road who are impaired from drugs and driving. You know, we all tend, and I don't like to do this, because we all know people who were killed, drunk drivers, some of us have families that were. I think about my neighbor whose daughter

was killed a few days before Christmas, in December, by a drunk driver going through a stop sign on a country road. And he will probably get nothing. It's hard to explain those. But how do you explain loosening the law the way it is now? If you reject this amendment, then you've opened the door some wider. And there isn't a soul in here who does not have a great many constituents who would be terribly disappointed, if this body allows that to happen. I hope that you will vote for Senator Kristensen's amendment. I'd like to see something tighter, tougher, but at least let's save what we have. That's something. Please vote for Senator Kristensen's amendment.

SPEAKER BARRETT: Thank you. Senator Beyer.

SENATOR BEYER: Well, Mr. Speaker and colleagues, again I have to follow Senator Warner. His words of wisdom are great. I think we need to listen to it. I think there is far more involved in this. I could refuse this and say let's go ahead and fight it and stay with my bill. Much as I think we need the bill, we seem to have some bleeding hearts in here that are afraid we're stepping on somebody's rights. What about the rights of those that have been killed, injured? They have no rights. We could tie up this session probably for another day or two on 799, if we want to go through all those amendments, fight it out. As important as I think 799 is, I will acquiesce to Senator Kristensen and urge that you support his so, as Senator Warner says, we still have what we have rather than lose any more of it. Let your own conscience be your guide. Maybe by next year...and I will reintroduce the bill or see that it's introduced by somebody. Let's just hope that none of you are involved or have too many constituents involved between now and then, that you'll come back and say, well we should have passed it at that time. With that, I would urge your support of Senator Kristensen's amendment.

SPEAKER BARRETT: Thank you. Senator Conway, followed by Senators Abboud and Lamb.

SENATOR CONWAY: Thank you, Mr. Speaker. All I have is some technical questions of sort for Senator Kristensen, if he would respond.

SPEAKER BARRETT: Senator Kristensen, would you respond?

SENATOR KRISTENSEN: Yes.

SENATOR CONWAY: Senator Kristensen, not seeing your amendment, in terms of clarification I went to LB 1020 to look at it. In the amendment do you include all of the committee amendments?

SENATOR KRISTENSEN: No, I do not.

SENATOR CONWAY: It is just the green copy as it was printed?

SENATOR KRISTENSEN: Yes.

SENATOR CONWAY: Then you mentioned the Supreme Court situation on the choice of the urine test. You dealt with that by striking the urine option in each case throughout?

SENATOR KRISTENSEN: What I did to solve the urine case, and quite frankly it wasn't because I knew the Supreme Court was going to do that, that was already stricken in 1020 as drafted originally. And you'll find that on the top of page 16, the first three lines there where it says that when the officer directs the test shall be of a person's blood or urine, such person may choose whether the test shall be blood or urine. I strike that out. So it was already in 1020, there was nothing I had to add. LB 1020 was ready to go and happens to solve the problem that the Supreme Court had.

SENATOR CONWAY: There are other places, such as on page 15, line 13, where they run the litany of the test and they keep throwing in the "or urine", "or urine" as we move through that, whether it be their choice or whether it be demanded of them. I believe the Supreme Court's position on urine was it's not a measure of impairment, that the amount of alcohol in one's urine has little or nothing to do with the impairment. I believe that was kind of the discussion that they dealt with. So would not taking urine out in and of itself, since it's not considered to be reliable, be a safer way to go? Granted, I can see the loop hole, by leaving it in they say you have the choice, I'm going to take urine because I know urine isn't valid. Why do we even have urine enclosed or incorporated at all at that point?

SENATOR KRISTENSEN: That's going to take me a little more time to explain. I'll gladly do it.

SENATOR CONWAY: Do it on my time, if I have it, please.

SENATOR KRISTENSEN: Okay. Great. What the Nebraska Supreme Court said, the reason urine tests weren't any good was because at the time you were driving the urine that was in your body that would have alcohol in it had to be voided by the Department of Health's rules and regulations so they could get a valid sample. The court came down and said, well that wasn't the urine that was in your body at the time you were driving, thus that isn't reflective of you violating the law at the time of your driving; this is a test of urine that accumulated in your body after you were driving, that's the reason they threw it out. We could do three things. We could have major surgery, we could have out-patient surgery, we could have a Band-Aid. What I'm proposing is the Band-Aid. With nine days left I don't think...if we're going to wipe urine tests completely out of the law, I think we ought to have a separate study and a separate bill to do so. There are also, when you see additional tests, the drug tests for presence of drugs is best done by a urine test. And so that's the reason I've left it in there. If I'd have my druthers, I would take all references to urine tests completely out of the law, but I think that's a major process, that's major surgery, that's something best left to do for next year, after we've had a chance to examine the Supreme Court case and see what its ramifications are. If you read that case close enough, there may even be some question about breath tests. I don't think that's going to happen. You can have the rest of your time back. Thank you.

SENATOR CONWAY: If I have any back, and this is another question that you prompted in doing that. In other words, what you were doing is not giving the individual who is accused of drunken driving the choice of the urine test, assuming that law enforcement people will be smart enough not to request a urine test.

SENATOR KRISTENSEN: That's exactly right, yes.

SENATOR CONWAY: That's kind of where we're at on it.

SENATOR KRISTENSEN: They will just take that choice and not have it.

SPEAKER BARRETT: One minute.

SENATOR CONWAY: Okay, I'm finished.

SPEAKER BARRETT: Senator Abboud, on the Kristensen amendment.

SENATOR ABBODD: Yes, Mr. President and colleagues, I rise to support this amendment to LB 799. This reminds me of what occurred a couple of years ago with the bill that I had. It was a bill that provided for testing for drugs. I brought in the bill on behalf of the City of Omaha. And while the bill was being considered by the Transportation Committee, the Nebraska Supreme Court struck down the breathalyzer test, leaving this state without a way to convict drunk drivers through the use of the breathalyzer, relying then exclusively on the blood or urine or appearance of the driver when that individual was pulled over. And, so it left us with a difficult situation. And, at the time, my bill was about the only one that was applicable to this particular subject matter. So the Transportation Committee gutted my bill, placed in the breathalyzer testing standards that, to this day, are constitutional, and advanced the bill onto the floor. The bill was then moved along, special ordered by the Speaker, and it became law. Every now and then we are faced with that situation where an emergency occurs, the Nebraska Supreme Court, thank goodness, when they chose to strike down the testing requirements, have done it while we are in session. So we're given an opportunity to at least keep the dike or the dam in its current position. We don't expand upon the DWI laws, but at the same time we don't loosen those laws either. I think that the urine test, with these new standards, will pass constitutional muster. And I think that leaving the laws as they are, while it may not do what some of us in the body would like to see done, would still help to deal with the problem of drunk drivers on the road. I urge that we adopt this amendment, that we advance the bill, and that we get this bill passed so that when an individual is driving while intoxicated that person can have the advantage of being tested for urine, as well as blood and breath. I think that it provides a good system of justice, and I think it's good for the court system, the police system, as well as the defendant that is being charged. Thank you.

SPEAKER BARRETT: Senator Lamb, please. Senator Lamb, please. Senator Hall, did you care to discuss it again, the amendment?

SENATOR HALL: Mr. President, members, again, I rise to oppose the Kristensen amendment, and I do it not as much out of opposition to the Kristensen amendment, because it does do what it purports to do in terms of dealing with the drug issue. And

I'm not as adamant against it as I am 799 in its currently unamended form. The...but I do believe that these aren't just things we come in and we do willy-nilly without talking about how the system works and whether or not it impacts the system. Senator Kristensen stated that in his conversation with Senator Conway that this is a tool that the courts and the prosecutors feel they need. That's difficult to argue against. We are, as has been stated, at the tail end of the session, we are amending one bill into another. There are going to be other bills that don't get an opportunity to even be addressed, let alone offered as amendments to other bills. You're dealing with a whole new area in terms of the drug testing, the evidentiary procedure that is laid out in LB 1020 through the Kristensen amendment. It isn't exactly something that has been around for a long time. But I know that the issue is new and the issue of someone driving under the influence of drugs is not something that our laws currently address. I intend to vote no on the procedural issue. And the issue of the evidentiary aspect of the amendment is one that I may offer an amendment to address that. The balance of the amendment, I guess, the urine issue, with regard to the question of its validity, how the courts have dealt with that in terms of throwing it out, or not allowing the test to be evidence, I can't argue with that, it's difficult to. But you are dealing with a new aspect. This is not something that has been through the system before. You are changing the procedure. That part of the proposal, as well as the procedural issue, is one that I don't agree with.

SPEAKER BARRETT: Thank you. Senator Kristensen, it appears that there are no other lights on. Would you like to close?

SENATOR KRISTENSEN: Yes, I would, Mr. Speaker and members of the body. I wish I had the burning "vengent" voice of a Senator Warner, or the window-rattling voice of George Coordsen, both who stand up and say, well, shucks, I'm just a farmer and I can't give a speech very well, but that the place just drops absolutely silent when they speak. And, unfortunately, the only experience I have right here is one that I'm not real pleased that I have to come up and take a bill that Senator Beyer has worked long and hard for. And I think he deserves our thanks and his staff for the work they have put into this bill. But, if we don't do something, you're letting one of the largest tragedies occur, and that is let drunk drivers go who we apprehend and who we know are guilty and who have over the legal limit in their body, but because they are either lucky enough or

smart enough to choose a test are going to walk away scot-free. We can't let that happen. And so often in this Legislature the word crisis gets thrown around. My conscience won't let me leave this session with that. There is nobody in here who can be for drunk drivers. And we certainly shouldn't condone the behavior of letting them go scot-free. With that, I want to thank again Senator Beyer, I respect him and I admire him for what he's done here on this, and for basically saying, yes, this is the best thing we do. Senator Hall, I would hope that you and Senator Lindsay would pull your amendments, if this would be adopted. I think there are more important issues before the state to address at this time, and I think we ought to get onto those. I think we ought to strengthen our drunk driving laws while we can. It's not the ultimate answer, it's not the best answer, but it certainly is the one we've got to have to keep it going. And as far as the procedural part of it, this bill did have its public hearing, it didn't have the opposition in the committee. The committee saw fit to not only advance it to the floor, but saw fit to designate it as a priority bill. And I guess I trust the Transportation Committee and their judgment, although, Senator Lamb, sometimes I don't know. No. In all seriousness, now is the time to act. Let's go on with the more important issues. And, again, I'd urge Senator Lindsay, I don't see him, but, Senator Hall, I implore you to drop your amendments, if this is adopted, and let's go on. Thank you.

SPEAKER BARRETT: Thank you, sir. You've heard the closing. And the question is the adoption of the Kristensen amendment to LB 799. All in favor of that amendment vote aye, opposed nay. Have you all voted? Record, Mr. Clerk.

CLERK: 29 ayes, 1 nay, Mr. President, on adoption of Senator Kristensen's amendment.

SPEAKER BARRETT: The amendment is adopted. The Chair is pleased to note that we have more guests in our south balcony. From Senator Schellpeper's district we have 35 first through fifth graders from District 4R in Schuyler and their teacher, and from Girl Scout Troop 49 in Chadron, Senator Scofield's district, we have a number of Girl Scouts along with their leaders. Would you folks please stand and be welcomed by the Legislature. Thank you, we're pleased that you could visit with us this afternoon. Mr. Clerk, the next motion.

CLERK: Mr. President, if I may very quickly, I have amendments

to be printed to LB 843 and LB 931 by Senator Baack. (See pages 1585-86 of the Legislative Journal.)

Mr. President, Senator Lindsay would now move to amend. All of them....Okay. Mr. President, the next amendment I have to the bill is by Senator Hall. (Hall amendment appears on page 1586 of the Legislative Journal.)

SPEAKER BARRETT: Chair recognizes Senator Hall.

SENATOR HALL: Thank you, Mr. President and members. The amendment that I filed in this case is, Mr. Clerk, AM...

CLERK: Yes, sir, AM3155.

SENATOR HALL: ...3155.

CLERK: Yes, sir.

SENATOR HALL: And the amendment deals with having the hearing that shall be conducted in accordance with the petition. And that was in the original 799, shall be accorded the rights prescribed in the Administrative Procedures Act. There is no need to offer the amendment at this time, because it's not appropriate to LB 799 in its current form. The....I'd just take a little exception with what Senator Kristensen said about there are more important things to deal with, and that, to me, is that I don't think there is anything more important to deal with. And I think the reason we're sent down here by our constituents is to make sure that they are protected. Yes, they need to be protected from drunk drivers. But they also need to be protected from a system that doesn't address things that aren't necessarily what they seem. And we shouldn't do things, we shouldn't put together a system that allows for convenience sake, saving of time, saving of money. As Senator Beyer said, a few people's rights get stepped on. I don't think any system that we put in place should step on anyone's rights. I don't think people should drive drunk. I don't think they should drive under the influence of drugs. The fact of the matter is they do. And no matter what law we pass, they'll continue to do that, unfortunately. Whether we outlaw drugs or outlaw alcohol, it's going to happen. We ought to have a system that protects the individuals, innocent individuals from those people. But we also ought to protect innocent individuals from laws that aren't appropriate, that out of convenience, or whatever sake, trample

on those individual rights. We just shouldn't do that. With that, Mr. President, I would withdraw the remainder of the amendments that I have to the bill, because they are not applicable.

SPEAKER BARRETT: Thank you. They are withdrawn. Have you anything else on the bill, Mr. Clerk?

ASSISTANT CLERK: Mr. President, the next amendment that I have is from Senator Peterson, and Senator Peterson would move to add the emergency clause.

SPEAKER BARRETT: Senator Peterson, please.

SENATOR PETERSON: Be very brief, Mr. President and members. I thank Senator Beyer with all amendments up there to relinquishing to let Senator Kristensen add LB 1020 into this bill and make it the bill. Without the E clause we go for about three months without...before it becomes law. I think it's so critical that this be added to correct the problem we have out there. And I, like several on the floor here, would certainly like to see tougher DWI laws than what we have. It kind of irks me that some of these people that get brought in and try to be fined and that, get off with some little technicality. But I would ask your indulgence to add the E clause so it becomes effective as quick as the bill is signed. And, if Senator Kristensen would like a little of my time, I'd relinquish it to Senator Kristensen.

SPEAKER BARRETT: Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker and members. It pays to have a little wisdom and legislative experience, and that is exactly what Senator Peterson is exhibiting. I hadn't thought about the emergency clause and I'm the one that stands up and says there is a crisis. I thank you, Senator Peterson, for your experience and I appreciate you coming over and saying something. We need the emergency clause, otherwise you're going to spend those three months with drunk drivers using the loop hole that's been created, and it's certainly something we don't want to foster and encourage. And, with that, I just want to say thank you to Senator Peterson. And this is just as essential as the bill that we placed into effect a few minutes ago. Thank you.

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LB 315, 799, 1131

SPEAKER BARRETT: Thank you. Any other discussion? Seeing none, those in favor of the adoption of the Peterson amendment to LB 799 vote aye, opposed nay. Have you all voted? Please record.

ASSISTANT CLERK: 27 ayes, 0 nays on Senator Peterson's amendment.

SPEAKER BARRETT: The amendment is adopted. Next item.

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

SPEAKER BARRETT: On the advancement of the bill, Senator Lindsay. Senator Hall, please.

SENATOR HALL: Mr. President, I would move that...that's apropos...(laughter)...LB 799 be advanced to E & R for engrossing.

SPEAKER BARRETT: Thank you, Senator Hall. Is there discussion? If not, those in favor of the advancement of the bill to E & R engrossing, please say aye. Opposed no. Ayes have it, motion carried, the bill is advanced. To LB 315, Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB 315 has been considered previously. The E & R amendments were adopted, as were amendments by Senators Coordsen and Ashford. I have a series of amendments pending, but I do have a priority motion, and that is to bracket the bill until April 9, 1990. That's offered by Senator Coordsen.

SPEAKER BARRETT: The Chair recognizes Senator George Coordsen.

SENATOR COORDSEN: Thank you, Mr. Speaker, members of the body. We know that we are in nearly the eleventh hour. We have a bill that is comprised of several issues, one is the original 315 which is, as amended, a \$20 per week increase over the period of two years for workers in the State of Nebraska who might become unemployed for a variety of reasons. We also have LB 1131 in this bill which, as amended, is an issue that provides a definition in the gross misconduct disqualification section in our unemployment statutes. And it provides that these persons who fail or refuse to take the test, as mandated in 48-1901 to 48-1910, would be disqualified. Then that people who use or

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LB 315, 536, 551, 551A, 799, 898, 899
920, 1019, 1019A, 1031, 1125, 1126, 1136
1170, 1220, 1246

SPEAKER BARRETT PRESIDING

SPEAKER BARRETT: Welcome to the George W. Norris Legislative Chamber. Please stand. The opening prayer of the day by Pastor Robert Bye of the First Presbyterian Church of Plattsmouth, Nebraska, Senator Wehrbein's district. Pastor Bye. (Gavel.)

PASTOR BYE: (Prayer offered.)

SPEAKER BARRETT: Thank you so much, Reverend Bye. Please come back again. Roll call.

PRESIDENT NICHOL PRESIDING

PRESIDENT: I understand we're about ready to start. Mr. Speaker, would you explain the progression we're going to follow, please.

SPEAKER BARRETT: Yes, thank you, Mr. President and members. Obviously we do have a problem with the electronic voting board this morning. Apparently everything else is working. The microphones and the panels on either side of the board are okay, so rather than waste some time waiting for repair people to arrive on the scene, I'd recommend we get started and when it comes to casting a vote, we'll have to either use hands, voice vote or, of course, a roll call. So if we can put up with the inconvenience for a short while, we should be back in business as soon as the repair people are on site. Mr. President, I'd suggest we go ahead with the first item on the agenda.

PRESIDENT: Okay, thank you. Have you any corrections, Mr. Clerk?

CLERK: I have no corrections this morning, Mr. President.

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

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 1246 and recommend that same be placed on Select File with E & R amendments attached. Mr. President, Enrollment and Review also reports they have carefully engrossed LB 315 and find it correctly engrossed as well as LB 536, LB 551, LB 551A, LB 799, LB 898, LB 899, LB 920, LB 1019, LB 1019A, LB 1031, LB 1125, LB 1126, LB 1136, LB 1170 and LB 1220, all of those reported

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LB 42, 42A, 799, 1146

nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 1835-36 of the Legislative Journal.) The vote is 41 ayes, 1 nay, 4 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 1146 passes with the emergency clause attached. LB 42. Senator Chambers.

SENATOR CHAMBERS: I want to just withdraw this bill.

PRESIDENT: Okay, you've made your point. Read the bill.

ASSISTANT CLERK: (Read LB 42 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 42 pass? All in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

ASSISTANT CLERK: (Record vote read. See pages 1836-37 of the Legislative Journal.) The vote is 36 ayes, 10 nays, 3 excused and not voting, Mr. President.

PRESIDENT: LB 42 passes. LB 42A.

ASSISTANT CLERK: (Read LB 42A on Final Reading.)

PRESIDENT: Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 1837 of the Legislative Journal.) 37 ayes, 8 nays, 1 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 42A passes. LB 799 with the emergency clause attached.

CLERK: (Read LB 799 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 799 pass with the emergency clause attached? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. clerk, please.

CLERK: (Record vote read. See page 1838 of the Legislative

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LB 799, 1019, 1019A, 1059

Journal.) 43 ayes, 1 nay, 2 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 799 passes with the emergency clause attached.
LB 1019.

CLERK: (Read LB 1019 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1019 pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 1839 of the Legislative Journal.) 35 ayes, 8 nays, 3 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 1019 passes. May I introduce some guests, please, of Senator Moore. In the south balcony, we have 10 junior high students from Bee Public Schools and their teacher. Would you folks please stand and be recognized by the Legislature. Thank you. LB 1019A.

CLERK: (Read LB 1019A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 1019A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Record vote read. See page 1840 of the Legislative Journal.) 34 ayes, 5 nays, 7 present and not voting, 3 excused and not voting, Mr. President.

PRESIDENT: LB 1019A passes. To the students from Bee, Nebraska, I might explain we're on what we call Final Reading and the Clerk is actually reading all of the bill that is being voted on. At the time you probably can't listen that fast but he actually does read it and it gives members of the Legislature time to reflect a little and vote the way they want to. So bear with us. Mr. Clerk, LB 1059.

CLERK: (Read LB 1059 on Final Reading.)

PRESIDENT: All provisions of law...Senator Withem, please.

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

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

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is shall LB 1222A pass? All those in favor vote aye, opposed nay. Have you all voted? Record, Mr. Clerk, please.

CLERK: (Read record vote as found on page 1847 of Legislative Journal.) 44 ayes, 0 nays, 2 present and not voting, 3 excused and not voting, Mr. President.

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

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

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

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

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

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

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LB 220, 220A, 315, 369, 369A, 551, 551A
571, 576, 720, 720A, 799, 851, 896
923, 953, 958, 960, 960A, 980, 980A
994, 994A, 1018, 1063, 1063A, 1064, 1064A
1080, 1090, 1136, 1146, 1184, 1184A, 1244

PRESIDENT NICHOL PRESIDING

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

HARLAND JOHNSON: (Prayer offered.)

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

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

PRESIDENT: Thank you. Any corrections to the Journal?

CLERK: No corrections this morning, Mr. President.

PRESIDENT: Any messages, reports, or announcements today?

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