

**FORTY-SECOND DAY - MARCH 8, 2007****LEGISLATIVE JOURNAL****ONE HUNDREDTH LEGISLATURE  
FIRST SESSION****FORTY-SECOND DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, March 8, 2007

**PRAYER**

The prayer was offered by Pastor Edi Bickford, Peru Community Church and Tecumseh Lutheran Community Church, Peru and Tecumseh.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 9:00 a.m., Senator Langemeier presiding.

The roll was called and all members were present except Senators Carlson and McGill who were excused; and Senators Ashford, Hansen, Heidemann, Mines, Pedersen, Raikes, and White who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the forty-first day was approved.

**MESSAGE FROM THE GOVERNOR**

March 7, 2007

Patrick J. O'Donnell  
Clerk of the Legislature  
State Capitol, Room 2018  
Lincoln, NE 68509

Dear Mr. O'Donnell:

Engrossed Legislative Bills 99e, 108e, 166e, 191e, 213, 263, 290, 298, 307, 311, 313, 333e, 422e, 434, 472, 527, 549, and 549A were received in my office on March 1, 2007.

I signed these bills and delivered them to the Secretary of State on March 7, 2007.

Sincerely,  
(Signed) Dave Heineman

Governor

**COMMITTEE REPORT**  
**Banking, Commerce and Insurance**

**LEGISLATIVE BILL 134.** Placed on General File - Com AM571.  
 AM571

- 1 1. On page 2, line 2, after "policy" insert "
- 2 certificate"; and in lines 10 and 19 after the first comma insert
- 3 "certificate".

(Signed) Rich Pahls, Chairperson

**ANNOUNCEMENTS**

Senator Pahls designates LB 482 as his priority bill.

Senator Harms designates LB 415 as his priority bill.

The General Affairs Committee designates LB 638 and LB 578 as its priority bills.

**GENERAL FILE**

**LEGISLATIVE BILL 57.** Senator White renewed his amendment, FA37, found on page 769.

Senator Preister offered the following motion:  
 To bracket LB 57 until April 13th, 2007.

The Preister motion prevailed with 37 ayes, 0 nays, 7 present and not voting, and 5 excused and not voting.

**LEGISLATIVE BILL 143.** Title read. Considered.

Advanced to E & R for review with 35 ayes, 0 nays, 9 present and not voting, and 5 excused and not voting.

**SENATOR FRIEND PRESIDING**

**LEGISLATIVE BILL 661.** Title read. Considered.

Committee AM455, printed separately and referred to on page 732, was adopted with 33 ayes, 0 nays, 11 present and not voting, and 5 excused and not voting.

Advanced to E & R for review with 33 ayes, 0 nays, 11 present and not voting, and 5 excused and not voting.

**AMENDMENT - Print in Journal**

Senators Rogert and Mines filed the following amendment to LB 255:  
AM613

1 1. Strike the original sections and insert the following  
2 new sections:  
3 Section 1. Section 48-1228, Reissue Revised Statutes of  
4 Nebraska, is amended to read:  
5 48-1228 Sections 48-1228 to 48-1232 and section 4 of this  
6 act shall be known and may be cited as the Nebraska Wage Payment  
7 and Collection Act.

8 Sec. 2. Section 48-1229, Reissue Revised Statutes of  
9 Nebraska, is amended to read:  
10 48-1229 For purposes of the Nebraska Wage Payment and  
11 Collection Act, unless the context otherwise requires:

12 (1) Employer means the state or any individual,  
13 partnership, limited liability company, association, joint-stock  
14 company, trust, corporation, political subdivision, or personal  
15 representative of the estate of a deceased individual, or the  
16 receiver, trustee, or successor thereof, within or without the  
17 state, employing any person within the state as an employee;

18 (2) Employee means any individual permitted to work by  
19 an employer pursuant to an employment relationship or who has  
20 contracted to sell the goods or services of an employer and to be  
21 compensated by commission. Services performed by an individual for  
22 an employer shall be deemed to be employment, unless it is shown  
23 that (a) such individual has been and will continue to be free  
1 from control or direction over the performance of such services,  
2 both under his or her contract of service and in fact, (b) such  
3 service is either outside the usual course of business for which  
4 such service is performed or such service is performed outside of  
5 all the places of business of the enterprise for which such service  
6 is performed, and (c) such individual is customarily engaged in  
7 an independently established trade, occupation, profession, or  
8 business. This subdivision is not intended to be a codification of  
9 the common law and shall be considered complete as written;

10 (3) Fringe benefits includes sick and vacation leave  
11 plans, disability income protection plans, retirement, pension, or  
12 profit-sharing plans, health and accident benefit plans, and any  
13 other employee benefit plans or benefit programs regardless of  
14 whether the employee participates in such plans or programs, Paid  
15 leave, other than earned but unused vacation leave, provided as a  
16 fringe benefit by the employer shall not be included in the wages  
17 due and payable at the time of separation as provided elsewhere in  
18 the Nebraska Wage Payment and Collection Act, unless the employer  
19 and the employee or the employer and the collective bargaining  
20 representative have specifically agreed otherwise; and

21 (4) Wages means compensation for labor or services  
22 rendered by an employee, including fringe benefits, when previously

23 agreed to and conditions stipulated have been met by the employee,  
 24 whether the amount is determined on a time, task, fee, commission,  
 25 or other basis. ~~Wages includes commissions on all orders delivered~~  
 26 ~~and all orders on file with the employer at the time of termination~~  
 27 Unless the employer and employee have specifically agreed otherwise  
 1 through a contract effective at the commencement of employment or  
 2 at least ninety days prior to separation, whichever is later, wages  
 3 includes commissions on all orders delivered and all orders on file  
 4 with the employer at the time of separation of employment less any  
 5 orders returned or canceled at the time suit is filed.

6 Sec. 3. Section 48-1230, Reissue Revised Statutes of  
 7 Nebraska, is amended to read:

8 48-1230 (1) Except as otherwise provided in this section,  
 9 each employer shall pay all wages due its employees on regular  
 10 days designated by the employer or agreed upon by the employer and  
 11 employee. Thirty days' written notice shall be given to an employee  
 12 before regular paydays are altered by an employer. An employer  
 13 may deduct, withhold, or divert a portion of an employee's wages  
 14 only when the employer is required to or may do so by state or  
 15 federal law or by order of a court of competent jurisdiction or  
 16 the employer has written agreement with the employee to deduct,  
 17 withhold, or divert.

18 (2) Except as otherwise provided in section 4 of this  
 19 act:

20 (a) Whenever an employer, other than a political  
 21 subdivision, separates an employee from the payroll, the unpaid  
 22 wages shall become due on the next regular payday or within two  
 23 weeks of the date of termination, whichever is sooner; and -

24 (b) Whenever a political subdivision separates an  
 25 employee from the payroll, the unpaid wages shall become due within  
 26 two weeks of the next regularly scheduled meeting of the governing  
 27 body of the political subdivision if such employee is separated  
 1 from the payroll at least one week prior to such meeting, or if -  
 2 ~~When~~ an employee of a political subdivision is separated from the  
 3 payroll less than one week prior to the next regularly scheduled  
 4 meeting of the governing body of the political subdivision, the  
 5 unpaid wages shall be due within two weeks of the following  
 6 regularly scheduled meeting of the governing body of the political  
 7 subdivision.

8 Sec. 4. Whenever an employer separates an employee from  
 9 the payroll, the unpaid wages constituting commissions shall become  
 10 due on the next regular payday following the employer's receipt of  
 11 payment for the goods or services from the customer from which the  
 12 commission was generated. The employer shall provide an employee  
 13 with a periodic accounting of outstanding commissions, until all  
 14 commissions have been paid or the orders have been returned or  
 15 canceled by the customer.

16 Sec. 5. Section 48-1232, Reissue Revised Statutes of  
 17 Nebraska, is amended to read:

18 48-1232 If an employee establishes a claim and secures  
 19 judgment on such claim under section 48-1231: (1) An amount equal  
 20 to the judgment may be recovered from the employer; or (2) if the  
 21 nonpayment of wages is found to be willful, an amount equal to  
 22 two times the amount of unpaid wages shall be recovered from the  
 23 employer. Any amount recovered pursuant to subdivision (1) or (2)  
 24 of this section shall be placed in a fund to be distributed to  
 25 ~~the common schools of this state.~~ remitted to the State Treasurer  
 26 for distribution in accordance with Article VII, section 5, of the  
 27 Constitution of Nebraska.

1 Sec. 6. This act becomes operative on January 1, 2008.

2 Sec. 7. Original sections 48-1228, 48-1229, 48-1230, and

3 48-1232, Reissue Revised Statutes of Nebraska, are repealed.

### ANNOUNCEMENT

Senator Howard designates LB 551 as her priority bill.

### NOTICE OF COMMITTEE HEARING Health and Human Services Room 1510

Thursday, March 15, 2007

1:30 p.m.

Roger Wells - Rural Health Advisory Commission

(Signed) Joel Johnson, Chairperson

### ANNOUNCEMENTS

The Health and Human Services Committee designates LB 463 and LB 247 as its priority bills.

Senator Wightman designates LB 502 as his priority bill.

### COMMITTEE REPORTS Health and Human Services

**LEGISLATIVE BILL 82.** Placed on General File.

**LEGISLATIVE BILL 523.** Indefinitely postponed.

(Signed) Joel Johnson, Chairperson

### WITHDRAW - Motion to LB 25

Senator Kopplin withdrew his motion, found on page 463, to return LB 25 to Select File for his specific amendment, FA10.

**WITHDRAW - Amendment to LB 25**

Senator Langemeier withdrew his amendment, AM242, found on page 580, to LB 25.

**MOTION - Return LB 25 to Select File**

Senator Langemeier moved to return LB 25 to Select File for his specific amendment, AM231, found on page 580.

The Langemeier motion to return prevailed with 37 ayes, 0 nays, 6 present and not voting, and 6 excused and not voting.

**SELECT FILE**

**LEGISLATIVE BILL 25.** The Langemeier specific amendment, AM231, found on page 580, was adopted with 39 ayes, 0 nays, 4 present and not voting, and 6 excused and not voting.

Advanced to E & R for reengrossment.

**WITHDRAW - Amendment to LB 25**

Senator Langemeier withdrew his amendment, AM394, found on page 596, to LB 25.

**MOTION - Return LB 67 to Select File**

Senator Ashford moved to return LB 67 to Select File for his specific amendment, AM416, found on page 632.

The Ashford motion to return prevailed with 37 ayes, 0 nays, 6 present and not voting, and 6 excused and not voting.

**SELECT FILE**

**LEGISLATIVE BILL 67.** The Ashford specific amendment, AM416, found on page 632, was adopted with 37 ayes, 0 nays, 6 present and not voting, and 6 excused and not voting.

Advanced to E & R for reengrossment.

**SPEAKER FLOOD PRESIDING****WITHDRAW - Amendments to LB 185**

Senator Erdman withdrew his amendment, AM230, found on page 513, to LB 185.

Senator Erdman withdrew his amendment, AM386, found on page 597, to LB 185.

**MOTION - Return LB 185 to Select File**

Senator Erdman moved to return LB 185 to Select File for his specific amendment, AM405, found on page 605.

Senator Ashford requested a ruling of the Chair on whether the Erdman amendment would require a three-fifths majority vote, pursuant to Rule 6, Section 3(h).

The Chair ruled that the Erdman amendment is substantially the same as LB 102, which was indefinitely postponed by the Judiciary Committee, therefore, both the motion to return the bill to Select File and the motion to adopt the amendment would require 30 votes, pursuant to Rule 6, Sec 6.

Senator Erdman withdrew his motion to return.

**BILL ON FINAL READING**

**Dispense With Reading at Large**

Pursuant to Rule 6, Section 8, the Legislature approved the dispensing of the reading at large of LB 185 with 32 ayes, 5 nays, 8 present and not voting, and 4 excused and not voting.

The following bill was put upon final passage:

**LEGISLATIVE BILL 185.** With Emergency.

A BILL FOR AN ACT relating to health and human services; to amend sections 71-629, 71-1734, 71-1748, 71-1752, 71-1756, 71-1764, 71-1765, 71-5185, 71-6726, 71-6733, 71-8249, and 71-8252, Reissue Revised Statutes of Nebraska, and sections 68-906, 68-919, 68-921, 71-1707, 71-1722, 71-1723, 71-1723.01, 71-1723.02, 71-1724, 71-1724.01, 71-1726.01, 71-1726.02, 71-1729, 71-1730, 71-1731, 71-1735, 71-1737, 71-1749, 71-1755, 71-1757, 71-17,118, 71-17,119, 71-17,121, 71-17,122, 71-17,123, 71-17,124, 71-17,128, 71-17,129, 71-17,134, 71-17,135, 71-17,137, 71-17,138, 71-17,139, 71-17,140, 71-6039, 81-647, and 81-671, Revised Statutes Cumulative Supplement, 2006; to change provisions relating to the Medical Assistance Act, birth certificates, nursing assistants, medication aides, regional trauma advisory boards, and the cancer registry; to change provisions relating to recovery of medical assistance; to change and eliminate provisions relating to licensure and certification of certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners; to authorize the release of patient information as prescribed; to harmonize provisions; to provide operative dates; to repeal the original sections; to outright repeal sections 71-1761 and

71-1762, Reissue Revised Statutes of Nebraska, and sections 71-1724.02, 71-1725, 71-1725.01, 71-1726, 71-1736.01, 71-1736.02, 71-1736.03, 71-1758, 71-17,125, 71-17,126, and 71-17,127, Revised Statutes Cumulative Supplement, 2006; and to declare an emergency.

Whereupon the President stated: "All provisions of law relative to procedure having been complied with, the question is, 'Shall the bill pass with the emergency clause attached?' "

Voting in the affirmative, 46:

Adams	Engel	Hudkins	Mines	Schimek
Aguilar	Erdman	Janssen	Nantkes	Stuthman
Ashford	Fischer	Johnson	Nelson	Synowiecki
Avery	Flood	Karpisek	Pahls	Wallman
Burling	Friend	Kopplin	Pankonin	White
Chambers	Fulton	Kruse	Pedersen	Wightman
Christensen	Gay	Langemeier	Pirsch	
Cornett	Hansen	Lathrop	Preister	
Dierks	Harms	Louden	Raikes	
Dubas	Howard	McDonald	Rogert	

Voting in the negative, 0.

Excused and not voting, 3:

Carlson            Heidemann      McGill

A constitutional two-thirds majority having voted in the affirmative, the bill was declared passed with the emergency clause and the title agreed to.

### **SPEAKER SIGNED**

While the Legislature was in session and capable of transacting business, the Speaker signed the following: LB 185.

### **MOTION - Return LB 211A to Select File**

Senator Cornett moved to return LB 211A to Select File for her specific amendment, AM474, found on page 669.

The Cornett motion to return prevailed with 44 ayes, 0 nays, 2 present and not voting, and 3 excused and not voting.

### **SENATOR LANGEMEIER PRESIDING**



**SELECT FILE**

**LEGISLATIVE BILL 211A.** The Cornett specific amendment, AM474, found on page 669, was adopted with 38 ayes, 0 nays, 8 present and not voting, and 3 excused and not voting.

Advanced to E & R for reengrossment.

**GENERAL FILE**

**LEGISLATIVE BILL 402.** Title read. Considered.

**SENATOR FRIEND PRESIDING**

Senator Erdman renewed his motion, found on page 512, to recommit LB 402 to the Executive Board.

Pending.

**COMMITTEE REPORTS**  
**Executive Board**

**LEGISLATIVE RESOLUTION 1CA.** Placed on General File.

**LEGISLATIVE RESOLUTION 3CA.** Indefinitely postponed.

(Signed) L. Patrick Engel, Chairperson

**PRESENTED TO THE GOVERNOR**

Presented to the Governor on March 8, 2007, at 11:07 a.m. was the following: LB 185e.

(Signed) Jamie Kruse  
Clerk of the Legislature's Office

**ANNOUNCEMENTS**

Senator Pankonin designates LB 425 as his priority bill.

Senator Engel designates LB 342 as his priority bill.

Senator Fischer designates LB 677 as her priority bill.

The Nebraska Retirement Systems Committee designates LB 328 as its priority bill.

**UNANIMOUS CONSENT - Room Change**

Senator Heidemann asked unanimous consent that the Appropriations Committee conduct its hearing on Tuesday, March 20, 2007, in Room 1003 instead of Room 1524. No objections. So ordered.

**ANNOUNCEMENT**

Senator Cornett announced the Business and Labor Committee will hold an executive session Friday, March 9, 2007, at 10:00 a.m., in Room 2022.

**UNANIMOUS CONSENT - Add Cointroducers**

Senator Synowiecki asked unanimous consent to add his name as cointroducer to LB 57 and LR 48. No objections. So ordered.

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB 143. No objections. So ordered.

**VISITORS**

Visitors to the Chamber were delegates of the Mayor's Committee for International Friendship from Andorra, Czech Republic, Finland, Hungary, Italy, and Serbia; Stan Poff from Kearney; Brittany and Katelyn Bohlmeier from Adams; members of the Nebraska Propane Gas Association; and 35 fourth-grade students from Cedar Elementary, Beatrice.

The Doctor of the Day was Dr. Dale Michels from Lincoln.

**ADJOURNMENT**

At 11:58 a.m., on a motion by Senator Engel, the Legislature adjourned until 9:00 a.m., Friday, March 9, 2007.

Patrick J. O'Donnell  
Clerk of the Legislature