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Transcriber's Office

Floor Debate
February 13, 2007

[LB124 LB204 LB205 LB230 LB231 LB296 LB395 LB630 LR27]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-eighth day of the One Hundredth Legislature, First Session. Our chaplain of the day is Senator Carroll Burling. Please rise. []

SENATOR BURLING: (Prayer offered.) []

SENATOR LANGEMEIER: Thank you, Senator Burling. I call to order the twenty-eighth day of the One Hundredth Legislature, First Session. Senators, please record your presence. Record, Mr. Clerk. []

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

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Are there any corrections for the Journal? []

CLERK: I have no corrections, Mr. President. []

SENATOR LANGEMEIER: Thank you. Are there any messages, reports, or announcements? []

CLERK: Your Committee on Enrollment and Review reports LB231 to Select File. I have a hearing notice, Mr. President, from the Health and Human Services Committee to be inserted in the Journal, and amendments to be printed to LB204 and LB205. That's all that I have, Mr. President. (Legislative Journal pages 563-564.) [LB231 LB204 LB205]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda. Mr. Clerk, we'll proceed to General File, LB395. [LB395]

CLERK: LB395 is a bill offered by Senator Johnson. (Read title.) Bill was introduced on January 16 of this year, Mr. President; at that time referred to the Health and Human Services Committee for public hearing. Bill was advanced to General File. I do have committee amendments pending. (AM276, Legislative Journal page 511.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Johnson, you are recognized to open on LB395. [LB395]

SENATOR JOHNSON: Mr. President and members of the Legislature, in many ways this could be an historic day in this Chamber. Let me tell you what has happened in the

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last couple of years that makes that a reality. In the past, there has been forms of this type of bill before this body and they have been narrowly defeated. In the past, there's always been the question, well, how bad is this secondhand smoke? Yeah, it irritates me. In fact, there were lots of stories about fellow senators, as recently as 10 or 12 years ago in this very Chamber, in your Executive Sessions and so on, operating in smoke-filled rooms. Last June the Surgeon's General report...and let me remind you this is a Surgeon General appointed by a conservative Republican President. He is a career person who is an admiral in the United States Navy. The Surgeon General's report said the evidence is now massive and conclusive, and you're going to hear that from me several times today, massive and conclusive that secondhand smoke causes serious diseases, including lung cancer, heart disease, respiratory illnesses. Plainly, secondhand smoke is a killer. The Surgeon General estimates that it is responsible for killing nearly 40,000 people in the U.S. every year. Now what happened two years ago? I think the vote failed by about 2. And as we were breaking up that day I remember someone saying, I guess it's up to the cities and other municipalities to see whether they want to pass this. Well, Lincoln and Omaha went right to work and passed city ordinances. The Lincoln city ordinance, and this is the ordinance after which this bill is patterned, is quite a strict bill. The Omaha ordinance is one where many exceptions were made in a patchwork-like fashion in order to get their ordinance with the support of the councilmen that was needed. Now the real question, and the opposition that we will hear to this today, is that we will be told to ignore the Surgeon General's report, it really doesn't count; and my First Amendment rights or Second Amendment rights; we'll hear quotations by Thomas Jefferson, etcetera, about this; and if you go out in the lobby there will be people out there handing out flags for people to wave, telling us about our individual rights. How important are these individual rights? Don't employees--and there are some 60,000 of these employees in the bars and restaurants and such in the state of Nebraska--have any rights? Well, let me tell you a little something about my family. My grandfather and father came over from Sweden to the land of opportunity, the free United States; do what they could do. What did they do? They went to work in the coal mines. They didn't have to go to the coal mines, of course, but then what else might they have done? They had to work. They had to support themselves. You know, 100 years ago the coal mines of Pennsylvania didn't have very good laws about safety. Even now with good laws about safety there are still accidents there. You can imagine what it was 100 years ago. Well, the government did step in to working places and made the coal mines safer. Every worker has the right to a safe workplace. If you want to say that they can work somewhere else, sure, they can. That college student, he can work somewhere else. So can that working mother. Speaking of working mothers, if you are a cocktail waitress and you, over your eight hours, are working in one of these smoke-filled places, she goes home having smoked the equivalent of two packs of cigarette while she was at work. She will have done the equivalent of smoked two packs of cigarettes while at work. A couple other things: This last fall I had the pleasure one day of sitting next to the Minister of Health from Scotland, and this was a talk about, or a conference about, ways to provide good healthcare cheaply. I said, basically, you know,

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whether you're a socialist type of country or one like ours, the problem is that cost has gone out of sight. What are the most important things that you have found? And he said, oh, that's easy--pass the best public health measures you can find. I challenge this body to tell me where there is a better public health measure than this that we can find. In the last 100 years here's a couple of the things that were public health measures. Clean water hasn't always been here in our city water supplies. It came in, in the 1920s. Vaccinations basically came into being in the 1960s, particularly with polio. I personally think, and I would challenge anyone to come up with something that has the potential for greater public health improvement in the last 40 years than what we are trying to establish here today. What will improve the health of all Nebraskans more than this measure? And we do it free. Speaking of free, last year this session of the Legislature put together a commission to study Medicaid... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR JOHNSON: ...and find out how best to curb our expenses in this area. If we don't accept this challenge for this major, free initiative that will cut down on our costs, then I think the rest is like rearranging the deck chairs on the Titanic. What we're going to talk about here this morning, however, is comparing what Lincoln did, which basically ended up with a town versus town situation; and Omaha, where a business versus business. Grand Island, Columbus, and Kearney, our three cities of Senator Stuthman and Aguilar, who are my colleagues in this, have shown a reluctance to do this on their own and believe that... [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR JOHNSON: ...we should do it statewide. Thank you, sir. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. As the Clerk has stated, there are amendments from the Health and Human Services Committee. Senator Johnson, as Chair of that committee, you are recognized to open on those amendments. [LB395]

SENATOR JOHNSON: Thank you, sir. AM276 is the committee's amendment to LB395. This will get a little bit more complicated as the morning is going on, as there will be a movement underfoot to divide this into many sections. But let me just tell you, pure and simply, what is in this amendment. This is the committee amendment: One, it makes technical changes in the bill for consistency of grammar, style, and greater clarity. Two, it removes the prohibition against smoking within 20 feet of the entrances to places of employment or public places. A part of this bill that was to focus of concern at the public hearing was the wisdom of an outdoor smoking prohibition around entrances to a place of employment or a public place. This proved to be problematic and difficult to comply with or enforce. The committee recommends that this restriction be removed. An example of this would be a bar on O Street in the middle of the block that if you were to

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get 20 feet away from the entrance you would be out in the street. This seemed a very reasonable amendment to make. Number two...or number three, it exempts retail tobacco outlets from this nonsmoking provision of the bill. A retail tobacco outlet is defined as a retail store that sells only tobacco and tobacco-related products, and which the sale of other products is incidental, such as ashtrays. This is meant to be a very narrow exception for a very narrow group of businesses and customers. It would mean that a person could go into the smoke store, try out a cigar, and if he liked that brand of cigar could buy the box. It revises the private residence exception in the bill to prohibit smoking in a private residence only when it is used as a place of employment for one or more employees who are not occupants of the house. This was specifically worded this way to protect the private residents. In addition, obviously we would want to protect children in childcare, as well as adult day care or healthcare facility. Mainly, what we're concerned about is a public place. The purpose of this exception is to be as narrow as possible and protect the rights of people to smoke in their own homes. Number five, it revises duties of a proprietor of a place of employment or public place. The proprietor is required to post "no smoking" signs, and there are even international "no smoking" symbols, at entrances to places where smoking is prohibited, and to take other necessary steps to ensure compliance with this bill. The bill, as introduced, had other requirements which have been removed in this committee amendment. We are...have attempted with this committee amendment to make the process clean and uncluttered. That, sir, are my opening comments on the committee amendment, AM276, to LB395. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Mr. Clerk, do you have a motion? [LB395]

CLERK: Mr. President, Senator Fischer would move to divide the committee amendments at this time. [LB395]

SENATOR LANGEMEIER: Would Senator Johnson and Senator Fischer please come to the front desk. The Chair has ruled that the amendment is divisible. Mr. Clerk, will you please explain the division to the members of the body. [LB395]

CLERK: Yes, Mr. President, I will. Mr. President, the Chair has ruled that the amendment is divisible into four components, four components. We'll be marking up copies and distributing copies to the membership so you can follow along with this. The first component of the original committee amendment, AM276, will consist of lines 3 through 5, page 1; lines 22-23, page 1; and lines 1 through 7, page 2. That's the first component. Second component, Mr. President, will consist of lines 6 through 11 on page 1; and lines 14 through 17 on page 2. The third component of the original amendment will consist of lines 12 through 21 on page 1; and lines 10 through 13 on page 2. And the fourth and final component will consist of lines 8 and 9 on page 2. As I indicated, members will be receiving a hard copy of the document broken down so you

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can see. Senator Johnson, the first amendment is FA15, Senator. That's your first component of the committee amendments. (Legislative Journal page 564.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Johnson. [LB395]

SENATOR JOHNSON: Just for clarification, we're talking Section 16 then? [LB395]

CLERK: Section 16, Senator, as well as drop down to lines 22 and 23 of that same page. [LB395]

SENATOR JOHNSON: Yes, sir. [LB395]

CLERK: Okay. [LB395]

SENATOR JOHNSON: I understand. [LB395]

CLERK: Okay. And then through line 7 on the second page. That's all part of that component. [LB395]

SENATOR LANGEMEIER: Due to some of the confusion, Senator Johnson, would you redo a opening on that first section? [LB395]

SENATOR JOHNSON: Yes, I certainly will. What this says, and I'll read both here to start with, under Section 16, which is one of two parts here, it says tobacco retail outlet means a retail store that sells only tobacco and related products and in which the sale of other products is incidental. Down below on...it says this: On page 6, line 12, strike Sections 16 and 17, and insert Section 16; strikes lines 13 and 14 and, it says, insert this, and this is the meat--private residences, except when used as a place of employment for one or more employees who are not the occupants of the residence, and others, such as a childcare, adult day care, or healthcare facility and a public place. I believe that is what we're talking about. Let me address the first one first. We mentioned this just a minute ago, but for clarity let's talk about it again. It seemed to all of us involved in this...and I must tell you this. There have been numerous, numerous meetings in our office and elsewhere to get all sides to agree to this bill. This isn't where we just took a bill of the Lincoln city ordinance and put our stamp of approval on it and went from there. One of the major groups that had a very positive influence on this whole bill was the...or not the grocers associations but our Restaurant Association for the state of Nebraska. In the past, they have been opposed to this bill. They were a party in constructing this bill, along with several others, to make this bill make good common sense to not only the members of this Chamber but to the state of...our citizens of our state. As we mentioned before, doesn't it make sense that tobacco outlets, where people go to try out the product, would get to try out the product before they buy that particular type of cigar, pipe tobacco or whatever? There we did make

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sure that, as best we could with this language, that these wouldn't become exclusive smoking bars and the like. So I think that fairly well covers that section. Down below I think it might actually be more important, because one of the things that we will hear today is that it's my right, my home, and I should be able to do with it what we want. We think so, too, provided you don't harm your employees. So a private residence is a private residence. You can do what you want, when you want to do it, except when your employees are there. Just because the employees are in your house makes them no less susceptible to the dangers of the secondhand smoke, which I hope all of us in this Chamber are beginning to understand. So those are my remarks about these two. I guess I would mention one other thing and that is we're talking other places that were specifically prohibited, were childcare, and, again, in the Surgeon General's report young children are one of the most susceptible groups; adult day care or older people who have various problems. And I might put in a little aside here. Of any of you in the building that have had a heart attack or other suggestion of cardiac disease, you are at increased risk in going into a smoke-filled room, and I would suggest that you not do it. The other one, of course, is a healthcare facility. My goodness, does that need further explanation? And then we get back to the public places that we are talking about. With that, Mr. President, I would conclude my remarks. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Mr. Clerk, do you have a motion? [LB395]

CLERK: Mr. President, I have amendments to this component; Senator Howard, the first, AM333. (Legislative Journal page 565.) [LB395]

SENATOR LANGEMEIER: Senator Howard, you are recognized to open on your amendment, AM333. [LB395]

SENATOR HOWARD: Thank you, Mr. President. Good morning, members of the body. The amendment I've introduced is designed to keep foster children from being exposed to the dangers of secondhand smoke. This amendment is consistent with the language of the bill. The bill already prohibits smoking in childcare facilities. This amendment would ensure that a young child's health is protected all day long. Children are particularly vulnerable to the effects of secondhand smoke because they are still developing physically, have higher breathing rates than adults, and have little control over their indoor environments. Children exposed to high doses of secondhand smoke, such as those whose parents or primary caregivers smoke, run the greatest risk of experiencing damaging health effects, and these include asthma in children who have not previously exhibited symptoms, increases in the risk for sudden infant death syndrome, increases in the risk for middle ear infection, and infants and children younger than six years old who are regularly exposed to secondhand smoke are at risk, an increased risk I would say, of lower respiratory tract infections, such as pneumonia and bronchitis. And I was interested to learn last night when I attended an event with the

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dentists that children that are in smoking homes have a much higher incident of dental cavities and dental health problems. For children with asthma, exposure to secondhand smoke can trigger asthma attacks and make asthma symptoms much more severe. The American Lung Association's secondhand smoke fact sheet cites that secondhand smoke is especially harmful to young children. It is responsible for thousands of hospitalizations each year and even linked to sudden infant death syndrome, also known as SIDS. A November 2006 article in the USA Today summarized laws addressing the issue of secondhand smoke and children. The article reported that Vermont, Washington, and other states and counties already prohibit foster parents from smoking around children in their homes and cars. In addition, Arkansas and Louisiana passed laws in 2006 forbidding anyone from smoking in cars carrying young children. Courts are even ordering smoke-free environments in custody and visitation disputes. At least six states and some counties prohibit foster parents from smoking when foster children are present. Litigation and advocacy at the University of Maryland School in Law, and I quote: There are times when it's appropriate to regulate what people can do in their home. In this instance, the state is responsible for that child. They are within their rights to ensure that child's health and safety. I've heard...I've heard some people, some senators, express concerns about the rights of the smokers, but this is not about the smokers. The goal here is simply to protect children who cannot protect themselves. The bill offers many provisions to protect the general public from the dangers of secondhand smoke, even some that primarily affect the health of adults, and yet we are unwilling to settle for a healthy quality of air for children who are wards of the state of Nebraska, whose care is entrusted to us. As a licensing agency for foster care homes, the state has an obligation to ensure that, to the extent possible, they are looking out for the health and the safety of these children who don't have a voice of their own in these matters. On behalf of the many children in foster care and childcare settings whose health is affected each and every day by exposure to secondhand smoke, I urge your support for this amendment. I'd like to add that I have heard the argument from some that we'll lose foster homes. I spent the past three-day weekend talking with case managers who work directly with children in foster care and with foster parents. Having firsthand knowledge of foster care, I was not surprised to learn that the number of foster parents who smoke is declining, but that those who smoke are such heavy smokers that the case managers will visit these children in schools or day-care centers to avoid being subjected to permeating secondhand smoke. If adults are unwilling to go into an environment that is recognized to be dangerous, how can we justify the placement of children, who are legal wards of the state of Nebraska, in these environments? By Senator Johnson's own calculations, within a 24-hour period these foster children are subjected to the equivalent of smoking six cigarettes. I ask your support of this amendment. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Howard. You have heard the opening to AM333 to FA15, the first component of the divided committee amendments to LB395. The floor is open for discussion. We have a number of lights on: Senator Schimek,

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White, Aguilar, Fischer, and others. Senator Schimek, you are recognized to discuss AM333. [LB395]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members. I stand in support of the floor amendment and the underlying amendment that Senator Johnson presented, the committee amendment, which is this FA15 now, that portion of it. I would like to ask Senator Johnson a quick question, if I might, Senator Johnson. [LB395]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question from Senator Schimek? [LB395]

SENATOR JOHNSON: Yes, I would. Thank you. [LB395]

SENATOR SCHIMEK: Thank you, Senator Johnson. I didn't know I was going to be up so fast because I turned my light on, I thought, pretty late, but...so I didn't get a chance to ask you this ahead of time. But somebody actually asked me this question yesterday and I couldn't...I couldn't answer it other than just speculating; has to do with the language in FA15 and it's the lines 3 through 5 on page 1 regarding the tobacco retail outlet. [LB395]

SENATOR JOHNSON: Okay. [LB395]

SENATOR SCHIMEK: And it says that this would sell only tobacco and related products and it would only sell other products in an incidental manner. My question is what's incidental? Because this person posed to me the question, and incidentally I'm supporting everything so far, the bill, the amendment, the floor amendment, etcetera, but I couldn't answer this. He wondered if you'd be able, for instance, to have a big room in this shop and have tables and chairs lined up and people could buy coffee, drink coffee, smoke their cigars. He didn't say anything about tipping any alcohol, but I suppose that even would...but would you kind of respond to that and tell me what you think "incidental" means here? [LB395]

SENATOR JOHNSON: Well, yes, and this was considered and there was looser language proposed and there was stiffer language that was considered. What we wanted to do, first and foremost, and I think we're all in agreement on this, is that the tobacco retail...regarding the tobacco products, it seems reasonable that they would be able to test out the cigar, if you will, or whatever, but let me assure you that the intent of this bill and those of us that are collaborating on it mean that...or that this does not mean that you set up a bar with this and have a drink while you're trying the cigars and so on. The words "only incidental" means that you don't set up a candy store along with it so that when this guy comes in, he brings his kids or grandkids with him and buys them a candy bar or a bottle of pop. [LB395]

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SENATOR SCHIMEK: Well,... [LB395]

SENATOR JOHNSON: This is meant to be tobacco related only. [LB395]

SENATOR SCHIMEK: Why don't we just say that then? Why do we say "and in which the sale of other products is only incidental"? To me, that is opening the door a bit. [LB395]

SENATOR JOHNSON: Well, I would tend to agree with you. This is the language that was agreed upon, all these people, and I certainly would consider reworking this a little bit, as we may have to, depending on what happens with these other sections. So you could count on my personal support in that. [LB395]

SENATOR SCHIMEK: Well, that first part of the sentence would really say what you just said to me--tobacco and other related products. And then it seems to me, and somebody needs to point out if... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR SCHIMEK: ...if there's a really good reason for having the second part of that sentence in there regarding the incidentals, so... [LB395]

SENATOR JOHNSON: I'd be happy to work with you about it. [LB395]

SENATOR SCHIMEK: Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Mr. Clerk, for clarification. [LB395]

CLERK: Mr. President, I might indicate to the membership that there will be a fifth component of the committee amendments and so that the copy that you have on your desk please disregard and we'll be replacing it with another version. There will be a fifth component that essentially strikes original Section 17 of the bill. We'll be replacing your hard copy very soon. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Continue the floor discussion on AM333. Senator White, you are recognized to address AM333. [LB395]

SENATOR WHITE: Thank you, Mr. Speaker. My fellow colleagues, I am rising today in opposition to this ban and I want you to know the personal history that still drives me to oppose it. I am a cancer survivor. Eleven years ago I was diagnosed with bladder cancer. I smoked from the time I was approximately 15 until I was 25. When I was 39 I woke up in urinated blood. Since then, I have undergone ten years of treatment which I

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think Dr. Johnson would tell you cystoscopies are anything but pleasant. I doubt there is anyone on this floor that despises cigarettes, cigarette smoking more than I do personally. They have taken much from me individually and even more from other members of my family, who they've taken their lives. Nevertheless, I rise in opposition to this bill because I believe it is poorly drafted. For example, a bill that takes away substantial liberties should be carefully written. This bill does that. Whether we think it is in their best interest or not, liberty allows people to be stupid sometimes. If you look at page 5, Section 14, public place means an indoor area in which the public is invited or in which the public is permitted. Now if we are going to do these kinds of things, let us please do them carefully. In addition, this bill has a number of concerns, not the least of which if you look at Section 21 on page 7. This permits warrantless searches of any place of employment in the state of Nebraska. I submit to you this is unconstitutional. I submit to you that even if the courts were to uphold it, and they might, it is fundamentally contrary to the principles of liberty that have long controlled our people's behavior, whether it not it seems to control our court's decisions. Let me give you an example. I have a client desperately unhappy, about to be indicted for a crime. They're melting down. They're in the back conference room. They light up a cigarette to try to collect their thoughts. The police or the health inspectors can kick the door down without a warrant to see if we are violating the law. I submit that is not consistent with who we are as a people, it is not consistent with how we should treat our fellow citizens. We cannot legislate common sense. We can educate. We can persuade. We can do things to help others try to understand the horrible cost of smoking. But when we pass blanket laws like this we threaten to criminalize an entire class. I know Senator Howard eloquently spoke about the risks to young children of secondhand smoke and she talked about their right to be in a free environment, but I ask you, how many of you have known good parents who smoke? If this bill is passed as it is now, it will be used, I guarantee, it will be used by attorneys in courtrooms to say that father or that mother should not be able to see the children. Why? Because they might smoke around them. Are we going to take a position that that is a proper use of state power? Where do we stop? Today, driving in from Omaha, on National Public Radio was a long story. They now wish, the physicians' associations wish, to make Casablanca, the great old movie,... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR WHITE: ...R rated. Why? Because they smoke in it. They say one of the reasons is the cost of treating these diseases. Senator Hansen, by far more expensive is the consumption of animal fats to our health system. There are lawyers now going after restaurants to stop them from using certain kind of fats. Where do you stop, sir? I submit that if we allow warrantless searches in our places of employment there is no logical place to stop. And I speak to you from the heart, from a person who hates smoking and everything that it has done to our people, that this is a bad bill. Thank you. [LB395]

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SENATOR LANGEMEIER: Thank you, Mr. White, Senator White, excuse me. Senator Aguilar. [LB395]

SENATOR AGUILAR: Thank you, Senator Langemeier, members. I rise in strong support of the underlying bill, in support of most of the amendments. I don't necessarily support Senator Howard's amendment, and I'll speak to that first. Quite frankly, because of what Senator White just spoke to, I think it would be very difficult to enforce what she's proposing. That would be, you know, a little stronger infringement on rights than I think we hope to accomplish. I think a far better solution would may be to consider not allowing smokers to be foster parents maybe. Then you don't have to worry about the issue at all. But speaking directly to the bill, this is what I feel could be one of the greatest public policies in the area of health for the state of Nebraska in 40 years, without any question. Senator White spoke to some problems in the bill, all of which can be remedied. Senator Fischer wants to divide the bill, clearly a delaying tactic, but that's all right. This is an important enough issue we can take some time with. I have no objection to taking a lot of time with this. I feel passionate about this issue. I prioritized this same bill last year. One of the issues I want to speak to directly is possibly one of the opposition arguments, and that is people are going to say we need local control, and I've always been a supporter of local control. But let me tell you this. I've spoken with city councils in Grand Island, Hastings, Kearney, three specific cities, the next three largest cities in the state of Nebraska who are considering bans. What's holding them back? Quite simply the political football that comes with it. Most city council members are business owners and they can't afford to lose any business by smokers getting mad at them and not coming in and supporting their business, or going out of town, like what happens right here in Lincoln, people going over to Waverly and having cigarettes. That's ridiculous. That's ludicrous. We can do better than that as a state. I honestly feel this is the greatest health public policy move the state of Nebraska has made or could make in 40 years, and I think you should all be proud of the fact that you have an opportunity to be part of that decision to protect our work force. You'll also hear the argument that people get up and say, well, they don't have to work there, employees don't have to work there. I challenge that. I tell you, there's poor people in Nebraska who don't have transportation who have to work somewhere close to home. If they want to feed their families, they have to do that. They're a captive audience to secondhand smoke. We can do better than that in this state. Let's change this policy while we have an opportunity, and I really think this is the year we have a great opportunity. We need to do this, folks. We need to make Nebraska the good life significantly more important in that statement. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. We have Senator Fischer, Carlson, Erdman, and others. Senator Fischer, you are recognized. [LB395]

SENATOR FISCHER: Thank you, Mr. President and members of the body. I appreciate

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the comments from Senator Johnson, in his opening; however, I cannot support this bill. In my view, this is a state mandate. We've left it up to cities to decide whether to have smoking allowed in their public restaurants, in their bars. The voters in Lincoln decided not to, and I say good for them. The Omaha City Council decided not to on a phased-in program, and I say good for them. They're the elected officials for that locality. Cities right now are allowed to have a smoking ban in effect. I don't believe our job is to have another state mandate. We talk about local control. We talk about local decision making. I hear that Grand Island, the business owners, want to do this but they're scared to, they're going to lose business. I hear that happens in Kearney. I hear it's...you know, we heard on the floor it's in Columbus. Those officials are elected to do a job, just as we are at the state level. They're elected to do a job at the local level. If people in that community want a smoking ban, they can talk to those local officials. They can do a petition. They can have a smoking ban in that area. You know what really set me off on this? I read in the paper that businesses in Lincoln and Omaha, they're really upset, they're really upset about this now because they have a smoking ban and they want to level the playing field. Well, folks, two years ago, last session, those same people were in here fighting the smoking ban. They did not want a state mandate. We left it up to the cities. Their cities decided to do it, but now they want to level the playing field. Those people are not concerned about health. Those people are concerned about business. They are concerned that they are losing business to smaller communities outside those corporate city limits because those smaller communities have decided, up to this point, not to have a smoking ban. Why are we interfering? Why are we saying we have to have a state mandate on this? The opportunity already exists for cities and local governments, local citizens to handle this issue. I don't believe it's in our place to do this. Then we get into the area of private property rights. As you know, I'm a strong supporter not just of local control and local decision making; I'm a strong supporter of private property rights and, in my opinion, this bill is a violation of private property rights. Shouldn't a business owner have the ability to make a decision in their business that they own on whether they're going to allow a legal product? Tobacco is a legal product in this state. Shouldn't they have that ability without the state telling them, no, you can't have a legal product in your business? I believe a business owner should have that ability. But yet, we're willing to step in as a state and, in my opinion, violate private property rights. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR FISCHER: That is not a wise move either. This issue gets very emotional and I hope, as we have this conversation, we're able to focus and offer respect to each other on the issue. I hope we can have a good discussion and not be ruled by emotions on this, because this is just one of the many issues we're going to be talking about this session that is emotional. So I hope you're able to focus on the issue, see where you stand in regard to your fundamental principles, and enter into this conversation in deciding whether this is a bill that would be proper to become law in the state of

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Nebraska. I will be addressing other specific issues because I, too, as Senator White said, I, too, see a number... [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR FISCHER: ...of problems with the bill. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Fischer. We have a number: Carlson, Erdman, Rogert, Mines, and others. Senator Carlson, you are recognized. [LB395]

SENATOR CARLSON: Mr. President, members of the body, for the time being, and I will change, I am speaking in a neutral position. This is a serious debate over the responsibility of government to promote good public health and to make decisions for the public good, and the freedoms we have as citizens of the United States and the state of Nebraska. I appreciated Senator White's testimony and before the balance of my comments let me be clear on some things. I decided to use words that we all understand rather than those that are political...politically correct. First, I hate smoking. Second, the decision to smoke is a stupid decision. I hate to be caught following a person down the sidewalk who's smoking. I believe the negative effects of smoking are true beyond reasonable argument. I believe smoking shortens life span and cripples the quality of life we cherish as Nebraskans. I wish no one smoked. But we're faced with balancing freedom to do the right thing with legislating the right thing. I firmly believe that long-term results are always better when people are educated to proper behavior and then voluntarily put that knowledge into practice. Government should help people do the right thing by reason, education, and persuasion; by dangling a carrot and not wielding a big stick. Much of the time, just another law brings us closer to too much dependence on big government and less reason to think for ourselves and take responsibility for our own actions. This has to stop somewhere. We have serious responsibilities as a legislative body to promote good public health and to protect those least able to protect themselves--the children. Now for the children, the most dangerous place by far is the home. So if we're really concerned about public health and protecting those least able to protect themselves, smoking should not be allowed in the home. But this is a serious matter. Maybe tobacco needs to become a controlled substance. I'm looking forward to the debate on this important issue. We have a big decision to make. Thank you for your attention. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Erdman, you're recognized, comments on AM333. [LB395]

SENATOR ERDMAN: Mr. President, members of the Legislature, I was wondering if I could get a copy of all the speeches of all the opponents, because they're being quoted by the proponents. Because then that way I could just read those into the record instead of actually coming up with my own thoughts. Seriously, the arguments that are being

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proposed are in preparation to a thoughtful process. In other words, we're trying to prevent you from having thoughts; these are what we think you're going to say; therefore, we're going to trump you by making these arguments up front. I'm opposed to LB395. I'm one of the members of the committee, the only member of the committee, that voted against its advancement. Couple reasons: one, I don't like the underlying policy; and two, there's probably some technical issues that need to be addressed but we, as a committee of the whole, are going to address those. I don't have any great quotes from Thomas Jefferson, but it sounds like I should probably have some. I don't have any great quotes that Senator Aguilar pulled out, but maybe I should go get a few of those from him and throw those into my next few speeches. Let's step back and think about what's before us, and my comments--Senator Aguilar is taking some notes for me so I'll get those from him later--my comments are going to be on the amendments that are before us and I think we'll have plenty of time to focus on the underlying policy, ultimately. The amendment that's before us would ban smoking in licensed foster homes or individuals who are licensed to provide foster care in their homes pursuant to state statute. Senator Howard, I commend you on the language. I think it's more intelligent, I think it's clearer, and I think it's better than the bill that you have before the Health Committee, because I think it actually gets at the heart of what your concern is. And so I think you've at least listened to that part of the committee's comments, at least in our Executive Sessions, and I think that this is a cleaner option for us to discuss. So from that standpoint, I think it's at least better than the bill that's before the committee. I do think, however, that the fact that this amendment is before us is in somewhat conflict with what the request to the Health Committee was to Senator Howard, and that was, from other members, before we proceed with any effort such as this to limit the number of people who could provide foster care services in the state, that we have a quantified impact, not just talking to a few case managers but actually understanding, if this policy is adopted, what does it mean. We understand the issues that come around when people are exposed to smoke, but as Senator White as pointed out, if you're going to give me a choice between a good parent who happens to smoke and putting a foster kid, who's the responsibility of the state, in a home where somebody is abusive, call me crazy but I'm going to pick the good parent who happens to smoke. I don't know that our pool is big enough that we can continue to bucket more water out and still be able to swim in the system that we call foster care. So, while I appreciate the intent and the Health Committee has had lengthy discussions on this proposal, I still don't think it's the right approach. We do have a problem in foster care and I think this compounds it. The other thing that I think is appropriate to understand is that, as I understand both Senator Howard's bill that's in front of the committee and this language, it doesn't only apply to the foster parents. It would apply to anyone. If you come to a foster home and you smoke, foster parents didn't tell you that it was the law, they may not be aware it's the law, those children are exposed to smoke, caseworker swoops in and takes the kid or provides a remedy program and then takes the kid, so then the kid is now moved again because of the actions of others not directly responsible for the child. Good intentions; not the right approach. The other thing that I think, and Senator Howard has an

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enormous amount of experience and she can speak to this further, but I would like at her next opportunity to outline the plan that she has in mind when this situation would occur. As we heard in the committee, there are processes that a caseworker may pursue to try to remedy it, and it's my understanding that the last case scenario is those children would be removed from those homes, and I would hope that... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR ERDMAN: ...Senator Howard, in her next opportunity to speak, would at least give us the idea about how she feels that AM333 would be enforced under the law should it become part of LB395. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Lights on: Rogert, Mines, Engel, Christensen, and others. Senator Rogert, you're recognized to address AM333. [LB395]

SENATOR ROBERT: Thank you, Mr. President. Members of the body, when I heard this bill was coming onto the floor a few weeks ago I was 100 percent in support of it. But as of the last few days, I've changed my mind from 100 percent support to I'm not convinced. I'm not convinced then yet that we should be telling people how to run their lives and how to run their businesses. I have 20 towns in my district, representing 34,000 people. They all tell me that this will kill many of their businesses. The bars and restaurants that are in these towns and the cafes will suffer greatly if we do not allow the people to make their choice. If they want to come in and have a cigarette in the afternoon and have a beer, then they should be able to do that. My particular reasoning for not liking smoke and supporting the smoking ban is not good enough yet, in my mind, to say yes on this bill. It is purely personal and it's because I don't like smoke. I like to socialize and I like to go out and see people, but I don't like coming home smelling like smoke, and I don't like to go spend \$50 bucks a week on dry-cleaning bills. But that's not a good enough reason. This is a very broad, broad definition for many things in this bill. For example, place of business means you employ one or more persons. I have hundreds of farmsteads in my district that employ one or more persons, and their business address is their house. According to this bill, we would have to post "no smoking" signs at every door in the house on those farms, and they can't smoke in their house, if that's the case. That's not going to fly, because at that point they're guilty of a misdemeanor and, like Mr. White said, the police can come in and check on them at any time. I also have a problem with Section 3. I know it's being stricken, but it made it out of committee with that language hitting the floor, and this is a body of lawmaking, not a lecture class, and that's what I believe Section 3 to be. Section 14 is awfully broad as well, as it defines "public place." All a public place has to be is any private club or personal residence that...where the public is invited to come once a year. That, at that point, makes it a public place and smoking would not be allowed there. So I agree that the intent of the law is very true. I believe also in the negative effects of smoking and I

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have no doubt that they do...they do harmful things, but we've also said that it's a legal product and for many, many years in this country we subsidized the farming of that product. We don't any longer, but we did. So I encourage everybody to think hard and think long about how we're going to handle this law, and the bill that we're speaking on right now or the amendment from Senator Howard further infringes on people's rights at that point. I believe that intention is good, too, but we're going quite deep into that. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Senator Mines, you're recognized to address AM333. [LB395]

SENATOR MINES: Thank you, Mr. President, colleagues. For those of you watching on television, this is a filibuster and let us make note that the senior member of this body is not participating, so there are some of us that do take our time and move the process at a very deliberate pace. You should also note that this...what will happen, and just so those of you on television understand, we're all chatting because there are a group of us that don't agree with the bill. And what will happen is Senator Johnson will be at a point where, after maybe eight hours, depends on what the Speaker decides, after eight hours of full and fair debate, and we're all full and fair debating right now, Senator Johnson will decide whether or not to call closure to this. And if he does cloture, he needs 33 votes. I personally believe he's got 25. He could pass it without those of us standing up, popping up and spouting off. I think there are 25 of you in the body that will vote for it. The question is, are there 33? So here's what will happen. We will talk for several days. You'll hear a lot of interesting information, both pro and con, some will be silly, some will not be; some will be like my comments, bordering on stupid, some others will as well. I need to tell you up front that I smoked. Smoked for 25 years. I have not smoked for, oh, 14 or 15 years. I lost my father to smoking. I've lost friends to smoking. Smoking is awful. It's a bad decision. I don't care what age you are, it's a bad decision. However, it's your decision. It's not the state's decision whether you smoke, and it should not be the state's decision primarily where...what businesses you choose to smoke in or, more importantly, what businesses allow you to smoke in their business. You see, I know it's a health issue. I think we can all use that as a given. Even though you can pull up on the Internet all kinds of information that secondhand smoke isn't as bad as we all believe it might be, I don't think we even need to go there. Secondhand smoke is bad. But first and foremost, this is about the right of a business to choose the activities that go on in their business as long as they're lawful, and the last time I looked smoking and tobacco products are lawful products. We could change that. I mean, if we really wanted to get at the core let's eliminate the sale of tobacco products. Let's see what cojones this body has and let's get rid of smoking and tobacco products altogether. I don't think we're going to do that. We don't have the political will. And speaking of political will, it's not a surprise to anyone that municipalities and the restaurant associations are all of a sudden saying, you know what, save us; we are...we're afraid of competition and it's too bad that people are leaving our cities to smoke elsewhere. If in

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fact we're going to subrogate our responsibility and not allow business owners to choose what happens in their businesses, let's let cities do that. I mean, that's the next logical progression. It's not a state mandate. It should be far from a state mandate. Let's let...leave this to local individuals to make those decisions. Senator Carlson made some terrific points. I agree with every single one of them. I don't like to walk down a sidewalk and somebody is smoking, and I don't...I know it shortens the life span. We all know that. Smoking is an awful, awful addiction. However, there are ways to accomplish the reduction in smoking. You're not going to eliminate smoking, nor should we. That should be a personal choice. What we should do is more education, more example. And, by the way, those are working. The number of smokers are going down. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR MINES: So I guess what I'd like to do is just let everybody know what the process is going to be. We'll chat. We'll blather on about whatever side we happen to pick. At the end of the day, Senator Johnson needs 33 and I think none of what we're talking about is going to change anybody's mind at this point. But we'll continue with debate and maybe there will be new information. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Mines. (Doctor of the day and visitors introduced.) We have Senator Engel, Christensen, Karpisek, and others. Senator Engel, you are recognized. [LB395]

SENATOR ENGEL: Mr. President, members of the body, the bill itself I don't support, and I'll tell you why, but I want to give you a little background. I used to be a very, very heavy smoker. I quit 28 years ago. A year later I had bypass heart surgery. If I still smoked I'd be dead because of it, because smoking is as hard on your cardiovascular system as it is on your lungs. So I was very fortunate that I did what I did. It's a very difficult thing to do. Back then, they called it a habit. It's not a habit. It's an addiction and we all know that because I went through withdrawals that I experienced that I didn't think were possible. And...but as a result, I've never wanted a cigarette since then. I don't like to be around smoke. In my office I used to allow smoking. Of course, I smoked myself in there, so did my secretary and so forth, but the thing is, how I got rid of it in my office, I just took away the ashtrays. People come in and we just put, we prefer you not smoke. We didn't say they couldn't. We just said we prefer you don't, you don't smoke in our offices, and they abided by that. So people are very considerate when you ask them not to do something. And...but the thing is Senator White, I think, very eloquently stated probably much better than I could say anything here this morning as far as our liberties and so forth. I don't believe that the state of Nebraska should tell everybody in the state of Nebraska what they can or can't do. I think local control is the best control, and the closer you get to home the better off you are. Whether that's in your schools, or that's in your cities, or whatever it is, I think that's where most of the control should be. And I realize that Senator Johnson is a doctor and he certainly knows the problems with

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smoking. I've been around, I have a brother that is on oxygen. I know the evils of smoking. But again, in the state of Nebraska and other states we speak with forked tongues. We want to keep raising cigarette taxes, we want more revenue from cigarette taxes on the one side of our mouth; on the other side of the mouth we want everybody to quit smoking. I prefer...I prefer the right side. Let's...I'd prefer everybody would quit smoking because everybody's health would improve and save everybody money down the road and, of course, their health would be improved. They would lead healthier lives. But the only thing is that's how we operate here. We want the money, but we don't want them to smoke, so you're kind of...I call that a little bit of hypocrisy, but that's across the country. And...but with as far as I'm concerned, as far as the bill itself, I don't like to be around smoke but I don't think it should be up to us to dictate to everybody in the state of Nebraska that they cannot smoke. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Engel. Senator Christensen, you're recognized to discuss AM333. [LB395]

SENATOR CHRISTENSEN: Mr. President, fellow senators, thank you. You know, I'm anxious to see how this vote goes. You know, if you look at what's being proposed here, taking away the personal choice, personal exception, reminds me of a concealed carry bill that I'm carrying, you know, that I've asked to get rid of the city exemption. You know, I think I'll have lots of votes if this thing flies through because it's taking away them choices. You know, sometimes there's logical reasons for it, you know, but you think about that city exemption a year ago you passed on concealed carry. You know, it should make it just like on this bill right here. You're wanting to take...I wanted to take that away in my concealed carry to get it uniform. That's what they're trying to do here. It will set a real precedence for me to see how I fight my bill. You think about the reasons why we do that. We all fight into the health issues or safety of the public or the freedom of choice, but we got to think about what we're doing here. You know, I personally hate smoke. I have never smoked. I had a dad that smoked when I was young and quit. You know, it comes down to personal choice, comes down to responsibility. You know, I get to thinking about this, this bill; you put in that smoking ban and you...taking away these bad habits. Where do we quit? Are we going to take drinking away too? Just as secondhand smoke kills, people drink and drive and kill. What are we going to take next? You know, think about this--where does the state stop? Do we say businesses can't have stairs in there because someone over 40 might fall? Where do we stop with this? You know, it's kind of like where do you want to go with this? Are we going to outlaw ice on the sidewalks? Because I've slipped and fell and got hurt. I've known a lot of broken bones. Ice skating is dangerous. Sports was very hard on my body. I'm paying for it today. Sports is one of the most favorite activity; brings kids, out of poor homes, scholarships; give them new opportunities. You know, where do we stop with this bill? I personally like sports. Even though I have weak ankles, weak knees, I wouldn't change it; I'd do it again. You know, there's a lot of issues here when we start giving up personal freedoms. You know, I think we got to look about the precedence we're setting here as

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we're debating this bill, because there's a lot of things. You know, I know we got this amendment here, you know, and I love the intent of this amendment. [LB395]

SPEAKER FLOOD PRESIDING [LB395]

SPEAKER FLOOD: One minute. [LB395]

SENATOR CHRISTENSEN: I'd like to take care of our kids and make sure that they are provided for in a smoke-free environment, just like I live in. But when we come to the kids, again, what is the main issue? I think Senator Erdman said it well. We got to make sure we have qualified foster homes first. If there's a way of ranking it, I would love to put them all in nonsmoking homes. I love the intent of this. But I think we got to think about the precedence we're setting with LB395 here. Where do we want to go here? You know, what is the direction that we're going as a body? Think about all these issues from sports, alcohol, cars, ice... [LB395]

SENATOR LANGEMEIER PRESIDING [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR CHRISTENSEN: Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Christensen. We have Senator Karpisek, Gay, Janssen, Schimek, and others. Senator Karpisek, you're recognized to address AM333. [LB395]

SENATOR KARPISEK: Thank you, Mr. President, the body. I stood up a couple weeks ago and asked Senator Chambers to move things along, so this pains me but I am involved in trying to slow this down and I really don't like the way we're going about it, but I did hear Senator Chambers say if you don't like what's going on, this is what's going to happen. Well, I don't like what's going on, but I'm going to speak to the amendment right now. I agree with Senator Howard's amendment that foster parents shouldn't smoke. Do we have enough foster parents now in the state? I don't think we do. I think we're way short. And would we rather have kids stay in a battered home or a bad environment, or go with someone who is caring that smokes? I know that we villainize smokers quite frequently in our society. When we see someone standing outside a bar or a office building having a cigarette, you look at them, like, boy, there's the scourge of the earth. Well, nobody is standing around them getting their secondhand smoke. Again, I understand what Senator Howard is trying to do with this bill and it would be nice, but if every foster parent shouldn't smoke then every parent shouldn't smoke either. And how are we going to control that? It would be great if we made people pass a test before they're parents. Give them on test on what to do and what not to do. And how are we going to do that? My wife and I took Lamaze. Maybe

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we could implement it in that. I don't know. We didn't seem to use many of the Lamaze techniques, so we probably wouldn't use very many of the techniques for teaching our children either. We are getting too far into telling people what they can do and cannot do. It reminds me of something that I used to hear about the communists. Yes, people make stupid mistakes. I agree with Senator Mines, we all make stupid mistakes. Hopefully it doesn't affect other people, but sometimes they do. I know a lot of the stupid things that I've done in my life affect other people and I've tried to apologize to those people, but when it comes to things that we can do or have to do, we need to stand up for our rights. This is not about smoking. We all know smoking is bad. As Senator Christensen said, there's a lot of things that are bad. Where do we draw the line? Back to the amendment, I don't think that we can get enough foster parents. If want to make this rule, then we should maybe make a rule that they can't drink either, they can't have pets, they can't have a compact car because, you know, they're not really good in an accident. Maybe they have to wear a helmet around the house too. I don't know. We are all concerned about these kids, I agree, but where do we draw that line? There are a lot of kids growing up right now, they probably are getting a real good education at home or in foster care, or maybe they're in an orphanage. Maybe we could make a big state orphanage for foster kids that could...they could stay there and we could support that also, and there would be no smoking, no drinking, no...as my kids said when they went to day care, no biting, no fighting, no hitting, no spitting, all those things. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR KARPISEK: And we could make sure that that wouldn't happen. We could put them in a bubble. That is not the way that we can raise kids. I feel very sorry for those kids, and they shouldn't have to ride around in a smoke-filled car. But I'll bet you if you give them the chance, they'd rather ride in a smoke-filled car than dad coming home and not treating them very well. We can't be the smoke police, the swearing police, all kinds of bad things just to protect each other. I'm sure that you'll see me quite a few times. I'm sure, as Senator Mines said, we heard some bordering on stupid. That will probably be me, or him. We shall see. But I appreciate your time. Thank you, Mr. Speaker. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. We have Senator Gay, Janssen, Schimek, Stuthman, and others. Senator Gay, you're recognized to address AM333. [LB395]

SENATOR GAY: Thank you, Mr. President. I would just like to say, as a member of the Health and Human Services Committee, we did look at this amendment and we did not support this amendment. I...no one in this body can question Senator Howard's passion for foster care, I don't think. We all know, extreme passion for that issue. However, to the point of this, Senator Erdman spoke to it, and I will just get back to task. Enforcement of this is difficult. How would we enforce it? We've taken no...we have no

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idea how many parents we could lose if we did this. And Senator White alluded to this. I...there are probably worse things that are happening, and good parents may smoke. My parents...father smoked. I mean, we can go on and on and on. And I'm not going to belabor the point, because I did vote to move this bill out of committee, and I support it. I support some parts of it. This, I do not support. Again, I just think if we're taking these amendments one by one, that's what this debate is for. Let's look at the amendments, discuss the merits of those amendments. We're going to get up here, and Senator Mines pointed out, and others, and go on and on and on. And that's fine; that's part of the process and we will go through the rounds of doing that. However, do not forget, this was looked at in the committee. It was not advanced out of committee. And now we're on the floor, and I just would urge you to oppose this amendment. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Gay. Senator Janssen, you're recognized to address AM333. [LB395]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. Very interesting debate. And we all knew that this is what was going to happen when this bill came to the floor. It's been here before. We've argued the same points. You know, and I have a few questions. And I'm not going to ask Senator Johnson to elaborate on them, but you know I wonder if in your home you are...you have a maid and possibly a cook--I don't, for heaven's sakes, but you know I'm thinking of situations where this could happen--and you smoke in your own home, which you have a very worthwhile...I mean, you can smoke in your home, so far. Now, would you be violating those people's rights to clean air? They are your employees, but you are in your home and you're entitled to smoke in your home. There's another question. In the small town that I have my business in, there is a bar in that town that if you are not a smoker and you walk into it, you certainly will be in a few minutes. There's a haze in there from the time you walk in until you walk out. The only people that go into that establishment are smokers. And I just wonder, if we have a total ban on...throughout the state, whether that particular establishment would survive. There again, if it's across the whole state, they wouldn't be able to go anywhere else. So it's kind of a double-edged sword that we're working with today. Whether...if this bill passes, I have some friends who have a very fine restaurant. They don't allow smoking in the dining room, but they do in the area that...where you sit and wait to get a table. And it's such a good restaurant that there are a lot of people that sit in this waiting area to get a table. They do allow smoking in there. And I know, visiting with Larry (phonetic) several times, he said, you know, I wish you would ban it throughout the whole state, because I don't like the smoke either, but most restaurants have areas like that, so I could not say, no, we're not going to have smoking in the waiting area or, he said, I would lose a lot of customers. And I'm sure that would happen. Another thought crossed my mind. I play a little golf, and I know that the lounge in the restaurant at this golf course that I go to would probably have to ban smoking in there. But what about out on the course? You know, I play golf

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with a few people that smoke these very humongous cigars, and you're in a golf cart with them. I cough and wheeze, you know. Now, would that person be violating my right to clean air if he's in that golf cart smoking this long cigar? Probably. You could argue that point. I'm no lawyer, but I would imagine you could argue that point... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR JANSSEN: ...all the way home. Now, I want to ask you one more thing. These tobacco products bring a few bucks into the state also. Now, are you willing to give up \$66 million that comes into the state coffers? That's \$66 million if we would ban smoking throughout this state. Think about that one. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Senator Schimek, then Stuthman, Wightman, Fischer, and others. Senator Schimek, you're recognized to speak to AM333. [LB395]

SENATOR SCHIMEK: Yes, thank you, Mr. President and members of the body. This is an interesting discussion this morning. And even though I've heard this discussion before, there are perhaps some new elements that should be talked about in this discussion, which we will get to eventually. But what I would like to do right now is talk about the amendment, the floor amendment that was introduced by Senator Howard. And I think that there are some distinctions here that need to be made between foster children and children who are living with their own parents. But first of all, I'd like to ask Senator Howard another question or two, before we get to that. [LB395]

SENATOR LANGEMEIER: Senator Howard, would you yield to a question from Senator Schimek? [LB395]

SENATOR HOWARD: Yes. [LB395]

SENATOR SCHIMEK: Thank you. Senator Howard, you and I have had this discussion off the mike, but I'd like for you to repeat it for the record. And one of the questions we talked about is, do we have any idea how many foster children may be living in homes where there is a great deal of smoke, where the parents smoke inside the home? [LB395]

SENATOR HOWARD: In talking with the case managers recently, the caseload size has gone down, which is good to hear. And of that, approximately a fourth, or a fifth even, of the foster parents would be smokers. [LB395]

SENATOR SCHIMEK: Okay, so a significant number. [LB395]

SENATOR HOWARD: Yes. [LB395]

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SENATOR SCHIMEK: Yeah. You and I talked about why the state might be able to make these kinds of regulations for foster care children that they might not be able to make for other children. And perhaps we could explore that a little bit. Would you like to expand on that a little bit? [LB395]

SENATOR HOWARD: When a child is removed from their biological parents and placed in an alternate form of custody, that's a very serious act, and it's never to be taken lightly. But when that does occur, the state, and the state alone, makes the decision as to placement. The state sets the rules for foster care. The state sets the standard. By doing that, they have the responsibility to select where the child will best be placed. [LB395]

SENATOR SCHIMEK: And, Senator Howard, does then...would you say that the state has a greater responsibility towards foster care children, perhaps, than children who are residing in their parents' own home? [LB395]

SENATOR HOWARD: I would agree with that. [LB395]

SENATOR SCHIMEK: Okay. The last question I would ask...or maybe I'll comment, rather than making it a question. It seems to me that the state can impose these kinds of rules. In fact, I'll go back to you, Senator Howard, for a moment, you did mention to me several of the kinds of rules that foster care already establishes for these homes that children go into. Would you discuss that a little bit? [LB395]

SENATOR HOWARD: That is correct. The state has parameters. The state has certain requirements, if you will, that foster parents must agree to--and these requirements are documented, the foster parents sign the agreement--the first being, if the foster parent has firearms in their home, they agree to keep those firearms under a locked condition, a locked box, a locked closet, a locked storage container where the foster child cannot access the firearms. The second is, if there are medications in the home, if the foster parent is on medications, or the foster child is on medications in its own right, that medication... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR HOWARD: ...has to be locked. [LB395]

SENATOR SCHIMEK: Thank you, Senator Howard. I'd like to close a little bit on what I'm saying here. And thank you for that information. It seems to me that the state does have the authority and perhaps the responsibility to make that part of the rule that the foster parent would agree. Now, if a foster parent still wants to smoke, this would not say the foster parent cannot smoke. It...the foster parent just can't smoke inside the

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home. They can go to the garage. They can go outside. They can do what a lot of other parents do voluntarily around their children. And I don't think this would be onerous. Would we police it? Heavens, no. But I think it would become obvious to people who go into that foster home that smoking still occurs in that home, and at that point then maybe the state could go in and say to that foster parent, we have reason to believe that you're not following the rules, and how can we address this. [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR SCHIMEK: So, thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Stuthman, you're recognized to... [LB395]

SENATOR STUTHMAN: Question. [LB395]

SENATOR LANGEMEIER: Do I...the question has been raised. Do I see five hands? I do see five hands. The question shall be, shall debate cease? All those in favor vote yea; all those opposed vote nay. Have all those voted who care to vote? Senator Stuthman, for what purpose do you rise? [LB395]

SENATOR STUTHMAN: I wish to have a call of the house. [LB395]

SENATOR LANGEMEIER: There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB395]

CLERK: 36 ayes, 0 nays, Mr. President, to place the house under call. [LB395]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. All those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Johnson, would you please check in? Senator Chambers, Senator Ashford, would you please return to the Chamber? The house is under call. Seeing all senators are checked in or accounted for, the question before the body is...Senator Stuthman, how would you wish to proceed? [LB395]

SENATOR STUTHMAN: I would ask for a roll call in regular order. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. The request is for a roll call vote in regular order. The question is, should debate cease on AM333, floor amendment? Mr. Clerk. [LB395]

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CLERK: (Roll call vote taken, Legislative Journal page 565.) 28 ayes, 14 nays, Mr. President, to cease debate. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Debate does cease. Senator Howard, you are recognized to close on AM333. And I do raise the call. [LB395]

SENATOR HOWARD: Thank you, Mr. President and members of the body. The purpose of this bill and the amendment is not to restrict the rights of people who choose to take the risk involved with smoking. When people smoke in public facilities, there are adults or children present, they are infringing upon the rights of others. They are making health choices for others and, in this case, for foster children. Senator Aguilar, I believe we are being shortsighted if we assume that if offered the choice between smoking in their homes or caring for foster children, the foster parents would not choose to put the children first. Frankly, it frustrates me that we are always concerned about protecting the rights of those who are in a position to choose. It is easy to say don't mandate it when you have the liberty to choose and, in this case, the care that your child receives. But people whose children are in foster homes don't get to choose. When the children are returned home, and the majority of them are, the parents have to deal with any health consequences that these children have suffered while in the care of the state. I thank you for listening to this debate. I'm glad so many of you are concerned about this issue. And I urge you to vote to support this amendment. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Howard. You have heard the closing on AM333 to the committee amendments. Shall AM333 be adopted? All those in favor vote yea; all those opposed vote nay. Senator Howard, for what purpose do you rise? [LB395]

SENATOR HOWARD: I would request a record vote on this issue. [LB395]

SENATOR CHAMBERS: (Microphone malfunction) Roll call vote. [LB395]

SENATOR LANGEMEIER: Mr. Clerk, there's been a request for a roll call vote. Senator Howard,... [LB395]

SENATOR HOWARD: I would request a call of the house, and the roll call vote in regular order, please. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Howard. There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB395]

CLERK: 42 ayes, 0 nays, Mr. President, to place the house under call. [LB395]

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SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. All those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Seeing all senators are here and present or accounted for, the question is,...Mr. Clerk, there's been a request for a roll call vote on AM333. Please call the roll in regular order. [LB395]

CLERK: (Roll call vote taken, Legislative Journal page 566.) 19 ayes, 17 nays on the amendment, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The amendment is not adopted. Next amendment. And I do raise the call. Mr. Clerk, items for the record? [LB395]

CLERK: Thank you, Mr. President. Your Committee on Banking, Commerce and Insurance, chaired by Senator Pahls, reports LB124 to General File with committee amendments attached. Education Committee, chaired by Senator Raikes, reports LB230 and LB630 indefinitely postponed. I have a Reference report referring LR28, and an amendment to be printed to LB204 by Senator Burling. (Also, an amendment to LB395 by Senator Rogert, Legislative Journal pages 566-567.) [LB124 LB230 LB630 LB204 LB395]

Mr. President, the next amendment I have to this first component of the committee amendments is, Senator Howard, AM332, Senator. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Howard, you're recognized to open on your amendment, AM332, to FA15. [LB395]

SENATOR HOWARD: Thank you, Mr. President and members of the body. I would request to withdraw that amendment. I think we've given the foster children what we could in this body. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Howard. AM332 is withdrawn. [LB395]

CLERK: Mr. President, the next amendment I have to this component of the committee amendments, Senator Erdman, FA19. (Legislative Journal page 568.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Erdman, you are recognized to open on FA19 to FA15. [LB395]

SENATOR ERDMAN: Mr. President, members of the Legislature, the amendment before you is a technical amendment, not designed to undermine the intent of the bill. As a member of the Health Committee, we've had a number of discussions intending on clarifying the language. Unfortunately, Senator White, we didn't catch the one you

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found. But it's my understanding, and Senator Johnson can speak to this if he chooses, that under FA15, which is the first division of the committee amendment, on lines 3...excuse me, on line 3 of page 2, the language refers to a prohibition for childcare, adult-day care, or healthcare facility. The amendment that's before you would simply add the word "licensed" in front of those entities. Senator Howard's amendment that was before us specified that a foster care home that was licensed would have been subject to the requirement under her amendment. My amendment simply clarifies the language that the prohibition is applied to a licensed childcare facility, a licensed adult day-care facility, or a licensed healthcare facility. That is the amendment, and I would welcome your comments or questions, and believe it is technical in nature. And I would yield any time that I would have remaining to Senator Johnson. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. Senator Johnson, 8 minutes. [LB395]

SENATOR JOHNSON: Thank you, Mr. President. And I won't use much of that time. I...Senator Erdman, I see no problems with this. It seems to define the character more clearly than what it was written. And so at this time, why, we would agree with your amendment. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson and Senator Erdman. The floor is now open for discussion on FA19 to the committee amendment, FA15. We have a number of lights on: Senator Fischer, Avery, McDonald, Aguilar, and others. Senator Fischer, you are recognized to address FA19. [LB395]

SENATOR FISCHER: Thank you, Mr. President and members of the body. On addressing this amendment, if you look at the handout that the Clerk provided for this when we divided the motion, this amendment deals with Section 16 on the committee amendment, lines 3 through 5. It deals with, on lines 22 through 7, as long as everybody is on the same page there. When Senator Johnson was addressing this issue to begin with, under Section 16, I guess I had questions on it. He said that this was a narrow exception for a narrow group. Senator Johnson, would you yield to questions, please? [LB395]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question from Senator Fischer? [LB395]

SENATOR JOHNSON: Mr. President, I'd be happy to. [LB395]

SENATOR FISCHER: Under Section 16, Senator Johnson, could you explain that a little better? I guess I'm confused by the word "only": "Tobacco retail outlet means a retail store that sells only tobacco and related products and in which the sale of other products is only incidental." I don't see the connection with the "only" and the "other" on

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that. [LB395]

SENATOR JOHNSON: Well, Senator Fischer, we did have a similar discussion with Senator Schimek here about an hour ago, I guess, and at that time what we said was this; is that it is meant that these would be smoke shops only, where a person goes in, tries out the tobacco, and see if he likes that one and buys it. The other incidental products was meant to be things like ashtrays and so on. But when it says "incidental," it does mean that you would set up a bar or this type of thing with it. [LB395]

SENATOR FISCHER: Could this retail outlet...when you're talking about "other products," can they sell candy bars and chips and snacks and...? [LB395]

SENATOR JOHNSON: No. And again, this was mentioned in my conversation... [LB395]

SENATOR FISCHER: I'm sorry, I missed that. [LB395]

SENATOR JOHNSON: That's fine. But, no, it is not meant so that a father, grandfather, or whomever, brings his children in and exposes them to the smoke. This would be just the tobacco-related products. [LB395]

SENATOR FISCHER: Do you think that's clear, since Senator Schimek and I both had questions on it? (Laugh) And I do apologize for not... [LB395]

SENATOR JOHNSON: No, that's perfectly fine. [LB395]

SENATOR FISCHER: ...for not following that earlier. I was off the floor, as you can imagine. [LB395]

SENATOR JOHNSON: Sure, no problem at all. And...but I will tell you the same thing, is that we will work with Senator Schimek and you to make that language more specific, if that would be helpful. [LB395]

SENATOR FISCHER: Okay, thank you. Also, Senator Johnson, on page...or, I'm sorry, on your amendment, on line 23, where you talk about private residences, I believe in your opening on this you said it was very narrow and it would protect the rights for people to smoke in their own homes. I do not agree with you on that because I think, according to the bill, if you would have, as Senator Janssen mentioned earlier during the debate, if you have a cleaning lady come into your home, you're employing one person, which in your bill you say, if you employ one or more people. If you are a farmer and you have employees... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

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SENATOR FISCHER: ...on your farm, one or more employees, to me, this is saying that those farmers then cannot smoke in any of the buildings on their farm. If you are an insurance agent and you smoke in your own home but yet you have your business attached to your home and you have one or more employees, the way I read this, then your home, even though it's a private residence, you...in the case of an insurance agent, yes, you use it for a business; in the case of a farmer, you use it for a home, but the mailing address for your business is your home. To me, that's saying that a private residence wouldn't necessarily be exempt from this bill in those cases. Would you maybe clarify that? [LB395]

SENATOR JOHNSON: Well,...yes. And I...let me tell you... [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR JOHNSON: I think our time is up. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson and Senator Fischer. We have Senator Avery, McDonald, Aguilar. Senator Avery, you're recognized to speak to FA19. [LB395]

SENATOR AVERY: Thank you, Mr. President. I'm probably the only person in this body who can say what I'm about to say. My grandfather was a tobacco farmer in North Carolina. All the people in my family smoked, my aunts, my uncles, my cousins. Two people in my family did not smoke--my own parents. My father died at 88; my mother is still living at 87. But all my uncles and aunts and cousins are either dead or suffering from severe smoke-related health problems. But we all know the health problems that are associated with smoking, so I don't need to belabor that point. I want to speak really about something else, and it has to do with the freedom issue, freedom of choice. Our job in this body is to pass laws that promote the public good. Clean air is a public good. It is provided to everybody, it's available to everybody, no matter what their contribution might be to providing or to creating that public good. That's our job. That's our job. We have to provide public goods, things that are available to promote the public interest, and promoting public health is one of those. Now, smoking in public places creates an environment in which nonsmokers become unwilling smokers. It's not their choice. They don't choose to smoke. But they have, because of passive smoke, they become unwilling smokers. This legislation is not taking away freedom. It is, in fact, restoring the freedom of nonsmokers. And I might point out to you that nonsmokers are the majority. So what we ought to be concerned about is protecting the majority and the freedom of nonsmokers not to be exposed to passive smoke, not to become forced, unwilling smokers because of some rights that we think we're protecting for smokers. I might add one more point. There is deep and broad public support for smoking bans here in Lincoln. We went through a two-year process. In June of 2004, Lincoln passed...the

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Lincoln City Council passed a ban. It was almost immediately challenged by public petition. It was placed on the ballot in November of '04, and 62 percent of the voters voted to support a smoking ban. I would suggest to you that if we pass this you will find that a similar number of people around the state will agree with us. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Avery. Senator McDonald, you're recognized to address FA19. [LB395]

SENATOR McDONALD: Mr. President and members of the body, I have not spoken on this issue. I think several years ago if you had brought this idea to the floor, I definitely would not have voted for it, and hoped it wouldn't pass, because I truly felt that local control is where it needed to be. But we've had issues of local control when it comes to tobacco regulation in our cities. They have taken it upon themselves to do local control. Lincoln has done local control. I've never smoked a cigarette in my whole life. I've hated smoke. My father was a tobacco smoker, and I vowed that I would never have tobacco and my husband would never smoke either. So, and none of my children smoke. We do not like smoke. The problem is that it's an infringement on the majority, because the majority of people in the state of Nebraska don't smoke; 20 percent smoke. But yet, we're passing laws to say that those 20 percent have more rights than those that don't smoke. And getting back to the local control issue, we passed concealed carry last year. We passed a bill that was statewide. The states now...or the cities now are doing local control, banning it in their communities. But yet, we have a bill that comes back and says, oh no, we don't like the local control; we want statewide again. So I don't see these as relevant at all because, one, we have the local control in the guns, but now we want state; and this, we don't want state, we want local control. To me, those issues don't match at all. We're looking at two different things. When you go into a bar and there's smoke there, I don't care if I'm smoking or you're smoking; I come out of there smoking. My clothes smell like smoke, my hair smells like smoke, I'm sure my lungs smell like smoke because I am breathing the smoke that's there. Secondhand smoke is an issue. If you're eating fattening foods and I want to get fat, that's my problem. If I go on a gym floor and fall and hurt my knee, that's my problem. I'm not inflecting or reflecting anything on you. It's a personal opinion and a personal problem that I do myself. But when you smoke, you're infringing on the rights of others, and I think we seriously need to look at that. Local control is one thing, but we need to make sure we're consistent in our thoughts, and we're not. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator McDonald. (Visitors introduced.) We have Senator...continued debate. We have Senator Aguilar, Heidemann, Karpisek, and others. Senator Aguilar, you're recognized. [LB395]

SENATOR AGUILAR: Thank you, Senator Langemeier and members. Senator Avery and Senator McDonald took away some of the best things I was going to say, and they said it very well. I thank them for their comments, very, very germane to the

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conversation that we're having here. The majority of Nebraskans don't smoke. What about their personal choice? People are getting up and talking about personal choice. What about their personal choice? Shouldn't they be allowed to choose to walk in any restaurant in the state and not have to breathe somebody else's cigarette smoke? I think they should. I think they have that right. Why are we catering to the minority, probably 20 percent or less of the people that we're really concerned about here? Somehow, that bothers me. It just doesn't seem quite the democratic thing to do. I do want to talk about the tons of e-mail that I've got from people, applauding me for bringing this issue forward, applauding me, because they're offended by it just as much as I am. I will speak specifically to one letter, because it really carried a lot of weight for me. A gentleman who I'll say is a constituent of mine wrote me a letter, told me that all his life he was a heavy smoker. His wife didn't smoke. His wife passed away of secondhand smoke-related diseases. His comment at that point was very much directed to the point. He asked why we didn't do this 20 years ago. Can you imagine the number of lives that would have been saved, people who would still be alive today, if we would have done this 20 years ago? I chuckle when I hear somebody mention something about, what about the revenue we're going to lose? I say, let's lose it, because I guarantee you, that number would pale, pale in amount to what we spend on smoking-related diseases in the state of Nebraska alone. That's the reality of the situation. I don't know why the opponents won't speak to that issue. I think it's an important part of the conversation. We have a responsibility of legislators to curb Medicare spending...Medicaid spending. This is the best way to do it that I know how. If I have any remaining time, I'd give it to Senator Johnson, if he desires. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Aguilar. Senator Johnson, two minutes. [LB395]

SENATOR JOHNSON: Thank you, Senator Aguilar. Let me just touch on a few things that were mentioned here before. You know, in an extensive bill such as this, that has been worked and reworked as many times as it has in order to come to a common agreement, we're going to put in words like "pubic" and "public." (Laugh) We all are guilty of those type of mistakes, and certainly they can be corrected. One of the things that I'd like to carry on, though, that Senator Aguilar was talking about, and that's this; is I think it was Senator White said, you know, we have the right to be stupid. I couldn't concur more. He is absolutely right. What the discussion here this morning, however, has failed to talk about, it is one thing to overeat, it is one thing to do...compete in dangerous sports, and so on. The difference here is that what you do with your actions doesn't stop... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR JOHNSON: ...with you. It is the adverse effect on other people. And you can say whatever you want about banning smoking: It's a legal product now; if it's so bad,

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get rid of the whole thing. No, we are willing to let you be stupid. You can drink. You can smoke. The thing about drinking is, unless you're dumb enough to get in the car with him, it really isn't going to affect you. But if you're sitting on the bar stool next to a smoker, it does affect you, and that's the whole difference that we're trying to make here this morning. Secondhand smoke hurts the other guy. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson and Senator Aguilar. Senator Erdman, you're recognized. My understanding is you want to withdraw this amendment due to another? [LB395]

SENATOR ERDMAN: Mr. President, I would request that my floor amendment, FA19, be withdrawn and filed below FA21, which I believe is Senator Johnson's amendment. His language would amend a similar area, and if his amendment is adopted, mine would be unnecessary. So I'd like to withdraw my amendment and have it filed below his amendment, if possible. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. FA19 is withdrawn. Mr. Clerk, next amendment. [LB395]

CLERK: Mr. President, Senator Johnson would move to amend this component of the committee amendments with FA21. (Legislative Journal page 568.) [LB395]

SENATOR LANGEMEIER: Senator Johnson, you're recognized to open on FA21 to the committee amendments, FA15. [LB395]

SENATOR JOHNSON: Mr. President and members of the body, there's been considerable discussion here between the members off of the mike. Senator Schimek first brought this up, and then Senator Fischer and then Senator Heidemann, as well as Senator Janssen and some others. And what we are...have found, particularly with Senator Fischer talking about ranch hands and using the farmhouse and so on, is it a business, or where does this line draw...is drawn. And with all of these different areas, we tried defining this as best we could before this bill was introduced. However, with good people making good suggestions that this is not the case with what was done, I would suggest this amendment. And what it is, is this; is on page 2 of what was passed out, if you go to the very top, line 1, after "residences," from this part, on: except when used (a) as a place of employment for one or more employees who are not the occupants of the residence, (b) as a childcare, adult day care, or healthcare facility, or as a public place. This amendment deletes this section, to remove all the ambiguities that apparently this has caused. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on FA21 to the first division of the committee amendment, FA15. The floor is now open for discussion. Senator Karpisek, you're recognized, followed by Wightman, Fischer,

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and others. [LB395]

SENATOR KARPISEK: Thank you, Mr. Chair, members of the body. I'd like to ask Senator Johnson to yield. [LB395]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question from Senator Karpisek? [LB395]

SENATOR JOHNSON: Certainly, sir. [LB395]

SENATOR KARPISEK: Thank you, Senator Johnson. I...just looking over it real quick, I had my light on for Senator Erdman's amendment, but...so can you just tell me real quick, this would take all these places and they could smoke in them now? [LB395]

SENATOR JOHNSON: No, just...it will not be part of the bill. So, yes, Senator Fischer's ranch hands can come in to her very nice living room and smoke to their heart's content, if she invites them in. [LB395]

SENATOR KARPISEK: And so now a childcare place would be okay, or adult day care or health facility? That would be all right to smoke now? [LB395]

SENATOR JOHNSON: Well, the problem here is, again, in the private residence, that...what constitutes this exact thing. If a person is taking care of a couple of kids of the neighbors, you know, is that...would that be a problem? And there's just too many exceptions that we could come up with. There are many people here that are concerned about the private residence; we are too. And with this being the case, we just felt that this would be the equitable thing to do, is to do our best to make the private residence their castle. [LB395]

SENATOR KARPISEK: Some of the day...childcares are in a...they're licensed and they're in private household. Would that also constitute that being okay to smoke then? [LB395]

SENATOR JOHNSON: Well, first of all, I would bet that the majority of those are not licensed; that they would be just neighbors taking care of neighbors. But, no, they put in all these exceptions; we will remove that language. [LB395]

SENATOR KARPISEK: Okay, thank you, Senator Johnson. I guess what I want to say is, if we're going to have a statewide smoking ban but now we're going to start taking these parts out of it, is I think we're getting back to the freedom that people have in their own homes, in their own businesses. I own a business that is a meat market, and we smoke meats. Now, are those the same as cigarettes? No, but the place smells like smoke. Most people think it smells good; not everyone, of course. My point being, my

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business has been my home for most of the last 17 years. I've put my blood, sweat, and tears into my business, and I've put more money in my business than my home. And my wife cringes at that, but that's what you have to do when you own a business. Then for the state to come in and tell me who can and cannot do what in my business is just like telling me what I can and cannot do in my home. And I think that is where we draw the line. We cannot have smoking in public buildings, such as this one? Fine. We can't have it in any other buildings, public-owned? Fine. But when it's privately owned and I have put my time, my life, and my expense into it, who are we to come in and tell me what can and cannot be done in my business? I think the issue here is many small towns around my district and the state... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR KARPSEK: ...thank you...that are going to have a real problem with this sort of legislation. Some of these towns in my district have one building in town, and it's the bar, it's the coffee shop, it's the diner, it's the community hall, it's the card playing place. It's where everybody goes. And it's privately owned. Mr. Deke, in Swanton, works a lot of hours there to put money back in to keep his business going for his community, and we should not step on his rights to let them do in there what they want that is legal. I don't think they can come in and smoke a joint in his business, but if they want to have a cigarette they should be able to while it is still legal in this state. Thank you, Mr. Chair. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Wightman, Fischer, Stuthman, and others. Senator Wightman, you're recognized to address FA21 to FA15. [LB395]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. I rise in support of LB395. I know we've had a lot of discussion this morning, including just the most recent statement by Senator Karpisek with regard to control of the business, and that that should be subject to the...or should be free from restrictions as much as control within your own home. But if we look, we've had restrictions on business and what you can do in your own business, and I speak of OSHA, the OSHA rules and regulations, the sexual harassment regulations. There are many, many things that you can't do in your own business, and some of those may protect the employees, most of them do. Likewise, I think a smoking ban in the place of employment also protects the right of the employees and the health of the employees. We have restrictions in Nebraska, have had, that seem to me to be a lot more questionable as far as restricting the personal liberties of the individual than a smoking ban would, and I would support those. One of those, I think, is the motor vehicle helmet law. It basically does not protect anybody except that person from his own follies, I guess, and yet we have seen fit to impose the requirement that they do have to wear helmets. The seat belt law would be another similar one, particularly if a person is riding in the car alone, but even if he's riding with

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anybody. Wearing that seat belt is probably not going to protect his passengers, because he's going to have the accident; all he's doing is protecting himself with that seat belt. So here it seems to me that the state has a lot more interest in imposing a restriction that affects public health and the health of employees, or wherever it may be, than one that just imposes a restriction upon the personal liberties, such as the seat belt law and the motorcycle helmet law. So I do see a distinction there. I think Senator Avery and Senator Aguilar both pointed that out, that we do have an interest. We're protecting more than the person themselves; we're protecting the employees, we're protecting the public who have come to the business establishment. I know there's been some issue made with regard to the fact that some of the communities have voted this down, and then they...and the Restaurant Association, I think, is a prime example. They've opposed it with regard to an individual municipality, but have said, and did come in and support the bill if it was a statewide ban. And I think there's reason for that. I think that the people of this state are looking to the members of this body for leadership. They would like to see it done on a statewide basis. And I think that we as a body have the obligation to protect the people of the state of Nebraska, and so I intend to support the bill. I would ask for your support of the bill as well. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Senator Fischer, then Stuthman, Nantkes, and others. Senator Fischer, you're recognized to address FA21. [LB395]

SENATOR FISCHER: Thank you, Mr. President and members of the body. While I appreciated Senator Wightman's comments, I will have to disagree with those. The people, on a whole, the majority of the people that I've heard from have been against this bill, and it's because they feel that they should be left...have the ability to make those decisions on a local level, instead of having senators who come down to Lincoln and sit in the Legislature make those decisions for what's going to happen in their city for them. As I've said earlier, we've seen that, you know, Lincoln and Omaha have made the decision. We hear that some cities, you know, the people aren't...the city council is not going to do it, the businesses are afraid to do it. Why are they afraid to do it? Could it be because the citizens in that community don't want a smoking ban? And if the citizens in that community do want a smoking ban, then I submit to you that those citizens are the ones that need to make that choice, not 49 of us sitting in this Chamber in Lincoln. Cities have the ability to have a smoking ban now. The city council can pass a smoking ban, as they did in Omaha. The citizens in a community can petition and have a smoking ban in their city, as they did here in Lincoln. Cities have that ability. You know, last session when we passed the concealed carry in this Chamber, we left an option in there that cities could determine what they wanted to do with that bill. We left that option there that local people, whether it's in Lincoln, Omaha, Kearney, Valentine, Broken Bow, wherever in this state, can make that decision on if they want to allow concealed carry within their corporate limits. But now, in my opinion, we've just done a flip-flop with this bill because we said, no, cities, you're not going to make the decision

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on this one, because a few of you have come and said, gee, you can't make it, you're afraid to make it, you want the state to mandate it. We didn't think that way last session on concealed carry. Senator Stuthman and I have a bill going through this body right now. It's on Select File. It deals with ATVs, all-terrain vehicles. We're giving cities the power to make decisions on ATVs within their corporate limits. We're taking that away from the state. We're changing state law with that bill and we're giving that authority to cities. I guess you can make the argument that ATVs might not be healthy for you too. You can make the argument that guns aren't healthful for you. You can make the argument that concealed carry will harm somebody else. You can make the argument that ATVs can harm somebody else. But yet we have turned that authority over to cities. I don't see them coming running to the Legislature. I haven't gotten calls on this saying, oh gee, don't let us make the decision on concealed carry; we want to abide by what you guys passed last session. I haven't seen that. But yet we're doing a flip-flop on this, folks. We're saying, okay, the state is going to mandate it this time because, for one reason or another, from our...from whatever perspective you're coming from on this, from whatever you've heard... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR FISCHER: ...from constituents, from whatever you've heard from businesspeople who want to level that playing field, whatever you've heard from them, gee, all of a sudden a state mandate is great on this, it is great on this. I disagree. This is not great. This is in conflict of what we've done before. And we can make arguments all we want on the health aspects, but I go back to a basic focus and a basic philosophy. We don't need the state to make this mandate. The power is there for our local communities to do it now. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Fischer. We have...next is Senator Stuthman, Nantkes, Friend, and others. Senator Stuthman, you are recognized to address FA21 of FA15. [LB395]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. This is the first time I've spoken on this bill. One of the things that really concerns me is hearing the debate this morning and people say, you know, we shouldn't be getting involved with...the state shouldn't be trying to tell everybody what they can do and what they can't do. And I will agree with that in a part. Some comments were made, you know, that we should be in control of the ice skaters, we should be in control of other things. But there's one thing that I think that we are really missing in this discussion, is the fact that tobacco is truly a legal product. People can smoke the tobacco products. The issue that we're dealing with is the particles that happen after the individual inhales the smoke, through a filter, I might add, and then he exhales the smoke. Where does the smoke go? It goes right into the lungs of the individual sitting aside of him at the bar. Now they say maybe we should have some control on the alcohol. The individual sitting

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aside of me is probably drinking straight peppermint schnapps, I will say. But his exhaling that alcohol, will that make me drunk, or will it have an effect on my health? No, I don't think so. I don't want to...you know, I will not have any of that secondhand alcohol; anyway, I'd hope not to. But the smoke is a part that...it is a person's right to smoke, and I'll totally agree with you there. But keep the smoke to yourself, if that is possible. I think that's the issue that we're dealing with. Allow the people to smoke if they want to, but if a person doesn't want to inhale that smoke, I think it should be that person's right, you know, that he shouldn't have to inhale that smoke, because it's secondhand smoke and there are dangers of secondhand smoke. That is a very...very much of a concern of mine. I think there are other issues, you know, when you look at what we talk about of regulations. I'm in the livestock industry. We have regulations out there. We have regulations as far as confinement livestock, where these confinement buildings can be located, because there are odors to them. Some people think they're offensive; others don't. There are issues with ethanol plants, with the odor from ethanol plants, you know, where they can be located around the neighborhoods. In the livestock industry, we have setbacks. You can't put those places right aside of somebody's home so they could get the effects of that odor. Well, in my opinion, what is smoke? Smoke is an odor. Maybe there should be setbacks as far as where you can smoke; you got to set yourself back 40 feet from somebody else, would be the only place that you can smoke. Maybe we don't want to go that far. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR STUTHMAN: So I...those are some of the current concerns that I have. You know, it is a product that's inhaled and it's exhaled for the next person to inhale, but he doesn't want to inhale that. And I think we should protect the air, the Clean Indoor Act (sic), we should protect that. I did get some e-mails from many, many people and I'd like to read you one of them, and this was from a good friend of mine: I'm very much in favor of LB395. I agree that smokers have the right to smoke, but their smoke should not have to affect me and my family. My dad died of lung cancer, but he was a smoker...and he was a smoker his entire life. He also never smoked in our house or in our cars. I wish all smokers would have the same courtesy, but they don't. Me and my family have chosen to spend weekends in Lincoln, rather than Omaha, because of the smoker ban in Lincoln. [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR STUTHMAN: Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Nantkes, then Friend, then Johnson, then others. Senator Nantkes, you're recognized to address FA21. [LB395]

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SENATOR NANTKES: Mr. President, members of the body, I rise in opposition to the floor amendment and to the underlying bill, LB395. We've heard a lot of eloquent discussion this morning about health issues related to this legislative bill, but that's not where the dialogue ends. There are, in fact, competing interests at play here. For example, we've heard a lot about personal freedom. We've also heard about economic development and free market concepts. We've also heard a lot about local control. These are all principles that I believe very strongly in. One interesting aspect of the debate this morning, I find, is it's quite refreshing to hear so many senators visit about their concern for workers' rights, health, and safety. And I hope to see a continuation of that concern as we address many other proposals, as we move forward into this session. I also think that it's a little bit inconsistent to be willing to receive revenues and balance the budget on the backs of people engaged in a legal activity, but then further regulate their personal choices. Here in Lincoln, we have a smoking ban. It's worked, to a certain extent, to improve air quality and otherwise. But there's been significant economic impacts, particularly in my district, in north Lincoln. Many bar owners in Havelock are struggling with this. A recent report from the University of Nebraska shows that in Lincoln bars are losing over \$170,000 a month, and that's a significant impact, there's no question about it. The other things that I wanted to point out in this discussion is that I think LB395 is poorly crafted and provides really expansive, expansive powers to government to enter into businesses that were previously unavailable to them. What is "reasonable"? "A health director or law enforcement officer may inspect a place of employment or public place at any reasonable time." That's not defined any further. And that's a broad, broad expansion of power for our government. In addition, the posting requirements that require a "no smoking" sign to be placed at every place of employment at every entrance, so we're saying to the farmers who have two ranch hands with them, every mud porch, every Quonset hut, every dairy barn, every entrance needs to have that sign posted. And I think that, again, is troublesome. I think we've had a really good debate this morning. I'm looking forward to hearing more about these issues. With that, I'll yield the balance of my time. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Nantkes. Senator Friend, you're recognized, then Senator Johnson, Karpisek, Erdman, and others. [LB395]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. This whole bill...I'm talking off the mike and off to the side with folks, and given occasions all morning, and they're saying, how come you haven't...where do you stand on this; how come you haven't spoken about it or anything else? I'm not sure I'm going to be able to provide anything valuable here. You know, if we had a bicameral, we probably could deal with this information a little more effectively...I'm just kidding. That was a bad joke. Mr. Clerk, relax. (Laughter) That was a joke. I had to waste about a minute of time. Look, I don't want to waste anybody's time. I think the bottom line for me is this...the underlying bill...FA21, FA15, obviously, those need to be attached to LB395, but the underlying bill tastes a little bit funny, I think, strange. It reminds me, my daughter was

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about six years old and she came home from school and said, Daddy, I have a joke for you. And she claims she doesn't remember this, but I remember it like it was yesterday. She's 13 now. She said, what did one lion say to the other lion when they were eating the clown? And I said, I...where did she hear this joke? I'm thinking, a six-year-old telling me that two lions are eating a clown. And I said, Megan, I don't know. And she said, do this taste funny? I thought it was funny, a six-year-old telling you a joke like...then of course I started thinking, I've got to find out where she heard the joke. Well, whatever. This bill tastes funny, and it tastes funny because there are exemptions provided...(laugh) this bill tastes funny because there are exemptions provided in it. And I'm not trying to make light of this and be trite. There are exemptions provided that just shouldn't be provided. I actually kicked around an idea of providing an amendment--and I've spoken seriously about this in the past--about providing an amendment that would create a ban for smoking inside of a person's house too. Why not? Senator Karpisek brought it up earlier. If this is bad for our health, why are we letting anybody do it? Maybe it should be a controlled substance. Maybe we should...you know, I even came up...I even thought about treating it like alcohol, to the degree that we manage and mandate and regulate and monitor alcohol consumption in this state, distribution, and the whole bit. You need to purchase a license in order to do that in this state. You can't just start distributing alcohol. Maybe some of these...you know, maybe you handle it in that manner. I don't think there's much creativity to LB395. That's not my problem with it. It's the exemptions that it provides. I'd leave you with this. I think we have to use great care when we compare smoking to alcohol use. It's been brought up quite a bit on the floor today and in the past four years that I've been here. I would submit to you that the peripheral effects of alcohol abuse...alcohol use and alcohol abuse have not just killed thousands upon thousands, like secondhand smoke have; they have affected and killed millions. We need to be...forgive me, members of the Legislature. We need to be real careful about the analogy, alcohol and secondhand smoke. You can't compare. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR FRIEND: It's very difficult to make that comparison. How many of us know somebody that have died or been abused...have died from alcohol abuse or been abused by alcoholic people? We all do. We all know that. Alcohol is a scourge. Secondhand smoke is a huge problem. There's a difference between a scourge and a huge problem. I've mentioned this before. I had two grandfathers die. They didn't die of secondhand smoke and they didn't die of smoking. They didn't have time. Their livers lodged into some skewed ball from alcohol poisoning, alcoholism. That's what they died from. [LB395]

SENATOR LANGEMEIER: Time. Thank you, Senator Friend. Senator Johnson, then Karpisek, then Erdman. Senator Johnson, you're recognized to address FA21. [LB395]

SENATOR JOHNSON: Thank you, Mr. President. Just a couple of things, and then

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we're about done for the day so I want to send you home with a few things. Senator Friend, unfortunately, you're not quite correct. And I'll find the exact numbers for you, but the people that die every year from secondhand smoke, the innocent victims, are about 40,000 a year. Every 18 months, we total the number of people killed in the Vietnam War. Every 18 months, secondhand smoke kills what we lost in the Vietnam War. I'll find the other numbers regarding alcohol. The difference here is, alcohol, again, we do it to ourselves. Let me reiterate a couple of things. The Surgeon General says, the scientific evidence that secondhand smoke causes serious diseases, including lung cancer, heart disease, respiratory illnesses, is massive and conclusive. There is no risk-free level exposure of secondhand smoke. Exposure to secondhand smoke has substantial and immediate adverse effects on the cardiovascular system. And please listen to this last one of the Surgeon General's report. Establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur at the workplace. How much plainer can we make it? I think that I'll leave you with that this morning. Please remember that establishing secondhand...or establishing smoke-free workplaces, the Surgeon General says, is the only effective way. I yield the rest of my time to Senator Aguilar. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Senator Aguilar, 2 minutes, 30 seconds. [LB395]

SENATOR AGUILAR: Thank you, Senator. Thank you, Senator Johnson. Just want to comment briefly on a couple things that has been said this morning. One of the arguments from one of the senators says...was kind of complaining because people are coming back and asking for a level playing field. I say, what's wrong with that? What's wrong with creating a level playing field and giving people the opportunity to increase their business? Isn't that what some of the arguments against this bill were about--people losing business? I support a level playing field and what this does. Another thing I'd like to comment on was something Senator White, I believe, said. He said, we have the right to be stupid. I submit to you, no, we don't. You can't go into a crowded theater and yell, fire. You can't go into a mall and start shooting off a gun. Those are just a couple of stupid things you can't do. And you shouldn't be stupid enough to cause medical harm to innocent people who don't want to smoke. Senator Karpisek, I'm glad you're back on the floor. There's something I would really love to address with you. Would you respond to a question, please? [LB395]

SENATOR LANGEMEIER: Senator Karpisek, would you yield to a question from Senator Aguilar? [LB395]

SENATOR KARPISEK: Yes, I would. [LB395]

SENATOR AGUILAR: When you were referring to small towns, and small towns sometimes having only one community building where everybody congregates, by

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everybody congregating, does that mean children as well? [LB395]

SPEAKER FLOOD PRESIDING [LB395]

SPEAKER FLOOD: One minute. [LB395]

SENATOR KARPISEK: I suppose they do if they go to the bar. [LB395]

SENATOR AGUILAR: Don't you think that's maybe helping our argument a little bit, when we're putting children in a situation, because they have noplac e else to go in that small town? I submit to you, Senators, that's all the more reason we need this bill, and that's all the more reason we need it in small towns, as well as municipalities the size of Lincoln, Omaha, Grand Island, Kearney, and Hastings. Thank you. [LB395]

SPEAKER FLOOD: Thank you, Senator Aguilar. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR27. Debate continues. Senator Karpisek, you're recognized. [LB395 LR27]

SENATOR KARPISEK: Thank you, Mr. President, members. I would just like to respond to Senator Aguilar that that gets back to our...maybe we need to have a permit to be parents. Maybe we should keep the kids out of the bar. But if they want to bring their kids there, and they don't want smoke, then they should either buy the bar and ban smoking, or ask the owner to ban smoking, because it is his place of business. With that, I would like to yield the rest of my time to Senator Erdman. [LB395]

SENATOR LANGEMEIER PRESIDING [LB395]

SENATOR LANGEMEIER: Thank you, Senator Karpisek. Senator Erdman, 4 minutes. [LB395]

SENATOR ERDMAN: Thank you, Senator Karpisek. Members of the Legislature, I intended to confine my remarks to the motion before us, as our rules outline. And so in keeping with our fine rule, in Rule 2, Section 7, Senator Johnson, I'll be supporting your amendment before us. Just a few clarifications that weren't disclosed at the outset. The only reason that the League of Municipalities showed up in favor of this bill is because they wanted a provision to opt out of it. So when you see their listing--Senator Mines took them to task a little bit earlier--when you see their listing as a proponent, it was qualified with an amendment being adopted that would allow a city to vote to opt out of the statewide ban. And I don't have the transcript. I think that's accurate. I think other members can clarify that that's there, but that's one thing that needs to be clarified. Senator Stuthman pointed out that in other areas of law we have requirements. Generally, those requirements apply if you have them in place. Senator Stuthman comes from a county that has no zoning. So you're going to argue that we need

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setbacks? Well, that's a local decision. And in fact, their community has opted, or their county has opted, to not have any zoning. That is 100 percent opposite of what this bill does. This bill doesn't give you that option. This bill doesn't give you, as we had this conversation, this bill doesn't give you the opportunity to show respect to one another. This is about imposing one group's will over another. I'm not in favor of that. I don't support the idea of letting nonsmokers impose their will on smokers, and I don't support the idea of letting smokers impose their will. This bill doesn't give us another alternative to work those issues out. And finally, the last opportunity, or the last thing that I'll say on this morning, is LB395 does not level the playing field, because it allows communities to adopt a more restrictive ban than this bill. If that happens, you still have the same potential problems that you have now with the communities surrounding Lincoln and Omaha. I've got an amendment that will address that issue, that says that this is the statewide standard. Like it or not, if this is about leveling the playing field, then level it. Don't have hills and valleys in between; level the playing field. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman and Senator Karpisek. Speaker Flood, you're recognized. [LB395]

SPEAKER FLOOD: Thank you very much, Mr. President, members. Just a quick note: this afternoon, after lunch, check your calendars, we have a number of members of our armed forces that are going to be recognized in the Warner Chamber across from the Rotunda. A number of you have constituents that are going to be recognized at this very important ceremony, and we would encourage you, if you received a letter especially, to be present so that you may be present as a member...as a constituent of yours receives a very high honor. And that begins, I believe, at 1:00 p.m. this afternoon in the Warner Chamber. That said, this bill will be back up again tomorrow as we continue debate on LB395. Thank you very much. [LB395]

SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk. []

CLERK: Mr. President, another series of notice of hearings from the Appropriations Committee, those signed by Senator Langemeier, as Chair. Amendments to be printed: Senator Chambers to LB296; Senator Johnson, LB395; Senator Johnson, LB395; Senator Nantkes, LB395; Senator Rogert, LB395; Senator Erdman, LB395, those all to be printed. Education Committee will meet in Executive Session in Room 1126 upon adjournment today. Business and Labor Committee will meet tomorrow in executive meeting in Room 2102 at 10:00. (Legislative Journal pages 568-571.) [LB296 LB395]

And a priority motion, Mr. President: Senator McGill would move to adjourn until Wednesday morning, February 14, at 9:00. []

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The motion before us is to adjourn

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until Tuesday (sic) morning at 9:00 a.m. All those in favor say aye. All those opposed say nay. The ayes have it. We stand adjourned until tomorrow morning, Tuesday (sic), at 9:00 a.m. []