

FIFTY-NINTH DAY - APRIL 9, 2009
LEGISLATIVE JOURNAL
ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION
FIFTY-NINTH DAY

Legislative Chamber, Lincoln, Nebraska
Thursday, April 9, 2009

PRAYER

The prayer was offered by Senator Coash.

ROLL CALL

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

The roll was called and all members were present except Senators Cornett and Council who were excused; and Senators Adams, Friend, and Pankonin who were excused until they arrive.

SENATOR CARLSON PRESIDING

CORRECTIONS FOR THE JOURNAL

The Journal for the fifty-eighth day was approved.

MESSAGE FROM THE GOVERNOR

April 8, 2009

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

Dear Mr. O'Donnell:

Engrossed Legislative Bills 105, 105A, 110, 110A, 165e, 168, 177, 184, 207, 260, 327e, 377e, and 403 were received in my office on April 3, 2009.

These bills were signed and delivered to the Secretary of State on April 8, 2009.

Sincerely,
(Signed) Dave Heineman
Governor

REPORT

The following report was received by the Legislature:

Investment Council

2008 Board of Educational Lands and Funds Annual Report

MOTION - Approve Appointments

Senator Avery moved the adoption of the Government, Military and Veterans Affairs Committee report for the confirmation of the following appointment(s) found on page 967:

State Emergency Response Commission

Richard Christensen

Steven Danon

Donald Eisenhower

Larry Johnson

Voting in the affirmative, 34:

Avery	Fischer	Harms	Mello	Schilz
Campbell	Fulton	Howard	Nantkes	Stuthman
Carlson	Gay	Janssen	Nordquist	Sullivan
Coash	Giese	Karpisek	Pahls	Utter
Cook	Haar	Langemeier	Pirsch	Wallman
Dierks	Hadley	Lautenbaugh	Price	Wightman
Dubas	Hansen	Louden	Rogert	

Voting in the negative, 0.

Present and not voting, 9:

Ashford	Gloor	Lathrop	McGill	White
Christensen	Heidemann	McCoy	Nelson	

Excused and not voting, 6:

Adams	Council	Friend
Cornett	Flood	Pankonin

The appointments were confirmed with 34 ayes, 0 nays, 9 present and not voting, and 6 excused and not voting.

GENERAL FILE

LEGISLATIVE BILL 436. Committee AM708, found on page 776 and considered on page 989, was renewed.

The committee amendment was adopted with 45 ayes, 0 nays, 2 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 45 ayes, 0 nays, 2 present and not voting, and 2 excused and not voting.

LEGISLATIVE BILL 188. Title read. Considered.

Committee AM611, found on page 688, was adopted with 40 ayes, 0 nays, 6 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review Initial with 42 ayes, 0 nays, 4 present and not voting, and 3 excused and not voting.

LEGISLATIVE BILL 56. Title read. Considered.

Committee AM310, found on page 459, was considered.

PRESIDENT SHEEHY PRESIDING

Pending.

RESOLUTIONS

Pursuant to Rule 4, Sec. 5(b), LRs 78 and 79 were adopted.

PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 78 and 79.

GENERAL FILE

LEGISLATIVE BILL 56. Committee AM310, found on page 459 and considered in this day's Journal, was renewed.

The committee amendment was adopted with 32 ayes, 0 nays, 13 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 34 ayes, 3 nays, 8 present and not voting, and 4 excused and not voting.

LEGISLATIVE BILL 497. Title read. Considered.

Committee AM627, found on page 946, was considered.

Senator White renewed the Council amendment, AM1015, found on page 990, to the committee amendment.

Senator Campbell moved the previous question. The question is, "Shall the debate now close?" The motion prevailed with 27 ayes, 7 nays, and 15 not voting.

The Council amendment was adopted with 32 ayes, 6 nays, 7 present and not voting, and 4 excused and not voting.

The committee amendment, as amended, was adopted with 37 ayes, 1 nay, 7 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 30 ayes, 2 nays, 12 present and not voting, and 5 excused and not voting.

MOTION - Print in Journal

Senator Pahls filed the following motion to LB385:

MO32

Place on General File pursuant to Rule 3, Sec. 18.

COMMITTEE REPORTS

Enrollment and Review

LEGISLATIVE BILL 420. Placed on Select File with amendment.
ER8058

- 1 1. In the Standing Committee amendments, AM710:
- 2 a. On page 2, line 20, strike "this" and insert "the";
- 3 and
- 4 b. On page 3, line 4, strike "the".
- 5 2. On page 1, strike lines 3 through 6 and insert "to
- 6 change provisions relating to sales and use tax exemptions for
- 7 certain nonprofit entities; to provide an operative date; to repeal
- 8 the original section; and to declare an emergency."

LEGISLATIVE BILL 601A. Placed on Select File.

LEGISLATIVE BILL 159. Placed on Select File.

LEGISLATIVE BILL 159A. Placed on Select File.

LEGISLATIVE BILL 489. Placed on Select File with amendment.
ER8060

- 1 1. In the Standing Committee amendments, AM731, on page
- 2 4, line 14, after "Assist" insert "each" and strike "centers" and
- 3 insert "center".
- 4 2. On page 1, line 2, after "Act" insert "; and to
- 5 provide a termination date".

LEGISLATIVE BILL 489A. Placed on Select File.

LEGISLATIVE BILL 246. Placed on Select File with amendment.
ER8061

- 1 1. On page 1, strike beginning with "amend" in line 1
- 2 through line 5 and insert "provide for development of a statewide
- 3 strategic plan for biotechnology; to create a fund; to define
- 4 terms; to eliminate the Biopower Steering Committee and the
- 5 Biopower Development Cash Fund; and to outright repeal section
- 6 66-1701, Reissue Revised Statutes of Nebraska."

(Signed) Jeremy Nordquist, Chairperson

AMENDMENT - Print in Journal

Senator Dierks filed the following amendment to LB241:
AM1028

- 1 1. Insert the following new sections:
- 2 Sec. 11. Sections 11 to 17 of this act shall be known and
- 3 may be cited as the Dog and Cat Purchase Protection Act.
- 4 Sec. 12. For purposes of the Dog and Cat Purchase
- 5 Protection Act:
- 6 (1) Casual breeder means any person, other than a
- 7 commercial breeder as defined in section 54-626, who offers for
- 8 sale, sells, trades, or receives compensation for one or more pet
- 9 animals from a litter produced by a female dog or cat owned by such
- 10 casual breeder;
- 11 (2) Clinical symptom means indication of an illness
- 12 or dysfunction that is apparent to a veterinarian based on the
- 13 veterinarian's observation, examination, or testing of an animal or
- 14 on a review of the animal's medical records;
- 15 (3) Health certificate means the official small animal
- 16 certificate of veterinary inspection of the Bureau of Animal
- 17 Industry of the Department of Agriculture;
- 18 (4) Pet animal means a dog, wholly or in part of the
- 19 species canis familiaris, or a cat, wholly or in part of the
- 20 species felis domesticus, that is under fifteen months of age;
- 21 (5) Purchaser means the final owner of a pet animal
- 22 purchased from a seller. Purchaser does not include a person who
- 23 purchases a pet animal for resale;
- 1 (6) Seller means a casual breeder or any commercial
- 2 establishment, including a commercial breeder, dealer, or pet shop
- 3 as such terms are defined in section 54-626, that engages in a
- 4 business of selling pet animals to a purchaser. A seller does not
- 5 include an animal control facility or animal shelter as defined
- 6 in section 54-626 or any animal adoption activity that an animal
- 7 control facility or animal shelter conducts offsite at any pet
- 8 store or other commercial establishment; and

9 (7)(a) Serious health problem means a congenital or
10 hereditary defect or contagious disease that causes severe illness
11 or death of the pet animal.

12 (b) Serious health problem does not include (i)
13 parvovirus if the diagnosis of parvovirus is made after the
14 seven-business-day requirement in subsection (1) of section 14 of
15 this act or (ii) any other contagious disease that causes severe
16 illness or death after ten calendar days after delivery of the pet
17 to the purchaser.

18 Sec. 13. (1) A seller shall deliver to the purchaser at
19 the time of sale of a pet animal a written disclosure statement
20 containing the following information regarding the pet animal:

21 (a) The name, address, and license number of any
22 commercial breeder or dealer as such terms are defined in
23 section 54-626 or, if applicable, the United States Department
24 of Agriculture license number of the breeder or any broker who has
25 had possession of the animal prior to the seller's possession;

26 (b) The date of the pet animal's birth, if known, the
27 state in which the pet animal was born, if known, and the date the
1 seller received the pet animal;

2 (c) The sex and color of the pet animal, any other
3 identifying marks apparent upon the pet animal, and the breed of
4 the pet animal, if known, or a statement that the breed of the pet
5 animal is unknown or the pet animal is of mixed breed;

6 (d) The pet animal's individual identifying tag, tattoo,
7 microchip number, or collar number;

8 (e) The names and registration numbers of the sire and
9 dam and the litter number, if applicable and if known;

10 (f) A record of any vaccination, worming treatment, or
11 medication administered to the pet animal while in the possession
12 of the seller and, if known, any such vaccination, treatment, or
13 medication administered to the pet animal prior to the date the
14 seller received the pet animal; and

15 (g) The date or dates of any examination of the pet
16 animal by a licensed veterinarian while in the possession of the
17 seller.

18 (2) The seller may include any of the following with the
19 written disclosure statement required by subsection (1) of this
20 section:

21 (a) A statement that a veterinarian examined the pet
22 animal and, at the time of the examination, the pet animal had
23 no apparent or clinical symptoms of a serious health problem that
24 would adversely affect the health of the pet animal at the time of
25 sale or that is likely to adversely affect the health of the pet
26 animal in the future; and

27 (b) A record of any serious health problem that adversely
1 affects the pet animal at the time of sale or that is likely to
2 adversely affect the health of the pet animal in the future.

3 (3) The written disclosure made pursuant to this section

4 shall be signed by the seller certifying the accuracy of the
5 written disclosure statement and by the purchaser acknowledging
6 receipt of the written disclosure statement. In addition to
7 information required to be given to a purchaser under this section,
8 at the time of sale the seller shall provide the purchaser with
9 written notice of the existence of the purchaser's rights and
10 responsibilities under the Dog and Cat Purchase Protection Act or a
11 legible copy of the act.

12 (4) If the pet animal is sold to a purchaser who resides
13 outside of the state or intends that the pet animal will be
14 relocated or permanently domiciled outside of the state, the seller
15 shall provide the purchaser with a health certificate signed by
16 a licensed veterinarian who has examined the pet animal and is
17 authorized to certify such certificate.

18 (5) The seller shall maintain a copy of any written
19 disclosure statements made and any other records on the health,
20 status, or disposition of each pet animal for at least one year
21 after the date of sale to a purchaser.

22 Sec. 14. (1) In order to have recourse to the remedies
23 available to purchasers under this section, a purchaser shall have
24 the pet animal examined by a licensed veterinarian within seven
25 business days after delivery of the pet animal to the purchaser.
26 The pet animal shall be declared unfit for sale and the purchaser
27 may obtain one of the remedies listed in subsection (2) or (3)
1 of this section if (a) during such examination, the veterinarian
2 diagnoses the pet animal with a serious health problem that the
3 veterinarian believes existed at the time of delivery of the pet
4 animal to the purchaser or (b) within fifteen months after the date
5 of birth of the pet animal, a veterinarian diagnoses the pet animal
6 with a serious health problem or states in writing that the pet
7 animal has died from a serious health problem that the veterinarian
8 believes existed at the time of delivery of the pet animal to the
9 purchaser.

10 (2) If a pet animal is diagnosed with a serious health
11 problem under subsection (1) of this section, the purchaser shall
12 notify the seller within two business days after the diagnosis
13 and provide the seller with the name and telephone number of
14 the veterinarian or a copy of the veterinarian's report. After
15 such notification, the purchaser may obtain one of the following
16 remedies from the seller:

17 (a) A refund of the full purchase price of the pet animal
18 upon return of such pet animal to the seller;

19 (b) An exchange for a pet animal of the purchaser's
20 choice of equivalent value, if such pet animal is available, upon
21 return of the pet animal, if alive, to the seller; or

22 (c) Reimbursement for reasonable veterinary fees, not to
23 exceed the full purchase price of the pet animal.

24 (3) If a pet animal dies from a serious health problem
25 as determined under subsection (1) of this section, the purchaser

26 shall notify the seller within two business days after receipt
27 of the written statement of the veterinarian by the purchaser and
1 shall provide the seller with a copy of such written statement.

2 After receipt of the written statement by the seller, the purchaser
3 may obtain one of the following remedies from the seller:

4 (a) A refund of the full purchase price of the pet
5 animal; or

6 (b) A pet animal of the purchaser's choice of equivalent
7 value, if such pet animal is available, and reimbursement for
8 reasonable veterinary fees not to exceed one-half of the full
9 purchase price of the pet animal.

10 (4) For purposes of this section, veterinary fees shall
11 be deemed reasonable if the service is appropriate for the
12 diagnosis and treatment of the serious health problem and the
13 cost of the service is comparable to similar services provided
14 by licensed veterinarians in close proximity to the treating
15 veterinarian.

16 Sec. 15. No refund or reimbursement of fees or
17 replacement of a pet animal under section 14 of this act shall be
18 required if one or more of the following conditions exist:

19 (1) The serious health problem or death of the pet animal
20 resulted from maltreatment, neglect, or injury occurring after
21 delivery of the pet animal to the purchaser;

22 (2) Any written disclosure statements provided by a
23 seller pursuant to subsection (2) of section 13 of this act
24 disclosed the serious health problem for which the purchaser is
25 seeking a remedy; or

26 (3) The purchaser failed to follow through with
27 preventative care, including, but not limited to, vaccinations,
1 deworming treatment, or medication, recommended by a licensed
2 veterinarian examining the pet animal.

3 Sec. 16. (1) If a seller does not comply with a demand
4 for remedy by a purchaser under section 14 of this act, the
5 purchaser may file an action in a court of competent jurisdiction.

6 (2) If a seller contests a demand for remedy by a
7 purchaser under section 14 of this act, the seller may require the
8 purchaser to produce the pet animal for examination or autopsy by
9 a licensed veterinarian designated by the seller. The seller shall
10 pay for all costs associated with such examination or autopsy. The
11 seller shall have a right of recovery against the purchaser if the
12 seller is not obligated to provide the remedy sought.

13 (3) The prevailing party in a proceeding under this
14 section shall be limited to a recovery of actual costs and no more
15 than five hundred dollars in reasonable attorney's fees.

16 Sec. 17. Nothing in the Dog and Cat Purchase Protection
17 Act shall limit any rights and remedies otherwise available under
18 the laws of this state. Any agreement or contract entered into
19 by a seller and a purchaser waiving any rights under the act is
20 void. Nothing in the Dog and Cat Purchase Protection Act shall

21 be construed to limit a seller to offering only those warranties,
22 express or implied, required by the act.

23 Sec. 18. Sections 11 to 17 of this act become operative
24 on January 1, 2010. The other sections of this act become operative
25 on their effective date.

26 2. On page 14, line 25; and page 15, lines 4 and 5,
27 strike "effective date of this act" and insert "operative date of
1 this section".

2 3. Renumber the remaining section accordingly.

UNANIMOUS CONSENT - Add Cointroducer

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB436. No objections. So ordered.

VISITORS

Visitors to the Chamber were Senator Carlson's son, Nathan Carlson, from Holdrege; Senator Fischer's brother, sister-in-law, and nephews, Cory, Patricia, Joshua, and Ben Strobel, from Knoxville, Tennessee; 60 fourth-grade students and teachers from Wasmer Elementary, Grand Island; Michelle Sherman from Omaha; 80 fourth-grade students and teachers from Dodge Elementary, Grand Island; Marna Pruett from Rocklin, California and Josephine Cranston from Irvine, California; and 22 fourth-grade students from Seymour Elementary, Ralston.

The Doctor of the Day was Dr. Mardelle DeLight from Lincoln.

ADJOURNMENT

At 12:05 p.m., on a motion by Speaker Flood, the Legislature adjourned until 10:00 a.m., Tuesday, April 14, 2009.

Patrick J. O'Donnell
Clerk of the Legislature

