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Floor Debate
January 22, 2010

[LB147 LB155 LB181 LB190 LB197 LB216 LB261 LB325 LB552 LB635 LB638 LB731
LB743 LB798 LB871 LB940 LB944 LB949 LB1018 LB1086 LB1103]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: Good morning, ladies and gentlemen, and welcome to the George W. Norris Legislative Chamber for this the eleventh day of the One Hundred First Legislature, Second Session. Our chaplain for today is Senator Norm Wallman. Please rise.

SENATOR WALLMAN: (Prayer offered.)

SENATOR LANGEMEIER: Thank you, Senator Wallman. I call to order the eleventh day of the One Hundred First Legislature, Second Session. Senators, please record your presence. Mr. Clerk, please record.

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: Mr. President, a Reference report referring LB962 through LB1033, as well as two gubernatorial appointees. Enrollment and Review reports LB552 to Select File with Enrollment and Review amendments attached. A series of reports received in the Clerk's Office, one from Game and Parks, the Investment and Finance Authority, and the Department of Roads; all will be on file and available for member review. And finally, Mr. President, the lobby report for this week, as required by statute. That's all that I have, Mr. President. (Legislative Journal pages 313-319.) [LB552]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda, motion to withdraw LB944. [LB944]

CLERK: Mr. President, Senator Harms would move to withdraw LB944. [LB944]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Harms, you are recognized to open on your motion to withdraw. [LB944]

SENATOR HARMS: Thank you, Mr. President and colleagues. Yes, I've asked to have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

that withdrawn because the simple fact is, as I'm reviewing that and have discovered that where I live there are an awful lot of people who do not have computers, do not have the technology available. I think we put that reporting at risk at this time. And I may come back with that sometime in the near future but at this point I would like to have it withdrawn. Thank you, Mr. President. [LB944]

SENATOR LANGEMEIER: Thank you, Senator Harms. The floor is now open for discussion on the motion to withdraw. Seeing no lights on, Senator Harms...Senator Wallman, you're recognized on the motion to withdraw. [LB944]

SENATOR WALLMAN: We're discussing this bill here? [LB944]

SENATOR LANGEMEIER: Yes, we're on the motion to withdraw LB944. [LB944]

SENATOR WALLMAN: Oh, yeah, I appreciate Senator Harms's concern here and I'm for this also. [LB944]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Seeing no other lights on, Senator Harms, you're recognized to close. Senator Harms waives closing. The question before the body is, shall LB944 be withdrawn? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB944]

CLERK: 31 ayes, 0 nays, Mr. President, on the motion to withdraw the bill. [LB944]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. The motion to withdraw is successful. It is withdrawn. Mr. Clerk, next item. [LB944]

CLERK: Mr. President, the first bill on General File this morning, LB216, introduced by Senator Wallman. (Read title.) Bill was introduced in January of last year, at that time referred to the Judiciary Committee, advanced to General File. Senator Wallman presented his bill yesterday, Mr. President. At this time, I have no amendments to the bill. [LB216]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Wallman, as introducer of LB216, I recognize you to give us a brief reopening on LB216. Thank you. [LB216]

SENATOR WALLMAN: Thank you, Mr. President. Good morning, members of the body, friends, like Senator Preister used to say, friends all. And I appreciate the good discussion we had on LB216 yesterday. Just to give you a quick recap, currently most guests in your vehicle can recover medical bills and other damages against your insurance company if you are negligent, but your spouse, children, parents or others who are related within two degrees of you cannot. I received an e-mail from a woman in Lincoln who was watching the debate from yesterday. She was shocked to learn this. I

Floor Debate
January 22, 2010

have also heard from a lot of people who just assumed they were covered. Prior to 1981, a passenger in a motor vehicle injured through the negligence of the driver could not recover damages for his or her injuries unless the driver was found to be guilty of gross negligence. This was known as a guest statute. So in 1981, LB54 repealed most of it so only those who are related to the driver within the two degrees were barred from recovery. In 1981, the argument against repealing most of the guest statute was that there would be rate increases. We now have a 30-year history but can't point to a rate increase based on the repeal of the guest statute. I just don't think it's fair that most people aren't aware they are not able to recover damages if they're in an accident caused by a family member. Let's get rid of this marriage penalty in car crashes. Thank you, Mr. President. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Wallman. You have heard the opening on LB216. The floor is now open for discussion. Those wishing to speak, we have Senator Lathrop, Carlson, Ashford, and others. Senator Lathrop, you are recognized. [LB216]

SENATOR LATHROP: Thank you, Mr. President. And good morning, colleagues. I have, since yesterday, heard a lot of the arguments in favor of leaving this law on the books and I'd like to talk to you about some of them. We oftentimes ask in our debate what are other states doing, and I have a handout coming around to you for your information so that you get some perspective on the guest statute across the country. Forty-one states have either repealed or had their Supreme Courts determine that the guest statute is unconstitutional. This is a relic that is available only in nine states, Nebraska being one of them. And I will share with you that one of the states that still has the guest statute limits it to hitchhikers. So it is a...it is a arcane notion that's on its way out in the legal community and it, I believe, is time for Nebraska to catch up. You'll see the chart that will be handed out momentarily and see that we are down to only nine states that have it and one limits it to hitchhikers. The other argument that has been made is that it will lead to collusive lawsuits, and collusion is where family members might agree to phony up a claim because they're family members. And to give you a little history on the guest statute, prior to 1981 the guest statute applied to any passenger who was in the car who did not pay and was injured. And it was the same argument in 1981 when this Legislature did a partial repeal of the guest statute and limited it to family members. So we do have an occasion to look at the experience since 1981 to see what happened when we allowed acquaintances, friends, people that were in the car to make claims, and it also tells us something about the argument that premiums will go up. So in 1981, this body limited the guest statute from any passenger down to family members and that was over the adamant protest of the insurance industry, who made the very same two arguments that they're making today--it will raise premiums, it will increase collusive lawsuits. You should know, you should know as you evaluate what you're going to do with this bill that back in 1981 you had to go to the Insurance Commissioner and get permission to raise your rates and you had to give a

Floor Debate
January 22, 2010

reason for raising your rates. The insurance industry never came back to the Department of Insurance and asked for a premium increase because the guest statute had been narrowed. So the argument that we will see premium increases is simply that, it's an argument, but on historical information, when we narrowed the guest statute to family members, it did not cause any increase in premiums. And as a practicing lawyer, I can tell you that we haven't seen collusive lawsuits either. Is it possible? It's possible. But we're also talking about the people of the state of Nebraska. They have Nebraska values, they have Nebraska morals. The collusive lawsuit is a rare thing, a rare thing. And what we are doing today is treating every family member as though they were going to engage in a collusive lawsuit and scam something up to make sure that we don't get a very small percent of people who will do that. Those people who would engage in collusive lawsuits, those people who would gin up a claim between family members must face a judicial process, and in that process defense lawyers who are... [LB216]

SENATOR LANGEMEIER: One minute. [LB216]

SENATOR LATHROP: ...very capable, we have a very capable defense bar, those lawyers can go in and unearth. They have available to them the power to subpoena, they have available to them the power to send out a private investigator to follow a plaintiff around. Those things, the process is there to find and ferret out the truth and sort out the collusive lawsuits from those that are legitimate. And I can tell you, I can tell you the collusive lawsuits are a very small percent of all claims. And if this stays in place, we are closing the door to your family to make a legitimate claim because we're overexcited about the possibility of a small number of collusive lawsuits. It is time for LB216 to be repealed and let us join the great majority of states that have done so. Thank you. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Carlson, you're recognized. [LB216]

SENATOR CARLSON: Mr. President and members of the Legislature. As I think about this bill and I'm listening to the debate on it, I think about the fact that we came back into special session. We cut a lot of money out of the budget. It was not a pleasant thing to do but I think it's helping us form a habit, even as we proceed in this 60-day session, and that is nobody would argue the fact that we are scrutinizing everything very closely, and I don't think that's bad. And so in looking at this bill, I look at it, it is...I believe it's a mandate. I think we need to use mandates very sparingly. I've expressed this before, that I have an aversion to the process of government whereby it's a slowly chipping away of freedoms that we have. It's kind of an erosion of our freedom of choice. However, I'm going to talk about this and then I will say that on another bill that's coming forward I will ask for a mandate. So I think there are some times that it's necessary. We had a discussion, I think it was two sessions ago, and Senator Lathrop was involved

Floor Debate
January 22, 2010

with the discussion on that with me about the CHIP plan for health insurance in the state of Nebraska and the idea of raising premiums and salvaging that block of health coverage business for people that can't get insurance. And one of the things that I said, and Senator Lathrop agreed with me, that we've got to be very careful because these people that are in that CHIP block of insurance are trying to take care of themselves. They're trying to be responsible. They're trying to keep coverage in force and I believe that's an individual responsibility and we need to help them so that they can continue to do that and not make it unaffordable. Now I think that passing this bill will bring a premium increase, Senator Lathrop isn't agreeing with that, but the estimates are from 3 to 5 percent premium increase. Now regardless of how small that premium increase is or how small it seems to some of us, that does tend to increase the population of people that are uninsured and that's dangerous. We don't want that in the CHIP plan. We don't want that in automobile coverage. And so I've tried to get some information that on a rider that I can choose to put on my policy, I can add \$25,000 of medical coverage for any passenger in my car, even if I'm at fault, my vehicle, even if I'm at fault, \$25,000 of coverage for each one for \$22.80 every six months. If my premium is about \$600 and it adds 5 percent to the premium, 5 percent is \$30, so we're in the ball park anyway. But this is a choice that I can make to be responsible and I think that \$25,000 is adequate coverage. I've found out that you can also put on \$50,000 on each passenger for about \$40. If the...and some of these riders that you put on that policy will pay in addition to any health insurance. It's not... [LB216]

SENATOR LANGEMEIER: One minute. [LB216]

SENATOR CARLSON: ...contingent on having other insurance in force. So I think that the insurance community should be encouraging people to put this rider on their policy and it keeps us in an area that we're being responsible and we're making this decision ourselves. I think it's the right kind of decision and I think we end up at the same place. So I would rather see it done that way at this point--I'll listen to the rest of the debate--rather than a mandated bill. Thank you, Mr. President. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Ashford, you're recognized. [LB216]

SENATOR ASHFORD: Thank you, Mr. President and members. And I appreciate Senator Carlson's comments. I think that the...generally, the insurance companies, and Senator Carlson knows a lot about it and Senator Lathrop knows a lot about lawsuits and, therefore, the discussion between these two gentlemen is very enlightening because they do know what they're talking about. And I would agree with Senator Carlson that the insurance industry, as they do in most cases, will develop, has developed, will develop in the future products that are affordable, products that are on the market that can be purchased by members of the public to protect, in this case, protect family members. I think that's a...that's appropriate and anything we can do in

Floor Debate
January 22, 2010

this body to encourage the development of insurance products that meet the needs of the public should be...should happen and should be encouraged, and we do that. Nebraska is a very, very much of a...is a state that is very friendly to the insurance industry and that's a good thing. That's a good thing for us as citizens of our state. But I think the discussion that...what Senator Lathrop was talking about is something entirely different. He's talking about standards of liability, not necessarily about insurance law. He's talking about standards of liability. We, as we did the other day when we talked about the cap on or, in effect, the preclusion of claims against municipalities after one year, the ban on claims after one year, we're talking about...in these discussions we're talking about what the standard of liability should be, who should bear the risk when there's a negligent occurrence, when there's an accident, for example, in the guest statute context, like we're talking about today. Should the risk be borne by the parties and the parties' insurance companies providing insurance, or should it be borne by some other third party or other entity? What so often...and the policy that we have to discuss here I think is a policy about who should bear that risk in the law. And on the insurance side, we should be always willing, as I said, to provide a platform for additional insurance products to be offered to cover these risks. But the discussion really today is about allocation of risk. Years ago when I was in the Legislature, we...Senator Conway and I...actually, Senator Conway sat where Senator Wallman is sitting and I sat...was sitting where Senator Council is sitting, developed what's called comparative negligence. Comparative negligence is a...the law in the state now and it is...what it basically says is we will allocate fault or allocate risk based on the percentage of negligence of each individual party. With gross negligence as the standard now for family members in an automobile case, it throws that out of whack. Could I ask Senator Lathrop a question, if he would? [LB216]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB216]

SENATOR LATHROP: Yes. [LB216]

SENATOR ASHFORD: Senator Lathrop, you're...obviously, you work with it every day, you're familiar with comparative negligence. Is that correct? [LB216]

SENATOR LATHROP: That's true. [LB216]

SENATOR ASHFORD: And what...am I generally accurate in stating that it's a way of allocating fault between various parties based on their degree or percentage of fault? Is that the general rule? [LB216]

SENATOR LATHROP: That's the rule. [LB216]

SENATOR ASHFORD: And how would...how does having a standard of gross negligence for family member guests, how does that impact that standard that we've

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

adopted in our state? [LB216]

SENATOR LATHROP: Ultimately, as you know, since you were involved in the comparative fault statute when you were here the first time, comparative fault requires the juries weigh, as a percent of all the fault, how much is attributed to each of the players involved. So anybody that had fault or was negligent in bringing about the collision and the injuries and the damages that follow, jury weighs that and a person who was partly at fault doesn't get a full measure of recovery. If they're more than 50 percent at fault, they don't get anything. And one of the problems that you and I talked about off the mike was the comparative fault statute came along after the guest statute, so we have a gross negligence standard over on the guest statute and we have an ordinary negligence standard contemplated in the comparative fault, so it causes a misfit in the comparative fault process. [LB216]

SENATOR ASHFORD: And that's what...that's exactly right. Thank you, Senator Lathrop. So what you have, if you have an accident with various negligent parties and it so happens that...and the injured party is a guest in a car driven by a relative, what you have is... [LB216]

SENATOR LANGEMEIER: Time. [LB216]

SENATOR ASHFORD: ...the comparative negligence standard is out of whack. It can't be applied across the board. Thank you, Mr. President. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Ashford and Senator Lathrop. Senator Price, you're recognized. [LB216]

SENATOR PRICE: Thank you, Mr. President and members of the body. I'm listening to the debate on this with great interest because one of the things I feel that is happening, in the current state of play, I believe most people when they have their insurance believe that all occupants of their vehicle are covered under the same rules. Until we brought this up, I was unaware of this guest issue and family marriage penalty, whatever we want to call it today. I drove my vehicle thinking that everybody was covered the same way. So it does give rise to concern. But to speak about a couple other things, some of the arguments that we're hearing is that we're one of nine states, and we have the list that was provided to us--one of nine states. Well, golly gee, aren't we 1 of only 50 states with a Unicameral? (Laugh) Aren't we only one of five states that has no benefit for veterans' benefits for retirees on their income and for other retirees? I mean we have a lot of "one ofs" that we are. Matter of fact, you could change the license plate from the good life to the one-of state, if you wanted to. So I don't really think that has bearing. Let's just stick to the merits of the arguments here and not try to obfuscate it whether we're the "one ofs," because every single one of us is a "one of" in the state of Nebraska being a member of the Unicameral. And with that, Mr. President,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

I'd like to yield my time to Senator Lautenbaugh, if he would like. [LB216]

SENATOR LANGEMEIER: Senator Lautenbaugh, 3 minutes. [LB216]

SENATOR LAUTENBAUGH: Thank you, Mr. President. Thank you, Senator Price. I, too, rise I guess in opposition to this bill and let me explain why. We heard discussion yesterday about the med pay coverage available on a policy as it currently stands, and I've been advised that companies differ and that's their prerogative. Insurance companies differ from what they'll offer in a state from one to another. I do know of a couple companies, and I'm not going to name them by name because I'm not in marketing here, but there are a couple of companies where you can get up to \$100,000 in med pay coverage per person if you choose to, and that would address this problem, a couple more with \$50,000 per person in coverage. You can choose to buy now if you want to so I think it's important that we know that that's available and that's out there, existing law. And here's another thing that kind of disturbs me about this and if I'm wrong on the history I think some will correct me on it. I'm confident I'll be corrected. The household exemption or exclusion was swept away by a prior Legislature and as I understand the thinking at the time, some of the insurance companies kind of lied down on that because they had the guest statute. Well, now we're sweeping away the guest statute. And I worry when we do things like this and we're told it's a modest change, it's a modest change, and I don't always subscribe to the slippery slope theory, but this is the kind of thing that demonstrates why some oppose even the smallest changes because the next one is always coming. And this is a case study, if I'm right on the history, where the household exemption or household exclusion was taken away, but it was okay because there's still a guest statute. And now maybe there won't be. So I want us to be careful and I want us to move ahead with caution on this. And as I indicated at first, at this point, I can't support this. Thank you, Mr. President. [LB216]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: Thank you, Senator Lautenbaugh. Senator Wightman, you are recognized. [LB216]

SENATOR WIGHTMAN: Thank you, Mr. President, colleagues. I would ask some questions of Senator Lathrop, if he would yield. [LB216]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Wightman? [LB216]

SENATOR LATHROP: Yes, I will. [LB216]

SENATOR WIGHTMAN: Senator Lathrop, I know Senator Lautenbaugh just raised a question of household exemptions or exclusions that are included in policies in a

Floor Debate
January 22, 2010

number of states. Is that correct or are you familiar with that? [LB216]

SENATOR LATHROP: I know what the household exclusion was and I didn't think the Legislature got rid of it. I thought the Supreme Court ruled that it was either unconstitutional or contrary to the other statutes that we have. I'm not going to...I'm not going to say Senator Lautenbaugh is wrong because I'm not confident enough, but that's my recollection. [LB216]

SENATOR WIGHTMAN: Okay, my understanding is, and I'm not certain of that either, Senator Lathrop, is that the Legislature took that out of the statutes when the guest statute...at least partly eroded by statute, but I'm not certain of that. Do you know if a number of other states do have the household exclusion? [LB216]

SENATOR LATHROP: No, I don't. I don't know any...a household exclusion is something that goes into a policy and it's not necessarily law. The law, of course, can forbid that kind of an exclusion and I don't know how many states have or how many don't have a household exclusion. I can tell you that it hasn't been a problem for us. I mean people live with their girlfriends now, right? A lot of people aren't getting married, so the household exclusion hasn't led to an onslaught...or the absence of the household exclusion hasn't led to an onslaught of collusive claims however. [LB216]

SENATOR WIGHTMAN: My information, and I certainly don't have documentation to back this up, is that 21 states, Senator Lathrop, now have household...allow household exclusions under their policies, including the state of South Dakota. And of course, if you did add that to the number that had the guest statute, and assuming that there's no coincidence between the two, that would allow about 30...it would provide that about 30 states either could have a household exclusion or have the guest statute presently, which certainly changes the figures a lot from the 9. [LB216]

SENATOR LATHROP: Well, I don't know that we don't know that they're not the very same states. [LB216]

SENATOR WIGHTMAN: And I agree with that. That could be possible. But 21 obviously is a lot larger than the 9 that currently have guest statutes. Thank you, Senator Lathrop. I guess I would also point out that my figures are about the same as Senator Lautenbaugh's. I did have a case at one time that had \$100,000 medical pay coverage, so I do know that that, on occasion, is provided by some companies. My figure was the same as Senator Carlson's that for \$50,000 it costs about \$40, which would add \$50,000 of medical pay coverage for each occupant of that vehicle. So you obviously can insure against some of those risks. Now I realize that when we get into liability insurance we're talking about a lot more than medical coverage. We can be talking about loss of wages, disability, pain and suffering, and all of the things that come in a liability suit. So certainly that's much broader coverage under liability coverage than it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

would be under medical pay. With regard to collusion, I would only say that collusion probably comes in all sizes. There can be collusion with regard to medical expenses. There can be collusion just by denying the cause of the accident. You know, I think probably if somebody in the car, an occupant of the car who's a family member, the person is certainly going to try to minimize what his part in the cause of that accident is. He's probably going to be driving slower. I don't say that necessarily, but I think probably people are going to be much more friendly toward their spouse, their children than they are another driver, so they may very well admit they were driving fast if it's going to be based upon a family situation. So collusion is kind of a moving target, I think. It's not something that's real clear that you're involved in collusion, but just not in denying the position that you would normally expect. If another...if another car is involved in that accident and it gets to be a question of who's at fault, I think he's going to...the driver of that automobile is going to deny that he's speeding a lot more quickly than he would be if it's a family member. So I do think that... [LB216]

SPEAKER FLOOD: Time, Senator. [LB216]

SENATOR WIGHTMAN: ...some degree of collusion might exist. Thank you, Mr. President. [LB216]

SPEAKER FLOOD: Thank you, Senator Wightman. Senator Gay, you're recognized. [LB216]

SENATOR GAY: Thank you, Mr. President. This morning I drove my 14-year-old son to school and I drive by Bryan High School every day and I drive by Papillion and we get around a lot of high school drivers. There's two people in that car and usually it's a brother and he may be hauling another sibling or a sister to school. And I'm paying close attention because my son is 14, will be driving soon, so want to know. But I guess I want to ask Senator Lathrop a question, if he'd yield. [LB216]

SPEAKER FLOOD: Senator Lathrop, will you yield to a question from Senator Gay? [LB216]

SENATOR LATHROP: Yes, I will. [LB216]

SENATOR GAY: Senator Lathrop, this has been quoted as, well, we want to do this for a husband and wife; if something happens, you know, you can protect her. So how would this benefit any...a young driver who has a sibling in the car? I mean does this have anything to do with them at all? [LB216]

SENATOR LATHROP: It does. Great example. [LB216]

SENATOR GAY: Give me a case where this would make a difference. [LB216]

Floor Debate
January 22, 2010

SENATOR LATHROP: Great question, and let me tell you how it works. If you are driving down Harrison Street on your way to Gross High and the car is being driven by an 18-year-old senior and he has his 15-year-old brother in the car and he makes a left turn in front of oncoming traffic, and the oncoming traffic collides broadside with the door...the brother's side of the car. And he has now suffered a spine injury, he suffered a fractured pelvis, may have a brain injury. Right now they cannot make a liability claim to collect the cost of those medical expenses. If the...if we do away with the guest statute, they will be able to collect liability limits to help with the medical expenses and the balance of the claim so it benefits those young drivers because those brothers, those siblings that they carry around now will have access to the liability limits in order to satisfy medical expenses and other damages. [LB216]

SENATOR GAY: Okay. Because that's an issue. These things could happen. And they're always tragic situations probably where this is happening so it's an important issue. But I guess Senator Carlson brought up a point. And I'm at this: I've looked at my own insurance card and I have the deductibles, comprehensive, medical payments, bodily injury, all these things. And...but if we're paying a premium and I can get coverage, an awareness issue now, I happen to be sitting in the Legislature, hearing these things so I'm going to look into that, definitely, but at what point though, if we start covering everything, as government--and I was looking at the healthcare bill had a long-term care provision in there, too--we just start covering many things, many bad things. All of a sudden, there's no incentive to buy a rider or at what point...I mean, where is the... [LB216]

SENATOR LATHROP: That may be. That may be the ultimate irony of the argument here and that is that the insurance lobby tells you that there will be an increase in premiums. By the way, they didn't come to the Judiciary Committee with that information. They didn't come with data that shows that there will be a premium increase, and that historically was not the case but that's their argument. They say, well, you're going to increase premiums and so instead of doing that, don't repeal the guest statute and provide coverage for these people, make them buy more med pay. Well, they're having it both ways, frankly, which is we don't want to cover these people. We want to make them go buy additional coverages under the med pay. I can tell you. I can tell you in my experience, and I deal with this every day, the typical med pay policy is \$1,000 and that is nothing. That is nothing. And what's more, if you don't mind me going into this, what's more, if you make a claim and your health insurance has paid the bill, you have to pay health insurance back out of this recovery. So to some extent, we're talking about lowering the premiums of the health insurance carrier who's more likely to receive more reimbursement if this bill is repealed. [LB216]

SENATOR GAY: Senator Lathrop, then that was the next question I was going to ask you, is earlier yesterday you said, well, this would transfer the risk from the health

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

insurers. This would be on your health insurance, assuming you have health insurance, which...so your health insurance picks this up. In this case, we are talking about a brother/brother, brother/sister, whatever. It goes to health insurance. Well, the health insurers now, I don't know if they'd lower premiums. Obvious...they probably won't. They're going up. But if you'd take a direct shift and say to...I'm...an insurance company so, by the way, here's a lot more cases where you're going to have to pick up potential liability, my actuary is going to say, well, my God, you know, now here's this situation. I would assume it would raise rates. [LB216]

SENATOR LATHROP: Absolutely. [LB216]

SENATOR GAY: Any time... [LB216]

SENATOR LATHROP: Great, great question and great point. [LB216]

SENATOR GAY: Senator Lathrop, hold on. Because many times we hear that. I was on Banking and Insurance Committee for two years and if you do this, rates are going up, and I understand that. But logically, I think rates would go up because you said no longer would this be a health insurance issue. It's now... [LB216]

SPEAKER FLOOD: Time, Senator. [LB216]

SENATOR GAY: ...a property casualty issue. [LB216]

SENATOR LATHROP: Exactly. [LB216]

SPEAKER FLOOD: Thank you, Senator Gay. Senator Rogert, you're recognized, followed by Senator Gloor, Wallman, Lathrop, Council, and others. Senator Rogert. [LB216]

SENATOR ROGERT: Thank you, Mr. President. Good morning, members of the body. I have a few comments and questions. Senator Lathrop, would you yield to a couple questions, please? [LB216]

SENATOR LATHROP: Yes, I would. [LB216]

SENATOR ROGERT: When...I was just...I've been listening to what you said earlier and you mention, I believe, in 1981 you said the...we repealed the majority of the guest statutes and took it just down to relatives, correct? [LB216]

SENATOR LATHROP: That's true. [LB216]

SENATOR ROGERT: And I believe you said the battle from the insurance companies at

Floor Debate
January 22, 2010

that time was, it will definitely increase rates. Is that right? [LB216]

SENATOR LATHROP: Their argument was twofold. It will increase collusive lawsuits and it will increase insurance premiums. [LB216]

SENATOR ROBERT: And I remember Senator Christensen, during the hearing of this particular bill, asking someone in the room whether they went up and...or whether they would go up, and I don't believe they could give us any examples. Did they go up or file for any rate increases in 1981? [LB216]

SENATOR LATHROP: No. And we know that, interestingly enough, because in 1981 you had to go to the Insurance Commissioner to get permission to increase rates and you had to give them a reason. No one came in after we altered the guest statute and said, we need to increase premiums because the Legislature rolled back a portion of the guest statute. [LB216]

SENATOR ROBERT: Okay. And I understand that oftentimes rate increases come because of an increase in claims and losses, and so those things may not have happened. It may have been a delayed effect. Do you think, in your mind, that it was a delayed effect, that it came in maybe within three or four years of increased claims and losses that it caused a possible increase in rates? [LB216]

SENATOR LATHROP: My understanding is there was never a filing with the Insurance Commissioner that said, we'd like to raise our auto insurance liability premiums because the guest statute was partially repealed back in 1981. [LB216]

SENATOR ROBERT: Okay. A second question for you, Senator Lathrop. I'm just going to give you an example. I'm going to say I'm employed by, say, the county and they give me health insurance just on myself and not on my wife or my child. It's just a single individual policy. Say I get in a wreck. I'm also not very well off and the rest of my family is not covered at all by any health insurance policy. Say I get in a wreck. I caused it, for some...whatever reason, and the folks in the car, my wife, is hurt. What happens to her at that point? What covers her health...what takes care of her hospital bill? [LB216]

SENATOR LATHROP: The average hospital bill I think that we see...I see these things all the way up in the million dollars, okay? Somebody that spends a couple of days in the ICU, they'll have hundreds of thousands in medical expenses. You can have \$1,000 in med pay and that's it. [LB216]

SENATOR ROBERT: So this person is probably going to be SOL and end up either getting caught...caught up, the hospital is going to eat the money or it's going to end up on a Medicaid claim or a taxpayer claim. [LB216]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR LATHROP: That's exactly right, and Medicaid picks up a lot of these people that don't have the health policy in this circumstance. [LB216]

SENATOR ROBERT: Okay. And...thank you, Senator Lathrop. I want to comment. Senator Carlson, would you answer to a question, please? [LB216]

SPEAKER FLOOD: Senator Lathrop, will you answer a question? [LB216]

SENATOR ROBERT: Senator Carlson, please. [LB216]

SPEAKER FLOOD: Senator Carlson. [LB216]

SENATOR CARLSON: Yes, I will. [LB216]

SENATOR ROBERT: Senator Carlson, I appreciated your comments. I know you've dealt a lot with insurance. I appreciate your comments on insurance companies should be encouraging their clients and their agent should be encouraging their clients to put these extra riders on. Is that what you mentioned? [LB216]

SENATOR CARLSON: Yes. [LB216]

SENATOR ROBERT: I've bought a lot of insurance policies with auto and I...personally, I've never been told that I should or encouraged to add this extra rider. Have you ever done that or has anybody ever asked that of you? [LB216]

SENATOR CARLSON: And I don't sell...I didn't sell this kind of insurance but, no, I've never been asked and, regardless of the outcome of the vote on this bill, this is a good thing because... [LB216]

SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB216]

SENATOR CARLSON: ...it's bringing to light something that should be of concern and it would seem to me like it needs to be a habit of an agent to offer that coverage. [LB216]

SENATOR ROBERT: Senator Carlson, I would bring to you the thought that if this doesn't pass then it ought to be a mandate, that this is one of those things where--thank you, Senator Carlson--where I pay good rate premiums on an insurance policy and I go to make a claim and oops, sorry, you're not covered. Nobody told me about it, nobody told anybody about it, and they're never required to because that...and that just seems wrong to me. Whether this goes through or not, it seems like we ought to be looking at the fact that folks are unaware of a situation where they could be making a claim when

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

they're not able to and then where are they? They're stuck. Thank you, Mr. President. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Rogert. Senator Gloor, you're recognized. [LB216]

SENATOR GLOOR: Good morning, Mr. President, members of the body. I wonder if Senator Lathrop would yield to a question...for a question. [LB216]

SENATOR LATHROP: Yes, I will. [LB216]

SENATOR GLOOR: I want to continue the questions that Senator Rogert started. After the last alteration of the statute, we've talked about there were no rate increases brought forward to the Insurance Commissioner. Do you know what kind of time frame that related to? Was it immediately after the enactment of the statute? Was it within a year? [LB216]

SENATOR LATHROP: I don't know how long that process continued because now they're free to... [LB216]

SENATOR GLOOR: Sure. [LB216]

SENATOR LATHROP: ...change their rates without going to the...without going to the Insurance Commissioner. And the person that gave me this information didn't tell me how much longer after 1981 that process continued. I think it went on for a number of years, however. [LB216]

SENATOR GLOOR: Do we know if...I mean ultimately, I'm sure, that there was an increase. It's hard to believe over that period of time that there wouldn't have been an increase. Does the information you have tell us whether ultimately the change in the guest statute was used as any kind of a justification for the increase that happened? [LB216]

SENATOR LATHROP: At some point they didn't have to come in with a justification and I can tell you, I'm confident that premiums are not today where they were in 1981. I expect that has more to do with the escalating costs of healthcare than the guest statute. [LB216]

SENATOR GLOOR: Thank you. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Gloor. (Doctor of the day introduced.) Continuing discussion on LB216 those still wishing to speak, we have Senator Wallman, Lathrop, Council, Ashford, Price, and others. Senator Wallman, you're recognized.

Floor Debate
January 22, 2010

[LB216]

SENATOR WALLMAN: Thank you, Mr. President. I find it ironic that we're talking about mandates here and I'm always usually against mandates and against whether it be property taxes or whatever. And this here, because of uninsured motorists, we better buy an uninsured motorist plan, hadn't we? All these things, these riders always cost us money, and I've never been told by my insurance agent that I needed a rider, no responsibility there. It's mine and it probably should be, but who knows that you need a rider for something like this? Not very many people. So why do we listen to insurance agents when they keep raising their rates? They recover their costs quite quickly. They have no qualms about raising their rates, whether it be health insurance, liability insurance or anything. You know, they raise your rates to cover their cost. And so uninsured motorists, nobody has healthcare, who pays this? We do, taxpayers, eventually the taxpayers. So I'll turn the rest of my time over to Senator Lathrop, if he'd like. [LB216]

SENATOR LANGEMEIER: Senator Lathrop, 3 minutes 50 seconds. [LB216]

SENATOR LATHROP: Thank you. And thank you, Senator Wallman. I'd like to talk to you about a cost shift, and Senator Carlson, you may be interested in this, and others. If we take Senator Gay's example, which is two family members in a car, one turns left in front of somebody else and we have an injury, significant injury, and we'll use \$50,000 as the medical bills, and that's pretty...that's pretty average, frankly, for a kind of a left turn, side impact sort of crash. If that person doesn't have availability, can't access the liability coverage, here's what happens. The individual that gets the \$50,000 worth of care down at Creighton or at the Med Center or at whatever your community hospital is, they do one of two things. They either walk out on the bill and/or go through bankruptcy, or they sign up for and receive Medicaid. You don't have to be on Medicaid before the accident. As long as you're destitute, you can pick up Medicaid afterwards. So the insurance industry is effectively arguing, the liability industry is effectively arguing, you know those people with legitimate claims, there's no collusion, we're not going to cover them and the state of Nebraska ought to pick up the cost of that care or Creighton University Medical Center ought to absorb the cost of that care. So recognize that when we decide...if you are wondering what happens if this stays in place, we are going to continue to leave responsibility for a lot of these medical expenses at the door of the hospital in your community or we're going to turn them over to Medicaid or they'll be absolved in a bankruptcy proceeding. It's also I think important for you to understand that if the person has health insurance, if they have health insurance and health insurance pays those bills and the person makes a recovery with this arcane marriage penalty out of the way, that it is incumbent upon the person who makes the recovery, the people who we will now allow to make a claim, they have to pay back their Blue Cross Blue Shield. So if we leave this in place, Blue Cross Blue Shield, for example, will be paying more claims that auto liability should be paying, they will not be reimbursed

Floor Debate
January 22, 2010

for claims that they have paid, and when you factor in and when you look at what are we doing to insurance premiums, recognize that we could see a decrease in health insurance premiums in this state if we put the responsibility for these auto accidents on the auto policy and not the health policy. And so as you... [LB216]

SENATOR LANGEMEIER: One minute. [LB216]

SENATOR LATHROP: ...consider these arguments about premiums, recognize that what you're not being told by the liability insurance lobby is that these costs are being picked up by Medicaid, they're being absorbed by hospitals, and they're being picked up by the health insurance policies, and that is an increase in our taxes, it's an increase in our health insurance premiums, and those are as real, as real as any claim that there will be an increase in the auto policy premium as a result of repealing this marriage penalty. Thank you. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Lathrop, your light is next and you are recognized. [LB216]

SENATOR LATHROP: Thank you. I have another...another aspect, believe it or not, that you're going to be interested in, I think, as it relates to this claim. Let me tell you what the statute says right now, that if you are a close family member you cannot make a claim against another family member unless the family member was drinking or engaged in gross conduct. Stop and think about that for a second. If you are riding with your brother-in-law and he turns left in front of somebody, which is what we would call ordinary negligence, you cannot make a recovery. But if you get in the car with your brother-in-law and he's all liquored up and he's drunk and he crosses the center line and hits somebody, now you can make a claim. It is a leftover, it is a leftover, irrational remnant from when we narrowed the cause of action back in 1981. For all the reasons we've talked about to this point in time in the debate, shifting the cost to insurance...health insurance carriers, shifting the cost to Medicaid, to the hospitals who will never be paid, the fact that a girlfriend that you live with can make a claim but your wife can't, those are all compelling reasons in themselves. But think about this, that the only time you can make a claim against a family member under the existing guest statute is if you got in the car with somebody that's drunk or grossly negligent, and that is silly policy. That is silly policy. In the end, colleagues, there has been discussion about collusion and there has been discussion about insurance premiums, and we have a tendency to look at those issues because that's what the lobby is talking about. They're not talking about those constituents of yours, those family members who have legitimate claims and who we are excluding from the courthouse because there is a very small percent of people who might engage in some collusive activity. We certainly have opened the door to claims by occupants, by girlfriends, by your next-door neighbor, by your buddies that you're going to the football game with, but not your wife and kids and not your brother-in-law. And that is, I think, an absurd proposition that we

Floor Debate
January 22, 2010

will close the door to all of these legitimate claims for the very people we love and care for the most in order to stop a couple of collusive lawsuits, which will in the end be subject to the work of capable defense council who can send private investigators to follow these people and get after collusive lawsuits where they happen. But what we do by leaving the guest statute in place, is to classify every claim by a family member as collusive, and I can tell you, historically, that's not the case. If you read the dissent of Judge Gerrard, he was exactly right. He was exactly right. This is about closing the door to a great number of legitimate claims out of some concern that a couple of collusive claims might be brought. I think that the time for the repeal of this marriage penalty, as Senator Christensen called it, the time for the marriage penalty to be repealed is now. Let's join the other 41 states that have done it, put this by the wayside, let health insurance pay for diseases and not car accidents, and... [LB216]

SENATOR LANGEMEIER: One minute. [LB216]

SENATOR LATHROP: ...bring good policy to the state of Nebraska. Thank you. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Council, you're recognized. [LB216]

SENATOR COUNCIL: Yes, thank you, Mr. President. I have appreciated the debate that has occurred on this bill thus far. I've listened intently yesterday and I listened today, and I hear questions, concerns, representations that raise serious questions and concerns for me. There was the statement made about mandates and not wanting to impose mandates and the repeal of the guest statute being viewed as a mandate. Well, look at the mandate we have with regard to automobile insurance. We mandate that all drivers or owners of vehicles have liability insurance and we have that mandate to protect others, to protect the individuals in another automobile. Because if an individual has liability insurance only and is involved in an accident that does not involve another automobile, that individual has no claim against his or her insurance company because the liability coverage is intended to cover the damages and costs that that individual causes for others. But we're not willing to repeal the guest statute, which would allow for protection of our own family members. We would prefer to provide protection for...and mandate protection for third parties that are not related to us than to provide a means for family members who are riding in automobiles that have comprehensive insurance coverage, and that's what we're talking about, comprehensive insurance company...coverage. So, I mean, we wouldn't even be in this discussion if we were just talking about the general liability insurance mandate because that's not going to cover the occupants of our cars in any event. It's going to cover injuries to others. We're talking about paying the premium for a comprehensive policy of insurance coverage. Now I listened to Senator Carlson provide data with regard to premium increases. Well, I was present during the Judiciary Committee hearing on this bill and heard no such figures. And, you know, I appreciate the fact that that information is being provided

Floor Debate
January 22, 2010

today but I don't know whether that's the case or not, that we're talking about 3 percent premium increases or 5 percent premium increases. There was other statements made this morning that, well, you could buy extended or additional medical "mal" coverage, and I heard the figure of like for an additional \$40 per some amount of coverage. But I don't know and I don't think anybody in here can say that a 5 percent premium increase is more than the cost that a family would have to incur in order to make sure that their own family members were covered by their insurance policy. I've also heard a lot of scenarios this morning and the one that I found most intriguing was the suggestion that a driver would admit that he or she was grossly negligent in order that their insurance company would provide coverage for an injured family member. And I'm sitting here and I'm going, first of all, that assumes that the average driver knows the issue that we're discussing today with regard to whether their family member would be covered or not, but it also ignores the very distinct possibility that if the driver admitted that he or she was grossly negligent in causing these injuries, that while the family member might be covered if we repealed the guest statute, the interesting thing is the driver might not be covered because his or her gross negligence is the cause of the accident and potentially the insurance company could deny coverage for the driver's injuries. So, I mean, I think we have to view this issue logically and objectively in what we're trying to accomplish. The guest statute without additional riders, additional coverages, prevents family members from recovering in instances where the driver may have been negligent, yet our mandatory liability insurance requirements would take care of third parties... [LB216]

SENATOR LANGEMEIER: Time. [LB216]

SENATOR COUNCIL: ...who were caused by...who were injured by that such negligence. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Council. Senator Ashford, you're recognized. [LB216]

SENATOR ASHFORD: I just can't help...I'm 60 years old and I think my premiums are going to go down if this bill passes. I've had 60 years of experience and I think my premiums are going to go...so there, Senator Carlson. (Laugh) No, seriously, I...this is...and I do appreciate Senator Carlson's comments and he does know what he's talking about and I don't, so...but look it. There are two separate issues. We're talking about insurance law on one side and we're talking about liability law on the other side. We know that if you have a homeowner's policy and you get into an accident and your wife is injured and you're negligent, you don't recover under your homeowner's policy. So you paid for that policy and you don't have coverage, under Nebraska law. That's not the law in most states. But you can, as Senator Carlson correctly says, you can buy a rider. You can buy...or supplemental insurance policy that covers your wife if you're negligent under our law, but that for sure is going to cost you more money. We know

Floor Debate
January 22, 2010

that that's going to cost more money. That's going to be an additional premium that you're not paying under your homeowner's. We don't know for sure. I will...Senator Carlson does this for a living and if he tells me that there will be a slight increase in premiums for the guest statute, I can't argue with that. There may be; there may not be. But it borders on silly to be in a situation in a state that is very receptive to the insurance industry, to not be able to cover a family member, for goodness' sake, when there happens to be an accident where the family member is in the car and you're negligent. That just...I can't...it makes no sense. The last point I'd make is this. Again, and we talked about this a bit the other day when we were talking about the liability claims against the city bill. The Judiciary Committee is the place to bring in your evidence. That's why we are there. Our committee is qualified to get through the evidence that is presented and present that to the body. We had no evidence presented to us that there was going to be a premium increase, not any. We had somebody come in from the defense attorneys and someone come in from the insurance group that said...the insurance group person said, well, premiums are going to go up, but there's no evidence that premiums are going to go up, just like the cities the other day said property taxes are going to go up if we...if we take the one-year claim bar and move it to two years--no evidence that that's going to happen. The committees are...and maybe this is a good teachable moment, I think. The committees are there to ferret through this evidence, to look at what is presented so that if there was evidence presented to us that said insurance premiums are going to go up significantly, we would look at that. And I'd say to Senator Lathrop, you know, you may be right theoretically but we can't raise...we can't be a part of raising insurance premiums to the degree that they might go up. But we don't have that evidence, so if someone bring...in any bill you have, if someone says to you out in the lobby, it is this way because I say it's this way, you know, where's the evidence? Where is the information that you can rely on and that you would be relying on in making judgments in your own business or your own life? That's why we have committees. This is not a battle between the trial lawyers and the insurance industry. This is a discussion about policy. Policy can only be made with information. If you don't have information, you got to make a...on one side you make policy based on the information that you do have, and the information that we have is that the guest statute in Nebraska is an oddity. It is a holdover. It does not apply in most states. It penalizes the family relationship. That is not the Nebraska way to deal with these issues, clearly. Thank you, Mr. President. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Ashford. Those still wishing to speak, we have Senator Price, Wallman, Conrad, Haar, and others. Senator Price, you're recognized. [LB216]

SENATOR PRICE: Thank you, Mr. President and members of the body. In listening more to the debate, one of the things we talked about was a premium increase. Well, if this goes forward and people were covering that other passenger through med pay, wouldn't your med pay correspondingly go down, the cost of it, because you wouldn't be

Floor Debate
January 22, 2010

making a claim against med pay, you'd be doing it under the other part of your insurance? So I kind of see it as a trade-off. If we talk about premiums rising, I mean this isn't...in full honesty, folks, if one part of the premium of a policy is doing the coverage and that part of the policy is no longer really going to be used in that situation, then I would hope to see and expect to see that my premium went down in that area. So does it become a wash? Or does this become a litmus test for insurance carriers that, one, they keep it high in one area where we're using it and then move to another area and raise it too? So I think this provides a great litmus test. Secondly, ladies and gentlemen, I'm not suing my wife. I don't know about you, but I'm not suing my wife. What I am doing is going to my insurance company and trying to collect. And I'm not very appreciative at this moment of the...of an implication of an emotional argument saying you're going to sue a family member. I ain't suing my wife, all right? I'm going to my insurance company to make a claim. Because as I said before, when I bought my policy it was my understanding everybody was covered the same way. There was no great attempt to disclose to me, Mr. Price, you're not covered if your wife is driving, your children aren't covered if you're driving but anybody else is. Yes, it may be written in the fine print, but that sure doesn't bode well for the openness of the process. Thank you, Mr. President. I yield my time to Senator Lautenbaugh, if he would like to use it. [LB216]

SENATOR LANGEMEIER: Senator Lautenbaugh, 2:50. [LB216]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And I'll be brief. I don't think anyone here is suggesting that we mandate that people go out and buy additional med pay coverage. I never used the word "mandate." My point was it's available. It's there if you choose to buy it. And we had discussion regarding, well, we require liability insurance for third parties, to protect third parties from our negligence. Well, that's fine. But this is asking us, if we do go with some kind of a mandate, either we're mandating everyone pay so that you have coverage for your family members, or as it exists now you can choose to have coverage for your family members. I'm not comfortable mandating that we all pay for this. I didn't use the word "mandate" originally and I don't like the use of the word "mandate" or the thought of a mandate in this area because mandates increase costs. We could go that extra mile and I could illustrate absurdity by being absurd by suggesting why don't we just mandate that everyone have healthcare coverage. Now I know no serious person would propose that and it would be a disaster and not really something in our American tradition, in my opinion, so I'm not going to propose that we mandate health coverage. I'm not for mandates. I didn't suggest we mandate that people go buy med pay coverage. What I said was they can if they choose to. It's available now, up to \$100,000. You can shop around for it if you like. No way did I mean to say we should mandate they do that. Thank you. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh and Senator Price. Senator Wightman, you're recognized. [LB216]

Floor Debate
January 22, 2010

SENATOR WIGHTMAN: Thank you, Mr. President and members of the body. There was some discussion earlier with regard to whether the deletion from the statute...whether it was statutory or whether it was a judicial decision with regard to eliminating or excluding household occupants. And I have since reviewed the statute and maybe somebody has read this already but I haven't heard it. Section 60-310(3), we have a provision in the statute that says, "An automobile liability policy shall not exclude liability coverage under the policy solely because the injured person making a claim is the named insured in the policy or residing in the household with the named insured." So it certainly is statutory. Now whether there's been a judicial decision on that I can't say. I'm not aware of one at least. That comes up in...by reason of our previous discussion, that there are 21 states that allow this exception, it is specifically excluded under Nebraska law. It does seem to me that if we were to provide that the guest statute be eliminated that we might want to look at eliminating this section of the Nebraska statute. But it just seems to me that we do have a lot more than 9 states that in one way or another do provide some sort of a guest statute protection for family members since 21 states allow that exclusion and 9 states, which may include some of the same states, that have guest statutes. So I don't think that we would be...that we're quite as far out here in never-never land, as might be suggested then, that only 9 states have it because 21 states let you in through the back door by issuing policies that exclude household occupants. With regard to whether it's going to increase premiums, I agree that maybe no evidence was submitted, no testimony provided to the Judiciary Committee, but sometimes common sense tells you that there will be an increase in premiums down the road. If you look at the pool of people who are likely to be injured in any given accident, occupants of the car who are family members certainly are a substantial number of the people who are likely to be injured. When you look at the number of cars in which one or more members of the family are driving with...or riding with a driver, it would be substantial. Furthermore, you have the issue of contributory negligence, assumption of risk. Assumption of risk may well apply even to the household member on occasion but not very often, because the Nebraska courts have pretty...I would say almost without fail say that the negligence of the driver cannot be imputed to the passenger. So you're talking about a class that...of people who would be allowed to bring suits who would almost never be barred by their own contributory negligence. For this reason alone, I think it increases the number of lawsuits substantially across the country, increases the number of recoveries, and is going to result in an increase of premiums. It may not be the first year until there's some history, but down the road I think that there's no question but what it will increase premiums and probably fairly substantially. Thank you, Mr. President. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Wightman. (Visitors introduced.) Continuing with discussion on LB216, those wishing to speak, we have Senator Conrad, Haar, Carlson, Council, and others. Senator Conrad, you're recognized. [LB216]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR CONRAD: Mr. President, I'd like to call the question. [LB216]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question before the body is, shall debate cease on LB216? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB216]

CLERK: 26 ayes, 3 nays to cease debate, Mr. President. [LB216]

SENATOR LANGEMEIER: Debate does cease. Senator Wallman, you are recognized to close on LB216. [LB216]

SENATOR WALLMAN: I appreciate the dialogue. Just got a letter here from e-mail. She's watching this today on here, on LB216. She said she's horrified to learn that close family members still are covered under the so-called guest statute or, frankly, that it ever existed. So she thanks me for introducing this bill and hopes it passes. And I do appreciate the dialogue here, and a certain senator mentioned mandates. Well, I'm sorry. I'm mandated to buy car insurance if I want to get my driver's license or renew my registration on something, I'm supposed to have a driver's license. Driver's license mandated, car insurance mandated, but health insurance isn't and maybe if it was it would be a lot cheaper premium, everybody pays. The rider system, I see all kinds of ads on TV, here, this insurance is cheaper, go here, this is cheaper, this is cheaper, pretty soon it ought to be free. But where's this advertising dollar come from? Out of my premium. Does that bother you people? So I would appreciate you pass this legislation. I think it's, like one station says on the air, fair and balanced. Thank you. [LB216]

SENATOR LANGEMEIER: Thank you, Senator Wallman. You have heard the closing on LB216. The question before the body is, shall LB216 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB216]

CLERK: 26 ayes, 16 nays, Mr. President, on the advancement of the bill. [LB216]

SENATOR LANGEMEIER: LB216 does advance. Mr. Clerk, items for the record. [LB216]

CLERK: Thank you, Mr. President. Amendments to be printed: Senator Haar would like to print amendments to LB261 and LB325. Notice of hearings offered by the following committees: Natural Resources Committee, General Affairs, Retirement Systems; those all signed by the respective Chairs. Your Committee on Natural Resources, chaired by Senator Langemeier, reports LB743 to General File; LB798, General File; LB871, General File. Agriculture, chaired by Senator Carlson, reports LB731 to General File. That's all that I have, Mr. President. (Legislative Journal pages 319-325.) [LB261 LB325 LB743 LB798 LB871 LB731]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We'll now proceed to the next item on the agenda, LB147. [LB147]

CLERK: Mr. President, LB147 was a bill introduced by Senator Pirsch. (Read title.) The bill was introduced on January 9 of last year, referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments, Mr. President. (AM756, Legislative Journal page 1297, First Session, 2009.) [LB147]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Pirsch, as introducer of LB147, you're recognized to open. [LB147]

SENATOR PIRSCH: Thank you, Mr. President and members of the body. LB147 was passed out of Judiciary Committee last year on an 8 to 0 vote and we simply ran out of time last year to address the bill on the floor. There is no fiscal note, no cost to the bill. LB147 helps improve the integrity and accuracy of three state registries...I'm sorry, three state registries: two maintained by the Nebraska Department of Health and Human Services, the central registry of child protection cases and the Adult Protective Services Central Registry; and one registry maintained by the Nebraska State Patrol, the Sex Offender Registry. The bill improves the accuracy of the registries by authorizing the clerks of the state's various district courts to electronically send a copy of any name change court order to the custodians of the three registries so that the three custodians can update any legal name changes on the respective registries. That's the sole effect of the bill. The district court clerks do not oppose this bill, by the way. This will go into effect, if amended, in 2012. All the courts will be on what they call the JUSTICE computer system by then. The existing system then will be able to simply automatically generate and send the necessary electronic information. So no manual labor will be required in transmitting this information, kind of the beauty of technology. My original green copy of the bill, as introduced here, did not include the Adult Protective Services Central Registry. Understand there's a Judiciary Committee amendment that is coming--and welcomed, by the way, by me--that adds to the registry, to the two registries that already exist in the green copy of the bill. The Judiciary Committee amendment also requires identifying information specific to the individual who has successfully sought the name change from the court to be relayed to ensure that the information is accurately recorded. I will also be bringing an amendment a little later to delay the date of the implementation of this bill, as I mentioned, to the year 2012 to ensure that the JUSTICE system is up and running and the clerks of the district court have plenty of time to get things set up. So I thank you for your time, Mr. President. [LB147]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. As the Clerk has stated, there are committee amendments offered by the Judiciary Committee. Senator Ashford, you are recognized to open on the committee amendment, AM756. [LB147]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR ASHFORD: Thank you, Mr. President. And Senator Pirsch accurately described the bill. The Judiciary Committee agreed with him that this was a needed change. There is a committee amendment, AM756, however, that does extend actually the reach of the bill slightly. It extends the tracking process described in the bill to the Adult Protective Services Central Registry to make the processes consistent across all registry systems. So I think...I'm sure Senator Pirsch would probably agree, that's a good amendment. And additionally, the amendment would add a requirement that any name change petition include the petitioner's address and date of birth, somewhat of a technical change. This provision will ensure that those on the registries are accurately identified with their name changes, just added information to cross-reference. Again, the bill was advanced unanimously to General File and we urge the adoption of the amendment and the advancement of the bill. Thank you. [LB147]

SENATOR LANGEMEIER: Thank you, Senator Ashford. You have heard the opening. You've heard the opening on the committee amendments to LB147. The floor is now open for discussion. Seeing no lights on, Senator Ashford, you are recognized to close on the committee amendments. Senator Ashford waives closing. The question before the body is, shall AM756 be adopted to LB147? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB147]

CLERK: 30 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB147]

SENATOR LANGEMEIER: AM756 is adopted. Mr. Clerk for a motion. [LB147]

CLERK: Senator Pirsch would move to amend the bill with AM1569. (Legislative Journal page 246.) [LB147]

SENATOR LANGEMEIER: Senator Pirsch, you're recognized to open on AM1569. [LB147]

SENATOR PIRSCH: Yes, thank you, Mr. President. And the sole effect of this amendment would be simply, as I mentioned earlier, to delay the date of the implementation of this bill to the year 2012, I put January 2012, just to ensure that adequate time is there to program the JUSTICE system by the clerks of the district courts. So I thank you for your time. [LB147]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. You have heard the opening on AM1569. The floor is open for discussion. Seeing no lights on, Senator Pirsch, you're recognized to close on AM1569. Senator Pirsch waives closing. The question before the body is, shall AM1569 be adopted to LB147? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB147]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

CLERK: 41 ayes, 0 nays, Mr. President, on the adoption of Senator Pirsch's amendment. [LB147]

SENATOR LANGEMEIER: AM1569 is adopted. [LB147]

CLERK: I have nothing further on the bill, Mr. President. [LB147]

SENATOR LANGEMEIER: We return now to discussion on LB147, the bill itself. Seeing no lights on, Senator Pirsch, you're recognized to close on LB147. Senator Pirsch waives closing. The question before the body is, shall LB147 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB147]

CLERK: 43 ayes, 0 nays, Mr. President, on the advancement of LB147. [LB147]

SENATOR LANGEMEIER: LB147 does advance. Mr. Clerk, next item, LB181. [LB147 LB181]

CLERK: LB181 is a bill by Senator Fischer. (Read title.) Introduced on January 12 of last year, at that time referred to the Transportation and Telecommunications Committee. The bill was advanced to General File. There are committee amendments, Mr. President. (AM1282, Legislative Journal page 1398, First Session, 2009.) [LB181]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator Fischer, you're recognized to open on LB181. [LB181]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB181 authorizes the Public Service Commission to resolve wire crossing disputes between railroads and telecommunication carriers. This bill was introduced due to some difficulties that various telecommunication companies were experiencing when trying to get a telecommunications line across a railroad right of way. In a typical situation, this could be handled by two private businesses through contractual negotiations. However, these are not typical situations because telecommunication carriers of last resort are required to provide telephone service to every residence. Initial and reoccurring fees that railroad carriers are charging in some cases have been exorbitant in regard to a small wire no larger than a quarter being buried underneath the railroad tracks. In rural areas, the wire may be for a single customer. This is obviously a high-cost, low-revenue situation, and an extra \$10,000 fee with an annual rent of \$500 to cross the railroad tracks makes it even more so. I believe legislation is warranted in this case when the state is mandating that a private company provide service, and circumstances out of its control are preventing it from doing so. This is a reasonable solution that puts in place a procedure to make the process...to make sure that the process is handled quickly in

Floor Debate
January 22, 2010

front of the proper authority. The bill requires a telecommunications carrier who wants to place a wire, line, or cable across a railroad right of way to request permission from the railroad through a written application. If the carrier and the railroad are unable to reach an agreement within 60 days after receipt of the application, either party can petition the Public Service Commission for a hearing on the disputed terms and conditions. Upon issuance of an order, the carrier and railroad shall have 15 days to file a conforming agreement. The commission may reject the agreement if it does not conform to the order. The bill requires the telecommunications carrier to pay a one-time standard crossing fee of \$1,250 to the railroad. This fee will be in lieu of any direct expenses incurred as a result of the placement of the wire. The bill does provide for a special circumstances exception. Either party may petition the commission for additional requirements or relief from the standard fee. The bill also declares any provision of an agreement that indemnifies or holds harmless the railroad or its representatives for damages resulting from its own negligence or intentional acts to be against public policy and is unenforceable. LB181 applies only to telecommunication carriers certified by the Public Service Commission. This section does not apply to any longitudinal encumbrance or any line, wire, or cable within the public right of way. Thank you, Mr. President. [LB181]

SENATOR LANGEMEIER: Thank you, Senator Fischer. As the Clerk has stated, there are committee amendments offered by the Transportation and Telecommunications Committee. Senator Fischer, as Chairman of that committee, you're recognized to open on the committee amendments. [LB181]

SENATOR FISCHER: Thank you, Mr. President and members. The committee amendment, AM1282, strikes the original sections and becomes the bill. The amendment makes several language changes for clarification. And I would stress that our committee counsel worked with Union Pacific on this amendment. In Section 2(2)(a), the amendment clarifies that the Public Service Commission is required to take into account railroad safety, engineering, and access requirements as required by federal law when resolving a crossing dispute between the railroad and telecommunications carrier. In (6)(a), the term "willful and wanton misconduct" is inserted to replace "intentional acts or omissions" when referring to a railroad's actions that it may not be held harmless from. This new term correlates with existing Nebraska case law. The term "loss or damage" is inserted in (b) to maintain consistent language throughout the section. The committee amendment will aid the Public Service Commission in having the correct interpretation of what its duty is in these disputed cases between the telecommunications company and the railroad carrier. And I would urge advancement of the amendment. Thank you. [LB181]

SENATOR LANGEMEIER: Thank you, Senator Fischer. There is a committee amendment AM...or an amendment, AM1595 offered to the committee amendments. Senator Fischer, you are recognized to open on that amendment. (Legislative Journal

Floor Debate
January 22, 2010

page 326.) [LB181]

SENATOR FISCHER: Thank you, Mr. President and members. I filed this amendment yesterday. Burlington Northern Santa Fe came to me with some concerns on the bill as the committee has amended it. We were able to agree on two of those changes that meet the concerns of BNSF and I would urge you to advance the amendment. Thank you. [LB181]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You have now heard the opening on AM1595 offered to the committee amendments to LB181. The floor is now open for discussion. Seeing no lights on, Senator Fischer, you're recognized to close. Senator Fischer waives closing. The question before the body is, shall AM1595 be adopted to the committee amendments? All those in favor say aye; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB181]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of the amendment to the committee amendments. [LB181]

SENATOR LANGEMEIER: AM1595 is adopted. We return now to discussion on the committee amendments, AM1282. Seeing no lights on, Senator Fischer is recognized to close. Senator Fischer waives closing. The question before the body is, shall AM1282 be adopted to LB181? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB181]

CLERK: 40 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB181]

SENATOR LANGEMEIER: AM1282 is adopted. We return now to discussion on LB181, the bill itself. Seeing no lights on, Senator Fischer, you are recognized to close on LB181. [LB181]

SENATOR FISCHER: Thank you, Mr. President, and thank you, colleagues. I believe this is a needed piece of legislation to help with our local telecommunications companies in meeting their duties that they are required to perform, again in especially rural areas. And I urge you to advance the bill. Thank you. [LB181]

SENATOR LANGEMEIER: Thank you, Senator Fischer. You have heard the closing on LB181. The question before the body is, shall LB181 advance? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB181]

CLERK: 40 ayes, 0 nays, Mr. President, on the adoption of the motion to advance the bill. [LB181]

Floor Debate
January 22, 2010

SENATOR LANGEMEIER: LB181 does advance. Mr. Clerk, Next item. [LB181]

CLERK: Mr. President, LB190, a bill by Senator Avery. (Read title.) The bill was introduced on January 12 of last year, at that time referred to the Judiciary Committee. It was advanced to General File. There are committee amendments, Mr. President. (AM85, Legislative Journal page 1460, First Session, 2009.) [LB190]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Senator Avery, you are recognized to open on your bill. [LB190]

SENATOR AVERY: Thank you, Mr. President. Good morning, colleagues. This bill should not be new to you. You may remember that in the '09 session I brought this bill as an amendment to LB155 which was a crime measure introduced by Senator Rogert. It was attached to that bill on Select File, and placed on Final Reading. Between Select File and Final Reading, I had conversations with people who indicated that because of the fiscal note that was accompanying that amendment, it was likely to lead to a veto of LB155. I did not want to bring down Senator Rogert's bill with my amendment, so on Final Reading I withdrew the amendment and sent it back to General File. So here we are. The bill would bring Nebraska into line with 47 other states that require all individuals convicted of felonies to submit a DNA test. This bill does not apply to arrestees, although many states do include arrestees. It does, however, include all individuals currently confined or serving probation for felony offenses. I'm happy to tell you that the two other states that do not have a DNA testing bill for all felons has been reduced by one because just last week New Hampshire, or at least the House of Representatives in New Hampshire, passed DNA legislation similar to what we are considering today. The DNA, you probably are aware, is collected by a blood draw or a cheek swab. The cheek swab is the least invasive manner for getting this evidence. The Supreme Court has long held that a compelling and legitimate state interest overrides personal privacy issues related to DNA collection. DNA samples are kept on file with the state lab and with the FBI's Combined DNA Index System known as CODIS, C-O-D-I-S. A CODIS DNA profile consists of an individual's DNA profile together with the sample's identifier and an identifier of a laboratory responsible for the profile. The CODIS databank is not a criminal history database. It does not contain any personal identification such as names, dates of birth, or Social Security numbers. DNA collection is very important in providing forensic information to convict the guilty and to exonerate the innocent. We have seen DNA evidence work in our own state where six people were exonerated of crimes committed in the Beatrice area. There are another 249 nationally that have been found innocent by way of DNA testing. It helps identify missing persons in human remains. It can aid the State Patrol in investigating and closing unsolved cases. There are approximately 250 cold cases in the state of Nebraska. CODIS, so far, has aided in closing 16 of these cold cases in Nebraska. It seems to me

Floor Debate
January 22, 2010

there are too many opportunities in the criminal system for failure--false testimony, misinterpretation, misrepresentation of evidence, tampering with evidence, incompetent legal representation, unreliable expert testimony. There are many, many ways in which the criminal justice system can fail. But one of the things that's important is that DNA evidence is the closest thing we have to foolproof. It is the gold standard for evidence in criminal cases. It should be further noted, I think, that Nebraska has been passed over for at least six years for federal grants relating to funding for a DNA database sample. We cannot afford to pass up grant money. It seems to me this might help us fill that void. The State Patrol indicates that we have about 6,000 felons who would be affected by this legislation. The Department of Corrections indicates that they have about close to 2,500 individuals in the correctional system right now and about 3,500 on probation that would need to have samples collected. So this does have some fiscal implications. I would call your attention to the pink copy of the fiscal note. You should have a copy of that. That is the latest revision. It is dated January 15, 2010. The fiscal implications will be borne or the fiscal responsibility will be borne by the Attorney General's Office. I will have an amendment I will discuss in a few minutes that will set up a special fund in which the Attorney General can put money, cash funds from settlements that qualify for this. It can be a repository for federal grant money. It can also...if we chose to appropriate money to it, we could do that as well. The Attorney General has assured the Fiscal Office that there is no impact to the General Fund. So with that, I will yield to my friend, the Chair of the Judiciary Committee, for an amendment. Thank you, Mr. President. [LB190 LB155]

SENATOR CARLSON: Thank you, Senator Avery. As the Clerk stated, there are amendments from the Judiciary Committee. And Senator Ashford, as Chair of the committee, you're recognized to open on those amendments. [LB190]

SENATOR ASHFORD: Thank you, Mr. President. This is a very important piece of legislation. I recall 20 years ago when I was here and we passed the AFIS bill for fingerprint...computerization of fingerprint identification and that now, of course, is incredibly commonplace and essential to law enforcement. This takes law enforcement to a new level and it is critical if not...absolutely essential, critical. I can't think of other adjectives that better describe this. Senator Avery has brought us an important piece of legislation. The amendment clarifies a few things but doesn't change the intent of the bill. And by the way, the committee voted 8-0 that this bill be advanced. We realize that there's some fiscal impact, but we're quite certain that the grant money and other funds that can be...and the same argument was made against the AFIS system 20 years ago, and law enforcement was able to collect other monies to help defray the cost of this. AM85 would retain the requirement that violations for the misdemeanor offenses of stalking and false imprisonment in the second degree would require the convicted individual to submit DNA to the state DNA database. It would retain the requirement that an attempt, conspiracy, or solicitation to commit the offenses of stalking in the first or second degree, and knowing an intentional sexual abuse of a vulnerable adult, and for

Floor Debate
January 22, 2010

violation of the Sex Offender Registration Act would require the individual convicted of these offenses to submit their DNA to the database. The amendment would also amend sections of the Criminal Code by providing that a person who is convicted of a felony offense or other specified offense on the effective date of the act who does not have a sample available for use in the state DNA sample bank must have a DNA sample collected. The current statute provides that a person who commits the offense before July 24, 2006, must submit a DNA sample before being released, and this simply amends that provision. Finally, AM85 would provide that an individual convicted of a felony offense or other specified offense on the effective date of the act who does not have a DNA sample available and who is still serving a term of confinement for such felony offense shall not be released prior to his or her maximum term of confinement prior to the maximum term of confinement until a DNA sample has been collected. So essentially it expands to all felonies. It expands the DNA collection process. It puts back in those misdemeanors that were...where DNA was required under current law and just clarifies some sections. But, again, Senator Avery has done great service to the state by bringing this bill to us. It is critical. It is essential. It is...not only does it...can it...will it help law enforcement in the justice system to convict perpetrators of these offenses, but at the same time it's exculpatory. It will make sure that we don't spend a lot of time going after those individuals who did not commit a particular offense, which is equally as important in our system. So thank you, Senator Avery, and I would urge the adoption of AM85 and advancement of the bill. [LB190]

SENATOR CARLSON: Thank you, Senator Ashford. Mr. Clerk. [LB190]

ASSISTANT CLERK: Mr. President, Senator Avery would move to amend the committee amendments with AM1555. (Legislative Journal page 276.) [LB190]

SENATOR CARLSON: Senator Avery, you're recognized to open on your amendment. [LB190]

SENATOR AVERY: Thank you, Mr. President. AM1555 creates the State DNA Sample and Database Cash Fund that I referred to in my opening comments. It would be maintained by the Nebraska Department of Justice and administered by the Attorney General. The fund would consist of any funds transferred by the Legislature or by the Department of Justice or any agency in the United States. This fund has been suggested to us by the Attorney General. It's been endorsed by him. He is prepared to commit money from state settlement funds to pay for initial collection of this evidence. And it does provide a means for the state to receive grant money from the federal government, and we know that there are grant monies available and, in fact, we have not qualified for some of that in the past because our DNA law was too restrictive. But we believe that AM1555 will be an important part of the funding of this and I urge that you support this. And if I might just for a moment, Mr. President, mention the reason for AM85. AM85 was made necessary because we originally were trying to keep the fiscal

Floor Debate
January 22, 2010

note very low, as low as we could get it, and so we excluded some of those misdemeanors. But I think that that was a mistake and AM85 corrects that. Thank you. [LB190]

SENATOR CARLSON: Thank you, Senator Avery. You've heard the opening on LB190, AM85, and AM1555. The floor is now open for debate. Senators wishing to speak are: Rogert, McCoy, and Avery. Senator Rogert, you're recognized. [LB190]

SENATOR ROBERT: Thank you, Mr. President. Members of the body, I rise in support of the amendments and the bill, and I have a little story to tell. This bill was carried by myself three or two years ago, and Senator Avery picked it up after I had had it in an attempt to push this further without creating a large A bill. A friend of mine, through a friend of a friend, knew a young woman in Florida--he went to school in Florida--who was raped and murdered five years ago or somewhere in that area. Several states have started to institute this type of provision. And the family of this young lady called me and asked me if I would help carry this legislation in Nebraska, and I said I absolutely would. It took three years to find the perpetrator for the crime. And the reason that he was caught is because he was picked up. I think he stole a car or robbed a convenience store, but he committed a felony in another state, and just by being arrested and convicted of that felony, the DNA was collected and it hit the database and a match was made and they were able to convict him for the rape and murder of this young woman. Had every state had this policy...and Florida at that time did not, if other states had had this type of legislation enacted--it had come to find out that he had committed several other crimes between the time factor between when he gets caught and when he had committed the first murder--he would have been put in jail a lot quicker, closure would have been reached for the family, and a lot of money and time would have been saved by law enforcement officials across the country. So I applaud Senator Avery for bringing this and finding a way that we can put it into our statutes without costing a lot of money, and I think this will be a good step towards solving a lot of crimes in the country in a quicker and more efficient manner. So thank you, Mr. President. [LB190]

SENATOR CARLSON: Thank you, Senator Rogert. Senator McCoy, you're recognized. [LB190]

SENATOR McCOY: Thank you, Mr. President and members of the body. I, too, rise in support of the amendments and also the underlying bill, LB190, and stand to commend Senator Avery for his work on this very important issue. I, too, would like to note a story that some of us are familiar with. A 1977 cold case involving the murder of a Saunders County woman. That's a very, very sad story. And this case was able to be solved through DNA testing. And there are, as Senator Avery noted, a number of other cases like this around the state. And it's very sad, of course, when these cases occur. The hopes would be is that through this technology that those who are guilty of such horrendous crimes would think twice before committing them. And also possibly this

Floor Debate
January 22, 2010

technology would be able to find those who may be serving time on other crimes be able to close some of these cold cases. I believe that criminals who thought they may have gotten away with their crime may find that technology and persistence are catching up with them now. And victims who thought their attackers might never be caught may have new hope. This is a very, very worthwhile piece of legislation. And, again, I commend Senator Avery for his work on this issue and would yield the remainder of my time to him if he would so wish. [LB190]

SENATOR CARLSON: Thank you, Senator McCoy. Senator Avery, you have 3 minutes. [LB190]

SENATOR AVERY: Thank you, Mr. President. Thank you, Senator McCoy. One of the things that we know about people who have been convicted of felonies is that that conviction might be their first time convicted of a felony, but in many, many cases these individuals have committed other felonies. And a DNA sample can establish guilt in cases where a person might not have been caught. This, of course, does not only help us close the cold cases, but as we indicated earlier it can do a lot to help us free those who are wrongfully convicted. I want to just briefly mention a couple of things about AM85 from the committee. I appreciate the work that the committee did on this and I appreciate Senator Ashford's complementary comments and his explanation of AM85. Our intent was to cast the net as broadly as possible to include as many felons as we could. And in going over the existing law, we did notice that a number of crimes that in statute are classified in the...kind of in the felony category, but are strictly identified as misdemeanors. We felt that...last year at least, that we couldn't afford to include them. But with circumstances now changed with the cooperation of the Attorney General's Office, it's now possible to expand and broaden the scope of this bill to include misdemeanor stalking, false imprisonment in the first degree, false imprisonment in the second degree, knowing and intentional sexual abuse of a vulnerable person, and a violation of the Sex Offender Registration Act. AM85 also includes a provision to include a mandatory DNA testing of those persons who have been convicted of a felony offense or other specified offense. And we add that language in order to allow for new offenses and misdemeanors that may rise to the level of required DNA testing that we are not yet aware of. And I think that's important language to add. This is a good bill. It is, I think, an important tool for law enforcement... [LB190]

SENATOR CARLSON: Time. [LB190]

SENATOR AVERY: Did you say time, Mr. President? [LB190]

SENATOR CARLSON: Yes, I did. [LB190]

SENATOR AVERY: Thank you. [LB190]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR CARLSON: Thank you, Senator Avery. Senator Dierks, you are recognized. [LB190]

SENATOR DIERKS: Thank you, Mr. President, members of the Legislature. I wonder if I could ask Senator Avery a question, please? [LB190]

SENATOR CARLSON: Senator Avery, would you yield? [LB190]

SENATOR AVERY: I will. [LB190]

SENATOR DIERKS: Senator Avery, forgive me. I was in conversation. I didn't get in on all your presentation. Do you know what the fiscal note is now on this bill with these two amendments adopted? [LB190]

SENATOR AVERY: I do. And you will be happy to know that AM1555 sets up a special fund that will be able to receive money from the Attorney General. The Attorney General will manage the fund. The Attorney General has a number of settlements, and some of those settlements qualify for use in this manner. And he has pledged to put that money into this fund. The fund also can accept federal grant money. And if we were to choose to appropriate money at some time in the future to the fund, we could do that. But at this point, the Attorney General has assured the Fiscal Office that there is no fiscal impact to General Funds, and that he intends to use this if we pass LB...I mean, if we pass the amendment, AM1555, he will use that fund as a repository for settlement monies that qualify for use in this manner. And that's how we'll pay for it. [LB190]

SENATOR DIERKS: Thank you. Thank you, Mr. President. [LB190]

SENATOR CARLSON: Okay. Thank you, Senator Dierks and Senator Avery. Senator Nelson, you're recognized. [LB190]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to ask a question of Senator Avery. [LB190]

SENATOR CARLSON: Senator Avery, would you yield? [LB190]

SENATOR AVERY: I will. [LB190]

SENATOR NELSON: Thank you, Senator. I'm looking at the most recent fiscal note dated the 15th, and I still see under expenditures for fiscal year 2010-11 that there's \$176,450 coming out of General Funds. Now, has that changed? I mean, are we going to just bank on the statement of the Attorney General that they're going to be able to cover that with other funds and grants? [LB190]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR AVERY: Yes. [LB190]

SENATOR NELSON: Do you see where (inaudible) ? [LB190]

SENATOR AVERY: I see what you're talking about. The front page of the fiscal note, the pink copy dated January 15, shows what the costs are. If you read that first paragraph, the last sentence in the first paragraph on page 1, the Department of Correctional Services assumes that funding would be non-General Funds obtained through cooperation with the Attorney General's Office. So they're telling you what they're going to have to spend, not where the money will come from. That will come from the Attorney General's Office. If you turn the page and you get on the second page of the pink copy, at the bottom there the fiscal note assumes that funding for the temporary .5 to 1 equivalent for an LPN would be non-General Funds obtained through cooperation with the Attorney General's Office. And, finally, the Attorney General estimated no fiscal impact. [LB190]

SENATOR NELSON: Well... [LB190]

SENATOR AVERY: But it all depends on LB1555...I mean, AM1555. [LB190]

SENATOR NELSON: The last amendment that you filed. [LB190]

SENATOR AVERY: Yes. [LB190]

SENATOR NELSON: So if that happens to be passed then, are we going to get a new fiscal note that would show zero under General Funds and that would be coming from other funds? Would that be the case? [LB190]

SENATOR AVERY: Well, I think the fiscal note is simply saying this is the cost and this is where the money will come from. [LB190]

SENATOR NELSON: Well, that's precisely... [LB190]

SENATOR AVERY: And it will not have a impact... [LB190]

SENATOR NELSON: You're right, and it's saying it's coming from General Funds on the fiscal note and I just would like some assurance, you know, that... [LB190]

SENATOR AVERY: Well, the Fiscal Office cannot predict that we will adopt AM1555. [LB190]

SENATOR NELSON: Okay. [LB190]

Floor Debate
January 22, 2010

SENATOR AVERY: So they have to assume, they have to base their estimates on what the situation is at the time they make the estimate. [LB190]

SENATOR NELSON: All right. Second question, Senator: What's the number of felons that would be affected by the passage of this LB190? [LB190]

SENATOR AVERY: Well, we have about 6,000 people who would be affected by it. Some of those 6,000 felons are tested under current law, but only about 20 to 25 percent. So you are talking about 2,473 individuals in the correction system and about 3,500 on probation that would need to be tested additional to what we're doing now. [LB190]

SENATOR NELSON: What about felons that have served their time and they're no longer on probation? Are we counting those that have paid their debt to society, so to speak? [LB190]

SENATOR AVERY: No. They're not included in this, but if they are habitual criminals, they'll make it back in the system; we'll get them then. [LB190]

SENATOR CARLSON: One minute. [LB190]

SENATOR NELSON: I see. So we're going to deal with those that we have access to at this time. We're not going to ask people who were convicted of a felony 20 years ago... [LB190]

SENATOR AVERY: No. [LB190]

SENATOR NELSON: ...and served their time to report some place and give a DNA sample. [LB190]

SENATOR AVERY: Absolutely not. [LB190]

SENATOR NELSON: Is that correct? [LB190]

SENATOR AVERY: No, this will take effect...when the law goes into effect, that's when the testing will begin, and it would only cover those in the system at the time. [LB190]

SENATOR NELSON: Finally, do you know what the individual cost is for a single DNA sample, collecting it, if you know? [LB190]

SENATOR AVERY: I do. It depends on what kind of sample you take. If you do a cheek swab, it's about \$1.77; if you do a blood test, it's over \$3. [LB190]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR NELSON: All right. [LB190]

SENATOR AVERY: And we leave...in the statute, we're leaving blood testing, tissue testing, and swabbing to give the corrections facility discretion. Not everybody will submit to blood, not everybody will submit to a cheek swab. [LB190]

SENATOR CARLSON: Time. [LB190]

SENATOR NELSON: Thank you very much, Senator. Thank you, Mr. President. [LB190]

SENATOR CARLSON: Thank you, Senators Nelson and Avery. Still wishing to speak, Senator Price and, Senator Price, you're recognized. [LB190]

SENATOR PRICE: Thank you, Mr. President and members of the body. Will Senator Avery yield to a question? [LB190]

SENATOR CARLSON: Senator Avery, will you yield? [LB190]

SENATOR AVERY: I will. [LB190]

SENATOR PRICE: Senator Avery, in all of this discussion here, it's your firm belief that this is going to facilitate and shorten the time frame of the search of people who have committed crimes, correct? [LB190]

SENATOR AVERY: I think it would probably be a tremendous asset to law enforcement in closing cold cases. [LB190]

SENATOR PRICE: Okay, great. And the next thing about this is, the funding mechanism you're looking at is from funds that the Attorney General collects from his office, correct? [LB190]

SENATOR AVERY: In settlements, yes, settlements with the state, and these are cash funds not General Funds that we appropriate from this body. [LB190]

SENATOR PRICE: Okay, great. So what happens in the event that there aren't any settlement funds or enough to cover it, then where do they go for the money or are we going to let people not get tested? What's the mechanism there in case that account should run down? If it's an important enough thing, we're going to have to at some point in time continue to fund it, correct? [LB190]

SENATOR AVERY: Well, I wouldn't expect that to happen because there are a number of settlements that the Attorney General engages in every year, and I suspect that the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

bulk of the funding will come from those settlements. But we are not now eligible for some grant, federal grants and we would become eligible after we've passed this law, and that would also go into the fund. So I don't anticipate that we would ever need to do a direct appropriation. [LB190]

SENATOR PRICE: Okay. Great. Because I know that sometimes things come up like we didn't anticipate, you know, the current economic situation we're in either, and I would hate to see a great program and something that would have such great service to our state fall victim to scouring for money to pay for other "must pays" and had hoped you had an answer for that. Thank you very much and I will yield the balance of my time to Senator Avery if he would choose, Mr. President. [LB190]

SENATOR CARLSON: Thank you, Senator Price. Senator Avery, you have 2 minutes and 30 seconds. [LB190]

SENATOR AVERY: Thank you, Mr. President, and thank you, Senator Price. I would like to address his question a little bit further. It seems to me that there are enough opportunities to put money into this fund from the federal government through grants and from the settlements. I cannot imagine that that would...they would dry up to the point where we'd be faced with either doing away with DNA testing or having to appropriate General Funds to it. I can tell you, too, that a lot of these costs that you see in the pink copy of the fiscal note are up-front one-time costs buying kits. And if you look at the first page there, the estimate of total funds needed goes from almost \$213,000 to \$249,000 in fiscal year 2010-11 down to just over \$73,000. So the out-years will be a lot less expensive because there you're only paying for the actual administration of the test and not the up-front costs of buying the kits and that kind of thing and staffing. So I am very pleased and I am happy to tell you that the Attorney General's Office was extremely... [LB190]

SENATOR CARLSON: One minute. [LB190]

SENATOR AVERY: ...helpful and cooperative in helping us put this together and worked with us all through the summer to make this work. And we think we have it in the best possible form it can be put and I urge you to support AM1555 and AM85 and the underlying bill. Thank you. [LB190]

SENATOR CARLSON: Thank you, Senator Avery. There are no other senators wishing to speak. Senator Avery, you're recognized to close on AM1555. Senator Avery waives closing. The question is, shall AM1555 be adopted? All those in favor vote aye; opposed vote nay. Record, Mr. Clerk. [LB190]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of Senator Avery's amendment to the committee amendments. [LB190]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

SENATOR CARLSON: The amendment is adopted. We return to the floor for discussion on AM85. I see no senators wishing to speak. Senator Ashford waives closing. The question is, shall AM85 be adopted? All those in favor vote aye; opposed vote nay. Have all voted who wish to vote? Please record. [LB190]

CLERK: 39 ayes, 0 nays, Mr. President, on the adoption of committee amendments. [LB190]

SENATOR CARLSON: AM85 is adopted. We return to discussion on LB190. There are no senators wishing to speak. Senator Avery, you're recognized to close on LB190. [LB190]

SENATOR AVERY: Thank you, Mr. President. This is a good bill. It will provide law enforcement in the state of Nebraska with an important tool to help us get it right. I think all of us can agree that we cannot afford to be making mistakes, that if people are incarcerated for a felony, we need to know whether or not we are incarcerating the right person and if not, we need to know how to find out who did the crime. This will help us do that. I appreciate the help that you have given me so far on the previous two amendments, and I ask that you continue to do that on the underlying bill. Thank you. [LB190]

SENATOR CARLSON: Thank you, Senator Avery. You heard the closing on the advancement of LB190 to E&R Initial. All those in favor vote aye; all opposed vote nay. Have all voted who wish to vote? Please record, Mr. Clerk. [LB190]

CLERK: 41 ayes, 0 nays, Mr. President, on the advancement of LB190. [LB190]

SENATOR CARLSON: LB190 does advance. Mr. Clerk. [LB190]

CLERK: Mr. President, the next bill, LB638, is a bill by Senator Lautenbaugh. (Read title.) The bill was introduced on January 21 of last year, at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. At this time, I have no amendments to the bill, Mr. President. [LB638]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Lautenbaugh, you're recognized to open. [LB638]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And this is one of those satisfying moments we get on the floor from time to time, and it makes me sound like a small person, but I'm tempted to call for a call of the house. I'm not calling for a call of the house but I'm tempted because I want to have a moment here to discuss this bill. This was my attempt to repeal the CFLA and we fought hard

Floor Debate
January 22, 2010

last year for the better part of a day about this, and I garnered 13 votes at the end and we failed, with 10 of us not even voting at all. And as we say, timing is everything in this life, as this bill comes up today and the Supreme Court in Washington did me a solid yesterday. So we're going to talk about this for a little bit I think because my argument was very simple. We restrict the amount of nonindividual money that can go to candidates like ourselves, but we don't restrict the amount of that money that can go into the faceless, nameless independent expenditure groups that are given these happy, feel-good committee to make Nebraska better type names. And they attack and they attack and they attack and no one is responsible and no one is to blame and we don't do anything about it. And one of our members last year said: Well, maybe we should look at regulating those groups. Well, guess what? As I read the Supreme Court's decision yesterday, you can't regulate those groups. We're in line with the Supreme Court decision because we don't try. That's the problem. We've disarmed ourselves and we've forced the money into nameless, faceless groups that go on the attack. And if you're angry about it, you can't hold a candidate responsible, you can't hold a party responsible. Maybe you go to Accountability and Disclosure and look up who formed the group and then look up their contributors, but who really does that? Who really takes the time to do that? So what we end up with is people disgusted with the system. They're tired of the way our campaigns are run. They're tired of the things we say about each other. That's not correct. The things we don't say about each other, the things these groups that no one knows who they are, what they say about each other. And we heard defenses of the CFLA about how, well, it's meant to keep big money out of politics. It is a staggering failure if that's what the CFLA was about--staggering. I won't go through the numbers again, but no one is unfurling the mission accomplished banner if you look at the reports from these groups. The money rolls in. I was told, well, it's meant to keep the big outstate money out. Again, failure, failure, failure. And no one stood up during the debate, as I recall, and said, yes, this thing was a success, the CFLA is working. What they said was, well, this is what we meant to do. Well, I'm sorry. I don't want to be governed by what you meant to do. We're governed by what's happened with the passage of this bill, and it is despicable the state we find ourselves in. And, again, the response last time was, well, we'll work on it. Maybe we'll regulate those outside groups. Well, you can't. I said it then and the Supreme Court said it yesterday as I read the opinion, you can't. So all you're doing is forcing the money underground and forcing it to...if you were watching the news yesterday, forcing it into the very areas where all the people were wringing their hands and saying, oh, this a terrible decision. This will let corporations and unions and everyone else do whatever they want. Well, we're ahead of the curve because we already do that. We just aren't responsible for it anymore. We forced it underground. And I talked about this until I was blue in the face last year and got 13 votes to repeal this abomination, this attack on the First Amendment, this thing that sets up public funding of campaigns which I think is just plain un-American. We're not supposed to be in that business. And here we are a year later, another election cycle, and we're living with this failed monstrosity. And I'm not a fool or at least not a complete fool. I can read

Floor Debate
January 22, 2010

and I can count and I know that I have 13 votes in a nonelection year, and I'm not going to do better in an election year. But shame on us. We're paying lip service to something we know doesn't work. We're violating First Amendment rights, I believe, by restricting the money that can go to us but allowing it to all go underground. Maybe we're not restricting corporate speech or union speech. We're just making sure it's conveyed in the most despicable way possible as a faceless, anonymous comment. And apparently we're fine with that. We were fine with it last year. I didn't even come close, 13 votes. But I don't think you can defend what we have and I don't remember a lot of people trying to defend the result, they were defending the intent. Well, I don't think we're judged by our intentions. I think we're judged by what the laws that we pass actually do, and this one isn't doing the right thing. And shame on us because we dodged the chance to repeal it. There is an A bill attached to this that I threw in, but I think we could deal with that if we wanted to because I think there's \$700,000 sitting up in "fair fight funds," up in the CFLA account and that could go to pay for what my bill did, which would provide for swift, full disclosure of where we all get our money and let the public decide if they don't like who's paying for our campaigns. It would at least be dialing direct. It would at least make us responsible for what we do. And it wouldn't really cost us anything if we used the funds we already have. But we're not going to go there this year and we probably won't get there next year; we'll just tolerate this. Maybe I'll throw the bill in next year and we'll have another hearing before the Government Committee and we'll get another tongue-lashing from Common Cause about how terrible we are for even contemplating fixing this abomination, and I don't use that word lightly. This is an abominable failure of policy. It's not consistent with our system. It's not consistent with our freedoms. And worse yet, it doesn't even bring about a good result. I don't know how...I can't think of anything else that we've done that is a bigger failure than the CFLA. It has taken a problem that some identified and made it worse. That's not a good measure of success. I'm going to pull this bill because I don't want to ask the 13...I'm sorry, I was one, I don't want to ask the 12 people who voted with me to follow me down that rat hole again and cast a vote that some will demagogue and use against them. That's not the right thing to do and I can count. But as I said probably two or three other times in this little tirade, shame on us. I think the Speaker approaches for a motion. (Laugh) That's the version of the hook coming out that (laughter) we use. And I'll calm down and move on, as we all will, and I'll pick on the next bill maybe because that's what we did last time. They came up in order as amendments last time last year. But this is wrong. It's wrong to tolerate this. It's wrong to think and pretend that we've done the right thing here by letting this stand, and we will because, again, I'm not going to ask the 12 people who stood with me last time to make that difficult stance again. It's just not right, it's not worth it, and we're not going to get anywhere with it. But, again, shame on us. [LB638]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Mr. Clerk. [LB638]

CLERK: Mr. President, a priority...a motion, I should say. Senator Lautenbaugh would

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
January 22, 2010

move to indefinitely postpone the bill. As the principal introducer, he would have the option to lay the bill over at this time. [LB638]

SENATOR CARLSON: Senator Lautenbaugh, you're recognized. [LB638]

SENATOR LAUTENBAUGH: Yes, I would lay it over, please. [LB638]

SENATOR CARLSON: The bill is laid over. Mr. Clerk. [LB638]

CLERK: Mr. President, items, if I might.

SENATOR CARLSON: Speaker Flood for an announcement.

SPEAKER FLOOD: Thank you, Mr. President. Good morning. We're going to shut down a little early this morning before we go to Senator Mello's bill. We'll be showing what we have on General File, for the most part notwithstanding what came in today, on Monday's agenda where we'll start at 10:00 a.m. I think we had a good week of debate and have tackled a number of good issues. And now that hearings are underway, I know that you're awfully busy. This will give you a chance to get ready for what's coming this afternoon and we'll move forward. Again, thank you very much. We'll be quitting early.

SENATOR CARLSON: Thank you, Speaker Flood. Mr. Clerk.

CLERK: Mr. President, amendments to be printed. Senator Gay to LB197; Senator Mello to LB635. I have a series of name adds, Mr. President. Senator Karpisek would like to add his name to LB940; Senator Howard would remove her name from LB949; Senator Coash to add his name to LB1018; Senator Mello to LB1086; Senator Langemeier, LB1103. A reminder, Reference will meet upon adjournment. Reference upon adjournment. (Legislative Journal page 327.) [LB197 LB635 LB940 LB949 LB1018 LB1086 LB1103]

And a priority motion. Speaker Flood would move to adjourn the body until Monday morning, January 25, at 10:00 a.m.

SENATOR CARLSON: You've heard the motion to adjourn until Monday, January 25, at 10:00 a.m. All in favor say aye. Opposed the same. Thank you. We are adjourned.