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Floor Debate  
February 02, 2011

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[LB20 LB29 LB30 LB77 LB78 LB81 LB98 LB146 LB154 LB178 LB208 LB211 LB215  
LB241 LB347 LB383 LB462 LR37]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twentieth day of the One Hundred Second Legislature, First Session. Our chaplain for today is Senator Hadley. Please rise.

SENATOR HADLEY: (Prayer offered.)

SENATOR CARLSON: Thank you, Senator Hadley. I call to order the twentieth day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

CLERK: I have no corrections.

SENATOR CARLSON: Are there any messages, reports, or announcements?

CLERK: Your Committee on Banking, Commerce and Insurance reports LB347 to General File with amendments, and LB462 to General File with committee amendments, those signed by Senator Pahls as Chair. That's all that I have, Mr. President. (Legislative Journal pages 427-428.) [LB347 LB462]

SENATOR CARLSON: Thank you, Mr. Clerk. We will now proceed to the first item on the agenda.

CLERK: Mr. President, LB29, a bill originally introduced by Senator Langemeier. (Read title.) Introduced on January 6 of this year. At that time referred to the Natural Resources Committee. The bill was advanced to General File. I have no amendments pending, Mr. President. [LB29]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Langemeier, you are recognized to open on LB29. [LB29]

SENATOR LANGEMEIER: Mr. President, members of the body, again as we left off yesterday, the following two bills are an attempt to be a little more efficient. LB29 was brought on behalf of the Department of Environmental Quality. The bill modifies the language on the use of various funds within the Department of Environmental Quality.

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So, hopefully, they can be used a little more efficiently. The first change it does is to change the funding source for the reimbursement to political subdivisions for the clean up of illegal roadside dumps. It changes it from the Integrated Solid Waste Management Cash Fund to the Waste Reduction and Recycling Incentive Fund. The second thing it does, it allows DEQ to fund petroleum-related emergency response activities. So if DEQ gets called out for a semi that got jackknifed that has a roll over and come out, it allows them to take that from the Petroleum Release Remediation Action Cash Fund. These activities are currently funded through the Integrated Waste Cash Fund which, I think, the petroleum fund for petroleum-related products versus tipping fees on trash is more appropriate. The third, it eliminates the authority to use the Integrated Waste Cash Fund for abandoned livestock facility waste clean up. You say, why do we want to eliminate an obligation to clean up an abandoned livestock waste facility? Number one, we've never had one. And number two, the fund isn't of significant size to actually do any clean up if that were the case. So with that, we ask for your support of LB29. [LB29]

SENATOR CARLSON: Thank you, Senator Langemeier. (Visitors introduced.) The floor is now open for discussion on LB29. Senator Sullivan, you're recognized. [LB29]

SENATOR SULLIVAN: Thank you, Mr. President and good morning, colleagues. I wonder if Senator Langemeier would yield for a couple of questions. [LB29]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB29]

SENATOR LANGEMEIER: Yes. [LB29]

SENATOR SULLIVAN: Thank you very much. I'll preface my question by saying that, you know, there's certainly been a lot of concern and discussion and even media attention with respect to the TransCanada Keystone XL pipeline that's going through Nebraska or proposed to go through and goes through a large part of my district. So anytime I see anything relative to petroleum and related activity, my ears perk up a little bit. So I, first of all, wanted to clarify if when you refer to petroleum-related emergency response, does this, in fact, relate to pipeline activity? [LB29]

SENATOR LANGEMEIER: My understanding is, it does not. [LB29]

SENATOR SULLIVAN: Along with that then, and maybe, I don't know if you're able to answer this, with respect to pipeline activity and in the event of a leak, as I understand it, DEQ would provide the oversight. But would any of the monies out of this cash fund go toward dealing with the pipeline leak? [LB29]

SENATOR LANGEMEIER: No. If...and we'll...shouldn't say, but in general terms let's talk about the Keystone pipeline. If that particular facility has a leak, DEQ is obligated to go make sure they clean it up to our satisfaction as state of the Nebraska. It's still their

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liability and their expense to do so. [LB29]

SENATOR SULLIVAN: Okay. And then the very last comment that you made in your remarks again perked my ears up. It's not relative to the petroleum activity, but abandoned livestock facility. You say we've never had one. Well, what if we do have one? We're taking the money out of this cash fund to deal with it, is that correct? [LB29]

SENATOR LANGEMEIER: This cash fund is so piddling that it wouldn't even attempt to address that type of a livestock facility to be cleaned up. And so we're taking it out that it's not a requirement under that particular fund, yes. [LB29]

SENATOR SULLIVAN: Are you aware of any statute that regulates those sorts of circumstances and what happens if we do have one down the road? [LB29]

SENATOR LANGEMEIER: Well, we have a lot of statutes that regulate the livestock industry currently. But my understanding is, is those facilities have been continued in use. We haven't had anybody walk away from a facility that doesn't have some liability with that. If you close it down, you still have personal liability. You can't get away from that. We don't have, like in the Lust Fund or in underground storage tanks, where we don't know who caused the problem. And that's why some of that funding was started in the first place was to cover those gaps where we couldn't find liability. In a livestock facility if somebody abandons it, we know the chain of ownership and who created the problem. So it's a little easier in that source to go back for liability purposes. [LB29]

SENATOR SULLIVAN: Thank you, Senator Langemeier, for your clarification. [LB29]

SENATOR CARLSON: Thank you, Senator Sullivan and Senator Langemeier. Are there others wishing to speak on LB29? Seeing none, Senator Langemeier, you're recognized to close. [LB29]

SENATOR LANGEMEIER: Thank you, Mr. President. I appreciate the questions for the record and I'd ask for the adoption of LB29. Thank you. [LB29]

SENATOR CARLSON: You've heard the closing on LB29. The question is, shall LB29 be advanced to E&R Initial? All those in favor vote aye; all those opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB29]

CLERK: 35 ayes, 0 nays, Mr. President, on the advancement of LB29. [LB29]

SENATOR CARLSON: The bill does advance. Next item, Mr. Clerk. [LB29]

CLERK: LB30, Mr. President, a bill by Senator Langemeier. (Read title.) Introduced on January 6 of this year. At that time referred to Natural Resources Committee for public

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hearing. Advanced to General File. At this time I have no amendments to the bill. [LB30]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Langemeier, you're recognized to open on LB30. [LB30]

SENATOR LANGEMEIER: Mr. President and members of the body, LB30 was brought to me on behalf of the Department of Environmental Quality as well. It's concerning regulated commercial compost sites governed by the Nebraska Environmental Protection Act. It does three things. First, it changes the compost permitting from a five-year permit to a ten-year permit. That makes their permitting process more consistent with other permits within the Department of Environmental Quality. Second, it removes the semiannual compost site inspection requirement. These compost sites, if you've been to one, there's only eight in Nebraska that are commercial. They don't change much. This would remove to try and make DEQ more efficient, it would remove they're require that they have to do semiannual inspections. They think it would be more suiting for them to do annual inspections. It does not prohibit them from going out at any particular other time that they see necessary. They also respond to any complaint they get. So any complaint they might have, they will go out and look at. Third, it removes the prohibition on transfer permits. Right now, if I own a compost facility and I would like to transfer it to Senator Harms, I have to close the facility. Senator Harms would have to apply for a permit. Once it's approved, then he could reopen and run the facility. This would allow for more seamless transfers that once we agree that we're going to sell it, that I can keep operating it and he can have his permit and we can do a more seamless transfer of these compost facilities. So with that, I would ask for your adoption of LB30. [LB30]

SENATOR CARLSON: Thank you, Senator Langemeier. The floor is now open for discussion on LB30. Senator Sullivan, you're recognized. [LB30]

SENATOR SULLIVAN: Thank you, Mr. President. And, Senator Langemeier, would you please yield for a question? [LB30]

SENATOR CARLSON: Senator Langemeier, would you yield? [LB30]

SENATOR LANGEMEIER: I would. [LB30]

SENATOR SULLIVAN: I don't mean to be picky and I ask some clarifying questions, but I've learned the hard way never to assume anything. So as I read the committee statement and also the bill, I just wanted to clarify what we're composting. [LB30]

SENATOR LANGEMEIER: We have a variety. There's eight of them across the state. There are manure compost piles and there's a variety of things out there. You had asked about livestock. We don't compost livestock in large scale in Nebraska. [LB30]

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SENATOR SULLIVAN: Okay. All right, that was my question. Thank you very much. [LB30]

SENATOR CARLSON: Thank you, Senator Sullivan and Senator Langemeier. Are there others wishing to speak? Seeing none, Senator Langemeier, you're recognized to close on LB30. [LB30]

SENATOR LANGEMEIER: Mr. President, again thank you for the question, and we'd ask for the adoption of LB30. Thank you. [LB30]

SENATOR CARLSON: You've heard the closing on LB30. The question is, shall LB30 be advanced to E&R Initial? All those in favor vote aye. All opposed vote nay. Are there others wishing to vote? Record, Mr. Clerk. [LB30]

CLERK: 38 ayes, 0 nays, Mr. President, on the advancement of LB30. [LB30]

SENATOR CARLSON: Thank you. LB30 does advance. Next item, Mr. Clerk. [LB30]

CLERK: LB20 offered by Senator McCoy. (Read title.) The bill was introduced on January 6 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments pending, Mr. President. (AM64, Legislative Journal page 359.) [LB20]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator McCoy, you're recognized to open on LB20. [LB20]

SENATOR McCOY: Thank you, Mr. President and members. I'm pleased to introduce LB20 this morning which implements a statewide electronic tracking system for purchases of methamphetamine precursor chemicals at the point of sale. And I'd like to start off by thanking Senator Ashford and his committee staff of the Judiciary Committee for their great hard work on this. The result of that is AM64, which Senator Ashford will explain in a moment and that I support. The National Precursor Log Exchange or NPLeX is designed to stop individuals who are illegally stockpiling medications used to make methamphetamine through a practice called smurfing, which is, very simply, bouncing around picking up small amounts of methamphetamine precursors usually somewhat innocuous cold medicine, that type of thing, and stockpiling those together for the creation of methamphetamine. NPLeX upgrades the current localized handwritten system which was federally mandated by the Methamphetamine Epidemic Act of 2006. Through our proposed legislation, the seller either enters the information on a secure Web site or with their scanner at the point of sale. They then receive immediate notification when a person is attempting to purchase illegal amounts of a meth precursor through a stop-sale alert. The seller can then override the stop-sale alert

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if they fear bodily harm. NPLeX is provided to us at no charge at/to taxpayers in Nebraska. I'll repeat that, this is paid for by the drug manufacturers. A group called Consumer Healthcare Products Association or CHPA which, again, provides no cost to participating states or retailers. The Attorney General can grant a waiver if a seller shows good cause that participating will be a hardship. And examples of that would be no Internet access or computer to be able to use this, in which case they would just continue with the same system that they currently have, which is the paper log. This NPLeX system is used in ten states, including three of our bordering states of Iowa, Kansas, and Missouri. In Iowa, since this was implemented, over 10,000 stopped sales occurred in the first three months of using NPLeX, which was 4 percent of their total sales attempts. And the statistics bear out that their meth incidents went way down with the use of NPLeX. The data is very secure and housed at the Appriss Data Center and where it is subject to annual FBI audit. It's under tight security policies that include independent security testing and HIPAA compliance. Appriss is also the disaster recovery site for the national law enforcement recovery system. Law enforcement has access to the NPLeX system through the Attorney General's Office. LB20 is not a bill about going after retailers. We don't want retailers to be afraid of using this system. We're very simply going after meth production and the smurfers that are a part of it. We really don't want Nebraska to be a meth haven of the Midwest. That is my firm belief and I'm sure it's the belief of the majority of us here, I would hope. And this legislation provides a pretty clear way to stop them in their tracks. And I would appreciate your support for LB20 and underlying amendment, AM64. Thank you, Mr. President. [LB20]

SENATOR CARLSON: Thank you, Senator McCoy. As the Clerk stated, there are amendments from the Judiciary Committee, and Senator Ashford as Chair, you're recognized to open on AM64. [LB20]

SENATOR ASHFORD: Thank you, Mr. President and I thank Senator McCoy for bringing this legislation and for the industry for coming up with the technology that will enable us to have real-time checking on the purchase of these products that can be precursors for the production of methamphetamines. It's very important legislation, quite frankly, because it will allow, as Senator McCoy correctly states, the ability of retailers to instantaneously, when this project or this technology is implemented fully in a year from now, to be able to check to make sure that this smurfing is not going on where an individual is purchasing the drugs or the precursors at various establishments. It's quite good work. There are a few committee amendments, clarifying amendments, and I'll read through them here. In Section 3, it does revise the definition of methamphetamine precursor to mirror the federal definitions and again, somewhat of a technical change. Section 4, the committee amended the required information to be collected under Section 4 to include the age of the purchaser in addition to the name and the address. It provides that the seller of items identified as methamphetamine precursors may refrain from selling these products if they experience a technical breakdown, mechanical breakdown of the technology. And finally, we clarify that compliance with reporting

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requirements under Section 4 is not required when a lawful prescription for items identified as a methamphetamine precursor is presented to a licensed pharmacist. So that's a clarification there. Section 6 is amended to provide that no claim or cause of action may arise against a seller of items identified as methamphetamine precursors for information submitted to the exchange as required under Sections 3 to 7 of this act. Again a protection to make sure that this information is flowing adequately. Section 7 provides that the criminal penalty provided in this bill would not come into effect until January 1, 2013. This is new technology. I think the committee felt, and Senator McCoy agreed, that there needs to be some time elapse so that the retailers, the establishments that sell the precursor drug could obtain and learn how to use the technology in an adequate manner. Section 8 is a new...adds a subsection (3)(b) to provide that a seller of items identified as a methamphetamine precursor may scan machine readable information from drivers licenses and state issued identification cards, and that the seller may store the information from these cards. And those are the items, such as name, age, address, type of identification, the governmental entity that issued the identification, and the number on the identification itself. This section also requires the seller to post a sign at the point of sale providing notice that the identification card will be scanned and that certain information will be stored. And the section also clarifies that the stored information may be used by law enforcement agencies, regulatory agencies, and the National Precursor Log Exchange for purposes of enforcement of the restrictions on the sale or purchase of these precursors. Finally, in (c) and (d) of Section 8, it is amended...there is an amendment to include the term "seller" in these subsections. The effective date will be January 1, 2012. This is, again we believe in the committee, an effort to very effectively address methamphetamine precursors and we commend the industry for coming up with the technology, for making this technology available to retailers, to dealers, establishments in the state that sell these items. It's a very effective, we believe, partnership with the private sector and with the industry in general. It's really good work. And combined with the efforts that Senator McCoy has made on K-2, this is a very good package with the K-2 legislation, of legislation to address what is a critical issue in our state and that is young people certainly getting access to these very destructive drugs. So thank you, Mr. President. [LB20]

SENATOR CARLSON: Thank you, Senator Ashford. You've heard the opening on LB20 and AM64. (Visitors introduced.) I would like to remind the body as we proceed on discussion on these bills, let's keep the side conversation at a level that does not disrupt our discussion, please. Members wishing to speak include Harms, Lautenbaugh, Gloor, and others. Senator Harms, you're recognized. [LB20]

SENATOR HARMS: Thank you, Mr. President and colleagues. Senator Lautenbaugh, would you yield to a question, please? [LB20]

SENATOR CARLSON: Senator Lautenbaugh. [LB20]

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SENATOR LAUTENBAUGH: Yes, I will. [LB20]

SENATOR CARLSON: He will yield, Senator Harms. He's on his way. [LB20]

SENATOR HARMS: Okay. Thank you. [LB20]

SENATOR LAUTENBAUGH: Yes, I will. [LB20]

SENATOR HARMS: Sorry about that, I didn't realize you had moved, Senator Lautenbaugh. I noticed on the committee statement that you voted not in favor of this bill. Would you share with me what your concerns are? [LB20]

SENATOR LAUTENBAUGH: Yes, I will. And thank you for that question. I'm actually the next speaker so I may be able to take care of it here. I mean, sometimes we lie in the weeds on a bill and we, you know, swoop in like commandoes on the floor and bring our amendment. But that's not what I'm doing here. I was very clear in committee what I was going for with this. There's a dispute in my mind over whether or not we should impose liability on these retailers for any errors with the system. And I said in committee if we take out the word "solely" in the provision that provides for liability, I would support this. And it's apropos that we have this discussion on Groundhog Day because we've seen this over and over and over, I think, in years gone by whether or not we should impose liability. This is a good bill, don't get me wrong. I support the bill. I will end up supporting the bill. The manufacturers are paying for this technology to be installed and all these pharmacies and I asked them in committee, why you doing that? Knowing the answer, they're doing it because it will make it easier to market their product. Because if we put more and more burdens on these pharmacies, put it behind the counter and make people sign a registry, etcetera, etcetera, at some point they're going to say, it isn't worth it to carry this product. So the manufacturers have come up with this electronic system and they're willing to pay for it. It's a good thing. It will help us crack down on people who are doing...and this is a new word I learned in committee, smurfing, buying little bits of stuff to make meth and aggregating it to make the meth. But I just don't see why we should impose liability. And the only people who came in and testified in opposition to this bill were the trial attorneys because they want there to be liability on the part of the pharmacies, for whatever reason. You can infer what you will. I don't think that's proper. The original bill as written contained an exception for liability, an exemption from liability, if you will, and that was fine. In the amendment we go to language that says, liability cannot solely be based on a violation or an error under this section. But that does mean that an error under this section could be a basis for liability, part of the mix of things that you could aggregate together to bring liability. So I voted no. [LB20]

SENATOR HARMS: Senator, do you have an amendment that you're going to see if



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you can correct that aspect of it or...? [LB20]

SENATOR LAUTENBAUGH: Yes, I actually through in an amendment that would take the word "solely" out just to make it clear that if you go wrong under this act, it cannot be a basis for liability on these pharmacies. [LB20]

SENATOR HARMS: Okay. Thank you very much. Senator McCoy, would you yield to a question, please? [LB20]

SENATOR McCOY: Yes, I would. [LB20]

SENATOR CARLSON: Senator McCoy. [LB20]

SENATOR McCOY: Sorry, yes, I would. [LB20]

SENATOR HARMS: Mr. President, how much time do I have? [LB20]

SENATOR CARLSON: One forty. [LB20]

SENATOR HARMS: Okay. Thank you, Mr. President. Senator McCoy, the question I had is, I noticed that on the...again on the committee statement that the Nebraska Association of Trial Attorneys voted neutral. I always have to chuckle when I see neutral because in so many of the hearings I've been involved in, you really aren't neutral. They just don't have the courage to step up and say I don't want to support this bill. My question to you is, and I think Senator Lautenbaugh alluded to this, what was the real purpose behind their views in regard to this piece of legislation? [LB20]

SENATOR McCOY: Well, I would suppose, although I don't know that I want to speak for them, that they were concerned over the liability issues... [LB20]

SENATOR CARLSON: One minute. [LB20]

SENATOR McCOY: ...and not as an attorney, I may not be as qualified to ascertain exactly why they would have been concerned about that, but the liability part of it as the "solely" versus some other word, was the nexus of their concern, and their only concern. Again, their concern was not over the core of the bill. It was over that specifically. [LB20]

SENATOR HARMS: Thank you, Senator McCoy. Thank you, Mr. President. [LB20]

SENATOR CARLSON: Thank you, Senator Harms, Senator Lautenbaugh, and Senator McCoy. Senator Lautenbaugh, you are recognized. And I will recognize you to open on your floor amendment. (FA3, Legislative Journal page 428.) [LB20]

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SENATOR LAUTENBAUGH: (Laugh) Thank you, Mr. President and members of the body. I kind of tipped my hand on this, I guess. And to correct the record, I believe the trial attorneys were neutral on this bill but their concern was that we weren't imposing liability on the pharmacies. I offered this amendment that does simply what I said and strikes the word "solely" so that there cannot be a basis for a violation of this act for liability upon the pharmacies. And again, I'll reiterate my point from before. We want the pharmacies to do this. This is something they are doing for us to help us fight meth. This is a good bill. This is a good thing. I can't conceive of why we would impose liability on them for making an error in using this electronic system. It seems, well, frankly unfair to say, help us out with this. We're making their lives more difficult, another step in the process, that's just lost money for them every time you have to have that much more involved with the transaction at the cash register or wherever. We're putting a burden on these retailers. And they're willing to take it and that's fine. But I don't think, in this bill, we should be imposing liability if they make an error when they use this system. So my amendment, very simply, takes the word "solely" out of the provision of the bill that deals with liability, meaning that making an error under this act cannot be alleged in a civil suit to be a basis for liability upon these pharmacists. And I think that's a good amendment. I don't think we should be ratcheting up their costs more. First they have to comply with this system. They have to train their people. Now we're saying, oh, and by the way, if you go wrong, you can be sued for it. I don't think that's what we should be about. So my amendment takes out the word "solely", making it clear that a violation or an error under this bill would not be a basis for liability upon the pharmacies. And I'll yield the rest of my time to Senator Harms. [LB20]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Harms, do you wish time? [LB20]

SENATOR HARMS: No, I'm fine. Thank you, Mr. President. [LB20]

SENATOR CARLSON: All right. [LB20]

SENATOR HARMS: Thank you, Senator Lautenbaugh. [LB20]

SENATOR CARLSON: Thank you, Senator Harms. The floor is now open for further discussion on FA3 to AM64 and the underlying bill, LB20. Those wishing to speak: Senator Lautenbaugh, Senator Gloor, Senator Nelson, Senator Howard, and others. Senator Lautenbaugh, you're now recognized. Senator Lautenbaugh waives. Senator Gloor, you're recognized to speak. [LB20]

SENATOR GLOOR: Thank you, Mr. President. Good sunny morning, my counterparts. I rise in support of AM64 and LB20. I'm not sure about FA3 yet, although I think I can get comfortable with this. But I would like to share with the group that I spent a little time

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during the summer months looking at this very issue, information brought to me by constituents, some of the reading I did on my own. And took a strong interest in it because this type of legislation, this type of monitoring, this collection of data can make a significant reduction in what is an epidemic in this state. I think we're well aware of that. I wonder if Senator McCoy would yield to a question. [LB20]

SENATOR CARLSON: Senator McCoy, would you yield? [LB20]

SENATOR McCOY: I would. [LB20]

SENATOR GLOOR: Senator McCoy, this is less a question, I guess, than asking you to repeat a comment that was made...or in your introductory comments, and that is the impact that this legislation had in one of our neighboring states, specifically Iowa. Would you repeat that for me, please? [LB20]

SENATOR McCOY: Certainly, Senator Gloor, I'd be happy to. Iowa, we have very good and clear statistics on what happened in Iowa since they've instituted the NPLeX system. And in the first three months of using NPLeX, they had 10,000 stopped sales. So again, stopped sales is when someone is trying to purchase more than the limit, which was 4 percent of their total sales attempts. And there was a corresponding drop in meth incidents at the same time we've seen a spike in our meth incidents. [LB20]

SENATOR GLOOR: Thank you, Senator McCoy. Those are pretty dramatic numbers. Again given... [LB20]

SENATOR CARLSON: (Gavel) [LB20]

SENATOR GLOOR: ...the scope of challenges we have dealing with drug abuse, specifically, methamphetamine in the state. I'm glad to see some of the amendments. I'm glad to see that we've done something to reduce the hassle factor for people who are involved in distributing and getting legitimate prescriptions for which they have a doctor's order and for which they have a legitimate need. I think that's important also so that Nebraskans who...the vast majority of whom are law abiding and have no interest in using these medications in illegal ways, don't have to go through the hassle factor. And I believe that there may be reasons to massage these further. Obviously, that's what Senator Lautenbaugh is trying to do with FA3. On the other hand, I would like the body to recognize the fact this is a pretty significant piece of legislation and important to us from a public health standpoint in the state and I hope they will be supportive of AM64 and LB20. Thank you, Mr. President. [LB20]

SENATOR CARLSON: Thank you, Senator Gloor and Senator McCoy. Senator Nelson, you're recognized to speak. [LB20]

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SENATOR NELSON: Thank you, Mr. President and members of the body. I, too, rise in support of LB20 as amended by AM64 and FA3. I would have a question or two of Senator McCoy, if he would yield. [LB20]

SENATOR CARLSON: Senator McCoy, would you yield? [LB20]

SENATOR McCOY: Yes. [LB20]

SENATOR NELSON: Thank you, Senator. At the top of the second page of the committee statement, item number 4, if you'll take a look at that, it provides that a sale of the product cannot go forward if a stop-sale alert is generated. Could you tell me a little bit about what generates a stop-sale, if you know? Is it a second or third purchase by the same person within a certain amount of time? What generates that? [LB20]

SENATOR McCOY: It's when a person is attempting to...the process by which I talked about, smurfing, or purchasing the legal limit at a number of different retailers that have the paper log. This would now provide a way to link those purchases together, and when you...when an attempt is made to go over the legal limit, then a stop-sale alert would pop up to the retailer. [LB20]

SENATOR NELSON: So there is a legal limit. I mean, an individual purchaser can purchase maybe three times or something before a stop-sale would be generated? [LB20]

SENATOR McCOY: Yes, and I...we can come up with the exact number. I apologize, I don't have that off the top of my head. [LB20]

SENATOR NELSON: Oh, okay. Well, if I understand it, the pharmacist or the seller puts this information in and it's automatically transmitted. And then it's not reviewed by an individual, is it? There must be something there that comes back just like with a credit card, an authorization. [LB20]

SENATOR McCOY: Exactly. [LB20]

SENATOR NELSON: But in this case, it's a stop-sale. [LB20]

SENATOR McCOY: That's correct. [LB20]

SENATOR NELSON: All right. Did these products, these precursors include most cough medicines or just a certain type of cough medicine, if you know? [LB20]

SENATOR McCOY: Well, this is more...this is more in the lines of Sudafed... [LB20]

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SENATOR NELSON: Sudafed? [LB20]

SENATOR McCOY: ...things with pseudoephedrine, yes. [LB20]

SENATOR NELSON: And are some of those...do we presently require those to be kept behind the counter now so they're not accessible? I mean, these are things that you just can't go and buy without a prescription? [LB20]

SENATOR McCOY: Correct. These are the same drugs that you currently have to sign the paper log for now. So if you go into your local Walmart, Target, any retailer, these are the things that you're signing for. The only thing that's different by this system that we're doing is, instead of a paper log being kept at your local Target store that you...or Walgreens, now it's a linked system. So that's the only difference here is that you could have purchased the limit at Walmart and gone across the street to Target and also purchased the limit. Now it links those together and tracks that you purchased the legal limit already at Walmart and then would trigger a stop-sale alert at Target, if that example makes sense. [LB20]

SENATOR NELSON: All right. Thank you. I appreciate that information. And with that, I'll return my time to the Chair. [LB20]

SENATOR CARLSON: Thank you, Senator Nelson and Senator McCoy. Those still wishing to speak: Senators Howard, Lathrop, McCoy, Wallman, Council, and Ashford. Senator Howard, you're recognized. [LB20]

SENATOR HOWARD: Thank you, Mr. President. If Senator McCoy would yield to a question. [LB20]

SENATOR CARLSON: Senator McCoy, would you yield? [LB20]

SENATOR McCOY: Yes. [LB20]

SENATOR HOWARD: Thank you. I think it would be helpful to all of us, probably, if maybe we just did a little walk-through of how this would really work. I've had people ask me, how will this be different from the bill that we passed, I believe, in 2007, regarding putting products behind the counter and people would sign for them? So let's just give a little example because this will be much simpler to follow. If someone goes into their grocery store and they want to purchase some Claritin-D, which is behind the counter, so right now you would be signing in a log book, you would be showing the pharmacist your driver's license so that they knew you were the person that was signing for this medication. How would this be different now for the consumer? [LB20]

SENATOR McCOY: Well, that's a great question. And the answer to that is, now it's a

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linked system where a stops-sale alert would pop up on the computer screen, the terminal screen, however the different retailers have this. And it's a linked system. So as I mentioned to Senator Nelson a moment ago, your local grocery stores that you shop at, if someone was trying to smurf, they could be going across the street, doing the same thing and there was previous to this, there was no way to share that information, much as Senator Nelson said, with a credit card transaction. [LB20]

SENATOR HOWARD: So if someone had gone to, say a, Walgreens a few days earlier and had purchased this and now they were at the grocery store, so those two pharmacies would be able to communicate with one another and that information would be available to the pharmacist. [LB20]

SENATOR McCOY: That's correct in the way of stop-sale alert if they were over that threshold. [LB20]

SENATOR HOWARD: But it wouldn't...there wouldn't be a difference for the average consumer who is coming in just to pick up a supply that they buy on a weekly basis or some amount that is within the regulated number that we, in the bill we passed some years ago, they wouldn't see a difference? [LB20]

SENATOR McCOY: Absolutely none whatsoever. I mean, this is the consumer out there purchasing your Sudafed or Claritin-D, as you mentioned, would see no change in any way really than what they've experienced thus far. [LB20]

SENATOR HOWARD: So, basically, what this does is it gives the pharmacist the opportunity to communicate with each other so that they know if someone had purchased an amount before. It really gives the pharmacists more, another tool to deal with the problem that we're all aware of and we're all concerned about. Is that a correct summation? [LB20]

SENATOR McCOY: That is correct. [LB20]

SENATOR HOWARD: All right. Thank you so much for the information. I yield back my time. [LB20]

SENATOR CARLSON: Thank you, Senator Howard and Senator McCoy. Senator Lathrop, you're recognized. [LB20]

SENATOR LATHROP: Thank you, Mr. President and colleagues, good morning. I want to first begin by saying I support LB20, at least that much of it that Senator McCoy intended, which is to get ahead of people who are buying little bits of Sudafed. Smurfing as they call it, and going about and, you know, the intent of this bill is fine. In the bill, which...now I want to talk about Senator Lautenbaugh's amendment. In the bill in

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Section 6 is a paragraph that provides for immunity. All right, and you may wonder what's the stink about all this immunity and why is Senator Lautenbaugh concerned about "solely" and why is Lathrop concerned about Section 6. So I'm going to talk about it. We have over in Judiciary Committee, and maybe you see it in your own committees, bills that come to us day in and day out by interest groups, organizations. And in this case I'm not sure where this came from, maybe the Attorney General's Office. But it has become a common practice to put an immunity provision in a bill. We do it without thinking anymore. We do it because someone has asked us to do it and we have not thought it through. So what do immunities do? I want to visit with you about it because it's important to me and because I've spent my life on this very subject, which is holding people accountable for their negligent actions. When we immunize somebody, we are saying it's okay if you are careless at what you do. It is okay if you don't do what you do carefully, you won't be held accountable for it. That's what we do with immunities. And we ought to have a pretty strong and compelling reason if we're going to give somebody an immunity for their negligent conduct. The reason that this is an issue in this particular bill, and why I had concerns about putting it out in the form it's in right now, is because we are giving somebody immunity for something that will never create liability. This is an ornament in a bill and it doesn't add anything to the bill or cause any problems, but it is a practice that we have to stop or at least stop and think and have a discussion about it. What is the big purpose we're going to serve with an immunity provision in this bill? You know what these guys are doing? If somebody comes into your drug store and buys some Sudafed, you enter them in a computer, it goes to a computer, and some computer keeps track of how much of this stuff this guy is buying in different stores. Now stop and ask yourself this question. What possible liability could there come from this? We had a discussion and I was involved in this paragraph, and the question I had for Senator McCoy, and he can answer this if he can think of anything, who could sue whom for what in this bill? If the pharmacist is sending information to a computer and says John Harms was just in here and bought Sudafed, who is going to sue whom over that? How could it go bad and create a liability situation? And your answer would be, I can't imagine anybody...what could you...who could possibly be harmed that could bring a cause of action where immunity would be necessary? Right? And so you may say, well, Lathrop, why do you care, it's not going to hurt anything. No one is ever going to use it. It's because we're here to legislate and do it carefully. And we are now putting things in bills that aren't necessary and we're saying to ourselves, why are we worried about it? No one is going to use it. That's a reason for it to not be there, not a reason to put it there and look the other way. If someone wants to stand up and tell me how we can create a liability claim over this bill, and transmitting information about John Harms buying Sudafed over at the Walgreens in Scottsbluff to a computer, I'll listen. And then we can decide if that's the difference between... [LB20]

SENATOR CARLSON: One minute. [LB20]

SENATOR LATHROP: ...these people participating in this program and not

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participating. You know, if we were talking about retired doctors who wanted to go down and open a free clinic in your hometown and they needed immunity or they needed some help on the liability side before they could volunteer their time to the homeless, we would have a good policy discussion about immunity. When we put an immunity provision in a bill as an ornament because somebody asked us to, and we don't know...there's not even a liability situation that could arise out of this, we are not legislating carefully. We are doing it carelessly. We will, after we get done with Senator Lautenbaugh's FA3, take up mine, which is to strike Section 6, and we can talk about it more at that time. Thank you. [LB20]

SENATOR CARLSON: Thank you, Senator Lathrop. Senator McCoy, you're recognized. [LB20]

SENATOR McCOY: Thank you, Mr. President. I would yield my time to Senator Lautenbaugh so he may respond to Senator Lathrop in this discussion. Thank you. [LB20]

SENATOR CARLSON: Senator Lautenbaugh, 4:50. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President and thank you, Senator McCoy. Senator Lathrop and I just plain disagree on this. What you just heard was that there's no conceivable way any liability could attach, but there's a problem with immunizing people from liability under this act. Well, on the one hand, it wouldn't be effective. If there's no conceivable theory under which liability could exist, then why do we care if we grant immunity? I will tell you, liability always exists in some way. It can be alleged. It doesn't have to have merit. It doesn't have to ultimately lead to recovery, but you can have a cause of action. But here's the real telling thing. This system, again something we're asking the retailers to do to help us combat meth, is an electronic system that replaces a paper system. The paper system exists under existing law and under existing law there is immunity from liability if you do this. So this thing just does the same thing as existing law with electronic technology. And somehow we're getting hung up on whether or not, you know, you're immune if you keep the paper log, which is ineffective and not as efficient. All the states around us have gone to an electronic method of tracking this stuff and we need to do that, too, so we don't become the haven for people trying to buy these meth precursors. But if you do it on paper, you're immune from liability under existing law right now. Under this bill, somehow, it's a problem of saying, and if you do it electronically, you're immune from liability. That's what the dispute is about. I am trying to preserve the immunity that exists for these retailers in helping us combat meth. And the word "solely" makes all the difference in the world. And if you're being told there's no way liability can exist under this act, I'm telling you, like anything else, someone, sometime, will make a claim based upon some theory, the immunity would eliminate that possibility. If we have the word "solely" in there, then they can say, well, you did this wrong and you violated this act and it becomes a basis for



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liability. That's the problem I have. Existing law grants immunity. It was a good policy when we did that. It remains a good policy. That's why I put in the amendment I put in. [LB20]

SENATOR CARLSON: Thank you, Senators McCoy and Lautenbaugh. Senator Council, you're recognized. [LB20]

SENATOR COUNCIL: Yes, thank you, Mr. President. And I appreciate the discussion on this issue and it's kind of a follow-up on Senator Lathrop. And I appreciate and respect the position taken by Senator Lautenbaugh because that is, in fact, the case. But it was my understanding in supporting the amendment that is reflected in AM64, that it was a compromise based on the fact that the additional language that is Sections 3 to 7, which are basically LB20, are being added to the current Uniform Controlled Substance Act. And that those sections now become a part of the Uniform Controlled Substance Act. And that with respect to liability, the reason that the language of AM64 is written the way it's written, is to do...the intent was to do that which Senator Lautenbaugh is arguing should be done, which I agree with, is to immunize participants from liability simply because they're participating in this electronic data collection system. But in reality, since LB20 adds new provisions to the current Controlled Substance Act, there are other acts that these providers could be engaging in that could subject them to liability. And it was my understanding that the purpose of adding "solely" in the AM64 is to make it clear that you are not immune from liability if you violate any other provisions of the Uniform Controlled Substance Act, and any part of that other violation includes some use of this electronic system. That's my understanding and that's why I am supporting AM64 because it's my understanding that the intent is not to subject individuals to liability solely because they utilize this system. And Senator Lautenbaugh is correct, and as we all know, anyone with a filing fee can file a lawsuit. So the language is not going to prevent those who believe that they've been harmed in some way from filing the lawsuit, but the question with regard to the language of AM64 is, if the cause of action is based solely on the fact that the pharmacists or the medical provider utilized the system, there will be no liability. And I think that's what everyone on the committee wanted to achieve and for that reason, I support AM64 amending LB20. Thank you. [LB20]

SENATOR CARLSON: Thank you, Senator Council. Those still wishing to speak: Ashford, Lautenbaugh, McCoy, and Lathrop. Senator Ashford, you're recognized. [LB20]

SENATOR ASHFORD: Thank you, Mr. President. I'm going to very briefly respond to some of the discussion and there is a...we will have and have had and will continue to have debates on liability coverage as we move forward in several of these bills as we do in Judiciary Committee on most of them. What is critical here for the body to know is that this language, the "solely" language was worked out with all of the parties, the

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pharmacists, trial lawyers, anybody else who had any kind of a stake in providing for this new technology. What is clear is the new technology is a considerable benefit to the citizens of the state and the "solely" language does limit liability in those cases involving the transmission of this data. This language allows this bill to go forward with the support of all the stakeholders. We are addressing a significant, what I believe and Senator McCoy has brought us on a couple of occasions, issues that are of significant importance to our state. The language, I think, is adequate. We could...there are many ways of addressing liability, and pharmacists relating to disbursement of drugs that we could go into ad nauseam. But as this...as it relates as Senator Council suggests, this language relates to the specific Sections 3 to 7 of the Controlled Substance Act. It is narrowly drawn, but it is effectively drawn. I would urge the body to reject the floor amendment to AM64, to pass AM64, and advance the bill. Thank you. [LB20]

SENATOR CARLSON: Thank you, Senator Ashford. Senator Lautenbaugh, you're recognized. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And here is one of those occasions where I get a little offended and I hope you are too. First of all, the word stakeholders has always set my teeth on edge. Who decides who the stakeholders are? Are you a stakeholder in this? Well, you're not a pharmacist, you're not a trial lawyer, so you probably shouldn't care. That is the wrong way to look at this. We are all stakeholders and I was not part of any compromise. This is starting to sound like Groundhog Day. It sounds like yesterday and today and tomorrow. (Laughter) I was not part of this. I voted no. And I was clear. Like I said, I didn't come in like a commando under cover of darkness. I was clear why I voted the way I voted. I don't care if there was a compromise worked out with the trial attorneys and the pharmacists. I don't answer to them and neither do you, hopefully. Immunity from liability exists in current law for the paper system. There is no reason, no reason, not to maintain that for the electronic system other than the trial attorneys have discovered it and decided they don't like it. Well, there's a point at which you say, too bad. We're the ones who make the laws, not the trial attorneys. And this is wrong. And if you're being told, well, there's no conceivable basis for liability so why do you care about this, that works in reverse. Why do you care about this if there's no conceivable basis in liability? You're not giving up anything. And there's a point at which I hope you get angry. And I hope you realize what you're being told. Sit in your seats and accept the compromise that you weren't a party to, because the trial attorneys and the pharmacists say it's okay. Well, that's not the standard that we're supposed to use. We are supposed to bring our own judgment to bear on bills and see what we like and what we don't like and what we support and what we don't support and what fits with us philosophically. And I don't care if 100 pharmacists come to me and tell me, this is fine. None of them have, but I don't care if 1,000 pharmacists come and tell me this is fine. I don't like it. We have immunity from liability in existing law. There's no reason there wouldn't be a clear complete immunity in this revision of existing law. That's what we're fighting about. And if that's not good

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enough for the trial attorneys and that's not good enough for the pharmacists and that's not good enough for whoever, well, there's a point at which you just say, too bad, we get to make those calls. And this is one of those calls we get to make, and there is no reason to impose liability on these retailers. And if you're being told there's no conceivable way liability can exist under this bill, I don't believe it. It may not ultimately exist. The court may not find it liable, find an entity liable, but that's after thousands of dollars in legal fees vindicating your rights, if you're sued. The immunity exists for a reason and we should support that, and that's the reason I brought my amendment. [LB20]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator McCoy, you're recognized. [LB20]

SENATOR McCOY: Thank you, Mr. President. You know, I appreciate Senator Lautenbaugh's thoughts on this as I do Senator Lathrop's, both very important members of the Judiciary Committee. And by way of a time line, I guess I would direct your attention to the committee statement that showed that there were no opponents and there was one neutral testifier and that was John Lindsay on behalf of the Nebraska Trial Attorneys. Now I saw it between the hearing date and the time the Judiciary Committee would hold Exec Session on this bill to make sure that we had taken care of what I hoped to be any issues, to try to take care as much of that before we got here to the floor. It wasn't to somehow take care of a compromise that would...everybody would be held to on the floor. I think discussion on the floor is fruitful and it should be the way we do things. I merely sought a way to put together any...try to take care of any issues of such that I knew them to be, and such that Senator Ashford knew them to be as Chair of the committee, and the members of Judiciary Committee. And so the language that you see in AM64 is the result of that. I respect both sides, such if there are, on this issue from Senator Lautenbaugh and Senator Lathrop. I think it's a fruitful discussion, one we probably should continue, obviously, since there appears to be a number of other lights on. But just to clarify again from what Senator Lautenbaugh said, the compromise, such that there was one, happened before the Judiciary Committee voted on this, and Senator Lautenbaugh voted no. Had I known Senator Lautenbaugh had an issue with this, I would have happily included him in our conversations that we had between the pharmacists and the trial attorneys, the Attorney General's Office, myself and my staff, and in extension, Senator Lathrop. I'd have happily included Senator Lautenbaugh, but I didn't know that was an issue. Didn't find that out until the Judiciary Committee voted this out 7-1. So this is a very good discussion. I just thought it was important to point out that all of this happened prior to the Judiciary Committee voting on this. So to the degree that there was something worked out in AM64, it was previous to Senator Lautenbaugh's vote on it. So I think this is a good discussion and one that should likely continue. Thank you, Mr. President. [LB20]

SENATOR CARLSON: Thank you, Senator McCoy. Senator Lathrop, you're

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recognized. [LB20]

SENATOR LATHROP: Thank you, Mr. President and colleagues. My first two years down here, and I've been here four, and my first two years, Senator Chambers was still here. And a lot of you never had the opportunity to serve with Senator Chambers. He was here for, I think, 39 years before term limits took him back to emeritus status, I think he calls himself. And I learned a lot about being a legislator with Senator Chambers and I know Senator Carlson did, too, because he sat right in front of him and he'd make an example out of Senator Carlson from time to time. But one of the things that Senator Chambers used to say when we were in this body and that is, what you put in these bills means something. These words have meaning. And we need to be careful as we legislate. We don't put things in bills that don't belong there. And we need to think through what we're doing. So I bring up today the question of whether Section 6 belongs in this bill. And the answer...we've heard from Senator McCoy, I think once, maybe twice since I asked either one of them, anybody, to tell me how you could create liability. And Senator Lautenbaugh, my good friend, has spoken twice and no one can give me a situation where this would create liability. So you say, Lathrop, why are you so stuck on this? Let me tell you something that I've learned after 30 years of practicing law and that is, nobody ever thinks that they're going to get hurt. No one ever thinks it's going to happen to their family. No one thinks they're going to go in the hospital and have a doctor commit malpractice and they lose a loved one or a leg or their vision, or they think they're going to get in a car accident this afternoon. It happens. And so we don't have a constituency for those people that are yet to be hurt or injured or damaged, right? They don't know it so they don't call you, they don't e-mail you, but it's important for this body to take care of that group of people who could be hurt, right? So as a general rule I'm going to stand up anytime an immunity comes into a bill, I'm going to stand up because I've seen what happens with immunities. We say to families, we decided to throw this into a bill because the pharmacists wanted it, we didn't really think it would do any harm and well, you know what, somebody made a terrible mistake. I lost my house and I've got no one to talk to because you stuck an immunity in there. What's this one do? We should be asking ourselves not does this do any harm, and what's the harm in leaving it in there, we should ask ourselves what does this add to the bill? What does it accomplish? An immunity is only worthwhile if it protects somebody from something. And my point today, colleagues, is that we're transmitting John Harms's name to a computer. If that person does that wrong and says it was Senator Dubas that bought the Sudafed and not John Harms, who is harmed, right? This is information sharing. We're not going to arrest Senator Dubas or Senator Harms for buying the Sudafed, no one is going to get hurt. You can't hurt anybody. Could somebody sue the pharmacist? Sure. And they can sue them if there's an immunity provision in this bill. That doesn't stop anybody from suing anybody they want. The question is, is there a claim here? Could there conceivably be a claim here? I'm not standing up here because I want to help my friends sue pharmacists over transmitting information about Sudafed purchases. It isn't going to happen, but we're being careless as we legislate. [LB20]

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SENATOR LANGEMEIER PRESIDING

SENATOR LANGEMEIER: One minute. [LB20]

SENATOR LATHROP: We're being careless as we legislate when we accept the reason to leave this in there is because it was in there before. It was in there before. What's the harm? Or as Senator Lautenbaugh said, turn it around. Well, turn it around is another way of saying, Lathrop, why do you care if no one is ever going to get sued? Well, I think if we're going to give somebody immunity, and there may be the right occasion for that, it will be a public policy debate that we're going to shut off somebody's right to make a claim because they've been hurt on account of someone else's carelessness or willful carelessness or deliberate disregard for someone else's safety. If we're going to do that, if we're going to shut somebody off, then we ought to have a policy discussion about it and not slide these into the bills because the last guy got an immunity or this is what they're doing in Iowa or this is what... [LB20]

SENATOR LANGEMEIER: Time. [LB20]

SENATOR LATHROP: ...they're doing in Utah. Thank you. [LB20]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Those still wishing to speak, we have Senator Lautenbaugh, McCoy, Schumacher, and Carlson. Senator Lautenbaugh, you're recognized. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And again, please think and please pay attention to what you're hearing here. There's no conceivable way there could be liability under this bill. But, by God, we shouldn't grant immunity under this bill from liability to make it clear that we don't want people to be liable. Despite the fact that it's in existing law and we're just substituting an electronic means for a paper means, the immunity must be compromised for some reason. We don't know why it must be compromised, but for some reason, we can't...we have to have that word "solely" in there so that conceivably there can be an argument for liability. I don't even know what the theory would be either, but there's a point at which you have to look at these things and say, we are asking the pharmacists to take on this additional burden to protect our kids and all of us. They're not thrilled, I assume, to have another thing. Businesses are in business to sell products. It should be very simple in a perfect world, give me your money and here's what you wanted. Every time we fancy it up a little bit, with good reason, and require these things to be kept behind the counter or keep a registry or check an ID or scan an ID, it's just another thing that costs businesses money. Even if the people who manufacture these products are paying for the system, there is a time cost, there is a training cost, there is a cost. We're telling these people who are in the business to sell product, by the way, go through these extra

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hoops, and protect us by going through these extra hoops, but we're not going to give you an immunity from liability. But if you just use the paper system and get a waiver, you've got an immunity from liability. I can't get my head around why that's good policy. An immunity exists. We're asking these people to help us out. The least we can do is preserve a clear unqualified immunity for them. And to say, it's not good enough justification for this to say it's in existing law, well, why not? It is in existing law and no one has lost their house, and the world hasn't ended, and the doors of the courthouse have not slammed shut for defendants with meritorious or plaintiffs with meritorious claims, but here's the difference. If someone brings a claim under this bill after we pass it and it's clear in here that there's immunity from liability, boom, you get summary judgment. That's a couple thousand dollars in attorneys fees. If there's not a clear immunity from liability, you don't get summary judgment. You have to vindicate your rights, which is a lot more in attorneys fees. Even if the plaintiff doesn't win, everybody loses, because you have to pay your attorney to pursue this, to defend you. That's what I do. I know how this works. We have an immunity in existing law. I wasn't here when it was put in existing law, I don't believe, but I'm sure there was a reason for it at the time. I'm trying to preserve that clear unqualified immunity for this progression of existing law, which transitions us from a paper registry to an electronic one. That's what this dispute is about. That's why I voted no in committee on what is, by all accounts and by any measure, a good bill. But I have a problem when we open the door. On the one hand, we're asking these people do us a favor. On the other hand, we're telling them, but if you don't do it right, we can sue you. And to say it's never going to happen, I'm sorry, that's not good enough. We can make it clear that it's never going to happen or at least it can be terminated very quickly if there's a clear immunity from liability. That's the purpose of my floor amendment. [LB20]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Schumacher, you're recognized. [LB20]

SENATOR SCHUMACHER: Thank you, Mr. President. I've been told that the senator from the 22nd District should always start out his comments with, in my opinion. (Laughter) So, in my opinion, Senator Lautenbaugh makes a good case. Granted, we're probably splitting hairs here, but if you're a businessperson... [LB20]

SENATOR LANGEMEIER: (Gavel) [LB20]

SENATOR SCHUMACHER: ...and you want to have as little liability insurance exposure, little worry as you can have about having to pay extra expenses to maintain your business in hard times, even the tiniest additional protection may prove useful. And to the extent this grants a tiny smidgen of protection, does no harm to no one, and help us take advantage of a offer by a competent and reasonable industry to control a big problem, then why not give it to them? The downside is that there's some theoretical exposure that somebody is going to get hurt sometime down the road and thus be

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denied recovery. Well, that's the whole idea of about immunity and that's why this is needed here. If you're going to do this for us, you're not going to get a headache, and you're going to get a minimal amount of expense out of it, and I yield my time to Senator Lautenbaugh. [LB20]

SENATOR LANGEMEIER: Senator Lautenbaugh, 3:23. [LB20]

SENATOR LAUTENBAUGH: Well, thank you, Senator Schumacher for the additional time and thank you for your opinion. If you could have worked cigars and hygienist into that, it would have been perfection. (Laughter) But I appreciate your comments just the same. And I have nothing more to add. Thank you. [LB20]

SENATOR LANGEMEIER: Thank you, Senator Lautenbaugh. Senator Carlson, you're recognized. [LB20]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. When you sit up in the Chair and you hear somebody say something and you can't open your mouth, it can be a little bit frustrating. I'd like to address Senator Lathrop, if he would yield. [LB20]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB20]

SENATOR LATHROP: Yes, I would. [LB20]

SENATOR CARLSON: Senator Lathrop, first of all, I appreciate very much you're on the Ag Committee and I'm glad that you're there and we're going to work together. You did make a statement that in our first two years here, Senator Chambers made an example out of me or how did you state that? [LB20]

SENATOR LATHROP: I think he often directed his remarks at you as he made a point to all of us. [LB20]

SENATOR CARLSON: Yeah, I think you said he made an example out of me and... [LB20]

SENATOR LATHROP: I don't mean to suggest that you were doing a poor job and he pointed it out. I just think you were right in front of him so he'd do this all the time and call you a Parson. [LB20]

SENATOR CARLSON: And I believe you on that. I think that there were a lot of times that he and I had some sparring back and forth, and sometimes he got the better end of it and sometimes I got the better end of it, but both of us learned a lot from Senator Chambers. And we appreciate the opportunities that we had to serve with him, however

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frustrating it might have been at times. But he was one that had a wealth of institutional knowledge and we all benefited from that. So simply wanted to express that. Thank you, Mr. President. [LB20]

SENATOR LANGEMEIER: Thank you, Senator Carlson and Senator Lathrop. Senator McCoy, your light is on, you're recognized. [LB20]

SENATOR McCOY: Thank you, Mr. President. Would Senator Lathrop yield to a question please? [LB20]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB20]

SENATOR LATHROP: Yes. [LB20]

SENATOR McCOY: Would you mind detailing again, and I provided you a copy of some existing statute, would you mind explaining again your...and very briefly, your reason for your amendment in light of the fact that state Statute 28-453 already has this in statute? [LB20]

SENATOR LATHROP: Yeah, I'd be happy to. Again my view on an immunity is...we've gotten to the place now as we legislate, I think we do it carelessly when we put things into a bill that are kind of standard language and we haven't thought it through. Whenever we put an immunity in a bill, we ought stop as a body and weigh, what are the injuries to the person we're cutting off? Will the people do this work if we don't give them an immunity? What's the social...what does society get from this? What does the potential claims look like? And what are we going to do to the victims who will not have access to the courthouse if we provide an immunity? We're not having that discussion about this bill. It makes me no difference if this was in there before. It was a bad idea before and I have a problem with the idea of sticking these in there. And if I don't stand up here, if I don't stand up here on your bill, Senator McCoy, it's going to happen over and over and over and everybody that brings a bill into Judiciary Committee that wants something is going to say, as Senator Lautenbaugh just did, they're doing us a...we're doing you a favor on this bill so give us immunity. Well, you know what, we're affecting a lot of citizens when we give an immunity, and I just don't see a reason for it here. And that makes, without a reason, that makes this superfluous, it serves no purpose, and it's bad legislating. [LB20]

SENATOR McCOY: However, you were content with the language in AM64, correct? [LB20]

SENATOR LATHROP: I really wasn't. I agreed to it, frankly...and as long as we're on the mike, we went out back and had a conversation about this because you well understood that I had a problem with the immunity in this bill. I have a problem with



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immunities... [LB20]

SENATOR McCOY: And we satisfied that through AM64, correct? [LB20]

SENATOR LATHROP: Pardon me? [LB20]

SENATOR McCOY: We satisfied that through AM64, correct? [LB20]

SENATOR LATHROP: Yes. [LB20]

SENATOR McCOY: Okay. [LB20]

SENATOR LATHROP: And now we come to the floor and somebody is doing indirectly or doing directly what you couldn't get done in the committee. [LB20]

SENATOR McCOY: Okay, I'm not following what you mean by that, Senator. [LB20]

SENATOR LATHROP: Look, you came to the Judiciary Committee with a bill. You wanted an early hearing date. You wanted it to the floor early so that you could not use a priority to get it to the floor and have it considered. And we did every bit of that. [LB20]

SENATOR McCOY: Senator, that's not... [LB20]

SENATOR LATHROP: And then we had an agreement out back and okay, Senator Lautenbaugh wasn't there. [LB20]

SENATOR McCOY: And Senator, I'm maintaining that AM64 which answered and resolved your concerns should be how the bill stands and is passed. The reason I asked for an early hearing date is because meth smurfing is a problem. People are dying because of it. This was not a personal attempt to get something through without a priority. It rises to the level it needed to have a hearing date and the committee clearly supported that. [LB20]

SENATOR LATHROP: I don't argue with that. Okay. I'm not telling you we don't need LB20. That isn't even it. It's this idea...yeah, you know what, Senator McCoy, what would impress me is if you stood up and opposed this amendment. You're not. [LB20]

SENATOR McCOY: I said the discussion was fruitful, Senator Lathrop. [LB20]

SENATOR LATHROP: Okay. Do you support FA3 or not? [LB20]

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SENATOR CARLSON: One minute. [LB20]

SENATOR McCOY: If FA3 is defeated or is pulled, will you pull your amendment?  
[LB20]

SENATOR LATHROP: Are you going to answer my question? My questions was, are you going to support FA3 which would put this where you had an agreement or not?  
[LB20]

SENATOR McCOY: It depends on what you attempt to do with your floor amendment behind us, Senator Lathrop. [LB20]

SENATOR LATHROP: Okay. Is that all the questions you have for me? [LB20]

SENATOR McCOY: It is. Thank you, Mr. President. [LB20]

SENATOR CARLSON: Thank you, Senator McCoy and Senator Lathrop. Senator Nelson, you're recognized. [LB20]

SENATOR NELSON: Thank you, Mr. President and members of the body. I don't think I can rise to be the great peacemaker here, but I do have a question of Senator McCoy, if he will yield. [LB20]

SENATOR CARLSON: Senator McCoy, will you yield? [LB20]

SENATOR McCOY: I would. [LB20]

SENATOR NELSON: If you know, when did we first get started with the...not the bill that you have here, but the bill that required the log and keeping of this thing, how long ago was that? [LB20]

SENATOR McCOY: That was federal legislation in 2006, Senator Nelson. [LB20]

SENATOR NELSON: Well, all right, but Nebraska has its own statute, is that correct?  
[LB20]

SENATOR McCOY: Correct, yes. [LB20]

SENATOR NELSON: From 2006. [LB20]

SENATOR McCOY: Um-hum. [LB20]

SENATOR NELSON: All right. Well, the only comment I'm going to make is that when

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we passed...if we're going to invoke the name of Senator Chambers, who is legendary and who used to sit right there, he was here in 2006. And I agree with Senator Lathrop, he said we have to be very careful with what we do, but Senator Chambers was on Judiciary at the time that this initial bill went through in 2006. And he, obviously, and we know that he read things carefully and every line of every bill, had no problem with granting immunity. And I just have to stand here and say that he would have no problem with it at this time. And that's the extent of my comment on this. I think we should go ahead and accept FA3 and go ahead with that amendment and then support the others. Thank you very much, Mr. President. [LB20]

SENATOR CARLSON: Thank you, Senator Nelson and Senator McCoy. There are no other lights on. Senator Lautenbaugh, you're recognized to close on FA3 to AM64. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. I'll try to be brief because I think it's all been said and I've appreciated your attention. But again, Senator Nelson's comments were straight on. I don't invoke the name of Senator Chambers very often or ever, but he was here and this bill got through with the immunity from liability in 2006 somehow. It was a good policy. There was a reason to do that. And again I'll come back to what I said before, we're asking these pharmacists to do something to help society out. We're asking them to give us a hand and it costs them in time, training, etcetera. It's just another hoop this business will have to jump through. We recognized that apparently in 2006 and gave them an immunity in liability for the paper registry. I'm arguing for an unqualified, clear immunity from liability for this electronic registry. And like I've said, we've had this discussion before. We had a bill last year that would have granted vets immunity from liability if they reported animal abuse, and they were wrong. And the trial attorneys didn't like that either because, well, you're not giving them a duty to report it, but you're giving them immunity if they do. Well, think about it. I mean, I think vets are in the business of helping animals. They probably would have reported it on their own. We gave them an immunity if they were wrong. And that was fine and I supported that immunity. I didn't support imposing the duty. I figured they would do it on their own, but I supported the immunity. This is the same thing. This is a good bill and this is not my attempt to hijack it or talk it to death or anything like that. It's my attempt to make a valid point. We are asking these pharmacists to help us with a problem that is plaguing our society. The industry is stepping forward with an electronic means of reporting who is buying these meth precursors that's much more efficient than the paper log. We grant unqualified immunity for the paper log. We should grant unqualified immunity for the electronic one. I can't make it any plainer than that. And again, I've been very clear on this. I suggested in committee, if you take out the word "solely", I'll support the amendment. That didn't happen. I voted against the amendment. I voted against the bill. I was not hiding in the weeds. I was not part of any compromise. I don't know if that makes me more or less of a stakeholder, but I was not a party to that, and I was clear what my concerns were. And you've heard them all

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morning now and I've been clear this morning, I hope, and I would urge you to vote for FA3. [LB20]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. You've heard the closing on FA3. The question is, shall the amendment to the committee amendment to LB20 be adopted? All those in favor vote aye; all those opposed vote nay. Senator Lautenbaugh. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB20]

CLERK: 38 ayes, 0 nays, Mr. President, to place the house under call. [LB20]

SENATOR CARLSON: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Lautenbaugh, how would you like to proceed? [LB20]

SENATOR LAUTENBAUGH: Roll call vote, please. [LB20]

SENATOR CARLSON: Mr. Clerk, please proceed with the roll call vote. [LB20]

CLERK: (Roll call vote taken, Legislative Journal page 429.) 30 ayes, 17 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB20]

SENATOR CARLSON: The amendment is adopted. The call is raised. [LB20]

CLERK: Mr. President, Senator Lathrop would move to amend the committee amendments with FA4. (Legislative Journal page 429.) [LB20]

SENATOR CARLSON: Senator Lathrop, you're recognized to open on FA4. [LB20]

SENATOR LATHROP: Thank you, Mr. President and colleagues. This amendment very simply would strike the immunity provision. So we're not done talking about it. And I have to tell you I'm a little discouraged by that last vote. Not discouraged because I have lost something or didn't prevail on something, that's going to happen...I've had it happen a fair number of times up to this point in time and I'm sure I'm not done losing votes. But I'd like you to, while you're sitting in your chair in the afterglow of that vote, ask yourself what you just did. Was it important that "solely" came out of there? Are we worried about that? This bill or this amendment would strike the provision dealing with immunities. We are here as policymakers, policymakers to discuss and to decide for yourself what's good policy. And I'm just going to let you in on a clue, if you're new or if you've been here a long time, that if we're going to talk about an immunity it ought to be done in the context of discussing what necessity exists for the immunity. Because when

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we tell people you can't go to the courthouse and get any kind of remedy for someone's careless conduct we ought to have a pretty good and compelling social policy reason for that, not because we like Senator Lautenbaugh or we happen to be in the same party or from the same part of the state. So let's talk about it in the context of this bill. What kind of a lawsuit did you just save somebody from? Because before you vote for an immunity you ought to have that answer in your own head. What kind of a claim are we talking about? Who's going to be hurt by this? Will this bill pass...will these people do this work if they're not given immunity? Do you have an answer to that? Because that's an important part of the discussion when you're talking about immunities, we do not put these things in bills just for the heck of it, just like we don't put fees in bills for the heck of it. If we're going to increase a fee or put a fee in a bill, we come to the floor and talk about why it's necessary, why we're going to do it to people. This isn't about this one because, as Senator Lautenbaugh has made pretty clear, there really is no harm that could come from somebody in the administration of this bill and this program. And, Senator McCoy, this is a good bill. Okay? I don't have a problem with the bill. Got a little problem with how it got out here, now the process. Feel a little bit tricked, I'll tell you that. Won't happen again to me. But I'll tell you, if we're going to talk about and put an immunity in I'll stand here and talk about it for days because we ought to be a little more thoughtful than this. I don't know what taking "solely" out of this immunity provision accomplished. And maybe if you gave this one a green light last time, you can ask yourself what you did. We've talked about this so I'm going to spend a little bit of time talking about my view of legislating because I watched it happen last year and I've started to watch it happen this year and it's a concern. It's a concern that people come to this floor when we're debating bills and they haven't read bills. They're following people instead of thinking for themselves. They're taking orders from people in the lobby or from a different branch of government. You know, we talked about Senator Chambers. I'll tell you one thing else I learned while he was here and that was when you're a senator this isn't a small deal. You represent about 39,000 people. It is a big deal. And they expect you to come here and use your own judgment and not follow somebody else's lead. And so if we're going to talk about an immunity, it isn't this bill that I really care about or this immunity that I care about, but one day something is going to come out of here that is of consequence. And you ought to be looking at these immunities and everything in these bills and ask yourself, do we need it? What's the policy? What's the purpose? Who are we protecting? Why are we protecting them? What is the harm to the people that aren't being protected whose access to the courthouse is being shut off? And I'll stand up here every single time an immunity comes to the floor and we'll have this debate. And I hope when we get done with the debate and we have a vote you look inside your own conscience, your own conscience and ask yourself, what's the right thing to do? And, colleagues, we just got done with the last amendment and we'll do it again with this one in all likelihood, and we're putting something in a bill that's meaningless. Now why would you vote for that? What...it isn't policy that just drove that last vote. Who were you following? Who were you listening to? Have you thought about the harm? Have you thought about the policy implications?

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Because if you're not doing that and you're just here following somebody around, somebody else should be in your seat. It's important, it is very important. And this is...we're early and this is a small deal but it's important for each one of us to be independent in our thinking, to ask the questions and to make sure we have answers, policy answers to the questions before we vote. And following somebody around for whatever reason or following somebody who's following somebody else, because that's who you take your lead from on issues relating to liability, this is meaningless, it's meaningless. And I stand here and I tell you it's meaningless and you want it. And for what purpose? Somebody just stand up, put your light on, on my amendment, and tell me who can sue over what. Tell me the harm not a theoretical, not a theoretical like you're getting from Senator Lautenbaugh. He's exactly right. I can sue anybody in the state of Nebraska I want. I can sue...even with an immunity I can go sue a pharmacist over making a mistake if I had damages. But the fact is people get all scared and we talk about the rhetoric of lawsuits, it's rhetoric and most of it is nonsense. But you cannot make a claim, I've done this for 30 years, I cannot bring a lawsuit based in negligence without damages. All right? Somebody has to make a mistake and somebody has to be hurt. And if no one is hurt, I can't bring the lawsuit with or without an immunity. It will be thrown out. If I say, well, he turned my name into the registry. Okay, what happened to you? Nothing. Okay, well, you don't have a claim, you don't have any damages. So we got...now we're immunizing people from the possibility of a lawsuit that could never be brought or never successfully be made. And for what purpose? The only argument is it was there before. And Senator Chambers was here when that last one got passed and he's a pretty sharp guy. It must be good policy. Well, now we're delegating the review of our legislation today to a guy who's been gone for two years. When we talk about an immunity, when we talk about an immunity, and if you're just getting here I promise you're going to see a lot of these. People are going to hand you bills and they'll say, will you offer this? And you look at it and you see an immunity. And you think, well, the trial lawyers are against it. Do you think the trial lawyers...that there's a lawyer in this state that wants to sue over a claim where there's no damages? No. It's a principle, it's a principle as simple as leaving the door to the courthouse open for people who have been injured... [LB20]

SENATOR CARLSON: One minute. [LB20]

SENATOR LATHROP: ...and we don't know who they are. They're going to be your neighbors, they're going to be your constituents, your kids, it might be you, we don't know. So we got to be fair when we talk about immunities and not hand them out because somebody is doing us a favor. Even people that do us a favor need to do it carefully. And if that were the standard, we'd immunize everybody. And then what? Shall we immunize the Post Office? They're doing us a favor delivering the mail. So when they run your daughter or son or your grandchild over, there shouldn't be a claim then? Well, we're sort of falling into the it will never happen to me so why do I care. I don't know these people who will benefit or be harmed by an immunity provision or not

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having an immunity provision in there but I know, I know they're going to come along. And I also know they're going to be in your family and they're going to be your constituents and your neighbors. [LB20]

SENATOR CARLSON: Time, Senator Lathrop. [LB20]

SENATOR LATHROP: Thank you. [LB20]

SENATOR CARLSON: Thank you. You've heard the opening on FA4. The floor is open for discussion. Those wishing to speak: Senators Krist, Lautenbaugh, Council, Louden, Karpisek, Nelson, and Conrad. Senator Krist, you're recognized. [LB20]

SENATOR KRIST: Not a lawyer but I'm listening intently to a few key words. I always think that if you internalize it and you bring it back to your world, sometimes you can understand a process better. In my prior life we were given diplomatic clearance to fly over a particular country. We had to do it thoughtfully, we had to do it carefully. We could not create any damage to the country that we could fly over to execute a combat mission someplace else. By combat mission I want you to take into account that there were bombs on airplanes. But if we would have at some point messed up crossing that country and would have done damage, we were not immune from being shot down. We were not protected for negligence. So I'm not going to yield my time to one or the other because there's obviously two different sides here. I just want someone to explain to me if my concept is correct what we're saying here is that one group of people has volunteered to come forward and do a job or we've been asked...they've been asked to do a job and we're going to go ahead and grant immunity to them if they screw it up, sorry, if they mess it up, if they foul it up? I don't understand the immunity part of this. If we're asking them to do something, we're telling them to do something by law don't they have to do it correctly? So if you follow my airplane analogy and I'm following the analogy correctly, then we're granting immunity for somebody who might do the job we're asking them to do by law correctly. If that's not a good analogy, then somebody get up here and tell me how we...how that differs because, in fact, whether you volunteer to do something or whether you're told to do something by law, and in this particular case I will say I absolutely agree with both sides, we are here represent the 37,000 to 39,000-plus people that are in our districts today. And we owe it to them to make sure that when we tell those professionals, those healthcare professionals, those pharmacies to do something they do it correctly. So I will yield the rest of my time back to the Chair. But I'd really like to hear a discussion based upon that particular point of law. [LB20]

SENATOR CARLSON: Thank you, Senator Krist. Senator Lautenbaugh, you are recognized. [LB20]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And

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maybe for the second time today I'm going to ask you to get a little angry because you heard the opening on this amendment--you stupid people you, you did not bring your judgment to bear, you voted green, 30 of you give or take, because I told you to, because that's what you do. That's why we have historic horse racing in this state, that's why we defeated the smoking ban because you guys do what I tell you to do, you don't use your independent judgment. Of course, if you were part of the herd of the independent thinkers that jump when the trial attorneys call, then you're a high-minded individual and you thought this through. But if you supported my amendment, you're just a robot following someone there at the mike. That's what you were just told. And that's not what just happened here. This immunity is an existing law and we're trying to preserve it. And you're being told it's no big deal. It was a big enough deal that the trial attorneys paid a lobbyist to come to committee and attack the immunity. So it was a big deal to someone. It's just not something that's a real thing we should think about and worry about on the floor today because everybody knows it's not a big deal. It's a big deal. It's in existing law that these entities are immune when they carry out their duties on this registry. We're trying to keep it in the electronic version of the law. That's all we're doing here. I don't believe that you're following anyone. I believe that you're thinking about this. And when you see an interest group send a lobbyist to a committee and attack something and then you're told, but it doesn't matter, yeah, they paid their lobbyist to come to the committee and complain about the immunity, but it doesn't affect anyone. Why don't we just take it out? It's meaningless. Obviously someone thought it was a big deal or they wouldn't have paid a lobbyist to come to committee and talk about it. And I don't think you were all swept away by my eloquence this morning and just put your judgment on hold and voted green, 30 of you. I don't think that happens. You made a good call I believe. This amendment needs to be defeated. This is kind of a tit for tat thing. We had a quasi-immunity provision with AM64. I made it a clear immunity provision by taking out the word "solely" with your support. Thank you, those of you who did. Now we're being told, well, fine, we're just going to take the whole thing out, nobody needs immunity and it's not a big deal anyway because it would never happen. There will never be a lawsuit under this bill, it just can't happen. What you heard earlier was that, well, you can't bring a suit without damages. Well, there's an old Saturday Night Live skit on that. An attorney doing a commercial saying, a lot of people are under the misimpression that you actually have to have damages to bring a lawsuit, that's not so. That was meant as a joke. But I'm telling you, anyone can bring a lawsuit. And sometimes in the end you're found to not have any damages. That's when the defendant wins. Sometimes you're...the defendant is found not to be liable, that's when the defendant wins. Sometimes the plaintiff is found to have a meritorious claim and damages, that's when the plaintiff wins. But think about it. If you're sitting here being told this is meaningless, if you're sitting here saying...being told that...and once again, I wasn't the one who invoked Senator Chambers' name first, but he sat there and let this go through in 2006 with a vote to 40 to 6, so it couldn't have been that bad then. I didn't invoke his name, someone else did. I'm just saying he was here. If you're being told this isn't a big deal and a claim could never come under this bill, then why all the hullabaloo



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about the immunity? Why did someone pay a lobbyist to come to committee and say, we don't like the immunity? We didn't put your judgment... [LB20]

SENATOR CARLSON: One minute. [LB20]

SENATOR LAUTENBAUGH: ...on hold earlier. I'm asking you not to put your common sense on hold now. And please vote no on this amendment. [LB20]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Council, you are recognized. [LB20]

SENATOR COUNCIL: Thank you, Mr. President. I'm not going to speak directly to the substance of the current amendment. I'm going to speak to the process. And I just want my colleagues on this floor to be mindful of the actions we take and the arguments that are presented in support and what votes we cast. One of Senator Lautenbaugh's arguments was, and I don't want to misstate him, was that if the immunity exists under the current law then that must be good policy and that should be the policy that carries forward. Be careful, colleagues, because days ago we were talking about current tax policy and what's in current tax policy. And we weren't swayed that that statement of current policy was the best course of action to follow. But I also rise because of the committee structure and what the committee determined. There was a 7:1 committee vote in favor of advancing LB20 with the amendment set forth in AM64. Now I have often, often heard my colleagues, some of my colleagues, when they are opposing a particular argument made on this floor to say what the committee said and there were 4 votes against it on the committee. And it's really surprising to me that in the vote on Senator Lautenbaugh's amendment the sponsor of LB20, who I thought supported the work of the committee, and the committee's amendment was AM64, voted for the floor amendment. So, yeah, we can do whatever we choose to do. But I'm saying let's be consistent about what we choose to do. When it's okay to override the vote of the committee, let's be consistent about it. Don't come back later and use it as a rationale for not voting to override the work of the committee. I believe that the committee made a good-faith effort to advance a piece of legislation that they felt was in the best interest of everyone involved. And the committee majority advanced that. And for the body to accept the floor amendment, kudos to Senator Lautenbaugh. I have, believe me, if he was able to convince a number of...the requisite number of senators that what the committee did wasn't the appropriate policy determination, so be it. But I trust that we're open and remain open to that on other measures that come before this body. That the committee may have taken a particular position on and someone else comes before this body and says, the real appropriate policy determination is this because, believe me, I know what's going to happen. I'm going to hope that the Judiciary Committee advances my... [LB20]

SENATOR CARLSON: One minute. [LB20]

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SENATOR COUNCIL: ...repeal of the death penalty bill. And I am sure that there will be three or four votes on that committee against advancing that. And I want everyone to be mindful of the position you're taking now. That if the committee says it's the right way to go, that that doesn't hold true. And I agree with that. It shouldn't in all cases be the direction that this body takes but remember that. And I yield whatever the balance of my time is to Senator Ashford. [LB20]

SENATOR CARLSON: Thank you, Senator Council. Senator Ashford, 20 seconds. Senator Ashford waives. Mr. Clerk for a motion. [LB20]

CLERK: Mr. President, a priority motion. Senator Ashford would move to bracket the bill until June 1, 2011. [LB20]

SENATOR CARLSON: Senator Ashford, you are recognized to open on your motion. [LB20]

SENATOR ASHFORD: Thank you, Mr. President. I'm deadly serious about this motion. This bill doesn't have to pass this year. The retail pharmacists, other establishments that sell this product can implement this system without the law in my view. So I think what we need to do is put this all behind us and think about it for next year. And I agree with Senator Council that this body has every right, and appropriately so, to cast whatever vote it wishes to cast on a particular matter. And I...the 30 votes or how many there were on this...Senator Lautenbaugh's amendment is fine with me. Great, it passed. The problem that I have is this, and this is not a criticism directly of Senator Lautenbaugh, but this idea of denominating a particular lobbying group over another. Certainly, in the Judiciary Committee...when I talk about stakeholders, as Senator Lautenbaugh knows, that when a bill gets ready to be voted out and it comes out of our committee we get comments from everybody who has an interest in the bill. We very rarely, as is the case with all the committees that I've ever been on in this Legislature, we deliberate within the committee. We happen to have in the Judiciary Committee some fabulous lawyers, in my view, on all sides of these issues. And we have some fabulous nonlawyers who have great insights on these issues and bring a great deal of common sense to how we proceed on these bills. But we mustn't continue to focus on going the way of one special interest versus another special interest group. Of course, we're going to talk to them. Of course, we're going to...they're going to see the outcome of the process that we've gone through in putting the bill together. I mean, this is a public body and they have a public responsibility to their clients. And we are the most public Legislature in the entire nation. We have a public hearing, as we all know, on every bill. But this is getting too screwed up, this really is. When we get down to a discussion about, and with all due respect to my friend and colleague Senator Lautenbaugh, when we get down to discussion about the trial lawyers rolling over this, the pharmacist or the pharmacist's doing this to that, we ought to just stop it now. We ought to stop going out there every two minutes and

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talking to the lobbyists to start with. We ought to have a steel bar (laugh) barring the door because we don't need...we are bright people. We are in this Legislature, in the years I've been here, I have never been impressed by a group of people more and I never will be. Every single, and I know I say this a lot but it's because I believe it to the depth of my being, every single one of us have been given a tremendous responsibility to come here but it's a responsibility, in my view, that has always been earned, no matter if we disagree or not. And we're going to have lots of disagreements going forward on other bills but it is not because the lobbyists tell us to do one thing or another. And it's because we decide in our own minds how we're going to vote on something. The 30 votes on Senator Lautenbaugh's amendment was because you believed his argument was the right argument. That's exactly the way it should be. But I think...I just want us, please stop this discussion about one special interest versus the other special interest. We can make our decisions based on what we believe is right. Our Judiciary Committee does that. My Urban...the Urban Affairs Committee does that, the Agriculture Committee does that and that's the way we do business here. And we cannot empower the lobby to be more powerful than the people of this state who sent us here. We represent all of the people, not a particular lobby. They're nice guys. Most of them served with me in the Legislature. They're nice people. But we are the policymakers in this state. We make the decision. I think we ought to bracket this bill. This is now toxic in my view, it needs to go away. And we need to start with the next bill and decide that we're not going to keep talking about lobbyists, we're not going to keep talking about special interests. We're going to start talking about what is best for our state. And I will guarantee you we can do that. And the people of this state, when they call us up and they yell at us because we've made a decision that they don't like, that's great, that's great, but not when some lobbyist says something to somebody at some point in some deliberation, which did not happen in the Judiciary Committee, by the way. We should bracket this bill. My time is getting...it's almost noon obviously. Let's bracket this bill and get out of here. And let's start with a new bill and start fresh tomorrow. Thank you. [LB20]

SENATOR CARLSON: Thank you, Senator Ashford. Mr. Clerk, items for the record. [LB20]

CLERK: Thank you, Mr. President. Revenue Committee reports LB383 to General File; Transportation and Telecommunications reports LB98, LB178, and LB215 to General File. Those signed by the respective chairs. Enrollment and Review Committee reports LB81, LB211, LB154, and LB208 to Select File, some of which have Enrollment and Review amendments attached. Hearing notices from the Appropriations Committee, the Government Committee, the Judiciary Committee, signed by the respective chairpersons. Revenue designating LB383 as one of its two committee priority bills. Amendments to be printed: Senator Hadley to LB241; Senator McGill to LB146; Senator Pahls to LB77 and LB78. Senator Council would like to add her name to LR37 as a cointroducer. (Legislative Journal pages 429-432.) [LB383 LB98 LB178 LB215 LB81

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LB211 LB154 LB208 LB241 LB146 LB77 LB78 LR37]

And, Mr. President, Senator Mello would move to adjourn the body until Thursday morning, February 3 at 9:00 a.m.

SENATOR CARLSON: Thank you, Mr. Clerk. Members, you've heard the motion. All those in favor say aye. Opposed, nay. Motion carried, we are adjourned until tomorrow, February 3, at 9:00 a.m.