

THIRTY-SECOND DAY - FEBRUARY 24, 2016

LEGISLATIVE JOURNAL

**ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION**

THIRTY-SECOND DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, February 24, 2016

PRAYER

The prayer was offered by Pastor Justin Adams, "EPIC" Church, Lincoln.

ROLL CALL

Pursuant to adjournment, the Legislature met at 9:00 a.m., President Foley presiding.

The roll was called and all members were present except Senators Larson, McCoy, and Schilz who were excused; and Senators Craighead, Davis, Groene, K. Haar, Kintner, Kuehn, Morfeld, Murante, and Sullivan who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the thirty-first day was approved.

COMMITTEE REPORT(S)

Enrollment and Review

LEGISLATIVE BILL 683. Placed on Select File.

LEGISLATIVE BILL 746. Placed on Select File with amendment.
ER169 is available in the Bill Room.

(Signed) Matt Hansen, Chairperson

NOTICE OF COMMITTEE HEARING(S)

Government, Military and Veterans Affairs

Room 1507

Thursday, March 3, 2016 1:30 p.m.

Polly Jordening - State Emergency Response Commission
James J. Ziebarth - Nebraska Accountability and Disclosure Commission

Keith Deiml - State Emergency Response Commission
 Kimberly Plouzek - State Emergency Response Commission
 Brian Tessman - State Personnel Board
 Edward A. Toner - Chief Information Officer
 Jeffery T. Peetz - Nebraska Accountability and Disclosure Commission

(Signed) John Murante, Chairperson

COMMITTEE REPORT(S)
 Nebraska Retirement Systems

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

J. Russell Derr - Public Employees Retirement Board

Aye: 5 Davis, Groene, Kolterman, Lindstrom, Mello. Nay: 0. Absent: 1 Kolowski. Present and not voting: 0.

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointments(s) be confirmed by the Legislature and suggests a record vote.

Keith Olson - Nebraska Investment Council

Aye: 5 Davis, Groene, Kolterman, Lindstrom, Mello. Nay: 0. Absent: 1 Kolowski. Present and not voting: 0.

(Signed) Mark Kolterman, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 449. Introduced by Stinner, 48.

WHEREAS, Mario Ybarra of the Scottsbluff High School wrestling team captured a first place finish at 126 pounds during the 2016 Class B Nebraska State Wrestling Championship; and

WHEREAS, with this first place finish, Mario Ybarra helped his team finish in the top five at state for the sixth straight year; and

WHEREAS, the Legislature recognizes the academic, athletic, and artistic achievements of the youth of our state.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates Mario Ybarra on his state wrestling championship.
2. That a copy of this resolution be sent to Mario Ybarra.

Laid over.

SELECT FILE

LEGISLATIVE BILL 954. ER162, found on page 569, was adopted.

Senator Krist offered the following amendment:

AM2279

1 1. Insert the following new section:
2 Sec. 2. Section 43-2,108.05, Revised Statutes Supplement, 2015, is
3 amended to read:
4 43-2,108.05 (1) If the court orders the record of a juvenile sealed
5 pursuant to section 43-2,108.04, the court shall:
6 (a) Order that all records, including any information or other data
7 concerning any proceedings relating to the offense, including the arrest,
8 taking into custody, petition, complaint, indictment, information, trial,
9 hearing, adjudication, correctional supervision, dismissal, or other
10 disposition or sentence, be deemed never to have occurred;
11 (b) Send notice of the order to seal the record (i) to the Nebraska
12 Commission on Law Enforcement and Criminal Justice, (ii) if the record
13 includes impoundment or prohibition to obtain a license or permit
14 pursuant to section 43-287, to the Department of Motor Vehicles, (iii) if
15 the juvenile whose record has been ordered sealed was a ward of the state
16 at the time the proceeding was initiated or if the Department of Health
17 and Human Services was a party in the proceeding, to such department, and
18 (iv) to law enforcement agencies, county attorneys, and city attorneys
19 referenced in the court record;
20 (c) Order all notified under subdivision (1)(b) of this section to
21 seal all records pertaining to the offense;
22 (d) If the case was transferred from district court to juvenile
23 court or was transferred under section 43-282, send notice of the order
24 to seal the record to the transferring court; and
25 (e) Explain to the juvenile what sealing the record means verbally
26 if the juvenile is present in the court at the time the court issues the
27 sealing order or by written notice sent by regular mail to the juvenile's
1 last-known address if the juvenile is not present in the court at the
2 time the court issues the sealing order.
3 (2) The effect of having a record sealed under section 43-2,108.04
4 is that thereafter no person is allowed to release any information
5 concerning such record, except as provided by this section. After a
6 record is sealed, the person whose record was sealed can respond to any
7 public inquiry as if the offense resulting in such record never occurred.
8 A government agency and any other public office or agency shall reply to
9 any public inquiry that no information exists regarding a sealed record.
10 Except as provided in subsection (3) of this section, an order to seal
11 the record applies to every government agency and any other public office
12 or agency that has a record relating to the offense, regardless of
13 whether it receives notice of the hearing on the sealing of the record or
14 a copy of the order. Upon the written request of a person whose record

15 has been sealed and the presentation of a copy of such order, a
16 government agency or any other public office or agency shall seal all
17 records pertaining to the offense.

18 (3) A sealed record is accessible to law enforcement officers,
19 county attorneys, and city attorneys in the investigation, prosecution,
20 and sentencing of crimes, to the sentencing judge in the sentencing of
21 criminal defendants, to a judge making a determination whether to
22 transfer a case to or from juvenile court, ~~and~~ to any attorney
23 representing the subject of the sealed record, and to the Inspector
24 General of Nebraska Child Welfare pursuant to an investigation conducted
25 under the Office of Inspector General of Nebraska Child Welfare Act.
26 Inspection of records that have been ordered sealed under section
27 43-2,108.04 may be made by the following persons or for the following
28 purposes:

29 (a) By the court or by any person allowed to inspect such records by
30 an order of the court for good cause shown;

31 (b) By the court, city attorney, or county attorney for purposes of
1 collection of any remaining parental support or obligation balances under
2 section 43-290;

3 (c) By the Nebraska Probation System for purposes of juvenile intake
4 services, for presentence and other probation investigations, and for the
5 direct supervision of persons placed on probation and by the Department
6 of Correctional Services, the Office of Juvenile Services, a juvenile
7 assessment center, a criminal detention facility, a juvenile detention
8 facility, or a staff secure juvenile facility, for an individual
9 committed to it, placed with it, or under its care;

10 (d) By the Department of Health and Human Services for purposes of
11 juvenile intake services, the preparation of case plans and reports, the
12 preparation of evaluations, compliance with federal reporting
13 requirements, or the supervision and protection of persons placed with
14 the department or for licensing or certification purposes under sections
15 71-1901 to 71-1906.01, the Child Care Licensing Act, or the Children's
16 Residential Facilities and Placing Licensure Act;

17 (e) Upon application, by the person who is the subject of the sealed
18 record and by persons authorized by the person who is the subject of the
19 sealed record who are named in that application;

20 (f) At the request of a party in a civil action that is based on a
21 case that has a sealed record, as needed for the civil action. The party
22 also may copy the sealed record as needed for the civil action. The
23 sealed record shall be used solely in the civil action and is otherwise
24 confidential and subject to this section;

25 (g) By persons engaged in bona fide research, with the permission of
26 the court, only if the research results in no disclosure of the person's
27 identity and protects the confidentiality of the sealed record; or

28 (h) By a law enforcement agency if a person whose record has been
29 sealed applies for employment with the law enforcement agency.

30 (4) Nothing in this section prohibits the Department of Health and
31 Human Services from releasing information from sealed records in the
1 performance of its duties with respect to the supervision and protection

2 of persons served by the department.

3 (5) In any application for employment, bonding, license, education,
4 or other right or privilege, any appearance as a witness, or any other
5 public inquiry, a person cannot be questioned with respect to any offense
6 for which the record is sealed. If an inquiry is made in violation of
7 this subsection, the person may respond as if the offense never occurred.

8 Applications for employment shall contain specific language that states
9 that the applicant is not obligated to disclose a sealed record.

10 Employers shall not ask if an applicant has had a record sealed. The
11 Department of Labor shall develop a link on the department's web site to
12 inform employers that employers cannot ask if an applicant had a record
13 sealed and that an application for employment shall contain specific
14 language that states that the applicant is not obligated to disclose a
15 sealed record.

16 (6) Any person who violates this section may be held in contempt of
17 court.

18 2. Renumber the remaining sections and correct the repealer
19 accordingly.

The Krist amendment was adopted with 31 ayes, 0 nays, 6 present and not
voting, and 12 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 1016. Advanced to Enrollment and Review for
Engrossment.

LEGISLATIVE BILL 188. Senator Watermeier asked unanimous consent
to withdraw his amendment, AM2084, found on page 549, and replace it
with his substitute amendment, AM2199. No objections. So ordered.

AM2199

1 1. In the Standing Committee amendments, AM374:

2 a. Strike amendment 1;

3 b. On page 1, line 8, after the second "or" insert "immediately";

4 and

5 c. Renumber the remaining amendments accordingly.

6 2. On page 3, strike lines 24 through 28 and reletter the remaining
7 subdivisions accordingly.

8 3. On page 5, strike lines 26 through 30 and reletter the remaining
9 subdivisions accordingly.

The Watermeier amendment was adopted with 31 ayes, 0 nays, 11 present
and not voting, and 7 excused and not voting.

Senator Schumacher offered his amendment, AM2140, found on page 592.

Pending.

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 919A. Introduced by Williams, 36.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 919, One Hundred Fourth Legislature, Second Session, 2016; and to state intent.

COMMITTEE REPORT(S)

Education

LEGISLATIVE BILL 930. Placed on General File with amendment. AM2280 is available in the Bill Room.

(Signed) Kate Sullivan, Chairperson

Urban Affairs

LEGISLATIVE BILL 857. Placed on General File with amendment. AM2240

1 1. On page 2, line 4, strike "forty-five" and insert "forty-one".

LEGISLATIVE BILL 1012. Placed on General File with amendment. AM2253 is available in the Bill Room.

(Signed) Sue Crawford, Chairperson

SELECT FILE

LEGISLATIVE BILL 188. Senator Chambers offered the following motion:
MO189
Bracket until April 20, 2016.

Senator Chambers moved for a call of the house. The motion prevailed with 25 ayes, 0 nays, and 24 not voting.

Senator Chambers requested a roll call vote on the motion to bracket.

Voting in the affirmative, 2:

Cook Haar, K.

Voting in the negative, 26:

Brasch	Fox	Hughes	Riepe	Watermeier
Coash	Friesen	Johnson	Scheer	Williams
Craighead	Garrett	Kolterman	Schnoor	
Crawford	Groene	Kuehn	Seiler	
Davis	Hadley	Lindstrom	Smith	
Ebke	Hilkemann	Murante	Stinner	

Present and not voting, 14:

Bloomfield	Chambers	Howard	McCollister	Schumacher
Bolz	Gloor	Kolowski	Morfeld	Sullivan
Campbell	Hansen	Krist	Pansing Brooks	

Excused and not voting, 7:

Baker	Kintner	McCoy	Schilz
Harr, B.	Larson	Mello	

The Chambers motion to bracket failed with 2 ayes, 26 nays, 14 present and not voting, and 7 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:

MO190

Reconsider the vote taken to bracket.

SENATOR SCHEER PRESIDING

Senator Chambers asked unanimous consent to withdraw his motion to reconsider. No objections. So ordered.

The Schumacher amendment, AM2140, found on page 592 and considered in this day's Journal, was renewed.

Senator Chambers moved for a call of the house. The motion prevailed with 29 ayes, 0 nays, and 20 not voting.

Senator Watermeier requested a roll call vote, in reverse order, on the Schumacher amendment.

Voting in the affirmative, 16:

Bolz	Cook	Howard	Morfeld
Campbell	Haar, K.	Kolowski	Pansing Brooks
Chambers	Hadley	Krist	Schumacher
Coash	Hansen	McCollister	Seiler

Voting in the negative, 21:

Brasch	Garrett	Kintner	Riepe	Watermeier
Davis	Groene	Kolterman	Scheer	
Ebke	Hilkemann	Kuehn	Schnoor	
Fox	Hughes	Lindstrom	Smith	
Friesen	Johnson	Murante	Stinner	

Present and not voting, 6:

Bloomfield	Gloor	Sullivan
Crawford	Harr, B.	Williams

Excused and not voting, 6:

Baker	Larson	Mello
Craighead	McCoy	Schilz

The Schumacher amendment lost with 16 ayes, 21 nays, 6 present and not voting, and 6 excused and not voting.

The Chair declared the call raised.

Senator Chambers offered the following motion:

MO191

Recommit to the Judiciary Committee.

Pending.

COMMITTEE REPORT(S)

Judiciary

LEGISLATIVE BILL 1075. Placed on General File.

LEGISLATIVE BILL 1098. Placed on General File.

LEGISLATIVE BILL 744. Placed on General File with amendment.

AM2142

1 1. Strike the original section and insert the following new section:

2 Section 1. (1) The adoptive parent or parents and the birth parent

3 or parents of an adoptee may enter into a written agreement to permit

4 continuing communication and contact after the placement of an adoptee

5 between the adoptive parent or parents and the birth parent or parents in

6 private or agency adoptions for adoptees not in the custody of the

7 Department of Health and Human Services.

8 (2) The terms of a communication and contact agreement entered into

9 under this section may include provisions for (a) future contact or

10 communication between the birth parent or parents and the adoptee or the

11 adoptive parent or parents, or both, (b) sharing information about the

12 adoptee, or (c) other matters related to communication or contact agreed

13 to by the parties.

14 (3) If the adoptee is fourteen years of age or older at the time of
15 placement, a communication and contact agreement under this section shall
16 not be valid unless consented to in writing by the adoptee.

17 (4) A court may approve a communication and contact agreement
18 entered into under this section by incorporating such agreement by
19 reference and indicating the court's approval of such agreement in the
20 decree of adoption. Enforceability of a communication and contact
21 agreement is not contingent on court approval or its incorporation into
22 the decree of adoption.

23 (5) Neither the existence of, nor the failure of any party to comply
24 with the terms of, a communication and contact agreement entered into
25 under this section shall be grounds for (a) setting aside an adoption
26 decree, (b) revoking a written relinquishment of parental rights or
27 written consent to adoption, (c) challenging the adoption on the basis of
1 duress or coercion, or (d) challenging the adoption on the basis that the
2 agreement retains some aspect of parental rights by the birth parent or
3 parents.

4 (6) A communication and contact agreement entered into under this
5 section may be enforced by a civil action. A court in which such civil
6 action is filed may enforce, modify, or terminate a communication and
7 contact agreement entered into under this section if the court finds that
8 (a) enforcing, modifying, or terminating the communication and contact
9 agreement is necessary to serve the best interests of the adoptee, (b)
10 the party seeking to enforce, modify, or terminate the communication and
11 contact agreement participated in, or attempted to participate in,
12 mediation in good faith or participated in other appropriate dispute
13 resolution proceedings in good faith to resolve the dispute prior to
14 filing the petition, and (c) when seeking to modify or terminate the
15 agreement, a material change in circumstances has arisen since the
16 parties entered into the communication and contact agreement that
17 justifies modifying or terminating the agreement.

18 (7) If the adoption was through an agency, the agency which accepted
19 the relinquishment from the birth parent or parents shall be invited to
20 participate in any mediation or other appropriate dispute resolution
21 proceedings as provided in subsection 6 of this act.

22 (8) With any communication and contact agreement entered into under
23 this section, the following shall appear on the communication and contact
24 agreement: No adoption shall be set aside due to the failure of the
25 adoptive parent or parents or the birth parent or parents to follow the
26 terms of this agreement or a later order modifying or terminating this
27 agreement. Disagreement between the parties or a subsequent civil action
28 brought to enforce, modify, or terminate this agreement shall not affect
29 the validity of the adoption and shall not serve as a basis for orders
30 affecting the custody of the child. The court shall not act on a petition
31 to enforce, modify, or terminate this agreement unless the petitioner has
1 participated in, or attempted to participate in, mediation in good faith
2 or participated in other appropriate dispute resolution proceedings in
3 good faith to resolve the dispute prior to filing the petition.

4 (9) The court shall not award monetary damages as a result of the

5 filing of a civil action pursuant to subsection (6) of this section.

LEGISLATIVE BILL 839. Indefinitely postponed.

(Signed) Les Seiler, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 450. Introduced by Johnson, 23.

WHEREAS, the David City High School wrestling team won the 2016 Class C State Wrestling Championship; and

WHEREAS, the David City Scouts showed outstanding determination, teamwork, and skill in winning the state championship for the second time in three years; and

WHEREAS, the Scouts won with 159 points to the second-place school's 97 points; and

WHEREAS, three individual champions, Trent Daro, Wyatt Phillips, and Melvin Hernandez, helped lead their team to victory.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature congratulates the David City High School wrestling team on winning the 2016 Class C State Wrestling Championship.

2. That a copy of this resolution be sent to the David City High School wrestling team and Head Coach Tahner Thiem.

Laid over.

BILL ON FIRST READING

The following bill was read for the first time by title:

LEGISLATIVE BILL 831A. Introduced by Hansen, 26.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 831, One Hundred Fourth Legislature, Second Session, 2016.

AMENDMENT(S) - Print in Journal

Senator Kolterman filed the following amendment to LB447:
AM2282

(Amendments to Standing Committee amendments, AM1979)

- 1 1. On page 11, line 28, strike beginning with "A" through "employer"
- 2 and insert "A member hired on or after July 1, 2016, or a member who has
- 3 taken a refund or retirement and is rehired or hired by a separate
- 4 employer covered by the retirement system".
- 5 2. On page 13, strike beginning with "who" in line 21 through

6 "employer" in line 25 and insert "initially hired on or after July 1,
7 2016, or a member who has taken a refund or retirement and is rehired or
8 hired by a separate employer covered by the retirement system on or after
9 July 1, 2016, and has acquired the equivalent of five years of service or
10 more as a school employee under the retirement system or under contract
11 with an employer on or after July 1, 2016, and who has not retired prior
12 to July 1, 2016".
13 3. On page 14, line 13, strike "persons" and insert "members"; and
14 strike beginning with "persons" in line 23 through "employer" in line 24
15 and insert "members hired on or after July 1, 2016, or for a member who
16 has taken a refund or retirement and is rehired or hired by a separate
17 employer covered by the retirement system".

UNANIMOUS CONSENT - Time Change

Senator Campbell asked unanimous consent that the Health and Human Services Committee conduct its hearing on Thursday, February 25, 2016, at 1:30 p.m. instead of 1:00 p.m. No objections. So ordered.

MOTION - Recess

Senator Chambers moved to recess until 12:30 p.m.

Senator Chambers moved for a call of the house. The motion prevailed with 20 ayes, 8 nays, and 21 not voting.

Senator Chambers requested a roll call vote, in reverse order, on the motion to recess.

Voting in the affirmative, 11:

Bloomfield	Cook	Howard	Schumacher
Chambers	Crawford	Krist	Williams
Coash	Harr, B.	McCollister	

Voting in the negative, 28:

Bolz	Garrett	Hughes	Lindstrom	Seiler
Brasch	Gloor	Johnson	Morfeld	Smith
Campbell	Groene	Kintner	Murante	Sullivan
Craighead	Hadley	Kolowski	Riepe	Watermeier
Fox	Hansen	Kolterman	Scheer	
Friesen	Hilkemann	Kuehn	Schnoor	

Present and not voting, 2:

Davis Haar, K.

Excused and not voting, 8:

Baker	Larson	Mello	Schilz
Ebke	McCoy	Pansing Brooks	Stinner

The Chambers motion to recess failed with 11 ayes, 28 nays, 2 present and not voting, and 8 excused and not voting.

VISITOR(S)

Visitors to the Chamber were Gregg Spagnolo of the American Council of Engineering Companies National Board of Directors; members of UNO Political Science Nebraska Leadership Program from Omaha; and 8 sixth-through eighth-grade students and teachers of Norris Middle School from Omaha.

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

MOTION - Adjournment

Senator Friesen moved to adjourn until 9:00 a.m., Thursday, February 25, 2016.

Senator Chambers requested a roll call vote on the motion to adjourn.

Voting in the affirmative, 36:

Bolz	Garrett	Hughes	McCollister	Smith
Campbell	Gloor	Johnson	Morfeld	Sullivan
Coash	Groene	Kintner	Murante	Watermeier
Cook	Haar, K.	Kolowski	Riepe	Williams
Crawford	Hadley	Kolterman	Scheer	
Davis	Hansen	Krist	Schnoor	
Fox	Harr, B.	Kuehn	Schumacher	
Friesen	Hilkemann	Lindstrom	Seiler	

Voting in the negative, 4:

Bloomfield	Brasch	Chambers	Craighead
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Present and not voting, 1:

Howard

Excused and not voting, 8:

Baker	Larson	Mello	Schilz
Ebke	McCoy	Pansing Brooks	Stinner

The Friesen motion to adjourn prevailed with 36 ayes, 4 nays, 1 present and not voting, and 8 excused and not voting, and at 12:04 p.m., the Legislature adjourned until 9:00 a.m., Thursday, February 25, 2016.

Patrick J. O'Donnell
Clerk of the Legislature