

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

Floor Debate  
April 19, 2017

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[LB68 LB97 LB145 LB152 LB159 LB167 LB172 LB203 LB223 LB244 LB255A LB257  
LB259 LB268 LB323 LB346 LB395 LB409 LB441 LB461 LB478 LB481 LB487 LB509A  
LB509 LB526 LB578 LB605 LB622 LB661 LR99 LR100 LR101]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the sixty-seventh day of the One Hundred Fifth Legislature, First Session. Our chaplain for today is Father Gary Coulter from Our Lady of Good Counsel Retreat House in Waverly, Nebraska, Senator Geist's district. Would you please rise.

FATHER COULTER: (Prayer offered.)

SPEAKER SCHEER: Thank you, Father Coulter. I call to order the sixty-seventh day of the One Hundred Fifth Legislature, First Session, Senators please record your presence. Roll call.

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Mr. Clerk, please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

PRESIDENT FOLEY: Thank you, Mr. Clerk. Are there any corrections for the Journal?

ASSISTANT CLERK: No corrections this morning.

PRESIDENT FOLEY: Thank you, sir. Are there any messages, reports, or announcements?

ASSISTANT CLERK: I have no messages, reports, or announcements.

PRESIDENT FOLEY: While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR99, LR100, and LR101. We'll now proceed to the first item on the agenda, General File, 2017, committee priority bill. Mr. Clerk. [LR99 LR100 LR101]

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ASSISTANT CLERK: Mr. President, LB409, introduced by Senator Groene. (Read title.) Bill was introduced on January 13, referred to the Education Committee. That committee placed the bill on General File with committee amendments. (AM955, Legislative Journal page 959.) [LB409]

PRESIDENT FOLEY: Thank you, Mr. Clerk. (Doctor of the day introduced.) We'll now proceed to LB409. Senator Groene, you're recognized to open on the bill. [LB409]

SENATOR GROENE: Thank you, Mr. President. Mr. President, members of the Legislature, LB409 as amended by AM955 is simply...in simple terms, would revise the Tax Equity and Education Opportunities Support Act, TEEOSA, by setting the base limitation rate, as known as the budget growth rate, at 1.5 percent and sets the local effort rate at 1.203 cents and funding that option at 95.5 percent. The net effect of these changes would be to increase our state aid obligation to roughly \$999.9 million. I say that because I don't want to be the first Education Chairman that had a billion-dollar state aid bill. Appropriations Committee estimations that we can fund the 2.1 percent, \$20.8 million increase over '16-17 state aid funding to Nebraska public schools. LB409 matches what the Appropriations Committee has appropriated. It adjusts the TEEOSA formula so it matches the \$21 million increase. AM955 also contains a request by the Nebraska Department of Education to ensure that the transition aid is to be provided to those members of the Learning Community who was going to be financially harmed by the common levy going away beginning in '17-18 school fiscal year will be calculated properly. The intent of the transition aid was to soften the landing for those Learning Community schools that suffered a loss of resources from the common levy going away, but the consideration of those resources was intended to include the provision of community achievement plan aid which was accidentally excluded from the consideration as a resource. This amendment would recognize community achievement plan aid. The change to the base limitation rate, local effort rate, and the net option adjustment would be for the 2017-18 and 2018-19 school fiscal years. It also should be apparent that at our current fiscal climate is still on the fluid nature. We may need to make additional changes in the overall state aid amount if deemed necessary between now and the final passage. In that I would ask for a clean bill. This bill is really coming from the Education Committee. It has my name on it because we had to throw it in early to make sure it was there. But it really should be considered an Education bill. I believe it was an 8-0 vote from the committee to send it forward. Let's approve it cleanly. Let's not play games with it. Let's send this on so we can get on to the bigger task of debating the budget. Thank you, Mr. President. [LB409]

PRESIDENT FOLEY: Thank you, Senator Groene. As the Clerk indicated, there are amendments from the Education Committee. Senator Groene, you're recognized to open on the committee amendment. [LB409]

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SENATOR GROENE: First I believe...what's the name of the amendment I'm dropping? We are...we pulled AM474. Apparently you already did that. [LB409]

PRESIDENT FOLEY: You've got Education Committee AM955 committee amendment. [LB409]

SENATOR GROENE: Right. There was another amendment. I believe it got pulled. AM955 is the bill. It's basically what I discussed earlier. Like I said, the original bill was dropped early with obscure language, basically a shell bill, so that when the Appropriations Committee came up with a number, then at that point it was the duty of the Education Committee to match TEEOSA formula to that number. AM955 replaces the original language and it is the bill and it is what I described earlier. So I appreciate a green vote on AM955. [LB409]

PRESIDENT FOLEY: Thank you, Senator Groene. Debate is now open on LB409 and the committee amendments. Senator Morfeld. [LB409]

SENATOR MORFELD: Thank you, Mr. President. I rise in support of LB409 and AM955. That being said, I rise in support understanding the financial situation that we are in and that LB409 represents I think a middle ground and a good balance of the interests of making sure that we balance the budget while still maintaining strong education funding for the state of Nebraska. I will state, though, that I believe that with the tax cuts that have been proposed, that this course is unsustainable ensuring that we have high-quality education, good funding, and keeping in mind that we cannot sustain just 1 or 2 percent increases in education spending and maintain the high-quality education that we've been able to provide our children. Now I also understand, and I have stated time after time that we are too reliant on property taxes when it comes to education and that we need to find other funding streams to be able to balance or right the three-legged stool to ensure equity and fairness among all taxpayers. That being said, I think LB409 represents good middle ground despite my concern that it's not enough. And I think that we should advance LB409 and AM955. Thank you, Mr. President. [LB409]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Stinner. [LB409]

SENATOR STINNER: Thank you, Mr. President. Members of the Legislature, I rise today in support of LB409 and the accompanying amendment. I want to thank Senator Groene and the Education Committee for their hard work on this bill. It did come out of the committee 8-0, so it had unanimous support. I do want to say also that LB409 is a necessary part of our budget. It is the modification to TEEOSA that is necessary in order to get to a 2.1 percent increase in the biennium. K-12 is still the most significant increase that we have and our support of K-12 and school funding is still the most significant increase in our budget, so it remained a top priority.

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Because of its importance, I would ask and urge that we don't get into an extended debate, that we have a clean bill, that we pass it as is. Therefore, I would urge you to vote green both on the amendment and LB409. Thank you. [LB409]

PRESIDENT FOLEY: Thank you, Senator Stinner. Senator Linehan. [LB409]

SENATOR LINEHAN: Thank you, Mr. President. I want to thank Senator Groene and the other Education members too. This is a tough bill to get through and I know lots of people had to give and it was take and Senator Groene did a great job of keeping his focus, getting the bill out of committee. I plan on supporting both AM955 and LB409. It does fit within the budget. I, like others on the committee and I think throughout the body, realize that we need to take a serious look at the way we're funding public education, including doing something about what seems somewhat inequitable about how much money goes to a certain group of schools and then a huge group of schools get very little money. So supporting this today does not mean that we don't need changes. We do need changes. We need to look at this between now and next session. But I think this is as good as we can...excuse me. I think Senator Groene worked extremely hard to try to be fair as to many schools as he can. There are some at the end, including my largest district in my...or largest school district in my district, that is probably taking a harder hit than I would like to see it take. But he...I agreed with him that, you know, we tried to do fair...be fair to the largest percentage of people. So thank you and please support LB409. [LB409]

PRESIDENT FOLEY: Thank you, Senator Linehan. Senator Groene, you're recognized to close on AM955. [LB409]

SENATOR GROENE: Expedience of time, I waive closing. [LB409]

PRESIDENT FOLEY: Thank you, Senator Groene. Members, you heard the debate on AM955. The question before the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB409]

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of committee amendments. [LB409]

PRESIDENT FOLEY: The committee amendments are adopted. Returning to debate on LB409. Mr. Clerk. [LB409]

ASSISTANT CLERK: Senator Groene, you had previously filed AM474, but I have a note to withdraw that. [LB409]

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SENATOR GROENE: Withdraw that. That was...we just placed that amendment so that people could see that the original language wasn't the real language statewide, but then, as the committee met, AM955 replaced that. So, yes, redraw (sic) it. [LB409]

PRESIDENT FOLEY: Without objection, the amendment is withdrawn. [LB409]

ASSISTANT CLERK: Mr. President, I have nothing further on the bill. [LB409]

PRESIDENT FOLEY: Senator Groene, you're recognized to close on LB409. He waives close. The question before the body is the advance of the bill to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB409]

ASSISTANT CLERK: 38 ayes, 0 nays on the motion to advance, Mr. President. [LB409]

PRESIDENT FOLEY: LB409 advances. Speaker Scheer, you're recognized. [LB409]

SPEAKER SCHEER: Well, colleagues, you never cease to amaze me. (Laughter) I am so good at handicapping I should be at the horse track, but I'm here so I'm probably money ahead. If you will look at your agenda, we have provided Senator Wishart a 1:30 opening. I'm not going to disturb that. But we will move down now to the 3:30 agenda with Select and move forward on the agenda through its entirety today, and at 1:30 we'll return for Senator Wishart. Thank you.

PRESIDENT FOLEY: Thank you, Mr. Speaker. Select File, 2017, Speaker priority bills. Mr. Clerk.

CLERK: Mr. President, LB172. I have no E&Rs. Senator Albrecht would move to amend with AM964. (Legislative Journal page 1018.) [LB172]

PRESIDENT FOLEY: Senator Albrecht, you're recognized to open on AM964. [LB172]

SENATOR ALBRECHT: Thank you, President Foley, and good morning, colleagues. AM964 is a technical amendment to LB172 which is a clean-up bill to the Employee (sic: Employment) Security Law. [LB172]

PRESIDENT FOLEY: Excuse me, Senator. Members, please come to order. Thank you, Senator. [LB172]

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SENATOR ALBRECHT: No problem. Again, AM964 is a technical amendment to LB172 which is a clean-up bill to the Employment Security Law. AM964 includes the statutory changes made in LB203 which was passed by the Legislature on a vote of 47-0 and signed by the Governor on March 29 of this year. Because of LB203, LB172 touched the same statutory sections; and because LB203 was signed ahead and separate from LB172, an amendment is necessary to resolve a few conflicting sections. AM964 addresses those issues, corrects two sections' references, and reinstates a reference to a federal act that was previously stricken. This is a technical amendment that contains no substantive changes. And as a reminder, LB172 also contains no policy changes. LB172 and AM964 are strictly clean-up regulations for a legislative bill and I would ask your support on AM964 and LB172. Thank you. [LB172 LB203]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Debate is now open on the amendment. Senator Erdman. [LB172]

SENATOR ERDMAN: Thank you, Lieutenant Governor. Good morning, everyone. I am in support of AM964, but I want to take this opportunity to say something this morning. Yesterday in my remarks I had made a comment about Senator Harr and him lying to me. That was...I was incorrect in that statement. He was not the one that lied to me. So I want to apologize to Senator Harr this morning for the record and make it right. I didn't intend to do that and so I wanted to just make that known. And I ask you to vote for AM964 and LB172. Thank you. [LB172]

PRESIDENT FOLEY: Thank you, Senator Erdman. Seeing no further debate on the amendment, Senator Albrecht, you're recognized to close. She waives closing. The question before the body is the adoption of AM964. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB172]

CLERK: 33 ayes, 0 nays, Mr. President, on the adoption Senator Albrecht's amendment. [LB172]

PRESIDENT FOLEY: AM964 is adopted. Mr. Clerk. [LB172]

CLERK: I have nothing further on the bill, Mr. President. [LB172]

PRESIDENT FOLEY: Senator Morfeld. [LB172]

SENATOR MORFELD: Mr. President, I move to advance LB172 to E&R for engrossing. [LB172]

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PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB172 advances. Mr. Clerk. [LB172]

CLERK: LB152, there are E&R amendments pending, Mr. President. (ER51, Legislative Journal page 973.) [LB152]

PRESIDENT FOLEY: Senator Morfeld for a motion. [LB152]

SENATOR MORFELD: Mr. President, I move to advance LB152 to E&R for engrossing. [LB152]

PRESIDENT FOLEY: Members, you heard the motion to advance the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mister... [LB152]

CLERK: Sorry. Mr. President, excuse me. I have nothing further on the bill, Mr. President. [LB152]

PRESIDENT FOLEY: Senator Morfeld. [LB152]

SENATOR MORFELD: Mr. President, I move to advance LB152 to E&R for engrossing. [LB152]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB152 advances. Mr. Clerk. [LB152]

CLERK: Mr. President, next bill, LB346, no E&Rs. Senator Lowe would move to amend with AM1066. (Legislative Journal page 1075.) [LB346]

PRESIDENT FOLEY: Senator Lowe, you're recognized to open on AM1066. [LB346]

SENATOR LOWE: Thank you, Mr. President. AM1066 is a simple amendment. It is designed to harmonize references to salespersons licensed in the Motor Vehicle Registration Act. This amendment will allow a salesperson to still drive a dealer-plated vehicle, which is important for the dealership as this ability is often part of their incentive and compensation programs for the employees. This amendment has worked up with...was worked up with the Nebraska New Car

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and Truck Dealers Association. I urge you to vote yes on AM1066 and then vote to move the amendment to...for LB364 to Final Reading. Thank you, Mr. President. [LB346]

PRESIDENT FOLEY: Thank you, Senator Lowe. Debate is now open on the amendment. Senator Chambers. [LB346]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to say a word or two on Senator Lowe's amendment and his bill. Thank you very much. [LB346]

PRESIDENT FOLEY: Thank you, Senator Chambers. Seeing no further debate, Senator Lowe, you're recognized to close on AM1066. He waives closing. The question before the body is the adoption of the amendment. Those in favor vote aye; those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB346]

CLERK: 35 ayes, 0 nays, Mr. President, on the adoption of Senator Lowe's amendment. [LB346]

PRESIDENT FOLEY: AM1066 is adopted. Mr. Clerk. [LB346]

CLERK: I have nothing further on the bill, Mr. President. [LB346]

PRESIDENT FOLEY: Senator Morfeld. [LB346]

SENATOR MORFELD: Mr. President, I move to advance LB346 to E&R for engrossing. [LB346]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB346 advances. Mr. Clerk. [LB346]

CLERK: Mr. President, LB323. I have no amendments to the bill, Senator. [LB323]

PRESIDENT FOLEY: Senator Morfeld. [LB323]

SENATOR MORFELD: Mr. President, I move to advance LB323 to E&R for engrossing. [LB323]



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PRESIDENT FOLEY: Members, you heard motion to advance LB323 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB323 advances. Mr. Clerk. [LB323]

CLERK: Mr. President, LB257. Senator, I have E&R amendments, first of all. (ER53, Legislative Journal page 973.) [LB257]

PRESIDENT FOLEY: Senator Morfeld. [LB257]

SENATOR MORFELD: Mr. President, I move the adoption of the E&R amendments to LB257. [LB257]

PRESIDENT FOLEY: Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB257]

CLERK: Mr. President, Senator Lindstrom would move to bracket the bill until May 18. [LB257]

PRESIDENT FOLEY: Senator Lindstrom, you're recognized to open on your motion. [LB257]

SENATOR LINDSTROM: Thank you, Mr. President. I filed this motion just so that I could get a chance to develop some legislative history and intent. I fully support LB257 and intend to withdraw the motion. Since Senator Hilgers' amendment became the bill, I'd like to ask him a couple of questions, please. [LB257]

PRESIDENT FOLEY: Senator Hilgers, would you yield, please? [LB257]

SENATOR HILGERS: Absolutely. [LB257]

SENATOR LINDSTROM: Senator Hilgers, the bill with your amendment seeks to reduce the statute of limitations for claims relating to real estate brokerage services. Is it your intent of the bill to apply the two-year statute to claims involving real estate transactions? [LB257]

SENATOR HILGERS: Yeah, that's exactly right. So the LB257 is intended to apply just to the services for real estate brokers and salespersons that are related or performed pursuant to their particular licenses, so, for instance, if there is an error in the preparation of a purchase offer or in a real estate disclosure statement. [LB257]

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SENATOR LINDSTROM: Okay. But that would not apply, for example, to a real estate broker or a salesperson operating a vehicle negligently on his or her way to show a home. Correct? [LB257]

SENATOR HILGERS: That's exactly right. So LB257 is intended to work the same way that we have other statute of limitations restrictions for other professionals. So for instance, a medical doctor or an attorney may have a limited statute of limitations. Those limits relate only to those services provided pursuant to the scope of their licenses. So for example, if a doctor has an error in a surgery, that's two years. But if someone slips and falls outside of their office building, it's four years. So that...so in other words, if it's not related to the scope of their services but, instead, related to something that would impact the general public writ large, then this narrowed statute of limitations would not apply. [LB257]

SENATOR LINDSTROM: And the intent would be that the realtor would have similar treatment, correct? [LB257]

SENATOR HILGERS: Exactly right. [LB257]

SENATOR LINDSTROM: Okay. Thank you, Senator Hilgers. I agreed with the intent when this bill came out of committee, and Senator Hilgers' amendment made it clear. I support LB257 and would encourage all of you to support it as well. And with that, I would like to withdraw my motion, Mr. President. Thank you. [LB257]

PRESIDENT FOLEY: The bracket motion is withdrawn. Mr. Clerk. [LB257]

CLERK: I have nothing further on the bill, Mr. President. [LB257]

PRESIDENT FOLEY: Senator Morfeld. [LB257]

SENATOR MORFELD: Mr. President, I move to advance LB257 to E&R for engrossing. [LB257]

PRESIDENT FOLEY: Members, you heard the motion to advance LB257 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB257 advances. Mr. Clerk. [LB257]

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CLERK: Mr. President, Select File, LB478. I have no Enrollment and Review. Senator Groene would move to amend with AM988. (Legislative Journal page 1041.) [LB478]

PRESIDENT FOLEY: Senator Groene, you're recognized to open on AM988. [LB478]

SENATOR GROENE: Thank you, Mr. President. All AM988 does is put an emergency clause on the bill that allows reform to felons to be able to have archery equipment. Since it passed Select File, believe or not, there is an awful lot of decent people that are born again, whatever, that have felonies and will not break any law. But this spring there's spring archery for turkeys, if we don't put the emergency clause on it, then it's 90 days after the session, which is September 1. Well, archery season is open early in the fall and these folks need to be able to plan if they're going to go hunting or not. So I would appreciate green on AM988 and all it does is put an emergency clause on it so that when the Governor signs it, it goes into effect. Thank you. [LB478]

PRESIDENT FOLEY: Thank you, Senator Groene. Seeing no debate on the amendment, Senator Groene, you're recognized to close on the amendment. Senator Groene, did you want to waive? He waives closing. The question before the body is the adoption of AM988. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB478]

CLERK: 34 ayes, 0 nays, Mr. President, on the adoption of Senator Groene's amendment. [LB478]

PRESIDENT FOLEY: AM988 is adopted. Mr. Clerk. [LB478]

CLERK: I have nothing further on the bill, Mr. President. [LB478]

PRESIDENT FOLEY: Senator Morfeld. [LB478]

SENATOR MORFELD: Mr. President, I move to advance LB478 to E&R for engrossing. [LB478]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB474 (sic) advances. Mr. Clerk. [LB478]

CLERK: LB509, Senator, does have Enrollment and Review amendments. (ER54, Legislative Journal page 993.) [LB509]

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PRESIDENT FOLEY: Senator Morfeld. [LB509]

SENATOR MORFELD: Mr. President, I move the adoption of the E&R amendments to LB509. [LB509]

PRESIDENT FOLEY: Members, you've heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB509]

CLERK: Nothing further on that bill, Senator. [LB509]

PRESIDENT FOLEY: Senator Morfeld. [LB509]

SENATOR MORFELD: Mr. President, I move to advance LB509 to E&R for engrossing. [LB509]

PRESIDENT FOLEY: Members, you've heard the motion to advance the bill to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB509 advances. Mr. Clerk. [LB509]

CLERK: LB509A, Senator, has no amendments. [LB509A]

PRESIDENT FOLEY: Senator Morfeld. [LB509A]

SENATOR MORFELD: Mr. President, I move to advance LB509A to E&R for engrossing. [LB509A]

PRESIDENT FOLEY: Members, you heard the motion to advance LB509A to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB509A advances. Mr. Clerk. [LB509A]

CLERK: LB97, Senator, has no amendments pending. [LB97]

PRESIDENT FOLEY: Senator Morfeld. [LB97]

SENATOR MORFELD: Mr. President, I move to advance LB97 to E&R for engrossing. [LB97]

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PRESIDENT FOLEY: Members, you heard the motion to advance LB97 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB97 advances. Mr. Clerk. [LB97]

CLERK: LB605, Senator. I have no amendments to the bill. [LB605]

PRESIDENT FOLEY: Senator Morfeld. [LB605]

SENATOR MORFELD: Mr. President, I move to advance LB605 to E&R for engrossing. [LB605]

PRESIDENT FOLEY: Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. LB605 advances. Mr. Clerk. [LB605]

CLERK: LB481, Senator, does have Enrollment and Review amendments. (ER56, Legislative Journal page 1053.) [LB481]

PRESIDENT FOLEY: Senator Morfeld. [LB481]

SENATOR MORFELD: Mr. President, I move to advance the Enrollment and Review amendments to LB481. [LB481]

PRESIDENT FOLEY: Members, the motion is to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The E&R amendments are adopted. Mr. Clerk. [LB481]

CLERK: Nothing further on that bill, Senator. [LB481]

PRESIDENT FOLEY: Senator Morfeld. [LB481]

SENATOR MORFELD: Mr. President, I move to advance LB481 to E&R for engrossing. [LB481]

PRESIDENT FOLEY: Members, you heard the motion to advance LB481 to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB481 advances. Proceeding now to General File, 2017, senator priority bill. Mr. Clerk. [LB481]

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CLERK: Mr. President, first bill LB259 is a bill by Senator Hansen. (Read title.) Introduced on January 11 of this year, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are committee amendments pending. (AM933, Legislative Journal page 1024.) [LB259]

PRESIDENT FOLEY: Senator Hansen, you're recognized to open on LB259. [LB259]

SENATOR HANSEN: Thank you, Mr. President, and good morning, colleagues. I'm opening today on LB259, my personal priority. LB259 was introduced...as introduced as a cleanup bill that deals with court jurisdiction. We further have added a committee amendment that would further update a series of court procedures largely in Chapter 29. The thoughts behind the changes in LB259 and its included committee amendment, AM933, started with a presentation last year. I, like many of my other Lancaster County senators, attended a presentation put on our county called "Lancaster County 101" at the NACO building shortly after the election. At that presentation, county officials stated their concerns about the ever-increasing costs of the county jail; and worse, that much of this cost was from people who did not necessarily belong or need to be in jail, people waiting for trial for minor offenses or people sitting out jail in lieu of paying fines. LB259 with AM933 is my attempt to fix that and I'm glad to have the support of Lancaster County, Douglas County, and NACO with the adoption of a following amendment, AM1082. This is an opportunity for us to eliminate unnecessary financial burdens on our counties. The green copy of LB259 allows for both the hearing of...allows for both the county and district court to hear competency hearings. Currently only district courts have that power, creating unnecessary delay and a few misdemeanor cases where there will both be a criminal case in the county court and a civil case in the district court. This would eliminate that duplication to speed up time in county court and eliminate the time totally in district court. It would further give the power of city attorneys to challenge competency, much like their county attorney counterparts are currently allowed. LB259 as introduced was supported by both the Omaha city attorney, the Douglas County Public Defender, and the Nebraska Bar Association. In keeping with the core concept of LB259, which is to address the problem of unnecessarily and prolonged detention of individuals in county jail, the Judiciary Committee Amendment, AM933, to LB259 also includes LB145, LB395, and a provision of LB526. Those three bills are all interrelated and deal with the underlying problem that I said before of unnecessarily prolonged detention in county jails, sometimes referred to as debtor's prisons in Nebraska. As I said earlier, at the Lancaster County retreat this last winter, one of the key problems that Lancaster County is facing is the increasing number of people that are incarcerated in county jails. The committee amendment will follow to continue to remedy that fact looking at people that are currently sitting in our county jails due to their lack of income. Jail time that is de facto based on income is a dangerous precedent that the Supreme Court has carefully scrutinized in the face of the equal protection clause of the Fourteenth Amendment. These bills will not only save our counties money, but they will also provide good public policy when it comes to why and how someone should be in prison for

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failing to pay a fine. Currently in Nebraska, you could be sentenced to jail to "sit out a fine" if you are unable or unwilling to pay fines and court costs. The current rate someone is credited per day to sit out their fine is \$90. What we are seeing is people having to sit out their fines in jail for a crime that carries no jail time due to their lack of income. This is both bad and expensive public policy. Within Lancaster County alone, we're seeing our jail coming close to being capacity after being built only a few years ago and around a quarter of that capacity is used to house individuals for unpaid fines and fees. Based on our research, over 2,800 people spend a grand total of 56,000 nights in the jail for fiscal year 2014-15 for a grand cost of \$5.6 million to the county. That was just for the unpaid fines and fees. This is expensive to our counties, in addition to the loss of revenue of the unpaid court fines and fees. This is complicated to the fact that when facing a sentence of only a fine, that is defendant is facing a sentence that carries no risk of jail time, indigent defendants are not eligible for appointed attorney. This creates a Catch-22 where an indigent defendant are not eligible for an attorney because they're not at risk of jail time, but are essentially de facto sentenced to jail because then they cannot pay the resulting court fee. LB145 as amended and included in AM933 seeks to remedy this problem. It allows multiple options for a judge to sentence an indigent defendant facing only a fine, payment be an installment plan, reducing or eliminating costs, or sentencing to community service. This way defendants are still fulfilling their obligation to society while not sitting in the jail needlessly because of their income. If the defendant fails to complete his or her community service, the judge could sentence them to sit out their fine. The goal of this standard would be similar to the determination of "indigency" for the appointment of public counsel, which is clarified in the AM, so this should not be adding an undue burden of new policies or procedures...creating new policies and procedures on to the court. I would like to thank Lancaster, Douglas Counties, NACO, the Supreme Court Administrator, the ACLU, the Attorney General's Office, county attorneys, public defenders, and all the other stakeholders who have worked with my office to make sure we are putting together the best possible package. And I will continue to work with them to make sure we're enacting the best possible legislation. As I stated, there is a committee amendment coming up that will become the bill and replace the green copy, and Senator Ebke will be introducing that amendment. It includes the provisions I described and the provisions of two bills by Senator Morfeld, also dealing with imprisonment and bonding in county jails as well. After that will be an amendment that I will offer, AM1082, that will alleviate the final cost concerns that the counties have, as well as protecting current existing programs in Douglas County. I would ask you for a green vote on LB259 and the following amendments. This is important opportunity to protect our citizens' constitutional rights, lower and eliminate the cost of some mandate on our counties, lower the cost that we have on our justice system while still providing the tools we need to protect public safety. With that, I would ask the body to support LB259, committee amendment AM933, and my amendment, AM1082. Thank you, Mr. President. [LB259 LB145 LB395 LB526]

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PRESIDENT FOLEY: Thank you, Senator Hansen. As the Clerk indicated, there are amendments from the Judiciary Committee. Senator Ebke, as Chair of the committee, you're recognized to open on the committee amendments, AM933. [LB259]

SENATOR EBKE: Thank you, Mr. President. LB259 and its accompanying committee amendment advanced from the Judiciary Committee on a vote of 7-1. AM933 is a white copy amendment that upon approval becomes the bill. AM933 is an omnibus amendment submitted to the committee for consideration by Senator Hansen. The amendment combines LB259, LB145, LB395 and LB526, all of which were approved by the Judiciary Committee. All four of the bills included in AM933 were introduced by Senators Hansen and Morfeld, and Senator Hansen has already detailed his bills. I believe Senator Morfeld is in the queue to talk about his bills as well. Almost all of the testimony at the public hearing on the bills included in Senator Hansen's package was in support of these bills. Those bills that had any opposition testimony have been amended to address the concerns expressed by the testifiers. Because the committee was satisfied that these concerns had been addressed, the committee advanced each of the bills and the comprehensive amendment in AM933 to the floor. And for these reasons, I would ask your green vote on AM933. [LB259 LB145 LB395 LB526]

PRESIDENT FOLEY: Mr. Clerk. [LB259]

CLERK: Mr. President, if I may, an announcement. The Health Committee will meet in Exec Session in 2022 at 9:45. Mr. President, Senator Hansen would move to amend the committee amendments with AM1082. (Legislative Journal page 1082.) [LB259]

PRESIDENT FOLEY: Senator Hansen, you're recognized to open on AM1082. [LB259]

SENATOR HANSEN: Thank you, Mr. President. Good morning, colleagues. This is the amendment I referred to in my opening. It strikes a couple of sections that were the final concerns of a possible expense upon the counties. I'm appreciative of NACO and the county officials who were working with me yesterday afternoon. Further, it also changes some language including on terms of organizations and persons and programs for the county board. That was a specific concern Douglas County had to make sure an existing program of theirs, their 24/7 program, would still be covered under this law, which was my intent and this amendment makes that clear. With that, I would ask the body to advance the bill and all the following amendments. Thank you, Mr. President. [LB259]

PRESIDENT FOLEY: Thank you, Senator Hansen. Debate is open on LB259 and the related amendments. Senator Morfeld. [LB259]



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SENATOR MORFELD: Thank you, Mr. President. Colleagues, as stated by Senator Ebke and Senator Hansen, there are components of two of my pieces of legislation in this legislation. They are significantly scaled back, though. And it was based on some opposition testimony and some concerns and so LB526, that allows for a section that makes it so that if you have a debt and there is a bench warrant that's issued, you cannot be arrested for that debt unless there is willful contempt, which is basically saying you did not respond to the court. You willfully are not complying. In some cases what we've seen, and the most egregious case was a single mother who was arrested in front of her children for a debt that was just over \$100 and she was not necessarily aware of that the debt, number one, existed. And so there must be a demonstration of willful contempt. This was a provision in the bill that was not controversial. There were three other provisions in the bill that were a little bit more controversial, and we took those out and did not include this in there. The other thing is LB395, we also watered that down significantly based on concerns from the county in terms of cost. And I believe Senator Hansen may have stated on the record that the counties are now in full support of this part of the amendment after we made the changes, but considering the ability of the defendant to pay fines as a factor, not the factor, but as a factor in whether or not they would be held in jail for a period of time. So it's only adding it as one of the many factors. There is other factors that can be taken into account. But this will make it so that nonviolent criminals who maybe just can't afford their fines but would pay them otherwise aren't held in prison for 30 or 60 days, costing the taxpayers a lot of money. But it's a factor, not the factor as it originally was in my legislation. If you have any questions about these provisions, I would encourage you to come up and talk to me off the mike or on the mike. Thank you. [LB259 LB526 LB395]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Seeing no further debate, Senator Hansen, you're recognized to close on AM1082. He waives close. The question before the body is the adoption of AM1082. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB259]

CLERK: 25 ayes, 4 nays, Mr. President, on the adoption of the amendment. [LB259]

PRESIDENT FOLEY: AM1082 is adopted. Senator Ebke, you're recognized to close on AM933. She waives close. The question before the body is the adoption of the committee amendments. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB259]

CLERK: 26 ayes, 3 nays, Mr. President, on the adoption of committee amendment. [LB259]

PRESIDENT FOLEY: The committee amendments are adopted. Senator Hansen, you're recognized to close on LB259. [LB259]

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SENATOR HANSEN: Thank you, Mr. President. I'll be brief. I'd just like to thank all my Judiciary Committee members and Senator Morfeld and all the stakeholders I mentioned in my introduction for coming in to support of this bill. I will say kind of when I was thinking about this bill, I was thinking about the two issues that are going to continue throughout my tenure, my first year in the Legislature. And there's two issues that are going to kind of perennial come up and have (inaudible) come up in my first three...two and a half years and four and that's been property taxes and that's been Corrections. This is my opportunity or my attempt to try and solve a little bit of both. I think this is going to have significant cost savings for some of our counties, my county included, Lancaster County, and presumably others, as well as trying to address some of the increasing growing at the county level that may or may not have been the result of some of the changes we've done in prior bills like LB605. With that, I'd ask the body to support LB259 as amended and continue to support through the next few rounds of debate. Thank you, Mr. President. [LB259]

PRESIDENT FOLEY: Thank you, Senator Hansen. Members, the question before the body is the advance of LB259 to E&R Initial. Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB259]

CLERK: 26 ayes, 4 nays, Mr. President. [LB259]

PRESIDENT FOLEY: LB259 advances. Moving on on the agenda, General File 2017 senator priority bill. Mr. Clerk. [LB259]

CLERK: Mr. President, LB268 is a bill by Senator Schumacher. (Read title.) Introduced on January 11, at that time referred to the Judiciary Committee. The bill was advanced to General File. There are Judiciary Committee amendments, Mr. President. (AM618, Legislative Journal page 699.) [LB268]

PRESIDENT FOLEY: Senator Schumacher, you're recognized to open on LB268. [LB268]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Never go to the races with Speaker Scheer or me because I think we were both betting that this would not come up today, much less come up before 10:00 in the morning. LB268, which I introduce today, is the finishing up of a project I started three years ago, and the project dealt with Medicaid recovery. When someone goes on Medicaid, essentially, the state begins to pay their bill for the nursing home. And this is what this is all about, the conflict between heirs who want to get their parents' money or property and the state who doesn't want to and shouldn't have to and won't have the money to pay the bills for nursing homes. Before three years ago, when we took the first step on this project, if you happened to go on Medicaid for your nursing home expenses and you had

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property, the state said that you owed the state money back at the time of death. There was a debt created. But the only way the state could collect that debt was if you had a probate estate, in other words, whether or not...whether you had property in your own name alone and a will or an absence of a will to pass that through the probate courts. Then the state could step in and make a claim against your estate to try to collect some of the money it advanced back. Well, the federal government realized in the early 2000s what was going on, and what was going on was estate planners, financial advisers, were telling people you can beat the system of Medicaid. What you do is you, in states that restrict it to the probate estate, put something in joint tenancies, life estate, payable on death CDs, and a whole bunch of different things, including revocable trust, and you can beat the system because the state has no way of going back on that kind of property if it's titled that way. And the federal government suggested that the states expand the definition of estate to include those other kinds of things, like joint tenants, payable on death, life estates, and things of that nature which are vehicles for the transfer of wealth to the next generation but which were avoiding the issue of paying the bill that was left behind. Two years ago the Legislature took a big step to blocking that loophole. It's hard to say how many millions that amounts to because nobody is keeping track of it, no way the Fiscal Office can estimate it, but we do know in other states it amounts to millions and millions of dollars. And what we did two years ago was expand the definition of estate to include the full range of things that the federal government says we can include in an estate. What that bill did not do, it did not itemize those things out so it was easy for practitioners to realize just how much we had expanded the definition of estate. Also, that bill did deal with trusts. When people were using revocable trust, it said before you distribute this trust to the heirs upon the death of the creator of the trust, you need to check with the Department of Health and Human Services to make sure there's no bill; and if there is a bill, you need to pay it before you distribute it. And there were some expedited lines in there that if an attorney, for example, or a trustee certified that there was no Medicaid, they could distribute it fairly quickly even without that notice going through. But the Department of Health and Human Services said that they would be able to respond fairly quickly, within a matter of a week or so. I think the statute said 60 days they had to, but they were able to do that. They ran into some issues with federal law of confidentiality and wanted to be real cautious, and so there were some issues created there. LB268 finishes the project. It spells out in detail so practitioners know what they're talking about all the things that we already included in the expanded estate. It also lies out when the piece of property or an interest is subject to a lien. It becomes subject to a lien when an application is filed for medical assistance if there is any retained interest in the property. And it spells out the rankings of the various...if there's a mortgage on it, how things are filed in the register of deeds. A lot of work went into this with the Bar Association, the bankers, the title association, in order to get the steps and procedures cleared up so everyone knew where they stand. It, in many ways, is a procedural bill rather than a substantive bill because the substance, in many ways, was taken care of three years ago when we passed what was then LB72. Essentially what the Legislature is being asked to do is complete the procedure on a very simple philosophical question. If you have money, it should first go to

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pay your bills at the nursing home and only after those bills are paid should it go to the heirs. It comes to grips with a very difficult problem in our society in that we are going to have a real hard time paying for our aging population of baby boomers. And more and more of them who did not save, who did not financially plan either through their fault or through the circumstances of life, are going to be looking to the state for that care. We need to make sure that only those who absolutely need that payment get care at the state expense. And if some of them get care, for whatever reason, whether it's an administrative follow-up or inadequate disclosure or some type of regulatory reason, when they pass away, the state can step in and get that property back. Now if you want to, you still can beat the system. Federal law says right now that if you give something outright to your kids, no strings attached, and set it out for five years, that that cannot be recaptured. And so this, of course, obeys the federal law and basically is prospective in nature in that things done before this are not affected by it but it puts a stop to what's going on. And what is going on is people are asking attorneys and financial advisers to help them come up with ways to get their wealth to their kids and the nursing home bill to the state. LB268 is kind of long but really the bulk of it lies between pages 19 and 31. The first part of it deals...has language dealing with register of deeds fees. In fact, we passed mirror language on to Final Reading this morning in a bill dealing with register of deeds fees. So a lot of the pages are redundant and also repetitive with minor things referring to various notices. I'll be happy in the course of the discussion to answer any questions regarding some of the details that have been worked out and some of the technical language and I ask for your support on LB268 so we can finish this particular project. Thank you, Mr. President. [LB268]

PRESIDENT FOLEY: Thank you, Senator Schumacher. (Visitors introduced.) As the Clerk indicated, there are amendments from the Judiciary Committee. Senator Ebke, as Chair of the committee, you're recognized to open on AM618. [LB268]

SENATOR EBKE: Thank you, Mr. President. AM618 is the committee amendment to LB268. The amendment first works to clarify language related to the specific types of assets meant to be subject to recovery. The language makes clear that securities, bank accounts, intellectual property rights, contractual or lease rights, and other similar types of assets are subject to Medicaid recovery. There were concerns from opponents expressed at hearing related to provisions in the bill that allowed the Department of Health and Human Services to determine the commercial reasonableness of lease terms or income. AM618 would allow for an appeal of the determination of commercial reasonableness to address those concerns. And finally, AM618 would clarify how a cause of action accrues for purposes of applying the statute of limitations. The bill, as amended, was advanced from Judiciary Committee on a vote of 7-0 with one not voting. For these reasons, I ask that you vote green on AM618 to LB268. [LB268]

PRESIDENT FOLEY: Thank you, Senator Ebke. Debate is now open on the bill and the amendment. Senator Hughes. [LB268]

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SENATOR HUGHES: Thank you, Mr. President. Would Senator Schumacher yield to some questions, please? [LB268]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB268]

SENATOR SCHUMACHER: Yes, I will. [LB268]

SENATOR HUGHES: Thank you. Last year or two years ago when you brought this bill, it did not pass and I was one of those that fought the bill. What changes have you made in this from the bill that was two years ago that could alleviate some of my fears about making sure that we are going after all of the assets that an individual may have? [LB268]

SENATOR SCHUMACHER: Senator Hughes, there were several changes made in this bill. I don't recall which ones you were arguing a couple of years ago. But, number one, and it's spelled out, doubly spelled out in the Judiciary Committee amendment, that makes it clear that every asset, not just land, not just houses, not just farms, every asset is subject to recovery if the person who passed away held any interest back or any control of it in any way, like they would if they had a payable on death certificate at the bank or had a joint tenancy savings account with the kids at the bank. That's number one. Number two, there were issues that when you filed a deed in the original thing from last year, you filed a separate piece of paper with the Department of Health and Human Services saying that you had filed one of these deeds to your heirs with a retained estate. There were some complaints that that was just too much paperwork. In reality, I don't think it was but I understood the issue. And so to simplify things, since everyone when they file a deed files a Form 521 which had most of that information on already, and I think you're familiar with 521 because you had a bill on mining rights or oil rights or something in which we exempted something, that particular form the register of deeds needs to send on to the Department of Health and Human Services for them to do with what they will in trying to put together a program in order to do that, so we took that paperwork out. Another thing, Department of Health and Human Services had a bit of a tummy ache over...they were to have a special notation on a death certificate of someone who owed money to them as a result of the having a Medicaid bill. They thought that would be too difficult to do, had some privacy issues. So this resolves that by just simply saying, look, on the death certificate simply say if there's a claim it will be...can be found at the local county courthouse in what they call a demand for notice in a probate proceeding, which the department routinely files now in many cases and is...can be filed electronically. So basically it tried to get over that objection so that an heir would know that if they were going out to cash out mom's CD at the bank, there would be ample notice on the death certificate that maybe they should check with the county court if there was a Medicaid claim that was due. In most cases the heirs will know anyway, but that's just to be doubly fair to people. So those, I think, are the principal changes. I think Bill Drafting maybe

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moved a paragraph around but didn't have any substantive change in it. I think those are most of the changes from the last version of this. [LB268]

SENATOR HUGHES: Okay, thank you. So a couple of...I want to get a little more into the weeds. On the...you said the death certificate is going to have a notification. [LB268]

PRESIDENT FOLEY: One minute. [LB268]

SENATOR HUGHES: But is there...who is the enforcement mechanism of this? Is there...is the county looking at that when there is a death notice or who is the enforcer in this for the state? [LB268]

SENATOR SCHUMACHER: The enforcement mechanism is as it is now, and that is Department of Health and Human Services. They've got the authority if they know they have a Medicaid bill on somebody and this instructs them to look at the debt when they get a reported death for a death certificate, to go check the records and if they see that there's a bill due them, that this person had an application in for Medicaid and was getting Medicaid, to file that demand for notice with the county and at that point they are aware, can check their data, these 521 forms that were sent in and if there is an asset out there that's available for recovery, to go recover it. [LB268]

SENATOR HUGHES: Okay. [LB268]

SENATOR SCHUMACHER: It should be a profitable operation. [LB268]

SENATOR HUGHES: Thank you, Senator Schumacher. Thank you, Mr. President. [LB268]

PRESIDENT FOLEY: Thank you, Senators Hughes and Schumacher. Speaker Scheer, you're recognized. [LB268]

SPEAKER SCHEER: Thank you, Mr. Lieutenant Governor. Colleagues, again you have proved me absolutely incorrect. I'm going to engage with Paul with some conversation. But so that everyone knows where we might be heading, it would...might be my opinion that we will probably dispense with this somewhere between 10:15 and 10:30. We will then move to LB661, I believe, is the next on tap. We will try to get an hour and a half in yet this morning. We will then move to LB622 at 1:30 through 3:30. We have introduction of retired senators at that point in time, so probably around 4:00 we will come back to LB661 and put the last hour and a half of our three-hour block in on that. So what I guess I'm trying to inform you during my time at the

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mike on LB268 is that we will not be here late night. We will be here probably till about 5:30-ish, somewhere in that, if all goes well and assuming that LB661 goes for three hours. So having said that, and having my own conversation with Paul because Paul was curious about what I was doing, Paul, does that answer some of the questions we had off the mike? [LB268 LB661 LB622]

SENATOR SCHUMACHER: Yes, it does. [LB268]

SPEAKER SCHEER: Paul, getting back to LB268, as we're going to talk about that for another 15 minutes or so, it has all to do with Medicaid reimbursement and so forth in relationship to assets. Is that correct? [LB268]

SENATOR SCHUMACHER: That is correct. [LB268]

SPEAKER SCHEER: How does it...a lot has been said in relationship to the Medicaid coverage in relationship to nursing home. But it would have a broader effect if you were on Medicaid and simply living on your own and having Medicaid coverage. Would it extend to the assets in relationship to just health and hospitalization and so forth? [LB268]

SENATOR SCHUMACHER: Basically it extends...it kicks in if you're 55 years of age or older and the great bulk of the things covered by it are the nursing home situation. [LB268]

SPEAKER SCHEER: Okay. But can you envision it going outside the extent of a nursing home bill that would be reimbursed to Medicaid? And go ahead and take some time. That's fine. [LB268]

SENATOR SCHUMACHER: Okay. There is first created, and this is under a law that's been around for a long time, a debt. And the debt is in this particular mechanism and the thing we passed a couple years ago, secured in various ways if you have any property. And: The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if: the recipient was fifty-five years of age or older at the time the medical assistance was provided; or the recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have been reasonably expected to be discharged and resume living at home. For purposes of this section, medical institution means...an intermediate care facility for persons with developmental disabilities, or an inpatient hospital. This debt arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any debt to the department that exists when the

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recipient dies shall be recovered only after the death of the recipient and the recipient's spouse, if any. [LB268]

PRESIDENT FOLEY: One minute. [LB268]

SENATOR SCHUMACHER: So it basically is any medical assistance given under those particular circumstances and that's existing law. That isn't changing. [LB268]

SPEAKER SCHEER: And that part is staying as the status quo that those type of expenditures would be eligible for reimbursement and none of what you're trying to accomplish in LB268 would change the scope of that part of the legislation or statutes, is that correct? [LB268]

SENATOR SCHUMACHER: That's correct. If you look at page 25 of the bill starting at line 20 and going through to the top of page 26, which is the areas that I just read you, what the debt has created...when a debt is created there is a no interlineation in any of that. That's existing law. [LB268]

SPEAKER SCHEER: Thank you, Senator Schumacher. And I especially thank you for taking the time over the interim to rework the bill and come up with a more palatable program, evidently, than what was presented last year. As I recall, it was actually on April Fool's Day that we were working on that, if my memory serves me correctly, so it's been about one year. So thank you, Mr. Lieutenant Governor. [LB268]

PRESIDENT FOLEY: Thank you, Mr. Speaker and Senator Schumacher. Senator Friesen, you're recognized. [LB268]

SENATOR FRIESEN: Thank you, Mr. Lieutenant Governor. Would Senator Schumacher yield to some questions? [LB268]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB268]

SENATOR SCHUMACHER: Yes, I will. [LB268]

SENATOR FRIESEN: So last year we ran into a few snags on this bill, looking back, and I know you've made quite a few improvements on it, so I just have a couple of questions, I guess, on some of the issues we had. And that dealt with different assets other than just real estate. So have you included other types of assets in that recovery? [LB268]



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SENATOR SCHUMACHER: Yes. The changes, to make it doubly clear to everyone, that it includes a lot of things that were in the expanded federal estate and...but part of the problem last year is it didn't spell them out and it led to the thought that maybe this was just targeted to a certain segment of the economy, which it is not. On page 19 of the bill and...this is what the language now says. The debt is secured or can be gone...these assets can be gone after, "all of his or her interest in any real estate, trust, corporation, limited liability company, or other entity, whether...direct or indirect, vested or contingent, or otherwise." The Judiciary Committee amendment then amplifies more on that even than what that did and it says: assets, including, but not limited to, any security, bank account, intellectual property right, contractual right or lease right. That would include, for example, interest in an insurance policy where the decedent may have purchased and had an interest, broad-ranging things that covers everything to get around and to address the issue and concern that this was just targeted at agricultural land. [LB268]

SENATOR FRIESEN: Okay. Thank you very much. And on current leases or those types of transactions when they judge them to be commercially reasonable, is there an appeal process if, for instance, they don't find that it's a commercially viable lease or whatever? Is there an appeal process outside of Health and Human Services? [LB268]

SENATOR SCHUMACHER: Yes, there is. In fact, to make that doubly clear also and clear up that line of confusion, the Judiciary Committee amendment specifically, in line 4, says the department's determination of commercial reasonableness may be appealed, and the appeal shall be in accordance with the Administrative Procedures Act. So they can go out beyond the Department of Health and Human Services. [LB268]

SENATOR FRIESEN: Thank you, Senator Schumacher. You know, we all want to make sure that we are not defrauding the Medicaid system. And so I look at this and I think he's made some substantial changes. So far from what I've heard I will be in support of this. I know some of these games are being played. There's attorneys that specialize in this. But in the end, I mean, I do strongly feel everybody needs to pay their way as long as they can and without trying to hide assets and give them away at the last minute, although I, you know, I don't know a lot of people that would do that. I mean, you have to do it so far ahead of time that you're willing to say I'm willing to live with nothing for those last five years. But in the end, I think it is a good effort. And if you're going to be on Medicaid, you better save your assets to make sure, make sure you've done it properly, and I do think it's probably a good approach. Thank you, Mr. Lieutenant Governor. [LB268]

PRESIDENT FOLEY: Thank you, Senators Friesen and Schumacher. Senator Pansing Brooks. [LB268]

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SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. I just have a few questions. I think that one of them...if Senator Schumacher would be willing to answer questions. [LB268]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB268]

SENATOR SCHUMACHER: Yes, I will. [LB268]

SENATOR PANSING BROOKS: Okay. I think you handled the objection of the lack of appealability--is that correct, was that what you were just talking about?--and that they can appeal, is that correct? [LB268]

SENATOR SCHUMACHER: That is correct, and that's made doubly clear in the Judiciary Committee amendment which specifically addresses that. It also...all of the rules and regulations of an administrative agency are appealable and rulings pursuant to the final rulings are appealable under the standard language of the Administrative Procedures Act. [LB268]

SENATOR PANSING BROOKS: Okay. And the...I think that the Department of Health and Human Services came in and asked about...felt that it wasn't...there wasn't language about commercial reasonableness. Can you speak to that a little bit? [LB268]

SENATOR SCHUMACHER: The commercial reasonableness is if you have property that you make a contractual relationship with or a lease with to make sure that you are not basically renting it for nothing and, thus, making it look like you have no income. And there are specific provisions in the bill regarding how they would calculate commercial reasonableness and the route of appeal that comes from that, and those would appear on page 20 just preceding that, and "the department may...promulgate rules and regulations" to amplify and clarify anything with regard to commercially reasonable. But the basic rule in the bill is that they be "commercially reasonable and consistent with income or lease terms derived in the relevant market area and negotiated at arms length between parties who are not related." [LB268]

SENATOR PANSING BROOKS: Okay. Thank you for pointing that out. The...I guess one of the things I'm interested in there, we know of people, of people in the state who will end up divorcing in their later lives because the one spouse is really sick and needs to go on Medicaid, and so they split their assets. Would this stop that? [LB268]

SENATOR SCHUMACHER: No, that's a very difficult situation, as you know, when you have a party who is really going to have an expensive illness or needs to be, with Alzheimer's or

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something, in a nursing home for a long period of time and the people try to divide up those assets to protect some of them. [LB268]

SENATOR PANSING BROOKS: Yes. [LB268]

SENATOR SCHUMACHER: Once they've divided those assets, it's...and unfortunately they do it in divorce court a lot of times. That's the only way they can. But once that's done, they're no longer a spouse and there's no crossover. [LB268]

SENATOR PANSING BROOKS: And so there isn't crossover on that. So at that point, I mean, because what was happening is that both entities had to spend their joint income down to \$4,000, isn't that correct? And so that's not what this is trying to... [LB268]

SENATOR SCHUMACHER: No. This... [LB268]

SENATOR PANSING BROOKS: ...impoverish both parties. [LB268]

SENATOR SCHUMACHER: This does not change any of the existing law on that. [LB268]

SENATOR PANSING BROOKS: Okay. Thank you. Thank you, Senator Schumacher. I was asked to ask some questions, and I think that's all I have right now, so Senator Scheer was trying to use up some time, so. Do you have anything else to say, Senator Schumacher? [LB268]

SENATOR SCHUMACHER: Maybe I should have answered your question slower. [LB268]

SENATOR PANSING BROOKS: It would have been a lot better if you had. [LB268]

SENATOR SCHUMACHER: Well, if you want to ask a slow question, I will try with a slow answer. [LB268]

SENATOR PANSING BROOKS: Could you answer in French? [LB268]

SENATOR SCHUMACHER: If I knew French, I could. [LB268]

SENATOR PANSING BROOKS: It would be really slow then if you don't know French. [LB268]

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PRESIDENT FOLEY: One minute. [LB268]

SENATOR PANSING BROOKS: Okay. Thank you, Mr. Lieutenant Governor. [LB268]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks and Senator Schumacher. Senator Clements. [LB268]

SENATOR CLEMENTS: Thank you, Mr. President. I have not had time to study this bill. Things went faster this morning than I expected, so I do have a few questions. Would Senator Schumacher... [LB268]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB268]

SENATOR SCHUMACHER: Yes, I will. [LB268]

SENATOR CLEMENTS: Thank you. I also understand that there has been some Medicaid abuse. I'm concerned about protecting some people, some of the people who are not really trying to commit fraud. The current law is a five-year exemption on transfer, is that correct? [LB268]

SENATOR SCHUMACHER: Five years on an absolute transfer and this does not change it. If there's no retained interest, no retained powers or controls, you give something to your kids and you're going to...you're parting with it absolutely and forever and in the case of an appreciated asset they get your original basis rather than a stepped-up basis that they would if inherited through debt. If they're willing to go through all that and they walk away from it, that's still the law. [LB268]

SENATOR CLEMENTS: But if they retain a life estate, then the five years does not change the transfer. [LB268]

SENATOR SCHUMACHER: If they retain a life estate and then go to the nursing home, that remainder interest is in the expanded estate just as if they had kept the property and willed the property to the kids. You can no longer, under this bill, use the gimmick of putting it in the life estate and then when all the state can get is maybe some rent off of it or something like that and then the kids walk away from it the minute you pass away and the state is left with the bill. [LB268]

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SENATOR CLEMENTS: Thank you. Another question, if a person had given \$10,000 to a child or a grandchild within the five-year period, is that going to be reclaimed, like a college expense gift? [LB268]

SENATOR SCHUMACHER: An absolute...I mean if they've given it, they need to disclose on a Medicaid application if they've made any gifts of any consequences before they get that, before they make such a gift. So if somebody had \$100,000 and ten grandkids and gave them each \$10,000 and then turned around a year later and applied for Medicaid, that should be disclosed already under existing law. What this does help is it gives some incentive for people to make sure that they disclose those things. And if it crosses the administrative level where the department is willing to or believe that it's worth chasing, they kick in at that particular point. [LB268]

SENATOR CLEMENTS: At what point is that disclosed? [LB268]

SENATOR SCHUMACHER: You need to make a disclosure of any gifts within the last five years and I don't think the point is... [LB268]

SENATOR CLEMENTS: Huh. At the point of applying for Medicaid benefits? [LB268]

SENATOR SCHUMACHER: Right, when you're applying, and they have, also, periodic reviews. And what this does provide, if you lie on any of that, then those assets can...they can...department can immediately cut you off and go after those assets. [LB268]

SENATOR CLEMENTS: Thank you. Another thing I was thinking about in our area, a widowed mother frequently leases farmland to her son at below the average rates. Would the difference in the lower rate of rent be reclaimed then and become a lien on mother's real estate? [LB268]

SENATOR SCHUMACHER: If the mother is not on Medicaid, no, it doesn't affect her at all. [LB268]

SENATOR CLEMENTS: But if she is, then it would be, could be. [LB268]

SENATOR SCHUMACHER: If she is, then the...the fruit of that tree belongs to mom, and that asset should be available at some point... [LB268]

PRESIDENT FOLEY: One minute. [LB268]

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SENATOR SCHUMACHER: ...for her to pay her bill rather than have her eat off of the fruit of the state and that fruit then go to the heirs. [LB268]

SENATOR CLEMENTS: All right. Thank you. I think it does create some extra questions for people, and I, at this point, don't believe I could support the bill, but I appreciate your efforts to do that. Thank you, Mr. President. [LB268]

PRESIDENT FOLEY: Thank you, Senator Clements and Senator Schumacher. Senator Williams. [LB268]

SENATOR WILLIAMS: Thank you, Mr. President, and good morning, colleagues. And again, a big thank-you to Senator Schumacher for taking on and addressing what has been a very difficult issue which we have faced in our state and, having had some experience in this, an issue that is compromising the ethics of many of our practitioners that are dealing with people in these issues. I can't tell you how many times I have had people sitting in my office over the years who have faced a situation with mom or dad or grandpa that they're going to need to be put into the home, and of course the home costs a lot of money, and they want to find a way that, now that they are in this situation, to not jeopardize their future inheritance so they look for ways to avoid that by transferring property. In fact, one of my really good friends, who is a lawyer in our area, and I have talked about this numerous times, about the ethical dilemma that he is in because he doesn't believe it is correct that people who have wealth transfer their property with the sole intention of qualifying for assistance rather than using their own assets, yet he feels bound by his legal responsibilities that if they come in his office he tells them how they can do it and make it work. And what we see happen, time after time, is they do carry through on those plans. I think all too often we think this is being done by what I will call the wealthy people, the rich farmer. And what I will tell you from experience is that is the least likely area that gets used. Where we have seen it happen, more often than not, is with the average-wealth people or even the lower-end people that want to save mom's home, want to save that quarter of land that's always been in the family, and not have that used to pay for mom's expenses at the nursing home. So I applaud Senator Schumacher's attempt here and do support both the Judiciary amendment and the underlying bill for those reasons. Is it perfect? Have we caught everything the way we should be? I suspect not necessarily, but I think it's a real attempt and a step the right direction. I've been asked the question, does this stand in the way of doing normal estate planning? And the answer is no. I think the practitioners that are complaining sometimes about this can adapt very easily to these are the rules and how it's going to work. So I think we look here. I've heard it said many times that we have solutions for problems that don't exist. Believe me, this problem exists. And as wealth continues to grow, it continues to be an issue for us long term. So with that, I would suggest we move forward. I appreciate, again, Senator Schumacher and his efforts on this, and I will support both the amendment and the underlying bill. Thank you, Mr. President. [LB268]

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PRESIDENT FOLEY: Thank you, Senator Williams. Senator Hilkemann. [LB268]

SENATOR HILKEMANN: Thank you, Mr. President. I'd like to ask if Senator Schumacher would yield to several questions. [LB268]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB268]

SENATOR SCHUMACHER: Yes, I will. [LB268]

SENATOR HILKEMANN: I've got...just recently went through this with my mother. Now my mother was not on Medicaid. We were very fortunate about that. But this whole thing, this discussion now, where does the five years come in? Is that a state or is that federal? [LB268]

SENATOR SCHUMACHER: That's federal. [LB268]

SENATOR HILKEMANN: Okay. My mother, bless her heart, in about 2001 went to the funeral home, planned her whole funeral service out and selected her casket, her vault, the whole thing, and then she bought insurance for that to cover all of that, or paid into a policy. And over the years--I don't know why--she put in quite a bit more than what she even put in for her...what it was going to cost at that time into that insurance plan. I'm curious. It grew. What would have happened in this situation if she had been on Medicaid? That additional amount that she had, is that money that the state could have come after on Medicaid if she had...if over the course of the time she had gone onto Medicaid? Let me repeat the question again. The question I had was is that my mother bought one of these insurance plans at the funeral home that's to cover her expenses and so forth and that grew quite a bit from the point when she put it in at 2001. Would that...if my mother in the point when she went from 2001 until she died several months ago, if she had been on Medicaid, would that growth that she had in that particular policy, would that have been something that Medicaid could have gone for if, indeed, she had gone onto Medicaid in that period of time? [LB268]

SENATOR SCHUMACHER: I think in here we have a line, and I'm looking for it. If I had a computer, I'd search it for the word "burial." We exempted some burial, those burial trusts. But if she had put \$100,000 in there and it was a substantial amount of money and not covered by a burial trust--I'm pretty sure we got that exemption in there--then, yes, I mean, it's an asset of hers. [LB268]

SENATOR HILKEMANN: Okay, and...but now, interestingly enough, that money could then...we found out that the additional of it, because even though there had been some

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acceleration in the cost from when she arranged it in '01, there was still some money left over that could have been distribute...that was actually distributed. Is there any...is that the type of thing that we would not have available for...in other words, she had money for her...for lunch for the people after, dinner, all those sort of things were...or after the service. Is that the sort of thing that this policy...that this may affect? [LB268]

SENATOR SCHUMACHER: No, that...a burial expense is not something that they would pursue. [LB268]

SENATOR HILKEMANN: Okay. I think...I appreciate you. I know we talked about this the last time that this was brought up. I appreciate you bringing this. I think this is an issue that we definitely have to look at. In the latter times with my mother, again I say we were very fortunate she never had to...that was never a consideration that we needed to make. But when I would talk to these nursing homes, many of them in the home within the city that she was in, 70 percent of the people on those...in those nursing homes are on Medicaid and I often wonder how many times the people have drained those resources out so that they can get them on to the Medicaid program. So thank you for bringing us. I know this is a tough issue but I think it's...as our aging society continues, that we definitely need to look at that. So thank you, Senator Schumacher. [LB268]

PRESIDENT FOLEY: Thank you, Senators Hilkemann and Schumacher. Senator Riepe. Senator Riepe, you're recognized. [LB268]

SENATOR RIEPE: Mr. President, colleagues, thank you very much. First I want to applaud Senator Schumacher for his leadership and his courage, and this is a very sensitive subject for many people. I speak in support of LB268. I cannot support healthcare reform without assurance of the integrity of full disclosure of assets regarding Medicaid eligibility. We are taught to purchase insurance for the losses we cannot afford and certainly if there's a large estate then I can only suggest that people consider long-term care insurance to protect that major loss. That's all that I have to say. I would yield the balance of my time to Senator Schumacher. [LB268]

PRESIDENT FOLEY: Thank you, Senator Riepe. Senator Schumacher, 4:00 if you care to use it. [LB268]

SENATOR SCHUMACHER: What I'm trying to ascertain, Mr. President, is whether or not adequate time has been had for us to move on to the next bill. And I would, if we want to move on to the next bill, and the indication is we do, I would...could I use this to close? [LB268]



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PRESIDENT FOLEY: We still have one other senator in the queue, Senator Schumacher. [LB268]

SENATOR SCHUMACHER: Oh. Then I'll address that at closing then. [LB268]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Clements. [LB268]

SENATOR CLEMENTS: Thank you, Mr. President. Would Senator Schumacher yield? [LB268]

PRESIDENT FOLEY: Senator Schumacher, would you yield, please? [LB268]

SENATOR SCHUMACHER: Yes, I will. [LB268]

SENATOR CLEMENTS: I had one more question that I hadn't got to. As a lender I would be concerned about a lender getting a mortgage on real estate and then a Medicaid lien coming up on file that would supersede that mortgage. Is there language that would protect a lender who did not have notice prior? [LB268]

SENATOR SCHUMACHER: Senator, there is language and language and language because Bob Hallstrom was very, very, very much involved in the drafting of this and there is no stone unturned that would put a banker in jeopardy. There is...this was worked out very carefully and to create...assure that bankers would be protected and got notice. [LB268]

SENATOR CLEMENTS: Thank you very much. I do...I also have been an insurance agent trying to sell long-term care coverage to people. It's been a difficult sell but I think it is important. I would encourage people to do that, especially now that it's going to be more difficult to hide assets. And I think there has been Medicaid abuse and, hearing these responses, I will support LB268. Thank you, Mr. President. [LB268]

PRESIDENT FOLEY: Thank you, Senators Clements and Schumacher. Senator McCollister. [LB268]

SENATOR MCCOLLISTER: Thank you, Mr. Lieutenant Governor. Good morning, colleagues. I certainly endorse and support AM618 and LB268. In fact, the Medicaid...Medicare and Medicaid services would indicate that the kinds of activities that Senator Schumacher is doing is helping the overall fund. Let me read this if I will: The Medicare Trustees today projected that the trust fund that financial services Medicaid hospital insurance coverage will remain solvent

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until 2030, four years beyond what was projected in last year's report. Due in part to cost controls implemented in the Affordable Care Act, per capita spending is projected to continue to grow slower than the overall economy for several years. A number of factors have contributed to the overall improved outlook, including lower-than-expected spending in 2013, and lower projected utilization in the types of healthcare needed by Medicare patients. Medicare spending on beneficiary has grown slowly over the last few years and projected to continue more slowly in the next few. Thank you, Mr. President. [LB268]

PRESIDENT FOLEY: Thank you, Senator McCollister. Senator Ebke, you're recognized to close on the Judiciary Committee amendments. She waives closing. The question before the body is the adoption of the committee amendments, AM618. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, Mr. Clerk. [LB268]

CLERK: 29 ayes, 0 nays on adoption of committee amendments. [LB268]

PRESIDENT FOLEY: Committee amendments are adopted. Returning to the bill, Senator Schumacher, you're recognized to close on LB268. [LB268]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Like to thank Senator Clements. He found for me the paragraph of the bill that cites to the preneed burial issue and it's on page 28 at line 8. Senator Williams pointed out a big reason for this bill. The first reason, of course, was that we conserve our Medicaid dollars and we prevent Medicaid fraud. The second reason was an ethical one. And the legal profession has struggled with this for some time, particularly in rural areas where there's few lawyers and a lawyer will work with a family for a long period of time trying to do a decent and ethical job, and then somebody will drift through in some estate planning seminar or get a free lunch and listen to this, that, or the other thing at the local restaurant and tell people that, gee, there's ways you can beat the system. And people naturally like the idea of listening to those folks and wondering if it works. And they show up at the local attorney's office and they say, hey, I understand that there's a way that I can put my property in the kid's name and if I need to go to the nursing home I can go to the nursing home and that I don't have to completely, outright give it in order to beat the system, can you help me do this? And, attorneys being attorneys and not priests, are obligated to say, yeah, I mean, there are ways, whether you want to do it or not is up to your conscience but here's how you can do it. And if the attorney says, no, I won't help you with that, I won't perform that procedure, then they say, well, we understand that Mr. X in the next town will, and that always makes life difficult to lose a good client and a stream of income over those kind of conflicts. So I thank Senator Williams for raising that issue. This goes a long way in solving it. I would suspect that during the course of, those of you who are in the freshman class, of being here you will probably revisit in some form or the other this particular issue. Attorneys, these estate planning--

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even there's a thing called Medicaid estate planners now, you can do that, look that up on the Internet and get a list of them--they will find ways to work around some of the intricacies of this bill and so this will be an ongoing issue even though this particular bill solves a great deal of it and lays a solid foundation from which we can work in the future. I thank you for your attentiveness this morning and your...for your support and would encourage you to vote green on LB268. Thank you very much. [LB268]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Members, you've heard the debate on LB268. The question before the body is the advance of the bill to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please, Mr. Clerk. [LB268]

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB268. [LB268]

PRESIDENT FOLEY: LB268 advances. Next bill, Mr. Clerk. [LB268]

CLERK: Mr. President, LB661. It was a bill originally introduced by Senator Kuehn. (Read title.) The bill was introduced on January 18 of this year, at that time referred to the Government Committee. The bill was advanced to General File. I have no committee amendments. I do have other amendments pending, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Kuehn, you're recognized to open on LB661. [LB661]

SENATOR KUEHN: Thank you, Mr. President. Good morning, colleagues. Today, I come before you and present an issue which is going to have some complexity. We know we're going to have some extended debate and discussion about an issue surrounding LB661, which creates a new section in Public Records Law, making the identity of any person or entity that manufactures, supplies, compounds, or prescribes the substances, medical supplies, or medical equipment utilized to perform a lethal injection, confidential. Known as a shield law, the law protects individuals involved in the manufacturing of drugs used in lethal injections from public activism, harassments, and threats. The integrity of the drugs and the transparency of the execution process as maintained, as the identity of the drug and the laboratory analysis of the drug are still publicly available for analysis and scrutiny. Only the identity of the individual or the entity remains confidential. I want to be clear at the beginning of today's discussion that LB661 is written specifically only to address public records statutes found in Section 84-712. It does not affect the judicial application, sentencing, or court processes regarding the death penalty. It does not alter or amend criminal code. It does not change the duties or responsibilities of the state. It simply addresses public disclosure. Last November the people of Nebraska spoke

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overwhelmingly when they passed Referendum 426 which preserved the death penalty as a punishment for the most heinous of crimes. Following the Referendum position that successfully gathered over 143,000 signatures in 90 days, 61 percent of all voters and a majority of voters in 92 of 93 Nebraska counties voted to reverse the 2015 legislative repeal of the death penalty. A frequent claim among death penalty opponents is that the system for carrying out the death penalty is broken beyond repair. It is now the responsibility of elected officials and state agencies to act in accordance with the will of the people and Nebraska law and to fix the functional problems with the death penalty. One of the most significant impediments to a functional system of capital punishment in Nebraska is the inability to acquire the anesthetic drugs administered to produce unconsciousness during lethal injection. The drugs are commercially unavailable as a result of political activism by death penalty opponents and the public harassment of companies and individuals that manufacture the drug. Due to these shortages, many states have had to turn to specialized compounding pharmacies to formulate individual drug doses on an as-needed basis. In several cases those compounding pharmacies have ceased production due to harassment when their identities were disclosed. Some states, like Nebraska, have unsuccessfully attempted to import anesthetics from international sources. I do want to take a moment to the body and to the public to explain the very real human cost of the activism against those who produce drugs that are used in lethal injection. Death penalty opponents have successfully eliminated sodium thiopental, an anesthetic induction agent routinely used in lethal injection from sale in the U.S. market in order to prevent its use in lethal injection and to protect the lives of convicted death row inmates. Sodium thiopental is a safe, effective, and FDA approved anesthetic agent. A mainstay of anesthesia that's actually listed on the world health organization list of essential medications. Throughout developing regions of the world, its affordability, stability, and safety make it the only viable option for safe anesthesia. Protests led the last U.S. manufacturer of sodium thiopental, Hospira to cease production in 2011. Sandoz, a subsidiary of Novartis, manufactures the drug in Europe but the company has banned its import into the United States to prevent its use in lethal injection due to activist protest and the actions of European government. The unavailability of sodium thiopental in the United States has prompted the American Society of Anesthesiologists to appeal to the FDA to aid in the importation of sodium thiopental citing, quote, a dangerous reduction in the availability of anesthesia induction medications, and that, quote, the safety of American patients is now in jeopardy. The anesthesiologist stated, quote, it is an unfortunate irony that many more lives will be lost or put in jeopardy as a result of not having the drug available for its legitimate medical use, unquote. The list of affective anesthesia induction agents is relatively small, and as the course of the day goes on, we will talk about some of those anaesthetic induction agents and what they actually mean and the potential that this kind of activism has to threaten the further safety as patients throughout the world. What I will state at the onset is I cannot overstate the absurdity or the magnitude of the social injustice created by an anesthetic shortage manufactured by those who wish to protect convicted death row inmates in exchange for vulnerable lives around the world who are in need of safe, effective, and approved medical care. Sodium thiopental is just the beginning. As states utilize lethal injection and

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implement alternative protocols using different drugs, it has already emerged as a very strong reality that activism and harassment could lead to shortages and the removal of the market of midazolam, propofol, and other safe and approved anesthetic aid and sedative agents. Missouri has already withdrawn its plan to utilize propofol as the manufacturer threatened to stop selling the drug in the United States under pressure from European governments. Fifty million doses of propofol are used safely in the United States each year. I'm going to reiterate. Needed and appropriate medical anesthetics are not available due to the disclosure and harassment of producers of these drugs. Of the 31 states that currently have lethal injection as a method of execution, 15 have a shield law to protect individuals involved in the manufacture of drugs used in executions from harassment and threats from the public. The United States Supreme Court has said that since execution by lethal injection is legal, states must be allowed some manner to carry out an execution. Disclosing the identify of suppliers subjects them to risk of harm, violence, economic and social harassment, and would prevent the state from obtaining lethal chemicals needed to perform our state obligations. The Georgia State Supreme Court in validating the Georgia shield law, stated its case most effectively. Quote, the reasons for offering such privacy are obvious including avoiding the risk of harassment or some other form of retaliation from persons related to the prisoners or from others in the community who might disapprove of the execution, as well as simply offering those willing to participate whatever comfort or peace of mind an anonymity may offer. Although the identity of the executioner who actually inflicts death upon the prisoner is the most obvious party in need of protection, we believe the same logic applies to the persons and entities involved in making the preparations for the execution, including those involved in procuring execution drugs. Second, without the confidentiality offered to execution participants by statute, as record and case law shows, there is a significant risk that persons and entities necessary to the execution would become unwilling to participate, end quote. I remain steadfast in my advocacy of transparency in government, especially with regard to the votes and actions of public officials. Private citizens, however, have a right to protection from undue harassments and threats in carrying out their jobs as private citizens. Pharmacists and other private citizens involved in the process have not voluntarily pursued public office. They're practicing their professions, engaging in their private businesses. Additionally, Nebraska state law has identified a number of privacy positions in Public Records Law to protect private citizens and companies in their interactions with state government. These include the constituents who correspond with our legislative offices, companies that receive tax incentives and payouts from the state, companies that receive state dollars through Nebraska Innovation Campus with the University of Nebraska, as well as trade and proprietary information. If we can aggregate company data to protect the identity of companies receiving tax breaks to prevent a competitive disadvantage, it is reasonable to protect the identity of private professionals... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

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SENATOR KUEHN: ...doing their jobs. Through the course of the day we will talk about other states' shield laws and some of the additional issues surrounding the drugs at question. But as the body considers LB661, there exists one fundamental issue, the compelling interest to know the identity of the individual who supplies the drug provided in a lethal injection and the consequences of that knowledge. If all other information including the drug, its composition and its analysis can be provided to the defense and to the public to provide oversight and scrutiny and the integrity of the compound and process, what value is the name? The identity provides no material value to the defense or to the public and certainly does not justify harassment, retaliation of a private citizen. Thank you, colleagues, and I look forward to and appreciate a respectful discussion and conversation over the next several hours. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. (Visitors introduced.) Mr. Clerk. [LB661]

CLERK: Mr. President, the first motion I have, Senator Chambers, I had Motion 20 that involved a rereference, but I understand you wish to withdraw that at this time, Senator. [LB661]

SENATOR CHAMBERS: Correct. [LB661]

PRESIDENT FOLEY: Motion is withdrawn. [LB661]

CLERK: Mr. President, then I have a series of amendments. The first, Senator Chambers would offer AM876. Senator, I have a note that you wish to withdraw AM876 and offer as a substitute, AM918. [LB661]

SENATOR CHAMBERS: Yes. [LB661]

PRESIDENT FOLEY: Without objection, the substitution is made. [LB661]

CLERK: Senator Chambers, AM918. (Legislative Journal page 919.) [LB661]

PRESIDENT FOLEY: Senator Chambers, you're recognized to open on AM918. [LB661]

SENATOR CHAMBERS: Thank you. Members of the Legislature, this bill before us allows us to go into a lot of different issues in a lot of different directions. My intent today is not to argue the invalidity of the death penalty and all of those related issues. I offered a bill to abolish the death penalty, which would have allowed for that discussion. This, however, relates to transparency, openness in government, and whether the public has a right to know how money

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that taxpayers provide is spent, to whom it is given. And especially is this area fraught with concerns because the Governor, the Attorney General, and the Director of Corrections collaborated to give \$54,000 of taxpayers' money to a known rogue drug dealer in India who had stiffed Nebraska on previous occasions with reference to trying to procure these drugs. The death penalty has shown itself to be a corrupting, demoralizing activity. And when, in order to try to get the means to carry it out, there are public and elected officials--the reason I say public, the Director of Corrections is not elected, but he can be considered a public official--are reduced to coming here and telling the senators to completely abrogate the principle of the open meetings law. Courts have stated that when it comes to the expenditure of public money, open meeting requests...I meant open records requests should be interpreted very broadly and liberally because the public has a right to know how that money is spent. So let me get right down to an amendment that I'm offering. It may sound facetious, but I assure you these amendments I'm offering, each one is as serious as a heart attack. They are based on past inappropriate, unethical action by elected officials, including the Governor and the Attorney General. This is the amendment: "Despite knowing that the federal Food and Drug Administration had placed a total and absolute ban on the importation of sodium thiopental for any purpose," those purposes related to use as envisioned by those who want to use it in executions, some purposes related to research may still be open, "the Governor, Attorney General, and Director of Correctional Services labored for months trying to arrange through an unscrupulous, disreputable drug dealer in India the unlawful importation of the illegal drug for use in judicial executions, by means of lethal injection which was developed by the Nazis." And the Nazis developed it in their extermination camps along with other activities that are similarly nefarious in nature. So I guess those who are for lethal injection would argue that the Nazis were not all bad. Continuing with the amendment, "If the Governor, Attorney General, and Director of Correctional Services deem it necessary or advisable to again pursue such a course, it is essential public knowledge of such clandestine action be thwarted at all costs." This bill that Senator Kuehn brought is designed to deprive the public of information it ought to have about how its government is carrying out the most solemn, the most consequential act that a government can perform. We're not talking about warfare, where there is a recognized enemy trying to destroy the country. We're talking about a ceremonial destruction of the life of a citizen or a resident of this country. And when that is done, it should be done in broad daylight. All aspects of it should be known by the public. I could take the full six hours on this myself, but I'm aware that other people will have comments to make. So I'm going to speak in measured tones, and there will be opportunities for a good amount of information to be placed on the record. But I have here a column that was written and it was published in the World-Herald December 19 of 2016. It was written by John Bender, and its headline: "Secrecy has no role in executions." The writer, a former reporter and editor in Kansas, is a journalism professor at the University of Nebraska-Lincoln. I will get finished as much of it as I can, and the next time I'm recognized, if I don't complete it, I definitely want this into the record. "Nebraska Governor Pete Ricketts wants to throw a blanket of secrecy over lethal injection. What a Missouri thing to do! Missouri has dealt with problems in its executions not by

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fixing the problems but by hiding them from the public. Ricketts wants to emulate that strategy. But the Missouri approach fosters only government incompetence. The proposed changes to Nebraska executions would hide the identities of those who provide the drugs used to kill inmates sentenced to death. Inmates wouldn't know the names of the drugs that would be used until 60 days before the state sought an execution warrant. Nor would inmates know the quantities of the drugs to be used or the order in which they would be administered. And it is possible that the drugs used to execute one criminal would be different from those used in previous or subsequent executions. Nebraska contends the secrecy would protect suppliers. Major pharmaceutical companies, foreign and domestic, oppose having their products used to kill people. So states have turned to small, compounding pharmacies that make drugs to order. These companies also fear the bad publicity that would accompany the use of their products in executions. So what's wrong with that? One problem is that compounding pharmacies lack the close regulation the federal government applies to major pharmaceutical manufacturers. The task of overseeing compounding pharmacies falls on the states, and the stringency of the regulations and their enforcement varies greatly from state to state. This means the quality and efficacy of the drugs produced by compounding pharmacies can vary, as well. When Oklahoma executed Clayton Lockett in 2014, it used a version of midazolam, an anesthetic and anti-anxiety drug." The drug had been purchased from a compounding pharmacy. "Lockett's execution took 27 minutes, during which he appeared to suffer greatly. The execution was so horrific that Oklahoma halted further executions. The same drug was used in executions in Ohio in 2014 and Alabama this year in which the condemned prisoners apparently suffered. Botched executions are not the only problem arising from secrecy. It also allows cronyism, corruption and simple mismanagement to flourish. Nebraska has already witnessed mismanagement. The state paid \$54,400 to Harris Pharma of India for two of the drugs used in the current three-drug protocol for executions. But the U.S. Food and Drug Administration had already prohibited importation of the drugs. Nebraska never got the drugs, and Harris kept the money. If the state can withhold the names of the suppliers of its execution drugs, the public won't know whether the suppliers are chosen on the basis of their competence or on some other basis, such as the size of their campaign contributions to state politicians. Although Ricketts insists the state has the legal authority to keep the identities of the drug suppliers secret, it seems contrary to the state's open records law." And that's what Senator Kuehn is trying to deal with today. "And because the information relates..." [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR CHAMBERS: "...to the expenditure of public money, it seems to violate the provision of the open records law calling for a broad interpretation of the right of the public to learn about how government handles its money." I will complete this the next time I speak. But there is far more involved here than simply protecting the identity. The Governor has made it almost a crusade to kill the people on death row, even by trying to obtain drugs through an illegal



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act and the inappropriate expenditure of public money without a written contract, without any means to recover the money should the drugs not be delivered, and to prevent the miscreant who stole the money from getting away. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Debate is now open on LB661. Senator Hughes. [LB661]

SENATOR HUGHES: Thank you, Mr. President. Good morning, colleagues. I was one who carried a petition to get this issue back on the ballot and during that process, the pledge that I made to those that I talked to was that the law was not broken, the process was broken. And if indeed the voters of the state of Nebraska gave us this law back, I would do whatever I could to fix the process. What we're dealing with is a roadblock that has been put up by anti-death penalty individuals, and I'm not faulting them for that at all. We use the tools that we have at hand. But realistically, the voters of the state of Nebraska have spoken very loudly and very clearly that they want the death penalty utilized within the state. This is one of the steps that we need to take in order to fix the process. There are lots of different arguments on both sides of this issue. This was one of the hardest issues I had to contend with my first year in the Legislature. It was much more difficult to have the conversation on the floor about why I supported the death penalty. I've learned a lot, but my resolve has not changed. The death penalty is something that the state of Nebraska needs to have and we need to have the ability to carry it out. And I'll remind you that this is only for the most heinous of criminals. There are several individuals who have committed murder in the state of Nebraska, but there are very, very few that have been sentenced to death. And it is reserved for the most heinous of crimes that have been committed against our citizens. While I was carrying the petition, I had some interesting conversations with individuals on whether or not they supported the death penalty in the state of Nebraska. And there is no template that you can put on our fellow citizens in predicting how they would vote on this issue. It went across man, woman, rich, poor, conservative, liberal, progressive, you know, Libertarian, whatever label you wanted to put on someone, there was no way of telling how they were going to respond to my question when I asked them, would you be willing to sign a petition to allow the voters of the state of Nebraska to put the death penalty back on the ballot? It was very fascinating to me as someone who likes to study personalities and politics and issues, of how diverse the state of Nebraska is when it comes to this issue. One other thing that I want to make sure people understand and if those of you who are watching on TV, term limits is something that comes into play on this issue. Looking at the board and I think I counted right, there are 13 senators in this body who have no accountability to the voters. They are term limited out. Rightly or wrongly, those are the laws we have to live by. There is nothing that you can do to apply pressure to those 13 individuals to change their vote on any issue. Term limits is a bad thing. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

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SENATOR HUGHES: We're seeing that in this Legislature. I'm part of the rookies here. I've only got two and a half years of experience and I'm making life and death decisions. We need longer term limits. I think three, four-year terms would be great. I don't know who would want to serve more than that, but we need more institutional knowledge within this body. To the voters of the state of Nebraska, this is another issue that we need to tackle. But back at hand, I do support the death penalty. I think we need to have the tools to carry it out. For me personally, I don't care if we use drugs, what method we use. It should only be quick. It doesn't necessarily have to be painless, but it should be quick. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Hughes. Senator Halloran. [LB661]

SENATOR HALLORAN: Thank you, Mr. President. I yield the rest or the balance of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Halloran. Senator Kuehn, 5:00. [LB661]

SENATOR KUEHN: Thank you, Mr. President. Thank you, Senator Halloran, I appreciate that. I want to talk about a lot of things today and some of it is going to be to educate Nebraskans and the body about the issue around drugs and also to educate you about the drugs themselves. And from the outset I do want to say, one of the reasons that motivated me to investigate this issue in shield laws was precisely the issue that Senator Chambers referenced and that is that without a domestic supply, without an approved domestic manufacturer who is willing to make these drugs under U.S. standards, the state turns to less than optimal--to be understated--options such as what happened overseas. I want to be clear that I do not condone that type of activity, but I do want to be clear and help the body and Nebraskans understand exactly what it means when we talk about FDA importation restrictions and to a degree, demystify some of these drugs. I have used sodium thiopental. I have used it a lot. I was trained to use anesthesia using sodium thiopental. I was trained and I have used and I am licensed and registered with the DEA to use a lot of the drugs that are frequently talked about. Phenobarbital, midazolam, some of you know as Versed. Most of you, if you had an outpatient procedure at your dentist's office or a colonoscopy, have probably been administered midazolam, Versed. Most of you who had a surgical procedure prior to 2005 probably had general anesthesia induced with sodium thiopental. I have also, although to animals in my role as a veterinarian, administered the cocktail of drugs that is used in a lethal injection. I have administered Phenobarbital, I have followed it with pancuronium bromide to induce paralysis and I have followed it with a lethal dose of an electrolyte or a compound called phenytoin to stop the heart. When I left my home in Heartwell this morning, locked in my drug safe is Phenobarbital--legal, licensed, safe and effective. So the question then becomes, why do we have this mystery? Why do we have all of this controversy around drugs that have been the mainstay of anesthesia for decades? Why when lethal injection was first put in place in 1982 by

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Oklahoma, did it take 30 years before there was widespread protests against the use and administration of sodium thiopental? And what are the very real consequences of that activism, because anyone who has taken an Ethics 101 class knows that when you make ethical decisions, there is no black and white, and there's no easy answer and there is a series of trade-offs. And in this case, there is a very real trade-off and it is that trade-off, colleagues, which has brought me to this issue and why I believe we must take steps to ensure domestic, safe supplies of anesthetic agents. Do the ends, that is removing safe, effective anesthetic agents from domestic markets that are needed for anesthesia, do they...are they justified by the means? To ensure, to inhibit, to harass, to prevent companies from... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: ...being willing to produce these medications, is it worth the cost? When we weigh the value of that public record, what is the greater cost? A name that serves no material value to the defense or the convicted and condemned at the cost of millions of doses of safe anesthesia, or ensuring that we can continue to have a cycle which cripples the system which many states, including Nebraska, have statutorily defined that they have a right to carry out? That is a fundamental issue we need to grapple with as this body. It's not an easy one and it's not straightforward. These are medications, they have been safe, they have been approved. I'm going to be sharing with you a letter from the American Society of Anaesthesiologists... [LB661]

PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR KUEHN: Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. (Visitors introduced.) Continuing debate. Senator Pansing Brooks. [LB661]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. Before I start speaking about this, I want to say that in one of our Judiciary hearings, we had a relative of somebody who had been murdered come and say that we were heartless and weren't caring about the victims or their relatives. And I just want to clarify for the record that that is not the intention of anybody in this body. We understand the seriousness of a murder and the loss of life and the loss of that family member to their family. And I just want to first state that that discussion is different from the discussion that we're having here. And again, I want to point out that we do care significantly for those who are hurt so much by those murders. But on the other hand, that doesn't help us to deal with the fact that some of us don't believe in putting people...or subjecting people to state-sponsored killing. And that one killing doesn't mean that the state gets to automatically kill

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somebody else. So when we're talking about this, you have to look at it, unfortunately, in silos of what we're talking about. We have great compassion for those who are victims, but we must also look forward and say as a state, what is appropriate for us? And I would say that having this secrecy and a lack of transparency, it's so disingenuous when I hear people saying that that's...oh, we need to go forward because that's how to make sure that we can really kill people as a state. Then, meanwhile, you go on and see what's going on in other states. There were at least three botched executions in Ohio, Arkansas, Oklahoma. It raised everyone's concern and heightened our alarm and disgust of state executions and the certainty and determination that we need to be watching carefully what our state is doing. So now to suggest a veil of secrecy over state executions, it's just...it's mind-boggling. Yes, the people spoke. They voted to go ahead and reinstate the death penalty. But I never saw a word on that form that anybody was voting to keep it all secret or keep any part of it secret so that the state can just move forward and do it at will, when, and if and however it wants to, because those are the next steps, my friends. If you're saying oh, no, we're just going to keep the drugs secret, but the rest of it's all transparent, that's bogus. The next step is all the rest of the parts. Now we don't want somebody watching because if it gets messed up, then it makes people upset. The idea that we are...that the state can take a life, that's the most powerful thing that a state can do, take somebody's life. And now we're talking about putting it into...under this veil of secrecy. You know, here's all the people in this body talk about transparency and governmental accountability. Boy, we're just going to throw it right out the window when we're talking about a human life. And yes, it's a guilty human life, but still, it is a human life. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR PANSING BROOKS: But if it were enforced...that this law were enforced in 2015, we wouldn't have known that Chris Harris of Harris Pharma had stolen \$54,000 from our state. Taxpayer money, \$54,000. Secrecy assures that scam artists continue. Want to get rid of the roadblocks? Senator Hughes talked about getting rid of the roadblock. Well, we're just creating new constitutional objections. Other states have been inundated by Eighth Amendment and Fourteenth Amendment cases. Arkansas planned a death festival. Eight people in two weeks. It literally is a death festival. But fortunately the courts there have held that there are rights of prisoners that must be protected and we're not going to go on with that mayhem. And, of course, there's all the arguments about how much more expensive it is to put people on death row and have these battles about transparency and where the drugs come from versus just putting somebody in prison, deal with it. [LB661]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Time, Senator. [LB661]

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SENATOR PANSING BROOKS: Thank you. [LB661]

SPEAKER SCHEER: Thank you, Senator Pansing Brooks. Waiting in the queue, Senators Morfeld, Hilgers, Bostelman, Geist, and others. Senator Morfeld, you're recognized. [LB661]

SENATOR MORFELD: Thank you, Mr. Speaker. Today, I rise in opposition to LB661 based on one very simple premise. When the state is executing its own citizens, the process should be as transparent as possible. When the state is executing its own citizens, we should not do it in a veil or cloud of secrecy. And this isn't my own personal opinion. This is also a fundamental part of our constitution. In the United States Constitution and both in the State Constitution, in Article 1, Section 3 of our own Nebraska Constitution, it provides for due process of law. No person shall be deprived of life, liberty or property without due process of the law. When the state decides to execute someone, that is the ultimate deprivation of life and property. It is the ultimate deprivation, and we should not do it in a veil of secrecy. Now, Senator Kuehn brings up a few different points. First, the availability of the drugs to actually carry out these executions. Colleagues, let's be clear. This bill does absolutely nothing to increase the availability of these drugs. These companies will not bring back these drugs simply because we do this in secret. It does nothing to address availability. Nebraska passing this law will not increase the availability of this drug. It's a disingenuous argument. Also the notion that these private individuals who are carrying out these executions don't deserve to be in the public eye. Colleagues, these are not private individuals. When they're taking a state paycheck or they have a state contract, they are no longer a private individual. They are an agent of the state. And as an agent of the state, they must comply with basic transparency standards. Now, I understand that many people have strong feelings about the death penalty and that's fine. I have strong feelings about the death penalty and they're well-known to this body and to the public at large. But the bottom line is that doesn't take away from the fact that we have a constitution and that we have standards and that when we take away life and liberty and not just in the theoretical sense, but actually take away life, the state should not do it in a veil, in a cloud of secrecy. Some people will bring up today, I have no doubt, that we protect other records in terms of personnel from public records request. Some of those are employees' personnel information, matters protected by attorney-client privilege, trade secrets, individuals' medical information, to name a few. This is all private information. Private information in regards to that private individual who is often a state actor in many different cases. But this is fundamentally different and unprecedented because this relates to an essential government function. An essential government function which takes away the life and the liberty of another individual. And you may not like that individual, that's fine. I may not even like that individual. I don't condone anyone... [LB661]

SPEAKER SCHEER: One minute. [LB661]

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SENATOR MORFELD: ...who has been convicted and charged under the crimes that you have to be convicted and charged with the death penalty, but that individual still has rights. They have a right to life and liberty and in order to ensure that there is due process, these records must be open to the public. They must be open to the people defending these individuals who also have rights. And this is critical information. For instance, for a person that is carrying out this execution, it's important to know who they are because there are botched executions, many examples of it. And you have to go to the training of those individuals, their ability to identify the right drugs, and so on and so on, to be able to carry out the due process and the rights of that individual. Colleagues, we'll talk about this much more today, but when the state is in the business of executing its own citizens, we should not do it in a veil of secrecy. It should be transparent to the public. [LB661]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR MORFELD: Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Hilgers. [LB661]

SENATOR HILGERS: Thank you, Mr. President. Good morning, colleagues. I rise today, this morning, in support of LB661 and I appreciate the comments made already this morning, particularly Senator Chambers' thoughtful comments and his focus where I think all of our focus ought to be, which is on the particular process in front of us. In other words, what does LB661 do? What does it not do? Although it's part of the larger death penalty debate, that is not precisely what's in front of this body today. And I agree with Senator Morfeld, and I think everyone else in this body, that transparency is a core operating principle for our government. And...but it is not a universal principle and it's one that we do deviate in a number of places. And Senator Morfeld listed a few. There are others. Our e-mails and communications, for instance, are protected from public view. So I think the question is whether or not the deviation from transparency is justified. And I think Senator Kuehn has made a very compelling case, in my view, that in this case it is. Because without transparency...I'm sorry, with transparency, what we are seeing is the lack of high-quality drugs in this process. And before I was in the Legislature, before I practiced, the very first thing I did after law school was I was clerk on the United States Court of Appeals for the Fifth Circuit. And the Fifth Circuit covers Texas, Mississippi, and Louisiana. And Texas, as you all probably know, is the most prolific state when it comes to the number of people executed under the death penalty. And the court of last resort for those executions is the United States Supreme Court, but the functional court of last resort is the United States Court of Appeals for the Fifth Circuit. And one of the most sobering and grave

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responsibilities I ever had as a clerk was being involved in a last second, eleventh-hour appeal from a death penalty case where the request was to stay the execution. And almost all, not all, but almost all of those appeals revolved around whether or not the drug protocol was adequate, or whether or not the use of that particular protocol from that particular manufacturer violated the accused's constitutional rights, fair and constitutional rights. It tells me two things. One thing is that the accused has due process. They have the ability through their lawyer, through the subpoena process, through the discovery process to find out who the manufacturer is and to challenge if that manufacturer and the source of the drugs that is allowed to them. And the second thing, it tells me is that having...ensuring the quality of the drugs is an important part of the process and when we allow...when we have the public disclosure, what happens is, it makes it harder and harder to find and procure the drugs from reputable sources, from high-quality sources. I think Senator Kuehn has made the case that that is what has happened in the past. So in this case, I think it's a justified deviation from our general operating principles of transparency, and with that I would yield the rest of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Kuehn, 2:00. [LB661]

SENATOR KUEHN: Thank you, Mr. President. Thank you, Senator Hilgers. I do want to address and continue to address a few of the comments to make sure everyone understands beyond the rhetoric what LB661 does and does not do. It does not do anything to shield the individuals other than already provided as part of the execution team. It does nothing with regard to the actual process, has to do with the procuring of the drugs. So again, I go back to the fundamental question, what is the value of the name of the individual or the company or entity that manufactured the drug if you have full access to the drug for testing, for purity on both sides? Due process. What value is the name? That value must overshadow the cost. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: That is the ethical trade-off that we have to think about. I think we need to be careful about saying that anyone who receives any sort of state dollars or state contract then becomes an agent of the state and is subject to full absolute disclosure. If that's the standard for which we are going to use, we have a lot of issues, whether that's those who receive state aid payments through our assistance to vulnerable citizens and programs, whether those are businesses that receive incentives, receive state dollars and are given a competitive advantage. The standard for full disclosure is you received, directly or indirectly, state dollars, a purchase was made, that's a pretty broad standard. And it's one that we need to apply universally. Do I believe in transparency of state expenditures? Absolutely. Do I believe that there is a point in which we must weigh the pros and cons? [LB661]

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PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR KUEHN: Yes. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Bostelman. [LB661]

SENATOR BOSTELMAN: Thank you, Mr. President. I yield my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Bostelman. Senator Kuehn, 5:00. [LB661]

SENATOR KUEHN: Thank you, Mr. President, and thank you, Senator Bostelman. I do want to...I've handed out and I've had the pages distribute a letter which I do want to read into the record because it is a very real issue. Do I...am I under the illusion or delusion that if suddenly Nebraska has a...protects the identity of lethal injection suppliers that suddenly the market is going to be flooded with sodium thiopental and we will be able to have it widely available for use? No. I'm not that naive. I do know, however, that it is a step. And if we are going to have it available by compounding pharmacies and others for specific uses for which it is needed and it is the best drug available, we have to have companies willing to produce it. Compounding pharmacy and others are not likely to be willing to produce this if they know that they're going to be subjected to economic, social, and civil harassment. So I want to read...while I'm certainly under no illusion that suddenly we're going to see widespread availability of these drugs, I want to read this letter from the American Society for Anaesthesiologists into the record because it outlines, not in my words, but in the words of board certified anesthesiologists why having the availability of sodium thiopental, specifically in specific cases is so important. They write: In the United States, patients undergo general anesthesia for surgery or diagnostic procedures over 50 million times annually. Until a few years ago--this is dated January 7, 2011-- a majority of these patients received thiopental intravenously for the induction of general anesthesia. In recent years, other agents, the most popular being propofol became more widely used for induction. Within the last two years, however, the United States has experienced significant shortages of propofol as a result of simultaneous manufacturing problems of one of the three propofol manufacturers exiting the market. During this time, however, the U.S. saw thiopental supplies reduced and domestic production discontinued. These coinciding events have led to a dangerous reduction in the availability of anesthesia induction medications to the point of safety of American patients is now in jeopardy. During this crisis period, anesthesiologists are often forced to resort to induction techniques that are known to either be less safe or involve the potential for undesirable side effects. In some cases, surgery must be canceled for lack of available safe medications. This is in the U.S. healthcare system. Imagine what this is like globally. Thiopental remains a mainstay of anesthesia induction medications, its availability must be ensured. While the use of



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thiopental until the recent shortage of all anesthesia induction medications may not have been as frequent as it was before the introduction of medications such as propofol and etomidate into clinical practice, and while many in clinical situations, thiopental may be used interchangeably with these drugs, there are many critical circumstances in when its use would be preferred as the anesthetic choice. These situations include providing anesthesia for geriatric patients or patients with significant cardiovascular disease and who have been administration of propofol may be associated with severe and prolonged hypertension. A specific example of patients undergoing neurologic surgery, many of whom are elderly or have significant cardiovascular disease. In neurosurgical patients of any age, hypertension associated with the use of propofol may compromise perfusion of the brain and lead to cerebral ischemia. Although propofol is used by many clinicians for induction of anesthesia and neurosurgical patients, there are multiple warnings on its package insert regarding its use in this patient population. The most specific of these states, DIPRIVAN injectable emulsion is used in patients with increased intracranial pressure or impaired cerebral circulation, significant decreases in mean arterial pressure.... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: ...should be avoided because of the result in decreases in cerebral perfusion pressure. To avoid significant hypertension and decreases in cerebral perfusion pressure, an infusion slow bolus of approximately 20 milligrams every ten seconds should be utilized instead of rapid, more frequent and/or larger dosages. Colleagues, these are the situations healthcare providers are dealing with. We talk about providing an increasing access of care to our most vulnerable citizens and then turn around and in activism, restrict the access of that drug. How hypocritical can we be? This is the issue we have to address and we have to confront. We cannot merely turn a blind eye in hopes of achieving one political goal without being aware of the secondary and unintended or in this case, intentional consequences. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Geist. [LB661]

SENATOR GEIST: Yes, thank you, Mr. President. And unfortunately, we have to speak about an uncomfortable issue today. In order to do that in the most effective way, I will yield my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Geist. Senator Kuehn, 4:45. [LB661]

SENATOR KUEHN: Thank you, Mr. President. Thank you, Senator Geist. Again, I want to continue to talk a little bit about these drugs and continue to demystify them because we have

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this assumption that these drugs are somehow insidious. That the FDA process which has restricted their importation is somehow because these drugs are unsafe or unpure or illegal, and that is not the case. Sodium thiopental, midazolam, propofol, these are all drugs which are FDA approved. They are safe and they are licensed for use in the United States. The importation issues become one of, first, addressing the idea of safety and purity to make sure that they are manufactured under FDA approved conditions, so that they meet FDA and U.S. standards for purity. Now, if your assumption is that any drugs that's manufactured overseas is somehow unsafe or unpure, you'd better go take a quick look at your medicine cabinet and identify exactly what kind of medicines are there and where they were manufactured. You'll note that many of them are manufactured in Europe and throughout Asia. It's a high unexacting standards. The issue for importation comes because these drugs are controlled substances. They are controlled and regulated by the DEA, which is a law enforcement agency. Use of these drugs requires DEA registration, requires that they be handled under strict guidelines for recording and use, so that they are not diverted or sent to the hands of those in which they could be misused. And we all know all too well in Nebraska and in the United States what happens when controlled substances go unregulated, are diverted, and are misused. It's an issuing concept that we somehow assume that pharmaceutical companies are acting out of some moral guidance or benevolence in the fact that they are not producing these drugs, that they have a moral conscience and that is why they are not producing sodium thiopental, or that is why they don't want it utilized for execution. They don't want it utilized for execution because they don't want the negative publicity. These are the same companies that are producing opioids at a breakneck rate. The United States consumes 83 percent of the world's opioids. We know what the problem is. We don't see pharma pulling back and saying, you know what, there is an unacceptable death rate due to opioid abuse, let's not produce it. These companies produce the drugs that are used in euthanasia and abortion. If you actually read the text of the Hippocratic oath, it prohibits two activities--the taking of a life before birth, and the voluntary taking of life via euthanasia to eliminate pain. Many of the companies who have refused and including European governments which have actively prohibited the exportation of these drugs to the United States for fear that they may be used in lethal injection, produce, manufacture, and dispense these drugs to terminate pregnancies and kill babies and for use in euthanasia in Europe. So don't tell me it's a moral choice on the part of the companies. They're a company. It's economic harassment. They don't want the publicity. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: These are the choices we make. And I will say it again and again and again, when you cast your vote, what is the value of the name? What does the name of the individual provide to the defense of the accused and the condemned? What does it do to improve the overall process if the drug is available, you know what it is, you can have an aliquot to test it. And is that value greater than the human cost? You cannot wash your hands of that human cost.

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It doesn't work that way. We may want to because it's uncomfortable and it's unpleasant. But it's not something we as legislators, as lawmakers can ignore. And it has gone ignored and unspoken about for far too long. [LB661]

PRESIDENT FOLEY: Time, Senator. Thank you, Senator Kuehn. Senator Erdman. [LB661]

SENATOR ERDMAN: Thank you, Lieutenant Governor Foley. I rise in support of LB661. I appreciate Senator Kuehn bringing this. We had a vote last November and the people of the state of Nebraska overwhelmingly said that they were in favor of the death penalty, so my impression is that we need to make sure that we carry out the wishes of those who voted for that, and that is why I believe that Senator Kuehn has brought this to implement those actions. It's a sad day, as Senator Geist alerted to, when we have to talk about things like this, but things like that have to be spoken about. And with that, I would yield the rest of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Erdman. Senator Kuehn, 4:15. [LB661]

SENATOR KUEHN: Thank you, Mr. President, and thank you, Senator Erdman. I do want to talk a little bit about this issue of confidentiality and I want to take a look at some of the confidentiality statutes and look at and discuss some of the things that we keep private and that we don't disclose. We've had some of those debates during my time in the Legislature about what we do and don't disclose in terms of interactions with private individuals and private companies. And I think that we all know and can agree that there are instances where that privacy outweighs the need for transparency in public disclosure. We certainly have had a discussion already this session about the use of economic development dollars and the utilization is an issue. Senator Schumacher talked about it. I also engaged with that on the floor, about companies that are receiving incentives. In that case it was biosciences companies. Should they reveal all of their shareholders? If the issue is that...and the concern is, is that \$50,000 is going to be diverted in political favors to a favored compounding pharmacist for the obtaining of sodium thiopental, we should probably be equally concerned about the diversion of hundreds of thousands of dollars to companies that we don't know who their shareholders are. We have restrictions on the communications with constituents through our offices. We don't have to turn over our phone records. Those are records that are being done on a public phone in our public offices, in our public roles. It has been determined and rightfully so, that the ability to protect the identity and the integrity of the communication process between senator and constituent is valuable and I support that. We have also looked at confidentiality with regard to hiring processes in searches of public employees, a hotly debated issue a year ago dealing with the hiring process for university employees. These are individuals who are making hundreds of thousands of dollars of taxpayer salaries, making decisions that impact the future directions of tens of thousands of students' lives in our state, including public spending decisions, and it was determined by this body that

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knowing those finalists was not an important name. As newspapers and the media continue to do things like, take a look at where things came from, and did the company want the drugs to go there, I think the question the media is not asking themselves is, what purpose does it serve? Is it salacious? Is it so that individuals can be called on the carpet for behavior that a particular writer or editorial board doesn't think is appropriate? Or again, what does the name serve? [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: We don't publicize the names of victims of crimes because we know the damage it would do. We protect juveniles. We protect the vulnerable. We have instances all over in our state statute, in our practice of custom where we have chosen to not reveal information because the revelation came at a greater cost than the confidentiality. If we're going to make a blanket statement that the name is more valuable than the cost, then let's go through everything we do with public dollars and open the doors, open the books. You get state dollars to pay for your medication, the public should know. You get state dollars to pay for childcare, the public should know. You get state dollars for your business, the public should know. [LB661]

PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR KUEHN: Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Murante. [LB661]

SENATOR MURANTE: Thank you, Mr. President. Members, good morning. I rise in opposition to AM918 and in support of LB661. As Chairman of the Government, Military and Veterans Affairs Committee we conducted a public hearing on this bill a few months ago and what we found was that LB661 was much like many other public records bills that were introduced this year and in years past. And oftentimes, members of this Legislature and members of the community identify a problem in our state that is created by our Public Records Act and seek to create exemptions to them, and LB661 is one of those. We had two other bills this year that I believe were heard on the same day. One introduced by Senator Wishart, the other introduced by Senator Briese, which sought to do a substantially similar thing to what LB661 seeks to do. And the policy question that I ask myself whenever a member of this Legislature brings a bill to withhold public records, it's really a sequence of questions and the first is, is there a legitimate state interest in withholding the information from the public? I believe you've heard today and it was ably expressed in the public hearing that there is, in fact, a state interest in withholding this information from the public. And that...those state interests, in my view, are two-fold. First, as Senator Kuehn has pointed out today, the lack of availability of these drugs on the broad market is clear, the evidence is unambiguous. That challenge exists. And the second is that we have an

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interest. The state Legislature has an interest in ensuring that our state laws are being implemented. And what we heard in the public hearing is that a state law that is on the books that the voters voted for, which is that the death penalty exists in the state of Nebraska, that law, the implementation of that law is hindered by the Public Records Act that we seek and we have an interest in ensuring that our laws are being implemented. So in my view, LB661 and Senator Kuehn have checked the first box of establishing that a legitimate state interest exists. And the second...and this is a step that is often overlooked by the introducers of the bill and the green copies of bills that are brought before the Government Committee that pertain to public records, is that is the proposal narrowly tailored such that it accomplishes the ends of the introducer, but does nothing beyond that. And with that, Senator Kuehn has succeeded again, because as he stated today, this bill does nothing more than conceal from public...withhold from the Public Records Act the identity of the companies which produce lethal injection drugs. And that's it. So Senator Kuehn has asked, and I haven't heard it answered yet, what is the reason, what interest does the state have in having that information? I'd be interested to hearing that discussion, but we didn't hear it in the public hearing and I haven't heard it today. But in my view, Senator Kuehn has checked both of those two boxes. We have a legitimate state interest... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR MURANTE: ...in advancing LB661 and this bill does not go any farther or further than Senator Kuehn's objective. But I think we also have a broader concern. And the fact is that the people of Nebraska, the people of this country broadly are losing faith in their institutions. They are losing faith in their confidence in their elected officials to do the jobs that they sent us here to do. Whether you like the death penalty or not, the people made their decision. That is the end of the story. If the people wish to reverse their decision, that is their prerogative to do, but I do not anticipate that happening in the near future. And as was stated in the public hearing, LB661 is a very important tool to effectuate of the implementation of that law. We have an obligation to do that both as legislators... [LB661]

PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR MURANTE: ...and as representatives of our constituents. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Murante. Senator Hansen. [LB661]

SENATOR HANSEN: Thank you, Mr. President. I'd yield my time to Senator Bolz. [LB661]

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PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Bolz, 5:00. [LB661]

SENATOR BOLZ: Thank you, Senator Hansen, and thank you, Mr. President. I rise with some questions about how LB661 connects to the new death penalty protocol that was published January 26, 2017. And Senator Hilgers in his experience as an attorney referenced the importance of that protocol, so I just want to walk through how that protocol connects to this bill and raise some questions about that process. So one of the pieces in the protocol is...the purpose of the protocol is to both articulate how the process will work in terms of executing death penalty to ensure the prevention of cruel and unusual punishment, and to protect the state and the people administering the death penalty from legal action. There are other purposes as well. But one of the pieces of the protocol is that the Director of the Department of Correctional Services will determine that the death penalty can be done without the infliction of pain. And one question I have is that the director is not a medical professional and so how do we ensure that in terms of making sure that the director can adequately say that this is a medication that...a drug that has come from a reliable source? How will that statute impact holding the source accountable under LB661? Because if the drug is not effective, the individual who was the recipient of that drug will not be able to exercise his or her due process rights because the death penalty will have already been implemented. I don't understand how those pieces come together under the new protocol. The protocol also says that records will be kept about the entirety of the process and the source of medication. So under LB661, how will compliance with the new procedure be verified? I particularly have concerns about that because the Department of Correctional Services has had recent history of serious mismanagement in their pharmaceutical practices and this was verified by the Nebraska State Auditor and discussed in a hearing with the LR34 Committee and it was responded to by the Department of Correctional Services with a report response. One of my additional questions is, has that response or has that plan implementing changes related to the audit, has it been fully implemented? Have all of those problems related to documentation, medical director approval, tracking, and destruction of medication been corrected completely? Can we trust this division to implement these medications as they should be, especially when there is not clarity and transparency about the source of these drugs? In other words, is this the right time to discuss this policy change? The procedure also says that the condemned inmate shall be notified of the determination of the substance or substances, quantity, and if more than one, the substance order of the drugs that will be used to implement the death penalty. How will that person understand that information? How will that person understand the source and the quality of those medications if the source of the medication is not transparent as under LB661? So I don't know that I have heard... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR BOLZ: ...the answers to those questions, and the assurances that I'm looking for in terms of how the new procedure intersects with LB661. I'll stay on the floor, I'll continue to

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listen, but I think that right now I have more questions than answers and with an issue this serious, with an issue that legitimately relates to the process that is used to execute a death, I want to make sure that all of the i's are dotted and t's are crossed. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Bolz. Senator Brasch. [LB661]

SENATOR BRASCH: Thank you, Mr. President, and thank you, colleagues. I do stand in support of LB661 and in opposition to AM918. If you have not read the bill, I would encourage you to. It's very, very short reading here and I am one of the cosigners. There are several others of us here who have cosigned on to it. But very clearly what it states and what we're debating here today is that the records containing any information reasonably calculated to lead to the identity of any person or any entity that manufactures, supplies, compounds, or prescribes the substance or substances, medical supplies or medical equipment utilized to perform a lethal injection shall be confidential and exempt from disclosure pursuant to Section 84-712 to 84-712.09 and shall not be disclosed. It's a matter of protection, a matter of confidentiality, and I don't believe that transparency should be an issue here. This is a matter that protects someone from undue actions of another entity or person that may wish them harm for protecting or for performing their duties. And I can understand that. Most of us here--and I believe all of us, but one--have our names on the outside of our doors in the Capitol here. Yet we are transparent. We are public. Anyone can walk in. Anyone knows how to find us. That is very transparent. And we really rely on the State Patrol for a lot of protection here. But apparently one of our colleagues does believe that that privacy, which they are entitled to...I'm not challenging it...I'm just saying that sometimes in certain situations your name could and should be sheltered. This is something that I believe is just and correct to do for that person who is...or the entity of...those records does protect them. And as far as the protocol, I want to thank Senator Bolz for bringing up that article because it's very clear that the protocol in effect now provides for a three-drug combination, sodium thiopental to render the inmate unconscious, and pancuronium bromide, a muscle relaxant to stop breathing, and then the third drug, potassium chloride, which would stop the heart. It's very clear. What is in question today is the right of those records to remain confidential and shall not be disclosed. I believe that is something that we as statesmen should understand. We should support. We know that sometimes our correspondents may not be the friendliest of nature, sometimes they are. We do have protection here. We should offer this protection. And again, I do stand in support... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR BRASCH: ...of LB661 and oppose AM918. Thank you, Mr. President, and thank you, colleagues. [LB661]

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PRESIDENT FOLEY: Thank you, Senator Brasch. Items for the record, Mr. Clerk. [LB661]

CLERK: Mr. President, just one--Senator Clements would like to add his name to LB68 and Senator Watermeier to LB244. (Legislative Journal page 1088.) [LB68 LB244]

Senator Kolowski would move to recess the body until 1:30, Mr. President.

PRESIDENT FOLEY: Members, you heard the motion to recess until 1:30. Those in favor say aye. Those opposed say nay. We are in recess.

RECESS

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, would you please record your presence. Roll call. Mr. Clerk, would you please record.

ASSISTANT CLERK: There is a quorum present, Mr. President.

SPEAKER SCHEER: Thank you, Mr. Clerk. Do you have any items for the record?

ASSISTANT CLERK: Not at this time.

SPEAKER SCHEER: Thank you, Mr. Clerk. Colleagues, I will make the following note to you. We will be coming back to LB661 after we are done with LB622. And we do have visiting retired senators that are going to be introduced after we're done with LB622. At that point in time, we will go back to Senator Kuehn's bill. We have written down those that were in the queue at that time. I will ask you at that time to please pop in. If you are coming up and looking at the board, it will not be correct because we will be using the format that everyone was checked in before. So those that were in the queue when we left, we will be taking up. But you need to "repop" your light on in order to do that, if you would, please. With that, Senator Brewer, you're recognized.

SENATOR BREWER: Thank you, Mr. President. For you that have been following...

SPEAKER SCHEER: Senator, are you asking for a point of personal privilege?



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SENATOR BREWER: Oh, I'm sorry. Yes, request point of personal privilege.

SPEAKER SCHEER: Proceed.

SENATOR BREWER: Thank you, sir. For you guys that have been tracking the events and have been following the legislation for Whiteclay, this morning at 11:00 the Nebraska Liquor Commission met and announced that all the liquor stores in Whiteclay will be closed. And it was received very well by a rather full crowd. And I just wanted to share with those of you who have been following our challenges to try and do this, only one of the two of us got to talk today. So she would be sharing some of these same emotions with you but, you know, for me it's a sacred thing. We have been poisoning a group of people for many years and today the decision was made to end that. And so I want to thank all of those that supported the legislation to provide the task force to help in Whiteclay and we are only part of the way. We are now going to figure out how to help them, once we start moving beyond the liquor stores, to have new businesses there. But for those in this body that have helped make this possible, thank you.

SENATOR PANSING BROOKS: Thank you.

SPEAKER SCHEER: Thank you, Senator Brewer and Senator Pansing Brooks. (Visitors introduced.) First item, Mr. Clerk.

ASSISTANT CLERK: Mr. President, first bill this afternoon, LB622, introduced by Senator Wishart. (Read title.) Bill was introduced on the 18th of January, referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments. (AM697, Legislative Journal page 767.) [LB622]

SPEAKER SCHEER: Thank you, Mr. Clerk. Senator Wishart, you're welcome to open. [LB622]

SENATOR WISHART: Well, good afternoon, Mr. President and members of the Legislature. I am here today to introduce LB622, a bill that would establish the Medical Cannabis Act and provide for the cultivation, processing, and use of medical cannabis in our state. First, I want to thank all of the families and advocates who have worked tirelessly on this legislation over many years. I want to thank the Judiciary Committee, and particularly Senator Ebke for conducting a quality hearing. I want to thank my legislative aide Elizabeth and Bill Drafters for their diligent work on crafting this bill. And I want to thank Logan in Legislative Research for their research that comprises the packets in front of you today. I introduced LB622 for multiple reasons. First and foremost, this is an issue that came up at doors during the campaign from people who themselves or family and friends are struggling with a chronic illness and desperately want

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access to this form of medical treatment. Additionally, I have become aware of a ballot initiative to legalize not just medical but all cannabis in our state. I believe that it would be to our benefit as a state that we work intentionally on addressing this issue in the Legislature where we can take the time needed to put in place a comprehensive, safe, and financially sustainable medical cannabis system. Before I dive into the details of medical cannabis and the system we're putting in place in this bill, I want to outline the history, science, and current environment surrounding medical cannabis. Cannabis has been used by humans medicinally for thousands of years. To date, more than 100 different cannabinoids have been identified in the cannabis plant. At our committee hearing for LB622, Dr. Rachel Knox from Oregon, who is cofounder of the American Cannabinoid Clinics, testified in support of the medicinal benefits of cannabis. One week earlier she had the distinct honor of speaking on this very subject to the United Nations. In her testimony, she detailed the science behind the benefits of cannabis. So I'm going to have a little science lesson here. The body has its very own endocannabinoid system. Discovered in the 1990s, we now have decades of scientific purview about this system inside of all of our bodies. It's an intricate network of receptors and ligands. Think of the receptors as locks with key holes and the ligands as the keys. Our systems play an...this endocannabinoid system plays an integral part in the regulation of pain relief, mood management, blood pressure, blood sugar control, appetite, sleep cycles, extinction of traumatic memories, inflammation, neuro protection. This system controls it all. Our body naturally produces ligands called endocannabinoids and, as I stated before, the cannabis plant has over 100 cannabinoids that have been shown to work hand in hand with our bodies and the endocannabinoid systems. Prior to its prohibition in 1937, at least 27 medicines containing cannabis were legally available in the United States. The legislative council at the time for the American Medical Association opposed the prohibition because it would prevent the medicinal use of cannabis. In 1970, with the establishment of the Controlled Substances Act, cannabis was placed at a Schedule I drug, which prohibits the ability of doctors to prescribe it medicinally. And I'd like to point out, colleagues, that cocaine is a Schedule II drug because it can currently be administered by a doctor for legitimate medical purposes. In 1972, a petition was submitted to the DEA to reschedule cannabis. After 16 years of court battles, the DEA's Chief Administrative Law Judge Francis Young ruled on September 6, 1988, "Marijuana, in its natural form, is one of the safest therapeutically active substances known." The provisions of the Controlled Substances Act permit and require the transfer of marijuana from Schedule I to Schedule II. "It would be unreasonable, arbitrary and capricious for the DEA to continue to stand between those sufferers and the benefits of this substance." The DEA rejected Judge Young's ruling and, to date, cannabis remains a Schedule I drug. While Schedule I designation does limit our ability to clinically research the effects of cannabis, there is growing research available that supports the medicinal benefits. In January 2017, the National Academies of Sciences, Engineering, and Medicine conducted a rigorous review of scientific research published since 1999 about what is known about the health impacts of cannabis and cannabis dried products. Their findings include, quote: One of the therapeutic uses of cannabis and cannabinoids is to treat chronic pain in adults. The committee found evidence to support that

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patients who were treated with cannabis or cannabinoids were more likely to experience a significant reduction in pain symptoms. For adults with multiple sclerosis related muscle spasms, there was substantial evidence that short-term use of certain oral cannabinoids, man-made cannabinoid-based medicines that are orally ingested, improved their reported symptoms. Furthermore, in adults with chemotherapy induced nausea and vomiting, there was conclusive evidence that certain oral cannabinoids were effective in preventing and treating those ailments. Additionally, a large and growing body of scientific evidence demonstrates that while there are health risks associated with cannabis, as there are with every medicine that you take that is legal today, the adverse effects are within range of effects tolerated for other medications. Colleagues, no one has died from overdosing on cannabis. According to the U.S. Centers for Disease Control and Prevention, there is no listed case of cannabis as a death, as a cause of death. Meanwhile, prescription drugs, such as opioids, have become one of the leading causes of accidental death in the United States. In fact, a study published in the Journal of the American Medical Association in 2014 found that the opioid overdose deaths were reduced by 25 percent in states with effective medical cannabis laws. So fast-forward to the present. A total of 9 states, the District of...29 states, excuse me. A total of 29 states, the District of Columbia, Guam, and Puerto Rico now allow for the comprehensive public medical cannabis programs. Additionally, no state that has established a medical cannabis system has sought to reverse it. National polls continue to show that Americans support medical cannabis. In fact, adults over 50 have become the fastest growing demographic of cannabis users in our country. There is a reported threefold increase in cannabis by this demographic between the years 2000 to 2012, and by 2014 about 4 million senior citizens have been using cannabis. Additionally, a 2013 national survey of physicians conducted by The New England Journal of Medicine found that 76 percent of doctors supported use of cannabis for medicinal purposes. The American Academy of HIV Medicine, American Bar Association, American Civil Liberties Union, American Nurses Association, American Public Health Association, the Lymphoma Foundation of America, the National Nurses Society on Addiction, the Episcopal Church, the Presbyterian Church, the United Church of Christ, the United Methodist Church Board of Church and Society, and countless other organizations support physicians to provide access to medical cannabis. The support for medical cannabis crosses party lines. We saw this at the Judiciary Committee hearing where we heard supportive testimony from Republicans, Democrats, Independents, and Libertarians. We heard from veterans, former doctors, people suffering from MS, a conservative business woman, parents of children who suffer from seizures, a former Division I athlete, and even we heard from my opponent, Dick Clark. And Mr. Clark, he had a very compelling testimony and he stated, quote: To liberal legislators in this body, I would ask you to support this bill because it would create a legal means to alleviate suffering for these patients without the dangers associated... [LB622]

SPEAKER SCHEER: One minute. [LB622]

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SENATOR WISHART: ...with the black market. To conservative legislators, I would ask you to stand up for the principles of reducing government interference in the doctor-patient relationship and I would ask you to roll back this destructive, Progressive Era, big government project called cannabis prohibition, end quote. I will share the stories of more of the members...people who testified in our hearing and...during the next time I speak, and I'll walk you through the specifics of the system that we're setting up in LB622. Thank you. [LB622]

SPEAKER SCHEER: Thank you, Senator Wishart. (Visitors introduced.) Senator Pansing Brooks, you're recognized. [LB622]

SENATOR PANSING BROOKS: Thank you, Mr. President. Well, colleagues, I want to thank Senator Wishart for bringing this bill. If you had had to sit through the compelling, heartrending testimony for, I think, two years now--I think we've only...we didn't have it the first year--but I think you would be as moved as we are. To have the mothers that come, who are now home schooling their children, and they have...the kids have to wear helmets and the difficulties, the pain, the difficulties with seizures that they were all going through. One woman testified last year that her child had...they were dealing with 300 seizures a day, a day. Can you imagine, my friends, if one of your children had 100 seizures a day and had to deal with that? And then was told, oh, no, we're not going to try this one drug that could be helpful, that anecdotally has been proven to work. Instead, they were told you must go try brain surgery. I want to ask each of you to think about that. Who in this body would ever subject your child to brain surgery before trying something as innocuous as medical marijuana? Which one of you? I'll tell you what, I would be driving as fast as I could to Colorado to determine if that would help over opening my child's brain and letting somebody cut in my child's brain. So when you think about this, there's all the fear: Oh, my gosh, we're going to all start smoking marijuana; we're going to all...we're going to turn into a hippie state just like Colorado. And, you know, I mean look at every other drug. I don't even...I think it's so crazy that we are even discussing this. How about morphine? That's pretty horrible. Or heroin? I guess we better start going through all the drugs that people get addicted to and just tell doctors they shouldn't have that in their tool chest as an option available to treat their patients because, you know, because it's addictive. Medical marijuana isn't addictive, but heroin is addictive, morphine is addictive. But we allow doctors to determine that that's what's necessary for their patients. But we won't let them have in their tool chest a drug that is not addictive, that hasn't ever caused anyone to have an overdose, that has no withdrawal, and instead we say, no, you don't know what's best for your patient, we do. We the government understand fully what kinds of drugs you should be allowed to prescribe. Crazy! This is crazy! Let's...you know, you need to go and have your child have brain surgery rather than this. We had one woman who came and testified. She's a soccer player and a law student and she had a serious brain injury. Her comment was: Oh, so many people have prayed for me. But I tell you that those prayers are a sacrilege when they're praying for my health and well-being, but we won't even do something as simple as allowing me to legally access a drug that I've used and helps. Again,

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brain surgery is better. We all know that's more important to say that we are saying to the medical profession, try brain surgery... [LB622]

SENATOR LINDSTROM PRESIDING

SENATOR LINDSTROM: One minute. [LB622]

SENATOR PANSING BROOKS: ...over medical cannabis. What in the world are we talking about? There was all sorts of testimony about how they can dose appropriately. The testimony is compelling, my friends. We are becoming a minority of the states that don't allow doctors to have this in their tool chest. This is not to have open season on medical marijuana. This isn't for everybody to be able to...and Senator Wishart has worked hard on this and modified the bill from last year significantly. You have to get a prescription, just like any other drug. How about all those opioids that we're dealing with? We had testifier after testifier that talked about the opioid addictions and how, if they had been able to use cannabis oil, they wouldn't have been addicted. We wouldn't be having this crisis we're having right now. [LB622]

SENATOR LINDSTROM: Time, Senator. [LB622]

SENATOR PANSING BROOKS: Thank you. [LB622]

SENATOR LINDSTROM: Thank you, Senator Pansing Brooks. Mr. Clerk for an amendment. [LB622]

ASSISTANT CLERK: Mr. President, the Judiciary Committee would offer AM697. [LB622]

SENATOR LINDSTROM: Senator Ebke, as Chair of the committee, you're recognized to open on the amendment. [LB622]

SENATOR EBKE: Thank you, Mr. President. AM697 would become the new white copy of LB622. This amendment was brought to the committee by Senator Wishart and is technical in nature to help the system LB622 creates to function more effectively. The details of this new white copy will be touched upon in more depth by Senator Wishart, but a thumbnail of the view of AM697 shows it adds new definitions; increases the number of producers, processors, and compassionate care centers per Congressional district; and alters the cost levied by DHHS for licensing, oversight, and inspections. LB622 with AM697 was advanced from committee on a vote of 7 ayes and 1 nay. I would urge your green vote on AM697 and a green vote on LB622. Thank you, Mr. President. [LB622]

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SENATOR EBKE: Thank you, Senator Ebke. Senators in the queue are Senators Morfeld, Craighead, Hilgers, Williams, Geist, and others. Senator Morfeld, you're now recognized. [LB622]

SENATOR MORFELD: Thank you, Senator Lindstrom. Colleagues, I rise in support of AM697 and LB622, and I rose in support of this legislation or similar legislation--it's not completely similar--legislation last session for a few different reasons. First, the number one reason why we haven't already passed legislation like this in the state or the federal level is simple--politics. And sometimes politics is based on reality and sometimes politics is just based on politics and a complete lack of the will to do anything simply because of misinformation and politics. That's highlighted by the fact that we allow the prescription of drugs that are highly dangerous, that kill thousands of Americans and Nebraskans, hundreds of Nebraskans each year, like opiates, but we don't allow for medical marijuana when it's been proven, proven to assist people who have real medical needs. The time has come to pass LB622. And one of the most compelling reasons, even if you don't think that medical marijuana is a good thing, even if you don't believe in the health effects, in the positive health effects of medical marijuana, one of the most compelling reasons to pass this legislation is to provide a regulatory framework. When I was at NCSL two years ago, one of the most interesting panels that I watched were three legislators that were completely opposed to medical marijuana but their state had passed it, and three legislators who were completely in support of medical marijuana and their state had passed it. The only thing these six legislators could agree on is you better pass a bill regulating medical marijuana, otherwise the voters will. And if the voters put it into the constitution, you just wait, it's going to be that much harder to regulate. Because when it's in the constitution, colleagues, the only time that we can contradict a right within the constitution is when there's a compelling state interest, and that's a pretty high bar. So for those that are opposed to medical marijuana and will get up and speak against it today, I would hope that when you get up and speak against it, you're actually working to make the bill better, because this is going to come. And it's not going to come in the form of a law that we can repeal and amend, it will come in the form of a constitutional amendment. And a lot of you will have been wishing that you worked with Senator Wishart to make this bill better if you feel as though there's problems. The research is clear where the research has been done. Medical marijuana has positive health effects. And the only reason why we haven't done more federal research goes back to politics. So when people bring up, well, we haven't researched this, there hasn't been federal studies, it's a Schedule I drug, it's because of politics. It's because people play politics, like we have in the past on this floor. There are positive health effects. And there is no reason, no reason why a mother or father of a child who has a doctor in another state that believes that this will help their child and it has been shown to help their child and it does help their child when they've gone to that other state, there's no reason why a Nebraska mother or father should risk going to prison to help their child based on the advice of their doctor. And that is exactly what's happening right now. This bill is a good middle ground. It doesn't allow for recreational use. It requires... [LB622]

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SENATOR LINDSTROM: One minute. [LB622]

SENATOR MORFELD: ...a doctor's prescription, only in pill form or a few other limited forms, and it allows people to get the medical care that they need. And it's also important to talk about...we constantly talk on this floor about states' rights. Well, colleagues, this is your opportunity to exercise states' rights and to do it in a way that helps people right away, that you will see the impact right away. For all of those that are in favor of the Convention of the States, that's a states' rights issue. Exercise the state's rights in a way that has been proven to help people today. Vote for LB622. Thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senator Morfeld. Senator Craighead, you are recognized. [LB622]

SENATOR CRAIGHEAD: Thank you, Mr. President. Good afternoon, colleagues. I stand in support of LB622 and AM697. One thing about this--and again, I was for this last year when we had it--medical marijuana needs to be...medical cannabis needs to be highly regulated, in a CBD oil or vapor only. There will be very little THC, which is hallucinogenic in the drug, but you have to have a little bit there to make the CBD oil function. Medical cannabis will not cause people to become weed smokers. I have seen a number of cancer patients and seizure patients who I think this can help, and for me this is very personal. I lost my husband Mike ten years ago this month to cholangiocarcinoma, which was caused by Agent Orange, and he was on painkillers. But if I would have had an opportunity to get medical cannabis for him, I think the quality of his life at the end would have been much better. And again, when children have seizures, 300 a day, and I'm sure we've all had the opportunity to meet them, it's not good. So I truly believe that this is a bill that needs to pass. I would like to read you some testimony from the Judiciary Committee this year: Hi. I'm Brenda Potratz and I'm from Lincoln. What do you picture when you think of a person who is in support of legalizing marijuana in the state of Nebraska? A bored young person? Someone who wants to get high to escape their worries? An old hippie? I don't think I really fit that image. I'm a 61-year-old conservative, former businesswoman with a Fortune 500 company. I am also a woman that has the misfortune of having been diagnosed with the debilitating disease rheumatoid arthritis, which has led to a lot of other autoimmune conditions. This is the disease that destroys you from the inside out. I visited numerous specialists as well as alternative doctors and healthcare providers. I am taking a drug that without insurance would cost \$40,000 a year. Guess what? The pain is still there. I have prescriptions for various painkillers, none of which truly do the job. When we were visiting our sons in Washington State, I decided to give cannabis a try. I went to a dispensary where it is perfectly legal and began to ask questions. The young man asked me how much I smoke. And I replied none. He pressed further. Well, what about back in the day? And I never tried cannabis. I didn't want to. I didn't want to get high. I was that person that thought it was a gateway drug, something we shouldn't allow, until it affected me. I was able to experiment with a pure CBD

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ointment, which provided immediate relief. I also tried a tincture in my tea before going to bed at night, which took the edge off my pain so that I actually got a full night's sleep for one of the first times in many years. I knew exactly what I was getting into because it was labeled and because it was legal. I implore you to legalize cannabis for medical use in the state of Nebraska, not for the bored, young person, the guy who wants to get high to escape his worries, or the old hippie. Do it for people like me who have exhausted all other options for their pain and know this works. So that's just a little bit of a testimony and, again, I do stand in support of LB622 and AM697. Thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senator Craighead. Senator Hilgers. [LB622]

SENATOR HILGERS: Thank you, Mr. President. Good afternoon, colleagues. I rise in opposition to LB622. Before I get into the reasons why, I do want to thank Senator Wishart for bringing the bill, for her thoughtful opening. I know she's worked very hard, done a lot of research and is trying to help a lot of people. And so I respect her very greatly and I appreciate the work she's done on LB622. But nevertheless, I oppose it. The reason I oppose it is not because as Senator Morfeld suggested that we would just oppose it on politics, because of politics. I think that's absolutely, flatly, completely, 100 percent wrong. And if you need evidence for why politics doesn't always enter into the equation for issues like this, look no further than the Obama administration's DEA. In August 2016, at the request of two democratically elected governors to reclassify marijuana as a Schedule I drug, the head of the Obama administration's DEA rejected that request, not based on politics but because the information that they had at hand, the science that they had at hand did not support the conclusions brought by proponents, in fact, actually to the contrary. I think the quote was: This decision is based on whether marijuana, as determined by the FDA, is a safe and effective medicine. They concluded it's not. You don't just have to take the word of the Obama administration's head of the DEA. The American Academy of Ophthalmology has said there's no scientific evidence to support the claims made by proponents. The American Academy for Epilepsy, in their December 2015 letter, stated: Despite the pressure of anecdotal evidence prevalent in the popular press and social media for the past two years, the American Epilepsy Society has been opposed to the expanded use of medical marijuana and its derivative. At this time there is no evidence from controlled trials that strongly supports the use of marijuana for treatment of epilepsy. Our position is informed by the lack of available research and supported by the position statement from the American Academy of Neurology, the American Academy of Pediatrics, the American Medical Association. Colleagues, this is a question of science. This is a question of what data do we have? What trials do we have? What is the proper dosage? Were these controlled studies? Did they measure for placebo effects? What can we take this drug with? Does it have adverse reactions if taken with something like Tylenol, acetaminophen? Can you take it when you're pregnant? There are dozens and dozens of questions and I submit to you, colleagues, this is not the place to analyze those questions. I cannot tell you for certain whether or not some of the studies that Senator Wishart



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said are as conclusive as she claims. There are very widely regarded entities that I trust that have said the opposite. There are other studies, including a recent study that suggests, from the Molecular Psychiatry, that suggests there might be a causal relationship between cannabis use and the increased risk of schizophrenia. Colleagues, we have a process to determine what types of drugs should be available for public consumption. That process is through the FDA. They have the scientists. They have the individuals in place, the expertise to analyze these questions. This Legislature, as high in regard as I hold all of you, we are not equipped to make this type of clinical decision. We just aren't. Senator Morfeld raised the question that said, well, states' rights. Well, colleagues, we have a constitution. I'm a constitutionalist and I do, I believe in our federal system. We have to ensure that states have the appropriate authority and we have our...we are sovereign states. However, Congress does have certain authorities and one of the authorities that they have is under the FDA. And I'm not going to argue today that the Federal Drug Administration is unconstitutional. I don't think anyone who opposes LB622 is going to make that claim. [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR HILGERS: But they are uniquely positioned to make this decision. It is not, I submit, as clear-cut as proponents would say for the science. And I would also submit that we are not able to determine whether it's clear-cut or not. This is not to say that I don't have deep sympathy and empathy for the individuals who suffer from these illnesses, from epilepsy, having seizures. I think Senator Pansing Brooks very eloquently stated their pain. And I would call on Congress and the FDA to allow for that research to occur, to allow for this to go forward so we can study it, because the principle we would establish by passing LB622 today, colleagues, could be applied to any medicine of any kind. There's a cutting-edge cancer drug that would help people who are pain. FDA hasn't act...hasn't gone forward. So let's say the state of Nebraska try to help those folks and let's authorize it. That's not the system we have in place. The system is sound. [LB622]

SENATOR LINDSTROM: Time, Senator. [LB622]

SENATOR HILGERS: Thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senator Hilgers. Senator Williams, you're recognized. [LB622]

SENATOR WILLIAMS: Thank you, Mr. President. Good afternoon, colleagues, and good afternoon, Nebraska. And like Senator Hilgers, I would also like to thank Senator Wishart for bring this legislation forward so that we can have this discussion today. Every day that I walk

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into this building and especially into this room, I recognize how fortunate those of us that are the 49 senators are. But I also take a pledge for the responsibility that each one of us has when we walk in here. And in Nebraska we demand excellence. We demand expectations that are higher than other people may have in other spots. And that's why I'm standing today in opposition of LB622. We have the obligation of creating the public policy for the state of Nebraska and I am sympathetic and empathetic to those that I have visited with that traditional medicine has failed. And we certainly have those people in our country and in our state. But the issue that we have as policymakers is we make public policy for 1.9 million people all across our state, not just a few, and that's difficult. The issue is, what direction will Nebraska take in legalizing a Schedule I drug? What direction will we take in legalizing a Schedule I drug? And I would tell you one of the concerns that I have that we will talk about more as we go forward--and Senator Wishart talked about those states that have legalized some form of medical marijuana--every state, my friends, that has legalized medical marijuana has now either legalized or has legislation pending to legalize recreational marijuana, including the state of Minnesota now, that we'll talk about this afternoon, where this piece of legislation is modeled after. Today we're going to talk a lot about emotion and we're going to talk a lot about fact. And you're going to hear words thrown out like: "have courage," "be brave," "this is the most controlled bill there could be," "politics." "Doctor prescribed" I've already heard on the microphone this afternoon. And as Senator Wishart understands, her bill does not include a prescription by a doctor. We also heard on the microphone this afternoon a comparison of THC and CBD, and this legislation does not restrict the THC content of the marijuana. Those are some words that you're going to hear. The words I would have you echo in the back of your head is "be passionate but be smart." Understand the proven process that we have used in our country that Senator Hilgers talked about with going through the FDA process and understand being consistent with... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR WILLIAMS: ...our public policy. I would remind you that at the hearing or at other spots, Dr. Williams from DHHS, and you have a letter from him, strongly opposed to this legislation. Law enforcement is opposed to this legislation. The judicial system that I have talked to are opposed to this legislation. The prosecutors in our state are opposed to this legislation. And the medical community is opposed to this legislation. Those are highly competent professionals and I believe they lead us to a smart choice to going... [LB622]

SENATOR LINDSTROM: Time, Senator. [LB622]

SENATOR WILLIAMS: ...down the right path. Thank you, Mr. President. [LB622]

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SENATOR LINDSTROM: Thank you, Senator Williams. Senator Geist, you're recognized. [LB622]

SENATOR GEIST: Yes, thank you, Mr. Speaker. And first I want to say that I rise with great respect for my fellow senator, Anna Wishart. And I have also heard from some of my constituents and I want you to know I've heard you. But let me also say that my background in almost six years of pharmaceutical sales is how I look at this process. And because of that, I also rise in opposition to the amendment and to the bill, LB622. And let me explain that. First, I just want to ask, what other drug has a Legislature been asked to approve, especially for a specific ailment or treatment of any kind? I'm not a scientist. I was not elected to be a scientist. I know there's a lot of studies, anecdotal studies out there. What I was trained to read is a clinical trial. And let me tell why. There's been a lot of suggestion about opioids and the more addictive drugs. But let me tell you, those have all gone through clinical trials. And physicians that use those and use those responsibly know how they operate. They know what dosing. They know what interacts with those medications. They know what is a contraindication, and what that means is something that responds so negatively you should not take them at the same time. They also know drugs that should not be taken, like Senator Hilgers suggested, when you're pregnant. That is the benefit of a clinical trial. It's not always because we want to establish whether this drug is going to cause death in a patient, and some do at high doses, and I'll cede that marijuana probably does not. However, there are many other questions that need to be answered besides the question of death. Because of that, I do believe this is a federally responsible move to study this drug just as any other drug is studied. Our physicians deserve that information. If they're going to recommend this to their patients, they need to know a dosing regimen. And often that looks like the weight of an individual. And with the weight of that person, here is the amount of THC, for instance, that you may need. There is often an efficacious dose, a dose that's very effective, and a nonefficacious dose, and that needs to be established. These are the reasons that I'm in opposition to this. Also reading in this bill on page 7, and I know I will be short on time so I'm not going to go through the specific language, but it asks for the patient's review of what they have...what treatments they have been on and whether that patient agrees that there's no other treatment that they can take for this ailment; therefore, they need to try medical marijuana. Typically, that should come from a physician and not from a patient. And so I would like to see that language. I would be very in favor of the FDA reviewing this, studying it, and especially in its oil form, making it available, that method, for patients. I do hear enough about it in...anecdotally that there must be some properties that are effective. [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR GEIST: But I would like to see it reviewed the same way that the FDA reviews other medications. Thank you. [LB622]

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SENATOR LINDSTROM: Thank you, Senator Geist. (Visitors introduced.) Senator Hansen, you are now recognized. [LB622]

SENATOR HANSEN: Yes, thank you, Mr. President. I don't have much to say or add on this bill. I'll let people who are better versed in it add it to me. I will just encourage everybody who was not able to, like our members of the Judiciary Committee, to go out and either read the history, read the testimony, ask for some of the committee materials, and hear some of the personal stories of people to really see the need or at least the desire, whether or not you do agree with the need, and encourage you to approach it from that point. I understand it's an emotional appeal and I understand that that's already been critiqued earlier today. But as a starting place for discussion, I think that's very important if you haven't done that already. And with that, Mr. President, I'll yield the rest of my time to Senator Wishart. [LB622]

SENATOR LINDSTROM: Senator Wishart, you're yielded 4:15. [LB622]

SENATOR WISHART: Thank you, Mr. President. Now let me go through and explain the Medical Cannabis Act that we're establishing in this legislation with AM697. And I want to thank Brent Smoyer, the legal counsel for the Judiciary Committee. He did a really thorough job of outlining the act in the committee statement. So I will highlight some of the important parts of this act. First of all, the Division of Public Health of the Department of Health and Human Services is responsible for regulating the Medical Cannabis Act. The medical conditions that qualify under our system, and I won't list all of them, but they include: cancer if the underlying condition or treatment produces severe or chronic pain, nausea, or severe vomiting; glaucoma, Tourette Syndrome, severe and persistent muscle spasms, including those characteristic of multiple sclerosis, Crohn's disease, lupus, Parkinson's disease, Lyme disease, opioid addiction, epilepsy, posttraumatic stress disorder, anxiety, and any other illness for which medical cannabis provides relief as determined by the participating healthcare practitioner. The allowed delivery methods for medical cannabis under our system are liquid, pill or capsule, vapor, topical creams, and suppositories. And I want to emphasize that smoking is not included in our medical cannabis system, nor are edibles other than in the form of pills or capsules. So the department shall establish and maintain a registry program for patients and their participating healthcare providers and the registry program will include the name, address, and telephone number of the patient enrolling in the registry, and shall identify their participating healthcare practitioner. It will also include a copy of certification from the patient's participating healthcare provider that certifies the patient has been diagnosed with a qualifying medical condition and a description of the potential outcomes of using medical cannabis specific to the patient's medical condition. A patient and their participating healthcare provider will be required to recertify on an annual basis. The department shall register a designated caregiver if a person has been identified by a healthcare practitioner as having a developmental disability or a physical disability and is unable to acquire or administer medication, so that designated caregiver will be able to do that for them.

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And a designated caregiver must be at least 21 years of age, does not have a felony conviction for a disqualifying felony offense, and has been approved by the department. And I want to emphasize that a designated caregiver in our system is required to go through a criminal background check. Parents and legal guardians may act as caregivers to patients who are under 21 and they won't have to register as a designated caregiver, but again, under our system, they will have to go through a criminal background check. Our system defines and creates regulations for the growers, which are called producers; the manufacturers, which are called processors; and the distributors, which are called compassion centers. The department shall register up to ten producers and processors per Congressional district and eight compassion centers... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR WISHART: ...per Congressional district. And I'll continue to outline this system in...further when I have more time. Thank you. [LB622]

SENATOR LINDSTROM: Thank you, Senator Wishart and Hansen. Senator Howard, you're recognized. [LB622]

SENATOR HOWARD: Thank you, Mr. President. I rise in support of LB622 and AM697. I originally came to this issue because I'm very passionate about access to healthcare and making sure that individuals can access all the kinds of healthcare that they need in this state, whether it's medicinal or a specific type of service. And I was really compelled by, I guess we call them, the "marijuana moms," right, from Bellevue who were so passionate about making sure that their kids could get access to a specific type of medication that they needed. But I rise today in support of LB622 predominantly because of how cannabis can help us with opioid addiction and opioid treatment. We talked about it a little bit yesterday, but my family has been personally impacted by opioid addiction. And I have to think that if my sister had had some type of access to something other than opioids, right? I feel bad because every time I've talked about her on this floor, it's been because she's addicted to...because she had been addicted to opioids, and she was so much more than that, right? She was a neat person. She thought I was hilarious. She was a human being. And so when we're talking about this bill, I want us to remember that we're talking about human beings. And I think everybody in this state actually, from the Governor on down, agrees that we have a problem with opioids. We have a problem with opioid addiction. We have a problem with opioid overdose deaths. Even our Governor said that the consequences of opioid abuse can be devastating, as national statistics demonstrate. And he's really proud of the work that the department has been doing over the past few years to ensure that citizens stay healthy. And here is just what we've been up to, right? Yesterday we did a cleanup on our own prescription drug monitoring program, which is one of the best in the country. And it helps prescribers and dispensers make good choices when they're prescribing and dispensing opioid

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medication. Senator Morfeld has worked on access to naloxone, which is really difficult to say. And in Medicaid they're actually monitoring prescription drug trend data in our own Medicaid system to make sure we can monitor individuals who are accessing opioids inappropriately. Now, when we talk about opioids and we talk about how it changes the way your brain functions, I tend to lean on scholarly articles to look at how cannabis might impact them. And so there is an article from JAMA from 2014 that talks about states that had medical marijuana laws that saw 25 percent drop in their opioid overdoses compared to states that didn't have a medical marijuana law. And in 2015, an analysis of 79 studies also published in JAMA reported a 30 percent or greater reduction in pain from cannabinoids compared to a placebo. So I understand Senator Hilgers was looking for specific types of research that had looked at the impact of cannabinoids and I'm only looking at those that have impacted or touch on opioid addiction. But I think there is a wealth of information about how cannabis can address pain and help individuals manage chronic pain. Other states that have allowed medical marijuana saw a 33 percent decrease in their opiate-related deaths, which is incredible. But I, you know, maybe don't take it from me. There was a testifier and I'd just like to read her story, because I think it's important for us to remember that my sister isn't here anymore, but there are people who are still dealing with this issue in this state. And so I'd like to read her story. Her name is Lia McDowell-Post and she says: I have Complex Regional Pain Syndrome. It's one of the most painful diseases in the world. Twenty-five percent of the people that have it commit suicide... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR HOWARD: Thank you, Mr. President,...because the pain is so great. The reason I know this isn't because of what I've read. It's because I've lived it for the past two years of my life. And there was a time that I was so hopeless, I didn't want to live. She said that she was on a mixture of opioids, benzodiazepines, and sedatives, which she later learned was a Molotov cocktail for overdose. And her...she had to sit there, while her husband and her teenage daughter watched helplessly, with drool dripping down her chin as they...and they took her to the Mayo Clinic because the opioids were impacting her so much. She ended up utilizing cannabidiol oil, so a cream and an oil, to help with her neuropathic pain. And it helped her get off opioids, which is incredible and exciting, and not just exciting in the sense that it can help people who struggling with this issue, but also because it saves the state a considerable amount of money and hardship. And so I would certainly urge the adoption of LB622. [LB622]

SENATOR LINDSTROM: Time, Senator. [LB622]

SENATOR HOWARD: Thank you, Mr. President. [LB622]

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SENATOR LINDSTROM: Thank you, Senator Howard. Senator Kuehn, you're recognized.  
[LB622]

SENATOR KUEHN: Thank you, Mr. President. Thank you, colleagues. And I do have concerns and I am opposed to LB622 today, as proposed and with the amendment. I want to talk about it a little bit with just maybe a bit of a different slant than where we've gone before today. I know we're having a good discussion. I think all of this is important. But I want to talk a little bit about some historical perspective. Late last century, a German pharmaceutical company developed a wonder drug. It was a small molecule. It was a sedative, but not a barbiturate, so it was very effective sleeping pill. It wasn't addictive. Showed no indications that individuals who consumed it ever developed any addictive patterns or addictive behavior. And it was considered 100 percent safe in trial after trial, because no matter how much you fed to the study rats, they never died. It became a widely prescribed and highly effective nonbarbiturate, nonaddictive, nonhabit-forming sleeping medication and it was quickly discovered to have a very handy additional effect. It prevented morning sickness in women. That drug was thalidomide. Marketed and stated as safe, nonaddictive and a wonder drug of its time, it's estimated 10,000 fetal deaths and over 7,000 deformed babies born to mothers who consumed thalidomide during pregnancy. The idea that a drug doesn't necessarily kill you or that any drug is safe is on its base a misnomer. We must learn from the mistakes of history and of the past, and medicine and the history of drug therapy is riddled with lessons for us to learn. Thalidomide, diethylstilbestrol, Ambien when it was originally prescribed. Think about all the poor women who got a great night's sleep and woke up the next morning and drove their car into the garage door or a post because of effects of a drug that was supposedly safe, but we didn't know the full impact until it got out in widespread use in the population. There's a lot that we know about medical marijuana; there's a lot we don't know. What we definitely don't know is that there's a lot we...that we definitely do know is there's a lot we don't know. To say that studies show one way or another conclusively in a meta-analysis or an examination of all studies is to overstate the evidence. But there are some things we do know. Cannabinoids, medical marijuana is really bad for the developing brain. We know definitely what it does when it accumulates in the neurons of children. And some startling studies on the rise of psychosis associated with marijuana use, and while it's not addictive, we now have a new disease. I encourage you, go to your Google and look up and it's called CUD, and it's called cannabis use disorder. It's not an addiction but we now have a term for when you use cannabis too much--CUD. And in April 2016, American Journal of Psychiatry found a significantly higher risk of death in a cohort study of 20,000 men who had used marijuana early in their life. We have a study that was published last year that showed an increase in the rate of suicide among Iraq and Afghanistan era veterans who utilized cannabis. We have to be careful about making claims that something is safe simply because you can't die of it. And again, I'm going to ask us to take a look at what actually goes on a death certificate. You can drink yourself to death and your cause of death may be cirrhosis of the liver or car accident. [LB622]

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SENATOR LINDSTROM: One minute. [LB622]

SENATOR KUEHN: We don't list alcoholism as a frequent cause of death. To assume that cannabinoids, because we have an endogenous cannabinoid system of ligands and receptors and neuroreceptors in the brain makes it okay, we have an endogenous opioid receptor system. That's why opium and morphine work so well. Pinch yourself. Give yourself a little bit of pain to where it hurts so good and you just enacted that endogenous opioid system. As we contemplate this, I want us to be careful not to overstate the science, because we are treating vulnerable children, people at the end of their rope who feel they have no options. Treating them as test subjects is not an option. Make sure we're clear on what the science says before we overstate it and before we speak about it with certainty. Thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senator Kuehn. Senator Vargas, you're recognized. [LB622]

SENATOR VARGAS: Thank you very much, President. Colleagues, I rise in support of LB622. I thank Senator Wishart for bringing this important legislation and for us having this conversation. I think oftentimes the conversation is as important as the legislation because we don't make decisions just on whether or not one person's perspective is more important than others'. We're making decisions based off of our informed rationale as to what we're hearing during debate, good policy, and making sure we're doing everything we can to be responsive to the needs of Nebraskans. And I think that's what we're hearing. I think we heard from the testimony from different individuals that there is a definite need to alleviate chronic pain that we are hearing, this evolving conversation across our country. I remind everybody that there is a changing landscape in terms of the way that medical marijuana and the use of medical cannabis programs nationwide are being taken into effect. We're seeing 29 states now in total that allow for comprehensive public medical marijuana and cannabis programs. We also see that we have at least 17 additional states that have a use of at least low THC and high cannabidiol products for medical reasons in limited situations or as a legal defense. And we're seeing a few states where we continue to not have some traction in advancing some policy in this arena, and we are one of those states. I think it's important that we are seeing changes in the way that this conversation is being had. But the one voice we want to continue to listen to are the voices of our constituents. And I know I have heard, and at least in the testimony from this committee, some constituents that are asking us, to implore to have some options to be able to address the chronic pain they're experiencing. One of those individuals, I want to read a testimony from one of the individuals from the committee: My name is Ben. I proudly served my country for four years: two years before war, one year at war, and one in the hospital. At the age of 17, I stood up for my country. When my, at the age of 17, when my country, they asked me to and I ran into the front line. I am now a disabled veteran. Now I'm asking you guys for help. I'm asking you to help establish this law for our state so we can have the usage of medical cannabis so people who deserve this medicine can utilize it



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lawfully. I'm referring to the veteran groups, the people who risked life, limbs, and sanity; our physical and mental being; the natural warning signs that tell you, you probably shouldn't be there, we were trained to be in that position, to oversee all odds, to complete our mission. If death is looking at you in the horizon, an American soldier will stand between you and death's way. But we aren't Superman. The bumps and bruises we take are life altering or life ending. Not only does the physical pain truly never stop, it gets worse each year. You can't tell me that this does not come with pain and heavy stress. No. And tell me that this does not hurt. I don't want this conversation with you because it's just heartbreaking that you don't listen to me. From what I've gone through and from what I've suffered, I don't want to talk to you because it's heartbreaking that I'm telling you my story and people continue to believe that this is just a fallacy. Colleagues, we are hearing from Nebraskans that there is something more that we need to do. We're hearing from a veteran... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR VARGAS: ...that there is pain that we are continuing to experience from individuals. And obviously, there is a step we need to take forward. Now I think that we, as legislators, are constantly making decisions with the best information, and as policymakers we are making that informed decision. I appreciate the concern and the circumspect that we are providing when we're thinking about decisions such as this. But I always want to consider we're listening to our constituents, especially those that have served their lives for our country. We're doing everything we can to address their stress, their chronic pain, and listen as much as we can. Thank you very much. [LB622]

SENATOR LINDSTROM: Thank you, Senator Vargas. Senator Hilkemann, you're now recognized. [LB622]

SENATOR HILKEMANN: Thank you, Mr. President. Been listening to this debate. I've always been interested in it in the past. Senator Wishart, would you take a couple of questions from me? [LB622]

SENATOR LINDSTROM: Senator Wishart, would you yield? [LB622]

SENATOR WISHART: Yes, I will. [LB622]

SENATOR HILKEMANN: You, on your opening, you said that you read some doctor who said that this is very safe. Could you tell me who that doctor was? Do you remember? [LB622]

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SENATOR WISHART: Oh, that was the doctor in 1937. It was the legal counsel for the American Medical Association at the time, I believe is who you're referring to. [LB622]

SENATOR HILKEMANN: Okay. Okay. Thank you. I missed who that was. Doctor (sic), what's...is your bill patterned pretty much after the Minnesota plan? [LB622]

SENATOR WISHART: It's similar to the Minnesota plan and to Senator Garrett's bill that was introduced last year. We have made some changes to the bill because Minnesota's model ended up not being as financially sustainable as some of the other medical cannabis models around the country. So we made some changes to address those issues. [LB622]

SENATOR HILKEMANN: Well, that's...I'm glad you mentioned that because that's exactly what I was going to point out, that the Minnesota thing has not worked out well. In fact, did they...originally when the legislation was passed, pain was not a part of their prescription. Am I correct? [LB622]

SENATOR WISHART: Yes, you are correct. They later added it in. [LB622]

SENATOR HILKEMANN: And then without legislative approval, they added pain. Am I correct? [LB622]

SENATOR WISHART: I'm not sure about the process through which they added pain, but they did add pain. [LB622]

SENATOR HILKEMANN: Okay. And am I understanding, one of the things that I've read about the Minnesota plan is that, indeed, it is...it has become too costly for the people to even afford the cannabis. What is different about our bill that you're proposing that's going to make it more affordable? Minnesota has more lives than we do. [LB622]

SENATOR WISHART: Yes. So we worked with some experts out of Oregon, especially, who have a medical cannabis system to address some of the concerns that we had seen in the Minnesota model and their financial sustainability. And one of the issues with Minnesota's model is that they had very few producers, distributors, and processors, too few. There wasn't enough competition or access. So we increased ours, as you'll see AM697. We increased the amount per Congressional district of each three of those entities. [LB622]

SENATOR HILKEMANN: Now am I correct, there would be 30 growers across the entire state with your legislation? [LB622]

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SENATOR WISHART: So, yes, up to ten producers per Congressional district. [LB622]

SENATOR HILKEMANN: Okay. But you said there's going to be only eight compassion centers that were distributors in each district. Is that? So we're having more growers than we are for your compassionate care centers that you said. Is that correct? [LB622]

SENATOR WISHART: Yes. That's correct and that's modeling some of the other medical cannabis systems that are financially sustainable in other states. [LB622]

SENATOR HILKEMANN: Okay. Who's going to...who's going to certify these dispensers? [LB622]

SENATOR WISHART: So...and I'll get to this as well as I continue to move forward on telling you about this system. But the Department of Health and Human Services, their department (sic--Division) of Public Health, is ultimately responsible for certifying and licensing these entities. But we do require that the entities go through more of a rigorous licensing process. [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR HILKEMANN: So to make it perfectly clear, these people who are going to be deciding which one of the oils or whichever you get are not licensed pharmacists. Am I correct? [LB622]

SENATOR WISHART: So actually we require in our bill that at the compassion centers, those that are distributing the actual medical cannabis, whether it be in an oil form or any allowable form, are licensed pharmacists. [LB622]

SENATOR HILKEMANN: Okay. But make it very clear that this is not going to be distributed at your corner store, CVS, or your Walgreens. Am I correct? [LB622]

SENATOR WISHART: No. Yes, you are correct. Excuse me. [LB622]

SENATOR HILKEMANN: Okay. [LB622]

SENATOR WISHART: It will not be distributed at a Walgreens. It will be a completely separate compassion center. [LB622]

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SENATOR HILKEMANN: There's just enough anecdotal evidence when people say that they get some improvement for this. I think it's a good discussion. [LB622]

SENATOR LINDSTROM: Time, Senators. [LB622]

SENATOR HILKEMANN: I will not be supporting your bill but will have more questions. Thank you, Senator. [LB622]

SENATOR LINDSTROM: Thank you, Senator Hilkemann and Senator Wishart. Senator Wishart, you're now recognized. [LB622]

SENATOR WISHART: Okay. Thank you. So I'll continue moving forward to describe the system that we're putting in place. As Senator Hilkemann and I discussed through some questions and answers, again, we will register up to ten producers and processors per Congressional district and eight compassion centers per Congressional district. And producers, processors, and compassion centers will be required to reregister every year. There will be an application fee of \$25,000 for all three entities, and producers and processors will pay an annual licensing fee of \$40,000 and compassion centers will pay an annual licensing fee of \$25,000. And these fees are for the cost of regulation and inspection. And I want to note that a county, city, or village governing body may adopt a resolution or ordinance prohibiting the operation of a producer, processor, or compassion center, or a zoning code limiting the amount of them. If every jurisdiction within a Congressional district adopts a prohibition of producers, processors, and compassion centers, then the department may register additional entities in other Congressional districts, up to the allowed amount at the state level. And the department will consider the following factors when determining whether to register a producer, processor, or compassion center: one, the technical expertise of the producer or processor or compassion center in cultivating, processing, and distributing medical cannabis; two, the qualifications of their employees--every employee must be 21 years of age and will be required to undergo a criminal background check; three, the long-term financial sustainability; four, the ability to provide appropriate security measures on the premises; and five, the ability to meet the production, processing, and distribution requirements by the dates outlined in this act. And I'll go through the time line of the act being put in place at the end of my testimony. Additionally, processors are required to contract with an independent laboratory that is approved by the department to test the cannabis being processed as to the chemical composition, containment (sic--contamination), and consistency, and report the range of recommended treatments for each medical condition and any risks of noncannabis drug interactions. Tracking numbers will be assigned by processors to any medical cannabis distributed by the processor. And employees of processors are required to have identification showing their employment status. Under our act, compassion centers shall require medical cannabis to be dispensed to patients by a licensed

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pharmacist. Prior to dispensing any medical cannabis, a compassion center shall do the following: one, must verify that the patient or designated caregiver is registered through the Department of Health and Human Services; two, they assign the dispensed medical cannabis a tracking number, patient's name and contact information, and the chemical composition of the cannabis; three, they properly package medical cannabis in compliance with federal poison prevention packaging; and four, they provide no more than a 30-day supply of the recommended quantity. The use, possession, cultivation, or sale of medical cannabis or medical cannabis products by a patient, designated caregiver, healthcare professional, producer, processor, or compassion center for anything other than what is included in this act will be penalized pursuant to Sections 42 through 46 of this bill. And this establishes...this act also establishes a Medical Cannabis Board of nine members who will be required to meet at least once each quarter to advise the department on the following: the rules and regulations pertaining to go medical cannabis, the policies of the department as they relate to medical cannabis, recommendations for legislative changes regarding the regulation of medical cannabis. So let me walk you quickly through the time line for this act. The department will accept applications for producers, processors, and compassion centers by November 18, 2018, if this bill is adopted. The processors will be required to... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR WISHART: ...begin supplying medical cannabis to compassion centers on or before May 1, 2019. And compassion centers are required to begin dispensing medical cannabis to patients by May 1, 2020. Now I will quickly walk you through the fiscal note. The Fiscal Office did a great job in detailing the fiscal note so I'll only mention a few key pieces. First, the fiscal note is based off LB622 and would not account for increased revenue seen in the changes to licensing and application fees in our committee amendment. I believe these additional dollars will generate enough annual revenue--I believe it's \$3 million annually-- generated to do our state to offset any expenses from the department. And if they do not, then we can continue an additional registry fee for patients, which is typical for many cannabis systems in other states. Additionally, an important piece that is missing from this fiscal note is the sales tax revenue that will be generated from this act because medical cannabis would be subject to sales tax. Thank you. [LB622]

SENATOR LINDSTROM: Thank you, Senator Wishart. Senator Walz, you're recognized. [LB622]

SENATOR WALZ: Thank you, Mr. President. I rise in support of LB622 and AM697. I want to thank Senator Wishart for bringing this. I also want to thank Senator Geist for her comments today. I thought that they were very informative. I want to start out just by letting you know that I

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have also received a lot of e-mails from parents, patients, and vets asking that we please pass this legislation. And as a young adult, I worked for an agency that served individuals with developmental disabilities and seizure disorders. Throughout that time, I handed out a lot of medication, including Depakote, phenobarbital, Demerol, Adderall, Ativan, and Haldol, just to name a few. These medications dramatically changed the behaviors of the individuals and had many negative side effects. I think about that responsibility...thank you...that I had to medicate. I think about leaving that medical office and wondering what the side effects might be for the clients that I served and what other options are there? What other medications might be available, medications that might have less side effects? And at that time I was only a direct care staff, so who was I to question the doctor? But thinking back, I wish I would have advocated a little bit more and pushed for answers and asked what the side effects were and if there was anything else available that was less addictive and had less side effects. So my point is, the drugs I was giving were very strong, behavior modifying drugs. And I believe that we need to be able to give patients another option. I'd also like to read a story from one of the testifiers in the Judiciary Committee. Her name is Amy Swearer: My name is Amy Swearer and I testify before you today in my individual capacity as many things: as a longtime resident of this state, as an ardent and principled conservative, as a devout and orthodox Protestant, as a student of law intent on speaking truth, and as a young woman and former Division I athlete who has spent much of my life dealing with a variety of medical issues. In the course of my life, I have been prescribed oxycodone for endometriosis. I have been given Demerol, morphine, and Ondansetron, without giving a second thought, for migraine management. I have been handed legalized forms of methamphetamine to deal with the effects of a soccer career riddled with head injuries. I guarantee you I have been prescribed in a few years at least half a dozen medications that I personally attest to are more addictive, more expensive, and often less helpful than the products this bill would legalize for the citizens of the state of Nebraska. I know countless others who would and who have today testified to a similar reality. Facts matter and they changed my mind on this issue. It matters that over 60 peer-reviewed studies have provided stunning support of marijuana's utility in treating a variety of health conditions. It matters that researchers from U-Penn, Georgetown, UC-San Diego, Columbia, Oxford, and universities all over the world have found that THC and CBD products have a significant medical value. It matters that your citizens are standing before you today pleading for a cheaper, effective, and relatively side effect free option in the form of medical marijuana products. This bill came before the Unicameral last year and did not pass. [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR WALZ: This is not just disheartening; it is absurd. The result of our absurdity is that these people, good, honest, hardworking citizens, are suffering needlessly. It is with good reason that 29 states and the District of Columbia have undertaken to remedy this absurdity. We are arbitrarily depriving citizens of a basic form of natural liberty--the right to make medical

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decisions in their best interest, the right to pursue medications that have been repeatedly proven to provide substantial relief for their ailments. Facts are funny things. They don't care much for our feelings. They don't care for preconceptions or assumptions of our fears. Facts persist and these facts about medical marijuana are not going away. I implore this committee to base its decision on facts. The studies exist in droves and I provided an overview of some of them for you. Read them. Visit a medical marijuana dispensary, as I have in my home state of Washington. See the incredible amount of regulation that occurs in... [LB622]

SENATOR LINDSTROM: Time, Senator. [LB622]

SENATOR WALZ: ...this industry. Thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senator Walz. (Visitors introduced.) Senator McDonnell, you're now recognized. [LB622]

SENATOR McDONNELL: Thank you, Mr. President. I rise in support of AM697 and LB622. I think about campaigning, I think about going door to door and those citizens that share their pain and suffering with you, that share their medical problems, that share their problems with their children, their families, and reach out to help...to you to help them. And I think back to the people that have brought up medical cannabis and their facts were based on family and friends in other states that it was working, that it was making a difference for them, for their families, for their friends. I believe everybody in this room, if you support this or do not, no one in this room wants to see anyone suffer. But how do we get there? Here is an option that we have in front of us, an opportunity to stop some of that pain and suffering. Recently I met a family that talked about their daughter since 15 months old, has epilepsy, the seizures she suffered her whole life, the different medicines that they've tried, the antiseizure medicines. Now up to 19 pills a day, 19 pills a day, still having at least one seizure a day. The falls, the depression from those medicines, one medication causes another problem and you have to take another medication to try to offset that problem. They are standing here in front of us, coming to our offices and telling us that we know medical cannabis will work. That it will stop the seizures. The four seizure medications, the 19 pills, no longer would be needed. Now let's talk money...let's talk money because that is something we're responsible in the state of Nebraska. Those 19 pills a day are costing the taxpayers of the state of Nebraska \$54,000. Fifty-four thousand dollars is what that 19 pills a day are costing. Take away that pain and suffering, take away what that individual is going through, but look at the \$54,000 we're going to save, and how many people in the state of Nebraska that we can stop their pain and suffering by giving them this option, and the money we will be able to save and spend in other places that are going to help people of Nebraska. I urge you to please think about that. And again, I know everyone in this room wants to stop the pain and suffering.

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Let's also think about the economic impact. I yield the remainder of my time to Senator Wishart. Thank you. [LB622]

SENATOR LINDSTROM: Senator Wishart, you're yielded 1:56. [LB622]

SENATOR WISHART: Thank you, Senator McDonnell. Just to follow up in terms of when Senator McDonnell was talking about the money side of things, state medical marijuana programs have generally had no trouble covering their expenses and some have even generated substantial surpluses for those systems that do exist across the state. Colleagues, if you have problems with the specifics of the bill, I am willing to work with you to make this a better bill. Already I've been working with Dr. Gold, who testified in opposition to this bill on behalf of the Nebraska Medical Association, but who has since then reached out to me to work on improving this legislation. I'll pass out a letter from him or send that to you in the future. What I can't accept today is an argument that this is too hard or complicated. We were all elected to come here, study, work hard, and address tough, complicated issues, so I hope you will support AM697... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR WISHART: ...and LB622. Thank you. [LB622]

SENATOR LINDSTROM: Thank you, Senators McDonnell and Wishart. Senator Pansing Brooks, you are now recognized. [LB622]

SENATOR PANSING BROOKS: Thank you, Mr. President. I would like to give my time to Senator Wishart if she wants it. And again, I stand in favor of the amendment, AM697, and LB622 and just hope that we can get our minds wrapped around change. I know change is really hard, but, literally, come on, everybody. Let's get on board and figure out how to help take care of people who are truly hurting and in need. Thank you. [LB622]

SENATOR LINDSTROM: Senator Wishart, you're yielded 4:22. [LB622]

SENATOR WISHART: Thank you so much, Senator, Senator Lindstrom. Thank you, colleagues. I'm actually waiting to get a testimony that I wanted to read to all of you today from another veteran who testified, so hold on one moment. I'll wait for my next time. [LB622]

SENATOR LINDSTROM: Thank you, Senator Pansing Brooks and Wishart. Senator Morfeld, you're recognized. [LB622]



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SENATOR MORFELD: Thank you, Mr. President. Colleagues, I just want to address some of the things that I heard earlier from folks concerning some of the federal issues. First, one thing that the opponents to this legislation from the Attorney General's Office failed to note...or maybe they represented the county attorneys actually. I can't remember. They worked in the Attorney General's Office, but they were representing the county attorneys as well. I don't know if they were representing the Attorney General. But in any case, they were talking about some of the federal complications. But one of the things that that opponent failed to mention was that Congress, our conservative Congress, actually made it so that the Justice Department cannot enforce actions against states that have medical marijuana. They said that no expenditures and no resources from the Department of Justice may be spent on marijuana enforcement in states that have legalized medical marijuana. So we can talk all day about the federal complications, what schedule drug this is, all those different things, but Congress itself has stated that they do not want the Department of Justice to enforce these federal laws in states that have allowed medical marijuana. And I believe they've renewed that clause in an appropriations bill several different times. So even if you don't want to assert states' rights on this issue, even if you're dubious about the medical benefits, despite there being clear medical advantages, keep in mind that the United States government, Congress has stated they do not want the Department of Justice to enforce these laws. And they haven't just stated it; it's actually in law. So we can make all of the arguments about the federal regulatory framework, the laws on the books, but the United States Congress, who creates laws, have said, Department of Justice, do not enforce these laws. There's no reason not to pass LB622. And for the reasons that I stated before, not only is there no reason not to pass it, there's plenty of reasons to pass it. It only takes going on-line and there's very reputable sources that have showed clear medical benefits. And I know Senator Kuehn earlier stated, you know, we can't overstate what we don't know and what some of the studies are. Well, a lot of the reasons why we don't have studies is because of politics on the federal and state level not allowing for the adequate research. But there has been research in several different instances, which Senator Wishart and others have stated and provided to all of you, both in handouts and in statements on the floor, that show there are clear medical benefits. And so I think that what we need to do is trust doctors, trust individuals and family members making informed decisions based on what doctors say and allow LB622 to pass. And if you have concerns about the bill, as Senator Wishart stated, work with Senator Wishart on them. Don't just oppose the bill. Don't be disingenuous about it but, rather, work to make the bill better. We have the ability to pass this. We have the ability to pass it. We have Congress, which has stated that the Department of Justice shall not enforce actions against states that allow medical marijuana. We have plenty of other states that have already done it and been successful in it. And this is the proper regulatory framework. [LB622]

SENATOR LINDSTROM: One minute. [LB622]

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SENATOR MORFELD: Thank you, Mr. President. The only other thing that I'll say is that we should really trust our doctors to make these decisions. We trust medical professionals to help end life in the Department of Corrections in Nebraska, and I have no clue why we wouldn't let medical professionals help alleviate pain and prescribe medications that they think will help benefit life. Colleagues, I urge you to keep an open mind to LB622, to go beyond the rhetoric, to go beyond the politics, think about the families, think about the individuals that would be positively impacted and have access to this type of medication based on their doctor's recommendation. Thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senator Morfeld. Senator Ebke, you're recognized. [LB622]

SENATOR EBKE: Thank you, Mr. President. I appreciate the tenor of this conversation today. We've had a good debate. I thought I might, if I heard Senator Williams right earlier, he mentioned that this legislative body is the appropriate policymaking body and that it's our responsibility to be careful about what kind of policy we make. And I agree with him. But I would also say that the citizens of the state of Nebraska have proven that if the body does not act that they will. At the time that many of us probably...a third of us or more were elected, 17 or 18 of us were elected in 2014, Initiative 425 was passed. This was the minimum wage legislation, the initiative action. And what we found as a result of that was that because of constitutional limitations, once an initiative is passed, once a law is put into place by the citizens, the Legislature is very limited in any changes that it can make for a period of time. So I looked on the Secretary of State's Web site and there are currently two petition efforts underway. One is an initiative petition effort which would decriminalize and remove all fines and penalties for the possession of one ounce or less of marijuana starting January 1, 2019, by amending Nebraska statute 28-416. The other is much more significant, in my view. It would add a new Section 26 to existing Article XV of the Constitution of Nebraska. It would say, one, any person in the state of Nebraska shall have the right to use any plant in the genus cannabis and any of the parts of such plant in the state of Nebraska. The right to use any plants, this is number two, the right to use any plant in the genus cannabis and any of the parts of such plant shall include but not be limited to: (A) noncommercial personal possession, consumption, manufacture and distribution by persons 21 and older; (B) commercial possession, consumption, manufacture, and distribution; and (C) noncommercial personal possession and consumption by a person under 21 years of age with written permission from a parent or legal guardian, and a written recommendation from a licensed healthcare practitioner. Three, any law that interferes with the application of this section shall be considered null and void. Nothing in this section shall allow a person to engage in conduct that endangers others. And four, if any portion, clause, or phrase of this section is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be affected but shall remain the full force and...in full force and effect. Friends, something is coming. One way or the other, we're going to see some

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sort of cannabis legislation, I would guess, if not in 2018, in 2020. There is a move out there. I was at a town hall a couple of weeks ago and I had a woman who I would estimate to be somewhere in the 80- to 85-year-old range. She said, Senator Ebke, what do you think of medical marijuana? Now when somebody of that age asks you that question in Fillmore County, Nebraska, you go, okay, what's the right answer here? And so I kind of danced around it. And she says, why shouldn't we get to use it? Why shouldn't I, as a person who has chronic pain because of arthritis, why shouldn't I be able to use this? I said, okay. Here's the deal, folks. Something is coming. Do we want to have some control? Do we want to make some inroads? Or do we want to let... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR EBKE: ...things open way up? And that's what's going to happen if either of these initiative petitions pass, because that opens the door to recreational use. If you don't want that, you need to be thinking about Senator Wishart's bill. And I didn't give you much time, but if you'd like it, Senator Wishart, I would give you the rest of my time. [LB622]

SENATOR LINDSTROM: Senator Wishart, you're yielded 42 seconds. [LB622]

SENATOR WISHART: Thank you, Mr. President. You know, we...I'll address some of the testimony today that I somewhat disagree with. One of the senators commented, you know, what other drug...what drug as a state made legal that is Schedule I. And my argument to that would be what other drug is a Schedule I and cannot be fatally overdosed on? Colleagues, this is, in the grand aspect of the medicinal products that are legal, this is fairly benign, concerning those that are legal. [LB622]

SENATOR LINDSTROM: Time, Senator. [LB622]

SENATOR WISHART: Thank you. [LB622]

SENATOR LINDSTROM: Thank you, Senators Ebke and Wishart. Senator Hilgers, you're recognized. [LB622]

SENATOR HILGERS: Thank you, Mr. President. Good afternoon again, colleagues. I wanted to reset the conversation a little bit and talk about what we agree on and what we don't agree on. What we agree on I think is pretty straightforward. We agree that there are people who are suffering. There's no doubt about it. Senator McDonnell spoke to that. There's...I have no doubt everyone in this body has empathy for those who are suffering. There's no doubt. We also agree,

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I think, that we would like to see more research, more clinical research into marijuana and the types of dosages, the types of use, what's safe, how could a doctor prescribe it, how does it interact with other drugs. Senator Geist spoke I thought in-depth about that particular topic. We absolutely agree about that. What we don't agree on I think is what the science currently says. There's been some discussion about some journals and articles and studies that suggest maybe it's okay and maybe some anecdotal experience that it's okay. But we've had reputable society after reputable scientific society say, no, that that is not what the evidence says, that it's only anecdotal. And in fact, there's some evidentiary or scientific sources that say the opposite. So I think we disagree on the science. I think we also disagree on whether or not this body is equipped to handle this particular topic. Senator Wishart spoke to that and I have complete agreement with Senator Wishart that we take very complicated matters every day in this body. There's absolutely no doubt. But I do think there's a difference in kind between complicated matters of statutory construction and interpretation and tax policy and the like with analyzing, interpreting, and applying clinical evidence. There's a reason why doctors go to four years of school and have year after year after residency...after post...in residency and postschooling clinical work. To have the scientific and clinical background to look at a study and understand whether it's good, whether it's bad, what does it add to the available literature, how does this impact, does it have the right control group, does this contradict other science I think takes years of study to do it right. We could say we're doing it, but to do it right for the people of Nebraska, they deserve to have it done right, I think it is beyond the capabilities of most of us in this body, with maybe the exception of Senator Hilkemann and Senator Kuehn. So I think we disagree on that. And we also disagree, I think, on what the appropriate mechanism is here. The appropriate mechanism, just like aspirin, just like the regulation of aspirin or Tylenol, generic drugs, over-the-counter drugs, prescription drugs, is through the FDA at the federal government. I wish they would do more, we agree on that, but they haven't. And I don't think it's this body's...I don't think it's appropriate for this body to go beyond and to approve a drug that has not been approved by the FDA. So I oppose LB622. And with that, Mr. President, I'd yield the rest of my time to Senator Dr. Hilkemann. [LB622]

SENATOR LINDSTROM: Senator Hilkemann, you're yielded 1:57. [LB622]

SENATOR HILKEMANN: Thank you, Senator Hilgers. Just a couple of things I've heard during this conversation I want to make here, this chance: One of the things Senator Morfeld had said that I think we do need concern ourselves with is that we do not want this to go to a ballot issue because we have more control in the legislative body than if we make this a constitutional issue, so that I am somewhat concerned about. Senator McDonnell made the comment about the epilepsy and referred to that patient. I wanted to be clear, from my understanding, unless it's changed, the American Epilepsy Association is opposed to medical marijuana. And my work with my own Podiatric Medical Association over the years, we tried to find out what's best for

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our patients, and I would think that if it was the best for our patients, the American Epilepsy Association would not be opposed to that at this point. [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR HILKEMANN: Senator Wishart, are you available for a question? [LB622]

SENATOR WISHART: Yes, I am. [LB622]

SENATOR HILKEMANN: One of the things Senator Walz mentioned was that this is cheap when we talk about medical marijuana. And what's the normal dose for medical marijuana? [LB622]

SENATOR WISHART: You mean the price of the normal dose? [LB622]

SENATOR HILKEMANN: No, I'm talking...well, you can give me price for...per normal dose. [LB622]

SENATOR WISHART: So it varies per state, Senator. I will...I'll run a few of those and give them to you. [LB622]

SENATOR HILKEMANN: Okay. [LB622]

SENATOR WISHART: But in Minnesota's, for example, theirs was on the high end of about \$500 per dose. [LB622]

SENATOR HILKEMANN: Right, \$500, yeah. I want people to be aware this is not...we talk about this being...it is not cheap medication that we're growing here as well. Thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senators Hilgers, Hilkemann, and Wishart. Senator Williams, you're recognized. [LB622]

SENATOR WILLIAMS: Thank you, Mr. President. Good afternoon again, colleagues. I did sit on the Judiciary Committee my first two years in the Legislature, so I heard the comments and the testimony. In fact, I had a young gal sitting next to me with a dog that needed to be with her, a service dog, and she actually passed out during that hearing. And for those of us that were in

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the hearing that day, it was one of the longest days I've ever spent in the Legislature. So being painted as a person that doesn't care about human beings is a little strong, I would think. And who are these voices of constituents? Because in addition to the people that you're talking about, my constituents are doctors, lawyers, hospital administrators, prosecutors, and judges, all who have talked to me in opposition to this. I would briefly like to talk about the Minnesota experience. As you have heard, the legislation we're looking at is highly modeled off the Minnesota law with a few tweaks, those tweaks being adding a few more diseases, I'll use that term, that could be used for medical marijuana and also adding some additional places to locate processing plants and distribution centers. And largely from a financial base, the Minnesota experience has been a financial flop. At first, they ended up with 1,190 people registered. And if you take Minnesota's population and turn that into Nebraska's, that's about 380 people that we would have registered in our state after spending several million dollars to put this process together. It was only when they decided to put intractable pain as one of the items that could have distribution of marijuana that their numbers began to shoot up. But even then, at the end of this current year, they are up to approximately 4,000 total registrants in the state. Change that into Nebraska numbers, that's just about 1,200 people in Nebraska that would be registered. And now, because of the financial calamity that has been created, they are now introducing legislation to legalize recreational marijuana. Medical marijuana is an oxymoron, much like jumbo shrimp or deafening silence or, lest I say, a tragic comedy. I don't say that lightly. I take these people's lives seriously. But when you talk about medicine, our perception is doctors prescribing medication to people for something they need, and that is not what happens under this legislation. The only involvement of a doctor is to certify that a person has one of these issues. We also many times in the bill talk about pharmacies and pharmacists. And our traditional role of a pharmacist, in what we think of, is different because, as Senator Hilkemann asked the question of Senator Wishart about the dosage, what is the dose with medical marijuana? It isn't the same as three pills... [LB622]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR WILLIAMS: ...twice a day. I'd also like to just very quickly talk about the additional obligations put on our stressed Department of Health and Human Services. There are words in the legislation like: you shall establish, you will create, you will enroll, you will provide, you will develop, you will determine, you will adopt, you will collect, you will administer, you will examine, and you will expect...inspect, excuse me. In fact, there are 39 references in this bill creating new burdens on our already stressed Department of Health and Human Services. I don't think that's the direction we want to go. Last week's Gothenburg Times, our weekly paper, front page: The Nebraska Attorney General has publicly stated that legalized marijuana... [LB622]

SENATOR LINDSTROM: Time, Senator. [LB622]

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SENATOR WILLIAMS: ...in Colorado...thank you, Mr. President. [LB622]

SENATOR LINDSTROM: Thank you, Senator Williams. Senator Halloran, you're now recognized. [LB622]

SENATOR HALLORAN: Thank you, Mr. President. I, too, want to commend Senator Wishart for her passion and her compassion. She's a very gracious, Senator. I would like to pick up where Senator Williams left off and if I could get Senator Riepe to yield to a question, please. [LB622]

SENATOR LINDSTROM: Senator Riepe, would you yield? [LB622]

SENATOR RIEPE: Yes, I will. [LB622]

SENATOR HALLORAN: Senator Riepe, this does entail, it does appear, the total responsibility is going to fall on to Health and Human Services, if I read this correctly. Has Senator Wishart visited with you about...in-depth or at any level in detail of what that might cause the department? [LB622]

SENATOR RIEPE: No. We've had no discussion. And I know the department is in opposition of LB622. [LB622]

SENATOR HALLORAN: Okay. Thank you, Senator. [LB622]

SENATOR RIEPE: Thank you. [LB622]

SENATOR HALLORAN: If Senator Wishart would yield to a few quick questions, please. [LB622]

SENATOR LINDSTROM: Senator Wishart, would you yield? [LB622]

SENATOR WISHART: Yes, I will. [LB622]

SENATOR HALLORAN: It's A quite in-depth bill, it's long at least in length, but I believe there's just far too little detail, but maybe you can help me out. Are there rules and regulations that are put in...that are in place, either...not in the bill, I don't see that, but are they in place for the dispensaries, producers? In other words, questions like secure...how will the growers be

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chosen? How will they be certified? How will they...who will tell them what varieties to grow? And what about the security around those facilities? [LB622]

SENATOR WISHART: So in the bill we do have some details on, you know, what are the specific requirements for the producers or growers when the department is looking at who to license. But we're intentionally not too prescriptive. We are giving the Department of Health and Human Services the responsibility of overseeing the system. And we are also appointing a nine-member Medical Cannabis Board who will also be responsible for overseeing the system. And so a lot of the details in terms of the specific rules and regulation will go through them. [LB622]

SENATOR HALLORAN: So bureaucracy is going to put the fine print in place. [LB622]

SENATOR WISHART: Well, it's...you know, when you get too prescriptive in a piece of legislation, sometimes you can have unintended consequences. [LB622]

SENATOR HALLORAN: I agree. Thank you, Senator. In Judiciary Committee there was another bill dealing with a product called cannabidiol. Yeah, it took us I think almost half of the Judiciary meeting to come close to pronouncing it right. And I'm probably not pronouncing it right, but that's the pronunciation I'm going to use today, cannabidiol. Let me read a little bit. This is LB167. It was...is going to be combined into a larger bill, LB487. Few quick paragraphs if you'll bear with me. The following constitutes the reason for this bill and the purposes which are sought to be accomplished thereby: LB167 reschedules cannabidiol in a drug product approved by the United States Food and Drug Administration, FDA, into Schedule V of the Nebraska Controlled Substances Act. Currently cannabidiol in any form is a Schedule I controlled substance with no approved medical use and possession, distribution; sale of cannabidiol is a criminal act in Nebraska. I think the key thing here, folks, is it's in the process of being approved by FDA, where efficacy will be dealt with, prescribed dosages will be dealt with. This won't be just so random a local dispensary. This will be done in the way we do all medicines. Are they perfect, the FDA perfect? No, it's clear they are not. Just a little anecdotal story here. We're good at doing anecdotal evidence. I have a friend who has epilepsy... [LB622 LB167 LB487]

SENATOR LINDSTROM: One minute. [LB622]

SENATOR HALLORAN: ...and she has tried a lot of medicines. She's gone through that process and it's not been highly successful, so she attempted marijuana. It was in...I would just have to say it was in highly unregulated circumstances, so you can all kind of use your own judgment about that. But what the result was, and she took it in moderate dosages, and the result was she ended up with a grand mal seizure. So, you know, I know that's anecdotal, but almost everything



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we're talking about is anecdotal. So I would suggest to everyone, have a little patience, look at LB487, which includes LB167, cannabidiol, which is in the process of being approved by FDA and it does have hope for seizures. Thank you. [LB622 LB487 LB167]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Thank you, Senator Halloran and Senator Wishart. Senator Hansen, you're recognized. [LB622]

SENATOR HANSEN: Thank you, Mr. President. I would yield my time to Senator Wishart. [LB622]

SPEAKER SCHEER: Senator Wishart, 4:55. [LB622]

SENATOR WISHART: Thank you, Mr. President. And I know we are running out of time today, but I did want to speak to some of the comments that have been made today. First of all, there was a comment made that law enforcement is in opposition to this legislation. The State Patrol did come in and testify in opposition, but before I introduced this legislation I sat down and spoke with the Fraternal Order of Police. I spoke with Omaha police and Lincoln police, and I actually did speak with the state troopers as well to walk them through this bill. And those other law enforcement organizations did not come in and testify in opposition of this legislation, so I wanted to make the record clear on that. I also wanted to clear up the record. When I was talking to Senator Hilkemann about dosage, I said \$500 for one dose. I spoke incorrectly. It's \$300 to \$500 a month is the typical amount that a patient would spend on cannabis, but again, dosage depends on the type of product and the ailment. And, colleagues, I don't know any person that goes to a doctor and gets prescribed a form of medication where...in their lifetime where they haven't had to go back to the doctor and tweak that. So the idea that there's one dosage for every form of medication that is specifically going to work on every single person is not true. A lot of times patients will go...I've had this experience with surgery with oxycodone where I went, it was too strong, the dosage that was given to me, and so I would have had to go back and ask for a lesser dosage in terms of managing my pain. Additionally, and thank technology for this, but there is being worked on, on a dosage pen, a meter dosage pen, for medical cannabis. I did want to speak a little bit to what Senator Halloran said on Senator Ebke's bill. As I stated before, there are a hundred different cannabinoids in this plan. Senator Ebke's bill is working through the FDA. It is establishing in our rules the ability for a bill that's...for a pill that's working through the FDA that has a very specific cannabinoid that it's addressing. Again, there are many more that have potential strong medical benefits for patients that would still remain legal. And then Senator Hilgers, would you yield to a question? [LB622]

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SPEAKER SCHEER: Senator Hilgers, would you please yield? [LB622]

SENATOR HILGERS: Yes, I would. [LB622]

SENATOR WISHART: Senator Hilgers, first of all I want to thank you for the intelligent debate today. You are growing to be one of my favorite senators. I wanted to ask you, you and Senator Geist spoke pretty eloquently about the need for Congress and for the federal government to take some action on studying the medicinal benefits of cannabis. Would you be willing to sign on to a letter with me to encourage them to do just that? [LB622]

SENATOR HILGERS: I will look at the letter and I'll take it very seriously. I'll strongly consider it, Senator Wishart. [LB622]

SENATOR WISHART: Okay. Thank you. [LB622]

SENATOR HILGERS: I learned as an attorney to not sign on to anything until you've read it. [LB622]

SENATOR WISHART: Well, thank you, Senator Hilgers. I'll look at working with you on that. Thank you so much, colleagues. [LB622]

SPEAKER SCHEER: Thank you, Senators Hansen, Wishart, and Hilgers. Senator Groene, you're recognized. [LB622]

SENATOR GROENE: Thank you, Mr. President. What bothers me about this more than anything is that we're not qualified to do this. There's no state agency that registers drugs, I don't believe, in the state of Nebraska. It's all done by the federal government through the FDA. And I...so I don't know why we're even talking about it in this body. I have been here two and a half years. I can't think of one other drug that this body has approved for use in the state of Nebraska. Did I miss any of those, that legislation that came through? Senator...well, Senator Riepe is on the phone, but I was going to ask him a question. Senator Riepe, would you answer a question? [LB622]

SENATOR RIEPE: Yes, sir, I will. [LB622]

SPEAKER SCHEER: Senator Riepe, would you please yield? [LB622]

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SENATOR RIEPE: Yes, sir. [LB622]

SENATOR GROENE: Senator Riepe, since you've been on the HHS Committee, how many times have you seen legislation that we, as a body, licensed a drug to be used in the state of Nebraska? [LB622]

SENATOR RIEPE: One specific drug? [LB622]

SENATOR GROENE: Any drug. [LB622]

SENATOR RIEPE: I don't recall any situations. [LB622]

SENATOR GROENE: Thank you, sir. But apparently we're experts on this drug. I looked at the process of the FDA Center for Drug Evaluation and Research, and they've got the whole process the go with clinical trials that are paid for by the drug company. The drug company has to come in and then the Center for Drug Evaluation and Research, CDER, approves the drug for trials and use. Here's some of the drugs that they've approved last year. I can't even pronounce them: caffeine citrate, donepezil hydrochloride, hydrochlorothiazide, losartan potassium, evolocumab. I could go on and on. It's a whole stack. I don't remember any of those coming before this body to approve for medical use in the state of Nebraska, but we're going to do that here. I've got...I read part of the bill. It's a lot of pages. But I see that, to change subjects on you, I see that in the bill that law enforcement will do background checks on employees. I didn't see anything about drug tests. Are these employees going to be drug tested? I think a lot of pharmaceutical companies make their employees be drug tested because they have access to those drugs. I didn't see that in there. And another thing, a point I thought about all prescription drugs is when Senator Halloran mentioned that a friend tried it on their own and then had a grand mal seizure. You know what's wrong with that, that situation? Every prescribed drug that is used in the state of Nebraska is prescribed by a doctor. You know what that says? That that patient is under a doctor's care. So when something like that happens, a grand mal seizure, guess what happens? Family, the patient gets in touch with the doctor who knows that the medical history of that patient and then reacts to that and makes sure that patient is cared for. That doesn't happen here. There's no doctor involved here at all. I don't know where anybody thinks a medical doctor that's sworn on their license that they can only prescribe approved FDA drugs is going to start issuing prescriptions for this. I also don't know the druggist who is licensed that can issue prescription...not a prescription but fill a prescription. This is not our purvey (sic) that we should be doing in this body. [LB622]

SPEAKER SCHEER: One minute. [LB622]

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SENATOR GROENE: That's the FDA's. We shouldn't even be talking about it here. It should go through the process. Senator Crawford's bill, which we were all...some of us were a part of passing, the University of Nebraska Medical Center is just in the process of testing some...doing some clinical trials on some drugs. That was a great bill. I supported it. But it comes through the process. One of the issues I heard was, well, medical drugs, FDA drugs are so expensive. What I heard Senator Wishart say, I think those individuals would be better off buying it on a street corner anyway if cost is a factor. This makes no sense. I understand Senator Wishart's passion. I understand helping individuals. But there's better ways to do it than sticking our nose into something we know nothing about. Thank you, Mr. President. [LB622]

SPEAKER SCHEER: Thank you, Senator Groene and Senator Riepe. Colleagues, based on the agenda, we are at 3:30, we will move on to the next item. I would ask those senators underneath the balconies if you would return to your seat. Any senators in their office, if you would please return to the floor, we have some very special guests that are returning this afternoon and I would like them to have the due respect that is entitled to them. Colleagues, it is my extreme pleasure and honor to introduce to you returning senators to the floor of this Legislature. They have served this state with honor and dignity, and they are accorded the privilege of returning to the floor. I would ask you to welcome them vigorously. I will introduce them by their name, district, and time served. Senator Jerry Johnson, District 23, 2013 to 2017; Senator John Harms, District 48, 2007 to 2015; Senator Tom Carlson, District 38, 2007 to 2015; Senator Tom Hansen, District 42, 2007 to 2015; Lieutenant Governor John Nelson, District 6, 2007 to 2015; Senator Norm Wallman, District 30, 2007 to 2015; the first Senator Howard from District 9, 2005 to 2013; Senator LeRoy Loudon, District 49, 2003 to 2013; Senator Arnie Stuthman, District 22, 2003 to 2011; Senator Joel Johnson, District 37, 2002 to 2009; Senator Lowen Kruse, District 13, 2001 to 2009...Senator Kruse is not with us; Senator Carroll Burling, District 33, 2001 to 2009...she's not here with us today; Senator Ray Aguilar, District 35, 1999 to 2009; Senator Carol Hudkins, District 21, 1993 to 2009; Senator DiAnna Schimek, District 27, 1989 to 2009; Senator Jim Jensen from 1995 to 2007; Senator Marian Price, District 26, 1999 to 2007; Senator Roger Wehrbein, District 2, 1987 to 2007; Senator Ed Schrock, District 38, 1990 to 1993 and 1995 to 2007; Senator Jim Cudaback, District 36, 1991 to 2007; Senator Robert Dickey, District 18, 1999 to 2001; Senator Donald Wagner, District 41, 1979 to 1985; Senator Bill Burrows, District 30, 1975 to 1983; Senator Richard Fellman, District 4, 1972 to 1975; Senator Vickie McDonald, District 41, 2001 to 2009; Senator Dave Schnoor, District 15, 2014 to 2017. Senators, could we give them one more round of applause for all their service to the state of Nebraska. Thank you so much for your commitment and dedication to the state of Nebraska. Will the returning senators please sort of combine your area, there are few that would like to get pictures of you, so if you could sort of consolidate in a smaller area so that those that wish to could get a picture.

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PRESIDENT FOLEY: Senators, we are about ready to return to business. Members, we will return to business. Pursuant to the Speaker's directive earlier today, we're going to return to LB661. I'm going to ask...a number of you that were in the queue when we departed for lunch if you could repress your lights and jump right back in and then we'll move on to other senators. I will ask Senator Kuehn and Senator Chambers both to refresh us for a couple minutes each and then we'll go to the regular speaking order. Speaker Scheer, you are recognized. [LB661]

SPEAKER SCHEER: Thank you, Mr. Lieutenant Governor. Those that were in the queue, I know there are many of you that will go up and look at the screen. We took the names down on the queue when we left at noon. So the screen will not be correct. They will be giving the names to the Lieutenant Governor. Whoever was in the queue at the time when we left at noon will be the first ones up, but we'd appreciate it if you would pop your lights on so that we make sure that we get those that were on the queue in the right order. But if you go up and look at the screen, that is not necessarily the order you will be called on. Thank you, Lieutenant Governor. [LB661]

PRESIDENT FOLEY: Thank you, Mr. Speaker. Senator Kuehn, you are recognized for a two-minute refresher on where we left off. [LB661]

SENATOR KUEHN: Thank you, Mr. Lieutenant Governor, colleagues. Getting us back to speed as far as what LB661 is and what it does. LB661 is an addition creating a new section in the public records statute which would not require the public disclosure of the name or identity of individuals or entities involved in the production, manufacture, or sale of drugs utilized in the lethal injection protocol. This does not fundamentally change the process, adjudication of the death penalty. It simply is a public records issues about what can and cannot be shared under Nebraska's public disclosure law. I would like to thank everyone for their attention this morning and a good discussion and look forward to continuing that discussion this afternoon. Thank you. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Chambers, would you like to take a couple of minutes just as a refresher? [LB661]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, my first amendment that I offered is pending now. As the door is slammed on the public's right to know and the exposure of what the state is doing, this amendment is designed to tell the truth about what is being done here. The Governor, the Lieutenant...I meant the Governor, the Attorney General, and the Corrections Department head had tried to get illegal drugs into this country, and this amendment is saying that should it be necessary for them to undertake this kind of clandestine action again, the public should not know anything about it. So whereas they are

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trying to conceal the truth, I want to reveal the truth. That's what my amendment would do. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Chambers. The first three speakers in the queue from this morning are Senators Friesen, Kuehn, and Chambers. Senator Friesen, you're recognized. [LB661]

SENATOR FRIESEN: Thank you, Mr. Lieutenant Governor. I stand in support of LB661 and I will yield the rest of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Friesen. Senator Kuehn, five minutes. [LB661]

SENATOR KUEHN: Thank you, Mr. President; and thank you, Senator Friesen, for some time to talk a little bit more about the implications of allowing the identity of individuals associated and manufacturers of these compounds to be public which then subjects them to issues of economic and public harassment and activism and what the impacts of that are. This morning I talked quite a bit about what ultimately brought me to this issue. And I do want to be clear to those who are paying attention and listening. I never came into the body thinking that I would introduce or be involved to this degree with an issue associated with capital punishment. Where I became involved in this issue and where I did a lot of research was two years ago when the question was made and the allegation was made the death penalty doesn't work, it's broken beyond repair, there is no point keeping it on the books. And that's when I started investigating this issue and putting it into coordination with a number of items that I had already experienced when it came to drug availability, things that friends of mine who serve in field hospitals around the world had told me about drug availability. And really started to grasp the totality of this issue and recognize that it's more than just a problem of, oh, the drugs aren't available. It's that we have intentionally broken the system. The drugs are not available by design and by intention and that has created a feedback loop of inability to carry out a statutory responsibility, but also had some secondary effects on the availability of very important, safe, and reliable anaesthetic drugs. I talked this morning a lot about sodium thiopental and what it's meant is that sodium thiopental is no longer available on the market for use and it's appropriate medical use. And it's true, nothing in LB661 is going to suddenly bring sodium thiopental back to the market. There are a lot of hurdles to getting a good supply of sodium thiopental for legitimate medical use available. But I do want to do is lay out for you what is already happening and threats that have already been made and how we can learn from the example of sodium thiopental and ensure that we don't further create additional problems with other very important compounds simply because states are turning to them because they are the only available options for lethal injection. I mentioned earlier this morning that the state of Missouri had suggested and recommended using the drug propofol in the absence of an availability of a barbiturate. Now propofol is an injectable

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anesthetic. Some of you may have heard of it before because it is the drug that Michael Jackson used to go to sleep and ultimately an overdose of propofol led to his death. Propofol was going to be substituted by Missouri for the initial agent to induce unconsciousness and anesthesia. And the German drug manufacturer located in Germany under pressure from the German government and a group called Reprieve basically laid it down and said because of the negative publicity associated with the potential use of propofol by the state of Missouri in this manner, we will simply stop selling propofol in the U.S. market. There's currently over 50 million doses sold annually and used of propofol in the human market today. So that means we don't have sodium thiopental; could mean propofol. The Governor of Missouri felt that there was the greater good in not reducing its availability at for legitimate use and chose not to use propofol. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: Thank you, Mr. President. That then leads us to the next series of drugs which are being utilized and being sought after, some of which have withstood Supreme Court challenge, and that brings me to the drug midazolam, which I also referenced this morning, commonly known by the trade name ResEd. It's reasonable based on the experience of sodium thiopental, as well as reasonable based on the experiences with Missouri and propofol to believe that midazolam, now it has been incorporated into one-drug protocols and been utilized that similar situations may occur with activism and reduction of ability of ResEd to the market. What potential does that leave for providing healthcare to vulnerable adults? Now I recognize that there is a significant issue that each of us has to make with regard to the death penalty. The question becomes... [LB661]

PRESIDENT FOLEY: Senator Kuehn, you are now on your time. [LB661]

SENATOR KUEHN: Thank you, Mr. President. The question becomes, where is that line? Where is the point at which we as lawmakers, as a society, decide that the will of a few with regard to the death penalty should come at a cost of accessibility and medical care to everyone? Not just those in the U.S., those globally. We start talking about pharmaceutical manufacture and production, we are talking about a global scale. When do we compel governments in order to carry out their statutory responsibilities to start doing things like going to foreign drug suppliers and trying to obtain import permits as opposed to using a domestically located, safe, approved, inspected source for the manufacture and use of these compounds? If the state has the statute; if it has the requirement by, in this case the state of Nebraska, the will of the voters to use it as a penalty, we have to give the state the tools to carry it out. It may be uncomfortable. It is certainly not pleasant. But I will say that when it comes to the ethical decision of which has the greater good and which does the greater harm, keeping the identity of manufacturers confidential to ensure access of these drugs, to prevent further drugs from being removed from the market, to

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ensure safe medication to all citizens is the greater good, it is the compelling state interest. I'm going to continue to ask it multiple times. No one has yet provided a reasonable response. What is important about the identity? LB661 allows full analysis of the drug. Nebraska's current protocols allows analysis of the drug. Does it matter the identity of the person who makes your Big Mac? Does the identity of individuals have a greater good than the fact that it's inspected and it's safe? That the health department knows that it is created under appropriate, safe, and healthy conditions? What value does the name create that supersedes the access to safe and effective medications? That's fundamentally the question that we have here today. And I hope we can continue to discuss and someone can provide for me what value that name holds. Later on this afternoon, I will be talking to you about some of the places where we have decided that names aren't important. That revelation of individual identity, stakeholders, shareholders who are receiving state money, who are involved in state-sanctioned actions are not disclosed and that is reasonable, responsible, and prudent. This is one of those cases where confidentiality meets the greater good. I appreciate that there have been things done in the past which are not optimal, which we all are uncomfortable with, with regarding procurement of drugs. This is a step towards preventing that from happening again. If we have a domestic supply, a compounding pharmacy is willing to produce the drugs domestically to U.S. standards, no one is looking overseas for importation; no one is looking for trade channels. No companies have to worry about end user agreements on how their products are, ultimately, going to be utilized. All of those problems, all of those critiques go away... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: Is that one minute, Mr. President? [LB661]

PRESIDENT FOLEY: A minute. [LB661]

SENATOR KUEHN: Thank you. So I encourage you, as you think about this, that, yes, we all have our opinions about the punishment. Now we have to think about how it operates, how it functions, and how we permit the state to carry out the process that the voters of Nebraska have asked it to do. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Chambers, to be followed by Senators Halloran, Pansing Brooks, and Groene. Senator Chambers. [LB661]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, we all know good and well why it's important to know the source of something. If these bad drugs continue to show up, you need to trace it back. And if you find a compounding pharmacy that's responsible, then if the state goes to that particular one again then you know something is amiss. Senator



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Kuehn knows this. And there are compounding pharmacies that created some of the bad drugs that led to some of the torturous executions. The identity is important. As far as the name, why do you have to put your name on a campaign ad? Why do you have to say so-and-so this, that, and the other, and then the particular Congressperson, I am so-and-so and I approve of this. He knows better, but he thinks he's dealing with foolish people and he can get away with it. You know why the death penalty system is broken beyond compare? Because no method that has been utilized so far works. They've been struck down by the courts. And when Senator Kuehn says, what is all this about the drugs and so forth, it's a little thing known as the Eighth Amendment to the U.S. Constitution, which prohibits cruel and unusual punishments. It was that similar provision in the Nebraska Constitution that led the Nebraska Supreme Court to strike down the electric chair. Even though in the past they had allowed electrocutions in this state, for the first time in the history of dealing with the electric chair, one lawyer and colleagues had the good judgment to create a record that had never been presented to any court before. They established that electricity does not affect every body, each body, I meant each individual corporeal body the same way, that the brain is not cooked immediately, that there is not instantaneous death, that electricity hits the skull and goes around the skull, not right through the brain, a lot of things that had never been presented to the court before. And when the Nebraska Supreme Court had that fully developed record, they said it is clear that electrocution is in violation of the Eighth Amendment to the U.S. Constitution. But there's a similar provision in the Nebraska Constitution which was utilized by the Nebraska Supreme Court in striking down the electric chair. The U.S. Supreme Court can still say it doesn't violate the U.S. Constitution, but that constitution does not limit the kind of protections that a state can provide, and this state Supreme Court decided to go a step beyond. When the death penalty drugs became difficult to procure from Europe, Senator Kuehn wants to babble--I wanted him to look up and smile--he wants to talk about all of the problems in this country. What he apparently doesn't know is that every country that's in the European Union must be without a death penalty. All Western Democracies abolished the death penalty decades ago. America is the only so-called developed country that has a death penalty. And nobody in the European Union is allowed to ship drugs to the United States when they'll be used for the purpose of executions, and they are in no way menaced by demonstrations in this country. There are drugs available for their appropriate use in other parts of the world. And the reason these drugs are not available now, contrary to what Senator Kuehn, with his narrow tunnel vision, doesn't want to recognize, is that the death penalty proponents are the one who drove these drugs out of circulation, because they took something that was wholesome, designed to heal, and turned it into a killing substance. They turned a healing substance into what amounts to a toxin that is deadly, and they are the ones. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR CHAMBERS: Let them stop being so obsessed with killing, and maybe something can be done about these drugs. When I'm told that the people voted and I ought to follow their

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vote, that's crazy. The U.S. Supreme Court pointed out that questions like the death penalty are not to be settled by a popularity contest or an opinion poll. There are substantive issues that mark the development of a maturing society as it moves toward a more humane society, and that is what we are attempting to do who want to get the state out of the killing business. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Halloran. [LB661]

SENATOR HALLORAN: Thank you, Mr. President. Well, Senator Chambers just prefaced what I'm going to say as crazy, so I'm going to say it in spite of being crazy. We often speak about the other house. And we should speak about the other house being an important part of this whole process, because we only have one house in this state. But we need to keep in mind that the referendum...the petition that was passed around the state, 143,000 signatures in 90 days, 61 percent of all the voters, and a majority of voters, 92 of 93 of the Nebraska counties, voted to reverse the 2015 legislative repeal of the death penalty. To be more detailed about that, not picking on anybody, but just going through some of the states numerically, excuse me, districts numerically, District 3 voted 62 percent to 38 percent to repeal that legislative decision. District 4, Senator Hilkemann's district, 55.5 percent to 44.5 percent to repeal. Senator McDonnell's district, 57.7 percent to 42.3 percent. Mine was almost 2 to 1. District 15, Senator Walz's district was 69 percent to 30 percent. Senator McCollister's district, 52.9 percent to 47 percent. Senator Schumacher, the "Professor's" district was 66.5 percent to 33.5 percent. Senator Baker's district, District 30, was 62 percent to 38 percent. Senator Kolowski's district, 58.7 percent to 41.3 percent. Senator Ebke's district, 66 percent to 34 percent. That's mine. Senator Quick's district, 59.7 percent to 40.3 percent. Senator Crawford's district 62.8 percent to 37.2 percent. Pointing this out because this was...I don't want to relitigate the death penalty debate, but the second house did speak, they spoke very loudly. We often heard that the whole system was broken, and this, folks, is an effort to fix that broken system, and I'm going to allow for the balance of my 15 seconds to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Halloran. Senator Kuehn, just under two minutes. [LB661]

SENATOR KUEHN: Thank you, Mr. President; and thank you Senator Halloran. There are a number of issues that have arisen and some this morning with regard to some questions about how this affects the protocols. And I note Senator Bolz is not here, but I want to address...again, this does not impact the protocol that was proposed and the rules and regs as they move forward. This, again, is in public record, statute, that affects the disclosure of those identities. Under the current protocol, members of the execution team are already kept confidential. That's a long-standing practice that the actual executioner and their identity is kept confidential. LB661 does

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not affect that protocol, does not affect those in any way. So while that was an administrative process... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: That was one minute, Senator. [LB661]

SENATOR KUEHN: One minute, thank you. While that was the administrative process that went through its separate set of hearings and public review process that allowed individuals of the public to provide their input and that input was provided, LB661 does not impact that specific set of rules and regulations. So, I mean, if Senator Bolz had questions about that and those questions about how those items may be functionally operated are not within the purview of this particular piece of legislation. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Pansing Brooks, to be followed by Senators Groene, Morfeld, and Schumacher. Senator Pansing Brooks. [LB661]

SENATOR PANSING BROOKS: Thank you, Lieutenant Governor. I rise in opposition of LB661. I appreciate my colleague, Senator Kuehn. But clearly, as Senator Halloran was talking about the percentages of the passage of the death penalty and what kind of percentage it passed by in whichever county, that's not the issue here before us today. The ballot and the initiative did not ask--do you think we should keep the process secret? Do you think we should keep it out of the...away from the eyes, the prying eyes of the second house? Clearly that's a totally different question than was asked. And so just because the people spoke to reinstate the death penalty doesn't mean that they spoke that it should definitely be kept secret. And we don't believe in transparency. I just, again, rise...there's talk about...there was talk about records that can be withheld from public...from the public. So it includes student records, medical records, trade secrets, records regarding the product of an attorney, the work product of an attorney; records regarding law enforcement, used for law enforcement purposes; appraisals, personal information in records of public bodies other than salary and routine directory information. So...library records, I mean, skimming down through this, paleontological site information for fear of theft and vandalism or trespass, job applications, public employee retirement board records, Social Security numbers, draft records. So, you know, the records that we have, that's true, we do have records that can be withheld from the public. But those are generally business-related records. They have to do with the ability of somebody to exercise their right to perform and participate in business, to grow in their educational standards and value, and to grow as a person. And when we're talking about taking away the life, that the state can take away and kill a person, that

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should be subject to the greatest transparency of all time. In light of the errors that we know the government makes, think of the number of errors. We have to have access and make it a priority to the information. Taking the life of another demands it. We've had all sorts of issues with...even in Corrections, with fires and deaths and erroneous guilty pleas by the Beatrice Six, staff injuries, escapes. That's just in the past year and a half! But we are going to trust our government to be able to take the single greatest gift any human has without...without revealing the drug or the information. What else are we not going to reveal? We might as well start making the entire thing secret. And somebody just shows up dead because, you know, they decided this guy's guilty, and that's that. That's not...that's not a democracy. That's not how our democracy works. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR PANSING BROOKS: We want to make sure that, yeah, it takes awhile. Wouldn't take as long if we gave them life in prison without the possibility of parole. But people want to kill them. So if you want to kill them, there are processes to go through to take away the most precious gift that we have, which is life. So is that a problem? Yeah, it takes quite awhile. We could have stopped it way earlier on the Beatrice Six and they could be dead right now, but instead we allowed the appeals to continue. And finally one person who had not had his DNA tested proved that none of them was guilty. So that's the kind of country and the kind of democracy that I want to live in--transparency and open information. Thank you. [LB661]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Groene. [LB661]

SENATOR GROENE: Thank you, Mr. President. You've heard it before, the people have spoken. I was one of those who went out and got signatures, there was a small group of us, went out and got 7,000, I think, we got 3 percent of the total. I personally got 1,700, I got 1 out of every 100. One out of every 100 I did myself. A lot of nice people that ran to the petition. And I didn't do it as a senator, I had a yellow t-shirt on that said you can sign here. Because I believe in justice. I believe in punishing evil. It exists in this world. These folks who we're talking about, I don't even want to call them humans, understand I'm not a lawyer, but I believe the ignorance of the law is not a defense. The death penalty is well known. These people chose their fate. They went out and premeditated, not an act of singular violence or mistaken fist fight or somebody was intoxicated and harmed somebody and they died. This is premeditated, the worst of the worst of the human race. They chose their fate. They knew the consequences of their behavior. I assume they want their fate. We owe it to them, the justice they sought. We owe it to the public to make sure that this civilization does not tolerate that behavior, in no way possible. We do not have the right to obstruct justice. And that is what is happening here. Senator Halloran didn't mention that about four senators on here, and there might be more with another vote against this, that we'll be back

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in two years, because the people are enraged on this issue. They want justice, and they expect their elected officials to follow their lead, not to thumb their nose at them and say you are wrong and I know what's right. It is the duty of this body to enact the laws and to make it possible that those laws are carried out. Senator Kuehn, admire his courage to bring this bill forward and his integrity, and I wish he would speak more on more issues; he's very eloquent. We've got to get him talking more. I stand in support of AM918 and LB661. This is our duty to make sure we're not buying drugs from India. You know, any company that's an LLC can do business with the state, and we don't know who their owners are, or their members. Did you know that? We don't. I could be a member of this LLC and doing business with the state, and if I didn't report it, you would never know that. This is no different, really. This is just allowing a company to sell its product without being attacked and demeaned. Texas, Missouri, Oklahoma, South Carolina, who I think it is, they are able to gather their drugs and do it legitimately through the process that is deemed by the people of their state. This is justice, pure and simple. What every civilized country should do is not tolerate evil. That is the strongest message we can send--you take innocent life on purpose,... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR GROENE: ...and you do it meditated, you are going to pay the ultimate price. It's protection of the innocent. That's what the death penalty is all about. It's protection of its civilized society. It is our duty to carry it out as elected officials, we should not stand in the way because of personal views. So thank you, Mr. President. Thank you, Senator Kuehn for bringing this, and I urge us to do our duty and to pass AM918...no, excuse me, say no on AM918...I got that wrong...and say yes to LB661. [LB661]

PRESIDENT FOLEY: Thank you, Senator Groene. Senator Morfeld. [LB661]

SENATOR MORFELD: Thank you, Mr. President; thank you, colleagues. I just want to respond to a few different things that came up. And I think Senator Chambers eloquently laid out the arguments against Senator Kuehn's arguments. First, I think I've already stated on the record, there's two compelling reasons why we need to allow disclosure of these individuals and the practices and where the drugs are coming from. First, from a legal point of view, in order to ensure due process and the rights of individuals, and also to investigate botched executions, which there are several examples of, to vindicate those due process rights even after the execution, you have to know the names of the individuals, the qualifications of those individuals who administer those drugs, and you also have to know where those drugs are coming from, because otherwise things like Harris Pharmaceuticals happen. And while Senator Kuehn notes that because of all these activists and these anti-death penalty folks is the reason why these foreign pharmaceuticals no longer produce these drugs, that's just like maybe a tenth of the story.

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The other part of the story is that many of these countries where these pharmaceutical companies reside are anti-death penalty, are not just activists but rather this is a common practice to oppose the death penalty and seen as a heinous act on the part of the state, despite that individual's motives or whatever they may have done, and so there are a lot of outside forces that cause these pharmaceuticals to decide not to manufacture and produce these drugs other than just these mysterious activists that Senator Kuehn keeps referring to. So first, for the purposes of due process, it's important to know the name of the individuals carrying out the execution, their qualification. And then also the companies that are supplying these drugs. And I want to bring it back to the constitution. So the people have decided, via initiative, that the death penalty was not going to be repealed. That's true. But that was not a mandate, that was never a mandate to make the process secretive. And I keep hearing about the will of the people, so we still have a death penalty. There was no mandate for us to make the process secretive. There was a mandate by the people of Nebraska to maintain the death penalty. And while we named out some districts, my district voted to retain the repeal of the death penalty. I believe it was 55 to 45 percent when I ran the numbers after the election. And I know that some districts were very different. But colleagues, it's not our job to take an opinion poll on every single issue that comes before this body. That is not the purpose of a representative democracy. Now, we have a side note to our representative democracy, which is that people have the power of the initiative and the referendum, but my duty as a legislator isn't to take an opinion poll on every single issue. My duty as a legislator is to listen to my constituents, listen to other people in the state that my decisions impact, listen to the facts, educate myself, and come to an educated decision based on my best judgment. And then my voters get to decide, next election cycle, whether they agree with me or disagree with me being the right representative to represent them. That is the purpose of a representative democracy, is to take in the information and make informed decisions. Now, if the people decide that my vote on the death penalty was the deciding factor, then so be it. I'll go home and I'll sleep well at night knowing that I did my job and I followed my conscience and followed it based on the facts and how I felt. So to state that the people decided that there should be a death penalty, therefore it should be secret is completely incorrect. There is no mandate from the people to make the process secretive. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR MORFELD: Thank you, Mr. President. In addition, I think it's ironic that Senator Kuehn and some other people who have been adamantly opposed to Medicaid expansion in the past are getting up here and talking about how this is to make healthcare more accessible for individuals. Come on. You want to make healthcare more accessible for individuals? Expand Medicaid. That would bring in at least ninety to a hundred thousand individuals in this state to have affordable healthcare. This isn't going to do it. It's not going to make these drugs more available. Those are forces well beyond the control of this Legislature or this bill. So let's be honest about what this bill is doing. It's making the process secretive so we can execute people

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more easily, and it's affecting their due process. The due process rights to make it so that people's life, liberty is not deprived without due process. That's what this is doing, and it's doing it unnecessarily. And half the reasons...not even half, three-fourths of the reasons that the proponents of this bill are providing are disingenuous and have nothing to do with this bill. [LB661]

PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR MORFELD: Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Morfeld. We'll now move to Senator Schumacher, to be followed by Senators Linehan and Lowe. Senator Schumacher. [LB661]

SENATOR SCHUMACHER: Thank you, Mr. President and members of the body. I think I have to agree with Senator Groene. It is our responsibility to carry out what the people wanted. Now, what I don't know is what the people wanted. The people did not pass an initiative petition saying we want to make changes. They did not pass one calling upon us for the use of the guillotine, for example, or to limit the number of appeals or try some other technique. They did not do that. What the people did is restored the status quo to the point that it was when we voted to repeal the death penalty in this body. Clearly, about 30...whatever the vote was, 30, 40 percent of the people didn't want the death penalty altogether. So we're dealing with 60-some percent. Why did they do that? What was the status quo? Now clearly some of them could have been confused on the repeal or retain language. And clearly some of them wanted these 14 people, and others that follow them, to be executed as quickly as possible. But there was a third thing they could have wanted, and it's impossible to define or divine what was in their heads. Maybe they wanted no change, restore the status quo. And really, by restoring the status quo, if you trust in some of the wisdom of the people, they might have been doing the smart thing. The status quo had the best of both worlds. We had whatever deterrence there was from the existence of the death penalty. We can argue how much that was or whether it was any at all, but whatever it was, we had it. It continued to give prosecutors plea-bargaining leverage to get the defendants to plead guilty, save the taxpayers' money, and avoid needless litigation. It provided absolute certainty that the people would not be released in one form or another onto the streets as long as they were on death row. And the status quo had the likelihood of the death penalty being imposed at virtually zero. We had the best of both worlds. We had the benefits, or theoretical benefits, of the death penalty without the death penalty. I submit that's the difference that puts the reasoning behind this, to be very skeptical about undoing the will of the people and voting to change the status quo with this bill. The last time we executed somebody was 1997, nearly 20 years ago, and it was by the electric chair. We've never executed anybody using drugs. Never. There is no outcry to go to something that would be simpler, like the guillotine, none at all. Perhaps, just perhaps,

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the will of the people is the status quo. Not to put our finger on the scale of the status quo and tilt it so that it's easier or harder, but the status quo, next to impossible to execute somebody, but that slim chance that you might do it acting as a deterrent, giving the prosecutors leverage and absolute certainty that the clown stays in jail... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR SCHUMACHER: ...the entire time. Is the will of the people for us to do nothing but preserve the status quo that they restored? That's what's bothering me. I thought the will of the people was hang 'em high right away. I would be right in there with Senator Groene. I don't know if they spoke that way. Be uncharacteristic of the people to be that brash. They may have sent us a good signal--leave it alone. We are happy with it the way it was. That functionally is a death penalty without a death penalty. Two contradictory things existing at the same time. Thank you. [LB661]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Linehan. [LB661]

SENATOR LINEHAN: Thank you, Mr. President. I've never been a rah-rah person for the death penalty. I'm uncomfortable with it, but I think for several reasons we do need to have it. It's a hard issue. I understand there's people on both sides. But when I was campaigning last year, I was going door to door, and I stopped at a woman's door, and she came out, and she was...she was...I don't know how...very wonderful woman, once I got to know her, but she was a little tough when she came out the door, and she asked me if I was for the death penalty, and I said yes, and I expected because the circumstances that she would argue veraciously with me. And she said, well, thank you because I work at the state penitentiary, and if we don't have that, we have no protections. So again, it's a hard issue, and I understand people can have strong feelings on both sides. But I am a supporter, and I'm in support of LB661. And I would yield the rest of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Linehan. Senator Kuehn, 3:45. [LB661]

SENATOR KUEHN: Thank you, Mr. President; thank you, Senator Linehan. Thank you, Senator Groene, I think. I've never had anyone tell me they wanted me to talk more. It's my entire life been "please talk less", so I'll take that where I can get it. I would also like to just comment, so I know people are watching at home and I know people are paying attention. For those who can't tell, who are watching at home, it is oppressive in this Chamber right now in terms of the humidity. I'm contemplating not using the ice in my glass because I'm afraid it's evaporation is actually making me sweat more and add to the humidity than it is actually cooling me off. There are people who are here who are committed and who are listening and know that



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this is a difficult issue on a day where conditions in the Chamber are not ideal, and I do appreciate that, and I appreciate that given that we're all warm and sweating and having a discussion on a very difficult topic, that we are continuing to keep focused and respectful of each other. Senator Linehan said she's not someone who is rah-rah for the death penalty, and I absolutely agree. It is not an issue I ever wanted to have to press a button on when I ran for public office. It is not an issue I ever wanted to have to introduce a bill on. But when I started studying the issue, and when I noted what took place and I learned, just like every senator, we arrived at our conclusions and we pressed our button, I knew that there were things that I was asked to do. While Senator Schumacher is probably correct, and I enjoy having Senator Schumacher in the Chamber because he can take an idea and run it around in a circle more so than even I can, it is difficult to know exactly based on the ballot, but many of us were contacted, had individuals come to us in town halls, reach out to us in our social settings, and let us know exactly what they thought and how they felt. I felt it was my responsibility to listen and to take steps to fix it. As I looked at a wide variety of things that were brought up that said this is why the system is broken, this one appealed to me because I truly do feel this is, and sincerely, an issue of social justice. Accessibility to drugs and the result of the activism, this is not disingenuous on my part, this is not a talking point, this is something I feel very, very passionate about, and it's something that has affected me and my ability to obtain pharmaceuticals for my practice. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: Thank you, Mr. President. It has affected me in my ability to work and work with colleagues and friends who practice abroad. Do I think it's going to change things, revolutionize it overnight? No. But I do care about the access of care to vulnerable people. Maybe I don't think Medicaid expansion is the best option, but I do care. So as we continue to move forward in this discussion, know that it comes from a place of sincerity, and this is an issue with regard to accessibility of these compounds that I do feel strongly about, and that it is one that is a legitimate concern for me. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Lowe. [LB661]

SENATOR LOWE: Thank you, Lieutenant Governor. You know, the death penalty is just a tool. It is just a tool to keep people under control, whether they have committed the crime or they have not yet committed the crime. It's something for them to think about. It's also a solution for problems that we've had in the past. That's not what this bill is. This bill talks about the tools to create that. Now, I've done this several times. I've done it to my best friends. I've taken them to the vet's, and I never did want to ask who supplied the drug, as I sat there with my best friend in my arms as they slowly slipped away into silence. It was a beautiful thing, for my best friends

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were hurting. They were no longer able to walk, they were no longer able to control themselves. It was a nice thing, and a very graceful way to start their new life. I also did it for one of my best friends that turned out not to be one of my best friends, as it attacked one of my children and my wife. It was an evil inside that dog. That dog that I could not take to a pound because I could not trust it with anybody else. That evil was bad, and it was a time to end its life. And it, too, slipped away very comfortably. It was the right way to do it. Years ago we decided not to use the electric chair. We decided to use a comfortable way to end a person's life. And it's a very good way. And I do believe that that's the way we ought to do it, because we do have people that their lives need to end. We need to bring the death penalty back to its full feature. That was brought up to me many times on my campaign trail that now that the vote was going to be in, because the vote had not been taken yet, but they said we need to make it work. We need to use it as a tool. If Senator Kuehn would use the rest of my time, I yield my microphone to him. [LB661]

PRESIDENT FOLEY: Thank you, Senator Lowe. Senator Kuehn, 2:15. [LB661]

SENATOR KUEHN: Thank you, Senator Lowe, and thank you, colleagues. Again, I want to just run through a few of the issues. Senator Pansing Brooks talked about some of the confidentiality issues, and things that we have shielded already from public records requests. And there are a number of reasons. Senator Murante earlier this morning talked about his, kind of, litmus test with regard to what he thinks meets the standard for something that it is in the best interests of the state to not disclose, to not make public. I've also talked about the idea of when the benefit and harm and how we weigh that and when the harm outweighs the benefits, and I've been very clear today, that I believe that the harm created by this disclosure far outweighs any alleged benefit. When we talk about what we don't make public, and we talked about important functions of the state, and certainly the state taking a life, there should not be a shroud of secrecy in the process. This does not shroud the process. It does not shroud the drugs used; does not deny due process to the individual. Several state supreme courts and court rulings have taken a look at some of the different laws that have been passed in other states and found that they do not deny the individual a right to due process. And that the individuals involved in the production and sale of these drugs are just as much a part of the execution team as those who are present at the execution itself. Specifically in Georgia, we have seen that state supreme court uphold Georgia's law very recently in that same manner as not being a due process issue. But if you take a look at Nebraska's public disclosure statutes and what kinds of things that we actually don't require to be disclosed under public disclosure, we realize that it runs the gamut. There are a number of reasons that have been determined, legitimate state reasons for not disclosing information. That may be things related to medical histories, things related to juveniles... [LB661]

PRESIDENT FOLEY: Time, Senator. That's time, Senator. [LB661]

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SENATOR KUEHN: Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: That completes the morning speaking queue; we're now working on the afternoon machine speaking queue. Senator Clements to be followed by Senators Harr, Brasch, Bostelman, Chambers, and many others. Senator Clements. [LB661]

SENATOR CLEMENTS: Thank you, Mr. President. I rise to support LB661 and oppose AM918. I want to thank Senator Kuehn for focusing on the issue of confidentiality. When I heard about this issue and how the identity of these persons could be disclosed, I realized that a bill like this was important. I'm in a business that deals with confidential information daily, and the federal government has greatly increased individual privacy regulations for all citizens. And I believe personal privacy is very important in this case. I believe persons involved with cases referenced in LB661 should have their identity protected. So I do support LB661, urge you to vote yes for it. I would like to yield the rest of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Clements. Senator Kuehn, 3:45. [LB661]

SENATOR KUEHN: Thank you, Mr. President. On that issue of confidentiality, I do want to read into the record a few things relative to some courts which is going to look at what courts have said regarding this idea of confidentiality and the legal standing. Owens v. Hill is the Georgia Supreme Court case which looked at the complainant in which...really looked at this due process issue associated with the shield law in Georgia. And I want to read a few excerpts from that ruling, because I think it's important to have in the record, important for us to contemplate. They stated: Although the identity of the executioner who actually inflicts death upon the prisoner is the most obvious party in need of such protection, we believe that the same logic applies to the persons and entities involved in making the preparations for the actual execution, including those involved in procuring the execution drugs. Second, without the confidentiality offered to execution participants by the statute, as the record and our case laws show, there's a significant risk that persons and entities necessary to the execution would become unwilling to participate. But Georgia's execution process is likely made more timely and orderly by the execution participant confidentiality statute and furthermore that significant personal interests are also protected by it. Accordingly, we also conclude that it therefore, on balance, plays a positive role in the functioning of the capital punishment process. Fundamentally, what Owens v. Hill identified was this not about protecting the state, it is about protecting a private citizen, about protecting the individual. Additionally, if we look at other rulings including Florida Star case in 1989, talks specifically about the role of the government in classifying what and how it can have classified information, stating the government may classify certain information, established and enforced procedures ensuring its redacted release, and extend a damaged remedy against the government or its officials where the government's mishandling of sensitive

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information leads to its dissemination. So certainly we have a court precedence which allows us to ensure that the handling of the sensitive information that could do harm to others is there. In McBurney v. Young, they stated the court has repeatedly made clear that there is no constitutional right to obtain all the information provided by FOIL laws. There is a legitimate reason for the state to keep some information confidential. Houchins v. KQED Incorporated, they stated the court has never... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: ...intimated a First Amendment guarantee of a right of access to all sources of information under government control. Furthermore, in Press-Enterprise v. Superior Court of California, they stated: Although many government processes operate best under public scrutiny, it takes little imagination to recognize that there are some kinds of government operations that would be totally frustrated if conducted openly. This is exactly one of those cases where the government operation is totally frustrated by the disclosure of this identity. If we are to carry out the statute, there must be an ability to procure the drugs. If confidentiality is required to procure the drugs, then that is the responsibility of the state... [LB661]

PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR KUEHN: Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Morfeld (sic-Kuehn). Senator Harr. [LB661]

SENATOR HARR: Thank you, Mr. President, members of the body. You know, I appreciate what Senator Kuehn's trying to say, but I think taking of a person's life probably isn't one of those rights that we should protect in secrecy. And we do have a right to know this. And by the way, we're doing this to protect the individual, but most of these companies are publicly traded. And their shareholders still have the right to go to that company that they own a portion of and say, hey, are you providing these drugs or not? So this is not an absolute protection. And then you say, well, why would we want to know this information? Surely not in this great state of Nebraska would there be a situation where someone would abuse their powers in attempting to purchase these drugs. And yet, just a year ago, we had a situation. Senator Chambers brought it up earlier. March 14th...excuse me, April 14, 2015, an individual from India, whom we'll call Mr. Harris, initiates conversation through an e-mail with Patrick Werner, who then forwards it on to Trish (sic-Tish (Dinisha)) Loomis who then forwards it on to John Wilson. Trish (sic-Tish (Dinisha)) Loomis is from the Nebraska Department of Corrections Health Services, John Wilson was the Nebraska Department of Correctional Services Chief Operating Officer; and Patrick Werner used to work in Corrections and currently is a fiscal project analyst at DHHS.

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The next day, we'll call it Tax Day, April 15, 2015, at 11:04 a.m., John Wilson forwards the e-mail to Harris; from Harris to Mark Cave and Kathy Derby and changes the subject line. At that point, Harris reaches out to Randy Kohl and that Director Frakes contacts Mr. Harris. The next day, April 16, 2015, an e-mail from Kathy Derby to John Wilson, subject "message recall failure sodium thiopental." Again, the subject changes and once again...and no content is shown in this e-mail, we got this all through public records, folks. Public records! Remember those? April 21, Frakes, Scott Frakes, I think we know who he is, sends Master...Company LLP Master Data Form to Mr. Harris to fill out and asks for an invoice as he was unable to locate an invoice dated April 21, 2015. They also request a form WAECI filled out by Mr. Harris and included in an invoice. April 22, a purchase order is made. April 23, an envelope sent via Federal Express to Harris containing documents from Frakes; we don't know what's in there. April 28, 2015, Harris sends e-mail to Frakes with an attached offer to sell. And I'm not sure where this conversation about the interest in peck...well, Bromide. May 12: Harris to Frakes, why don't you issue a warrant for payment, please send me mail with final... [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR HARR: If anyone wants to give me more time, I can go through this whole deal. But what we find out is that there's an invoice from Harris to purchase the drugs; the purchase order is signed May 14. May 15, there is an invoice from Mr. Harris dated the day after the purchase order was made. Frakes fills out a DEA Form on May 26 for the sodium thiopental with a letter to Kara Sweeney with intent to use this for the death penalty. Frakes fills out another DEA form on May 29, a form 236, with a letter from Kara Sweeney with, again, the intent. June 18, Frakes receives from the FDA an approval for the NDC to use. At 9:01, three minutes later, Gallagher, who is from the FDA, asks Frakes if the facility is an FDA-approved. At 10:42, Gallagher then, who is with the FDA, denies the import declaration. [LB661]

PRESIDENT FOLEY: Time, Senator. [LB661]

SENATOR HARR: Thank you. [LB661]

PRESIDENT FOLEY: Thank you, Senator Harr. Senator Brasch. [LB661]

SENATOR BRASCH: Thank you, Mr. President; and good afternoon, colleagues. And this is the second time I rise to speak on this bill. I do support LB661 and I oppose AM918. I do believe the shield law is very important, it's an important protection, and disclosing identities of the suppliers and others, it keeps them from a risk of harm. It keeps them from the risk of violence or harassment. And I believe that we need to look at the other 15 states that currently have a shield law. And those states do include: Arizona, Florida, Louisiana, Missouri, Ohio, South

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Dakota, Texas, Wyoming, Arkansas, Georgia, Mississippi, North Carolina, Oklahoma, Tennessee, and Virginia. I believe that...that these individuals who are doing their jobs, their work, their occupations, their business should have the privacy and protection from any harassment, any threats of...that their safety needs to be ensured, and that's what LB661 intends to do. I would like to yield the rest of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Brasch. Senator Kuehn, three minutes. [LB661]

SENATOR KUEHN: Thank you, Senator Brasch; and thank you, Mr. President. Again, I think it's also important to recognize with...kind of dovetailing on what Senator Brasch had discussed, is that we're not tilling new ground here or unprecedented ground in terms of looking at this type of legislation in order to facilitate obtaining lethal injection drugs. As she mentioned, 15 states have adopted some of them via rules and regulations, which later went via statute, or via statute, different laws restricting the disclosure of this information. The shield laws are...and the states that have adopted them have found them important in terms of being able to carry out the process, but also in the ability to have dialogue regarding how is the best way to find and to obtain these drugs. And what we find is that when organizations get brought into light, even local U.S. domestic manufacturers, primarily compounding pharmacies, become disclosed even when they've provided these drugs to states that have shield laws, it becomes complicating for them. There's been several times where it's been talked about alleged harassment. I think if you look up and you discuss the group Reprieve, they are first group that via European political activism really made the concerted effort to attack the issue associated with obtaining the drugs. So they're the primary activist group, and their public activities are well documented. There's also been some fairly highly publicized cases involving a couple of compounding pharmacies; one in Texas that received threats, both threats of life, hate mail, that impeded their ability to do their business. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: As well as a pharmacy in Oklahoma, which also experienced similar trials and tribulations. I don't disagree with the facts that Senator Harr presented. They are the facts are what they are. I wish that that was not the circumstances in which the state was placed in order to obtain these medications. So if we are to prevent situations just like what Senator Harr discussed from happening again, we need to have a domestic source. That means a compounder within Nebraska or the United States who is willing to sell these drugs on an individual basis for use. It takes the whole process of foreign purchase orders and foreign transactions and importation off the table. Ultimately, that is what we are attempting to do. That is one of the goals of making the system work. [LB661]

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PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Bostelman. [LB661]

SENATOR BOSTELMAN: Thank you, Mr. President. I yield my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Bostelman. Senator Kuehn, 4:45. [LB661]

SENATOR KUEHN: Now I know why Senator Chambers sometimes sings, but I cannot sing, so I will not attempt. I do want to take a few minutes again to talk again about some of the issues that are associated with what has been called the alleged harassment. The harassment is real. And as was discussed in the hearing, and I've had some individuals who reached out to me, and I think it's very...they were very courteous and very direct, but you'll notice there's not a lot of people who want to go out front on this issue, and it's not because they don't believe in it, or not because they don't have convictions, it's because they know what follows. I don't think I would want the general public to see some of the e-mails, some of the social media posts, some of the messages that I have received simply by sponsoring this legislation. I'm a public official, I ran for this office, I chose to do this legislation. This is all by my choice. I'm not a private citizen; I'm not conducting business; I'm not selling a duly-manufactured and legal product as part of my routine business. There is a strike distinction between a private citizen and a public citizen, and what we do in our roles publicly and what we expect and demand of private citizens. So when the idea is purported or advanced that these are alleged fears, no one should fear this harassment. Where is the evidence? Is it legal? Have there been restraining orders placed? There have been investigations, including investigations by the FBI into alleged threats. But what is the line in this day and age between harassment and an inability to do your economic business, economic activism, that prevents you from being able to do business. Senator Harr's right. There are public shareholders. We have a number of different funds which have chosen to not invest in companies which do activities that they feel don't fit with their ethic. That is the free market, that's how the system works. But the publicity associated with a company, the negative publicity associated has become an impediment to production. And it is precisely that impediment to production that LB661 attempts to correct and to address. It's not a comfortable issue; it's not a straightforward issue; but it is an important one nevertheless. I don't know with definitive voice, as (Senator) Schumacher has pointed out to us, exactly what was meant by every ballot that was cast. But I know that they said the penalty should be here, and the responsibility then becomes to have those individuals who have been sentenced with that penalty, have some degree of resolution or closure. Again, this does not affect the appeals process. This does not affect the ability of those individuals to access the drugs, know what is being utilized. It does not hide the process of what actually happens that would somehow cover up something that didn't go as planned or appropriately. It simply provides a means for obtaining the drugs without making the individual who manufactured, sold, or procured the drug part of public record. That is the fundamental question we are weighing here today. [LB661]

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PRESIDENT FOLEY: One minute. [LB661]

SENATOR KUEHN: So as we reach 5:00, and I note some people are making their way back into the Chamber, I hope we continue to discuss what that issue is. And you've seen a wide array of individuals who have stood in support, who recognize for a wide variety of reasons from their own personal ethic and their own personal decisions where they stand on this issue. I hope as we continue forward with this discussion that everyone weighs that ultimate moral choice and ethical choice. What is the value and what is the cost? This does not...is not something by which we take lightly or flippantly, but one that does involve a responsibility of the state and responsiveness to the voice of the people. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Chambers. [LB661]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, through all this, my backup is the courts. The legislators don't know what they're talking about. Senator Kuehn is not a lawyer. He doesn't even realize that the U.S. Constitution, based on findings by the U.S. Supreme Court, have discovered a private right to privacy in the U.S. Constitution. That's why certain things cannot be exposed. The U.S. Supreme Court said that the federal constitution guarantees a right to personal privacy. We're talking here about people who are helping to carry out an official state function. Because people on this floor are not trained in the law, they're like cement, concrete, all mixed up and permanently set. Senator Kuehn says the same thing over and over and over. Senator Brasch chimes in. It doesn't matter what they say. The judges are acknowledging, and they do it in their Opinions, that they see so many political motivations involved in the death penalty, they see so many people who get the death sentence who had inadequate counsel, that Scalia said shortly before he died that it's just a matter of time before the U.S. Supreme Court declares all death penalty laws unconstitutional. Judges will seize on any reason they can find to overturn a death sentence, even if they retain the conviction. So the courts are the ones that allow appeal after appeal after appeal, because they are not eager to see people die. There have been a number of articles where they quote former Judge Ronald Reagan, that's his name, from Sarpy County who presided over the case that sent John Joubert to his death. He has regretted that ever since it happened and he stated that judges would be happy if there were no death penalty. He has said this at committee hearings, that they would feel fine. Judges just will not say anything about it while they're on the bench because they're not allowed to. But the judges are not eager to carry out these death sentences or you'd see more of them. The courts are going to be the ones who will make mincemeat out of what is being done here today. But the more moving parts you put into the machinery of death, the more appeals that you create. That's why inmates can appeal and appeal every time a legislature changes its death penalty law. That's about three to ten years of appeals. But I'd like to ask Senator Kuehn a question. [LB661]



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PRESIDENT FOLEY: Senator Kuehn, would you yield, please? [LB661]

SENATOR KUEHN: Yes, I will. [LB661]

SENATOR CHAMBERS: Senator Kuehn, you quoted from a California case about activity that would frustrate a governmental activity. Was that activity that that court was talking about secrecy with reference to what this bill deals with or were they talking... [LB661]

SENATOR KUEHN: That was not specific... [LB661]

SENATOR CHAMBERS: ...about something else? [LB661]

SENATOR KUEHN: That was not specifically a death penalty case, no. [LB661]

SENATOR CHAMBERS: They were talking about something else, weren't they? [LB661]

SENATOR KUEHN: Correct. [LB661]

SENATOR CHAMBERS: But he left the impression that they were talking about what we're talking about, and that's the difference between a nonlawyer and a lawyer. The lawyer lets you know that the case is on all fours and the language referred to the issue being discussed. He didn't let you know it was not a situation like this. I knew, without even knowing the case, a California court wouldn't say what he said that the court said. But that may be as it is. What I want everybody to know is that I'll do everything I can to stop people from being killed by the state. And I wish Senator Halloran would have looked at what happened in the 11th Legislative District on that vote, because everybody knows that if 99 percent of the people in my district were for the death penalty I'd still speak against it. They don't want an empty-headed echo. They want a functioning brain that thinks and draws conclusions. I'm not an echo. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR CHAMBERS: I'm a voice. Everybody in my district could be wrong on an issue. I don't reflect what they think. They're not informed. They don't have the information. They send me down here to get the information, to use my judgment and form my own opinion and vote accordingly. A lot of the people in my district are religious. They know I don't have a religious corpuscle in my body. A lot of them are anti gay and lesbian. They know that I'll fight hard for the rights of everybody and they know that I tell them you get your salvation in church; I deal

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with legislation, not salvation. So I want, if Senator Halloran will, to stand on the floor and tell what the vote was in the 11th Legislative District. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Albrecht. [LB661]

SENATOR ALBRECHT: Thank you, President Foley. I'd like to yield the rest of my time to Senator Kuehn. [LB661]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Kuehn, 5 minutes. [LB661]

SENATOR KUEHN: Thank you, Mr. President; thank you, Senator Albrecht. And I don't disagree with Senator Chambers. I am not an attorney. I am not and I do not pretend to be. And so I appreciate always the instruction that he provides and the clarification. I have learned a lot from those who have that training in my time here in the Nebraska Legislature. So that said, I do believe that we have an obligation and a responsibility to look at as much comprehensive case law as possible when looking at how we put together these particular types of proposals and statutes. And specifically as I was researching and looking at this issue, as was stated earlier, and Senator Brasch talked about, there are 15 states which have adopted shield laws. And a number of them are located in different places within statute, they are located in a variety of different contexts, and they have different language. Some of that language has been tested by various courts and others has not. And I do not fundamentally disagree with Senator Chambers' assertion that this will, probably, have a court ruling and a court opinion on it at some point. And I think that that is part of the three branches of government. That the courts will look at the statutes, look at that application, and they will make that determination. Similarly, I do fully respect Senator Chambers' passion on this issue and that it is a deeply personal and long-standing issue for him. I will never criticize an individual for their deeply held belief and the issues which are important to them. I fully respect that that's a core value of the things that we believe. And while we may disagree on the principle, I do not disagree or choose to be disagreeable when we are on opposite sides of that issue. That said, I do want to draw the attention of the body to the fact that the language in this bill, as I worked with Bill Drafters and with my staff, is very similar in terms of its type and pattern to that of the Georgia shield law. And that's important because it has, at the time at which it was drafted, it combined the best of previous laws, and also has withstood significant court challenge. So as I've stated here on other bills, I certainly do not want to put forth legislation that I know has the potential to be struck down or that is not constitutional or not in keeping with the provisions of the courts, even though that may happen unintentionally. It is an attempt in the language to make sure that it is narrow, it is specific, and it makes of that very careful exclusion. I also want to note that it is a separate section in the public record laws. I chose not to...there's several places in several sections in that section of statute which it might logically be inserted or attached in and within. Intentionally, I had it put in a separate section so

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that it was clear and it didn't muddle up or become confused with other issues that may be contained within the public records statute. So while Senator Chambers is correct, I am not an attorney; while he is correct that there certainly will be judicial review and that is wholly appropriate in these types of situations and in dealing with the penalty that we are talking about, there were legitimate and deliberate and conscious attempts to ensure that it met that with previous court evaluation of shield law cases, that it took the best of shield laws from other states, and that it did not, if you will, create a lack of clarity or...or get other potential confidential records mixed up within it within the section of statute. So with that I certainly hope that everyone takes an opportunity to read. I hope everyone takes a look at some of the different legal precedents. And that people take an opportunity to look and see what the court has said; the court has said a variety of different things regarding the death penalty over the years. I do want to reference Justice Scalia, who stated: capitol punishment presents moral questions that philosophers, theologians, and statesmen have grappled with for millennia. The framers of our constitution disagreed bitterly on the matter. For that reason, they handled it in the same way they handled many controversial issues... [LB661]

PRESIDENT FOLEY: Senator Kuehn, we're now on your time--five minutes. [LB661]

SENATOR KUEHN: Thank you, Mr. President. ...they left it for the people to decide. He's referring to Justice Breyer, who wrote a minority opinion: by abrogating to himself the power to overturn that decision, Justice Breyer does not just reject the death penalty, but he rejects the enlightenment. This is an issue which courts have spoken upon extensively. I in preparation and in study for...over the past three years, I have looked at and I have read and tried to digest a variety of opinions by courts at all levels, from the Supreme Court of the United States, through circuit courts, through courts of appeals, through state courts, and even local courts. On balance, it is a challenging body of work to move through. And there continues to be a discussion about deference to the protection of life. I do not agree with that deference from the courts. Senator Chambers is correct, the courts when faced with a decision rather than make an error, place a stay. I don't feel that that is inappropriate. Given the magnitude and severity and permanency of the punishment, it is wholly appropriate. That court review process, that appellate process, is not affected by LB661. The ability of the condemned to exercise their full right to appeal, their full right to due process is not impacted by this bill. We are simply attempting, as a body, to ensure a reliable source of safe, quality, effective drugs to carry out the sentence that has been imposed by the people and the statutes of Nebraska. How we feel and where we ultimately come down on the punishment is, again, going to be a personal decision of which we must all grapple with. It's not an easy decision for me, nor is it one that I take lightly, nor one that I have arrived at a decision to lightly. But if the penalty exists, carry it out, bring a degree of finality, obtain the drugs. If we obtain the drugs and the people don't want it to happen, they'll let us know. They always do. Let's get off of this hamster wheel of trying to run around the globe and obtain drugs from wherever we can, let's not worry about what the source may be from foreign sources or

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where they're coming from or who's had possession and control, and let's create a mechanism by which a domestic source of these drugs can be obtained. That is the ultimate goal of this legislation. It is not meant with blood thirsty intent, it is not meant to be flip, nor is it meant to be an empty head, putting my finger to the wind and listening to the public. A ballot petition, a referendum is not an opinion poll. It's a two-step process that takes a lot of individual activity by a lot of people across our state. It's not simply a matter of responding based on what you think people may want. It's listening, it's understanding, and it's doing our job as legislators. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Morfeld. [LB661]

SENATOR MORFELD: Thank you, Mr. President. Well, colleagues, this debate certainly is interesting with a lot of different contradictions that have been stated here today. First off, I guess I'll keep repeating it because it doesn't seem to be getting across to a lot of the people that support this bill. The referendum, the ballot initiative that happened in November was a ballot initiative on whether or not we maintain the status quo, as Senator Schumacher stated. It was not a referendum on whether or not we conduct executions in secret. It simply wasn't. We can keep repeating it on the floor. I enjoy repeating myself and hearing other people do it. But that's not going to make it any more true. I also think that it's a little bit interesting...I was thinking about the medical marijuana debate that we just had. And I thought it was interesting how a lot of the opponents of medical marijuana, who are some of the same proponents of this bill, kept referring back to the FDA and the federal government. Well, I was looking on the Website of the FDA, and it's really interesting, I couldn't find that the FDA approved use of these drugs for killing people. It's just not on there. Did a Google search, searched the Website. Saw it approved for a lot of different thing, but not for killing people. So on one hand we're going to oppose medical marijuana, which has been proven to help a lot of people in some instances, on the basis of--well the FDA, you know, they haven't approved this, they haven't done enough research, yada, yada, yada. But on the other hand, man, when it comes to killing people, no big deal. FDA didn't put anything on there, it's not a big deal, we can do it. There's a lot of hypocrisy being spoken on this floor today. And one of the other things that's kind of hypocritical is stating that this is a bill about making sure people can get access to healthcare. Nonsense. This bill is going to do nothing to increase access to healthcare. The fact that these drugs are not available isn't because we have an open death penalty process in Nebraska. And yes, there might be some activists that go after some pharmaceutical companies, but it's not just the activists, that's not just the only reason why these pharmaceutical companies aren't creating these drugs anymore. There's a lot of other forces beyond that, including their own country's laws, maybe some of the board members not liking to be in the business of killing people, along with various other factors. This bill is going to do nothing to increase access to healthcare. But I tell you what will, I have a bill in the Health Committee called LB441 which would expand Medicaid to 90,000 to 100,000 people in this state. So I think this is a perfect time to talk about a bill that will actually help Nebraskans, and

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would help one Nebraskan in particular, Miss Sarah Parker, who actually testified on the bill from LD-25, which I believe is Senator Geist's district. And I will read her story quick. Sarah Parker has worked hard throughout her life to try to ensure that she could provide for herself and her loved ones. She graduated college in Nebraska and has lived and worked here for more than 20 years. But a few years ago, Sarah made a difficult choice when her father got ill, Sarah cut back on her work hours so she could stay at home and care for him. Sarah calls that decision, quote, the best thing I ever did. But it also means that she lost her health insurance because she had to quit her job. Unfortunately, that left Sarah exposed to the high-cost of medical care. A hospital stay resulted in a mountain of medical bills and near bankruptcy as she is looking again for full-time work. Expanding Medicaid for Nebraskans like Sarah would mean that they're not punished for being a hardworking employee... [LB661 LB441]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR MORFELD: ...and being a loving caretaker for their family. Nobody, including Nebraskans, should be buried in debt for making that choice. Colleagues, LB661 will do nothing for Sarah. This will not expand access to medical care for Nebraskans. What it will do is it will allow the state to carry out executions in secret--something that wasn't on the ballot, something that when I talked to most Nebraskans, even some Nebraskans in my district that were upset with my vote to repeal the death penalty, even thinks this is a bad idea. But what will help Nebraskans? Expanding Medicaid, doing the right thing, bringing in \$1.7 billion into our state. Not just to help people, but also stimulate our economy. Colleague, I urge you to oppose LB661. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Hansen. [LB661]

SENATOR HANSEN: Thank you, Mr. President. I would yield my time to Senator Chambers. [LB661]

PRESIDENT FOLEY: Thank you, Senator Hansen. Senator Chambers, five minutes. [LB661]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Hansen. Members of the Legislature, Senator Kuehn is very repetitive but he doesn't deal with the issue that this bill concerns. This bill deals with governmental transparency, the public's right to know. These people who are being protected are not operating and functioning as private individuals. They are cogs in the state's killing machine. Senator Kuehn and others have made it clear over and over and over that without these cogs in the machine, the killing cannot occur apace to the extent that the Governor would like to see it. So for them to say that these are private individuals carrying out their private duties is preposterous. Everybody knows that. That's why Senator Kuehn keeps

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talking about the drug this, the drug that, harassment, and so forth. There are companies that make cereals, and they have been threatened with boycotts because of certain political positions they take. And I'm sure those who would support Senator Kuehn's bill would say, well, that's a right under the First Amendment that people have to criticize, to boycott, to do what they please. We're not talking about private conduct. We are talking about a governmental function, the most awesome and I think evil thing that a state can do--that's to kill its residents, its citizens. I'm going to say it again. No country in the European Union has the death penalty. No country can be a member of the E.U. that has a death penalty. Turkey is interested in becoming a member of the E.U. and had to abolish its death penalty to do so. There is a cleric in America whom Turkey would like to have extradited as being responsible for certain uprisings in Turkey. And when people in this country and other parts of the world express fear about what would happen to this man, Erdogan emphasized that Turkey has no death penalty. Turkey formerly had a death penalty. But in trying to become a full-fledged member of the E.U., it was compelled to give up its death penalty. So being in the E.U. meant more to Turkey than being able to kill its citizens. There's nothing in America as important to these death penalty people as killing people. But as Senator...I will say "Professor" Schumacher pointed out, the people in this state don't know whether a death penalty will ever be carried out. They don't know how many people are on death row. Had not the Governor and his father chipped in closer to a half million dollars than not, that petition drive would not have been successful. This was not a grass-roots effort that the people carried out. Over 300...at least \$300,000 were donated by the Governor and his daddy to have this petition drive be successful. So all of this talk about the second house is so much hooley. Not one person on this floor would say submit to the people a vote...for a vote as to whether or not they want to pay property taxes. [LB661]

PRESIDENT FOLEY: One minute. [LB661]

SENATOR CHAMBERS: You all know that. I still see Senator Halloran down there. He was reading off the names of people and their districts. I challenge him to read what the vote was in the 11th Legislative District. It would make me no difference whatsoever, and he knows it. That was designed to put fear in the people on this floor. But I will...well, a minute is not enough time, but if it is, he can have my time to tell me what happened in the 11th Legislative District. [LB661]

PRESIDENT FOLEY: Senator Halloran, a half minute. [LB661]

SENATOR HALLORAN: In less than 30 seconds, it was 37 percent for keeping or for...63 percent for keeping...doing away with the death penalty. I'm tired. Sixty-three percent in your favor. Yeah, 63 to 37 percent. It's past my nap time. [LB661]

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PRESIDENT FOLEY: Time has expired, Senators. Thank you, Senator Chambers and Senator Halloran. Senator Hilgers. [LB661]

SENATOR HILGERS: Thank you, Mr. President; good evening, colleagues. I think for the record, I think I heard Senate Halloran say 63 percent to repeal the repeal and 37 percent to retain. Is that correct? The other way around, okay. Speaking of making a record, the reason I rise this evening is to do just that. One of the things we're doing as we talk on the floor, as been reminded to us throughout these debates, is that we're making a legislative record for if and when there's ever a challenge to this statute or a court is tasked with having to interpret the statute in light of other legal authorities. They may look to the history of this debate to understand...to give some understanding to what the intent of the bill was. And one of the things I mentioned when I rose this morning was that I believe, while this bill deals with one issue of transparency, in other words, the ability of media and other members of the public to receive certain information, it does not deal with another, and I think incredibly critical issue of transparency, which is the ability of a defendant to get critical information regarding that person's pending or scheduled execution. And I wanted to elaborate on that a little more because I don't think I was very clear in my remarks. There's a couple of different ways that any individual, in any kind of legal or judicial proceeding, can get information. That includes criminal or civil proceedings. They could go and actually ask for...or submit a public...a FOIA request, Freedom of Information Act request, and get the information that way. But they often don't. The reason they don't is because they have a much more powerful tool at their disposal which are the federal...this case is in federal court, the discovery rules that are allowed under the Civil Code of Procedure and the federal code of criminal procedure. And under those rules, an individual party or defendant or plaintiff has the power by virtue of the courts to go and get information the public otherwise cannot receive. And so in this case while if LB661 was passed, it would impact the ability of the public to get information through the state FOIA system. It would not at all, in my view, impact the ability of a plaintiff or defendant or one challenging the constitutionality of their execution to get that same information under a federal discovery process. What they would do is submit some sort of discovery request, if the state was the party, they would submit a discovery request. If the state was a third party what they would do is serve a subpoena. It very well may be that the court, and this often happens, the court will say--we will let you have the information, it is confidential. And so you are not allowed to give it to the public. And so they'll enter what's called a protective order, which governs the disclosure of that information. But the individual themselves, their counsel will be able to receive that information and be able to make use of that information in proceedings. If I thought that LB661 eliminated a defendant's right to exercise their own constitutional guarantees under our U.S. Constitution I would not be in favor of it. So I do want to make that very clear on the record, that while LB661 does impact one aspect of transparency, the ability of the public to get information through a FOIA request, it does not, in my view, nor could it impact an individual's right under the federal constitution or under the

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federal criminal code of procedure to get that same information. So I think that...I want to make that very clear for the record. Thank you, Mr. President. [LB661]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Items for the record, Mr. Clerk. [LB661]

ASSISTANT CLERK: Thank you, Mr. President. Your Committee on Enrollment and Review reports LB223 to Select File, LB578 to Select File with amendments. A new A bill: (Read LB255A by title for the first time.) Amendments to be printed: Senator Hughes to LB461; Senator McCollister to LB159. And a motion from Senator Watermeier relating to the qualification challenge in the 11th District. That will be laid over. (Legislative Journal pages 1089-1090.) [LB223 LB578 LB255A LB461 LB159]

Finally, a priority motion: Senator Hansen moved to adjourn until Thursday, April 20, 2017, at 9:00 a.m.

PRESIDENT FOLEY: Members, you've heard the motion to adjourn. All those in favor say aye. Those opposed say nay. We are adjourned.