

FORTY-EIGHTH DAY - MARCH 26, 2019**LEGISLATIVE JOURNAL****ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION****FORTY-EIGHTH DAY**

Legislative Chamber, Lincoln, Nebraska
Tuesday, March 26, 2019

PRAYER

The prayer was offered by Pastor Ken Miller, St. Paul Lutheran Church, Auburn.

ROLL CALL

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

The roll was called and all members were present except Senators Albrecht, Gragert, and Kolowski who were excused; and Senators Cavanaugh, Lindstrom, Linehan, Morfeld, Pansing Brooks, Vargas, and Wishart who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the forty-seventh day was approved.

RESOLUTION(S)

LEGISLATIVE RESOLUTION 59. Introduced by Kolterman, 24.

WHEREAS, the York Rotary Club was founded on February 6, 1919, and officially approved by Rotary International on March 1, 1919; and

WHEREAS, the York Rotary Club was initially organized by Melvin O. McLaughlin and twenty other men from the York area with the help of a delegation of Rotarians from the Downtown Lincoln Rotary Club; and

WHEREAS, serving youth has been a focus of York Rotary Club since its inception, shaping future generations through unique opportunities from camping trips for boy's homes in 1919 to providing scholarships and exchange-student programs around the world in 2019; and

WHEREAS, York Rotary Club is also focused on improving the lives of individuals from committing to eradicate Polio worldwide to helping stamp out hunger in local communities through fundraising and food drives; and

WHEREAS, the club has worked to serve the York area, greater Nebraska, and the world for 100 years and plans to continue for future generations.

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

1. That the Legislature recognizes the York Rotary Club for 100 years of service to the state.
2. That a copy of this resolution be sent to the York Rotary Club.

Laid over.

LEGISLATIVE RESOLUTION 60. Introduced by Lowe, 37.

WHEREAS, Katie Philpot represented the United States of America at the 2019 Special Olympics World Games in Abu Dhabi, competing in four swimming events; and

WHEREAS, Katie won gold medals in the 100 meter butterfly and 100 meter freestyle events and won silver medals in the 200 meter freestyle and 4x100 meter freestyle relay; and

WHEREAS, Katie, a sophomore, is a member of the Kearney High School swimming and diving team; and

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

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

1. That the Legislature congratulates Katie Philpot on winning gold and silver medals at the Special Olympics World Games in Abu Dhabi.
2. That a copy of this resolution be sent to Katie Philpot.

Laid over.

MOTION(S) - Confirmation Report(s)

Senator Howard moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 976:

Board of Emergency Medical Services

Randy Boldt
John Bonta
Karen Bowlin
Ann Fiala
Michael Miller
Carl Rennerfeldt

Voting in the affirmative, 33:

Arch	Clements	Halloran	Kolterman	Slama
Blood	Crawford	Hansen, B.	La Grone	Stinner
Bostelman	DeBoer	Hilgers	McCollister	Walz
Brandt	Dorn	Hilkemann	McDonnell	Wayne
Brewer	Erdman	Howard	Moser	Williams
Briese	Friesen	Hughes	Murman	
Chambers	Geist	Hunt	Quick	

Voting in the negative, 0.

Present and not voting, 6:

Bolz	Hansen, M.	Lowe
Groene	Lathrop	Scheer

Excused and not voting, 10:

Albrecht	Gragert	Lindstrom	Morfeld	Vargas
Cavanaugh	Kolowski	Linehan	Pansing Brooks	Wishart

The appointments were confirmed with 33 ayes, 0 nays, 6 present and not voting, and 10 excused and not voting.

Senator Howard moved the adoption of the Health and Human Services Committee report for the confirmation of the following appointment(s) found on page 976:

Nebraska Rural Health Advisory Commission
 Lynette Kramer
 Laeth Nasir
 Rebecca A. Schroeder

Voting in the affirmative, 33:

Arch	Clements	Halloran	Kolterman	Scheer
Blood	Crawford	Hansen, B.	La Grone	Slama
Bostelman	DeBoer	Hilgers	McCollister	Stinner
Brandt	Dorn	Hilkemann	McDonnell	Walz
Brewer	Friesen	Howard	Moser	Wayne
Briese	Geist	Hughes	Murman	
Chambers	Groene	Hunt	Quick	

Voting in the negative, 0.

Present and not voting, 6:

Bolz	Hansen, M.	Lowe
Erdman	Lathrop	Williams

Excused and not voting, 10:

Albrecht Gragert Lindstrom Morfeld Vargas
 Cavanaugh Kolowski Linehan Pansing Brooks Wishart

The appointments were confirmed with 33 ayes, 0 nays, 6 present and not voting, and 10 excused and not voting.

GENERAL FILE

LEGISLATIVE RESOLUTION 14CA. Senator Groene renewed his amendment, FA26, found on page 958.

Pending.

COMMITTEE REPORT(S)

Revenue

LEGISLATIVE BILL 585. Placed on General File with amendment.
 AM953

- 1 1. Strike original section 11.
- 2 2. On page 3, line 3, after "together" insert "in blends higher than
- 3 E-15"; and strike beginning with "consider" in line 26 through "received"
- 4 in line 27 and insert "award grants to the maximum number of qualified
- 5 applicants".

LEGISLATIVE BILL 610. Placed on General File with amendment.
 AM917 is available in the Bill Room.

(Signed) Lou Ann Linehan, Chairperson

General Affairs

LEGISLATIVE BILL 252. Placed on General File.

(Signed) Tom Briese, Chairperson

AMENDMENT(S) - Print in Journal

Senator Hilkemann filed the following amendment to LB558:
 AM920

- 1 1. Strike original section 1 and insert the following new section:
- 2 Section 1. There is hereby appropriated (1) \$10,269,035 from
- 3 federal funds for FY2019-20 and (2) \$10,269,035 from federal funds for
- 4 FY2020-21 to the Department of Health and Human Services, for Program
- 5 348.
- 6 There is hereby appropriated (1) \$10,269,035 from the General Fund
- 7 for FY2019-20 and (2) \$10,269,035 from the General Fund for FY2020-21 to
- 8 the Department of Health and Human Services, for Program 424.
- 9 There is included in the amount shown as General Fund aid in Program

10 424 for FY2019-20 \$10,269,035 General Funds and for FY2020-21 \$10,269,035
 11 General Funds for rates paid to providers of developmental disability
 12 services as determined by the rate study conducted by the Division of
 13 Developmental Disabilities and completed in 2018. No expenditures for
 14 permanent and temporary salaries and per diems for state employees shall
 15 be made from funds appropriated in this section.

Senator Hilgers filed the following amendment to LB583:

AM523

- 1 1. On page 2, line 23, strike "or an eligible county" and insert ";
- 2 an eligible county, or a city of the metropolitan class".
- 3 2. On page 5, line 12, after "county" insert "or a city of the
- 4 metropolitan class"; and in line 14 after "county" insert "or city of the
- 5 metropolitan class".
- 6 3. On page 15, line 9, after "county" insert "or a city of the
- 7 metropolitan class".

GENERAL FILE

LEGISLATIVE RESOLUTION 14CA. The Groene amendment, FA26, found on page 958 and considered in this day's Journal, was renewed.

SENATOR WILLIAMS PRESIDING

Pending.

BILL ON FIRST READING

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

LEGISLATIVE BILL 556A. Introduced by Howard, 9.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 556, One Hundred Sixth Legislature, First Session, 2019; and to declare an emergency.

AMENDMENT(S) - Print in Journal

Senator Linehan filed the following amendment to LB288:

AM974

- 1 1. Strike the original sections and insert the following new
- 2 sections:
- 3 Section 1. Section 77-2734.04, Reissue Revised Statutes of Nebraska,
- 4 is amended to read:
- 5 77-2734.04 As used in sections 77-2734.01 to 77-2734.15, unless the
- 6 context otherwise requires:
- 7 (1) Annual average amortized loan balance means the total of the
- 8 ending monthly values in the tax year divided by the number of months in
- 9 the tax year;

10 (2) Application service means computer-based services provided to
11 customers over a network for a fee without selling, renting, leasing,
12 licensing, or otherwise transferring computer software. Application
13 service includes, but is not limited to, software as a service, platform
14 as a service, or infrastructure as a service;

15 (3) Billing address means the location indicated in the books and
16 records of the taxpayer as the address of record where the bill relating
17 to the customer's account is mailed;

18 (4) Borrower located in this state means:

19 (a) A borrower who is engaged in a trade or business in this state;
20 or

21 (b) A borrower whose billing address is in this state, but is not
22 engaged in a trade or business in this state;

23 (5) Buyer includes a buyer, licensee, user, or person providing
24 consideration for the use of an item or service;

25 (6) Commercial domicile means the principal place from which the
26 trade or business of the taxpayer is directed or managed;

27 (7) Communications company means any entity that:

1 (a) Is:

2 (i) A telecommunications company as defined in section 86-119 that
3 provides a telecommunications service as defined in section 86-121 or
4 provides broadband, Internet, or video services as defined in section
5 86-593;

6 (ii) A communications company that provides the electronic
7 transmission, conveyance, or routing of voice, data, audio, video, or any
8 other information or signals to a point, or between or among points, and
9 includes such transmission, conveyance, or routing in which computer
10 processing applications are used to act on the form, code, or protocol of
11 the content for purposes of transmission, conveyance, or routing without
12 regard to whether such service is referred to as a voice over Internet
13 protocol service or is classified by the Federal Communications
14 Commission as enhanced or value added. The company may also provide video
15 programming provided by, or generally considered comparable to
16 programming provided by, a television broadcast station, regardless of
17 the medium, including the furnishing of transmission, conveyance, and
18 routing of such services by the programming service provider. Video
19 programming includes, but is not limited to, cable service as defined in
20 47 U.S.C. 522 and video programming services delivered by providers of
21 commercial mobile radio service, as defined in 47 C.F.R. 20.3; or

22 (iii) A broadcast company that provides an over-the-air broadcast
23 radio station or over-the-air broadcast television station; and

24 (b) Owns, operates, manages, or controls any plant or equipment used
25 to furnish telecommunications service, communication services, broadband
26 services, Internet service, or broadcast services directly or indirectly
27 to the general public at large and derives at least seventy percent of
28 its gross sales for the current taxable year from the provision of these
29 services. For purposes of the seventy-percent test, gross sales does not
30 include interest, dividends, rents, royalties, capital gains, or ordinary
31 gains from asset dispositions, other than in the normal course of

1 business;

2 (8) Compensation means wages, salaries, commissions, and any other
3 form of remuneration paid to employees for personal services;

4 (9) Corporate taxpayer means any corporation that is not a part of a
5 unitary business or the part of a unitary business, whether it is one or
6 more corporations, that is doing business in this state. Corporate
7 taxpayer does not include any corporation that has a valid election under
8 subchapter S of the Internal Revenue Code or any financial institution as
9 defined in section 77-3801;

10 (10) Corporation means all corporations and all other entities that
11 are taxed as corporations under the Internal Revenue Code;

12 (11) Credit card means a credit card, debit card, purchase card,
13 charge card, and travel or entertainment card;

14 (12) Doing business in this state means the exercise of the
15 corporation's franchise in this state or the conduct of operations in
16 this state that exceed the limitations provided in 15 U.S.C. 381 on a
17 state imposing an income tax. Doing business in this state includes the
18 sale, lease, or license of services, intangibles, or digital products to
19 customers in this state that exceed five hundred thousand dollars in the
20 previous or current calendar year;

21 (13) Federal taxable income means the corporate taxpayer's federal
22 taxable income as reported to the Internal Revenue Service or as
23 subsequently changed or amended. Except as provided in subsection (5) or
24 (6) of section 77-2716, no adjustment shall be allowed for a change from
25 any election made or the method used in computing federal taxable income.
26 An election to file a federal consolidated return shall not require the
27 inclusion in any unitary group of a corporation that is not a part of the
28 unitary business;

29 (14) Intangible property means all personal property which is not
30 tangible personal property and includes, but is not limited to, patents,
31 copyrights, trademarks, trade names, service names, franchises, licenses,
1 royalties, processes, techniques, formulas, and technical know-how but
2 excludes money;

3 (15) Loan means any extension of credit resulting from direct
4 negotiations between the taxpayer and its customer or the purchase, in
5 whole or in part, of an extension of credit from another person. Loan
6 includes participations, syndications, and leases treated as loans for
7 federal income tax purposes. Loan does not include properties treated as
8 loans under section 595 of the Internal Revenue Code prior to its repeal
9 by Public Law 104-188, futures or forward contracts, options, notional
10 principal contracts such as swaps, credit card receivables, including
11 purchased credit card relationships, noninterest bearing balances due
12 from depository institutions, cash items in the process of collection,
13 federal funds sold, securities purchased under agreements to resell,
14 assets held in a trading account, securities, interests in a real estate
15 mortgage investment conduit or other mortgage-backed or asset-backed
16 security, and other similar items;

17 (16) Loan secured by real property means a loan or other obligation
18 which, at the time the original loan or obligation was incurred or during

19 the current taxable year, was secured by real property. A loan secured by
20 real property includes an installment sales contract for real property;
21 (17) Loan secured by tangible personal property means a loan or
22 other obligation which, at the time the original loan or obligation was
23 incurred or during the current taxable year, was secured by tangible
24 personal property. A loan secured by tangible personal property includes
25 an installment sales contract for tangible personal property;
26 (18) Loan servicing fee includes (a) fees or charges for originating
27 and processing loan applications, including, but not limited to, prepaid
28 interest and loan discounts, (b) fees or charges for collecting,
29 tracking, and accounting for loan payments received, and (c) gross
30 receipts from the sale of loan servicing rights;
31 (19) Participation means an extension of credit in which an
1 undivided ownership interest is held on a pro rata basis in a single loan
2 or pool of loans and related collateral;
3 (20) Sales means all gross receipts of the taxpayer, except:
4 (a) Income from discharge of indebtedness;
5 (b) Amounts received from hedging transactions involving intangible
6 assets; or
7 (c) Net gains from marketable securities held for investment;
8 (21) Single economic unit means a business in which there is a
9 sharing or exchange of value between the parts of the unit. A sharing or
10 exchange of value occurs when the parts of the business are linked by (a)
11 common management or (b) common operational resources that produce
12 material (i) economies of scale, (ii) transfers of value, or (iii) flow
13 of goods, capital, or services between the parts of the unit.
14 (A) For the purposes of this subdivision, common management
15 includes, but is not limited to, (I) a centralized executive force or
16 (II) review or approval authority over long-term operations with or
17 without the exercise of control over the day-to-day operations.
18 (B) For the purposes of this subdivision, common operational
19 resources includes, but is not limited to, centralization of any of the
20 following: Accounting, advertising, engineering, financing, insurance,
21 legal, personnel, pension or benefit plans, purchasing, research and
22 development, selling, or union relations;
23 (22) State means any state of the United States, the District of
24 Columbia, the Commonwealth of Puerto Rico, any territory or possession of
25 the United States, and any foreign country or political subdivision
26 thereof;
27 (23) Subject to the Internal Revenue Code means a corporation that
28 meets the requirements of section 243 of the Internal Revenue Code in
29 order for its distributions to qualify for the dividends-received
30 deduction;
31 (24) Taxable income means federal taxable income as adjusted and, if
1 appropriate, as apportioned;
2 (25) Taxable year means the period the corporate taxpayer used on
3 its federal income tax return;
4 (26) Treasury function is the pooling, management, and investment of
5 intangible assets to satisfy the cash-flow needs of the trade or

6 business, including, but not limited to, providing liquidity for a
7 taxpayer's business cycle, providing a reserve for business
8 contingencies, or business acquisitions. A taxpayer principally engaged
9 in the trade or business of purchasing and selling intangible assets of
10 the type typically held in a taxpayer's treasury function, such as a
11 registered broker-dealer, is not performing a treasury function with
12 respect to income so produced;
13 (27) Unitary business means a business that is conducted as a single
14 economic unit by one or more corporations with common ownership and shall
15 include all activities in different lines of business that contribute to
16 the single economic unit.
17 For the purposes of this subdivision, common ownership means one or
18 more corporations owning fifty percent or more of another corporation;
19 and
20 (28) Unitary group means the group of corporations that are
21 conducting a unitary business.
22 Sec. 2. Original section 77-2734.04, Reissue Revised Statutes of
23 Nebraska, is repealed.

NOTICE OF COMMITTEE HEARING(S)
Revenue

Room 1510

Wednesday, April 3, 2019 12:30 p.m.

AM974

Note: Amendment to LB288

GENERAL FILE

LEGISLATIVE BILL 169. Senator Groene renewed his amendment, AM804, found on page 927 and considered on pages 928 and 948, to the committee amendment.

SENATOR HUGHES PRESIDING

Senator Howard moved the previous question. The question is, "Shall the debate now close?"

The Chair ruled there had not been a full and fair debate, pursuant to Rule 7, Sec. 4, on the Groene amendment.

Pending.

AMENDMENT(S) - Print in Journal

Senator Wayne filed the following amendments to LB675:

FA27

Strike section 2.

FA28

Strike section 8.

FA29

Strike section 16.

FA30

Strike section 52.

FA31

Strike section 57.

Senator Wayne filed the following amendment to LB147:

FA32

Add new section:

Sec. 4 Sections 2 and 3 of this Act shall only apply to Class III school districts located within a county with a population between 35,000 and 40,000.

Senator Wayne filed the following amendment to LB148:

FA33

Amend AM421

On page 5, lines 6-7, strike "described in subdivision (1)(a)(i) of section 84-1409" and insert "located within a county with a population between 35,000 and 40,000".

Senator Wayne filed the following amendment to LB606:

FA34

On page 2, line 1, after "district" insert "located within a city of the metropolitan class".

RESOLUTION(S)

LEGISLATIVE RESOLUTION 61. Introduced by Arch, 14; Blood, 3; Clements, 2; Crawford, 45; La Grone, 49.

WHEREAS, the 55th Wing is a unit of the United States Air Force and is the largest wing in Air Combat Command; and

WHEREAS, the 55th Wing, known as the Fightin' Fifty-fifth, is over 75 years old and was a fighter wing during World War II; and

WHEREAS, the 55th Wing was reconstituted as the 55th Strategic Reconnaissance Wing in 1948 and finally renamed the 55th Wing in 1991; and

WHEREAS, the 55th Wing has been stationed at Offutt Air Force Base since 1966; and

WHEREAS, the 55th Wing provides premier reconnaissance, real-time intelligence, command and control, information warfare, and combat support around the world; and

WHEREAS, the 55th Wing is proudly supported by the 55th Wing Association, comprised of veterans who have served in the Fightin' Fifty-fifth in the United States Air Force; and

WHEREAS, the 55th Wing Association, an exemplar alumni organization, works tirelessly at supporting members of the 55th Wing as embodied in its credo, "Honoring those who served and serving those who do".

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

1. That the Legislature recognizes the contributions of the 55th Wing and the 55th Wing Association and commends the exceptional relationship between military personnel and veteran citizens.

2. That the Legislature expresses appreciation to the members of the 55th Wing and the 55th Wing Association for their ongoing contribution to maintaining safety and security around the world for Nebraska and the United States.

3. That copies of this resolution be sent to the 55th Wing at Offutt Air Force Base and the 55th Wing Association.

Laid over.

LEGISLATIVE RESOLUTION 62. Introduced by Bolz, 29; Geist, 25; Hansen, M., 26; Hilgers, 21; Morfeld, 46; Pansing Brooks, 28; Wishart, 27.

WHEREAS, Thomas K. Casady is well known for his distinguished career in law enforcement, protecting the public and assisting victims; and

WHEREAS, Tom Casady, a Lincoln native, graduated from Northeast High School and earned a bachelor's degree in criminology and criminal justice from the University of Nebraska at Omaha and a Master of Arts in political science from the University of Nebraska-Lincoln; and

WHEREAS, Tom Casady joined the Lincoln Police Department in 1974 and rose to the rank of lieutenant in 1986; and

WHEREAS, Tom Casady was appointed as the Lancaster County Chief Deputy Sheriff in 1987 and then as the Lancaster County Sheriff in 1991; and

WHEREAS, in 1994, Tom Casady was appointed by Mayor Mike Johanns as Chief of Police for the City of Lincoln, where he served for 17 years; and

WHEREAS, Mayor Chris Beutler appointed Tom Casady as the Public Safety Director for the City of Lincoln in 2011, where he served honorably for the last eight years; and

WHEREAS, Tom Casady retired in March 2019, leaving a remarkable 45 year legacy in law enforcement.

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

1. That the Legislature extends its appreciation to Tom Casady for his 45 year career in public service and his dedication to Lincoln and Lancaster County.
2. That the Legislature congratulates Tom Casady on his retirement.
3. That a copy of this resolution be sent to Tom Casady.

Laid over.

LEGISLATIVE RESOLUTION 63. Introduced by Linehan, 39; Friesen, 34; Groene, 42.

PURPOSE: To study educational service units, including, but not limited to, the structure, duties, current projects, and financing of educational service units.

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

1. That the Education Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Referred to the Executive Board.

GENERAL FILE

LEGISLATIVE BILL 169. The Groene amendment, AM804, found on page 927 and considered on pages 928, 948, and in this day's Journal, to the committee amendment, was renewed.

Senator Howard moved the previous question. The question is, "Shall the debate now close?"

The Chair ruled there had not been a full and fair debate, pursuant to Rule 7, Sec. 4, on the Groene amendment.

Senator Howard challenged the ruling of the Chair. The question is, "Shall the Chair be overruled?"

Senator Howard withdrew her motion to overrule the Chair.

Senator Groene withdrew his amendment, AM804.

Pending.

COMMITTEE REPORT(S)

Government, Military and Veterans Affairs

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Richard Grauerholz - State Emergency Response Commission

Aye: 8 Blood, Brewer, Hansen, M., Hilgers, Hunt, Kolowski, La Grone, Lowe. Nay: 0. Absent: 0. Present and not voting: 0.

The Government, Military and Veterans Affairs Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Tim Hofbauer - State Emergency Response Commission

Aye: 7 Blood, Brewer, Hansen, M., Hilgers, Kolowski, La Grone, Lowe. Nay: 0. Absent: 0. Present and not voting: 1 Hunt.

(Signed) Tom Brewer, Chairperson

AMENDMENT(S) - Print in Journal

Senator Morfeld filed the following amendment to LB352:
AM955

(Amendments to Standing Committee amendments, AM761)

- 1 1. Strike the original amendments and insert the following new
- 2 amendment:
- 3 1. Strike the original sections and all amendments thereto and
- 4 insert the following new sections:
- 5 Section 1. For purposes of sections 1 to 6 of this act:
- 6 (1) Benefit means any plea bargain, bail consideration, reduction or
- 7 modification of sentence, or any other leniency, immunity, financial
- 8 payment, reward, or amelioration of current or future conditions of
- 9 incarceration that has been requested by the jailhouse informant or that
- 10 has been offered or may be offered in the future to the jailhouse
- 11 informant in connection with his or her testimony in the criminal
- 12 proceeding in which the prosecutor intends to call him or her as a
- 13 witness; and
- 14 (2) Jailhouse informant means a person who offers testimony about
- 15 statements made by a suspect or defendant while the suspect or defendant
- 16 and jailhouse informant were in the custody of any jail or correctional
- 17 institution and who has requested or received or may in the future
- 18 receive a benefit in connection with such testimony.
- 19 Sec. 2. Sections 1 to 6 of this act apply to any case in which a

20 suspect or defendant is charged with a felony.
21 Sec. 3. Each prosecutor's office shall undertake measures to
22 maintain a searchable record of:
23 (1) Each case in which:
24 (a) Trial testimony is offered or provided by a jailhouse informant
25 against a suspect's or defendant's interest; or
26 (b) A statement from a jailhouse informant against a suspect's or
1 defendant's interest is used and a criminal conviction is obtained; and
2 (2) Any benefit requested by or offered or provided to a jailhouse
3 informant in connection with such statement or trial testimony.
4 Sec. 4. (1) Except as provided in subsection (3) of this section,
5 if a prosecutor intends to use the testimony or statement of a jailhouse
6 informant at a defendant's trial, the prosecutor shall disclose to the
7 defense:
8 (a) The known criminal history of the jailhouse informant;
9 (b) Any benefit requested by or offered or provided to a jailhouse
10 informant or that may be offered or provided to the jailhouse informant
11 in the future in connection with such testimony;
12 (c) The specific statements allegedly made by the defendant against
13 whom the jailhouse informant will testify or provide a statement and the
14 time, place, and manner of the defendant's disclosures;
15 (d) The case name and jurisdiction of any criminal case known to the
16 prosecutor in which the jailhouse informant testified or a prosecutor
17 intended to have the jailhouse informant testify about statements made by
18 another suspect or criminal defendant that were disclosed to the
19 jailhouse informant and whether the jailhouse informant requested, was
20 offered, or received any benefit in exchange for or subsequent to such
21 testimony; and
22 (e) Any occasion known to the prosecutor in which the jailhouse
23 informant recanted testimony about statements made by another suspect or
24 defendant that were disclosed to the jailhouse informant and any
25 transcript or copy of such recantation.
26 (2) The prosecutor shall disclose the information described in
27 subsection (1) of this section to the defense as soon as practicable
28 after discovery, but no later than thirty days before trial. If the
29 prosecutor seeks to introduce the testimony of a jailhouse informant that
30 was not known until after such deadline, or if the information described
31 in subsection (1) of this section could not have been discovered or
1 obtained by the prosecutor with the exercise of due diligence at least
2 thirty days before the trial or other criminal proceeding, the court may
3 permit the prosecutor to disclose the information as soon as is
4 practicable after the thirty-day period.
5 (3) If the court finds by clear and convincing evidence that
6 disclosing information listed in subsection (1) of this section will
7 result in the possibility of bodily harm to a jailhouse informant or that
8 a jailhouse informant will be coerced, the court may permit the
9 prosecutor to redact some or all of such information.
10 (4) If, at any time subsequent to the deadline in subsection (2) of
11 this section, the prosecutor discovers additional material required to be

12 disclosed under subsection (1) of this section, the prosecutor shall
13 promptly:

14 (a) Notify the court of the existence of the additional material;

15 and

16 (b) Disclose such material to the defense, except as provided in
17 subsection (3) of this section.

18 Sec. 5. If a jailhouse informant receives leniency related to a
19 pending charge, a conviction, or a sentence for a crime against a victim
20 as defined in section 29-119, in connection with offering or providing
21 testimony against a suspect or defendant, the prosecutor shall notify
22 such victim. Prior to reaching a plea agreement, the prosecutor shall
23 proceed as provided in subsection (1) of section 23-1201. For purposes of
24 this section, leniency means any plea bargain, reduced or dismissed
25 charges, bail consideration, or reduction or modification of sentence.

26 Sec. 6. If, at any time during the course of the proceedings, it is
27 brought to the attention of the court that the prosecutor has failed to
28 comply with section 4 of this act, or an order issued pursuant to this
29 section, the court may:

30 (1) Order the prosecutor to disclose materials not previously
31 disclosed;

1 (2) Grant a continuance;

2 (3) Prohibit the prosecutor from calling a witness not disclosed or
3 introducing in evidence the material not disclosed; or

4 (4) Enter such other order as it deems just under the circumstances.

5 Sec. 7. Section 29-1912, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 29-1912 (1) When a defendant is charged with a felony or when a
8 defendant is charged with a misdemeanor or a violation of a city or
9 village ordinance for which imprisonment is a possible penalty, he or she
10 may request the court where the case is to be tried, at any time after
11 the filing of the indictment, information, or complaint, to order the
12 prosecuting attorney to permit the defendant to inspect and copy or
13 photograph:

14 (a) The defendant's statement, if any. For purposes of this
15 subdivision, statement means a written statement made by the defendant
16 and signed or otherwise adopted or approved by him or her, or a
17 stenographic, mechanical, electrical, or other recording, or a
18 transcription thereof, which is a substantially verbatim recital of an
19 oral statement made by the defendant to an agent of the prosecution,
20 state, or political subdivision thereof, and recorded contemporaneously
21 with the making of such oral statement;

22 (b) The defendant's prior criminal record, if any;

23 (c) The defendant's recorded testimony before a grand jury;

24 (d) The names and addresses of witnesses on whose evidence the
25 charge is based;

26 (e) The results and reports of physical or mental examinations, and
27 of scientific tests, or experiments made in connection with the
28 particular case, or copies thereof; and

29 (f) Documents, papers, books, accounts, letters, photographs,

30 objects, or other tangible things of whatsoever kind or nature which
31 could be used as evidence by the prosecuting authority.;

1 ~~(g) The known criminal history of a jailhouse witness;~~

2 ~~(h) Any deal, promise, inducement, or benefit that the prosecuting
3 attorney or any person acting on behalf of the prosecuting attorney has
4 knowingly made or may make in the future to the jailhouse witness;~~

5 ~~(i) The specific statements allegedly made by the defendant against
6 whom the jailhouse witness will testify and the time, place, and manner
7 of the defendant's disclosures;~~

8 ~~(j) The case name and jurisdiction of any criminal cases known to
9 the prosecuting attorney in which a jailhouse witness testified about
10 statements made by another criminal defendant that were disclosed to the
11 jailhouse witness while he or she was a jailhouse witness and whether the
12 jailhouse witness received any deal, promise, inducement, or benefit in
13 exchange for or subsequent to such testimony; and~~

14 ~~(k) Any occasion known to the prosecuting attorney in which the
15 jailhouse witness recanted testimony about statements made by another
16 criminal defendant that were disclosed to the jailhouse witness while he
17 or she was a jailhouse witness and, if any are known, a transcript or
18 copy of such recantation.~~

19 (2) The court may issue such an order pursuant to the provisions of
20 this section. In the exercise of its judicial discretion, the court shall
21 consider among other things whether:

22 (a) The request is material to the preparation of the defense;

23 (b) The request is not made primarily for the purpose of harassing
24 the prosecution or its witnesses;

25 (c) The request, if granted, would not unreasonably delay the trial
26 of the offense and an earlier request by the defendant could not have
27 reasonably been made;

28 (d) There is no substantial likelihood that the request, if granted,
29 would preclude a just determination of the issues at the trial of the
30 offense; or

31 (e) The request, if granted, would not result in the possibility of
1 bodily harm to, or coercion of, witnesses.

2 (3) Whenever the court refuses to grant an order pursuant to the
3 provisions of this section, it shall render its findings in writing
4 together with the facts upon which the findings are based.

5 (4) Whenever the prosecuting attorney believes that the granting of
6 an order under the provisions of this section will result in the
7 possibility of bodily harm to witnesses or that witnesses will be
8 coerced, the court may permit him or her to make such a showing in the
9 form of a written statement to be inspected by the court alone. The
10 statement shall be sealed and preserved in the records of the court to be
11 made available to the appellate court in the event of an appeal by the
12 defendant.

13 (5) This section does not apply to jailhouse informants as defined
14 in section 1 of this act. Sections 1 to 6 of this act govern jailhouse
15 informants. For purposes of subdivisions (1)(g) through (k) of this
16 section, jailhouse witness means a person in the physical custody of any

17 ~~jail or correctional institution as (a) an accused defendant, (b) a~~
18 ~~convicted defendant awaiting sentencing, or (c) a convicted defendant~~
19 ~~-serving a sentence of incarceration, at the time the statements the~~
20 ~~jailhouse witness will testify about were disclosed.~~
21 Sec. 8. Original section 29-1912, Reissue Revised Statutes of
22 Nebraska, is repealed.

UNANIMOUS CONSENT - Add Cointroducer(s)

Unanimous consent to add Senator(s) as cointroducer(s). No objections. So ordered.

Senator Moser name added to LB15.

Senator Kolterman name added to LB657.

VISITOR(S)

Visitors to the Chamber were Chris Klinger and members of Leadership Beatrice; students from St. Bernadette Catholic School, Bellevue; and students from St. Columbkille Catholic School, Papillion.

The Doctor of the Day was Dr. Carol LaCroix from Omaha.

ADJOURNMENT

At 11:53 a.m., on a motion by Senator Howard, the Legislature adjourned until 9:00 a.m., Wednesday, March 27, 2019.

Patrick J. O'Donnell
Clerk of the Legislature

