

**FIFTY-SEVENTH DAY - APRIL 10, 2019**

**LEGISLATIVE JOURNAL**

**ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION**

**FIFTY-SEVENTH DAY**

Legislative Chamber, Lincoln, Nebraska  
Wednesday, April 10, 2019

**PRAYER**

The prayer was offered by Pastor William Ramage, Nebraska City Baptist Church.

**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 Friesen, Groene, M. Hansen, Linehan, Morfeld, and Stinner who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fifty-sixth day was approved.

**SPEAKER SCHEER PRESIDING**

**GENERAL FILE**

**LEGISLATIVE BILL 227.** Senator Hughes renewed his amendment, AM1209, found on page 1084 and considered on pages 1096 and 1097, to the committee amendment.

Senator Hughes withdrew his amendment.

Senator Hughes withdrew his amendment, AM1201, found on page 1085.

Senator Hughes offered the following amendment to the committee amendment:

AM1274

(Amendments to Standing Committee amendments, AM746)

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new

3 sections:

4 Section 1. Section 2-4401, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 2-4401 Sections 2-4401 to 2-4404 and sections 3, 4, and 5 of this  
7 act shall be known and may be cited as the Nebraska Right to Farm Act.

8 Sec. 2. Section 2-4403, Reissue Revised Statutes of Nebraska, is  
9 amended to read:

10 2-4403 A farm or farm operation or a public grain warehouse or  
11 public grain warehouse operation shall not be found to be a public or  
12 private nuisance if:

13 (1) ~~The~~ the farm or farm operation or public grain warehouse or  
14 public grain warehouse operation existed before a change in the land use  
15 or occupancy of land in and about the locality of such farm or farm  
16 operation or public grain warehouse or public grain warehouse operation  
17 and before such change in land use or occupancy of land the farm or farm  
18 operation or public grain warehouse or public grain warehouse operation  
19 would not have been a nuisance; -

20 (2) The farm or farm operation or public grain warehouse or public  
21 grain warehouse operation employs reasonable techniques to mitigate  
22 negative effects on the property of others, including, but not limited  
23 to, reasonable techniques to keep dust, noise, insects, and odors at a  
24 minimum; and

25 (3) The farm or farm operation or public grain warehouse or public  
26 grain warehouse operation is in compliance with applicable laws and  
1 regulations, including any zoning regulations of a local governing body.

2 Sec. 3. A farm or farm operation or public grain warehouse or  
3 public grain warehouse operation shall not be found to be a public or  
4 private nuisance after two years following the established date of  
5 operation. For purposes of this section, established date of operation  
6 means the date on which a farm or farm operation or public grain  
7 warehouse or public grain warehouse operation commences operation, except  
8 that if the farm or farm operation or public grain warehouse or public  
9 grain warehouse operation undergoes any subsequent change, including any  
10 of the following, the date of such change shall be deemed the established  
11 date of operation for such change:

12 (1) The conversion from one type of farm or farm operation or public  
13 grain warehouse or public grain warehouse operation to another type of  
14 farm or farm operation or public grain warehouse or public grain  
15 warehouse operation;

16 (2) A change in ownership or size of the farm or farm operation or  
17 public grain warehouse or public grain warehouse operation;

18 (3) The enrollment, reduction, or cessation of participation in a  
19 government program by the farm or farm operation or public grain  
20 warehouse or public grain warehouse operation; or

21 (4) Adoption of new technology by the farm or farm operation or  
22 public grain warehouse or public grain warehouse operation.

23 Sec. 4. For a period of two years after the established date of  
24 operation as described in section 3 of this act, there is a rebuttable  
25 presumption that a farm or farm operation or public grain warehouse or  
26 public grain warehouse operation is not a public or private nuisance.

27 Sec. 5. Section 2-4404, Reissue Revised Statutes of Nebraska, is  
 28 amended to read:  
 29 ~~2-4404 The Nebraska Right to Farm Act Sections 2-4401 to 2-4404~~  
 30 shall not affect the application of state and federal statutes.  
 31 Sec. 6. Original sections 2-4401, 2-4403, and 2-4404, Reissue  
 1 Revised Statutes of Nebraska, are repealed.

Senator Chambers offered the following motion:

MO60

Recommit to the Agriculture Committee.

Senator Chambers withdrew his motion to recommit to committee.

Senator Hughes withdrew his amendment, AM1274.

Senator Hughes offered the following amendment to the committee amendment:

AM1287

(Amendments to Standing Committee amendments, AM746)

1 1. Strike amendment 1 and insert the following new amendment:

2 1. Strike the original sections and insert the following new

3 sections:

4 Section 1. Section 2-4401, Reissue Revised Statutes of Nebraska, is

5 amended to read:

6 2-4401 Sections 2-4401 to 2-4404 and sections 3 and 4 of this act

7 shall be known and may be cited as the Nebraska Right to Farm Act.

8 Sec. 2. Section 2-4403, Reissue Revised Statutes of Nebraska, is

9 amended to read:

10 2-4403 A farm or farm operation or a public grain warehouse or

11 public grain warehouse operation shall not be found to be a public or

12 private nuisance if:

13 (1) The the farm or farm operation or public grain warehouse or

14 public grain warehouse operation existed before a change in the land use

15 or occupancy of land in and about the locality of such farm or farm

16 operation or public grain warehouse or public grain warehouse operation

17 and before such change in land use or occupancy of land the farm or farm

18 operation or public grain warehouse or public grain warehouse operation

19 would not have been a nuisance; -

20 (2) The farm or farm operation or public grain warehouse or public

21 grain warehouse operation employs reasonable techniques to mitigate

22 negative effects on the property of others, including, but not limited

23 to, reasonable techniques to keep dust, noise, insects, and odors at a

24 minimum; and

25 (3) The farm or farm operation or public grain warehouse or public

26 grain warehouse operation is in compliance with applicable laws and

1 regulations, including any zoning regulations of a local governing body.

2 Sec. 3. A farm or farm operation or public grain warehouse or

3 public grain warehouse operation shall not be found to be a public or

4 private nuisance after two years following the established date of

5 operation, including as modified by any subsequent change as provided in  
 6 this section. For purposes of this section, established date of operation  
 7 means the date on which a farm or farm operation or public grain  
 8 warehouse or public grain warehouse operation commences operation, except  
 9 that if the farm or farm operation or public grain warehouse or public  
 10 grain warehouse operation undergoes any subsequent change, including any  
 11 of the following, the date of such change shall be deemed the established  
 12 date of operation for such change:

13 (1) The conversion from one type of farm or farm operation or public  
 14 grain warehouse or public grain warehouse operation to another type of  
 15 farm or farm operation or public grain warehouse or public grain  
 16 warehouse operation;

17 (2) A change in ownership or size of the farm or farm operation or  
 18 public grain warehouse or public grain warehouse operation;

19 (3) The enrollment, reduction, or cessation of participation in a  
 20 government program by the farm or farm operation or public grain  
 21 warehouse or public grain warehouse operation; or

22 (4) Adoption of new technology by the farm or farm operation or  
 23 public grain warehouse or public grain warehouse operation.

24 Sec. 4. Section 2-4404, Reissue Revised Statutes of Nebraska, is  
 25 amended to read:

26 ~~2-4404 The Nebraska Right to Farm Act Sections 2-4401 to 2-4404~~  
 27 shall not affect the application of state and federal statutes.

28 Sec. 5. Original sections 2-4401, 2-4403, and 2-4404, Reissue  
 29 Revised Statutes of Nebraska, are repealed.

Pending.

### **VISITOR(S)**

Visitors to the Chamber were students and Senator Quick's granddaughter, Amaya Quick, from St. Pius X/St. Leo School, Omaha.

### **RECESS**

At 11:38 a.m., on a motion by Senator Bostelman, the Legislature recessed until 1:30 p.m.

### **AFTER RECESS**

The Legislature reconvened at 1:30 p.m., President Foley presiding.

### **ROLL CALL**

The roll was called and all members were present except Senators Bolz, Dorn, Morfeld, and Pansing Brooks who were excused until they arrive.

**COMMITTEE REPORT(S)**

Executive Board

**LEGISLATIVE BILL 330.** Placed on General File with amendment. AM979 is available in the Bill Room.

(Signed) Mike Hilgers, Chairperson

**GENERAL FILE**

**LEGISLATIVE BILL 227.** The Hughes amendment, AM1287, found in this day's Journal, to the committee amendment, was renewed.

Senator Hughes offered the following motion:  
MO61

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Hughes moved for a call of the house. The motion prevailed with 28 ayes, 4 nays, and 17 not voting.

Senator Hughes requested a roll call vote on the motion to invoke cloture.

Voting in the affirmative, 34:

Albrecht	Clements	Groene	La Grone	Scheer
Arch	DeBoer	Halloran	Lindstrom	Slama
Blood	Dorn	Hansen, B.	Linehan	Stinner
Bostelman	Erdman	Hilgers	Lowe	Walz
Brandt	Friesen	Hilkemann	McDonnell	Wayne
Brewer	Geist	Hughes	Moser	Williams
Briese	Gragert	Kolterman	Murman	

Voting in the negative, 11:

Cavanaugh	Howard	Lathrop	Quick
Chambers	Hunt	McCollister	Vargas
Hansen, M.	Kolowski	Pansing Brooks	

Present and not voting, 2:

Crawford	Wishart
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Excused and not voting, 2:

Bolz	Morfeld
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The Hughes motion to invoke cloture prevailed with 34 ayes, 11 nays, 2 present and not voting, and 2 excused and not voting.

Senator Chambers requested a record vote on the Hughes amendment to the committee amendment.

Voting in the affirmative, 36:

Albrecht	DeBoer	Hansen, B.	McCollister	Walz
Arch	Dorn	Hilgers	McDonnell	Wayne
Blood	Erdman	Hilkemann	Moser	Williams
Bostelman	Friesen	Hughes	Murman	Wishart
Brandt	Geist	Kolterman	Pansing Brooks	
Brewer	Gragert	La Grone	Scheer	
Briese	Groene	Lindstrom	Slama	
Clements	Halloran	Lowe	Stinner	

Voting in the negative, 2:

Chambers      Hunt

Present and not voting, 9:

Cavanaugh	Hansen, M.	Kolowski	Linehan	Vargas
Crawford	Howard	Lathrop	Quick	

Excused and not voting, 2:

Bolz              Morfeld

The Hughes amendment was adopted with 36 ayes, 2 nays, 9 present and not voting, and 2 excused and not voting.

The committee amendment, AM746, as amended, was adopted with 33 ayes, 4 nays, 10 present and not voting, and 2 excused and not voting.

Senator Chambers requested a roll call vote on the advancement of the bill.

Voting in the affirmative, 31:

Albrecht	Clements	Groene	La Grone	Slama
Arch	DeBoer	Halloran	Lindstrom	Stinner
Blood	Dorn	Hansen, B.	Lowe	Williams
Bostelman	Erdman	Hilgers	McDonnell	
Brandt	Friesen	Hilkemann	Moser	
Brewer	Geist	Hughes	Murman	
Briese	Gragert	Kolterman	Scheer	

Voting in the negative, 7:

Chambers	Hunt	Pansing Brooks	Wishart
Hansen, M.	Lathrop	Quick	

Present and not voting, 9:

Cavanaugh	Howard	Linehan	Vargas	Wayne
Crawford	Kolowski	McCollister	Walz	

Excused and not voting, 2:

Bolz	Morfeld
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Advanced to Enrollment and Review Initial with 31 ayes, 7 nays, 9 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

### COMMITTEE REPORT(S)

Enrollment and Review

**LEGISLATIVE BILL 177.** Placed on Select File.

**LEGISLATIVE BILL 252.** Placed on Select File with amendment.

ER71

1 1. On page 1, line 1, strike "state lottery" and insert "State  
2 Lottery Act".

**LEGISLATIVE BILL 304.** Placed on Select File with amendment.

ER73

1 1. On page 2, line 16, strike "deliver" and insert "delivery".  
2 2. On page 1, strike lines 2 through 4 and insert "sections 81-2,239  
3 and 81-2,245.01, Revised Statutes Cumulative Supplement, 2018; to exempt  
4 certain operations from the definition of a food establishment as  
5 prescribed; to require registration of certain operations; to harmonize  
6 provisions; and to repeal the original sections."

(Signed) Julie Slama, Chairperson

### GENERAL FILE

**LEGISLATIVE BILL 616.** Title read. Considered.

Committee AM442, found on page 572, was adopted with 35 ayes, 0 nays, 13 present and not voting, and 1 excused and not voting.

Senator Hilgers withdrew his amendment, AM203, found on page 459.

Advanced to Enrollment and Review Initial with 37 ayes, 0 nays, 11 present and not voting, and 1 excused and not voting.

**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 1081 and 1082:

Stem Cell Research Advisory Committee  
Alysson R. Muotri

Voting in the affirmative, 37:

Arch	Crawford	Hansen, B.	Linehan	Scheer
Blood	DeBoer	Hansen, M.	Lowe	Slama
Bolz	Dorn	Hilgers	McCollister	Walz
Bostelman	Erdman	Hilkemann	McDonnell	Wayne
Brandt	Friesen	Howard	Moser	Wishart
Brewer	Geist	Hughes	Murman	
Cavanaugh	Gragert	Hunt	Pansing Brooks	
Clements	Groene	Kolowski	Quick	

Voting in the negative, 0.

Present and not voting, 11:

Albrecht	Halloran	Lathrop	Vargas
Briese	Kolterman	Lindstrom	Williams
Chambers	La Grone	Stinner	

Excused and not voting, 1:

Morfeld

The appointment was confirmed with 37 ayes, 0 nays, 11 present and not voting, and 1 excused and not voting.

Senator Hughes moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 1085:

Nebraska Power Review Board  
Frank Reida

Voting in the affirmative, 40:



Albrecht	Crawford	Hilgers	Linehan	Scheer
Blood	DeBoer	Hilkemann	Lowe	Slama
Bostelman	Dorn	Howard	McCollister	Stinner
Brandt	Erdman	Hughes	McDonnell	Vargas
Brewer	Friesen	Kolowski	Moser	Walz
Cavanaugh	Geist	Kolterman	Murman	Wayne
Chambers	Gragert	La Grone	Pansing Brooks	Williams
Clements	Hansen, B.	Lindstrom	Quick	Wishart

Voting in the negative, 0.

Present and not voting, 7:

Bolz	Groene	Hansen, M.	Lathrop
Briese	Halloran	Hunt	

Excused and not voting, 2:

Arch	Morfeld
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The appointment was confirmed with 40 ayes, 0 nays, 7 present and not voting, and 2 excused and not voting.

Senator Hughes moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 1086:

Nebraska Game and Parks Commission  
Robert E. Allen

Voting in the affirmative, 36:

Albrecht	Erdman	Kolowski	Moser	Walz
Blood	Geist	Kolterman	Murman	Wayne
Bostelman	Gragert	La Grone	Pansing Brooks	Williams
Brandt	Hansen, B.	Lindstrom	Quick	Wishart
Cavanaugh	Hilgers	Lowe	Scheer	
Chambers	Hilkemann	McCollister	Slama	
Clements	Howard	McDonnell	Stinner	
Crawford	Hughes	Morfeld	Vargas	

Voting in the negative, 0.

Present and not voting, 12:

Bolz	DeBoer	Groene	Hunt
Brewer	Dorn	Halloran	Lathrop
Briese	Friesen	Hansen, M.	Linehan

Excused and not voting, 1:

Arch

The appointment was confirmed with 36 ayes, 0 nays, 12 present and not voting, and 1 excused and not voting.

Senator Hughes moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 1085:

Nebraska Game and Parks Commission  
John M. Hoggatt

Voting in the affirmative, 38:

Albrecht	Crawford	Hilkemann	Lowe	Stinner
Blood	Dorn	Howard	McCollister	Vargas
Bolz	Erdman	Hughes	Moser	Walz
Bostelman	Geist	Hunt	Murman	Wayne
Brandt	Gragert	Kolowski	Pansing Brooks	Williams
Brewer	Hansen, B.	Kolterman	Quick	Wishart
Chambers	Hansen, M.	La Grone	Scheer	
Clements	Hilgers	Lindstrom	Slama	

Voting in the negative, 0.

Present and not voting, 10:

Briese	DeBoer	Groene	Lathrop	McDonnell
Cavanaugh	Friesen	Halloran	Linehan	Morfeld

Excused and not voting, 1:

Arch

The appointment was confirmed with 38 ayes, 0 nays, 10 present and not voting, and 1 excused and not voting.

#### SELECT FILE

**LEGISLATIVE BILL 320.** ER61, found on page 999, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 603.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 713.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 316.** ER59, found on page 999, was adopted.

Senator Kolterman offered his amendment, AM1187, found on page 1061.

The Kolterman amendment was adopted with 35 ayes, 0 nays, 13 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE RESOLUTION 14CA.** Senator Groene offered the following amendment:

AM1255

- 1 1. On page 1, line 23, after "if" insert "due to a high rate of
- 2 unemployment combined with a high poverty rate as determined by law.".

The Groene amendment was adopted with 43 ayes, 0 nays, 5 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 390.** ER58, found on page 999, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 472.** ER66, found on page 1095, was adopted.

Senator Lowe offered the following amendment:

AM1223

(Amendments to E&R amendments, ER66)

- 1 1. On page 1, strike beginning with "upon" in line 9 through
- 2 "members" in line 11 and insert "by resolution"; and in line 16 after the
- 3 period insert "The power to impose a sales and use tax under this section
- 4 shall not be exercised unless and until the question has been submitted
- 5 at a primary, general, or special election held within the county which
- 6 would be subject to the tax and in which all registered voters are
- 7 entitled to vote on such question. The county board shall order the
- 8 submission of the question by submitting a certified copy of the
- 9 resolution proposing the tax to the election commissioner or county
- 10 clerk. If a majority of the votes cast upon the question are in favor of
- 11 the tax, the county board may impose the tax. If a majority of those
- 12 voting on the question are opposed to the tax, the county board shall not
- 13 impose the tax. Any election under this section shall be conducted in
- 14 accordance with the procedures provided in the Election Act.".

Senator Lowe moved for a call of the house. The motion prevailed with 27 ayes, 6 nays, and 16 not voting.

Senator Lowe requested a roll call vote on his amendment.

Voting in the affirmative, 9:

Bolz	Clements	Hansen, B.	La Grone	Slama
Bostelman	Geist	Hilgers	Lowe	

Voting in the negative, 22:

Blood	DeBoer	Hilkemann	McCollister	Stinner
Brandt	Dorn	Hughes	Morfeld	Williams
Brewer	Friesen	Hunt	Murman	
Cavanaugh	Gragert	Kolowski	Pansing Brooks	
Chambers	Hansen, M.	Kolterman	Scheer	

Present and not voting, 17:

Albrecht	Groene	Lindstrom	Quick	Wishart
Briese	Halloran	Linehan	Vargas	
Crawford	Howard	McDonnell	Walz	
Erdman	Lathrop	Moser	Wayne	

Excused and not voting, 1:

Arch

The Lowe amendment lost with 9 ayes, 22 nays, 17 present and not voting, and 1 excused and not voting.

The Chair declared the call raised.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 268.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 352.** ER65, found on page 1095, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 218.** ER60, found on page 999, was adopted.

Senator Lindstrom offered his amendment, AM1137, found on page 1068.

The Lindstrom amendment was adopted with 46 ayes, 0 nays, and 3 present and not voting.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 59.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 514.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 87.** ER62, found on page 1024, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 212.** ER63, found on page 1091, was adopted.

Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 15.** Advanced to Enrollment and Review for Engrossment.

**LEGISLATIVE BILL 637.** ER64, found on page 1091, was adopted.

Advanced to Enrollment and Review for Engrossment.

#### **GENERAL FILE**

**LEGISLATIVE BILL 585.** Title read. Considered.

Committee AM953, found on page 982, was offered.

Senator Friesen offered the following amendment to the committee amendment:

AM1257

(Amendments to Standing Committee amendments, AM953)

1 1. Insert the following new amendment:

2 3. On page 4, line 19, strike "1"; and strike lines 28 through 30.

The Friesen amendment was adopted with 36 ayes, 0 nays, and 13 present and not voting.

The committee amendment, as amended, was adopted with 35 ayes, 0 nays, and 14 present and not voting.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, and 10 present and not voting.

**COMMITTEE REPORT(S)**

Transportation and Telecommunications

**LEGISLATIVE BILL 184.** Placed on General File with amendment.  
AM1252 is available in the Bill Room.

(Signed) Curt Friesen, Chairperson

**AMENDMENT(S) - Print in Journal**

Senator Lathrop filed the following amendment to LB538:  
AM1278

(Amendments to Standing Committee amendments, AM900)

- 1 1. Strike amendment 1 and insert the following new amendment:
- 2 1. Strike the original sections and insert the following new
- 3 sections:
- 4 Section 1. Section 28-1107, Reissue Revised Statutes of Nebraska, is
- 5 amended to read:
- 6 28-1107 (1) A person commits the offense of possession of a gambling
- 7 device if he or she manufactures, sells, transports, places, possesses,
- 8 or conducts or negotiates any transaction affecting or designed to affect
- 9 ownership, custody, or use of any gambling device, knowing that it shall
- 10 be used in the advancement of unlawful gambling activity.
- 11 (2) The owner or operator of a retail establishment who is not a
- 12 manufacturer, distributor, or seller of mechanical amusement devices as
- 13 defined under the Mechanical Amusement Device Tax Act, shall have an
- 14 affirmative defense to possession of a gambling device described in
- 15 subsection (1) of this section if the device bears an unexpired
- 16 mechanical amusement device decal as required by such act. However, such
- 17 affirmative defense may be overcome if the owner or operator had actual
- 18 knowledge that operation of the device constituted unlawful gambling
- 19 activity at any time such device was operated on the premises of the
- 20 retail establishment.
- 21 ~~(2) This section shall not apply to any coin-operated mechanical~~
- 22 ~~gaming device, computer gaming device, electronic gaming device, or video~~
- 23 ~~gaming device which has the capability of awarding free games, which is~~
- 24 ~~intended to be played and is in fact played for amusement only, and which~~
- 25 ~~may allow the player the right to replay such gaming device at no~~
- 26 ~~additional cost, which right to replay shall not be considered money or~~
- 1 ~~property, except that such mechanical game (a) can be discharged of~~
- 2 ~~accumulated free replays only by reactivating the game for one additional~~
- 3 ~~play for each accumulated free replay and (b) makes no permanent record~~
- 4 ~~directly or indirectly of free replays so awarded.~~
- 5 (3) Notwithstanding any other provisions of this section, any
- 6 mechanical game or device classified by the federal government as an
- 7 illegal gambling device and requiring a federal Gambling Device Tax Stamp
- 8 as required by the Internal Revenue Service in its administration of 26
- 9 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, are
- 10 hereby declared to be illegal ~~and excluded from the exemption granted in~~
- 11 ~~this section.~~

12 ~~(4) (3)~~ Possession of a gambling device is a Class II misdemeanor.  
13 Sec. 2. Section 77-3001, Reissue Revised Statutes of Nebraska, is  
14 amended to read:  
15 77-3001 For purposes of the Mechanical Amusement Device Tax Act,  
16 unless the context otherwise requires:  
17 (1) Cash device means any mechanical amusement device capable of  
18 awarding (a) cash, (b) anything redeemable for cash, (c) gift cards,  
19 credit, or other instruments which have a value denominated by reference  
20 to an amount of currency, or (d) anything redeemable for anything  
21 described in subdivision (c) of this subdivision;  
22 (2) Department means the Department of Revenue;  
23 (3) Distributor means any person who sells, leases, or delivers  
24 possession or custody of a machine or mechanical device to operators  
25 thereof for a consideration either directly or indirectly received;  
26 (4) Mechanical amusement device means any machine which, upon  
27 insertion of a coin, currency, credit card, or substitute into the  
28 machine, operates or may be operated or used for a game, contest, or  
29 amusement of any description, such as, by way of example, but not by way  
30 of limitation, pinball games, shuffleboard, bowling games, radio-ray  
31 rifle games, baseball, football, racing, boxing games, electronic video  
1 games of skill, and coin-operated pool tables. Mechanical amusement  
2 device also includes game and draw lotteries and coin-operated automatic  
3 musical devices. Mechanical amusement device does not mean vending  
4 machines which dispense tangible personal property, devices located in  
5 private homes for private use, pickle card dispensing devices which are  
6 required to be registered with the department pursuant to section  
7 9-345.03, or devices which are mechanically constructed in a manner that  
8 would render their operation illegal under the laws of the State of  
9 Nebraska;  
10 (5) Operator means any person who operates a place of business in  
11 which a machine or device owned by him or her is physically located or  
12 any person who places and who either directly or indirectly controls or  
13 manages any machine or device;  
14 ~~(6) (1)~~ Person means an individual, partnership, limited liability  
15 company, society, association, joint-stock company, corporation, estate,  
16 receiver, lessee, trustee, assignee, referee, or other person acting in a  
17 fiduciary or representative capacity, whether appointed by a court or  
18 otherwise, and any combination of individuals;  
19 ~~(2) Mechanical amusement device means any machine which, upon~~  
20 ~~insertion of a coin, currency, credit card, or substitute into the~~  
21 ~~machine, operates or may be operated or used for a game, contest, or~~  
22 ~~amusement of any description, such as, by way of example, but not by way~~  
23 ~~of limitation, pinball games, shuffleboard, bowling games, radio ray~~  
24 ~~rifle games, baseball, football, racing, boxing games, and coin-operated~~  
25 ~~pool tables. Mechanical amusement device also includes game and draw~~  
26 ~~lotteries and coin-operated automatic musical devices. The term does not~~  
27 ~~mean vending machines which dispense tangible personal property, devices~~  
28 ~~located in private homes for private use, pickle card dispensing devices~~  
29 ~~which are required to be registered with the Department of Revenue~~  
30 ~~pursuant to section 9-345.03, or devices which are mechanically~~

31 ~~constructed in a manner that would render their operation illegal under~~  
1 ~~the laws of the State of Nebraska;~~

2 ~~(3) Operator means any person who operates a place of business in~~  
3 ~~which a machine or device owned by him or her is physically located or~~  
4 ~~any person who places and who either directly or indirectly controls or~~  
5 ~~manages any machine or device;~~

6 ~~(4) Distributor means any person who sells, leases, or delivers~~  
7 ~~possession or custody of a machine or mechanical device to operators~~  
8 ~~thereof for a consideration either directly or indirectly received;~~

9 ~~(7) (5) Whenever in the act, the words machine or device are used,~~  
10 ~~they refer to mechanical amusement device; and~~

11 ~~(8) Whenever in the act, the words electronic video games of skill,~~  
12 ~~games of skill, or skill-based devices are used, they refer to mechanical~~  
13 ~~amusement devices which produce an outcome predominantly caused by skill~~  
14 ~~and not chance; and~~

15 ~~(9) (6) Whenever in the act, the words machine, device, person,~~  
16 ~~operator, or distributor are used, the words in the singular include the~~  
17 ~~plural and in the plural include the singular.~~

18 Sec. 3. (1)(a) The Tax Commissioner or his or her agents or  
19 employees, at the direction of the Tax Commissioner, or any peace officer  
20 of this state may seize, without a warrant, any mechanical amusement  
21 device if there is cause to believe such device is not in compliance with  
22 the Mechanical Amusement Device Tax Act or any rules and regulations  
23 adopted and promulgated under the act or if the department determines the  
24 response to a request for information is materially deficient without  
25 good cause. In addition to seizure, any person placing in service or  
26 operating a device constituting a game of chance within this state shall  
27 be subject to a penalty of one thousand dollars for each day of such  
28 operation.

29 (b) For purposes of this subsection, a mechanical amusement device  
30 is subject to seizure and penalties as if it were a game of chance if:

31 (i) The mechanical amusement device is a cash device; and

1 (ii) The mechanical amusement device does not bear an unexpired  
2 decal as required under the Mechanical Amusement Device Tax Act.

3 (c) This section does not apply to any device (i) used in any bingo,  
4 lottery by the sale of pickle cards, or other lottery, raffle, or gift  
5 enterprise conducted in accordance with the Nebraska Bingo Act, Nebraska  
6 County and City Lottery Act, Nebraska Lottery and Raffle Act, Nebraska  
7 Pickle Card Lottery Act, Nebraska Small Lottery and Raffle Act, State  
8 Lottery Act, or section 9-701, (ii) used for a prize contest as defined  
9 in section 28-1101, or (iii) specifically authorized by the laws of this  
10 state.

11 (2) To receive a determination from the department that a cash  
12 device is in compliance with the Mechanical Amusement Device Tax Act and  
13 any rules and regulations adopted and promulgated under the act, a  
14 manufacturer or distributor of the device shall:

15 (a) Submit an application to the Tax Commissioner containing  
16 information regarding the device's location, software, Internet  
17 connectivity, and configuration as may be required by the Tax  
18 Commissioner;



19 (b) Submit an application fee of five hundred dollars;  
20 (c) Provide a specimen of the proposed device;  
21 (d) Provide all supporting evidence, including a report by an  
22 independent testing authority preapproved by the Tax Commissioner, to the  
23 Tax Commissioner indicating that, under all configurations, settings, and  
24 modes of operation, operation of the device constitutes a game of skill  
25 and not a game of chance and the use, operation, sale, or manufacture of  
26 the device would not constitute a violation of section 28-1107; and  
27 (e) Provide an affidavit from the distributor affirming that no  
28 functional changes in hardware or software will be made to the approved  
29 device without further approval from the Tax Commissioner.  
30 (3) The Tax Commissioner shall issue a response in writing to the  
31 applicant within forty-five days after the applicant has completed and  
1 submitted all application requirements. The Tax Commissioner's response  
2 shall state the reason for any denial or the reasons a determination  
3 cannot be made.  
4 (4)(a) A device shall not be considered a game of skill if one or  
5 more of the following apply:  
6 (i) The ability of any player to succeed at the game played on the  
7 device is impacted by the number or ratio of prior wins to prior losses  
8 of players playing such device;  
9 (ii) The ability of the player to succeed at the game played on the  
10 device is impacted by the ability of any person to set a specified win-  
11 loss ratio for the device or by the device having a predetermined win-  
12 loss percentage;  
13 (iii) The outcome of the game played on the device can be controlled  
14 by a source other than any player playing the device;  
15 (iv) The success of any player is or may be determined by a chance  
16 event which cannot be altered by player action;  
17 (v) There is no possibility for the player to win every game played  
18 on the device or there are unwinnable games or game modes on the device;  
19 (vi) The ability of any player to succeed at the game played on the  
20 device requires the exercise of skill that no reasonable player could  
21 exercise; or  
22 (vii) The primary determination of the prize amount is determined by  
23 the presentation or generation of a particular puzzle or group of symbols  
24 dealt to the player and the player does not have control over the puzzle  
25 or group of symbols presented.  
26 (b) For purposes of this subsection, reasonable player means a  
27 player with an average level of intelligence, physical and mental skills,  
28 reaction time, and dexterity.  
29 (5) The department or any court considering whether a gambling  
30 device is a game of skill may consider:  
31 (a) The results of an analysis by any independent testing authority  
1 preapproved by the Tax Commissioner to evaluate the reaction time  
2 required for a player of a particular game on such device to perform the  
3 tasks required by the game to win; or  
4 (b) The results of an analysis by any independent testing authority  
5 preapproved by the Tax Commissioner to evaluate factors set forth by the  
6 Tax Commissioner, other than reaction time, required for the player of a

7 particular game on such device to perform the tasks required by the game  
8 to win.

9 (6) Factors which are not sufficient indications of a skill-based  
10 game include, but are not limited to:

11 (a) Whether a comprehensive list of prizes or outcomes is offered to  
12 the player or whether all outcomes are drawn from a finite pool of  
13 predetermined outcomes or starting positions;

14 (b) Whether a player can increase his or her chance of winning based  
15 on knowledge of probabilities in general or the probabilities of any  
16 particular prize or outcome in a game or on a device;

17 (c) Whether a player can simply choose not to play before committing  
18 money or credits; or

19 (d) A game task consisting solely of moving a symbol up or down,  
20 replacing one symbol with another, or any similar action, with or without  
21 a timer.

22 (7) Upon approval of an application based on a determination that  
23 the mechanical amusement device is a game of skill and not a game of  
24 chance, the Tax Commissioner shall issue a mechanical amusement device  
25 decal for the device as configured and as provided in subsection (8) of  
26 this section. No mechanical amusement device decal shall be issued for  
27 any cash device unless the department has determined that such device is  
28 a game of skill and not a game of chance and that the manufacture, sale,  
29 transport, placement, possession, or operation of such device does not  
30 constitute a violation of section 28-1107. If the Tax Commissioner does  
31 not approve the application for the device, the application shall be  
1 denied and the operator shall have the opportunity for an administrative  
2 hearing before the Tax Commissioner at which evidence may be presented on  
3 the issue of whether the device is specifically authorized by law and is  
4 not a gambling device as defined in section 28-1101. After such hearing,  
5 the Tax Commissioner shall enter a final decision approving or denying  
6 the application. The Tax Commissioner's final decision may be appealed,  
7 and the appeal shall be in accordance with the Administrative Procedure  
8 Act.

9 (8)(a) Upon approval of a specimen of a mechanical amusement device  
10 as a game of skill under this section, the department may issue a  
11 mechanical amusement device decal for each such device;

12 (i) If certified by the manufacturer to be functionally identical in  
13 both hardware and software configurations to the specimen provided to the  
14 department; and

15 (ii) If the application fee described in subdivision (2)(b) of this  
16 section and the annual decal fee described in subdivision (b) of this  
17 subsection have been paid.

18 (b) The owner or operator of a cash device shall pay an annual decal  
19 fee of two hundred fifty dollars to the department for each device in  
20 operation in Nebraska. The decal issued under this section shall be  
21 distinct from other decals issued by the department for mechanical  
22 amusement devices that are not required to be evaluated under this  
23 section. Regardless of the issuance of a decal by the department, no  
24 device shall be considered in compliance if it does not bear an unexpired  
25 decal in a conspicuous place.

26 (9) The application process described in this section shall not be  
 27 construed to limit further investigation by the department or the  
 28 issuance of further regulations to promote compliance after the  
 29 application process is completed. At any point after a determination of  
 30 skill by the department, the department may request from the  
 31 manufacturer, distributor, or operator information about any device in  
 1 operation in this state, including, but not limited to, information  
 2 regarding currently operable source code, changes to software or  
 3 hardware, and communications from or to the device over the Internet. A  
 4 manufacturer, distributor, or operator that receives a request shall  
 5 respond with all responsive information in its possession or control  
 6 within fifteen business days.

7 Sec. 4. Section 77-3006, Reissue Revised Statutes of Nebraska, is  
 8 amended to read:

9 77-3006 The administration of the Mechanical Amusement Device Tax  
 10 Act provisions of sections 77-3001 to 77-3011 is hereby vested in the Tax  
 11 Commissioner ~~of the State of Nebraska~~ subject to other provisions of law  
 12 relating to the Tax Commissioner. The Tax Commissioner may prescribe,  
 13 adopt and promulgate, and enforce rules and regulations relating to the  
 14 administration and enforcement of ~~the act~~ the provisions of sections  
 15 77-3001 to 77-3011, and may delegate authority to his or her  
 16 representatives to conduct hearings, or perform any other duties imposed  
 17 under the act. The Tax Commissioner may adopt and promulgate rules and  
 18 regulations necessary to carry out section 3 of this act ~~provisions of~~  
 19 ~~sections 77-3001 to 77-3011.~~

20 Sec. 5. Section 77-3007, Reissue Revised Statutes of Nebraska, is  
 21 amended to read:

22 77-3007 (1) The payment of the tax imposed by the Mechanical  
 23 Amusement Device Tax Act ~~provisions of sections 77-3001 to 77-3011~~ shall  
 24 be evidenced by a separate decal for each device signifying payment of  
 25 the tax, in a form prescribed by the Tax Commissioner.

26 (2) Every operator shall place such decal in a conspicuous place on  
 27 each device to denote payment of the tax for each device for the current  
 28 year.

29 Sec. 6. Section 77-3008, Reissue Revised Statutes of Nebraska, is  
 30 amended to read:

31 77-3008 Nothing in ~~the Mechanical Amusement Device Tax Act~~ sections  
 1 ~~77-3001 to 77-3011~~ shall be construed to limit, usurp, or repeal any  
 2 power to tax granted to the political subdivisions and municipalities of  
 3 the State of Nebraska by the laws and Constitution of ~~the State of~~  
 4 Nebraska.

5 Sec. 7. Section 77-3010, Reissue Revised Statutes of Nebraska, is  
 6 amended to read:

7 77-3010 Prosecutions for any violations of the Mechanical Amusement  
 8 Device Tax Act ~~sections 77-3001 to 77-3011~~ shall be brought by the  
 9 Attorney General or county attorney in the county in which the violation  
 10 occurs. Any prosecution for the violation of any of the provisions of the  
 11 act ~~sections 77-3001 to 77-3011~~ shall be instituted within three years  
 12 after the commission of the offense.

13 Sec. 8. Section 77-3011, Reissue Revised Statutes of Nebraska, is

14 amended to read:

15 77-3011 Sections 77-3001 to 77-3011 and section 3 of this act shall

16 be known and may be cited as the Mechanical Amusement Device Tax Act.

17 Sec. 9. This act becomes operative on January 1, 2020.

18 Sec. 10. Original sections 28-1107, 77-3001, 77-3006, 77-3007,

19 77-3008, 77-3010, and 77-3011, Reissue Revised Statutes of Nebraska, are

20 repealed.

### RESOLUTION(S)

#### LEGISLATIVE RESOLUTION 83. Introduced by Hansen, B., 16.

WHEREAS, Bernard Chris Hunke, known in his community as someone always willing to help, died February 9, 2019, in rural West Point; and

WHEREAS, Bernie was born in West Point to Hilbert and Joan Hunke on November 15, 1965, attended Pebble Valley School, and graduated from West Point Central Catholic High School in 1984; and

WHEREAS, Bernie served in the United States Air Force from 1986 until his retirement in 2008; and

WHEREAS, Bernie returned to his home town of West Point after military retirement and served as the Cuming County Veterans Service Officer and Emergency Manager; and

WHEREAS, Bernie met his wife, Lisa Turner, while stationed at Little Rock Air Force base in Little Rock, Arkansas. The couple later had four daughters and five grandchildren; and

WHEREAS, Bernie was a member of St. Mary's Catholic Church in West Point, Knights of Columbus Council #2272, American Legion Post #70, Veterans of Foreign Wars Post #4912 of West Point, and Beemer American Legion Riders Post #159; and

WHEREAS, Bernie served for the last ten years on the West Point Volunteer Fire Department and was recently awarded 2018 Fireman of the Year; and

WHEREAS, Bernie volunteered for the last twelve years as caretaker of St. Boniface Cemetery where he has since been buried; and

WHEREAS, Bernie served as co-chair of the planning committee dedicated to the funding, development, and construction of American Veterans Park, a memorial designed to honor God, country, veterans, and their families. The park is located in West Point and was dedicated on Veterans Day 2018; and

WHEREAS, Bernie personified the Air Force values in all he did: Integrity First, Service before Self, and Excellence.

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

1. That the Legislature honors Bernard Hunke for his dedication to State and Country.

2. That the Legislature extends its condolences to the family of Bernard Hunke.

3. That a copy of this resolution be sent to the family of Bernard Hunke.

Laid over.

**VISITOR(S)**

Visitors to the Chamber were students from Standing Bear Elementary School, Omaha; students and faculty from Chadron State College, Creighton University, the Grace Abbott School of Social Work at UNO, Nebraska Wesleyan University at Lincoln and Omaha, Union College, and the University of Nebraska at Kearney; and Aviv Ezra, the Consul General of Israel to the Midwest, and Alan Potash, the CEO of the Jewish Federation of Omaha.

**ADJOURNMENT**

At 4:38 p.m., on a motion by Senator Groene, the Legislature adjourned until 9:00 a.m., Thursday, April 11, 2019.

Patrick J. O'Donnell  
Clerk of the Legislature

