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Floor Debate  
March 06, 2007

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[LB395]

SENATOR LANGEMEIER: The confirmation report is adopted. Mr. Clerk, first item on General File. [LB395]

CLERK: Mr. President, the first bill this morning, LB395, a bill originally introduced by Senator Johnson. (Read title.) It has been discussed. Yesterday it was discussed, Mr. President. The first component of the committee amendments were adopted. Starting this morning the second component is pending, Mr. President, which would be FA16, is the first piece of business this morning, the second component of the committee amendments, FA16. (Legislative Journal page 748.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. As the Clerk has stated, there are committee amendments from the Health and Human Services Committee. Senator Johnson, we've had pretty good discussion yesterday on LB395 itself. I would recognize you to open on your floor amendment, second component, FA16. Senator Johnson, I recognize you to open on the second chunk of the committee...component of the committee amendment. [LB395]

SENATOR JOHNSON: All right, FA16, I believe that is right. Is that correct, Mr. President? Thank you. Mr. President, members of the Chamber, first of all, let me say that we have had intensive discussions with the people that feel differently about this, and we would hope to continue working with them. But let's talk here first about something that we do...and I think we would have an agreement about this section. What this is, as you might recall, is that the bill was amended so that we were going to take, I believe it was four different components, and this is the second component of the divided committee amendment. What this does is it revises the duties of the proprietor under the act. There are different grammatical changes, and it removes the word "reasonable" from the rule and the regulation language, because it is subjective, and frankly, it's just not necessary in this context. Let me tell you what is present, and what it is, is this, is a proprietor shall post a "No Smoking" sign or the international no smoking symbol clearly and conspicuously at every entrance to a place of employment or public place where smoking is prohibited under the Nebraska Clean Indoor Act, and shall take other necessary and appropriate steps to ensure the compliance with such act at such place. So basically, I would ask--I believe it was Senator Fischer, if she is available, that if she has had a chance to look this over, that she might comment on if this is acceptable change in language. I think that she will find that to be the case, but I would ask her, in particular, if she would agree to this, so that we could pass on to other language, and obviously, I would invite the comments of the other members of the Chamber, as well. So to get back to what this is, is this, is FA16 under Section 19, it says this, and I'll repeat it again: A proprietor shall post a "No Smoking" sign or other international no smoking symbol clearly and conspicuously at every entrance to a place of employment or public place where smoking is prohibited under the Nebraska Clean

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Indoor Air Act, and shall take other necessary and appropriate steps to ensure compliance with such an act. Again, it changes the grammatical aspect of this and removes the word "reasonable," because apparently the word "reasonable" is not one that is commonly present in such language. With that, Mr. President, I would close. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the opening on the second component of FA16. The floor is now open for discussion. We have lights on: Schimek, McDonald, Stuthman. Senator Schimek, you are recognized. Senator Schimek, you are recognized to speak to the second component, FA16. She waives her time. Senator McDonald, you're recognized. [LB395]

SENATOR McDONALD: Good morning, Mr. President, members of the body. We have debated this long and hard, and it appears that there's not going to be an easy compromise. Those that are standing firm against doing something statewide want local control. Those that have local control want it done statewide. And those are issues that were sent here to the Legislature for us to solve, and it's not been easy to solve, and I'm not sure that we're going to be able to solve it. When it comes to local control, local control truly is the vote of the people, and anything less is not vote of the people, is not local control. And so we sent it to our council members--they're put in the same position that we are, and they're going to be harassed, they're going to be...they're up for election, also. So they're concerned about their future positions. So we truly want local control. It only should go back to the vote of the people, the people that it affects the most, the people that are in the smoking bars that are utilizing those places. They need to make the decision, no one else. So if we truly want local control, it goes back to the vote of the people, not council members. Local control is the people, and I support that wholeheartedly to go back to the vote of the people, and probably nothing less. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Mr. President, members of the body. I truly agree with Senator McDonald, the local control. The local control also, in my opinion, is what it is--the vote of the people. And I think, realistically, that we have been more or less given the task, you know, to make a state ban on smoking, to have a level playing field--a very level playing field. And I think that is what we're attempting to do, but we're running into a few of the problems. I don't think that allowing a county board, which is representatives of the people, or a city council, which is representatives of the people, but I think that it should go to a vote of the people, if we can't come to some agreement here this morning. I think I'm down here, you know, representing the people of my community and also representing the people of the state of Nebraska. I'm looking at what we have gotten in, some of the results of the survey--the health risk. You know, do we have, you know, health problems because of the smoke? Yes, we do. It has been

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proven. We also have health risks from secondhand smoke, people that do not smoke that are being affected by this. Yes, it's been said that, you know, you don't have to go to these places that allow smoking, but why can't we go to those places? Those are some of the comments that I've got for this morning. I know we're trying to utilize a little bit of time so we can hopefully come up with some type of an agreement that we can hopefully move forward on this. With that, thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Stuthman. Senator Wightman, you're recognized. [LB395]

SENATOR WIGHTMAN: Thank you, Mr. President, members of the body. Lexington was in the news yesterday, in that Senator Fischer used Lexington as an example of a city who had voted by popular vote against the smoking ban. I had a call yesterday from Lexington city mayor, and he had been listening to the floor debate, as well, and asked me to step forth his position and the position of the Lexington city council, in that the Lexington city council has passed a unanimous resolution, 5 to 0, asking me to support the ban. I'm just going to read his letter. On March 5, 2007, the Legislature held floor debate on LB395. During this discussion Senator Fischer mentioned the failure of a Lexington ballot issue. I believe it to be important that you know the facts that contributed to the rejection of this ordinance. This was placed on the ballot by a 3 to 2 vote of the Lexington city council--so I want to point out with 3 to 2 as far as placing it on the ballot, it's now 5/0 asking me to support this ban...3 to 2 of the Lexington city council, and this was after the Lexington Economic Development Council asked that the action be delayed. For the record, I oppose this action based solely on the economics. Creating a smoke-free island in the statewide sea of smoking I felt would place our businesses at a disadvantage. The other major contributor to the failure was a poorly informed public. The ordinance was never published in the paper, nor was the language on the ballot. I'm not sure that's exactly a correct statement, but...the ballot question read: Shall the smoking ban proposed by the Lexington city council be accepted? I found these two things to be the strongest reasons for the failure. I would like to note that the Legislature is correct. We do not like unfunded mandates, but I see no fiscal note attached to this legislation, and I have not seen cities strongly object to health and safety issues such as speed limits, seat belts, or alcohol legislation that is solely to protect Nebraskans from injuring themselves or other Nebraskans. And I think the key words are probably the last three words: or other Nebraskans. I see this as being--and I've said this before on the floor on debate on this issue--I see this as being the key element and difference between other legislation that we've already passed, and I would like to contrast the seat belt law and the motorcycle helmet law to this bill. Those protected only the perpetrator of the act. The smoking ban will protect many other people who are not in a position to protect themselves, and that includes employees of establishments that allow smoking, it includes patrons of establishments that allow smoking. I see this as being an intrusion, certainly, on the personal lives of people within the state of Nebraska, but I see it being an intrusion with reason, in that we're

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protecting other people from the perpetrators of the act. So I would ask for the support of this body on the smoking ban. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Wightman. Wishing to speak: Senator White and then Senator Gay. Senator White, you're recognized. [LB395]

SENATOR WHITE: Thank you, Mr. President. I would like to try to bring back focus on what we're talking about here, and as many of you know, there is a motion pending that will provide for a statewide smoking ban. And if this motion is adopted, I will personally vote for it. What it does is creates a statewide ban, but then allows cities and counties in their respective jurisdictions to make the adjustments necessary so the bill will work...the ban will work in their local area. I heard Senator McDonald's comments that only a vote of the people is really local control. Well, we're not a direct democracy. We haven't been a direct democracy for over 200 years. We are a representative democracy, and for people to say that they can't withstand the pressure, somehow we've managed for 200-plus years to muddle on through, despite political pressure far worse than this. If we're really dedicated to the only way a law can be passed as a vote of the people, then we have no business taking up a statewide ban in the first place. That should only occur with a statewide vote of the people. I don't think that's rational. I think we're here to make hard decisions. I will at...proper time comes and when allowed, offer a motion that will amend this bill in a manner that allows local control to opt out--city councils or vote of the people. It will also remove the provisions that make this a crime, by allowing people to remove it from the record by going through treatment, because what we're really dealing with is an addiction here. I don't know where Senator Johnson is with that, but I know Senator Fischer is here. Senator Fischer...and may I ask, Mr. President, will Senator Fischer please yield to a question? [LB395]

SENATOR LANGEMEIER: Senator Fischer, would you yield to a question from Senator White? [LB395]

SENATOR FISCHER: Certainly. [LB395]

SENATOR WHITE: Senator Fischer, will you join me in supporting a statewide ban on smoking, if local control for local cities and counties is preserved, so they can adjust the law so it's enforceable in their areas? [LB395]

SENATOR FISCHER: Yes, I will, Senator White. I supported Senator Mines yesterday on his proposal. I think it's important. The cities, currently through the city council or a vote by the people on petition, have the ability to have a smoking ban in their community, and I believe that we can certainly say that they should have that same opportunity to allow smoking in certain areas in their city, if we pass this state smoking ban. [LB395]

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SENATOR WHITE: Thank you, Senator Fischer. The other complaint I have heard is that we will have an unacceptable patchwork. I don't think that's politically realistic. I think if you look at Senator Johnson's popularity polls of smoking, that I doubt very few, if any, city councils or counties will choose to do much in the way of exemptions, but they will have that right. And by having that right, it will make a law like this much more palatable and acceptable to the public in the state of Nebraska. If however, ultimately we find that a patchwork of cities have made exemptions that are creating problems, there's absolutely nothing to prevent the proponents of this bill from coming back in a year or two, after the laws have taken effect, to say it's not working, we're having enforcement problems because of the various cities. At that point in time, we can address the problem, if it ever exists, though personally, I doubt that it will. I would ask Senator Karpisek a question, if he would yield. [LB395]

SENATOR LANGEMEIER: Senator Karpisek, would you yield to a question? [LB395]

SENATOR KARPISEK: Yes, thank you. [LB395]

SENATOR WHITE: Senator Karpisek, the folks back in Wilber, would they be more understanding and acceptable of a statewide ban, if they understood they had local rights to come and petition as a community... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR WHITE: ...to decide how the rules should be enforced in their town? [LB395]

SENATOR KARPISEK: I can't speak for all of them, but I would think that they would be much more favorable to something like that. [LB395]

SENATOR WHITE: Would it be less of a direct order, telling them how to live, other than a statement--look, this is bad for you; please take it seriously and make adjustments accordingly? [LB395]

SENATOR KARPISEK: I think so. I think it comes back to the local control issue, where county boards and city boards do those sorts of things for the people that they take care of. This state is a very diverse state. What works for one community may not work for all communities, and I think they should have the opportunity to do that. [LB395]

SENATOR WHITE: Thank you, Mr. President, and thank you, Mr. Karpisek. [LB395]

SENATOR KARPISEK: Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Gay, you're recognized. [LB395]

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SENATOR GAY: Thank you, Mr. President. I just wanted to talk a little bit about this issue of local control. I agree with Senator White. It's a representative democracy. They...we elect leaders to lead. I looked at this local control, and I've got a letter here from the state association of county and city health officials, encouraging us to support this. I've got a letter from the public health association of Nebraska. But we have numerous...we've all known we're going to deal with this issue in this session, and you've got your input. But there comes a time where we have to decide and take some leadership, and I think that's what we're doing here. I appreciate the compromises that are taking place, I encourage those, and I hope we do come up with something that can be acceptable, that we can move forward. But the one thing on local control, I think we talk about this, and I've had communities in our area--Bellevue dealt with this, and they wanted to see the state take the lead. They had their arguments, and they discussed it--I think it was a year ago--and they were looking for the Legislature to take a leadership position on this issue. You heard Senator Wightman talk about his community. I'm hearing from constituents, city council members, in Papillion, asking me to take leadership on this issue. So I do think there's a time--and I'm not one, of course...I've been on the county board for 12 years, and I don't like the state telling you what to do in a lot of instances. But there are certain instances you do want that. So I don't think you can say one size fits all on this local control issue, because many times during these debates we're going to hear that issue. If that's the case, let's just write up some...let's just write up everything and send it to the people to vote on it. So we shouldn't be doing that. I think here's a chance to take some leadership. We've had the discussion in committee, we're having it on floor debate. That's what we're here to do. We're going to draft a good bill. We've been changing this bill, I think, to make it a much better bill. But it needs to be consistent. It needs some consistency, and that's why I think we need to take the leadership here. If we don't do this, we're going to have petition process again, we're going to have communities fighting amongst each other, citizens coming, fighting amongst each other. I don't think that's good for Nebraska. So I would encourage us, as we're talking about this local control, to understand local control. I think they want that; they don't want you spending money for them. They don't want you creating new programs that they have to implement. To me, that's local control--don't shove things down our throat. But when it comes to public health, leadership issues, I think this is an example where we need some consistency throughout the state. We're all going to use our own judgment on this issue, but when you look at it, you know, we were sent here to deal with some tough issues. This is one of those issues, so I hope we will find out. I'm looking forward to any compromises that may be done. When it's all said and done we've heard debate. We need to take a stand and make our call on this issue. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Gay. Wishing to speak, Senator Lathrop. You're recognized. [LB395]

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SENATOR LATHROP: Thank you, Mr. President, colleagues. I am today...I have not joined in this debate at this point, or up to this point in time, and I want to today, because we've started to talk about the prospect of a compromise. And before I address the compromise that Senator White was discussing, I'd like to applaud the effort of Senator Johnson for bringing this bill to the floor in the first place. I think the idea...personally, I think the idea of a statewide ban is a good thing. We have seen in Omaha, and we have seen in Lincoln that a smoking ban is something that the people get used to. The bars don't close, people continue to patronize the businesses that formerly allowed smoking, and it's generally been a good thing. It's also good for the health of the people of the state of Nebraska. I think there is a tremendous amount of support for the statewide ban. I can tell you that my E-mail on this subject and the telephone calls are running probably 20 to 1 in favor of a ban, and that might be a reflection of the fact that we already have one in Omaha, and that people have gotten used to it. And I think that even folks that smoke in Omaha have gotten used to stepping outside, and so all in all, I think the idea of a statewide smoking ban is a good one. On the other hand, as I get a sense of where LB395 is going, it appears to me that it does not have the support to get past the filibuster that we are experiencing from the opposition, and Senator White, I think, and Senator Mines have been thoughtful in their effort to come up with a compromise. And the compromise would allow for the statewide ban, subject to local communities opting out, and I think that's a good solution. I would encourage those people who are supporters of LB395 to support this compromise amendment, because I think in the end it will allow us to get a statewide smoking ban, and my fear is that if we don't accept the compromise, if we don't accept the amendment that we'll see here in a little bit, that we'll find ourselves with no statewide smoking ban, and we will have failed the people who are calling upon us to enact a statewide smoking ban. So today I support the compromise that we'll see in a little bit from...in the form of an amendment from Senator White or Mines, and I also appreciate their effort to find a middle ground, to come to some solution that will allow for a statewide ban, which is better than what we have right now, which is no ban outside of the city of Omaha and Lincoln. So thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Wishing to speak we have Carlson, White, Janssen, and others. Senator Carlson, you're recognized. [LB395]

SENATOR CARLSON: Mr. President, members of the body, I want to vote for the smoking ban. I want to vote for LB395. I'd like the possibility for a county-by-county election in May of 2008, to accept or reject the smoking ban. I think this discussion is good. I think to vote for LB395 is a bold step. I'm willing to take that step, but I think that we need options for communities in the state. This is an issue of public health versus property rights and personal choice, and I disagree with a few of our members, in that I don't think a level playing field has any place in this discussion. This is either a worthy public health issue that deserves action, or it isn't significant to the degree that action is required. It has nothing to do with level playing field. Communities and counties need

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the option, by vote, to reject the smoking ban. This amendment that we are going to listen to a little bit later I hope addresses that concern, and with that, I thank you for this time. I'll listen to the rest of the debate. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator White, you are recognized. [LB395]

SENATOR WHITE: Thank you, Mr. President. When the motion is actually offered, I'd ask the...all of the members of this body to seriously consider it. Laws that try to change human behavior that is really addictive, that's profound like this, cannot work and have never worked if they're dictated. What does work is a gradual educational approach. The amendments that we're talking about allow local communities to adjust the law so they can get enforcement. I think one of the arguments has been that it will allow a patchwork of laws, and we must have uniformity across the state. I think just the opposite--I think what happens now is we have a uniform state policy that smoking is dangerous and should not be allowed, except under specially considered circumstances that we entrust to local governments. I am very concerned by what I perceive to be in the body a lack of trust of local governments. That I do not understand. Nebraska has been uniformly a well-governed state. We have a high level of integrity in public office. I see no evidence that city councils are overwhelmed by special interests. Instead, what I see them being is responsive to local needs. Therefore, I'd urge everyone at the appropriate time to recognize that a statewide smoking ban is in the best interests of the state, and to vote for it, but to allow the law to be flexible enough that it is workable and will actually have a chance of achieving its ends. Thank you, Mr. President, for your time. [LB395]

SENATOR LANGEMEIER: Thank you, Senator White. Senator Janssen, you are recognized. [LB395]

SENATOR JANSSEN: Thank you, Senator Langemeier, members of the Legislature. I haven't spoken too much on this proposal. As a reformed smoker, I don't like smoke. It does bother me, but you know what I do? I go to the places that are...where there is no smoking. That's my choice. I look back at what happened several years ago with Prohibition, when this whole country was a dry country, what happened then. We had an influx of bootleggers that came into the state. Alcohol was there; it was dangerous, it was abused. Some say that alcohol is still abused, but we did repeal that. We repealed the Prohibition. I'm concerned what would happen without this amendment. I think the amendment is good, that if we had a statewide ban on smoking, people would...they would find a way to get around that. You would have areas that would be clandestine, areas that people would go to, and probably overdo that, get on a smoking binge, if you might say. That, I think, would be worse. Of course, I'm looking at the real drastic side of it. But those things could happen. I believe that in some of these smaller communities where you have one restaurant or one liquor license in a small town, it would be

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devastating. I know the opposition says, all right, then you can go somewhere else. Yes, you can, but those smaller communities, which I have quite a few of, some of the bars and restaurants allow smoking, others segregate the lounge from the dining area, which works. The city of Omaha, they left the Keno parlors as smoking, as I understand. Can you imagine what it must be like in those Keno parlors, where all the people who want to go out and get something to eat and play Keno, the fog in there must be terrific. And I don't think it would be...if they wouldn't have imposed this smoking ban in Omaha, you wouldn't have had that severe of atmosphere. I know you have the choice. You can either go into those places or not. But I think it's up to the people's choice, and they are elected city and county officials. I'm afraid I can't support this, unless we do have the amendment that has been talked over here this morning. I think that's the only way that you are going to be able to get this piece of legislation through the body this year. With that, I would give the rest of my time back to the Chair. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Janssen. Speaker Flood, you're recognized. [LB395]

SPEAKER FLOOD: Thank you, Mr. President, members. We have the amendment ready to be filed, and I wanted to lay out for you the procedure that we're going to be going through here, with your consent, in the next couple of minutes. Senator Mines, I want to credit him for working very hard on trying to bring, to the best of his ability, both sides of LB395 to the table. Although he is not here right now, we are going to be considering an amendment that was the outgrowth of his efforts. In just a moment, Senator Johnson is going to file an amendment to FA16, which essentially--and I'll let him describe it; and Senator White has been very involved in this; he may be the actual introducer--that's essentially going to strike everything that we've done to date, and this amendment, the Mines compromise on General File, will be hopefully adopted and move this bill to Select File. That said, I don't want to give anybody the idea that Senator Johnson is going lay down his opposition to some of the technical changes and most specifically, the opt-out provisions in the Mines compromise, but it is my hope that we will have some time between now and Select File to continue the discussions between both sides of LB395. And it will be a new discussion on Select File. I would ask that if you have your light on, to move this along this morning, you consider taking it off for just a little while, listen to both sides discuss what they like about this compromise, and certainly, you'll hear a few references to the fact there are things to work on. That said, it's also my understanding that those that have amendments filed to LB395 will be withdrawing the same amendments and re-offering the same on Select File. I think we're at a point on this issue where it's time to make a decision as to where we're going to go as a body, and this compromise offered by Senator Mines gives the Legislature the opportunity to move this to Select File in a way that the opponents are more comfortable with the direction of the policy. That said, I will sit down and listen to the discussion about the amendment that is soon to be filed to FA16. Thank you, Mr. President. [LB395]

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SENATOR LANGEMEIER: Thank you, Speaker Flood. Mr. Clerk, you have an amendment. [LB395]

CLERK: Mr. President, Senator White would move to amend the second component of the committee amendments with AM593. (Legislative Journal pages 748-752.) [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. Senator White, you're recognized to open on AM593. [LB395]

SENATOR WHITE: We've largely discussed this. I won't belabor the point, but with this amendment we will achieve a statewide smoking ban now. It preserves local control so that local jurisdictions can alter the law so it fits their circumstances, and it can be effectively enforced. I urge all of the members to vote for this. If this law...this bill continues to embody the Mines amendment, I will personally vote for it, not only now, but also to advance it from Select to Final Reading. I thank the body for their attention to this matter, I thank Senator Mines for his work, and I thank Senator Johnson for his cooperation and courtesy throughout, and also Senator Fischer for her hard work and courtesy. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator White. You've heard the opening on AM593. Now we return to discussion of AM593. Senator Chambers, you are recognized. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, in order that I can understand what is going on, I would like to ask Senator White a question. [LB395]

SENATOR LANGEMEIER: Senator White, would you yield to a question from Senator Chambers? [LB395]

SENATOR WHITE: Yes, I will, sir. [LB395]

SENATOR CHAMBERS: Senator White, is this the great compromise that has been discussed? [LB395]

SENATOR WHITE: No, Senator, this is, like most compromises, really not that palatable to anybody. [LB395]

SENATOR CHAMBERS: So this is not the one that Senator Mines... [LB395]

SENATOR WHITE: Oh, it is. I'm sorry. [LB395]

SENATOR CHAMBERS: This is Senator Mines' amendment? [LB395]

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SENATOR WHITE: I thought you were just asking if it was a great deal. I was commenting on that. [LB395]

SENATOR CHAMBERS: Oh, okay. Thank you. That's all I will ask. Members of the Legislature, as happened when this bill was discussed the last time, I did not participate in the discussion. I wanted to listen and see if my colleagues had learned anything about how things are done when significant legislating is underway. I heard some notions that are very parochial, narrow-minded, and limited. When rights are discussed, that debate ought to deal with those things that are grand, that are expansive, that have significance to the human condition. When you talk about rights that are going to be found in the pantheon of those, for example, inalienable human rights, you're not going to find smoking among them. You're not going to find what is called the right to foul and pollute the air that other people breathe. You're not going to find a so-called right to be uncivil, rude, and coarse. You're not going to find what Senator White tried to argue so forcefully for yesterday--the right to have an addiction and impose your weakness on other people. Those who are going to buy that argument today are going to argue about the need for people to assume personal responsibility when we get to other matters. These smokers don't want to assume the personal responsibility for their individual, personal weakness. Instead, they want society to accommodate them. Why make cars have devices to restrict the amount of exhaust that goes into the atmosphere. It's your car! You should be able to do what you want to with it. Senator White is talking about how great these local political subdivisions are. They are people who have been involved in politics longer than Senator White who have observed the way various city councils have been bullied into granting liquor licenses which ought not to have been granted, and people would have to go to the state, and sometimes the state would not grant the license because it should not have been granted. So there is nothing about local government which is worthy of the kind of accolades that Senator White was laying out this morning. It is easier to bully a local subdivision, and that's why when it comes to guns and other things, the special interest groups want to leave it to the locals and not allow the state to preempt. I heard somebody talking in a very parochial way the other day. It was almost like the attitude of a small town, narrow-minded mayor who deals with small things like dogs barking, people not shoveling their snow, and will not realize that when we come to this Legislature, we are the lawmakers. What we do goes into the statute books, not in some little ordinance book... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: ...which is so complicated to the locals that they hire outside agencies to revise their ordinance books. And as a result, there are contradictory ordinances in their ordinance books. I've seen it happen in Omaha, which is the largest municipal government in the state. I heard somebody talking about, don't let the government be sticking their nose in people's business! Well, I saw where in New York

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the government stuck its nose in the business of KFC, the ones who run Kentucky Fried Chicken, because in one of their restaurants the people love rats, and they allowed the rats to have the run of the place, just like the two-footed rats. And the government came in, stuck their nose in that man's personal business, and shut it down. When people talk about property rights, they don't even know what they're talking about. They need to take an elementary course in the limitations on the rights that a person has to property. [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator Johnson, you're recognized. [LB395]

SENATOR JOHNSON: Mr. President, members of the body, I always hate to follow Senator Chambers. You can't be very eloquent following what he has to say. But let me just kind of try and simplify what we're trying to do here this morning, and I do want to compliment particularly Senator White. I've also been working for the past several days with Senator Mines. He is not able to be here today, so that we also had the problem of changing horses in the middle of the stream here. Nonetheless, we have been able to work together, and let me just kind of tell you what the main bone of contention is that still exists. And what it is, is this, and I'm actually using the paper that Senator Mines gave to us, to look at. And here's what it says about this ban that we're talking about. In regard to cities, it can be put on the ballot by initiative by the voters. Obviously, we'd have no problem with that. It could be put on the ballot by a vote of the governing body, the city council as an example. Again, this would seem to be acceptable. But here is where the real problem comes in: The governing body can vote itself to opt out. And our question here is, is whereas our opponents would say that this is representative government, we would suggest that here, three people on a city council might be making the decisions, and would it not be better to have a vote of the people? But that's the question. And in regard to our counties, it's a very similar situation, where we have county boards. Would they be the ones to make the decision, or again, the vote of the people? We're still working on this. There are other things, as far as when these votes could take place and that type of thing, but these...I think the ones that I outlined are the main difficulties that we're working to overcome. Now, what I'd like to do at this point in time is say, let's vote for this amendment. Let's vote for this amendment, advance the bill to Select File. That will give us a chance to keep working on a compromise, and the amendment that Senator White has offered, I have many disagreements with this and do not in any way at this point in time, want to indicate that I am in agreement with Senator White's amendment. But I do want you to please advance this to Select File, so that we can move on with the other business that this Legislature should be conducting itself towards, so let us work and continue to work on this. So if you would please vote

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for this amendment, and those of you that feel like those of us, and many of the expressions Senator Chambers just referred to, we will deal with those another day. So we would ask your support of this amendment. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. Wishing to speak we have Schimek, Kruse, Chambers, Wallman, McDonald. (Doctor of the day introduced.) Senator Schimek, you're recognized. [LB395]

SENATOR SCHIMEK: Yes. Thank you, Mr. President and members. I haven't really weighed in on this issue lately, and I do want to ask some questions about the amendment that has been presented to us. And Senator White, if I could...would Senator White yield to a question or two? [LB395]

SENATOR LANGEMEIER: Senator White, would you yield to a question? [LB395]

SENATOR WHITE: Yes, Mr. President. [LB395]

SENATOR SCHIMEK: Thank you, Senator White. My questions are probably geared towards knowing where Lincoln would come out in all this, because as you know, Lincoln has adopted such ordinance. And if I could over the language with you a little bit, in Section 23 on page 6, it would be helpful. And it says that in any city or village which had an ordinance with respect to smoking regulation in effect on January 1, 2007, the provisions of such ordinance shall supersede the provisions of this act until June 1, 2009. Then beginning June 1, 2009, in such city or village, the ordinance shall continue in effect unless...and then it goes through a litany of ways that it could be undone. So what I want in the record here is, is this would only stay in effect...well, it could stay in effect forever, unless the governing body acts in a different manner. [LB395]

SENATOR WHITE: My understanding of it is, and again, this went through that Never Never Land of bill drafting, Senator, so...but as I understand the intent of the amendment, the intent of it is that we respect what the city of Lincoln has done. The state will do nothing to undo it, unless the city of Lincoln acts itself, either by vote of the people or by vote of the city council. The intent is to respect the local control of the cities that have already acted on smoking and found that balance. The law just leaves them be, whatever they've done. [LB395]

SENATOR SCHIMEK: And I think this amendment also preserves the right of the local council or board that hasn't adopted such amendment. It preserves their right to do something even more stringent than the statewide ban that would be in effect after this act passes; is that correct? [LB395]

SENATOR WHITE: Absolutely. I mean, that's what local control is. They can judge their environment and their situation. They can be more strict than the state; they can be

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less. They could make, by ordinance, this to be an offense far more serious than the state law. They have a wide variety of ability to enact laws to protect a community as they see fit. That's the point of it. [LB395]

SENATOR SCHIMEK: In some ways I'm attracted to this amendment, and I don't know where I will eventually hand. I did hear Senator Johnson's concern about the amendment, but one of my concerns might be somewhat more practical in a way. What happens if the statewide ban goes into effect, and a town in a county decides that they will undo the ban, because then they will attract more business to the town. Does that upset the apple cart? Then do other towns around have to do likewise? Are we making this so permissive that it's going to get into this whole competition for business aspect again,... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR SCHIMEK: ...which I think we're trying to undo with the statewide ban? [LB395]

SENATOR WHITE: Well, no, I would disagree that we are doing that. I mean, right now the cities and counties can make it and completely prohibit it, and a number of them have done that--Omaha, Lincoln, despite those political pressures. I think what this does is tell the state, look, statewide it's presumed that you're not going to smoke. I doubt there will be very many cities or counties that actually do opt out. That's my personal belief. And should that ultimately become a problem, Senator, and we do see that situation developing, that this hasn't been used responsibly, there's nothing to prevent us as a body from revisiting it in a couple of years and saying it's not working because, you know, we're getting competition. [LB395]

SENATOR SCHIMEK: That's a good point, Senator White. So I guess in closing my remarks, I'm going to keep my mind open to this, but I do have some questions in the back of my mind as to whether it would work adequately or not. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Schimek. Senator Kruse, you're recognized. [LB395]

SENATOR KRUSE: Thank you, Mr. President and colleagues. I have not spoken on this issue--been listening intently. I find this part of the debate a very strange thing. I...local option on public health? How do we do that? I don't know how you even discuss it, and I certainly will not be able to participate in the voting on this particular piece. I am all for local option, and I certainly honor those that are trying to work for it, but it's got to be a true option, and I don't see how you have an option on health. I certainly do not trust a town council to represent local option. I've seen too many of those. A town council is going to be under the influence of a major local bar, especially if they're near a large

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city, in order to draw some business. That is not a health decision. City councils are regularly contacting us, asking that it not be local option, starting with Omaha before they adopted this. They asked us to adopt a statewide ban. They asked us during their deliberation. They made it very clear that they knew that the public of Omaha wanted a ban, but they had reasons to be fearful of making that decision. If we are to have local option on public health, why don't we have local option on the temperature of meat coolers. Put that up to a vote, you know. You will talk about state mandates--that's statewide. That's a mandate. You're supposed to have your locker and cooler in a restaurant at a particular temperature. I can imagine a lot of restaurant owners would fuss with that, say, well, I think it would be better six degrees higher. It would age the meat better or something. You know, they...we are very creative people, and we can come up with all kinds of excuses for our opinion. There's a possibility of having local option on clean water, if that's what we want to do. You know, most of the cities are not going to pollute because we say they ought not to pollute. But let's make that a local option so that some village out here says, well, we can pollute, and they're the one town on this stream that pollutes, but it's a local option, as though that doesn't affect somebody else, or as though that's something that could be up to a vote. Again, I do not understand how we can seriously talk about local option when it's a matter of health. The evidence is extremely clear. There's no debate...I haven't heard a bit of debate about that. It is a question of whether or not we take our stand with our people. I will oppose the so-called local option. I will favor moving it on to Select. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Kruse. Senator Chambers, you're recognized. [LB395]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I would like to ask Senator White a question or two, since he seems to be a strong advocate of personal rights. [LB395]

SENATOR LANGEMEIER: Senator White, would you yield to a question? [LB395]

SENATOR WHITE: I would. [LB395]

SENATOR CHAMBERS: Senator White, do you believe there is such a thing as a female human being? [LB395]

SENATOR WHITE: I think there are human beings, Senator. [LB395]

SENATOR CHAMBERS: Do you think there are female human beings in the state of Nebraska? [LB395]

SENATOR WHITE: I think there are human beings, some of whom are male and some of whom are female. [LB395]

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SENATOR CHAMBERS: Do you believe that a female has the right to use her body in the way she chooses? [LB395]

SENATOR WHITE: Well, I guess you can't answer anything completely openly like that, so I guess I would say, in general, yes. [LB395]

SENATOR CHAMBERS: Does a woman have a right to engage in sex with whomever she pleases, if she is of age? [LB395]

SENATOR WHITE: No. No, she doesn't. She does not have the right to engage in sex with minors. She does not have the right to engage in sex if she contains communicable diseases that could injure others. [LB395]

SENATOR CHAMBERS: So let's remove minors, and let's remove communicable disease. [LB395]

SENATOR WHITE: That's the problem with big principles, Senator. We start out with a mountain and we end up with a pile of sand. [LB395]

SENATOR CHAMBERS: Let's continue, though, because we want to get down to the nub of this right that a woman would have. [LB395]

SENATOR WHITE: Some of us wish to get to the nub. Others of us are just tap dancing, Senator. [LB395]

SENATOR CHAMBERS: Senator White, Senator Fred Astaire White (laughter), does a consenting woman have a right to engage in sex with a consenting man? These are both adults. [LB395]

SENATOR WHITE: Under certain circumstances; for example, not in public, certainly, she does. [LB395]

SENATOR CHAMBERS: It they are in their own bedroom, in the privacy of their bedroom or a hotel room? [LB395]

SENATOR WHITE: Well, yes, unless they're smoking, in which case, given the original bill (laugh), we could break the door down to find out. [LB395]

SENATOR CHAMBERS: Since you're one who believes in rights, you're doing an awful lot of temporizing, which I'm going to try to get you away from, but since I won't, I'm going to deal with the issue, because Senator White does not want to answer the questions, and I'm not going to waste all of my time. [LB395]

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SENATOR WHITE: (Laugh). [LB395]

SENATOR CHAMBERS: That's all I'll ask you, Senator White. [LB395]

SENATOR WHITE: Thank you, Senator Chambers. [LB395]

SENATOR CHAMBERS: He might know what I'm getting to, and he may not. He is so defensive about the fallacious arguments he has given that he is afraid to put himself in a position where he might think their falsity will be clear, even to him, and it will come out of his own mouth, but I'm not going where he thinks I'm going. If a woman engages in sex with a man and she doesn't charge money for it, it's not against the law. If she gives sex free, it's not against the law. She came have sex with ten men in a day, and it's not against the law. But if she charges a dollar, then that is called prostitution and it's against the law. So what the men who govern this society has said, if a woman is willing to give herself and her favors free to a man, it's not against the law. But if she's going to earn money doing it, then it's against the law. Then it's against the law. That's the hypocrisy that we deal with, and Senator White probably knew where I was going, and he knew that it would show the falsity of all these nonsensical things he's saying. Smoking is not a right that is untouchable. It's a right as long as the state allows it. It's not a human right; it's not a right that a person has because he or she is a human being. But why is it that if a woman gives her body away, men say that's all right and it's not against the law. But if she's going to earn money,... [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: ...then men have passed laws that say it is against the law. Why is that? Because this is one of the most hypocritical societies you can find, and Senator White has sat there with all his knowledge and let these nonsensical statements be made about personal property, when he knows that ownership of property is like a bundle of sticks. You have certain of those sticks which are yours. Others are in the hands of the state or society at large. You never own property absolutely. If you owned property absolutely, nobody could even tax it. You could not have a village taxing the king's castle! You could not have a group of earls and dukes, and put all of them together and they would tax the king's lands. The king owns everything. [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Wishing to speak we have Wallman, McDonald, White, Friend, and others. Senator Wallman, you're recognized.

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[LB395]

SENATOR WALLMAN: Thank you, Mr. President and others. Thank you, Senator Chambers. I thought it's ironic. We've mentioned about property, we've mentioned about cigarettes, and we tax cigarettes. And what do we use that money for? We heard it this morning--education. So let's use that cigarette money for education, and educate others. But I'm just going to talk a little bit here, and I support this amendment to the bill, even though I have trouble with it. But I'll support this amendment, and thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Wallman. Senator McDonald. Senator McDonald, you are recognized. [LB395]

SENATOR McDONALD: Mr. President and members of the body, I'd like to ask Senator White a question. [LB395]

SENATOR LANGEMEIER: Senator White, would you yield to a question? [LB395]

SENATOR WHITE: I will. [LB395]

SENATOR McDONALD: Looking at this synopsis of the amendment,... [LB395]

SENATOR WHITE: Yes. [LB395]

SENATOR McDONALD: ...under number two, the act would become effective June 1, 2008. Why the delay? [LB395]

SENATOR WHITE: Well, a couple of reasons; primarily, so that city councils can review the law, find time, build a consensus, and see what they should do. [LB395]

SENATOR McDONALD: And normally, we pass a statute, it becomes law 90 days after session; is that correct? [LB395]

SENATOR WHITE: I think so. [LB395]

SENATOR McDONALD: So we could actually, if this moved to Final Reading, it could probably be...the Governor could sign it, say in a month, and we're looking at over a year...almost a year and a half, or a year and a couple of months for them to review it. Do you think that's adequate time? [LB395]

SENATOR WHITE: I think it's adequate time. [LB395]

SENATOR McDONALD: I guess I disagree with Senator White. I think waiting till June

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1, 2008, is more than enough time. And what happens is, they have the opportunity to opt out before it even goes into effect, and I think that disputes the whole reason for the statewide smoking ban. I think this is a smoke screen to allow them to opt out before it ever goes into effect. I'm going to give the rest of my time to Senator Chambers.  
[LB395]

SENATOR LANGEMEIER: Thank you, Senator McDonald. Senator Chambers, 3, 30.  
[LB395]

SENATOR CHAMBERS: Thank you, Senator McDonald. Thank you, Mr. President. Members of the Legislature, and at this point on this issue, I've got to say like I do on my program when I take a call, friends...I start, brothers, sisters, friends, enemies, and neutrals. I've got to lay on what these opponents keep saying. Senator White wants to elevate an addiction to the level of a right, to impose a nasty habit upon others, to impose somebody's weakness and flaw upon others. Rather than make them assume personal responsibility for their flaw, for their addiction, and keep it away from others, he wants to say they have the right to impose it on others, and those others have no right to speak against it. That is preposterous! He knows, though he may not admit it, that the state has what are called police powers. These powers put the state in a position to enact laws to protect the health and the welfare of the citizenry at large. We are not a village board. We are not a city council. We are not a PTA. We are not a high school debate society. And people stand up here and talk about their little feelings getting hurt because they're chastised when they make a statement, meaning they think everybody's got to go along with them, even when they make no sense. Maybe on the city council, or maybe a small town mayor can expect that from his small town, parochial friends, but that's not going to happen on the floor of the Legislature. If you jump in the ring, what did the referee say in every fight you've ever seen on television? Protect yourselves at all times. Don't get in here and you've got the gloves on and you want to punch somebody; then you don't want them to punch back. I expect people to deal with me the way I deal with them. Now Senator White is not the one I have in mind when I'm saying people get up here and whine about being chastised and disagreed with. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: But Senator White is very disingenuous in some of the positions that he takes, and we're going to discover that as we get to other issues during the session. If he indeed thinks that people's addiction gives them rights to impose a hurtful practice on others, then that should be his philosophy throughout. But it's that way, I'm sure, only when it comes to smoking. I haven't heard my friend Senator Christensen speak today. But he believes in the state meddling in people's business. He thinks the state should stick its nose into the issue when two people can get married, and put a fine on them if they don't do it the way he thinks they ought to do it. Now you

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tell me that's not the government sticking its nose in people's business! And I have a few more things that I intend to say, and I'm not going to be upset if somebody challenges me or attacks me. If I can't this heat, I shouldn't be in the kitchen. [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator McDonald. Wishing to speak we have Friend, Erdman, Chambers, White and others. Senator Friend, you're recognized. [LB395]

SENATOR FRIEND: Thank you, Mr. President and members of the Legislature. This has gotten to the point--and it usually does for the amount of time that we put into these issues, particular issues--it's gotten to the point where we have an opportunity to create a very viable mess, and not to imply AM593 is a mess, that amendment to FA16. But I think we always have to step back and ask ourselves why have we gotten to this point. Why have we gotten to this point where we're talking about local opt outs? That's specifically what we're talking about with the amendment. When I sat on Judiciary Committee, we had folks come in and testify and brag to the committee and then run off and brag to the newspapers about how the Legislature didn't have the guts to deal with the smoking issue, so we as a community have dealt with it. I'm not going to tell you who those people were, but it happened more than once. I think the thing that was most offensive about that, and I've said this before on the record, is that when the Legislature decides not to do something, that's action, too. That is action. I've said that twice--I'll say it three times, I'll say it ten times. When we decide not to implement something, that is action by a 49-person body. Make no mistake about that. Have somebody come up to one of you out on this floor and tell you, after the two days that you've put in here, that you haven't done anything. That is offensive. Here's where this is leading. LB395 and AM593 are in, in a lot of ways, total contrast. We are either taking the bull by the horns as far as statewide public policy, or we're not. Now for years I always came to the conclusion, and maybe it was my own conclusion, based on the limited that I chose to try to gain from the subject matter, but I always came to the conclusion that in this environment, when you're talking about smoking, the free market could drive this type of behavior. The free market would say, you could walk in and tell somebody look, I don't like the smoke in here. Next thing you know, the proprietor is saying, hum, I'm losing business. But we're past that. When Lincoln and Omaha decided to go about things and take their proverbial bull by the horns and do what they needed to do, as far as what they felt like they needed to do anyway, they claim they did it because of our inaction. I laughed at them and I said, what you don't understand is, our inaction is action, and until you come into this body and deal with that, you don't get it. So here's what I'd say about AM593--it is action. So is LB395. That's action. We're making some public policy for the entire state, but if this amendment and this bill don't pass, that's action, too. You

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know what kind of message we're sending? Why even have AM593? That's my point. [LB395]

SENATOR FRIEND: If AM593 passes, if we adopt that to LB395, why pass a bill? Because Lincoln and Omaha have already taken action, and other cities will. Why pass this bill, if this amendment gets adopted? And I know you're going to...some of you who know me are going to find that very strange, that I'm talking about an amendment like AM593 and saying, I don't like it. Well, it's like that clown that I talked about (laugh) when my daughter came home and told me that joke. This amendment tastes funny; it takes very funny, because it doesn't...I'm not sure it does a thing, and maybe that's what the opponents want. I don't like LB395, but I think we're in a position, unfortunately, that we're going to have to deal with this subject matter, if not now next year. If not next year, the year after. But LB395 shouldn't succeed if we adopt AM593,... [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR FRIEND: ...because that's the inaction that I'm talking about in the end. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Friend. Senator Erdman, you're recognized. [LB395]

SENATOR ERDMAN: Question. [LB395]

SENATOR LANGEMEIER: The question has been called. Do I see five hands? I do see five hands. The question is, shall debate cease? All those in favor vote yea; all those opposed vote nay. Has everyone voted that wishes to? Senator Erdman, for what purpose do you rise? [LB395]

SENATOR ERDMAN: Mr. President, I request a call of the house, please. [LB395]

SENATOR LANGEMEIER: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; all those opposed vote nay. Record, Mr. Clerk. [LB395]

CLERK: 32 ayes, 0 nays to place the house under call, Mr. President. [LB395]

SENATOR LANGEMEIER: The house is under call. Senators, please record your presence. Those senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators, the house is under call. Senator Johnson, Senator Hudkins, Senator Chambers, would you check in? Senator Preister, Senator Raikes, Senator Kruse, the house is under call. Please return to the Chamber. Senator Aguilar. Senator

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Heidemann, would you please return to the Chamber? The house is under call. Senator Preister, would you please return to the Chamber as well? The house is under call. All senators are checked in or accounted for. Senator Erdman, how do you wish to proceed? Senator Erdman requests...accepts call-ins. The question is, shall debate cease? Mr. Clerk. [LB395]

CLERK: Senator Kruse voting yes. Senator Preister voting yes. Senator Burling voting yes. [LB395]

SENATOR LANGEMEIER: Record, Mr. Clerk. [LB395]

CLERK: 28 ayes, 6 nays, Mr. President, to cease debate. [LB395]

SENATOR LANGEMEIER: Debate does cease. Senator White, you are recognized to close on AM593. [LB395]

SENATOR WHITE: Thank you, Mr. President, and I ask the members to advance, to adopt this amendment so that we can advance a smoking ban across the state. I disagree that it does nothing. It actually changes the presumption across the state of Nebraska where right now, if nothing is done, there is smoking. We change that across the state and we put the message out that smoking is not permitted in public places unless specific limited exemptions are cut out by city councils or county commissioners. The question on the delay that Senator McDonald raised is an interesting question. That delay is there so we can have a vote of the people, which Senator McDonald was arguing for. She said we need to have local control, which means votes of the people. Well, you need time to organize an election, educate the voters so they can make that informed decision. This bill provides for that. Senator Chambers is an incredible advocate; however, when he gets to tell people what my case is, I don't even need a jury. I lose before I even get started. In all due respect, Senator, I'd like to lose my own case, thank you very much. I do not find that smoking is a constitutional right. I do think, however, the right to control one's property and how it is used and what is used is a right we have regularly recognized. Now do we have the right to move in on that? Certainly we do. We have zoning rights. We have police rights. And I understand and appreciate that. However, when you're dealing with a behavior that is addictive, when you are dealing with the right to control one's own property, control one's own business, it is an area we should move slowly and carefully in, and with caution. This amendment is a dramatic step forward for the state of Nebraska. I will be able, and you will be able, to vote for a statewide smoking ban. If we have a problem subsequently that the city councils, that the county commissioners are not acting responsibly in what, if any, exemptions they make, and I doubt that will be the case, we can easily adjust that in a year or two. The idea that if I don't get everything I want then there's nothing at all worth having is not fit for mature democracy. It is not fit for people who find that their common ground is reached through cooperation and compromise. This bill is a compromise.

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There are many aspects of it I don't like, but I will vote for it and I urge you to do the same. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator White. You have heard the closing on AM593. The question is, shall the amendment to the committee amendment, LB395, be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB395]

CLERK: 28 ayes, 4 nays, Mr. President, on the adoption of the amendment to the committee amendments. [LB395]

SENATOR LANGEMEIER: The amendment is adopted. With that, I do raise the call. [LB395]

CLERK: I have nothing further pending to this component of the committee amendments, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We return back to discussion on the floor on FA16. We have a number of lights on. We have a number of lights on. Wishing to speak: Senator Chambers, White, Stuthman, and Johnson. Senator Chambers, you're recognized. [LB395]

SENATOR CHAMBERS: Mr. President, I'm going to support the movement of this bill to Select File. I tried to vote for the amendment that was just before us, but I couldn't. My finger simply wouldn't go to that green button, so it slipped over to the red and voted no, but it was inconsequential because there were more than enough votes to adopt the amendment. Senator White understands, as a lawyer, that the opposing counsel is going to analyze, evaluate, and attack the fallacious, weak, wrong-headed position of the lawyer on the other side, and all of those words that I used describe what Senator White has been doing on this bill. First of all, I didn't say he suggested that the addiction to smoking or smoking itself is a constitutional right. I said they're trying to elevate it to the level of a right, not just to be addicted, not just to smoke. You have a right to be stupid. Senator White pointed that out early on. But you don't have a right to inflict the consequences of your stupidity on others. I tell you again, in Omaha I can't burn leaves that fall off my trees on my own property. That property is mine. The trees are mine. The leaves are mine. But when those leaves fall to the ground and I rake them in a pile, I cannot burn them without being in violation of the law. So where does my right to private property go? Senator White knows what I'm talking about when I suggest that there are people on this floor who do not understand the limits to what is called private property. He allows that ignorance to go forward. Those of us who know better have an obligation to share our knowledge with our colleagues. There are matters related to farming which I don't know as much about as my colleagues, and I'm not resentful when they explain to me things that happen in farming which may have a bearing on what

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we're doing as legislators. I appreciate the fact that they bring the information, but it shouldn't be false. I follow the methodology that I think is appropriate for me to use on the floor of this Legislature. Other people can choose to do what they want to, but I'm not going to just sit back and let what they say go by without challenge when I think it's fallacious. Smoking needs to be banned in the way that the original form of LB395 contemplates, but sometimes to be strategic means that you give up a tactical position. Tactics relate to these little brush fires. Strategy relates to the overall plan for fighting the war. You can lose a tactical battle without in any way weakening your ability to win the war. You might even allow that to happen to make your opponent show what he has got. So Senator Johnson is thinking strategically this morning. You all have heard the children's rhyme, he who laughs and runs away will live to laugh another day. They say that a live dog is better than a dead lion, and that's true. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: What has happened on this bill is the power of the tobacco industry and the terrible devastation it reeks on this society being made manifest. I have family members who smoked, and some who still do, but you think I'm going to do what I can to facilitate that? I don't preach to them about what they do because they're grown, but don't let them ask me, don't let them do it in a set of circumstances where it's appropriate for me to comment. But they know what my view is and I will never do what Senator White is trying to do here--make these addicted people feel like they don't have to take responsibility for their flaw, for their failing, for their coarsening of society, for their incivility. They blow smoke where other people have to breathe who do not smoke, and they think they have the right to do it. [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Senator White, you are recognized. This is your third time on this portion. [LB395]

SENATOR WHITE: Thank you, Mr. President. At this time I would urge that this bill be advanced to Select File. I have made an agreement with Senator Johnson and I would ask the Chair if Senator Johnson would yield to a question. [LB395]

SENATOR LANGEMEIER: Senator Johnson, would you yield to a question? [LB395]

SENATOR JOHNSON: Certainly. [LB395]

SENATOR WHITE: Senator Johnson, do you agree that at this point the bill is in the shape that we have discussed and should be advanced to Select File for the

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negotiations? [LB395]

SENATOR JOHNSON: Yes, sir, we do have that agreement to advance it to Select File, and work to resolve our differences particularly regarding the votes and so on that we've talked about here this morning. [LB395]

SENATOR WHITE: I thereby urge the members of the body to vote to advance the bill to Select File. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator White. Wishing to speak, Senator Stuthman, you're recognized. [LB395]

SENATOR STUTHMAN: Thank you, Mr. President and members of the body. I'd like to yield my time to Senator Chambers. [LB395]

SENATOR LANGEMEIER: Senator Chambers, you're recognized. [LB395]

SENATOR CHAMBERS: Thank you, Senator Stuthman. Thank you, Mr. President. Members of the Legislature, we're dealing with as critical a public health problem as we will confront and it's being discussed by some people in the same way you would discuss the right, if you want to call it that, to license a vehicle. And when it comes to driving a car, courts have said that's a privilege, not a right. Some of us have seen the ravages of cancers produced from smoking; others have not. Yul Brynner, the late Yul Brynner, portrayed roles on the screen of the viral, macho man, but he was weak. He could not resist the thing that would take his life, so what he did, because he was too weak to overcome that devastating habit of smoking, was to make a public service spot that would be played on television only after that demon tobacco had taken his life, and he started with words to the effect, when you see this, or, if you see this I am no longer here; I am dead and what killed me is smoking. But he didn't have the strength to resist it. Smoking meant more to him than life itself. There are people to whom smoking means more to them than life itself. Take your own life. You can do that. It's right there in the constitution. If you have the right to life, you have the right to give up your life. Jesus told you, you can give up your life, but he didn't say give it up to tobacco. He said if you give up your life for your friend. He didn't say take the life of your friend through your addictive, lethal habit. What people are arguing on this floor is that those people who manifest incivility should feel nothing is wrong with it when to do so is to put in jeopardy not just the health but the life of other people who have not done anything to harm them. But they will do the harm. They perform the work of a pathogen, of a virus, of a bacterium. Tell me a single disease in this country that kills as many people as smoking does. They are more virulent than anthrax bacillus. And they're proud of it. They walk around here saying, I got the right to smoke whenever I want to, wherever I want, by God. Then these other sniveling people who know better say, well, that's right, they have a right to smoke. I don't think so and I will speak my mind without apologizing,

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because they are disregarding the health and the rights of others. [LB395]

SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: And have people on this floor talking about what will you do next, ban drinking? That's that juvenile, adolescent nonsense. People have to understand that now they have graduated from elementary school when they get into the Legislature. Tom Osborne found out that he, when he left coaching and Nebraska and went to the U.S. House, he was just 1 of 435 and did nothing of any consequence while he was there. But in Nebraska, he's a demigod. Well, maybe if you're a mayor or a member of the village board in your little corner of the meadow, you're a big duck in a little pond. Here you're a water bug on the surface of Lake Michigan. You got to grow up. You got to improve your mind, use your brains, use your brains. [LB395]

SENATOR LANGEMEIER: Time. [LB395]

SENATOR CHAMBERS: Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers and Senator Stuthman. Senator Johnson, you are recognized. You are the last light. You're recognized to close or speak. [LB395]

SENATOR JOHNSON: I'll choose to close, sir. Mr. President, is my mike on? Okay. Mr. President, members of the Legislature, it's been an interesting morning with a lot of maneuvering going on. I think one of the things I should tell you is where we're at here. And what FA16 is, is really kind of a cleanup part of the originally divided portions that we took over on the first day or so that this bill came into being on this floor. Let me just tell you what it is again, is it makes it so that the...it's about the symbolism, the no smoking signs, that type of thing which I think we would all be in agreement on its own. Don't believe that anyone spoke to the contrary about this, and it was used as a vehicle for the compromise that Senator White and myself and others have come to an agreement on. And again, I think if we're going to thank anyone this morning, we should thank the hard work of Senator Flood. Our Speaker has worked very diligently to get us to a point where at least we can advance to Select File, and so personally want to thank him for that and I'm sure the others would as well. With that, I would ask that we would advance FA16. Thank you. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on FA16, the second component of the committee amendments. The question before the body is, shall the committee amendments to LB395 be adopted? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB395]

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CLERK: 31 ayes, 0 nays, Mr. President, on the adoption of the second component of the committee amendments. [LB395]

SENATOR LANGEMEIER: The second component is adopted. Mr. Clerk. [LB395]

CLERK: Mr. President, the third component is FA17. Two amendments to that: Senator Johnson, the first is AM345. I have a note, Senator, you'd like to withdraw that at this time. [LB395]

SENATOR JOHNSON: That is correct, sir. [LB395]

SENATOR LANGEMEIER: It is withdrawn. [LB395]

CLERK: Senator Johnson, I now have FA14, which was an amendment to the third component. I understand you want to withdraw that as well, Senator. [LB395]

SENATOR JOHNSON: Sir. [LB395]

SENATOR LANGEMEIER: It's withdrawn. [LB395]

CLERK: Mr. President, Senator Johnson would ask unanimous consent to withdraw FA17, which is the third component of the committee amendments. [LB395]

SENATOR LANGEMEIER: Are there any objections to the withdrawal of the third component, FA17? Seeing no objections, it is withdrawn. [LB395]

CLERK: Mr. President, the fourth component is FA18. Senator Johnson, I note that you would like to withdraw that and ask unanimous consent to do so, sir. [LB395]

SENATOR JOHNSON: That is correct. [LB395]

SENATOR LANGEMEIER: Are there any objections to the withdrawal of FA18, the fourth component? Seeing none, it is withdrawn. [LB395]

CLERK: Mr. President, the fifth and final component of the committee amendments, FA20, Senator Johnson would ask unanimous consent to withdraw. [LB395]

SENATOR JOHNSON: That is correct. [LB395]

SENATOR LANGEMEIER: Thank you. Are there any objections to the withdrawal of FA20, the fifth and final component? Seeing none, it is withdrawn. [LB395]

CLERK: Mr. President, I now have a series of amendments to the bill. The first is

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Senator Johnson, AM321, Senator. [LB395]

SENATOR LANGEMEIER: Senator Johnson. [LB395]

SENATOR JOHNSON: I would ask that be withdrawn and refiled. [LB395]

CLERK: The next amendment, Mr. President, to the bill, Senator Nantkes, I had a note, Senator, you wanted to withdraw AM340. [LB395]

SENATOR LANGEMEIER: Senator Nantkes. [LB395]

SENATOR NANTKES: That's correct. [LB395]

SENATOR LANGEMEIER: It is withdrawn. Thank you. [LB395]

CLERK: The next amendment, Mr. President, Senator Rogert. Again, I had an note from Senator Rogert that he wished to withdraw, Mr. President. [LB395]

SENATOR LANGEMEIER: Senator Rogert. [LB395]

SENATOR ROGERT: Yeah, that is correct. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: It is withdrawn. [LB395]

CLERK: Mr. President, the next amendment I have was by Senator Erdman. Senator, FA22. I had a note, Senator, you wish to withdraw that. [LB395]

SENATOR LANGEMEIER: Senator Erdman. [LB395]

SENATOR ERDMAN: That is correct. [LB395]

SENATOR LANGEMEIER: Thank you. It is withdrawn. [LB395]

CLERK: Mr. President, the next amendment to the bill, Senator Fischer, FA23. [LB395]

SENATOR LANGEMEIER: Senator Fischer. [LB395]

SENATOR FISCHER: I would like to withdraw that amendment and refile it on Select File, please. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Fischer. It is withdrawn. Mr. Clerk. [LB395]

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CLERK: Mr. President, Senator Erdman offers AM366. [LB395]

SENATOR LANGEMEIER: Senator Erdman. [LB395]

SENATOR ERDMAN: Mr. President, I would ask that that amendment be withdrawn and filed on Select File. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Erdman. It is withdrawn. Mr. Clerk. [LB395]

CLERK: I have nothing further to the bill at this time, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Mr. Clerk. We return now to discussion on LB395, the bill itself. Senator Chambers, you are recognized. [LB395]

SENATOR CHAMBERS: Mr. President, members of the Legislature, if this paper signified LB395 and it's about to move I'd say, in the words of the bard, ah, parting is such sweet sorrow. I have one more opportunity to speak on this bill at this point and I intend to do that, and then I won't have any further comments on the bill while it's on General File, unless somebody just provokes me. (Laughter) There have been many attempts to regulate smoking and some have been successful in local communities; others have not. The state, by enacting this bill in the appropriate form, will declare a public policy that relates to the health of all the state's residents, citizens, noncitizens, visitors, and anybody who happens to be within the borders of this state for any reason or purpose whatsoever. When the state declares that policy, it ought to embrace all of the people, not just those who have an enlightened governing board or body who will protect their health. It should embrace everybody within the state. So when this bill gets to Select File and the debate resumes, I will not support this so-called opt-out provision. Our responsibility as the Legislature is to enact general laws. The health of people, when it comes to breathing secondhand smoke, whether those people live in Scottsbluff or in Omaha, will not be different. The people in Scottsbluff run just as great a risk. Those in Red Cloud, those in Sioux City, those in Norfolk, those in Brownville, wherever they live in this state, the same threat to their health from secondhand smoke will exist. The same threat to the health of employees will exist. If we have people on this floor who say that the employer should be able to allow smoking in his or her establishment, that employer should be allowed to bust a union comprising people who work in his or her business. But union busting is not allowed. Why? Why shouldn't the employer be allowed to do whatever he or she pleases? Why should not the employer be allowed to pay \$1.10 if people are willing to work for \$1.10 an hour? Because a policy decision was reached to say that certain wage levels should not fall below a certain point because this is a civilized society. Those who have the power are not going to be allowed a free hand to do anything they want to those who lack power or the wherewithal to stand up and speak for themselves. Senator White knows that one reason... [LB395]

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SENATOR LANGEMEIER: One minute. [LB395]

SENATOR CHAMBERS: ...the federal courts came into existence is because people could not get justice in the state courts in certain locations in this country, and the federal courts came into existence for that purpose and were granted certain types of jurisdiction to counter that racism, that hatred, and that unfairness which would be in the state courts. The state should adopt this policy and protect all the citizens and not leave their welfare to the vagaries of a weak village board or city council. Thank you, Mr. President. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Chambers. Anyone else wishing to speak to LB395? Seeing no lights on, Senator Johnson, you're recognized to close on LB395. [LB395]

SENATOR JOHNSON: Mr. President and members of this great Legislature, we've had a very significant battle over the last couple of days as to what local control means, and particularly local control when it comes to the health of our federal citizens. Want to thank everyone for advancing the amendment brought by Senator White and Senator Mines. This is a tool for us to discuss and hopefully come to an agreement regarding the main points of contention, and that is just what is local control and how we would go about regulating this, and particularly when it comes to the smoking. I think that without exception in this room we are all in agreement that smoking is bad, secondhand smoking is also bad and destructive to our neighbor's health, and it may be our friend sitting in the next chair. With that having been said, thank you for your great discussion. I would ask that we advance this to E&R for initial. [LB395]

SENATOR LANGEMEIER: Thank you, Senator Johnson. You have heard the closing on LB395. The question is, shall LB395 advance to E&R Initial? All those in favor vote yea; all those opposed vote nay. Have all those voted that wish to? Record, Mr. Clerk. [LB395]

CLERK: 32 ayes, 6 nays, Mr. President, on the advancement of LB395. [LB395]

SENATOR LANGEMEIER: LB395 does advance. Mr. Clerk. [LB395]

CLERK: Mr. President, items, thank you. Your Committee on Enrollment and Review reports LB497 to Select File with Enrollment and Review amendments attached. Enrollment and Review also reports LB239, LB296, and LB390 as correctly engrossed. Priority bill designations: Natural Resources Committee, chaired by Senator Louden, has selected LB579 and LB295 as the two committee priority bills; Senator Aguilar, LB564. Hearing notice from Senator Heidemann, and also from the Rules Committee, chaired by Senator Hudkins. Amendments to be printed: Senator Johnson to LB395;

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Senator Hudkins, LB659; Senator Fischer to LB395; Senator Erdman to LB395.  
Resolutions: Senator Stuthman offers LR43 and LR44; Senator Gay offers LR45; all three will be laid over. And a new A bill. (Read LB370A by title for the first time.) That's all that I had, Mr. President. (Legislative Journal pages 753-760.) [LB497 LB239 LB296 LB390 LB579 LB295 LB564 LB395 LB659 LR43 LR44 LR45 LB370A]