

TWENTY-FIFTH DAY - FEBRUARY 11, 2015

LEGISLATIVE JOURNAL

**ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION**

TWENTY-FIFTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, February 11, 2015

PRAYER

The prayer was offered by Pastor Drew Rietjens, Twin Valley Church, Bellevue.

ROLL CALL

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

The roll was called and all members were present except Senators Coash, Garrett, K. Haar, Kuehn, Larson, Murante, and Watermeier who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the twenty-fourth day was approved.

COMMITTEE REPORT(S)

Urban Affairs

LEGISLATIVE BILL 304. Placed on General File with amendment.
AM286

- 1 1. Strike the original sections and insert the following new
- 2 sections:
- 3 Section 1. Sections 1 to 5 of this act shall be known and may be
- 4 cited as the Municipal Custodianship for Dissolved Homeowners
- 5 Associations Act.
- 6 Sec. 2. For purposes of the Municipal Custodianship for Dissolved
- 7 Homeowners Associations Act, unless the context otherwise requires:
- 8 (1) Common area means lot or outlot within a plat or subdivision of
- 9 real property including the improvements thereon owned or otherwise
- 10 maintained, cared for, or administered by the homeowners association for
- 11 the common use, benefit, and enjoyment of its members;
- 12 (2) Homeowners association means a nonprofit corporation duly
- 13 incorporated under the laws of the State of Nebraska for the purpose of
- 14 enforcing the restrictive covenants established upon the real property

15 legally described in the articles of incorporation which is located
16 within the corporate limits of a municipality, each member of which is an
17 owner of a lot located within the plat or subdivision, and by virtue of
18 membership or ownership of a lot is obligated to pay costs for the
19 administration, maintenance, and care of the common area within the plat
20 or subdivision. Homeowners association includes associations of
21 residential homeowners, nonresidential property owners, or both;
22 (3) Lot means any designated parcel of land located within a plat or
23 subdivision to be separately owned, used, developed, or built upon;
24 (4) Member means an owner that is qualified to be a member of a
25 homeowners association by virtue of ownership of a lot covered by the
26 property described in the declaration and articles of incorporation of a
27 homeowners association dissolved under section 21-19,138;
1 (5) Municipality means any city or incorporated village of this
2 state;
3 (6) Owner means the owner of a lot within the plat or subdivision,
4 but does not include a person who has an interest in a lot solely as
5 security for an obligation; and
6 (7) Real property means the real property described in the articles
7 of incorporation which is located within or to be located within a plat
8 or subdivision approved by a municipality and which is subject to
9 restrictive covenants to be enforced by the homeowners association and
10 filed of record in the office of the register of deeds of the county in
11 which the real property is located.
12 Sec. 3. In the event a homeowners association is dissolved pursuant
13 to section 21-19,138 and not reinstated pursuant to the Nebraska
14 Nonprofit Corporation Act, any municipality may bring an action to be
15 appointed as custodian to manage the affairs of the homeowners
16 association as set forth in section 4 of this act.
17 Sec. 4. (1) The district court of the county in which a dissolved
18 homeowners association was previously existing shall, in a proceeding
19 brought by a municipality by petition to the district court, appoint the
20 municipality as custodian to manage the affairs of the homeowners
21 association upon a finding that:
22 (a) The homeowners association has been administratively dissolved
23 by the Secretary of State pursuant to section 21-19,138;
24 (b) The homeowners association has failed in one or more of the
25 following ways:
26 (i) To maintain the common area as required by the municipality's
27 conditions of approval for the plat or subdivision of real property;
28 (ii) To maintain the common area or private improvements located
29 outside of the common area on the real property in the plat or
30 subdivision in accordance with all terms and conditions of any agreement
31 with the municipality; or
1 (iii) To comply with any applicable laws, rules, or regulations
2 pertaining to maintenance of the common area or private improvements
3 located outside of the common area on the real property in the plat or
4 subdivision such that the noncompliance is adverse to the interests of
5 the municipality and may result in expenditures by the municipality not

6 otherwise required;

7 (c) The municipality has made a demand on the members to hold a
8 special meeting to remove and elect new directors and to approve a
9 submission of an application to the Secretary of State for reinstatement
10 pursuant to the Municipal Custodianship for Dissolved Homeowners

11 Associations Act or the Nebraska Nonprofit Corporation Act; and
12 (d) The members have failed to reinstate the homeowners association
13 within six months after the demand.

14 (2) The district court shall hold a hearing, after written
15 notification thereof by the petitioner to all parties to the proceeding
16 and any interested persons designated by the court, before appointing a
17 custodian, and the petitioner shall provide sufficient proof of service
18 to the court. Service by first-class mail shall be deemed sufficient
19 service. The district court appointing the custodian shall have exclusive
20 jurisdiction over the homeowners association and all of its property
21 wherever located.

22 (3) The district court shall describe the powers and duties of the
23 custodian in its appointing order, which order may be amended upon motion
24 and notice to the parties from time to time. Among other powers, the
25 appointing order shall provide that the custodian may exercise all of the
26 powers of the homeowners association, through or in place of its board of
27 directors or officers, to the extent necessary to manage the affairs of
28 the association in the best interests of its members. The custodian shall
29 not be liable for the actions or inactions of the homeowners association
30 and shall maintain all immunities granted to municipalities by applicable
31 law.

1 (4) Upon application of the custodian, the district court from time
2 to time during the custodianship may order compensation paid and expense
3 disbursements or reimbursements made to the custodian from the assets of
4 the association or proceeds from the sale of the assets. Notice of a
5 hearing to determine compensation and costs shall be provided to all
6 owners and interested parties by the custodian as set forth in subsection
7 (2) of this section, with proof of service provided by the custodian. In
8 the event the district court awards compensation or reimbursement of
9 costs, all such compensation and costs shall be a lien on each and all of
10 the lots in the manner as set forth in subsection (5) of this section.

11 Any court order awarding compensation or reimbursement of costs herein
12 shall identify each lot and the amount of compensation or reimbursement
13 of costs each lot shall be charged as a lien.

14 (5)(a) A lien created under subsection (4) of this section shall be
15 effective from the time the district court awards the compensation or
16 reimbursement of costs and a notice containing the dollar amount of the
17 lien is recorded in the office where mortgages or deeds of trust are
18 recorded. The lien may be foreclosed in like manner as a mortgage on real
19 estate but the municipality shall give reasonable notice of its action to
20 all other lienholders whose interest would be affected.

21 (b) A lien created under subsection (4) of this section is prior to
22 all other liens and encumbrances on real estate except (i) liens and
23 encumbrances recorded before the recordation of the declaration or

24 agreement, (ii) a first mortgage or deed of trust on real estate recorded
25 before the notice required under subdivision (5)(a) of this section has
26 been recorded, and (iii) liens for real estate taxes.

27 (6) In the event the homeowners association is reinstated after
28 appointment of a custodian, any interested party may make a request to
29 the district court for termination of the custodianship.

30 (7) A custodian may be allowed to withdraw from or terminate the
31 custodianship upon an order from the district court permitting such
1 withdrawal or termination following a hearing for which notice is
2 provided to all owners and interested parties by the custodian.

3 Sec. 5. (1) Notwithstanding any provision to the contrary in the
4 Nebraska Nonprofit Corporation Act or the articles of incorporation or
5 bylaws of a homeowners association, a homeowners association dissolved
6 pursuant to section 21-19,138 may, in addition to any other procedure
7 allowed by law, apply to the Secretary of State for reinstatement in one
8 or more of the following ways:

9 (a) An application for reinstatement may be brought at any time
10 after dissolution by an officer or director of the dissolved homeowners
11 association pursuant to section 21-19,139; or

12 (b) Three or more members of such homeowners association may, at any
13 time after dissolution, call a special meeting to (i) remove and elect
14 new directors and (ii) approve the submission of an application to the
15 Secretary of State for reinstatement. Such members may set the time and
16 place of the meeting. Notice of the meeting shall be given pursuant to
17 section 21-1955. For purposes of this section only and notwithstanding
18 the declaration, articles of incorporation, or the bylaws of a dissolved
19 homeowners association, action on matters described in this subsection
20 shall be approved by the affirmative vote of the voters present and
21 voting on the matter. Three members eligible to vote on the matter shall
22 constitute a quorum.

23 (2) Upon action being taken to apply for reinstatement as set forth
24 in subdivision (1)(a) or (b) of this section, the process for
25 reinstatement set forth in section 21-19,139 shall apply, except that the
26 reinstatement fee for a homeowners association dissolved more than five
27 years shall be one hundred dollars. Nothing in this subdivision shall be
28 construed to abolish, modify, or otherwise change any restrictive
29 covenant or other benefit or obligation of membership in a homeowners
30 association.

31 (3) The application for reinstatement must:

1 (a) Recite the name of the homeowners association and the effective
2 date of its administrative dissolution;

3 (b) State that the ground or grounds for dissolution either did not
4 exist or have been eliminated; and

5 (c) State that the homeowners association's name satisfies the
6 requirements of section 21-1931.

7 (4) If the Secretary of State determines that the application
8 contains the information required by subdivisions (1)(a) and (b) of this
9 section and that the information is correct, the Secretary of State shall
10 cancel the certificate of dissolution and prepare a certificate of

11 reinstatement reciting that determination and the effective date of
12 reinstatement, file the original of the certificate, and serve a copy on
13 the homeowners association under section 21-1937.
14 (5) When reinstatement is effective, the reinstatement shall relate
15 back to and take effect as of the effective date of the administrative
16 dissolution, and the homeowners association shall resume carrying on its
17 activities as if the administrative dissolution had never occurred.
18 Sec. 6. The Revisor of Statutes shall assign sections 1, 2, 3, 4,
19 and 5 of this act within Chapter 18.

(Signed) Sue Crawford, Chairperson

NOTICE OF COMMITTEE HEARING(S)

Revenue

Room 1524

Wednesday, March 18, 2015 1:30 p.m.

LB26 (cancel)

Wednesday, March 4, 2015 1:30 p.m.

LB26

(Signed) Mike Gloor, Chairperson

MESSAGE(S) FROM THE GOVERNOR

February 4, 2015

Mr. President, Speaker Hadley
and Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President, Speaker Hadley and Members of the Legislature:

Contingent upon your approval, the following individuals are being reappointed to the Nebraska Educational Telecommunications Commission:

Dennis Baack, 2233 Surfside Drive, Lincoln, NE 68528
Patricia M. Kircher, 15715 California Street, Omaha, NE 68118
Darlene Starman, 1030 Rockhurst Drive, Lincoln, NE 68510

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificates and background information are included for your review.

Sincerely,
 (Signed) Pete Ricketts
 Governor

Enclosures

ANNOUNCEMENT

The Chair announced the birthday of Senator Hansen.

MOTION - Withdraw LB604

Senator Bloomfield offered his motion, MO26, found on page 451, to withdraw LB604.

The Bloomfield motion to withdraw the bill prevailed with 40 ayes, 0 nays, 3 present and not voting, and 6 excused and not voting.

MOTION(S) - Confirmation Report(s)

Senator Schilz moved the adoption of the Natural Resources Committee report for the confirmation of the following appointment(s) found on page 431:

Nebraska Natural Resources Commission
 Joel G. Christensen

Voting in the affirmative, 36:

Baker	Davis	Hughes	Morfeld	Smith
Bolz	Friesen	Johnson	Nordquist	Stinner
Brasch	Gloor	Kintner	Pansing Brooks	Sullivan
Campbell	Groene	Kolowski	Riepe	Williams
Chambers	Hansen	Kolterman	Scheer	
Cook	Harr, B.	Larson	Schilz	
Craighead	Hilkemann	Lindstrom	Schumacher	
Crawford	Howard	McCollister	Seiler	

Voting in the negative, 0.

Present and not voting, 7:

Bloomfield	Hadley	McCoy	Schnoor
Ebke	Krist	Mello	

Excused and not voting, 6:

Coash	Haar, K.	Murante
Garrett	Kuehn	Watermeier

The appointment was confirmed with 36 ayes, 0 nays, 7 present and not

voting, and 6 excused and not voting.

Senator Seiler moved the adoption of the Judiciary Committee report for the confirmation of the following appointment(s) found on page 452:

Board of Parole

Randall L. Rehmeier

Voting in the affirmative, 36:

Baker	Crawford	Howard	McCollister	Smith
Bloomfield	Davis	Hughes	Mello	Stinner
Bolz	Ebke	Johnson	Nordquist	Sullivan
Brasch	Friesen	Kintner	Pansing Brooks	Williams
Campbell	Hadley	Kolowski	Riepe	
Chambers	Hansen	Kolterman	Schilz	
Cook	Harr, B.	Larson	Schumacher	
Craighead	Hilkemann	Lindstrom	Seiler	

Voting in the negative, 0.

Present and not voting, 9:

Coash	Groene	Krist	Morfeld	Schnoor
Gloor	Haar, K.	McCoy	Scheer	

Excused and not voting, 4:

Garrett	Kuehn	Murante	Watermeier
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The appointment was confirmed with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

SELECT FILE

LEGISLATIVE BILL 91. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 41. ER2, found on page 315, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 42. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 126. ER1, found on page 315, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 92. Senator Johnson offered his amendment, AM89, found on page 349.

The Johnson amendment was adopted with 28 ayes, 0 nays, 18 present and not voting, and 3 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 93. ER4, found on page 346, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 95. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 150. Considered.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 151. Senator Crawford offered her amendment, AM85, found on page 326.

The Crawford amendment was adopted with 30 ayes, 0 nays, 18 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 170. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 171. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 99. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 100. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 65. ER5, found on page 346, was adopted.

Senator Schumacher offered his amendment, AM67, found on page 364.

The Schumacher amendment was adopted with 29 ayes, 0 nays, 19 present and not voting, and 1 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 177. ER7, found on page 356, was adopted.

Senator K. Haar offered his amendment, AM154, found on page 406.

The K. Haar 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 BILL 159. ER8, found on page 401, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 220. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 220A. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 157. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 149. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 168. ER9, found on page 402, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 40. ER10, found on page 402, was adopted.

Senator Nordquist offered his amendment, AM224, found on page 407.

The Nordquist amendment was adopted with 30 ayes, 0 nays, 17 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 43. Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 247. ER15, found on page 416, was adopted.

Advanced to Enrollment and Review for Engrossment.

LEGISLATIVE BILL 219. ER16, found on page 416, was adopted.

Senator Crawford offered her amendment, AM225, found on page 441.

The Crawford amendment was adopted with 27 ayes, 0 nays, 20 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review for Engrossment.

NOTICE OF COMMITTEE HEARING(S)

Natural Resources

Room 1525

Wednesday, February 18, 2015 1:30 p.m.

David Bracht - State Energy Office

(Signed) Ken Schilz, Chairperson

COMMITTEE REPORT(S)

Health and Human Services

LEGISLATIVE BILL 366. Placed on General File.

(Signed) Kathy Campbell, Chairperson

RESOLUTION(S)

LEGISLATIVE RESOLUTION 53. Introduced by Baker, 30.

WHEREAS, the Homestead Act of 1862 was signed by President Abraham Lincoln which gave 160 acres of land to any man or woman who would build a home and make improvements and farm the land for five years; and

WHEREAS, the Homestead Act allowed settlement of almost ten percent or 270 million acres of public land and placed it in the hands of settlers; and

WHEREAS, in 1936, with the backing of United States Senator George Norris, Congress passed a law which was signed by President Franklin D. Roosevelt establishing a new unit in the National Park system called the Homestead National Monument of America; and

WHEREAS, the Homestead National Monument of America near Beatrice commemorates and remembers the hardships and pioneer spirit of early settlers at the homestead site of Daniel Freeman who filed the very first claim in 1863; and

WHEREAS, each homestead created paper documents known as case files which exist only as paper originals. The complete collection of case files consists of over 30 million pieces of paper stored in the National Archives in Washington D.C.; and

WHEREAS, since 1999, the Homestead National Monument of America has been involved in the project to digitize all 30 million documents of the homestead case files collection; and

WHEREAS, the United States Mint's 2015 America the Beautiful Quarters Program will launch the Homestead National Monument of America quarter on February 10, 2015, with approximately 10 million quarters minted each day; and

WHEREAS, the quarter design represents the essential things a homesteader needed to survive including food, housing, and water.

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

1. That the Legislature congratulates the Homestead National Monument of America on the 2015 launch of the Homestead National Monument of America quarter.

2. That a copy of this resolution be sent to the Homestead National Monument of America.

Laid over.

SELECT FILE

LEGISLATIVE BILL 18. Senator Groene offered the following amendment:

AM301

1 1. On page 2, lines 19 through 26, strike the new matter and
 2 reinstate the stricken matter; and after line 30 insert the following new
 3 subsection:
 4 "(4)(a) Beginning July 1, 2016, each public and private high school
 5 in Nebraska shall provide to each incoming first-year student and to any
 6 student transferring from a high school located in another state, and to
 7 the student's parent or legal guardian, the following information
 8 concerning meningococcal disease:
 9 (i) Meningococcal disease is a serious disease;
 10 (ii) Meningococcal disease is a contagious, but a largely
 11 preventable, infection of the spinal cord fluid and the fluid that
 12 surrounds the brain; and
 13 (iii) Immunization against meningococcal disease decreases the risk
 14 of contracting the disease.
 15 (b) In addition to the information required in subdivision (4)(a) of
 16 this section, each public and private high school in Nebraska shall
 17 provide to each incoming first-year student and to any student
 18 transferring from a high school located in another state, and to the
 19 student's parent or legal guardian, web site addresses, telephone
 20 numbers, or other information to assist the student or the student's
 21 parent or legal guardian in identifying a location where the student may
 22 receive an immunization against meningococcal disease.
 23 (c) The information required by subdivision (4)(a) of this section
 24 may be provided exactly as written in such subdivision or through similar

25 language that reasonably meets the intent of such subdivision and is
 26 based upon established and scientifically recognized medical or
 27 epidemiological data.
 1 (d) Beginning July 1, 2016, each public and private high school in
 2 Nebraska shall require each incoming first-year student and each student
 3 transferring from a high school located in another state who has not
 4 received the vaccination against meningococcal disease, and the student's
 5 parent or legal guardian, to check a box on a document provided by the
 6 high school indicating that the student and the parent or legal guardian
 7 have reviewed the information provided pursuant to subdivision (4)(a) and
 8 (b) of this section and have decided that the student will not obtain a
 9 vaccination against meningococcal disease.
 10 (e) Nothing in this subsection shall be construed to:
 11 (i) Require a student to obtain the vaccination against
 12 meningococcal disease; or
 13 (ii) Require a high school to provide or pay for the vaccination of
 14 a student.
 15 (f) A public or private high school in Nebraska that has made a
 16 reasonable effort to comply with this subsection shall not be liable for
 17 damages for injuries sustained by a student as a result of contracting
 18 meningococcal disease if the student's claim is based solely upon the
 19 provision of the information required by this subsection."

SPEAKER HADLEY PRESIDING

Pending.

NOTICE OF COMMITTEE HEARING(S)

Appropriations

Room 1524

Monday, March 2, 2015 1:30 p.m.

LB565

LB584

Agency 47 - Educational Telecommunications Commission, Nebraska

Agency 48 - Coordinating Commission for Postsecondary Education

Agency 50 - Nebraska State College System

Agency 83 - Community College Aid

Tuesday, March 3, 2015 1:30 p.m.

Agency 51 - University of Nebraska System

LB108

LB110

LB154

LB417

LB436

LB496
LB532
LB533
LB560
LB593

Room 1003

Wednesday, March 4, 2015 1:30 p.m.

Agency 21 - State Fire Marshal
Agency 35 - Liquor Control Commission, Nebraska
Agency 64 - State Patrol, Nebraska
Agency 78 - Nebraska Commission on Law Enforcement and Criminal
Justice
Agency 24 - Motor Vehicles, Department of

Thursday, March 5, 2015 1:30 p.m.

Agency 82 - Commission for the Deaf and Hard of Hearing
Agency 81 - Commission for the Blind and Visually Impaired
Agency 67 - Equal Opportunity Commission
Agency 68 - Latino-American Commission
Agency 70 - Foster Care Review Board, State
Agency 76 - Indian Commission, Nebraska

Friday, March 6, 2015 1:30 p.m.

LB57
Agency 19 - Banking, Department of
Agency 22 - Insurance, Department of
Agency 87 - Accountability and Disclosure Commission
Agency 93 - Tax Equalization and Review Commission
Agency 65 - Administrative Services, Department of

(Signed) Heath Mello, Chairperson

Health and Human Services

Room 1510

Friday, February 20, 2015 1:00 p.m.

John A. E. Craig - Nebraska Rural Health Advisory Commission
Teresa Konda - State Board of Health
Laura A. Scholl - Board of Emergency Medical Services

(Signed) Kathy Campbell, Chairperson

COMMITTEE REPORT(S)

Judiciary

LEGISLATIVE BILL 504. Placed on General File with amendment.

AM291

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

2 sections:

3 Section 1. Section 29-2261, Revised Statutes Cumulative Supplement,
4 2014, is amended to read:5 29-2261 (1) Unless it is impractical to do so, when an offender has
6 been convicted of a felony other than murder in the first degree, the
7 court shall not impose sentence without first ordering a presentence
8 investigation of the offender and according due consideration to a
9 written report of such investigation. When an offender has been convicted
10 of murder in the first degree and (a) a jury renders a verdict finding
11 the existence of one or more aggravating circumstances as provided in
12 section 29-2520 or (b)(i) the information contains a notice of
13 aggravation as provided in section 29-1603 and (ii) the offender waives
14 his or her right to a jury determination of the alleged aggravating
15 circumstances, the court shall not commence the sentencing determination
16 proceeding as provided in section 29-2521 without first ordering a
17 presentence investigation of the offender and according due consideration
18 to a written report of such investigation.19 (2) A court may order a presentence investigation in any case,
20 except in cases in which an offender has been convicted of a Class IIIA
21 misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic
22 infraction, or any corresponding city or village ordinance.23 (3) The presentence investigation and report shall include, when
24 available, an analysis of the circumstances attending the commission of
25 the crime, the offender's history of delinquency or criminality, physical
26 and mental condition, family situation and background, economic status,
27 education, occupation, and personal habits, and any other matters that

1 the probation officer deems relevant or the court directs to be included.

2 All local and state police agencies and Department of Correctional
3 Services adult correctional facilities shall furnish to the probation
4 officer copies of such criminal records, in any such case referred to the
5 probation officer by the court of proper jurisdiction, as the probation
6 officer shall require without cost to the court or the probation officer.

7 Such investigation shall also include:

8 (a) Any written statements submitted to the county attorney by a
9 victim; and10 (b) Any written statements submitted to the probation officer by a
11 victim.12 (4) If there are no written statements submitted to the probation
13 officer, he or she shall certify to the court that:

14 (a) He or she has attempted to contact the victim; and

15 (b) If he or she has contacted the victim, such officer offered to
16 accept the written statements of the victim or to reduce such victim's
17 oral statements to writing.

18 For purposes of subsections (3) and (4) of this section, the term
19 victim shall be as defined in section 29-119.

20 (5) Before imposing sentence, the court may order the offender to
21 submit to psychiatric observation and examination for a period of not
22 exceeding sixty days or such longer period as the court determines to be
23 necessary for that purpose. The offender may be remanded for this purpose
24 to any available clinic or mental hospital, or the court may appoint a
25 qualified psychiatrist to make the examination. The report of the
26 examination shall be submitted to the court.

27 (6) Any presentence report or psychiatric examination shall be
28 privileged and shall not be disclosed directly or indirectly to anyone
29 other than a judge, probation officers to whom an offender's file is duly
30 transferred, the probation administrator or his or her designee, or
31 others entitled by law to receive such information, including personnel
1 and mental health professionals for the Nebraska State Patrol
2 specifically assigned to sex offender registration and community
3 notification for the sole purpose of using such report or examination for
4 assessing risk and for community notification of registered sex
5 offenders. For purposes of this subsection, mental health professional
6 means (a) a practicing physician licensed to practice medicine in this
7 state under the Medicine and Surgery Practice Act, (b) a practicing
8 psychologist licensed to engage in the practice of psychology in this
9 state as provided in section 38-3111, or (c) a practicing mental health
10 professional licensed or certified in this state as provided in the
11 Mental Health Practice Act.

12 (7) The court may permit inspection of the report or examination of
13 parts thereof by the offender or his or her attorney, or other person
14 having a proper interest therein, whenever the court finds it is in the
15 best interest of a particular offender. Upon application by counsel, the
16 court shall provide a copy of the report or examination to counsel for
17 the defendant and the prosecution at no charge at least seven days in
18 advance of the sentencing hearing. The copy of the report may be provided
19 electronically. The court may order that the report or examination not be
20 reproduced or disseminated to persons other than the defendant and his or
21 her counsel and counsel for the prosecution. Upon application by counsel
22 for the prosecution or the defendant, the court may order that addresses,
23 telephone numbers, and other contact information for victims or witnesses
24 named in the report or examination be redacted upon a showing by a
25 preponderance of the evidence that such redaction is warranted in the
26 interests of public safety. The court may allow fair opportunity for an
27 offender to provide additional information for the court's consideration.

28 (8 7) If an offender is sentenced to imprisonment, a copy of the
29 report of any presentence investigation or psychiatric examination shall
30 be transmitted immediately to the Department of Correctional Services.
31 Upon request, the Board of Parole or the Office of Parole Administration
1 may receive a copy of the report from the department.

2 (9 8) Notwithstanding subsection (6) and (7) of this section, the
3 Supreme Court or an agent of the Supreme Court acting under the direction
4 and supervision of the Chief Justice shall have access to psychiatric

5 examinations and presentence investigations and reports for research
6 purposes. The Supreme Court and its agent shall treat such information as
7 confidential, and nothing identifying any individual shall be released.
8 Sec. 2. Original section 29-2261, Revised Statutes Cumulative
9 Supplement, 2014, is repealed.

LEGISLATIVE BILL 602. Placed on General File with amendment.
AM308

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

3 Section 1. Section 24-703, Revised Statutes Cumulative Supplement,
4 2014, is amended to read:

5 24-703 (1) Each original member shall contribute monthly four
6 percent of his or her monthly compensation to the fund until the maximum
7 benefit as limited in subsection (1) of section 24-710 has been earned.

8 It shall be the duty of the Director of Administrative Services in
9 accordance with subsection (10) of this section to make a deduction of
10 four percent on the monthly payroll of each original member who is a
11 judge of the Supreme Court, a judge of the Court of Appeals, a judge of
12 the district court, a judge of a separate juvenile court, a judge of the
13 county court, a clerk magistrate of the county court who was an associate
14 county judge and a member of the fund at the time of his or her
15 appointment as a clerk magistrate, or a judge of the Nebraska Workers'
16 Compensation Court showing the amount to be deducted and its credit to
17 the fund. The Director of Administrative Services and the State Treasurer
18 shall credit the four percent as shown on the payroll and the amounts
19 received from the various counties to the fund and remit the same to the
20 director in charge of the judges retirement system who shall keep an
21 accurate record of the contributions of each judge.

22 (2)(a) In addition to the contribution required under subdivision
23 (c) of this subsection, beginning on July 1, 2004, each future member who
24 has not elected to make contributions and receive benefits as provided in
25 section 24-703.03 shall contribute monthly six percent of his or her
26 monthly compensation to the fund until the maximum benefit as limited in
27 subsection (2) of section 24-710 has been earned. After the maximum
1 benefit as limited in subsection (2) of section 24-710 has been earned,
2 such future member shall make no further contributions to the fund,
3 except that (i) any time the maximum benefit is changed, a future member
4 who has previously earned the maximum benefit as it existed prior to the
5 change shall contribute monthly six percent of his or her monthly
6 compensation to the fund until the maximum benefit as changed and as
7 limited in subsection (2) of section 24-710 has been earned and (ii) such
8 future member shall continue to make the contribution required under
9 subdivision (c) of this subsection.

10 (b) In addition to the contribution required under subdivision (c)
11 of this subsection, beginning on July 1, 2004, a judge who first serves
12 as a judge on or after such date or a future member who elects to make
13 contributions and receive benefits as provided in section 24-703.03 shall
14 contribute monthly eight percent of his or her monthly compensation to

15 the fund until the maximum benefit as limited by subsection (2) of
16 section 24-710 has been earned. In addition to the contribution required
17 under subdivision (c) of this subsection, after the maximum benefit as
18 limited in subsection (2) of section 24-710 has been earned, such judge
19 or future member shall contribute monthly four percent of his or her
20 monthly compensation to the fund for the remainder of his or her active
21 service.

22 (c) Beginning on July 1, 2009, a member or judge described in
23 subdivisions (a) and (b) of this subsection shall contribute monthly an
24 additional one percent of his or her monthly compensation to the fund.

25 (d) It shall be the duty of the Director of Administrative Services
26 to make a deduction on the monthly payroll of each such future member who
27 is a judge of the Supreme Court, a judge of the Court of Appeals, a judge
28 of the district court, a judge of a separate juvenile court, a judge of
29 the county court, a clerk magistrate of the county court who was an
30 associate county judge and a member of the fund at the time of his or her
31 appointment as a clerk magistrate, or a judge of the Nebraska Workers'
1 Compensation Court showing the amount to be deducted and its credit to
2 the fund. This shall be done each month. The Director of Administrative
3 Services and the State Treasurer shall credit the amount as shown on the
4 payroll and the amounts received from the various counties to the fund
5 and remit the same to the director in charge of the judges retirement
6 system who shall keep an accurate record of the contributions of each
7 judge.

8 (3) Except as otherwise provided in this subsection, a Nebraska
9 Retirement Fund for Judges fee of six dollars shall be taxed as costs in
10 each (a) civil cause of action, criminal cause of action, traffic
11 misdemeanor or infraction, and city or village ordinance violation filed
12 in the district courts, the county courts, and the separate juvenile
13 courts, (b) beginning October 1, 2015, enrollment in a pretrial diversion
14 program established under section 29-3602 or 43-260.02, (c) filing in the
15 district court of an order, award, or judgment of the Nebraska Workers'
16 Compensation Court or any judge thereof pursuant to section 48-188, (d) e
17 appeal or other proceeding filed in the Court of Appeals, and (e) f
18 original action, appeal, or other proceeding filed in the Supreme Court.
19 In county courts a sum shall be charged which is equal to ten percent of
20 each fee provided by sections 33-125, 33-126.02, 33-126.03, and
21 33-126.06, rounded to the nearest even dollar. No judges retirement fee
22 shall be charged for filing a report pursuant to sections 33-126.02 and
23 33-126.06. When collected by the clerk of the district or county court,
24 such fees shall be paid and information submitted to the director in
25 charge of the judges retirement system on forms prescribed by the board
26 by the clerk within ten days after the close of each calendar quarter,
27 except that fees related to pretrial diversion programs shall be paid and
28 information submitted by the appropriate county treasurer or city
29 treasurer. Beginning July 1, 2015, the county attorney or city attorney
30 in each county or city that has established a pretrial diversion program
31 shall inform the director in charge of the judges retirement system, in
1 writing, which pretrial diversion programs have been established. The

2 board may charge a late administrative processing fee not to exceed
3 twenty-five dollars if the information is not timely received or the
4 money is delinquent. In addition, the board may charge a late fee of
5 thirty-eight thousandths of one percent of the amount required to be
6 submitted pursuant to this section for each day such amount has not been
7 received. Such director shall promptly thereafter remit the same to the
8 State Treasurer for credit to the fund. No Nebraska Retirement Fund for
9 Judges fee which is uncollectible for any reason shall be waived by a
10 county judge as provided in section 29-2709.

11 (4) All expenditures from the fund shall be authorized by voucher in
12 the manner prescribed in section 24-713. The fund shall be used for the
13 payment of all annuities and other benefits and for the expenses of
14 administration.

15 (5) The fund shall consist of the total fund as of December 25,
16 1969, the contributions of members as provided in this section, all
17 supplementary court fees as provided in subsection (3) of this section,
18 and any required contributions of the state.

19 (6) Not later than January 1 of each year, the State Treasurer shall
20 transfer to the fund the amount certified by the board as being necessary
21 to pay the cost of any benefits accrued during the fiscal year ending the
22 previous June 30 in excess of member contributions for that fiscal year
23 and court fees as provided in subsection (3) of this section and fees
24 pursuant to sections 25-2804, 33-103, 33-103.01, 33-106, 33-106.02,
25 33-123, 33-125, 33-126.02, 33-126.03, and 33-126.06 and directed to be
26 remitted to the fund, if any, for that fiscal year plus any required
27 contributions of the state as provided in subsection (9) of this section.

28 (7) Benefits under the retirement system to members or to their
29 beneficiaries shall be paid from the fund.

30 (8) Any member who is making contributions to the fund on December
31 25, 1969, may, on or before June 30, 1970, elect to become a future
1 member by delivering written notice of such election to the board.

2 (9) Not later than January 1 of each year, the State Treasurer shall
3 transfer to the fund an amount, determined on the basis of an actuarial
4 valuation as of the previous June 30 and certified by the board, to fully
5 fund the unfunded accrued liabilities of the retirement system as of June
6 30, 1988, by level payments up to January 1, 2000. Such valuation shall
7 be on the basis of actuarial assumptions recommended by the actuary,
8 approved by the board, and kept on file with the board. For the fiscal
9 year beginning July 1, 2013, and each fiscal year thereafter, the actuary
10 for the board shall perform an actuarial valuation of the system using
11 the entry age actuarial cost method. Under this method, the actuarially
12 required funding rate is equal to the normal cost rate, plus the
13 contribution rate necessary to amortize the unfunded actuarial accrued
14 liability on a level percentage of salary basis. The normal cost under
15 this method shall be determined for each individual member on a level
16 percentage of salary basis. The normal cost amount is then summed for all
17 members. Beginning July 1, 2006, any existing unfunded liabilities shall
18 be reinitialized and amortized over a thirty-year period, and during each
19 subsequent actuarial valuation, changes in the funded actuarial accrued

20 liability due to changes in benefits, actuarial assumptions, the asset
21 valuation method, or actuarial gains or losses shall be measured and
22 amortized over a thirty-year period beginning on the valuation date of
23 such change. If the unfunded actuarial accrued liability under the entry
24 age actuarial cost method is zero or less than zero on an actuarial
25 valuation date, then all prior unfunded actuarial accrued liabilities
26 shall be considered fully funded and the unfunded actuarial accrued
27 liability shall be reinitialized and amortized over a thirty-year period
28 as of the actuarial valuation date. If the actuarially required
29 contribution rate exceeds the rate of all contributions required pursuant
30 to the Judges Retirement Act, there shall be a supplemental appropriation
31 sufficient to pay for the differences between the actuarially required
1 contribution rate and the rate of all contributions required pursuant to
2 the Judges Retirement Act.

3 (10) The state or county shall pick up the member contributions
4 required by this section for all compensation paid on or after January 1,
5 1985, and the contributions so picked up shall be treated as employer
6 contributions pursuant to section 414(h)(2) of the Internal Revenue Code
7 in determining federal tax treatment under the code and shall not be
8 included as gross income of the member until such time as they are
9 distributed or made available. The contributions, although designated as
10 member contributions, shall be paid by the state or county in lieu of
11 member contributions. The state or county shall pay these member
12 contributions from the same source of funds which is used in paying
13 earnings to the member. The state or county shall pick up these
14 contributions by a compensation deduction through a reduction in the
15 compensation of the member. Member contributions picked up shall be
16 treated for all purposes of the Judges Retirement Act in the same manner
17 and to the extent as member contributions made prior to the date picked
18 up.

19 Sec. 2. Section 29-3602, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-3602 The county attorney of any county may establish a pretrial
22 diversion program with the concurrence of the county board. Any city
23 attorney may establish a pretrial diversion program with the concurrence
24 of the governing body of the city. Such programs shall be established
25 pursuant to sections 29-3603 and 29-3605 to 29-3609. Beginning July 1,
26 2015, and within sixty days after establishing new or additional pretrial
27 diversion programs, the county attorney or city attorney shall submit
28 written notification to the director in charge of the judges retirement
29 system, regarding the establishment of each program and provide
30 additional information as requested for purposes of remitting fees as
31 required in section 24-703.

1 Sec. 3. Section 29-3606, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-3606 (1) A pretrial diversion plan for minor traffic violations
4 shall consist of a driver's safety training program.

5 (2) A driver's safety training program shall:

6 (a) Provide a curriculum of driver's safety training, as approved by

7 the department, which is designed to educate persons committing minor
8 traffic violations and to deter future violations; and
9 (b) In addition to the fee established in section 24-703, require
10 ~~Require~~ payment of a fee approved by the department which is reasonable
11 and appropriate to defray the cost of the presentation of the program. A
12 jurisdiction shall charge a uniform fee for participation in a driver's
13 safety training program regardless of the traffic violation for which the
14 applicant was cited. Except for the fee established in section 24-703,
15 ~~fees~~ Fees received by a jurisdiction offering a driver's safety training
16 program may be utilized by such jurisdiction to pay for the costs of
17 administering and operating such program, to promote driver safety, and
18 to pay for the costs of administering and operating other safety and
19 educational programs within such jurisdiction.

20 (3) The program administrator of each driver's safety training
21 program shall keep a record of attendees and shall be responsible for
22 determining eligibility. A report of attendees at all driver's safety
23 training programs in the state shall be shared only with similar programs
24 throughout the state. All procedures for sharing records of attendees
25 among such programs shall conform with the rules and regulations adopted
26 and promulgated by the department to assure that no individual takes the
27 approved course more than once within any three-year period in Nebraska.
28 Such record of attendees and any related records shall not be considered
29 a public record as defined in section 84-712.01.

30 (4) The department shall approve the curriculum and fees of each
31 program and shall adopt and promulgate rules and regulations governing
1 such programs, including guidelines for fees, curriculum, and instructor
2 certification.

3 Sec. 4. Section 43-260.02, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 43-260.02 A county attorney may establish a juvenile pretrial
6 diversion program with the concurrence of the county board. If the county
7 is part of a multicounty juvenile services plan under the Nebraska County
8 Juvenile Services Plan Act, the county attorney may establish a juvenile
9 pretrial diversion program in conjunction with other county attorneys
10 from counties that are a part of such multicounty plan. A city attorney
11 may establish a juvenile pretrial diversion program with the concurrence
12 of the governing body of the city. Such programs shall meet the
13 requirements of sections 43-260.02 to 43-260.07. Beginning July 1, 2015,
14 and within sixty days after establishing new or additional juvenile
15 pretrial diversion programs, the county attorney or city attorney shall
16 submit written notification to the director in charge of the judges
17 retirement system, regarding the establishment of each program and
18 provide additional information as requested for purposes of remitting
19 fees as required in section 24-703.

20 Sec. 5. This act becomes operative on July 1, 2015.

21 Sec. 6. Original sections 29-3602, 29-3606, and 43-260.02, Reissue
22 Revised Statutes of Nebraska, and section 24-703, Revised Statutes
23 Cumulative Supplement, 2014, are repealed.

24 Sec. 7. Since an emergency exists, this act takes effect when

25 passed and approved according to law.

(Signed) Les Seiler, Chairperson

AMENDMENT(S) - Print in Journal

Senator Groene filed the following amendment to LB18:

AM300

- 1 1. On page 2, lines 19 through 26, strike the new matter and
- 2 reinstate the stricken matter; and after line 30 insert the following new
- 3 subsection:
- 4 "(4)(a) On and after July 1, 2016, every public and private high
- 5 school shall provide each student and the student's parent or legal
- 6 guardian with information about meningococcal disease and its vaccine one
- 7 week prior to the student's graduation from high school. Such information
- 8 shall include:
- 9 (i) The causes and symptoms of meningococcal disease, how the
- 10 disease is spread, and the places where parents and guardians may obtain
- 11 additional information; and
- 12 (ii) Current recommendations from the United States Centers for
- 13 Disease Control and Prevention regarding the receipt of vaccinations for
- 14 meningococcal disease and where the vaccination may be received.
- 15 (b) This subsection shall not be construed to require the Department
- 16 of Health and Human Services or any public or private high school to
- 17 provide meningococcal vaccination to students.
- 18 (c) The Department of Health and Human Services shall prepare the
- 19 informational materials required in this subsection.
- 20 (d) This subsection does not create a private right of action."

Senator Groene filed the following amendment to LB18:

AM302

- 1 1. On page 2, line 21, strike "shall" and insert "may".

Senator Groene filed the following amendment to LB18:

AM143

- 1 1. Insert the following new section:
- 2 Sec. 2. Section 79-221, Reissue Revised Statutes of Nebraska, is
- 3 amended to read:
- 4 79-221 Immunization shall not be required for a student's enrollment
- 5 in any school in this state if he or she submits to the admitting
- 6 official either of the following:
- 7 (1) A statement signed by a physician, a physician assistant, or an
- 8 advanced practice registered nurse practicing under and in accordance
- 9 with his or her respective certification act, stating that, in the health
- 10 care provider's opinion, the immunizations required would be injurious to
- 11 the health and well-being of the student or any member of the student's
- 12 family or household; or
- 13 (2) An affidavit signed by the student or, if he or she is a minor,
- 14 by a legally authorized representative of the student, stating that the

15 immunization conflicts with the tenets and practice of a recognized
 16 religious denomination of which the student is an adherent or member or
 17 that immunization conflicts with the personal and sincerely followed
 18 religious or philosophical beliefs of the student.
 19 2. Renumber the remaining section and correct the repealer
 20 accordingly.

Senator Groene filed the following amendment to LB18:
 AM303

1 1. On page 2, line 20, strike "2016" and insert "2017".

Senator Groene filed the following amendment to LB18:
 AM304

1 1. On page 2, line 20, strike "2016" and insert "2018".

Senator Groene filed the following amendment to LB18:
 AM305

1 1. On page 2, line 20, strike "seventh" and insert "eighth"; and in
 2 line 21 strike "sixteen" and insert "seventeen".

Senator Groene filed the following amendment to LB18:
 AM299

1 1. On page 2, lines 19 through 26, strike the new matter and
 2 reinstate the stricken matter; and after line 30 insert the following new
 3 subsection:
 4 "(4)(a) On and after July 1, 2016, every public and private school
 5 shall provide each student entering the seventh grade and each student
 6 entering the junior year of high school and the student's parent or legal
 7 guardian with information about meningococcal disease and its vaccine.
 8 Such information shall include:
 9 (i) The causes and symptoms of meningococcal disease, how the
 10 disease is spread, and the places where parents and guardians may obtain
 11 additional information; and
 12 (ii) Current recommendations from the United States Centers for
 13 Disease Control and Prevention regarding the receipt of vaccinations for
 14 meningococcal disease and where the vaccination may be received.
 15 (b) This subsection shall not be construed to require the Department
 16 of Health and Human Services or any public or private school to provide
 17 meningococcal vaccination to students.
 18 (c) The Department of Health and Human Services shall prepare the
 19 informational materials required in this subsection."

Senator Cook filed the following amendment to LB10:
 AM344

1 1. On page 2, line 13, strike "formulate and promulgate a state
 2 platform," and show as stricken.

Senator Schumacher filed the following amendment to LB118:
AM343

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 28-1429.03, Revised Statutes Cumulative
4 Supplement, 2014, is amended to read:

5 28-1429.03 (1) Except as provided in subsection (2) of this section
6 and section 28-1429.02, it shall be unlawful to sell or distribute
7 cigarettes, cigars, vapor products, alternative nicotine products, or
8 tobacco in any form whatever through a self-service display. Any person
9 violating this section is guilty of a Class III misdemeanor. In addition,
10 upon conviction for a second or subsequent offense within a twelve-month
11 period, the court shall order a six-month suspension of the license
12 issued under section 28-1421.

13 (2) Cigarettes, cigars, vapor products, alternative nicotine
14 products, or tobacco in any form whatever may be sold or distributed in a
15 self-service display that is located in a tobacco specialty store or
16 cigar ~~shop bar~~ as defined in section 53-103.08.

17 Sec. 2. Section 53-101, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 53-101 Sections 53-101 to 53-1,122 and sections 5 and 6 of this act
20 shall be known and may be cited as the Nebraska Liquor Control Act.

21 Sec. 3. Section 53-103.08, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 53-103.08 Cigar ~~shop bar~~ means an establishment operated by a holder
24 of a Class C liquor license which:

25 (1) Does not sell food;

26 (2) In addition to selling alcohol, annually receives ten percent or
27 more of its gross revenue from the sale of cigars, ~~and~~ other tobacco
1 products, and tobacco-related products, except from the sale of
2 cigarettes as defined in section 69-2702. A cigar ~~shop bar~~ shall not
3 discount alcohol if sold in combination with cigars or other tobacco
4 products and tobacco-related products;

5 (3) Has a walk-in humidor on the premises; and

6 (4) Does not permit the smoking of cigarettes.

7 Sec. 4. Section 53-131, Revised Statutes Cumulative Supplement,
8 2014, is amended to read:

9 53-131 (1) Any person desiring to obtain a new license to sell
10 alcoholic liquor at retail, a craft brewery license, or a microdistillery
11 license shall file with the commission:

12 (a) An application in triplicate original upon forms prescribed by
13 the commission ~~prescribes~~, including the information required by
14 subsection (3) of this section for an application to operate a cigar ~~shop~~
15 ~~bar~~;

16 (b) The license fee if under sections 53-124 and 53-124.01 such fee
17 is payable to the commission, which fee shall be returned to the
18 applicant if the application is denied; and

19 (c) The nonrefundable application fee in the sum of four hundred
20 dollars, except that the nonrefundable application fee for an application

21 for a cigar shop bar shall be one thousand dollars.

22 (2) The commission shall notify the clerk of the city or village in
23 which such license is sought or, if the license sought is not sought
24 within a city or village, the county clerk of the county in which such
25 license is sought, of the receipt of the application and shall include
26 one copy of the application with the notice. No such license shall be
27 issued or denied by the commission until the expiration of the time
28 allowed for the receipt of a recommendation of denial or an objection
29 requiring a hearing under subdivision (1)(a) or (b) of section 53-133.
30 During the period of forty-five days after the date of receipt by mail or
31 electronic delivery of such application from the commission, the local
1 governing body of such city, village, or county may make and submit to
2 the commission recommendations relative to the granting or refusal to
3 grant such license to the applicant.

4 (3) For an application to operate a cigar shop bar, the application
5 shall include proof of the cigar shop's bar's annual gross revenue as
6 requested by the commission and such other information as requested by
7 the commission to establish the intent to operate as a cigar shop bar.
8 The commission may adopt and promulgate rules and regulations to regulate
9 cigar shops. The rules and regulations existing on August 1, 2014,
10 applicable to cigar bars shall apply to cigar shops until amended or
11 repealed by the commission bars.

12 (4) For renewal of a license under this section, a licensee shall
13 file with the commission an application, the license fee as provided in
14 subdivision (1)(b) of this section, and a renewal fee of forty-five
15 dollars.

16 Sec. 5. (1) The Legislature finds that allowing smoking in cigar
17 shops as a limited exception to the Nebraska Clean Indoor Air Act does
18 not interfere with the original intent that the general public and
19 employees not be unwillingly subjected to second-hand smoke. This
20 exception poses a de minimis restriction on the public and employees
21 given the limited number of cigar shops compared to other businesses that
22 sell alcohol, cigars, and pipe tobacco, and any member of the public
23 should reasonably expect that there would be second-hand smoke in a cigar
24 shop given the nature of the business and could choose to avoid such
25 exposure.

26 (2) The Legislature finds that (a) cigars and pipe tobacco have
27 different characteristics than other forms of tobacco such as cigarettes,
28 (b) cigars are customarily paired with various spirits such as cognac,
29 single malt whisky, bourbon, rum, rye, port, and others, and (c) unlike
30 cigarette smokers, cigar and pipe smokers may take an hour or longer to
31 enjoy a cigar or pipe while cigarettes simply serve as a mechanism for
1 delivering nicotine. Cigars paired with selected liquor creates a synergy
2 unique to the particular pairing similar to wine paired with particular
3 foods. Cigars are a pure, natural product wrapped in a tobacco leaf that
4 is typically not inhaled in order to enjoy the taste of the smoke, unlike
5 cigarettes that tend to be processed with additives and wrapped in paper
6 and are inhaled. Cigars have a different taste and smell than cigarettes
7 due to the fermentation process cigars go through during production.

8 Cigars tend to cost considerably more than cigarettes, and their quality
9 and characteristics vary depending on the type of tobacco plant, the
10 geography and climate where the tobacco was grown, and the overall
11 quality of the manufacturing process. Not only does the customized
12 blending of the tobacco influence the smoking experience, so does the
13 freshness of the cigars, which is dependent on how the cigars were stored
14 and displayed. These variables are similar to fine wines, which can also
15 be very expensive to purchase. It is all of these variables that warrant
16 a customer wanting to sample the product before making such a substantial
17 purchase.

18 (3) The Legislature finds that exposure to second-hand smoke is
19 inherent in the selling and sampling of cigars and pipe tobacco and that
20 this exposure is inextricably connected to the nature of selling this
21 legal product, similar to other inherent hazards in other professions and
22 employment.

23 (4) It is the intent of the Legislature to allow cigar and pipe
24 smoking in cigar shops that meet specific statutory criteria not
25 inconsistent with the fundamental nature of the business. This exception
26 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance
27 with the intent of the act to protect public places and places of
28 employment.

29 Sec. 6. (1) The holder of a cigar shop license shall not allow a
30 person under twenty-one years of age to smoke or purchase any product in
31 the cigar shop.

1 (2) The licensee shall post a sign on all entrances to the cigar
2 shop, on the outside of each door, in a conspicuous location slightly
3 above or next to the door, with the following statement: SMOKING OF
4 CIGARS AND PIPES IS ALLOWED INSIDE THIS BUSINESS. SMOKING OF CIGARETTES
5 IS NOT ALLOWED.

6 (3) Beginning November 1, 2015, the licensee shall provide to the
7 commission a copy of a waiver signed prior to employment by each employee
8 on a form prescribed by the commission. The waiver shall expressly notify
9 the employee that he or she will be exposed to second-hand smoke, and the
10 employee shall acknowledge that he or she understands the risks of
11 exposure to second-hand smoke.

12 Sec. 7. Section 53-1,120.01, Reissue Revised Statutes of Nebraska,
13 is amended to read:

14 53-1,120.01 No county resolution or city ordinance that prohibits
15 smoking in indoor areas shall apply to cigar ~~shops~~ ~~bars~~.

16 Sec. 8. Section 71-5716, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 71-5716 Sections 71-5716 to 71-5734 and section 11 of this act shall
19 be known and may be cited as the Nebraska Clean Indoor Air Act.

20 Sec. 9. Section 71-5717, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 71-5717 The purpose of the Nebraska Clean Indoor Air Act is to
23 protect the public health and welfare by prohibiting smoking in public
24 places and places of employment with limited exceptions for guestrooms
25 and suites, research, tobacco retail outlets, and cigar shops. The

26 limited exceptions permit smoking in public places where the public would
27 reasonably expect to find persons smoking, including guestrooms and
28 suites which are subject to expectations of privacy like private
29 residences, institutions engaged in research related to smoking, and
30 tobacco retail outlets and cigar shops which provide the public legal
31 retail outlets to sample, use, and purchase tobacco products and products
1 related to smoking. The act shall not be construed to prohibit or
2 otherwise restrict smoking in outdoor areas. The act shall not be
3 construed to permit smoking where it is prohibited or otherwise
4 restricted by other applicable law, ordinance, or resolution. The act
5 shall be liberally construed to further its purpose.

6 Sec. 10. Section 71-5730, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 71-5730 (1) The following indoor areas are exempt from section
9 71-5729:

10 (a) (1) Guestrooms and suites that are rented to guests and that are
11 designated as smoking rooms, except that not more than twenty percent of
12 rooms rented to guests in an establishment may be designated as smoking
13 rooms. All smoking rooms on the same floor shall be contiguous, and smoke
14 from such rooms shall not infiltrate into areas where smoking is
15 prohibited under the Nebraska Clean Indoor Air Act;

16 (b) (2) Indoor areas used in connection with a research study on the
17 health effects of smoking conducted in a scientific or analytical
18 laboratory under state or federal law or at a college or university
19 approved by the Coordinating Commission for Postsecondary Education;

20 (c) (3) Tobacco retail outlets; and

21 (d) (4) Cigar shops ~~bars~~ as defined in section 53-103.08.

22 (2)(a) The Legislature finds that allowing smoking in tobacco retail
23 outlets as a limited exception to the Nebraska Clean Indoor Air Act does
24 not interfere with the original intent that the general public and
25 employees not be unwillingly subjected to second-hand smoke since the
26 general public does not frequent tobacco retail outlets and should
27 reasonably expect that there would be second-hand smoke in tobacco retail
28 outlets and could choose to avoid such exposure. The products that
29 tobacco retail outlets sell are legal for customers who meet the age
30 requirement. Customers should be able to try them within the tobacco
31 retail outlet, especially given the way that tobacco customization may
1 occur in how tobacco is blended and cigars are produced. The Legislature
2 finds that exposure to second-hand smoke is inherent in the selling and
3 sampling of cigars and pipe tobacco and that this exposure is
4 inextricably connected to the nature of selling this legal product,
5 similar to other inherent hazards in other professions and employment.

6 (b) It is the intent of the Legislature to allow cigar and pipe
7 smoking in tobacco retail outlets that meet specific statutory criteria
8 not inconsistent with the fundamental nature of the business. This
9 exception to the Nebraska Clean Indoor Air Act is narrowly tailored in
10 accordance with the intent of the act to protect public places and places
11 of employment.

12 (3)(a) The Legislature finds that allowing smoking in cigar shops as

13 a limited exception to the Nebraska Clean Indoor Air Act does not
14 interfere with the original intent that the general public and employees
15 not be unwillingly subjected to second-hand smoke. This exception poses a
16 de minimis restriction on the public and employees given the limited
17 number of cigar shops compared to other businesses that sell alcohol,
18 cigars, and pipe tobacco, and any member of the public should reasonably
19 expect that there would be second-hand smoke in a cigar shop given the
20 nature of the business and could choose to avoid such exposure.

21 (b) The Legislature finds that (i) cigars and pipe tobacco have
22 different characteristics than other forms of tobacco such as cigarettes,
23 (ii) cigars are customarily paired with various spirits such as cognac,
24 single malt whisky, bourbon, rum, rye, port, and others, and (iii) unlike
25 cigarette smokers, cigar and pipe smokers may take an hour or longer to
26 enjoy a cigar or pipe while cigarettes simply serve as a mechanism for
27 delivering nicotine. Cigars paired with selected liquor creates a synergy
28 unique to the particular pairing similar to wine paired with particular
29 foods. Cigars are a pure, natural product wrapped in a tobacco leaf that
30 is typically not inhaled in order to enjoy the taste of the smoke, unlike
31 cigarettes that tend to be processed with additives and wrapped in paper
1 and are inhaled. Cigars have a different taste and smell than cigarettes
2 due to the fermentation process cigars go through during production.
3 Cigars tend to cost considerably more than cigarettes, and their quality
4 and characteristics vary depending on the type of tobacco plant, the
5 geography and climate where the tobacco was grown, and the overall
6 quality of the manufacturing process. Not only does the customized
7 blending of the tobacco influence the smoking experience, so does the
8 freshness of the cigars, which is dependent on how the cigars were stored
9 and displayed. These variables are similar to fine wines, which can also
10 be very expensive to purchase. It is all of these variables that warrant
11 a customer wanting to sample the product before making such a substantial
12 purchase.

13 (c) The Legislature finds that exposure to second-hand smoke is
14 inherent in the selling and sampling of cigars and pipe tobacco and that
15 this exposure is inextricably connected to the nature of selling this
16 legal product, similar to other inherent hazards in other professions and
17 employment.

18 (d) It is the intent of the Legislature to allow cigar and pipe
19 smoking in cigar shops that meet specific statutory criteria not
20 inconsistent with the fundamental nature of the business. This exception
21 to the Nebraska Clean Indoor Air Act is narrowly tailored in accordance
22 with the intent of the act to protect public places and places of
23 employment.

24 Sec. 11. (1) The owner of a tobacco retail outlet shall post a sign
25 on all entrances to the tobacco retail outlet, on the outside of each
26 door, in a conspicuous location slightly above or next to the door, with
27 the following statement: SMOKING OF CIGARS AND PIPES IS ALLOWED INSIDE
28 THIS BUSINESS. SMOKING OF CIGARETTES IS NOT ALLOWED.

29 (2) Beginning November 1, 2015, the owner shall provide to the
30 Division of Public Health a copy of a waiver signed prior to employment

31 by each employee on a form prescribed by the division. The waiver shall
 1 expressly notify the employee that he or she will be exposed to second-
 2 hand smoke, and the employee shall acknowledge that he or she understands
 3 the risks of exposure to second-hand smoke.

4 (3) The owner shall not allow cigarette smoking in the tobacco
 5 retail outlet.

6 Sec. 12. If any section in this act or any part of any section is
 7 declared invalid or unconstitutional, the declaration shall not affect
 8 the validity or constitutionality of the remaining portions.

9 Sec. 13. Original sections 53-103.08, 53-1,120.01, 71-5716, and
 10 71-5717, Reissue Revised Statutes of Nebraska, and sections 28-1429.03,
 11 53-101, 53-131, and 71-5730, Revised Statutes Cumulative Supplement,
 12 2014, are repealed.

13 Sec. 14. Since an emergency exists, this act takes effect when
 14 passed and approved according to law.

Senator Riepe filed the following amendment to LB18:
 AM352

1 1. On page 2, line 25, after the period insert "A student may be
 2 exempted from complying with this subsection if he or she presents to the
 3 administration of the school in which he or she is enrolled written
 4 permission signed by either a physician licensed and practicing under the
 5 Medicine and Surgery Practice Act or a nurse practitioner licensed and
 6 practicing under the Nurse Practitioner Practice Act.".

UNANIMOUS CONSENT - Add Cointroducer(s)

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

Davis - LB641
 Riepe - LB357
 Garrett - LB268
 Harr, B. - LB329

VISITORS

Visitor to the Chamber was Karen Humphrey from Kearney.

The Doctor of the Day was Dr. Gilbert Head from Omaha.

ADJOURNMENT

At 12:00 p.m., on a motion by Senator Seiler, the Legislature adjourned until 9:00 a.m., Thursday, February 12, 2015.

Patrick J. O'Donnell
 Clerk of the Legislature