

**FIFTY-THIRD DAY - APRIL 2, 2024**

**LEGISLATIVE JOURNAL**

**ONE HUNDRED EIGHTH LEGISLATURE  
SECOND SESSION**

**FIFTY-THIRD DAY**

Legislative Chamber, Lincoln, Nebraska  
Tuesday, April 2, 2024

**PRAYER**

The prayer was offered by Reverend Richard Snow, President of Nebraska District Lutheran Church Missouri Synod, Seward.

**PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was offered by Senator Sanders.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Kelly presiding.

The roll was called and all members were present except Senators Aguilar, Bostar, Conrad, DeBoer, Dorn, Dover, Hughes, Hunt, Ibach, Walz, and Wayne who were excused until they arrive.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the fifty-second day was approved.

**MESSAGE(S) FROM THE GOVERNOR**

April 2, 2024

Brandon Metzler  
Clerk of the Legislature  
State Capitol, Room 2018  
Lincoln, NE 68509

Dear Clerk Metzler:

Engrossed Legislative Bills 1412e and 1413e were received in my office on March 26, 2024, and signed on April 1, 2024.

These bills were delivered to the Secretary of State on April 2, 2024.

Sincerely,  
(Signed) Jim Pillen  
Governor

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 453.** Introduced by DeKay, 40.

WHEREAS, the 2024 Nebraska School Activities Association State Speech Championships were held from March 20 through March 22 in Kearney, Nebraska; and

WHEREAS, the Hartington-Newcastle High School speech team competed for the Class C-2 State Speech Championship; and

WHEREAS, the Hartington-Newcastle High School speech team earned a first place finish with a score of one hundred and seventy-six points, prevailing over Twin River by twenty points; and

WHEREAS, the Hartington-Newcastle High School speech team placed first in three categories at the state speech championship; and

WHEREAS, Hartington-Newcastle High School has won eight state speech championships, four since becoming Hartington-Newcastle High School and four as Hartington High School; and

WHEREAS, such a team achievement is made possible through the support of teachers, administrators, parents, and the community; and

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

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

1. That the Legislature congratulates the Hartington-Newcastle High School speech team on winning the 2024 Nebraska School Activities Association Class C-2 State Speech Championship.
2. That a copy of this resolution be sent to the Hartington-Newcastle High School speech team.

Laid over.

**LEGISLATIVE RESOLUTION 454.** Introduced by DeKay, 40.

WHEREAS, the 2024 Nebraska School Activities Association State Speech Championships were held from March 20 through March 22 in Kearney, Nebraska; and

WHEREAS, the Plainview High School speech team competed for the Class D-1 State Speech Championship; and

WHEREAS, the Plainview High School speech team earned a first place finish with a score of one hundred and seventy-two points, prevailing over Wausa by twenty-eight points; and

WHEREAS, the Plainview High School speech team placed first in four categories at the state speech championship; and

WHEREAS, this is the third state speech championship win for Plainview High School; and

WHEREAS, such a team achievement is made possible through the support of teachers, administrators, parents, and the community; and

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

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

1. That the Legislature congratulates the Plainview High School speech team on winning the 2024 Nebraska School Activities Association Class D-1 State Speech Championship.

2. That a copy of this resolution be sent to the Plainview High School speech team.

Laid over.

**LEGISLATIVE RESOLUTION 455.** Introduced by DeKay, 40.

WHEREAS, the 2024 Nebraska School Activities Association State Speech Championships were held from March 20 through March 22 in Kearney, Nebraska; and

WHEREAS, the Chambers High School speech team competed for the Class D-2 State Speech Championship; and

WHEREAS, the Chambers High School speech team earned a first place finish with a score of one hundred and forty points, prevailing over Stuart by ten points; and

WHEREAS, the Chambers High School speech team placed first in three categories at the state speech championship: Oral Interpretation of Poetry, Oral Interpretation of Serious Prose, and Oral Interpretation; and

WHEREAS, two members of the Chambers High School speech team earned three state champion honors: Rose Woepfel in Oral Interpretation and Duet Acting and Claire Woepfel in Oral Interpretation of Serious Prose and Duet Acting; and

WHEREAS, this is the first state speech championship win for Chambers High School; and

WHEREAS, such a team achievement is made possible through the support of teachers, administrators, parents, and the community; and

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

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

1. That the Legislature congratulates the Chambers High School speech team on winning the 2024 Nebraska School Activities Association Class D-2 State Speech Championship.

2. That a copy of this resolution be sent to the Chambers High School speech team, Rose Woepfel, and Claire Woepfel.

Laid over.

**LEGISLATIVE RESOLUTION 456.** Introduced by DeKay, 40.

WHEREAS, watermelon is a flowering plant species of the Cucurbitaceae family and the name of its edible fruit; and

WHEREAS, watermelon was a delicacy for Nebraska settlers and a popular food among the Nebraska pioneers; and

WHEREAS, Nebraska is one of forty-four states where watermelon is grown commercially; and

WHEREAS, watermelon is consumed and enjoyed by countless Nebraskans in the summer and fall of each year; and

WHEREAS, several Nebraska communities hold annual festivals to celebrate the agricultural significance of watermelon; and

WHEREAS, the agricultural and historical significance of watermelon in Nebraska deserves recognition.

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

1. That the Legislature recognizes August 11, 2024, as Watermelon Day in Nebraska.

2. That a copy of this resolution be sent to the third-grade class of Mr. Adam Simington of Ponca Public Schools in Ponca, Nebraska.

Laid over.

**LEGISLATIVE RESOLUTION 457.** Introduced by Meyer, 41; Lowe, 37.

WHEREAS, the 2024 Nebraska School Activities Association Boys Basketball State Championships games were held from March 6 through March 9, 2024; and

WHEREAS, the Amherst High School Broncos boys basketball team were seeking their first Boys State Basketball Championship in school history after a fourth place finish in 2022 and a runner-up ending in 2023; and

WHEREAS, the top-overall seed Broncos defeated the Lincoln Lutheran High School Warriors by a score of 59-54 after a back and forth game ending in overtime; and

WHEREAS, the Broncos were down by two points at the end of the fourth quarter, secured a 41-41 tie, and won after sinking an early three-pointer in overtime; and

WHEREAS, the Broncos' Coach Eric Rippen thought the team played well and competed hard; and

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

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

1. That the Legislature congratulates the Amherst High School Broncos boys basketball team on winning the Class C-2 Boys State Basketball Championship.

2. That copies of this resolution be sent to Coach Eric Rippen and Amherst High School.

Laid over.

### RESOLUTION(S)

Pursuant to Rule 4, Sec. 5(b), LRs 343 and 350 were adopted.

### PRESIDENT SIGNED

While the Legislature was in session and capable of transacting business, the President signed the following: LRs 343 and 350.

### GENERAL FILE

**LEGISLATIVE BILL 388.** Senator M. Cavanaugh renewed [MO550](#), found on page 958, First Session, 2023, and considered on page 1331, to indefinitely postpone pursuant to Rule 6 Sec. 3(f).

Pending.

### COMMITTEE REPORT(S)

Enrollment and Review

**LEGISLATIVE BILL 1108.** Placed on Final Reading.

**LEGISLATIVE BILL 1120.** Placed on Final Reading.

**LEGISLATIVE BILL 1169.** Placed on Final Reading.

**LEGISLATIVE BILL 1355.** Placed on Final Reading.

#### [ST56](#)

The following changes, required to be reported for publication in the Journal, have been made:

1. In lieu of the Vargas floor amendment, FA312, in the Vargas amendment, AM3194, on page 4, line 29, the third "or" has been struck; and in line 31 "and including" has been struck and ", (d) support" inserted.

2. On page 1, the matter beginning with "the" in line 1 through line 6 and all amendments thereto have been struck and "public health and welfare; to amend section 81-5,153, Reissue Revised Statutes of Nebraska, and sections 38-1201, 38-1225, 71-2485, 71-2486, 71-2487, 71-2488, 71-2489, 71-2490, and 81-3119, Revised Statutes Cumulative Supplement, 2022; to provide for release of certain patient data by an emergency medical service; to restate the purpose and findings of the Opioid Prevention and Treatment Act; to define terms; to create, rename, and provide for additional uses and distribution of funds; to provide for aid programs; to provide for research, support and training for first responders, and staff to carry out the Overdose Fatality Review Teams Act; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency." inserted.

**LEGISLATIVE BILL 1284.** Placed on Select File with amendment.[ER119](#)

1 1. In the Standing Committee amendments, AM3061:

2 a. On page 8, line 23, strike "Chairperson" and insert

3 "chairperson";

4 b. On page 15, line 22, strike "; and" and insert an underscored

5 period; and

6 c. On page 18, line 13, strike "grapho-phonic" and insert

7 "graphophonic".

8 2. On page 1, strike beginning with "the" in line 1 through line 9

9 and insert "education; to amend section 38-3113, Reissue Revised Statutes

10 of Nebraska, sections 79-8,146, 79-8,147, 79-8,148, 79-8,149, 79-8,150,

11 79-8,151, 79-8,152, 79-2607, 79-3301, and 85-3004, Revised Statutes

12 Cumulative Supplement, 2022, and sections 79-8,114, 85-3103, 85-3105, and

13 85-3112, Revised Statutes Supplement, 2023; to define and redefine terms;

14 to adopt the Special Educators of Tomorrow Act and the Special Education

15 Teacher Forgivable Loan Program Act; to develop a pilot program to make

16 menstrual products available to schools as prescribed; to create a

17 Dyslexia Research Grant Program; to make changes to the Psychology

18 Practice Act and the Nebraska Teacher Recruitment and Retention Act; to

19 terminate loan repayment assistance and provide grants to teachers under

20 the Teach in Nebraska Today Act; to provide powers and duties to the

21 State Department of Education, the State Board of Education, and the

22 Commissioner of Education; to provide for the creation and support of a

23 professional learning system and regional coaches relating to instruction

24 in reading; to require the State Department of Education to establish a

25 statewide computer science and technology education expansion program

26 under the Computer Science and Technology Education Act; to create the

27 Computer Science and Technology Education Fund; to add an additional

1 eligible program of study offered by the University of Nebraska under the

2 Nebraska Career Scholarship Act; to change provisions relating to the

3 Attracting Excellence to Teaching Program and eligible uses for the

4 Excellence in Teaching Cash Fund; to state intent regarding

5 appropriations; to harmonize provisions; to provide operative dates; to

6 repeal the original sections; and to declare an emergency."

**LEGISLATIVE BILL 934.** Placed on Select File with amendment.

[ER114](#) is available in the Bill Room.

**LEGISLATIVE BILL 1023.** Placed on Select File with amendment.[ER116](#)

1 1. Strike the von Gillern amendments, AM2150, as it is included in

2 the Standing Committee amendments, AM3034, on page 21, lines 11 through

3 19.

4 2. On page 1, strike lines 2 through 5 and insert "77-2733 and

5 86-704, Reissue Revised Statutes of Nebraska, section 77-6831, Revised

6 Statutes Cumulative Supplement, 2022, and sections 77-2701, 77-2715.07,

7 77-2716, 77-2717, and 77-2734.03, Revised Statutes Supplement, 2023; to

8 adopt the Relocation Incentive Act; to provide for adjustments to federal

9 adjusted gross income for non residents and for certain businesses for

10 research or experimental expenditures and the cost of certain property;

11 to change provisions relating to the taxation of nonresident income; to

12 provide for additional incentives under the ImagiNE Nebraska Act; to

13 change the occupation tax relating to telecommunications services; to

14 harmonize provisions; to provide operative dates; to provide severability

15 and to repeal the original sections."

**LEGISLATIVE BILL 1370.** Placed on Select File with amendment.[ER117](#)

1 1. On page 1, strike beginning with "public" in line 1 through line  
 2 3 and insert "electricity; to amend sections 70-624.04, 70-637, and  
 3 70-1012, Reissue Revised Statutes of Nebraska, sections 70-1014.02 and  
 4 84-1411, Revised Statutes Cumulative Supplement, 2022, and section  
 5 70-1001.01, Revised Statutes Supplement, 2023; to provide requirements  
 6 relating to the closing or decommissioning of a dispatchable electric  
 7 generation facility; to change provisions relating to directors of public  
 8 power and irrigation districts; to change provisions relating to  
 9 contracts entered into by public power districts; to require certain  
 10 actions by a developer, owner, or operator of a wind energy conversion  
 11 system; to provide certain requirements relating to the construction or  
 12 acquisition of an electric generation facility or transmission lines; to  
 13 exempt certain entities from certain meeting requirements; to define  
 14 terms; to harmonize provisions; to provide operative dates; to repeal the  
 15 original sections; to outright repeal sections 70-1029, 70-1030, 70-1031,  
 16 and 70-1033, Reissue Revised Statutes of Nebraska, and section 70-1032,  
 17 Revised Statutes Cumulative Supplement, 2022; and to declare an  
 18 emergency."

**LEGISLATIVE BILL 1017.** Placed on Select File.

**LEGISLATIVE BILL 253.** Placed on Select File with amendment.

[ER113](#)

1 1. Strike beginning with "the" in line 1 through line 5 and insert  
 2 "criminal justice; to define terms; to establish a veteran justice  
 3 program; to provide for verification requirements and a report as  
 4 prescribed; and to provide an operative date."

(Signed) Beau Ballard, Chairperson

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

Senator Slama filed the following amendment to [LB388](#):

[AM3248](#)

(Amendments to Standing Committee amendments, AM3203)

1 1. Strike sections 8 to 12.  
 2 2. Renumber the remaining sections and correct internal references  
 3 accordingly.

Senator Sanders filed the following amendment to [LB71](#):

[AM3284](#)

(Amendments to Standing Committee amendments, AM833)

1 1. On page 1, line 23; page 2, line 9; and page 3, line 21, strike  
 2 "2024" and insert "2025".  
 3 2. On page 3, line 10, strike "2023" and insert "2024".

Senator Jacobson filed the following amendment to [LB686](#):

[AM3229](#) is available in the Bill Room.

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

Senator Murman filed the following motion to [LB1092](#):

[MO1317](#)

Recommit to the Education Committee.

Senator Murman filed the following motion to [LB1092](#):  
[MO1318](#)  
Indefinitely postpone.

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 458.** Introduced by Walz, 15.

WHEREAS, the Manufacturing Institute's 2024 Women MAKE Awards will be celebrated on April 18, 2024, to honor women who are leaders in modern manufacturing; and

WHEREAS, Vivian Sanchez from Lincoln Premium Poultry will be recognized as an honoree at the 2024 Women MAKE Awards, helping to inspire more women to consider a career in manufacturing; and

WHEREAS, celebrating women in science, technology, engineering and production careers is an effective way to change the perception of manufacturing careers and to showcase the rewarding and lucrative manufacturing jobs in the industry; and

WHEREAS, women represent only twenty-nine percent of the modern manufacturing workforce and are therefore an untapped talent resource for modern manufacturers; and

WHEREAS, Vivian Sanchez's leadership and dedication to her industry and community has earned her well-deserved respect and congratulations.

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

1. That the Legislature congratulates Vivian Sanchez on receiving the 2024 Women MAKE Award on April 18, 2024.
2. That a copy of this resolution be sent to Vivian Sanchez and Lincoln Premium Poultry.

Laid over.

**LEGISLATIVE RESOLUTION 459.** Introduced by Ibach, 44.

WHEREAS, the 2024 Nebraska School Activities Association Girls Basketball Championships were held from February 28 through March 2 in Lincoln, Nebraska; and

WHEREAS, the Overton Public School Eagles girls basketball team competed for the Class D-2 Girls State Basketball Championship; and

WHEREAS, the Eagles prevailed over the Wynot Blue Devils by a score of 44-40 to claim the Class D-2 Girls State Basketball Championship; and

WHEREAS, the Eagles finished the season with twenty-eight wins and one loss; and

WHEREAS, such a team achievement is made possible through the support of teachers, administrators, parents, and the community; and

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

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

1. That the Legislature congratulates the Overton Public School Eagles girls basketball team on winning the 2024 Nebraska School Activities Association Class D-2 Girls State Basketball Championship.

2. That copies of this resolution be sent to the Overton Public School Eagles girls basketball team and Coach Janessa Bergman.

Laid over.

**LEGISLATIVE RESOLUTION 460.** Introduced by Brewer, 43; Bosn, 25; Bostelman, 23; Brandt, 32; DeKay, 40; Erdman, 47; Holderoft, 36; Ibach, 44; Lowe, 37; Meyer, 41; Murman, 38.

WHEREAS, the National FFA Organization (FFA) offers students a wealth of opportunities through academic instruction and intracurricular activities; and

WHEREAS, FFA encourages personal growth and development by providing opportunities for students to set goals, work towards achieving them, and receive recognition for their accomplishments; and

WHEREAS, FFA emphasizes experiential learning, allowing students to engage in hands-on activities; and

WHEREAS, FFA offers a range of scholarships to its members to help alleviate the financial burden of pursuing higher education; and

WHEREAS, FFA encourages students to engage with their local communities through service projects, outreach initiatives, and educational programs; and

WHEREAS, FFA offers students the chance to connect with peers who share similar interests and aspirations, as well as with professionals and mentors within the agricultural industry; and

WHEREAS, the Nebraska Agriculture Academy founded by Breann Zimmer seeks to offer FFA programs to homeschool students across Nebraska; and

WHEREAS, the Nebraska Agriculture Academy has student participants from communities from all across Nebraska; and

WHEREAS, Miss Breann Zimmer and her work to meet the FFA needs of homeschool students in Nebraska deserves recognition.

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

1. That the Legislature congratulates the Nebraska Agriculture Academy and its student participants for their work in agriculture education.

2. That a copy of this resolution be sent to the Nebraska Agriculture Academy.

Laid over.

**VISITOR(S)**

Visitors to the Chamber were students and teachers from Conestoga Elementary, Murray; Fr. Paul Colling, Kearney; Fr. Tom Ludwig, Missouri; members of Leadership Bellevue; students from Fire Ridge Elementary, Elkhorn.

**RECESS**

At 12:01 p.m., on a motion by Senator Bosn, the Legislature recessed until 1:30 p.m.

**AFTER RECESS**

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

**ROLL CALL**

The roll was called and all members were present except Senator Raybould who was excused; and Senators Armendariz, Dover, Hunt, and Walz who were excused until they arrive.

**COMMITTEE REPORT(S)**

## Agriculture

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

Britt D. Anderson - Beginning Farmer Board  
Bradley D. Lubben - Beginning Farmer Board  
Lisa A. Lunz - Beginning Farmer Board  
Wade E. Thornburg - Beginning Farmer Board  
John E. Walvoord - Beginning Farmer Board

Aye: 7. Brewer, Halloran, Holdcroft, Hughes, Ibach, Raybould, Riepe. Nay: 0. Absent: 1. Hansen. Present and not voting: 0.

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

Christopher J. Gentry - Nebraska Brand Committee

Aye: 7. Brewer, Halloran, Holdcroft, Hughes, Ibach, Raybould, Riepe. Nay: 0. Absent: 1. Hansen. Present and not voting: 0.

(Signed) Steve Halloran, Chairperson

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

Senator M. Cavanaugh filed the following amendment to LB388:

[FA327](#)

Strike Section 1.

Senator M. Cavanaugh filed the following amendment to LB388:

[FA328](#)

Strike Section 2.

Senator Lowe filed the following amendment to LB388:

[AM3298](#)

(Amendments to Standing Committee amendments, AM3203)

1 1. On page 33, line 11, strike the comma and insert "and"; strike  
2 beginning with the comma in line 12 through "77-3005" in line 14; in line  
3 20 strike the comma and insert "and"; and strike beginning with the comma  
4 in line 21 through "77-3005" in line 24.

**RESOLUTION(S)**

**LEGISLATIVE RESOLUTION 461.** Introduced by Hughes, 24; Holdcroft, 36; Ibach, 44; Kauth, 31; Riepe, 12.

WHEREAS, Jean Kolterman is a seventy-five-year member of the General Federation of Women's Clubs (GFWC); and

WHEREAS, Jean has served locally as President of both the GFWC Seward Junior Women's Club and the GFWC Seward Women's Club; and

WHEREAS, Jean served as the State President of the Nebraska Federation of Women's Clubs, Inc. and as the District IV President; and

WHEREAS, Jean served as the GFWC Mississippi Valley Regional President; and

WHEREAS, Jean currently serves as the editor and chairperson for the Nebraska Federation of Women's Clubs Anthology featuring the writing of Nebraska students and members of the women's club; and

WHEREAS, Jean chairs and hosts an annual GFWC "Girls Only" Writing Workshop for girls in high school; and

WHEREAS, Jean chairs the annual GFWC "Girls Only" High School Quiz Bowl and also a GFWC High School "End of Year" Quiz Bowl; and

WHEREAS, Jean serves as chairperson of the GFWC Elementary School Postcard Art Contest promoting the Nebraska State Song "Beautiful Nebraska" for kindergarten through 4th Grade students; and

WHEREAS, Jean has championed the Nebraska Federation of Women's Clubs involvement with the Dr. Susan La Flesche Picotte's Memorial Hospital Restoration at Walthill as Dr. Susan was a leader in the Nebraska Federation of Women's Clubs at the turn of the twentieth century; and

WHEREAS, Jean has long been an involved Seward community leader serving Seward as an elected official, a civic volunteer, loyal and involved church member, city beautification voice, and loving family mentor.

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

1. That the Legislature congratulates Jean Kolterman for her seventy-five years of service to the GFWC Seward Women's Club.
2. That a copy of this resolution be sent to Jean Kolterman and the GFWC Seward Women's Club.

Laid over.

### GENERAL FILE

**LEGISLATIVE BILL 388.** Senator M. Cavanaugh renewed [MO550](#), found on page 958, First Session, 2023, and considered on page 1331 and in this day's Journal, to indefinitely postpone pursuant to Rule 6 Sec. 3(f).

Pending.

### COMMITTEE REPORT(S)

Enrollment and Review

**LEGISLATIVE BILL 484.** Placed on Final Reading.  
**LEGISLATIVE BILL 484A.** Placed on Final Reading.  
**LEGISLATIVE BILL 880.** Placed on Final Reading.  
**LEGISLATIVE BILL 926.** Placed on Final Reading.

**LEGISLATIVE BILL 932.** Placed on Final Reading.

#### [ST59](#)

The following changes, required to be reported for publication in the Journal, have been made:

1. In the Blood amendment, AM3149, on page 42, the matter beginning with "Sections" in line 23 through "session" in line 25 has been struck and "The other sections of this act become operative on their effective date" inserted.
2. On page 1, the matter beginning with "the" in line 1 through line 4 and all amendments thereto have been struck and "public health and welfare; to amend section 38-130, Reissue Revised Statutes of Nebraska, sections 28-327, 38-2101, 38-2116, and 38-2139, Revised Statutes Cumulative Supplement, 2022, and section 38-131, Revised Statutes Supplement, 2023; to adopt the Social Worker Licensure Compact; to change provisions of the Uniform Credentialing Act and the Mental Health Practice Act; to harmonize provisions; to provide operative dates; and to repeal the original sections." inserted.

**LEGISLATIVE BILL 1069.** Placed on Final Reading.  
**LEGISLATIVE BILL 1095.** Placed on Final Reading.  
**LEGISLATIVE BILL 1167.** Placed on Final Reading.  
**LEGISLATIVE BILL 1270.** Placed on Final Reading.

**LEGISLATIVE BILL 1344.** Placed on Final Reading.

#### [ST58](#)

The following changes, required to be reported for publication in the Journal, have been made:

1. In lieu of the Wayne amendment, FA320, in the Wayne amendment, AM3191, on page 10, lines 2 through 10 have been struck; in line 11 "(e)" has been struck and "(d)" inserted; and in line 14 "(f)" has been struck and "(e)" inserted.

2. On page 1, the matter beginning with "the" in line 1 through line 7 has been struck and "economic development; to amend sections 13-201, 13-203, 13-204, 13-205, 13-206, 13-207, 13-208, and 81-1201.12, Reissue Revised Statutes of Nebraska, sections 77-908, 77-3806, 81-12,108, and 81-12,112, Revised Statutes Cumulative Supplement, 2022, and sections 77-2715.07, 77-2734.03, 77-4403, 77-4404, 77-4405, 81-12,109, and 81-12,110, Revised Statutes Supplement, 2023; to rename and change provisions of the Creating High Impact Economic Futures Act; to change provisions relating to good life districts, innovation hubs, and inland port districts; to require a report to the Legislature; to define and redefine terms; to harmonize provisions; and to repeal the original sections." inserted.

3. On page 3, line 10, the stricken comma has been reinstated.

4. On page 6, the matter beginning with "Original" in line 7 through line 9 has been struck and "Original sections 13-201, 13-203, 13-204, 13-205, 13-206, 13-207, 13-208, and 81-1201.12, Reissue Revised Statutes of Nebraska, sections 77-908, 77-3806, 81-12,108, and 81-12,112, Revised Statutes Cumulative Supplement, 2022, and sections 77-2715.07, 77-2734.03, 77-4403, 77-4404, 77-4405, 81-12,109, and 81-12,110, Revised Statutes Supplement, 2023, are repealed." inserted.

**LEGISLATIVE BILL 164.** Placed on Select File with amendment.

[ER120](#)

1 1. On page 1, strike beginning with "buildings" in line 1 through  
 2 line 4 and insert "law; to amend sections 13-3301, 13-3303, 13-3304,  
 3 13-3310, and 13-3311, Reissue Revised Statutes of Nebraska, sections  
 4 81-12,195, 81-12,196, 81-12,201, 81-12,215, and 84-602, Revised Statutes  
 5 Cumulative Supplement, 2022, sections 72-819, 72-1001, 81-1239, 81-1243,  
 6 81-12,203, 81-12,241, 81-12,241.01, 81-12,243, and 81-12,244, Revised  
 7 Statutes Supplement, 2023, and section 31, Legislative Bill 1413, One  
 8 Hundred Eighth Legislature, Second Session, 2024; to change provisions  
 9 relating to the Economic Recovery Act, the Municipal Inland Port  
 10 Authority Act, and the Nebraska Rural Projects Act; to provide for a  
 11 museum at Fort Robinson State Park; to provide for and change provisions  
 12 relating to transfers and use of funds, investment earnings, and  
 13 interest; to provide a duty for the State Treasurer; to eliminate  
 14 obsolete provisions; to adopt the Child Care Capacity Building and  
 15 Workforce Act; to provide operative dates; to repeal the original  
 16 sections; and to declare an emergency.".

**LEGISLATIVE BILL 164A.** Placed on Select File.

**LEGISLATIVE BILL 1092.** Placed on Select File with amendment.

[ER118](#)

1 1. Strike the original sections and all amendments thereto and  
 2 insert the following new sections:  
 3 Section 1. Sections 1 to 5 of this act shall be known and may be  
 4 cited as the Online Age Verification Liability Act.  
 5 Sec. 2. For purposes of the Online Age Verification Liability Act:  
 6 (1) Commercial entity includes a corporation, limited liability  
 7 company, partnership, limited partnership, sole proprietorship, or other  
 8 legally recognized entity;  
 9 (2) Digitized identification card means a data file that contains  
 10 all of the data elements visible on the face and back of a government-  
 11 issued operator's license or identification card and displays the current  
 12 status of the license or card;  
 13 (3) Distribute means to issue, sell, give, provide, deliver,  
 14 transfer, transmute, circulate, or disseminate by any means;  
 15 (4) Internet utility means an Internet service provider, a search  
 16 engine, or a cloud service provider or an affiliate or subsidiary of any  
 17 such provider or search engine;  
 18 (5) Material harmful to minors means any material to which all of

19 the following apply:

20 (a) The average person, applying contemporary community standards,  
21 would find, taking the material as a whole and with respect to its  
22 consumption by minors, that such material is designed to appeal to or  
23 pander to the prurient interest;

24 (b) The material is patently offensive to prevailing standards in  
25 the adult community as a whole with respect to its consumption by minors;  
26 and

27 (c) The material taken as a whole lacks serious literary, artistic,  
1 political, or scientific value for minors;

2 (6) Minor means any person under eighteen years of age;

3 (7) News-gathering organization means any of the following:

4 (a) A newspaper, news publication, or news source, printed or on an  
5 online or mobile platform, of current news and public interest, or any  
6 employee of such organization while acting within the scope of employment  
7 for such organization; or

8 (b) A radio broadcast station, television broadcast station, cable  
9 television operator, or wire service operator, or any employee of such  
10 organization while acting within the scope of employment for such  
11 organization;

12 (8) Publish means to communicate or make information available to  
13 another person or entity on a publicly available Internet website;

14 (9) Reasonable age verification method means a process to verify  
15 that the person attempting to access the material is at least eighteen  
16 years of age or older through the use of (i) a digitized identification  
17 card, including a digital copy of a driver's license, (ii) a government-  
18 issued identification, (iii) a financial document or other document that  
19 is a reliable proxy for age, or (iv) any commercially reasonable method  
20 that relies on public or private transactional data to verify the age of  
21 the person attempting to access the material;

22 (10) Substantial portion means an amount which is more than one-  
23 third of the total material on a website; and

24 (11) Transactional data means a sequence of information that  
25 documents an exchange, agreement, or transfer between an individual,  
26 commercial entity, or third-party used for the purpose of satisfying a  
27 request or event and includes records from mortgage, education, and  
28 employment entities.

29 Sec. 3. (1) A commercial entity shall not knowingly and  
30 intentionally publish or distribute material harmful to minors on the  
31 Internet on a website that contains a substantial portion of such  
1 material unless the entity uses a reasonable age verification method to  
2 verify the age of an individual attempting to access the material.

3 (2) A commercial entity or third party that performs an age  
4 verification required by this section shall not retain any identifying  
5 information of the individual after access has been granted to the  
6 material.

7 Sec. 4. (1) A person aggrieved by a violation of section 3 of this  
8 act may bring a civil action against the commercial entity or third party  
9 which engaged in that violation to recover such relief as may be  
10 appropriate.

11 (2) In an action under this section, appropriate relief includes:

12 (a) Such preliminary and other equitable or declaratory relief as  
13 may be appropriate;

14 (b) Damages under subsection (3) of this section; and

15 (c) At the discretion of the court, reasonable attorney's fees and  
16 other litigation costs reasonably incurred.

17 (3)(a) A minor or a parent or guardian of such minor aggrieved by a  
18 violation of subsection (1) of section 3 of this act may recover actual  
19 damages caused by such violation.

20 (b) An individual whose information was retained in violation of

21 subsection (2) of section 3 of this act may recover actual damages caused  
 22 by such violation.  
 23 Sec. 5. (1) The Online Age Verification Liability Act shall not  
 24 apply to any news-gathering organization or any bona fide news or public  
 25 interest broadcast, website video, or report.  
 26 (2) An Internet utility does not violate the Online Age Verification  
 27 Liability Act solely by providing access or connection to or from a  
 28 website or other information or content on the Internet or a facility,  
 29 system, or network not under the Internet utility's control, including  
 30 transmitting, downloading, or storing data or providing access, to the  
 31 extent that such Internet utility is not responsible for the creation of  
 1 the content that constitutes material harmful to minors.

**LEGISLATIVE BILL 937.** Placed on Select File with amendment.  
[ER115](#) is available in the Bill Room.

**LEGISLATIVE BILL 937A.** Placed on Select File.

(Signed) Beau Ballard, Chairperson

Revenue

**LEGISLATIVE BILL 1403.** Placed on General File.

**LEGISLATIVE BILL 1363.** Placed on General File with amendment.

[AM3250](#)

1 1. Strike the original sections and insert the following new  
 2 sections:  
 3 Section 1. Section 76-901, Reissue Revised Statutes of Nebraska, is  
 4 amended to read:  
 5 76-901 There is hereby imposed a tax on the grantor executing the  
 6 deed as defined in section 76-203 upon the transfer of a beneficial  
 7 interest in or legal title to real estate at the rate of two dollars and  
 8 ~~sixty~~ ~~twenty-five~~ cents for each one thousand dollars value or fraction  
 9 thereof. For purposes of sections 76-901 to 76-908, value means (1) in  
 10 the case of any deed, not a gift, the amount of the full actual  
 11 consideration thereof, paid or to be paid, including the amount of any  
 12 lien or liens assumed, and (2) in the case of a gift or any deed with  
 13 nominal consideration or without stated consideration, the current market  
 14 value of the property transferred. Such tax shall be evidenced by stamps  
 15 to be attached to the deed. All deeds purporting to transfer legal title  
 16 or beneficial interest shall be presumed taxable unless it clearly  
 17 appears on the face of the deed or sufficient documentary proof is  
 18 presented to the register of deeds that the instrument is exempt under  
 19 section 76-902.  
 20 Sec. 2. Section 76-903, Reissue Revised Statutes of Nebraska, is  
 21 amended to read:  
 22 76-903 The Tax Commissioner shall design such stamps in such  
 23 denominations as in his or her judgment will be the most advantageous to  
 24 all persons concerned. When any deed subject to the tax imposed by  
 25 section 76-901 is offered for recordation, the register of deeds shall  
 26 ascertain and compute the amount of the tax due thereon and shall collect  
 27 such amount as a prerequisite to acceptance of the deed for recordation.  
 1 If a dispute arises concerning the taxability of the transfer, the  
 2 register of deeds shall not record the deed until the disputed tax is  
 3 paid. If a disputed tax has been paid, the taxpayer may file for a refund  
 4 pursuant to section 76-908. The taxpayer may also seek a declaratory

5 ruling pursuant to rules and regulations adopted and promulgated by the  
 6 Department of Revenue. From each two dollars and ~~sixty twenty-five~~ cents  
 7 of tax collected pursuant to section 76-901, the register of deeds shall  
 8 retain fifty cents to be placed in the county general fund and shall  
 9 remit the balance to the State Treasurer who shall credit: ~~ninety-five~~  
 10 ~~cents of such amount to the Affordable Housing Trust Fund, twenty-five~~  
 11 ~~cents of such amount to the Site and Building Development Fund, twenty-~~  
 12 ~~five cents of such amount to the Homeless Shelter Assistance Trust Fund,~~  
 13 ~~and thirty cents of such amount to the Behavioral Health Services Fund.~~  
 14 (1) Ninety-five cents of such amount to the Affordable Housing Trust  
 15 Fund for the purposes of providing at least:

16 (a) Fifteen percent to emerging developers;

17 (b) Fifteen percent for site preparation, including federal low-  
 18 income housing tax credit eligible site preparation;

19 (c) Fifteen percent for populations at high risk of homelessness  
 20 including, but not limited to, senior adults, individuals impacted by the  
 21 criminal justice system, and individuals experiencing physical or  
 22 developmental disabilities;

23 (d) Fifteen percent for development of affordable housing units  
 24 eligible for federal low-income housing tax credits;

25 (e) Twenty percent for the Middle Income Workforce Housing  
 26 Investment Act; and

27 (f) Twenty percent for the Rural Workforce Housing Investment Act;

28 (2) Twenty-five cents of such amount to the Site and Building  
 29 Development Fund;

30 (3) Twenty-five cents of such amount to the Homeless Shelter  
 31 Assistance Trust Fund;

1 (4) Thirty-five cents of such amount to the Behavioral Health  
 2 Services Fund;

3 (5) Ten cents of such amount to the Economic Recovery Contingency  
 4 Fund for the establishment and operation of an office to pursue and  
 5 coordinate grant funding on behalf of the state; and

6 (6) Twenty cents of such amount to the Innovation Hub Cash Fund for  
 7 the operational support of innovation hubs.

8 Sec. 3. Section 77-1327, Reissue Revised Statutes of Nebraska, is  
 9 amended to read:

10 77-1327 (1) It is the intent of the Legislature that accurate and  
 11 comprehensive information be developed by the Property Tax Administrator  
 12 and made accessible to the taxing officials and property owners in order  
 13 to ensure the uniformity and proportionality of the assessments of real  
 14 property valuations in the state in accordance with law and to provide  
 15 the statistical and narrative reports pursuant to section 77-5027.

16 (2) All transactions of real property for which the statement  
 17 required in section 76-214 is filed shall be available for development of  
 18 a sales file by the Property Tax Administrator. All transactions with  
 19 stated consideration of more than one hundred dollars or upon which more  
 20 than two dollars and ~~sixty twenty-five~~ cents in documentary stamp taxes  
 21 are paid shall be considered sales. All sales shall be deemed to be arm's  
 22 length transactions unless determined to be otherwise under  
 23 professionally accepted mass appraisal techniques. The Department of  
 24 Revenue shall not overturn a determination made by a county assessor  
 25 regarding the qualification of a sale unless the department reviews the  
 26 sale and determines through the review that the determination made by the  
 27 county assessor is incorrect.

28 (3) The Property Tax Administrator annually shall make and issue  
 29 comprehensive assessment ratio studies of the average level of  
 30 assessment, the degree of assessment uniformity, and the overall  
 31 compliance with assessment requirements for each major class of real  
 1 property subject to the property tax in each county. The comprehensive  
 2 assessment ratio studies shall be developed in compliance with

3 professionally accepted mass appraisal techniques and shall employ such  
4 statistical analysis as deemed appropriate by the Property Tax  
5 Administrator, including measures of central tendency and dispersion. The  
6 comprehensive assessment ratio studies shall be based upon the sales file  
7 as developed in subsection (2) of this section and shall be used by the  
8 Property Tax Administrator for the analysis of the level of value and  
9 quality of assessment for purposes of section 77-5027 and by the Property  
10 Tax Administrator in establishing the adjusted valuations required by  
11 section 79-1016. Such studies may also be used by assessing officials in  
12 establishing assessed valuations.

13 (4) For purposes of determining the level of value of agricultural  
14 and horticultural land subject to special valuation under sections  
15 77-1343 to 77-1347.01, the Property Tax Administrator shall annually make  
16 and issue a comprehensive study developed in compliance with  
17 professionally accepted mass appraisal techniques to establish the level  
18 of value if in his or her opinion the level of value cannot be developed  
19 through the use of the comprehensive assessment ratio studies developed  
20 in subsection (3) of this section.

21 (5) County assessors and other taxing officials shall electronically  
22 report data on the assessed valuation and other features of the property  
23 assessment process for such periods and in such form and content as the  
24 Property Tax Administrator shall deem appropriate. The Property Tax  
25 Administrator shall so construct and maintain the system used to collect  
26 and analyze the data to enable him or her to make intracounty comparisons  
27 of assessed valuation, including school districts and other political  
28 subdivisions, as well as intercounty comparisons of assessed valuation,  
29 including school districts and other political subdivisions. The Property  
30 Tax Administrator shall include analysis of real property sales pursuant  
31 to land contracts and similar transfers at the time of execution of the  
1 contract or similar transfer.

2 Sec. 4. Section 81-12,114, Revised Statutes Cumulative Supplement,  
3 2022, is amended to read:

4 81-12,114 (1) The Innovation Hub Cash Fund is created. The fund  
5 shall be administered by the department and shall consist of application  
6 fees received under section 81-12,110, money received pursuant to section  
7 76-903, funds transferred by the Legislature, and any other money as  
8 determined by the Legislature.

9 (2) The fund shall be used by the department for purposes of  
10 carrying out the Nebraska Innovation Hub Act. Money transferred to the  
11 fund under section 76-903 shall be used for the operational support of  
12 innovation hubs. Any money in the fund available for investment shall be  
13 invested by the state investment officer pursuant to the Nebraska Capital  
14 Expansion Act and the Nebraska State Funds Investment Act.

15 Sec. 5. Section 81-12,243, Revised Statutes Supplement, 2023, is  
16 amended to read:

17 81-12,243 (1) The Economic Recovery Contingency Fund is created. The  
18 fund shall consist of money received pursuant to section 76-903 and  
19 transfers by the Legislature to carry out the Economic Recovery Act. Any  
20 money in the fund available for investment shall be invested by the state  
21 investment officer pursuant to the Nebraska Capital Expansion Act and the  
22 Nebraska State Funds Investment Act. Investment earnings on and after  
23 July 1, 2023, shall be credited to the fund.

24 (2) Money transferred to the fund under section 76-903 shall be used  
25 for the establishment and operation of an office to pursue and coordinate  
26 grant funding on behalf of the state.

27 (3) ~~(2)~~ The Department of Economic Development may review the  
28 projects listed in the coordination plan and the appendices by the  
29 Economic Recovery Special Committee of the Legislature dated January 10,  
30 2023, and shall prioritize the use of the fund on projects listed in the  
31 coordination plan followed by the projects in the appendices.

1 Sec. 6. This act becomes operative on October 1, 2024.  
 2 Sec. 7. Original sections 76-901, 76-903, and 77-1327, Reissue  
 3 Revised Statutes of Nebraska, section 81-12,114, Revised Statutes  
 4 Cumulative Supplement, 2022, and section 81-12,243, Revised Statutes  
 5 Supplement, 2023, are repealed.

(Signed) Lou Ann Linehan, Chairperson

### AMENDMENT(S) - Print in Journal

Senator McKinney filed the following amendment to LB631:  
AM3262 is available in the Bill Room.

Senator Bostelman filed the following amendment to LB1370:  
AM3245

(Amendments to Standing Committee amendments, AM2863)

1 1. On page 1, line 21, after "public" insert "due to the proprietary  
 2 and commercial information discussed".  
 3 2. On page 13, line 6, strike ". contains no" and insert an  
 4 underscored colon; and strike lines 7 through 9 and insert the following  
 5 new subdivisions:  
 6 "(A) Contains no materials, electronics, or other components  
 7 manufactured by any foreign government or foreign nongovernment person  
 8 determined to be a foreign adversary pursuant to 15 C.F.R. 7.4; or  
 9 (B) Is in compliance with the critical infrastructure protection  
 10 requirements issued by the North American Electric Reliability  
 11 Corporation if connected to the transmission grid at one hundred  
 12 kilovolts or higher voltage and has to have a nameplate rating of twenty  
 13 megavolt amperes for a single generation unit or injecting at an  
 14 aggregate of seventy-five megavolt amperes or greater. The private  
 15 electric supplier shall also submit written notice to the board at any  
 16 time such private electric supplier is no longer in such compliance.".

Senator Ibach filed the following amendment to LB1368:  
AM3281

1 1. Strike the original sections and all amendments thereto and  
 2 insert the following new sections:  
 3 Section 1. Sections 1 to 7 of this act shall be known and may be  
 4 cited as the Nitrogen Reduction Incentive Act.  
 5 Sec. 2. The Legislature finds and declares that:  
 6 (1) Agriculture is Nebraska's number one industry;  
 7 (2) Water is Nebraska's most precious natural resource;  
 8 (3) Nebraska farmers are leading the charge on sustainable  
 9 agriculture initiatives that will make Nebraska a world-renowned leader  
 10 and ensure protection of the land and water of Nebraska for generations  
 11 to come; and  
 12 (4) The Nitrogen Reduction Incentive Act encourages farmers to adopt  
 13 efficient and sustainable practices to help Nebraska protect these  
 14 natural resources and positions Nebraska farmers to compete.  
 15 Sec. 3. For purposes of the Nitrogen Reduction Incentive Act,  
 16 commercial fertilizer has the same meaning as in section 81-2,162.02.  
 17 Sec. 4. (1) The nitrogen reduction incentive program is created and  
 18 shall be administered by the Department of Natural Resources. The  
 19 department may collaborate with natural resources districts to administer  
 20 the program.  
 21 (2) The purposes of the program are to:  
 22 (a) Provide incentive payments to farmers; and

23 (b) Encourage farmers to (i) reduce the use of commercial fertilizer  
24 and (ii) incorporate innovative technology into farming practices,  
25 including the proper use of biological nitrogen products.

26 (3) The program shall provide an annual per-acre incentive for any  
27 farmer who verifies through documentation that commercial fertilizer  
1 rates were reduced by the lesser of forty pounds per acre for nitrogen or  
2 fifteen percent by incorporating a qualifying product in the farmer's  
3 nutrient plans.

4 (4) A commercial fertilizer rate reduction from historic baseline  
5 use shall be completed to qualify for the program.

6 (5) The department shall review the required commercial fertilizer  
7 rate of reduction for the program on a biennial basis to determine if  
8 higher reduction targets are necessary.

9 (6) The department shall:

10 (a) Collaborate with natural resources districts to add any new  
11 technology to the program as it becomes available. Such technology shall  
12 replace nitrogen fertilizer use and maintain farm productivity;

13 (b) Identify geographically beneficial target areas while keeping  
14 the program open to all farmers in the state;

15 (c) Consult with farmers and commercial entities in the agriculture  
16 industry to determine a per-acre payment rate tied to the commercial

17 fertilizer rate reduction but not less than ten dollars per acre; and

18 (d) Review the per-acre payment rate based on inflation or emerging

19 technology in subsequent years.

20 (7)(a) The department shall not award an amount of incentive  
21 payments in total per year under the nitrogen reduction incentive program  
22 that is greater than the lesser of:

23 (i) Five million dollars; or

24 (ii) The amount appropriated for such purpose by the Legislature.

25 (b) It is the intent of the Legislature that any appropriation from  
26 the General Fund to carry out the Nitrogen Reduction Incentive Act be  
27 used only for operating expenses.

28 Sec. 5. The Department of Natural Resources may adopt and  
29 promulgate rules and regulations that adopt a standard for labeled  
30 commercial fertilizer products to qualify for the nitrogen reduction  
31 incentive program and may adopt and promulgate rules and regulations to  
1 carry out the Nitrogen Reduction Incentive Act.

2 Sec. 6. (1) The Nitrogen Reduction Incentive Cash Fund is created  
3 and shall be administered by the Department of Natural Resources for  
4 purposes of the Nitrogen Reduction Incentive Act. The Nitrogen Reduction  
5 Incentive Cash Fund may consist of transfers as directed by the  
6 Legislature and gifts, grants, bequests, and money from any public or  
7 private source.

8 (2) The Department of Natural Resources may apply for all grants  
9 from state, federal, and private sources that are applicable to the  
10 purposes of the Nitrogen Reduction Incentive Act.

11 (3) Any such grant applied for by the Department of Natural  
12 Resources that is awarded to the Department of Natural Resources or the  
13 State of Nebraska shall be credited to the Nitrogen Reduction Incentive  
14 Cash Fund.

15 (4) Any money in the fund available for investment shall be invested  
16 by the state investment officer pursuant to the Nebraska Capital  
17 Expansion and the Nebraska State Funds Investment Act.

18 Sec. 7. The Nitrogen Reduction Incentive Act terminates on December  
19 31, 2029.

20 Sec. 8. Section 61-218, Revised Statutes Supplement, 2023, is  
21 amended to read:

22 61-218 (1) The Water Resources Cash Fund is created. The fund shall  
23 be administered by the Department of Natural Resources. Any money in the  
24 fund available for investment shall be invested by the state investment

25 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska  
26 State Funds Investment Act.

27 (2) The State Treasurer shall credit to the fund such money as is  
28 (a) transferred to the fund by the Legislature, (b) paid to the state as  
29 fees, deposits, payments, and repayments relating to the fund, both  
30 principal and interest, (c) donated as gifts, bequests, or other  
31 contributions to such fund from public or private entities, (d) made  
1 available by any department or agency of the United States if so directed  
2 by such department or agency, (e) allocated pursuant to section  
3 81-15,175, and (f) received by the state for settlement of claims  
4 regarding Colorado's past use of water under the Republican River  
5 Compact.

6 (3) The fund shall be expended by the department (a) to aid  
7 management actions taken to reduce consumptive uses of water or to  
8 enhance streamflows or ground water recharge in river basins, subbasins,  
9 or reaches which are deemed by the department overappropriated pursuant  
10 to section 46-713 or fully appropriated pursuant to section 46-714 or are  
11 bound by an interstate compact or decree or a formal state contract or  
12 agreement, (b) for purposes of projects or proposals described in the  
13 grant application as set forth in subdivision (2)(h) of section  
14 81-15,175, and (c) to the extent funds are not expended pursuant to  
15 subdivisions (a) and (b) of this subsection, the department may conduct a  
16 statewide assessment of short-term and long-term water management  
17 activities and funding needs to meet statutory requirements in sections  
18 46-713 to 46-718 and 46-739 and any requirements of an interstate compact  
19 or decree or formal state contract or agreement. The fund shall not be  
20 used to pay for administrative expenses or any salaries for the  
21 department or any political subdivision.

22 (4) It is the intent of the Legislature that three million three  
23 hundred thousand dollars be transferred each fiscal year from the General  
24 Fund to the Water Resources Cash Fund for FY2011-12 through FY2022-23,  
25 except that for FY2012-13 it is the intent of the Legislature that four  
26 million seven hundred thousand dollars be transferred from the General  
27 Fund to the Water Resources Cash Fund. It is the intent of the  
28 Legislature that the State Treasurer credit any money received from any  
29 Republican River Compact settlement to the Water Resources Cash Fund in  
30 the fiscal year in which it is received.

31 (5)(a) Expenditures from the Water Resources Cash Fund may be made  
1 to natural resources districts eligible under subsection (3) of this  
2 section for activities to either achieve a sustainable balance of  
3 consumptive water uses or assure compliance with an interstate compact or  
4 decree or a formal state contract or agreement and shall require a match  
5 of local funding in an amount equal to or greater than forty percent of  
6 the total cost of carrying out the eligible activity. The department  
7 shall, no later than August 1 of each year, beginning in 2007, determine  
8 the amount of funding that will be made available to natural resources  
9 districts from the Water Resources Cash Fund and notify natural resources  
10 districts of this determination. The department shall adopt and  
11 promulgate rules and regulations governing application for and use of the  
12 Water Resources Cash Fund by natural resources districts. Such rules and  
13 regulations shall, at a minimum, include the following components:  
14 (i) Require an explanation of how the planned activity will achieve  
15 a sustainable balance of consumptive water uses or will assure compliance  
16 with an interstate compact or decree or a formal state contract or  
17 agreement as required by section 46-715 and the controls, rules, and  
18 regulations designed to carry out the activity; and  
19 (ii) A schedule of implementation of the activity or its components,  
20 including the local match as set forth in subdivision (5)(a) of this  
21 section.

22 (b) Any natural resources district that fails to implement and

23 enforce its controls, rules, and regulations as required by section  
24 46-715 shall not be eligible for funding from the Water Resources Cash  
25 Fund until it is determined by the department that compliance with the  
26 provisions required by section 46-715 has been established.  
27 (6) The Department of Natural Resources shall submit electronically  
28 an annual report to the Legislature no later than October 1 of each year,  
29 beginning in the year 2007, that shall detail the use of the Water  
30 Resources Cash Fund in the previous year. The report shall provide:  
31 (a) Details regarding the use and cost of activities carried out by  
1 the department; and  
2 (b) Details regarding the use and cost of activities carried out by  
3 each natural resources district that received funds from the Water  
4 Resources Cash Fund.  
5 (7)(a) Prior to the application deadline for fiscal year 2011-12,  
6 the Department of Natural Resources shall apply for a grant of nine  
7 million nine hundred thousand dollars from the Nebraska Environmental  
8 Trust Fund, to be paid out in three annual installments of three million  
9 three hundred thousand dollars. The purposes listed in the grant  
10 application shall be consistent with the uses of the Water Resources Cash  
11 Fund provided in this section and shall be used to aid management actions  
12 taken to reduce consumptive uses of water, to enhance streamflows, to  
13 recharge ground water, or to support wildlife habitat in any river basin  
14 determined to be fully appropriated pursuant to section 46-714 or  
15 designated as overappropriated pursuant to section 46-713.  
16 (b) If the application is granted, funds received from such grant  
17 shall be remitted to the State Treasurer for credit to the Water  
18 Resources Cash Fund for the purpose of supporting the projects set forth  
19 in the grant application. The department shall include in its grant  
20 application documentation that the Legislature has authorized a transfer  
21 of three million three hundred thousand dollars from the General Fund  
22 into the Water Resources Cash Fund for each of fiscal years 2011-12 and  
23 2012-13 and has stated its intent to transfer three million three hundred  
24 thousand dollars to the Water Resources Cash Fund for fiscal year  
25 2013-14.  
26 (c) It is the intent of the Legislature that the department apply  
27 for an additional three-year grant that would begin in fiscal year  
28 2014-15, an additional three-year grant from the Nebraska Environmental  
29 Trust Fund that would begin in fiscal year 2017-18, and an additional  
30 three-year grant from the Nebraska Environmental Trust Fund that would  
31 begin in fiscal year 2020-21 if the criteria established in subsection  
1 (4) of section 81-15,175 are achieved.  
2 (8) The department shall establish a subaccount within the Water  
3 Resources Cash Fund for the accounting of all money received as a grant  
4 from the Nebraska Environmental Trust Fund as the result of an  
5 application made pursuant to subsection (7) of this section. At the end  
6 of each calendar month, the department shall calculate the amount of  
7 interest earnings accruing to the subaccount and shall notify the State  
8 Treasurer who shall then transfer a like amount from the Water Resources  
9 Cash Fund to the Nebraska Environmental Trust Fund.  
10 (9) Any funds transferred from the Nebraska Environmental Trust Fund  
11 to the Water Resources Cash Fund shall be expended in accordance with  
12 section 81-15,168.  
13 (10) The State Treasurer shall transfer one million dollars from the  
14 Water Resources Cash Fund to the Nitrogen Reduction Incentive Cash Fund  
15 as soon as administratively possible after the effective date of this  
16 act, but before June 30, 2025, on such dates and in such amounts as  
17 directed by the budget administrator of the budget division of the  
18 Department of Administrative Services.  
19 Sec. 9. Original section 61-218, Revised Statutes Supplement, 2023,  
20 is repealed.

**ATTORNEY GENERAL'S OPINION****NEBRASKA DEPARTMENT OF JUSTICE**

Opinion No. 24-001 — April 2, 2024

OPINION FOR SENATOR KATHLEEN KAUTH

**Lawfulness of the Sports and Spaces Act**

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**Summary:** The Sports and Spaces Act does not violate the Equal Protection Clause or Title IX. The Act's segregation of bathrooms and athletic teams based on biological sex is substantially related to the State's important interests in protecting student privacy and female athletic opportunity. Title IX's provisions permitting the segregation of teams and facilities based on "sex" permits segregation of teams and facilities based on biological sex.

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You have asked whether L.B. 575, 108th Leg. (introduced 2023), known as the "Sports and Spaces Act" ("L.B. 575"), would violate the United States Constitution or federal law. If enacted, L.B. 575 would require all schools in Nebraska to designate group bathrooms and locker rooms for use according to biological sex.<sup>1</sup> Schools would also be required to designate school-sponsored athletic teams and sports based on biological sex.

We conclude that L.B. 575 is constitutional and violates no federal law. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution ensures that states apply the law similarly to all people similarly situated. Cases interpreting the Equal Protection Clause do not consider men and women similarly situated in all respects. Laws that treat men and women differently in pursuit of an important government goal related to the real differences between men and women do not violate the Equal Protection Clause. L.B. 575 does exactly that. It recognizes the real biological differences between males and females and designates facilities and sports by biological sex in pursuit of the important goals of protecting student privacy and preserving female athletic opportunity. In pursuit of these goals, and in recognition of the biological differences between males and females, it is reasonable for L.B. 575 to classify students by biological sex regardless of their gender identity. We thus conclude L.B. 575 does not violate the Equal Protection Clause.

We further conclude that L.B. 575 does not violate federal law. Title IX of the Education Amendments Act of 1972 ensures that no person is deprived of equal opportunity in educational activities on the basis of sex. "Sex" under Title IX means biological sex, not gender identity. Title IX recognizes that to protect opportunity in interscholastic athletics, athletic teams may need to be segregated by sex. Title IX also appreciates the need for different restroom facilities based on sex. As a consequence, L.B. 575

does not violate Title IX by designating facilities and athletics based on biological sex.

Section I of our analysis outlines the provisions of L.B. 575. Section II summarizes the case law where similar laws have been challenged under the Equal Protection Clause and then lays out our reasons for finding that L.B. 575 does not violate the Equal Protection Clause. Section III summarizes case law where similar laws have been challenged under Title IX and then provides our reasons for finding L.B. 575 does not violate Title IX. Section IV summarizes our conclusions.

### I.

We begin with the text of L.B. 575. If enacted, L.B. 575 would designate certain school facilities and functions by a student's biological sex. It defines a biological female as "a person who was born with female anatomy with two X chromosomes in her cells," and a biological male as "a person who was born with male anatomy with X and Y chromosomes in his cells." L.B. 575, § 2(1)(a), (b). The bill also defines a school as any public, private, denominational, and parochial school offering instruction in elementary (kindergarten through eighth grades) or high school grades. *Id.* § 2(c).

L.B. 575 requires schools to designate each group bathroom and locker room within school buildings either for use by biological females or for use by biological males. Biological males are prohibited from using the restrooms or locker rooms designated for biological females and *vice versa*. L.B. 575, § 3(1), (2)(d).

School-sponsored athletic teams or sports must also be designated by biological sex as either male, female, or coed. *Id.* § 4(1). Athletic teams and sports designated for females are not open to biological males. *Id.* § 4(2). Teams and sports designated for males are not open to biological females unless there is no female team available for such sport. *Id.* Government entities, licensing or accrediting organizations, and athletic associations cannot investigate or take adverse action against a school for maintaining athletic teams in accordance with students' biological sex. *Id.* § 5.

A student who is deprived of an athletic opportunity or who suffers any direct or indirect harm as a result of a public school knowingly violating L.B. 575 can bring a private cause of action against the school. *Id.* § 6(1). Schools and school officials are forbidden from retaliating against any person who reports a violation of L.B. 575's bathroom or locker room provisions. *Id.* § 3(4). Students aggrieved by a violation of the retaliation provision may also bring a civil cause of action against the school. *Id.* § 3(5). Students who prevail in these kinds of lawsuits may be entitled to injunctive relief, damages, and any other relief available by law. *Id.* §§ 3(5), 6.

### II.

The Equal Protection Clause provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The Supreme Court has said the Clause is "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

Courts apply one of three standards to determine whether a law's classification unlawfully treats similarly situated people unequally. The first is known as rational-basis review. This standard applies when statutes make classifications that are not considered "suspect" (or "quasi-suspect") and do not otherwise implicate a fundamental right. *State v. Harris*, 284 Neb. 214, 233, 817 N.W.2d 258, 275 (2012). Classifications are not considered suspect or quasi-suspect unless the class created is based on "immutable characteristic[s] determined solely by the accident of birth" or is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Gallagher v. City of Clayton*, 699 F.3d 1013, 1018 (8th Cir. 2012) (first quoting *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973), second quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)). Examples of classes created by laws that are subject to rational-basis review include smokers, *id.*, compulsive sex offenders, *Artway v. Att'y Gen. of State of N.J.*, 81 F.3d 1235, 1266 (3d Cir. 1996), and victims of sexual harassment, *see Means v. Shyam Corp.*, 44 F. Supp. 2d 129, 131 (D.N.H. 1999).

Under the rational-basis standard, courts generally presume that a law is constitutional. Based on that presumption, courts may only overturn a law if the challenger can show that the law's classification is not rationally related to any government interest. *See F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993).

On the other end of the spectrum is strict scrutiny, which applies when a law or policy burdens a "suspect" group (e.g., a racial or ethnic minority), or when it burdens a fundamental right (e.g., voting). *Harris*, 284 Neb. at 233, 817 N.W.2d at 275. Under such a classification, a law will be upheld only "upon an extraordinary justification," *Shaw v. Reno*, 509 U.S. 630, 643 (1993) (quoting *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 272 (1979)), and it must be narrowly tailored to serve a compelling governmental interest, *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 227 (1995).

Intermediate scrutiny lies in between. It applies to laws that discriminate based on a quasi-suspect classification. Sex-based classifications fall under this standard. *See United States v. Virginia*, 518 U.S. 515, 533 (1996). For a sex-based classification "to withstand equal protection scrutiny, it must be established . . . that the challenged classification serves important governmental objectives" and that the "means employed are substantially related to the achievement of those objectives." *Nguyen v. I.N.S.*, 533 U.S. 53, 60 (2001) (internal quotation marks omitted) (quoting *Virginia*, 518 U.S. at 533).

Intermediate-scrutiny analysis for sex classifications recognizes that "[p]hysical differences between men and women . . . are enduring." *Virginia*, 518 U.S. at 533. And the Supreme Court accounts for these "actual differences between the sexes, including physical ones." *Clark v. Arizona Interscholastic Ass'n*, 695 F.2d 1126, 1129 (9th Cir. 1982). Indeed, the Supreme Court "has consistently upheld statutes where the gender

classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances." *Michael M. v. Superior Ct. of Sonoma Cty.*, 450 U.S. 464, 469 (1981) (plurality opinion); see, e.g., *Nguyen*, 533 U.S. at 63.

#### A.

Some courts have held statutes classifying facilities and athletic teams by biological sex do not violate the Equal Protection Clause. These courts, as summarized in subsections III.A.1–3 below, have decided that segregating by biological sex was a classification based on sex, not gender identity, and have held these policies survive intermediate scrutiny. See *Adams v. School Board of St. Johns County, Florida*, 57 F.4th 791 (11th Cir. 2022) (en banc); *Bridge ex rel. Bridge v. Okla. State Dep't of Educ.*, No. CIV-22-787, 2024 WL 150598 (W.D. Okla. Jan. 12, 2024); D.N. *ex rel. Jessica N. v. DeSantis*, No. 21-CV-61344, 2023 WL 7323078 (S.D. Fla. Nov. 6, 2023).

#### 1.

In *Adams*, a biological female identifying as a man challenged her school's policy requiring students to use the bathroom that aligned with their biological sex.<sup>2</sup> 57 F.4th at 796, 798. A federal district court enjoined the policy, concluding that the policy discriminated against *Adams* because "he d[id] not act in conformity with the sex-based stereotypes associated with biological sex." *Id.* at 808.

The Eleventh Circuit reversed the district court. *Id.* at 801. The court observed that on its face, "the bathroom policy facially classifies based on biological sex—not transgender status or gender identity." *Id.* at 808 (emphasis added). It reasoned that "both sides of the classification—biological males and biological females—include transgender students." *Id.* The court also reasoned that the policy was not dependent on how students acted or identified, and therefore it did not rely on impermissible sex stereotypes associated with a student's transgender status. *Id.*

The fact that the bathroom policy had a disparate impact on the transgender students was not consequential. The court stated that a "disparate impact alone does not violate the Constitution." *Adams*, 57 F.4th at 810. "Instead, a disparate impact on a group offends the Constitution when an otherwise neutral policy is motivated by 'purposeful discrimination.'" *Id.* (quoting *Feeney*, 442 U.S. at 274); see also *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–66 (1977). And the record did not support a finding that the bathroom policy was motivated by discrimination against transgender students.

The court then applied intermediate scrutiny to the sex-based classification, examining whether the policy substantially advanced an important governmental objective. It found the school had an important interest in "ensur[ing] the privacy and overall welfare of its entire student body." *Adams*, 57 F.4th at 803. The court then determined that the "policy is clearly related to—indeed, is almost a mirror of—its objective of protecting the privacy interests of students to use the bathroom away from the opposite sex." *Id.* at 805. The court was ultimately persuaded by the "long tradition in this country of separating sexes," with public bathrooms "likely the most frequently encountered example." *Id.* "Indeed, the universality of that

practice" is why "a sign that says 'men only' looks very different on a bathroom door than a courthouse door." *Id.* at 801 (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 468–69 (1985) (Marshall, J., concurring in part and dissenting in part)). The policy thus survived intermediate scrutiny.

## 2.

In *Bridge*, transgender students challenged an Oklahoma law requiring every multiple occupancy restroom in a public school to be "[f]or the exclusive use of the male sex," or "[f]or the exclusive use of the female sex." Okla. Stat. tit. 70, § 1-125. The students argued that the law violated the Equal Protection Clause because they were not treated like non-transgender students who were allowed to use the bathroom that aligned with their gender identity. *Bridge*, 2024 WL 150598, at \*4.

The court applied intermediate scrutiny to the law, finding it "enact[ed] a sex-based classification." *Id.* The court found that separating bathrooms by biological sex to address the privacy concerns of students using multiple occupancy restrooms was "an important governmental objective." *Id.* at \*5. In response to the students' argument that the law was premised on generalizations about men and women, the Court reasoned that "[b]iological sex is distinct from gender generalizations, and [u]se of a restroom designated for the opposite sex does not constitute a mere failure to conform to sex stereotypes." *Id.* (internal quotation marks and citation omitted).

The court also found that the law was substantially related to achieving the important government objective of student privacy. The court reasoned that the means used to protect the government's privacy interest were "almost identical" to the privacy interest itself. *Id.* at \*6. In other words, the law did not extend beyond the State's important privacy concerns. The court also noted if biological-sex-based classifications were Equal Protection Clause violations, then "no law recognizing the inherent differences between male and female would pass constitutional muster. This is an untenable position." *Id.*

## 3.

*D.N.* involved a Florida law providing that school sports and teams designated for females are not open to biological males, and sports and teams designated for males are not open to biological females. *See* Fla. Stat. § 1006.205. Plaintiff, a biological male identifying as female who had played girls sports, sued claiming the law violated the Equal Protection Clause and Title IX. *D.N.*, 2023 WL 7323078, at \*1.

On the equal-protection claim, the Southern District of Florida found that intermediate scrutiny applied because the law classifies students based on biological sex. *Id.* at \*5. In applying the first step of intermediate scrutiny, the court found the government had an important government interest in "promoting women's equality in athletics." *Id.* at \*6. The court looked to Justice Stevens's in-chambers opinion affirming the constitutionality of a middle school's gender-based classification in competitive contact sports. *Id.* (quoting *O'Connor v. Bd. of Educ. of Sch. Dist. 23*, 449 U.S. 1301, 1302 (1980) (Stevens, J., in chambers)). Justice Stevens reasoned, "Without a gender-based classification in competitive

contact sports, there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete in interscholastic events." *O'Connor*, 449 U.S. at 1307.

The court then found that the means the Florida law employed were substantially related to that important government objective. The court found that Florida's sex-based classification was "rooted in real differences between the sexes—not stereotypes." *Id.* at \*9. "[T]he statute adopts the uncontroversial proposition that most men and women do have different (and innate) physical attributes." *Id.* The court also found that the plaintiff failed to plead any fact showing the law was based on "purposeful discrimination" against transgender students instead of a legitimate attempt to advance the important interest of "fostering and promoting athletic opportunities for girls." *Id.* at \*8, \*9.

## B.

Other courts have held that policies similar to those in L.B. 575 unlawfully discriminate based on sex and transgender status. *See, e.g., Hecox v. Little*, 79 F.4th 1009 (9th Cir. 2023); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020).

### 1.

In *Hecox*, Lindsay Hecox, a biological male identifying as a transgender woman, challenged Idaho's Fairness in Women's Sports Act, which mandated that all sports teams sponsored by schools in Idaho be expressly designated based on biological sex—male, female, or coed. *Hecox*, 79 F.4th at 1019; Idaho Code § 33-6203(1), (2). Hecox moved for, and the district court granted, a preliminary injunction to enjoin enforcement of the Act, finding it violated both the Equal Protection Clause and Title IX. *Id.* at 1019–20; *see also Doe v. Horne*, No. CV-23-00185, 2023 WL 4661831 (D. Ariz. July 20, 2023).

The Ninth Circuit affirmed, holding the Act failed intermediate scrutiny under the Equal Protection Clause. *Hecox*, 79 F.4th at 1022–35. The Ninth Circuit proffered several reasons for its holding. The court found that the Act intentionally discriminated against transgender athletes based on comments in the Act's legislative history discussing the advantages biological males who identify as girls have over biological females. *Id.* at 1022. The court also asserted that "the Act's definition of 'biological sex' is likely an oversimplification of the complicated biological reality of sex and gender." *Id.* at 1023–24. Ultimately, the court found that the use of "biological sex" as a means of identifying a class was a form of "proxy discrimination" against transgender athletes. *Id.* at 1024 (quoting *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1160 n.23 (9th Cir. 2013)).

The court then determined that transgender status was a quasi-suspect class, reasoning that "discrimination on the basis of transgender status is a form of sex-based discrimination." *Id.* at 1026. The court thus reviewed the Act under intermediate scrutiny. *Id.*

In applying intermediate scrutiny, the court did not dispute that promoting fairness in female athletic teams is an important state interest. *Id.* at 1028. But it found the Act was not substantially related to, and "in fact undermine[d]," that interest. *Id.* The court found the district court reasonable

in relying on a medical expert who testified that there is a "medical consensus" that the primary driver of difference in athletic performance between males and females is the difference in "circulating" testosterone—which can be reduced through hormone therapy—as opposed to "endogenously-produced" testosterone. *Id.* at 1030–31. The expert testified that a person's genetic make-up and reproductive anatomy "are not useful indicators of athletic performance." *Id.* The court thus found the Act was based on overbroad stereotypes and did not serve the interest of protecting female sports. *Id.* at 1033.

## 2.

*Grimm* involved a transgender student's claim that a school policy designating bathroom and locker room use by "biological gender" violated the Equal Protection Clause and Title IX. 972 F.3d at 593. The Fourth Circuit affirmed the district court's grant of summary judgment on both counts for the student. *Id.* at 616, 619. As to the equal-protection challenge, the court determined that intermediate scrutiny should apply because the policy "necessarily rests on a sex classification" and "cannot be stated without referencing sex." *Id.* at 608. The court also reasoned that Grimm was "subjected to sex discrimination because he was viewed as failing to conform to the sex stereotype propagated by the Policy." *Id.* The court, on an alternative basis, held that intermediate scrutiny was also appropriate since "it is apparent that transgender persons constitute a quasi-suspect class." *Id.* at 611.

Applying intermediate scrutiny, the court found that the State had an important interest in protecting student privacy, but it concluded that excluding Grimm from the boys' bathroom was not substantially related to that interest. *Id.* at 613–14. The court found that the record evidence showed privacy actually increased when Grimm was allowed to use the boys' bathroom because "privacy strips and screens between the urinals" were installed. *Id.* at 614. For this reason, the court held that "policy was not substantially related to its purported goal." *Id.*; see also *Whitaker ex rel. Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1050–54 (7th Cir. 2017).

## C.

Each of the above cases applied intermediate scrutiny to determine whether a biological-sex-based classification of sports teams or facilities violates the equal-protection rights of transgender students. These cases applied intermediate scrutiny because the subject policies made a sex-based classification.

Before turning to our analysis applying these authorities to L.B. 575, we address a threshold question—whether rational-basis review, instead of intermediate scrutiny, should apply to these challenges. Some courts and states, including Nebraska, have argued that rational basis is often the appropriate review standard.

In the paradigmatic sex-based equal-protection claim, a plaintiff argues that the subject law or policy is unconstitutional because it treats men and women differently. See, e.g., *Clark*, 695 F.2d 1126. Men have access to something that women do not, or *vice versa*. See, e.g., *Virginia*, 518 U.S. at 533. These claims are indisputably subject to intermediate scrutiny. See *id.*

But the challenges advanced by transgender students in the above cases are of a different variety, as observed in *B.P.J. v. West Virginia Board of Education*, 649 F.Supp.3d 220 (S.D. W. Va. 2023). In that case, a transgender 11-year-old biological male (B.P.J.) sought to participate on his school's female cross-country team. *Id.* at 223. But West Virginia designated athletic participation based on biological sex. *Id.* at 224. The district court held the policy survived intermediate scrutiny under the Equal Protection Clause. *Id.* at 229–32. But in so ruling, the district court observed the unique nature of B.P.J.'s claim: "B.P.J.'s issue here is not with the state's offering of girls' sports and boys' sports" but with "the state's definitions of 'girl' and 'boy.'" *Id.* at 228. B.P.J. believed the policy improperly defined the terms (according to biological sex). The district court's order was stayed by the Fourth Circuit without substantive explanation, *B.P.J. ex rel. Jackson v. W. Va. State Bd. of Educ.*, No. 23-1078, 2023 WL 2803113 (4th Cir. Feb. 22, 2023), but the court's observation remains relevant.

The dissent in the now-vacated Eleventh Circuit panel opinion in *Adams* made a similar observation. Chief Judge Pryor explained that while "[s]eparating bathrooms by sex treats people differently on the basis of sex," "the mere act of determining an individual's sex, using the same rubric for both sexes, does not treat anyone differently on the basis of sex." *Adams v. Sch. Bd. of St. Johns Cnty.*, 3 F.4th 1299, 1325, 1326 (11th Cir. 2021) (Pryor, C.J., dissenting). Chief Judge Pryor suggested that by applying intermediate scrutiny, the majority "appl[ie]d the wrong kind of constitutional scrutiny." *Id.*

Other states have taken positions in court that agree with and expand on this point. *See, e.g.*, Brief of Amici Curiae Alabama et al., *West Virginia v. B.P.J. ex rel. Jackson*, 2023 WL 2648004, at \*10 (U.S. Mar. 13, 2023); Brief of Amici Curiae Alabama et al., *Doe v. Horne*, Nos. 23-16026 & 23-1603 (9th Cir. Sept. 15, 2023) (*Doe* Amicus). We agree with this reasoning and have joined these briefs. Our briefs have observed that transgender plaintiffs are not arguing that "to segregate sports teams on the basis of sex violates the Equal Protection Clause." *Doe* Amicus at 5. "Just the opposite. Plaintiffs *want* [their state] to continue segregating sports teams by sex." *Id.* But they argue their states have unlawfully excluded them from the segregated category in which they wish to be. *Id.* In other words, "Plaintiffs seek to compel the State to continue segregating—just to adjust the contours of its segregation." *Id.* So, plaintiffs are really arguing that the classes created by these laws are "unlawfully narrow"—a "textbook underinclusiveness challenge." *Id.* at 7.

In another context, courts have applied rational-basis review when plaintiffs have challenged the contours of racial classifications, rather than the fact of discrimination itself. For example, *Hoohuli v. Ariyoshi*, 631 F. Supp. 1153 (D. Haw. 1986), involved a law that provided benefits to native Hawaiians based on ancestral lineage. *Id.* at 1154. Plaintiffs in the case did not contest the Legislature's ability to grant such preferences. They instead argued that the Legislature defined the beneficiary class too expansively. *Id.* at 1159. Plaintiffs asked the court to apply strict scrutiny because the legislation used a race-based classification. *Id.* at 1158–59. The district court refused and applied rational-basis review. *Id.* at 1159. The court reasoned

that it was not asked to examine "the racial preference itself," but it was asked "to examine the parameters of the beneficiary class." *Id.* The court explained that the government's decision not to calibrate the class to plaintiffs' preferences does not warrant heightened scrutiny. *See id.* at 1160–61. The court thus rejected plaintiff's equal-protection claim because the State's "definition of 'Hawaiian' . . . ha[d] a rational basis." *Id.* at 1163.

The Second Circuit elucidated this principle in *Jana-Rock Construction, Inc. v. New York Department of Economic Development*. 438 F.3d 195 (2d Cir. 2006). The case involved a New York affirmative-action statute that benefitted "Hispanics." *Id.* at 200. Plaintiff Rocco Luiere was "the son of a Spanish mother whose parents were born in Spain," but he was not considered Hispanic for purposes of the statute. *Id.* at 199. Similar to the plaintiff in *Hoohuli*, Luiere did not challenge the fact that the program benefitted only Hispanics; he challenged the State's decision not to classify him as Hispanic for purposes of the program. *Id.* at 200, 205.

On its way to rejecting Luiere's claim, the court confirmed that "[t]he purpose of [heightened scrutiny] is to ensure that the government's choice to use racial classifications is justified." *Id.* at 210. It is "not to ensure that the contours of the specific racial classification" are always "correct." *Id.* The Second Circuit therefore "evaluate[d] the plaintiff's underinclusiveness claim using rational basis review" and duly rejected it. *Id.* at 212.

We have argued that these racial-classification cases map onto sex-based classifications. The above cases were not about whether the government could draw lines between races for certain benefits; they were about whether the government drew the lines in the right spots. Transgender students have not argued the government cannot draw a line between boys and girls for purposes of bathrooms and sports; they have argued that the government has drawn the line in the wrong spot. Chief Judge Pryor and several states would argue that the definitions creating a sexual classification—like the definitions creating a racial classification—are subject to only rational-basis review.

#### D.

After considering all the above authority, we find L.B. 575 would not violate the Equal Protection Clause. Specifically, we find (1) L.B. 575 does not discriminate based on gender identity, but on only biological sex, (2) L.B. 575's discrimination of facilities and athletics based on biological sex survives intermediate scrutiny, and (3) L.B. 575's defining its classes based on biological sex rather than gender identity survives rational-basis review.

#### 1.

We conclude that L.B. 575 does not discriminate based on gender identity. First, a plain reading of the bill reveals no mention of transgender status or gender identity. On its face, L.B. 575 defines females and males according to biology at birth. It designates bathrooms and locker rooms based on biological sex. It designates involvement in athletics based on biological sex. These are distinctions based on sex, not gender identity. Biological males, transgender or not, cannot use female bathrooms or locker rooms or be on female-designated sports teams. And biological females,

transgender or not, cannot use male bathrooms or locker rooms or be on male-designated sports teams. As such, the plain text of L.B. 575 cannot be said to single out transgender students.

It may be asserted that while the policy does not facially discriminate against transgender students, it may have a disparate impact on transgender students. Indeed, it seems transgender students would be more likely than non-transgender students to request to use a bathroom that differs from their biological sex. But as noted in *Adams*, disparate impact alone is not enough to render an otherwise neutral law unconstitutional. Instead, the policy must also be motivated by "purposeful discrimination." *Adams*, 57 F.4th at 810. Purposeful discrimination involves more than awareness of the disparate effect a bill may have on a group of people. *See Feeney*, 442 U.S. at 279. Purposeful discrimination requires that lawmakers acted "'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Id.* In *Adams*, the Eleventh Circuit found the defendant school board did not act to "single out" transgender students, evidenced by the fact that the school board sought to accommodate those students by offering alternative sex-neutral bathrooms. *Adams*, 57 F.4th at 810–11. We find no evidence that L.B. 575 has been introduced to single out and harm transgender students as opposed to protect the privacy of students and protect female athletic opportunity.

## 2.

Next, we conclude L.B. 575's sex-based classifications survive sex-based intermediate scrutiny. L.B. 575 classifies students (for both school facilities and athletic programs) based on biological sex. The State's decision to segregate facilities and sports teams by sex would warrant intermediate scrutiny. *See Virginia*, 518 U.S. at 532–33. We find L.B. 575's sex-based classifications clear intermediate scrutiny.

Under intermediate scrutiny, "absolute necessity is not required before a gender based classification can be sustained." *Clark*, 695 F.2d at 1131. The question is whether the classification is substantially related to an important government interest. *Nguyen*, 533 U.S. at 60. We first review whether Nebraska has a substantial interest or interests in L.B. 575's sex classifications. Then, we review whether L.B. 575's means are substantially related to those interests.

### a.

There is little-to-no dispute in the case law that segregating boys' and girls' bathrooms serves the important government interest of protecting student privacy. "The protection of students' privacy interests in using the bathroom away from the opposite sex . . . is obviously an important governmental objective." *Adams*, 57 F.4th at 804. Even in cases that found segregating bathrooms by biological sex is a violation of the Equal Protection Clause, courts have recognized "that students have a privacy interest in their body when they go to the bathroom." *Grimm*, 972 F.3d at 613. And the government has "a legitimate interest in ensuring [those] bathroom privacy rights are protected." *Whitaker*, 858 F.3d at 1052.

The cases also affirm that protecting female athletic opportunity is an important government interest. "[T]he government has an important interest in protecting and promoting athletic opportunities for girls." *D.N.*,

2023 WL 7323078, at \*6. Even the Ninth Circuit, which struck down Idaho's Fairness in Women's Sports Act, has recognized this interest. In *Clark*, male students (who were not transgender) challenged the Arizona Interscholastic Association's policy that prohibited them from competing on the girls' volleyball team even though their school did not offer boys' volleyball. 695 F.2d at 1127. The Ninth Circuit recognized that the challenged policy furthered two "legitimate and important" interests—(1) "promoting equality of athletic opportunity between the sexes" and (2) "redressing past discrimination against women in athletics." *Id.* at 1131. While the Ninth Circuit in *Hecox* distinguished *Clark* in striking down Idaho's Fairness in Women's Sports Act, the court still recognized "an important state interest" in "furthering women's equality and promoting fairness in female athletic teams." *Hecox*, 79 F.4th at 1028. States have an important interest in preserving and advancing female athletic opportunity.

**b.**

The conflict in the case law arrives at the second step of intermediate scrutiny—whether laws like L.B. 575 are *substantially related* to the government's important interests. *Adams* and *Bridge* and *D.N.* answered that question, "yes"; *Hecox* and *Grimm* answered, "no."

We find the latter line of cases have misapplied the standard and their reasoning unpersuasive. These courts have not focused on the question of whether separating bathrooms and athletics *by sex* is substantially related to protecting the privacy of students and protecting women's sports. These courts have instead focused on the question of whether prohibiting *transgender students* from accessing facilities and teams designated for the biological sex opposite them is substantially related to the government's interests. We find the logic of these decisions misplaced.

*Hecox* illustrates the methodological error. In that decision, the court affirmed the district court's conclusion that, based on the record, "a categorical bar against a transgender female athlete's participation" was not necessary to "promote 'sex equality' or to 'protect athletic opportunities for females.'" *Hecox*, 79 F.4th at 1030. But the classification at issue was not based on transgender identity. The policy did not create a "non-transgender team" on one end and a "transgender team" on the other. The classification was between biological males and biological females. *See* Idaho Code §§ 33-6201–06 (2020). So, the question should have been whether a categorical bar against biological males' participation in female sports promoted "sex equality" and "protect[ed] athletic opportunity for females." The Ninth Circuit had already answered that question, "yes," in *Clark*. There, it held there was "clearly a substantial relationship between the exclusion of males from the [women's] team and the goal of redressing past discrimination and providing equal opportunities for women." *Clark*, 695 F.2d at 1131. Indeed, the court concluded that if Arizona was forced to allow biological males to compete on women's teams, "athletic opportunities for women would be diminished." *Id.*

In *Grimm*, the Fourth Circuit reasoned that "the record demonstrates that bodily privacy of cisgender boys using the boys restrooms did not increase when *Grimm* was banned from those restrooms." *Grimm*, 972 F.3d at 614. But the school board policy did not create a "non-

transgender restroom" and a "transgender restroom." It provided for "male and female restroom and locker room facilities" as determined by biological sex. *Id.* at 599. So, the question should not have been whether bodily privacy of boys increases when transgender "boys" are banned from the restroom. The question should have been whether the bodily of privacy of biological males is supported when biological females are banned for the boys' restrooms.

In both cases, when the analysis is properly framed, the answer becomes clear. Disallowing biological males from competing with biological females in athletics is substantially related to preserving athletic opportunity for biological females. As noted by the Ninth Circuit, because of "physiological differences" between average males and average females, "males would displace females to a substantial extent if they were allowed to compete for positions" on sports teams and "athletic opportunities for women would be diminished." *Clark*, 695 F.2d at 1131; *see also* pp. 24–25, *infra*.

It is also clear that segregation between the sexes in bathrooms is substantially related to the government's interest in privacy. The Seventh Circuit has explained that "the law tolerates same-sex restrooms or same-sex dressing rooms . . . to accommodate privacy needs." *Chaney v. Plainfield Healthcare Ctr.*, 612 F.3d 908, 913 (7th Cir. 2010). The Fourth Circuit has found that "[t]he need for privacy justifies separation and the differences between the genders demand a facility for each gender that is different." *Faulkner v. Jones*, 10 F.3d 226, 232 (4th Cir. 1993). The Supreme Court has also acknowledged the necessity of sex-segregated facilities, recognizing that admitting women for the first time into the Virginia Military Academy "would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements." *Virginia*, 518 U.S. at 550 n.19. To hold otherwise would undermine a common practice throughout humanity itself. Indeed, "it has been commonplace and universally accepted—across societies and throughout history—to separate on the basis of sex those public restrooms, locker rooms, and shower facilities that are designed to be used by multiple people at a time." *Grimm*, 972 F.3d at 634 (Niemeyer, J., dissenting).

In the end, L.B. 575's separation of facilities and athletics is substantially related to the important government interests of student privacy and female athletic opportunity. Its sex-based classifications thus survive intermediate scrutiny.

### 3.

Finally, we note that while the above intermediate-scrutiny analysis is appropriate and necessary to evaluating the constitutionality of L.B. 575, we think that rational-basis is the correct review standard for the type of claim that would likely be brought against L.B. 575. For completeness, we address this issue as well.

In the case where a student challenges whether Nebraska can segregate bathrooms and sports between boys/men/males and girls/women/females at all, intermediate scrutiny would necessarily apply. *See* p. 13, *supra*. But plaintiffs who have recently challenged similar laws have not made this argument. They do not object to the fact that these laws

segregate sports or bathrooms. *See* pp. 13–14, *supra*. Rather, plaintiffs have argued only that these policies' definitions should place transgender students on the side that matches their gender identity. *Id.* L.B. 575's definitions are subject to rational-basis review. And its definitions survive rational-basis review.

L.B. 575 defines a "biological female" as a person "born with female anatomy with two X chromosomes," and it defines a "biological male" as a person "born with male autonomy with X and Y chromosomes." L.B. 575 § 2(a), (b). Some may complain that those definitions improperly exclude transgender students. That objection is fundamentally a line-drawing one, which survives constitutional scrutiny under a rational-basis test.

The State's definitions of "biological male" and "biological female" do not warrant heightened scrutiny. *Jana-Rock* and *Hoohuli* subjected the government's definitions of a racial classification to rational-basis review. *See Jana-Rock*, 438 F.3d at 212; *Hoohuli*, 631 F. Supp. 1159. These cases demonstrate the difference between a challenge to a classification and a challenge that disagrees with the parameters of the classification. The first is subject to heightened scrutiny while the latter receives only rational-basis review. *See* pp. 14–16, *supra*. L.B. 575's excluding transgender "boys" from the definition of male and transgender "girls" from the definition of female falls into the latter.

We agree with *Jana-Rock* that the reason for heightened scrutiny is suspicion over the fact that the government is dividing people into groups at all. *See Jana-Rock*, 438 F.3d at 210. That suspicion is not present where the parties agree the government can segregate and disagree only on where to draw the boundaries between groups. The issue of whether transgender students should get to play on the team and use the bathroom of their choice is about the parameters of segregation, not the segregation itself.

L.B. 575's definitions clearly pass rational-basis scrutiny. But they also would pass even intermediate scrutiny. Excluding transgender students from the definition of the sex with which they identify is substantially related to the important government interests already laid out—student privacy and protecting female athletic opportunity.

The privacy interests fueling L.B. 575's sex-based bathrooms rule are "sex-specific privacy interests." *Adams*, 57 F.4th at 806. "[M]ost people have 'a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning and humiliating.'" *Fortner v. Thomas*, 983 F.2d 1024, 1030 (11th Cir. 1993) (quoting *Lee v. Downs*, 641 F.2d 1117, 1119 (4th Cir. 1981)). This privacy interest is implicated when a male is in the female bathroom regardless of how that male identifies, and *vice versa*. It would undermine this interest for the State to give students of the opposite sex—who in many cases have genitals of the opposite sex—access to bathrooms meant to provide students a place where they can "shield[] their bodies from the opposite sex." *Adams*, 57 F.4th at 805. In short, keeping biologically male students out of female bathrooms, even if the males identify as female, is substantially related to the State's interest in shielding students' bodies in intimate facilities from members of the opposite sex.

Disallowing transgender students to play on the team designated for the opposite biological sex is substantially related to protecting female athletic opportunity. Simply put, there are "physiological differences" between males and females. *Clark*, 695 F.2d at 1131. The "genetic" differences "between males and females" include "height, body mass, skeletal structure, strength, muscle quality, center of gravity, limb length ratios, [and] cardiovascular performance." Amicus Brief of 67 Female Athletes, Coaches, Sports Officials, and Parents of Female Athletes, *West Virginia v. B.P.J.*, 2023 WL 2648011, at \*6 (Mar. 13, 2023).<sup>3</sup> "[A]dult males are faster, stronger, more powerful than females because of fundamental sex differences in anatomy and physiology dictated by sex chromosomes." *ACSM Releases Expert Consensus Statement*, American College of Sports Medicine (Sept. 29, 2023), <https://perma.cc/Q5UZ-2F8G>. These biological advantages are not erased the moment a male announces, "I am a woman." If Nebraska allowed biological males to play on a female team if they so identified, "there would be a substantial risk that boys would dominate the girls' programs and deny them an equal opportunity to compete in interscholastic events." *O'Connor*, 449 U.S. at 1307.

Some courts have suggested that estrogen therapy and other transition procedures may quell any physiological advantages biological males have over biological females. See *Hecox*, 79 F.4th at 1029. Even if that is true, not every biological male that identifies as a woman undergoes these procedures.<sup>4</sup> And neither rational-basis nor intermediate scrutiny requires states to narrowly tailor laws to every individual's unique circumstances. See *Heller v. Doe*, 509 U.S. 312, 321 (1993); *Clark*, 695 F.2d at 1131–32. The Legislature does not have to tailor L.B. 575 to allow biological males who have undertaken treatments that curtail their physiological advantages to compete on female-designated teams.

L.B. 575's definitions of "biological female" and "biological male" do not fail either rational-basis or intermediate review. L.B. 575 does not violate the Equal Protection Clause.

### III.

L.B. 575 is also consistent with Title IX of the Educational Amendments of 1972. Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a); *accord* 34 C.F.R. § 106.31(a). "Congress enacted Title IX in response to its finding—after extensive hearings held in 1970 by the House Special Subcommittee on Education—of pervasive discrimination against women with respect to educational opportunities." *Cohen v. Brown Univ.*, 101 F.3d 155, 165 (1st Cir. 1996); *see also Neal v. Bd. of Trs. of Cal. State Univs.*, 198 F.3d 763, 766 (9th Cir. 1999).

While Title IX prohibits discrimination "on the basis of sex" in the provision of educational benefits, 20 U.S.C. § 1681(a), it *expressly allows* educational institutions to "maintain[] separate living facilities for the different sexes," *id.* § 1686, and implementing regulations allow "separate toilet, locker room, and shower facilities on the basis of sex," 34 C.F.R.

§ 106.33. The Title IX regulations also allow institutions to "operate or sponsor separate teams for members of *each sex* where selection for such teams is based upon competitive skill or the activity involved is a contact sport." 34 C.F.R. § 106.41(b) (emphasis added). As Senator Bayh, the chief sponsor of Title IX in the Senate, explained, this safe harbor was intended to "permit differential treatment by sex . . . in sports facilities or other instances where personal privacy must be preserved." 118 Cong. Rec. S5,807 (daily ed. Feb. 28, 1972) (statement of Sen. Bayh).

L.B. 575's separation of school facilities and athletics based on biological sex implicates Title IX. Courts are split on whether the refusal to allow transgender athletes to use facilities or compete in sports based on their gender identity violates Title IX.

**A.**

In *Grimm*, the Fourth Circuit relied on the Supreme Court's holding in *Bostock v. Clayton County*, 590 U.S. 644 (2020)—a Title VII case about employment discrimination—to strike down a school board's policy prohibiting the transgender plaintiff from using the boys' restrooms. In *Bostock*, the Court found that discrimination based on sexual orientation or gender identity violates Title VII because "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex." *Bostock*, 590 U.S. at 660.

The Fourth Circuit stated that "[a]lthough *Bostock* interprets Title VII of the Civil Rights Act of 1964, it guides our evaluation of claims under Title IX." *Grimm*, 972 F.3d at 616 (citation omitted). It explained that "the Board could not exclude *Grimm* from the boys' bathrooms without referencing his 'biological gender' under the policy," so "[e]ven if the Board's primary motivation in implementing or applying the policy was to exclude *Grimm* because he is transgender, his sex remains a but-for cause for the Board's actions." *Id.* at 616. The court thus concluded that "the Board's policy excluded *Grimm* from the boys' restrooms 'on the basis of sex.'" *Id.* at 617. The court reasoned, "*Grimm* was treated worse than students with whom he was similarly situated because he alone could not use the restroom corresponding with his gender." *Id.* at 618. The court accordingly affirmed summary judgment on *Grimm*'s Title IX claim. *Id.* at 619.

Similarly, in *Doe v. Snyder*, 28 F.4th 103 (9th Cir. 2022), the Ninth Circuit held that *Bostock*'s reasoning should apply to Title IX challenges. There, two minors diagnosed with gender dysphoria argued that the Arizona Health Care Cost Containment System's policy was unconstitutional. *Id.* at 106. Specifically, they argued that the policy of excluding "gender reassignment surgeries" from coverage under Arizona Medicaid violated the Affordable Care Act's anti-discrimination provision, which incorporates by reference Title IX's prohibition of discrimination "on the basis of sex," *see* 42 U.S.C. §18116(a). Although the court did not reach the merits of the constitutional and statutory challenges, it instructed that "Title IX's protections [should be construed] consistently with those of Title VII." *Doe*, 28 F.4th at 114. It did this despite acknowledging that the statutes employ

different language, reasoning that *Bostock* interchangeably used "because of sex" and "on the basis of sex" throughout the opinion. *See id.*

**B.**

Other courts have declined to extend the reasoning of *Bostock* to Title IX. For example, in *Adams*, the en banc court held that a school's "separating school bathrooms based on biological sex . . . comports with Title IX." *Adams*, 57 F.4th at 796. To determine the meaning of "sex" in Title IX, the court looked to the ordinary meaning of the word when the law was enacted in 1972. *See id.* at 812. Guided by dictionary definitions from the time of Title IX's enactment, the court found the meaning of "sex" to be unambiguous. It held that "when Congress prohibited discrimination on the basis of 'sex' in education, it meant biological sex, i.e., discrimination between males and females." *Id.* If "sex" included "gender identity," then Title IX's "carve-out" for sex-separated living facilities, "as well as the various carveouts under the implementing [Title IX] regulations, would be rendered meaningless," and transgender persons "would be able to live in both living facilities associated with their biological sex *and* [those] associated with their gender identity or transgender status." *Id.* at 813 (emphasis added). Such a conclusion was "difficult [for the court] to fathom." *Id.*

The court likewise declined to extend *Bostock* because it "expressly declined to address the issue of sex-separated bathrooms and locker rooms" and instead cabined itself to the Title VII issue of "various employers' decisions to fire employees based solely on their sexual orientations or gender identities." *Id.* at 808. The "appeal [in *Adams*] centers on the converse of that statement—whether discrimination based on biological sex necessarily entails discrimination based on transgender status." *Id.* at 809. The court concluded that "it does not—a policy can lawfully classify on the basis of biological sex without unlawfully discriminating on the basis of transgender status."<sup>5</sup> *Id.*

The court in *Bridge* also rejected the plaintiff's Title IX challenge to the school's policy that excluded him from his preferred bathroom. It found that because Title IX expressly allows schools to separate facilities based on sex, see 34 C.F.R. § 106.33, the determinative question was whether "sex" under Title VII means biological sex or gender identity. *Bridge*, 2024 WL 150598, at \*7. The court concluded that "[a]t the time Title IX was enacted, the ordinary public meaning of 'sex' was understood to mean the biological, anatomical, and reproductive differences between male and female." *Id.* at \*8. The school therefore did not violate Title IX by separating bathrooms by biological sex as allowed by Title IX's exception.

In *Neese v. Becerra*, two Texas-based physicians challenged the United States Department of Health and Human Services' (HHS) interpretation of Section 1557 of the Affordable Care Act. 640 F.Supp.3d 668, 672–73 (N.D. Tex. 2022). Section 1557 incorporated by reference Title IX's prohibition of discrimination "on the basis of sex," see 42 U.S.C. §18116(a), and HHS announced that it would interpret and enforce this provision to include gender-identity and sexual-orientation discrimination, per *Bostock*. *Neese*, 640 F.Supp.3d at 672.

The court held that neither *Bostock* nor its reasoning apply to Title IX. The court reasoned that Title VII and Title IX use different phraseology. Title VII prohibits discrimination "because of sex," while Title IX uses "on the basis of sex." *Id.* at 679–80. The court reasoned that "[a]s written and commonly construed, Title IX operates in binary terms—male and female—when it references 'on the basis of sex.'" *Id.* at 680. Thus, the word "sex" in Title IX refers to biological sex and not sexual orientation or gender identity. The court concluded that reading the phrase otherwise would render "Title IX and its regulations . . . nonsensical." *Id.* In fact, to ensure the legislative purposes of Title IX are accomplished, the court stated that Title IX "expressly allows [for] sex distinctions and sometimes even requires them to promote equal opportunity." *Id.* Accordingly, the court held, "Title IX's ordinary public meaning remains intact until changed by Congress, or perhaps the Supreme Court." *Id.* at 684.

### C.

Adopting the analyses of the latter cases, we conclude L.B. 575 does not violate Title IX. Those courts reasoned that separating bathrooms and athletics based on biological sex comports with the text and legislative purpose of Title IX. As pointed out by the extensive en banc opinion in *Adams*, the reasoning of *Bostock* does not apply to Title IX. *Bostock* concerned only Title VII; it expressly noted that "other federal or state laws that prohibit sex discrimination"—like Title IX—were not "before" the Court; and it refused to "prejudge any such question" about what those statutes require. 590 U.S. at 681. Substantively, "Title VII differs from Title IX in important respects." *Meriwether v. Hartop*, 992 F.3d 492, 510 n.4 (6th Cir. 2021). Title VII involves employment claims. Title IX is "about schools and children—and the school is not the workplace." *Adams*, 57 F.4th at 808. It therefore "does not follow that principles announced in the Title VII context automatically apply in the Title IX context." *Meriwether*, 992 F.3d at 510 n.4.

We also reiterate the material differences in the texts of Title VII and Title IX. Title IX prohibits discrimination "on *the basis* of sex," 20 U.S.C. § 1681(a) (emphasis added), rather than "because of . . . sex." 42 U.S.C. § 2000e-2(a)(1). That distinction is significant. *Bostock* concluded that Title VII's prohibition on discrimination "because of" sex imposed a but-for causation requirement, which the Court acknowledged "can be a sweeping standard." *Bostock*, 590 U.S. at 656. Title IX, by contrast, prohibits only discrimination "on *the basis* of sex." 20 U.S.C. § 1681(a) (emphasis added). That language conveys that biological sex must be the *sole* reason for the discrimination. "A statutory provision's use of the definite article 'the,' . . . indicates that Congress intended the term modified to have a singular referent." *S.E.C. v. KPMG LLP*, 412 F. Supp. 2d 349, 387–88 (S.D.N.Y. 2006); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004).

We also agree with *Adams* and *Bridge* that separating bathrooms and sports by biological sex falls squarely into Title IX's carve-outs for separating facilities and athletic teams on the basis of "sex." *See* 20 U.S.C. § 1686; 34 C.F.R. §§ 106.33, .41(b). The ordinary meaning of the word "sex" at the time the law was enacted was biological sex. Definitions show

that in 1972 the word "sex" meant biological sex, not gender identity. See *Adams*, 57 F.4th at 812 (collecting dictionary definitions); *Bridge*, 2024 WL 150598, at \*7 (same); *Grimm*, 972 F.3d at 632–33 (Niemeyer, J., dissenting); see also 85 Fed. Reg. 30026, 30178 ("Title IX and its implementing regulations include provisions that presuppose sex as a binary classification . . ."). Defining sex to mean biological sex, as is the case in L.B. 575, does not offend Title IX. Rather, it appears to be in accord with the legislative purpose of Title IX. For these reasons, L.B. 575 does not violate Title IX.

#### IV.

We conclude that L.B. 575, as introduced, is constitutional. Courts have long found that separating sports and facilities by sex is permissible under the Equal Protection Clause. And any challenges to L.B. 575's exclusion of transgender students from its definitions of "biological male" and "biological female" should be examined under rational-basis review. But even if the bill is reviewed under intermediate scrutiny, it is still constitutional. Courts have routinely found that objectives like those of L.B. 575—student privacy and equal athletic opportunities—are important. It is reasonable for the State to make designations based on biology to ensure those objectives are accomplished.

As to Title IX challenges, we believe separating facilities and teams based on biological sex comports with the text and legislative purpose of Title IX. The word "sex" in Title IX and its carve-outs for facilities and athletic teams refers to biological sex, not sexual orientation or gender identity. To read the phrase otherwise would be to render Title IX illogical.

MICHAEL T. HILGERS  
Attorney General of Nebraska

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<sup>1</sup>Currently, Nebraska allows, but does not require, educational institutions to maintain separate toilet facilities, locker rooms, or living facilities for the different sexes. See Neb. Rev. Stat. § 79-2,124 (Reissue 2014).

<sup>2</sup>Students also had the option to use a gender-neutral bathroom. *Adams*, 57 F.4th at 798.

<sup>3</sup>See also K. M. Halzip et al., *Sex-Based Differences in Skeletal Muscle Kinetics and Fiber-Type Composition*, 30 *Physiology* 30 (2015); Sandro Bartolomei et al., *A Comparison between Male and Female Athletes in Relative Strength and Power Performances*, 6 *J. Functional Morphology and Kinesiology* 17 (2021); Sarah R. St. Pierre et al., *Sex Matters: A Comprehensive Comparison of Female and Male Hearts*, *Frontiers in Physiology* (2022), <https://perma.cc/2VHJ-FPCS>; Melanie Schorr et al., *Sex Differences in Body Composition and Association with Cardiometabolic Risk*, *Biology of Sex Differences* (2018), <https://perma.cc/VP2B-LTU9>.

<sup>4</sup>See, e.g., *Transgender & Non-Binary Care Frequently Asked Questions*, The MetroHealth System, <https://perma.cc/K3J3-3BU3> (last visited Mar. 12, 2024), ("Living according to your gender identity does not always mean you need to use hormones or surgery."); *Learn About Sex and Gender*, Planned

Parenthood Great Northwest, Hawai‘i, Alaska, Indiana, Kentucky, <https://perma.cc/W66P-AK7Z> (last visited Mar. 12, 2024) (“Transitioning can involve medical treatment and hormones, changing name and pronouns, altering appearance and dress, or coming out to your friends and family. Not all transgender people transition.”).

<sup>5</sup>Even if the term “sex,” as used in Title IX, was ambiguous, the court would have still found in favor of the School Board because under the clear-statement rule for laws passed under the Spending Clause, Congress must have “unambiguously” defined sex to mean something other than biological sex—which it did not. *Id.* at 815–17.

### GENERAL FILE

**LEGISLATIVE BILL 388.** Senator M. Cavanaugh renewed [MO550](#), found on page 958, First Session, 2023, and considered on page 1331 and in this day’s Journal, to indefinitely postpone pursuant to Rule 6 Sec. 3(f).

### SPEAKER ARCH PRESIDING

### PRESIDENT KELLY PRESIDING

The M. Cavanaugh motion to indefinitely postpone pursuant to Rule 6, Sec. 3(f) failed with 8 ayes, 29 nays, 10 present and not voting, and 2 excused and not voting.

Senator Slama offered the following motion:

[MO1320](#)

Reconsider the vote taken on MO550.

Senator Linehan offered the following motion:

[MO1321](#)

Invoke cloture pursuant to Rule 7, Sec. 10.

Senator Linehan moved for a call of the house. The motion prevailed with 39 ayes, 3 nays, and 7 not voting.

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

Voting in the affirmative, 33:

Aguilar	Bostelman	Erdman	Kauth	Sanders
Albrecht	Brandt	Hansen	Linehan	von Gillern
Arch	Brewer	Hardin	Lippincott	Walz
Armendariz	Clements	Holdcroft	McDonnell	Wayne
Ballard	DeKay	Hughes	Meyer	Wishart
Bosn	Dorn	Ibach	Moser	
Bostar	Dover	Jacobson	Murman	

Voting in the negative, 6:

Cavanaugh, J.	Dungan	Slama
Conrad	McKinney	Vargas

Present and not voting, 8:

Blood	Day	Fredrickson	Lowe
Cavanaugh, M.	DeBoer	Halloran	Riepe

Excused and not voting, 2:

Hunt	Raybould
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The Linehan motion to invoke cloture prevailed with 33 ayes, 6 nays, 8 present and not voting, and 2 excused and not voting.

The Slama motion to reconsider failed with 9 ayes, 32 nays, 6 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 28 ayes, 12 nays, 7 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

### COMMITTEE REPORT(S)

Education

**LEGISLATIVE BILL 1331.** Placed on General File with amendment.

[AM3313](#) is available in the Bill Room.

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

Timothy Daniels - Coordinating Commission for Postsecondary Education  
 Deborah Frison - Coordinating Commission for Postsecondary Education  
 LeDonna Griffin - Coordinating Commission for Postsecondary Education  
 Dennis Headrick - Coordinating Commission for Postsecondary Education  
 Dannika L. Nelson - Coordinating Commission for Postsecondary  
 Education

Aye: 8. Albrecht, Conrad, Linehan, Meyer, Murman, Sanders, Walz, Wayne.  
 Nay: 0. Absent: 0. Present and not voting: 0.

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

Jon W. Abegglen - Board of Educational Lands and Funds  
Dwayne B. Probyn - Board of Educational Lands and Funds

Aye: 8. Albrecht, Conrad, Linehan, Meyer, Murman, Sanders, Walz, Wayne.  
Nay: 0. Absent: 0. Present and not voting: 0.

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

Dorothy C. Anderson - Nebraska Educational Telecommunications  
Commission

Aye: 8. Albrecht, Conrad, Linehan, Meyer, Murman, Sanders, Walz, Wayne.  
Nay: 0. Absent: 0. Present and not voting: 0.

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

Christy Hovanetz - Technical Advisory Committee for Statewide  
Assessment

Aye: 8. Albrecht, Conrad, Linehan, Meyer, Murman, Sanders, Walz, Wayne.  
Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) Dave Murman, Chairperson

General Affairs

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

Dan Volnek - Nebraska Commission on Problem Gambling

Aye: 8. Brewer, Cavanaugh, J., Day, Hardin, Holdcroft, Hughes, Lowe,  
Raybould. Nay: 0. Absent: 0. Present and not voting: 0.

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

Todd Zohner - Nebraska Commission on Problem Gambling

Aye: 8. Brewer, Cavanaugh, J., Day, Hardin, Holdcroft, Hughes, Lowe,  
Raybould. Nay: 0. Absent: 0. Present and not voting: 0.

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

Paul Leckband - Nebraska Commission on Problem Gambling

Aye: 8. Brewer, Cavanaugh, J., Day, Hardin, Holdcroft, Hughes, Lowe, Raybould. Nay: 0. Absent: 0. Present and not voting: 0.

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

Helen Abbott Feller - State Racing and Gaming Commission

Aye: 8. Brewer, Cavanaugh, J., Day, Hardin, Holdcroft, Hughes, Lowe, Raybould. Nay: 0. Absent: 0. Present and not voting: 0.

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

Stephen M. Farrington - State Electrical Board

Aye: 8. Brewer, Cavanaugh, J., Day, Hardin, Holdcroft, Hughes, Lowe, Raybould. Nay: 0. Absent: 0. Present and not voting: 0.

(Signed) John Lowe, Chairperson

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

Senator Holdcroft filed the following amendment to LB876A:

[AM3273](#)

1 1. Strike original section 2.

2 2. On page 2, line 1, strike "\$50,000" and insert "\$65,000".

Senator Linehan filed the following amendment to LB388:

[AM3292](#)

(Amendments to Standing Committee amendments, AM3203)

1 1. Strike section 35 and insert the following new section:

2 Sec. 35. Section 77-3446, Revised Statutes Cumulative Supplement,

3 2022, is amended to read:

4 77-3446 Base limitation means the budget limitation rate applicable

5 to school districts and the limitation on growth of restricted funds

6 applicable to other political subdivisions prior to any increases in the

7 rate as a result of special actions taken by a supermajority of any

8 governing board or of any exception allowed by law. The base limitation

9 is ~~three two and one-half~~ percent until adjusted, except that the base

10 limitation for school districts ~~for school fiscal years 2017-18 and~~

11 ~~2018-19 is one and one-half percent and for school fiscal year 2019-20 is~~

12 ~~two and one-half~~ percent. The base limitation may be adjusted annually by

13 the Legislature to reflect changes in the prices of services and products

14 used by school districts and political subdivisions.

Senator Bostar filed the following amendment to [LB388](#):

[FA329](#)

On page 33, strike lines 25-31; and on page 34, strike lines 1-22.

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 462.** Introduced by Jacobson, 42; Aguilar, 35; Albrecht, 17; Arch, 14; Armendariz, 18; Ballard, 21; Blood, 3; Bosn, 25; Bostar, 29; Bostelman, 23; Brandt, 32; Brewer, 43; Cavanaugh, J., 9; Cavanaugh, M., 6; Clements, 2; Conrad, 46; Day, 49; DeBoer, 10; DeKay, 40; Dorn, 30; Dover, 19; Dungan, 26; Erdman, 47; Fredrickson, 20; Halloran, 33; Hansen, 16; Hardin, 48; Holdcroft, 36; Hughes, 24; Ibach, 44; Kauth, 31; Linehan, 39; Lippincott, 34; Lowe, 37; McDonnell, 5; McKinney, 11; Meyer, 41; Moser, 22; Murman, 38; Raybould, 28; Riepe, 12; Sanders, 45; Slama, 1; Vargas, 7; von Gillern, 4; Walz, 15; Wayne, 13; Wishart, 27.

WHEREAS, Fred Hoiberg was named one of the 2023-24 Big Ten Coaches of the Year; and

WHEREAS, Hoiberg began his coaching career at Iowa State University in 2010, coached the Chicago Bulls from 2015 to 2018, and made his way to the University of Nebraska-Lincoln in 2019; and

WHEREAS, Hoiberg is the first Husker coach to be named Big Ten Co-Coach of the Year since 2014; and

WHEREAS, under Hoiberg's direction, the Huskers were forecasted to finish twelfth in the league, but countered the prediction with a third place finish; and

WHEREAS, the Huskers totaled twenty-two wins in the 2023-24 season tying for the second most in program history; and

WHEREAS, Hoiberg respected the process of the program, from the players to the people behind the scenes, and the dedication and hard work has awarded him recognition.

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

1. That the Legislature congratulates Fred Hoiberg on being named 2023-24 Big Ten Co-Coach of the Year.
2. That a copy of this resolution be sent to Fred Hoiberg.

Laid over.

### GENERAL FILE

**LEGISLATIVE BILL 388A.** Title read. Considered.

Advanced to Enrollment and Review Initial with 35 ayes, 1 nay, 11 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 1073.** Committee [AM2568](#), found on page 810 and considered on page 1373, was renewed.

The first Slama amendment, [AM3285](#), found on page 1373 and considered on page 1380, to the committee amendment, was renewed.

The first Slama amendment was adopted with 37 ayes, 0 nays, 10 present and not voting, and 2 excused and not voting.

The second Slama amendment, [AM3286](#), found on page 1377, to the committee amendment, was offered.

The second Slama amendment, to the committee amendment, was adopted with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

Senator J. Cavanaugh withdrew [AM3228](#), found on page 1380, to the first Slama amendment.

The committee amendment, as amended, was adopted with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 1073A.** Title read. Considered.

#### **SENATOR DEBOER PRESIDING**

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 196.** Title read. Considered.

Committee [AM3100](#), found on page 1164, was offered.

Senator Clements offered [AM3195](#), found on page 1260, to the committee amendment.

#### **SPEAKER ARCH PRESIDING**

Pending.

**LEGISLATIVE BILL 1085.** Title read. Considered.

Committee [AM2369](#), found on page 933, was offered.

The committee amendment was adopted with 35 ayes, 0 nays, 10 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 903.** Title read. Considered.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 6 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 1326.** Title read. Considered.

Advanced to Enrollment and Review Initial with 40 ayes, 0 nays, 5 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 1214.** Title read. Considered.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 6 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 1070.** Title read. Considered.

Advanced to Enrollment and Review Initial with 40 ayes, 0 nays, 5 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 910.** Title read. Considered.

Committee [AM2389](#), found on page 749, was offered.

Senator Riepe offered the following amendment to the committee amendment:

[AM3303](#)

(Amendments to Standing Committee amendments, AM2389)

1 1. On page 1, line 14, strike "care provider" and insert "medical  
2 service".

The Riepe amendment, to the committee amendment, was adopted with 39 ayes, 0 nays, 6 present and not voting, and 4 excused and not voting.

The committee amendment, as amended, was adopted with 38 ayes, 0 nays, 7 present and not voting, and 4 excused and not voting.

Advanced to Enrollment and Review Initial with 36 ayes, 0 nays, 9 present and not voting, and 4 excused and not voting.

**LEGISLATIVE BILL 1029.** Title read. Considered.

Advanced to Enrollment and Review Initial with 40 ayes, 0 nays, 5 present and not voting, and 4 excused and not voting.

**POINT(S) OF PERSONAL PRIVILEGE**

Senator Hansen took a point of personal privilege.

Senator Wayne took a point of personal privilege.

**MESSAGE(S) FROM THE GOVERNOR**

April 2, 2024

Brandon Metzler  
Clerk of the Legislature  
State Capitol, Room 2018  
Lincoln, NE 68509

Dear Clerk Metzler:

Engrossed Legislative Bills 857/857A, 607, 644e/644Ae, 834, 839e, 894, 906, 1004e, 1102, 1204/1204A, 1215e, 1313, 851e, 877e, 998, 1118, 1143, 1162 and 1188e were received in my office on March 28, 2024, and signed on April 2, 2024.

These bills were delivered to the Secretary of State on April 2, 2024.

Sincerely,  
(Signed) Jim Pillen  
Governor

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

Senator Wayne filed the following amendment to [LB348](#):  
[AM3263](#) is available in the Bill Room.

Senator Fredrickson filed the following amendment to [LB856](#):  
[AM3218](#)

(Amendments to AM2544)

1 1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:  
3 Section 1. Section 68-1206, Revised Statutes Supplement, 2023, is  
4 amended to read:  
5 68-1206 (1) The Department of Health and Human Services shall  
6 administer the program of social services in this state. The department  
7 may contract with other social agencies for the purchase of social  
8 services at rates not to exceed those prevailing in the state or the cost  
9 at which the department could provide those services. The statutory  
10 maximum payments for the separate program of aid to dependent children  
11 shall apply only to public assistance grants and shall not apply to  
12 payments for social services.  
13 (2)(a) As part of the provision of social services authorized by  
14 section 68-1202, the department shall participate in the federal child  
15 care assistance program under 42 U.S.C. 9857 et seq., as such sections  
16 existed on January 1, 2023, and provide child care assistance to families  
17 with incomes up to (i) one hundred eighty-five percent of the federal

18 poverty level prior to October 1, 2026, or (ii) one hundred thirty  
19 percent of the federal poverty level on and after October 1, 2026.

20 ~~(b)(i) (b)~~ As part of the provision of social services authorized by  
21 this section and section 68-1202, the department shall participate in the  
22 federal Child Care Subsidy program. A child care provider seeking to  
23 participate in the federal Child Care Subsidy program shall comply with  
24 the criminal history record information check requirements of the Child  
25 Care Licensing Act. In determining ongoing eligibility for this program,  
26 ten percent of a household's gross earned income shall be disregarded  
1 after twelve continuous months on the program and at each subsequent  
2 redetermination. In determining ongoing eligibility, if a family's income  
3 exceeds one hundred eighty-five percent of the federal poverty level  
4 prior to October 1, 2026, or one hundred thirty percent of the federal  
5 poverty level on and after October 1, 2026, the family shall receive  
6 transitional child care assistance through the remainder of the family's  
7 eligibility period or until the family's income exceeds eighty-five  
8 percent of the state median income for a family of the same size as  
9 reported by the United States Bureau of the Census, whichever occurs  
10 first. When the family's eligibility period ends, the family shall  
11 continue to be eligible for transitional child care assistance if the  
12 family's income is below two hundred percent of the federal poverty level  
13 prior to October 1, 2026, or one hundred eighty-five percent of the  
14 federal poverty level on and after October 1, 2026. The family shall  
15 receive transitional child care assistance through the remainder of the  
16 transitional eligibility period or until the family's income exceeds  
17 eighty-five percent of the state median income for a family of the same  
18 size as reported by the United States Bureau of the Census, whichever  
19 occurs first. The amount of such child care assistance shall be based on  
20 a cost-shared plan between the recipient family and the state and shall  
21 be based on a sliding-scale methodology. A recipient family may be  
22 required to contribute a percentage of such family's gross income for  
23 child care that is no more than the cost-sharing rates in the  
24 transitional child care assistance program as of January 1, 2015, for  
25 those no longer eligible for cash assistance as provided in section  
26 68-1724.

27 (ii) A licensed child care program that employs a member of an  
28 eligible household shall make reasonable accommodations so that the  
29 eligible applicant or adult household member is not a primary caregiver  
30 to such applicant's or adult household member's child. If reasonable  
31 accommodation cannot be made, the department shall allow the applicant or  
1 adult household member to receive child care assistance for the  
2 applicant's or adult household member's child including when the  
3 applicant or adult household member is the primary caregiver for such  
4 child.

5 (iii) A licensed child care provider eligible for the child care  
6 subsidy may enroll the household member's child in a child care program  
7 other than the household member's child care program to receive child  
8 care assistance.

9 (c) For the period beginning July 1, 2021, through September 30,  
10 2026, funds provided to the State of Nebraska pursuant to the Child Care  
11 and Development Block Grant Act of 1990, 42 U.S.C. 9857 et seq., as such  
12 act and sections existed on January 1, 2023, shall be used to pay the  
13 costs to the state resulting from the income eligibility changes made in  
14 subdivisions (2)(a) and (b) of this section by Laws 2021, LB485. If the  
15 available amount of such funds is insufficient to pay such costs, then  
16 funds provided to the state for the Temporary Assistance for Needy  
17 Families program established in 42 U.S.C. 601 et seq. may also be used.  
18 No General Funds shall be used to pay the costs to the state, other than  
19 administration costs, resulting from the income eligibility changes made  
20 in subdivisions (2)(a) and (b) of this section by Laws 2021, LB485, for

21 the period beginning July 1, 2021, through September 30, 2026.  
 22 (d) The Department of Health and Human Services shall collaborate  
 23 with a private nonprofit organization with expertise in early childhood  
 24 care and education for an independent evaluation of the income  
 25 eligibility changes made in subdivisions (2)(a) and (b) of this section  
 26 by Laws 2021, LB485, if private funding is made available for such  
 27 purpose. The evaluation shall be completed by July 1, 2024, and shall be  
 28 submitted electronically to the department and to the Health and Human  
 29 Services Committee of the Legislature.  
 30 (3) In determining the rate or rates to be paid by the department  
 31 for child care as defined in section 43-2605, the department shall adopt  
 1 a fixed-rate schedule for the state or a fixed-rate schedule for an area  
 2 of the state applicable to each child care program category of provider  
 3 as defined in section 71-1910 which may claim reimbursement for services  
 4 provided by the federal Child Care Subsidy program, except that the  
 5 department shall not pay a rate higher than that charged by an individual  
 6 provider to that provider's private clients. The schedule may provide  
 7 separate rates for care for infants, for children with special needs,  
 8 including disabilities or technological dependence, or for other  
 9 individual categories of children. The schedule may also provide tiered  
 10 rates based upon a quality scale rating of step three or higher under the  
 11 Step Up to Quality Child Care Act. The schedule shall be effective on  
 12 October 1 of every year and shall be revised annually by the department.  
 13 Sec. 2. Original section 68-1206, Revised Statutes Supplement,  
 14 2023, is repealed.

Senator Ibach filed the following amendment to [LB1368A](#):  
[AM3290](#)

1 1. On page 2, lines 2 and 9, strike "\$5,000,000" and insert  
 2 "\$1,000,000".

#### **BILL ON FIRST READING**

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

**LEGISLATIVE BILL 631A.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to aid in carrying out the provisions of Legislative Bill 631, One Hundred Eighth Legislature, Second Session, 2024.

#### **RESOLUTION(S)**

**LEGISLATIVE RESOLUTION 463.** Introduced by Walz, 15.

WHEREAS, the American Occupational Therapy Association has declared the month of April 2024 to be Occupational Therapy Month; and

WHEREAS, the profession of occupational therapy makes valuable contributions in helping people live life to its fullest after an illness or injury; and

WHEREAS, occupational therapy services are available to residents of Nebraska through occupational therapists and occupational therapy assistants at hospitals, home health agencies, schools, clinics, community organizations, and nursing homes; and

WHEREAS, the health and productivity of the residents of Nebraska depends upon the effective use of health care resources, including the important services of occupational therapists and occupational therapy assistants.

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

1. That the Legislature recognizes April 2024 as Occupational Therapy Month in Nebraska.

Laid over.

### EASE

The Legislature was at ease from 6:06 p.m. until 6:40 p.m.

### SENATOR DEBOER PRESIDING

#### GENERAL FILE

**LEGISLATIVE BILL 196.** Committee [AM3100](#), found on page 1164 and considered in this day's Journal, was renewed.

Senator Clements renewed [AM3195](#), found on page 1260 and considered in this day's Journal.

Senator Clements moved for a call of the house. The motion prevailed with 27 ayes, 4 nays, and 18 not voting.

The Clements amendment lost with 24 ayes, 16 nays, 7 present and not voting, and 2 excused and not voting.

The Chair declared the call raised.

Senator Bostar offered the following amendment to the committee amendment:

#### [AM3151](#)

(Amendments to Standing Committee amendments, AM3100)

- 1 1. Strike amendment 1 and insert the following new amendment:
- 2 1. Strike original sections 2, 3, 4, and 5 and insert the following
- 3 new sections:
- 4 Section 1. Section 81-8,318, Revised Statutes Cumulative Supplement,
- 5 2022, is amended to read:
- 6 81-8,318 (1) To receive compensation under the In the Line of Duty
- 7 Compensation Act, a claim for the compensation ~~shall~~ ~~must~~ be filed with
- 8 the Risk Manager within ~~three years~~ ~~one year~~ after the date of death of
- 9 the public safety officer who was killed in the line of duty. Such claim
- 10 shall be on a form prescribed by the Risk Manager and shall include:
- 11 (a) The name, address, and title or position of the public safety
- 12 officer who was killed in the line of duty;
- 13 (b) A copy of the form filed in accordance with subsection (4) of
- 14 section 81-8,317, if any. If no such form has been filed, the claim shall

15 include the name and address of the person or persons to whom  
16 compensation is payable under subdivision (3)(b) of section 81-8,317;  
17 (c) A sworn statement providing a full factual account of the  
18 circumstances resulting in or the course of events causing the death of  
19 the public safety officer; and  
20 (d) Such other information as the Risk Manager reasonably requires.  
21 (2) The Risk Manager shall send written notice to all claimants  
22 within two weeks after the initiation of a claim indicating whether or  
23 not the claim is complete. For purposes of this subsection, a claim is  
24 complete if a claimant has submitted to the Risk Manager all documents  
25 and information required under subsection (1) of this section. If a claim  
26 is incomplete, the Risk Manager shall include in the written notice a  
1 list of the documents or information which the claimant must submit in  
2 order for the claim to be complete. If a claim is complete, the State  
3 Claims Board shall make an investigation of the claim in the manner  
4 provided in the State Miscellaneous Claims Act. Upon completion of such  
5 investigation, and no later than forty-five days after receipt of a  
6 complete claim, the State Claims Board shall approve or deny such claim  
7 in accordance with section 81-8,300 and the Risk Manager shall send  
8 written notice to the claimant stating whether the claim has been  
9 approved or denied. If a claim is denied, the notice shall include the  
10 reason or reasons for the denial. If a claimant is dissatisfied with a  
11 denial, he or she may file an application for review with the Risk  
12 Manager in accordance with subsection (2) of section 81-8,300. If a claim  
13 is approved, compensation shall be paid to the claimants entitled to such  
14 compensation in accordance with subsection (3) of section 81-8,300.  
15 (3) This section shall apply to any claim arising on or after  
16 January 1, 2022.  
17 Sec. 3. Original sections 81-8,318 and 81-2017, Revised Statutes  
18 Cumulative Supplement, 2022, are repealed.

The Bostar amendment was adopted with 42 ayes, 0 nays, 5 present and not voting, and 2 excused and not voting.

The committee amendment, as amended, was adopted with 45 ayes, 0 nays, 2 present and not voting, and 2 excused and not voting.

The Conrad motion [MO1235](#), found on page 964, to place on General File pursuant to Rule 3, Sec. 20(b), was not considered.

Advanced to Enrollment and Review Initial with 44 ayes, 0 nays, 3 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 196A.** Title read. Considered.

Advanced to Enrollment and Review Initial with 38 ayes, 0 nays, 9 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 870.** Title read. Considered.

Committee [AM2533](#), found on page 828, was offered.

The committee amendment was adopted with 46 ayes, 0 nays, 1 present and not voting, and 2 excused and not voting.

Senator M. Cavanaugh withdrew [AM2179](#), found on page 548.

Advanced to Enrollment and Review Initial with 43 ayes, 0 nays, 4 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 870A.** Title read. Considered.

Advanced to Enrollment and Review Initial with 39 ayes, 0 nays, 8 present and not voting, and 2 excused and not voting.

**LEGISLATIVE BILL 399.** Title read. Considered.

Committee [AM2702](#), found on page 856, was offered.

Senator J. Cavanaugh offered [MO1231](#), found on page 905, to recommit to the Natural Resources Committee.

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

Senator Erdman moved for a call of the house. The motion prevailed with 18 ayes, 0 nays, and 31 not voting.

The motion to cease debate prevailed with 27 ayes, 9 nays, and 13 not voting.

Senator M. Cavanaugh requested a roll call vote on the J. Cavanaugh motion to recommit to committee.

Voting in the affirmative, 10:

Blood	Cavanaugh, M.	DeBoer	Fredrickson	Vargas
Bostar	Day	Dungan	McKinney	Walz

Voting in the negative, 31:

Aguilar	Brandt	Halloran	Linehan	Sanders
Albrecht	Brewer	Hansen	Lippincott	Slama
Arch	Clements	Hardin	Lowe	von Gillern
Armendariz	DeKay	Holdcroft	McDonnell	
Ballard	Dorn	Hughes	Meyer	
Bosn	Dover	Jacobson	Moser	
Bostelman	Erdman	Kauth	Murman	

Present and not voting, 5:

Cavanaugh, J.	Conrad	Ibach	Riepe	Wishart
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Excused and not voting, 3:

Hunt            Raybould        Wayne

The J. Cavanaugh motion to recommit to committee failed with 10 ayes, 31 nays, 5 present and not voting, and 3 excused and not voting.

The Chair declared the call raised.

Senator J. Cavanaugh offered the following motion:

[MO1323](#)

Reconsider the vote taken on MO1231.

Pending.

**COMMITTEE REPORT(S)**  
Enrollment and Review

**LEGISLATIVE BILL 1288.** Placed on Final Reading.

[ST55](#)

The following changes, required to be reported for publication in the Journal, have been made:

1. In the McKinney amendment, AM3096, on page 2, line 12, "(b)" has been struck and "(ii)" inserted.

2. Due to the adoption of the McKinney amendment, AM3096, in the Raybould amendment, AM3106, section 30 has been struck and the following new sections inserted: Sec. 35. Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 36 of this act become operative on October 1, 2024. The other sections of this act become operative on their effective date. Sec. 37. Original sections 53-167.02, 53-180.06, 69-2404, and 69-2430, Reissue Revised Statutes of Nebraska, and section 28-1202.03, Revised Statutes Supplement, 2023, are repealed.

3. On page 1, the matter beginning with "civil" in line 1 through line 13 and all amendments thereto have been struck and "tribal matters; to amend sections 53-167.02, 53-180.06, 69-2404, 69-2430, 71-901, 71-902, 71-903, 71-910, 71-912, 71-919, 71-920, 71-926, 71-929, 71-936, 71-937, 71-939, 71-958, 71-961, 71-1201, 71-1203, 71-1204, 71-1206, 71-1210, 71-1213, 71-1220, 71-1221, and 71-1223, Reissue Revised Statutes of Nebraska, section 83-338, Revised Statutes Cumulative Supplement, 2022, and section 28-1202.03, Revised Statutes Supplement, 2023; to allow the use of tribal enrollment cards for proof of age and identity for certain firearm and alcohol laws; to provide for recognition of tribal mental health and dangerous sex offender commitment orders as prescribed; to provide for tribal law enforcement officers to take a subject into emergency protective custody; to provide for transportation of and commitment of persons committed under tribal law and for payment of related costs; to define and redefine terms; to eliminate obsolete provisions; to harmonize provisions; to provide operative dates; and to repeal the original sections." inserted.

(Signed) Beau Ballard, Chairperson

Nebraska Retirement Systems

The Nebraska Retirement Systems Committee desires to report favorably upon the appointment(s) listed below. The Committee suggests the appointment(s) be confirmed by the Legislature and suggests a record vote.

Janis Elliott - Public Employees Retirement Board

Aye: 6. Clements, Conrad, Hardin, Ibach, McDonnell, Vargas. Nay: 0.  
Absent: 0. Present and not voting: 0.

(Signed) Mike McDonnell, Chairperson

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

Senator Vargas filed the following amendment to LB1355A:  
AM3231 is available in the Bill Room.

Senator DeKay filed the following amendment to LB1301:  
AM3182

(Amendments to E&R amendments, ER104)

1 1. Strike sections 1, 5, 6, 7, 8, 9, 10, and 12 and insert the  
2 following new sections:  
3 Section 1. Section 4-107, Reissue Revised Statutes of Nebraska, is  
4 amended to read:  
5 4-107 (1) The right of a ~~nonresident an alien not residing within~~  
6 ~~the United States or its territories~~ to take either real or personal  
7 property or the proceeds thereof in this state by succession or  
8 testamentary disposition, upon the same terms and conditions as  
9 inhabitants and citizens of the United States, is dependent in each case  
10 upon:  
11 (a) ~~The Upon~~ the existence of a reciprocal right upon the part of  
12 citizens of the United States to take real and personal property and the  
13 proceeds thereof upon the same terms and conditions as inhabitants and  
14 citizens of the country of which such ~~nonresident~~ alien is an inhabitant;  
15 (b) ~~The Upon~~ the rights of citizens of the United States to receive  
16 by payment to them within the United States or its territories money  
17 originating from the estates of persons dying within such foreign  
18 country; ~~and~~  
19 (c) ~~Proof Upon proof~~ that such nonresident alien heirs,  
20 distributees, devisees, or legatees may receive the benefit, use, or  
21 control of property or proceeds from estates of persons dying in this  
22 state without confiscation in whole or in part, by the governments of  
23 such foreign countries; ~~and~~ -  
24 (d) ~~Compliance of the nonresident alien with the Foreign-owned Real~~  
25 ~~Estate National Security Act, except that if the nonresident alien does~~  
26 ~~not comply with the Foreign-owned Real Estate National Security Act, the~~  
1 ~~act shall control the transfer and disposition of any of the property~~  
2 ~~that is agricultural land.~~  
3 (2) The burden is upon such nonresident alien to establish the fact  
4 of existence of the reciprocal rights set forth in subsection (1) of this  
5 section.  
6 (3) If such reciprocal rights are not found to exist, the property  
7 shall be delivered to the State Treasurer to be held for a period of five  
8 years from date of death during which time such nonresident alien may  
9 show that he ~~or she~~ has become eligible to receive such property. If at  
10 the end of such period of five years no showing of eligibility is made by  
11 such nonresident alien, his ~~or her~~ rights to such property or proceeds  
12 shall be barred.  
13 (4) At any time within the one year following the date the rights of  
14 such nonresident alien have been barred, any other person other than an  
15 ineligible nonresident alien who, in the case of succession or  
16 testamentary disposition, would have been entitled to the property or  
17 proceeds by virtue of the laws of Nebraska governing intestate descent  
18 and distribution had the nonresident alien predeceased the decedent, may  
19 petition the district court of Lancaster County for payment or delivery

20 of such property or proceeds to those entitled thereto.

21 (5) If no person has petitioned the district court of Lancaster  
22 County for payment or delivery of such property or proceeds within six  
23 years from the date of death of decedent, such property or proceeds shall  
24 be disposed of as escheated property.

25 (6) All property other than money delivered to the State Treasurer  
26 under this section may within one year after delivery be sold by the  
27 State Treasurer ~~him~~ to the highest bidder at public sale in whatever city  
28 in the state ~~affords~~ in the State Treasurer's ~~his~~ judgment would be the  
29 most favorable market for the property involved. The State Treasurer may  
30 decline the highest bid and reoffer the property for sale if the State  
31 Treasurer ~~he~~ considers the price bid insufficient. ~~The State Treasurer He~~  
1 need not offer any property for sale if, in ~~the State Treasurer's his~~  
2 opinion, the probable cost of sale exceeds the value of the property. Any  
3 sale held under this section shall be preceded by a single publication of  
4 notice of such sale ~~thereof~~ at least three weeks in advance of sale in a  
5 ~~an English language~~ newspaper of general circulation in the county where  
6 the property is to be sold and the cost of such publication and other  
7 expenses of sale paid out of the proceeds of such sale. The purchaser at  
8 any sale conducted by the State Treasurer pursuant to this section shall  
9 receive title to the property purchased, free from all claims of the  
10 owner or prior holder of such property ~~thereof~~ and of all persons  
11 claiming through or under such owner or prior holder ~~them~~. The State  
12 Treasurer shall execute all documents necessary to complete the transfer  
13 of title.

14 (7) For purposes of this section, nonresident alien has the same  
15 meaning as in section 5 of this act.

16 Sec. 5. For purposes of the Foreign-owned Real Estate National  
17 Security Act:

18 (1) Nonresident alien means any person who:

19 (a) Is not a citizen of the United States;

20 (b) Is not a national of the United States;

21 (c) Is not a lawful permanent resident of the United States; and

22 (d) Has not been physically present in the United States for at  
23 least one hundred eighty-three days during a three-year period that  
24 includes the current year and the two years immediately preceding the  
25 current year; and

26 (2) Restricted entity means:

27 (a) Any person or entity identified on the sanctions lists  
28 maintained by the Office of Foreign Assets Control of the United States  
29 Department of the Treasury as such sanctions lists existed on the  
30 operative date of this act; or

31 (b) Any person or foreign government or entity determined by the  
1 United States Secretary of Commerce to have engaged in a long-term  
2 pattern or serious instances of conduct significantly adverse to the  
3 national security of the United States pursuant to 15 C.F.R. 7.4, as such  
4 regulation existed on the operative date of this act.

5 Sec. 6. Section 76-402, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 ~~76-402~~ (1) Except as provided in the Foreign-owned Real Estate  
8 National Security Act, a nonresident alien, a foreign corporation, a  
9 government other than the United States Government or a government of its  
10 states, political subdivisions, territories, or possessions, or an agent,  
11 a trustee, or a fiduciary thereof:

12 (a) Shall not purchase, acquire title to, or take ~~Aliens and~~  
13 corporations not incorporated under the laws of the State of Nebraska are  
14 prohibited from acquiring title to or taking or holding any land, or real  
15 estate; or any leasehold interest extending for a period for more than  
16 five years or any other greater interest less than fee in any ~~land, or~~  
17 real estate in this state by descent, devise, purchase or otherwise ~~on or~~

18 after the operative date of this act, except as provided in the Foreign-  
 19 owned Real Estate National Security Act; and sections 76-403 to 76-405.  
 20 (b) Shall be in compliance with the federal Agricultural Foreign  
 21 Investment Disclosure Act of 1978, 7 U.S.C. 3501 et seq., with respect to  
 22 any real estate in Nebraska.

23 (2) Except as provided in the Foreign-owned Real Estate National  
 24 Security Act, a restricted entity, a nonresident alien, a foreign  
 25 corporation, a government other than the United States Government or a  
 26 government of its states, political subdivisions, territories, or  
 27 possessions, or an agent, a trustee, or a fiduciary thereof, that on or  
 28 after the operative date of this act purchases, acquires title to, or  
 29 takes any real estate or any leasehold interest in violation of the  
 30 Foreign-owned Real Estate National Security Act shall be subject to  
 31 divestment as prescribed under section 15 of this act.

1 Sec. 7. Section 76-404, Reissue Revised Statutes of Nebraska, is  
 2 amended to read:

3 76-404 (1) Except as provided in subsection (2) of this section,  
 4 corporations Corporations incorporated under the laws of the United  
 5 States of America, or under the laws of any state of the United States of  
 6 America, or any foreign corporation or any nonresident alien, doing  
 7 business in this state, may acquire, own, hold, or operate leases for  
 8 oil, gas, or other hydrocarbon substances, for a period as long as ten  
 9 years and as long thereafter as oil, gas, or other hydrocarbon substances  
 10 shall or can be produced in commercial quantities.

11 (2) Subsection (1) of this section shall not apply to a restricted  
 12 entity or an agent, trustee, or fiduciary thereof. A restricted entity  
 13 that violates subsection (1) of this section shall be in violation of the  
 14 Foreign-owned Real Estate National Security Act and subject to divestment  
 15 as prescribed under section 15 of this act.

16 Sec. 8. Section 76-405, Reissue Revised Statutes of Nebraska, is  
 17 amended to read:

18 76-405 Any nonresident resident alien may acquire title to lands in  
 19 this state by devise or descent only, except that provided such  
 20 nonresident alien shall be required to sell and convey such said real  
 21 estate property within five years after from the date of acquiring it,  
 22 and if the nonresident alien fails he shall fail to dispose of it to a  
 23 bona fide purchaser for value within such that time, the nonresident  
 24 alien # shall be in violation of the Foreign-owned Real Estate National  
 25 Security Act and the real estate shall be subject to divestment as  
 26 prescribed in section 15 of this act revert and escheat to the State of  
 27 Nebraska. If a person no longer meets the definition of nonresident alien  
 28 within five years of acquiring title to real estate by devise or descent,  
 29 such person shall not be required to dispose or divest of the property.

30 Sec. 9. Section 76-406, Reissue Revised Statutes of Nebraska, is  
 31 amended to read:

1 76-406 No corporation organized under the laws of this state and no  
 2 corporation organized under the laws of any other state or country, doing  
 3 business in this state, which was organized to hold or is holding real  
 4 estate, except as provided in the Foreign-owned Real Estate National  
 5 Security Act sections 76-404 and 76-412 to 76-414, shall elect  
 6 nonresident aliens as members of its board of directors or board of  
 7 trustees in a number sufficient to constitute a majority of such board,  
 8 nor elect nonresident aliens as executive officers or managers nor have a  
 9 majority of its capital stock owned by nonresident aliens.

10 Sec. 10. Section 76-407, Reissue Revised Statutes of Nebraska, is  
 11 amended to read:

12 76-407 Any such corporation described in section 9 of this act  
 13 violating such the provisions of section 76-406 shall be construed and  
 14 held to be a nonresident an alien and within the provisions of the  
 15 Foreign-owned Real Estate National Security Act sections 76-401 to 76-415

16 applicable to nonresident aliens alien persons. Any such domestic  
 17 corporation violating ~~the provisions of section 9 of this act 76-406~~  
 18 shall forfeit its charter and be dissolved. Any such foreign corporation  
 19 violating ~~the provisions of said section 9 of this act~~ shall forfeit its  
 20 right to do business in the State of Nebraska.  
 21 Sec. 12. Section 76-413, Reissue Revised Statutes of Nebraska, is  
 22 amended to read:  
 23 ~~76-413 (1) Except as provided in subsection (2) of this section,~~  
 24 ~~any nonresident Any alien, or foreign corporation, government other than~~  
 25 ~~the United States Government or a government of its states, political~~  
 26 ~~subdivisions, territories, or possessions, or agent, trustee, or~~  
 27 ~~fiduciary thereof:~~  
 28 (a) ~~May may~~ purchase, acquire, and hold title to, or be a lessor or  
 29 lessee of as much real estate as shall be necessary for the purpose of  
 30 (i) ~~(4) erecting on such real estate thereon~~ manufacturing or industrial  
 31 establishments, and in addition thereto such real estate as may be  
 1 required for facilities incidental to such establishments, or (ii) ~~(2)~~  
 2 erecting and maintaining establishments primarily operated for the  
 3 storage, sale, and distribution of petroleum products or hydrocarbon  
 4 substances, commonly known as filling stations or bulk stations; and  
 5 (b) ~~Shall not expand establishments or facilities purchased,~~  
 6 ~~acquired, held, or leased pursuant to subdivision (1)(a) of this section~~  
 7 ~~or build new such establishments or facilities if a restricted entity or~~  
 8 ~~an agent, trustee, or fiduciary thereof.~~  
 9 (2) ~~A restricted entity, or an agent, trustee, or fiduciary thereof,~~  
 10 ~~shall not purchase, acquire, hold title to, or be a lessor or lessee of~~  
 11 ~~real estate pursuant to subdivision (1)(a) of this section unless such~~  
 12 ~~restricted entity has a national security agreement with the Committee on~~  
 13 ~~Foreign Investment in the United States as of the operative date of this~~  
 14 ~~act, maintains such national security agreement, and certifies the~~  
 15 ~~validity of such national security agreement annually to the Department~~  
 16 ~~of Agriculture within thirty days after the operative date of this act~~  
 17 ~~and on or before January 15 of each year thereafter.~~  
 18 (3) ~~A restricted entity that violates this section shall be in~~  
 19 ~~violation of the Foreign-owned Real Estate National Security Act and~~  
 20 ~~subject to divestment as prescribed under section 15 of this act.~~

Senator Conrad filed the following amendment to LB1393:  
[AM3305](#)

1 1. On page 6, line 1, after "48-3604" insert "(1)"; in line 9 strike  
 2 "Unless", show as stricken, and insert "Except as provided in subsection  
 3 (2) of this section, or unless"; and after line 17 insert the following  
 4 new subsection:  
 5 "(2) If any term of a contract or agreement or proposed contract or  
 6 agreement for the use of a student-athlete's name, image, or likeness  
 7 rights or athletic reputation involves an expenditure of public funds,  
 8 such information shall be considered a public record under section  
 9 84-712.01."

Senator Conrad filed the following amendment to LB1393:  
[AM3306](#)

1 1. Strike original section 5.  
 2 2. Renumber the remaining sections and correct the repealer  
 3 accordingly.

Senator Bostar filed the following amendment to LB399:  
[AM3296](#)

(Amendments to Standing Committee amendments, AM2702)

1 1. Insert the following new section:  
2 Sec. 5. (1) For purposes of this section:  
3 (a) Compensation package includes salary, bonuses, and benefits; and  
4 (b) Public power entity means a public power district organized  
5 under Chapter 70, article 6, a public power and irrigation district, a  
6 municipality, a registered group of municipalities, an electric  
7 cooperative, an electric membership association, a joint entity formed  
8 under the Interlocal Cooperation Act, a joint public agency formed under  
9 the Joint Public Agency Act, an agency formed under the Municipal  
10 Cooperative Financing Act, or any other governmental entity providing  
11 electric service.  
12 (2) Any compensation package of any employee of a public power  
13 entity that has a value of two hundred thousand dollars or more is  
14 subject to annual review and approval by a majority vote of the members  
15 of the Legislature. If the compensation package is not approved by the  
16 Legislature pursuant to this section, the value of such compensation  
17 package shall be reduced by the public power entity to one hundred  
18 ninety-nine thousand nine hundred ninety-nine dollars and ninety-nine  
19 cents. Such compensation package shall be subject to future annual review  
20 and approval pursuant to this section if its value increases to two  
21 hundred thousand dollars or more.  
22 2. Renumber the remaining sections accordingly.

Senator Dungan filed the following amendment to LB399:

[FA330](#)

Strike Section 2.

Senator Dungan filed the following amendment to LB399:

[FA331](#)

Strike Section 3.

Senator M. Cavanaugh filed the following amendment to LB600:

[FA332](#)

Strike Section 1.

Senator M. Cavanaugh filed the following amendment to LB1120:

[FA333](#)

Strike Section 1.

Senator M. Cavanaugh filed the following amendment to LB1169:

[FA334](#)

Strike Section 1.

Senator M. Cavanaugh filed the following amendment to LB1394:

[FA335](#)

Strike Section 1.

#### **MOTION(S) - Print in Journal**

Senator J. Cavanaugh filed the following motion to LB399:

[MO1324](#)

Bracket until April 18, 2024.

**UNANIMOUS CONSENT - Add Cointroducer(s)**

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

Senator Dover name added to LB910.

Senator Bosn name added to LB910.

**VISITOR(S)**

Visitors to the Chamber were students from Reagan Elementary, Omaha; students from St. Paul's School, Beatrice.

The Doctor of the Day was Dr. Heather Kleeman of Lincoln.

**ADJOURNMENT**

At 9:57 p.m., on a motion by Senator Conrad, the Legislature adjourned until 9:00 a.m., Wednesday, April 3, 2024.

Brandon Metzler  
Clerk of the Legislature

