

Investigational drug use bill advanced

Drugs in U.S. Food and Drug Administration clinical trials could be used by eligible Nebraska patients under a bill advanced from general file March 1.

LB117, introduced last session by Omaha Sen. Robert Hilkemann, would allow an eligible patient under the Investigational Drug Use Act to be treated with any drug, biological product or medical device that has successfully completed Phase 1 of a clinical trial but has not yet been approved for general use by the FDA—provided that the drug remains in an FDA-approved clinical trial.



Sen. Robert Hilkemann

Hilkemann said the bill would offer hope to patients facing terminal illnesses whom conventional medication has failed.

“Thirty-three states have now adopted similar legislation with bipartisan support,” Hilkemann said. “I believe that it is time for Nebraska to join this growing list of states that allow terminally ill patients access to medications and treatments that may help them save their own lives.”

To be eligible, a patient must:

- have a documented, advanced illness;
- have considered all other approved treatment options;
- not be receiving inpatient treatment in a licensed hospital;

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Tighter controls on opiate prescriptions advanced



Sen. Sara Howard said the bill would ensure that physicians and pharmacists have important conversations with patients before sending them home with highly addictive opiates.

Lawmakers gave first-round approval to a bill Feb. 26 that would tighten restrictions on dispensing opiates in Nebraska.

LB931, sponsored by Omaha Sen. Sara Howard, would limit opiate prescriptions for a patient younger than 19 to no more than a seven-day supply. A medical practitioner would be required to discuss the risks associated with opiates with the patient’s parent or guardian. Exceptions to the seven-day limitation could be made for chronic pain, cancer diagnosis or palliative care.

If a health practitioner deems such

an exception appropriate for a patient, he or she would be required to document the medical condition requiring the pain medication in a patient’s medical record and indicate that a non-opiate alternative was not appropriate to address the condition.

Howard said her sister Carrie, who developed an addiction to prescription pain medication and died of an overdose in 2009, was her inspiration for bringing legislation to combat the state’s opioid problem.

The Legislature has collectively changed the face of the opioid

addiction in Nebraska, Howard said, with its passage of a prescription drug monitoring program. She said an article from the Pew Charitable Trust ranks Nebraska as just one of 14 states that saw a decline in the rates of opioid addition and deaths in the country.

“We wouldn’t give narcotic medications to a child for more than a week, but there are some physicians who are giving a month’s worth just to be on the ‘safe side,’” Howard said of LB931. “This [bill] shifts the focus to the doctor’s office and at the pharmacy—having that important conversation before they send out that medication

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Investigational drug use bill clears first round

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- give written, informed consent for the use of the investigational treatment; and
- have a recommendation from his or her treating physician for an investigational drug, biological product or device.

Under the bill, a manufacturer could provide an investigational treatment without compensation and would be prohibited from seeking reimbursement for such treatment if an eligible patient dies while being treated.

In addition, a treating physician would not be held liable if a treatment failed to work or be subject to action by a professional board based solely on a recommendation of the use of an investigational treatment.

Sen. Mike Hilgers of Lincoln expressed support for the bill's ultimate goal but opposed it on constitutional grounds. Federal law governs clinical trials and expressly prohibits the sale and use of drugs that have not been approved by the FDA, he said, and the U.S. Constitution is clear that federal law trumps state law when the two conflict.

"No matter what we think of the policy or its goals, I think we always have to ask if we have the authority to do what we're trying to do," Hilgers said, adding that Congress would be the proper venue to address the issue.

Heartwell Sen. John Kuehn offered a motion to bracket the bill, which he opposed for a number of reasons. Calling the measure "feel-good legislation," he said LB117 would undermine the FDA approval process and raise a number of ethical concerns while giving false hope to vulnerable patients.

Kuehn said that many patients' rights groups have opposed similar legislation in part because desperate patients cannot give informed consent when the impact of drugs that have not completed the FDA process is not known to manufacturers or doctors.

In addition, he said, the bill would give complete immunity to providers, some of whom could be bad actors.

"[There is] a very real possibility that this bill exposes patients and families—at their most vulnerable time in health care—to exploitation," he said.

Albion Sen. Tom Briese said that

similar laws in other states have not been deemed unconstitutional by the court system, so it is not possible to say definitively whether LB117 would withstand a constitutional challenge or not. Patients who assume the risk and the cost of using investigational drugs should be able to make their own choices, he said.

"Informed consent is not an absolute standard," Briese said. "It's not possible to delineate all risks, only the known risks."

Sen. Sue Crawford of Bellevue opposed the bracket motion. The bill is not an attempt to pre-empt federal law, she said, but rather a way to "create some wiggle room" in the federal prohibition on the sale and use of unapproved drugs.

"As a state, we're saying that for these particular patients—in this particular situation—we're making an exception," Crawford said.

The bracket motion failed on a vote of 11-30.

Following adoption of a technical Health and Human Services Committee amendment on a 29-9 vote, the bill advanced to select file 33-12. ■

UNICAMERAL UPDATE

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THE NEBRASKA LEGISLATURE'S OFFICIAL NEWS SOURCE SINCE 1977

Tighter controls on opiate prescriptions advanced

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with minors.”

A Judiciary Committee amendment, adopted 38-0, limited the bill’s provisions to patients younger than 18 to accommodate young people who may be living independently. The amended bill would expire on Jan. 1, 2029, to allow lawmakers to revisit the need for continuation of the program.

The amendment also incorporated into LB931 provisions of two additional bills addressing opiate prescriptions.

LB933, introduced by Omaha Sen. Brett Lindstrom, would require medical practitioners to notify patients—or a parent or guardian of a patient under 18—of the risk of addiction and overdose when prescribing opiates and other Schedule II prescription medications. The notification would be required prior to the initial prescription and again before issuing a third prescription.

Under the bill, a practitioner would be required to discuss the risks of addiction and overdose, including:

- the fact that controlled substances and opiates are highly addictive even when taken as prescribed;
- there is a risk of developing a physical or psychological dependence on opiates or controlled substances;
- reasons why the prescription is necessary and alternatives that may be available; and
- taking more controlled substances or opiates than prescribed, or mixing sedatives, benzodiazepines or alcohol with controlled substances or opiates, can result in fatal respiratory depression.

A notation in the patient’s medical record of the discussion would be required.

LB934, introduced by Heartwell Sen. John Kuehn, would require a person picking up an opiate prescription to provide valid photo identification. A driver license, operator license, Nebraska state identification card, military identification card, alien registration card or passport would be considered acceptable forms of identification.

A patient, resident or employee of a licensed health care facility would be exempt from this provision if identification procedures are in place for the receipt and administration of controlled substances at the facility.

Kuehn said his bill mirrored successful legislation passed to address the inappropriate distribution of Sudafed, which can be used in the production of methamphetamine. To adequately address the opioid

epidemic, he said, we must start with the primary suppliers.

“Opioid addiction, for the most part, begins with a prescription pad, a pen and a health care provider,” Kuehn said. “If we are really going to get to the root cause of why people are getting addicted to prescription painkillers and dying, we have to start talking about what’s happening in the exam room.”

Omaha Sen. Bob Krist supported the bill, saying that Nebraska needs to take proactive steps to stop the spread of addiction.

“The opioid epidemic may not be as violent or as oppressive as it is on the East coast, but it is moving this way,” he said.

Senators advanced the bill to select file on a 47-0 vote. ■

COMMITTEE HEARINGS

Current hearing schedules are always available at:
NebraskaLegislature.gov/calendar

Tuesday, March 6

Health & Human Services

Room 1510 - 12:00 p.m.

Appointment: Michael Aerni - Foster

Care Advisory Committee

Appointment: Noelle Petersen - Foster

Care Advisory Committee

Wednesday, March 7

Natural Resources

Room 1525 - 12:30 p.m.

AM2191 to LB822: Clarify public power exception from public records

Thursday, March 8

Health & Human Services

Room 1510 - 12:00 p.m.

Appointment: Matthew A. Van Patton -

Div. of Medicaid and Long Term Care,

Department of Health and Human Services

Transportation & Telecommunications Room 1113 - 1:00 p.m.

Appointment: LaShonna Dorsey - Neb.

Information Technology Commission

Appointment: Thomas Nutt - Neb.

Information Technology Commission

Appointment: Terry Haack - Neb.

Information Technology Commission

Appointment: Dorset Harvey - Neb.

Information Technology Commission

Appointment: Gerald Warren - Neb.

Information Technology Commission

Appointment: Walter G. Weir - Neb.

Information Technology Commission

Tuesday, March 13

Health & Human Services

Room 1510 - 12:00 p.m.

Appointment: Stacie L. Ray - Commission for the Deaf and Hard of Hearing ■

BUSINESS & LABOR

Integrated education and training initiative proposed

A bill that would provide grant funding for integrated education and workforce training programs was discussed by the Business and Labor Committee Feb. 26.

LB991, introduced by Lincoln Sen. Kate Bolz, would create the Nebraska Integrated Education and Training Grant program, to be administered by the Nebraska Community College Student Performance and Occupational Education Grant Committee.



Sen. Kate Bolz

Bolz said people without postsecondary education are unemployed and underemployed at higher rates than others.

“We all know Nebraska employers view workforce shortages to be a major impediment to economic growth,” she said. “Matching these people with skill-based training will help businesses to grow and people to earn better wages.”

Grants under the bill would be funded by a transfer of \$750,000 from the Nebraska Training and Support Cash Fund on or before Aug. 1, 2018. A transfer of \$750,000 would be made annually thereafter.

The committee would allocate competitive grants lasting up to three years to community colleges. To be considered for a grant, a community college would be required to submit an application outlining a specific integrated education and training instructional model that would be developed and implemented by educa-

tors with expertise in adult education and occupational skills training.

The application also must show how the program would prepare students to receive a high school diploma or equivalency, obtain postsecondary credentials and obtain employment through a career pathway supported by the program.

There must also be a description of the target population, a demonstrated employer demand for students who complete the program, sufficient support services provided to students, strategies for tracking and reporting outcomes and evidence of matching funds from local or philanthropic sources of at least 25 percent of the total cost of the program.

The Coordinating Commission for Postsecondary Education would be required to develop an annual evaluation for each local program, including information on the number of students enrolled, the number of students who successfully complete each program and the percentage of students who obtained employment in the relevant occupations or industries within six months of completing a program.

Representing the Nebraska Community College Association, Greg Adams spoke in favor of LB991. He said many traditional programs require students to complete remedial education courses before they can move on to a vocational training program.

The bill would allow people to take a more intensive approach, Adams said, completing remedial courses while also working on building a new career.

“This would incentivize the means whereby we can reach out and grab that nontraditional student ... not just remediate him in math, but also get him into welding at the same time,” he said. “They want a certificate or credential so they can move on with their lives.”

Nearly 10 percent of all Nebraskans

between the ages of 18 and 64 lack a high school degree or equivalent, said Nebraska Appleseed representative Ken Smith in support of the bill.

“This would help prepare the workforce for the jobs of tomorrow while creating pathways to a living wage for Nebraskans who are working more than one job and still living paycheck to paycheck,” he said.

Opposing the measure was Commissioner of Labor John Albin. He said it would negatively impact the training funds that currently are available to Nebraska employers.

“If this is passed, in a matter of a few years the worker training board will have to stop awarding training grants to employers because there will be no more money left,” Albin said.

The committee took no immediate action on the bill.

Changes proposed to state claims process, state vehicle identification

The Business and Labor Committee heard testimony Feb. 26 on a bill that would make a number of technical revisions to current statute.

In 1992, the Legislature consolidated the State Claims Board and the Office of State Risk Management into one division under the state Department of Administrative Services. Before consolidation, the State Claims Board administered the state workers’ compensation program.

LB1096, introduced by Lincoln Sen. Mike Hilgers, would remove several references to the State Claims Board from statute to reflect that the state risk manager now administers the workers’ compensation program.



Sen. Mike Hilgers

EDUCATION

Dissolution of learning community proposed

Hilgers said the bill would allow for a more efficient, streamlined state claims process.

Under current law, claims against the state that arise from the same set of circumstances and facts must be aggregated, meaning one claim cannot be paid until all the claims are settled. The bill would modify this requirement so that any claim under \$50,000 could be paid at the time of settlement.

Under LB1096, the State Self-Insured Liability Fund could be used by the state to pay claims against the state or its agencies, officials or employees for which there is a specific provision of law for the resolution of such claim, but which are not otherwise payable from the State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, Workers' Compensation Claims Revolving Fund or Tort Claims Fund.

Such claims would include payments for awards, settlements and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal.

Finally, the bill would exempt the state Department of Justice from a statute requiring that all motor vehicles used or controlled by a state agency be marked with identifying information. The change would remove "State of Nebraska Attorney General's Office" from the vehicles.

Doug Wilken, assistant general counsel to DAS, spoke in support of the bill.

"Currently, a claim cannot be paid until all claims arising out of the same circumstances can be paid," he said. "This would make for more efficient administration and processing of claims."

No one testified in opposition to the bill and the committee took no immediate action on it.

A bill that would eliminate the learning community in Douglas and Sarpy counties was heard by the Education Committee Feb. 26.

The Legislature created the learning community in 2007 to share resources among the students in the broader Omaha area to help address the achievement gap of children in the city center.

LB1033, introduced by Sen. John Murante of Gretna, would dissolve the learning community and the learning community coordinating council. The bill would allow school districts that are currently part of the learning community to form joint entities with educational service units to operate elementary learning centers and early childhood education programs and services for children in poverty.

Learning communities currently may levy up to 1.5 cents per \$100 of valuation to pay for early childhood education programs and for elementary learning center employees and services. They also are authorized to levy up to half a cent for elementary learning center leases. LB1033 would transfer that taxing authority to the interlocal entities to pay for early childhood programs.

Murante said that the 2-cent levy authority is insufficient to justify an entire political subdivision with administration costs of approximately \$500,000 per year. Authorizing school districts and ESUs to continue the

programs currently offered through the learning community would be more efficient, he said.

"This is an example of where taxpayers and citizens of the state really feel like they were taken advantage of," he said. "I think doing away with this and allowing the local school districts to engage in interlocal agreements to do these programs themselves, I think it would get much more public buy-in."

Doug Kagan of Omaha testified in support of the bill on behalf of Nebraska Taxpayers for Freedom. He said that the learning community wastes taxpayer dollars by providing programs and services already offered by school districts and other entities.

"This bureaucracy, we believe, is unnecessary, redundant and deserves elimination," he said.

Testifying in opposition to the bill was Allen Hager of Omaha, a member of the learning community coordinating council. When he first ran for the council in 2012, Hager said, he agreed with Murante's position. But now he sees the value of the learning community's efforts to address poverty in its member school districts, Hager said.

"This is the largest and most comprehensive early childhood program in the country," he said. "It makes no sense to disrupt 11 school districts that are collaborating and all working together—as you all requested them to—in the best interest of children and families."

Samuel Meisels, executive director of the Buffett Early Childhood Institute, also testified in opposition to the bill, saying that independent evaluations demonstrate that the learning community's programs and initiatives are effective. The learning community's superintendents' early childhood plan, developed in partnership with the institute, is the largest,



Sen. John Murante

most comprehensive program in the nation designed to reduce income- and race-based achievement gaps for children from birth through third grade, he said.

“Economists—Nobel Prize winners—have pointed out that the best investment you can make is actually in the first three years of life, not at later stages of education,” Meisels said. “This is where you get the most bang for the buck.”

Keeley Bibins, an Omaha Public Schools teacher, also testified in opposition. She said the professional development training offered to teachers in the learning community has been instrumental in helping her become a better teacher. When she meets with parents, Bibins added, she can tell which ones have attended the learning community’s parent university because they are more engaged in their children’s education.

“It’s more of a dialogue versus me just sitting there for 15 minutes telling you what your child is doing,” she said. “They’re actually talking to me.”

Tonya Ward of Omaha, another coordinating council member, provided neutral testimony on the bill. She supports abolishing the learning community, Ward said, but LB1033 would continue what she called wasteful spending of taxpayer dollars on expensive programs that do not serve enough children in poverty.

“The learning community has no measurable outcomes that support all of the millions of dollars that [have] gone into evaluations and pilot programs and training for people who are not having a direct impact on the lives of children,” she said.

The committee took no immediate action on the bill.



Tax incentive audit bill narrowed, advanced

A bill intended to improve oversight of the state’s tax incentive programs by strengthening reporting requirements was narrowed significantly before being advanced from general file Feb. 28.

LB935, as introduced by the Legislative Performance Audit Committee, would make an array of information regarding the programs available and accessible to the Legislative Audit Office.

The Legislative Audit Office is required to conduct performance audits that review state agency programs in order to evaluate an agency’s success in effectively implementing legislative intent.

Heartwell Sen. John Kuehn, chairperson of the Performance Audit Committee, said the bill would implement recommendations gleaned from the three performance audits of the state’s tax incentive programs that have been completed.

For example, he said, in 2016, the Legislative Audit Office was not able to compare the level of job creation by companies participating in the Nebraska Advantage Act with that of nonparticipating companies.

“[The office] found that there is not enough data available in the current reporting mechanism on employees at Advantage Act projects to provide the analysis that the committee and the Legislature have requested,” Kuehn said.

An Executive Board amendment, adopted 37-0, replaced the bill. Under the amendment, the state tax commissioner could allow one designee from the state Department of Economic

Development to review limited tax data—subject to strict confidentiality—only for the purpose of assisting the audit office with tax incentive program performance audits.

Omaha Sen. Burke Harr offered an amendment to the committee amendment, adopted 36-0, that instead would require the tax commissioner to do so.

Sen. Dan Watermeier, chairperson of the Executive Board, said the committee amendment would allow for a more thorough analysis of the types of jobs that participating companies are creating and provide a better picture to lawmakers of how the programs are being used.

“The provisions will still provide the audit office with needed data but will not require changes to DED’s data tracking system, thereby reducing the bill’s fiscal note,” Watermeier said.

The committee amendment also would limit the rest of the bill’s provisions to the Nebraska Advantage Act. As introduced, LB935 would have applied to eight tax incentive programs.

The committee amendment would require companies participating in the Nebraska Advantage Act to create an unemployment insurance account or accounts specific to program participants at each project location. It also would require reporting of wages paid, hours worked and job titles for new employees at each project location and limit the reporting of federal ID numbers and unemployment insurance numbers only to those affiliated with a company’s Nebraska businesses.

The state Department of Revenue would be required to retain for 20 years the tax returns, administrative data bases and spreadsheets, audits, contracts and agreements relating to program participants.

Omaha Sen. Ernie Chambers spoke in support of the bill and the amendment. The state’s tax incentive

programs divert hundreds of millions of dollars from the state's coffers, he said, and lawmakers have a right to know how the programs are being used.

"This is the Legislature's best effort to bring sunshine into all of those corners where information can be found that will be necessary for the Legislature to make wise decisions in the best interest of the public who sent us here," Chambers said.

Sen. Kate Bolz of Lincoln echoed his concerns. Tax incentive programs reduced the state's revenues by an estimated \$270 million in 2017, she said, and the Legislature needs the right tools to examine whether the incentives are providing the good jobs and strong economic development that was envisioned when they were created.

"This has a significant impact on our budget and it is right and fair to ask for information on how it is and isn't working," Bolz said.

Seward Sen. Mark Kolterman opposed the bill, saying the Nebraska Advantage Act is known throughout the country for its labor-intensive application process, lengthy wait times for approval of credits and extensive ongoing reporting and auditing processes. He said the benefits of the additional information that would be gained under the bill are unclear.

"Here, we are talking about adding to the already heavy burden on Nebraska Advantage participants," Kolterman said. "What are we going to get from it? What are we going to gain?"

In response, Kuehn offered an amendment, adopted 43-0, that narrowed the bill further. The amendment removed the requirement that participating companies create separate unemployment insurance accounts with the state Department of Labor and reporting requirements regarding employee benefits.

Kuehn said the amendment "strips

the bill down to the chassis" but was necessary due to concerns from the business community. The remaining provisions still would improve the quality of the legislative performance audits, he said.

"I'm disappointed that we have not taken a stronger stand as a body with regard to how we will provide this information to the public and to this body as a whole," Kuehn said. "But I recognize that this is advancing us forward in the best [way] possible."

Following adoption of the Kuehn amendment, the bill advanced to select file on a 36-0 vote.

Child sexual abuse reporting requirement advanced

Lawmakers gave first-round approval Feb. 26 to a bill that would strengthen reporting requirements regarding children in the state's child welfare and juvenile justice systems.

Currently, all cases of death or serious injury of a child in a foster home, private agency, child care facility or other program licensed by the state Department of Health and Human Services must be reported to, and investigated by, the office of the inspector general of Nebraska child welfare.

LB1078, introduced by Bellevue Sen. Sue Crawford, would add to that requirement all allegations of sexual abuse of a state ward or a juvenile on probation, in a detention facility or residential child-caring agency.

Crawford said the bill was in response to a 2017 inspector general report that found 50 cases of child sexual abuse of children served by Nebraska's child welfare and juvenile justice programs that were substanti-

ated by DHHS or the court system. Of those cases, she said, 27 occurred while the child was in state care.

In light of those findings, she said, the inspector general recommended that the department create a system to collect and review information about allegations of sexual abuse of children served by the state.

Crawford said DHHS rejected the recommendation, claiming it already has an intake system that collects the information in question. However, DHHS could not immediately provide that information when asked for it by the inspector general, she said, adding that it is not a data point that is being properly collected and analyzed.

Crawford said the data must be gathered so that it can be monitored to identify patterns and implement necessary interventions on behalf of vulnerable children.

"It is critical that the department and the [inspector general's] office have access to timely and accurate information about the frequency of these allegations," Crawford said. "Those children who are in our care in the child welfare and the juvenile justice system are our responsibility."

Lincoln Sen. Anna Wishart supported the bill, noting that insufficient training in the foster care system—especially for kinship and relative placements—indicates systemic issues that need to be addressed in the area of sexual abuse prevention.

"In 14 of 37 of the child sexual abuse cases that the [inspector general's office] reviewed in foster and adoptive homes, caregivers dismissed sexual abuse allegations that children made as false or failed to report them to authorities," Wishart said.

LB1078 would require that the annual report of the DHHS division of children and family services include the number of sexual abuse allega-



Sen. Sue Crawford

tions that occurred among children being served by the division and those placed at a residential child-caring agency.

Also required would be the number of corresponding screening decision occurrences by category, open investigations by category and agency substantiations, court substantiations and court-pending status cases.

The bill advanced to select file on a 37-0 vote.

GENERAL AFFAIRS

Bill seeks to boost compulsive gambling assistance

A bill that would increase the amount of lottery funds directed to compulsive gambling assistance in Nebraska was considered Feb. 26 by the General Affairs Committee.

Currently, 40 percent of the taxes collected from the state's gaming operations are available to the charitable gaming division to administer and enforce gaming laws in Nebraska. The remaining 60 percent is transferred to the state's general fund. Of that 40 percent, \$50,000 is transferred to the Compulsive Gamblers Assistance Fund annually.

LB679, introduced by Omaha Sen. Bob Krist, would increase the annual transfer to \$500,000. From the taxes collected each quarter, 7.5 percent of the remaining balance in the Charitable Gaming Operations Fund would be transferred to the Compulsive Gamblers Assistance Fund. Sixty percent of the remainder would be transferred to the state's



Sen. Bob Krist

general fund.

Krist said the bill would ensure proper funding of the Compulsive Gamblers Assistance Fund without a cost to taxpayers. The Nebraska Commission on Problem Gambling uses the funds as the Legislature directed it to when the lottery was approved, he said, by expanding services and providing counseling and prevention education.

"LB679 ensures that this institution has the resources they need to provide education, counseling and support to families affected by problem gambling in our state," Krist said.

Mark Canada of Hastings, chairperson of the Nebraska Commission on Problem Gambling, testified in support. The formula for the division of gaming revenue has not changed for years, he said, and currently the share received by the commission is not enough to sustain its programming.

"Even though we've operated well within our budget, program spending has always outpaced the revenue sources that we've had," he said, with the difference drawn down from the cash fund.

At the current rate, Canada said, the Compulsive Gamblers Assistance Fund will be reduced from its original balance of \$1.7 million in 2013 to approximately \$400,000 by the end of the next budget biennium.

No one testified in opposition to the bill and the committee took no immediate action on it.

Bill would regulate bottle clubs

The General Affairs Committee heard testimony Feb. 26 on a proposed attempt to provide clear regulation and oversight for bottle clubs—private membership alcohol clubs—in Nebraska.

Omaha Sen. Theresa Thibodeau, sponsor of LB747, said the bill would bring bottle clubs back under the regu-

latory umbrella of the Nebraska Liquor Control Commission, where they were prior to 2004. Before that time, she said, bottle clubs



Sen. Theresa Thibodeau

were defined in state law and regulated according to the type of liquor license they were required to obtain.

The bill defines a bottle club as an operation that maintains premises where members who have purchased their own alcohol congregate for the express purpose of consuming it upon payment of a fee or other consideration, including:

- entertainment;
- maintenance of the space for consumption; or
- the sale of food, ice or mixes for alcoholic drinks.

Several such clubs have opened in the last few years, Thibodeau said, taking advantage of the unintended loophole created in state law when the definition of bottle club was removed because it was deemed unnecessary. These clubs bring with them the potential for underage drinking, overserving, public intoxication and disorderly conduct, she said, and need to be regulated.

"Because the same risks exist as with bars and taverns, the same high standards of regulatory scrutiny should exist as well," Thibodeau said.

Under the bill, a bottle club operator would be required to maintain the appropriate classification of retail liquor license based on the type of beverages consumed. Such operation could be conducted by a club, an individual, a partnership, a limited liability company or a corporation. An accurate and current membership list would be maintained upon the premises.

Thibodeau said she would offer an amendment specifying that a mem-

bership list would be made available only to local law enforcement and the commission for investigative purposes.

Hobert Rupe, executive director of the Nebraska Liquor Control Commission, testified in support of the bill. Bottle clubs were regulated by the commission for nearly 40 years prior to the change in state law in 2004, he said, and the need has arisen to provide clear regulatory oversight again.

An establishment that holds a liquor license is required to allow entrance to local law enforcement and inspectors to look for issues such as underage drinking, overserving and after-hours consumption, he said.

“That oversight does not exist here because they are private clubs,” Rupe said. “For the [commission], if you’re going to be a commercial enterprise allowing alcohol, you need to be licensed as such.”

Omaha City Council member Aimee Melton also supported the bill, saying the city has been unable to effectively regulate private clubs because it cannot gain access without probable cause and a search warrant.

One such club appears to be a place where members engage in consensual sex, Melton said, but she stressed that the bill is not an attempt to regulate morality. Rather, she said, liquor licensure would allow law enforcement to ensure the health and safety of club customers.

“When you have a club where it’s bring your own—and there is no monitoring of the alcohol—I think there are concerns with who is serving who and what can happen in a place that is open for actual consensual sex,” Melton said.

Opposing the bill was Shane Harrington, owner of four private membership clubs in Nebraska that include nude dancing entertainment. Public safety concerns about the clubs—which he said have been visited by more than

25,000 people—are unfounded, Harrington said. The businesses provide a safe after-hours environment for members, employment for entertainers and tax revenue for the state, he said.

“I believe LB747 is unnecessary,” Harrington said. “Our clubs are already regulated by municipalities. Omaha passed a nuisance ordinance specifically directed at us shortly after we opened and we’ve not been ticketed or warned under this new ordinance.”

Joe Evans, general manager of Harrington’s Omaha club, also opposed the bill. Attempts to clamp down on bottle clubs are the wrong way to try to combat issues such as sex trafficking, Evans said, which he said happens far more often in massage parlors than in the adult entertainment industry.

Omaha is evolving into a younger “more hip” metropolitan area, he said, and people are looking for the kind of entertainment that private clubs provide.

“This bill will slow down that change,” Evans said. “It will slow down possible growth in the bar district and the entertainment districts in Omaha and possibly Lincoln as well.”

The committee took no immediate action on LB747.



Bill would exclude noncitizen population from redistricting process

A portion of Nebraska’s redistricting process would exclude the state’s noncitizen population under a bill considered by the Government, Military and Veterans Affairs Committee Feb. 27.

The Legislature is responsible for

drawing new governmental boundaries every 10 years after the decennial census for districts pertaining to the U.S. House of Representatives, Legislature, Nebraska Supreme Court, Public Service Commission, University of Nebraska Board of Regents and the state Board of Education.

Redistricting will be undertaken next in 2021.

LB1115, sponsored by Gretna Sen. John Murante, would require that the boundaries for legislative districts, state Supreme Court districts and political subdivisions be determined by Nebraska’s total population as determined by the U.S. Bureau of the Census, less the noncitizen population of the state.



Sen. John Murante

District lines for members of the U.S. House of Representatives would not be subject to the bill’s provisions.

Murante said the change would put into force a provision of the Nebraska Constitution, which requires that apportionment be based on the population “excluding aliens.” He said that the term “alien” was understood to refer to noncitizens when the current version of the state constitution was drafted in 1920.

The state excluded noncitizens until the U.S. Census Bureau stopped asking the citizenship question in the 1960s, he said, and has not adhered to it since. The bureau produces a non-citizen population estimate that the state should be using to adhere to the constitutional requirement, he said.

“I believe that we cannot simply take a provision of our constitution and ignore it,” Murante said.

Scott Lautenbaugh testified in support of the bill, saying it simply would require the state to do what the

constitution requires it to do.

“The court cases are clear that states are given the discretion to determine the populations they consider [for apportionment purposes],” he said.

Gavin Geis, representing Common Cause Nebraska, spoke in opposition to the bill. He said that several former U.S. Census Bureau directors submitted a brief in a recent U.S. Supreme Court case indicating that the noncitizen population estimate data is problematic.

The brief stated that the data is not gathered at the same time as other census data, he said, and instead is gathered on a rolling basis every three to five years. Geis said that as a result, the brief indicated that the noncitizen estimate data could be as much as 80 percent out of date at the time that official census data is gathered.

“That is something I think we should take into account when we’re looking at using that data to draw our own maps in this regard,” Geis said.

Gabriela Pedroza of the Heartland Workers Center also opposed the bill, saying it would exclude large populations of people from representation in state government, including permanent residents, individuals with work permits and others who do not have permanent status.

She said that in 2010, the result would have been the exclusion of approximately 12,800 people in Lancaster County, or 4 percent of the population, as well as 6.4 percent of Douglas County and almost 20 percent of Colfax County, which has a large immigrant population.

“Just because they cannot vote does not mean that people should be excluded from representation,” Pedroza said.

Nate Dobbs of Nebraska Appleseed agreed. Testifying in opposition, he

said a significant number of hard-working, taxpaying Nebraskans would lack representation in a redistricting process based on the provisions of LB1115.

The undocumented population in Nebraska—currently about 85,000 people—contributes approximately \$40 million in state and local taxes per year, he said.

“Without representation, that creates a situation where there is some taxation without representation at the state level,” Dobbs said.

The committee took no immediate action on the bill.



Developmental disability funding priority for military dependents advanced

A bill that would create a new funding priority for military dependents with developmental disabilities was given first-round approval Feb. 28.

Current law specifies a hierarchy of funding priorities for disability services in Nebraska under the Medicaid home and community-based services waiver. For example, the first funding priority of the state is responding to the needs of persons with developmental disabilities in immediate crisis due to caregiver death, homelessness or a threat to the life and safety of the person.

LB685, sponsored by Bellevue Sen. Carol Blood, would allow dependents of a member of the U.S. Armed Forces who is a legal Nebraska resident due to the service member’s



Sen. Carol Blood

military assignment in the state to become the fifth priority. The bill is estimated to impact only one or two families per year, Blood said.

She said that everyone in need of waiver services in Nebraska starts out at the bottom of the list and moves up in accordance with the severity of their need. Placing military dependents into the fifth position would keep them from always being at the bottom of the list, Blood said, since military families move so frequently and must start over in each new state.

“We’re not skipping the line,” she said. “We’re not taking anything away from Nebraskans.”

Bellevue Sen. Sue Crawford supported the bill, saying it would send an important message to military families while maintaining the state’s priority to serve individuals with the highest need first. Higher priority still would be given to individuals transitioning from high school to independence, wards of the state and others, she said.

Omaha Sen. Bob Krist, a retired U.S. Air Force pilot, also supported the bill, which he described as a reasonable accommodation to help ensure that military families reach a minimal level of developmental disability services.

The measure also would demonstrate Nebraska’s commitment to military families, he said, an important factor when the Department of Defense considers potential base closings.

“The military is always watching to see which states treat their DOD people the best,” Krist said.

The bill advanced to select file 37-0.

JUDICIARY

Process for health care surrogacy advanced

The Legislature advanced a bill from general file Feb. 28 that would allow people to make health care decisions for certain adults and emancipated minors.

Under LB104, introduced by Lincoln Sen. Kate Bolz, a patient could designate a surrogate to make health care decisions on his or her behalf in the event that the patient becomes incapacitated. Surrogacy is a less expensive and restrictive approach than establishing a guardianship, Bolz said, especially for people with disabilities.



Sen. Kate Bolz

“This cuts red tape and expenses for individuals and families who are making health care decisions,” Bolz said. “It fills a need for both individuals who need assistance in medical decision-making and health care providers who need to take action when no guidance is available.”

In the absence of a formal designation, a member of the patient’s family could act as surrogate in the following descending order of priority: spouse, adult child, parent or adult sibling. If no family member is available to serve as a surrogate, an adult who has exhibited special care and concern for the patient and is familiar with the patient’s personal values may be designated as surrogate.

If there is more than one person of equal standing who assumes authority as a surrogate but disagree on a health care decision, the supervising health

care provider would comply with the majority decision.

A surrogate would be required to make health care decisions in accordance with the patient’s instructions and wishes, if known. Otherwise decisions must be made in the patient’s best interests, taking into account his or her personal values.

Decisions made by a health care surrogate would not require judicial approval.

The bill specifically would prohibit an owner, operator or employee of a health care facility at which the patient is residing or receiving care from acting as a surrogate. An exception would be made if that person is related to the patient by blood, marriage or adoption.

Following approval of a technical Judiciary Committee amendment, the bill was advanced to select file on a 32-0 vote.

Bill that would ensure statewide legal representation for juveniles debated

A bill ensuring that all Nebraska juveniles appearing in court could have legal representation was debated by lawmakers Feb. 26-28.

Under LB158, introduced by Lincoln Sen. Patty Pansing Brooks, legal counsel would be appointed each time a juvenile court petition is filed. The juvenile and his or her parent or guardian would be informed of the right to retain such counsel as needed.



Sen. Patty Pansing Brooks

The bill also would require any legal counsel representing a juvenile to continue representation through post-dispositional proceedings unless

the juvenile requests new counsel.

Senators passed legislation in 2016 ensuring that juveniles in counties with a population greater than 150,000 would be guaranteed access to counsel. LB158 would expand that legislation to cover juveniles in every county.

Juveniles waive their right to counsel at excessively high rates, Pansing Brooks said, which puts them at particular risk because juvenile court judges have the authority to place a child in detention for any crime.

“We’re expecting a child to wander the abyss of the juvenile justice system and understand procedural, strategic and legal matters all on their own,” she said.

A pending Judiciary Committee amendment would clarify that a juvenile who waives the right to counsel could rescind the waiver at any time. It also would clarify that counsel need not be appointed for a juvenile who participates in a pre-trial diversion program.

Pansing Brooks also filed an amendment that would create a Juvenile Indigent Defense Fund to provide grants to counties to cover the cost of providing legal counsel to indigent juveniles. This would be funded by a \$1 increase in court filing fees.

Supporting the measure was Bellevue Sen. Sue Crawford, who said access to counsel is critical for a juvenile to make informed decisions that could have lifelong consequences.

“This does not take away the right of a juvenile to waive counsel, but it does say that a juvenile may need help making that decision,” she said. “There are consequences to these decisions that a juvenile needs to understand and a 14-year-old is not going to know the law.”

Lincoln Sen. Adam Morfeld also supported the bill. Most adults do not fully understand their legal rights, he

said, let alone a young person who has never interacted with the legal system.

“Young people should have the right to counsel when their liberties and freedom are likely going to be taken away,” Morfeld said. “Given the status of a young person and not fully knowing their rights ... we should put them at an even higher protective status.”

Sen. Mike Groene of North Platte introduced a motion to bracket the bill until April 18, 2018. He said Nebraska already has strong provisions in place to protect a juvenile’s right to counsel. Requiring every juvenile to have counsel would force county budgets to the breaking point, Groene said.

“No juveniles are being denied a lawyer if they want one,” he said, “but we are pricing justice to the point that it’s not affordable to society.”

Kids must learn that if they make a bad decision, there will be consequences, said Henderson Sen. Curt Friesen in support of the bracket motion. The bill would remove parents from critical decisions, he said.

“If my child is taken into custody and put into the court system and they appoint an attorney, I no longer have a say in it,” Friesen said. “My child and his attorney don’t have to listen to my advice or my attorney’s advice and that troubles me as a parent.”

Crete Sen. Laura Ebke said constitutional rights never should be subsumed by money. Protecting a juvenile’s rights is more important than concerns about the financial cost to counties, she said.

“Parents don’t have the right, I believe, to take away their child’s constitutional rights,” Ebke said. “We can argue about how we’re going to pay for this, but that’s the lesser argument.”

The Legislature moved to the next item on the agenda without taking action on the bill.

Prohibition against threatening texts, emails advanced

Sending a text message with the intent to threaten someone would be a criminal offense under a bill that received first-round approval in the Legislature Feb. 28.

Under current law, a person commits the offense of intimidation by telephone call if he or she telephones someone with the intent to terrify, intimidate, threaten, harass, annoy or offend. The offense is a Class III misdemeanor with a maximum penalty of three months in prison, a \$500 fine or both.

LB773, sponsored by Sen. Robert Clements of Elmwood, would amend the law to include intimidation by electronic message, such as a text message or an email. He said it also would remove the terms “terrify,” “annoy” and “offend” to address First Amendment concerns.



Sen. Robert Clements

Clements said he introduced the bill after the Plattsmouth Police Department notified his office of several reports of acts of intimidation, some of which used text messages, emails and instant messages.

“LB773’s main purpose is to make sure law enforcement and prosecutors have the necessary tools to address intimidation, threats and harassment that have migrated from telephone calls to new forms of direct electronic communication like text messages, email and other forms of electronic communication,” he said.

A Judiciary Committee amendment, adopted 35-0, would replace the term “electronic message” with the more inclusive “electronic communication,” which is “any writing,

sound, visual image or data of any nature that is received or transmitted by an electronic communication device.” The amendment also would add a requirement that the call or communication cause significant distress.

Clements introduced a floor amendment, adopted 34-0, that would remove that requirement. He said the terms “intimidate,” “threaten,” and “harass” are all well defined in statute, but “causes significant distress” is not. The term is subjective and would make it difficult for prosecutors to prove a case, Clements added.

Lincoln Sen. Patty Pansing Brooks spoke in support of the bill, saying that it recognizes that methods of intimidation and harassment have changed since the current law was passed in the 1970s.

“Modern technology has changed the ways that we interact with one another,” she said, “so our statutes need to be updated to reflect the new forms of communication and thus new ways in which people now bully one another.”

Children in particular are susceptible to bullying via these new forms of communication, Pansing Brooks added. The Bureau of Justice Statistics found that 28 percent of U.S students in grades 6 through 12 have experienced bullying, much of it done using electronic communication, she said.

The bill advanced to select file on a 38-0 vote.

Assault protection extension for health care providers advanced

Lawmakers gave first-round approval Feb. 28 to a bill that would establish enhanced assault penalties for health care providers.

Under a bill passed by the Legislature in 2011, any person who knowingly and intentionally strikes

a public safety officer with a bodily fluid is guilty of a Class I misdemeanor assault, which carries a penalty of up to one year imprisonment, a \$1,000 fine or both.

The charge is upgraded to a Class IIIA felony if the person committing the assault strikes a person's eyes, mouth or skin and knows that the fluid is infected with HIV, hepatitis B or hepatitis C at the time the assault is committed.

A Class IIIA felony carries a penalty of up to three years imprisonment with 18 months of post-release supervision, a \$10,000 fine or both.

People protected under the original legislation currently include law enforcement officers, correctional employees and employees of the state Department of Health and Human Services if the person committing the offense is classified as a dangerous sex offender under the Sex Offender Commitment Act.

The statute was expanded in 2014 to include firefighters and out-of-hospital emergency care providers.

LB913, introduced by Omaha Sen. Mike McDonnell, would once again expand such protections to include health care professionals who practice at hospitals or health clinics. McDonnell said paramedics, emergency medical technicians and firefighters all are currently protected, but an emergency room nurse is not.

They are all doing their jobs, he said, but the nurse is treated differently.

"When a nurse runs into a patient's room with both hands full of tools and medicine, they're not thinking about having to protect themselves," McDonnell said. "Providing life-saving

care in the emergency room is just as important as providing life-saving care in a medic unit."

Ralston Sen. Merv Riepe supported the bill. He said during his time as a hospital administrator, he saw just how stressful and emotionally charged an emergency room can become.

"These individuals do need recognition and some level of protection from abusive individuals that may come through the emergency department," said Riepe.

In raising concerns about the bill, Sen. Paul Schumacher of Columbus said the same argument could be made for teachers, lawyers in a courtroom or bankers foreclosing on a loan.

"It's always made me uncomfortable when we have a law that treats people unequally because it starts ranking our citizens unequally," Schumacher said. "We have those who are deserving of special rank and treatment, who a crime against gets special punishment. And then we have the rest of the people out there. Why?"

Following adoption of a technical amendment, senators advanced the bill to select file on a 33-0 vote.

Process proposed for sexual assault survivors

The Judiciary Committee heard testimony Feb. 27 on a bill that would create a sexual assault survivor's bill of rights.

Under LB1126, introduced by Lincoln Sen. Kate Bolz, a survivor of sexual assault would be guaranteed the right to consult with a sexual assault counselor during any physical examination or interview by a peace officer, prosecutor or defense attorney.

Bolz said each day hundreds of Americans are affected by sexual violence. One out of 6 women and 1 out of 33 men will be victims of rape or attempted rape in their lifetime, she said.

"Sexual assault is traumatizing and after an attack it can be difficult to figure out next steps," Bolz said. "Learning more about what steps to take and what resources are available to them can help victims in a difficult time and protect their rights."

The bill would require that any medical professional, peace officer, prosecutor or defense attorney inform the survivor of his or her rights before conducting a physical examination or interview. A survivor also would have the right to be interviewed by a peace officer of the gender of his or her choosing.

A medical provider conducting a physical exam after a sexual assault would be required to contact the appropriate law enforcement agency within 24 hours. After the agency has taken receipt of the evidence, it would have to submit it for analysis within five days. The evidence must be analyzed within 90 days under the bill, unless a survivor requests to defer such analysis.

The crime laboratory would be required to retain the evidence indefinitely.

Evidence collected from a sexual assault physical examination could not be used to prosecute a survivor for any misdemeanor crimes or offenses under the Uniform Controlled Substances Act.

Robert Sanford, representing the Nebraska Coalition to End Sexual and Domestic Violence, spoke in support of the bill. He said the 2015 National Crime Victimization Survey found that only 310 sexual assaults out of every 1,000 victimizations are reported to police.



Sen. Mike McDonnell



Sen. Kate Bolz

Sexual assault is a crime that forces many victims to second-guess nearly every decision going forward, Sanford said.

“It is a crime often committed by people we know and that society says we can trust,” he said. “When the one who violated the victim is supposed to be a person they could trust, the victim may often question if anyone will believe them.”

Also supporting the bill was Westin Miller of Omaha. During his time working for a 24-hour crisis hotline, he said he found that many victims of sexual assault are not aware of their rights.

Miller said one woman waited too long to get a physical examination because she falsely believed that she would need insurance to cover it.

“Being well informed of your options and rights in the face of trauma is invaluable when starting down the road to healing,” Miller said.

No one testified in opposition to the bill and the committee took no immediate action on it.

REVENUE

Elimination of state tax incentive programs discussed

The Revenue Committee heard testimony Feb. 27 on a bill that would move up the end dates of several of the state’s current business tax incentive programs.

LB1023, introduced by Columbus Sen. Paul Schumacher, would expire on Dec. 31, 2018, the Nebraska Advantage Act, the New Markets Job



Sen. Paul Schumacher

Growth Investment Act, the Nebraska Advantage Rural Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, the Community Development Assistance Act and the Beginning Farmer Tax Credit Act.

Additionally, no credits could be claimed under the Nebraska Advantage Research and Development Act after Dec. 31, 2018. No applications for the Nebraska Advantage Micro-enterprise Tax Credit Act could be approved for calendar years beginning after Dec. 31, 2018, and no credits could be allocated for the Angel Investment Act for calendar years beginning after that date.

The programs currently are set to end Dec. 31, 2022, except for the Nebraska Advantage Act, which is set to end Dec. 31, 2020.

Schumacher said state spending on the tax incentive programs has limited its ability to respond to financial crises. More than \$362 million in credits had been used as of 2016, he said, and more of them are being granted each year. Performance audit studies of the tax incentive programs have found that they have worked in some cases, Schumacher added, but there is no clear evidence that they are worth what the state is spending on them.

“This is an expensive item,” he said, “and it’s pretty imperative that we pull the plug on it so that we can begin to recover our financial ability to maybe institute a new one or otherwise respond with increased funding for things that might be better investments.”

The state Department of Revenue estimates that LB1023 would increase state revenue by approximately \$19.5 million in fiscal year 2019-20 and an additional \$22 million in FY2020-21.

Renee Fry, executive director of the OpenSky Policy Institute, testified in support of the bill. She said that a

high-quality, educated workforce is a more important factor than tax incentives when businesses are considering where to locate. She also questioned whether the credits are incentivizing the creation of new businesses or if they only reward behavior that would have happened anyway.

“I think it’s important for us to think about how we should be using these dollars so that they’re really maximizing our taxpayer return on investment,” Fry said.

John Hansen, president of the Nebraska Farmers Union, also testified in support, saying that businesses in rural Nebraska have not benefited much from the tax incentive programs. With the state facing a budget deficit and a struggling agricultural economy, now is a good time to move up the programs’ end dates and find a more cost-effective way to stimulate business growth, he said.

“The sooner that the sun sets on those things that are ineffective and cost more money than we can afford, the sooner the sun rises on new and better ideas.”

Tim Quigley, of real estate developer Cohen-Esrey, testified in opposition to the bill. He said that his firm is using both state and federal historic building tax credits to pay for an affordable housing project in Hastings. He said the \$8.6 million project received \$1 million in tax credits under the Nebraska Job Creation and Mainstreet Revitalization Act.

“Without having the state historic tax credit,” he said, “we would not have done this project.”

Also speaking in opposition was Michael Sotham of Mainstreet Beatrice, an organization working to revitalize that city’s downtown. He said the historic building tax credit encourages small businesses and developers to renovate existing buildings

rather than build new ones on the city's outskirts, which would require the city to spend money building new infrastructure.

The projects will draw more people to Beatrice by improving quality of life, Sotham added, which in turn will spur more economic development.

"If we cannot attract people to our communities," he said, "how are we going to be able to go out and get these bigger businesses?"

The committee took no immediate action on the bill.

Economic forecasting board raises revenue projections

The Nebraska Economic Forecasting Advisory Board voted to increase revenue projections during a Feb. 28 meeting at the Capitol. The board provides an advisory forecast of general fund receipts used by the Legislature to craft the state's budget.

Revenue projections for the current fiscal year and FY2018-19 were raised primarily based on anticipated increases in individual income tax receipts of \$20 million in FY2017-18 and \$45 million in FY2018-19.

Total projected revenue receipts for FY2017-18 were increased to \$4.53 billion, an increase of \$25 million.

Projected total revenue receipts for FY2018-19 were set at \$5.04 billion, an increase of \$365 million.

The revised projections for FY2018-19 include an estimated \$327 million increase in individual income tax receipts and \$8 million in corporate tax receipts as the result of the federal Tax Cuts and Tax Jobs Act of 2017.

LB1090, a bill introduced by Papillion Sen. Jim Smith, is intended to offset those federal changes by implementing credits, deductions and exemptions that would reduce state revenue by \$326 million in FY2018-19, as estimated by the state Department of Revenue.

The next board meeting is scheduled for Oct. 26, 2018. ■



Hoa Phu Tran, Revenue Economist Manager at the Nebraska Department of Revenue (left) and Legislative Fiscal Office Director Michael Calvert briefed the Economic Forecasting Advisory Board before the board updated its revenue forecast Feb. 28.

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AmeriCorps members from across the state visited the Nebraska Capitol Feb. 27 to meet with their state senators.