[LB48 LB385 LB395 LB584]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 1, 2007, in Room 1402 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB385, LB48, LB584, and LB395. Senators present: Joel Johnson, Chairperson; Tim Gay, Vice Chairperson; Philip Erdman; Tom Hansen; Gwen Howard; Dave Pankonin; and Arnie Stuthman. Senators absent: None.

SENATOR JOHNSON: Good afternoon, everyone. Welcome to the public hearing of the Health and Human Services Committee for the Nebraska Legislature. First, let me introduce the senators that are here, and you will note that they will come and go, and the reason for that is that they have not only business at this committee, but other committees, as well. So it's not for lack of interest in your particular subject. First, Senator Pankonin was here just a little bit ago; he's from Louisville. Senator Erdman is next, from Bayard. Our Vice Chair is Senator Tim Gay from Papillion. To my immediate right is Jeff Santema, our legal counsel for this committee. On my left is Erin Mack, the committee clerk, Arnie Stuthman from Platte Center, and next is Senator Tom Hansen from North Platte. And last but not least is Senator Howard from Omaha. Now a couple of ground rules. Proceedings are recorded and will be transcribed. And if you have a cell phone, please shut it off now. It says turn off your ringer. We will turn off your ringer if it rings. (Laughter) One thing, by the way, that the person who does type up the recordings asked us to do is that yesterday, we had quite a few people that came up and spoke and were constantly doing this (thumping table) with the desk, or tapping their pen or something like that. That doesn't come out very well on the recording, so if you can avoid that, the person who does the typing would appreciate it. Now the way we go about this is first we hear...have an introduction of the bill, then proponent testimony, opponent, and then finally neutral. And we have bills that may take a considerable length of time today. We left here last night at about quarter of seven. It's not fair to the last bills under those conditions, because sometimes senators have to leave, and certainly our attention span sags considerably before that. So be brief, to the point, and make your points known. And so, we'd greatly appreciate that, and more importantly, the people behind you later in the day will most certainly appreciate it. There is a sheet for you to fill out and then put it in the box when you do testify. Also, if there are those of you that are in support or opposed to any particular bill but don't want to speak publicly about it, there will be sign-up sheets for you to sign for a public record, as well. When you do testify publicly, tell us your name and spell it. Only about half the people successfully complete that test, by the way. (Laughter) And another thing is, we have a lot of testifiers today, and it looks like we might, if you'll move towards the front row, it does help in moving things along. If you have materials that need to be passed out, we'd like 12 copies. If you didn't bring 12, the pages are here and they will make copies for you. Other than that, Jeff, did I leave anything out? I think we got it right today, and at any rate...so with that, let's open with LB385, and this is a bill that I am sponsoring, and therefore, I will ask Vice Chairman, Senator Gay, to take over this job.

[LB385]

SENATOR GAY: Thank you, Senator Johnson. You'll set a good example for the rest of us, right? (Laugh) [LB385]

SENATOR JOHNSON: (Exhibit 1) Senator Gay, members of the committee...I just about forgot myself. I'm Senator Joel Johnson, 37th District, basically the Kearney area. I come today before you on LB385. The other day we had what we called a cleanup bill, and this comes pretty close to being a cleanup bill. What we have here is to integrate legislation that was passed in 2005, with the Uniform Credentialing Act that we had before this committee very recently. Here's what the situation is: In 2005, the Legislature passed LB256 that consolidated the various procedures for licensing of advanced practice registered nurses. These provisions go into effect the first of July, this year. Now with LB256, it provides for a certificate to be issued and a license then issued. This is contrary to the desired provisions of a single-step licensure that would appear in LB463, this Uniform Credentialing Act that we recently acted upon. Under the provisions of LB385 and LB463, this procedure or process would be corrected. A single license would be issued as a APRN, and upon proof of certification, they may practice as a nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or a certified clinical nurse specialist. So we'd go from two credentialing acts to one. It's makes more sense to move to a single license process now before the changes are made in LB256 are implemented this first of July, only to be changed in December by the new legislation. To accomplish this, LB385 will contain an emergency clause to bridge the effective dates of July 1, 2007, and December 1, 2008. There also is an amendment, and it's AM187. This amendment makes the terms of the members on the APRN board consistent with the proposed provisions in LB463; that is, the uniform credentialing thing. So I think, again, this can best be called a technical bill, where we are attempting to coordinate this legislation here with the Uniform Credentialing Act, since they will go into effect in a relatively close proximity of time. Any other questions of me? There will be people behind me, as well, to go through these various procedures. [LB385]

SENATOR GAY: Thank you, Senator Johnson. Are there any questions from the committee members? Seeing none,... [LB385]

SENATOR JOHNSON: Thank you. [LB385]

SENATOR GAY: I'd appreciate a show of hands, proponents on this. Tom and two...are there going to be any opponents who'd like to speak? And anybody in the neutral capacity? Okay. Proponents, come on up. [LB385]

TOM VICKERS: (Exhibit 2) Senator Gay, members of the committee, for the record, my name is Tom Vickers, that's T-o-m, V-i-c-k-e-r-s, registered lobbyist for the Nebraska

Nurses Association, here in support of LB385. I think I've visited with most of you about this. The senator did a really good job of explaining. You have the letter from our...the executive director explaining it, as well, so in the essence of time, I will just simply ask if there are any questions that I can answer. [LB385]

SENATOR GAY: Thank you. Thank you, Tom. Are there any questions from the committee? Hold on one minute. Senator Hansen. [LB385]

SENATOR HANSEN: Senator Gay, thank you. Mr. Vickers, the amendment...were you involved with the amendment? [LB385]

TOM VICKERS: Oh, yes. We are grateful for Senator Johnson to offer that amendment. Yes, we're in support of that, and I should also point out to you that you don't think that on this side of the glass that we sometimes read those bills, I had to compare this bill with a nice little phone book that you had yesterday, and discovered that they weren't alike, so that's where that amendment came from, so. [LB385]

SENATOR HANSEN: Okay, very good. [LB385]

SENATOR GAY: Thank you. Other questions? Looks like there are none. Thank you. [LB385]

TOM VICKERS: Thank you very much. [LB385]

SENATOR GAY: Other proponents? [LB385]

HELEN MEEKS: (Exhibit 3) Good afternoon, Senators. For the record, my name is Helen Meeks, M-e-e-k-s. I work for the Department of Health and Human Services, Regulation and Licensure, and I administer in the Credentialing Division, and I'm here to speak in support of this bill, on behalf of the department. I have my testimony in writing, and I won't read it verbatim, but we're supporting this because of essentially two things: It's fixing something that we know the intenders of LB256 last year intended, which is that for those registered nurses who are to practice in an advanced capacity--there are four areas--and the intent was, you have your basic--I shouldn't say basic--you have your registered nurse license, and then you, if you're going to go to be a nurse anesthetist there was...the intent was a license there, a license or certificate for midwifery, for certified nurse specialists, and then for advanced registered nurse practice. And so when we were working on the regulations, we discovered that we would have had to issue three licenses to the same person, and so this bill is rectifying that problem, and we are supportive of that. The department did not want to extend the time beyond what LB256 did last year, which is starting July 1 of this year, we are to start issuing those advanced registered nurse practitioner licenses. So we're here to lend support, because this rectifies something that was intended to have occurred in

past legislation, and as Senator Johnson, synchronizes everything with LB463. I'd be happy to respond to any questions. [LB385]

SENATOR GAY: Thank you. Are there any questions? I see none. [LB385]

HELEN MEEKS: Thank you. [LB385]

SENATOR GAY: Just for the record, other proponents? Opponents who would like to speak? Anybody neutral? I see none. Senator Johnson will waive his closing, and with that, we'll close the public hearing on LB385. [LB385]

SENATOR JOHNSON: I thank you all very much. Looks like we'll be out of here by 3:00 o'clock or so. (Laughter) Okay. We are moving along so well. Senator Dierks is on his way and should be here just shortly, so we can stand at ease for just a minute or so. Let's open the hearing on LB48. Senator Dierks. [LB48]

SENATOR DIERKS: LB48; is that right? Got a bunch of them to do today, Senator. [LB48]

SENATOR JOHNSON: I believe so, sir. Welcome to our committee. [LB48]

SENATOR DIERKS: Thank you. I feel like I'm coming home, in a sense. I spent a lot of years on this committee, and I enjoyed them all. Chairman Johnson, members of the Health and Human Services Committee, my name is Senator "Cap" Dierks, that's spelled, D-i-e-r-k-s, and I represent District 40. I'm here today to introduce LB48, a bill that exempts nurse anesthetists from certain radiation use qualification requirements. This bill allows certified nurse anesthetists, known as CRNAs, to use the fluoroscope display to assist them in providing patient medication. Fluoroscopy essentially is an x-ray in real time, and captures motion as it occurs on a display tube, somewhat like a television screen. CRNAs have two years of additional hospital-based education in anesthesia after becoming registered nurses. They are the sole providers of anesthesia in the majority of our state's hospitals, especially in rural Nebraska. CRNAs are currently permitted to use fluoroscopy now in the presence of a physician. This bill eliminates the supervision requirement placed on CRNAs when using this equipment. As a veterinarian, I understand the importance of the scope of practice, and the changes in the scope of practice as they occur. As a rule, Senator, I also understand that there are very few physician/anesthesiologists in rural Nebraska. LB48 allows more people to receive more accurate treatment by qualified medical professionals. I thank you for your time. There are some people who will come to testify behind me, and I will try to take any questions you might have. [LB48]

SENATOR JOHNSON: Any questions of Senator Dierks? I see none, sir. Thank you for coming. [LB48]

SENATOR DIERKS: Gosh, I was hoping I could stick around awhile. [LB48]

SENATOR JOHNSON: All right. Can you, or will you be here for closure, or will you waive? [LB48]

SENATOR DIERKS: I'll try to be. I've got a bill coming up over in Judiciary. They might come and get me, so. [LB48]

SENATOR JOHNSON: All right, fine. Thank you very much. [LB48]

SENATOR DIERKS: Thank you. [LB48]

SENATOR JOHNSON: Well, how many proponents do we have? One, two, three, four--four or five. How many opponents? About the same number. All right. Again, would...and I will tell you this. The first person we usually have, we let them have a little bit more leeway than the ones to follow, but again, to be fair to those people down the line here, let's be precise and let's proceed. Thank you. First proponent. [LB48]

TIM GLIDDEN: Hi, Senator Johnson and Committee of Health and Human Services. My name is Tim Glidden, G-l-i-d-d-e-n, and I'm here today to speak in support of LB48. I'm a certified registered nurse anesthetist. I've been a CRNA for 19 years. I have practiced in the state of Nebraska since the year 1989. I'm currently the chief nurse anesthetist at the University of Nebraska Medical Center, and I'm also the president of the Nebraska Association of Nurse Anesthetists. My educational background consists of a bachelor's degree in registered nursing, and after that I obtained a master's degree in anesthesia. Nurse anesthetists are the only anesthesia providers in 87 percent of the rural hospitals in Nebraska, and CRNAs are involved in all anesthesia care in hospitals throughout the state of Nebraska. Delivery of anesthesia care involves various modalities. General anesthesia techniques involve techniques for patients who are put completely to sleep, and regional anesthesia techniques involve putting part of the body to sleep for certain patients--it could be a spinal block or an epidural. Some of these techniques that you may be familiar with are like an epidural for a laboring mother, or an epidural for a mother having a Cesarean section. It is the responsibility of the nurse anesthetists in the state to deliver safe and satisfactory care of our patients, in consultation and collaboration with the physician. CRNAs have safely administered anesthesia for over 100 years in this state. During this time we have been fortunate to have many great technological changes come about in our profession. Some of these changes that have come about in the 1980s include such monitoring devices as pulse oxymetry and end/tidal CO2 monitoring. These monitoring devices have enabled us to ensure that breathing tubes are put correctly in the right spots, and that patients are oxygenated thoroughly throughout the operative procedure. Today these monitors that we use are considered standard of care, which means that everybody...every patient in the United

States that's having an anesthetic at that time, that these monitors must be employed. With the development of new technology comes a new use for old technology, and fluoroscopy has been around for many years. Fluoroscopy is the use of real time x-ray imaging. Simply put, it's x-ray imaging that you can watch on a monitor, and for our purposes, it's to watch on a monitor for the placement of needles and/or catheters. The bill before you today would allow for CRNAs to use fluoroscopy to locate and place needles and/or catheters in precise areas of the body, for the purpose of injecting medications. Examples of these techniques would be placement of internal jugular central lines, which is a needle and a catheter placed in the internal jugular vein of the neck; PIC lines, which are commonly used for...they're placed in the forearm of an arm and floated up to the area of the heart. These catheters are use in patients who would require long-term antibiotic use, or in the chronically ill patient who would require medications for pain control. The use of fluoroscopy in these cases only adds to the safety in which these procedures are currently being done. In most cases, fluoroscopy is not used for central line placement like I described to you, but it would be very beneficial in times or instances where complications could arise. In the advancing area of pain management, fluoroscopy greatly aids the practitioner in the precise area of needle placement. Many CRNAs in Nebraska, especially in the rural settings, are currently doing pain epidurals at this time. The most effective and efficient use of manpower would be to allow CRNAs to use this proven and safe technology to help their local physicians provide better care to their patients. Their patients...they want it done locally. The physicians expect the CRNAs to provide this service to them, and the local institutions already support it. By having our patients treated in their hometown rural hospitals, it saves them a large trip to a bigger metropolitan hospital. In addition to the quality care that these patients receive, it also keeps the small rural hospitals economically viable. I'd like to point out one thing...a couple things to you that several states around us currently allow for fluoroscopy use by CRNAs, and a partial listing of these states would include South Dakota, North Dakota, Iowa, Illinois, Kansas, Montana, Colorado, Wisconsin, Michigan, Mississippi, and Texas, and that's just to name a few. In providing care to our patients, this technology basically is a tool to make certain that these procedures are done in the most effective and safe fashion available. In accordance with Nebraska state statutes, certified nurse anesthetists work in consultation, collaboration, and consent to the physician. In regards to the competence of individual providers that are doing these procedures, it is my personal feeling and that of the Nebraska Association of Nurse Anesthetists that the credentialing of these people be left up to each institution or hospital that is credentialing the individual provider. In closing I'd like to reiterate the key components of the bill. The bill would allow for CRNAs to use fluoroscopy in the placement of needles and catheters, for the purpose of precise needle placement and injection of medications. Utilization of this technology would improve patient safety, increase the availability in patient safety in the rural hospitals, improves access to care, and after all, I guess we're in the business of patient safety. It's my understanding that the Department of Regulation and Licensure may be recommending a 407 on this. As an association and a group, we do not feel this to be

necessary. What we're asking here for today is not an expansion of our practice techniques that we already have. When we started this bill process a few years ago, the current medical director, Richard Raymond, at that time advised us that a 407 was probably not necessary at that time. I'd like to thank you for allowing me this time to spend in front of you today, and if you have any questions, I would be more than happy to try to answer them for you. [LB48]

SENATOR JOHNSON: Any questions? Senator Hansen. [LB48]

SENATOR HANSEN: Senator Johnson, thank you. Can you briefly explain again why you don't think you need a 407 review to change your license? [LB48]

TIM GLIDDEN: Well, it's because we don't feel it's an expansion of the practice that we're already doing. CRNAs are already allowed to use...to place epidurals at this time, so all we're asking for is a chance to use fluoroscopy and some of the techniques that are more specific, so we're already able to...we don't feel we need a 407, because it's not a change in our current practice setting. [LB48]

SENATOR HANSEN: Okay. Not a change in scope, either? [LB48]

TIM GLIDDEN: Correct. [LB48]

SENATOR HANSEN: Okay. [LB48]

SENATOR JOHNSON: Any other questions? I see none. Thank you very much. [LB48]

TIM GLIDDEN: Thank you for your time. [LB48]

SENATOR JOHNSON: A very good presentation, I might say. Sir, go ahead. [LB48]

PHIL POWERS: We'll keep them brief. Good afternoon, Chairman Johnson and members of the Health and Human Services Committee. My name is Phil Powers, P-o-w-e-r-s. I'm an practicing certified registered nurse anesthetist from Columbus, Nebraska. I'm appearing before you this afternoon on behalf of the Nebraska Association of Nurse Anesthetists and in favor of LB48. It's extremely important in considering LB48 that you recognize what the bill would and would not do. As stated by the previous witness, Mr. Glidden, LB48 would allow nurse anesthetists to utilize fluoroscopic display to perform procedures that are currently part of our scope of practice, and which are only performed with the consultation, collaboration, and consent of a physician. The difference from the present situation is that utilization of this technology will allow nurse anesthetists to perform those procedures with a greater degree of accuracy and safety to the patient. That's it; no more, no less. (Laughter) LB48 does not make either radiologists or medical radiographers out of nurse

anesthetists. As you will see, the medical community is divided over this bill, and the opposition essentially represents a difference of opinion among physicians as to who should be ordering and performing certain pain management procedures and in what settings. However, LB48 should not be saddled with those differences among physicians. The good news for this committee and for the Nebraska Legislature is that you don't have to decide who should and should not do pain management in each and every Nebraska healthcare institution. While the state of Nebraska is responsible for issuing licenses to practitioners, the governing of how those practitioners perform various services and procedures within Nebraska's healthcare institutions is currently and logically determined through a process commonly referred to as credentialing. Credentialing committees in each institution examine education, licensure, and professional history in order to grant the privileges that they feel the individual provider is capable of delivering to the patients, and those privileges are reevaluated on a regular basis. As an example, for me to be practicing as a CRNA at the Columbus Community Hospital, I initially had to apply to the medical staff to be credentialed. They examined my work history, my license, and my references, and at that point, they then determined what procedures and anesthetics I could provide to the patients at the Columbus Community Hospital. It's a common practice for all institutions. I do this also at the Butler County Hospital and the Alegent Hospital in Schuyler. So once again, we ask that you consider this bill on what it does and does not do. LB48 will provide Nebraska nurse anesthetists with an additional mechanism to provide safe care that we strive for. It does not privilege any practitioner in Nebraska to do pain management or any other procedure in any Nebraska healthcare institution, and on that basis, we think it's limited, reasonable, and important, and we urge you to report it to General File. Thanks for the opportunity to visit with you, and I would be happy to answer any questions you might have. [LB48]

SENATOR JOHNSON: Senator Stuthman. [LB48]

SENATOR STUTHMAN: Thank you, Senator Johnson. Dr. Powers, this...the use of the fluoroscopic, that is in the scope of your practice already? You're permitted to do that, or you've got the training to do that? [LB48]

PHIL POWERS: Currently, right now we are not recognized in statute to use that tool, in the radiography statutes. The other practitioners that are recognized to use that are physicians, chiropractors, veterinarians, podiatrists, PAs, that all have the ability through that statute, to use fluoroscopy as a tool. [LB48]

SENATOR STUTHMAN: But this would allow you to utilize that part of it, this bill? [LB48]

PHIL POWERS: That's correct, as stated in LB48. [LB48]

SENATOR STUTHMAN: Yes. And you have the training to do it, prior to this? [LB48]

PHIL POWERS: Yes, in anesthesia school, we are introduced to that. That's right. [LB48]

SENATOR STUTHMAN: Okay. That is the concern I had, is this something that you have to have additional permitting to allow you to do this. [LB48]

PHIL POWERS: No. You know, in anesthesia training we are taught how to evaluate chest x-rays and place central lines under the use of fluoroscopy, if necessary. [LB48]

SENATOR STUTHMAN: Okay. Thank you. [LB48]

SENATOR JOHNSON: Any other questions? I see none. Thank you very much. [LB48]

PHIL POWERS: Thank you. [LB48]

SENATOR JOHNSON: Next proponent, please. I thought we had three. [LB48]

CARLY RUNESTAD: (Exhibit 2) Hi, Senator Johnson and members of the Health and Human Services Committee. My name is Carly Runestad, C-a-r-l-y, R-u-n-e-s-t-a-d, and I'm here today on behalf of the Nebraska Hospital Association. You've already heard from the experts on this issue, so I will simply submit my written testimony, but would like to be on record in support of LB48. It was stressed earlier, but I would like to point out once again that CRNAs are the sole providers of anesthesia within the majority of Nebraska's hospitals, and this is particularly true in rural areas. Finding ways to increase access to healthcare in rural areas while maintaining and ensuring patient safety remains essential for the health and well-being of all Nebraskans. No individual, and certainly not those in pain, should have to travel for hours just to receive a service that can safely and reasonably be provided in their local community. LB48 would allow CRNAs to utilize the technology that will enhance the accuracy and safety of care provided to all Nebraskans, and Nebraska's hospitals urge you to support and advance LB48. [LB48]

SENATOR JOHNSON: Any questions? Carly, I see none. Thank you very much. [LB48]

CARLY RUNESTAD: Thank you. [LB48]

SENATOR JOHNSON: Any other proponents? [LB48]

DR. PRESTON RENSHAW: (Exhibit 3A) Good afternoon, Senator Johnson and members of the Health and Human Services Committee. My name is Dr. Preston Renshaw, P-r-e-s-t-o-n, R-e-n-s-h-a-w. I'm here representing our practice, O'Neill

Family Practice, in O'Neill, Nebraska. I very much appreciate the opportunity to testify to support LB48. I'm a family physician who's here to testify for my group, my group of four physicians, two nurse practitioners, and one physician's assistant. We provide care to O'Neill, Nebraska and surrounding area for about the past 30 years. During that time our clinic has worked closely with CRNAs who provided quality anesthesia services to patients in our area for over 35 years in O'Neill and in surrounding areas. Our patients have been treated by these CRNAs with excellent outcomes, which are reviewed and reported through our staff at Avera St. Anthony's Hospital. The CRNAs are credentialed, as other proponents of this bill have mentioned already, through our local medical staff which has been placed in our hospital for over 35 years. Many of the techniques that we have already discussed consist of the use of fluoroscopy for these different procedures, whether it's central lines, whether it's the PIC lines, or it's the administration of medications for pain management. Our clinic has utilized these services in O'Neill and other practice areas, not only in obstetrics and pediatrics, but also in the chronic pain population. As you are also aware, chronic pain is an extremely disabling condition. Patients who suffer from chronic pain require a high degree of emotional, physical, and spiritual support. Pain affects every facet of their lives. It places a tremendous strain on the resources of any medical community. As family physicians we not only find our time extremely limited, but find our resources in the management of these patients limited in regards to geographic and financial attributes of those patients. Most of our senators who are well aware, from the small areas of our state, know that we're seeing a continual decline in our patient populations. By 2002, the U.S. Bureau of Census looks at 20 percent drop in our patient population. However, of that population, we're beginning to see a higher use of those over the age of 65. They do require more time, they do require more services of the medical community. With this declining population, it puts more stress on our medical resources, so it's important to have those other ancillary supports in place. I was extremely lucky to find the community of O'Neill. They have a very tremendous medical community in place, particularly for rural Nebraska. Our patients are extremely fortunate that they have the vast array of resources available to assist in their needs. Our clinic and hospital serve a large area in northeast Nebraska. Our patients will drive just an hour to see us, as family physicians, versus before they see a specialist, and we're the closest access to care that many of these have. It's very comforting to know that we have the resources available at our institution to meet those needs. One of our biggest assets is our CRNAs. They're available 24 hours to it. They assist in not only our traumas, our obstetricals, our surgicals, but also in the management of our chronic pain issues. Our community is extremely fortunate to have this group who is able to treat our acute, our chronic conditions, that are diagnosed by myself and my colleagues, who are not only family physicians, but also orthopedists and surgeons. Over the years our CRNAs have been using imaging to manage their chronic pain, and our patients have been extremely satisfied with their outcomes. We have had only less than a handful of complications. What those might be are prolonged blocks--something that lasts a little longer than it should, one headache. Otherwise, our QA, which is filed to our board of our hospital, reviews all those cases on

a case-by-case basis. Our patients are very pleased with their outcomes, even in patients who've been very difficult to treat, who failed their therapies. They have been seen by a specialist, fellowship trained in pain, who have fared no better. The Nebraska Hospital Association is in favor of this bill, to better serve our rural population. However, rural healthcare is limited across our state. We're becoming more dependent on a fewer number of physicians, and it's very reassuring that we have a group in our community that is able to provide for these difficult patients. Even at times when I try to utilize the resources of these larger medical centers, it's difficult. Our patients' conditions, they limit them. They don't make it because of the pain that's bothering them, and it's too much to make these long trips. Our community has been very fortunate for a large number of specialists who have now started supporting our area. I know that no hospital in the state would not appreciate the assistance of a pain management group; however, we all know that there are a limited number of physicians who are able to provide this service in Nebraska. Why would we deprive those who can provide this technique safely use of this technology limited access? I ask your support to provide the access to the care for patients who would otherwise be denied to the services, because of the geographical and the financial limitations of our state. Thank you, and I'd be happy to answer any questions. [LB48]

SENATOR JOHNSON: Senator Stuthman. [LB48]

SENATOR STUTHMAN: Thank you, Senator Johnson. Doctor, in your current practice, who is granted the privileges currently that can do the use of fluoroscopy? [LB48]

DR. PRESTON RENSHAW: The four physicians of our group,... [LB48]

SENATOR STUTHMAN: Just the four physicians. [LB48]

DR. PRESTON RENSHAW: ...myself and our...we...our PAs, our nurse practitioners have not been doing it, because most of the time if we use the fluoroscopy, whether it be for reducing a fracture, we will come in to reduce those fractures and use the assistance of fluoroscopy to help with that. [LB48]

SENATOR STUTHMAN: But currently, you're the only ones that are granted that privilege,... [LB48]

DR. PRESTON RENSHAW: Correct. Correct. [LB48]

SENATOR STUTHMAN: ...the doctors. Okay, thank you. [LB48]

SENATOR JOHNSON: Any other questions? I see none. [LB48]

DR. PRESTON RENSHAW: I have listed for you in the packet a number of physicians

across our state. They include orthopedic surgeons, spine surgeons, interventional radiologists, who all sponsored...or written their sponsorship for this bill, so thank you. [LB48]

SENATOR JOHNSON: And I might say that there's also a letter in support from a Mr. Cork, who is the CEO of St. Anthony's Hospital in O'Neill. (See Exhibit 3B) [LB48]

DR. PRESTON RENSHAW: Correct. [LB48]

SENATOR JOHNSON: Thank you very much. [LB48]

DR. PRESTON RENSHAW: Thank you. [LB48]

SENATOR JOHNSON: Any other proponents? Let's proceed to opponents. How many do we have? Thank you. All right, let's go ahead. [LB48]

JOHN MASSEY: (Exhibit 4) Good afternoon. My name is John Massey, M-a-s-s-e-y. I'm an interventional pain medicine physician. I practice in many communities throughout the state. I'm board certified by the American Board of Anesthesiology. I'm board certified by the American Board of Pain Medicine. In addition, today I represent the Nebraska Medical Association. It seems the bill before us, LB48, is a very simple bill. On the face of it, it's a simple matter of allowing fluoroscopy by a few other people, to put a needle somewhere in the body. But make no mistake about it: This bill is about one thing--it's about increasing the scope of practice for CRNAs who want to practice interventional pain medicine. It's appropriate that we treat medicine in appropriate ways, because chronic pain is a very pervasive and common problem. It's the second most common diagnosis made in the U.S. every year. It's responsible for $25 billion in direct medical care costs for low back pain treatment alone annually each year in the United States. That doesn't measure the indirect costs. Low back pain indirect costs are higher than any other diagnosis in the United States every year. That's because it affects young people who are otherwise productive, who become less productive, lose their ability, so the costs to society are extraordinarily high. Despite the pervasiveness of chronic pain in our society, it's a very difficult thing to study and treat. Why is that difficult? Because of the subjective nature of pain. It's very difficult to ferret through the medical literature and understand what's effective and what's ineffective, and in the past we've been very hamstrung in that ability. We've not been able to come up with treatments that are proven to be effective, and there's been a very high amount of anecdotal--that is, nonevidence-based medicine that occurs in this regard. The good news is, over the last 12 to 15 years, that has changed, and the change has provided a dramatic increase in our ability to care for these patients, prevent suffering, prevent ongoing disability, and dramatically reduce costs to society. The cost of chronic pain is higher than the cost of treating cancer and cardiac care combined, okay? The problem with this literature as it develops is it is very difficult to follow through. It's very difficult for

mid-level providers, it's impossible for lay people. I understand the difficulty that you people face in this situation, and it's even difficult for physicians who aren't practicing directly in this specialty to understand what's good medicine and what isn't. Let me talk about what I'm talking about here. We've heard a lot of people come up here and talk about epidurals. In my practice every day, I speak to a number of different patients, and I never talk to somebody who hasn't heard about an epidural. Makes sense. You know, you have an epidural stirrett. Oh yeah, doc, that's the cortisone injection. I've heard of that. We used to do epidural injections for low back pain. The problem is, in 1994, in a very nice study in the New England Journal of Medicine we found out that doesn't work. We used to do epidurals for pain medicine the way epidurals are done for labor epidural. That's why it's confused. We think of this as an anesthesia issue. You have an epidural, you go to labor. You have an epidural, somebody floods that space that's around the dura--that's what epidural means--full of medication and the patient has no pain. Postoperatively, somebody has an epidural that prevents pain in the acute setting. That is the practice of anesthesiology. Interventional pain medicine has nothing to do with that. What's been the impetus for these great changes that we've had in the treatment of chronic pain is the different types of procedures that we've been able to do that have been developed over the last 12 to 15 years. These procedures in no way resemble what was done before with the old-fashioned epidural. What we do now, with a very small needle, is target the neural structures involved. We're able to place a much smaller needle into a specific structure, and when we place that needle into a specific structure, we're able to identify and then diagnose the cause of low back pain. And everything that happens after that is based upon the diagnosis that you make, if you make it appropriately at that time. Most people, and even primary care physicians, often don't understand that 85 percent of patients with low back pain, nothing can make a diagnosis--including physical examination, MRI, myelogram, nerve conduction studies--nothing can accurately make a diagnosis for ongoing treatment, short of doing an interventional spine procedure, a diagnostic procedure. This is very similar to what happens in interventional cardiology. Maybe you're aware of, 30 years ago, cardiologists were able to look at an EKG, think that you have heart problems, they're going to give you nitroglycerin, beta blockers. They're going to try to treat that problem, and then if they can't treat that well enough, they're going to send you to a heart surgeon, who opens up a chest and performs a bypass graft. The great news about cardiac care in the last 20 years--and most people are aware of this--is that interventional cardiologists are able to place a small catheter into the heart using fluoroscopy or some other imaging as a tool, and through that catheter they're able to make a diagnosis and to what's causing the pain, the cardiac condition. And when they do that, they're able to treat that. That improves outcomes, prevents disability, and reduces costs to society. But they're making a diagnosis only using fluoroscopy as a tool. And in this situation, that's exactly the analogy that interventional pain medicine is--that's what we're doing. The problem is, if you don't make the accurate diagnosis, you're not going to make good treatment decisions down the road. I don't believe anyone here in this committee or in the Legislature would say, let's just go ahead and

allow nurses, then, to put, under fluoroscopy, a catheter into the heart, and they can do an angiogram. Nobody would think about that, but this is the same analogy that we should be able to draw. If we are considering that that's a possibility, and that is something that we want to do in this situation, that is certainly a dramatic increase in the scope of practice for nurses in this state. If we want to do that, I would suggest, and the AMA would suggest, that that is clearly a 407 process issue. In conclusion, I'd just like to thank you for your time. I'd like to remind you that I am a lifelong resident of the state of Nebraska, I'm dedicated to providing the same type of quality care to my patients throughout the state of Nebraska that I know can be provided everywhere. And I think it's inappropriate that we submit patients to high risks of complications. One last issue I'd like to address with that is, what is the increased risk with these procedures? What's the big deal with the smaller needed? When you're placing a needle such as these procedures which are being proposed by these nurse anesthetists into these individualized structure, you can place these needles in very crowded areas, and you get a very high likelihood of putting a needle into a blood vessel. If you put one of these very small needles in a blood vessel and fail to recognize this, then what happens, when you inject a small amount of medication, you don't cause a small problem for this patient--you cause an infarct, an embolus. That leads to stroke and death. This is not a theoretical concern; this is a practical concern. This has happened in the United States, between 40 and 50 times in the last decade. This is in the hands of trained physicians who have had advanced training beyond their training in just pain medicine alone. And it would certainly be more likely to occur in the hands of individuals who have just been able to go to a weekend course after their training. That is the only type of training that's available to the individuals who are proposing this procedure. I'd like to answer any questions, if I could. [LB48]

SENATOR JOHNSON: Senator Stuthman. [LB48]

SENATOR STUTHMAN: Thank you, Senator Johnson. Dr. Massey, explain to me the difference between a physician certified in pain medicine and a certified registered nurse anesthetist. [LB48]

DR. JOHN MASSEY: Okay. [LB48]

SENATOR STUTHMAN: Is there a difference? [LB48]

JOHN MASSEY: Absolutely. [LB48]

SENATOR STUTHMAN: Are they the same person? [LB48]

DR. JOHN MASSEY: Well, I would argue, certainly not. My training is this: I went to four years of undergraduate. After I graduated with my bachelor's degree, I went to four years of medical school. After I went to four years of medical school, I did a year of

surgery residency, and then I completed an anesthesia and pain residency at the University of Nebraska. So I had 12 years of training. After that, I went into the practice of pain medicine. I had to further get board certified in anesthesiology, and even then, I'm not prepared to practice pain medicine. After that, I have to go through a separate set of examinations and process and study, in order to practice interventional pain medicine. I would remind you--and this is, I think, very enlightening--the director of the University of Nebraska Fellowship for physicians who are fellowship trained in pain medicine, sent a letter to physicians in the Omaha area last year, saying that despite the fact that he is fellowship trained--he is the leader of the fellowship at the University of Nebraska--he has not had enough training in order to safely propose to perform these procedures that are being proposed to be done by nurses in the state of Nebraska. I think that's a telling situation. [LB48]

SENATOR STUTHMAN: Thank you. [LB48]

SENATOR JOHNSON: Senator Pankonin. [LB48]

SENATOR PANKONIN: Thank you, Chairman Johnson. Dr. Massey, where do you...you mentioned you practice in several places in Nebraska. Where do you practice at? [LB48]

JOHN MASSEY: I practice in Lincoln, I practice in Auburn, I practice in Columbus, my practice is in Seward, and currently, we're trying to go to several other hospitals throughout the state. [LB48]

SENATOR PANKONIN: The reason I ask that question, and I'm from Louisville, Nebraska, pretty close to Lincoln, and I'm impressed with your qualifications and what you do, and if I have a pain problem, I'll probably look you up. (Laughter) [LB48]

JOHN MASSEY: I hope you don't. [LB48]

SENATOR PANKONIN: But as a person that's involved with public policy, and I had a bill introduction; I got in here a little bit late, but I heard the gentleman, the doctor from O'Neill. Here's the problem as I see it, in public policy. I'm sure your treatment is the best that can be had, but you're not everywhere that we need help for. So what I think I need to analyze is whether we have people that might not be as qualified, but yet as mentioned, there may be people in O'Neill, Nebraska, that can't make the four-hour trip to see you. And so I guess my question is, you know, I have to weigh this out. [LB48]

DR. JOHN MASSEY: Absolutely. [LB48]

SENATOR PANKONIN: And how do you weigh it out? [LB48]

DR. JOHN MASSEY: Let me answer it how I would answer you individually, as well as in the situation here. I am truly concerned about the issue. I know geographics (inaudible). In my practice I see patients from Kansas, the northwestern corner of Missouri, and Iowa. I understand that. One thing that I was sensitive about that when we testified at LB838 and LB908 last year was the situation for these O'Neill physicians. I understand that that's a geographically isolated area. But I can tell you, personally as well as understanding the professional area, that physicians such as myself do wish to practice in those areas, and do feel that that would be an appropriate thing to do. And I can't believe with the technology available that's not something that can happen. The problem is, and it's kind of a disingenuous argument on the part of these people who are testifying today, after I testified last year, I thought maybe there is a problem. I went out to O'Neill and I said, I think that's a problem. How can we solve that? I wanted to talk with the medical staff about that. They were not interested in this. They did not come and speak with me on this, and they...I think what they're...when we go to communities, we do sometimes have an issue with trying to get a practice into a new area, simply because, despite the fact that they say, well, there aren't any qualified people to do this, they're interested in themselves doing this. And the problem from the public policy standpoint is this: These risks are real, and they're not the kind of risks that leads to an, oh no, there's a little bit of problem with Mrs. Jones. I'm talking about people dying on the table when they're having a little outpatient procedure, and if there's anything that's going to make this unavailable to all the citizens in the state, is an increase in complications or malpractice, such as we saw with the hepatitis in Fremont last year, when unqualified individuals dramatically increased their scope of practice without appropriate training. I remind you--these are not the same-old, same old procedures, despite the fact that they're telling you that. These are newly developed procedures. They've been developed after they're out of practice, and they're simply not safe to do without appropriate training. [LB48]

SENATOR PANKONIN: Thank you. [LB48]

SENATOR JOHNSON: Any other questions? [LB48]

SENATOR GAY: I've got one, Joel. [LB48]

SENATOR JOHNSON: Senator Gay. [LB48]

SENATOR GAY: Dr. Massey, just as follow-up to Senator Pankonin's question, what kind of numbers are we talking about, because the larger question to me is the lack of doctors or people available to do this in the rural areas. You made an effort to go. What kind of numbers are you talking about that are in your profession, that could be available, even if they wanted you available? [LB48]

JOHN MASSEY: It's dramatically increasing all the time because of fellowships and so

forth. I think that at last check there will at least 15 communities in out state, not including Lincoln and Omaha, that had physicians who were doing this--I know in Norfolk, I know in Columbus, I know in Fremont there are several, I know in Hastings, I know in North Platte. There's a lot of these people, and they're going elsewhere. It's a little bit like, you know, cardiology. A lot of times there aren't individuals who are there all the time, but there are individuals who are there several days a week, and that's how many of these communities are. And again, to speak to numbers, when we're doing these procedures, when we're doing these types of things, the numbers about potential complications are very high. Twenty-two percent of the time in unrecognized cases, the first placement of a needle is in one of those blood vessels that will lead to stroke or paralysis. And if you don't have the qualification to recognize that, that means that 22 percent of these procedures are potentially leading to a catastrophic event. [LB48]

SENATOR JOHNSON: Any other questions? I see none. Thank you, sir. [LB48]

DR. JOHN MASSEY: Okay. [LB48]

SENATOR JOHNSON: How many more opponents do we have? Three? All right. Would you come up, please? The reason I ask that is, I'm trying to keep track, so that we let Senator Preister know about his bill when the time comes, so if you would proceed. [LB48]

DR. CHARLES GREGORIUS: Senator Johnson, members of the Health and Human Services Committee, my name is Dr. Charles Gregorius, that's G-r-e-g-o-r-i-u-s. I will be brief. I'm a practicing anesthesiologist, board certified. I've been in the practice of anesthesia in the city of Lincoln for 28 years. I came to tell you that I train CRNAs at BryanLGH Medical Center, and have for the last eight years. I train them to place central venous lines. I train them to place epidurals for obstetrical analgesia pain control. I train them to place epidurals for postoperative pain management. That's all I'm training them for. That's all their certification requires that they be trained for. The additional pain control, both diagnostic and therapeutic pain interventions that Dr. Massey talked about are not a part of their CRNA training, which can vary from two years, and you heard, to as many as three, which is what we have at Bryan. We have the extra year that a lot of people don't have, and we don't train them to do this. This is not a part of what they do. It's diagnosis, and it's therapy. Last time I checked, diagnosis and therapy is the practice of medicine. The problem that I see year after year coming before this group, relative to the mid-level practitioners--all the various advanced practice nurses--is one of wanting to do more and more for the people in more and more rural communities. And I understand that you don't want to drive 60 miles to get something that Dr. Massey can do for you. It's a whole lot nicer if somebody real close by can do that. But there are lots of problems with access to advanced care in rural communities. My problem is, and I hope that you consider this, need does not confer ability or education, nor does legislation. Legislation is not a substitute for education and

training. [LB48]

SENATOR JOHNSON: Any questions? Senator Stuthman. [LB48]

SENATOR STUTHMAN: Thank you, Senator Johnson. Dr. Gregorius, in this LB48 we're dealing with certified registered nurse anesthetists. [LB48]

DR. CHARLES GREGORIUS: Right. [LB48]

SENATOR STUTHMAN: Are we also dealing with pain management doctors? [LB48]

DR. CHARLES GREGORIUS: Absolutely. As I said, I train the CRNAs to do some of the epidurals, the epidurals that we use for obstetrical pain management and the epidurals that we do use for postoperative pain management, two things that have truly helped the majority of the population. I don't train them; I don't know anybody who does train them to do diagnostic and therapeutic chronic pain management. An epidural for chronic low back pain or pain that's shooting down your leg is not the same as what...as Dr. Massey said. It's not the same animal, not even close. When I came out of my anesthesia residency program, I was trained to do some epidural steroid injections, like Dr. Massey said. That's long since gone, in terms of being up to date. And I don't...I can't keep up with that. That's why we have people who now specialize in pain management, interventional pain management, and get board certified in interventional pain management. These are not all...all epidurals are not the same. [LB48]

SENATOR STUTHMAN: Thank you. [LB48]

SENATOR JOHNSON: Other questions? I see none, sir. Thank you very much. [LB48]

DR. CHARLES GREGORIUS: Thank you. [LB48]

SENATOR JOHNSON: Next, please. Welcome. [LB48]

LIANE DONOVAN: (Exhibit 5) Thank you. Chairman Johnson, Vice Chairman Gay, senators and honored guests, thank you for allowing me to testify today. My name is Liane Donovan, L-i-a-n-e, D-o-n-o-v-a-n, and I'm a physician, board certified in pain medicine. LB48 on the surface describes utilization of fluoroscopy or real time x-ray in the insertion of needles and the placement of lines. If we were to accept this legislative bill at face value, we would probably not be here today. In fact, the current debate is not so much about the use of x-ray, but the expansion of scope of practice. Certified nurse anesthetists are trained in the supervised administration of anesthetics. Placement of catheters for venous access and the administration of medication is one thing. Placement of needles in proximity to neural structures and vascular structures near the spine is quite another. I've been an integral part in the training of nurse anesthetists, first

at the University of Kansas and then at the Bryan School of Nurse Anesthesia. I am also aware of the curriculum covered, as well as that that has not been taught. Nurse anesthetists have been trained in the placement of epidural catheters, without fluoroscopy, to provide patients with anesthesia for operative procedures. Anesthesiologists and nurse anesthetists are both trained in the placement of needles by an interlaminar or midline approach, to anesthetize the nerve structures surrounding the spinal cord. Placement of a needle by a transforaminal approach or a lateral approach is an entirely different and rarely taught approach, even in pain fellowship programs. Pain medicine has evolved over the years, in that the blind placement of spinal needles or epidural needles to deliver small quantities of particulate steroids into the space around this cord is no longer the standard of care supported by current medical literature. When fluoroscopy is utilized, it does not necessarily increase patient safety, especially in the wrong hands. Fluoroscopy is akin to a viewfinder on a gun. One can see better, but it is still a gun. If one has not been trained to recognize hazardous structures in the area, it's only a matter of time before someone is injured. Furthermore, placement of the needle by transforaminal approach is like firing a gun into a crowded area. The likelihood of injury and possibly death is increased multifold. There was a closed claim study done by the American Society of Anesthesiology, with about a 42 percent incidence of injury related to epidurals. That's 142 of 276 closed claim cases. A quick review of the variety of injuries reported: spinal cord injury under direct fluoroscopy, cardiac arrest with severe brain stem and spinal cord injury and resultant death, three cases resulted in paralysis and permanent painful injuries, seven cases are pending litigation and include infarction of the spinal cord by unrecognized steroid injection around the arteries of the cord. Vascular injections occur in approximately 22 percent of injections and if not identified, may result in injury. Fifteen cases of epidural abscesses were reported; 12 cases of meningitis and 2 cases of osteomyelitis; 9 cases of brain damage and death were reported; 14 cases involved spinal cord injury and bleeding. Clearly, fluoroscopy alone cannot prevent neurological injury, and while valuable, it tends to provide a false sense of security. Affordable imaging technology can only warn of impending complications, but it's up to the practitioner to interpret this warning. It appears that there are nurse anesthetists who are attempting to utilize a legislative bill to increase scope of practice. Again, if we are truly talking about x-rays to examine placement of catheters in veins, that's one thing. If we're discussing passing legislation to allow medical professionals a back door way to increase scope of practice, the 407 process, not a legislative bill, is the correct means to do so. Thank you. [LB48]

SENATOR JOHNSON: Any questions? [LB48]

SENATOR GAY: I've got one. [LB48]

SENATOR JOHNSON: Senator Gay. [LB48]

SENATOR GAY: On this statistic that 42 percent...142 out of 276 claims, how long of a

time period was that study done? [LB48]

LIANE DONOVAN: There actually...it's an ongoing...that was in...it was a couple years ago, and actually, it's still ongoing. The problem is, is there's not a denominator on those numbers, because in litigation they cannot disclose it, and so this is just by voluntary effort. These are the current cases, then. So it's been over...I think they were doing it over the past ten years, but it's still ongoing. [LB48]

SENATOR GAY: Okay. Thank you. [LB48]

SENATOR JOHNSON: Other questions? I see none. Thank you very much. [LB48]

LIANE DONOVAN: Thank you. [LB48]

SENATOR JOHNSON: Any other opponents? You have some things to pass around? Great. [LB48]

BARBARA HURLBERT: (Exhibit 6) Good afternoon, senators. Thank you for allowing me the opportunity to testify before you today. My name is Barbara Hurlbert, H-u-r-l-b-e-r-t. I'm a board certified anesthesiologist. I've practiced for 32 years at the Nebraska Medical Center, teaching anesthesia both to residents and to nurse anesthetists. I have trained anesthesiologists who practice in every corner of the state. I've trained some of the anesthesiologists sitting behind you today, including Dr. Massey, who has testified before you. I've trained anesthesiologists in Norfolk, Grand Island, Scottsbluff, to name just a few. I've not only participated in the training of anesthesiologists but have supervised and trained numerous nurse anesthetists throughout the years. I'm here to discuss LB48 with you, which proposes to exempt certified registered nurse anesthetists from radiation-use qualifications. This bill will allow nurse anesthetists in our state to utilize fluoroscopy to locate the precise point to inject drugs for pain control. In my practice I have taught hundreds of residents to administer local anesthetics and pain medication via injection for relief of pain. However, I have never in my entire practice of 32 years, performed any of the techniques that Dr. Massey has been telling you about. The reason: I haven't taken that extra year of training; I haven't got that extra time and spent that extra time learning the precise area to place this needle, just like Dr. Gregorius was speaking about. I train nurse anesthetists daily. They are in a two-year program rather than a three-year program, like Dr. Gregorius. In our two-year program, there is no time at all where they're taught to do pain management. I have a letter that I also passed out before you that is from Dr. Christopher Criscuolo, who is the director of the pain fellowship at the University of Nebraska Medical Center, listing for you the fact...how he does the training for the MDs. And again, the MDs are four years of bachelor's, four years of medical training, one year of internship--and Dr. Massey did surgery; I do family medicine--three years of anesthesia training, and after that, a full year of pain control and pain management. Our

nurse anesthetists have two years after their BS. They're just not trained...they're trained for epidurals, they're trained for central line placement, as all residents are, as all nurses are, but not for the fluoroscopy. Regional injections that require precise pinpointing of injection with fluoral are not without risk. Residents are not routinely taught these special pain blocks without an extra year of fellowship. Nurse anesthetists have never been taught these blocks at our center and do not participate in any chronic pain management. I just talked again this morning with Criscuolo and Dr. Angie Racus (phonetic), both from our pain center, who are very strongly opposed to the statement--and their name has been placed in statement at various hearings here--that they have been training nurse anesthetists in this area. They have not been. That's why one of the letters from Chris is sitting there before you. The use of fluoral is not only for treatment, but also allows a physician the opportunity to confirm or change his diagnosis before injection. These last-minute changes may be critical, as we've heard from various other people. The diagnosis and treatment of pain is not part of a nurse anesthesia program. It takes a well-trained specialist to make these critical decisions at the last minute, ensuring that the needle is in the appropriate position. I believe this bill has made no attempt to provide safety standards for our chronic pain patients in the state of Nebraska. There is no provision for training or competency of those performing the procedure. Furthermore, there is no limitation on the procedure that a nurse anesthetist can perform with fluoroscopy, once you pass the bill. At my facility it is mandatory that everyone using fluoroscopy be educated in the dangers of it, and I currently take a course yearly to update myself. I just got off the computer two weeks ago taking my annual exam, looking at if I know the safety of radiology, if I use a fluoral. And to be honest with you, I probably use a fluoral once every four or five years, as do most of my partners. And when do I use it? I use it to see if a Swan-Ganz catheter--a catheter that goes into the internal jugular, goes down into the heart, and circles out into the lung...and once in awhile we can't get that to make the circle without using the real time x-ray. But under normal circumstances, it's done a different way. As has been suggested, most of our central lines are done blindly or with ultrasound, which is a whole different technique, and the standard of care for central line placement in the United States for now, is becoming ultrasound, which is not fluoroscopy. I'm required to reexamine yearly, as I told you, and I've taken my yearly exam. Even though I have the privileges to use fluoral, I would not consider ever placing a needle in the spine of a person without one of my expert people standing at my side, or actually referring my patient to them. Anesthesiologists have led the way in research and education for patient safety throughout the nation. We're recognized as a national institution for our safety record. As a respected educator and practicing anesthesiologist in the state, I feel compelled to speak out on behalf of our patients and their safety. Placement of needles guided by fluoroscopy in the spinal axis are not without complication, even in the hands of expert chronic pain physicians. And you're heard already that chronic pain physicians have got complications. Because these injections are not taught usually to nurse anesthetists and are not in their usual practice, I believe it is not in the best interest of the safety of the citizens of our state. I believe our citizens have access to

many trained interventional physicians across the state, who travel across the state, who can practice advanced spine injections. Patients with chronic pain often see a lot of physicians. They travel from here to there looking for the physician who is going to help them. So I do not believe that this would be a problem for them, with our physicians moving closer to them, and them coming closer to us. This bill opens a Pandora's box and can allow any nurse anesthetist with a weekend course in training, or a week of training to place a spinal needle in a dangerous location. I believe it is my duty to speak out on this bill and try to prevent a potentially dangerous outcome to the patients. Thank you for listening, very much. I appreciate you hearing my points. [LB48]

SENATOR JOHNSON: Any questions? [LB48]

BARBARA HURLBERT: I could read Chris' letter, but I assume it's all before you, and you will read it. [LB48]

SENATOR JOHNSON: Yes, we certainly will. Let me ask you this kind of one blunt question. [LB48]

BARBARA HURLBERT: Okay. [LB48]

SENATOR JOHNSON: Is there a legitimate place for the use of fluoroscopy within the existing scope of practice for CRNAs? That's kind of a broad question, I realize, but... [LB48]

BARBARA HURLBERT: CRNAs are trained to place epidurals. Epidurals are placed blindly. CRNAS are trained to place spinals for spinal anesthesia for C-sections or for knee procedures, etcetera, or total...or hip procedures. That's a blind procedure; it doesn't use fluoral. Nowadays we place central lines with...on an ultrasound device, to make sure that we're in the internal jugular. That doesn't require fluoroscopy. So my answer would be, we...I can't think of a time that I pulled the fluoral machine in, even though I have privileges to do so, to train a CRNA in my practice at our institution. I'm not saying the fluoral is not there. Sometimes with our surgeons placing central lines or it's not there when the orthopedics are looking at the bones and stuff, it's just that we don't use it for our practice. [LB48]

SENATOR JOHNSON: Any other questions. I see none. Thank you very much. Any other opponents? We've got one in the back of the room. Please move to the front here, so that we can move along. [LB48]

SHEILA ELLIS: (Exhibit 7) Good afternoon. My name is Sheila Ellis, E-l-l-i-s, and I am a physician practicing in anesthesiology and instead of repeating some of the things that are already said, I'll truncate my remarks and just make a couple of points that I think are salient. Among the things that I do in my day-to-day life is I'm an examiner for the

American Board of Anesthesiology, and so I am aware of the educational requirements and the expectations for someone that is fully trained in anesthesia, and these advanced pain procedures are beyond the limits of what is expected of someone who is fully trained in anesthesiology, even sitting for the American Board of Anesthesiology. The other point I wanted to make is that I serve on the credentials committee of the Nebraska Medical Center, and for any person there to do these kind of procedures requires a fellowship in pain medicine. And I'll take any questions that you have. [LB48]

SENATOR JOHNSON: I see none. Thank you very much, and thank you for being very precise. Next, please. [LB48]

PHIL ESSAY: Good afternoon. My name is Phil Essay, E-s-s-a-y. I am a physician who practices in Lincoln. I've practiced as an anesthesiologist for 15 years, and now as an interventional pain medicine specialist. I don't want to repeat all of the comments that have already been made this afternoon--there's an advantage to going last, I guess. But I do think that there are a couple of points that haven't been made. I realize this is the state of Nebraska, and we have special concerns in regards to providing healthcare to some of the rural areas, but I think it's important that you recognize on a national level what the general opinion and general consensus is. I'm an active member of the International Spine Intervention Society, which is a society of 3,000 physicians of multispecialty society. This includes pain management specialists, physiatrists, neurologists, radiologists, and neurosurgeons who primarily practice interventional pain medicine. And I will keep this short, if you'll just allow me to read a few sentences from a statement that was adopted September 25, 2006, by the society: In the field of spinal intervention, serious and potentially life-threatening complications can occur. Often the provider has only a few seconds to accurately assess the patient and render the appropriate care to avert a devastating injury. Timely assessment and appropriate treatment require a level of training that is well beyond the scope of physician extenders such as physician assistants and nurse practitioners, including CRNAs. Identifying indications and contraindications for these procedures and the subsequent safe performance of these interventions requires a broad background of knowledge in medicine, spinal anatomy, pathophysiology, medical imaging, and pharmacology; in other words, what happens in medical school. We strongly believe that these types of procedures warrant the same level of standards and training ascribed to colonoscopies, bronchoscopies, and cardiac catheterizations, which are procedures normally done by physicians. [LB48]

SENATOR JOHNSON: Senator Erdman. [LB48]

SENATOR ERDMAN: It's been recently brought to my attention that you may have some knowledge as to the study habits of a current member of the Nebraska Legislature that sits as a member of this committee, and I wasn't aware of that, Dr. Massey, either when you were up here, but we won't hold that against you in any

decisions we make in regards to Mr. Gay as a member. [LB48]

PHIL ESSAY : I noticed he excused himself to the rest room for a while. (Laughter) [LB48]

SENATOR ERDMAN: He was probably doing that a lot in college, was he not? [LB48]

SENATOR GAY: I was studying all the time. [LB48]

PHIL ESSAY: Thank you for your time, senators. [LB48]

SENATOR JOHNSON: You bet. Thank you. Any other opponents? Any neutral? I have...yes, Senator Dierks, if you would approach. I do have a letter that is technically neutral from Dr. Joann Schaefer of the Department of Health and Human Services, Regulation and Licensure. (Exhibit 1) I'd like to read just two lines of it, however. While the Health and Human Services System is not taking a formal position on LB48 at this time, the agency has reviewed the legislation. And then in the last paragraph it says this, the department believes that this proposal should be reviewed by the agency's credentialing review program before any additional action is taken on LB48. Senator Dierks, welcome back. [LB48]

SENATOR DIERKS: Thank you, Dr. Johnson. I just wanted to inform you all that I have the greatest respect for professional medicine, not only in our state, but also in our nation. I think we are actually second to none worldwide in our abilities to prevent and treat medical conditions. I've been subject to a number of them myself in the recent years, and I have to tell you that I've been very impressed with the care I got when I had the cardiac bypass surgery in June; also with the knee replacement surgery four years ago. I also have stainless steel in my ears instead of...I've had the stapes replaced 30 years ago, because I was losing my hearing. So my vibration is with stainless steel. I kind of getting close to the million dollar man, doctor, and the medical profession has done it for me. [LB48]

SENATOR JOHNSON: Do they call that the tympanic membrane? [LB48]

SENATOR DIERKS: Something like that, yeah. [LB48]

SENATOR JOHNSON: I think there's a kind of drum that's the same way. (Laugh) [LB48]

SENATOR DIERKS: No, not the tympanic. They lift the tympanic membrane to get in there, you know. No, the eardrum is still in good shape. [LB48]

SENATOR DIERKS: You know, as I listened to the opposition testimony today, I was

somewhat taken aback that we got into the business of pain management, because that isn't what...I heard nothing about pain management from CRNAs when they were talking about this. I'm just saying that there are some 200 licensed nurse anesthetists in Nebraska, and they are the sole providers of anesthesia in all of our hospitals, but especially in rural area, and they do this procedure we're asking them to do, they do it now under the supervision of medical doctors. How, then, do they become unable to do it when the medical doctors aren't there? They still have the same technique, the same ability. They just are not allowed to do this. And this where we need them, in rural Nebraska. I guess that that would be about all I could add to it. I just was disappointed that we got into a discussion on pain medicine. I don't think this is even part of what the CRNAs are asking for, so with that, I would urge your careful consideration of the bill and pass it on to General File. If I can answer any questions, I'll be glad to do that. [LB48]

SENATOR JOHNSON: Any questions? Thank you very much, Senator Dierks. [LB48]

SENATOR DIERKS: Thank you all for your attention. [LB48]

SENATOR JOHNSON: You bet. Is Senator Preister on the scene yet? [LB48]

SENATOR JOHNSON: Are you going to represent Preister? [LB48]

MATT RATHJE: Yes, sir. [LB48]

SENATOR JOHNSON: Let's just take a second and let people clear. (Microphone malfunction)...open the hearing on LB584, and Senator Preister cannot be here, so he has sent his representative. [LB584]

MATT RATHJE: Yes, sir. Good afternoon. First of all, Senator Preister does apologize for not being able to be here. He has to introduce another bill in a different committee, so he had me to introduce LB584 for him. My name is Matt Rathje, M-a-t-t, R-a-t-h-j-e, and I am the administrative aide for Senator Don Preister, and as I said, I'm introducing LB584. It has been documented for decades that cigarettes are the leading cause of fatal residential fires in the United States. For over a quarter century, attempts have been made at the state and federal level to regulate cigarettes for fire safety. These efforts have usually been advanced by public health and tobacco control organizations, with the fire service playing a significant role. On June 28, 2004, New York State became the first political jurisdiction in America to require cigarettes to meet a fire safety standard. Preliminary data released in late 2005 indicates a significant reduction in fire deaths as a result of this law. Canada became the first nation to enforce such a law, beginning in October of 2005. Cigarettes have long been the leading cause of fatal fires in the United States, killing nearly 900 people and injuring 2,500 to 3,000 annually. In Nebraska, the Fire Marshal has reported that in the two-year reporting period of

2004-2005, 162 fires have been started due to burning cigarettes. Those fires consumed over 6,000 hours of response time by firefighters throughout the state of Nebraska. The solution is reduced ignition propensity cigarettes. Reduced ignition propensity cigarettes are a proven, practical, and effective way to eliminate the risk of cigarette-ignited fires. The use of such cigarettes will help prevent thousands of cigarette-ignited fires each year. Currently, six states--New York, California, Vermont, New Hampshire, Massachusetts, and Illinois--which cover approximately 20 percent of the American public, have already passed legislation that requires this type of cigarette. This reduced ignition propensity technology provides a tremendous reduction in the risks by cutting off the burning time before most cigarettes are able to ignite things like furniture or bedding materials. Now about the bill: The bill is comprised of four major sections. Section 3 establishes the criteria for flammability by requiring cigarettes that are sold in Nebraska to meet the requirements of the American Society of Testing Materials standard, which is the standard test method for measuring the ignition strength of cigarettes. Section 4 outlines the certification process that requires cigarette manufacturers to verify to the state that the cigarettes offered for sale in Nebraska meet the provisions of the American Society of Testing Materials standard. This section also provides for an assessment of fees by the state to defray the actual costs of enforcing the act. Section 5 stipulates the marking of cigarette packages to indicate a compliance with these requirements, and Section 6 outlines penalties for noncompliance with these requirements. The summary is that cigarettes are the leading cause of home fires in Nebraska and the rest of the nation. However, we have the opportunity to prevent these horrible situations through the simple but effective technology found in reduced ignition propensity cigarettes. I urge you to support me in this effort, and with that I...if you have any questions, the people that are going to testify behind me are going to be a lot more helpful than I probably will. (Laughter) [LB584]

SENATOR JOHNSON: I've only got one question of you. [LB584]

MATT RATHJE: All right, sir. [LB584]

SENATOR JOHNSON: Where did Senator Preister prefer to go, rather than to our fine committee? (Laughter) [LB584]

MATT RATHJE: I plead the Fifth on that. I honestly don't even know what committee it is. [LB584]

SENATOR JOHNSON: You're not going to incriminate yourself, I can see. [LB584]

MATT RATHJE: Yes. I'd like to keep my job, Senator. (Laughter) [LB584]

SENATOR JOHNSON: All right, fine. Thank you very much. [LB584]

MATT RATHJE: You're welcome. [LB584]

SENATOR JOHNSON: Proponents, please. How many do we have? One, two, three, four. Opponents? I see none. Let's go ahead. Thank you, sir. [LB584]

ANDREW McGUIRE: (Exhibit 1) Thank you very much, Chairman Johnson and the Health and Human Services Committee. I'm Andrew McGuire, and McGuire is spelled M-c-G-u-i-r-e, and I am director of a coalition for fire safe cigarettes--those are the low ignition propensity cigarettes--that was formed by the National Fire Protection Association, the organization I'm representing today. The National Fire Protection Association is an over a century old organization that sets the fire codes for fire departments around this country and the world, in fact. So the question is, why haven't we had what I'm going to call "fire-safe cigarettes" before? The first patent for the technology being used by the cigarette companies in those six states in Canada, where they're currently, in three of those places, selling these cigarettes today, the patent came out in 1931. The first time this was mentioned in the U.S. Congress was in 1929; the first time it was introduced in the U.S. Congress after that was 1974--failures to pass legislation at those times. And at the federal level, the tobacco lobby has stopped all attempts to regulate the cigarette as a fire hazard, which has necessitated going to the state level. And so that's why I'm here today, and I've testified in most of those other states that have passed the law. So I wanted to bring up a couple of key points, and then pass on the baton to the Fire Chief and to the burn nurse from your local burn center. First, this is a major way to quickly prevent death and major burn injuries, probably in about three months after you say it's going to happen, because the number of cigarettes in the stream of commerce at any given point is about a three month supply. So when you change the paper of the cigarette, which is all that the cigarette companies are doing here, those bad cigarettes that have the burning paper that allows the cigarette to cause ignition are sold up, and this bill allows the current cigarettes in the marketplace to be sold, but in three months, then, you will have cigarettes that won't cause ignition most of the time. I brought a diagram of how the cigarette companies are doing this. I think a picture is worth a few words, and when you see this diagram--I'll wait till you all get it before I describe it. What the cigarette companies have done is in two areas, what we call bands. They've made the paper a little bit thicker. There are no chemicals added, it's simply a process of making the paper thicker. The smoker of a cigarette cannot see the difference. This does not actually show up as a line on the cigarette paper. It's just the paper doesn't allow oxygen through to the burning ember in those two places where the paper is thicker. This banded--as the cigarette companies call it--banded technology means that when the burning ember gets to that band, oxygen doesn't get to this burning ember if it's laying on a mattress or a sofa, and the cigarette goes out. And so it's a very natural, sort of physical process that stops the cigarette from causing ignition. If you were to look at the diagram of the 1931 patent, it looks just like this. This is a diagram that was taken from a mock-up diagram used by Philip Morris cigarette company to display in New York State for a while, how they made

their fire-safe cigarettes. My next point is that the data that has come out of New York State already, just partial period of time of implementation, has shown that this is working. You may hear testimony, or you may hear someone say to you that there hasn't been a major reduction in New York, There's a reason for that. When New York implemented their law, all of the surrounding states did not have a law like that, and therefore, it's estimated between 25 and 40 percent of all the cigarettes sold in Manhattan, and most of the other part of the state of New York, were noncompliant cigarettes coming from other states, and also from the Mohawk Reservation in northern New York, and the taxation rate on New York cigarettes was higher than New Jersey and the other states. So many of the cigarettes that were sold, and still being sold, by the way, in New York State are noncompliant. Even so, there's been a dramatic reduction in fire deaths and fire, as reported to the fire departments. I'm going to conclude by asking that this committee pass on to General File this very important public health and fire safety legislation. And I'd be glad to answer any questions. [LB584]

SENATOR JOHNSON: Senator Hansen. [LB584]

SENATOR HANSEN: Thank you, Senator Johnson. I understand the federal law, you have trouble getting...the lobbyists kept you from doing this on a nationwide basis, and you say now you're going to states. How many states are you in now, how many states that have this proposed, if you can answer that? [LB584]

ANDREW McGUIRE: As of today, 12 different state legislatures are considering this bill, and I'm going to testify in Salt Lake City on Monday, and another gentleman in this room will be testifying in Helena on Monday, for the exact same language, by the way, of this bill, and we think that there's going to be an additional 8 or more states besides the 12 that will do it this session, including most likely Texas and Florida. [LB584]

SENATOR HANSEN: Do you have to relight this thing three times, then, to get it smoked? [LB584]

ANDREW McGUIRE: The cigarette itself extinguishes if it's dropped on something, and the lack of oxygen puts it out. If you're actively holding it in the air and smoking it, it continues burning. There actually was a survey done by the folks from Roswell Park cancer group in New York, where they've interviewed New York smokers, after the bill took effect, and the smokers couldn't tell the difference between pre- and post-bill. They didn't notice any difference in taste or anything else. [LB584]

SENATOR HANSEN: Thank you. [LB584]

SENATOR JOHNSON: Senator Howard. [LB584]

SENATOR HOWARD: Thank you, sir. It sounds to me like where this will be most beneficial is for people that still insist on smoking in bed and fall asleep with a cigarette. Am I accurate in that? [LB584]

ANDREW McGUIRE: That's actually probably 90 percent of the problem, that you've identified, and I always look at the problem this way, is if someone lives in an apartment building and someone drops a cigarette in bed if they're sleepy or drunk, who lives upstairs in the apartments, that get caught up in a fire that they didn't start? And so a third of the people who die in cigarette fires are nonsmokers--children and adults. [LB584]

SENATOR HOWARD: Okay. Thank you. [LB584]

SENATOR JOHNSON: I have a question. You know, if I was making cigarettes, I think I might say, buy my cigarettes and keep from starting fires in your home, and so on. What's the objection of the cigarette companies? Do they taste bad? Does it cost a lot? I would think that if some company along the way would say, this is the best way of making cigarettes... [LB584]

ANDREW McGUIRE: Well, Senator, this is a question I've been asking. I've been working on this issue since 1978, and my first question when I found out about the early patents and so on was, why haven't they done it and, like you say, promoted it as a public health measure? You would really have to ask the cigarette companies why they haven't done it. I think a lot of it has to do with the worries about products liability. If they come out with a fire safe cigarette without legislation, then I think the attorneys within the company inform the CEOs and others of Philip Morris and RJR and so on, you may be setting yourself up for big liability problems. I think they're going to have those problems anyway, but I do know, in talking with a former head of research and development for Brown & Williamson tobacco company, Jeffrey Wigand, who is famous for being the whistle-blower that started all the tobacco settlements, he said within Brown & Williamson there was major concern about products liability. And that's the only thing that would make sense to me, having been at this for about 30 years. [LB584]

SENATOR JOHNSON: I guess...again, I don't want to be the testifier here, but it would seem to me that the liability would be just the opposite, once there were some studies that showed that this prevented fires. [LB584]

ANDREW McGUIRE: Well, just a quick response is, the cigarette companies...there's documents that have been exposed in some trials, product liability suits, that have been filed--one in Texas that settled out of court--showing that they had actually developed an acceptable cigarette for consumers and put it on the shelf more than 15 years ago. And those are the kinds of memos and documents and so on I don't think they would want to come forward, because they developed it, tested it with the consumers, and

then didn't put it into the marketplace. So I think the legal issues are what has driven a lot of this, and it's very contorted. I don't understand it, but I think that's the main reason. [LB584]

SENATOR JOHNSON: Thank you. Yeah, Senator Pankonin. [LB584]

SENATOR PANKONIN: Thank you, Senator Johnson. Sir, one more question, and that is, are the potential savings great enough that this could even have some impact on insurance rates in states, and if there's a number of states contiguous that...do you think this is a big enough factor that could even potentially have savings there? [LB584]

ANDREW McGUIRE: Well, first of all, I hate to contradict prior testimony, but there was a slight misstatement. Cigarette fires are not the major cause of fires and property damage. They're the major cause of fire death, and there's a big distinction. I think the major cause of fires is kitchen grease fires. [LB584]

SENATOR PANKONIN: Okay. [LB584]

ANDREW McGUIRE: So in terms of property damage, cigarette fires...it's a large number when you add it up for the nation. But compared to, you know, other causes--electrical and kitchen fires and so on--it's not the major cost problem for insurance companies to deal with. It is going to reduce the property damage. It will clearly reduce burn care costs and health insurance reflect that, but in the scheme of how much money is spent, it...you know, we're talking about big numbers for all the health problems. [LB584]

SENATOR PANKONIN: Right. [LB584]

ANDREW McGUIRE: And so I would never make a claim that it would help, but it should. [LB584]

SENATOR PANKONIN: Thank you. [LB584]

SENATOR JOHNSON: Other questions? I see none. Thank you, sir. [LB584]

ANDREW McGUIRE: Well, thank you very much. [LB584]

SENATOR JOHNSON: Next, please. Again, if you'd make your way to the front and so on, any other testifiers. So go ahead, ma'am. Thank you. [LB584]

RUTH ALBRECHT: (Exhibit 2) My name is Ruth Albrecht, A-l-b-r-e-c-h-t, and I would like to thank the members of this committee for allowing me to testify today, and I am going to read my testimony. My name is Ruth Albrecht and I have been a burn nurse at

the St. Elizabeth Regional Burn Center for 19 years, with about half that time also coordinating outreach programs for the state of Nebraska for the burn center. I have held three terms and am currently on the American Burn Association Prevention Committee. Included is a copy of the American Burn Association policy statement, for your review. Today I am here to support LB584, introduced by Senator Preister, which would require the adoption of cigarettes sold in the state of Nebraska to have a reduced ignition propensity. According to the CDC, smoking is the leading cause of fire-related deaths in 2003. Based on statistics from the Nebraska Fire Marshal web site from the years 2000 to 2004, which is the last completed years of statistics, there were over 300 fires listed with smoking as a cause. There were a total of 12 deaths, 20 injuries, and 8 firefighter injuries, with a total monetary loss of over $3 million. This number doesn't come close to capturing the total amount of money involved and the medical care and lost productivity for those injured and treated in the hospital. Although there was not a breakdown as to those caused by smoldering cigarettes in particular, which is the type of fire the adoption of this bill is meant to prevent, generally, when a death occurs from smoking, it is from a cigarette that has been left burning as someone has fallen asleep. Although these numbers, in the whole scheme of things, may not look impressive, I would like to take a moment of your time to add a human element to this discussion. I was working a night shift when we received a call from our emergency department, telling us of a house fire with a possible victim. Shortly after, we received a call from another hospital where the victim was first taken and coded multiple times, then sent to the burn center for definitive treatment. The victim sustained a burn over 50 percent of his body and smoke inhalation. It was also discovered, because of the hypoxic incident to his brain, that this person would not recover. The fiancee, who was able to escape the fire unharmed, and his parents, at his bedside made the decision no family member should ever have to make; that is, to allow him to die. A marriage ceremony took place to give comfort for those that remained. I realize that this is just one incident, but I have seen many others over my years in the burn center. Please consider those firefighters that have been injured in the line of duty. We all recognize that they take on risks every day in the course of their jobs; however, should we not make their risks less if there is technology available to do so? If low propensity cigarettes were required, then fires caused by smoldering cigarettes would be reduced, thereby reducing the risk of injury and death to our firefighters. The technology has been available to supply this type of cigarette for many years, and the states of New York, California, Vermont, Illinois, New Hampshire, and Massachusetts, as well as Canada, have already passed legislation. Legislation is pending in New Jersey, Pennsylvania, and Wisconsin, and you heard of others today. Please be proactive and join this growing list of states in adopting this important legislation to save lives and keep our firefighters safe. The most effective way to prevent fires is to break the fire triangle. This legislation will break the triangle by taking away the cigarette that is able to smolder on surfaces long after the smoker has left. Thank you for giving me this opportunity to present this information to you. If I can be of any further help in any way, please contact me at the hospital. [LB584]

SENATOR JOHNSON: Any questions? I see none. Thank you. [LB584]

RUTH ALBRECHT: Thank you. [LB584]

SENATOR JOHNSON: Other proponents? [LB584]

BRUCE SELLON: Good afternoon, senators. Thank you for hearing my testimony. My name is Bruce Sellon, S-e-l-l-o-n. I'm a deputy fire chief with Lincoln Fire and Rescue in Lincoln, Nebraska. I am also a proponent on behalf of this legislation to adopt the reduced cigarette ignition propensity act. In Lincoln, Nebraska, alone in 2006 we have accounted for 37 cigarette-related fires out of 643. There were several undetermined, and those also may be cigarette related, as well. It's been the mission of fire departments in Lincoln as well as all over the country, and Nebraska as well--it's the mission of fire departments to try to reduce fire cause, and a lot of the fire cause that we see is related to cigarettes. I would also like to account for a fire that I happened to be incident commander on a year ago, on January 26 of 2006, here in Lincoln. This fire involved a house here in Lincoln, Nebraska. It resulted in total loss of the home. It did severe damage to homes on both adjacent sides. We had two significant firefighter injuries as a result of this fire, with lengthy loss of time to work. We also had two minor treat-and-release injuries from our firefighters in this incident, and I personally had to call the spouses of the firefighters to inform them of their firefighter injuries. That's one of the hardest calls I had to make. Fortunately, the family in this house--it happened at 6:00 o'clock at night or so--were alerted by a neighbor that saw the fire, and they were able to get out, so everyone was safe on that part. But the cause of this fire was a carelessly discarded cigarette. This scenario was also repeated many times, as we see smokers driven outside because of various clean air acts and legislation. A carelessly discarded cigarette, again, is a cause for many fires that we see in containers outside a building, wind might pick up, cause a fire to impinge on the outside of the structure and again, causing a lot of loss and injuries. I would be happy to answer any questions you might have at this time. [LB584]

SENATOR JOHNSON: Any questions? I see none, sir. Thank you very much. [LB584]

BRUCE SELLON: Okay, thank you. [LB584]

SENATOR JOHNSON: Any other proponents? Do we have further proponents? And opponents? Okay, go ahead, please. [LB584]

RHONDA CERNY: Good afternoon, senators. Pardon the scratchy voice--I'm just getting rid of a cold. [LB584]

SENATOR JOHNSON: You're fine. [LB584]

RHONDA CERNY: I'm Rhonda Cerny, R-h-o-n-d-a, C-e-r-n-y, member of the Linwood Volunteer Fire Department. I'm here on behalf of fire prevention teams throughout the state of Nebraska. I serve as the chairman of the fire prevention committee for the Nebraska State Volunteer Firefighters Association. I serve as one of the five Nebraska Partners in Prevention for the Nebraska Forest Service. I belong to several of the fire prevention co-ops, along with active fire prevention in our local town. What we're here for, in supporting this bill, is another measure of fire prevention. One of our big sayings is, prevention before suppression. As you know, we're looking at the money issues. Fire prevention needs to be observed 365 days of the year, not just one week in October, when we call it Fire Prevention Week. We're always using...looking for tools, we're looking for ways to save money, which again saves the property, the times, and the lives. We think by looking into this bill and looking at the safe cigarettes, we're never going to stop people from smoking. That would be one answer, but that's not going to happen. If we can find a source that's causing fires and a way to control the fires that it's starting, whether it be the house fires, whether it be the grass fires that you're seeing along the interstate...every one of those fires that you're calling out your career and your volunteer firefighters to, is taking your time, your money, and possibly injuring people. So we're just thinking this is one more fire prevention tool, and we're always out there looking for ways to prevent a fire from happening, because every fire prevented is going to be a savings. Any questions? [LB584]

SENATOR JOHNSON: Thank you. Any questions? I see one. Thank you very much. [LB584]

RHONDA CERNY: Thank you. [LB584]

SENATOR JOHNSON: Any other proponents? [LB584]

MARK WELSCH: My name is Mark Welsch. I'm the president of GASP of Nebraska, the Group to Alleviate Smoking Pollution. I just wanted...I'll just be very brief. Some of you are too new here, that you may not have seen the ravages of fire that was outside, I think it was the west entrance of this building a few years ago, we think caused by a carelessly discarded cigarette out there. So this bill, you know, strikes close to home here at the Capitol, where it could have prevented some damage done here at the Capitol, to state property. As you've heard, other states have done this. The tobacco companies don't have to invent something--it already exists. They just have to start shipping those cigarettes that are fire safe to Nebraska, once this bill gets passed. So I urge you to advance this bill and support it on the floor of the Legislature, once it gets there. Thank you. [LB584]

SENATOR JOHNSON: Any questions of Mr. Welsch? I see none. Thank you. [LB584]

MARK WELSCH: Thank you. [LB584]

SENATOR JOHNSON: Any other proponents? Opponents? Any opponents? Any neutral testifiers? Seeing none, I declare LB584 testimony to be over. The next bill is LB395, where I am the chief introducer, and I will turn over the leadership to our Vice Chairman, Senator Gay. [LB395]

SENATOR GAY: Thank you, Senator Johnson. We'll take one minute while the room clears out, or get resituated. All right, I'd like to open the public hearing on LB395. Over the course of the afternoon...I see many people have arrived, particularly for this bill, and I understand that. Senator Johnson had mentioned...it's about 3:30 now. I'd like to shoot for a 5:00 o'clock wrap-up if we can, but I know this is a passionate issue on both sides. But if we could, I'll repeat some of the things we had mentioned earlier when we opened the hearing. If you could not be so repetitive on issues and add new information, that's very helpful to your testimony. Many people come with a written testimony. If you want to read it, that's fine, but sometimes if you can summarize it, that makes for a little more effective testimony, I think. I think I could speak for everybody on that, especially as the day gets a little longer. But we want to have everyone be heard, and just respect each other's time. So with that, we will get started. Senator Johnson. [LB395]

SENATOR JOHNSON: Thank you, Senator Gay, members of the committee. First, let me clear up one thing. There is no doubt secondhand smoke is harmful. I guess I'd better introduce myself. I'm Senator Joel Johnson, representing the 37th District. Let me start again, and it's worth the emphasis anyhow. Let me make sure that you understand--there is no doubt about secondhand smoke. It is harmful. The Surgeon General says so. There's a huge number of scientifics that say so. In fact, the Surgeon General's comments are the evidence is massive and conclusive. There are also good studies that are beginning to appear that show the monetary costs to individuals and publicly funded programs. In the last session a similar bill to this failed by a few votes. At the conclusion someone said, I guess it's up to the local communities to take the lead. Lincoln and Omaha stepped forward with ordinances covering nearly one-half of Nebraska's population. This bill is essentially the Lincoln city ordinance. Each city, however, points out a problem with the local approach. In Lincoln, with a strong all-inclusive ordinance, we see the problem of town against town. You even hear advertisements on the radio to come to our town and avoid Lincoln's ordinance. With Omaha's ordinance, many exceptions were included that resulted in pitting business against business. The goal here is to create a level playing field. What was done in Omaha is to create a level playing field in the future. We need to do this now. Numerous cities are considering ordinances but are reluctant to do so because of the concern of their local businesses. Senator Stuthman from Platte Center and Senator Ray Aguilar from Grand Island and I all consider ourselves to be joint sponsors of this bill for these reasons. There is a prevalent sentiment throughout our communities, and we think in many communities, that we need a state ordinance, and that is the answer. They are

reluctant to create the same problems that we have seen with the Lincoln and Omaha ordinances. I think the last issue that we need to consider is this: We often hear, it's my business and I can run it as I want, and if my employees don't like smoking, they can go work somewhere else, and the same goes for my customers. Well, my father's family came to this country and worked in the coal mines in Pennsylvania as immigrants. They didn't have to work in the coal mines. This is a free country. And mines were privately owned, so they didn't have to submit to government demands for safer environment. Is this issue any different than it was when we were considering this problem 50 and 60 years ago? Do we really need to put profit ahead of the health of all Nebraskans? Let's have that playing field, and let's have it now. This may be the greatest public health measure of our time. I'd be glad to answer any questions. [LB395]

SENATOR GAY: Thank you, Senator Johnson. Are there any questions of the committee for Senator Johnson at this time? I see none. [LB395]

SENATOR JOHNSON: Thank you. [LB395]

SENATOR GAY: Thank you. Could we get a show of hands of proponents that will be wanting to speak? Okay. You can see for yourselves, there's quite a few. And opponents that might...all right. Anybody that would like to talk in the neutral capacity on this? Neutral? Okay, thank you. Go ahead, Senator. [LB395]

SENATOR AGUILAR: (Exhibit 16) Good afternoon, Senator Gay, members of the Health and Human Services Committee. My name is Ray Aguilar, I represent District 35, the city of Grand Island. My name is spelled A-g-u-i-l-a-r. I'm here to voice very strong support for LB395. In a private setting we can choose to smoke, if we care to accept the risk of smoking and secondhand smoke. But public places are not a good place for us to exhibit behaviors that are hazardous to another person's health. The health benefits of prohibiting smoking in public places has proven to be astounding. The rate of heart attacks in cities where smoking bans have been drastically dropped. The healthcare savings is very measurable, both by the residents of the city and for the individuals who are encouraged to quit smoking, by such bans. I'm sure the advocates in the hearing will elaborate on some of these amazing statistics. Both the city of Hastings and the city of Grand Island are drafting resolutions of support for this bill that I will have in time for floor debate. Today I have a letter from Peg Gilbert, a Grand Island city councilwoman, to share with the committee, that voices her support for a comprehensive, statewide smoking ban in public areas, and a letter of support from Central Nebraska Health Department is on the way. As Senator Johnson said, I ask you to really consider developing the best health public policy for this state, that will be historically present for a long time. Thank you. I'll take any questions at this time. [LB395]

SENATOR GAY: Thank you, Senator. Are there any questions from the committee?

[LB395]

SENATOR ERDMAN: I've got a question. [LB395]

SENATOR GAY: Okay. Senator Erdman. [LB395]

SENATOR ERDMAN: No, you've waved me off. I'll wait. [LB395]

SENATOR GAY: Speak up, (inaudible). [LB395]

SENATOR ERDMAN: I did. [LB395]

SENATOR GAY: All right. [LB395]

SENATOR ERDMAN: (Inaudible) [LB395]

SENATOR GAY: You can catch him later. Other proponents? Come on up. Would you state your name and spell it. Thank you. [LB395]

RON ASHER: (Exhibit 17) Thank you. My name is Ron, R-o-n, Asher, A-s-h-e-r. I am from North Platte. Good to talk to Senator Hansen today. I'm a representative for the Nebraska Medical Association, and I do have some documents. I was going to say, Dr. Johnson has already said all the good things about healthcare, but I'll give it a shot. Clearly, there's no doubt that smoking is a problem in terms of health, and I reference the National Institutes of Health which indicates that there are 450,000 deaths a year from smoking. The thing I didn't understand was the economic cost, and their estimate is that roughly $2,500 of medical expense is related to smoking, as well as about $2,500 of disability, lost productivity, economic loss. And that works out to be about $5,000 per smoker, or for Nebraska, about $1.5 billion of cost to our state, roughly $6 a pack of cigarettes. But we get to secondhand smoke, and for this I had the opportunity to visit with the nicotine addiction center at the Mayo Clinic, and their estimate is that the risk of secondhand smoke is roughly to 10 to 15 percent of what it is for smokers, and that would mean about 50,000 deaths a year and an economic cost of about that same 10 or 15 percent. So for the 1.2 million Nebraskans that don't smoke, that works out to be about $1.2 billion. That's what it costs the state. I know you're likely to hear some issues about secondhand smoke not being dangerous, and I'm not going to argue with Dr. Johnson, because he's hit it right on the head. As a practicing physician, one of the things that I see, families coping with smoking. And more and more often, we'll see that the requirement at home is that people smoke outside. They recognize that avoidance of secondhand smoke...that the need for clear air exists in their home. And so a big question is, if it's good for home, why isn't it good for the workplace? Another issue that I often see is that a big part of what I do often is to tell people that they should quit smoking and to help them quit smoking. One of the big things that can help them is

that...not being required to go to a place where smoking occurs during their work hours. It improves the success significantly. So the question I raise is, you know, what does this legislation mean for Nebraska? Well, simply it means that Nebraskans will be healthier, safer, happier, and that there is a significant economic gain. The last comment I make is that, you know, I have two grandchildren and one on the way, and in a few years, those grandchildren will be in the workplace. And I don't want them to suffer the health consequences of being...of working in a place where there's smoke involved. Thank you. I appreciate your attention. [LB395]

SENATOR GAY: Thank you, Doctor. Senator Howard. [LB395]

SENATOR HOWARD: Thank you, Senator Gay. I have a question that I've long wondered about, and maybe you can give me some information. When I worked in foster care and did adoptions, I would see many children who would come in and have severe asthma and would come from smoking families. Do you...can you tell me if there's a direct relationship between secondhand smoke and asthmatic conditions in children? [LB395]

RON ASHER: That would be a question better asked to people who take care of children, but I'll tell you what I know. Children who grow up in a smoke-filled environment have developmental delay of their lungs. They don't mature as well, and as a result, they're more susceptible to irritants and infection. And I don't know specifically if they're more associated with asthma, but clearly, they're more susceptible to anything that can damage the health of their lungs. [LB395]

SENATOR HOWARD: So basically they're sicker. They're sicker kids. [LB395]

RON ASHER: Yeah. The second issue is that if you have asthma, what is one of the best ways to trigger an asthma attack? What is one of the best ways to aggravate asthma? Well, it's to be around pulmonary irritants--smoking is a really big pulmonary irritant. So clearly, you see children needing much more frequent healthcare--going to the emergency room, going to the hospital. And part of the consequence of that is that those...the damage that they receive as a child carries over to their adult life, so as adults, they have lungs that are less healthy, more susceptible to damage, more susceptible to injury. You know, and I forgot to mention one of the things that the folks at the Mayo Clinic mentioned to me, which is how quickly does smoke damage people? And they did some very nice studies which documented that within five minutes of being exposed to secondhand smoke, the blood flow in the major arteries of the body becomes constricted, and that's just five minutes. And you can imagine what it might be like to grow up in such an environment, or to be exposed to that all during the day. [LB395]

SENATOR HOWARD: Well, and following up on that, would a smaller...say in a car

where the smoke would be more contained, is that even more severe than in a bigger... [LB395]

RON ASHER: Yeah, I think it would be, and you know, you see a lot of discussion. You know, I talked about people not smoking in their homes, and I see the same discussion where smoking in the car is just not an option any more. You know, if somebody is driving by themself...but if there are, you know, there's a spouse in the car, there are children in the car, it's one of the agreements that often gets worked out in families that, you know, not going to smoke in the house, not going to smoke in the car. And I think clearly that's a very confined space and can be very troublesome for children, and for adults, too. [LB395]

SENATOR HOWARD: Thank you. That's excellent information. Thank you. [LB395]

SENATOR GAY: Senator Hansen. [LB395]

SENATOR HANSEN: Thank you, Senator Gay. Dr. Asher, thank you for coming from North Platte today. What percentage of your clients would you say have had smoke, first- or second-hand smoke related health problems? And is it about the same in western Nebraska as it is in urban Nebraska? [LB395]

RON ASHER: I think it's probably higher in western Nebraska, because we're out in Marlboro country. (Laughter) And I'm not sure how to express a percentage. [LB395]

SENATOR HANSEN: Any type of pulmonary problems. [LB395]

RON ASHER: If I think about...well, I'll give you an example. I was in Valentine yesterday; nice young fellow, 55 years old. He has an ejection fraction in his heart of, you know, 10 percent, you know--clearly, smoking related illness. You know, he's been a smoker all his life. Person before him, who was in the mid-sixties, you know, chronic lung disease, emphysema; clearly, smoking related. You know, in the standard course of a day, I suppose, you know,...my practice tends to be a fairly small volume practice, so you know, 20, 25 people a day. You know, it would be 15 or 20 real clearly smoking related problems. And you talk about smoking related problems, and everybody knows about emphysema; everybody knows about chronic lung disease, about heart disease, bladder cancer, stomach cancer, throat cancer, amputations, vascular problems. I mean, it's just a long, long, long litany of smoking related problems. [LB395]

SENATOR HANSEN: Real quickly, because I know this is off the subject, the last bill that we heard testimony on, we had...we call those safe cigarettes. Is there such an oxymoron as a safe cigarette? [LB395]

RON ASHER: Well, I think they're safer than the usual. You sort of wonder... [LB395]

SENATOR HANSEN: If they would go out every time between those bands, they might be. That's all I have. (Laughter) [LB395]

RON ASHER: Yeah. You sort of wonder. I don't wonder why it took 80 years for the cigarette industry to allow some patent to come forward. [LB395]

SENATOR GAY: That debate was closed, so (laugh) thank you. Any other questions? I see none. Thank you. Next proponent? I would read, while the next proponent is coming up...the committee has received 24 letters of support on LB395, and they'll be entered into the record of this hearing. I'm not going to take the time now to read that list, but it will be available for review upon any request. Go ahead, if you could state your name and spell it out. (See Exhibits 1-15, and Exhibits 26-35.) [LB395]

CHRISTIAN CARDONA: Honorable members of the committee, thank you for allowing me to speak here today. My name is Christian Cardona, C-h-r-i-s-t-i-a-n, C-a-r-d-o-n-a. I'm 13 years old and I'm from Papillion, Nebraska. I'm here today to tell you what it feels like to have asthma and to breathe cigarette smoke. When I go out to a public place that allows smoking, I have a hard time breathing, not only while I'm there, but even after I leave. Even if there's a nonsmoking area, the smoke still travels through the entire building. The smoke burns my nose, my eyes, and my lungs, and I have to go home and wash clothes and bathe, just so I can get the residue off, so it doesn't irritate my lungs any more. But even then, I still have a hard time breathing, so I have to take my inhaler, just to make me feel better. You know, I have to take three medications twice a day, and I work really hard to keep my lungs healthy and clean, and I've chosen not to be a smoker. But I hate that just by wanting to go somewhere out with my parents, I'm forced to smoke and to damage my lungs that I've worked hard to keep healthy. You know, if I went to a store to try to buy cigarettes, the salesman would say no and that it was against the law. However, children like me who are exposed to secondhand smoke might as well be having an after dinner cigarette or worse, a pack. The laws protect me from becoming sick by inspecting restaurants and they protect me from being safe in the car by enforcing speed limits and the use of seat belts, but this law, which I think is most important, protects my right to breathe. Thank you. [LB395]

SENATOR GAY: Thank you. Very well done. Senators...hold on, Christian, we might have a question for you. (Laughter) Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. First of all, thank you for your testimony. I have two questions. [LB395]

CHRISTIAN CARDONA: Yeah? [LB395]

SENATOR STUTHMAN: Do any members of your family smoke? [LB395]

CHRISTIAN CARDONA: No. [LB395]

SENATOR STUTHMAN: They don't? [LB395]

CHRISTIAN CARDONA: No. [LB395]

SENATOR STUTHMAN: And the second question is, how long after you get bathed and cleaned up do you feel you're almost back to normal, that your "breathway" is normal? [LB395]

CHRISTIAN CARDONA: A few minutes after I use my inhaler. [LB395]

SENATOR STUTHMAN: Inhaler. But if you didn't use your inhaler,... [LB395]

CHRISTIAN CARDONA: It would take awhile. [LB395]

SENATOR STUTHMAN: It would take several hours, at least, or maybe longer? [LB395]

CHRISTIAN CARDONA: May...basically. [LB395]

SENATOR STUTHMAN: Okay. Thank you. [LB395]

CHRISTIAN CARDONA: You're welcome. [LB395]

SENATOR GAY: Thank you. Any other questions? Okay, you're off the hook. (Laughter) Thank you. [LB395]

MICHELLE HUG: (Exhibit 18) My name is Michelle Hug, M-i-c-h-e-l-l-e, Hug, H-u-g. I own and operate the Marylebone Tavern at 3710 Leavenworth Street in Omaha with my sister, Dawn Blankenship. I know you're all aware of our new smoking ban ordinance in Omaha, and we have filed a lawsuit with the support of 11 other bars and restaurants in regard to its application. The way our city sits now there are approximately 811 liquor licenses that allow a potential customer to walk in, sit down and have a drink. Of those, one can still smoke in 386 places, about 47 percent. Surely this was not the intent of this legislation. The purpose of the legislation was to protect public health and to secure the right of the people to breathe smoke-free air. If the ability to breathe smoke-free air is indeed a right, then it must apply equally and now, not in May of 2011 for some, as the Omaha ordinance allows. Through the court process, the city now contends that an unstated purpose of this ordinance is to protect the revenue they receive from Keno operations. They say that if they do not allow smoking, Keno customers will drive to Bellevue, Papillion, Ralston, or LaVista to play Keno and smoke. I am baffled by the notion that Keno customers will drive to another city, but at the same time I am asked to

believe that my customers will not drive to any of the other five bars in the nine blocks of Leavenworth Street. It is an argument that simply makes no sense. In the nine blocks of Leavenworth Street there are six bars, and mine is the only nonsmoking one, because I serve food and do not have Keno. The city of Omaha supplied affidavits from Big Red Keno and Horsemen's Park, stating what they pay in taxes each year, in an attempt to show the necessity of their exemptions to the ban. When I saw these, I was offended and reminded by nine-year-old that my state model is equality before the law. How can the amount of taxes paid equate to special privileges or in this case, immunities, to anyone? It should not matter. If the right to breathe smoke-free air is indeed a right, then you have no choice but to vote for LB395. I understand the argument that the government should not get involved in business and aware that many of you support this idea. The time for that has come and gone in the city of Omaha. The government has involved themselves in business in the city in an unfair fashion, and now you must take the initiative to begin to repair the damage. We need uniformity in the law. One should not be made to wonder if they are walking into a smoke-filled room in Valentine or the one nonsmoking bar at 3710 Leavenworth in Omaha. We believe that the role of government is to create rules in business, but know that those rules need to be uniform and clear to all. Local politicians cannot be left to make laws based solely on political preference. As elected officials, the responsibility to create laws that are fair and equitable lie in their hands alone, and now we are in the position to come to you and ask that you act. I understand that some of you represent border towns which have received much discussion in this debate. I too operate business in a border town, maybe five minutes from all of the casinos in Council Bluffs. But just as I cannot look to Iowa's laws to run my office, neither can you. What they are doing there cannot have an impact on what is right and good for the people of Nebraska, and what is right and good is a system of uniform laws that protect all equally. You will hear much testimony today telling you of the harm of cigarette smoke and secondhand smoke. My charge here is not to prove this one way or the other. I am simply here as a business owner in Nebraska's biggest border town, asking you to make a law that is comprehensive, understandable, and applicable to all. You have the power to enact legislation that will preempt all local laws and put the state of Nebraska under one rule, and we ask that you do that. I assure you--this is not where I thought I would be a year ago today. I am not a politician or a lobbyist. I am here as a business owner to tell you that LB395 matters. Our state constitution matters. Fairness in business matters. And the ability of elected officials to enact laws without regard to political preference matters. Thank you. [LB395]

SENATOR GAY: Thank you. Hold on. Any questions? Senator Hansen. [LB395]

SENATOR HANSEN: Thank you, Senator Gay. Michelle, do you think that a city should have more influence on an ordinance like this than the state? Did you participate in the ordinance making in Omaha (inaudible)? [LB395]

MICHELLE HUG: No, I didn't, and can I explain why? [LB395]

SENATOR HANSEN: Uh-huh. [LB395]

MICHELLE HUG: Because my mayor and several of my city councilmen said they would never vote for anything less than a total smoking ban, with which I have no problem. They said it several times. There was no reason to go. [LB395]

SENATOR GAY: Senator Pankonin. [LB395]

SENATOR PANKONIN: Thank you, Senator Gay. Michelle, obviously we've had...we've already had people talk about the medical part of it. You've talked about the business part of it. Since you are the only one out of six, has it hurt your business significantly over this time? [LB395]

MICHELLE HUG: Well, I can tell you this. Our business is definitely different, and it's kind of a black cat in our business to say if your business is bad, because then people hear--ooh, I don't want to go there--no one's there. And then the next thing you know, you've got rats in your kitchen. (Laughter) So it's not something...no, really, it's spreading a rumor about yourself. I can tell you this. Our lunches are the same. Our nights are definitely different. We serve food from 11 to 2, and at night... [LB395]

SENATOR PANKONIN: (Inaudible) [LB395]

MICHELLE HUG: Yeah, and I have customers who have come in and said, hey, great to see you. I just wanted to tell you we're going so-and-so--too cold to go outside. You can't blame them. I've done it with my own friends. [LB395]

SENATOR PANKONIN: So do you smoke? [LB395]

MICHELLE HUG: Yes, I do. [LB395]

SENATOR GAY: Michelle, we'll strike that "rats in the kitchen." We'll strike that from the record, then. [LB395]

MICHELLE HUG: Why? That has nothing to do with it, to me. It's not about smoking. [LB395]

SENATOR GAY: Other questions from the committee? I see none. Thank you. [LB395]

MICHELLE HUG: All right. [LB395]

BILL HARVEY: Thank you, Mr. Chairman, members of the committee, for the

opportunity to speak today. My name is Bill Harvey, 11248 John Galt Boulevard, Omaha, Nebraska, and I'm general counsel for Big Red Keno. [LB395]

SENATOR GAY: Can you spell that? Can you spell that out? [LB395]

BILL HARVEY: So I thought it might be appropriate... [LB395]

SENATOR GAY: Could you spell your name for the record? [LB395]

BILL HARVEY: Yes. B-i-l-l, H-a-r-v-e-y. So I thought it might be appropriate if I followed the last speaker, because I think perhaps I can put some of that controversy to rest. First of all, let me just say that Big Red is a company with 250 employees that operates Keno games on behalf of cities at 237 locations throughout the state. Our job is to generate community betterment revenue for cities, and we've done that. We've raised over $100 million over the last 15 years for community betterment in Nebraska communities. I'm here today to speak in support of LB395; however, we are respectfully asking that you do make one amendment to that bill when you forward it, and that would be to strike Section 17, which relates to the outdoor restrictions in that bill. First, let me say thank you to the senators and groups that have worked on this bill. I know a lot of work has gone into the development of this bill and we appreciate that, and we particularly appreciate the leadership of the Nebraska Medical Association on this issue, our own Nebraska doctors. We very much appreciate that. I'm certain that you'll hear a significant amount of testimony today regarding the arguments in support of a smoking ban, and I'm not here to forward those arguments. What I'm here to do is to say, very similar to Ms. Hug, that we believe that if a smoking ban is going to come, it needs to be done on a statewide basis, and it needs to be done fairly to affect all business equally, to create a level playing field. So we're very much in agreement with that. The circumstances in Omaha, which I don't want to rehash at this committee, because they are what they are, we're different in our opinion, because of the localized nature of Keno. We felt that if Omaha had passed a ban without those exceptions, it wouldn't have created a level playing field for our business and for some of the other businesses in Omaha, because people could have gone outside the city. But all along, even in supporting that local ban, our goal was to have a statewide ban that puts all businesses on a level playing field. The concerns I have about...and I'll try to brief here. But the concerns I have about Section 17 are basically that we see that ban as being vague and difficult to enforce, and as the Chairman pointed out, primarily LB395 is based on Lincoln's ordinance. But there's one significant difference, and that is Section 17, because neither the Lincoln ordinance nor the Omaha ordinance incorporate outdoor restrictions. We think that there are number of questions raised by this section that aren't answered. What responsibility does the proprietor of a business have regarding outdoor smoking under Section 17? What about law enforcement? What are the penalties for outdoor smoking? They're not specified in the bill. Who will do the 20-foot measuring for this 20-foot distance from windows, doors, and so forth? It gets rather

complicated, and we think the bill would be much stronger and a better, more comprehensive if that section were simply struck, and we don't think it detracts from the rest of the bill to strike that section. Unless there are any questions for me, basically we urge you to strike Section 17 and move the bill forward to General File. [LB395]

SENATOR GAY: Thank you. Are there any questions? I see none. Thank you. [LB395]

BILL HARVEY: Thank you. [LB395]

JIM PARTINGTON: Good afternoon, Senator Gay, members of the committee. My name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association, and I appreciate the opportunity to appear before you to testify in support of LB395. The state of Nebraska has over 3,600 restaurants with about 87,000 employees, and we generate a revenue of around $1.5 billion. The mission of the Nebraska Restaurant Association is to represent, educate and promote this growing industry. The Nebraska Restaurant Association has historically been opposed to smoking bans, because we believe that restaurants should be free to cater to the preferences of their customers in the pursuit of legal activities. Several developments over the past three years have caused us to reevaluate this position. Community smoking bans in Lincoln and Omaha have placed restaurants within these communities at a competitive disadvantage with those in surrounding towns without such regulations. Other communities throughout the state are considering similar ordinances, and this will place an economic burden on many more of our member restaurants. The trend is clear--80 percent of the population are nonsmokers. The majority of these people want public facilities to be smoke free. In response to this, 27 states now have or are applying to enact legislation limiting smoking in public, and we expect more to follow. Recent research on the health effects of secondhand smoke is more compelling than that previously available on the subject. The economic effects of community smoking bans vary depending on the type of establishment, but the loss of business from smoking bans results, to a great extent, on the ability of customers to shift their patronage to competing establishments in communities which continue to allow customers to smoke. A statewide smoking ban in all public facilities and workplaces with not exceptions will eliminate this competitive imbalance and allow the hospitality industry to compete based on core business, rather than on location within or outside of a community that bans smoking. We believe that a comprehensive, all-inclusive ban across the entire state will serve to enhance the health and comfort of our customers and employees, and provide a level competitive business environment for our members. In supporting this legislation, we do recommend that the following changes be made to provide for consistent enforcement: We'd like to revise Section 10. This section defines an indoor area, and we propose adding a definition for an outdoor area, as well, and the definition is consistent with the Lincoln ordinance, which this ordinance is modeled on, and I've given a copy of that to Senator Johnson's staff. We think you should remove Section 17. I quote that, and it says smoking is prohibited when at a distance of 20 feet outside

entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, to ensure that tobacco smoke does not enter those areas. It's difficult to enforce, it's too restrictive, and virtually impossible to comply with in many locations, such as downtown Lincoln. So the bill would be better off and stronger without that. And we believe you should remove Section 25, which says the Nebraska Clean Air Act shall be liberally construed to further its purposes, because the meaning is unclear and open to interpretation. None of these recommended changes detract from or limit the intent of the legislation. With adoption of these changes the Nebraska Restaurant Association supports enactment of LB395. We believe that it is in the best interests of our members to impose a smoking ban across the largest jurisdiction possible, to level the competitive business environment. We would like to see this accomplished without a drawn-out process of individual community bans over an extended period, wasting private- and public-sector resources to debate and resolve an issue on which the general public has already reached a conclusion. Thank you for the opportunity to testify in support of this legislation. I would be pleased to answer any questions you may have. [LB395]

SENATOR GAY: Thank you. Any questions? Senator Hansen. [LB395]

SENATOR HANSEN: Thank you, Senator Gay. I'm sorry I wasn't here for most of your testimony, but you were talking about the 20 feet separation from a door of a building for nonsmoking. [LB395]

JIM PARTINGTON: That's right. [LB395]

SENATOR HANSEN: About three weeks ago I was in Omaha waiting for a table in a nonsmoking food establishment. My two grandchildren were outside with me, sitting on a bench. We were 20 feet or more from that door, and we could get smoke coming from the outside, rushing right toward the door. We were sitting right next to it. Would you accept 30 feet? [LB395]

JIM PARTINGTON: I don't think the feet... [LB395]

SENATOR HANSEN: A hundred feet? [LB395]

JIM PARTINGTON: I don't think that the number of feet... [LB395]

SENATOR HANSEN: Hundred fifty feet? (Laughter) Say when! [LB395]

JIM PARTINGTON: Can we keep going feet? The issue is not the feet. Actually, this is a situation where local communities could probably enter this fray and come up with a solution to this. If you look at downtown O Street--and this is in front of these risk analysis trade-offs, risk benefit trade-offs you make--when you look at downtown O

Street, if you enforce this law there on all of the bars and restaurants that are along that O Street, you'll have college students standing out on the yellow line in the middle of O Street. And you may or may not approve of that. (Laugh) But it becomes a hazard with weather and traffic and a lot of other factors that play into this. So I think this is one of those issues that's better handled at the local situation, rather than dictated by the state. [LB395]

SENATOR HANSEN: (Inaudible) Thank you. [LB395]

SENATOR GAY: Thank you. Any other questions? I see none. Thank you. [LB395]

JIM PARTINGTON: Thank you. [LB395]

KEVIN NOKELS: (Exhibit 19) Good afternoon, members of the committee. My name is Kevin Nokels, N-o-k-e-l-s. I am the chief operating officer of Alegent Health Midlands Hospital in Papillion, Nebraska. Alegent Health is the largest faith-based healthcare system in Nebraska and southwest Iowa, with more than 100 different sites of services and nine acute hospitals, more than 1,200 physicians on our medical staffs, and almost 8,500 employees. I'm also here on behalf of Nebraska Hospital Association, and together, we support LB395. To keep things brief, there are many good things about this bill, but I think one area that touches everyone yet we do not really talk about, is the fact that LB395 reflects a core message and commitment across the state that's already in play; that is, Nebraskans are focusing on their health, they're more engaged in their health than ever. This gives us that opportunity. A little over a year ago, Alegent Health, we responded to a call from our employees, our visitors, our patients when we began implementing a plan that would take us a yearlong journey to implement, becoming completely tobacco free at all of our properties. This means throughout...we always were within our buildings, but this is banning all tobacco use on any part of our campuses. This includes the clinics--everything. We responded to that call when developing a program. We provided tools for our staff, for patients, for visitors, to help them gain control of their lives in regards to smoking. And today, we can count about 400 of our employees that have stopped smoking. When we started we had an estimate based upon our survey of employees that roughly 15 percent of our employees did smoke. To assist you and your colleagues in your important deliberations regarding LB395, Alegent Health would be pleased to share with you what worked with our program, what did not work, and what worked well, and what we see as our continuing challenges and our likely successes. I thank you for the opportunity to share our experience, and I'm available for any questions. [LB395]

SENATOR GAY: Any questions? I have one question for you, Kevin. When you implemented that program, it took leadership to do that. How was that taken by the employees? I assume some people smoke at your... [LB395]

KEVIN NOKELS: Yes, there was quite a few, that we certainly did have some push back, but we provided smoking cessation classes, we provided the nicotine products, we have support groups. And so, you know, it was seen as well, yes, but we feel that very strongly, as a place of healing, it's inconsistent to allow something that can be so damaging in that environment. I've also had employees that have since thanked me. We've had employees that have smoked for well over 15, 20 years that have stopped and thanked me and said, thank you for giving me the drive to make my life better, to stop smoking. [LB395]

SENATOR GAY: Thank you. Are there any other questions. I see none. Thank you. [LB395]

MARGARET BROCKMAN: (Exhibit 20) Good afternoon, Senators. My name is Margaret Brockman, M-a-r-g-a-r-e-t, B-r-o-c-k-m-a-n. I am a registered nurse with a master's in nursing and have worked in occupational health field and academia for the last 20 years. I am here today on behalf of NNA, representing over 20,000 registered nurses in Nebraska. NNA would like to go on record in support of LB395. I have provided you today with a letter outlining our position. We would like to make a few points in regards to the major financial burden for healthcare in businesses. As healthcare costs due to tobacco-related illnesses increase, they erode employer profits, which in turn creates a cycle of diminished healthcare coverage, salaries and other benefits for employees. The standard practice in the insurance industry is to increase insurance premiums approximately 25 to 30 percent over nonsmoker rates, in order to cover the increased healthcare costs. My letter has also outlined national statistics. Some of those have already been previously talked about. In addition to that, we also see that employees...male smokers incur $15,800 more in lifetime medical expenses and miss an average of four more days of work than nonsmoking men; females, very similar. Overall costs--again, we're looking at between $4,000, $5,000, $6,000 indirect costs in lost productivity. One of the other interesting things that I've found in researching this, from NIOSH, the National Institute for Occupational Safety and Health, is that many of the chemical compounds found in tobacco smoke also occur in the workplace. Thus, workers exposed to toxic chemicals at work receive additional exposures from the presence of those same toxic chemicals in tobacco smoke. In some instances, the effects of tobacco smoke and occupational exposure are greater than the additive; therefore, the combined adverse health effects of exposure to occupational hazards and tobacco smoke are usually greater than either exposure alone. The effects of smoking is a major financial burden on healthcare and business, and therefore, we urge you to advance LB395. [LB395]

SENATOR GAY: Thank you. Are there any questions? I see none. Thank you. [LB395]

BRANDI GOLDAPP: Hello, senators. My name is Brandi Goldapp, G-o-l-d-a-p-p. I'm the owner of Goldeez along with my husband, in Omaha, Nebraska. I think things happen

for a reason. One year ago today we chose to go nonsmoking, before the ordinance was ever put into place. We did it in honor of a client who died from lung cancer, but it's also given us an advantage to hear the pros and the cons firsthand on what it's affected us with. For us it's been primarily good. You can smell our food when you walk into our bar, which we do serve food all day. We have an employee who has quit smoking, just simply because she can't smoke when she's at work. We have a lot of new faces. Because of medical reasons they couldn't come to the bar or hang out with their friends, if they had asthma, they were pregnant. You know, they...some just didn't want to have the secondhand smoke smell when they went home. I do though, however, know a lot of the negatives. We lost countless numbers of our regulars. I have to agree with Michelle--they stop in and say, hi. I've missed you, but I'm going down the street because I can smoke. We lost six dart and pool leagues because of...not because my customers were against it. It's because the opposing teams threw a fit and went to the head people and said, we're not shooting out of Goldeez because we can't smoke. So the pressure made our teams leave which, that's my income. We had a team that actually walked in, saw they couldn't smoke, turned around and walked out and refused to shoot pool. If there was a statewide smoking ban, that would not have happened. Several bars in Omaha with the ordinance have closed their kitchens because that was a choice they weren't sure if they wanted to make, whether to keep their food or keep their smokers, and they opted to keep smoking. It wasn't a level playing field. Once again, if there had been a statewide smoking ban, that wouldn't have been an issue. Several bars were forced to get Keno when they got information prior to the ban happening--if they have Keno, they can have a kitchen. Well, that wasn't fair. Once again, it wasn't a level playing field. Not all the bars were privy to that information. Even though we didn't have smoking, I didn't have a clue. Once again, we were guaranteed there would be no partial smoking ban--it would be all or nothing. As business owners, we shouldn't be forced to play the political game. Let us run our businesses the way we see best. Our choice was taken away. It is now a partial ban. So since we don't have a choice any more, everybody should be created and treated equally, and all of the level playing fields should be out there for everyone. So LB395 not only has health implications for people, it also has business implications for us small business owners. Do you have any questions? [LB395]

SENATOR GAY: Thank you. Are there any questions? Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Brandi,... [LB395]

BRANDI GOLDAPP: Yes. [LB395]

SENATOR STUTHMAN: ...do you feel your business would really expand if this bill was passed, you would get the people back, because there is no other place they could go then? [LB395]

BRANDI GOLDAPP: I believe that the regulars that stop in to say hi, because they miss my bartenders, absolutely would be back. They say that. In fact, that's what we've heard. Yeah, once the smoking ban all the way...happens all the way across the state, we'll be back. But until then, I'm going to go up the street. [LB395]

SENATOR STUTHMAN: Okay. Thank you. [LB395]

SENATOR GAY: Senator Hansen. [LB395]

SENATOR HANSEN: Thank you, Senator Gay. Brandi, you do have a choice. You could go back to a smoking bar, right? [LB395]

BRANDI GOLDAPP: No. [LB395]

SENATOR HANSEN: You can't? Once you go smoke free you have to stay that way? [LB395]

BRANDI GOLDAPP: Well, we went smoke free by choice. [LB395]

SENATOR HANSEN: Um-hum. [LB395]

BRANDI GOLDAPP: But then the ban came into play, whether you either didn't have a kitchen or if you had Keno, you could keep your kitchen. Now if I close my kitchen, I would have to fire three employees, close down early, cut my revenue probably by about 30 percent. So once again, how is that fair for the small business owner to decide which revenue are you willing to cut? [LB395]

SENATOR HANSEN: I see your point. Thank you. [LB395]

SENATOR GAY: Thank you. I see no other questions. Thank you. [LB395]

BRANDI GOLDAPP: Thank you. [LB395]

LINDA MILLER : (Exhibit 21) Hello. My name is Linda Miller, M-i-l-l-e-r. I'm from Lexington. I'm a member of the Lexington City Council. I've been on the city council for only two years. One year ago this month a community person brought to our council the request that we look into having a smoking ban for Lexington. We did, and our council voted that we would have it be put on the November 6 ballot...November ballot in 2006. We held a public forum; we had a lot of newspaper coverage, articles that we worked with the newspaper, had TV coverage from neighboring communities. And the ballot...the ordinance that we placed on our ballot was modeled after the Lincoln city ordinance. We did make some modifications to help compromise with our business owners, who were concerned, and we were going to allow separately ventilated

smoking areas within the bars and restaurants, realizing that that's not as effective, but we wanted--we're a small community, just over 10,000--we wanted to work with our business owners. We hoped to be the third community in Nebraska that had a smoking ban in place. We hoped to be a leader in that respect. It did not happen. There was concern expressed in the community about the economic impact that our restaurants and bars, even though they are few in number, but concern about what would happen to them. In November, 1,776 votes were cast on this issue, and it failed by only 106 votes. I know there was strong public support, I know for a fact, and I believed with all my heart that it would pass. I was shocked when it did not. Our own city council was divided. We had two members at that time who stated that they were not in favor of a local ban, but that they would be in favor of a statewide ban. I have confirmed with them that yes, they do believe that, and their names are in front of you. We meet next week as a city council, and before us will be resolution to support LB395. I have every confidence that our council will pass it, and at that time I will forward it to Senator Johnson's office. I told our city council, the people present, and our community last fall that whether or not our ban passed, I would do what I could to help pass a statewide ban, and I am here. I thank you for listening, and are there any questions? [LB395]

SENATOR GAY: Thank you. Are there any questions? I see none. Thank you. [LB395]

LINDA MILLER : Okay, thank you. [LB395]

LEON CEDERLIND: My name is Leon Cederlind, C-e-d-e-r-l-i-n-d, from the Grand Island area. I'm here as an asthmatic and a taxpayer. Most of the questions have been covered, but one question that seems to be asked is, why not just go where smoking is prohibited? Well, I work a job that, one thing I like about it, it takes me all over the state of Nebraska, a lot of traveling to large and small communities. Whenever I go to a larger community, I always go to a place where smoking is not allowed, and when it is, especially a new place, I tell them, I came here because you eliminated smoking. Thank you for it. But the small communities, the ones with only one restaurant, usually a combination of restaurant/bar in the whole community, they allow smoking. There's no place for an asthmatic like me to eat. I either suffer, like the young man who testified earlier here, or I don't eat. Also, a couple things that were brought up by previous presenters was Section 17. I don't see the problem with Section 17 as it is. If anything, that 20 feet could be extended, but as an asthmatic, if the door is opened and someone is smoking just outside of it, I immediately know it. It's like a shark can smell blood drops in a billion gallons of water--that's the way it is with smoke to an asthmatic. It's very simple to enforce, just the way VA medical centers in Omaha and Grand Island and other places do it--just put a sign or a saying up there, no smoking past this point. I don't see the problem with having that enforced. Thank you. [LB395]

SENATOR GAY: Thank you. Are there any questions? I see none. Thank you. Other proponents? How are we doing? Whose else, proponents, that need to speak? Moving

along. I appreciate everyone not being repetitive. It's going very well. Thank you. Go ahead. [LB395]

PATRICIA CASTRO: Good afternoon. My name is Patricia Castro, P-a-t-r-i-c-i-a, C-a-s-t-r-o, and I am a member of the board of directors of the Hispanic Chamber of Commerce of Nebraska. La Camana Comercio Hispana de Nebraska is an institution dedicated to promoting leadership and economic development of the Hispanic business, as well as professionals in the Latino community who reside in the state of Nebraska. The mission of the Hispanic Chamber of Commerce is to represent the leadership of the Latino business, to promote economic development, and develop and sustain Latino entrepreneurial professionals. We strive to foster and protect the interests of the Latino business community. The Hispanic Chamber of Commerce of Nebraska strongly supports LB395. We believe that all people should be protected from secondhand smoke in the work place. Latinos are disproportionately affected by secondhand smoke in the work place because of the industries in which they serve. We believe that the smoke-free laws are not only good for people; they are also good for business. Currently, smoking causes an enormous burden on our economy. In Nebraska the healthcare costs that are directly caused by smoking cause Nebraska taxpayers an average of $586 per household. Smoking is also responsible of lost productivity. People who smoke are more likely not only to be sick, but take longer breaks and be less productive while they are at work. Smoking causes productivity losses equated to almost half a billion dollars per year. We also believe that all businesses across the state deserve the right to a level playing field. All businesses should have to play by the same rules. As a membership organization with members across the state, it makes sense that all businesses comply with the same expectations to provide a healthy environment for both the employers and their customers. The Hispanic Chamber of Commerce of Nebraska supports LB395, and we do not support additional exemptions to the bill. And we encourage you to vote this bill out of the committee. Thank you. [LB395]

SENATOR GAY: Thank you. Are there any questions? I see none. Thank you. [LB395]

DEAN DUNN: Gene Dunn, D-u-n-n. I am from Omaha. I have a small neighborhood bar/restaurant that has been affected by the smoking ban. (Inaudible) would be to support what Big Red Keno said prior to me, in that Big Red Keno was the main emphasis behind having a partial ban in the city of Omaha. The city of Omaha is obviously more than half of the population of this state, and with Lincoln, certainly more. So half of your constituents already are under some type of smoking ban. So the health issues have already been discussed, and the fairness in economics to neighboring cities that allow different things need to be ended, so that there can be no more economic disadvantages to anybody. And with Big Red Keno behind this bill--and I agree with him on 17, especially in a bar atmosphere, we have areas that are designated to be allowed to have drinking in, which are not 20 feet. I mean, some of

them have large ones, but for instance, mine is; it's approximately eight feet out from the front of my establishment, that you can both drink and now smoke. So the 17 would, again, not be good for my business, because they then could not take their drinks, especially in nice weather, out, and we could not have any outdoor smoking in the small area that we do have, and drinking. So with Big Red Keno behind this bill, I think that that is one of the huge emphases, and they had said that they would be behind 100 percent ban statewide when they passed this law back in October. So I appreciate the bill, and I think that other than the 17, it is a bill that you should all pass, for economic reasons. Any questions? [LB395]

SENATOR GAY: Okay, thank you. Are there any questions? Senator Stuthman has a question. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Could you restate your name, please? [LB395]

GENE DUNN: Gene Dunn, D-u-n-n. [LB395]

SENATOR STUTHMAN: Okay, thank you. [LB395]

DON ARENA: Good afternoon. I'm Don Arena, A-r-e-n-a. I'm the owner of the Red Fox Steak House in Lincoln, Nebraska. I've heard some testimony from these poor people in Omaha. I've got to tell you, I feel horrible for them, because if I was put in their position, I would have had to make a choice what business I was in, whether it be entertainment, whether it be food. And if you all think about this, putting a person that's in business in that position is shameful. Now I run my business from my heart, and here to talk to you today from my heart. Since the ban has gone into effect here in Lincoln, well, I think I'm paying about 20 percent more in sales tax to the state of Nebraska. That must be a good thing, I think. (Laughter) So what it did was, it expanded the number of people going out for dinner. It expanded this pool of people that go out every night of the week, or two nights a week, one night a week--it expanded it. So naturally, the restaurants in Lincoln are doing much better. Now because it's a total ban, it didn't make a question in people's minds--oh, can I go here? Oh, can I go there? Oh, do they have Keno or do they have a kitchen? It didn't put those questions in the public mind here in Lincoln, and that enabled people to go out anywhere in Lincoln and not be afraid that they're going to contend with smoke. Now yes, I'm in the restaurant business, but I've got to tell you, I'm also in the entertainment business. We do a thing called karaoke a couple nights a week. So Wednesday nights are karaoke night, and that was last night. I'm here to tell you that I had 250 kids through the door. It's a young...we got a college group that comes in on Wednesday nights. Nothing has changed. You know, they're still coming out, they're still having a good time. They go outside and smoke. It's a little bit of a social thing, also. These people are going outside, meeting other smokers and gals, and so it's a good thing. It's a good mix. (Laughter) So I guess what I'm here to tell you guys

is that, you know, when this thing first came up, our bodies are great things. We don't notice things unless sometimes they're taken away from us, and when the smoke was taken out of...I've lived in this business, I've been in 30 years. I've doing this business. When it was taken away, I woke up and go, wow, this is quite a difference! And if the state doesn't do something now, it's a shame, because...all these people testifying about all the numbers and all the facts. I'm telling you, because I live it every day, it is a good thing, and it's the best thing you could ever do, sitting where you're sitting today. So I want to thank you for having me. Questions? [LB395]

SENATOR GAY: Thank you, Don. Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Don,... [LB395]

DON ARENA: How are you? [LB395]

SENATOR STUTHMAN: ...we were discussing things prior to the Lincoln ban. [LB395]

DON ARENA: Yes, we were. [LB395]

SENATOR STUTHMAN: And you had said, well, boy, I don't know how I'm going to make it, you know, without having to smoke, and the people are going to leave, and stuff like that. And I think you're just a perfect testimony of what has happened, you know, and yourself you have personally realized, you know, how much nicer it is to breathe that air because prior to that, it was a fog in your establishment. [LB395]

DON ARENA: Absolutely, you know, and it was a scary thing, just like these people from Omaha. It's a scary thing. You know, you've got to make a decision in your business, and I'm here to report to you. It turned me 180. You know, I'm back around, and I didn't need to come down here today, but I really want you to know it's the thing to do--a total ban. Make it clear, make it straight, but do it, because people will be happy in the end, and your constituents will be happy with you. [LB395]

SENATOR STUTHMAN: Thank you. [LB395]

DON ARENA: Thank you. [LB395]

SENATOR GAY: Thank you. Senator Hansen. [LB395]

SENATOR HANSEN: Thank you, Senator Gay. Don, I'm reluctant to ask this question, but it seems like a natural progression that if we get smoking out of inside, that it's not going to be long and someone is going to suggest, like Leon back there, that we not have smoking outside, either. [LB395]

DON ARENA: Um-hum. [LB395]

SENATOR HANSEN: How are you going to come down on that? [LB395]

DON ARENA: Well, you know, that's going to be a decision that's going to probably be out of my hands, and you know, I'm just doing the best I can with my business and keeping people on a level playing field. That's the most important thing. If it's the same for you, this guy, and the other guy that has a business down the street, we'll all deal with it the same way, you understand? If they say no more smoking outside, eventually people are going...not going to stay home, you know, as long as it's the same everywhere. And so they're still going to go out, and they're still going to take the dollar out, and they're still going eat, and they're still going to want to meet a gal (laughter), they're still going to go entertainment, they're still going to listen to bands. You follow what I'm saying? Yeah, I'm with you as far as I want people to have the right to do what they need to be doing, but this is an issue that's got to do with health and personal...I'm just telling you on a personal level. I don't know about the real facts. I'm not a doctor. But it made me feel personally a lot better, and I know all my employees, even the smokers, if I had to go back and tell them, hey, we're going to go back to smoking, I think some of them would quit. And you know, dealing with that fact, you know, as long as we're all on the same playing field, it will level out. [LB395]

SENATOR HANSEN: Thank you. [LB395]

DON ARENA: Um-hum. [LB395]

SENATOR GAY: Thank you. I don't see any other questions. Thank you. [LB395]

DON ARENA: Thank you. [LB395]

CHARLOTTE BURKE: (Exhibit 22) Hello, senators. My name is Charlotte Burke, C-h-a-r-l-o-t-t-e, B-u-r-k-e, and I'm here wearing a few different hats today. One is that I'm a volunteer for the American Heart Association, and I do have written letter of support from them. I also am a volunteer with the American Cancer Society, and I have a letter of support from them. My official capacity, however, today is as a representative of the Lincoln/Lancaster County Health Department, and I have written testimony that's being passed to you. But I'll just hit the highlights. I'm here actually to share our experiences with the Lincoln ordinance. This ordinance now has been in place for two years, and as you can imagine, we've been following what the effects have been, rather carefully. I'd like to mention first that when the ordinance actually was passed, 62 percent of the people voting in Lincoln voted for the ordinance. So we felt that there was certainly strong public support at that point in time, and a few months after the ordinance was passed there was a survey done of Lincoln residents to determine whether or not they felt that the work sites were healthier--particularly bars and

restaurants--healthier than they were before. And at that point, 91 percent of people agreed that it was healthier, which certainly would suggest that people do recognize the hazards of secondhand smoke exposure. To give you a bit more information about our experience, we were, I have to say, from a health department standpoint, we were very pleased, because we had a lot to do with helping businesses get ready for this law. And we, of course, were anticipating complaints from the public, we were anticipating tickets being written to people. But I am very pleased to report that in the first year of the law, which was 2005, we had only 64 complaints from the public about smoking going on in businesses. Now our department followed up with each of those complaints. We had people that went out to the businesses, visited with them about the complaints, provided them more materials, made sure that they understood what the scope of the law was, and provided assistance wherever we could. And in the second year, we had only received 28 complaints. So it appears to us, based on the complaints, that businesses really are complying. And from the standpoint of citizens, we have been extremely pleased, too, with the citizen compliance of the law. The police department in 2005 issued only 24 tickets to people who were smoking where they shouldn't have been smoking, and in 2006, there were only 18. Now from a public health standpoint, I have to say that I am particularly pleased by the next bit of numbers that I'm going to give you, and that is that we do monitor numbers of smokers in our county, and we do that on a yearly basis. The state does the same. It's called the Behavioral Risk Factor Surveillance System, and in 2003, Lincoln had--and you'll see this in my written testimony--but we had just about 24 percent of our population was smoking. The state at the time had about 21 percent. In 2005 when we did our survey, we found that that number had dropped to 17 percent, and the state was still at approximately 21 percent. Now recognizing that when we do surveys we can't ever say that one point in time is something that we can absolutely hang our hats on, but we just recently got in our 2006 numbers for Lancaster County, and we don't have them yet for the state, but that number has now dropped from 17.1 percent to 16.8 percent. Now the thing that's great about that is that this represents--I have in my written testimony--an estimated 12,117 fewer smokers in Lancaster County since the ordinance went into effect. Now with our new numbers, that number has gone up to closer to 12,500 fewer smoker. While...and again, we don't have the state's information yet, but in 2003 and 2005, that number essentially stayed the same. So it does appear, at least at this point in time, that our tobacco use rate has gone down more quickly than it has in the state. And if we look at it from a public health perspective, that certainly is...it's great for health, and from an economic standpoint, it certainly is very important. Something else I'd like to share: We also have what's called the Social Climate Survey, and this is done across the state, and we get Lancaster County results from that. And one of the, I think, very significant components of the Social Climate Survey is that smokers are asked if they have rules against smoking in their homes and vehicles, in their homes. And in this particular question, in 2005 we found that 62 percent of smokers in Lancaster County had rules against smoking in their homes, and that's as compared to 40...approximately 40 percent of smokers in the state. So again, I believe that we have to at least suspect that

all the work that's been done to help people understand the hazards of exposure to secondhand smoke are having an impact on them. So I may not have told you--I'm here testifying in support of this, and I certainly would encourage that you would pass this law. And if, in fact, you have questions, I'd be happy to answer them. [LB395]

SENATOR GAY: Thank you. Senator Hansen. [LB395]

SENATOR HANSEN: Thank you, Senator Gay. Charlotte, do you have any figures on child, under 18 age, use of... [LB395]

CHARLOTTE BURKE: We do have...we have a survey that we do that's called the Youth Risk Behavior Survey, and we have those. It's just that we don't have the latest numbers in, and we won't get those until probably June or July. Now I can tell you that at the last survey we had about 23 percent of our youth smoking. Now this survey is done of 9 through 12th graders. The numbers of youth smoking have been consistently going down over the years, and even though we don't have the latest statistics in, and the last one that was done was in 2005, so we're very anxious to see the 2007 report. We certainly know from other research that's done across the country that having smoke-free laws is an effective deterrent to children to start smoking. And I know all of you are aware that if people are going to start smoking, they do so when they're teenagers. There's very few people that are 19 and over that start smoking. [LB395]

SENATOR HANSEN: Does Lincoln have an undercover cigarette (inaudible) sting program? [LB395]

CHARLOTTE BURKE: We do...we call them business compliance checks, and yes, we do. We do them for both...for Lincoln and for Lancaster County, so we work with our Lincoln Police Department and the Sheriff's Department. And that, too, is certainly...keeping children from buying cigarettes is another effective deterrent. [LB395]

SENATOR HANSEN: Thank you. [LB395]

SENATOR GAY: Thank you. I see no other further questions. Thank you. [LB395]

CHARLOTTE BURKE: All right, thank you. [LB395]

GARY KRUMLAND: Senator Gay, members of the committee, my name is Gary Krumland, it's G-a-r-y, K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. I'm here in support of LB395, but with some qualifications, and I'll explain that. The League, whose members are cities and villages across the state, have cities who are strongly in support of LB395. You've heard some of that. You'll be getting resolutions from several cities those councils are voting to support this. But we also do have some cities and villages who do oppose a statewide smoking ban. The League

board did adopt a resolution last week to support LB395, but ask that an amendment be adopted to have a local option to allow a vote of the people in a city or village to opt out of the smoking ban. This idea is based on a provision that was in LB245, which this committee heard last week, which is the fluoridation bill, which imposes requirements that public water systems...cities and villages fluoridate their water, but does have a provision would allow an initiative to put it to the voters to opt out of it, and the board did like that idea. They thought that would accommodate the members who did not agree with the bill, and they would suggest that if the bill had that and allowed either initiative by the people or the city council village board to put it to the voters, then that would take care of the members. But because of the split in the membership, without an opt-out provision, the League board said they would not be able to support LB395. I'm happy to answer any questions. [LB395]

SENATOR GAY: Okay. Thank you. Are there any questions? Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Gary, if we would go with this amendment, then we'd be in the same pickle we've always been in, that we're going to change...we're going to drive one community's business to another. [LB395]

GARY KRUMLAND: It would...I mean, well, I guess I would say there is a little difference on one hand. The default is that smoking is banned, and somebody would have to take action in order to allow smoking. So it changes the dynamic, but yeah, there is...that may be one of the arguments that, I mean, the cities have made. One is they want local control, but also some cities, especially smaller communities, seem to say they're benefiting from bans in larger cities. [LB395]

SENATOR STUTHMAN: Okay. Thank you. [LB395]

SENATOR GAY: Thank you. Are there any other questions? I see none. Other proponents? Keep working your way up and...still proponents. [LB395]

MARK WELSCH: How many copies do you want? [LB395]

SENATOR GAY: Twelve, if you have them. If not, we can make some. [LB395]

MARK WELSCH: (Exhibit 23) Okay. I've got more than that here, so I'll keep a...there you go. You know, I'm not going to read this. [LB395]

SENATOR GAY: Thank you. [LB395]

MARK WELSCH: I know you're all well-educated people and can do that on your own. I don't know if Shelly Hug is still here, but I'm very pleased that the person that is fighting

the Omaha ordinance the hardest is here as one of the proponents of making the state entirely smoke free. I think that's just great. What I've handed to you or have had given to you is just some suggestions on amendments that GASP would like to see. Oh, did I spell my name? It's W-e-l-s-c-h. Mark is spelled M-a-r-k. [LB395]

SENATOR GAY: Thank you, Mark. [LB395]

MARK WELSCH: I live at 5611 Howard Street in Omaha, Nebraska, and I am the president of GASP of Nebraska, the Group to Alleviate Smoking Pollution. You know, number one on our list...I guess I won't read the entire thing, but I will just highlight them, that no employer should require their employees to breathe dangerous levels of secondhand smoke while they're at work. There's just no safe level of that, as you've heard. You know, the number two item is, we want to make sure that all businesses are made smoke free--bars, restaurants, Keno, even tobacco stores. Even tobacco stores should be smoke free, because employees in tobacco stores, some of them do not smoke, and they are not second-class citizens. They should not be forced to breathe secondhand smoke. You know, allowing smoking in a tobacco store would sort of be like allowing people to drink in a package liquor store, to sample the alcohol before they buy it. You know, people can take it home or smoke in their car on their way home to test things out. Some of these suggestions that are made are because we see a very small loophole in the law that we'd like to close. They're not major things, they're kind of minor. A few word changes will accomplish what we want, to make sure that businesses, even those that are operated only by owners, they have to be smoke free so their customers will not have to breathe secondhand smoke when they come in. There's a little problem in Section 7 that might allow only...that might allow businesses that are owned and operated only by the owners to allow smoking in those businesses. Section 10 has a little problem where the definition of "indoors" and "outdoors", which is also an issue for other individuals that have been here; hopefully we can discuss that and come to some agreeable compromise, perhaps. You know, smoking in a private office is also an issue in Section 12. A private residence, I think, needs to be defined in this ordinance--it currently is not--because reference is made to private residences as not being places of employment, when in fact, some of them are. And I think that if a business is run by the people that live in that home, and that's the only people that work there, let them smoke in their home-based business. I don't have a problem with that. But if that business is a day care, if it's a provider for elder care, I think that those home-based businesses should be smoke free all of the time, so that when that door is opened for that first toddler or that first six-month old to come into that in-home day care, they shouldn't be greeted by a cloud of smoke. It should be a smoke-free day-care facility, and that's been debated in this Legislature and in this committee a year and two years ago, with Senator Price's bill. So those are pretty much the amendments that I would like to suggest. Now I had a much longer list, but I've pared that down to the most important things. You know, another point with the tobacco stores I'd like to make is that it is currently illegal to smoke in just about every tobacco store in Nebraska, so where it

is occurring today, they're breaking our state law that was passed in 1979. I don't expect you to report them to me, but that's just an FYI. You know, if you're in to dancing, live music, Mary's on West O is a great smoke-free music venue now. I've been out there a few times myself and talked with the owner, and she says, you know, business isn't really harmed by the smoke-free ordinance in Lincoln, much as Don Arena mentioned, where his sales tax receipts have gone up 20 percent. If you live in out...the larger part of Nebraska--the better part, I think--you can go to SmokeFreeNebraska.org and find a list of all the smoke-free restaurants in our state. There's over 2,500 smoke-free restaurants that have chosen to be smoke free, or in Lincoln and Omaha have been required to become smoke free. I'd like to stop updating our web site by making every place smoke free, because it's a lot of work to keep that up to date. Outdoor smoking was mentioned. There are businesses in Omaha and possibly in Lincoln--I know about ones in Omaha, where when they had to go smoke free indoors, they chose to go smoke free outdoors, because they were smoke free indoors because of the competitive advantage that those business owners saw to be smoke free. And now they've expanded that to be competitively advantageous to them, by being smoke free outdoors, as well. Some places are McFosters, which is sort of midtown; Johnny's Italian Steakhouse, which is actually outside of the city limits of Omaha, so they don't have to be smoke free there. But they're not only smoke free indoors, but also outdoors at Johnny's Italian Steakhouse. The last thing I'd like you to think about--not for this committee, but for others--we're going to have fewer smokers if you pass this. Fewer smokers means you're going to have a smaller amount of tobacco tax, so maybe you need to raise the tobacco tax to balance that out. [LB395]

SENATOR GAY: Maybe on another bill, but not...(Laughter) Thank you, Mark. [LB395]

MARK WELSCH: Thank you very much. [LB395]

SENATOR GAY: We have a question for you. Senator Howard. [LB395]

SENATOR HOWARD: Thank you, Senator Gay. Helpful suggestions, all! Looking at your seventh recommendation here, you noted day care, and children who are in day care. Those children are ordinarily there from say, six in the morning to six at night. How do you feel or what's your stand on children who are in foster care, which is 24 hours a day? [LB395]

MARK WELSCH: Oh, I'm a strong proponent of making sure that all children, whether they're in day cares or foster care, should be in a smoke-free environment all the time, especially foster care because of the additional costs to the taxpayer. When you put a child into a smoky foster home, they're sick more. They...you know, the young ones, the ones that are under one year of age, have a much higher rate of SIDS deaths when they're in a foster home where smoking is allowed. And that is occurring today, because as I've told you, I get complaints from grandparents who...their children have had to

send their children into foster care, and they're crying on the phone to me, because their grandchild is in a smoky environment, and they get them for visitation on the weekends, and that grandchild comes reeking of tobacco smoke--sick, coughing, spitting stuff up. They have to wash all the clothes that they're in, all the clothes that are brought with them that are supposedly clean, but they reek of smoke, to protect that child from secondhand smoke. And they tell me, you know, by the end of the weekend, the child is getting better, but they know when they give them back to that foster parent or family, they're just going to be exposed to more secondhand smoke and be made sick again. And I'm very... [LB395]

SENATOR HOWARD: Well, I share your concerns and I missed your testimony when I presented my bill regarding banning smoking in foster homes for particular children. Thank you. [LB395]

MARK WELSCH: Um-hum, um-hum. Thank you very much. [LB395]

SENATOR GAY: Thank you. Are there any other questions? Senator Hansen. [LB395]

SENATOR HANSEN: Thank you. Mark, very briefly, if this bill is passed, can you envision a sign in--doesn't matter, Omaha or Lincoln, either one--bar-restaurant-Keno parlor-tobacco store? If we leave that tobacco store loophole in there, will there be places with tobacco store in their name? [LB395]

MARK WELSCH: Oh, I would suspect that that would happen, absolutely. [LB395]

SENATOR HANSEN: Thank you. (Laugh) [LB395]

MARK WELSCH: And that's a problem, as you... [LB395]

SENATOR GAY: Thank you. Okay, I think we're wrapping it up, though, I think. Proponents still? [LB395]

ERIN McKNELLY: Yes, I'm the last one. [LB395]

SENATOR GAY: Tough act to follow there, though. Go ahead and state your name, please. [LB395]

ERIN McKNELLY: My name is Erin McKnelly, M-c-K-n-e-l-ly. I want to thank you for your time in allowing me to speak. The reason I'm speaking before you today is, I have got a chronic illness called cystic fibrosis. There is no cure for it to this day, and cystic fibrosis has an excessive, large amount of mucus in the lungs that in which when I am exposed to cigarette smoke when going out with my family and friends to restaurants that has smoking, it causes my lungs to swell up, which then I inhale the cigarette

smoke, it gets trapped in my lungs, and over a period of time causes lung infections. And because I have repetitive lung infections, I am admitted into the hospital for at least 12 to 14 days, if not more, at least. Right now, I'm going in to the hospital at least two to three times a year, every six to seven months because I am exposed, over a period of time, to the cigarette smoke in the restaurants and other businesses throughout Omaha. And when I do go out, I have to go home, no matter what I have scheduled to do, after my outings I have to go home, change my clothes, take a shower, and do a respiratory treatment which involves an Albuterol treatment, a hypertonic saline, which is a high dose of sodium saline, and it's recently new testing with that, to open my airways, cough up the mucus that is affected by the cigarette smoke, to help prevent infections. Now there is a camp called Camp Kitaki that they have every year, a camp...a week out of the year that is designated to kids with cystic fibrosis, called Camp Jenny. They used to have representatives from the American Lung Association work with them and go to the camp. There are several of us kids throughout the state of Nebraska that have this disease and have dealt with the same thing throughout the state of Nebraska, not just in Omaha. But I've got friends out in North Platte, I've got friends in Grand Island, I've got friends in Valentine and O'Neill--everywhere--that that is the same problem with them. They go to other businesses in them towns and they experience the same thing, and just like the gentleman in the back that spoke earlier, even when we are there, we have to use our Albuterol inhalers minutes after we are in there because of the cigarette smoke. And granted, I know not just banning cigarette smoke within the businesses but the whole certain perimeter away from the businesses would be nice, because like other speakers have said, you open that door, anybody smoking outside of the businesses, the smoke goes in. I can automatically...I can tell when it's in the air, because of cystic fibrosis, it does not take long to stimulate the lungs. And I really appreciate it if you guys would ban this statewide, because we already...because there's no cure for it. We do treatments three to four times a day to fight to keep our lungs healthy, so we can live a long life on this earth, and by having the large amount of infections that we do get, not only because of bugs that are in the air, but cigarette smoke, we have to fight twice as hard. And every time over a period of time that we get sick, end up in the hospital, there's more damage, more time taken off of our life, more medications that we end up not responding to because we've used them so much. And then--and this is a whole other issue--end up getting put onto transplant lists, to try and allow us to have a longer period of time on this earth. So by having a whole state ban, this would allow us to...granted, we would still be fighting for our life and fighting to breathe, but it would allow us a chance to live longer and not...be able to go out with our families and friends and live a somewhat normal life that we can without having to fight so hard. I want to thank you so much for your time today. [LB395]

SENATOR GAY: Thank you. Questions? Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Erin, first of all I want to thank you for coming and testifying. And it sounds to me like, you know, if we could accomplish

this, your life would be so much more pleasant. It won't be perfect yet,... [LB395]

ERIN McKNELLY: No. [LB395]

SENATOR STUTHMAN: ...but it would be so much more pleasant, and it would be a lot less costly because of the time that you spend in the hospital. [LB395]

ERIN McKNELLY: Yes. Yeah, because just today, I was just in the hospital. I had an exacerbation, not just from...which is an infection in my lungs, because of exposure to cigarette smoke, and infections to bugs that I inhale throughout the community that's just airborne. I ended up spending 18 days in the hospital, and that's...that's the shortest I've spent in the past three years. [LB395]

SENATOR STUTHMAN: And that was just to remove the inflammation of your lungs. [LB395]

ERIN McKNELLY: Yes, just to remove the cigarette smoke exposure that caused my lungs to be...because it inflames, all the bugs that I inhale gets trapped in there because I can't get it out. It's like you try...if a straw, for example, is blocked, you try and shove something through a straw, you can't get it through. It's trapped. And when bugs are trapped in your airways, it can't be forced out by treatments. It sits in there and causes the infection, which then puts us in the hospital. [LB395]

SENATOR STUTHMAN: Okay. Thank you. Thank you very much. [LB395]

ERIN McKNELLY: And just now, I have about a 95, and I still haven't gotten all my bill copays for different tests and medications from the hospitalization, so. [LB395]

SENATOR STUTHMAN: Thank you. [LB395]

SENATOR GAY: Thank you. [LB395]

ERIN McKNELLY: Thank you. [LB395]

SENATOR GAY: Any other questions? I see none. Thank you. Okay, I think that was the end of the proponents. We will ask for opponents, if you want to come forward and start working your way forward. Opponents now. [LB395]

JIM MOYLAN: (Exhibit 24) Mr. Chairman, members of the committee, I'm Jim Moylan, J-i-m, M-o-y-l-a-n, an attorney from Omaha and lobbyist for the Nebraska Licensed Beverage Association, which is a state association of liquor retailers. We're here to...mostly in opposition to the bill, but with some amendments down the pike, I think there's a way to compromise, and add something that will take care of everybody. First,

I'd like to...the handout that I have here, just came out this last week, and it's out of the Omaha World-Herald regarding Lincoln bars and the hit they took from the ban on smoking. Down at the bottom I've underlined where our Bureau of Business research report, written by the bureau's director, Eric Thompson and others, said that based on sales tax revenue at about 65 taverns, the Lincoln bars experienced a statistically significant decline of 6 percent in sales in 2005. That was a total of roughly $169,800 per month during the first year the ban was in place. The report also said that approximately 340 full-service restaurants lost 600 jobs after that, and that Keno revenue fell by $376,000 per month in 2005. So the old myth, you know, that sure, some of them might have not have lost as much money as others, but never...it is a decline, it does affect the businesses when you take the smoking out of it. We'll go to some other things. I think...I don't know whether I'm representing the liquor retailers sometimes or the 25 percent of the population that smoke. Sometimes I feel like I'm representing both of them. That's a fourth of our population that smoke, and we think there has to be an accommodation for them, also. I mean, they're citizens, they live in the towns--large ones, small ones--they pay taxes, they go to church, they tithe their church. Some of them have been veterans. They all work, they raise families, they're no different than anybody else in the community except they enjoy the pleasure of smoking a legal product. Now some of the policy statements, first, in here...the first two pages, you really ought to read them over. I mean, most of them are just conclusions, I think. I remember way back when old Senator Terry Carpenter was here. They were talking about the U.S. Surgeon General's report, and he had the old philosophy if he had an Attorney General's report...opinion, he'd go around and say, this is the law of the land. If there was one that he was opposed to that somebody else was floating, he'd say, ah, that's just the opinion of one man. Well, now we know the Surgeon General is the surgeon general of the United States. He has a staff, and naturally, he's going to say a lot of things about smoking. Now there's one up at the top, 10 and 11 on page 2, to guarantee the right of nonsmokers to breathe smoke-free air and to recognize that the need to breathe smoke-free air has a priority over the desire to smoke. Well, I think you take the 25 percent of the population, they might think other than that, that the desire to smoke has a priority over, you know, the need to breathe clean air, you know. And there's a few more of them, but just kind of read them through. Now the preemption part of it we wholly agree with. If you're going to enact something, preempt. Now this is not wholly, you know, wholly a total ban across the state of Nebraska. You're exempting 20 percent of hotel rooms. Remember: Smoke, as you heard from (inaudible) can sneak out under a door and come down the hall to other rooms. Number two: You're also exempting laboratories where they are conducting smoking-type tests, I guess, you know. And if they're worried about those employees, then take your test outside and smoke it. Ban it from there, too. And private residences--I don't think you can do that constitutionally, but that's probably the only place that you can't, you know, ban smoking, if you know, if you so want to. As we see things going along...oh, the other section of the bill on ashtrays, you know, that's a bad one, and the 20-foot thing, you know, that's a bad one. I mean, those are just a couple of little parts of the act that if you

do enact it, you ought to take out. We've got the nicest, biggest ashtrays in our office up there, but really, we can set potted plants in there and they work just as well for that, so I don't know whether you'd call them an ashtray or a potted plant. Don't even get into that. You know, whether you've got an ashtray sitting around, or whether it's a pot for a potted plant, you know, I just don't think we need to get into that. Now I think we said before, the market is dictating, you know, who smokes and who doesn't, and what establishments have smoking and what don't. Here, and I didn't make enough for all of you, here's a list of 553 restaurants in Omaha, Nebraska--Douglas County, which includes Omaha, Bennington, Elkhorn, Ralston, and Valley--that are all nonsmoking, and a lot of them are your famous steak houses, even. So those that don't like smoking--this is over half of them in Douglas County--there are plenty of establishments for them to go to and enjoy dinner, drink, whatever they like, without smoke interfering with them. The other ones for the smokers, they're still available for smokers. Now eventually there will probably be more restaurants, because there are more nonsmokers than there are smokers. But the market pretty well dictates, you know, how a person wants to run his business, and he ought to decide. Should I give it up because I'll earn more revenue, or should I continue it because my crowd, which might be entirely different in one end of town to the other, wants, you know, to use...I mean, wants to smoke and they need a place to smoke. We already have an act that's been here since 1979 or 1980, and it's the same act that you're entitling this. You're repeating that act totally, and we have been operating off that act forever. It's a good, solid act, and in lieu of the fact that, you know, the market is dictating, and most places are going totally nonsmoking, that act alone has taken care of us for 25 years, and can take care of us for another 25 years. I'm going to make a couple of suggestions to accommodate the 25 percent and the veterans. Now some of the exemptions in the existing law, of the veterans' homes, there's a couple three other ones--I think one of them has to do with the Fairgrounds, and I forget what they are. But they're already in that act, and they've been put in over the years. There's been some exemptions added to it. My recommendation is all liquor licenses that have on-sale privileges be allowed to have smoking and to continue to operate under the existing indoor air act, which means you have a smoking area and a nonsmoking area, and a ventilated establishment. Number two, that would include restaurants whose food, gross revenue of food, is less than 60 percent, would be included in that category. If you're over 60 percent food, then have the option. The restaurants want it--I had another suggestion for them. If you had a totally enclosed smoking area within that restaurant, then you could smoke in that area, but that would be the only area, and the preemption, making it totally statewide. Now that way, you could accommodate everybody. It's a matter of accommodation, and you gentlemen know, it's a matter of compromise in the legislation. I think if you take those recommendations and run with them this year, you're going to have pretty much a smoke-free state, and yet have areas for the smokers to enjoy their particular cigarette. Employees--you know, I guess it's just like when you gentlemen all filed for office, you know. You consciously said, I want to serve in the Legislature, handed in your resume', filed, paid your fee, got elected, and came down here. When employees go to work in

an establishment, when they go in there, they know what the details are. If they don't like smoke, they can go to places where they don't smoke. But you'll find out that in most bars, that the employees do smoke and always have. So you know, I feel for them, but I've said, you don't have to stay there. You can all go someplace else, you know. So either let the market dictate it and kill the bill, or I will try to get some amendments ready that would accommodate everybody in the state. We'll have the issue settled for some time. Thanks for listening to my long...any questions? [LB395]

SENATOR GAY: All right. Thanks, Jim. Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Jim, I realistically think, you know, smoking cigarettes, they are a legal product. [LB395]

JIM MOYLAN: Right. [LB395]

SENATOR STUTHMAN: And people have rights... [LB395]

JIM MOYLAN: Yes. [LB395]

SENATOR STUTHMAN: ...rights to do what they want to. The thing that really concerns me, though, is that when you breathe that smoke in, in my opinion that smoke should not be coming out for someone else to breathe, because that person doesn't want to smell that smoke. That's the thing. I've taken a lot of heat on this, also. [LB395]

JIM MOYLAN: Um-hum. [LB395]

SENATOR STUTHMAN: But they say, well, you know, you let drunks drive down the road. But you can be sitting in the bar by somebody that's drinking--I won't get drunk from that person drinking. But the smoke effect from somebody smoking goes into my lungs, and I think, you know, the beautiful young lady that just... [LB395]

JIM MOYLAN: Yes, I heard her. [LB395]

SENATOR STUTHMAN: ...just was here before, I don't know how anybody can say, oh, I want to smoke right aside of her. But she don't have to sit by me. That really bothers me. [LB395]

JIM MOYLAN: Well, I guess what I'm saying is, you know, there's a place for both. [LB395]

SENATOR STUTHMAN: There's a place for both if you... [LB395]

JIM MOYLAN: I'm talking about the ones that has smoking for those that smoke. The

other places, they won't be blowing smoke in anybody's face, you know, so. [LB395]

SENATOR STUTHMAN: I think if you want to smoke, I think you've got to go somewhere where you can contain all of the smoke that you're letting out of your...you're exhaling it, because I don't want to have to inhale that smoke. [LB395]

JIM MOYLAN: Well, I guess that place is only outside, isn't it? (Laugh) [LB395]

SENATOR STUTHMAN: That's right, that's right. [LB395]

JIM MOYLAN: And like Senator Hansen said earlier, how soon is it going to be before they come along and ban it from outside, so... [LB395]

SENATOR STUTHMAN: Maybe we should ban it in Nebraska. [LB395]

JIM MOYLAN: All over, huh? Well, it's going to go across the border now, or it's going to come over from the casinos in Council Bluffs, you know. [LB395]

SENATOR GAY: All right. [LB395]

JIM MOYLAN: There's a lot of smoke over there, you know. [LB395]

SENATOR STUTHMAN: Thank you. [LB395]

SENATOR GAY: Other opponents? Are there any other questions? [LB395]

JIM MOYLAN: Thank you. [LB395]

SENATOR GAY: Thank you, Jim. [LB395]

SENATOR GAY: Any other opponents? [LB395]

TED WRIGHT: My name is Ted Wright, T-e-d, W-r-i-g-h-t. I'm the owner of Ted's Tobacco, which is a smoke shop here in Lincoln. You've not been allowed to smoke in my shop in Lincoln for two years now, and I don't like that. In Omaha, smoke shops are apparently exempt. There's no five-year grandfather or anything. Now I don't want to deny them the privilege--I just want to get it for myself. I don't want to take away from some to make it even with me. I'd like to be exempt for this ban. My customers are smokers. I sell tobacco. That's it--cigars mainly, pipe tobacco. I'd like to be able to have people come in and sample my product. It would help at least to promote my product. It's like going into Hy-Vee for a wine tasting. It's like going to the supermarket to sample various foods that they offer. You have Article 19, I believe, line 13, it says all ashtrays should be removed. I sell ashtrays. Now you want to make that an illegal product for me

that I can't sell. As far as a level playing field, if you allow smoking in my establishment, I'm not taking any business away from any bar or any restaurant or any establishment, because they can't smoke and I can. That's pretty much a level playing field, with that exception. Are there any questions? [LB395]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB395]

TED WRIGHT: Thank you. [LB395]

MIKE KELLEY: Vice Chairman Gay, members of the committee, my name is Mike Kelley. I'm appearing here today for a couple different clients. I'm registered lobbyist for the Horsemen's Benevolent & Protective Association, commonly referred to as the Horsemen; also, Omaha Exposition and Racing, which is the racetrack in Omaha, Horsemen's Park; also Responsible Beverage Operators of Nebraska, which is a group of about 35 to 40 bars and restaurants in Omaha and Lincoln. You know, this is...I've been wrestling with this issue for the last three or four or five years, and it's a tough issue. You've got public health slamming right into personal rights and economic health. If you do this, this is pretty far-reaching. This is a very tough law. You know, South Dakota has done it, work place; North Dakota has done it, work place; but they haven't done restaurants and bars yet. Now as I look at the literature and I read about it, it's pretty clear about 70 percent of the people don't want it in restaurants. So those of us who are in that business--I also own some saloons that serve food--I think we're kind of preparing for the fact that that's coming. But there ought to be some exceptions, and somebody talked about second-class citizens here before, I mean, I think the smokers--I'm not a smoker, except a cigar now and then--have got to feel like second-class citizens. And those folks, and especially, you look out in rural Nebraska, you've got a place there that maybe that's the only place in 50 miles, and if they shut smoking down, and that losing that 10 percent or 12 percent costs him his livelihood, then you've got no restaurant out there. So you've got a...when you get into the rural areas, it's a different issue. Horse racing I represent--it's a different issue. Traditionally, all around the country they are exempting tracks, they're exempting casinos, and why is that? Just because our customers smoke. An inordinately high amount of our customers smoke. So if you don't exempt the track, you're really putting an extra burden, an economic burden, on us. Now in Omaha, we have to compete with a casino. We're not competing with another restaurant or another bar; we're competing across the river, and up to now, at least, our state has not let us have slot machines or any other way to compete on a level playing field with them. So consequently, we've got one hand tied behind our back. If you pass this and don't exempt us, you tie the other hand behind our back, and then you're really looking at an industry dying. And we have in Omaha, we've got 40-foot ceilings, a 40,000 square-foot building, plus a separate side building, 100 percent return air--and that means that every hour, all of the air is circulated. So we can...and we've been 50 percent nonsmoking since we opened ten years ago, and I

would submit to you, we've never had a smoking complaint--maybe one of Kentucky Derby day, and then we were probably breaking a lot of laws--fire codes--because we had a lot of people in there. And with that exception, I mean, I don't think you have to do that. I also don't think you have to do it in the bars. I mean, you know, I look up and say, the Interlude Lounge in Omaha, Nebraska, which is up the street from my office, one of the few bars I go into any more that I don't own (laugh). And I look at it, and at 10 o'clock at night there's 15 people in there, and they all smoke. Now should we tell those 15 people that they can't smoke? Shouldn't there be some...in the United State of America, shouldn't there be some ability to associate? Should I be able to say to ten of my friends, we're going to have a smoking club. We're going to hire a guy; we're going to tell him you've got to smoke to work here, so everybody is on a level deal, or a club. Shouldn't we be able to do that? I mean, I wonder. I think we certainly...nobody misunderstands what this bill is trying to do. It's trying to protect people. We understand that--good motive, good motive. But you can also have a lot of inadvertent effects, so I think you've got to take a long look at some exemptions, like North Dakota and South Dakota have done. I don't think you've got to ban it in all bars, I really don't. I think restaurants, while I'm still opposed to that, morally I understand that's coming. The public is demanding it, so we'll have to live with that. But from there I don't know. Otherwise, I don't think you need to do it in racetracks; I don't think you need to do it in bars, and you've got all kinds of financial issues that you've got to face. I'm telling you, if you pass this as it is, without some exemptions, without some relief, you will feel it. You will feel it, and I think it could be the last nail in the coffin of the race industry, and we're already gasping for air (laugh) as it is, and so, that's a $100 million industry that you just sent away. So with that, you've got a tough job, and I appreciate the time today. Thank you. [LB395]

SENATOR GAY: Thank you, Mike. Senator Howard. [LB395]

MIKE KELLEY: (Inaudible) [LB395]

SENATOR HOWARD: I remember two years ago when Nancy Thompson brought the smoking bill, and it seems to me, maybe you can help me remember this, but it seems to me we did put an exemption on the track at the state fair, or there was something...there was an exemption put on there to exclude the racing concession. [LB395]

MIKE KELLEY: I don't remember exactly how that worked. I know that the state fair was unique, because they were outside the city, and then they got annexed and then I believe because they were...then they were accommodated. They were taken care of. So all the tracks, currently you can smoke at, currently. [LB395]

SENATOR HOWARD: Yeah, that's how I remember, too, that there was discussion regarding an exemption for the tracks. [LB395]

MIKE KELLEY: And I'm sorry, I can't remember exactly how that worked out, either, Senator, but it did...I can find out. I'll find out exactly for you. [LB395]

SENATOR HOWARD: Okay. Thank you. [LB395]

SENATOR GAY: Any other questions? I see none. Thank you. [LB395]

MIKE KELLEY: Thank you. [LB395]

TIM KEIGHER: Good afternoon, Senator Gay and members of the committee. Well, maybe it's good afternoon; maybe it's good evening now. I will be brief. I appreciate your time. I debated whether...first of all, my name is Tim, last name Keigher, K-e-i-g-h-e-r. I appear before you today on behalf of the Nebraska Petroleum Marketers & Convenience Store Association, in opposition to LB395, as written. I guess I want to make it clear, as written, because my convenience store members really don't have a problem with this bill. In the convenience store industry, people are coming in, picking up, you know, soda, milk, whatever, paying for their gasoline, and they're out the door. It's my truck stop members that have an issue with this. While 75 percent of the population doesn't smoke, 75 percent of truckers do smoke. We already have a high fuel tax, which is discouraging truckers from purchasing fuel in our state. Briefly, truckers do pay for the number of miles they drive on Nebraska highways. They do pay through the International Fuel Tax Agreement, but that doesn't force them to buy the fuel here. They are typically buying it in states that have a cheaper tax, because they remit the mileage tax on a quarterly basis. We also have a high cigarette tax; we're 28 cents a pack higher than the state of Iowa already. I have members who have locations in Council Bluffs who say that 75 percent of the cars at their locations are Nebraska plates, because we also have a 7.1 cents a gallon higher motor fuel tax on gasahol than does the state of Iowa. Truckers have a lot of alternatives. They can travel Interstate 70; they could travel Interstate 90 as they go west throughout the state. They don't have to stop as often, you know. They can stop in Council Bluffs. If you look at the smoking ban in Lincoln, I have a member who wasn't able to make it here today who owns a truck stop inside the city limits. His business went down 30 percent when they passed the smoking ban in Lincoln. That's a significant decrease to him. I guess, as I stated earlier, you know, we would like to see a level playing field, as well. I understand that asking for exemptions is a difficult thing for you to do, but for my members who own truck stops, it is very difficult to remain competitive with the clientele that they serve, have the mobility that they have. And I would ask you to consider an exemption for facilities that sell more that 75,000 gallons of diesel fuel a month. That should not get any convenience stores, or it is not our intention to allow a convenience store to have that ability, but strictly the truck stop industry. And with that, I would be happy to answer any questions you may have. [LB395]

SENATOR GAY: Thank you, Tim. Are there any questions? I don't see any. Thank you. [LB395]

TIM KEIGHER: Thank you. [LB395]

SENATOR GAY: Other opponents? [LB395]

BILL PETERS: Mr. Vice Chairman, members of the committee, my name is Bill, B-i-l-l, Peters, P-e-t-e-r-s. I'm appearing in front of you today as a registered lobbyist for the Cigar Association of America. I would like to start out by saying that the cigar association is opposed to prohibition, though I suspect some folks would like it in this particular industry. I think there's several things with regard to the bill, before I get into some suggested improvements, as far as has been addressed previously. I think within the definitions of a public place, and a place of employment...certainly, any time the public is invited or permitted, that's a public place. But when the place is secured and locked up, is that still a public place or a place of employment? And I think that will be important, if you consider some modifications of the restrictions on smoking. The other thing is, I think it gets a bit carried away in some of the smaller details. You've already heard about the ashtrays, but it strikes me that it's quite a burden to require the posting of "No Smoking" signs in places where smoking is illegal. The bill requires posting in all places of employment, plus at all entrances to such places. We'll even have more signs on no smoking than we do on no handguns. It's a little bit different (laugh), which you can carry and which you can't. If the goal of the legislation is to further restrict adult choices and to regulate adult choices, then I think that there are certain areas that we could make a change that would be more favorable to the industries that I represent, to allow adults in a restricted environment to exercise a freedom of choice on using tobacco, or on...primarily cigars. Some of the reasonable options that I think that should be permitted would be, first, retail tobacco stores. And to anticipate your question, Senator, you don't want to let anybody get away with just a name. But the standard that's used in many of the states that are referred to in some of these preamples, that...where they exempt, is a definition of a retail tobacco store as one who sells tobacco, tobacco-related products, and smoking accessories, would be what we would consider within the realm of a tobacco retail store. And appearance should take care of it, but you know, you can talk about a certain percentage of sales. We would suggest that it not go above 25 or 50 percent, because there's other items that is occasionally sold--fine pens, exotic gifts, etcetera. The second exemption that we think would meet many of the concerns would be to allow smoking lounges or cigar bars. This concept is that these are separately ventilated, separately accessible facilities where beverages...the most that can be served would be beverages. Most cigar bars, by the very definition, that exist around the country, of course serve alcoholic beverages, but that would have to depend upon the community and the liquor license. I think the two absolute requirements that you would want in there is age restricted, period. I mean, just no questions. It's age restricted, and it has to be separately ventilated from any

other room or facility within a structure, if not a free standing. This would allow adult choices. I don't think it's probably conceivable, but I, you know, personally would favor private clubs. But I think that issue has been addressed, and I would be happy to revisit it. The last comment I'd like to have is I would like to address the discussion that we've had to the level playing fields. Level playing fields are nice--I'm not sure there are many. A football field is not level. I understand there's some hump. If you have to sit down real low, you have to see the other side. I'm...if you try to level all playing fields, you're going to be like me with a saw, trying to level out a three-legged stool. I'm afraid that it's not going to be too accomplishable. If we want to talk about a level playing field, level on what? On the tax rates? On the type of amenities that are provided? There's all sorts of levelness. My thought is that keeping in mind--and I think that's something you have to continuously observe or consider, but that the smoking lounge would provide an adult option, if somebody wanted to provide it. If the business community...if nobody wants to put in a smoking lounge, then we don't have any. But I think those are two exceptions. The other thing...last comment I'd make is regarding level playing field. I'm sorry, there's two comments, and I appreciate the time, so I'll go real quick. First, level playing field on level of enforcement is something that you can only suggest in legislation. But that's going to be an ultimate key. Then the second point is that if we have a level playing field, then why do we have anti-preemption language in the bill? It would seem that the level playing field, then, would have a preemption clause, so that whatever you decided, nobody could change, though quite honestly, I think there's considerable merit to the suggestion of the League of Municipalities, and you should make note of that, because that's something I don't normally say. [LB395]

SENATOR GAY: Thank you, Bill. Are there any questions? I don't see any. Thank you. [LB395]

BILL PETERS: Thank you. [LB395]

SENATOR GAY: Other opponents? [LB395]

RICHARD SLAMA: (Exhibit 25) Thank you, senators, for giving me the opportunity to testify today. I'm Richard Slama, that's S-l-a-m-a. When I told others I was coming to testify, they said, why? You can't change anything. The free world smoking ban movement is like a buffalo stampede. You'll be trampled. I said to them, my uncle told me over 50 years ago that you have to trust your leaders, because they have more information than the rest of us when they make their decisions. So today, I'm here to bring you some information. First, how many of you have heard of the study that found that a daughter has a 50 percent less chance of getting breast cancer if her mother smoked when her daughter was in her womb? Probably, not many of you have heard of this study, because the buffalo stampede doesn't have the time to look to the side, only straight ahead as it charges across the world and Nebraska. A few years ago the result of a study was published in the American Scientist that suggested there is a genetic link

to addiction, and that 12 percent of the population carried two copies of this gene; otherwise, a gene on both of their chromosomes, and these people were irritable, even as children. Last week you may have read in the paper about a man that had been smoking 40 cigarettes a day when he had a stroke that damaged the insula in his brain. The insula is the part of the brain that converts information into feelings like hunger, pain, craving. After the stroke, he never wanted a cigarette and found smoking disgusting. Because of this incident, the University of Iowa looked for and found 19 insula-damaged individuals. The university found a total of 63 percent of these individuals also quit smoking immediately after the damage. If this data is extrapolated out to the whole human population, the result is about 12 percent of the population might respond, if their insula was damaged or treated, if we only knew how. Otherwise, the 12 percent figure comes up again. This and other studies lead me to conclude that about 12 percent of the population has a brain handicap that can be treated by smoking and possibly the use of other chemicals. So how does Lincoln's smoking ban--and I refer to Lincoln's smoking ban, because LB395 it has been said that it appears to copy Lincoln's ban--so how does Lincoln's smoking ban treat these handicapped people that want to feel like the rest of us; i.e., not irritated? Well, Lincoln tells them, if you want to relax with a group of people, they can do it by getting together in a livestock pen. That's what I call it. Lincoln calls it the 20 percent rule; i.e., 20 percent of the building must be removed. If you remove the roof, you get 20 percent...accomplish that, and what do you have? You have a pen. It must be a livestock pen, because that is the kind of thing we use to feed livestock on winter days like we've been having lately. So how does this make Lincoln smokers feel? And then there's the exception for hotel and motel businesses, even though workers like maids must enter these rooms, and smoke can migrate through floors and ceilings into other rooms. Lincoln says, that's okay. A Lincoln smoker gets the message that Lincoln doesn't want to treat out-of-town smokers as badly as Lincoln smokers, or Lincoln's smokers are at the bottom--they're scum. What does such tactics do to smokers? During the Korean War, the North Koreans were able to kill 38 percent of our healthy soldier prisoners. The North Koreans didn't physically torture these prisoners. In fact, they took good care of their physical needs. What they did was deprive them of emotional support. Other studies indicate such actions can increase health problems. Therefore, if you believe you must support this buffalo stampede, I urge you to have health and death rate monitored of the people that continue to smoke. My guess is you'll see an increase in health problems and death rate in these smokers. I hope you understand what I'm saying there. The rate is going to go up. The prisoners in Korea describe it as "give-upitis." They just gave up and died. Sometime, you might want to go around Lincoln and ask smokers if they just want to die and get it over. I think you'll be surprised at the yeses you'll get. There is a different approach that can be taken to recognize the needs of all Nebraskans. First, make hotel/motel businesses abide by the same rules as other businesses. I mean, look at this lady up here that suffers from smoke. What if she's in some room where the smoke gets through the walls to her? Second, allow businesses to build or have total smoking businesses in totally separate buildings, if there is another like business nearby that

offers a smoke-free environment. Otherwise, in a small community you've got to have a smoke-free business first. If it's a restaurant, it's got to be a smoke-free restaurant before you can ever have a smoking restaurant in that town. This could be like within a mile or two miles of each other. Such smoking businesses would need signage on all entrances indicating it is a smoking building, and further signage must provide the details of probabilities of various health impacts if they enter the building. Inside, information needs to be posted telling where individuals can get counseling to help quit smoking, because some people, I believe, do respond to counseling. I risked my life in Korea and Vietnam so you would be free to make decisions about our fellow Americans. I'm disgusted how fellow Americans are treated in Lincoln. Probably many are handicapped because of insulas that are different than yours and mine. Hopefully, you will treat these kind of people better than they are treated in Lincoln, because now you have additional information that the Lincoln people did not have. Someday I believe scientists may be able to treat the insulas of these smokers, but until that happens, please be careful of the buffalo stampede. My guess is that when scientists do find a treatment, our jails will begin to empty, since the last I heard was that 85 percent of Lancaster County's jail population is made up of individuals that are addicted to something. Thank you. [LB395]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB395]

RICHARD SLAMA: Okay. [LB395]

SENATOR GAY: Other opponents? Seeing none, anybody want to speak neutral on this issue? [LB395]

ALICE LICHT: Good afternoon, Senator Gay and members of the Health and Human Services Committee. My name is Alice Licht, and I am the legislative director for the Nebraska Hotel & Motel Association, and there are over 700 hotel properties in the state. And I'd like to just talk briefly. We are neutral on this bill, with the exception of looking at Section 18, where it talks about guest rooms in hotels. When Lincoln passed this ordinance, I don't know where they came up with 20 percent, because if we're going to do this statewide, we are talking about every hotel or motel in the state, and we could be tinkering with some problems on properties, where you take a Quality Inn & Suites in North Platte that has 234 or...no, is it 324 rooms, I think, versus a Holiday Inn Express, which may have 100 rooms. So 20 percent/20 percent makes an unfair advantage, if they're bidding a convention. The other thing you need to look at in reality is we hear bantered anywhere from 20 to 27 percent of the people smoke. We have to, as hoteliers and moteliers, recognize that those people when they rent a room from us, that is their home and in many cases, they rent on a monthly basis. So any legal activity can be done in that hotel, and whether we're for or against smoking, we still have to accommodate those people, because once that door is closed on that hotel room, they

can smoke in the room. Now the Marriott Corporation has banned smoking in their hotels, so the market is doing something there, and as a matter of fact, the Hilton in Omaha has it 10 percent, because they did a customer survey and they found that 10 percent of their clients--that would suffice for them. But again, you're talking a huge number of rooms, so 20 percent may be a problem statewide. I was in an airport not too long ago, going in Chicago and waiting, and there were a group of people that were getting on the same plane with me, going to Minneapolis, and they were going to an Alcoholics Anonymous convention. And Nebraska probably could never host an Alcoholics Anonymous convention, because that group of individuals, in our business, is known to be heavy smokers. So there's some latitude that needs to be given for something like that. When this passed in Lincoln, some of our hotels lost business for billiard tournaments, because that clientele will smoke. Now if you have the 20 percent rule, the cost to clean those rooms so that the young lady who has cystic fibrosis can stay in that room again is anywhere from $200 to $400. So if I rent that room, it's a nonsmoking room. I have a legal right to smoke in that room, because I rented it under contract, and it becomes my property. So this hotel thing is a little iffy. The gentleman earlier said, why are hotels exempt? They're exempt because they're a lot like apartment houses, or they're a lot like private residences. So I guess the one thing I would suggest is relook at that 20 percent number, because in Lincoln, you've got larger properties. Twenty percent, the big properties, are on an even playing field. But if you go statewide and you get into communities where they have the 80- and 65- and 100-room properties, you may run into problems. You'll run into problems in North Platte and Scottsbluff, where you have rail labor, where there will be a higher smoking ratio. So where will those people stay, if only 20 percent of those rooms can be used for smoking? I'm willing to work on any number on that, but I think if we go statewide, because Lincoln picked 20 percent, I think statewide it makes a difference. The other provision in there, at the end...in Section 18, Section 2, it says the status of rooms as smoking or nonsmoking cannot be changed, except to add additional nonsmoking rooms. So for example, the Hilton Omaha has, I want to guess, 300 rooms. They have talked about adding maybe another 200 rooms, and if they stayed with their 10 percent, they're probably okay. But they still have to cater to a population of people that smoke, and the way things are going on education, I suppose, 50, 100 years from now, people aren't going to smoke, but we've got to live with today and accommodate those people. I guess that would kind of be the end of my comments. I would be happy to work with you on it, but the two points would be the 20 percent, and the second would be the last statement in there, the status of rooms as smoking and nonsmoking cannot be changed. We would like to see some change on that. And with that, I would close my testimony, and thank you. [LB395]

SENATOR GAY: Thank you. Senator Hansen. [LB395]

SENATOR HANSEN: Thank you, Senator Gay. Alice, if a smoker comes, say a traveling salesman comes through North Platte at 11 o'clock at night, there's a

convention in the hotel, he goes to a hotel. The only room that's left there is a nonsmoking room. Can he...he or she rent that room? [LB395]

ALICE LICHT: Yes. [LB395]

SENATOR HANSEN: Can he or she smoke outside? [LB395]

ALICE LICHT: They can smoke outside. If the weather is very frigid and cold, it's uncomfortable. The point is, it's their home once they rented that room. For example, a hotelier...if I am the hotelier and I rent you a room, I have no right to go in that room, except for emergencies. So I can't come in to see if you're smoking or not, because that becomes your property, just as if I rented you an apartment. I should have brought it along today, but there are legal cases that deal with, once I rent you that room, I can't go in there and make sure you're not smoking. [LB395]

SENATOR HANSEN: Can you add to the bill, the clean-up to the bill the next day? [LB395]

ALICE LICHT: Now, a lot of properties are doing that, and in fact, I stayed at the Hilton in Omaha a couple weeks ago for a convention we had, and we had to sign...well, I happen to smoke (laugh), so I didn't have to sign a waiver. I had a smoking room. But any of our participants who stayed in a nonsmoking room signed a waiver that said if they detected smoke in the room, there would be $200 automatically added to their credit card. So the thing, I guess, I'm coming back to, that room becomes a legal residence. And so this 20 percent we have to be careful of, that we don't hurt one hotel over another on bidding a convention, whether it be a billiards group, or it could be a cigar group, or it could be, you know, people who by nature of their business, smoke. And we could lose conventions to the state, we could lose things like that. Maybe the number is 25 percent. Most of our hotels are saying that they're going to 27 percent; that's about what the customer ratio is across...when they have travelers. Now Marriott chose it nationally, as a zero, and they're advertising. They're using it as a marketing ploy. The Hilton in Omaha stayed in business for a year, did their own customer surveys, because they are a premier, four-diamond hotel, and so they wanted to cater to their customer needs, and they found 10 percent would work for them. [LB395]

SENATOR GAY: Okay. Thank you. Senator Stuthman. [LB395]

SENATOR STUTHMAN: Thank you, Senator Gay. Alice, you stated that the Marriott, they have no smoking in any of the rooms. Are they going to file bankruptcy pretty soon, or are they making more money? [LB395]

ALICE LICHT: I'm not saying that our people are going to file for bankruptcy. I'm just...the Marriott is using it as a marketing ploy saying, we are a smoke-free property.

And so they're looking at attracting a different clientele, and as I indicated, 50 or 100 years from now, people probably aren't going to smoke. Or maybe, who knows? We'll all be smoking it will be so crazy. [LB395]

SENATOR STUTHMAN: And they're still in business, and they're doing well, I'm sure. [LB395]

ALICE LICHT: Yeah. I don't know. They just started it, so I have no idea how this is played with them, and maybe they're gearing it toward not trying to book conventions with people who smoke. [LB395]

SENATOR STUTHMAN: Okay. Thank you. [LB395]

SENATOR GAY: Senator Howard. [LB395]

SENATOR HOWARD: Well, just another little aspect to that. The Marriott is owned by a family that's a Mormon family, so that may... [LB395]

ALICE LICHT: I had forgotten about that, yes. Yeah, it's a religious thing. I apologize for that. [LB395]

SENATOR GAY: I don't see any other questions. Senator Johnson, would you like to...thank you. [LB395]

ALICE LICHT: Thank you. [LB395]

SENATOR GAY: Would you like to close? [LB395]

SENATOR JOHNSON: It won't take long. Actually, all I want to do is thank everybody on both sides for a great discussion this afternoon, sticking to the issues, and I just want to let my friend in the back of the room, who was concerned about level fields, is that yes, football fields may be as much as 18 inches higher in the middle, but both teams play on the same field. Thank you very much. (See also Exhibit 36) [LB395]

SENATOR GAY: Thank you. With that, we'll close the public hearing on...(machine malfunction). [LB395]

Disposition of Bills:

LB48 - Held in committee.
LB385 - Advanced to General File, as amended.
LB395 - Advanced to General File, as amended.
LB584 - Held in committee.

Chairperson

Committee Clerk