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General Affairs Committee
February 08, 2010

[LB834 LB854 LB883 LB942 LB1000 LB1013]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 8, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1013, LB834, LB854, LB1000, LB942, and LB883. Senators present: Russ Karpisek, Chairperson; Kent Rogert, Vice Chairperson; Colby Coash; Tanya Cook; Merton "Cap" Dierks; Annette Dubas; Bob Krist; and Scott Price. Senators absent: None.

SENATOR KARPISEK: Welcome to the General Affairs Committee. My name is Russ Karpisek and I'm from Wilber and I am the chair of the committee. To my far right, Senator Coash from Lincoln will be arriving shortly, we hope. Next to him is Senator Krist of Omaha; then Senator Dierks of Ewing; Senator Rogert of Tekamah who is Vice Chair of the Committee; Joshua Eichmeier of Seward is our committee legal counsel. To my far left is Joan Snyder of Lincoln, committee clerk. Next to her is Scott Price of Bellevue; then Senator Tanya Cook of Omaha; and Senator Dubas of Fullerton. Pages helping us today are Justin Trauernicht of Pickrell and Leslie McIntosh of Syracuse. After each bill introduction we would like to hear testimony in support of the bill, then testimony in opposition, and finally neutral testimony. If you are planning on testifying in any capacity, please pick up sign-in sheet that is on each of the tables in the back of the room. Please fill out the sign-in sheet before you testify. When it is your turn to testify, give your sign-in sheet to one of the pages so they can give it to the committee clerk. This will help us keep a more accurate public record. If you have handouts, please make sure that you have at least ten copies for the page to hand out to the committee. If you don't have that many, raise your hand and the page will help you get them. When you come up to testify please speak clearly into the mike, tell us your name and spell your first and last name, even if it's a common name, so we can get it correct on the record. Also, please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that beeps. Please keep your conversations to a minimum or take them out in the hallway. While we do allow handouts, we do not allow visual aids or other display items in the committee. We will also be using the light system this year because of all of the bills that we have. The green light means that you have five minutes, yellow means you have one minute left, and when you get to red you are done, please wrap it up as soon as you can. If you go over some of the committee gets a little bit, h'm, roughed up, maybe, feisty, there you go. So it's best for you to wrap it up. That does not count on your time for senators asking questions, there is no time limit on that. Ask for your cooperation in all of those. Again, if you have any questions, just ask the pages and they'll be willing to help you. With that, we will start with LB1013 by Senator Rogert. Welcome, Senator Rogert. Whenever you're ready.

SENATOR ROGERT: Okay. Good afternoon, Senator Karpisek, members of the General Affairs Committee. My name is Kent Rogert. I represent the 16th Legislative District here today to introduce LB1013. LB1013 is a bill allowing establishments within

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a county encompassing a city of the metropolitan class the ability to extend their time of sale for alcohol and lottery on Friday and Saturday nights until 2:00. Pretty simply, this would allow Douglas County to stay open one hour longer on Friday and Saturday nights. We had a bill similar to this last year for the extension for the whole state. We're dropping it down and tightening it up to the folks that really need it and are asking for it. It's in my very humble and true belief that we, as a state, lose a lot of money every weekend due to the flow of traffic and money across the river for a lot of reasons. Iowa does things a little more differently. They're able to do them longer and they do more things than we do. This one specifically adds the provision on weekends that establishments can stay open for an extra hour and that's it. There will be some folks testifying behind me what they think this will do to help them out. You chat with establishment owners in Iowa and it's very...their best hours of the night is from 12:30 to 2:00. There's a large number cars that run across the river there every weekend night and often regular nights during the week. So I think this is in a time where Nebraska as a state is looking for things to raise money, revenue streams are in question all across many industries, this is one that seems to be recession-proof. On a side note, I believe that it's an issue of safety. The folks going across the river at nights often shouldn't be, but they're going over because they don't...the old saying is, "it's closing time, you don't have to go home but you can't stay here." And so you see a pretty good line of red dots going across the Douglas County line into Council Bluffs. So I think it's a matter of revenue and I think it's a matter of safety. If you've ever tried to get a cab in Omaha on a weekend night around closing time and they tell you it will be 30 to 45 minutes at least, I think a lot of folks say nevermind and they drive when they shouldn't. And by extending this hour, I think it will spread that out considerably and not only raise revenue for the state but allow for a little more safety. There are some folks behind me that will testify, including Councilman Gray. And I'll answer any questions that you have at this time. [LB1013]

SENATOR KARPISEK: Thank you, Senator Rogert. Any questions for Senator Rogert? I guess I would ask, okay, so we're talking on Saturday and Sunday, so it's actually Friday night and Saturday night. [LB1013]

SENATOR ROBERT: Correct, Saturday morning and Sunday morning, it would go from 1:00 to 2:00. [LB1013]

SENATOR KARPISEK: Thank you. Senator Krist. [LB1013]

SENATOR KRIST: Thank you, Chair. Are you going to close? [LB1013]

SENATOR ROBERT: Depends, I have another bill up in Business and Labor and one in Transportation. So I'm going to run, do those, and if it's still going on, I'll close when I get back. [LB1013]

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SENATOR KRIST: Well, just in the event that you don't, then I do have a question. What drove...what brought this to you? [LB1013]

SENATOR ROBERT: Well, I have a list of things that I see that we do differently in Nebraska that most other states do. This happens to be one of them. I've had friends in South Dakota, friends in Iowa, friends in Kansas come visit. They're kind of astonished that we're still a 1:00...we are the last state in the Union that does not have some sort of provision to go on past 1:00. And I believe it's a revenue hindrance. A lot of the things that we do different are great, a lot of the things that we do different than other states I believe hinder us, thus creating a need for a higher tax base, leading to what...folks would call us a high-tax state. And I think this is one of those things. This isn't going to solve the problem but there's a list of about 10 to 20 things in my head and this is just one of them. [LB1013]

SENATOR KRIST: We shared off privately and off mike time that what have heard from friends who have come in for major events in the downtown area, our Olympic trials, yadda, yadda, that they are amazed that this...that we close the doors at 1:00 after an event, that usually is just beginning time with dinner and meals. Do you think that this is a start at Friday and Saturday or...I mean, because these events, the Olympic trials, obviously, were weeks long. [LB1013]

SENATOR ROBERT: Exactly. I think it's a step to gauge. You know, there are folks that will have concerns, there always are when you're expanding the alcohol provisions. I think it's a good way to gauge and show that we can do it just like everybody else does. You take the first step and say, well, let's start with the busiest two nights and the busiest place of the year and let's start there. What I think will probably happen is other folks will see that it's a good idea and want to do it other places. But for here is where we are going to start today. And I appreciate your comments on the events. I think the Qwest Center...there is a possibility that they don't...a pretty good possibility that they don't get some events located there because of this provision. Conferences and conventions and different events that would come here that would get out at maybe 11:00, they'd look at it and go, ooh, that means our folks won't have any ability to enjoy themselves for very much longer, and they may choose another city if we're down to the final. [LB1013]

SENATOR KRIST: Thank you, Senator Robert. Thank you, Chair. [LB1013]

SENATOR KARPISSEK: Thank you, Senator Krist. Any other questions? Seeing none, thank you, Senator Robert. Now we will take the first proponent of LB1013. Welcome to the committee, sir. [LB1013]

BEN GRAY: Sir, thank you. Mr. Chairman, members of the committee, my name is Ben Gray. I'm a city councilman in Omaha, represent the 2nd city council district in Omaha.

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And I'm here to speak in support of LB1013. And I'm in support of it for a number of reasons. There will be people that speak in opposition. And they will talk about some of the social ills and some of the social concerns that they will bring to the table. And those social concerns are serious. Those social concerns need to be taken into consideration. But those of us who are legislators, we have to also balance the social concerns that people may have with the ability of businesses to succeed and be successful, especially in the metropolitan area of Omaha. And I believe that this bill, the way that it is framed, will do that. And I think it will do that for several reasons. First of all, it is not a carte blanche piece of legislation. In other words, you don't have the 2:00 time period for the entire week. This is just on Friday and Saturday, and I think it's appropriate to do that. I would have concerns if we did it every day during the week and we extended it throughout the entire community. I think that closing later on Friday and Saturday gives us an opportunity to be competitive, to give our businesses an opportunity to be competitive. I, last week coincidentally, sat in on a hearing that the Convention and Visitor's Bureau of Omaha had put together with National Farm to talk about, you know, the convention business and how things are going there and what some of the concerns are. And with that business being extremely tight and the Convention and Visitors Bureau being in my judgment underfunded to the extent that a lot of Convention and Visitors Bureau, you know, dollars that they get in from seat taxes and so forth are about 40 to 50 percent, and what we give our Convention and Visitors Bureau in Omaha is about 17 percent. They are sort of at a disadvantage. And every advantage they can get to bring conventions and others to Omaha, I think, is a win-win for not only the city but the state. And they need the advantage of having the same sort of hours of closing that all of the surrounding states have. The other reason that I'm in favor of this is that it gives the city of Omaha flexibility. If there are concerns that need to be addressed, we can roll back those hours without having to come back to this body to gain permission to roll back the hours. So it does give us that sort of an opportunity. So I'm in favor of it for that reasons as well. As a friendly amendment, though, I would like for this committee to consider not allowing those with off sale liquor licenses to be able to sell alcohol after 1:00. I think they still need to keep the 1:00 hour. So any off sale liquor licenses I would like, as a friendly amendment, to keep at those...at that particular hour. Again, this gives us the opportunity to, you know, roll back this legislation if there are some concerns or if there are some issues that arise that the city needs to look at without coming back to the Legislature for enabling legislation. I think it does, most importantly, give businesses a leg up in terms of competition. I see the numbers of individuals and the number of people that come in for conventions or, as Senator Krist mentioned, some of the events that we have, I've seen them go across the river after closing time at 1:00. And it's almost like a parade going to Council Bluffs so that they can, you know, so that they can finish having a good time, you know, in Council Bluffs as opposed to, you know, continuing to be in Omaha. It will give our folks, especially in the downtown area where we're trying to redevelop in certain areas and the Old Market and other places, it will give them the ability to compete on better footing. I think the Legislature and the city of Omaha and others in our wisdom not to have casino

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gambling and so forth, I think, that was appropriate. But at the same time we need to provide every other avenue that we can within reason to allow our businesses, especially our bars and restaurants to compete on a level playing field with others around the surrounding states. So with that, as the city councilman for District 2, I am in support of LB1013. And that will close my testimony. And I will answer any questions that you all might have. [LB1013]

SENATOR KARPISEK: Thank you, Councilman Gray. Senator Dierks. [LB1013]

SENATOR DIERKS: Thank you. Councilman Gray, do the bars, the liquor establishments in Council Bluffs stay open until 1:30 or 1:00 and 2:00? [LB1013]

BEN GRAY: Two, 2:00. [LB1013]

SENATOR DIERKS: 2:00? [LB1013]

BEN GRAY: Yes. [LB1013]

SENATOR DIERKS: Thank you. [LB1013]

BEN GRAY: Yes. [LB1013]

SENATOR KARPISEK: Any other questions? Seeing none, thank you for your testimony. [LB1013]

BEN GRAY: Thank you, Mr. Chairman. Thank you all, members of the committee, appreciate your indulgence listening to our testimony. Thank you. [LB1013]

SENATOR KARPISEK: Thank you. Next proponent for LB1013. Welcome. [LB1013]

JIM MOYLAN: (Exhibit 1) Mr. Chairman, members of the committee, I'm Jim Moylan, M-o-y-l-a-n, representing the Nebraska Licensed Beverage Association, which is a state association of liquor retailers. I do have a handout here for you also that we can review when it's handed out. Okay. At the outset, just one technical correction I think ought to be made. On page 8, line 7, if you notice, four lines up they have 15 minutes after they quit selling liquor to get the containers, you know, off the table. This one just makes it whack when you quit selling, why, I don't know how you get the containers off the table all at the same time. I think instead of until closing time, make that until 2:15 a.m. Members, I've represented this association for many years and I've had a bill in, statewide bill for a number of years trying to get 2:00 opening (sic). You've got to remember, this is by local control. It doesn't mean that every city council or county board across the state is going to allow it, but for border counties. Now if you'll notice the handout, this is the 2000 census, 52 percent of the people living in the state of

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Nebraska are within approximately a half hour's drive from another state, all the surrounding states which have 2:00 a.m. opening (sic). Missouri is a little bit different. They have Kansas City and St. Louis, 3:00 opening (sic) and then 1:30 and 12:00 on midnight Sunday. All the rest of them are 2:00. So, you know, it just means half the population can go across the border if they want to stay open until 2:00, you know. So we're drawing business...they're drawing business from all of our surrounding counties. I remember the story very well of a gentleman in Omaha that had an establishment down across from Rosenblatt Stadium. He had groups of people working in a manufacturing plant down there that used to come in about 10:00, 10:30 after they got off their shift. And they would stay until about 11:30 and then they'd all pick up and leave and go to Council Bluffs so they could go stay over there until 2:00 in the morning. Basically, that was their cocktail hour, you know, compared to most people whose cocktail hour is 4:00 or 5:00 to 6:00, you know. Theirs was when they get off that late shift. So they'd just head to Council Bluffs. He's no longer in business but he came down here many years and testified for it statewide. Now, my association has instructed me that they would like statewide 2:00 a.m. open (sic) by local control and I have to follow their dictates because we have...everybody in the state of Nebraska belongs to...not everybody belongs to the association, but there are approximately 4,200, 4,300 retailers in the state. So we would heartily support this bill, it's a starting place. If you want to make it statewide, we'd welcome that too. If you have any questions, I'd be happy to try to answer them. [LB1013]

SENATOR KARPISEK: Thank you, Mr. Moylan. Any questions for Mr. Moylan? Seeing none, thank you. Further proponents. Welcome. [LB1013]

JIM OTTO: Thank you, Senator Karpisek, members of the committee. My name is Jim Otto, O-t-t-o, I'm a registered lobbyist for the Nebraska Restaurant Association. And I'm here today to testify as a proponent...the Nebraska Restaurant Association as a proponent for LB1013. Don't really need to go into very much, just the competition bordering states putting our businesses at a disadvantage, our restaurants, our sports bars. That's the reason for the favorable testimony. [LB1013]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thank you, Mr. Otto. Further proponents. [LB1013]

KIRSTEN CASE PENROD: Good afternoon, Chairman and members of the General Affairs Committee. My name is Kirsten Case Penrod, K-i-r-s-t-e-n C-a-s-e P-e-n-r-o-d. I am testifying in support of LB1013 on behalf of the Greater Omaha Chamber as well as our Young Professionals Council. And we appreciate Senator Rogert's introduction of this legislation. To us, this bill is not about giving Douglas County the opportunity to drink an extra hour over the weekend, on Friday or Saturday nights or Saturday, Sunday mornings as the case may be, but it is about our state's imagine in particular to young people who are choosing where they want to live, work, and play. According to

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Next Generation Consulting, a generational consulting firm, after hours is one of seven key indexes that young professionals consider when they're thinking about where they want to live. When working with prospective businesses and young professionals alike, we often hear impressions of Omaha such as bland, boring, plain, unexciting. And it's really important that we change that image. They're often shocked to learn about the great amenities that we have to offer but this legislation is an important step towards changing that image. It's not about...again, it's not about the drinking as it is about being able to gather with your peers out in a fun setting during those weekend hours. There's been a lot of discussion in our state about brain drain and the impact that...on our state when college graduates and young professionals leave for other communities. I'm not going to tell you that this legislation will single-handedly address brain drain, but it is a small step in the right direction to help us. With that, I'd be happy to answer any questions that you may have. [LB1013]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thank you [LB1013]

KIRSTEN CASE PENROD: Thanks. [LB1013]

SENATOR KARPISEK: Any further proponents? [LB1013]

FRANK VANCE: Good afternoon, Mr. Chairman and members of the committee. My name is Frank Vance, F-r-a-n-k V-a-n-c-e. My wife and I are the owners of the Dubliner Pub and co-owners of Kelley's in Omaha. I come in full support of this bill. I think it's time that Omaha retailers are given the opportunity to compete with our neighbors across the river. The extended hours would also be an additional opportunity for revenue to the business, to my employees, to the city and state for sales tax. At our locations we do 80 percent of our business between the hours of 11:00 p.m. and 1:00 a.m. The demand is there to give the customers a choice to stay out later in Omaha. And also, I think, the request for only Friday and Saturday nights are a responsible approach to this issue. I would also urge you to consider this is a seven-day law. The weeks that the College World Series, Berkshire Hathaway, Peter Kiewit, and other corporations that are considering Omaha for the conferences, those people are not here just on Friday and Saturday night. It's been my experience through the years that patrons have been coming out later and later. A 2:00 closing time would accommodate this trend, improve the nightlife, and make Omaha a more attractive place for young professionals. Lastly, it's important to note that all retailers would not stay open until 2:00 a.m. We have one location in west Omaha, one location in the Old Market. I would be real surprised that the west Omaha location would stay open as the Old Market location would. I'll be happy to answer any questions that anybody has got. [LB1013]

SENATOR KARPISEK: Thank you, Mr. Vance. Senator Price. [LB1013]

SENATOR PRICE: Thank you, Senator Karpisek, Chairman. Sir, the question is you

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mentioned a number of (inaudible) your business being done 11:00 and 1:00, correct?
[LB1013]

FRANK VANCE: Um-hum. [LB1013]

SENATOR PRICE: Is that proportional, 40 percent each hour or is there actually a trend where it's coming down maybe a little towards the 1:00? [LB1013]

FRANK VANCE: I don't know that, I haven't broken it out like that. The reports that I get, I get an hourly report that I can pull up on my cash registers. And all I get is an hourly breakdown. And all I know is that...and that's not just on weekends, that's not...that's everything inclusive. So I have my information from 11:00 until midnight, I have my information from midnight to 1:00. I do know that there's...when the people are leaving, in particular the Dubliner in the Old Market, I do know that those people aren't leaving at 1:00, they're leaving at 12:30 and 12:15, and that's another 45 minutes of revenue that could stay with my business and the state and everything else. [LB1013]

SENATOR PRICE: So your hourly reports then and instead of people leaving, your 12:00 to 1:00 hourly report should trend be lower than your 11:00 to 12:00. [LB1013]

FRANK VANCE: I can't tell you, I've actually...I can give you that answer for positive.
[LB1013]

SENATOR PRICE: Okay, thank you. [LB1013]

SENATOR KARPSEK: Thank you, Senator Price. Any other questions? Senator Krist.
[LB1013]

SENATOR KRIST: Thank you, Chair. Thanks for coming down and testifying. In your opinion then, what I heard, I mean just for the record would you say that we should be addressing a seven-day issue or more than just the weekend issue? [LB1013]

FRANK VANCE: Yeah, I really do. The people that come in for things that are going on at the Qwest Center, concerts or basketball games or whatever it might be, the people that come in for Berkshire Hathaway, I have a number of groups that I work with at Berkshire, and I get a number of people that come down from Peter Kiewit and they come into Omaha for this. They're in town, like the Peter Kiewit people that just left Omaha, they were in town for Friday night and had a gay old time Friday night. But they were in town, I believe, Tuesday, Wednesday, Thursday, and Friday night. So Tuesday, Wednesday, and Thursday, you know, it's lock it up at 1:00. I've actually had people literally laugh in my face when I'll go around at last call and say, okay, we need to pick them up now and go, are you serious? It's...that's just the way it is. And when people come in from out of town it's...like I've a relationship with some people from Canada that

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come in for Berkshire Hathaway, they're just flabbergasted that we lock up at 1:00.
[LB1013]

SENATOR KRIST: Thank you. Thank you, Chair. [LB1013]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? I have a couple. So at 1:00, what time do you usually call last call? [LB1013]

FRANK VANCE: We give last call, well, we call at bar time, but we set our clocks ahead ten minutes. So we actually give last call at 12:35. And so...and then we stop serving at 12:45, and then that gives us, you know, we start telling people we're going to pick things up shortly after 1:00, so we've got a 15-minute window that everything is off the table at 1:15. [LB1013]

SENATOR KARPISEK: And would you see problem more, intoxication, more fights, that sort of thing do you think for another hour? [LB1013]

FRANK VANCE: No. I really think what would happen and what I...in the, you know, I kind of pay attention to stuff when my wife and I travel. And what I kind of see is when we're out and, you know, you start seeing, regardless of how young people are or whatever, the crowd starts drifting, it starts filtering out. You know, now at 1:00 there's a lot of times that we're just full, you know, at 1:00. But it seems like as it gets to...and when we're out of town, when we're in St. Louis or anyplace like that, the crowd starts filtering out. I don't care how young you are or whatever, you start getting tired, you know, and then particularly on Friday nights, people have been working, whatever and they start leaving. I mean, you can only stay up so late. [LB1013]

SENATOR KARPISEK: All right (laugh). [LB1013]

FRANK VANCE: And there's the other ones that go on forever, then they go to the after hours. [LB1013]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you.
[LB1013]

FRANK VANCE: Thank you. [LB1013]

SENATOR KARPISEK: Do we have any other proponents? Welcome. [LB1013]

PATRICK VONDRA: Well, thank you. My name is Patrick Vondra, P-a-t-r-i-c-k, Vondra, V-o-n-d-r-a. You'll have to excuse me, I just flew back into town from Arizona on Saturday and found out yesterday I was going to be here today, so I don't have a whole lot prepared. But as a child growing up, I guess, midnight to me was always kind of an

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antimagical hour. It was the time where goons and goblins would come to get me. And as I got older I kind of outgrew those fears. And as I entered college, midnight just meant a late night of studying. Once I turned 21 and I was at the bars, midnight became a time where it became slam them, do them quicker, do them faster, and drink, drink, drink because the bars are about to close. As I travel throughout the country in different places I notice that midnight didn't have that same effect on me. When you're in Las Vegas and the bars are open until 4:00 or 5:00, you don't see the need to speed up, you can stay at your own steady pace and you just seem to moderate your drinking a lot more. I really find that that seems to be one thing as people really try to start binging the earlier that the bars close. A lot of people, 1:00 a.m. really just isn't late enough for them. A lot of people, especially we get a lot of industry people that may work at a nice restaurant or even your local Applebee's or Chili's, they're getting off work, they get their cleaning done, they show up at about 11:30 or midnight and they want to have a good time too. And trying to cram their entire night into one hour just really becomes a problem. As I've heard before, people that come in from out of town are amazed that we close at 1:00. Not only are they amazed, it's almost a negative shock. They're just absolutely flabbergasted, they are. They're amazed and they're shocked that we close so early. It seems to really put a negative effect on our city. You asked a question earlier about would I see more problems with fights and overintoxication. Like I said, I think if you give people more time to spread out their drinking they don't seem to binge as hard. I would see less problems with fights, less overintoxication. Frank touched a little bit about how this could be a really good seven-day thing. I think in the future maybe, but for right now I'd really love to get weekends going in Douglas County for this later closing time. A lot of times I feel like Nebraska, with all the states around us, we're saying: No, I'm sorry, we're closed. We don't want your business. We don't want your money. We don't want your tax revenue. Feel free to go across the border. Feel free to go to Council Bluffs. Feel free to go continue your night on over there. But for us, no. And I've never totally understood that reason why, no. It seems like everywhere you go in Nebraska for this it's no, no, no. There is a safety issue of people traveling across the river. One of the bars I represent is Club Patrick's, out on 114th and Dodge. We probably don't see it nearly as bad as many of the locations downtown, but we still do see it, people come and talk to me, hey, why don't you meet us across at the casinos afterwards, we're leaving there right now. They start exiting my place at midnight, 12:15. I can't say it's a staggering amount, but I can guarantee probably at least 10 to 20 people leaving my place and driving all the way across town every Friday and Saturday night. The state right now, we are in a revenue crunch. Revenue streams are drying up. I think this is an easy way to keep things going. It's more sales tax for our state, more employment taxes, everything, there's tax, tax, tax. That's about all I have from my scrap notes. I'd love to answer any questions or any thoughts that anyone has.
[LB1013]

SENATOR KARPISEK: Thank you. Any questions? Senator Cook. [LB1013]

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PATRICK VONDRA: Yes. [LB1013]

SENATOR COOK: Thank you, Mr. Chair. What organization are you representing today, Mr. Vondra? [LB1013]

PATRICK VONDRA: We have a family business of a multitude of bars. We have three Clancy's Pubs, we have Club Patrick's on 114th and Dodge, we have Wet Lounge on 178th and Pacific, and we also have Zesto's Ice Cream Store across from Rosenblatt. [LB1013]

SENATOR COOK: Thank you. [LB1013]

PATRICK VONDRA: You're very welcome. [LB1013]

SENATOR KARPISEK: Any other questions? Seeing none, thank you. [LB1013]

PATRICK VONDRA: Great, thank you. [LB1013]

SENATOR KARPISEK: Any further proponents? Okay, we'll move to opponents. Welcome back. [LB1013]

MARGIE MAGNUSON: Hi. I hope this is not a weekly thing. (Laughter) I'm getting tired of driving to Lincoln. [LB1013]

SENATOR KARPISEK: We'll keep you busy. [LB1013]

MARGIE MAGNUSON: Yeah. Margie Magnuson, M-a-r-g-i-e, Magnuson, M-a-g-n-u-s-o-n. I'm here on two accounts, one for the Alcohol Impact Coalition, also as a parent. You know, I didn't have any written comments. But just sitting here listening to all the proponents, it really is a money issue and it really is a safety issue for me. I am going to pull out one thing that when I was hearing people talking about going to Council Bluffs--this will show my age--when I was growing up, 18 you'd go to Council Bluffs and drink if you were 18, and it was 19 in Omaha. I don't know if there was anything afoot, all the drain that everybody was driving to Council Bluffs there. But it just seems kind of...we've always had this sort of relationship with Council Bluffs. You know, if you were 18 years old and you wanted to drink and you had to drive over to Council Bluffs to do it. But we didn't kind of start going, wow, where's all our revenue going because all the kids are driving over there to drink. I just kind of wanted...that just kind of popped into my head. As far as the money issue, you know, I know there's other states that have laxer laws. There's also other states that have tighter laws when it goes to licensing and everything. I get really frustrated that we seem to kind of not want to listen to what other states are doing to tighten some of our controls. But, boy, as soon as, you know, you want to do it the other way, other states are...have looser controls so we got to match

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them. I guess, I have a really big issue as far as the money. I get tired of it all being about the liquor industry, the liquor businesses that they need more money, more time to do this, that it's an economic issue. I think it's an economic issue when we have to look to the flip side, what's going to happen with law enforcement? I'd love to see what law enforcement says about this. I bet they wouldn't be very happy about having to have another hour of the bars being open and then having to contend with drunker people or having that, having more people on the roads 2:30, 3:00, you know, or whenever they get kicked out of the...or whenever they leave the bars. So there's always going to be someone who is going to want to party longer, there's always...you're always going to have that. But I think we as a state or even Omaha, if you're looking at just having this Omaha, I guess, I think we have to really think about the safety issue and the economic issue of what cost is this going to be for more traffic-related deaths or enforcement. I mean, there's a flip side to this. And I don't hear anybody talking about that. We're only talking about the money that's going to go into some liquor business's pockets and eventually trickle down to the city or to the state as far as with the taxes. But I really think we need to consider that part. And, I guess, I'd like to see some kind of input from our law enforcement and from the other side of it. There is going to be some costs associated with that. And is that a balance? Is there going to be more deaths related to alcohol? And at what point is someone's live versus, you know, more money in some bar's pocket? I really think we need to consider that. Also, I think one of the things that Councilman Gray, he and I have talked about this and, in fact, it came up at the city council, and I...my comment to the city council at the time when Senator Gray (sic) was talking about this is, are you kidding me? Are you serious? You're really going to think about wanting to support a bar staying open an hour longer? And, I guess, I would say that to you, too, are you kidding me? But one of what Senator...sorry, not Senator Gray, Councilman Gray said today also about not having off sale, of kind of amending that, that would certainly be a good thing to consider as well. So, I guess, I'm just going to close. I just really hope that you've listened to a lot of proponents on the virtues of how much more money they're going to gain. But I think we really need to consider the flip side of this and what we're going to lose. So thank you. [LB1013]

SENATOR KARPISEK: Thank you, Ms. Magnuson. Any questions? I guess, you talked about other states, do any others that you know of close before 1:00? [LB1013]

MARGIE MAGNUSON: No, I mean, I didn't research what time people close. I guess, I was thinking, you know, I've been here before and talked about other states, you know, when it comes to zoning laws and stuff. We have tougher stuff, but we don't seem to want to listen to or look at what other states are doing when it comes to that. But, boy, as soon as something will make our laws a little looser, oh yeah, other states are going to do it so we got to do it. So, no, I don't have any of those figures with me. I'm sorry. [LB1013]

SENATOR KARPISEK: Okay. Well, I think the point they're trying to make is that it's

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everywhere around us and in proximity, so. I understand what you're saying, but...
[LB1013]

MARGIE MAGNUSON: Well, you know, what my dad would say, if everybody jumps off the cliff, we're going to join them. I don't know. You know, I mean, I don't think it's a good policy. I don't think it's our...you're looking at the health and safety of our kids, of our young people, of our young adults, because those are really the people who are out partying. I mean, to be perfectly honest, I like to be home in bed by midnight, (laugh) and I don't want to be anywhere near when bars are closing. In fact, if my kids are out, I tell them, I want you in the house before 1:00 because I have concerns about people leaving the bars at 1:00, you know, so...any way. [LB1013]

SENATOR KARPISEK: Okay. Thank you. [LB1013]

MARGIE MAGNUSON: Thank you. Um-hum. [LB1013]

SENATOR KARPISEK: Further opponents of the bill? Welcome. [LB1013]

ERIN BAUM: (Exhibit 2) Thank you. Good afternoon. My name is Erin Baum, that's E-r-i-n, Baum, B-a-u-m, and I'm here today representing Project Extra Mile. Our concern with this proposal continues to rest squarely on the loss of life and serious injury suffered by young people in Nebraska. Alcohol is a key contributing factor in the top three causes of death among youth, and kills four times more young people under 21 than all illicit drugs combined. Recent studies have indicated that later hours of alcohol sales increase problems such as injuries, drinking and driving, and other alcohol-related problems. While proponents of this proposal continue to suggest that later sales of alcohol might help reduce alcohol-related problems, there is no scientific evidence to support that claim. There is, however, a body of research to support the contrary. In 2004, police statistics indicate that violent crime increased significantly in the campus town neighborhood of Champaign-Urbana, Illinois, after the city extended sales of alcohol from 1:00 a.m. to 2:00 a.m. Crime did not increase in the rest of the city where hours of sale remained the same. Similarly, a 2000 study published in the American Journal Public Health found that restrictions on the hours of alcohol beverage sales and bars resulted in significant decreases in murders, and to directly quote the study's authors confirmed what we know from the literature. Restricting access to alcohol can reduce alcohol-related problems. The piece that you have in front of you is a piece that I brought today because it just came out this month, but that was put together by a group of public health and prevention experts that came together as a result of an effort through the Centers for Disease Control and Prevention. And if you turn to the second page, they list their recommendations for public health and safety, and you'll see that one of those is maintaining restrictions on both days and hours of sale. So we would urge the committee to indefinitely postpone LB1013. We'd be happy to provide you with any additional information and research relevant to this policy. And we'd ask that you

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carefully consider the public health and safety ramifications of this proposal. Thank you.
[LB1013]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thank you for your testimony. [LB1013]

ERIN BAUM: Okay. Thank you. [LB1013]

SENATOR KARPISEK: Any further opponents to the bill? Anyone testifying neutral?
[LB1013]

HOBERT RUPE: Good afternoon, senators. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. The official position of the commission is neutral. We've always been neutral on closing times. There are a couple technical issues, I think, I need to raise and just to query and to make sure. Upon my reading of the bill, it would seem that the designation for these Class C and I license would be an additional \$300 on top of the existing licensing. I think it's...I think that's the intent. I'm not sure. Perhaps Senator Rogert can clarify that because it seems silly, you know, because a Class C is \$300, then there's an additional...I'm not sure if he was keeping it the same or there was an additional charge. And I think that's one question that would need to be looked at and answered. As per the issue that was brought up earlier, as you're aware, all cities have the right underneath the act to do an earlier closing time. The act is...it starts with, except for the word Sunday, which is so confusing you need a flow chart sometimes, is 6:00 a.m. to 1:00 a.m. except unless otherwise earlier by ordinance, you know, an earlier closing time by ordinance of the local governing body or by the county in the location. So that's clearly already in the act already, that's 53-179 which has the closing statements on that. So other than that, those technical issues, I'd be happy to answer any questions anyone would have. [LB1013]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Seeing none, thank you.
[LB1013]

HOBERT RUPE: Thank you. [LB1013]

SENATOR KARPISEK: Any further neutral testimony? Senator Rogert, would you like to close? [LB1013]

SENATOR ROGERT: Briefly. [LB1013]

SENATOR KARPISEK: (Exhibit 3) I should, Senator Rogert, before you close, read into the record a letter of support by Sam and David Hohman of LIV Lounge. Proceed.
[LB1013]

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SENATOR ROBERT: Okay. Thanks for the testifiers coming in today. I missed a couple of them, but I think I know what most of them said. A couple things. Once again, 49 states and then there's Nebraska, 49 states have closing times at some point past 1:00. Enforcement and highway and traffic deaths, I don't think enforcement is a problem because I don't think you're going to have added people on the streets. I think you will spread out the time that people are on the streets, which in my opinion, I mentioned the taxi cab situation. When you're talking Douglas County it literally is sometimes impossible to catch a cab between midnight and 1:00 on a Friday and Saturday night in Omaha. You spread this to another hour, I believe you take people off the streets. And I've always been a big fan or not a fan but big understanding that if you want to encourage binge drinking, shrink the times when people can be out and doing it. You send people out after a concert, you send people out at 11:00, they're only out until 1:00. They're going to drink the same amount between 12:00 and 1:00, 11:00 and 1:00, or between 11:00 and 2:00. They're just going to get it done in a quicker amount of time and that is binge drinking. It doesn't have anything to do with youth. People under the age of 21 will not be affected by this bill at all. This is people in the bars and establishments. Mr. Rupe mentioned that it doesn't force anybody to stay open until 2:00, it allows them to, it doesn't force Omaha to let them, it doesn't force Douglas County to let them, it allows them to if they so choose. Many cities, I believe, in towns across the state have some ordinances for lower times. I know Tekamah was 12:00 until not very long ago, my hometown. And I've always said just because some people want to be home in bed doesn't mean they have to tell everybody else to be home in bed. People will do what they want to do no matter what it is. At 1:00 if they're not ready to go home, they're going to buy a six pack, they're going to get three or four more at last call, or they're going to get in their car and drive to Iowa. We're going to...this bill would allow them folks to stay where they are and get home safely. I'll answer any questions. [LB1013]

SENATOR KARPISEK: (Exhibit 4) Thank you, Senator Rogert. I also missed one, a letter of support from the Old Mattress Factory in Omaha. Any questions for Senator Rogert? Senator Price. [LB1013]

SENATOR PRICE: Thank you, Chairman Karpisek. Senator Rogert, I have a question for you. You just said, and I tried to take the note down, you said that, one, there would be no more traffic. I take it that you mean the traffic would just remain on this side of the bridge because the same number of people out. And then you said the same number of drinks will be sold between 11:00 and 2:00 as 11:00 and 1:00. [LB1013]

SENATOR ROBERT: I think there is a tendency...I'll rephrase that. I think there is a tendency at 1:00, if folks aren't wanting to go home, they go rushing up to go get more. [LB1013]

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SENATOR PRICE: Okay. So given that and looking at it from a business case, if I own a business and I sell my alcohol with an hour less of manpower costs, I mean, from the business point of view I'm better off because I've sold all the alcohol I'm going to sell either way. [LB1013]

SENATOR ROBERT: I think it could be seen both ways. [LB1013]

SENATOR PRICE: Okay. Great, thanks. [LB1013]

SENATOR KARPISEK: Senator Krist. [LB1013]

SENATOR KRIST: The question that Hobie asked about...I'm sorry. Thank you, Chair. [LB1013]

SENATOR KARPISEK: Oh, that's fine. [LB1013]

SENATOR KRIST: Senator Robert, the question Hobie asked an additional \$300, does that... [LB1013]

SENATOR ROBERT: Yeah, I'll have to clarify that. We had some numbers in there that we had taken out. And there are still some in here. I think we just have to clean up the language a little bit there. [LB1013]

SENATOR KRIST: Was that your intention? [LB1013]

SENATOR ROBERT: No. [LB1013]

SENATOR KRIST: Okay, all right. So there's no additional cost, it's just the... [LB1013]

SENATOR ROBERT: No. [LB1013]

SENATOR KRIST: Okay. And when we talk about the provision in here, line 22 of page 4 says, the city of a metropolitan class, that pretty much says Douglas County, Omaha. [LB1013]

SENATOR ROBERT: That is Omaha...Omaha is the only city of a metropolitan class and Douglas County is that. [LB1013]

SENATOR KRIST: You missed testimony from a couple of folks that made a case that all the borders around Nebraska, everybody has got two hours all the way around. Why not all of Nebraska? Our intent, just to be clear, is that this is a metropolitan class, Douglas County, the city of Omaha. And I don't know, were you here for Councilman Gray's testimony? [LB1013]

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SENATOR ROBERT: Yes. As the bill is written right now, yes, it's only for Douglas County and Omaha. [LB1013]

SENATOR KRIST: Okay, thank you. [LB1013]

SENATOR KARPISEK: Thank you. Any further questions? Senator Robert, Councilman Gray talked about a friendly amendment of taking off sale out. Would you have a... [LB1013]

SENATOR ROBERT: Don't have an issue with that at all. We can do that. [LB1013]

SENATOR KARPISEK: Okay. The other question that I've thought of is, what about Sarpy County? Sarpy is growing. Are we missing the boat on that or... [LB1013]

SENATOR ROBERT: Well, absolutely. [LB1013]

SENATOR KARPISEK: (Laughter) But to try to get this bill through, try to do the Douglas County right now and see how it works, is that your thought? [LB1013]

SENATOR ROBERT: That was my intention. But I, you know, I'm willing to go the other way. But, you know, I'm willing to do whatever it does to get the first steps in the right direction. [LB1013]

SENATOR KARPISEK: Very good. Any further questions? Seeing none, that ends the hearing for LB1013. Next we have LB834. Senator Howard, welcome to General Affairs. [LB1013]

SENATOR HOWARD: Thank you. Thank you, Senator Karpisek...Chairman Karpisek. Could I get a glass of water?

SENATOR KARPISEK: Sure.

SENATOR HOWARD: These liquor issues always make me thirsty (laughter).

SENATOR KARPISEK: Make you thirsty.

SENATOR HOWARD: I know I'll need it before we're done, so I hope this...

SENATOR ROBERT: We're going to let that one go then (laughter).

SENATOR HOWARD: Thank you (laugh).

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SENATOR PRICE: What a segue.

SENATOR HOWARD: (Exhibit 1) Chairman Karpisek and members of the General Affairs Committee, I am Senator Gwen Howard and I represent District 9. Thank you. I'm here today to introduce LB834 which addresses a serious problem I have seen over the past couple of years involving the penalties for liquor licensees who have violated state laws and Liquor Commission control rules and regulations. Over the past three years, I've attended several Liquor Control Commission hearings in person. One particular case caused me to look further into the penalties for violating Nebraska liquor laws. A bar owner from Omaha was before the commission, appealing his conviction of ten days' suspension for selling to a minor. For over a half hour, the licensee pleaded his case that being closed for ten days would put him out of business. At this point, the commission explained that the licensee, even though his penalty was suspension of his license for ten days, he could pay the \$50 per day fine, the rate for first offense in lieu of suspension. When he realized all he had to pay was \$500, he just said, well, why didn't you tell me this? Where do I pay? After being at that hearing, it seemed to me that the punishment for violating Nebraska liquor laws does not appear to be much of a deterrent. Many repeat offenders simply add the minimal cost of \$50 per day as the cost of doing business because they know that even if they have their liquor licenses suspended for multiple offenses, for example, selling to minors, they will not lose a day of alcohol sales. According to the Liquor Control Commission, there were a total of 3,051 days of suspension in 2008. Of that number, only 76 days or 2.5 percent were actually mandatory closure. In 2007, there were 5,014 days of suspensions with only 180 days or 3.6 percent of mandatory closure. It's clear to me that in Nebraska, a suspension does not equate suspension of sales. A Hy-Vee grocery store located in my district has had 52 days of suspensions for violations and another 14 days suspension for the convenience store/gas station at the same location for a total of 66 days over four years. For a national company like Hy-Vee, the current low fines are on the scale of a library fine rather than an actual penalty. There are many examples of licensees being automatically renewed year after year despite repeated violations of the law. I'd like to use as an example, a license in Kearney that shows how little impact our current penalties have. Have you got the packets? Were they distributed out? Thank you. You'll find a copy of that in your packet. I'm not going to read that to you because you can read it. It has a long list of violations, and the automatic renewals for this license. These have been provided to us by the Liquor Control Commission. This is just one example where our laws are being repeatedly violated and yet the state automatically renews the license year after year without question. The minimal fines currently being posed are not working. LB834 also brings an end to the automatic license renewals for violators. The bill would require a licensee who has been convicted or pleaded guilty to a violation during the previous year to complete a long form application and appear before the local governing body and the Liquor Control Commission. Under the current law, a license is automatically renewed unless three citizens filed a request for the local governing body to hold a public hearing on whether the long form should be required. This puts the

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entire burden on the public which often does not know if a licensee has violations or even that a protest needs to be filed in January. It should not be up to the public to do what the Legislature has entrusted state and local government to do. If LB834 had been in place, the licensee from Kearney that I described probably would not have been renewed. LB834 also restores a period for which violations of the Liquor Control Commission Act are considered back to ten years from the current four years. Under current practice, all violations going back longer than four years are no longer considered. We do not do this with criminal violations which these are, so why are we so allowing for liquor violations? And I would like to address the argument that will undoubtedly be made by some opponents that increasing these penalties put an unfair burden on small business. The reality is that this increase in penalties only affects those licensees who are convicted of violating Nebraska laws. If you are among the vast majority of license holders who obey the law year after year because it's the right thing to do, then this increase in penalties does not impact you in any way. In my legislative district, over 65 percent of the licensees have zero violations. I have no doubt that with the passage of LB834 that percentage will go up even higher. I fully expect that you will hear from the list of paid lobbyists from the liquor industry about how unfair this bill is to their clients when they break the law. Frankly, I would think that the liquor industry would be supportive of weeding out the small minority of licensees who break the law who are giving a bad reputation for all the members of their organizations. I don't see it's unfair to follow the law. I would also like to address the fiscal note which claims that this bill would require a \$242,000 expenditure. I have a tough time seeing why the Liquor Control Commission would need four additional full-time employees given the commission already processes these cases. It does not take more employees to collect higher fines. The fiscal note also states that LB834 would bring an additional \$8,400...\$842,000--it's more which under current law goes to the temporary school fund. I would be supportive of putting similar language into this bill as was put into the shipping fee bill to place this revenue in General Fund. I want to thank Chairman Karpisek and the committee for your willingness to address this issue. I believe LB834 is a positive step forward to reducing the number of violations that occur in Nebraska. Thank you for your patience and attention. [LB834]

SENATOR ROBERT: Thank you, Senator Howard. Are there any questions? Senator Krist. [LB834]

SENATOR HOWARD: Yes, Senator. [LB834]

SENATOR KRIST: Thank you, Chair. Senator Howard, you obviously did your homework, and so let me just ask you. Is it possible to call a fine...to put a fine into the General Fund? [LB834]

SENATOR HOWARD: Well, is it possible to put a fine into the General Fund? I think that's something that I would defer to (laugh)...I'm getting a nod it's not, but it seems like

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it's pretty possible for us to do most things that we make up our mind to. I would investigate that further and see if that isn't possible. [LB834]

SENATOR KRIST: Thank you. [LB834]

SENATOR ROBERT: Thank you, Chair. Senator Price. [LB834]

SENATOR PRICE: Senator, thank you. Senator Howard, appreciate and again, as Senator Krist said, your level of effort in bringing information for us. But...and I don't want to seem like an apologist, okay, but I looked at the first document you provided, and if you flip it over, and you give a tertiary glance, you think, oh, my gosh, I've got hundreds of violations. [LB834]

SENATOR HOWARD: The very reason I didn't read all those to you. [LB834]

SENATOR PRICE: But you read it and they don't. You find one that's referred to multiple times. You'll find a couple of years they don't have any at all. Okay, so I went back and I tried to look at it and there's a tertiary, but I see maybe seven violations in nine years. No, excuse me, in 10, 11 years so I look at seven to ten violations in 11 years, and we hear bills all the time. We had the driver's license bill before that the business owners oftentimes...and I look here at the number where you say, serving minors, and we have a very, very active group of our population who are trying to deceive these people, where they come up with fake IDs. They work really hard to deceive these business owners, and they get...every once in awhile, a minor gets served. Now, how we ascribe and assign blame...I don't blame you, but when you come here with this, it looks like it's much more horrific than when you drill down to it. And when you look at, like you said, the total universe of total owners, I know that there's a concern in your district, you know, that there's that bad actor, and that we want to get the system to work to really penalize those who are habitual abusers of our good trust, that's what we're doing, we give trust. But when you apply that statewide, could you not see that that's perhaps a reach? [LB834]

SENATOR HOWARD: Well, I have to say this to you. You're right, absolutely right. We've had a problem in District 9. I didn't...liquor issues were never in the forefront of my mind (laugh), although they do pertain indirectly to child welfare. But I have had a lot of contacts from people from out of the Omaha area that have been very concerned about this as well. It's not isolated to Omaha. We hear more about it in Omaha, and sometimes the situations that happen are much more...the shootings, for example. You read about those. Those make the paper, but there are other problems in other areas. This isn't isolated to the Omaha area. [LB834]

SENATOR PRICE: No, I absolutely agree with you, Senator Howard, and I do appreciate you coming forward with it and giving us numbers to work on. Just as an

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ancillary thing, would you be open to bars being open until 2:00 in the morning? [LB834]

SENATOR HOWARD: Well, (laugh) I'd have to tell you no. [LB834]

SENATOR PRICE: All right, thank you. [LB834]

SENATOR HOWARD: You're welcome. [LB834]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you. [LB834]

SENATOR HOWARD: Okay. You bet. [LB834]

SENATOR KARPISEK: Do we have a proponent...any proponent testimony, LB834? Welcome back. [LB834]

ERIN BAUM: Thank you. Good afternoon. Again, my name is Erin Baum. That's E-r-i-n B-a-u-m, and I'm here today representing Project Extra Mile. We'd like to thank Senator Howard for not only recognizing problematic areas of the Liquor Control Act, but also working to effectively address them. Her proposal provides the opportunity for critical leadership and is worthy of your support. Project Extra Mile has been privileged for a nearly 15-year history to work with citizens across the state, to work to address alcohol control policies, and licensing issues. During that time period, we have also watched policy decisions implemented at the Nebraska Liquor Control Commission and monitored the outcomes of hundreds of sale to minor cases. An increase in penalties for licensees selling alcohol to minors is a good step toward further deterring businesses across Nebraska for making illegal alcohol sales to minors. While we've seen significant progress in reducing the rate of retail establishment selling alcohol to minors since collaborative efforts began in the nineties, we continue to see businesses that repeatedly violate the law and put young people in harm's way. During recent compliance checks conducted in Douglas and Sarpy Counties, one business marked its fifth sale to a minor, and another marked its fourth. However, these businesses will only face penalties of a first and second sale to a minor violation respectively due to the current four-year lookback period. Examples like these are consistently being seen and are in part...well, my Project Extra Mile supports at least a ten-year lookback period for the purposes of imposing penalties. The period of time a drunk driver's record is used for purposes of enhancing penalties is 12 years. In the last five years, we've seen at least five cases where minors have died after purchasing alcohol at retail outlets across the state. In the most recent case that we are aware of, Sideline Steak and Sports Bar in Cook was found guilty of selling alcohol to a minor who later died in an alcohol-related crash. This was the business's second sale to a minor in about a three-month period. The business was given a 14-day suspension for which it paid a cash penalty in lieu of closing alcohol sales. It was never required to shut down alcohol

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sales for a single moment. These are the cases that deserve the highest level of scrutiny yet seem to be getting little attention and response. Currently, the commission imposes increased penalties for retailers found guilty of disturbances involving serious injury or death as part of its general guidelines or penalties schedule. There is no enhancement or differentiation in cases where injury or death occurs in sales to minors or intoxicated cases. Project Extra Mile's board of directors recently took a position in support of license revocation when death or serious injury occurs following a sale to a minor. Continuing to address these types of circumstances as we've seen in the past is a step away from the states charged to protect the health, safety, and welfare of its citizens. And with that, I'd be happy to take any questions. Thank you. [LB834]

SENATOR KARPISEK: Thank you. Any questions? Seeing none. [LB834]

ERIN BAUM: Thank you. [LB834]

SENATOR KARPISEK: Any other proponents? [LB834]

MARGIE MAGNUSON: Margie Magnuson, M-a-r-g-i-e, Magnuson, M-a-g-n-u-s-o-n. I'm here on behalf of the Alcohol Impact Coalition. We're in support of the higher fees for the...for violations. I think we need to really crack down and let people know that we're serious about these violations, especially if there's a death involved. The other part of this bill with the renewal, Gwen talked about that a little bit. I've had personal experience in that, and I think it is not generally known by 99.9 percent of the population that that's what happens, that I think when I've told people, I've had to actually submit a protest for a renewal in Omaha. It's automatic renewal unless you have three citizens that do that, to keep track. There's a very small window of opportunity for certain types of licenses, and when you can submit a protest for that. When I've told people about that, they're absolutely shocked. You mean like a store who's like maybe had a problem, had a sale to a minor, had a violation, had some kind of infractions? They think somebody's out there watching and keeping track. I think that's ridiculous that we don't as a city or state are monitoring that, and that you would have a red flag system. I mean, we've cut...the technology now that should be on the computer. It should automatically be red-flagged and come up and say, hey, we need to have that. It doesn't happy at the city level. I don't know what happens with the Liquor Commission and how much of that actually happens if someone's actually had some violation, if that's red-flagged. So I think that's an important component because, as Senator Howard said, you know, I'm involved in the neighborhood association and been involved for over 20 years. We've got a lot of other things on our plates. There's positive things that we're looking at, that we're trying to impact our neighborhoods. We're also trying to identify those things that are negative impacts. And so we don't always have the times or the resources to do that, so I think having a system in place that would automatically red flag any business that's had a violation within that year seems like a no-brainer. We shouldn't be depending on three people in the community to be monitoring that. That's something that the city and our

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state should be doing and looking out for the welfare, and I think the majority of the people would assume that the city or the state is already doing that. So I really think that's also an important component of this law that we really need to identify. So if you have...that's it. [LB834]

SENATOR KARPISEK: Okay. Thank you. Any questions? Seeing none, thank you. [LB834]

MARGIE MAGNUSON: Thank you. [LB834]

SENATOR KARPISEK: Any further proponents? Any opponents to LB834? Welcome back. [LB834]

JIM MOYLAN: Again, I'm...Mr. Chairman, members of the committee, I'm Jim Moylan, appearing on behalf of the Nebraska Licensed Beverage Association again. We're here in opposition to this. To start with, let's kind of take the sections that are in this particular bill. Page 3, the burden of proof is on the applicant. That's true when you file an application. When you get an application and the things that you have to reveal in that application goes all the way through the gamut of your whole life, so the burden is pretty much on them. (2) the license has already been vetted by your local governing body and your local police departments generally, and then (3) if it's approved by them, and the commission doesn't find anything additional from the FBI reports, then they'll grant it. Now, occasionally, they will call you down and you will have to come in. On the application, if they have some questions about it, they'll set a show cause, come down, want to know why a license should be issued to you. So the burden is really on them from the start. Now, let's go over to page 5. As you know, the automatic renewals is a form that's mailed out by the commission, and what you do, you affirm that everything, you know, for the coming year is no different from what the original application was when you filed it, that there has been no changes. Here, if there's been a misdemeanor or a high misdemeanor or a felony, naturally, you're not going to be able to get the license even on an automatic renewal. And if you have something like that, you probably ought to reveal it to them or it will be picked up by your local governing body, you know, and you will be asked to law inform. So that's pretty well taken care of. And now the commission can always require anybody to file a formal application if they find something in there or in their background that was not in the original application or there had been changes since then. So, you know, an automatic renewal, they ought to just continue like they are because they have to affirm that there's been no changes in the past year. The next...page 7, third and subsequent offenses...they're changing that to within ten years and they're tying the arms and the control of the Liquor Control Commission. Now, the Liquor Control Commission has a little bit of discretion on what type of a penalty they issue with respect to what the violation is, the severity of it, previous violations a person might have had, and any other characters, things. So that should, you know, still remain at four years and leave the commission the authority to

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not mandate closing, but they can mandate closing. Now, you might have two different separate applications. One might be the type of license that they'll mandate closing on; the other one, background, might not be. They might just give you the penalty, and then you can pay the fine. Now, on the previous page, they want to raise that to \$250. Go back to your little towns, and with all the compliance checks that are going on now around the state, you know, and the compliance checks are the type of things they come in when you're busy. They don't come in at 10:00 in the morning when there's two people in there. They usually come in at night when you're busy and bring a young lady in or a young man, ID, and some of them, we find they can't read the age right, number one, or they don't check, one of the two. And so let's say they come into your small town. You've never had one before. They come in on a busy Friday night, and the compliance check catches the bartender serving a minor. And so it gets to the commission; you have a hearing, and so they decide to close you for ten days. A little place like that cannot pay \$250 for each day. That would be \$2,500 to remain open on what I always have called an entrapment situation. So I think you ought to just leave that alone, leave that at the \$50. And also, second offense within four years, they have to pay \$100, so I think it's very important that, you know, we not change that because that should remain the same. And I think that's pretty much the bill. So we would ask that you let the Liquor Commission have some discretion. That's what they're there for; that's what they were...you know, you put them in the statute for, give them the authority and duties, let them continue to have the discretion that they need to handle each licensee possible. So we'd ask that you'd indefinitely postpone the bill. [LB834]

SENATOR KARPISEK: Thank you, Mr. Moylan. Senator Price. [LB834]

SENATOR PRICE: Thank you, Chairman Karpisek. Mr. Moylan, my question...actually, I have two of them... [LB834]

JIM MOYLAN: Um-hum. [LB834]

SENATOR PRICE: ...if you'll endure me. How many drinks are served...how many drinks are served in Nebraska in a year? [LB834]

JIM MOYLAN: How many what? [LB834]

SENATOR PRICE: How many...roughly, I mean you have a...how many billions of dollars, millions of dollars are served each year? I mean, roughly, do you have...as an industry, do you have an idea, rough order magnitude of how many drinks are served in Nebraska in a year? [LB834]

JIM MOYLAN: How many drinks, individual drinks are served? [LB834]

SENATOR PRICE: Yeah, yeah. Would you say that's just a big...too big a number right

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now to answer? [LB834]

JIM MOYLAN: I would think it would be, you know. They just...each one of them...every area is going to be a little bit different, you know. [LB834]

SENATOR PRICE: Well, the reason I ask this question, I mean, if we look at how many bags of potato chips are sold, if we look at any universe of numbers, and we look at violations, if we see that there's only, you know, 5,000 days of suspension given for drinks, but we have millions of drinks, you can see that the percentage of error is very low is what I'm trying to bring about here. To say of the total number of drinks served, most of them are legal, properly served to the proper patron, correct? [LB834]

JIM MOYLAN: Yeah, no question about it, and you could get the figures on all the liquor that came into the state and has been distributed, you know, by quarts, liters, cans, and that type of thing... [LB834]

SENATOR PRICE: Okay. I figured as much. I just want to put that on the record. And the other question I have for you, earlier you talked about the automatic renewal process, and you said that you as an owner or a holder of the license are affirming there's no changes to the status, so when you go to the next year's license, correct? So is it fair to say that there's never a case where an automatic renewal has taken place, and there has been a violation? [LB834]

JIM MOYLAN: Well, there has been, but generally, if it's picked up, you're going to have to, you know... [LB834]

SENATOR PRICE: But there is an if there. [LB834]

JIM MOYLAN: Yes. You'd have to... [LB834]

SENATOR PRICE: You have to have somebody pick it up, so in other words, it is also conceivable that the system has enough laxity in it, that you could have a license holder have a violation and get an automatic renewal. [LB834]

JIM MOYLAN: Well, not...it wouldn't be a serious one. Yeah, there might be...you know, you might have a liquor violation in the last year, you know, a small after-hours container or serving after hours or something or one of these sting operations, yeah. But as far as the application and everything is concerned, you know, you're pretty much affirming what was on there the past year. [LB834]

SENATOR PRICE: All right. Thank you, sir. [LB834]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none,

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thank you, Mr. Moylan. [LB834]

JIM MOYLAN: Thank you. [LB834]

SENATOR KARPISEK: Any further opponents? [LB834]

HOBERT RUPE: (Exhibit 2) Good afternoon, Chairman Karpisek, members of the General Affairs Committee. Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission, and I'm sort of put in a weird position here, opposing Senator Howard's bill. And we've been working with her very closely on a lot of other bills which we...and support on issues, but just proves that no matter how hard you try, you can't get everybody to agree all the times. What you're being handed out right now is a copy of what's called the Penalty Guidelines utilized by the commission. And a couple of things I'm going to go through with you on this. First of all, you know, the fiscal note, you know, and, like I say, I don't put in and sign off on 200-plus-thousand-dollar fiscal notes lightly. The problem which creates the fiscal note is the requirement that everyone who has been found guilty of a violation or found guilty, either pled guilty or found guilty must go back through the process. Okay. What does that mean? That means we'll be processing an additional 387 licenses based upon fiscal year '08-09. That almost doubles the number of licenses we process in that same time period. During that same time period, we process, amazingly, 487, only 100 applications more than this would be an additional, almost doubling the requirement. Also, and that's done primarily right now by three licensing staffs. Also, the requirement is that shall be had before...a hearing shall be had before the commission, so that's an additional 387 hearings that shall be had before the commission. That's probably going to take our hearing schedules from a two-day per month, probably to a four- or five-day per month schedules. It's also going to increase the number of legal staff, you know, staff assistants in the legal division to process those applications. So we would think that, you know, there's two people there now. If you're going to double our workload, that's going to be double our number of people we need handling the jobs. And also, I think that's a relatively, believe it or not, conservative fiscal element because it doesn't have the fiscal note from the Attorney General's Office requiring the prosecutor to help appear on those cases, doesn't handle the Fire Marshal who's going to have to go back out and reinspect those locations, doesn't have the fiscal note from the Department of Agricultural Foods and Dairies is going to have to go out and reinspect those, nor the Nebraska State Patrol expenses going out and relooking at those. That's just the commission expenses. All right. So that was our big concern there is that everybody who has been found guilty of a violation by the commission shall be had. It's also, I guess, my thought that we would see actually more contestant cases, people would be less likely to plead guilty if they're going to have to go through the long-form process anyway. They might show up and hope that the opposing witnesses don't show up. All right. Give you an idea of what happens in a hearing before the commission. The Nebraska State Patrol is the primary investigative

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arm of the commission, however, they're not the only ones. The commission can receive reports from any law enforcement agency--local sheriffs, local police, the patrol. They will send a report which is commonly called a tavern violation. It's got a relatively old terminology for it. Those tavern violations are sent to the commission. Once they're come in, that's when they'll be first logged in and then sent to us. All right. The process they go through then is they're reviewed by Sergeant Martin Costello of the Nebraska State Patrol to make sure they're actually alleging a prima facie case of violation of the Liquor Control Act. Some things might be alleging, for instance, there is no statute, Nebraska statute which prohibits an employee from drinking on duty. However, Lincoln has a city ordinance, so, you know, they might be alleging that this person was drinking on duty which might be a violation of ordinance, but isn't a violation of the act. Okay. After they're reviewed by Sergeant Costello, and he doesn't get rid of any, he just reviews them and writes his comments on, they're then reviewed by the Assistant Attorney General currently assigned to the commission, Milissa Johnson Wiles, for a decision whether there is sufficient evidence to charge. These are administrative charges, therefore, it's a preponderance of the evidence. If she makes a decision to charge, it goes onto the docket. There will be a hearing held in front of the commission. The three commissioners sit as a jury to make the final decision. I have the privilege of serving as hearing officer and try not to screw up the law coming in too bad, and...or otherwise, the district court will tell me I did so. They can be represented by counsel, and sometimes they represent themselves. There is...and Milissa serves as the administrative prosecutor. Okay. If they're found guilty, then they're sanctioned, and that's where we get to what we have in front of you. That's currently the penalty guideline structure, and I can tell you right now, probably 99 percent of the cases that come in front of them fall within that. The commission long ago has gone by the theory of progressive discipline. You'll notice that certain offenses are considered more serious; they start at a higher level. The fourth conviction is four years. You've heard earlier about the four-year lookback. The four-year lookback, believe it or not, is as a result of a court order. The court looked at, and I believe Senator Howard's bill amends it, the 53-1,104. We tried looking further back than four years, and the district court said, it appears the legislative intent that four years should be lookback based upon that statute--that's what you're going to do. So, you know, it's one of those lovely things. You think you know what a law says exactly until somebody with a black robe sitting behind a big bench tells you otherwise. All right. So that's where the four-year lookback comes from right now currently. The amount of penalty is based upon the Legislature. It's \$100 per day except for your first offense, and it's your first offense on anything, not for each subsequent type--it's \$50 per day. So let's say that you had a refilling, and you had a guy here for three days, and that would be \$150 fine which you could serve in lieu of, but you've got to remember, the commission cannot fine you. It can suspend you and the statute allows you to pay off those days of suspension in lieu of fine. And to go back to Senator Howard's opening statement, unfortunately, she's finding the same thing we do that not all the times our licensees don't read what we send them. It's the buyout period is purely within the notice of the hearing of how they can pay it out if they plead

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guilty. So the individual...I remember the individual showed up and was shocked he could pay it out, and we were shocked they didn't realize it because it's the third paragraph down in the letter he would have received going through the buyout plan. The other issue I would look at is, you know, it is progressive discipline, and I will say that most times we go by the penalty guidelines, but not always. There have been cases where we have revoked or cancelled a liquor license for a first offense. I'll give you an example of one. It was a place in Kearney which had a sell to a minor and, unfortunately, the minor died. Well, the commission can't really look at what was the outcome. It has to look at what happened. Well, when we look at what happened was this place had such lax controls, they allowed a 17-year-old to become a regular by being sold by three or four different clerks. Then Commissioner Flowers made the statement on the record that not only did they not attempt to pick the ball up, they kept bouncing it in front of them, and they ignored it. And so the commission felt that because it was a...it appeared to be a systematic failure that progressive discipline was not warranted and, therefore, they went...I believe they revoked the liquor license...either revoked or cancelled, I can't remember, on a first offense. So the commission does have that, and I can tell you that with a...if generally, if they're going to deviate from the guidelines you have in front of you, it's generally going to be to deviate upwards because if they think there's a public health safety or welfare aspect to it. Also, you know, the..there is a rule (inaudible) time where citizens can protest also, and you're seeing more of it recently. Cities can request a...the commission to have someone follow a long form in lieu of being automatically renewed. Now, this is, once again, this case where you read the law and you think it says one thing, but a court decision has altered it. It seems to indicate that the city or the commission can, at any time, ask for a long form where there's a case called Grand Island Latin Club v. Nebraska Liquor Control Commission which says there's got to be at least a reason that there's...to believe there's been a change from the other ordinary renewal which would necessitate that. And so when we have those requests, a lot of times it's almost like a probable cause hearing, the city will...the probable cause, does appear to be a change, will do so. What happens if somebody, oh, renews and forgets to notice things? Depends on what it is. A lot of times when we get the renewals in, we'll see that all of a sudden someone got married in the interim. Well, that would require the spouse then to undergo a background check because a spouse must qualify the same as the primary. And so, a lot of times when we get those renewals in, they do spark the action by the commission. A lot of times they'll be...they'll have gotten married; there will be a change in the corporate structure. If there's a change in the corporate structure resulting in over 25 percent of the stock change, the corporation will have to file a new form. And also, of course, we do get reports, you know, felonies and misdemeanors. If we get reports and, unfortunately, I can't say that it's never happened, if we do find out that somebody has been convicted in the interim of a felony, they're...except for a show of cause hearing, there's no renewal form--this is for show of cause hearing of why the license should not be cancelled or revoked due to them being ineligible to hold a liquor license. Do I think there are things we could try to do better? Yes, but I think overall the commission does

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a pretty good job. I see I'm talking on the red, so I will, you know, shut up at this point in time. People probably wish I would have done it a couple of minutes ago, and be happy to answer any of your questions. [LB834]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Senator Krist. [LB834]

SENATOR KRIST: If this...thank you, Chair, if this bill did nothing but raise the fines to raise the awareness to be more restrictive, would you be in favor of that action? [LB834]

HOBERT RUPE: You know, I would have to go by you, and the final decision whether to support or oppose a bill comes from the three commissioners. I don't think that there would be as much opposition, at least from the way it's set up. Now, whether we would continue to do the same numbers of days might be determinative. The commission tries to use progressive discipline, you know. They try to utilize what's...you know, it's unfortunate it's not a carrot, it's a stick. How big of a stick can you hit somebody to try to get them into compliance? You know, that's the key thing that must be recognized. The penalties, guidelines, especially the first and second offense, are how do we get this person back into compliance, not how we drive them out of business--how do we get them back into compliance? Philosophically, there's been a big debate within the commission and nationally amongst administrators on what are commonly called penalty matrixes. This is what's commonly called a penalty matrix. You know, does the penalty matrix have the same effect because ten days on a small bar in Wilber...does that have the same effect as a ten-day suspension on Walmart? It's easy to pick on Walmart--they're big. Walmart can find the \$1,000 fine in the cushions in home furnishings. You know, and so there is a difference there but, you know, that's sort of philosophical. I mean, the commission tries to impose a penalty to rectify the behavior, so. [LB834]

SENATOR KRIST: Thank you. [LB834]

SENATOR KARPISEK: Senator Coash. [LB834]

SENATOR COASH: Thank you, Chair. Hobie, we seem to be very interested in this committee and the whole Legislature in what are other states doing, so. [LB834]

HOBERT RUPE: Okay. [LB834]

SENATOR COASH: Can you speak to fines with our neighboring states and how we compare with fines for liquor violations? [LB834]

HOBERT RUPE: On some we're higher and some we're lower. It really depends. Some commissions utilize more what's sort of called an agreement type thing where they'll go in in front of a hearing officer and have an impartial where they'll sort of agree what the

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appropriate fine is. And a lot of times those we based upon a percentage of the alcohol sales which that's sort of the contrary version of the penalty matrix that we've got here. Other states, Florida, for example, uses a penalty matrix like we do. You know, there are different ways to do it. You know, the main intent is the same in all jurisdictions. Is the sanction large enough to curtail the activity? I used Walmart as an example earlier in the, you know, is the same as...a ten-day suspension the same? Well, you know, the ten-day suspension of a small bar in Wilber, the only person who has to pay that and get in trouble for that is the guy in Wilber. I happen to know that when Walmart happened...goes...it goes all the way up to a vice president who can then sanction, perhaps remove a manager or review the manager's position. So, you know, it depends on the corporation, how it is. I mean, everybody is not created equal. The penalty matrix tries to put some parameters so that basically the commission knows what it did beforehand, so it's not being arbitrary and capricious. Other states will do more, they'll do less. Some states will have a mandatory closure. We have mandatory closures for second and subsequent sales of violations to minors, and we also have option for mandatory closure on possession of gambling devices. [LB834]

SENATOR COASH: Just to follow up on that, Hobie, what's your best guess as to estimating how many licensees pay their fine rather than close up? [LB834]

HOBERT RUPE: I think the vast majority do pay the fine. [LB834]

SENATOR COASH: Most people just pay the bucks? [LB834]

HOBERT RUPE: They do pay the fine. [LB834]

SENATOR COASH: Okay. [LB834]

HOBERT RUPE: And I guess I'll answer the question that Senator Howard was asked earlier. There's some Supreme Court cases which treat fees different than fines. I don't think you can redirect fines anywhere other than the local school fund because of the Constitution, so. I know that question was asked earlier. I think it's...you know, it's one of those things where they should be treated the same but the case law sort of differently on the two of them and fines clearly go to the school fund. [LB834]

SENATOR COASH: Thank you. [LB834]

SENATOR KARPSEK: Any other questions? Senator Dubas. [LB834]

SENATOR DUBAS: Thank you, Chairman Karpisek. Thank you, Hobie. So did I understand correctly? If there's a violation, it's not a fine that you directly assess. You assess a suspension and then in lieu of the suspension, they're able to pay a buyout. [LB834]

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HOBERT RUPE: Yes, that's by statute. They have to pay that fee at least seven working days prior to the date of suspension that would have to begin. So when I...when the commissioner says, fine somebody 14 days, here, it suspends them 14 days. We will send an order out which will have, you will close at the end of the business day on X. You can reopen here. We will send out the two forms which must be posted, and also we'll have within that thing, if you choose not to serve the suspension, you can pay it out this much, and will contribute it...generally, it's \$100 per day except if they've had a clean record in which case it's \$50 per day. [LB834]

SENATOR DUBAS: So, if you've had a violation, XYZ, you don't come in and say, okay, this is your violation and you need to pay \$100. You come in and you say, this is your violation, and so we will suspend you for this many days, and then you have this option of the buyout. [LB834]

HOBERT RUPE: That's correct. [LB834]

SENATOR DUBAS: Okay. Is there anything...is there any violation that would make you automatically not renew a license? [LB834]

HOBERT RUPE: A couple of things. Violations...got to remember, when they come before us on the sanction they can cancel that time, and generally, we'll take care of those issues at that point in time. If there's been, as I said, a systematic failure, the commission might take care of it. If there's been a material falsification of the application or the renewal, they will cancel it, cancel. Now, material means, you know, if they forgot that they...you know, they put it down that they had a disturbing the peace in '71 and it was in '73, that's not a material falsification. However, if it comes out...if they renew it and we find in the interim they've been convicted of a Class I misdemeanor or a felony or oftentimes a second or third offense DUI, we'll bring them back in for a hearing at that point in time and generally, not only are they in trouble for the act--they're also being in trouble for the cover-up because they didn't notify the commission, that's a falsification. The commission takes falsification very seriously. The other issue which normally you will receive a cancellation is if you're in violation of the spousal affidavit. As I said earlier, the spouse has to qualify the same as the primary. Oftentimes that person will be ineligible because of past history or other things. The act allows for them to say, hey, I have absolutely nothing to do with this. It's completely my spouse's business. I'm receiving nothing from this, and they'll do the spousal affidavit. We generally, about six months after we give out one of those, we generally make sure the patrol checks up, make sure the spouse isn't there. If he's there...that's what it's been lately, it's been he's have been the guys who should not have been in there and have been, they'll be sent for a hearing, and their license will be cancelled. [LB834]

SENATOR DUBAS: How would you know if someone falsified some information on their

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renewal? [LB834]

HOBERT RUPE: We get a lot of ways. We hear from law enforcement; we hear from the citizens; we hear from...the local governing bodies will bring it to our attention. You know, one of the best ways we will look...from the enforcement wing, there are investigators assigned to each troop area, and they generally will try to get relationships with the road troopers who check the other towns, and if they hear of something or...and they'll...oftentimes...they'll check the arrest reports from people in the records and cross-reference those. And so most times when there's been an arrest or a conviction, it's come to us from the Nebraska State Patrol. [LB834]

SENATOR DUBAS: This example that's been passed out to us,... [LB834]

HOBERT RUPE: I haven't seen it, so. [LB834]

SENATOR DUBAS: ...this business in Kearney, okay. I would like to maybe visit with you and just have you kind of walk me through it and explain some things to me. [LB834]

HOBERT RUPE: Sure. It's somewhat archaic. I mean, my licensing staff has been after me to get a new licensing database for years. (Laugh) I keep telling her we can't afford it, so. [LB834]

SENATOR DUBAS: All right. Thank you. [LB834]

SENATOR KARPISEK: Any other questions? You touched a little bit and was brought up about the red flags for violations. You said, yes, maybe it could slip by you. Most of the time it's going to come up on a renewal. [LB834]

HOBERT RUPE: Yup. [LB834]

SENATOR KARPISEK: How does that work? How do you get red flagged on that through the...? [LB834]

HOBERT RUPE: Well, if there's been a violation of the commission, the commission is aware of that. [LB834]

SENATOR KARPISEK: Right. [LB834]

HOBERT RUPE: You know, and we have those in the records. The ones which sometimes, you know, might slip through we don't know is, as I said, usually the patrol does an excellent job, and they have an excellent staff who will...and then we have a very good working relationship where they'll notify us of, hey, you know, Hobie at

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Hobie's Hootch Hut got picked up for, you know, getting into a fight and looks like he's being charged with a Class I misdemeanor. And so we'll start tracking that and we'll see what the ultimate conviction is. You know, ultimately, they'll be convicted of, say, a disturbing the peace. He better notify that on his renewal the next year or because we sort of have a wall where we're tracking some of those. That said, is it possible that a conviction of somebody could slip through and we don't see everything? It's entirely possible. I mean, you know, I'll use this as a plug. I wish I had twice as many people assigned to the patrol doing investigative services, you know. I guess that's a plug. I'll say, hey, I'm not asking for money for my own agency but I'm asking for money for another agency (laugh). [LB834]

SENATOR KARPISEK: Okay. Thank you, Mr. Rupe. Any further questions? Seeing none, do we have further opponents on the bill? While she's coming up, I will read into the record a letter of opposition from Responsible Beverage Operators of Nebraska. Welcome. [LB834]

KATHY SIEFKEN: (Exhibit 3) Senator Karpisek and members of the committee, my name is Kathy Siefken. Kathy with a K, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. I'm their executive director and their lobbyist, here in opposition to this bill. The first point I would like to make is that we as licensees of alcoholic products take the additional responsibilities that we have, as a result of holding that license, we take those responsibilities very seriously. And we do what we can to stop those sales to minors, and sales to minors is the highest number of violations that we have in grocery stores. We run our own compliance checks here in Lincoln. We asked for your assistance in LB261 that would allow us to scan the back of a driver's license. So that we would know what the age of the birth date was. We try to implement as many things as possible to stop those sales to minors and to keep those violations low. What this bill does, though, is...the bill in its entirety as it's written and introduced, would put people out of business. What I passed out to you is a list of the penalties...what the current penalties are and what this bill would take them to. And the first offense, Senator Howard had made the comment that some guy said, where do I pay? And while \$500 doesn't sound like a lot of money to some people, that is a lot of money to a small retailer in rural Nebraska. They don't have \$500...they don't do...they don't intentionally make these sales. When you compare that to one of the bigger operators, \$500 probably doesn't have that big of an impact, but it still is a detriment...or not a detriment, excuse me, a deterrent. What this bill does is on the renewals, and Hobie talked about this, so I'm not going to go into a lot of detail. But on the renewals, if there's a misdemeanor then you'd have to have a formal application and a hearing, and it increases the cost to the state in that regard. The penalties...and I wrote these out like this so that you could actually see what kind of dollars we're talking about. When you take those fines from \$50 to \$100 and...from \$100 to \$300 on a second offense which is the second segment there, a second offense, and this bill would also take it to ten years, a lookback to ten years, and it says that the Liquor Control Commission shall

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look back ten years, not may, so that discretion is taken away. And so in ten years, if they make a sale to a minor, the penalties that they are going to see on...within four years, it goes to \$2,200. If it's within three years, it goes to \$9,600. If it's within two years of their first offense, then we're at \$12,000. And if their second offense of selling to a minor is within one year of their first offense, then you've got a \$15,000 fine. That's more than a deterrent. That will kill a business. It will absolutely take those grocery stores out of those towns, \$15,000 on a second offense in ten years. Our turnover in our grocery stores is about a hundred percent per year. We are constantly training and retraining. We worked with the DMV to get the vertical drivers' licenses, and you would think that that would be a no-brainer, that our clerks would not sell to minors because all they have to do is look at that driver's license and if it's vertical, you don't make the sale--no-brainer. They do it anyway. They do it. We don't know how to stop that. That's why we asked for the standing...the driver's license so that we could get that birth date. In a perfect world these things work. This isn't a perfect world, and people make mistakes. Senator Howard mentioned that there was a Hy-Vee in Omaha that had a...and I think she misspoke, and she's going to come up after me, and so she can correct me if I'm wrong. But Senator Howard and I talked about this bill when she first...when it first came up, and I read it. And she told me that there was a Hy-Vee store that had a mandatory close, and so I went to the Hy-Vee regional director and said, okay, what is this all about? He checked into it, and what it was, Senator Howard said that it was a 52-day close, and I think she meant a 52-hour close because there has only been one Hy-Vee that has had a mandatory closure. They're not proud of it. It was a 48-hour closure, and it's never happened again. They took steps to correct what was wrong in that store. They take pride in making sure that they do things the right way. They don't want to sell to minors. So I believe that that was just an error in that testimony. I understand that Senator Howard has problems in her district. We don't like the bad players either. We would like to see those people not get a license to begin with, but you can't tell who's going to be a good player and who's going to be a bad player until they turn into a bad player. You have to give people a chance to correct their errors. We're all human. This is called due process, and we need due process. We need to be able to correct those things that are wrong, and those people that are not willing to correct the wrongs that they are doing deserve to lose their license. We believe that. We are doing everything that we can to stop the sales to the minors. Sales to intoxicated people is one of the other things that every once in awhile we may have an issue with, but for the most part, not. So we oppose this bill for those reasons. If you have any questions, I'd be happy to answer. [LB834]

SENATOR KARPISEK: Thank you, Ms. Siefken. Any questions? Seeing none, thank you. [LB834]

KATHY SIEFKEN: Thank you. [LB834]

SENATOR KARPISEK: Further opponents. [LB834]

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TIM KEIGHER: Good afternoon, Senator Karpisek and members of the committee. My name is Tim Keigher. That is K-e-i-g-h-e-r. I appear before you today as a registered lobbyist and the executive director of the Nebraska Petroleum Marketers and Convenience Stores Association in opposition to LB834. I guess I won't reiterate everything that's already been said. I should have compared notes with Ms. Siefken first because she said everything I was going to say. I guess, you know, my members do spend a lot of time and a lot of money training their employees not to sell age-sensitive products to underage people. But any of you that ever have had employees know that it's difficult to control everything an employee does. Just like Kathy had mentioned, you know, having a different driver's license, you would think it would be easy. In...I know that one of my members brought in a bunch of employees who had been caught, you know, selling to an underage person before and asked them why. You know, why didn't you look at the driver's license? And, you know, we have a little chart there that says how old you're supposed to be and everything, you know, they were rushed. They didn't...they just assumed since they gave them the driver's license they were of age. So it's difficult to control everything that an employee does. I think that, you know, looking back four years is an adequate amount of time to look at what the history of a retailer is, and I think that we should keep the flexibility with the Liquor Control Commission. I think they're doing a good job in deciding who should get licenses and who shouldn't. So with that, I won't reiterate anything else. I'll be happy to answer any questions you may have. [LB834]

SENATOR KARPISEK: Thank you, Mr. Keigher. Any questions? Don't see any. Thank you. Further opponents? [LB834]

JIM OTTO: Senator Karpisek, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for both the Nebraska Retail Federation and the Nebraska Restaurant Association. I'm here on behalf of both organizations in opposition to LB834. I don't need to really repeat things that have already been said. I think most of the points have been made. We simply feel that the Liquor Control Commission does a good job with the discretion it has, and that the bill as introduced is...takes things too far. With that, I'll... [LB834]

SENATOR KARPISEK: Thank you, Mr. Otto. Any questions? Don't see any. Thank you. Any more opponent testimony? Any neutral? Senator Howard, would you like to close? [LB834]

SENATOR HOWARD: Well, I will, actually. A couple of things before I get into the closing testimony that I have here. In listening to some of the testimony, it sounds like the lookback period of four years really was decided upon by the judicial system based on their understanding of what the legislative process had put out there. So I would suggest to you that that lookback period really is at our discretion. If we choose to keep

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it at four years, that's what it is. If we make the decision to look back further, I would say that's up to this body. The other thing that struck me as very interesting, was possibly I've regarded the Liquor Commission in an unfair light. I really hadn't thought of them as a social services agency (laugh). I had really regarded them more as a law enforcement agency, but when Hobie was speaking about assisting bar owners and licensee holders to get on the right path and to do the right thing, I saw his regard for their mission as different from what I had regarded it as. Chairman Karpisek and members of the General Affairs Committee, I want to thank you for your commitment to looking at this issue and for considering LB834. As you would expect, you've heard from some individuals that passing the tougher penalties contained in this bill would place an unfair burden on a minority of licensees who have been found guilty of violating state laws. I did a check of the histories for the licensees in my district to see how many actually had violations and suspensions. I discovered that 65.7 percent of the licensees in District 9 have zero violation and zero days of suspension. They obey the law because it's the right thing to do. Why shouldn't the remaining 34.3 percent with violations of the law be made to respect the law in the same manner? License holders should expect that if they violate our laws, then there are serious and meaningful consequences for those actions. If a licensee has 66 days of suspension for repeated violations without actually being required to stop selling alcohol, then clearly, they do not fear the consequences as they are currently written. LB834 would bring the penalties in Nebraska more in line with some of our surrounding states which is what you had asked. To offer one example, in Iowa, a licensee faces a \$500 fine and 30 days actual suspension for the first offense; \$1,500 fine and 30-day actual suspension for the second offense within two years; and a \$1,500 fine and a 60-day actual suspension for a third offense within three years. The fourth offense within three years is an automatic revocation. Other bordering states have even stricter penalties. I would say to you, the time has come to make liquor laws mean something. I do not believe that we cannot think this Legislature should ever accept the argument that it is too hard and too unfair for a minority of people to obey the laws we pass. Businesses in my district like Gorat's which has zero violations since 1988, the Leavenworth Bar which has had zero violations since 1993, and Gerda's Bakery that has had zero violations since 1993, Katie's Tavern, Bucky's Convenience, McFly's, these should be commended, and the violators who break the laws should be fined accordingly. As I mentioned in my opening, I'm very open to working with the committee on addressing the costs in the bill as well as removing the revenue funds to the General Fund, although that may not be possible. One final closing comment is, I do have the information regarding the suspended 52 days. According to the Nebraska Liquor Control Commission form, it's for license number 55723, suspension of 52 days, trade name Hy-Vee Food Store #1. The address is 5150 Center Street, the address I referred to. This grocery store also has a convenience store and gas station associated right there with it on the premises. Hy-Vee Gas #1 at 5102 Center Street, they, in addition to the 52 days at the grocery store, have been suspended for 14 days. So, thank you. [LB834]

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SENATOR KARPISEK: Thank you, Senator Howard. Any questions? And that is one of the ones that you passed out to us, correct? [LB834]

SENATOR HOWARD: It is. [LB834]

SENATOR KARPISEK: And it looks like that was in '02 just for the record. No other questions? That will end the hearing for LB834. We'll now open the hearing on LB854 with Senator Howard again. [LB834]

SENATOR HOWARD: All right. I'm back for more water. Thank you. (Laugh) Mr. Chairman and members of the General Affairs Committee, I am Senator Gwen Howard, and I represent District 9. I'm here today to introduce LB854. First, I want to thank Chairman Karpisek, Chairman Karpichek (laughter) for his willingness to work with me over the interim to address some of the issues that I brought before this committee last year on LB605. As you may remember, we had a very good public hearing last year on LB605, and I appreciate all the work that this committee has done to reach this point. At the suggestion of Chairman Karpisek, the various components of LB605 have been reintroduced as individual bills for your consideration. LB854 is the component of LB605 that requires all applicants for a liquor license in Nebraska to certify that they are current on all federal, state, and local taxes as well as all contributions to workmen's compensation. What brought this issue to my attention was a battle over the past two years in my legislative district involving an applicant for a liquor license at several convenience stores. Neighborhoods opposed these licenses, and during the licensing process, it was discovered that the applicant had failed to pay any of the property taxes that he owed for any of his properties over the past two years. He had moved to Nebraska from Illinois, and he had failed to pay his wheel tax or register his car...his two cars, actually, his Hummer and his Mercedes in Nebraska in addition. When this issue was brought to the attention of the Liquor Control Commission, the neighborhoods were told that it didn't matter because there was no requirement to pay taxes in order to get a liquor license. Nobody likes to pay taxes, especially when we see nearly every governmental body in Omaha raising their levies. But no matter how much we dislike paying them, all of us meet our obligations by paying our taxes on time. I asked my constituents in my annual survey this year about this tax issue. In District 9, 89.7 percent support requiring liquor license applications applicants to be current on their taxes while 6.5 percent were opposed, and 3.8 percent had no opinion. I would certainly expect a similar response in other parts of the state. As statute 53-149 states, a liquor license in Nebraska is purely a personal privilege. This has been in the statute since 1935 and has been reaffirmed by the Nebraska Supreme Court in several rulings. I do not feel that it is asking too much of anyone requesting the privilege of selling alcohol in Nebraska to be current on their taxes like any of the rest of us. When someone does not pay the taxes they rightfully owe, the burden then falls on all of us who do pay in the form of higher taxes to make up the difference. Again, I want to thank Senator Karpisek for all of his assistance and for this committee for standing up for the vast majority of

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taxpayers who follow the law by not rewarding applicants who do not pay their fair share. Thank you. [LB854]

SENATOR ROBERT: Thank you, Senator Howard. Any questions? Senator Coash. [LB854]

SENATOR COASH: Thank you, Senator Robert. Senator Howard, I was just...I'm just putting myself in the position of a license holder if this bill were to pass. What do you envision certification to look like? Do I have to go...I mean, you're requiring certification on federal, state, local taxes, and what do I...what do you envision that applicant bringing? [LB854]

SENATOR HOWARD: It would be as simple as the burden being on the individual who's applying for it. Having a certified statement that is current. [LB854]

SENATOR COASH: From like self-disclosed statement or? [LB854]

SENATOR HOWARD: You know, I would defer to either working with this body or the Liquor Control Commission themselves to see what they would find to be, (1) the simplest method of doing this, and (2) the most accurate. [LB854]

SENATOR COASH: Okay. I think Hobie will help us out. Thanks. [LB854]

SENATOR ROBERT: Any other questions? [LB854]

SENATOR HOWARD: Okay. [LB854]

SENATOR ROBERT: Thank you, Senator Howard. [LB854]

SENATOR HOWARD: Thank you. [LB854]

SENATOR ROBERT: We'll move to proponent testimony. Are there any proponents to LB854? [LB854]

MARGIE MAGNUSON: Margie Magnuson, M-a-r-g-i-e M-a-g-n-u-s-o-n, and I'm here on behalf of the Alcohol Impact Coalition. We were here when it was LB605, supporting Senator Howard on this measure. You know, she spoke of some of the residents and the issues we had. I've had...we've had this issue. We've had where we've gone before the city and the state. Again, we keep hearing the tying in liquor licenses to economic development which really irritates me, but it is a privilege, and so what we found really frustrating was some of these owners, and we still have...that's not just the one particular owner that Senator Howard is talking about, but we have one right now currently, hasn't paid their taxes. It's really irritating to a resident to know that they

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haven't paid their property taxes or any other kind of taxes, and to have the city tell us, well, or the state tell us, well, this is...you know, we want to have new businesses here. We want to have people to generate income, yet they're not paying their property tax. I mean, I guess we'd all like to be able to defer paying our property tax for a couple of years. This one business had...it was a couple of years, actually, that it went into a tax lien. So...and also, there's a measure on this bill about renewals of making sure, at the time of renewals, that their taxes are paid. Currently, we're protesting a renewal. They haven't yet paid their 2009 taxes, property taxes. So, I guess as a taxpayer, I think, you know, we should be requiring businesses to have their taxes paid, and there should be some sort of certification to that. So I support this bill. [LB854]

SENATOR KARPISEK: Thank you, Ms. Magnuson. Any questions? Seeing none, thank you. Further proponents? Welcome back. [LB854]

HOBERT RUPE: You guys have missed me, right? No. Hobert Rupe, executive director of Nebraska Liquor Control Commission, (laugh) that's H-o-b-e-r-t R-u-p-e. As I said earlier, my early comments were weird because we've been working with Senator Howard on certain bills. This is one where we would support her effort. You've had the privilege and duty of hearing a whole host of liquor bills recently, if there's one underlying theme that at least on ones that the commission has put forth, is we're trying to professionalize the industry as much as we can. You know, the industry back in 1935 contemplated different types of setups than you currently have today. It was more ma and pa shops, there wasn't many incorporated entities. It wasn't multi-state entities. And so most of the bills we've had sort of try to look at it and say, you know, it doesn't reflect what's required in 2010. This requirement, we think, would be not very onerous. Based upon just a quick look, it looks like at least Kansas and Oklahoma are similar states within the Midwest which have similar statute and requirements. We're already trying to examine their forms that might be required (laugh) because why reinvent the wheel? We think it would be as simple as probably doing a form. Most of our forms are electronic on the Internet, and so they're pretty easy to change. It doesn't require a lot of changes. It would probably just be an addendum to the application that they are current. What happens if they're not current? Well, it's probably always going to depend on whether it's a sin by omission or commission. If somebody is unaware that there's a, you know, sales tax lien of \$5.55 on his previous business that he never got certified with, probably the commission would look at that quite differently for him failing to disclose that for owing 5 grand or something else, like it was I think was the case in the...with individuals that Senator Howard looked at before. It would be a very serious possible falsification of the license; it would be a requirement. As I said earlier, we don't really like falsifications of the license. But a lot of it is going to depend on what exactly it was and, you know, what they've done to look at it. So I think, you know, the support...the commission would strongly support the bill, and I'd be happy to answer any questions. [LB854]

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SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Price. [LB854]

SENATOR PRICE: Senator Karpisek. Thank you, Mr. Rupe. My first question has to go with the word...has to go with all obligations current, current on all obligations. [LB854]

HOBERT RUPE: Um-hum. [LB854]

SENATOR PRICE: Where does that put a person who is in the protest of a property with the TERC or something like that? [LB854]

HOBERT RUPE: I think he would be current in all obligations until he's exhausted his remedies and been found to have that liability. [LB854]

SENATOR PRICE: Do you think it would be advantageous for that to be called out on this legislation, so you don't have someone say, well, he's not current, but in other words, I want to make sure that all entities who would have some input on this understand the definition of current means in case...there's many times when...where someone will own multiple properties. We had someone testifying earlier today. There could be a lot of different things going on where a person isn't in violation of anything, but they're not current. [LB854]

HOBERT RUPE: Yeah. I think, you know, you could probably, you know, clarify that a little bit, and I think Senator Howard would work to...make that...I mean, you know, we're...just because, like I said, if somebody is, you know, protesting a right or perhaps let's say that they're in a payment plan with the IRS over a certain amount of time, I would consider that current. They might still owe money, but they're in a payment plan that they set up with the IRS, so they're current on all their obligations as to that. I think, you know, perhaps you might want to clarify that. You know, a lot of it's going to be, you know, the individual that Senator Howard...oh, by the way, he was revoked...his license was denied for that reason and a whole other laundry list (laugh). But it did look at...it did reveal some problems we have, especially with out-of-state liabilities and that kind of stuff. And so I think, you know, logic would dictate if somebody is, you know, currently protesting evaluation, you know, I'm not sure they would be considered not current for that. You know, they would have to keep the commission apprised. [LB854]

SENATOR PRICE: Well, thank you, because I think our previous bill today defied logic sometimes where people didn't understand the application and here we have an opportunity for clarifying or a reason why you wouldn't do something like that, and I think that would be in everybody's best interest and since you're the one doing the application, it's important that we know your interpretation. [LB854]

HOBERT RUPE: Okay. [LB854]

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SENATOR PRICE: Thank you. [LB854]

SENATOR KARPISEK: Thank you, Senator Price. Anything that...Senator Dierks. [LB854]

SENATOR DIERKS: Thank you, Senator Karpisek. Hobie, I guess I'm surprised that we don't have some of those things in place already, some of those requirements for having a liquor establishment. [LB854]

HOBERT RUPE: Well, I think, you know, you're right. I mean, and it's probably, once again, you know, where the...you know, we're late coming to the party on it. You know, I think a big part of it is a lot of people are hesitant to introduce liquor bills because, you know, they are generally...any time a liquor bill is introduced that's controversial, and for the most part, they're hard to get through. And so, I...you know, that might be...it's not an excuse, but I think it's a sort of, you know, recognizing the issue of what goes on. You know, part of this would roll over currently into...you must be of good character and reputation in the community in which you reside. If somebody is a scofflaw and, you know, has, you know, owe...has an awful lot of bad debts, you know, we've denied licenses on that before, you know, somebody who's been in business four different times, you know, left business partners holding the lurch. You know, we've used that as character and reputation, we've assumed that that's part of it. In here I think you realistically, right now, we could utilize character and reputation that, you know, if you're not current on your...on what you owe, you're probably not of good character and reputation in the community in which you reside. But I think this would clarify and specifically say that, you know, you must put an attestation that if you're going to be a business person, you're current on everything you owe as a business person. [LB854]

SENATOR DIERKS: Thank you. [LB854]

SENATOR KARPISEK: Senator Coash. [LB854]

SENATOR COASH: Thank you, Chair. Hobie, you talked about you would...Liquor Commission would put together a form that applicants could fill out, saying that they're current. [LB854]

HOBERT RUPE: Yep. [LB854]

SENATOR COASH: I guess I'm still concerned, not that this is a bad idea, but I'm concerned about the licensee has a form, and I don't have a way to verify all these tax...I mean, the absence of not having a lien would do that. So my question for you is, would it make more sense maybe to go back on the Liquor Commission and just say, it's part of your screening process? You check the property owned by the licensee, maybe in the business, in their home, to see if they have a lien. And then it's on you. I'm

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just trying to put myself in the licensee... [LB854]

HOBERT RUPE: A lot of times, those come up right now during the background investigations. But you have to remember, most licensees don't own the business. They lease it. They have a lease towards it. The requirement is they have a lease with these...the entirety of the license period or more. You know, and so going back to the case that Senator Howard referenced earlier. Currently, I think those locations...because the previous guy who bought them couldn't get a liquor license, and he subsequently sold them to other businesses. Well, he's no longer the landlord. I think the bank is now because of some tax liens. You know, I'm not sure of the proper way to do it. I think, you know, the best person, too, who could tell whether they're in violation is the person making the application. Currently, a lot of people will go to the local police department and have them run their driver's license and...or get an abstract and make sure they're not forgetting a conviction, and so because they have to list down everything on the application, everything they've been convicted of. In this case here, I mean, it could be as simple as calling your county clerk, saying this is my property at this location. Is it free and clear? You know, the burden should be on them. I think by doing it this mechanism, you're...it's not going to put an undue burden on most licensees who are good upstanding business people and are going forward, but it's going to give the commission another hammer on somebody who is trying to be a shady dealer and shady operator who's coming in. And, unfortunately, it gives us another arrow in our quiver to try and get those bad businesses out of business. [LB854]

SENATOR COOK: I have a question. [LB854]

SENATOR KARPISEK: Senator Cook. [LB854]

SENATOR COOK: Thank you, Mr. Chairman. And, Hobie, this may not be a question for you, but as I'm sitting here and listening to this and listening to the dialogue about the business owners, some questions pop into my head about whether or not we're potentially creating a class of business owners, if you will, that are required to be up to date or on a payment plan for all of the taxes and fees that apply to them as an individual or to their spouse as an individual. For example, a physician, that's a business. It's a small business. Hairdresser, esthetician...does she or he have to be...if we pass this, advance it and have a conversation on the floor, are we creating that requirement for all Nebraska business owners? [LB854]

HOBERT RUPE: I don't think so. Under the license of the proposed bill, it's clearly upon your application or renewal of your liquor license, and they're holding the liquor license somewhat differently. The statute is replete with efforts where liquor licenses are treated differently. They are a personal privilege. You give up certain abilities and rights when you decide to get a liquor license. I mean, I remember you had a somewhat shocked look when I informed you that the police can go in there and look without a warrant, you

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know, to make sure that the act is being complied with. There are certain things that the state Legislature has a lot of powers to make sure that the liquor is being sold in a safe and proper manner. It's a power given to you by the Twenty-first Amendment. There are a lot of reasons that liquor is treated differently than any other product within the state or across the country. It's the only product, there's been not one but two constitutional amendments on. And so the current structure to giving the power to the states, you know, has worked pretty well for 75 years and it's, you know, each state can craft laws to regulate the industry as it sees as appropriate. And I think this would be one...as I said, I think Senator Howard is attempting to professionalize the industry, making sure that we got people who are, you know, before they get the privilege, they're current on all their obligations. [LB854]

SENATOR COOK: Thank you. [LB854]

SENATOR KARPISEK: Thank you, Senator Cook. Any other questions? Senator Krist. [LB854]

SENATOR KRIST: I was reminded last week that there was a time in Nebraska, particularly in Omaha, where you had to have a lot of money to buy a liquor license. And the quality of the business person when you have to spend \$25,000, \$35,000, \$40,000 for a liquor license to get one, there was a buy-in process so there was a guarantee that the person got to that point. I applaud Senator Howard's effort to get back to that point because the quality of the business owner is important to the integrity, I think, and the dispensing alcohol. I had the same question that Senator Cook had in terms of where we draw the line between integrity issues, but it is a privilege, and I think that you hit it right on the head. I would suggest to you that there are already standard formats to get security clearances, to do a lot of things across our continuum that require statements from the IRS, state tax and federal tax that would be a snap to employ as a part of the application process. And I would encourage the committee, and I'll do this in committee and executive, making sure that we specify and maybe work with you to specify, so that there isn't any open how do we prove this? Because it's important. [LB854]

HOBERT RUPE: Yeah. [LB854]

SENATOR KRIST: Do you want to comment? [LB854]

HOBERT RUPE: I...other than I agree. As I said earlier, most of the issues that you've seen with...on...that have come forth from the commission have been trying to professionalize the industry more. The commission put forth, you know, the radical idea of increasing license fees for the metropolitan and primary-class city for just exactly that. The theory is, if you have more of an investment, you're going to professionalize the industry. You know, Nebraska is, you know, you'll hear (inaudible), as you said earlier, you used to have the...Omaha had a quota system that was struck down as being

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unconstitutional. You know, there are states which have quota systems, states without. I mean, you see pros and cons on both, and there's no one panacea. But I think the overall theory recently that what this bill does and some of the other bills which have been introduced is to make it more professional in that, you know, people who are respected businessmen who have got a lot to risk are going to comply with the laws. [LB854]

SENATOR KRIST: Thank you. [LB854]

SENATOR KARPISEK: Thank you, Senator Krist. Any further questions? Don't see any. Thanks, Mr. Rupe. Further proponents? Any opponents? [LB854]

JIM MOYLAN: Mr. Chairman, members of the committee, I'm Jim Moylan, again, M-o-y-l-a-n, appearing on behalf of the Nebraska License Beverage Association, the professional association of liquor retailers throughout the state. Let me tell you a little bit about what they span. From the little bar, the little corner bar that just sells alcohol; the little bar that has a restaurant and sells alcohol and food. Then you've got your more restaurant style. Then you've got your sports bars. You've got your grocery stores, your convenience stores, and your big department stores. That's a big span of people across the state. These things come about because of an exception. One or two people make a mistake, you know, and because of that, you got to impose some new rules on everybody else throughout the organization. Let's take the legal profession. Let's say that 4 lawyers out there out of 7,000 have not been paying their quarterly taxes and they're behind on it. So they decide we'll go to the Supreme Court and make everybody certified before they get their license that they paid all their income taxes, paid all these taxes in here. I think this is the wrong venue for this. We have state agencies that are supposed to take care of these particular problems. You have a state tax commissioner to take care of the sales and income tax. The Internal Revenue Service monitors and collects federal taxes. Your county treasurer is the one that monitors real estate taxes. And the Workers' Comp Court monitors and makes sure you have workers' compensation insurance, and the state Labor Department and part of the federal government has the employment security law, so they're the ones and not the Liquor Commission that should be handling these particular problems. Now, these are just as professional people as anybody else. Okay, now let's go over and say they require accountants, certified... (microphone malfunction) ...real estate brokers and agents, real estate appraisers. And all the public health privileges, and all these licenses have privileges just like the licenses that the retailers hold, same type of privilege except in different fields. So if you're going down that line, then all of those other professions ought to certify that they've paid all of their taxes also. So I think you're putting a burden on the Liquor Commission and going down a path that I think probably should not be done. The Liquor Commission was established to monitor the sale of alcoholic liquors and not to monitor tax payments by anybody. So I'd recommend that you indefinitely, you know, postpone this legislative bill, otherwise, I don't think the commission can even

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handle it. If there's any questions, I'd be happy to try to answer them. [LB854]

SENATOR KARPISEK: Thank you, Mr. Moylan. Senator Krist. [LB854]

SENATOR KRIST: I'm not a lawyer, but it seems to me that if you're guilty of not paying your taxes, at some point you're going to be guilty of a misdemeanor or a felony, depending upon how deep you get into the process. [LB854]

JIM MOYLAN: That's right. [LB854]

SENATOR KRIST: And if that process carries itself forward, then you're not eligible to get a liquor license because you have a felony conviction on your record. [LB854]

JIM MOYLAN: That's right. There's already...yeah. [LB854]

SENATOR KRIST: Okay. Thank you. [LB854]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? Senator Dierks. [LB854]

SENATOR DIERKS: Jim, medical doctors in order to practice, they have to have a license, and they're governed by the State Medical Association. [LB854]

JIM MOYLAN: Right. [LB854]

SENATOR DIERKS: Dentists the same way. Every professional the same way. [LB854]

JIM MOYLAN: Um-hum. [LB854]

SENATOR DIERKS: Because they're dealing with people, and they could be guilty of some sort of an infraction. The liquor dealers are also dealing with people, and they're dealing with a product that can be extremely explosive. And especially if someone gets a little bit too much to drink and they get on the highway and have a wreck. And then we're dealing with bills right now that would have some application to whether the people that were in the car when the wreck was...that occurred...are going to be eligible for some sort of penalties. We...if we're going to have these sorts of things going on and have this sort of liability being thrown around for these...if the liquor dealers are going to be having some sort of responsibility for those kind of liabilities, it looks to me like they ought to have some responsibility in the way of protecting the citizens as well. It's more of a sense of personal responsibility, I think, than a sense of personal freedom, so comment. [LB854]

JIM MOYLAN: Well,... [LB854]

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SENATOR DIERKS: Yes. [LB854]

JIM MOYLAN: ...like I've said, most of them...probably 95 or better than 95 percent of the liquor retailers out there are honest, legal operating businesses and persons. And like I said, it's the other 1, 2, or 3 percent that cause all the problems. Now, the same way in the medical field or in the pharmacy field and dealing with medications. It takes just one or two to cause a flux in legislation that maybe is going to affect the whole industry, you know, and that's why I say, we're not in any worse shape as far as being law abiding, you know, than probably any other profession including the legal profession. [LB854]

SENATOR DIERKS: Okay. Thanks, Jim. [LB854]

SENATOR KARPSEK: Thank you, Senator Dierks. Any other questions? Seeing none, thanks, Jim. [LB854]

JIM MOYLAN: Thank you. [LB854]

SENATOR KARPSEK: Further opponents? [LB854]

KATHY SIEFKEN: Senator Karpisek and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association as their executive director and lobbyist. This is one of those bills where you sit in the back on the room, and you listen to the testimony, and you try and figure out how you're going to testify because it really doesn't...where we are doesn't really fit in with opposing, and we're not really neutral. It's more of a negative-neutral. I think that this bill probably has some merit. The concern is the definition of current and I think, Senator Price, you nailed it. How will that be interpreted? And that is not addressed in the actual bill. If there were some remedy or some opportunity to correct someone not being in compliance, an example, I guess, that I have is, what if you file your taxes, and the IRS comes in and audits you, and you get stuck in that period of time in between where you think that you're compliant and you're not, and the IRS is saying, you still owe us money, and what if it's only 75 bucks? Does that mean that you take that license and you destroy that livelihood over something that minor that can be straightened out? And so, I think with a little bit of wordsmithing or a little bit of work on this bill, it might be okay. So if you have any questions, I'd be happy to answer them. [LB854]

SENATOR KARPSEK: Any questions? I have a letter in my office. I owe the state of Nebraska 2 cents,... [LB854]

KATHY SIEFKEN: There you go. (Laugh) [LB854]

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SENATOR KARPISEK: ...and (laugh)...so I understand. [LB854]

KATHY SIEFKEN: And it's just those little things where you could get caught in between, and it's not a huge violation. It's not a felony. It's not even really maybe a...well, I don't know, would that be a misdemeanor? Two cents? [LB854]

SENATOR KARPISEK: We'll probably find out, won't we, (laughter) now that I let the cat out of the bag. Thank you. [LB854]

KATHY SIEFKEN: Thank you. [LB854]

SENATOR KARPISEK: Further opposition. [LB854]

TIM KEIGHER: Good afternoon, Senator Karpisek and members of the committee. Again, my name is Tim Keigher, it's K-e-i-g-h-e-r. I appear before you today as a registered lobbyist and the executive director of the Nebraska Petroleum Marketers and Convenience Store Association in opposition to LB854. I guess I am like the previous testifier. We all want everybody to be on a level playing field, and if we're paying our property taxes and we're paying workers' comp and all that, we want everybody to be paying those same expenses. I have the same concerns that if you have a minor infraction of \$7,500 or I don't know what that dollar amount is, but whatever we would consider minor, do we want to hold up someone's liquor license on that? And I guess maybe we could come up with some verbiage that there could be a temporary license issued until the issue is taken care of or something like that, and then I think we probably could be supportive of it. So with that, I would answer any questions. [LB854]

SENATOR KARPISEK: Thank you, Mr. Keigher. Any questions? Don't see any. Further opposition? [LB854]

JIM OTTO: Senator Karpisek, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation, the Nebraska Restaurant Association. I appear on behalf of both organizations in opposition to LB854 as introduced, but as both of the previous testifiers have said, our opposition isn't in the spirit, but like Senator Price said, very concerned over how you define current. And I know Mr. Rupe said that if some...for example, if someone were on a payment plan with the IRS because they had gotten audited and didn't realize they owed several thousand dollars, couldn't pay it all at once. Mr. Rupe said that he would consider that current, but the next person who has Mr. Rupe's position may not feel that way, so we feel that current needs to be defined. And as others have said, we would probably be supportive if that can be done in an acceptable manner. [LB854]

SENATOR KARPISEK: Any questions? Senator Price. [LB854]

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SENATOR PRICE: Chairman Karpisek, thank you. Sir, just to make sure I'm also clear on that. When I read Abkens (phonetic) current obligation relating, that was on their private residence, on everything, not just the business. Correct? [LB854]

JIM OTTO: That's the way I assume it means,... [LB854]

SENATOR PRICE: Okay. Thank you. [LB854]

JIM OTTO: ...but I don't know. [LB854]

SENATOR KARPISEK: Any other questions? Do you know something about Mr. Rupe's job that we don't? (Laughter) [LB854]

JIM OTTO: No, I don't (laugh). [LB854]

SENATOR KARPISEK: (Laugh) Thank you. Further opponents? Do we have anyone in the neutral? Seeing none, Senator Howard to close. [LB854]

SENATOR HOWARD: Thank you. Oh, hopefully, I've caught my breath again, can do this without...all right. I would just like to thank the General Affairs Committee for your patience in sitting here listening to this testimony this afternoon. This bill is very simple and straight forward. When someone applies for a liquor license, they would be required to sign an affidavit stating that they are current on all federal, state, and local taxes including Workmen's Compensation. To me, this is an issue of fairness to those who did pay their taxes on time. A liquor license in Nebraska is a privilege, and with every privilege comes a responsibility. It is not an unfair burden to expect someone asking for a license to be current with what they owe in taxes. And I would also really like to take a moment to thank Hobie. He has extended himself in working on these issues, and I'll have to say, I am delighted if I can offer him one more arrow in his quiver, as he puts it. So thank you. [LB1000]

SENATOR KARPISEK: Thank you, Senator Howard. Do we have any questions of her? Seeing none, thank you. And that will end the hearing on LB854. We'll now move to LB1000. Senator Dubas, would you like to chair for me, please? [LB1000]

SENATOR DUBAS: Certainly. [LB1000]

SENATOR COASH: Use the lights. [LB1000]

SENATOR COASH: Yeah. Welcome. [LB1000]

SENATOR KARPISEK: Thank you. Thank you, Senator Dubas, members of the General Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s

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K-a-r-p-i-s-e-k, and I am the chair of the General Affairs Committee and introducer of LB1000. LB1000 amends sections 53-125 and 53-103 of the Liquor Control Act. The issues addressed in this bill stem from the relatively recent increase in the number and complexity of LLCs or limited liability companies that are applying for liquor licenses. One issue is that when an LLC applies for a liquor license, every member of the LLC must be individually processed including fingerprinting and background checks before a license may be granted. This requirement can be very burdensome and costly for the Liquor Control Commission. LB1000 mirrors the current requirements for how corporations are treated under these circumstances. And I think that's the main point here. This would make LLCs the same as corporations when they are trying to get a liquor license. LB1000 requires that any officer or director of the LLC or any member with an ownership interest of more than 25 percent would have to meet the qualifications for a liquor license which is the current requirement for corporations. LB1000 also requires that a manager for an LLC would need to be a citizen and a resident of Nebraska, and that is consistent with LB788 which would also require that a manager for a corporation be a citizen and resident of Nebraska that we have heard earlier in this committee which, as you recall, during the hearing on LB788, it is the current interpretation of the Liquor Control Commission that managers be citizens and residents of Nebraska, so we would not be changing anything there, just reinforcing how they're doing it. Again, this bill came to me with the help of Hobie Rupe, Executive Director of the Liquor Control Commission, and he will be here to help provide any further information that you need on this bill. And I'd be glad to take any questions. [LB1000]

SENATOR DUBAS: Thank you, Senator Karpisek. Questions? [LB1000]

SENATOR PRICE: Yes. [LB1000]

SENATOR DUBAS: Senator Price. [LB1000]

SENATOR PRICE: Thank you, Senator Dubas. Senator Karpisek, one question I have is, will this...would a bill like this blur the lines between an LLC and a corporation as far as liability is concerned because, you know, there are different levels of liability between the two? [LB1000]

SENATOR KARPISEK: I don't think so, and Mr. Rupe can help with that. But right now, we have corporations coming in and getting liquor licenses as LLCs which is easier for them to do right now. So this would make it the same, a higher bar to pass for the corporation. [LB1000]

SENATOR PRICE: Right, but I think it...what I'm trying to say is, would this LLC now that it has the requirements of a corporation...you don't see this as any way, shape, or form eroding or changing the differences between an LLC and a corporation in and of

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itself as a legal structure. [LB1000]

SENATOR KARPISEK: I don't, but, again, we can ask... [LB1000]

SENATOR PRICE: Great. [LB1000]

SENATOR KARPISEK: ...the legal counsel afterwards too. [LB1000]

SENATOR PRICE: All right. Thank you. [LB1000]

SENATOR KARPISEK: Thank you. [LB1000]

SENATOR DUBAS: Other questions? I would have one for you, Senator Karpisek. So you said this would make it the same as it is for corporations now, is that correct? [LB1000]

SENATOR KARPISEK: Yes, correct. [LB1000]

SENATOR DUBAS: So how is it now for an LLC? [LB1000]

SENATOR KARPISEK: Let's ask Hobie on that. [LB1000]

SENATOR DUBAS: Okay. All right. (Laugh) [LB1000]

SENATOR KARPISEK: Okay? [LB1000]

SENATOR DUBAS: Okay, thank you. Any other questions? Thank you. [LB1000]

SENATOR KARPISEK: Thank you. [LB1000]

SENATOR DUBAS: First proponent? Welcome. [LB1000]

HOBERT RUPE: Welcome. Thank you very much. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. To answer a couple of questions that just came up, Senator Price. I don't think it would change the legal status at all from liability purposes. In fact, that's why we're seeing more LLCs. More LLCs they have a beneficial tax purpose as opposed to corporations. More people are utilizing those. When LLCs were first I think thought of in the Liquor Control Commission, it was three guys decided they're going to open up a bar together. They're going to pool their money. They're going to do an LLC, and they're going to have the...you know, and run a bar. Well, that's not what we're seeing now. As more and more corporate entities take advantage of the LLC status, Wilber should get an LLC that sometimes be made up of three individuals, two corporations in the United States.

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One corporation is a foreign corporation (laugh) as members of the LLC. They're corporate entities but their standing as an LLC. The reason why it's somewhat more difficult as an LLC is all individual members of an LLC must qualify the same as if an individual. So if you've got 200 members of an LLC, that's 200 background checks; that's 200 sets of fingerprints. That's assuming they all have their spouses file spousal affidavits because, otherwise, it could be up to 400 sets because the spouses have to file, you know, qualify the same. It also requires that one of the entities be a citizen of Nebraska. So a lot of times one person will, you know, they'll give one person 1 percent who's actually the actual operations manager will get 1 percent of the business to satisfy that requirement. What we're trying to do is treat LLCs, at least in the Liquor Control Commission for licensing purposes, the same as a corporate entity. The officers and any person owning over 25 percent will undergo a background check, the same background check they currently do. They'll have to have a manager assigned who will undergo the background check be a citizen as a resident, the same as a corporation. You know, the rise of the...like I said, you know, we have wholesalers now who are utilizing LLC mechanisms as opposed to a corporation. It's because people are using for the tax purposes requiring the change. If the purpose is to make sure that you're looking at the person selling alcohol correctly in the state of Nebraska, they're sold as one license. By having a manager, we know exactly who's in charge of it; we know who we can reach out and touch if we need to for any issues regarding the license, and so we're just trying to, you know, clean it up a little bit and make it consistent with corporate entities. So I don't think...if you're sued on or anything else, I don't think there's any difference. You're still going to have a different liability under an LLC. According to us, it doesn't matter anyway; it's the license, you know, whether it can be suspended, cancelled, or revoked; doesn't matter whether it's a corporation, individual, or an LLC. With that, I would be happy to answer any questions. [LB1000]

SENATOR DUBAS: Other questions for Mr. Rupe? Seeing none, you get off easy. [LB1000]

HOBERT RUPE: Thank you. [LB1000]

SENATOR DUBAS: Next proponent for LB1000? [LB1000]

TIM KEIGHER: Good afternoon, Senator Dubas, members of the committee, my name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today as a registered lobbyist and the executive director of the Nebraska Petroleum Marketers and Convenience Store Association in support of LB1000. I guess simply we just think this is a good idea. So with that, be happy to answer any questions. [LB1000]

SENATOR DUBAS: Thank you. Any questions for Mr. Keigher? Seeing none, thank you. [LB1000]

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SEAN KELLEY: Good afternoon, Senators. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y. As an attorney who works in this field, I support this bill strongly to make the whole process much easier for a lot of applicants and a commission. Be happy to answer any questions if you have any. [LB1000]

SENATOR DUBAS: Thank you. Any questions for Mr. Kelley? Seeing none, thank you. [LB1000]

SEAN KELLEY: Thank you. [LB1000]

SENATOR DUBAS: Senator Rogert, would you like your vice chairmanship duties back? [LB1000]

SENATOR ROGERT: Oh, where are we? [LB1000]

SENATOR DUBAS: We are on LB1000. [LB1000]

SENATOR ROGERT: Proponents? [LB1000]

SENATOR DUBAS: Proponents. [LB1000]

SENATOR ROGERT: Any further proponents? Are there any opponents? Anybody here today neutral? Senator Karpisek waives closing and returns to the helm. We'll close the hearing on LB1000 and open up on LB942. Senator Gay. [LB1000]

SENATOR KARPISEK: Senator Gay, welcome to the General Affairs Committee.

SENATOR GAY: It's my first time here. Thank you.

SENATOR COOK: Really?

SENATOR ROGERT: Oh, we can razz him then (laughter).

SENATOR PRICE: And we've missed you.

SENATOR COASH: In four years?

SENATOR DUBAS: Got to have an initiation here.

SENATOR GAY: Yes, and so I might have been...oh, maybe one more time. The first time in two years. Thank you, Senator Karpisek and members of the General Affairs Committee. For the record, my name is Tim Gay, and I represent the 14th Legislative District. I'm here today to introduce LB942. The concept behind LB942 was brought to

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me by a local business owner, and I believe the ultimate goal of the bill makes sense and would be good for Nebraska. The intent behind the bill is to allow craft breweries that do not currently do business in the state to test market through limited events such as beer festivals and tastings. Under LB942, the Liquor Control Commission would be authorized to issue a special shipping permit to a manufacturer that does not already hold a shipping license in Nebraska. The product could only be shipped to a person holding a special designated license and only for the time period specified on the special designated license. So, for example, if an individual is issued a special designated license for a two-day beer festival, an out-of-state manufacturer who does not already hold the Nebraska shipping license could ship directly to that individual for this two-day period. The holder of the special shipping permit would be responsible for all the excise taxes, and the cost of this permit could not exceed \$50. However, at your discretion, you could use your discretion to set that higher because I know you've...would adjust the fees. My constituent will go into more detail regarding the reasons he brought up this issue, but it is my understanding that when he recently sponsored a beer festival, he discovered our current statutes discourage smaller craft brewers from coming into the state. He visited with the Liquor Control Commission regarding the issue and was told legislation would be needed. My office worked with the commission on the language to make sure it was technically correct. I understand there is some concern that this bill would erode the three-tier system, and that is not the intent. I would argue that LB942 does not take a business away from distributors, but rather has a potential to increase business for distributors and benefit the state. The craft breweries we are talking about in this measure are small businesses that some produce less than a thousand gallons a year, is not worth the risk for them to pay an annual \$200 shipping license fee which now appears, because of legislation, will soon be a thousand if there's no market for their product. LB942 would allow them to test the waters. If a beer festival generates demand for a particular brand or beer, then this brewery would be able to go through the distributor in a traditional shipping license method. But we're thinking that maybe business opportunities could come from conversations and just coming into the state discussing with other producers. It makes little economic sense to put roadblocks up for companies that are considering doing business here in Nebraska. It makes a lot of sense to invite these new companies to bring business to our state, and I think LB942 does that. There is language in the bill that allows the holder of a special shipping permit to ship wine, beer, or spirits, and it's really aimed at the craft beers. And I would absolutely have no problem with removing the wine and spirits portion of this from the bill if that would make it a better bill. I do have a commitment later back in Omaha that I need to get going to, but I would ask for consideration of this bill, and if you find anything that we could work on, you know, to make it a better bill, I'd be more than happy to do that. And I could answer any questions from the committee if there's any. [LB942]

SENATOR KARPISEK: Thank you, Senator Gay. Any questions? [LB942]

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SENATOR ROBERT: I have one. Senator Gay, do you know today if it's...if you want to have one of these craft beer festivals, and it was all folks within the state, would you be able to do it right now? [LB942]

SENATOR GAY: I think the person behind me...I think you could in the state. [LB942]

SENATOR ROBERT: Okay. [LB942]

SENATOR GAY: The idea would be, is there a new...are there other opportunities? And they wanted a bigger festival, and I've seen advertisements where they have these things, and I think that's the intent. But an owner behind me will be able to answer some of that. [LB942]

SENATOR ROBERT: Thank you. [LB942]

SENATOR KARPISEK: Thank you, Senator Robert. Any other questions? Seeing none, thank you, Senator Gay. [LB942]

SENATOR GAY: Thank you, Senator Karpisek. [LB942]

SENATOR KARPISEK: So you will not be closing? [LB942]

SENATOR GAY: No, I'm going to waive closing. [LB942]

SENATOR KARPISEK: All right. Thank you. First proponent. Since we have a husband-and-wife, I understand, team, we're going to have them testify together. Correct? [LB942]

KIM KAVULAK: Sure. [LB942]

SENATOR KARPISEK: Okay. [LB942]

PAUL KAVULAK: (Exhibit 1) Good afternoon, Senator Karpisek, members of the committee. My name is Paul Kavulak, K-a-v-u-l-a-k. I'm here with Kim Kavulak, same spelling, my wife and co-owner and operator of Nebraska Brewing Company. I'm also a member of the Nebraska Craft Brewer's Guild, and I'm a brewer myself. I'm here to introduce a concept that will offer broad participation in educational beer events or beer festivals. While there are numerous beer festivals already held each year in our state, more broad participation is hoped for to include breweries from outside of our state who do not currently distribute their products here. Current law states that to legally have beer enter Nebraska, one must hold either a valid shipper's license or transport beer in an amount under nine liters, an amount equivalent to two point four gallons or just over a single case of beer. To transport beer into Nebraska without a shipper's license or

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over the single case limit is considered bootlegging and illegal. For the purposes of a brief event, it does not currently make sense for a smaller, boutique, out-of-state brewery to undertake the effort and expense of legally distributing beer here. It should be possible to create a situation where a small window of time exists for these breweries that would enable them to participate. The concept being introduced today addresses these shortcomings by creating an ability for breweries that do not hold a shipper's license to enter the state for the purposes of attendance in a beer festival. [LB942]

KIM KAVULAK: Senator Rogert, I think that probably addresses your question of, if it was an in-state festival with all the breweries in-state, they all hold a current valid shipper's license, or if they're in-state they already are licensed in the state. If they're out of state and hold a valid shipper's license, then this does not apply to them. It's only these small breweries that maybe produce or don't distribute at all that this would apply to. So in the United States today, there are approximately 1,500 breweries with the majority of these not currently distributing their products in our state. In fact, a lot of these breweries don't distribute at all and their products are served only on their own premise in their brew pubs, restaurants, or tasting rooms. Currently, Nebraska's law does not provide a distinction between the larger mega beer corporations and the small craft beer breweries. But it should be noted that these small craft breweries are the ones that we are looking for inclusion in these types of festivals. Larger brands and those that may choose to exploit a concept such as the one we're introducing are likely already doing business in Nebraska and would be unaffected by this change. In large measure, it is the rich diversity of so many individually created craft beers that we wish to highlight within a craft beer festival. Realistically, beer festivals such as those being referenced here are merely regional due to the expense associated with drive times, lodging, other costs, just time away from people's own facilities. Currently, we attend...we have ours that we had last year. There are two in Lincoln that we attend. There's one in Kearney that I can think of off the top of my head. Breweries within a bordering state are those that would likely attend such festivals. Breweries such as free state in Kansas, O'Fallon in Missouri, or Olde Main in Iowa, none of those breweries or brew pubs distribute in our state, but we'd love to include them in a festival such as this for exposure. These breweries are essentially unknown in the region necessarily, but they're right next door to us. Our concept provides for a one-day fee that would cover administrative costs, and those monies would currently be slated to go into the state's General Fund. All taxes on beer entering the state would be collected and would be paid. Of note is that the targeted group of breweries do not currently conduct trade in the state. These are breweries that do not contribute in any form to our tax base, so these are out-of-state breweries. This is new money. It's a way to bring in some dollars to the state from these out-of-state breweries that don't currently do business here. All taxes and fees being discussed here are new and incremental and would likely build over time as these festivals grew larger. Out-of-state breweries may find that these festivals provide for product awareness, exposure into a new and untested market, a

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direct connection with the public, and that they can directly contribute to a craft beer advocacy in our state. Further, these festivals can be seen as a method to test market products in our state where no trade currently exists. Ultimately, opportunities such as these could result in some of these breweries conducting business here and contributing not only to our tax base but also to the incremental revenues within this three-tier system. We understand that public safety is always a major factor when considering any change, so we'd like to point out that these breweries are all conducting business in their home states in a legal and safe manner and there's no reason to believe that that would change in any way. In summary, this bill attempts to address the shortcoming that exists which negates an exposure to the great product diversity beyond Nebraska's borders. While at face value, this concept addresses issues with the beer festival participation, a more broad or long-term view can cast this in a light that may lead to increased commerce, diversity, and competition, and possibly an increased tax base. Beer festivals already exist within the state. We're simply asking that we create the opportunity to expand the participation to others in our industry. We thank you for your time on this, and we will be glad to answer any questions that you have. [LB942]

SENATOR KARPISEK: Thank you very much. Senator Dierks. [LB942]

SENATOR DIERKS: Thank you, Kavulak's. Tell us how much it would cost you...are you going to be bringing the beer in or do you have friends that will? [LB942]

PAUL KAVULAK: The Craft Brewers Association within the state of Nebraska last year--to give a little bit of history--we conducted a beer fest last year. It was fairly successful. We had roughly 400 participants, and as part of that process, the initial word went out to other craft brewers in surrounding states that we'd love to have them participate, so these other breweries would be breweries that would come in, and they would bring the beer and ultimately we're looking for that broad participation that we just couldn't get last year. [LB942]

SENATOR DIERKS: Dollarwise, what would they be saving by having legislation like this passed? [LB942]

PAUL KAVULAK: Well, right now the current legislation at \$200 per a shipper's license is, basically covers the duration of a year. It makes very little sense for a brewery that wants to attend a single-day event to go through the effort and expense to hire an attorney possibly, and then, you know, get a \$200 shipper's license when the reality of the expenses that they have in addition to that license makes it quite a deterrent. We travel to other beer festivals that don't necessarily have these similar circumstances, and it's fairly easy for us to go in, show our products, create some brand awareness, and depart the state the next day. [LB942]

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SENATOR DIERKS: So what would it cost someone to come here today without this legislation? [LB942]

PAUL KAVULAK: Today they'd have to sign up for that \$200 shipper's license and... [LB942]

KIM KAVULAK: Which I believe is about to increase to \$1,000. [LB942]

PAUL KAVULAK: Right. And then they'd also have to make sure that they made use of the three-tier system. So in addition to that, they would have to create a contract and an agreement between a distributor to carry their products in the state and ultimately then, pay to have that beer delivered to the beer fest. [LB942]

SENATOR DIERKS: Okay. So if the bill passes, what's it going to cost the same person for the same product? [LB942]

PAUL KAVULAK: It'll cost them the \$50 one-day fee and any taxes associated with the beer. [LB942]

SENATOR DIERKS: Thank you. [LB942]

SENATOR KARPISEK: Thank you, Senator Dierks. Senator Rogert. [LB942]

SENATOR ROBERT: Just what would they do with the leftover inventory? Would they be allowed to leave any here or would they have to take it all back with them if they didn't distribute? [LB942]

PAUL KAVULAK: Well, I guess from a mandate perspective, it could easily be said that they must take the beer back, but the reality is, these breweries that don't distribute, they're not bringing in six-packs; they're not bringing in product they could actually leave behind in most cases. Many of these breweries use their own cooperage, their capital and beer kegs, and it's very important for them to carry those kegs back out of the state because those...it's quite an expense. Right. [LB942]

SENATOR ROBERT: Reuse them, yeah. Okay, great. [LB942]

SENATOR KARPISEK: Senator Dubas. [LB942]

SENATOR DUBAS: Thank you, Senator Karpisek. Thank you for coming forward with this today. Okay, so the beer would be brought into the state in a manner that you would consume it at the place that you're having this festival. [LB942]

PAUL KAVULAK: Correct. It's absolutely the intent. [LB942]

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SENATOR DUBAS: But if you had a wine festival or a wine tasting, more than likely, those people from out of state would be bringing bottles of wine. Would they be able to sell those bottles of wine or is this all for consumption on-site? [LB942]

KIM KAVULAK: It's our intent to have it all be consumed at the event. [LB942]

SENATOR DUBAS: Okay. Is it legal now... is there any...are there any types of Internet sales where you can order from another state and have it come in or are there laws in place that don't allow that to happen? [LB942]

KIM KAVULAK: Well, I think every...different states have different laws when it comes to Internet sales of...and it differs, I think, from beer to wine to spirits, and, again, I think Senator Gay referred to the fact that this current...the bill that's been introduced currently refers to beer, wine, and spirits. For our purposes in the craft beer industry, you know, we're focused specifically on the beer, and we'd be willing to amend it to exclude the wine and spirits. [LB942]

SENATOR DUBAS: But the focus of your bill is just for that special designation of that day. You're not looking to make off-sales of any kind. [LB942]

KIM KAVULAK: Absolutely. That's absolutely correct. [LB942]

SENATOR DUBAS: All right. Thank you. [LB942]

SENATOR KARPISEK: Any other questions? I would ask, what other states have you gone to? [LB942]

PAUL KAVULAK: Well, there's a couple more,... [LB942]

KIM KAVULAK: Missouri,... [LB942]

PAUL KAVULAK: ...just ones in the United States. We do some smaller...when I say smaller, we did 400 attendees last year. Parkville, Missouri, does roughly 1,800 attendees plus 1,400 volunteers. That one is still considered fairly small. Madison, Wisconsin, holds probably the number two largest and best organized beer fest in the United States. I don't recall the participant level, but I believe that it was close to... [LB942]

KIM KAVULAK: Five thousand, I think. [LB942]

PAUL KAVULAK: Right. [LB942]

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KIM KAVULAK: And they cap their sales. They're actually...they sell that out on...when they begin sales, I think they sell their tickets out within like three minutes. It's pretty quick, and they're very well organized. [LB942]

SENATOR KARPISEK: And have you taken your product to these? [LB942]

KIM KAVULAK: Absolutely. [LB942]

SENATOR KARPISEK: And you haven't...do you know their laws if they've made an exemption for those, the three-tier system, that sort of thing? [LB942]

KIM KAVULAK: I don't...when we go to Parkville, Missouri, for example, which is in April, we do not have to apply for a shipper's license there. Their law must either allow an exemption or they don't have such a requirement. Madison, Wisconsin, when we attend that beer festival in August of each year, their state does allow for a one-day shipper's license. We have to...they send...the organizers send us the paperwork. We fill it out; we sent it into the state with a \$20 fee, it is for their state. But that allows us to bring our beer in for that...for that event only. If we don't sell it, we can't leave it behind. We actually generally don't like to bring any back home with us, so...but Wisconsin does have that. [LB942]

SENATOR KARPISEK: Okay. And I know that it's probably hard to say, but just raising...if we would raise the minimum or the maximum that you could bring in, would that...because you said, what, about a case now that you could bring? I mean... [LB942]

KIM KAVULAK: Right. [LB942]

PAUL KAVULAK: I believe that would accomplish the goal. In fact, given some consideration...Parkville, Missouri, we aspire to be an event that would host that many attendees. They require from us a minimum of four kegs, four half barrels, so 62 gallons. And then they also state that any other beer that you wish to bring beyond that, you can do so, but the requirement is, is 62 gallons. And looking at the scope of what we hope to accomplish, I believe that 62 gallons would be adequate for a single-day festival per brewery. [LB942]

SENATOR KARPISEK: Any other questions? How do you get to be a volunteer at that one? (Laughter) [LB942]

KIM KAVULAK: Sign up for our newsletter, we'll let you know (laugh). [LB942]

SENATOR KARPISEK: Okay. [LB942]

SENATOR DUBAS: They're not looking for tasters, Russ, they're just looking for...

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[LB942]

SENATOR KARPISEK: Those people aren't...that many are volunteering, just to be there (laugh). [LB942]

KIM KAVULAK: Right. Right (laugh). [LB942]

SENATOR KARPISEK: All right. Thank you very much. [LB942]

PAUL KAVULAK: Thank you. [LB942]

KIM KAVULAK: Thank you. [LB942]

SENATOR KARPISEK: Do we have any further proponents? Any opponents? Welcome to the committee. I think you haven't been here on these other bills, have you? [LB942]

JOE KOHOUT: I have not. [LB942]

SENATOR KARPISEK: Good. [LB942]

JOE KOHOUT: I have not. Good afternoon, Senator Karpisek and members of the General Affairs Committee. My name is Joe Kohout, K-o-h-o-u-t, and I am a registered lobbyist representing the Associated Beverage Distributors of Nebraska. I'm here to testify in opposition on behalf of ABD in opposition to LB942. The 21-member companies that ABD are in are locally owned and operated independent family businesses serving over 4,000 retailers across Nebraska. Nebraska's beer laws through the establishment of the three-tier system create checks and balances between suppliers and retailers, moderate the sale and promotion of beer, and establish an orderly, transparent, and accountability distribution system. LB942 creates a special shipping permit for out-of-state manufacturers by authorizing them to obtain a special shipping permit allowing the holder to ship wine, beer, or spirits from outside the state, only to the holder of an SDL, although I understand we're considering scaling that back only to beer. In essence, this legislation creates a special classification for these out-of-state manufacturers to vertically integrate the socially sensitive liquor industry. Prior to the implementation of the current regulatory system, suppliers could own what was termed tied houses which were retail houses that sold only that suppliers' products. For over 75 years, effective liquor regulation has been premised on a three-tier system that prevents vertical integration and/or these tied houses within the industry. The system not only guarantees transparency and accountability within the industry, but also permits local government to limit the number of retail outlets within a community. Without tied house prohibitions, it is impossible to limit the number of retail outlets in a community because of the consequences deny a host of suppliers access to the market. By requiring that all beer and liquor pass to distributors located in Nebraska,

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who are subject to the jurisdiction of regulators would promote transparency, accountability, and local job creation. Under current law, the out-of-state manufacturer is required to pay \$200 for a shipper's license, have that product go to a wholesaler, and then to a retailer. The current system creates an efficient framework for ensuring protection and collection of state excise taxes. The three-tier system also creates market efficiencies. The independent distributor has an incentive to maintain a diverse product portfolio and to buy from many brewers for sale and all licensed retailers. This gives the consumer the widest of product choices for major brands to micro-brewed specialty products at competitive prices. Our members make a significant contribution each year to the state's economy. Their direct and indirect contributions to Nebraska's beer distributors support more than 640 jobs, provide employees with competitive wages and quality benefit programs which amounts to over \$32 million in wages. We also make a considerable impact through the purchase and operation of almost 2 dozen warehouses, hundreds of trucks, trailers, and vans, and fuel costs for a total economic contribution that exceeds \$85 million. By undermining the current regulatory system and bypassing distributors, this proposed legislation could cost Nebraskans jobs. This bill creates a dangerous exception to the three-tier system because it would permit out-of-state manufacturers, with no restriction on the size of said manufacturer, to do what no other brewer, distributor, or retailer may do, i.e., manufacture wholesale and potentially retail beer. Such an exception dismantles the three-tier system. By creating special category of license for out-of-state manufacturers with little regulation, this legislation also impedes both public health and safety concerns. The most prominent feature of our state liquor regulatory structures is the three-tier system. It was created to avoid the harmful effects of vertical integration in the industry by restricting suppliers, distributors, and retailers to one level of activity. The three-tier system creates a transparent and accountable distribution system which facilitates the effect of regulation by the state. Also, because of their very nature and their operations, firms, and the distribution and retailing tier have a local presence which makes them more amenable to regulation and naturally keeps them accountable. For these reasons, our association remains opposed to the special shipping permit created in LB942, and I would be happy to answer questions you might have. [LB942]

SENATOR KARPISEK: Thank you, Mr. Kohout. Senator Rogert. [LB942]

SENATOR ROBERT: Hey, Joe. Would you have less problem with it if we maximized the size of brewery that was allowed under this provision? [LB942]

JOE KOHOUT: No. I just...I think we need to be clear about what LB942 does, and that is, I understand what your question is, and so, can we start playing with issues with regards to can we look at the size of brewery that's allowed to ship direct into the state? Can we look at the number of leaders that the individuals...and, you know, those are great questions. But, you know, when we looked at LB942 and, frankly, when other organizations outside Nebraska look at LB942, they see it as a beginning of an erosion

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of that three-tier system which has served well since the end of prohibition in 1935. So I think to that...I mean, those are great questions, and I think we could walk through those, but, again, I'd have to check directly. [LB942]

SENATOR ROBERT: Okay. [LB942]

SENATOR KARPISEK: Senator Krist. [LB942]

SENATOR KRIST: Thank you, Chair. Joe, not disagreeing with the fact that a sampling beer fest is a great institution made by God and that (laughter) potentially that distributor may be a market, may have a market here in Nebraska, and potentially, they will eventually spend the thousand dollars for the shipping license to bring that product in because it's so good. How do we allow them to have those God-given, beautiful beer fests without disturbing the three-tier process? [LB942]

JOE KOHOUT: I think there are two ways, frankly, Senator Krist, that you could look at that. The first is, I would say two, that one of which doesn't require legislation, and the second that would. The first is the issue of...and I believe the proponents alluded to this, is to somehow form an association or some sort of a co-op or a joint venture by an individual not located in the state of Nebraska who could act as an aggregator of those small breweries. And those individuals...some quick math. If...I believe we had a conversation with proponents last week about this, I believe that of the 80 breweries they're looking at to come into the state, only 40 don't ship here now. So if you actually look at the...presuming the passage of Senator Karpisek's bill with regards to the \$1,000, it actually ends up costing them approximately \$25, each of those 40 members, versus the 45 that LB942 calls for. So I think that that's something that can be done and could be explored right now with regards to trying to get that shipper's permit in time. The second is, as you mentioned, Senator Robert. I think you look at what is the thresholds for imports, and if you're going to do that, I think it's fair to say, okay, because I think, Senator Dubas, you were asking the question about wine tastings. So, okay, why are beer tastings different than wine tastings, and if we're going to do one, shouldn't we do more though? I mean, I think those are legitimate questions that this committee should ask. [LB942]

SENATOR KRIST: Thank you. [LB942]

JOE KOHOUT: Um-hum. [LB942]

SENATOR KARPISEK: Thank you, Senator Krist. Senator Robert. [LB942]

SENATOR DUBAS: That would be Coash. [LB942]

SENATOR KARPISEK: Oh, I'm sorry (laughter). [LB942]

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SENATOR ROBERT: He's much shorter than I am (laughter). [LB942]

SENATOR KARPISEK: (Laugh) I'm still confused on Joe's second thing. Sorry, got me all mixed up. I'm sorry, Senator Coash. [LB942]

SENATOR COASH: Don't worry about it. Joe, couldn't this LB942 be a benefit to distributors in that, you know, if we have these small breweries from outside the state that get these special designated licenses come in here, Nebraskans love it, and they say people like this so much, we're going to distribute here, and then we're going to go, we're going to have to find some of your members... [LB942]

JOE KOHOUT: Um-hum. [LB942]

SENATOR COASH: ...to carry their product. [LB942]

JOE KOHOUT: Um-hum. [LB942]

SENATOR COASH: I mean, wouldn't you see that as a benefit? Wouldn't your members see that as a benefit if they could increase the amount of product they can distribute? [LB942]

JOE KOHOUT: Absolutely, I think so. And I think that that's actually a great conversation that occurred at our board level where they had actually discussed this legislation, but I think some of their conversation was around...well, some of these, again, going back to the 80 versus 40, a lot of them are here. So, but you're talking now about a market. Can we go out and try to get some additional folks? And I know that some of our distributors currently are even distributing the proponents' beer through...I know right down here in Lincoln there's one who is distributing that beer. So, sure, they see it as a long-term, and I think that's why conversations are important. I think looking at a way to do it within the current system, I think, makes those individuals a little bit more amenable to talk about the long-term effects and whether or not we can...that's something we could support. [LB942]

SENATOR KARPISEK: Thank you, Senator Coash. Any further questions? Seeing none...can you say again your second way to do this through legislation? [LB942]

JOE KOHOUT: I think you look at the co-ops or the other is what Senator Robert said, you could look at the possibility of increasing those thresholds. But, again, those are not...and I want to be clear, those are not positions that we vetted... [LB942]

SENATOR KARPISEK: Right. [LB942]

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JOE KOHOUT: ...or taken back to them, so I'd have to clear that. [LB942]

SENATOR KARPISEK: Okay, thank you, Mr. Kohout. [LB942]

JOE KOHOUT: Thank you. [LB942]

SENATOR KARPISEK: Further--what are we on, opponents--opposition? [LB942]

SENATOR PRICE: He's all over the floor today. [LB942]

SENATOR KARPISEK: I know. [LB942]

HOBERT RUPE: Thank you, Senator Karpisek, members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission, and much as Senator Krist has brought up, you know, this is a weird position for me to have because I am what my friends call a beer snob. And the more obscure and strange the beer, the more I like it. That said, I sort of...let me give you a little story about how a director can wear three hats at three different times on a possible issue. When this issue came up to me last August, you know, Nebraska Brewing Company is a well-respected licensee, craft brewery licensee, in Nebraska, when they first brought up the possibility, I was the bearer of bad news, at least from their perspective, who said, you can't do that here because you can't bring in more than nine liters. You certainly can't bring it in for a consumption-type sale, you know, absent having a liquor license, a shipping license to bring the alcohol in. So that was my first expansion, and they kept saying, well, is there a way we can get around it? And I said, unfortunately, no, you have to change the...go to the Legislature. All right, well, they listened to me. It's amazing when people actually do that, so they went to the Legislature and their senator, and they brought forth this bill. And so we were then...I was then approached by Senator Gay's office and which puts the second hat on. The commission has long made a decision that even if we might end up opposing the bill, if we're approached by a senator for technical support as to: Here's what we want to do. How is the proper way we can do this? How are we not going to have unintended consequences? We're going to do that. I am here testifying in opposition to a bill that I wrote, technically. This bill before you, if you as a Legislature makes a policy decision that is good policy, I believe that this is the proper mechanism to do it. Senator Gay's office brought forth a bill beforehand that...and primarily because they're not in depth into the Liquor Control Act as much as my brain works, had problems would be an issue, and a whole host of unintended consequences. My staff and I said, if this is what you want to do, Senator, here's the proper way to do it. And so that's the bill in front of you. And so I would say, if this committee and the Legislature as a whole thinks this is a good policy, this mechanism is a good way to do it. Okay. So now your next question is, well, how are you testifying against a bill you helped write? It has purely to do with philosophical issues that Mr. Kohout raised. The three-tiered system has been set up

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post 1935 to make sure there is a clear line of demarcation between the three tiers--a supplier or principal importer, a wholesaler, and a retail level. Okay. What has happened since 1935? For the most part, these three...these lines weren't crossed by any states. They really weren't. Slowly, there have been inroads into the three-tiered system. Nebraska is as guilty as any other state in that. We have three big inroads, and we're all aware of it. The craft brewery license in itself is an inroad because it allows this person to operate at two tiers. They can operate as a manufacturer of their own product; they can also act as a retailer. Now, the craft brewery license does require them, if they're going to be selling off their premise, to go through a wholesaler, so they're only operating at first and second tiers, and there is a cap limit on it. And they pay exactly the same tax rate, 31 cents a gallon currently as Anheuser-Busch InBev does. All right. The spirit, the craft distillery one which was passed recently, is modeled on that legislation, has exactly the same parameters, exactly the same liabilities there at two of the three tiers. Then you've got the farm wineries which are actually what would...I jokingly call the most powerful liquor license in the state because you have abilities at all three tiers. You can...you make it, they can wholesale it themselves, they can sell it at retail themselves. They also pay a lower tax than their other competitors. Now, there are limitations. There's a gallonage limitation on them. There is a limitation on having other access other than just their wine where a craft brewery can actually get an additional license for their brew pub to sell their other products, the winery is stuck with their own winery products. And so there's definitely restrictions on them, but they've also...you know, they've got partial rights at all three tiers. All right. So your next question is, well, why does this matter now to the Liquor Control Commission? Why does this matter is because of federal litigation which has been ongoing over the last five years plus regarding entities attempting to chip away at states three-tier systems. The first, something you might have heard of was Granholm v. Heald. That was a case where it was all about the direct shipping, where you had an out-of-state--this was a case primarily brought by the California Wine Institute--trying to direct ship to end consumers. Now, Nebraska was forward thinking. We made sure they had a license. That's the S1 license we've heard about. That also complied with beer. There's no restriction or it would be a winery. That was the first case which has gone up to the United States Supreme Court in, oh, I think 15 years that dealt specifically with the interplay between the Twenty-first Amendment and the dormant commerce clause under the Fifth Amendment. And this court said, well, wait a minute, you can't allow your instate people to do something you're not going to allow an out-of-state entity to do. You either allow both of them to do it or you don't allow either. You know, that's your right under the Twenty-first Amendment. All right. The case which followed on the heels of Granholm was the Costco v. Washington case. Washington is a control state, so their system is much different than ours. There's 13 control states where they are the actual liquor and wine wholesaler. The judge there, the district court judge there wrote a very expansion proceeding which was reversed by the...I believe, the Ninth Circuit Court of Appeals, in part. It struck down part of Washington's act; part of other ones. The main message that people like me have taken from there is the courts aren't going to say, well, just because

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we have a three-tiered system so you can't do it. They're saying to states, what are you doing to make sure that you're sustaining and promoting your three-tiered system and what is the rational jurisdictional reason behind keeping those restrictions? So most of the lawsuits which have come since then, there was a case down in Louisiana where luckily there, Louisiana was able to say here's why we have these restrictions; here's why they're good public policy. And the court looked at those. And so it's incumbent upon the commission, I think, at this point in time, given the federal litigation to give a warning much like Mr. Kohout did. Any time you're going to be doing a further weakening of the dam which is the three-tiered system, you have to be cognizant that there might be unintended consequences. In this case here, unless you're very careful, you'll notice this bill here was pretty carefully drafted, if I might say so myself. My staff did the heavy work. I just affirmed the final version of it, was it cannot have any other liquor license because we did not want a large corporation who had a shipping license to circumvent the wholesale tier and do this. And so we try to put parameters in there, so this bill, we think, is a very minor chipping away of the dike, but it is a chipping away of the dike. And I think this committee has to be cognizant that, you know, any time you're...you know, that there are entities out there who would love to take the three-tiered system and flush it down the toilets. They would love to be able to go direct shipping and circumvent the tiered system. Why does that help us? The three...as...I'm not going to go through the...Joe did an excellent job, Mr. Kohout did, of explaining the value that's in the second tier. The second tier works very closely with the commission on enforcement issues. Earlier on, someone asked me, how do we find out whether there might be a problem with a retail license? A lot of times it's the beer driver calling us saying, hey, I think there's somebody in here who's not supposed to be in here. I think there's a hidden ownership. Almost all of our hidden ownership cases originate from the wholesale tier. They figure out something is wrong; somebody is in there who's not on the license, somebody is paying for the beer who isn't...who they have never heard of before, and that's the way we find out about hidden ownership is usually from the wholesale tier. Why? Because they're local, they're partners with the industry and with the commission, and they are an efficient gatherer of the excise tax. The excise tax is gathered in Nebraska at the wholesale tier--\$29 million overall, about 14...about 13.5 splits, pretty even, between beer and wine, and so that's also collected at the tax level. So I just would say, you know, that would be our opposition; it's very philosophical. If you make the philosophical choice to go forward, this bill is a good mechanism for it, though. I'd be happy to answer any questions. [LB942]

SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Krist. [LB942]

SENATOR KRIST: Can the Kavulak's solicit the aid of a distributor in the state of Nebraska, his sponsor of a beer tasting in the state and bring in 30 names with smaller samples on that license? [LB942]

HOBERT RUPE: Okay. You're asking a compound question. Are these out-of-state

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entities licensed any way, shape, or form? [LB942]

SENATOR KRIST: They're all licensed in other states to do what they're doing, and they're all doing... [LB942]

HOBERT RUPE: Okay. But they don't have a license in Nebraska, so no. [LB942]

SENATOR KRIST: ...they don't have a license in Nebraska. [LB942]

HOBERT RUPE: So, no. [LB942]

SENATOR KRIST: So if they...if you have a distributor from outside the state who distributes inside the state,... [LB942]

HOBERT RUPE: Okay, yeah, yeah. We could do that a lot. A lot of the small wineries in California, we have...you'll have a person who will be an agent who will be representing five, six small wineries, and that will be the license holder. That will be the shipper, and they'll get the license; they'll ship in. They pay the tax, you know, they coordinate all of it. It's not each individual winery. So that mechanism does exist, so if somebody wanted to...they have to be careful about using it instate because of the whole tight house. You can't have, you know, unregulated cash flowing between the tiers, causes us heartburn and headaches, and so they would have to go to an out-of-state entity. So if an out-of-state entity formed a co-op of say, ten of these locations in southwest Iowa and got a shipper's license, and they went through a wholesaler and brought the product in, 100 percent legal. [LB942]

SENATOR KRIST: Thank you. [LB942]

SENATOR KARPISSEK: Thank you, Senator Krist. Any other questions? I would like to say that I do appreciate you--I think we all do--working with someone with a bill even though you do oppose it because a lot of times we don't have that, and then maybe a bill gets a long way, and it shouldn't have, and it needs a lot of reworking, so I do appreciate that even if you do come in and testify against some of my bills. [LB942]

HOBERT RUPE: Well, I appreciate that and I appreciate you understanding that at different times we wear different hats, so. But thank you very much for your time, Senators. [LB942]

SENATOR KARPISSEK: Thank you. Any further opposition? Any neutral? Welcome, Mr. Brady. [LB942]

JUSTIN BRADY: Senator Karpisek and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for

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Republic National Distributing. Given the comments by Senator Gay and the proponents on their willingness to remove spirits and wine, then Republic National doesn't have any issues with the bill and, therefore, I just wanted to let you know given that change, they would be in a neutral capacity. With that, I'd try to answer any questions. [LB942]

SENATOR KARPISEK: Any questions? If we did not remove that, you would be in opposition. [LB942]

JUSTIN BRADY: Correct. [LB942]

SENATOR KARPISEK: Thank you. [LB942]

JUSTIN BRADY: Thank you. [LB942]

SENATOR KARPISEK: Any further neutral testimony? Seeing none, Senator Gay waived closing, so that will be the end of LB942. We will now open with LB883. Senator Coash. [LB942]

SENATOR COASH: (Exhibit 1) Thank you, Chairman Karpisek and members of the General Affairs Committee. For the record, I'm Colby Coash, C-o-a-s-h, and I represent District 27, here to introduce LB883. LB883 does two things. First, it allows farm wineries upon notification to the proper local commission to store their product in an off-site facility. Alcohol consumption on this premises, on this off-site would be prohibited. This is simply for storage. The second part of this bill revises the timing of when farm wineries report their inventory to the commission. In working with the liquor commission, we learned that there are some farm wineries that pay their...well, they all have to pay their excise tax monthly and often the commission is processing a 4-cent excise tax per month. So that didn't seem real reasonable, so we're going to move that to an annual reporting similar to the federal excise tax. Hobie is going to talk about an amendment that he suggested harmonize that with the federal excise tax payment as well. This is important for a couple of reasons. I'm going to pass this around. Our wine and grape growing industry continues to grow in Nebraska. It's a big economic driver. It's bringing people to our state. It's putting people to work, and this is important. And what we need to do is we need to do everything we can to help this industry grow and providing them with off-site storage allows them to grow and doesn't put an undue burden on them, and I'll defer to some of the grape growers and wineries to illustrate how this will help them be more efficient and market their product even better. With that, I'll close and see if anybody has any questions. [LB883]

SENATOR KARPISEK: Thank you, Senator Coash. Any questions? Senator Price. [LB883]

SENATOR PRICE: Senator Karpisek, thank you. Senator Coash, we just heard about

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the ability for the farm wineries to operate in all three tiers, but it seems like they had some limitations. Do you see this as going to be another further erosion of that by allowing this off-site storage? It sounds like a distribution network to me. [LB883]

SENATOR COASH: Well, as I understand wineries, and Hobie talked about this, they can manufacture it; they're also allowed to distribute it, but right now, as I understand it, they're going to have to, you know, a winery in the east part of the state has to drive clear to the west to distribute that. Might be more of a cost benefit for them if they could store it halfway or something like that. I don't see it as a...I mean, Hobie talked about wineries having inroads in all three tiers. That's the way it is now. I don't see this as making it any worse. [LB883]

SENATOR PRICE: Thank you. [LB883]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you, Senator Coash. Have the first proponent of LB883. [LB883]

HOBERT RUPE: Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of Nebraska Liquor Control Commission. I appreciate the committee's indulgence on this. I figure I would go next after Senator Coash just because I could introduce the pending amendment to the bill. To answer Senator Price's bill (sic), I don't think it's a further erosion. I mean, they can already act as a wholesaler. They're asking for an off-site requirements. They came to the commission. We said, well, so long as that limitations, and you'll see the limitation is there can be no consumption there. They've got to keep what's called a perpetual inventory at both the primary winery and at the location. So, in other words, if we've gone to the primary winery, they're going to have a record of what's stored at the other location and vice versa. I mean, at least for the...when we go to the winery, so we don't think keeping track of it for purposes should be any more of a problem. As I said, they already have the ability to act as their own wholesalers, and this is just sort of allowing them to, you know, be more efficient doing that. Most of the states are, you know, the wine industry, you know, they are growing in (inaudible) different locations, and they're just trying to be able to, you know, store some off-site, and there are requirements. I don't think it's a further expansion or erosion. It's just clarification what they can do. The...what you'll see is in AM1684, sort of rewrites the underlying bill, at least on the part of the taxation purposes. Right now farm wineries pay monthly, and I have an accountant who is in charge of, as one of her duties is doing the auditors...doing the...does everybody have a copy of the amendment? I thought it was...I got... [LB883]

SENATOR HOWARD: No. [LB883]

SENATOR COASH: I gave a copy to the Chair. [LB883]

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HOBERT RUPE: All right. Okay. [LB883]

SENATOR COASH: Okay. [LB883]

HOBERT RUPE: Okay. I have an accountant who will process these applications on a monthly basis and often, sometimes it's 25 cents or less, but we have to make sure that they're rectified and they're consistent with that. What the amendment does is it mirrors when these entities have to file their federal taxes. All farm wineries have to receive what's called a basic permit from the Trade and Tax Bureau of the federal government. They have to pay a tax on that, and it's based upon their production. And Mr. Ballard is back here. He can probably clarify. It's either...depending on your...how much your gallonage, it's annually, quarterly, or monthly. I don't think there are any places in Nebraska which are filing annually, and if there are, they're probably...there's a couple of them, and they're probably filing quarterly. But what this will do is codify it so that when they're paying their federal excise tax, they're also having to remit the state excise tax, so they're not having two different tax reporting times. And it also will help us out because then we can cross check with the feds, and they can cross check with us and make sure that the same amount of gallons is being declared. And so it's going to be more consistent, and it'll actually help for...to make sure that the taxes...the proper tax is being paid. And also, it's going to free up one of my staff persons. Right now there are...I think there are 28 farm wineries, and so that's 28 tax returns per month, 12 months she's processing. More than likely, just cut those down just to 28 on an annual basis, and then compare those with the appropriate federal return will be a process. And so we think it's, you know, it's clearly just a, you know, a clarification and sort of, you know, looking at how the farm wineries passes baby steps. It's going into a more professionalized...they might need the off-site, and we make sure that the taxes are the same, so. I'd be happy to answer any questions. [LB883]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? I would just ask and it's been brought up. Will the beer wholesalers--and I don't see any of them here--have a problem with the off-site storage? [LB883]

HOBERT RUPE: I don't think so. Beer and wine are very different. I mean, as you might know, beer, wine, spirits...there's actually beer territories. There's not wine territories; there's not spirit territories. Beer has a limited geographical territory. It is set up by the manufacturer who they reach into an agreement with that wholesaler to serve that geographic area, and it has to do with basic physics. There's a lot more beer; beer takes up a lot more space than wine does. You're going to, you know, it requires conditions that wine might not be required as especially if you're trying to go to a supermarket where they're going to want to refrigerate it, so they can just go right to the cold cooler instead of having to go through the process of cooling it down. It weighs less. That's one reason why, if you look at the...our S1 licenses, the direct shipping licenses, almost all of them are wineries because of the cost. It's cheaper to, you know, the equivalent

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alcohol in beer is...that requires a lot more space than a case of wine would do, for an example. So I don't see this being a problem. I don't see them having an objection to it. They're aware of it, and I'm sure if they would have opposed it, they would have been here. [LB883]

SENATOR KARPISEK: Good enough. Thank you. Any questions? Seeing none, thank you, Mr. Rupe. Further proponents. Welcome, Mr. Ballard. Glad we put you last, so you could stay for the entire hearing today. [LB883]

JIM BALLARD: We can clear out a room pretty well here, so (laughter). Senator Karpisek, members of the committee, it's a pleasure to be here. My name is Jim Ballard from James Arthur Vineyards in Raymond, Nebraska, and I'm here representing the Nebraska Winery and Grape Growers Association in support of LB883. First off, the off-site storage would be of great benefit for a number of wineries in an economic sense. It'll give...give you an example. Our winery, we're in about 350 different locations around the state that we distribute to. Our salesperson will load up in Raymond, maybe make it to Grand Island, unload, have to drive all the way back to Raymond, go back out west. He may have to do that three or four times in order to accommodate all the stores that carry our wine in that part of the state. If we had an option two warehouse, say, in Grand Island or Kearney, we haven't run all the numbers yet, but if we had that option, it might be of benefit to us economically to warehouse and eliminate a number of unnecessary trips. Another reason we're in favor of the bill is that many of the wineries in the state don't have extremely large facilities. You just heard Mr. Rupe talk about some of the excise taxes that are paid. There's a number of small wineries across the state, and since we're all farming operations, we still are considered a farm winery. We can't predict sometimes what Mother Nature will do to us, and if we have a record crop, you know, when that crop has to be processed, we can't store it in grain bins or put it on the ground. If we have excess crop, that crop has to be processed, has to be bottled. And in lieu of building another facility or to expand an operation that we may not have to use or some of these wineries may not have to use the next year or the year after that, to have access to a temporary off-site facility to store wine would be a great benefit for some of these smaller wineries as well. We checked with the federal Alcohol, Tobacco Tax and Trade Bureau who mandates us or governs us at the federal level. They were fine with the...as long as the facility was bonded, secure, and we could do perpetual inventory the same as the state would require, they had no problems with that as well and would be okay under those requirements. As for paying excise taxes, Hobie told you about following the federal, how they do it. That would be wonderful. Again, we have a lot of smaller wineries that once a year would be sufficient. We're actually the largest winery in the state. We do ours on a monthly basis, but to follow the federal requirements would be a wonderful benefit to many of the wineries coming into the state plus it would make the Liquor Control Commission much more efficient, I'm sure, in dealing with 10- and 15-, 25-cent payments coming in on a monthly basis. So having said that, I would be more than happy to answer any questions with either one of those

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issues. [LB883]

SENATOR KARPISEK: Thank you, Mr. Ballard. Any questions? Seeing none, thank you. [LB883]

JIM BALLARD: Thank you. [LB883]

SENATOR KARPISEK: Next proponent? Welcome to the committee. [LB883]

PAT GAMET: Thank you, thank you. Chairman, members of the General Affairs Committee, my name is Pat Gamet, it's P-a-t G-a-m-e-t. I am here on behalf of 5 Trails Winery in Paxton, Nebraska, which I own and operate, as well as a member of the NWGGA or the Nebraska Wine and Grape Growers Association. I am here to testify in support of LB883 for the exact same reasons from the opposite end of the state as Mr. Ballard just suggested here, whereas our business is structured that about 40 percent of our sales are on-site sales or through the tasting room, and about 60 percent of our business is distribution to retailers across the state. Of that 60 percent, better than half...I haven't really rounded it down or brought down to the numbers, but far better than half is east of Grand Island. And I am a considerably smaller winery than James Arthur. We're about middle of the tier. I think last year we ended up about eighth in size, so there's a lot of wineries a lot smaller than me, but a lot of my deliveries down to the eastern end of the state are for 10, 15 cases of wine which when you start crunching the numbers that I have to load up a pickup truck in Paxton which can hold 17 cases of wine exactly and haul them all the way to Lincoln. I get down here and retailer Joe says, oh, holy cow, that went great over Christmas. Do you have another three cases? Well, I'm not going to turn down that sale. I say, no, but I can have them back here next week. And so it's a really a huge efficiency issue in distribution which we have been generously afforded through the Nebraska Farm and Winery Act, but it's a very inefficient way for a smaller winery to operate where we're not running big trucks down the road. On the point of having the opportunity for the smaller wineries to afford extra storage space, either on or nearly off-site as opposed to storing your current facility which we currently have to do, during the harvest crunch. As Mr. Ballard said, there is a...we're dealing with a perishable that you cannot reasonably store in any other vessel other than a fermentation tank and a bottle. And an empty bottle takes up just as much room as a full bottle, and so there is a period of time in, say, starting the first of September running through roughly the end of the year where you have got more empty bottles and more full bottles than a person really knows what to do with. And this would afford us to be able to go out and get a secure, bonded inventoried space to fill that gap in between those storage crunch times. With that, the tax basis, I am a smaller winery, so I file on an annual basis with the TTB and having that ability to file on an annual basis with both reports would be very efficient for the taxes. I have not had any 25-cent bills yet, thank God. Hopefully, they stay a little bit bigger than that, but it...you know, there's a lot of \$10, \$15 tax bills that I send in that I'm sure on a monthly basis probably

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cost the Liquor Control Commission nearly that much just to process. So with that, any questions? [LB883]

SENATOR KARPISEK: Thank you, Mr. Gamet. Any questions? I would like to thank you for bringing up the storage during harvest, too, that it's not just distribution... [LB883]

PAT GAMET: It is not just a distribution issue. There are storage times. I think you're going to hear more of that from the gentleman to follow me. [LB883]

SENATOR KARPISEK: Very good. Thank you. [LB883]

PAT GAMET: Thank you. [LB883]

SENATOR KARPISEK: Next proponent? Welcome. [LB883]

NICHOLAS RYAN: Thank you. I fall under the small winery. [LB883]

SENATOR KARPISEK: Can you give us your...? [LB883]

NICHOLAS RYAN: Oh, sorry. [LB883]

SENATOR KARPISEK: That's all right. Name and spell it, please. [LB883]

NICHOLAS RYAN: Nicholas Ryan, N-i-c-h-o-l-a-s R-y-a-n, representing Prairie Creek Vineyards in Central City. It is a harvest time issue for us. We store our wine in the same part of the building that we make our wine in. So come that time of year, we have to move wine behind the toilets and other places in the winery to get by. Other than that, (laughter) what else can I say? I think they've really...they have... [LB883]

SENATOR KARPISEK: What was the name of that again? (Laughter) [LB883]

NICHOLAS RYAN: Don't come out in September, I guess (laughter). But yeah, it's a storage issue, you know. We...you know, we're pretty much forced right now to store our empty bottles off-site right now. It would just be helpful to have a bonded place where we can keep our bottled case wine labeled and everything. So as far as taxes go, it doesn't bother me one way or the other. I guess I'm neutral on paying monthly or annually or however it goes, so. [LB883]

SENATOR KARPISEK: Okay. Thank you very much. Any questions? Senator Dubas. [LB883]

SENATOR DUBAS: Thank you, Senator Karpisek. Welcome, Nick. Would it be...is there any kind of a hardship in finding a place to warehouse your grain...or grain...your wine

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off-site? (Laugh) Where my mind's at. [LB883]

NICHOLAS RYAN: There was a hardship this year with the grain, too, yes (laugh). We have...at one time, we got granted temporary licensure when we put in new equipment, but that was temporary and, you know, that's it. And I doubt that they'd be interested in doing temporary licensure for everybody for a couple of months at a time. I can't speak for Hobie, but I think... [LB883]

SENATOR DUBAS: Okay. So would you be looking just for yourself to find a place to warehouse or would you be sharing some warehouse space possibly with some other... [LB883]

NICHOLAS RYAN: I would look for myself, yeah. [LB883]

SENATOR DUBAS: Okay, all right, thank you. [LB883]

SENATOR KARPISEK: Any other questions? Seeing none, thank you. Do we have any further proponents? Any opponents? Any neutral? Senator Coash to close. [LB883]

SENATOR COASH: Thank you, Chairman. I just wanted to publicly thank the testifiers. They all sat here beginning at 1:30, and they've all been waiting real patiently to give you their feedback, and I think they illustrate it very well for the committee the benefits of this. We have an opportunity to streamline both the Liquor Commission's process which makes government more efficient and streamline their process which makes them more efficient, so I think it's a win-win for everybody. Thank you. [LB883]

SENATOR KARPISEK: Thank you, Senator Coash. That will end the hearing for LB883 and end the hearings for today. [LB883]