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General Affairs Committee  
October 15, 2010

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[LR528]

The General Affairs Committee met at 1:30 p.m. on Friday, October 15, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR528. 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: (Exhibit 1) Welcome to the General Affairs Committee hearing. My name is Russ Karpisek. I'm the Chair of the committee. Joining me today are: Senator Coash from Lincoln; Senator Krist from Omaha; Senator Dierks from Ewing; Vice Chair Senator Rogert from Tekamah. Josh Eickmeier is our committee counsel. I'm Russ Karpisek from Wilber. We have: Annette Dubas...Senator Dubas from Fullerton; Senator Cook from Omaha; and Senator Price from Bellevue. We also have Joan Snyder from Lincoln, our committee clerk. Today's briefing is on LR528, and I'm going to read it just real quickly. The LR is a review of the area restrictions found in Section 53-177, specifically (1) of Section 53-177, which prohibits the granting of liquor licenses within 150 feet of any church, school, hospital, or home for the aged or indigent persons or for veterans, their wives or children. In (2) of this section, which prohibits the sale for consumption on the premises within 300 feet from the campus of any college or university in the state: a consideration of whether the terms in Section 53-177 are adequately defined and whether it is appropriate to remove or add terms to such section; a consideration of the potential impact on the area if alcohol could be purchased or consumed within 150 feet of the locations listed in Section 53-177; (4) a consideration of this potential impact alcohol-related environmental messages send to prospective students and their parents if alcoholic liquor retail sales are permitted, without restrictions, within the core of a campus or within close proximity to campus-approved housing; (5) a consideration of policies and procedures that are flexible enough to support economic development and provide new opportunities for retail growth, yet recognize the impact of selling and serving alcoholic liquor adjacent to

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academic facilities or campus-approved housing; (6) a consideration of whether a definition of "campus" is still relevant and, if so, consider what that definition should be. This should recognize that a one-size-fits-all definition may not apply to all colleges and universities. It will also be important to differentiate between residential campuses, undergraduate and graduate programs, the electronic uses employed by campuses offering classes, and other such issues that impact the changing nature of education and the populations they serve; (7) a consideration of allowing colleges or universities to grant waivers for the service of alcoholic liquor at locations that are not in conflict with the academic mission of the institution yet provide an important social gathering place for populations affiliated with campus; and (8) a consideration of ways to reduce the number of applications for special designated licenses, or SDLs, for the service of alcoholic liquor on or near campuses as well as on or near those locations listed in (1) of Section 53-177. So that's what we're talking about. We're going to start with the 300-foot rule as it pertains to campuses. We're going to ask Mr. Rupe to go first, and then we will ask for UNL representatives to go next, and then we will open it up for anyone else who wants to testify. Mr. Rupe, thank you for being here and whenever you're ready. [LR528]

HOBERT RUPE: Thank you, Chairman Karpisek. Thank you, senators of the General Affairs Committee. Look forward to having reason to wear perhaps the ugliest Husker tie ever, and I thought today would be the day to get by with it. [LR528]

SENATOR KARPISEK: Thank you. [LR528]

SENATOR PRICE: Bravo. (Laughter) [LR528]

HOBERT RUPE: (Exhibit 2) My name is Hobie Rupe. I'm the executive director of the Nebraska Liquor Control Commission. And I'm handing out, you'll see, what's actually the current statute. As you'll remember, it was altered last year in LB861 to allow the waiver on the churches; that's now is where (2) is. It used to be...so that's what was

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inserted there. And also has the culinary arts program, which was put in the year before. Why are we here? 53-177 was an initial part of the Liquor Control Act; it was passed in 1935. And later on when you go through Section 1, you'll see that some of the terms are getting somewhat archaic. If you look down, what is within the statute as 53-177(3), which is the area we're going to talk about first, the 300-foot boundary on schools, you'll notice what it says: No alcoholic liquor, other than beer, shall be sold for consumption on the premises within 300 feet from the campus of any college or university in this state, except this section then has the two exclusions. So what does that mean? That means you can't drink spirits or wine at a location within 300 foot. You can have beer. That's why if you look upstairs, everyone here might know the Valentino's up there on 34th and Holdrege has a beer-only license; it's 300-foot of it. Historically, beer was seen as being less dangerous, less abusable. You have to remember, technically beer, 3-2 beer, was legal even prior to the repeal of prohibition. They went...one of President Roosevelt's campaign--or platforms was to get rid of prohibition, and although it took a little longer to actually repeal the entire thing, one of the first things they did was they amended the Volstead Act to say that 3-2 beer was...that a normal person could not get intoxicated on 3-2 beer. Well, it might take you a little while longer, but I've seen people intoxicated (laugh) on 3-2 beer. But that sort of shows the 1935 mind-set that beer, especially a lighter beer, is not...would not be a problem and would not be abusable. What does that not prohibit? As we said, Valentino's at 33rd...34th and Holdrege--beer-only license. You could have a package store. Beer, wine, and spirits for off-sale within a foot, potentially, of a university. So in a lot of ways, what that section is doing is saying, okay, we're just not going to...we're going to stop bars and restaurants in a lot of ways if you want to have spirits and wine. This ban has resulted in many legislative tweaks over the year. The Supreme Court has, in actually looking at (1), defined that the distance the commission needs to use is from nearest external wall to nearest external wall. That's not property lines; it's nearest external wall, nearest external wall. Well, the southern boundary of UNL, according to the statute, for Liquor Control Commission purposes, is the right of way along R Street. Last time I checked, the University of Nebraska city campus had buildings south of R Street, but for our

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purposes, by statute, we have to look at R Street. A couple of years ago, this same issue arose with the western boundary, when the proposed plans of the university was going to be opening up some locations, basically expanding the university footprint into the Haymarket. And so therefore now the western boundary is 10th Street. We're just wondering if...unless we look at this and rechange it, when are we going to see a request for the northern boundary the minute somebody wants to open up a sports bar up in Innovation Campus up there north of the university to feed all those people during lunches who they hope are going to be having jobs up there. And so we thought that this was a good time to look at this, because it's sort of a perfect storm in a lot of ways because it's also coming when the commission over the last couple of years has been looking at the misuse of SDLs. SDLs are special designated licenses; they create a temporary license for a short period of time from up to six days at one specific location. Two broad classes of individuals can get an SDL: a liquor licensee and a nonprofit, including museums, political parties, you know, social...you know, mostly 501(c)(3)'s can get it. What was happening is we were seeing SDLs...let me back up, one of the people who uses SDLs the most are caterers. You know, they have an existing license and they have sort of a catering endorsement on top of it. Normally, a liquor licensee is limited to six SDLs a year. A caterer does not have that prohibition; they pay a little bit more for the rights, but then they can have as many as they want during that time...during that year. And so what the commission was seeing was people were utilizing SDLs to basically run bars on weekends without going through the licensing procedure. Why is that important? Why are they trying to do that? Well, as you're aware, when you get a liquor license, not only does the commission do the investigation, Patrol will do a background investigation on the applicant; the Fire Marshal's Office will have to sign off on the location and set the capacity rating; and the Department of Agriculture--Foods and Dairy--signs off that it meets the health code conditions that are set. So if you're utilizing an SDL, there's a way that you can be getting around that oversight. And so what the commission did by rule was any location which has 12 or more days of an SDL during one year is set for a review to see why aren't they getting permanently licensed. And we've got a lot of those places which were sort of running

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these rogue bars or nightclubs...to either close them down because they can't get the SDL seven, eight days or they've actually gone through the process and applied for liquor license, gone through the issues. A lot of times they try to avoid it, because to bring some buildings up to fire code can be prohibitively expensive, so that's why they try to stay away from it. Where does this...what happens here is that statute says that except for a place which could otherwise be licensed. Well, that means places within 300 foot of campus cannot receive a liquor license if they want spirits and wine, which would be an I- or a C-class license. And so what we do is we have special designated licenses being utilized in many different ways. The other pages you'll have, you'll see that on the last page of the handout I've given you there, for 2009 there were 3,590 special designated licenses issued by the commission. Of those, for exemptions seeking just the 300-foot exemption, there were 504, which was 14 percent of all SDLs were being filed primarily to get around that exemption. Total exemptions for 53-177, which is usually the church one which they would utilize and that one, was 957, which was 26 percent of licenses. And so what you're seeing is a large volume of SDLs which are being utilized by locations. You know, you'll see there we've got some ones highlighted, and basically I highlighted either one which is going to be at 11 per year, because that's when you're starting to get to that tipping point where we would look at you--why are you not getting permanently licensed--and you'll see that a lot of those locations are far beyond that. Chances R at the Champions Club had 63 SDLs in 2009. We don't know...I would have to do more research whether they were one day or it's up to six days, but there were 63 different SDLs issued for that location. And when an SDL gets requested, it's got to be on file with the commission ten business days prior to being issued; that means the local governing bodies having to deal with the issue prior--the clerk's office is processing it. And so, you know, there's quite a bit of work on both the city and the commission staff to process an SDL. We're not saying that's work we're ready to do, but when you start seeing this many...a couple of other ones which you're seeing which are sort of strange. Hy-Vee--that's the Hy-Vee at 50th and O--they've got 40. All right. One of the other ways where we're trying to reduce the number of SDLs which are being licensed--we're doing grocery stores, we're doing wine

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tastings. They traditionally have a Class D off-sale liquor license. Omaha and Lincoln city clerks came to us saying, isn't there a way you can help us; we're being swamped. And so what we did was we allow them to get the C license, the full on- and off-sale, but with a restriction that can only be used for wine and beer taste...you know, tasting purposes only. Well, given that, that we give out these restricted C's, why is Hy-Vee showing up with 40 for 2009? Doane College has a satellite location within 300 foot of that location which has more than 25 percent of their students there, therefore it qualifies as a campus. So of all the Hy-Vees in the city of Lincoln, one of them has to still go through the old SDL process to the tune of 40 last year. Some other ones which you see might be pretty high. Thirty-two, that's the Lied Center. On the next page, another one you've got there, 20 at the Sheldon Art Gallery, SDLs. The Wick Alumni Center had 47. The Harper Center up in Omaha had 45. Morrisson Stadium, which I think is Creighton stadium, had 13. The Thompson Center, UNO, had 43. And so we're not trying to say that all of these...because many of these you'll see have one or two, which is probably a proper usage of the SDL system. But the question we're having is when we're seeing this many SDLs at one location, shouldn't we consider at least allowing those places or having those places to go through the full licensing process, because there's a couple of things which happen when the...I went through already the oversight. You know, they have to go through the process and be completed, you know, they have to be...the Patrol has to sign off, you know, that there's...you know, through the background check, Fire Marshal, Ag, the commission has to go through the issues. The other issue is, is any time there's a liquor license, law enforcement officers have the right to enter onto those premises to make sure the compliance with the Liquor Control Act is taking place. So in other words, if you actually had a place that's fully, permanently licensed, you're looking at more control, more safety, not less. And the other issue is, is when you're looking at it, and Commissioner Batt is going to testify about this, you know, is the money side of it. You've got other places who are fundamentally fair. I'll give you an example. Right downtown Lincoln, you've got the Lied Center, which gets SDLs. What is it, one block, two blocks away, you've got the Rococo Theatre. They're not open every day. They're only open for special events, about two or

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three a month, but they're permanently licensed. They're paying \$900 a year for a liquor license. They're paying the \$300 for a Class C and paying \$600 to the city of Lincoln for its occupation tax. So that's why we really thought this needs to be looked at. You know, you can tell this is definitely a 1935 statute. I know the university is going to come; they have some concerns. And I think the position of the commission is we're trying to be more safe and more healthy, and we're trying to sort of cut back on what we think is an abuse of the SDL process. So I think that's one reason why we need to look at this language, and perhaps, you know, there will be some other ideas coming forward: I think going all the way from abolition of the statute to perhaps rewriting the statute and updating it. And then we'd be happy to work with, you know, the senators and anyone else looking to go forward there. But it is an issue that I think we need to look at, because it's worked pretty well for--since 1935, but I think it's starting to show its age quite a bit. I'd be happy to answer any questions. [LR528]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? I'll ask. Are all SDLs good for six days? [LR528]

HOBERT RUPE: No. What they have to do is they have to identify the dates and the times on the SDLs, so it could be...a lot of them are one-days; most of them are probably one-days, but they could be up to six. The reason for that is oftentimes you'll have a centennial street dance which is going to go three or four days, you know, or over a weekend, so you'll have the one special designated license which would cover those three days. So--but they could be no longer than six days. If you have more than that, they'd have to get a second SDL to sort of back in on the other side. [LR528]

SENATOR KARPISEK: And then could you go over once again when you said if you're permanent licensed the police have more...what can't they do on an SDL? [LR528]

HOBERT RUPE: Well, an SDL, while it's operational or going on, you know, arguably they can go in to make sure compliance is, because that's a temporary license. All right.

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The issue about a permanent license, where there's more control, is law enforcement officers can go in and make sure that compliance is going on, make sure the liquor is being stored in a safe and secure manner, make sure that it's coming through the proper retail/wholesale chain. And it's...you know, they can go there and make sure that the place meets its criteria without having, you know...a lot of times, if you talk to most investigators, one of the most dangerous times is they're trying to do, you know, enforcement actions on a really full bar, because you've got a lot of people who...you know, it can escalate very quickly. So the enforcement sometimes is better either before or after an event. Oftentimes if you have a temporary...an SDL, what do they care? Once the event is over, the license goes away. I mean, the only issue that's going to come up then is: Is this through a licensee? Then we would have to go after the licensee. Let's use an example, and I'm not trying to pick on them or say it, let's say that they're...this weekend a minor is found to be consuming on the SDL premise, because there's an SDL for the Champions Club tomorrow, tell you right now. Let's say officer goes in, sees a minor consuming. What you going to do then? Well, he can cite, in this case, Chances R Restaurant, who's the holder of the catering permit, in York, you know. So we're either going to have to look at, you know, Chances R, which is, you know, as the holder of the license, might be suspended, cancelled, or revoked. Or the other thing is, is just deny any further SDLs for that location or for that caterer at that location. You know, the problem with the SDL is they can be a little arbitrary and capricious as well, because they have to get approved by both the local governing body and by the Liquor Control Commission. If either of those entities say no, it's gone, there's no appeal rights because it's for this sort of thing. And so if you're going to have a place which is acting like a bar, you'd rather treat them like a bar, including progressive discipline, oversight. And so that's one reason why, from an enforcement standpoint, the permanently licensed places is more appropriate to be dealt with. [LR528]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you, Mr. Rupe. Mr. Withem, anyone. I did forget to tell everyone to please state your name and spell it for the transcription. We're keeping a record. [LR528]



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RON WITHEM: (Exhibit 3) Senator Karpisek, members of the General Affairs Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m, here representing the University of Nebraska to visit with you a little bit about LR528. We always feel a little responsible for this every time we come in front of this committee, because I think we kind of kicked this off, a lot of this off, a couple of years ago when we brought in the legislation that was referred to in the previous testimony concerning the western boundary of the UNL campus. We have spent quite a little bit of time with it. We have a proposal. Josh, does everybody have a copy of the...if they don't, we did bring copies, but. [LR528]

JOSH EICKMEIER: It's in the back of the first half. [LR528]

RON WITHEM: As we understand the issues surrounding the 300-foot limit, they kind of break down into three different categories. Categories: The one you heard from the Liquor Control Commission in regard to the specially designated license. Second concern is one that brought us here in front of the committee a couple of years ago with the boundary change. And that is: a lot of new economic development proposals, multiuse property proposals--such as the one in the Haymarket, such as the one on the Aksarben campus at UNO--involve a economic development type of proposal that needs a hotel, needs a fancy restaurant, needs something along that line that needs a liquor license. And we don't want to see the 300-foot limitation that's in statute now make it difficult to do those economic development proposals. So that's the second group of issues. Third group of issues...and we're going to have Linda Major, who's from the UNL campus and works with the program to try to discourage misuse of alcohol by the students on the campus. That third category of issues involves the social concerns having a large concentration of young people in close proximity to availability of liquor. That's why I think the 300-foot limitation was put into place back in 1935. I was absent from the Legislature in 1935 when the legislation passed (laughter), but that's my... [LR528]

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SENATOR KARPISEK: Sick that day? [LR528]

RON WITHEM: Yeah, I was sick that day, yes. (Laughter) But that's my understanding of the history of the measure. We think we have a proposal here that addresses all three of those concerns, and we're asking you to give it serious consideration. Last year's legislative session you had had a proposal before you to simply repeal the 300-foot limitation, and admittedly that would take care of the first two concerns. That would take care of the SDL concern. It would also have taken care of the economic development concern. But we're still concerned, particularly on our Lincoln campus, where there is such a close proximity between an entertainment district and student residential and academic areas. So let me walk you through this proposal. It's fairly simple. Section 2: Lines 6 through 19 are simply a reiteration of current statutes. The bill drafter just thought the statutes would read a little more easily if this provision were in this particular place. But I point it out to you because there have been some people we've shared this with that have read this--sections (a) and (b), paragraph (1), sections (a) and (b)--and thought that this, because it's underlined, that this is new language. It really isn't new language; it's just a reiteration of the old. So this maintains in statute the current 300-foot limitation. Starting on line 20--paragraph (2) and the subparagraphs under that--is a provision where the Liquor Control Commission would be allowed to grant a waiver. Current statute, there is no provision for a waiver in those...a waiver of the 300-foot. This section allows the Liquor Control Commission to grant a waiver if it has taken into consideration one or more of the following, and then we've set up a number of considerations that we ask the Liquor Control Commission to take into consideration when they're deciding to grant a waiver or not: whether it is close to premises of academic institutions, whether what the impact to the students are likely to be, the proximity to academic facilities, the impact on economic development, the closeness to approved student housing, how it will impact on specially designated licenses. So we ask the Liquor Control Commission to take those into consideration and if they feel that positive implications can occur by the waiver for...along one or more of

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these considerations, they can grant the waiver, if not, they can deny the waiver. Paragraph 3 of pages (sic) 14 through 25 indicates what needs to go into this application for a waiver, if somebody would like to see this waived. One important provision here is a notification of the governing body. At one time, we talked about the approval of the governing body. I guess we don't feel like it's up to the governing body, or the Board of Regents, to approve or disapprove of liquor licenses, but we do ask that we be notified of when a waiver is put into place. And then one very important provision over here on the top of page 4, we do have on our Lincoln campus several pieces of property that are owned by individuals other than the University of Nebraska. The one I think that's the most visible that I would point to, if you remember the old Reunion Building on...across the street from the Scott Engineering facility. That was and may still be--I don't know--private...owned by a private individual. We really don't want to see holes in the liquor statutes that would allow private individuals to come in and open liquor establishments on the campus. So this is the one place in the statute where we're asking not only to be notified but to be asked for our approval or our disapproval. That, basically, are the changes. The rest of this is Bill Drafter sort of changes. I have asked Linda Major from the UNL campus to visit with you just a little bit on why, particularly on the UNL campus, we're concerned about not doing away totally with the 300-foot limit. If you have any questions on anything other than that, I'd be happy to respond to it.

[LR528]

SENATOR KARPISEK: Thank you, Mr. Withem. Does any one have any questions for Ron before... [LR528]

RON WITHEM: Was I slightly more articulate today than I was last night? I just totally bombed last night trying to explain to Senator Dubas what I was going to be talking about today, so... [LR528]

SENATOR DUBAS: So I'll ask a question. (Laughter) [LR528]

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SENATOR KARPISEK: Yeah, good. [LR528]

RON WITHEM: ...hopefully I was a little more articulate than then. [LR528]

SENATOR DUBAS: I told you I'd promise I'd have an open mind, and so I am attempting that. [LR528]

RON WITHEM: Thank you very much. [LR528]

SENATOR DUBAS: When we get into granting waivers, that...to me, that leaves a lot of room for personal-type judgements. It's not quite as black and white as an actual... [LR528]

RON WITHEM: That's true. [LR528]

SENATOR DUBAS: ...policy or a statute. And so it just makes me wonder, will we maybe solve one problem and create another by giving this amount of leeway in deciding who gets to have a license and who doesn't? [LR528]

RON WITHEM: It's a good question, and I believe that's the reason that when we drafted this we put in the laundry list of considerations that needed to be considered. So it, hopefully, would not be an arbitrary, capricious sort of--we like you, we don't like you... [LR528]

SENATOR DUBAS: Um-hum. [LR528]

RON WITHEM: ...we'll grant your waiver, we won't grant yours--but some sort of findings that--this one makes sense because it makes sense to grant a permanent exception to the 300-foot limitation at the Champions Club, for example--so that we won't have all of these special designated licenses coming in. It makes sense not to

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approve it, one right on fraternity row at UNL, because of the close proximity to residential facilities. So that's why we put this laundry list of items to be considered. [LR528]

SENATOR DUBAS: You know, at first glance this appears to be...you know, it's a very old, archaic law established in a different time period with a lot of different mind-sets going on, but it's not as easy to solve as maybe we would like to think that it is. And I certainly understand the position of the university and the concerns that you have about your students and how do we allow economic development to happen at the same time. And when you consider that students don't have to walk very far anyway to go to a bar and get whatever it is that they want, it just makes it very hard for me, in my mind, to clarify, you know, why...making these waivers, are we really going to get where we want to get as far as the message we're trying to send to our students? [LR528]

RON WITHEM: Well, Annette, that's why I've asked Linda to visit with you a little bit, because she has firsthand knowledge and experience with the circumstances on the campus, which I don't have. Thank you. [LR528]

SENATOR DUBAS: I do appreciate your willingness to come up with some solutions, and at least it gives us a starting point for discussion. [LR528]

RON WITHEM: Yeah, hopefully, if this were to pass, we won't be in with a, "please define what the north boundary of UNL is for us," so. Thank you... [LR528]

SENATOR DUBAS: That is very clear. We need to discuss the boundaries and we definitely need to discuss SDLs. [LR528]

SENATOR KARPISEK: Thank you, Senator Dubas. Senator Krist. [LR528]

SENATOR KRIST: What's the definition of a campus? [LR528]

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RON WITHEM: That's a good question, and you might ask Hobie that legally. I think...to my knowledge, other than we know in statute where the southern boundary and the western boundary of UNL is, we don't know otherwise. I think there was some concern a couple of years ago, when a liquor license had been applied for as part of the Aksarben Village property and it was within 300 feet of the boundary of the UNL (sic) campus but there weren't any physical facilities there at that time, so it was--and maybe I'm talking out of my depth here, but this is my understanding of it--so it was determined that that wasn't necessarily the campus. I don't know if it means their having property...I really don't know. What you're raising is one of the things that we--I think in our discussions, we identified as a concern and a problem. [LR528]

SENATOR KRIST: Would you--a follow-on question--would you then, in a programmatic sense, suggest that we first define the boundaries of a campus before we enforce laws? [LR528]

RON WITHEM: That would be one approach. I'm sitting here thinking about the first question, in reference to a strip shopping center in east Lincoln along about 50th Street, where Doane came in and put in "a campus" by renting a couple of bays, impacting upon the way in which Hy-Vee was able to conduct their wine tastings. Looks like you're getting some better information than I'm able to give at this time. [LR528]

SENATOR KRIST: Well, okay, so I am. Thank you both. By definition...can I read this? [LR528]

SENATOR KARPISEK: Please. [LR528]

SENATOR KRIST: Campus--let's see if I can read it: (laugh) "Campus shall mean any buildings owned, leased, or otherwise under the jurisdiction and control of the administration of a college and university which are used as a place for the education of

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students or for student living quarters and the grounds surrounding such building, provided that a satellite location that is not adjacent to the university or college's primary location and which serves not more than 25 percent of the number of students enrolled at such university or college shall not be considered a campus for purposes of Nebraska"...duh-duh-duh-duh-dah. "A student attending a satellite location and the university or college's primary location shall be counted as served by the satellite location." So with that definition and an unknown boundary on a campus, the second question still applies, and that is, should we not define what the boundaries are of this legal entity before we start talking about changing distances under our rulings, so. I mean, I'm not pinning you down for an answer. I'm just... [LR528]

RON WITHEM: Yeah, you're really talking about your procedures and... [LR528]

SENATOR KRIST: Yes, sir. [LR528]

RON WITHEM: ...where you may want to go from here. [LR528]

SENATOR KARPISEK: Thank you, Senator Krist. And that's why we're having an interim study on it. And there are some other definitions that we've been asked to look at--the indigent housing, that sort of thing--too. So that will all come up in this discussion also. Any other questions? Seeing none, thank you, Mr. Withem. [LR528]

RON WITHEM: Thank you. [LR528]

SENATOR KARPISEK: Ms. Major. [LR528]

LINDA MAJOR: (Exhibit 4) Good afternoon, Chairman Karpisek, senators. My name is Linda Major. I'm assistant to the vice chancellor for student affairs. Part of my role and responsibility at the university has been to provide co-leadership for UNL's efforts to reduce high-risk drinking among its students. Over the past 12 years, UNL, in

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collaboration with the city of Lincoln, has reduced high-risk drinking among its students from a high of 63 percent. I will tell you, this is a research definition: binge drinking means five or more in one sitting if you're a male, four or more if you're a female within a two-week period. High of 63 percent to a low of 41 percent, which is below the national average. UNL has been nationally recognized for its work and the results we've realized. Very few schools have realized the decline that we have through what we call our environmental management approach, which means that we've reshaped the social landscape in the neighborhoods and the downtown entertainment district. We've done this work very collaboratively. We work with a variety of key stakeholders including law enforcement, off- and on-sale retailers, students, faculty, staff, advocacy groups, elected officials. We worked with the Nebraska Liquor Control Commission, the Department of Motor Vehicles not too many years ago to change the driver's license, for example. Eliminating the 300-foot buffer zone completely is concerning to me for a couple of reasons. One, as I think Senator Karpisek pointed out or, I'm sorry, maybe it was you, Senator, that UNL shares a boundary with the downtown entertainment district. Currently, we have in excess of 100 liquor licenses within a one-mile radius of the campus, many of whom cater to the young adult. I want to be very clear. The businesses in the downtown Lincoln area do a very good job of keeping minors out of their business. They do a great job of catering to 21 and over. However, this creates a very competitive environment for the young adult dollar. Drink specials right now range from \$3.50 for a 32-ounce well drink to \$1 shot or 50-cent beers. This became even more apparent during the recent economic downturn, when the blood-alcohol content of people--of individuals transported to the local detoxification center increased dramatically. As we saw the price decline, the BACs of people who were admitted to detox went up. We didn't see an increase in the number of people transported, but we did see an increase in their BACs. Many may not be aware that there is private property within the boundary of the UNL campus; most of that property abuts undergraduate residential housing. Collocating bars with primary locations for sleep and study isn't conducive to a student's academic success. And I've distributed a map that shows where the private property within the campus boundary. The green is the campus



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property; the red highlighted area is private property. And the majority of the private property on the first map abuts undergraduate housing. And we have approximately 9,000 students who live either in Greek living units or in university-owned residential facilities. We've also found that parents of prospective students are sensitive to the alcohol issue. You can imagine as national media has focused its attention on students who are having problems with high-risk drinking, including dying, that parents frequently ask about an institution's efforts and take that into consideration during the recruitment process. From my professional perspective, the proposed waiver process allows each college or university to proactively shape the retail environment in ways that are most compatible with their mission and/or its student population. And I would be pleased to answer any questions you might have about my testimony or high-risk drinking among our students or our efforts to reduce it. [LR528]

SENATOR KARPISEK: Thank you. Any questions? I would like to thank you for the map and bringing up the issue of the privately owned, because I for one did not realize that, and it was never my intention to make a bar in the middle of campus. [LR528]

LINDA MAJOR: Thank you, Senator. [LR528]

SENATOR KARPISEK: Thank you. Do you have anyone else from the university that...? Okay. We'll just open it up, then, to whoever else would like to testify. [LR528]

SENATOR COASH: Can we get Hobie back up here at some point? [LR528]

SENATOR KARPISEK: Sure. I think we can do that. [LR528]

SENATOR PRICE: At the end, maybe at the end. [LR528]

SENATOR KARPISEK: Should we...can we wait until the end, Hobie? [LR528]

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HOBERT RUPE: Sure. I figure there'll be more questions then. [LR528]

SENATOR KARPISEK: Welcome. [LR528]

DIANE RIIBE: (Exhibit 5) Thank you. Good afternoon, Senator Karpisek, members of the committee. First of all, my name is Diane Riibe with Project Extra Mile. My comments are all together. Would that be fine? [LR528]

SENATOR KARPISEK: That's fine, however you would like to do so. [LR528]

DIANE RIIBE: Okay. We didn't realize it was separated. We'd be happy to. [LR528]

SENATOR KARPISEK: Well, and we didn't either. [LR528]

DIANE RIIBE: Okay. (Laugh) [LR528]

SENATOR KARPISEK: I didn't. [LR528]

DIANE RIIBE: Good deal, good deal. Again, I'm Diane Riibe with Project Extra Mile. We're a network of community coalitions across the state working to prevent underage drinking as well as youth access to alcohol. And I will tell you, for those of us living in Omaha, we've had, unfortunately, a fairly busy number of weeks. We do appreciate your efforts to learn more about the issues surrounding area restrictions in the Liquor Control Act, and we really urge you to maintain the current provisions that allow for the buffer zones around colleges, universities, schools, hospitals, and homes for the indigent or aged. Nebraska is quite literally, frankly, at a critical time in terms of our ability to effectively address our alcohol-related problems. And we ask that the process not be an opportunity to chisel away yet again at the Liquor Control Act for those who would like to see less regulations and restrictions. Nebraska has granted more and more liquor licenses over the last year. Since 1990, we've seen a liquor license increase

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by 31 percent at a time our population has increased by about 14 percent across the state. With that level of increase, again we would ask you to maintain the provisions already in 53-177. We know that it provides some ability to address the growing problem of outlet density and its negative impact. We know that, from the literature, that increased outlet density is associated with college binge drinking, youth access to alcohol, drunk driving, assaults, violence, and reduced economic viability, just to name a few. Repealing that 300-foot buffer zone for colleges and universities makes no sense from a public health perspective. Eight years ago, Dr. Henry Wechsler, the principal investigator at the Harvard School of Public Health's College Alcohol Study, published a book about the binge drinking epidemic on college campuses in the United States. And Linda Major is right; they have done a fantastic job of addressing that issue locally. But what Dr. Wechsler found is that the University of Nebraska-Lincoln was highlighted for its level of outlet density around the campus--117 alcohol venues within a two-mile radius. Researchers implementing the College Alcohol Study have found strong associations between outlet density within that two-mile study area of college campuses and binge drinking, frequent drinking, and drinking-related problems among all student drinkers. With over 1,800 college students dying yearly and nearly 600,000 injured each year as a result of alcohol use on campus in the country, we owe it to these young people to maintain the types of policies that protect them rather than present and pose for them increased risks. And as you consider the buffer zone around other types of schools and elementary...including elementary and secondary schools, there's new information out of Johns Hopkins Bloomberg School of Public Health focusing on the impact of liquor licenses near schools. Researchers found that young people in elementary, middle, and high schools located near liquor stores were more likely to be involved with drugs and exposed to violence than those who attended schools without licenses in close proximity. Additionally, schools within 300 feet of a liquor store were almost ten times more likely to have had a homicide occur near the school property, have young people who reported carrying weapons, or have higher rates of community drug use. As a result of the findings, the city of Baltimore is now working to strengthen zoning enforcement. We oppose the removing of the 150-foot buffer from hospitals and

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homes for the aged and indigent just as we were for churches. As a note, we've already seen a recent case out of a church in Wakefield, Nebraska, that really requested the Liquor Control Commission to not grant a license near them, and that was granted above the opposition of that particular church. For many of these places, these are places of healing. I can tell you at my church, we host AA meetings on a pretty regular basis, but that is a done deal, unfortunately. But we know across the country when we look at churches, schools, hospitals, etcetera, we see those buffer zones ranging from 100 to 500 feet. The overarching goal for our state and others should be to protect the alcohol control policies that govern those licensing processes so that the public health benefit of everyone is there and included. In closing, our position on providing buffer zones around the locations identified in this part of the statute includes our concern for placing temporary licenses in those areas. The state has an obligation, again, to provide some protection to special and at-risk populations, or a buffer zone, including homes for the indigent, treatment facilities, schools, universities, churches, and other at-risk populations. But in addition, our enforcement resources, as Hobie mentioned to you, are rarely available for these temporary licenses. They just aren't on the radar screen, quite frankly, almost all of the time. And there's little ability to ever hold anyone accountable if there is a sale to a minor or intoxicated person. We really thank you, Senators, as you look at the consideration of both the information and the science that we've provided, as well as our concerns. We ask that as you move forward with the discussions, that your concerns be on a primary focus for our young people, for our communities, and for our neighborhoods, and that protecting the public can be the larger scale as you weigh the considerations of any additional interest. So we thank you for your time. [LR528]

SENATOR KARPISEK: Thank you, Ms. Riibe. Any questions for Ms. Riibe? Senator Dubas. [LR528]

SENATOR DUBAS: Thank you, Senator Karpisek. When you...I guess I didn't quite track with you when you talked about the SDLs--and you heard the number of SDLs that have been issued. What are your thoughts about that extreme number? And, to me,

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that's a problem, too, so how do we address that number? [LR528]

DIANE RIIBE: It is a problem. It is a problem. I won't tell you, Senator, that we have the absolute answer. Quite frankly, they can be denied both by the local jurisdiction as well as the state. So at that level, they can be denied without the same kind of consideration that a permanent license is granted. That would be an easy kind of first step, just by using the process that we already have available. We have simply too many, and they do need to be addressed. I don't know that I have the answer for the campus. That waiver process is used, as Hobie mentioned, all of the time, but the waivers are granted, quite frankly, by the system, so it does need to be addressed. [LR528]

SENATOR DUBAS: So are you saying you think that same buffer zone should apply to SDLs as well as permanent licenses or that there is more leeway for the SDLs? [LR528]

DIANE RIIBE: Yes. I think there needs to be...the buffer zone needs to be there, really, for the sale of alcohol and the provision of alcohol and the availability issue, because, as we're seeing even beyond, you know, Hobie's testimony, those are prolific. I mean, that's probably the best word to use. They're just common, and we rarely see those denied. I can tell you, in Omaha we just saw the granting of on-sale...excuse me, tasting licenses, SDLs, for our convenience stores. So we're going to have convenience stores having tastings from 4:00 in the afternoon--which I would think everyone would say is school time--until 8:00 in the evening. And those are often located next to schools or nearby schools. So it...I don't think we can mince temporary versus permanent. It still is the availability and the distance of alcohol to young people and populations that we would hope would not be. [LR528]

SENATOR DUBAS: Thank you for the clarification. [LR528]

DIANE RIIBE: Um-hum, um-hum. [LR528]

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SENATOR KARPISEK: Thank you, Senator Dubas. Senator Dierks. [LR528]

SENATOR DIERKS: Thank you, Senator Karpisek. Diane, you mentioned something in your testimony about a connection between alcohol use and drugs. Would you expound on that a little bit? [LR528]

DIANE RIIBE: Well, that was one of the studies that was shown in terms of the availability and the closeness of those locations to, particularly, schools--elementary, middle, and high schools. I can get that for you to expand upon that further if that would be helpful. [LR528]

SENATOR DIERKS: That would be helpful. The other thing I wanted to just talk about briefly, I don't think we have an answer for it, but I see more and more in the rural area where I'm from that moms and dads will sometimes host parties for underage students. Their excuse is that they think that they want to be able to supervise, see this done under supervision. And it's difficult for them to take into account that maybe they're going to have some problems when they go home, if they had too much to drink. But do you see this as a problem anyplace? [LR528]

DIANE RIIBE: Well, there's a couple of things I will say. What we know from the literature is that youth access to alcohol happens if there...usually, oftentimes age of onset is right around sixth grade, unfortunately, and that happens within a very close social environment, which usually translates into the home, parents, and other relatives. As a young person moves into high school and then to college, they really have a social network that is pretty extensive, so it's anywhere at that point; it's no holds barred, so it's anywhere. In terms of parents hosting those parties, we have...I guess there's two issues. We have, of course, a dram shop for...dram shop civil liability for anyone who would provide alcohol in that social setting to a minor who had gone on, injure, and kill someone. The second piece I can tell you, because we're dealing with it in Omaha right now, is unfortunately for individuals who have provided in a social setting--it could be a

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retail as well--but right now that's just a misdemeanor, and when a serious injury or a death occurs, it would make sense that we provide a felony for those violations. So it is a problem. I won't say it's always the primary one, but it certainly is a real serious one, and it makes no sense whatsoever. [LR528]

SENATOR DIERKS: Assuming the only protection is the fact that we have laws that will prosecute them if they disobey. [LR528]

DIANE RIIBE: Right. I know up in Norfolk--it's been a number of years ago--but one of the sports writers for the newspaper thought that that very scenario would have been a good thing and hosted a party for his family, or his daughter, with about 20 of her good friends. And he and his wife did two weeks in jail. That usually gets the attention and begins to shift, quite frankly, the community norm in some fashion. So when we have adults...and that's really what we know, is adults create the rules, adults create the environment; and so holding kids accountable solely in those moments makes no sense. We have to go to those adults, parents or not, who have provided and allowed that to happen. [LR528]

SENATOR DIERKS: Thank you. [LR528]

DIANE RIIBE: Um-hum. [LR528]

SENATOR KARPISSEK: Thank you, Senator Dierks. Any other questions? Seeing none, thank you, Diane. [LR528]

DIANE RIIBE: Thank you. [LR528]

SENATOR KARPISSEK: Whoever would like to go next. Welcome, sir. [LR528]

JACK CHELOHA: Thank you. Senator Karpisek and members of the General Affairs

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Committee, my name is Jack Cheloha; that's J-a-c-k, the last name is spelled C-h-e-l-o-h-a. I'm the lobbyist for the city of Omaha, and I thank you for having the hearing today and allowing me to testify before you. At first when I arrived today, my plan was just to arrive and listen and learn, and due to the technology, the e-mail came in and I was sent in. So part of it is just to let you know that the city of Omaha is very interested in the topic and we want to be part of whatever discussion you might have if there are legislative changes coming along. Just as you would take for granted due to the population, most of the liquor licenses in the state are issued within the city of Omaha, and our elected officials do take their responsibility very serious. We had a nice discussion relative to this resolution. But much the same as I'm sure you could be conflicted, we had conflicting suggestions and recommendations from our seven elected council members, who ultimately, you know, give their recommendation to the Liquor Control Commission on licenses as well. And so I just wanted to kind of make a few points and try to be helpful and maybe let you know of some things that go on in the Omaha community that might play into the study as well. I would say the elected officials in Omaha like having a comfort level where we have, you know, specifics in the statute regarding distances, because that at least...they know going into a discussion what the rules are up-front. And also as we, you know, get the word out, and as landlord and landowners and business...prospective business owners, you know, study the land...or the rules and the law, as they should, and do their due diligence, they can, you know, have something in mind regarding that. Additionally, there's been times where we've had to deny licenses as a result of the existing law. For instance, there was an applicant that wanted to locate within closer proximity than the law allows to the Metropolitan Community College's south campus, south Omaha. Yet at the same time, you know, this committee, I'm sure, is mindful of the fact that we have other things going on. We'd passed a special bill so that the culinary school at Metropolitan Community College's other campus could have wine and libations up there. I think it's...it might be limited to wine, I'm not certain on that--but at least to do in coexistence and union with their food serving. And also at Creighton University, which is in the city of Omaha limits, within their new...for lack of a better term I guess I would call it a community center or



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the part of campus--they have a liquor license there, where the key, I think, is they're responsible in terms of serving, they're responsible in terms of their patrons, etcetera. So it seems to me that goes into the discussion. As I'm looking at my notes here, as you know, as the word gets out in the community that someone has applied for a liquor license, there's going to be a discussion. And we think it's, you know, remarkable that groups can be so organized: they understand, they want to know what's going on in their community, and so they voice those concerns. And so we look to you for guidance in terms of, you know, letting the citizens know what the rules are and where we can have liquor establishments. One last point that I'd like to bring up, an incident that came up for us is, as you look in central Omaha, we have--University of Nebraska at Omaha is located along Dodge Street. Immediately to the south of it is Elmwood Park, which is a city of Omaha park, and within that park, we have a golf operation. And we've had a number...and the city of Omaha operates that golf course. We've had a number of patrons at the golf course...I wouldn't say complain, but they...we can only serve beer, I think, at that location. And after the round or whatever, they've asked, well, why can't I order a mixed drink or why can't I have something else? And the reason is, is because of, you know, the laws that are in place. And so one of the suggestions is, well, maybe as we modify this we could have an exception or an exemption for golf courses. And the other thing is, is the golf course, the northern border that touches UNO, is a long way from where the clubhouse is on the southern end of the golf course. So in one sense, it's a great, great distance beyond the 300-foot rule. Sorry. I said that was the last point; there was one other one (laughter), sorry, regarding the development at the former Ak-Sar-Ben property. As you know, UNO's campus has expanded there as well. And I think Mr. Withem or somebody alluded that we had an issue of a new applicant wanting a license as we've had commercial development on the southern part of that property. And so those are factors, too, to consider, and sometimes we have to look at the grandfather rule that, according to my e-mail, I think we look at, like, a two-year time frame for a liquor license, and if they have that, then they get the grandfather rule. I don't know if that's factual. Okay. [LR528]

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SENATOR KARPISEK: Well, I... [LR528]

JACK CHELOHA: Is that close? [LR528]

SENATOR KARPISEK: We'll ask Mr. Eickmeier, but there is... [LR528]

JACK CHELOHA: Okay, okay. And so we thought maybe that's something to look at, too. And the suggestion from our city law department was if there's any movement on that--or we would ask your committee to look at that. Maybe, you know, we could even make it more simpler by saying, you know, first in time, first in right, without having a two-year time frame, because we think responsible landowners have a duty of due diligence to inspect the property they want to buy or establish a group home or other type of activities. And so in order to relieve, you know, the community discussion, if you will, where you have, you know, a couple of sides butting heads, you know, maybe this committee could help us there too. But those are just some of the points we wanted to make, and we wanted to say we offer to help. We'd like to be included in the discussions. And with that, I'll say, happy Friday. [LR528]

SENATOR KARPISEK: (Laugh) Thank you, Mr. Cheloha. And especially for me it's good to hear the Omaha, because I'm not in the proximity to Omaha, so I think of UNL, mainly, when this comes up. [LR528]

JACK CHELOHA: Okay. Right. [LR528]

SENATOR KARPISEK: And as Hobie pointed out, there are a lot of other SDLs in Omaha that are going on that... [LR528]

JACK CHELOHA: Sure. [LR528]

SENATOR KARPISEK: ...do need to be looked at along with this, so. [LR528]

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JACK CHELOHA: Right. [LR528]

SENATOR KARPISEK: Senator Krist. [LR528]

SENATOR KRIST: Thanks for coming. Thank you, Senator Karpisek. I just want to make a statement. You, in your testimony, told us that your elected officials do a great job, essentially, of managing the requests and looking through. I got to tell you that one of the things that I'm hearing from a lot of my constituents is that the city council that you refer to is not listening to the citizens about what businesses should be put in what locations. And it seems to me that if we tout the fact that the council is doing a great job, they should listen to people. And if development is the most important thing in the city and the citizens' voices are not heard, there's got to be a balance. So for that reason alone I would say, to allow the council or the locals to make decisions about where the bars go, where the drugstores go, where the developments go and disregard what the citizens have to say in a very concentrated city like this metropolitan area that I live in, there's a gap, in my opinion. I would invite you to respond to that if you want to, but I just feel like I need to put it out there, because it's my city. [LR528]

JACK CHELOHA: Okay. Well, I appreciate your comments, Senator, and I'd be happy to...we could either have a discussion on the side or if there's a specific incident, I'd be happy to talk about it with you. I know that there's been, you know, some controversial issues before the council in the past year or so. And much as this resolution identifies, I mean, you have the ongoing conflict between economic development versus, you know, what type of economic development do we want. So I understand your point, and I'll be happy to take that back to the elected officials, and, with anything, you know, I'm sure they would like to hear your feedback if you would like to do that. And maybe we have some things we could work together on then. [LR528]

SENATOR KRIST: Thank you. [LR528]

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JACK CHELOHA: Okay. Thank you. [LR528]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions or just statements? Thank you, Mr. Cheloha. [LR528]

JACK CHELOHA: Thank you, sir. [LR528]

SENATOR KARPISEK: Welcome, Mr. Batt. [LR528]

BOB BATT: Well, good afternoon. Great weekend for a football game. [LR528]

SENATOR KARPISEK: Yes, it is. [LR528]

BOB BATT: May Texas rest in peace. (Laughter) [LR528]

SENATOR KARPISEK: It's pretty good timing to have this today, wasn't it? [LR528]

BOB BATT: It's amazing. [LR528]

SENATOR KARPISEK: Yeah. [LR528]

BOB BATT: My name is Bob Batt, B-a-t-t. I have a couple of jobs, but my one is I work for the state as a Liquor Control commissioner for the last two and a half years. We have many jobs: one is to grant licenses, the other is take them away or fine, suspend, or revoke licenses. In the last couple of years, we've revoked more licenses than they ever had. We've had a lot of positive changes in legislation, thanks to the General Affairs Committee, in particular, and the Legislature in general. But certain things come about that start screaming at you that we need to make a change, and this is one of them. It came about...probably the poster child for this would be the Champions Club.

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They had 63 SDLs, and the only reason they get SDLs is because they're within 300 foot of the university and they can't be licensed as a liquor establishment, but, in fact, they are. Last year during a football game, Hobie and I went over there and did an inspection. They said we were the first people that had ever inspected or done anything in that facility ever. They had no memory of ever seeing anybody from the state. What we saw was a lot of overservice, high levels of intoxication, and not real orderly. Now you have to understand that the Champions Club, for instance--it's a two-part deal: one is the building, and the other one is the parking lot. The parking lot is not licensed at all, and it's just a lot of people tailgating. But the part in the building is, and it is run without doing backgrounds, without going through any of the normal checks. That's the first thing that happened. And we kept seeing these over and over, and they would come up at our monthly meeting, and I started voting no. You know, it was 2 to 1, but I was making a statement that there was no check and balance here. This was just, give them as many as they want. Nobody wants to deny that that venue not be open, not only during football games but in other social events that they have at that location. It's quite popular, but with popularity you need control. The whole object of making a change in the legislation is not to have less control. That is not true. The reason behind the commission pushing for this is to have more control, to have the neighborhood have...get off of this SDL kick or obsession and to bring more order to this business. And when you look at these certain places, we'll take UNL for instance, 63 at the Champions Club; the Lied Center, 32 SDLs; the... [LR528]

SENATOR ROBERT: Bob, there's 222 just by the university. I added them up. [LR528]

BOB BATT: Yes. Thank you. [LR528]

SENATOR ROBERT: Yeah. [LR528]

BOB BATT: And 47 at the Wick Alumni Center. If the campus was dry, this would be a different story, but it's not. There are a lot of social events involving liquor on the

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university property today. And it's...they're done, some by outside caterers, some that are just doing it because they're...under the statute they can do them without catering. The same thing at UNO. I drive by there all the time, and you see everything from UNO social events to private parties who hire this out for weddings. Even had a couple of wakes there. The point is, it can't be licensed as an establishment, because it's within 300 foot. This serves absolutely no purpose. We need more control here, not less control. I can tell Mr. Withem and the entire UNL administration that you should put in the law that that building on private property that's in the middle of the campus be specifically carved out that there will never be any liquor there--liquor, wine, or beer, ever. That's not the right place for it. This is not to open up a proliferation of licenses; it's to control what we have. And I'll tell you a couple of things. The Lincoln Police Department and the UNL police department have excellent liquor control programs. If you go up and down O Street, you go in the Haymarket, the Lincoln PD and the university in their own jurisdiction, they're there all the time; they're patrolling in the bars. The State Patrol is there. They're looking for anyone who's a licensee who is breaking a rule. They're also looking for individuals who are intoxicated and a danger to themselves and others. Lincoln does a terrific job. Unfortunately, Omaha, for instance, does not have a liquor control unit anymore. They did away with it. And a lot of the problems come from lack of enforcement. Cities, I have found--you know, we've heard over 1,000 cases--cities I have found react to liquor matters in a political way. They do what is politically expedient and not what's good liquor control policy, therefore you'll see a lot of conflicts on when one approves and we deny or vice versa. We--the Liquor Control Commission has only one choice, and that is to follow the state statutes. Hobie is an attorney. We have an assistant attorney general. We get great advice from him on what is legal and what is not. It's not what you like to do. It's what you have to do, just like all of us who work for the state, of what's applicable under state statute. And we need to use that as the premise on whether or not. There is no per capita license law in Nebraska. They tried that in Omaha. The Supreme Court overruled it, being unconstitutional, etcetera. We need to have our decisions based on what is in the state statutes, and a lot of it is experience and common sense. One of the biggest problems

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that we're having right now in the Liquor Commission has to do directly with the city of Omaha. They're having UFL football games at Rosenblatt that's owned by the city. It has a concessionaire who is the...serving beer, wine, and liquor there. I got, myself, a dozen calls from people who said: I went to that game; I went with my family; I can never go back there again because of the overservice. The last game they had, they opened the tailgating at noon in their parking lot, which is technically not legal. By the time the people got in the front door there, they were already hammered, drunk, intoxicated, and it was not a pretty sight. So the second game I went and observed for myself so I could understand how bad it is. Once they got in there, they had multiple outlets for...most of it was beer but also for liquor and wine. Not...they're supposed to have a wristbanding program, failed to do so. There was no supervision. There was over 50 police officers there; not one of them lifted a finger to stop anything. If you had enough money to put on that counter, you could get a beer. We're going to have a meeting with them, and they might lose their liquor license over this, and there's going to be some severe fines, because they probably...in my two and a half years, that's the worst thing I've ever seen. Cities cannot be expected to understand or rule in liquor issues. It is a state function under the way our laws are done and rightfully so. (Inaudible) as a commissioner, I don't have to raise money, I don't run for office. They try to make it as insulated as possible to keep it out of the personal or the political process, so the decisions are a little different. But all of our basis comes from what the Legislature does and empowers us to do and not to do. We need order in all of the campuses, whether it's UNL, UNO, Kearney, Wayne State, Doane, and we need to be able to control those areas by allowing stricter control, not less control. They will not be opening bars along the southern boundary of UNL. That's just not going to happen. Besides the fact, already in place here is--say, somebody wanted to do away with the buffer and somebody wanted to open a bar across the street from the university, right next to it. Under statute, you have to notify all the adjoining property owners of there's a liquor license application to be heard both at the city and the state level. They're free to protest, both at the city council level and at the State Liquor Commission. That's already in place. We want to do things to help UNL, not to hurt them. And we don't want to open

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this up into a free-for-all. We take a lot of pride in this and we take a lot of work in this, and this is what, I think, that we need to do. We need to rewrite this law. It comes from 1935. It is way out of date and is not relevant to how things operate today. The legislatures (sic) in '35 never envisioned what would happen to Nebraska today and what was available. So I'm going to cut it at that and say that we want to help, we don't want to hurt anybody. [LR528]

SENATOR KARPISEK: Thank you, Mr. Batt. Senator Krist. [LR528]

SENATOR KRIST: Thank you, Senator. Mr. Batt, could you...I think you've seen the presentation that the university brought forward with Mr. Withem? [LR528]

BOB BATT: Yes. [LR528]

SENATOR KRIST: Okay. Could you just talk me through for a second, use the UNO campus as an example of a place that has the wedding receptions and... [LR528]

BOB BATT: Well, there's two parts there. There's the Aksarben portion, and there is the main campus, the UNO Thompson Alumni Center. [LR528]

SENATOR KRIST: Okay. This says that the waiver--a waiver authority--the waiver would likely reduce the number of applications for special designated licenses requests by the colleges or universities. So specifically for that location, would you see the caterer being a preferred caterer or the institution would have a Class C? How would that...? [LR528]

BOB BATT: Well, we think...the caterer there is Brandeis Catering. They get all the jobs there, and that's who we usually see in that case. I mean, we have other ones. Chances...not Chances R--we have other ones for the Champions Club; we have other ones for the Wick and the Lied, etcetera. Our estimation is that they should have a



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liquor license there for that building and that they should have professional staff running it and that there be consequences for things that are not done correctly. [LR528]

SENATOR KRIST: So to follow up with Ms. Riibe's point that they're not controlled when there's an SDL--in your situation, if you're issuing that for either the institution, the building, or the caterer, you would... [LR528]

BOB BATT: The practical matter is they're not controlled, because it's...now that's not a spot thing, they have them every week. If you have some, like a street dance, it's one day, gone, and there's nothing you can do, and there's not a real following of the rules. I mean, we've had to crack down on those on a continual basis to try to...you know, when they break out into large fights, you got to keep it toned down so it's, you know, but, you know, they don't get hurt or law enforcement doesn't get hurt. [LR528]

SENATOR KRIST: Thank you. [LR528]

BOB BATT: All right. [LR528]

SENATOR KARPISEK: Thank you, Senator Krist. Anyone else, any questions? Mr. Batt, you commented on the part about the property actually inside the campus and what was written about--saying that there's no way that that could ever get a license. [LR528]

BOB BATT: Legally it could, but I would guarantee you--because we do...I mean, for instance, we had a person who applied to have a package liquor store next to the open-door mission down on O Street, on I think it's 1st or 2nd Street. We immediately...the city voted 7-0 against. We voted 3-0 against, because there's no way we're going to put a liquor store next to a alcohol recovery program. I mean, that's almost cruel to do something like that. I would guarantee you from the Liquor Commission standpoint, there's not one of the three of us that would ever put a license

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on that property. And if you wrote it in statute, I would see no problem that that area is forever not licensable. I mean, you could do that and...you know, but it's just not...that's not what it's there for. [LR528]

SENATOR KARPISEK: Well, and I agree, and I saw that part, too, and I did want to talk to the university about that and maybe... [LR528]

BOB BATT: Yeah. [LR528]

SENATOR KARPISEK: ...maybe there's something more to go with that, but I wouldn't have a problem, either, saying it's just not...it can't... [LR528]

BOB BATT: And it's not going to happen. [LR528]

SENATOR KARPISEK: Instead of a waiver, just, period, but... [LR528]

BOB BATT: I guarantee you if that application ever came in--I doubt if it ever would--that the commission wouldn't have anything to do with it. It's just not...you're not going to...there's...you have to find a fine balance. We found in the last 75 years since prohibition, prohibition doesn't work, and neither does no laws, work. You have to find the balance in between it for what's going on for the state. We have to protect the state interest in this to function as efficiently. I'd like to say one last thing, and that has to do with the business practices of the SDLs and the fact that we get all of these, like, for the university. There are no fees to establish this. We spend at the Liquor Commission--you only have 12 people--we spend a tremendous amount of time processing these, as well as the cities spend a tremendous time of processing, which is almost an academic exercise, because it's...but you have to do it, and you have to issue actually a paper license, and you have to do all these things. It's...if we're going to reduce our expenses, we have to find a better way to do it, like once a year, to license venues, whether it's UNO, UNL, or anything on campus or near where it conflicts, especially when you get

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into areas like Haymarket and in the Aksarben Village area. [LR528]

SENATOR KARPISEK: That's a very good point. [LR528]

BOB BATT: You know, we're all here to make money on one end and try to save it on the other and still do our mission in this deal. [LR528]

SENATOR KARPISEK: Good point. Thank you. [LR528]

BOB BATT: All right. Thank you. [LR528]

SENATOR KARPISEK: Thank you, Mr. Batt. Okay. Next. Welcome. [LR528]

DEL BOMBERGER: Thank you. Commissioners, senators, I'm Del Bomberger. I'm the chief executive officer of the Stephen Center, which is a homeless shelter and substance abuse treatment program in Omaha. We are a state-licensed substance abuse treatment center that has a 64-bed facility that serves homeless and low-income people. I wanted to follow up now because of something that Bob just said that I'd like to see incorporated in any rewrite or a consideration of a rewrite. Twice in the last four years I've gone before the city council and then, ultimately, the Liquor Commission when someone was asking for a liquor license directly across the street from our facility. And what I have come to realize is that this 150-foot rule is just not nearly enough. A hundred and fifty feet is just not adequate, particularly for the distance from a substance abuse treatment center and, for all practical purposes, from a homeless shelter, because that...today, if you walk out the front door of the Stephen Center, where the homeless people live, the very first building you see is--directly across the street--is a little restaurant that just recently applied for a liquor license. Fortunately for us, it also is directly across the street from the new city library in Omaha and from Metro campus. And so we were successful in both instances about that. But I just want to suggest that we might even consider, first of all, specifically mentioning homeless shelters. I know we

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talk about the indigent, but when I...no one anymore is quite sure who the indigent are, you know, because those that...that's not...it is an archaic term that no one really understands very well. We do know what homeless people are. We do know what people in recovery are. We know what people in substance abuse treatment centers are. So I do think there's a real strong case to be made just that we modernize the language. And, you know, I would love to see the 150 foot changed to 300 feet and make it uniform. And really that's about all I have to offer today. But, you know, if you looked out your back door, for many of us, it'd be 150 feet to our neighbor's house. It's just not any distance at all, so. [LR528]

SENATOR KARPISEK: Thank you. Any questions? And I'm sure that we will have a definition change. We've had that here in Lincoln with the People's City Mission, was it, who also had that issue of what is a home of an indigent, those sort of things. [LR528]

DEL BOMBERGER: Sure. [LR528]

SENATOR KARPISEK: So as we got into this last year, they also wanted to see something about qualifying that. [LR528]

DEL BOMBERGER: Yeah, yeah. [LR528]

SENATOR KARPISEK: The going to 300, I don't know; we'll see how that goes. [LR528]

DEL BOMBERGER: I understand, (laugh) believe me. You know, we do talk about economic development a lot, but an organization like us, we know we built this \$4 million treatment center with NIFA funds here. We're talking about building a \$10 million to \$14 million addition, but it all hinges...you know, if this liquor license had been granted across the street from us, we...you know, that would have had an impact on our thinking and our planning and ability to raise money to do things like that. So, you know, there's different kinds of economic development. [LR528]

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SENATOR KARPISEK: So was that within 150 feet? [LR528]

DEL BOMBERGER: This is another change I would strongly encourage. We need to go property line to property line, not building to building. It is not within 150 feet of anything we have in existence today. Within two years, when we build our new facility, we'll be at 146 feet, so it's...or, yeah, it will be within a 150-foot range. But, there again, that's a tough standard to meet, and expanding it could only help. [LR528]

SENATOR KARPISEK: Thank you, sir. Any other questions? [LR528]

DEL BOMBERGER: Okay. Thank you. [LR528]

SENATOR KARPISEK: Seeing none, thank you. [LR528]

DEL BOMBERGER: Great. [LR528]

SENATOR KARPISEK: Anyone else like to testify, have something to say? Is it okay if we bring Hobie back up? I think I'd rather do it now. Committee, would we like Hobie to come back up for a little bit? [LR528]

SENATOR KRIST: It's pretty important. [LR528]

SENATOR KARPISEK: Yeah. Normally in a hearing we would not do it, but it's a hearing...not a hearing, study. [LR528]

SENATOR ROBERT: You're the boss, dude. You can make any rules you want. [LR528]

SENATOR KARPISEK: Oh, good. [LR528]

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HOBERT RUPE: Thank you all for letting me come back up. I'd be happy to answer any questions. I think I just want to clarify a couple of issues. Once again, my name is Hobie Rupe. SDLs--you know, the reason why people utilize SDLs for these issues is, specifically in the statute it says the commission can waive any other statute or rule other than the age of consumption in granting SDLs. So another issue that you have to realize is that oftentimes there's 400-plus SDLs given to churches and to...at certain school functions where they...you know, I know Creighton Prep often will get an SDL because...for a fund-raiser. I can also let you know that even if they're not the most religious person in the world, everybody in the Liquor Commission knows when fish fry season is coming up (laughter), given the number of SDL requests we get for fish fries or for pasta feeds. And so one thing you have to consider--and first of all, I also want to thank Diane for bringing some of, a lot of these issues up, because there are issues that need to be looked at--is if you decide that, okay, we're going to apply the 300 foot even on SDLs, I'm just thinking there might be a couple of Catholic churches who just might be sending some people to talk to you. A couple of years ago when we attempted to take SDLs away from nonprofits, just making them go to licensees because we have more of a hammer if something happens over there, I remember, I'm not sure if anyone else was on the...on the committee was here then when the monsignor for business affairs for the archbishop came down and said that would kill their fund-raising, and that was where the bill stopped. Ms. Riibe brought up also an issue regarding, you know, perhaps, license density. I mean, that's probably an issue that needs to be brought up to the Legislature. Nebraska does not have a per capita license density. Some states do. There are pros to those approaches; there are cons to that approach. And the proper issue should be in front of the Legislature to decide how we want to do that. You know, once you make them...once you limit the number, you now transform it into a property right which can be bought and sold. You know, some states get a percentage of the selling rights, so, hey, in this economic climate that might not be a bad thing to do. But--I know that there are some issues going on in Omaha regarding that, but, you know, our position is that if the Legislature wants to contemplate a per capita type density back,

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the proper place we'd have to start is right here in this committee. And we'd be happy to work with anybody on that who wants to bring it forward and have an examination of those interests, but it's a little far afield of what we are dealing with here today. I did want to bring up how SDLs, how you can have an SDL within 300 foot. They have to ask for a specific waiver for that exception. That's how we know...that's how the numbers you see in front of you we pulled up on our database every time we gave an exemption under that during 2009 and kicked out the report. So I'd be happy to answer any questions. [LR528]

SENATOR KARPISEK: Senator Coash. [LR528]

SENATOR COASH: Thank you, Senator Karpisek. Hobie, just on the topic of the SDLs and the enforcement, tell me the commission's...what's different about enforcement--enforcing a regular liquor license versus a special...an SDL? [LR528]

HOBERT RUPE: Okay. For the first part is, the SDLs only exist...you know, they're like fireflies. They exist for that brief moment in time. You know, if they're going to, let's say--you know, we've been beating on them all day, so let's continue to--the Champions Club. Tomorrow--I'm just going off the top of my head, I don't know for certain--it's a 2:30 kickoff; they're probably going to have an SDL, which is going to run from probably 10:00 a.m. in the morning until probably 10:00 a.m. (sic) at night. And so during that window, that's when they have the ability to sell and consume alcohol on that location, primarily the selling part of it. Unless you're there at that--during that 12-hour period to enforce, you know, you're not going to be...you're not going to see what's going on, because at the end of it, that licensing goes away. Poof! It's ephemeral. Off in smoke. The problem with enforcing right in the middle of one of those things is how many angry Husker fans are you going to have when you say, this place is getting out of control and we have two officers who are going to turn off liquor sales. I'm not sure...you know, you have to factor in officer safety a little bit. And one thing Diane and I agree on--I mean, shockingly enough, Diane and I agree on a lot more issues than people think--is we do

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need more enforcement and we need more...better trained enforcement. But I can tell you right now, you can have the two best-trained investigators in the world, and they're going into the middle of a 500 people at an SDL trying to shut it down, there's going to be officer safety and you're going to have issues you don't want to deal with. If you have a permanent license, you have more why to get that place back into compliance, because there's a permanent license to investigate and to hold over their head. [LR528]

SENATOR KRIST: So not to interrupt your question, but... [LR528]

SENATOR COASH: Go ahead. [LR528]

SENATOR KRIST: ...sorry, Mr.... [LR528]

SENATOR KARPISEK: That's fine, Senator. [LR528]

SENATOR KRIST: Okay. But tell me the difference, then, if you imply that waiver, as I asked Mr. Batt; take the Champions Club as an example and tell us how to fix that. If it's not an SDL, does the facility have a Class C and then the caterer is held to all the Ag and all those kind of thing? [LR528]

HOBERT RUPE: What would happen is there's a permanent license. I would...I mean, they'd probably go for a C because there...our C's aren't that much more expensive than an "I," which is what they probably should have, because they're just doing on-premise consumption. This was traditionally restaurant license. You've got a lot of guidance from other publicly owned entities. The city of Omaha, for example...actually, the city has a liquor license on their golf courses. They're a separate entity which has it. The city of Lincoln contracts with a third-party provider, who gets the liquor license. You know, basically, in this case it's the pro who gets the liquor license, who's in charge, so it's not the actual city, but it's a contractee through an arrangement. So we've seen both ways. So if I'm giving any guidance, I mean, you know, you remember the word...the problem



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with free legal advice is you get what you pay for. If I was the alumni center, I would probably--or the Champions Club--I would probably put a bid out and, you know, get a either a caterer or a new entity to, you know, get a permanent liquor license for that location. That person is going to be the...you know, and his staff are going to be responsible. It's his liquor license that's at risk if he loses it, you know, because the commission gives them out and then takes them away. And so the advantage there is you're able to then use progressive discipline. Let's say there is a minor; we can say, okay, you know, you come in; normally for a first offense, you're going to get a 10- to 20-day suspension, which will go into a fine of \$100 per day. So, I mean, it's not really...it's more stick than carrot, but there's a way to try to bring somebody back into compliance. If they're not going to get into compliance, they'll have a cancellation. And so the permanency of the license there--either owned by the owner of the Champions Club or by a third-party person they contracted to perform those catering...those duties on a permanent basis--you know, has an enforcement gravitas that's not there because of the ephemeral nature of an SDL. [LR528]

SENATOR KRIST: Thank you. [LR528]

SENATOR KARPISEK: Senator Coash. [LR528]

SENATOR COASH: Thanks. Have you had a chance to look at the proposal from the university? [LR528]

HOBERT RUPE: Yeah. [LR528]

SENATOR COASH: I just saw it today--but the changes that are proposed apply only to campuses, not to schools or churches or homes for the indigent... [LR528]

HOBERT RUPE: Yeah. [LR528]

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SENATOR COASH: ...this proposal only addresses the campus issue, is that...?  
[LR528]

HOBERT RUPE: Yeah, exactly. There's two parts to 53-177. The first one is the 150-foot and then the 300-foot. This would deal with the 300-foot on campuses and universities. [LR528]

SENATOR COASH: Okay. So, you know, just to use your crystal ball a little bit, I mean, looking at the map here, if this type of proposal were enacted by the Legislature, would we have...same places would have licenses that have SDLs now, more than likely?  
[LR528]

HOBERT RUPE: I think so, yeah. [LR528]

SENATOR COASH: Would we have more or less, I mean, same people--they just have a different type of license, a permanent license versus a special temporary license, right? [LR528]

HOBERT RUPE: That's what we're trying to do. We're not trying to increase the number; we're trying to get the--you know, it's happening now--we're trying to get a better control over it and a little more long-term control. And here is another thing that...in fact, Linda Major brought this up to me while we're having a debate, a discussion about this; I misspoke there, I wasn't trying to be smart there. City of Lincoln--going back to SDLs for a minute, you got to remember, in a lot of ways, the most powerful entity in approving or denying an SDL is actually the local governing body. The statute says it must be approved by both. If they deny it, we never see it. The statute specifically also says they can place reasonable conditions upon it to issue a license. Okay. One of the conditions that Lincoln puts on SDLs on game days, for example, is they will not approve any SDL which is not immediately contiguous to an existing liquor license. So if I have a bar, you know, say, down near SouthPointe and I'm

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trying to get an SDL for a vacant building in downtown--in the Haymarket, the city of Lincoln is not going to let me get an SDL. But now if I'm an existing bar owner down in the Haymarket and I'm trying to get a building or space right next to us and it's contiguous, they'll allow it. They were trying to make sure that they were rewarding and keeping control over the people who are actually located down there. In this case now, if a license were to be issued, say, to the Champions Club, then they could apply for a special designated license. We might still see some on game days, but not 40-some, because (inaudible), you know. And you might have more of a control over that parking lot area, because then it's a licensee. Then minors, overintoxication, all those rules apply that might not apply on a privately owned land. That's the problem right now on a privately owned garage or a parking lot. Unless they're seeing a violation just screaming at them, it's really hard for a law enforcement officer to go onto private property and enforce that. So that's sort of, you know, another issue which might sort of...we're trying to contain--we're trying to do a little better control over the environment, what's going on right there. [LR528]

SENATOR KARPISEK: Senator Dubas. [LR528]

SENATOR DUBAS: Thank you. How often do you deny SDLs? [LR528]

HOBERT RUPE: Very rarely, honestly. Generally, when we get involved in SDLs is when there's an ongoing problem that's been identified and, often, to be blunt, the local governing body is not going to be dealing with it. The best example I'll give of that recently was Comstock years ago, where Comstock was turning into a big problem. We got those reports from the one year. We sent them a letter saying: You must apply for the SDL three months in advance; there will be a hearing in front of the commission. And we put conditions upon them, which we think helped control the access. If you listen to them, they'll blame me for helping drive them out of business in that respect. But, you know, I've got broad shoulders. So that's the other problem on an SDL: there's very little to do with what's already happened. All you can be is proactive, what's going

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to come in next. And so if there's a lot of problems...Senator Karpisek and I were aware there was an issue regarding Wilber Czech Days and some issues a couple years ago, and so we try to be proactive...it wasn't Wilber Czech Days, it was... [LR528]

SENATOR KARPISEK: Milligan. [LR528]

HOBERT RUPE: ...Milligan. Senator, thank you. Milligan. And what we did there, the next time we gave them a liquor license SDL...for some reason they thought a half-gallon jug was the proper beer receptacle for drinking, and that was leaning to a little bit of overintoxication. And so we said, hey, as sort of a restriction, they had to use normal 12- or 18-ounce glasses, and that sort of takes care of a lot of the issues. And so the problem with SDLs is how we fix it after something already bad happens; it's more proactive, more what's going to happen before it comes back, because it's not like we can go back and suspend, cancel, or revoke the license, because the license is gone. [LR528]

SENATOR DUBAS: You mentioned something about putting some conditions on some of those regularly applied-for SDLs. Is that something that you could look at as far as tightening up the application process and the criteria that you would have to meet to receive an SDL? [LR528]

HOBERT RUPE: The problem with SDLs are there's just no time. The statute only says it has to be filed with us ten business days beforehand. Unless it's a location where we have a history beforehand and knowledge of beforehand, where we can be proactive, like we were on Comstock, it's really impossible, given the current time frames built into the statute which allows them. So, you know--so in a lot of ways what we're doing is, we're trusting that if there's a big problem, the cities are going to deny it, because they have a better idea of what's going on at that location than we do sitting here in Lincoln. And, hopefully, then we don't even see it. [LR528]

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SENATOR DUBAS: What I see us here trying to figure out is how do we have our cake and eat it too. And that's always, you know, that's a difficult issue to address. I certainly do understand the economic development part of it, especially in communities like Lincoln and Omaha. I certainly do understand what we need to do to protect and educate our young people about their actions. But where I run into problems with is we have these SDLs, we have the tailgates, we have all those other things that our kids are very much exposed to, we have no controls over whatsoever, but yet we're trying to put controls just on certain places. So it makes it very hard for us to achieve what it is we're trying to achieve. [LR528]

HOBERT RUPE: If it was easy, alcohol wouldn't be the only product mentioned not once, but twice in the U.S. Constitution. [LR528]

SENATOR DUBAS: This is true. But I definitely agree that the SDL situation is out of control. So what can we do to allow you to have more input, more control, more guidelines, I think, is what we need to do. But the problem is, how do we get (inaudible)? [LR528]

HOBERT RUPE: Yep. As I said, this was sort of a culmination. You know, we've been looking at this issue the last four or five years. We did rules trying to reduce it, trying to reduce the...you know, when you're giving out almost as many SDLs as you have permanent liquor license, which include retail, wholesale and shippers, you know--we only have about 5,000 total licenses, mostly in Nebraska, you know, to shippers in California and all over the place, and then we're giving out 3,500 SDLs--it's getting to the point where the...the purpose of an SDL, which was--everybody always knows an SDL: it's the street dance; it's Ribfest, they might need that; it's the local social hall, which doesn't do a lot, might do a wedding reception where they want to sell alcohol. But at this point in time, it gets a little broader, and we're trying to bring the...you know, pull it back a little bit, and that's why we're here in front of you. [LR528]

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SENATOR DUBAS: I appreciate you bringing up the fact that the local government has a lot more authority or control than maybe they're using. And that kind of goes back to what Senator Krist said, you know, and when Miss Riibe brought up that point about an SDL for a tasting at a convenience store; that's a little bit stretching it to me, I think. And so I don't know what we need to do with helping or supporting or encouraging our local government entities to be more responsible with the decisions. I don't want to say that they're irresponsible, but I think we really need to stress that fact, that they...that they're the first line. [LR528]

HOBERT RUPE: Yes. [LR528]

SENATOR DUBAS: They're the first line, and we need to be supportive of the decisions that they're making and hoping that they are making responsible decisions. [LR528]

HOBERT RUPE: As I said, if an SDL is denied by the local governing body, we never even see it. [LR528]

SENATOR DUBAS: Yep, and I'm afraid that maybe they're...they are hard decisions to make; they're emotional decisions to make, and sometimes it is easier to pass it to the next level. [LR528]

HOBERT RUPE: Well, I mean, part of the problem where they might have that sort of disconnect is on permanent licenses; you know, they can make a recommendation, and a recommendation automatically sets for hearing. As Commissioner Batt said, that's part of the idea of trying to insulate from the--you know, when you're looking at statutory instead of political in that respect; and so they might not realize in a lot of ways that they...in a lot of ways their final decision may garner an SDL. [LR528]

SENATOR DUBAS: Thank you, Hobie. [LR528]

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SENATOR KARPISEK: Thank you, Senator Dubas. Anyone else? Seeing no one.  
[LR528]

HOBERT RUPE: Do we talk about the other ones? [LR528]

SENATOR KARPISEK: Well, I was just going to...is there anyone else that wants to say anything else about the 300-foot before we move to the 150? And if not, we will move to the 150 and just kind of start all over. [LR528]

HOBERT RUPE: I will start all over on that one. (Section) 53-177 was also passed in 1935, (1) the same as (2). It's really an example of the archaic language of the statute. A church is pretty clear, although there is a court case that determines what a church is and what a church is not. So we...not only is it a little bit (inaudible) in the statute, but we have some guidance from the courts. School is clear and needed. I don't think we're here saying that there should ever be one within 150 foot of a school. And I'll be the first to say that if the statute were to be rewritten, either different or to be specifically property line to property line, that would be okay too. The wall-to-wall is what a case from 1956 says we have to measure it from. But where a...hospitals are there; it's clear what a hospital is, but, you know, there are concerns why there are. We do get reports that some hospitals have served wine to private-area patients. I'm not sure how they're billing that in or not. I mean, if they are billing it, technically they are selling liquor without a license. I'm not really sure that law enforcement is going to go out and give them a ticket for that; that's a Class III misdemeanor. I'm not sure why church--hospitals are in there anyway. There is some issues. Most hospitals would be outside the 150-foot from wall to wall anyway, so I'm not really sure where the issue is at. Home for aged and indigent--are we really believe...you know, if we're going to be monkeying around and rewriting and updating the statute, we should really update that language. I mean, I would be the first one to say it should probably be expanded to include homeless shelters, alcohol treatment facilities, in that regard. That's how we've been interpreting it. Sometimes we sort of have to use our prism of 2010 looking at 1935 statutes and

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what did they mean at that time. I think there's absolutely no problem, and as you heard earlier today, we've been pretty consistent in that regard in denying those locations. If we want this any more clear, more clear and concise, updated, I think that's probably appropriate thing to do. The restriction regarding homeless or veterans: I can only go back--you got to remember that was 1935; you still had a somewhat sizeable population from the Spanish-American War of 1898 alive, and you also had World War I veterans. You had more homes, veteran homes where people would go, you know, at that time than you do today. And I really don't know why it was expanded to include their spouses and children. So I'm not really sure that, you know, that would be needed; or we would have to look at that, whether we would want an issue for that. The one issue which comes up a lot is, you know, home for the aged. Is that a nursing home? Is that an assisted-living place? Unfortunately, in a lot of ways, the largest-growing age group of consuming alcohol is post 65. A lot of those people will sell the four- or five-bedroom house and buy a small assisted-living place, you know, because it's easier to maintain; the kids are gone. They often will have rec halls where they will often have alcoholic beverages, because it's their home, so it is allowed. I'm not really sure that a home for an aged...you know, a home for the aged, you know, what does that really mean? I think that definition has changed. The old, traditional idea of a nursing home is still there, but generally you have stages, as people are advancing in age; so I believe that that would probably need to be looked at, at least what we're going to do in regard to that statute. I will say that the change we made to 53-177 regarding churches--since that went into effect in July, there have been three hearings before the commission. Two of them were denied--the applicant. One was a convenience store which had been there 20 years next to a 120-year-old church; the commissioners sort of went by the thought, you knew what it was when you got it there, you're not looking to it. The one we did approve, and I believe Miss Riibe mentioned, was in Wakefield, was not a new license; it was a location which was looking to get a beer garden because of the smoking ban concerns, and the outer wall, I think, was currently at 170-some feet already, and the church would have put--and the beer garden would just put the beer garden within that 150 foot. So the commission thought that was a legitimate use of the waiver. We weren't doing a new



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license. It wasn't like we were creating a new license there. We're just sort of expanding the footprint of an existing license to accommodate a request. So we haven't seen a lot of that. Hopefully we'll see more, because one of the reasons--we're trying to have those places more professional as well. I mean, that's...if there's one thing you can look at this, is we're trying to, as much as we can, professionalize the alcohol beverage industry. So we'll see what happens in that regard. But I think, in and of itself, given the fact that we already shortchanged and allowed the waiver for the churches last year, which was the immediate problem as we were aware of, with the storefront churches sort of sealing off downtown business districts, you know, that mechanism is there. But if we're going to be looking at this, we probably should update the language to reflect 2010 instead of 1935. I'd be happy to answer any questions. [LR528]

SENATOR KARPISEK: Any questions? Senator Dierks. [LR528]

SENATOR DIERKS: I don't have a question, I just want to make a comment, Hobie. You remarked about this legislation starting in 1935. [LR528]

HOBERT RUPE: Yes. [LR528]

SENATOR DIERKS: I was 3. I don't think anybody in here can beat that. (Laughter) I have to tell you about my great-grandfather. He was from Germany, and he was a home brewer, and he did a great job of making home beer. He homesteaded a ranch out in Wheeler County, and they had quite a few cowboys who worked there, and so they all knew they could come to the tank and get a beer at the end of the day...at the stock tank; they didn't have refrigeration, of course. But he had a pair of Colt .44s that he wore on his side all the time. And he sat on the porch, and if anybody got to that tank before quitting time, they got a couple of slugs placed at their feet. Now what do you think of that for a way of enforcement, Hobie? [LR528]

HOBERT RUPE: I would say probably very effective. Given the current legal issues, I'm

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thinking there might be a lawsuit. But it is, you know, an issue that--in a lot of ways, the states don't get enough credit, you know. Prohibition, the great experiment, did not work. I mean, it created the Mob, is one thing. And so what happened when they decided, okay, this is not working...you have to remember, one of the seminal books--and I've got a copy of it, and I'll loan it to anybody who wants to take a look at it--is a book called Toward Liquor Control. And it was financed by John Rockefeller, the second one, not the first one, who was an ardent prohibitionist and was a large supporter of prohibition for (inaudible). Then he saw the cultural problems, and his basic theory was we just weren't culturally advanced enough to accept prohibition. So we didn't want to go back to the saloon era, where you had vertical integration where you had a brewer basically owning it from the crop all the way to the tap and probably owning the guy who...in a lot of ways, by debt, to the guy who was drinking it. So they created the three-tiered system and gave the states the primary responsibilities of the Twenty-first Amendment. In a lot of ways, the states don't give themselves enough credit. We haven't had a return to the saloon era, in a lot of ways. We haven't had the problems with the Mob; I mean, the Mob is still there, but they're not bootlegging in whiskey across the Canadian border anymore. And the thing which you always have to look at whenever you're looking at policy--maybe this will help Senator Dubas a little bit--as I read a recent report, is 20 percent of the adult population don't drink at all, total teetotalers. Twenty-five percent of the adult population drink about 75 percent of the alcohol products. So you've got that 55 percent there which drink 25 percent of the alcohol, in what I like to call the moist majority. You know, they're neither wet nor dry; they're looking for reasonable regulations to allow people to exercise the right to have a beer and have a good time in a responsible manner. I think that's one reason why these are not easy...it's easy to identify the question, but coming up with a final solution is often, you know, much harder than the first part of the issue. [LR528]

SENATOR KARPISEK: Any other questions? The 150 feet was brought up by...should maybe go to 300, what...? [LR528]

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HOBERT RUPE: I don't think that would be a problem. I mean, you probably would have to have something in there grandfathering existing licensees who are already existing there, because otherwise, you know, they probably would as a taking. It would be more consistent; you know, right now we have 150 foot for one and 300 foot for the other. I think that, you know, as I said, the only reason we go building-to-building is because a court case tells us we have to do that. If the Legislature were to say, you know, specifically, we're going to measure this distance from nearest property line to nearest property line, I don't think there would be a problem with that. It's not as easy for enforcement perspective; it's pretty easy for a Patrol person to go out there and to shoot the distance laser or to run the little roller to see how far it is. There might be a little more issue when you're looking at what's actually the property line, based upon the surveyors. I don't think it would be a problem. I mean, as I said, the commission will enforce the rules the Legislature sets forth. I don't think it would be a hard issue; it would be a change, but I think it could be accomplished. [LR528]

SENATOR KARPISEK: I guess I...I'll just speak for how I feel about that. I think on some of the things, especially, is...I'm sorry if Pastor or the treatment centers...I would have a hard time with churches that have SDLs to expand their boundary, but... [LR528]

HOBERT RUPE: Well, you might want to look at it that way. I mean, that's the issue in front of you. The problem with churches is, they are, at one time, depending upon who they are, they'll use any SDLs and, depending on the location and the denomination, a large user of SDLs. And so unfortunately, you can't...the theory that all churches are created equal, this response aren't. Some utilize SDLs and some don't. [LR528]

SENATOR KARPISEK: Could you please touch on the Wakefield case one more time?  
[LR528]

HOBERT RUPE: Yeah. It was an existing licensee which had been there; they're outside the 150 foot. And what they were seeking was a beer garden, because they had

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a lot of requests because of the smoking ban. And the thought would be, it would be better for them to be in a beer garden rather than going out on the front stoop, out on the street to smoke. This way we keep them contained, be able to keep the alcohol there. And so they sought a beer garden. And the expansion of the beer garden crossed over that 150-foot line. The commission took the discussions held before this committee and before the senate as a whole. What was the purpose of this waiver? It wasn't to be a blanket waiver to do away with it, but it was to be on a case-by-case basis and to look at the situation, what was going on. How was the area zoned? What was there? What was going on? And this case here--the commissioners felt that by granting...yes, you're at 150 foot, but you're not creating a new license. You're just sort of expanding the footprint of an existing licensee. It would be the same as, perhaps, if somebody had been there for many years and put an additional room on. You got to remember, a liquor license has sort of a footprint, and adding that on might put it in there. Well, was it really going to change the issue? No, the same bar was going still going to be there, the same bar with all its warts or with a good record, depending on how the bar is. And so that was what it was. It was an expansion of a beer garden in that zone. [LR528]

SENATOR KARPISEK: So was the local municipality opposed? [LR528]

HOBERT RUPE: No, the local municipality voted to approve it. The church itself sent a letter of opposition. They received notice of the hearing, but nobody from the church came down. But they did send a letter in opposition. [LR528]

SENATOR KARPISEK: Okay, any other questions? Thank you, Hobie. [LR528]

HOBERT RUPE: Thank you. [LR528]

SENATOR KARPISEK: Anyone else who would want to...Diane, do you want to...?  
[LR528]

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DIANE RIIBE: Yes. [LR528]

SENATOR KARPISEK: Okay, I didn't want to... [LR528]

DIANE RIIBE: No, it's (inaudible). [LR528]

SENATOR KARPISEK: ...since you asked before, I didn't want to make... [LR528]

DIANE RIIBE: No. Well, I just want to...again, Diane Riibe with Project Extra Mile, and I just want to, for clarification purposes, give you a sense of why some of this matters, including the Wakefield case. Because even though it was an existing license, it was a request to expand into an area that came closer to them, that church location. And I think because the statute had been changed, allowing that church to have a voice, which was how that particular piece of legislation was sold, the voice of that church didn't matter in the end. And that's the relevant piece. I guess I would also say, Hobie and I can disagree a little bit. Prohibition was an enforcement failure; it was not a public health failure. And so that's where you need to, at least, as you're balancing these...they are difficult decisions; but knowing that the basic premise of what we know from the research is when you limit accessibility, you also limit the public health implications. And when we look at the kinds of devastation that we have in our communities, we know that price matters, availability matters, most particularly when it comes to our young people. And we could go into the research pretty extensively, but that is the gist of it. We also know, again with Hobie's numbers, it's actually well over 40 percent of the population considers themselves essentially nondrinkers and about 25 percent would be considered really low-risk drinkers, which is one or fewer drinks in a week. So you're talking the vast majority of the population are pretty reasonable in terms of their drinking. And again, why does this matter? When you look at that 20 to 25 percent that consume virtually all of the alcohol--80 percent or more--you're looking at an industry that needs to make certain that they secure those drinkers early, because we know that anyone who begins drinking before age 15 is four times more likely to be alcohol

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dependent as an adult. And again, so why does that matter? It matters because we have to, if we're an industry, get them young. And we then keep them into the largest consumers, where we're going to make our most profit. And again, that's their world; their world is profit. But ours and yours as a public policy decision is, how do we balance that, the interest of those businesspeople, which is certainly appropriate, but balance that with what we know we can do to protect the health and safety of particularly our young people. I can tell you as a matter of record that any of us working in this field know that in the last three to five years this is a state that has gone significantly backwards. And we'll say it again and again on this issue; it's alarming, and it's frightening, and it's sad, because we don't see those numbers now, we'll see them in three to five years. We'll see them in three to five years because the availability of alcohol matters. It doesn't mean we're looking for prohibition, it never has, but it does matter. And I can tell you in working with families, unfortunately, that find us, and we don't find them, it's large. And I didn't know that I would be in defense of the Omaha City Council, but I will say for the record that they have increasingly had really good, solid decisions. And Senator Krist, we don't always agree with them either, but they have begun to have some very valid discussions. And we would never support a proposal for a limitation on outlets that was based on population ratio; no one would want that. You would have a value placed on a license that...talk about black market, I mean, you would have a whole different world. So there is a need to address that issue. I don't know how well we have been able to address it at a state level. We do know we have that opportunity at a local level in a whole different way: it's not the licensing process; it's the land-use process. And some of us will have to just keep working on that, because it does matter that we have some control over what the landscape of our communities look like. So thank you. [LR528]

SENATOR KARPISEK: Senator Krist. [LR528]

SENATOR KRIST: I'm going to tell a story. (Laughter) [LR528]

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DIANE RIIBE: And we're going to listen. [LR528]

SENATOR DIERKS: I started something, didn't I? [LR528]

SENATOR KRIST: Yes, you did. I lived in Iceland for two years, where the legal intoxication was .001. It's a nation of alcoholics in some ways, but there aren't any deaths on the highway. There are very few alcohol-related incidents, because the crime carries with it an incredible punishment and an incredible loss of personal privilege and responsibility. You lose your license after two--and it's a year. You go to jail, no question, if you cause physical harm. You go to jail forever if you kill somebody and you're intoxicated. I just think we need to think about not punishing those that are responsible but enforcing the laws that are in place, whether it's 150 feet or 300 feet--we're mobile; these kids have their own cars; they can do whatever they want to do. And 300 feet away from a campus may not be enough--it may be too much. But I think there's another page in this book, and I think it's really enforcement. And to be clear, what I said to Jack was, I'm in agreement with Mr. Batt and Hobie. It's not the city's responsibility. There's too many conflicting interests. We saw that in the city of Omaha with granting or pushing for economic development when the citizens of the city said, please, no, do not let this come into our community for a number of different reasons. So I wanted Jack to understand as their lobbyist that this is not a city problem. [LR528]

DIANE RIIBE: And I understand and appreciate your position. But to clarify what I was saying, I would agree with you there are those moments and we would disagree with them. But I can also tell you--and you all wouldn't want to stay that long--countless cases where the community, not just Omaha community, but many communities have really begged to be heard at a state level in terms of the kinds of transformation of their community that has not been healthy and they have been pretty substantially ignored. The Walgreens case would be a very clear example of that. And just to give you a sense, it wasn't an opposition to Walgreens as a corporation, it was an opposition

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because Walgreens, just in the city of Omaha, had sales to minors on tobacco of almost 70 over the last year. So you had a corporation, as a corporate practice, really not giving a lot of care to the health of our young people. So as one premise, that seemed to be of grave concern and ought to have been a consideration in terms of their due diligence as a corporate partner in a community. Beyond that, there were a large number of those locations that were in areas that, frankly, the neighbors and the city had grave concerns because of the economic and social conditions that were in that neighborhood, which is a requirement now because of particular case law. So that was ignored. I, frankly, thought that some of them would be granted; I thought some of them certainly, absolutely should have been denied. But all of those were granted at the state level. And I can tell you that virtually anyone in that process felt completely unheard. So I think it, sadly, goes both ways. But I can tell you what we're seeing, and we're seeing--and again, not just Omaha--but growing dissatisfaction to the point of really, truly the train has left the station, and residents are saying we are having absolutely no control over what our city looks like. Also for clarification, the city council did not look at the Kum&Go applications for the SDL for tasting. They have opted to allow their city clerk to look at those, and that was one individual making a decision, that, quite frankly, I don't know that it will happen again, but the process...and certainly there's always the opportunity to say no when you have an SDL that has some difficulty. Again, unfortunately, clarification for the record, and Hobie is free to come up and clarify what I've said, but the Comstock case was egregious and repeatedly year after year was egregious. But even after all of that, the Liquor Control Commission granted an opportunity for that business to sell alcohol out of roving backpacks on people. So we didn't get better, I don't think. They ultimately had really awful financial problems and had to go away. [LR528]

SENATOR KARPISEK: Anything else? Could I blame the Wakefield case on the smoking ban then? [LR528]

SENATOR PRICE: Yes. (Laughter) [LR528]



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SENATOR \_\_\_\_\_: I knew you'd get that in. [LR528]

SENATOR KARPISEK: (Laughter) You knew I'd...sorry, I had to go there. [LR528]

DIANE RIIBE: We'll let you do whatever you want. [LR528]

SENATOR KARPISEK: Sorry, I just had to throw that in there. [LR528]

DIANE RIIBE: Yeah, it's okay. [LR528]

SENATOR KARPISEK: Thank you. [LR528]

DIANE RIIBE: Thanks. [LR528]

SENATOR KARPISEK: Anyone else on the 150 feet? If not, that will end our hearing for today. Thank you, everyone, for coming. [LR528]