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General Affairs Committee
January 24, 2011

[LB249 LB256 LB279 LB294 LB311]

The Committee on General Affairs met at 1:30 p.m. on Monday, January 24, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB249, LB256, LB279, LB294, and LB311. Senators present: Russ Karpisek, Chairperson; Bob Krist, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Tyson Larson; Amanda McGill; and Paul Schumacher. Senators absent: Colby Coash.

SENATOR KARPISEK: Okay. Welcome to the General Affairs Committee. My name is Russ Karpisek from Wilber, and I am the Chair of the committee. Committee members that are present are Senator Brasch from Bancroft, Senator Bloomfield from Hoskins, Senator Coash will be joining us from Lincoln, Senator Krist of Omaha is Vice Chair of the committee and will be doing most of the chairing today. Josh Eickmeier is our legal counsel for the committee, from Seward. To my far left is Christina Case, committee clerk. Next to her will be Senator Larson of O'Neill, Senator Schumacher of Columbus, and Senator McGill of Lincoln. The page helping us today is Lacey Schuler. A few rules to go by, after each bill introduction we would like to hear testimony in support of the bill, then testimony in opposition, and finally neutral testimony. If you are planning on testifying in any capacity, please pick up a sign-in sheet that is on the table at the back of the room at either entrance. Please fill out the sign-in sheet before you testify. When it is your turn to testify, give your sign-in sheet to the page or to the committee clerk and that way we will have an accurate public record of who has testified. If you have any handouts, please make sure that you have ten copies for the page to hand out to the committee. When you come up to testify, please speak clearly into the mike, tell us your name and spell your first and last name, no matter how common and easy to spell it seems to you. Also, please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers or anything else that beeps. Please keep your conversations to a minimum or take them out in the hallway. Finally, while we do allow handouts, we do not allow visual aids or other display items. Thank you for your cooperation. We do not plan to use the light system this year in the committee. However, we have a full agenda almost every day probably because of mainly all of my bills. So if you will please bear with us and not be repetitive in testimony and not take too long, we will try not to use the light system. However, if we don't want to follow those guidelines, we will use the light system at my or Senator Krist's discretion. I want to remind everyone that this is not a football game, no cheering or booing for either side, especially no booing on my bills. And although this is a very serious matter, let's relax and enjoy the process. We can have a little fun and try to do some good for the state. With that, I will turn the chair over to Senator Krist. []

SENATOR KRIST: Thank you, Senator Karpisek. Our first bill to be heard will be LB249. Senator Karpisek, when you're ready. []

SENATOR KARPISEK: Thank you, Senator Krist and members of the committee. For

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the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, from Wilber, Nebraska. Under current law,...I should say this is LB249. Under current law, there is a restriction prohibiting the sale of alcoholic liquor for consumption within 300 feet of a campus. Currently, there are entities located within 300 feet of the University of Nebraska-Lincoln campus that receive a special designated license, or an SDL, for numerous events because of the 300-foot restriction and that can be waived for an SDL. LB249 would allow an exemption to this prohibition but would require consideration of a number of criteria before the exception could be granted. LB249 would not allow an exception if the property in question were surrounded by the campus. The Liquor Control Commission expressed concerns for the number of SDLs that were being issued for places like the Champions Club, across from Memorial Stadium. Requiring entities to apply for a regular liquor license provides the commission with additional enforcement options such as cash penalties and license suspensions, which are unavailable for an SDL. The Liquor Control Commission worked with the University of Nebraska to craft LB249. And I would like to thank both of those groups for working on this matter. I want to say that we are not trying to create something where there would just be alcohol available right across the campus nor inside the campus full time. But as I said, the SDLs are very numerous. And the Liquor Control Commission would like a little bit more of a hammer, if you will, to police some of these establishments. Both of those groups will be here to answer any questions. But I would be happy to take any if I can now. [LB249]

SENATOR KRIST: Any questions for the Senator? I assume you'll be here for closing. [LB249]

SENATOR KARPISEK: I will. [LB249]

SENATOR KRIST: Thank you. [LB249]

SENATOR KARPISEK: Thank you, Senator Krist. [LB249]

SENATOR KRIST: Can I see the hands of everyone who is going to speak in support, proponents? Thank you. We will now be accepting that testimony. [LB249]

HOBIE RUPE: Good afternoon, senators. My name is Hobie Rupe, H-o-b-i-e R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. And this is a process that's been going on for a little while. There was an interim study on it recently. The current prohibition, what it does not allow is consumption of spirits within 300 feet. You can have beer for sale on premise or you can have off-sale. So it's sort of an archaic provision in the first place. And what we're seeing is the commission has been looking at how many SDLs we issue and whether people are sort of utilizing the SDL process in lieu of actually getting a liquor license for these places, which are primarily running like social halls. And so we've been keeping track of it. In 2010, which is where

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we just had the last number, there were 3,700, approximately SDLs issued by the Liquor Control Commission. Of those, 550 of them had the exception to be so close to a campus. As you're aware, the Liquor Control...the SDL...that you can waive any rule or regulation other than the age of consumption. And so that's how they were utilizing those. And many of those, or at least 845 days where that exception applied. So we're talking about places, well, the one we all might be aware of like the Champions Club. Champions Club is directly right across from the university. It in all ways, shapes, and form acts as a hall, you know, it has wedding receptions, it has the big games. And so in every other way it's acting like a licensee. But because it's within 300 feet of the campus they can either just have beer, which would be legal, or if they want to have hard spirits they've got to use the SDL process. And so we're not trying to get every single one of the college campuses. We're looking at...we've highlighted by looking through how many we would be looking at, and some of the bigger cases which have been using them, for instance, the brand new HyVee, out at 50th and O, is within 300 feet of Doane University which has more than 25. It had, I believe, 246 days of SDLs last year because they wanted to do the wine tastings. And so, because of that, they're utilizing those. The Harper Center, up in Omaha, 90 days of SDLs, the Thompson Center had 29 different times, the Champions Club had 82. You know, so what we're trying to do is look at these. And the reason where it comes in is, this is, as I said, an ongoing process. The commission has been looking at...and we have a rule that any location which has more than 12 days shall be reviewed in case they're trying to utilize the SDLs instead of getting a liquor license. We run into that, there are some places which were basically running bars under SDLs through caterers every single weekend because they were trying to get away from, oh, the fire and health codes, which come incumbent upon a liquor license. And so that's what we're trying to get. We're trying to get these places which are acting like licensees to be appropriately licensed. What does that do? Well, if there's a violation, they can be suspended, cancelled or revoked. They're also now open to inspection by not only Nebraska State Patrol but by police officers of the city and county can go in there to make sure that compliance is happening. And so that's what the purpose is. We're trying to make it more safe for these places which are already open and utilizing this process to make sure that they're actually being, you know, under the same onus that everybody else does. The other issue is a lot of those places, because they're going through caterers, are a lot cheaper to run that way than actually getting a license and paying the occupation tax, which doesn't really seem very fair. You know, if the Lied Center isn't doing that but then you've got the Rococo, just down the street, two very similar venues, very similar events...number of events, one's a licensee and one is utilizing SDLs. So that's the purpose behind it. I think the proposed legislation in front of you came out of the interim study. The university, I believe, is in support of it. We think it's a fair way to accomplish that goal, but still especially give discretion to the university, especially for anything that they totally surround. You know, I sort of was like everyone else--somewhat surprised to be notified. There are little pockets of privately owned property right in the middle of the UNL campus. And I don't think they really wanted somebody opening up a bar right next to a, you know,

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dormitory. So they were a little concerned about that. And so I believe this bill does that. With that, I'd be happy to answer any questions. [LB249]

SENATOR KRIST: Any questions? [LB249]

SENATOR MCGILL: I'd just like to see that list if...if that's okay. [LB249]

HOBIE RUPE: What I'll do is I'll send you an e-mail, I'll forward it to you. [LB249]

SENATOR MCGILL: Okay, yeah, that would be great. Thanks. [LB249]

HOBIE RUPE: Yeah, I'd give you this one, but it has all these archaic written, handwritten notes that even I can't read. [LB249]

SENATOR MCGILL: (Laugh) Okay. [LB249]

SENATOR KRIST: And I know there's some material that we reviewed last session and in the interim that showed the campus, showed the direction. And, I think, if it's not been provided yet, then the new members of the committee would love to see those as well. [LB249]

HOBIE RUPE: Yeah. Last year, you might remember there was a bill that...we had to define what the western boundary of the UNL campus was, much like we...they had to define what it was for the southern boundary. The issue with that was...is if they're thinking about opening up like Sheldon 2, which they were thinking about in the Haymarket district, it would then create a 300-foot bubble around it preventing any new licensees going in around it. And so there's...so this would also...sooner or later, if Innovation Park takes off like I think it will, you know, if we don't sort of fix it with this bill, we'll probably have to come up with an arbitrary northern boundary because, you know, somebody is going to want to have a restaurant up there serving all those people when they come in. And so I think this is the way to take care of that issue as well before it comes up. [LB249]

SENATOR KRIST: Thanks, Hobie. Oh, one more question. Senator. [LB249]

SENATOR BLOOMFIELD: What is the financial difference between getting the deferral or licensing? [LB249]

HOBIE RUPE: Okay. The reason...if I'm going to get a, let's say a Class D liquor license, which would be beer, wine, spirits, or back up, a Class I, which is a restaurant, beer, wine, spirits on sale, it's about \$250. On top of that, the cities can charge up to twice the license fee as an occupation tax, Lincoln does, Omaha does, a lot of other cities do. And so you're looking at a yearly fee for your license of \$750. Most of these

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places utilizing SDLs are utilizing caterers. Now the caterers are getting the one license. And so they pay for the...up front, getting their caterer's license, and then they're just...they're not paying for this license. You know, they're doing this under their catering license so there is a loss. So I think our look was we actually thought the fiscal note would be, at the end, would be about \$7,000 to the General Fund on the positive side. [LB249]

SENATOR BLOOMFIELD: Are we going to do damage to the catering business if we do this? [LB249]

HOBIE RUPE: You know, we might. I don't anticipate it. A lot of those places, if they're happy with the caterers, will probably just hire them as a management team, consultant, for a fee to do it that way or they might get their own licenses. A lot of it is going to depend on what kind of business they're going to look at, what they're going to be looking to do. So there might be some impact, I can't say there isn't. But, you know, we're trying to look more at the enforcement side and sort of the fairness side. [LB249]

SENATOR BLOOMFIELD: Thank you. [LB249]

SENATOR KRIST: Thanks, Hobie. Any other testimony as proponent? Thank you. Senator, how are you? [LB249]

RON WITHEM: Just fine, thank you, Senator. Thank you all for listening to my testimony on this legislation. For the record, my name is Ron Withem, R-o-n W-i-t-h-e-m, registered lobbyist for the University of Nebraska. And as Hobie indicated, we've been working on this issue for two or three years now. It's one of those simple things that isn't as simple once you get into it. First thing I'd like to do is point out in the bill, because there's been a lot of confusion. And if you look at Section 2, underlined language starts off with, "No alcoholic liquor shall be sold for consumption on the premises within 300 feet from the campus." People who have been reading this, as we've all been taught, underlined language is new so they think we're imposing a new 300-foot limit. Actually, what Bill Drafters have done is they've taken a section later in the bill, striking it there and putting it in place here. I go through that because we're not imposing a new 300-foot limit. Three hundred feet will continue to be the standard in terms of issuing these new liquor licenses. During the course of working on this for two or three years, it appears as though there are about three problems that have been identified. One of those is, is there a problem if you have alcoholic liquor for consumption within 300 feet of residential facilities for students? And we have some people here from the university who are going to comment on that. We believe there is a problem and we will support the maintenance of the limitation for those purposes. But secondly, we heard about something we probably didn't even know existed before, I didn't know existed before, specially designated licenses. And you heard from Hobie about how the proliferation of those has been a problem in terms of enforcement. The third is, he also alluded to this,

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there's a concern about economic development, particularly...and this is...we've talked about UNL here. I represent all four university campuses. And if you drive about 50 miles north and east of here to Omaha you'll see the UNO campus developing on the old Ak-Sar-Ben property at the same time that there's commercial development. And we don't want this 300-foot impediment to get in the way of economic development. If the Marriott or Holiday Inn or somebody like that wants to open a hotel within 300 feet of the UNO campus and have an establishment that is absolutely no threat to the students at all, we'd like to see that happen. So those are the three issues. There have been three potential solutions I've seen. Solution one was a bill last year to repeal the 300-foot limit. Well, we're concerned with that and what it would do to the proximity to our residential students. Second option would be to leave the 300-foot limitation in place. Liquor Control Commission has problems with that with the specially designated licenses and there's a concern relative to economic development. So what we have here is a bill that leaves the 300-foot limitation in place but allows for a waiver. And those conditions for the waiver are here, point...subpoint (a) on the bottom of page 2 through subpoint (d) on the top of page 3, basically, the impact of the liquor license on the academic mission of the college, the impact on prospective students, impact on economic development, and reduction of special designated licenses. So we think this bill deals with all three of the issues we've seen and would urge you to pass it. Those of you that have heard me testify on this before know I have gone through the sum total of my knowledge on this particular subject. So we brought Linda Major, from the UNL campus here, who can answer any questions. And then our Police Chief Yardley is also here to comment on some of the law enforcement issues. So I would attempt to respond to questions or more likely leave and let Linda come up to respond to them. [LB249]

SENATOR KRIST: That's a great way to get out of any questions. (Laughter) [LB249]

RON WITHEM: Okay, thank you. You've seen me operate here before, so you're aware of that. (Laughter) [LB249]

SENATOR KRIST: Yes, sir, I have. Any questions? Thank you. [LB249]

RON WITHEM: Thank you very much. If you have some later on and want to call Linda up as an expert witness, I'm sure she'll be happy to do that. Thank you. [LB249]

SENATOR KRIST: Okay, thank you very much. Any other testimony in support of this proposed legislation? [LB249]

OWEN YARDLEY: Thank you, senators. My name is Owen Yardley. I'm the police chief at the University of Nebraska in Lincoln. I am testifying in support of this. [LB249]

SENATOR KRIST: Chief, can I ask you, just for the record, could you spell your last name for the clerk? [LB249]

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OWEN YARDLEY: Oh, I'm sorry. Yardley, Y-a-r-d-l-e-y. [LB249]

SENATOR KRIST: Thank you, sir. [LB249]

OWEN YARDLEY: (Exhibit 1) I know some of the mention has been on game day activities. Another benefit to this that I see from our side is on a day-to-day basis. University has some very good programs for dealing with high-risk drinking and behaviors, drinking behaviors on campus. And I think this would give us another tool that we'd be able to use to help that project and the programs that we have going. There is...I think you're looking at the maps. You'll see that there is a swath of private property that goes through the middle of campus. One thing we would like to do with this and one of the benefits we see is that we could protect the core of the campus, which is the area where most of the students live and reside and do a lot of their activities on campus; we'd like to restrict that. And I think this bill would allow us to do that. I think it's tailored significantly so that the campuses can deal with the problems they have that are particular to their environments, and I think that's very beneficial. There is some talk of...the talk started, was about the SDLs. This won't reduce every SDL on campus, but I think at first blush it's probably going to reduce 20 to 25 percent of them. So it will have a significant impact on what's going on with campus there. I can answer any other questions, if you have them, otherwise... [LB249]

SENATOR KRIST: Any questions for the Chief? [LB249]

SENATOR SCHUMACHER: Chief, as a practical matter, what's the difference between 0 and 300 feet? Three hundred feet is, you know, even I can walk that. [LB249]

OWEN YARDLEY: Well, there's not a whole lot of difference unless you're in weather like we are right now, then it's pretty significant. I think one of the things about it is we're dealing with an environment that we've inherited, that's built up around us, and we try and deal with that as best we can. I think the 300 may have a benefit to some part. I think the closer in proximity, I think every adult can probably attest to this, that if they go...having...to drink alcohol and go to a bar, go to a restaurant, they try and go as close proximity to their residence as they can quite often. Because the more convenient it is, I think the more issues you have. And I think the farther we can push that away, even if it's slightly, is going to be beneficial. And again, it helps us protect that core of our campus. Three hundred feet is a city block. And when you're talking about the heart of campus, which is just several blocks wide from that point, I think it is pretty significant at that point. [LB249]

SENATOR KRIST: Any other questions for the Chief? Thank you for your testimony. [LB249]

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OWEN YARDLEY: Thank you. [LB249]

SENATOR KRIST: Ask the New York Jets what 300 feet means. (Laughter) Any other testimony in support of LB249? Okay. Is there any opposition, anybody who would like to speak as an opponent to LB249? Welcome back. [LB249]

DIANE RIIBE: (Exhibit 2) Thank you. Good afternoon, Senator Krist, members of the committee. My name is Diane Riibe, and that's D-i-a-n-e R-i-i-b-e. And I'm here today representing Project Extra Mile. We are a network of coalitions serving ten communities in 11 counties across the state. And we work to prevent underage drinking and youth access to alcohol. We're here today in opposition to LB249, a bill that removes, although certainly provides a waiver, but for all intents and purposes allows removal of that critical buffer zone around college and university campuses in the state. We're concerned about the continuing problem of alcohol use as a larger cultural norm throughout this state, leading Nebraska to have a high rate of underage alcohol use and binge drinking. Our policy decisions are not removed from these statistical results that speak to a devastating impact on our young people ultimately. The intent of the proposal is to address special designated licenses or SDLs being granted in the area around campuses, specifically, as you've heard, around UNL. In fact, one of the considerations required in the proposal includes taking into consideration whether the waiver of the 300-foot rule would "likely reduce the number of applications for SDLs requested by the college or university or its designee." There is no evidence at all that taking the action will do anything of the sort. It may, in fact, reduce the number of these locations requesting an SDL. However, we have no concrete evidence that additional requests will not come forward, as has already been mentioned. What we do know with certainty is that Nebraska has experienced a substantial increase in all of our liquor licenses across the state, including SDLs over recent years. There is another option, a solution that has not been discussed. We can simply reduce or limit the number of SDLs granted in and around our campuses. The commission does grant those. The local municipality does that initially, but there can be a consideration to say, how do we limit those around those campuses? If we're truly concerned about, as the bill quotes, impact on students and prospective students if such sales were permitted on or near our campuses, as is outlined as a mere consideration in the license granting process in Section 2(b) of the proposal, we would give this alternative valid thought, discussion, and consideration. Reducing, not increasing, alcohol sales and availability in and around campuses is what is suggested by a large body of evidence and research. The literature tells us that alcohol-related problems are the single greatest public health hazard on American college and university campuses, Misch, 2010, with consequences including deaths, accidents, injuries, physical violence, unintended and/or unprotected sex, sexual assault, property damage, legal consequences, academic failure. Unfortunately, the list goes on, Misch, 2010; Hingson, 2009. Further, we know that many of the harms engendered by alcohol are secondhand effects. The Harvard College Alcohol Study found that 66 percent of college students had experienced the

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effects of other students' drinking, including violence, unwanted sexual advances, sexual assault, quarrels, arguments, humiliation, noise, disruption of sleep, personal property damage, and again, on and on. The commercial access and availability of alcohol has a considerable effect on college drinking. Specifically, increased alcohol outlet density near colleges and universities has been shown and associated with, and, yes, the numbers get numbing, but they are very real and I think it's important for us to kind of listen to them for a moment--student heavy drinking, Weitzman 2003; student frequent drinking, Weitzman, et al., 2003; drinking and personal problems among students, Kypri, et al., 2008; secondhand drinking effects, Kypri, again, 2008; average number of drinks when partying, Scribner, et al., 2008; frequency of drunkenness in the past two weeks, Scribner, et al., 2008; 30-day frequency of drinking, Scribner, et al., 2008; greatest number of drinks in one sitting, Scribner, et al., 2008; and campus sexual assaults, Scribner, et al., 2010. Certainly, the university has done a great job and has made some great progress on their underage youth access and drinking, and no one can deny that. And we commend them for that. But we come to you, asking today that you give some serious consideration and pause, learn more about the impact of alcohol on our students, our young people in the surrounding campus areas and the role that we play in changing that. Communities across Nebraska continue to search for opportunities to look at outlet density with very little opportunity for recourse or addressing it on a long-term, sustainable policy level. And they need your help. And you can do that, quite frankly, senators, with just your vote here today. Thank you. [LB249]

SENATOR KRIST: Thanks, Diane. Any questions? Senator Larson. [LB249]

SENATOR LARSON: Thank you, Diane. I'm looking at this map and I see a lot of private property just around UNL and we're talking about UNO's development into Ak-Sar-Ben and Innovation Campus. And you brought up limiting SDLs. So you want to limit private property owners from what they can and cannot do in their businesses? [LB249]

DIANE RIIBE: Well, I think, I mean, in Nebraska we have privatized all of our liquor sales. So it's everyone who has a liquor license, for the most part, is a private business owner in some fashion. And yes, indeed, as a state we have to determine how we want that property to be used in some fashion, if we have a consideration of our public health and safety as a factor that we have in that discussion. [LB249]

SENATOR LARSON: So, for example, if there were to be a restaurant or something close to the new Innovation Campus, you would advocate for not allowing them to have a liquor license? [LB249]

DIANE RIIBE: Without actually, and all due respect, Senator, without actually seeing that proposal and seeing the actual location, I don't know that I could speculate on that. I do know that businesses usually take that in consideration. I also know that we

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recently passed a law that made a limitation on the church buffer zone. That was specifically because of some of those storefront churches. There are ways to be creative, and I'm just suggesting that perhaps we don't have that. [LB249]

SENATOR LARSON: Being creative, you mean. [LB249]

DIANE RIIBE: I think there's a better opportunity to think more about it, yes. [LB249]

SENATOR LARSON: Okay. [LB249]

DIANE RIIBE: We haven't discussed, as an example, limiting those sales and access. [LB249]

SENATOR KRIST: Any other questions? Thank you, Diane. Oh, I'm sorry. Senator Schumacher. [LB249]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Has your group done any comparative analysis between our culture and European cultures with reference to alcohol? [LB249]

DIANE RIIBE: We have not, but there is some research out there, yes. And what we know is that the European and industrialized countries have significantly higher rates of usage in the past 30 days as well as their binge drinking rates. In fact, England, London, specifically, has a binge drinking rate that's for the 15-year-olds that's twice what the United States. [LB249]

SENATOR SCHUMACHER: Thank you. [LB249]

DIANE RIIBE: Um-hum. [LB249]

SENATOR KRIST: Thanks, Senator. Any other testimony in opposition of LB249? Anyone that wants to speak in the neutral on this bill? With that, Senator Karpisek, you are invited to close. [LB249]

SENATOR KARPISEK: Thank you, Senator Krist and members of the committee. As we look at the map that Chief Yardley handed out, and thank you very much for bringing that, Chief, you see some of the private buildings in the middle of campus there. This bill is intended to not let those places have liquor licenses as we have talked about being surrounded by the university. I did not realize when I brought the bill last year to do away with the 300-foot buffer zone that there was...there were those sort of businesses there or buildings, excuse me. So I definitely want to point that out and say we want to keep that from the middle of campus, obviously. The "surrounded by" may be a little bit vague and we are working on that. And I think when you look at that map you can tell

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what is "surrounded by" and what is not. Again, this would be up to the university on those "surrounded by" and the Liquor Control Commission. Again, the university has worked with us on this issue. They drew up the language and I appreciate that. I also appreciate Ms. Riibe's consternation on being close to campus. And I share those same issues. However, I think we're trying to make sure that these places that have numerous SDLs have...there's a little more hammer to make sure that they're in compliance. Not to say that they aren't right now, but I think that there's an awful lot of places that are functioning much like a bar, look like a bar in every sense of the way, but they really are not licensed as a bar. And I really would not want to impose on private business to tell them on how many SDLs they could have, but rather try to work it out this way. With that, I would take any questions. [LB249]

SENATOR KRIST: Senator. [LB249]

SENATOR BLOOMFIELD: Senator, these studies that you're showing here are concerned with the university here. Does this not also reach out to like Wayne State? [LB249]

SENATOR KARPISEK: Yes. [LB249]

SENATOR BLOOMFIELD: Have we done any looking around there? [LB249]

SENATOR KARPISEK: We have and, as Senator Withem said, he also represents the whole university system. We have looked at it. And last year, it was the 300-foot rule, eliminating it, and there were some concerns. However, we found maybe the person testifying was not associated with the campus. So they have looked at it. We haven't heard a whole lot of opposition from them. [LB249]

SENATOR BLOOMFIELD: Okay. That's all the state colleges then? What about private colleges then? [LB249]

SENATOR KARPISEK: Private colleges right now can do a lot of their own...they can do a culinary arts program and those sort of things with alcohol. [LB249]

SENATOR BLOOMFIELD: Okay. [LB249]

SENATOR KRIST: Any other questions for Senator Karpisek? With that, we are closing the hearing on LB249 and moving to LB256. And, if you'd like to continue, Senator. (See also Exhibit 4) [LB249]

SENATOR KARPISEK: Thank you, Senator Krist. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I'm from Wilber and I represent the 32nd Legislative District. LB256 clarifies the State Racing Commission's terms, the commissioners'

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terms. LB1012, last year in 2010, which was amended into LB861 added two members to the commission. And LB256 harmonizes the provisions regarding the lengths of the commissioners' terms and when the terms begin and end. The bill would have...essentially, all it does is swap the terms of the members appointed from the 1st Congressional District and the 3rd Congressional District. The bill would have the member representing the first district appointed on or after April 1 of 2011; and the member representing the third district appointed on or after April 1, 2012. Under current statute, the appointments are reversed. So this is basically a cleanup bill. I would take any questions. [LB256]

SENATOR KRIST: Any questions? Senator Schumacher. [LB256]

SENATOR SCHUMACHER: If all that's happening is reversing it, I mean, what difference does that make? [LB256]

SENATOR KARPISEK: The way the terms fall out, I think in the current bill we would be having one district not having a representative for that year. [LB256]

SENATOR KRIST: It created gaps. [LB256]

SENATOR SCHUMACHER: Okay, yeah. [LB256]

SENATOR KRIST: No overlap. Anything else? Any other questions? And I know you'll be around to close. [LB256]

SENATOR KARPISEK: I will. [LB256]

SENATOR KRIST: We are now accepting any testimony in support of LB256. Welcome back. [LB256]

LYNNE SCHULLER: Hello. Lynne Schuller, representing the Nebraska Horsemen's Benevolent and Protective Association, testifying in support of this bill. We are usually the industry people who are concerned with this legislation because, typically, people who are interested in applying for this position either call us or work through the Racing Commission with the statute. And it was unclear about what the terms exactly were. So we support this change, and that's all I have. [LB256]

SENATOR KRIST: Any questions for Ms. Schuller? Thank you very much. [LB256]

LYNNE SCHULLER: Thanks. [LB256]

SENATOR KRIST: Any other testimony in support of LB256? Any...okay. Any testimony against LB256? Opponents. Going once, going twice. Any neutral? Okay, Senator

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Karpisek waives his closing. That will conclude our hearing on LB256. And we will begin LB279. And surprise, Senator Karpisek is back. [LB256]

SENATOR KARPISEK: It gives a chance for all my fans to come on one day, Senator Krist. (Laughter) Thank you, Senator Krist. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I'm from Wilber, Nebraska, and represent the 32nd Legislative District. LB279 would deal with what is known as a Storz exception. Under current law, there is an exception that allows a beer manufacturer to also own a beer distributorship. LB279 eliminates this exception in the Liquor Control Act. This exception is often referred to as the Storz exception, named after Storz Brewing Company that was based in Omaha. The Liquor Control Commission expressed concerns regarding whether this exception should be kept in state law. Nebraska's liquor laws follow a model often referred to as the three-tier system. Under the three-tier system, separation is maintained between the manufacturer, distributor, and retailer. This system assists the state in its law enforcement and tax collection efforts. The commission is asking the Legislature to eliminate the Storz exception in order to strengthen the integrity of the three-tier system. As the committee probably remembers, when Mr. Rupe came in and talked to us about the three-tier system, a manufacturer cannot be a distributor, cannot be a retailer, and vice versa, so we have three separate levels. This exception, again, was for the Storz Brewing because it was based in Omaha. I'm not real sure about Commerce Clause and treating an in-state different from an out-of-state manufacturer. But that really doesn't even play in anymore since Storz isn't here. The question to me is, how do we keep the three-tier system intact, keep our distributors solvent, and keep our retailers also protected? I would not want to see a manufacturer coming in and open their own distributorship or their own bar. I think they would obviously be able to sell much cheaper by skipping a step, a middle man, and do other harm that wouldn't be good for competition. I know that there are some issues with this bill, but that's why we have Mr. Rupe here from the Liquor Commission and some others from the industry to talk to us about how this bill came about and where it will go. I'd be happy to take any questions. [LB279]

SENATOR KRIST: Any questions for the Senator? Okay. [LB279]

SENATOR KARPISEK: I will be here to close, Senator. [LB279]

SENATOR KRIST: We assumed so. Are there any testimony in support of LB279? [LB279]

HOBIE RUPE: Good afternoon, Senators. Once again, my name is Hobie Rupe, H-o-b-i-e R-u-p-e, executive director of the Nebraska Liquor Control Commission. Today I'm going to speak in support of LB279. I didn't realize I would be, you know, causing this much of a stir when we looked at this issue. But I'll give you why we're looking at it and what we're thinking of. As you're aware, the commission has been

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looking at some of the older, more archaic provisions that are in the act. The act was passed in 1935 and 1936. It's acquired what I call barnacles and some holes, you know, it's got things added onto it, some holes carved in it. For instance, last year LB...we had a bill to get rid of the old antiboilermaker bill, 53-174 prohibition. Had nothing to do with boilermakers, but that was the actual effect that it had. And so we thought...another one we're looking at was the prohibition found in the ownership. As far as we can tell, this exception was put in the act; it was not in the original 1935 act, and somehow it appears in the 1947 revision of the act. The words "except beer" were thrown in there. And sort of the institutional knowledge of the commission was it was always considered the Storz exception. Storz, as you're aware, was a brewery in Omaha from 1884 until 1972. It was, at one point in time, a third of all Nebraska beer was actually brewed by Storz Brewery in Omaha, Nebraska, consumed in Nebraska. The purpose of that was they had their own bars nearby, they wanted to continue to service, they'd serviced them prior to prohibition. When they survived, came through, out of prohibition, they went back to the same business model. And you know, as often is the Legislature sort of will carve out an exception for a local business. Okay. Here's why we think we need to get rid of that exception for now. As far as...it does sort of plug a hole that exists in the three-tiered system right now. You know, we tell Bacardi they can't own a wholesaler, but we're telling Miller, Coors, Budweiser, whoever you want that they can have an ownership interest in a wholesaler. And the main thing that the three-tiered system was designed was to, you know, to have those three tiers broken up so there wasn't the vertical integration issue. Second, we think that passage of this will prevent any legal challenges. There has been a...to say a lot of litigation across the nation involving different liquor control acts across the nation would be somewhat of an understatement. It's been almost a cottage industry. And this exception or loophole that was once made for an instate entity at that time, does create the possibility of us being sued. And this is a bill to sort of correct that issue. And third is accountability. The only entity which has utilized this exception since Storz went under in 1972, the Storz family sold it in '66 and then went out of business in '72, was Coors had an ownership interest in a wholesaler for a while. Now where this comes into issue is when you look at the collection of the excise tax. That was about 15 or 20 years ago was the last time they had any ownership interest. The wholesaler files the report which says, okay, back up. Beer is taxed when it...we call...it's almost like when it hits the dock, when it lands at the wholesaler, that's when the state excise tax attaches. The wholesaler files a monthly report with the commission saying, this is how much of this product I've received during the month of January. At the same time, the licensed shipper files a report which says, this is how much we shipped into these different wholesalers during that same time period. Does anyone else see there might be a slight accounting problem if the same entity has both sides of that ledger? We expect to see minor discrepancies. Oftentimes, the paperwork will come ahead. And so the paperwork might land on the 31st where the beer doesn't deliver until the 2nd. And so there might be a discrepancy there. We can usually find that out. The other issue is sometimes there is an accounting error and there's a missed...an overpayment or underpayment of the tax. And so, it's actually not

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a true and accurate tax picture. And so, by having sort of different entities on that time frame it's easier for the commission to maintain that the appropriate tax is being paid. As I said, you know, this was an old exception. We believe that its time and usefulness has passed. We believe that...and you might ask, okay, if it's been around since 1947, Hobie, why should we even worry about it today? There's been more litigation, a lot of litigation. Currently, there is a big case in the state of Illinois where a manufacturer wanted to own the principle wholesaler outright in the Chicago metropolitan area. And the Illinois Liquor Commission said no. And I believe they're going up to the Seventh District Court of Appeals now because...going through that. Other states have also been, in this litigation area, been looking at sort of revising, repairing their three-tiered systems. Louisiana passed a similar statute to this last year. I believe Missouri has a very similar statute to this bill pending in front of its legislature this session. So we're not alone. I think a lot of states are looking at it as part of the job duties. I mean, the commission is sort of charged with maintaining the system and making sure that it's applied fair and equitably. And if we're seeing a possible exception that no longer needs to be made there we should probably take out the spackle and fill it in. So with that, I'd be happy to answer any questions. [LB279]

SENATOR KRIST: Do you have an amendment to propose? [LB279]

HOBIE RUPE: Yeah, I'm sorry, thank you. There's an amendment, I believe the Bill Drafter's had it. Once we introduced this, you know, this is sort of one of the great things about the law, possible unintended consequences. Some representatives from a brewery came forth. They were concerned what would happen in the case of say a bankruptcy or a death or the ineligibility of a current licensee, what would happen to that wholesaler at that time? As you may or may not be aware, the beer wholesalers are a little bit different, is that they are set to specific geographic territories. And they have those brands in that geographic territory. So the fear was that if one of those places were to go bankrupt, you would then have the unintended consequence of retailers in that area not being able to acquire the product. And so we drafted..., based upon those concerns that were brought forth and in consultation with the agency counsel or the committee counsel, we...an amendment which would say, a manufacturer of beer may acquire an ownership interest otherwise prohibited by (1) of this section for a period not to exceed one year, upon the death or bankruptcy of the wholesaler with which the manufacturer has been doing business, or upon the wholesaler...upon which the manufacturer is doing business becoming ineligible to hold a liquor license under 53-125. So we think that that amendment, if adopted, takes care of the concerns that a lot of people had, that what happens, you know, worst case scenario, there's a way they can sort of continue to operate the business for a limited time, one year. You know, the main reason is they can keep it in business, start looking for a bona fide purchaser for those assets. So that would be the amendment. So I'd be happy to answer any questions. [LB279]

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SENATOR KRIST: Any questions? Senator Bloomfield. [LB279]

SENATOR BLOOMFIELD: You mentioned that the way it sits now they could...the manufacturer can own a portion of it. Can you own it outright or just a portion? [LB279]

HOBIE RUPE: He can own it outright, yeah. Right now if you read our statute, 53-169.01 says, no manufacturer of alcoholic liquor except beer may, and so it would be that he could own it outright currently. [LB279]

SENATOR BLOOMFIELD: Okay, thank you. [LB279]

SENATOR KRIST: Any other questions? Senator Schumacher. [LB279]

SENATOR SCHUMACHER: Thank you, Senator Krist. Just a couple quick questions. Is there any litigation in Nebraska on this issue? [LB279]

HOBIE RUPE: Not yet. And I'm hopeful that this bill will serve to short-circuit any potential litigation in Nebraska. [LB279]

SENATOR SCHUMACHER: The act refers to affiliate. What standard of affiliations is the standard? [LB279]

HOBIE RUPE: Generally, the setting which courts have looked at is if there is an ownership interest. In other words, it would be impossible, let's say, you know, brewing company decides they want to own a wholesaler in Lincoln. And I decide to create a wholly-owned subsidiary called Hobie Co, and try to do it that way. That would probably be the same violation because it would be an ownership interest. Primarily, what the issue is designed to stop is a financial interest going up and down because the purpose there is, of course, as Senator Karpisek, you know, brought forth, you know, then we're revisiting a lot of the issues which brought around prohibition in the first place where you had incomplete vertical integration, basically ownership, you know, all the way...it used to be they said the big beer companies owned it from the field all the way to the tap. [LB279]

SENATOR SCHUMACHER: But what is the standard for affiliation? I mean, I can understand subsidiary, you create a subsidiary as a sham. But I mean, is it 50 percent, a sister company relationship? [LB279]

HOBIE RUPE: Okay. We would probably...right now we look at, you know, any officers or management in common. In other words, if there's a board or board of directors, if there was entities in common. We would also look at, you know, what those officers are. It is somewhat a case by case basis on the disclosure they find. If you were to have an ownership interest through say a, you know, a 401(k) would own something, something

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you don't actually have control or responsibility over, that probably would not be a prohibited interest. It's an interest where the entity could sort of dictate or control the business of the other entity. [LB279]

SENATOR SCHUMACHER: Two more follow-ups. What if there was a really good brewpub and they wanted to not go through a middle man distributor and have their product sold elsewhere. Any mechanism for them to do that? [LB279]

HOBIE RUPE: Currently, no. Nebraska's brewpub statute allows them to sort of exist at the two tiers. They can exist as a manufacturer; they can also exist as a retailer. They can actually have the restaurants. Anything else other than that, they do need to go through the three-tiered system. That's the current statute. [LB279]

SENATOR SCHUMACHER: So they got to...if they are...a little brewpub has to have a middle man. And finally, what if there's a wholesaler out there that wants to sell...there's no real market out there or they have a hard time finding a buyer and there's a manufacturer that would like to pick them up? [LB279]

HOBIE RUPE: Well, if they're at such a stage that they're going bankrupt, I think the amendment would cover that, at least short term. I sort of find it difficult to think that there would not be, depending upon the price, a buyer for an ongoing wholesaler. Even during the recession, our tax revenues on excise tax continued to increase. Their profit margin might have changed because of...I don't think they have captured quite the same amount on a sale to a...off sale as they do to an on sale location. But the actual gallonage in Nebraska, we sold more beer in 2010 than we did in 2009. So these are actually, I think, very equitable. And if I had enough money, I would love to be a wholesaler. But then I'd have to give up this job as well. [LB279]

SENATOR SCHUMACHER: No further questions. [LB279]

SENATOR KRIST: Senator Larson. [LB279]

SENATOR LARSON: Thank you, Hobie. Do any of the major manufacturers have any interest or ownership in distributors right now? [LB279]

HOBIE RUPE: Currently, no, at least none that we've been able to ferret out at least. (Laugh) [LB279]

SENATOR LARSON: Have they ever? [LB279]

HOBIE RUPE: At one time, about 15 or 20 years ago, when Coors had an ownership interest, and I can tell you that, you know, Jerry Van Ackeren, my chief auditor, my only auditor now from last year's budget cuts, told horror stories about trying to get those.

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Because it was amazing, they were always exactly balanced how they came in, (laugh) until he went out and did a perpetual inventory. The thing...so they did have at the time. We believe that for integrity and especially to make sure that the appropriate tax, one way or the other, is being paid we do...that separation is needed. [LB279]

SENATOR LARSON: And Senator Schumacher brought it up in terms of the small, local breweries. You said, right now they can exist in the manufacturing and in the retailing side, correct? [LB279]

HOBIE RUPE: Yes, that's...the current craft beer and microbrewery. [LB279]

SENATOR LARSON: So they can't...they do have to have a wholesaler? [LB279]

HOBIE RUPE: Yes, they...it flows through a wholesaler. [LB279]

SENATOR LARSON: Even...so this bill doesn't change that at all? [LB279]

HOBIE RUPE: No. No. The difference there is they are operating under a different license which was specifically created under the craft beer brewery and brewpub license. They sort of can exist at two of the tiers, but then they have some limitations that another big beer would not have. They have a gallonage limit, you know, they can only produce, I can't remember exactly, up to X amount of barrels. [LB279]

SENATOR LARSON: Each store or can they have like multiple places where they do it? [LB279]

HOBIE RUPE: Well, they can get different locations. But the thing is each of the different locations has to pay it in. And we've got a couple, for instance, I believe, Thunderhead Brewing is an example. They've got two brewpub licenses. They had one in Grand Island, and they had one in Kearney, and they're sort of separated in that respect. [LB279]

SENATOR LARSON: Okay. So this will have no effect in terms of limiting their economic growth or development? [LB279]

HOBIE RUPE: No, no. The only thing that would limit them is if any of them get close to the barrel limit. And I don't think anyone is getting anywhere close yet on the barrel limit. [LB279]

SENATOR LARSON: Okay. Should those craft breweries have the right to distribute their own beer? [LB279]

HOBIE RUPE: I don't believe so. Right now we have one licensee type which has all

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three rights, and that's the farm winery license. It is also the hardest place to audit because of the account...because there's not the second levels, there's not the cross-checks. [LB279]

SENATOR LARSON: So what's the difference between a farm and winery to a small microbrewer trying to make a living? [LB279]

HOBIE RUPE: Well, for one thing there's...a major difference is the microbrewery does not have a restriction on it that the farm winery does. The farm winery has a restriction that 75 percent of their product has to come from Nebraska agricultural product. There is no such restriction on a microbrew license. The other issue is the microbrewer, specifically under the act, can also acquire a normal retail license so they can sell products in addition to the stuff they make. A farm winery doesn't have that right. In a perfect world, do I think they should go through a wholesaler? Maybe, but that's not really the issue here today. [LB279]

SENATOR LARSON: All right, thank you. [LB279]

SENATOR KRIST: Any other questions? Senator Schumacher. [LB279]

SENATOR SCHUMACHER: One quick question. You said our beer budget has gone up. Has our champagne budget come down? (Laugh) [LB279]

HOBIE RUPE: Overall, our consumption has stayed up. You know, it's...someone said that alcohol is recession proof. I said, well, I'm not sure it's recession proof, but it certainly is recession resistant. [LB279]

SENATOR KRIST: Any other questions? Thanks, Hobie. [LB279]

HOBIE RUPE: Thank you. [LB279]

SENATOR KRIST: Any other testimony in support of LB279? [LB279]

JOE KOHOUT: Good afternoon, Vice Chairman Krist and members of the General Affairs Committee. For the record, my name is Joe Kohout, K-o-h-o-u-t, and I appear before you today as registered lobbyist for and on behalf of the Associated Beverage Distributors of Nebraska, in support of LB279. Since the repeal of prohibition with the adoption of the Twenty-first Amendment, over 75 years ago, Nebraska, like many other states, has used the three-tier system--retailer, wholesaler, supplier, and manufacturer to regulate the distribution of alcohol. One of the primary objectives of the three-tier system is to keep each tier independent of the others. To achieve independence among the tiers, ownership in more than one tier is prohibited. Our current law includes an exception to this prohibition against ownership in more than one tier. This exception,

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known as the Storz exception, was adopted when Nebraska had a strong hometown household named beer in Storz. Today, Storz is no longer manufactured and distributed here in Nebraska and therefore, no longer a need for this exception. We support LB279 for three simple reasons. First, that the passage of LB279 will maintain a strong, independent three-tier system of alcohol distribution. Our three-tier system of alcohol distribution has proven to be an effective way to protect the public through transparency and accountability for over 75 years. Ownership or other interest in more than one tier works to compromise the integrity of the system and it is essential that each tier remain absolutely independent of the others. By closing this loophole in our law, we will strengthen our distribution system by ensuring independence among the tiers. Second, the passage of LB279 will prevent frivolous legal challenges. Over the past several years, there have been attempts to dismantle the three-tier system by filing lawsuits challenging state alcohol laws across the country. So far, most states have been successful in protecting state-based alcohol regulation. The current exception or loophole in our law invites such legal challenges. For that reason, it is important that we close this loophole. Third, the passage of LB279 will protect Nebraska businesses and local jobs. It is important to note that Nebraska's beer wholesalers have a direct economic impact to the state of over 500 jobs and an economic contribution to the state of over \$70 million, with over \$26 million per year paid in wages. We are responsible for the collection and remitting to the state of the excise tax. This legislation would ensure that these jobs, economic contributions, and wages remain in Nebraska. In conclusion, Mr. Chairman and members, we can stop this effort in Nebraska by repealing this antiquated exception in our alcohol law. I would be happy to try to answer your questions. [LB279]

SENATOR KRIST: Any questions for Mr. Kohout? Got off easy. [LB279]

JOE KOHOUT: Thank you. [LB279]

SENATOR KRIST: Any one else in support of LB279? Diane, I don't think I've ever seen you come in support of anything in front of this... [LB279]

DIANE RIIBE: Yes, you have. [LB279]

SENATOR KRIST: Okay. [LB279]

DIANE RIIBE: Yes, you have, yes, you have. (Laughter) [LB279]

SENATOR KRIST: I'm kidding. [LB279]

DIANE RIIBE: I just want to...again, Diane Riibe with Project Extra Mile, R-i-i-b-e. And I would just reiterate what the testifiers before have said. The three-tier system is extremely important for all the reasons that you've heard. But our concern, obviously, is

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the public health and safety concern. And those in the public health world have long seen it as a critical component of the control system. And so, as we know, alcohol not being an ordinary commodity, it is important that we keep those...accountability and that regulatory system in place and strong. So we are here to support. [LB279]

SENATOR KRIST: Thank you. And I was just kidding. [LB279]

DIANE RIIBE: Thank you. No, that's fine. [LB279]

SENATOR KRIST: Any other questions for Ms. Riibe? Thank you very much. Anyone else in support of LB279? Okay, with that, are there any opponents to LB279? Welcome, Amy. [LB279]

AMY PRENDA: (Exhibit 3) Thank you. Senator Krist and members of the General Affairs Committee, my name is Amy Prenda, it's A-m-y P-r-e-n-d-a. I'm here representing Anheuser-Busch in opposition to LB279. First, I'd like to say that Ted Powers apologizes for not being able to be here to testify today. He was going to try to make it last week to talk to you prior to this hearing, but the weather sort of kept him from getting into Lincoln. He also said that he will be available this week, Wednesday and Thursday, to follow up with you, if you have any questions. The letter is the testimony that he would have given, if he could have been here today, in opposition to the bill. I will be happy to try to answer any questions that you might have. [LB279]

SENATOR KRIST: Any questions for Ms. Prenda? [LB279]

SENATOR BLOOMFIELD: Did the amendment that was offered alleviate any of your concerns? [LB279]

AMY PRENDA: I have passed the amendment on to Ted with Anheuser-Busch, but have not received any answer back to whether or not that would alleviate their concerns. [LB279]

SENATOR KRIST: For the record, the amendment that's in has not been coordinated with all of the businesses, and this is one. Should we decide to put it out of committee, that amendment will be attached. Thanks, Amy. [LB279]

AMY PRENDA: Thank you. [LB279]

SENATOR KRIST: Anything else? Any other questions? Thank you. Any other opponents to LB279? [LB279]

TIM KEIGHER: Good afternoon, Vice Chairman Krist, members of the committee. My name is Tim Keigher, that is T-i-m, last name is K-e-i-g-h-e-r, and I appear before you

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today as the registered lobbyist for MillerCoors in opposition to LB279 as written. We have had conversations with Mr. Rupe and with the committee counsel. And we will be supportive of the amendment if it is adopted and remove our opposition from the bill. So with that, I'd be happy to answer any questions. [LB279]

SENATOR KRIST: Any questions? Thank you, sir. Any other testimony in opposition to LB279? Any testimony in the neutral? Senator Karpisek. [LB279]

SENATOR KARPISEK: Thank you, Senator Krist and members of the committee. We did not realize that we were going to create such a stir when we introduced this bill. But as Ms. Prenda said, there's things going on with Anheuser-Busch right now. I realize that she is not trying to be evasive at all, but she does need to check with the people back there, and I appreciate her honesty on that. Senator Larson and Senator Schumacher, I had the same concerns about our craft breweries. And I hope that...we'll discuss that more in Exec Session, but hopefully, your fears or concerns have been alleviated a little bit. With that, I would take any other questions, if there are any. [LB294]

SENATOR KRIST: Any other questions? Let the record show that we have the letter from Anheuser-Busch. And that concludes our hearing on LB279. We will now start hearing the opening on LB294, Senator Karpisek. [LB279]

SENATOR KARPISEK: Thank you, Senator Krist, members of the General Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I'm from Wilber, Nebraska and represent the 32nd Legislative District. LB294 would prohibit a liquor licensee from selling alcohol to an individual prior to 6:00 a.m. on the person's 21st birthday. When the bar closing time was 1:00 a.m. across Nebraska, an individual could go to the bar at 12:01 a.m. on their 21st birthday for what is commonly referred to as the hour of power. Now in communities with a 2:00 a.m. closing, individuals could consume alcohol at a bar for two hours. The concern is that individuals feel pressure to drink large quantities of alcohol, often shots of liquor, during a short period of time. These individuals often reach high levels of intoxication which can reach very dangerous levels. This bill came to me from a member of the Liquor Control Commission and then the commission itself. It's caused more...I don't want to call it grief, but a lot of talk than I kind of anticipated. I think any of you that know me, know that I am not a prohibitionist by any means. However, I am concerned about someone just turning 21 years of age who shouldn't legally be used to consuming alcohol going out at 12:01 and probably in 45 minutes, because of last call, trying to consume 21 shots of alcohol, which is the rite of passage. I don't think I would...I know I wouldn't want to try to do 21 shots in 45 minutes or an hour. I think that it gets the blood alcohol very high very quickly without someone knowing it. We can talk about our servers not overserving. But if they're on a bar crawl these people don't know how many shots they've had. They don't show any signs of intoxication because that first shot is probably

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just getting into their bloodstream before the 21st one has hit. I feel that it is a very dangerous thing to do. Now there's nothing to say that they can't do this the next morning at 6:00 a.m. They can, but I think if they're going to do it the next day, they'll have a little more time. They'll either be sick or pass out before they get them all down if they have a little more time. It also falls under...where we have in this committee been trying to make the alcohol industry more accountable, more professional. And I think that with the Liquor Commission and some of the underage drinking groups and the MADD, the drunk driving initiatives, I think we've done a good job. We don't always see eye to eye, but I think we have done some good things. So this is another way to try to make sure that people don't get so drunk so fast, especially when they're not maybe ready for it. With that, I'd be glad to take any questions. [LB294]

SENATOR KRIST: I...this is not a question but just a comment for the record. Whether or not we would have gone to 2:00 closings, this is a good idea. It eliminates that time frame, whether it's an hour or two hours or three hours, it puts the pressure on the individual. Sometimes peer pressure is the worst kind of pressure. And I applaud you for bringing it forward. Any questions for the Senator? Senator Schumacher. [LB294]

SENATOR SCHUMACHER: Just a couple of things. If you don't let them do it in the bars, once midnight happens you can procure for them and they can drink anyway. And it's not illegal for them to possess it once midnight happens and they can drink anyway. [LB294]

SENATOR KARPISEK: Very true, Senator. Hopefully, we have someone here from... [LB294]

SENATOR KRIST: Maybe Hobie will address that. [LB294]

SENATOR KARPISEK: ...well, from the Liquor Control Commission and, hopefully, maybe a bar owner, too, and some of the things that go along with that. I certainly don't want to stomp any individual's rights by doing this because I have always been an advocate for personal rights. And that is not what I'm trying to do. And again, it may seem a little silly or frivolous. But I think the attitude that has come with turning 21 now is not so much to even go out and get good and drunk but to do it in a heck of a hurry and really get after it. So I think it is something that we at least need to talk about and see what happens. [LB294]

SENATOR KRIST: Any other questions for the Senator? [LB294]

SENATOR SCHUMACHER: Just quickly reading the language, it shall be unlawful for a licensee licensed to sell alcoholic liquor at retail to sell or serve alcoholic liquor,...I just answered my own question. (Laughter) [LB294]

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SENATOR KRIST: He's good. [LB294]

SENATOR SCHUMACHER: It sounds different when you read it out loud. [LB294]

SENATOR KARPISEK: It does. I usually have to read them more times and then ask someone what it means, Senator. [LB294]

SENATOR SCHUMACHER: Okay. [LB294]

SENATOR KRIST: Any other questions? All right, thank you. And you'll be here for closing, I'm sure. [LB294]

SENATOR KARPISEK: Yes, I will. Thank you. [LB294]

SENATOR KRIST: Testimony in support of LB294. [LB294]

HOBIE RUPE: You're going to get sick of hearing from here pretty soon, senators. Once again, my name is Hobie Rupe, H-o-b-i-e R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. I'm sort of going to testify also on behalf of one of my commissioners, who is out of the country right now and can't really testify for that, Bob Batt. He's the commissioner who approached Senator Karpisek regarding it. It sort of came up, a legislative issue. We came up sort of late in the process of doing our legislative letter. As you may or may not be aware, in his day job, Commissioner Batt works...is the executive vice president for Nebraska Furniture Mart. And one of the reasons why he got involved with being on the commission in the first place is because of an incident that happened behind where the Furniture Mart is at. He was called by the police. The police had found a body in the creek behind the Furniture Mart and they were concerned, they thought it might be an employee or something like that. And so Bob goes out there with them and he's there sort of observing the police as they look into it. And what happened was actually the person was an individual on his 21st birthday, had gone out actually horribly enough with his parents, and did the hour of power. And then while they weren't watching, he wandered away, fell down the embankment and he put himself in such a position that he died, strangled. His blood alcohol level was...high would be an understatement. And so that was one of the personal reasons why Commissioner Batt brought this issue forth. Generally, also the commission looks at, as you know, there is no public intoxication law in Nebraska. There is no...you can't...the closest thing we've got is actually there's a rule of the commission that a licensee shall not serve to visibly intoxicated. And actually, we could go through a whole laundry list of the signs. It's very much a reasonable man standard, you know. It's not...we're not looking to stop a drunk driver at .09 or 1.1, that might not show up. But we're trying to get to the place where a reasonable person says, hey, that person can no longer make the responsible decision to stop drinking. The problem with the hour of power is, is the way alcohol works in your system, you're not exhibiting very

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many of those signs, even though you're way over the limit, because your body hasn't caught up to your alcohol backlog. The normal adult male can process what they consider one drink equivalency per hour. That's about 12 ounces of beer, 5 ounces of 11 to 12 percent wine, and 1.5 ounces of 80 proof or 1 ounce of 100 proof hard liquor. Once you get past that one drink, you start getting what's called the alcohol backlog. And that's where actually where it starts showing up in your bloodstream, you know, the .08, 1.0, .10 and that. Generally, the more you compress that, the less accurate that reading is going to be because as your stomach is processing alcohol, it's really, really hard to see where that person is along that continuum. That's one reason why we're in support of this bill. It's an irresponsible manner to go out and celebrate your 21st birthday. I know there's at least a bar owner here who's going to testify how it causes issues for them. He might be able to answer some of your questions...exactly what they're seeing as the person behind the bar at these events. Now, to his credit, earlier today Linda Major was here from UNL. And she's been here, at least through their cooperative efforts they convinced the downtown bars not to give out free drinks on the 21st birthday. Because they used to give out free drinks. So that was even more of an enticement, because you try to get out the free drink at 12:15, then maybe the next day at 9:00 you'd go back to the same bar and it's still your birthday, and maybe there's a different bartender. (Laugh) So let's not get the free drinks. And unfortunately, what you'll see is a lot of times there's four or five people with the one birthday person. The only one drinking is the birthday person, and the rest of them are just wandering around trying to ply him with as much alcohol in the shortest period of time as possible. I'm using "him," it happens with females as well. I mean, it's just the birthday person is sort of the target of how much they're going to drink. And they're probably drinking things they've never drank before, some of the shot combinations. So with that, I'd be happy to answer any questions. [LB294]

SENATOR KRIST: Any questions for Mr. Rupe? Senator Larson. [LB294]

SENATOR LARSON: Hobie, what's the drinking age? [LB294]

HOBIE RUPE: Twenty-one. [LB294]

SENATOR LARSON: Not 21 and six hours? [LB294]

HOBIE RUPE: No. [LB294]

SENATOR LARSON: Okay. Why 21? I mean, the legal drinking age is 21 and that's my first concern with this. And my second concern is if you want to do something like this, what about putting time of birth on driver's license, that way we ensure it's 21. Well, what do you...what would the Liquor Commission think of that to ensure that somebody is 21? [LB294]

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HOBIE RUPE: Okay. Well, you have to remember, under the Twenty-first Amendment, you can make it 121. [LB294]

SENATOR LARSON: Oh, this is true. [LB294]

HOBIE RUPE: You have the right to set the drinking age. [LB294]

SENATOR LARSON: It comes down to state highway funds. We all know why the drinking... [LB294]

HOBIE RUPE: Well, yeah. [LB294]

SENATOR LARSON: But in Nebraska what is it? [LB294]

HOBIE RUPE: Right now the Legislature under its Twenty-first Amendment right, has said it's 21. If the Legislature says it's 21 on the day of your birthday after 6:00, that would also be an exercise of its constitutional rights under the Twenty-first Amendment. [LB294]

SENATOR LARSON: But right now it's 21. [LB294]

HOBIE RUPE: Yeah, right now it's 21. [LB294]

SENATOR LARSON: But what about putting time of birth on the driver's license? Would that be a good idea? [LB294]

HOBIE RUPE: I'm not going to...given the fact...I don't want to get a nasty call from Bev about putting something more on the driver's license. (Laughter) I'm not going to say that would be impossible to do but... [LB294]

SENATOR LARSON: But, I mean, if we want to ensure nobody drinks until they're 21, I think that would be a reasonable amendment to this bill. [LB294]

HOBIE RUPE: Yeah. Well, okay. I'm not saying you couldn't. I mean, you can put on there whatever. I'm just saying the reason why is what they were seeing out there, you know, as... [LB294]

SENATOR LARSON: I understand. [LB294]

HOBIE RUPE: ...so... [LB294]

SENATOR KRIST: Any other questions? Senator Brasch. [LB294]

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SENATOR BRASCH: Thank you, Senator Krist. Mr. Hobie, or no, you are Hobie and it's Mr... [LB294]

HOBIE RUPE: Rupe. [LB294]

SENATOR BRASCH: ...Rupe. It's not that it's 21, it's to prevent that hour of power. So I see no need for a time. It's just basically let them wait until the next morning and hopefully...no, that you're not pushing a two-hour, one-hour window of slamming drinks. [LB294]

HOBIE RUPE: That's exactly the purpose of the bill. [LB294]

SENATOR BRASCH: Okay. [LB294]

HOBIE RUPE: The purpose isn't that you can't go out with all your friends the next night and... [LB294]

SENATOR BRASCH: It's not validating 21; it's just a little bit of common sense where they may not have any. [LB294]

HOBIE RUPE: That's the intent of it, you're absolutely right. [LB294]

SENATOR BRASCH: Okay, thank you. [LB294]

SENATOR BLOOMFIELD: I would think we'd be fairly safe in assuming that most of the them weren't born in that first hour. [LB294]

HOBIE RUPE: I assume probably about 1/24 would probably have been born in that first hour. (Laughter) [LB294]

SENATOR KRIST: Thank you for that expert testimony. (Laugh) I'm sorry. Senator Schumacher. [LB294]

SENATOR SCHUMACHER: Thank you, Senator Krist. Well, the problem seems to be that it's at midnight that the bewitching hour happens. What if we made the drinking age 21 minus eight hours? Then they could start drinking at 6:00 the night before and we'd... [LB294]

HOBIE RUPE: I'm not sure that you want to...if you're going earlier than 21, I think Senator Larson hit it, I'm not sure you want to put those highway funds in possible jeopardy. (Laughter) You know, because technically, under the Twenty-first Amendment, you could make it whatever age you want. I mean, it's an interesting part that the federal government sort of got the nationwide 21, knowing they couldn't tell you

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what time it was, but said, here's what you're not going to get if you don't have a 21 drinking age. (Laugh) [LB294]

SENATOR KRIST: And, you know, let me...got a question and a comment. [LB294]

HOBIE RUPE: Okay. [LB294]

SENATOR KRIST: The comment is that although we treat things with a little bit of levity, it's a pretty serious matter because we put people in a position in a bar with their peers in an hour or two hours or whatever it is. Is it the smart thing to do? Absolutely, in my opinion. But if a bar...you said that there's a bar owner here that's going to testify? [LB294]

HOBIE RUPE: Yes. [LB294]

SENATOR KRIST: Okay, I'll wait for my question then. Thank you, Mr. Rupe. [LB294]

HOBIE RUPE: Okay. I'll let you go, just so...you asked about the 2:00, one last comment. Most of the reports coming back for 2:00 has been pretty much a success. What you're getting now is you're getting now what is called a soft close where people are leaving slowly between about 1:00 and 2:00 rather than everybody hitting the street at 1:15. So if you're wondering what effect the two hours might have on this issue. [LB294]

SENATOR KRIST: Any more questions? [LB294]

SENATOR LARSON: I'm not quite done. Is our drinking age written in statute or in the constitution? [LB294]

HOBIE RUPE: It's in statute. [LB294]

SENATOR LARSON: Does this change that statute? [LB294]

HOBIE RUPE: No, this would... [LB294]

SENATOR LARSON: So wouldn't it be the more common sense goal to actually just go ahead and change the statute and then...instead of trying to write it in six hours after the 21st birthday, why don't we just write it in as age 21 and six hours? [LB294]

HOBIE RUPE: Well, because then you'd have to go back and put when someone was born because then you'd be spreading around...I mean, the issue is primarily is to stop this dangerous drinking promotion. [LB294]

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SENATOR LARSON: But then we come back to what's your drinking age? Twenty-one. If you're legally able to consume and buy alcohol, why should we, as a body, stop that individual's right? If you want to stop that, it should be 21 and six hours, not 21. [LB294]

HOBIE RUPE: Well, for one thing I got to say there is no right to drink, that's when you're able to drink. [LB294]

SENATOR LARSON: Well, able. [LB294]

HOBIE RUPE: I mean, a bar owner, you know, hopefully, we say...we tell them no oftentimes if they're over intoxicated already. You know, you don't have a right to a beer. [LB294]

SENATOR LARSON: Right, you're able, when you're able to drink. [LB294]

SENATOR MCGILL: Senator Krist. [LB294]

SENATOR KRIST: Ma'am, I'm sorry. Senator McGill. [LB294]

SENATOR MCGILL: Oh, that's okay. I mean, we make the laws of the land so ultimately we are the ones that will determine what that will be or what, you know, is legal or illegal. But I'm just wondering if there are any establishments that already just don't serve people at midnight. Because I could have sworn, I mean, I'm 30, but I could have sworn being in the bar, a couple of them before where there were people who just...bars that just wouldn't serve after midnight. [LB294]

HOBIE RUPE: I think there are some bars...they don't want to serve. And I think Mr. Falk, who's going to be following me up from a bar, will tell you why. Because the headache that those sort of roving birthday parties at that 12:00 to 1:00 time period caused. So I think you're absolutely right, as a policy they just...some bars chose not to do it. [LB294]

SENATOR MCGILL: Yeah, I know I've been in some that don't allow it. Okay. [LB294]

SENATOR KRIST: Any other questions for Mr. Rupe? Thank you, Hobie. [LB294]

HOBIE RUPE: Thank you. [LB294]

SENATOR KRIST: Any other testimony to support LB294? [LB294]

TROY FALK: Hello. My name is Troy Falk, T-r-o-y F-a-l-k. I'm the owner/operator of Doc's Place, martini bar down in the Haymarket. And I'm here to support this bill mainly because we really don't serve 21-year-old birthdays on their hour of power because in

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our experience you get a group that comes in, they're promoting unsafe drinking practices, they're trying to buy as many shots as they can for the individual. And the other people generally aren't spending any money. So there's no real boon for us to take somebody in. And then we're responsible for somebody after they're intoxicated. And, you know, somebody comes in, they're...even if they're not showing the signs, you know they've already been to several bars and they're trying to get as many shots as they can in on the night before. And, I guess, I'm not trying to limit somebody's right to do any behavior. But the way I've explained it to my staff and we explain it to them is that our day of business doesn't end until 2:00. So say it's a Tuesday, our day of business doesn't end until 2:00 on Wednesday morning. So that's still in our business, all of our books, everything is on the day before. And the way the Liquor Commission holds our licenses is when our licenses are renewed on October 31, we can...our new license doesn't kick in until 6:00 a.m. on November 1. So technically, we're still on October 31. So by, I guess, that definition we're still on the day before. And, you know, we want people to come out and have a good time. And generally, when they come out as a group the day of the birthday everybody is coming in, everybody is having a drink, and there's not that rush to drink as many shots as possible. They come in and they'll have a martini, they'll have a drink and they'll take their time. And they won't try to get as many shots in as possible. And we're just trying to help support and have, I guess, a safe drinking environment for everybody that comes in. And, yeah, we just want people to be safe and have fun and we want them to be able to come back the next day and not, you know, hurt themselves or get in an injury or an accident or do something, you know, that they regret so that they don't come back out to the bars. [LB294]

SENATOR KRIST: Thank you, sir. Any questions? You answered my question. [LB294]

SENATOR MCGILL: Yeah, and I was just going to say that that's the exact justification I had heard years ago. So I think a lot of places don't allow it like yourself. [LB294]

TROY FALK: Yeah, we're not in the minority, you know. [LB294]

SENATOR MCGILL: Yeah, yeah. [LB294]

SENATOR KRIST: Thank you so much. [LB294]

TROY FALK: You bet. [LB294]

SENATOR KRIST: Any other questions? Any other testimony in support of LB294? Testimony in opposition of LB294. Testimony... [LB294]

SENATOR MCGILL: Where are all the 20-year-olds? (Laugh) [LB294]

SENATOR KRIST: Testimony...they all left. Testimony in the neutral. Mr. Moylan, how

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are you? [LB294]

JIM MOYLAN: Mr. Chairman, members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n, representing the Nebraska Licensed Beverage Association, which is the state association of liquor retailers, approximately 4,500 of them in the state. And as you know, they're the backbone of all your communities around there when it comes to community activity. Very seldom am I here in a neutral capacity, and I feel uncomfortable. (Laughter) I'm just going to give you three comments of the many I heard from some of the retailers. The first one said, well, that's just a half a loaf; the other half, you've got to prevent the minor from drinking alcohol until 6:00 the next morning, not just the retailer selling...that will be more effective. Don't let a person turning 21 drink until 6:00 the next morning. The other one was, well, which is better? Let them drink for two hours when they first turn 21 or else start at 6:00 in the morning and go all day or, if they've got to work all day, start in the evening and drink all evening, six hours worth of drinking instead of two hours? That sounded a lot more logical to one retailer. And why don't you change the bill so that the minors turning 21 can't drink until 6:00 the next morning? That would solve the whole problem right there. And then, after 6:00 when they're 21, you don't have that two-hour problem. If you have any questions, I'd be happy to try to answer. [LB294]

SENATOR KRIST: Your last suggestion was, just so we're clear, no matter what time of the day you turn 21, on that prior business day you're not allowed to buy alcohol until six hours later, which would be 6:00 the next morning? [LB294]

JIM MOYLAN: Under the bill. [LB294]

SENATOR KRIST: Right. [LB294]

JIM MOYLAN: Right, right. [LB294]

SENATOR KRIST: Right, okay, understand. Senator Schumacher. [LB294]

SENATOR SCHUMACHER: Thank you, Senator Krist. Mr. Moylan, your suggestion also solves the question, I think, I raised earlier that nothing is stopping somebody from procuring for the...as much as they want right after midnight or possessing as much as they want right after midnight. [LB294]

JIM MOYLAN: Correct. [LB294]

SENATOR SCHUMACHER: If we just make the bewitching hour 6:00 in the morning. [LB294]

JIM MOYLAN: Correct. [LB294]

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SENATOR SCHUMACHER: Thank you. [LB294]

JIM MOYLAN: Yeah. [LB294]

SENATOR KRIST: Any other questions for Mr. Moylan? Thank you, sir. [LB294]

JIM MOYLAN: Thank you. [LB294]

SENATOR KRIST: Any other testimony in the neutral? [LB294]

DIANE RIIBE: Good afternoon, Senator Krist, members of the committee. Again, Diane Riibe, D-i-a-n-e Riibe, R-i-i-b-e, with Project Extra Mile. Again, we're an organization that serves 11 counties with 10 coalitions across the state working to prevent underage drinking and youth access to alcohol. We're here in a neutral capacity primarily. We're not opposing and we're not supporting primarily because the evidence isn't there in terms of what's effective. I will say, is it a good business decision to make, a good business policy? It absolutely would be a wise one if you were a business owner. And I think, as Mr. Rupe explained and others, this was a proposal that was brought by the Liquor Control Commission. So they were looking at how do we, in some fashion, attempt to mitigate that environment and control that environment in that business world. So understanding that they're not able to necessarily in this proposal do the social availability, but instead look at the retail. I just want to, for your benefit, give you just a quick background of the 21 law. And again, it is 21 across the states. That happened back in the 1980s. In fact, it was adopted and pushed by President Ronald Reagan, who I think anyone who remembers that history knows he was the greatest states' rights President in the history of the country. But he said, with the problem clear and a proven solution at hand, it made judicious use of federal power to adopt a 21 law across the land. And that was an experiment that happened, quite frankly, during the Vietnam war where you saw states reducing their drinking age because they had the argument if someone can fight at war, they can come home and drink. And so they reduced their drinking age and they saw a very direct correlation in their injuries and fatalities going up. It was just like the scales of justice. And when they began to then see that, then states, one by one, began taking their drinking age and putting it back up again. And they saw that direct relationship and those injuries and fatalities went down. So that was an experiment that we unfortunately did on behalf of and to our young people with not a very good result. But we learned that lesson very, very quickly. We probably wouldn't, Senator, look at 21 and six hours because they may have a 6:00 p.m. birthday. And then that would be midnight on a night and you still have to be careful. The other piece I would say is you would want to think of who might be keeping track of the actual time of their birth and what documentation must you send and give to DMV, and do they have the mechanism to keep that and record all of that? So there are a lot of issues there. But that's really kind of our consideration and just for your

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information. Thank you. [LB294]

SENATOR KRIST: Any questions for Ms. Riibe? Thank you very much. Any other testimony in the neutral? With that, we will ask Senator Karpisek to close. (See also Exhibit 5) [LB294]

SENATOR KARPISEK: Thank you, Senator Krist and members of the committee. Again, I know that it does bring some different thoughts and emotions from each side. And believe me, I'm somewhere right in the middle of both of those. I guess, I am falling on the side of safety on this. And again, I completely see someone turning 21 wants to go out and have a good time. I'd like to see them go out and have a good time and be fairly safe at it. I do know one of the bars back home also did not ever do the hour of power. I think he thought it was a state law, but...or (laughter) he said it was anyway. But I do think it is something that we need to talk about. And there's been good discussion on it. And it is a scary thing. I think no one has brought up either the detox, people that have gone to detox and the alcohol BACs that we've seen in their bloodstreams have been dangerously high on these nights. I'd take any more questions if we have any. [LB294]

SENATOR KRIST: Any other questions? Thank you, sir. With that, we'll close the hearing on LB294 and we will move to the last bill on the agenda today, LB311. Senator Karpisek, you are declared hot, as they say. [LB294]

SENATOR KARPISEK: Thank you, Senator Krist. We are moving right along today. I did not expect this. Thank you, committee and testifiers. [LB311]

SENATOR MCGILL: Woo hoo, because I have to leave at 4:00. (Laugh) [LB311]

SENATOR KARPISEK: That's right. [LB311]

SENATOR SCHUMACHER: So we've got an hour. [LB311]

SENATOR KARPISEK: For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k and I am introducing LB311. Under current law, a liquor licensee in violation of the Liquor Control Act may choose between paying a cash penalty or a suspension of their license. LB311 would allow the Liquor Control Commission the discretion of requiring a fine for out-of-state licensees since enforcement of a suspended license poses unique challenges. Basically, the issue is that there is no practical means for the commission to verify if a licensee is actually closed for the duration of the suspension when that licensee is located outside of Nebraska. I will probably let Mr. Rupe talk to you a little more about that. I would probably just tell you what he is going to say because he's told it to me. So if there's any questions, I would take them now though. [LB311]

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SENATOR KRIST: Any questions? Thank you, sir. [LB311]

SENATOR KARPISEK: Thank you. [LB311]

SENATOR KRIST: We are now accepting testimony in support of LB311. Welcome back. [LB311]

HOBIE RUPE: Thank you, Senator Krist. Thank you, senators of the General Affairs Committee. My name is Hobert Rupe...I said Hobert for a change instead of Hobie, H-o-b-e-r-t R-u-p-e. That's the real name. Hobie is the short name. I am the executive director of Nebraska Liquor Control Commission. As you're aware, as was brought out, the Liquor Control Commission may suspend, cancel, or revoke a licensee for violation of the Liquor Control Act. Suspend means they shall be prohibited...temporarily prohibited from the service and sale and purchase of alcoholic liquors. All right. Pretty clear, pretty easy to enforce within the state because we have patrolmen, we have local police who are made aware of when they're suspended when they're...and so they see even as soon as they'd be suspended. Technically, we can't fine them. There's a provision in the act which says, in lieu of serving that suspension they shall pay either \$50 per day for the first offense, or \$100 per day for second and subsequent offenses one week prior to the beginning of the term of suspension. If they don't make that payment, it's not received within one week prior to the suspension date at the beginning, it's conclusively presumed that they're going to serve the suspension instead. Once again, not a bad thing to do when you're dealing with an instate entity. Earlier we were sort of talking about unintended consequences. As you're aware, Nebraska has an S1 direct shippers license. We've also seen an explosion in out of state wineries getting not only S1 licenses but regular S licenses to ship in. Oftentimes, those entities don't have the best bookkeeping and they get in trouble with us for failing to file the proper forms or for errors on their taxation issues. So oftentimes, they'll be suspended for five or ten days. I hope they're not selling any alcohol in Nebraska during those days of suspension. But the only mechanism I have to guarantee that is, oh right, the form that they file is telling me how much they sold into Nebraska during that time frame. (Laugh) So they might be doing it in violation, and they're just cooking their books to be afterwards. You know, if we had the budget I, of course, and I've had shockingly enough a lot of volunteers say, well, I will go out to Sonoma and Napa and make sure those places aren't (laugh) selling to Nebraska during those time periods. But that's what we're looking at. So what we're looking at here is when we do a five-day suspension, instead of giving them the option, if they're domiciled outside, we can say, hey, you have to pay the waiver instead. And it's to make sure that they're actually, you know, serving their time or paying their punishment for violation of the act. So that's the easiest thing. It's an unintended consequence. We never thought we would have this many small wineries, small producers having different types of licenses shipping into the state. [LB311]

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SENATOR KRIST: My question is, when you identify that there is an issue and you issue the fine, there is a problem, you issue the fine. [LB311]

HOBIE RUPE: Um-hum. [LB311]

SENATOR KRIST: When the suspension starts, do they have notification so that they can stock up everything they need to within the state and then take their down days? [LB311]

HOBIE RUPE: Yep. [LB311]

SENATOR KRIST: And that's how it exists today? [LB311]

HOBIE RUPE: That's how it exists today. I mean, if they're being suspended for five to ten days, they'll either do a lot of shipping beforehand or a lot of it after. The key thing is, the only way we know how much they're shipping is on the reports that they're self-filing. [LB311]

SENATOR KRIST: So this is going to say, you folks out of state, you don't have an option, you're going to pay the fine. [LB311]

HOBIE RUPE: Exactly. [LB311]

SENATOR KRIST: Thank you. Senator Larson. [LB311]

SENATOR LARSON: How much would the cash penalty be? [LB311]

HOBIE RUPE: Cash penalty, if it's your first offense it's \$50 per day, and if it's a second or subsequent it's \$100 per day. So let's say it's the first time that the winery has failed to, and it gets hit with a five-day suspension, we'd say, instead of that you need to pay the \$250 fine plus the hearing costs. [LB311]

SENATOR LARSON: And this would make that mandatory or would they have a choice? [LB311]

HOBIE RUPE: It would make it mandatory, they would have to pay...they would have to pay the fine instead of serving the suspension. [LB311]

SENATOR LARSON: What if they wanted to serve the suspension? [LB311]

HOBIE RUPE: Well, that's what they can do now. And the problem is, is there's no way...it's very...it's impossible for us to make sure that they're actually serving the

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suspension. You know, Troy just left. If we were to suspend Doc's Place for ten days, we'd send out a notice to the Patrol and also send a notice to LPD and they have access on our database that...for days of suspension. So they can go and if they're in violation then they're probably going to get a cancellation. We don't have that enforcement outside the state of Nebraska. [LB311]

SENATOR LARSON: I understand. [LB311]

SENATOR KRIST: Senator Schumacher. [LB311]

SENATOR SCHUMACHER: Thank you, Senator Krist. I think you explained this in one of your earlier sessions with us. But normally, discriminating with an out-of-state vendor runs into Interstate Commerce Clause issues. Is that different for liquor? [LB311]

HOBIE RUPE: It's different for liquor in that things which are on an automatic violation of the Commerce Clause, you at least have an opportunity to, if you can justify, let's say, here's the reason why we're doing it, under the Twenty-first Amendment power, you know, we're licensed. Those people from out of state have come in and acquired a license and voluntarily subjected themselves to the jurisdiction of the commission. In this case here, you know, we could also just, you know, in lieu of that give the commission the power to apply a fine, penalty in lieu of suspension. But the key thing is, currently right now is we can suspend and they can pay it off in lieu of. So how we ever do it, I think there is a justifiable reason. I mean, I would love to get sued by an out-of-state winery on that one. And I'll say, okay, here's the other way, then you pay for...you want me to send one of the Patrol people out to Napa Valley to go through (laugh) your records. [LB311]

SENATOR SCHUMACHER: You wouldn't get the Patrol to fight you on that one. (Laughter) [LB311]

HOBIE RUPE: Like I said, I don't think there would be a shortage of volunteers. [LB311]

SENATOR KRIST: Hobie, one other question. I'm reading the fiscal note on this one. And I guess, I always look at the fiscal note. Is that realistic? [LB311]

HOBIE RUPE: Yeah. [LB311]

SENATOR KRIST: Or are you talking about a lot more than that? [LB311]

HOBIE RUPE: That is actually lowballing it. [LB311]

SENATOR KRIST: I was going to say... [LB311]

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HOBIE RUPE: Last year we gave 124 days in penalties and that sort of assumes that they all pay the \$50. [LB311]

SENATOR KRIST: Right. [LB311]

HOBIE RUPE: Unfortunately, a couple of them have, you know, are not quite the frequent fliers that some retail licenses are. But, you know, they'll file a late renewal, they'll file late taxes. The issue is, is the way that fee works, as you'll remember, penalties go to the school fund. These are out-of-state entities. So this actually is remitted to the General Fund and then the Treasurer's Office takes it out of the General Fund to the, I think, the common school fund, you know, there's one that's sort of catchall because they're not domiciled. Normally, if you pay a suspension, if I have a liquor license here in Lincoln and I were to pay the fine in lieu of, it would go to the...we'd remit it to the Treasurer's Office and then they would remit it to the Lincoln Public Schools fund. [LB311]

SENATOR KRIST: Thanks, Hobie. Any other questions for Mr. Rupe? Seeing none, thank you very much. Any other testimony in support of LB311? Any testimony not in support of LB311? Any neutral testimony? Wow. Waive closing? Ladies and gentlemen, that concludes LB311 hearing and our session for today. Committee members, stick around for a few minutes. And could I ask you all to clear the room. Thank you, thanks for coming. [LB311]