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Transcriber's Office

General Affairs Committee
January 23, 2012

[LB780 LB781 LB861]

The Committee on General Affairs met at 1:30 p.m. on Monday, January 23, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB780, LB781, and LB861. Senators present: Russ Karpisek, Chairperson; Bob Krist, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Colby Coash; and R. Paul Lambert. Senators absent: Tyson Larson; and Amanda McGill.

SENATOR KARPISEK: Welcome to the General Affairs Committee. My name is Russ Karpisek, and I live in Wilber; and I'm the Chair of the committee. Committee members: To my far right we have Senator Brasch of Bancroft; to her left is Senator Bloomfield of Hoskins; to his left, Senator Coash of Lincoln. Senator Krist is the Vice Chair of the committee and will be here shortly. To my immediate right is Josh Eickmeier; he is our legal counsel for the committee, from Seward. To my far left is Christina Case, our committee clerk. Senator Larson will not be joining us today; he had to go home for something going on. Then we have Senator Lambert of Plattsmouth. And in between that should be Senator McGill of Lincoln, and she will not be with us today. The page helping us out today is Lacey Schuler, and we have her out on a mission already. After each bill introduction we would like to hear testimony in support of the bill, then testimony in opposition, and then neutral testimony. If you are planning on testifying in any capacity, please pick up a sign-in sheet that is on a 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 so they can give it to the committee clerk. This will help us keep a more accurate public record. If you have handouts, please make sure you have ten copies for the page to hand out to the committee. If you don't, get ahold of the page and she will run some for you. When you come up to testify please speak clearly into the mike, please tell us your name and spell your first and last name. Also, please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that will make noise. 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. Today we have three liquor bills for our consideration, and we will begin with Senator Smith's LB780. Senator Smith, welcome to the General Affairs Committee.

SENATOR SMITH: Good afternoon, Senator Karpisek and members of the General Affairs Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Papillion. I am here today to introduce LB780. LB780 is a very simple bill but also a very important bill to some of our local businesses. Very simply, LB780 increases the maximum number of barrels a craft brewery can produce annually from 10,000 barrels to 20,000 barrels. There are currently 22 craft breweries located throughout the state, and at least two are on track to hit the 10,000 barrel limit very soon. In order for a business to grow it needs the tools and the ability to start planning for and investing in the future. LB780 will give these craft breweries the

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ability to prepare for continued growth and their success. This will provide certainty for their capital investment and their planning purposes. One of these breweries, Lucky Bucket, was located in my district prior to redistricting. I'm glad I'm able to introduce LB780 and to have the chance to help Lucky Bucket's owners realize their potential as Nebraska entrepreneurs. I have had the opportunity to tour Lucky Bucket Brewery and have been impressed by this fairly young operation; and moreover, I can attest to the positive contribution this company is making as a local business to our community and to the state of Nebraska. Lucky Bucket is now in Senator Louden's district, and I want to thank Senator Louden for signing on as a cosponsor of this bill. Actually, I want to also thank all of those who signed on to LB780, including Senator Karpisek, and in particular, Senator Coash, who was interested in introducing this same legislation. The second craft brewery reaching the 10,000 barrel--Empyrean Brewing Company--is located in Senator Coash's district. And once again, I appreciate both of you senators for signing onto this bill. With that, I will conclude my testimony, and I urge you to please advance LB780 so that we can get this bill passed and let these successful Nebraska businesses move forward and continue to succeed. Thank you for your time. And I'm available to answer any questions you may have. [LB780]

SENATOR KARPISEK: Thank you, Senator Smith. Any questions? Seeing none, thank you. [LB780]

SENATOR SMITH: Thank you. [LB780]

SENATOR KARPISEK: Are you planning on sticking around to close? [LB780]

SENATOR SMITH: Yes. [LB780]

SENATOR KARPISEK: Very good. Do we have anyone in support of LB780? Welcome. [LB780]

HOBERT RUPE: Welcome. Good afternoon. My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission. Very rarely will we come in support of a bill which it seems something like, well, why are they asking for it? But a couple of years ago we reached out to our craft breweries and said, you know, how is the industry going; how are we looking at things? Part of the thing, one of the jobs of the commission is to make sure that it maintains a level playing field and that everybody is able to compete. And we look at that not only just locally, but also nationally. Nationally, the one area of the beer market which has been increasing in its production has been what is called American craft style beers. What has happened in the last about five years is what you see, what I like to call the rise of the regional brewery, where it might have started off in a single stage as their brewpub or brew; they become successful, and they start branching out into neighboring states. Currently, and I believe Senator Smith has correctly identified, Nebraska has two of those regional breweries. And I think

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there is at least one or two other ones who are hopeful to join into that crowd. The craft brewery license was first passed in 1988. The barrelage limit has been unchanged since that time. In this case here, just to make sure that you're aware, you know, there is no preferential tax treatment for the beers. You know, they pay exactly the same as the big breweries do. A gallon of Bud Light is taxed at 31 cents a gallon; a gallon of Lucky Bucket is taxed at 31 cents a gallon, from a state excise tax perspective. Furthermore, (inaudible) distribution goes through the three-tiered system. Although they are a manufacturer and have retail rights like at the restaurants or at the location, if they're going to other locations it goes through the Nebraska licensed wholesalers, or if they're shipping out of state it goes through a licensed wholesaler in that other state where they would ship it to. So we would be supportive of this fact. This is a...one of those things where something happened back in the '80s and it's actually still working very well. But finally they are getting close to that 10,000 barrel limit, and they asked us if we would consider coming in, in support, and we said we would. So I'd be happy to answer any questions. [LB780]

SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Krist. [LB780]

SENATOR KRIST: I completely support the effort of going...increasing, I agree with the commission. I think it's a great thing. It's great for the economy and great for the individual micros or brewers. But where do we hit the brick wall? I mean, what is too much? And I think...I don't know if you want to even attack that question today. But I think we should be ready in the next few years, because if we're making large breweries out of these things, where is that line? [LB780]

HOBERT RUPE: I'm not sure where the upper level of gallonage is. I know that the...according to the "federals," everybody bigger than Sam Adams is still a major brewery (laugh) and they...because they're Sam Adams, and amazingly enough they keep raising the level to keep that, because they think they get two different tax rates. I'm not sure we can look at that. I think the issue right now, where you're looking, is that what do these entities have available, what can they do? You've got sort of the two extremes present of these two people who have become regional breweries here. You've got Lucky Bucket who I would consider is primarily a manufacturer. You know, they have a small retail tasting room at their location. But most of their sales, most of their growth has come from going to other stores, other bars, other restaurants. Then on the other one you have Empyrean Ales, i.e., Lazlo's, which started off as a traditional craft brewery, where it was making beers only for their own location. And then because they were successful they sort of grew. If you get to the point where if we don't change this limit and they get to a point where you're going to force those people to make a decision one way or the other: Do they want to keep it in the restaurant and stifle their growth on the beer side, or do they want to spin off and get out of the restaurant location and just become beermakers. I'm not sure 20,000 barrels makes a heck of a bunch of difference for that. I don't think you're looking at that large of a footprint in the

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marketplace, I mean. Although I did say that craft breweries are one of the few that are growing, it is also not a large share of the beer market. I will tell you that in 2011 our current 22 licenses donated \$157,835 worth of excise tax that was collected from the manufacture of the beer just last year. And so if anything, they're looking to, if they're going to increase production, that fund to the General...then that adds to the General Fund can only be expected to increase. If we're talking a lot more barrels...you've got to remember, people think of barrel; you have to remember, a barrel is 31 gallons. That's what...a barrel is 31 gallons. So right now, you know, we're doubling the production. But I don't anticipate anyone getting anywhere close to 20,000. Heck, it took us since 1988 for somebody to get to this point now. And they're still not there yet. They're projecting to be there within the next three years, so. I think it's growing, but I don't think we're going to be running...looking at a problem of having a major manufacturer. I think we're still going to have niche makers who still should have the retail ability at the shops. [LB780]

SENATOR KRIST: Thank you. [LB780]

SENATOR KARPISEK: Thank you, Senator Krist. Senator Coash. [LB780]

SENATOR COASH: Thank you, Senator Karpisek. Hobie, I understand that if we don't pass this and one of these brewers decides to brew 10,001 barrels, do they have to get a new license? [LB780]

HOBERT RUPE: Yeah, they would have to become a manufacturer then. [LB780]

SENATOR COASH: Manufacturer, okay. [LB780]

HOBERT RUPE: They would lose out on any of the retail abilities at their shop. [LB780]

SENATOR COASH: Okay. So... [LB780]

HOBERT RUPE: So they wouldn't be able to get new people in to the tastings at their location or, in the case of Empyrean, at their restaurant. You know, you wouldn't be able to be a retailer and a manufacturer at that point in time. [LB780]

SENATOR COASH: All right. So it goes...what was the name of...the manufacturers license would be the one that they would need... [LB780]

HOBERT RUPE: Yes. [LB780]

SENATOR COASH: ...if they go over 10,000. And that means that they could make it there; they just have to be a brewer. They couldn't stick it in their restaurant and stick it in their... [LB780]

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HOBERT RUPE: They couldn't have a restaurant because we have a very clear line on...between the three-tiered system, except for the small, little, you know, the boutique things, the craft brewery, the winery, and the distillers. If they're over 10,000 barrels they've got to choose: Are they going to stay as a retailer or a restaurateur, or are they going to give that up and become a beermaker? [LB780]

SENATOR COASH: Okay, thank you. [LB780]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Senator Lambert. [LB780]

SENATOR LAMBERT: Thank you, Chair. To me what I'm seeing in this is just kind of an economic development thing in a way. I mean, we're going to get more revenue from taxes. I would assume as they grow there's possibilities of more jobs. I mean, I don't know the brewing industry, but... [LB780]

HOBERT RUPE: Well, I think you're absolutely right. And I think that's one other area you can look at. I know for instance when I was talking with the people from Empyrean Ales, their current facility at max production can do 10,000 barrels. There's no one...right now they have no incentive to increase or expand their production. They just bought that new building a year or two ago down at the old Meadow Gold building. Hypothetically, they could, you know, if it's worthwhile to them to expand, not only would they expand that but then they're also making the infrastructure improvements which will also create more jobs. And so, you know, the key thing is I think this is a win-win. I'm not seeing...we're not seeing any downside from the commission's perspective. [LB780]

SENATOR LAMBERT: Okay, that was my next question. [LB780]

HOBERT RUPE: You know, brewpubs, I cannot truthfully, honestly tell you ever of my own recollection of a brewpub coming before us for a violation of the act, either overservice or selling to a minor. I'm not saying there might not have been something in the past. But in my own recollection I can't remember them in front of us. So from that perspective the industry as a side, and part of it is what they're selling. Craft beers are generally more expensive, you know; they're generally skewing to an older clientele anyway. And so I think part of the, you know, basically, their business model has protected them from having the problems that, say, a college bar would have or something like that. [LB780]

SENATOR LAMBERT: Thank you. [LB780]

SENATOR KARPISEK: Thank you, Senator Lambert. Senator Bloomfield. [LB780]

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SENATOR BLOOMFIELD: Thank you, Chairman. Would you, Hobie, refresh me again on the three-tier system and where that breaks up and where it doesn't. [LB780]

HOBERT RUPE: Yeah. The traditional three-tiered system is you have the first tier, which is the manufacturer or importer. So in other words, Budweiser is, you know, everybody knows, they have a manufacturing license. But in Nebraska they have a shipping license because they're the people who are shipping it into the state, they're not making it here, but they're shipping it in. They can only sell their product to a licensed wholesaler. So in the case of Budweiser they're shipping it to a Budweiser territory franchisee or a wholesaler who has the ability to sell it in that area. That person then sells it to a retailer. The purpose of that goes clear back, and I'll try not to wax too philosophical, post-Prohibition the three-tiered system of some sort was put in place in every single state. That was the attempt to say, okay, Prohibition didn't work. But they did not want to return to what was commonly called the saloon era. One of the problems of the saloon era was the brewery, for instance, owned everything from the field where the grain was grown to the tap that ended up the beer was coming out. They owned the entire chain of production that resulted in not a lot of choice for the consumer. Basically, you went to a bar, you got that beer; but it also really, really suppressed the prices. That's when you had the nickel beers, the penny beers and so...which really had the high amounts of consumption. So Nebraska, like every other state, after Prohibition, put in some sort of three-tiered system in order to break the industry up. You're either making the beer, you're either wholesaling the beer, or you're retailing the beer. Now Nebraska, like in many other states, has made a couple small tweaks to their system and allowed small producers to have multiple rights in that level. In this case here, we have...in 1988, we passed the statute that allows microbreweries and brewpubs. And what that allows them to do is it allows them to make the beer, and then it also allows them to sell it at retail at their own location, you know, their restaurant or their tasting room, that sort of thing. Now under the...they still don't wholesale it. It goes outside and if there's some at the HyVee it's going through a wholesaler who's collecting the excise tax and that kind of stuff. So that's sort of the three-tiered system. The three-tiered system was designed to stop vertical integration in a way that you weren't having the industry control from production to tap. [LB780]

SENATOR BLOOMFIELD: Okay. I remember last year we talked about the Falstaff exemption and Storz. [LB780]

HOBERT RUPE: Yeah. [LB780]

SENATOR BLOOMFIELD: Are we getting close to that with this 20,000 barrel...? [LB780]

HOBERT RUPE: No, I don't think we are because, you know, the key thing about...what this is allowing them to do is, you know, and I think the key reason why we're supporting

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that is they still have to go through a wholesaler. They're not controlling all three tiers. They can make the beer and they can sell it at retail at their restaurant or at their tasting room. But if they're expanding it out to other retailers, they're going through the three-tiered system, which means there are checks and balances placed on them. [LB780]

SENATOR BLOOMFIELD: Okay, thank you. [LB780]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any other questions? Seeing none, thank you, Mr. Rupe. [LB780]

HOBERT RUPE: Thank you. [LB780]

SENATOR KARPISEK: Anyone...any other proponents for LB780? Welcome. [LB780]

ZAC TRIEMERT: (Exhibit 1) Thank you. Good afternoon, Senator Karpisek and members of the General Affairs Committee. My name is Zac Triemert, Z-a-c T-r-i-e-m-e-r-t. I'm the president of Lucky Bucket Brewing Company and the Solas Distillery. I am here to speak in support of LB780, a bill designed to increase the brewing capacity of small Nebraska craft breweries from 10,000 31-gallon barrels to 20,000 31-gallon barrels. Craft brewing is on the rise and has been for over three decades. The definition of craft brewery is a small, independent traditional brewery, brewing less than 6 million barrels per year. Currently, there are 1,949 breweries operating in the U.S., and that's up 16 percent since 2010. There are also 915 breweries in planning set to open in 2012. In Nebraska, there are 22 operating craft breweries and 3 breweries in planning. Most of these breweries are growing, some rapidly, and going to butt up against the 10,000 barrel ceiling soon. It is our hope that the brewing ceiling is lifted up to 20,000 barrels to allow for our local businesses to continue to grow. Lucky Bucket is an example of this. We are just concluding our third year of business and brewed over 5,500 barrels. Empyrean Brewing Company is another local Nebraska craft brewery that will potentially reach this 10,000 barrel cap soon. The benefits to the state of Nebraska include more jobs, increased excise taxes, increased tourism, the use of Nebraska-grown raw materials, increased beer distributed through the Nebraska wholesalers, and another source of pride for the state. Nebraska craft breweries pay \$9.61 per barrel brewed in excise taxes. The potential revenue for the state from each brewery that maximizes up to 20,000 barrels would pay \$96,100 per year above that already permitted 10,000 barrel limit. We also estimate that we will need approximately 1.5 people per extra 1,000 barrels that we brew. I also want to make clear that we have no goal or hope of changing Nebraska's three-tier system. More than 99 percent of the beer that we produce will be sold through the three-tier distribution chain, with the only exception being our tasting room located at our brewery. We use our tasting room as a marketing tool for our brand and not a major revenue source. To conclude, LB780's intent is to increase the amount of beer that can be

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brewed by local craft breweries. This will increase the amount of beer distributed through Nebraska wholesalers, increase jobs, increase excise taxes, support local agriculture, be a source of pride for the state, and support the continued growth of Nebraska businesses. Thank you. I'd be happy to answer any questions. [LB780]

SENATOR KARPISEK: Thank you, Mr. Triemert. Any questions? You said you were at 5,500 barrels? [LB780]

ZAC TRIEMERT: Yes, sir. [LB780]

SENATOR KARPISEK: So when you would look at expanding, obviously you would probably (laugh)...it would make a difference on the equipment you buy, another building? [LB780]

ZAC TRIEMERT: Absolutely. [LB780]

SENATOR KARPISEK: And just a shot, when do you see yourself hitting the 10,000? [LB780]

ZAC TRIEMERT: I believe we will flirt with it this year, though we will not hit it. I do believe we will hit it in 2013. And that will, you know, force us to buy more equipment, more kegs, hire more people--which I say "force." We're excited at the opportunity and hope we have a chance to do so. [LB780]

SENATOR KARPISEK: Very good. Senator Bloomfield. [LB780]

SENATOR BLOOMFIELD: Thank you. Given that growth, when would you anticipate bumping up against the new level of 20,000? [LB780]

ZAC TRIEMERT: I estimate it's going to be around five years. [LB780]

SENATOR BLOOMFIELD: Then you have to make a decision again or come back again. [LB780]

ZAC TRIEMERT: And then we have to make a decision. [LB780]

SENATOR BLOOMFIELD: Thank you. [LB780]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any other questions? Seeing none, thank you very much. [LB780]

ZAC TRIEMERT: Thank you. [LB780]

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SENATOR KARPISEK: Any other proponents for LB780? Welcome. [LB780]

ERIC SCHAFER: Thank you. My name is Eric Schafer, E-r-i-c S-c-h-a-f-e-r. One of every letter my mom says. I'm here representing Telesis and Empyrean Brewing Company in support of LB780 which raises the legal limit a brewpub or microbrewery can produce to 20,000 barrels per year. I want to thank each of the sponsors for their support of this bill and the General Affairs Committee for hearing us out. Empyrean Brewing Company started as Lazlo's Brewery and Grill in 1990 where we opened Nebraska's first brewpub. For over 20 years the people of Nebraska have been very supportive of us, as well as those people visiting Nebraska, enough so that in 1997 we were able to install another brew house that would allow us to brew to the 10,000 barrel limit. Since then we've worked very hard to hit that 10,000 barrel limit. In 1999, we installed a bottling line and became Nebraska's first brewpub to bottle beer. In 2006, we opened three new restaurants as a source of distribution. In 2009, we for the first time started distributing outside of the state of Nebraska. By the end of this year I think we'll be in eight states. And in 2010, we did purchase the former Meadow Gold Factory in hopes of building a bigger brewery there. You know, craft beer in the United States and in Nebraska have really gained consistently since 2006. On average, if you look at sales as a percentage, if you look at craft beers sold in Nebraska and then craft beer brewed by Nebraska breweries, the growth here has exceeded the national average. And I think that's very telling of how much support craft beer has in the state of Nebraska. LB780 makes it possible for us to achieve another milestone in addition to the benefits it has for Nebraska craft brewers, the state of Nebraska, and the local community here in Lincoln. Our current brewery, as Hobie said, can produce 10,000 barrels. Without LB780 there is no opportunity or reason for us to build a bigger brewery at the Meadow Gold complex. Empyrean, Lucky Bucket, and some other breweries have expanded outside of Nebraska. You know, this growth has made that 10,000 barrel mark visible for us. And raising the limit would allow us to continue on that growth. As I said, craft beer has seen unprecedented growth in the last few years. This change will easily double the amount of excise tax and eventually quadruple the amount of excise tax in Nebraska. And, right now, our current brewery sits at the doorstep of the new Pinnacle Bank Arena, and Meadow Gold sits at the exit. Urban development would really like to see our semitrucks move and improve the ambience of the north Haymarket; and we'd like to develop the southern Haymarket, so guests leaving the area we leave a lasting impression. You know, passing LB780 gives people the opportunity to grow their businesses, generate tax revenue, support economic development in the Haymarket, and allows us to show more people that we make great beer in Nebraska too. Thank you. [LB780]

SENATOR KARPISEK: Thank you, Mr. Schafer. Any questions? So your...are you brewing the 10,000 gallons now...or 10,000 barrels, sorry? [LB780]

ERIC SCHAFER: We're projected to do 8,300 barrels this year. [LB780]

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SENATOR KARPISEK: So it wouldn't be long and you'd be over. [LB780]

ERIC SCHAFER: Correct. And if you're looking at growth, on an average you're looking at somewhere between 10 percent and less. And so if you're adding that 10 percent, it will be awhile before we hit 20,000. [LB780]

SENATOR KARPISEK: And you don't have to use a wholesaler to go to your other restaurants, correct? [LB780]

ERIC SCHAFER: Correct. [LB780]

SENATOR KARPISEK: But anywhere else you would have to use a wholesaler? [LB780]

ERIC SCHAFER: That's correct. [LB780]

SENATOR KARPISEK: Very good. Senator Brasch. [LB780]

SENATOR BRASCH: Thank you, Chairman. And thank you, Mr. Schafer, for your testimony here today. I'm curious, has the ratio of restaurant, the people there to dine, has that also proportionately increased? Are you seeing people eating as much as they are drinking? Is it a growth and, right, you're a restaurant and a brewery or not? [LB780]

ERIC SCHAFER: Well, no. We consider our restaurants brewpubs, even though we're not brewing in each of the restaurants. [LB780]

SENATOR BRASCH: Okay. But you're basically not a restaurant then, you're... [LB780]

ERIC SCHAFER: We're a full service restaurant. [LB780]

SENATOR BRASCH: Okay. And so...and the reason it's a brewpub is because it's...the difference, there's something that's just a bar and then something that's a restaurant bar, is that... [LB780]

ERIC SCHAFER: Well, the brewpub allows us to offer something unique in terms of brewing the beer on site, and that's how we started. Currently, the restaurants are a separate entity from the brewery. The restaurants and the brewery are separate entities. But we've always kind of kept that feel of a brewpub at Lazlo's because the brewing equipment is still there. In terms of our restaurants are about an 80-20 split, and our sales of beer only go up because we serve more guests. But our beer sales per guest are not increasing. [LB780]

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SENATOR BRASCH: All right. Thank you. [LB780]

SENATOR KARPISEK: Thank you, Senator Brasch. Any other questions? Legal counsel has turned me on to the sweet potato fries, too, so. (Laughter) Just an FYI. I like them. [LB780]

ERIC SCHAFER: I think it's part of a good health and wellness plan. [LB780]

SENATOR KARPISEK: (Laughter) Yeah, I'm sure it is. Thank you for your testimony. [LB780]

ERIC SCHAFER: Thank you. [LB780]

SENATOR KARPISEK: Any other proponents? Seeing no more, are there any opponents of LB780? Anyone neutral? Seeing none, Senator Smith waives his opportunity to close. But coming right back, we'll have Senator Smith introducing LB781. Welcome back, Senator Smith. [LB780]

SENATOR SMITH: Once again, good afternoon, Senator Karpisek and members of the General Affairs Committee. Again, for the record my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Papillion. I am here again this afternoon at this time to introduce LB781. My opening is going to be extremely brief. LB781 would change the point at which the current excise tax is attached to products manufactured at farm wineries, craft breweries, and micro distilleries. Currently, the tax is attached after production. Under LB781 the tax would be attached to the product at the point it leaves the bonded portion of the licensed premises. This bill does not change the excise tax. The change is basically technical in nature and has no fiscal impact; and you can see that from your packet as well. There is a representative here from the Liquor Control Commission who can better explain why this adjustment is necessary. And with that, I will conclude my testimony and ask you to please advance LB781. [LB781]

SENATOR KARPISEK: Thank you, Senator Smith. Any questions? Seeing none, thank you. Do we have proponents for LB781? Welcome again, Mr. Rupe. [LB781]

HOBERT RUPE: Thank you, Chairman Karpisek. Once again, my name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission. Also with me, in back, is Jerry VanAckeren, my wholesale compliance administrator, who if I get really confused and I look back at him, he's the guy who can do numbers. I'm a lawyer and numbers, you know, hurt my head. (Laughter) And it's simple, what this is, it has two purposes. One, it brings the tax point consistent with the federal government. Our old statute, ours sort of attached earlier, ours would attach when it was bottled for sale rather than leaving the bonded production facility, the bonded site. That had never become much of an issue, as for on beer, for instance, you know, generally as soon as

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it's bottled or kegged it's being shipped out because of freshness; it isn't an issue. And the farm wineries had never brought it to our attention before. It's only been some of the craft distilleries of late because what they'll do is a product called bottle aging. And so that will...and the problem is, is that stuff might not be ready for sale right away, but they're having to pay the tax on it the minute they get it into the bottle. And that's when it sort of was shown that we have sort of a disconnect, you know, because they're not having to pay the federal excise tax on it until it leaves their bonded warehouse, their bonded production facility, where we were assessing a tax on it while it was just sitting there not being offered for sale yet. So in its simplest, that's what this is. It brings us consistent with the federal government tax point, which we think is sort of, you know, easier on us to collect and also on the licensees to be compliant with. You know, having two different tax points was somewhat confusing. And also sort of is cognizant of something that we missed when we did the craft distillery back in 2007. The other reason why you might see a disconnect on that is beer, it sort of goes out right away because it sort of has a freshness idea. Wine production is somewhat dependent upon the harvest and when it comes in. You know, you can distill pretty much at any time because the grain, the water, that facility. And a lot of times what you'll do is you'll produce a big load, a big run, but then expect that one run to be sold out over, say, six months instead of right away like you'll see some of the other products. So that was one reason why it was brought to us. It was somewhat of an oversight back in 2007. Once we looked at it, Jerry and I said, well, you know, let's be consistent with the feds. We think that's the best way for the industry, because you have to remember all these entities have two licenses. They have a state of Nebraska license; they also have a basic permit from the feds to produce alcohol on the site. The term "bonded warehouse," just in case that sounds confusing, every location has to have a bond on file with both the feds and with the state. And it's sort of an average of their last three years' taxable or estimated, if it's a new one, what their estimated excise tax is going to be. So if something happens, there's that bond on file that we can execute against to make sure the state doesn't lose any money. And so that's sort of the term of art, is when it's leaving that bonded warehouse. So given that the tax point is going to become consistent with the feds and until that point it's sitting there in a bonded warehouse, the state's interest in the excise tax is protected. So we would ask that you would support LB781. I'd be happy to answer any questions that I can. [LB781]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Senator Coash. [LB781]

SENATOR COASH: Thank you, Senator. Hobie, I'm just kind of interested in what...the purpose of the bond for these...what...is this so that if there's a fire at the warehouse, we still get our excise tax? [LB781]

HOBERT RUPE: Fire. More importantly, if they go bankrupt. [LB781]

SENATOR COASH: Okay. [LB781]

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HOBERT RUPE: Or if they go out of business. You know, the product is...this is a product that was produced. There's a bond for us to execute. Almost all your wholesalers also have a bond for that same thing: fire, natural disaster, bankruptcy. They all have to carry a bond too for roughly one year's taxes. And so...and that can go up or down, based upon their...the amount of excise tax they remit. And so it's been hard-wired into the system since the inception of the act in 1935. [LB781]

SENATOR COASH: Okay. [LB781]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Krist. [LB781]

SENATOR KRIST: Thank you, Senator Karpisek. Talk to me about any inconsistencies between a bar or a restaurant having its stock and being taxed on the stock at the end of the year. I mean, how do we not tax because you're bonded and the liquor is in your vat and we do tax on the product in a normal business for stock that you carry over. [LB781]

HOBERT RUPE: Okay. See, the problem...you have to remember, we weren't taxing on the barrel. It was being taxed when it was bottled, basically when it could be sold. And so, you know...and the difference there, of course, is like the bottle aging. They're not wanting to sell it yet. They're not wanting to proffer it for sale, and they want to let it sit there for awhile before they sell it. You know, I mean, you've got to remember, alcohol is taxed more than almost any other product. It's taxed federally by excise tax, state by the excise tax, then it is also taxed at the sales tax point when it is sold. So, you know, in this case here we're trying to be consistent with the feds who are already taxing it at. That's the main goal behind it is so we don't have two different times. And so, you know, we're trying to make it easier for the licensee so they know, hey, I've got to pay both taxes now instead of one now and one a month from now, depending on how it works. [LB781]

SENATOR KRIST: Okay, thank you. [LB781]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? When they pay their state and federal, is it two separate...? It doesn't all come to you, does it? [LB781]

HOBERT RUPE: No, no, no. Feds get their own. [LB781]

SENATOR KARPISEK: They send it right to the feds. [LB781]

HOBERT RUPE: Yeah, they send it right to the feds. They send it right to the feds. [LB781]

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SENATOR KARPISEK: I didn't know if they sent it all to you and then you forwarded it to the feds. [LB781]

HOBERT RUPE: Well, I wish, because their...you've got to remember, their hunk of the pie is a lot larger than ours. (Laugh) [LB781]

SENATOR KARPISEK: You could hang onto it for a month before you got it there? [LB781]

HOBERT RUPE: Yeah. But no, you got to remember, the feds don't let anybody else get in the way of them or their taxes. [LB781]

SENATOR KARPISEK: Very good. Any other questions? Seeing none, thank you, Mr. Rupe. [LB781]

HOBERT RUPE: Thank you. [LB781]

SENATOR KARPISEK: (Exhibits 3 and 4) Any other proponents of LB781? Seeing none, any opponents? Anyone who would like to testify neutral? Seeing none, Senator Smith waives his opportunity to close. That will end the hearing on LB781. We will now have LB861, presented by Senator Council's staff. Oh, I'm sorry, Senator Cornett. That's what I get for trying to be...sorry. Welcome, Brenda. [LB781]

BRENDA LARSON: Thank you. Good afternoon, Chairman Karpisek, members of the General Affairs Committee. My name is Brenda Larson, L-a-r-s-o-n. I'm the legislative aide to Senator Cornett, who represents the 45th Legislative District. LB861 removes the prohibition of selling alcoholic liquor from the hours of 6:00 a.m. to 12:00 noon Sunday in state statute. The cities would still be able to pass an ordinance prohibiting the sale of alcoholic liquor during those hours. With the passage of LB861, Sunday would be treated like every other day of the week and will reduce the need to get a special permit to be able to serve alcoholic beverages on Sunday. Several examples currently would be golf courses on Father's Day, if you want to have a drink while you're out on the course; also restaurants who serve brunch on Sunday mornings would be able to serve alcoholic beverages. So I would just say thank you for listening today and consideration of LB861. [LB861]

SENATOR KARPISEK: Thank you. Any questions? Seeing none,... [LB861]

BRENDA LARSON: Thank you. [LB861]

SENATOR KARPISEK: Thank you very much. Do we have any proponents of LB861? [LB861]

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JACK CHELOHA: Good afternoon, Senator Karpisek and members of the General Affairs Committee. My name is Jack Cheloha. The first name is J-a-c-k. The last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I wanted to testify in support of LB861 on behalf of our city, in particular, the city council, which typically has domain over liquor licenses. And just to let you know, we have a subcommittee of our seven-member city council that meets monthly, if not more than once a month, to deal with liquor issues relative to licensees in the city of Omaha. So we take it very seriously in terms of our ability to not only issue licenses but also to, you know, police the sales thereof. We feel that in the interest of local control that we would like to be granted this authority. We don't have any definite plans to open it up and authorize Sunday morning sales. In fact, the bill wasn't introduced...it was not introduced at our request. We just happened upon it as you do sometimes with legislation. And based upon the verbiage of it we support it. We think, you know, just some anecdotal evidence, seems to me today that a lot of families now do their shopping on weekends, where both parents work, you know, jobs outside of the home. And so you do your shopping on weekends. If you go on a Sunday morning, sometimes you might be inconvenienced to where you happen to buy your supplies for the week. And if you happen to include a bottle of wine or a six-pack of beer, you won't be able to purchase that due to the hours of enforcement. In terms of problems with, you know, liquor sales, we don't think Sunday mornings would create any type of enforcement problems for police, anything unusual beyond what we would deal with any other morning of the week. So, for a number of reasons, likewise as Brenda mentioned in her opening, I mean the city operates public golf courses. We feel this would give our customers the ability to, like she said, enjoy a cocktail on a Sunday morning if it's Father's Day, because that's always on a Sunday, or some other holidays that fall on Sunday. So for various reasons we just think that maybe the Sunday prohibition is outdated and we would support a change in this law. I'll try to answer any questions you might have. [LB861]

SENATOR KARPISEK: Thank you, Mr. Cheloha. Any questions? Seeing none, thank you. [LB861]

JACK CHELOHA: Thank you. [LB861]

SENATOR KARPISEK: Any other proponents for LB861? Seeing none, any opponents? Welcome. [LB861]

DIANE RIIBE: (Exhibit 2) Hi. Senator Karpisek, members of the committee, my name is Diane Riibe and I'm with Project Extra Mile as the director. And welcome, Senator Lambert, nice to meet you. We're here in opposition to LB861. Primarily what we wanted to do is to bring you information regarding what we know from the literature, to at least give you the public health perspective. The documents that you have in front of you are pretty abbreviated. You may remember the one on the top, which you may see

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again, because it's the most relevant current information on particularly binge drinking and excessive drinking among young people as well as adults, particularly young adults. And what we know is that when we increase hours and days of sale we increase all of the related harms to that. And I really just wanted you to be aware of that as you make your decision, knowing that Nebraska rates consistently darn high in our binge drinking rates across the nation. And we pay a pretty dear and high price for that. So I wanted you to see on "The Community Guide," which is the top sheet, that really is the community task force that has looked at in conjunction with the CDC at all of the...kind of a systematic review of all of the literature and all of the research that's out there. So it's really an assessment of what we know on the issues and what works and particularly when it comes to binge drinking and excessive drinking. I would tell you also, and you may see that in some of your documents, that those who binge drink are not necessarily alcohol dependent. It's really important that we know that. Binge drinking are those high-risk moments. And unfortunately, about 90 percent of all of the underage drinking happens in a binge drinking fashion, and about 75 percent of the drinking that happens of those of age happens in a binge drinking fashion. Unfortunately, this is when we get our drinking drivers, our alcohol-related fatalities on the roads, our homicides, our suicides, our unintentional pregnancy issues, STDs, etcetera. So it's just relevant for you to have that as a sense. We are going in this state from a public health perspective backwards on the issue and this is one of those teeny kind of corners that you get to look at and at least be aware of, and I wanted to bring that to your attention. So thank you. [LB861]

SENATOR KARPISEK: Thank you, Ms. Riibe. Any...Senator Krist. [LB861]

SENATOR KRIST: What do our neighboring states do? [LB861]

DIANE RIIBE: Frankly, I don't know. [LB861]

SENATOR KRIST: Okay. I would be interested in knowing that. If anyone could give me that information or we can do our own research. Thank you very much. [LB861]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? Seeing none, thank you. [LB861]

DIANE RIIBE: Thank you. [LB861]

SENATOR KARPISEK: (Exhibit 5) For the record, I would also like to say that the ACLU Nebraska has put a letter in, in support of LB861. Any further opponents to LB861? Seeing none, any neutral? Welcome back, Mr. Rupe. [LB861]

HOBERT RUPE: Welcome back. I'll try and make this one quick. (Laugh) My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm executive director of the Nebraska Liquor Control

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Commission. The commission's position on this is neutral. You know, how the Legislature wishes to deal with Sunday sales we believe is a legislative issue. I'd be happy to answer any questions. And I at least would give you an idea of the implication of the rule as it currently is utilized, the statute will affect this. Now you have to remember, that as of right now they can allow beer and wine before noon, they just can't allow spirits. But they also have the discretion when they want to allow sales, when they don't want to allow sales. Oftentimes what we will see is a lot of requests for special designated licenses, someone addressed it earlier. We almost always get a licensee, a golf course which is normally licensed, will ask for permission because if they're an SDL, you can waive any statute other than the age of consumption, to allow distilled spirit sales prior to noon primarily on like for Father's Day golf outings, you know, the early morning flights for Bloody Marys. The other days we see a lot is every time the 4th of July falls upon a Sunday, we'll see a flood of SDL requests. And we also see a slightly lesser flood of requests whenever St. Patrick's Day happens to fall on a Sunday because of the marketing. So from our perspective right now the only impact it has on the commission is we're doing, depending upon the year, we're processing either more or less special designated licenses seeking to get around this prohibition at that time. So I'd be happy to answer any questions. [LB861]

SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Coash. [LB861]

SENATOR COASH: Thank you, Chair. With those SDLs that you're referring to that you get on those Sundays every now and again, does the commission typically approve those? [LB861]

HOBERT RUPE: Typically we do. You have to remember, an SDL is the one license that has to be approved by both the local governing body and the commission. And so we figure if the local governing body wants to allow Sunday sales in that situation, that absent another concern, the commission should allow it. And usually it's around holidays or events like that. We somewhat, especially on those because there's such a short review time on an SDL, we very much defer to the local governing body, if they wish to approve it, unless we've had a place with a history of violations where the commission feels we need to step in on it. [LB861]

SENATOR COASH: When you...regardless of this particular bill by Senator Cornett being enacted, local governing bodies can already be more restrictive than... [LB861]

HOBERT RUPE: For Sundays. Yes, they can. [LB861]

SENATOR COASH: Okay. Can you give me a scope of how many communities that you know of are taking advantage of their ability to be a little more restrictive than the statute allows? I mean, do we have local governing bodies who are out there saying, you know what, I appreciate what the Legislature is doing, but... [LB861]

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HOBERT RUPE: Lincoln, for example, could allow beer and wine sales before noon and they don't on Sunday. And that's a change, I mean, now I'm going to show my age. Back, I remember when I was going to law school here, and you couldn't buy at all in Lincoln on a Sunday. You had to go outside the city limits. I know a lot of people before an NFL football game would be going out to Big Daddy's, out there on the northeast part of town, trying to get a six-pack or a twelve-pack for the football game. So I'm not really sure. I think the key thing about it is, it is up to the local governing body. They can be more restrictive. All this does is allow them to be either as restrictive or as nonrestrictive as they want to be. [LB861]

SENATOR COASH: Thank you. [LB861]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Krist. [LB861]

SENATOR KRIST: I'm just going to register my offense at the whole thing because I think Mother's Day should be accounted for here too. (Laughter) [LB861]

HOBERT RUPE: Apparently they like mimosas more than Bloody Marys. It's the only thing I can go for. (Laugh) [LB861]

SENATOR KRIST: Oh, I see. [LB861]

HOBERT RUPE: Because the wine is usually allowed, but yeah. [LB861]

SENATOR KRIST: Thank you. [LB861]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? Seeing none, thank you. [LB861]

HOBERT RUPE: Thank you. [LB861]

SENATOR KARPISEK: Any other neutral testimony? Seeing none, that will end the hearing on LB861 and end our hearings for the day. (See also Exhibit 6.) Thank you for appearing. [LB861]