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General Affairs Committee
February 04, 2013

[LB6 LB413 LB579]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 4, 2013, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB413, LB6, and LB579. Senators present: Russ Karpisek, Chairperson; Colby Coash, Vice Chairperson; Dave Bloomfield; Jerry Johnson; Bob Krist; John Murante; and Ken Schilz. Senators absent: Scott Lautenbaugh.

SENATOR KARPISEK: Okay. I think we're going to get started. It's a little after 1:30. We have enough members present. Welcome to the General Affairs Committee. I'm Senator Russ Karpisek of Wilber, and I am Chair of the committee. Committee members present are Senator Murante of Gretna; next to him is Senator Bloomfield of Hoskins; Senator Lautenbaugh of Omaha may or may not make it to be with us today; Vice Chair of the committee will be Senator Coash of Lincoln; to my immediate right is Josh Eickmeier, committee legal counsel from Seward; to my far left is Christina Case, who is our committee clerk; next to her is Senator Johnson of Wahoo, Senator Schilz of Ogallala, and Senator Krist of Omaha. The pages helping today are Cicely Batie and Colton Wolinski. 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're 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 both entrances. Please fill out the sign-in sheet before you testify. When it is your turn to testify, give your sign-in sheet to one of the pages--or to the committee clerk--so they can give it to the committee clerk. This will help us make a more accurate public record. And we have been joined by Senator Coash. If you have 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 microphone. 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 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 on that. I do not plan to use the light system today, but if you can, please try to keep your remarks around 5 minutes and then senators will be able to ask you questions, which isn't on a time limit. But if we can't keep it within a reasonable amount of time, we'll have to start using the lights, and I really don't like that. When people come in to testify, I don't like to have to cut them off. With that, we will begin our bill hearings with Senator Schumacher and LB413. Senator. Welcome to your old committee.

SENATOR SCHUMACHER: Thank you, Senator Karpisek and members of the committee. It's good to be back at the fun committee or sin committee or...(laughter). Today I'm here to introduce LB413, and LB413 is like a bad penny. It keeps coming back and back and back again. And it is that way and it keeps coming back because it is a sore subject. Going a little bit into the history or the background for the new folks on

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the committee, the people who have been here for a while have heard it over and over and probably know the issues by heart. You have a bar...in a bar in...certainly in the rural sectors of the state and probably in Omaha too, you know, they're really the epitome of small business people, and they're struggling to make a living, they're paying down the contract on the bar. Most of them don't have the money to purchase the bar outright. They have a hard time finding good help that will show up and not leave them stranded in the middle of a busy Saturday or Friday night, and it's a struggle. And for those bar owners who figure that it's going to be a great picnic, you can just go drinking with your friends all the time and make a lot of money, they soon find there's a rude awakening. Well, we have liquor enforcement laws. You're not supposed to sell to minors. And that may be easier said than done in a lot of cases. But most bar owners make a conscientious effort not to do so. And most of them card like they're supposed to. Most of them tell their employees what they're supposed to do, but we've all had employees, and we know that sometimes the employees get hurried, mind on other things, misstep. And for the most part, the law is enforced by common sense. Somebody looks too young, you card them. Somebody looks old enough, you might let it slide, particularly if the hamburger is burning on the back counter and you've got people that are screaming at you for drinks, and life is life. And you have a situation where you basically run on common sense. Then the state decides to enforce the law, and it should enforce the law. But the way it enforces the law sometimes is with stings. They'll find a person who is, in fact, underage but who certainly doesn't look it. And there are other situations where people are busy, things are going on, and the waitress, who may be worried about whether or not the kid is at home sick and where she's going to get the rent payment from, is just up to her ears or his ears in alligators. And they, in a busy time, make a misjudgment. That person looked old enough and they don't card him. And, lo and behold, it was somebody that was paid to go in, and paid to look old, and they're stung. Well, such is life. You pay the fine. You take the penalty. You know, you're...you just were unlucky. Well, what then comes into play is what they call progressive enforcement. If it happens a second time, you're stung worse. The penalty goes up, and pretty soon, you may not be in business. What this bill simply says, doesn't change anything if it's an honest situation where you're really serving a minor who is a minor and it's not connected with a law enforcement sting. That stays the same. Same idea of progressive enforcement. But if it is a sting, if you are targeted twice and bite twice, or even if you're targeted ten times and pass eight times and only bite twice, you get the progressive sting. And at a point, that seems unfair. You have the unfairness of the issue of entrapment, you have the unfairness of these folks trying to honestly make a living, and you are treating them kind of almost like entrapment. And so that's the purpose of this and it's been around before. This bill and the folks that make their livelihood off of the small bars, particularly in smaller communities, maybe the only place in town where you can get a hamburger, they're really, really put under stress with this. And all the bill does is says, for purposes of enhanced penalty, count every sting as a first offense. If it's not a sting, then go ahead with progressive enforcement. But the people that are sent in on these stings do not look like they're 15

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or 19. They're sent in because they look like somebody that might be able to make a sting. So that's my opening. I'll take any questions that the committee might have. [LB413]

SENATOR KARPISEK: Thank you, Senator Schumacher. Any questions? Senator Coash. [LB413]

SENATOR COASH: Thank you, Senator Karpisek. Senator Schumacher, I was...I skipped ahead to your statement of intent, and I always appreciate your very straightforward ways of writing these so everybody can understand them. And in your statement of intent, you say that the intent of this bill is to prevent liquor licensees from being stung to death. So I know what you're trying to do, you made that clear. My question is, to your knowledge or maybe some testifiers will speak to this, do we have evidence of licensees being stung to death, where the situation that you're describing where law enforcement uses an underage person to check the compliance of the act, that that happens, like in your opening you said, like, ten times? Do we...I mean, is this a problem? In other words, do we have license holders being stung to death? [LB413]

SENATOR SCHUMACHER: Well, they're certainly stung sick; whether or not they actually die, I'm not sure. But the progressive enforcement does take place. I mean, it does happen. People get stung and stung and stung, and the ten versus eight, that's a figurative thing in my testimony there, but they do get repeatedly stung, and each time the penalty gets increasingly larger. And I think Mr. Moylan probably can specify a little more on the frequency of people being the victims of multiple stings. [LB413]

SENATOR COASH: Okay. [LB413]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Senator Bloomfield. [LB413]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. Senator Schumacher, does...do you think caught once in a sting, would that not likely trigger another one? [LB413]

SENATOR SCHUMACHER: It could. [LB413]

SENATOR BLOOMFIELD: Should it not, if it doesn't? [LB413]

SENATOR SCHUMACHER: At some point, sure, it may very well be. And that...but this does not deal with they can't catch them a second time. This deals with an enhanced penalty on the second time. Now, I mean, if they've been stung once and they go in and get stung again, this is not saying they shouldn't get penalized that second time. This is just saying it shouldn't be an enhanced penalty. [LB413]

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SENATOR BLOOMFIELD: It shouldn't be enhanced. [LB413]

SENATOR SCHUMACHER: Right. [LB413]

SENATOR BLOOMFIELD: How do you get rid of the bad actor, then, that just continues to do it? [LB413]

SENATOR SCHUMACHER: Well, if it is truly a bad actor, then it shouldn't...and they're just very reckless disregard and they're not checking IDs and they're just selling to minors, should be easy to catch them without a sting. Should be able to sit in that bar and get a half dozen at a shot. [LB413]

SENATOR BLOOMFIELD: Thank you. [LB413]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Krist. [LB413]

SENATOR KRIST: You say in your bill summary, and it's the last sentence under (3)(a) and (3)(b), licensee must not serve the suspension and cannot...must serve...I'm sorry, must serve the suspension and cannot pay a fine in lieu of the suspension as he or she could if it were a first offense. I'm looking for...maybe I just missed it here, but Section (3)(a), this is not in the current piece of legislation? [LB413]

SENATOR SCHUMACHER: Are you talking about the green copy? [LB413]

SENATOR KRIST: No, I'm talking about...and this is our legal summary. I think you have a copy of it, do you not? [LB413]

SENATOR SCHUMACHER: I don't... [LB413]

SENATOR KRIST: So your intent here, according to this, is that you don't...you would not then allow someone to pay the fine out and buy out themselves out of a penalty? [LB413]

SENATOR SCHUMACHER: No, the intent here is it wouldn't be an enhanced penalty on a second or third sting. [LB413]

JOSH EICKMEIER: It would always be treated as the first offense if it were a compliance check failure, and the first offense you can pay a fine in lieu of the suspension. On a subsequent offense, if you treat it as a subsequent offense, which the current statute does, then you can have a suspension that cannot be paid a fine in lieu of, but you could have another suspension separate from that. But if you have more days, they could pay a fine for those, so there could be a hybrid of the two. [LB413]

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SENATOR KRIST: So inherently by making this a first offense and not a subsequent or escalated fine, they are under the provisions of being able to...or not able to... [LB413]

JOSH EICKMEIER: To pay the fine in lieu of the suspension. [LB413]

SENATOR KRIST: In lieu of the suspension. Okay. Which brings me to my actual question. I, for one, think that after the first time it happens in your establishment, the escalation...maybe it's not the second time or third time, but at some point if we continue to treat it like the first time and they continue to buy their way out of the obligation or the fine, we have another problem and that's people buying their way out all the time. And I bring to light just recently a young man was killed in an accident at an establishment, the same owner had another establishment and received a ten-day penalty for very much the same thing and bought his way out of it as opposed to being closed. I got to believe at some point a...to follow on with Senator Bloomfield's point, at some point a reasonable, respectable barkeep, the only way you're going to get through to him, or you find a bad actor, a reasonable man is going to do what he needs to do to make sure it happened. But someone who is maybe a bad actor, if we continue to allow them to buy their way out of it, there's really no hammer. Being closed for ten days is certainly worth more than \$500, \$50 a day, for that first offense. Did you want to talk to that at all? I mean, is that an unintended consequence of treating this like this? [LB413]

SENATOR SCHUMACHER: I don't think so, because I think we got truly a bad actor and not just somebody that's taking the bait; but you have somebody who is basically ignoring the law; it is not that hard to catch him without a sting, and then the enhanced penalties apply. [LB413]

SENATOR KRIST: Okay. Fair enough. Thank you. [LB413]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? Seeing none, thank you Senator Schumacher. [LB413]

SENATOR SCHUMACHER: And I'll waive closing. We've got some things over in Banking, so thank you. [LB413]

SENATOR KARPISEK: Very good. Thank you. First proponent for LB413. [LB413]

JIM MOYLAN: (Exhibit 1) Mr. Chairman, members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n. I represent the Nebraska Licensed Beverage Association, which is the state association of liquor retailers. As you know, there's about 4,700 licensees in the state, all the way from grocery stores, convenience stores, bar-restaurant type, restaurants, plain bars, package stores, all over the state. And they render a service to the point almost two million people in the state. They're maligned often because, you

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know, they just get maligned because of the business they're in. Some people don't like it, you know. But if you look back in your communities you're going to find out most of those people are leaders in your communities. They're the ones that support Little League baseball or whatever charity is going on. They're one of the first ones to come in and help with the program, you know, so I think it's important. Now this bill, all it does is...and you can get the number, but I know that about every month when the commission meets, there are a lot of sales to minors, and most of them are all, we call them stings, they call them compliance checks. I'd say, I don't know, you can ask Mr. Rupe, because I'm sure he's probably going to be up here to oppose this bill anyhow. But, anyhow, what it does, it just, because of the insidiousness of those entrapments, they bring young kids in under age, who are violating the law, and usually at a busy time, Fridays or Saturday nights, you know, when it's busy, and they'll order something, you know, and then some of them when they're busy, they probably don't, you know, check all, you know, all of the IDs that they should, you know. But anyhow, what this does, because of the nature of that entrapment, is, all this does is just says that if it's been a compliance check that you have been convicted for, then that shall not count as an offense for subsequent violations. Now, any violations over at the commission fall off after four years, kind of like points on your driver's license. But say you had a...serving an intoxicated person or some other minor thing, running a tab for some old veteran, you know, at the end of the month and they get picked up for...you're not supposed to, you know, give credit to anybody. And so there you've got two violations, and the first violation, you know, within a four-year period is a \$50-per-day fine. Close your ten days, it costs you \$500. Now, if this was a compliance check on a second one, you know, you still would not be counted as a subsequent violation, so you could still pay the \$50 instead of the \$100 that you would have to pay for any violation you had within a four-year period. So, basically, that's just, you know, it gives them a little bit of a break because of the manner in which these arrests take place. Now, four or five years ago the Century Council, for which was an association of distillers in the country, ran a survey and it showed that about 65 percent of the teen drinkers got it from their parents or family friends. But that survey showed that less than 7 percent of sales to minors were committed by licensed establishments. So, you know, basically, you know, running these sting operations and continuing to run them, you know, it's kind of like killing an ant with a sledgehammer when there's only 7 percent of the kids are getting their liquor from there. They ought to be concentrating more on going out to fraternity parties or sorority parties or some other-type parties in the community instead of bringing a couple of young kids into an establishment that are underage, you know, and forcing them to purchase. Now, most of them anymore are very well aware, you know, that the driver's licenses of minors are vertical and regulars are horizontal. So there are, you know, very few, very few arrests made of minors purchasing alcoholic beverages in liquor establishments unless they're done through a compliance check. If there's any questions, I just recommend you advance the bill to General File and maybe we could pass it sometime. [LB413]

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SENATOR KARPISEK: Okay. Thank you, Mr. Moylan. Any questions? Senator Johnson. [LB413]

SENATOR JOHNSON: Thank you. You quoted the 7 percent. Of the sting operations, do you know what percentage of them actually find somebody in default? I mean, do most of them make it through that sting operation and do not sell to that person? Or do you know what those numbers are? [LB413]

JIM MOYLAN: I'm sure quite a few of them are. No, I would not know that because if they didn't...I mean, if they didn't sell to one of those minors, you know, they aren't cited before the Liquor Commission. So I don't know how many, you know, comply, but I think most of them do. I mean, they've got a big investment in these licenses, you know, and they do their best, they do their best and they're careful about...you know, they can't afford to sell to minors. They want to keep their license. They don't like to have to go down to the commission and pay a fine or whatever it is. But, no, I wouldn't know how many. Maybe Mr. Rupe can answer that. [LB413]

SENATOR JOHNSON: Somebody else might have it. Thank you. [LB413]

SENATOR KARPISEK: Thank you, Senator Johnson. Any other questions? Seeing none, thank you, Mr. Moylan. [LB413]

JIM MOYLAN: Thank you. [LB413]

SENATOR KARPISEK: (Exhibit 2) Anyone else in support? While Ms. Siefken is coming up here, I'll read in the record a letter of support from the Nebraska Retail Federation signed by Jim Otto. Welcome. [LB413]

KATHY SIEFKEN: Chairman Karpisek and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and lobbyist for the Nebraska Grocery Industry Association here today in support of LB413. A couple of points. First of all, we like compliance checks. The members of my industry like them so well they actually have me conduct our own compliance check program, and that's because they work. They work because we use them as a tool to help identify those areas of weakness at the front end of our stores. So, as a result, we would love to have the Liquor Control Commission...or the...I'm sorry, the State Patrol's compliance check serve as a tool that we can use so we know who to train and where our weak areas are. The State Patrol does have guidelines and, of late, we have not heard any complaints about people coming in dressed up looking like older people. The State Patrol has been very good in doing compliance checks that are realistic. And, again, that's why we think it would be a great educational tool for our members, because we could use that information to help correct bad behaviors without using a sledgehammer. In addition to that, Senator Bloomfield, you had asked about if you fail a compliance check, they do

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trigger additional compliance checks. So the idea, I believe, that the Liquor Control Commission has is to progressively punish people and use that as an educational tool, and the punishment is in higher fines. I think you can do the same thing in educating people without those higher fines that they are assessing against our members that make that mistake. In addition to that, the compliance rate that we have in our compliance program is 92 percent. Again, compliance checks work. Now, when we were dealing with the city of Lincoln and their permits, I pulled together some statistics, and in the city of Lincoln, Lancaster County, what I discovered when I went through and pulled up compliance checks done by law enforcement, and there were three different law enforcement entities that were doing the compliance checks in Lincoln. And in November...let me start. Lancaster County Sheriff did a compliance check on 4-29-10 and it was 81 percent compliance. They came back again in 6-19-10 and it was 86 percent compliance. Again they held a compliance check, Lancaster County Sheriff, on 6-11 and that was 93 percent compliance. The point is, we're getting better because compliance checks work. And again, if we can use those compliance checks as an educational tool instead of a hammer, it would be better for our members. If you have any questions, I'd be happy to try to answer them. [LB413]

SENATOR KARPISEK: Thank you. Any questions? Senator Coash. [LB413]

SENATOR COASH: Thank you, Senator. Kathy, those...the data you were just reciting from Lancaster County here, were the compliance checks done at...you listed three separate dates where the sheriff, right? [LB413]

KATHY SIEFKEN: By three different parties, sheriff, Lancaster...or it was Lincoln Police did one, State Patrol, and Lancaster County, they were the three entities. [LB413]

SENATOR COASH: Okay. So, but those were three sets of compliance checks which were done pretty close together. Do you know if...and then we did improve. [LB413]

KATHY SIEFKEN: Yes. [LB413]

SENATOR COASH: Do you know if those three entities went to the exact same license holders, or did they choose different...? [LB413]

KATHY SIEFKEN: No. They were different. The compliance checks are done randomly. So it should never be the same locations unless, of course, you have someone that failed the compliance check, then it triggers additional compliance checks. [LB413]

SENATOR COASH: Okay. [LB413]

KATHY SIEFKEN: And then, really, whether there is a fine or not, if you fail a compliance check, it should trigger. That's part of the educational process. [LB413]

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SENATOR COASH: Right. Well, you know, I guess from your testimony and Mr. Moylan's testimony, now you said 8 percent, Mr. Moylan said 7 percent, which you're both consistent there, would seem to me that your members don't have much to worry about, then, if they're that good. I mean, they seem to be pretty good license holders. Your members, Mr. Moylan's members seem to be complying with the law at a pretty high rate. [LB413]

KATHY SIEFKEN: Yes, they are, and they're getting better. But this isn't just to my members. The program that we run in Lincoln is 92 percent compliance and we're doing that program through the University of Nebraska. We use...we actually use 21-year-olds. And you pass or fail based on whether you ask for the ID and you look at it and understand, because everyone should card anyone that's under 29 years of age. [LB413]

SENATOR COASH: Okay. My point is that, I mean, I understand what Senator Schumacher is trying to do, but the reasons for supporting this, I mean, it just doesn't seem like the license holders should be too concerned about enhanced penalties if they're, in fact, as compliant as you are. So I'll just leave it at that, but if you have a comment. [LB413]

KATHY SIEFKEN: The other 8 percent that are doing this include my members because you're only as good as your worst employee at the worst moment on their worst day. That's as good as you can get. [LB413]

SENATOR COASH: I think you...I think your members are doing a good job. [LB413]

KATHY SIEFKEN: I think they're doing a great job, too, so to use a sledgehammer in these instances, I just think that if you use it as an educational tool, that it would be much better for everyone. [LB413]

SENATOR COASH: Thank you. [LB413]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Bloomfield. [LB413]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. Ms. Siefken, you said that one...getting caught once triggers another one. If the second one is triggered and you pass that in good shape and then the third one, at what point does that start going away again, do you know? [LB413]

KATHY SIEFKEN: The Liquor Control Commission goes back four years. And so after four years from your initial violation, then it drops off and then it's no longer considered. [LB413]

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SENATOR BLOOMFIELD: If the first violation triggers another one quicker, does the second one clear that up or is there still likely to be a third one triggered by that first one? [LB413]

KATHY SIEFKEN: It's my understanding, and I think Hobie is going to...Mr. Rupe is going to come up in a little bit and you can clarify that with him. But it's my understanding that when you pass that second one, that it doesn't trigger additional. [LB413]

SENATOR BLOOMFIELD: Okay. Thank you. [LB413]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Johnson. [LB413]

SENATOR JOHNSON: Thank you, Senator Karpisek. Appreciate the answer on the percentages, the high percentage. Let me ask you maybe not a hypothetical question, but I, as part of city government, I sat in on several Extra Mile committee meetings, and the comments there were there seemed to be a network that if you went into a community with compliance checks, that they called ahead and triggered that they're in town, or whatever. Do you think that has been an issue or do you think that's a factor in those numbers being higher and it's maybe protected a little bit by that network of calls? [LB413]

KATHY SIEFKEN: I can tell you that the network of calls that takes place is before the compliance checks even begin. I have members that call each other, their stores, every Friday night and say, okay, remember, you don't sell to minors, you don't sell to intoxicated people, and I think that's the network that they've identified and somehow it got messed up with the rest of this. I don't know. I can't speak for them. I can tell you that as far as I know, my members don't get on the phone and say, we just had a compliance check. I'm not sure how they would know that, because sometimes when you pass, and we're at 92 percent compliance, you don't know that they were even in your store until two months later. So I'm not sure how that network works when they can't identify that a compliance check took place. [LB413]

SENATOR JOHNSON: Well, if they got stung, they might call ahead. [LB413]

KATHY SIEFKEN: If you have a network, I don't see that happening. [LB413]

SENATOR JOHNSON: Okay. Thank you. [LB413]

KATHY SIEFKEN: I know that my members do call each other, but it is... [LB413]

SENATOR JOHNSON: So you're proactive in your calls as an education. [LB413]

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KATHY SIEFKEN: Absolutely. We're proactive in making sure that the people that are selling alcohol understand and remember, you check the IDs and you look for the vertical ID. [LB413]

SENATOR JOHNSON: Okay. Thank you. [LB413]

SENATOR KARPISEK: Thank you, Senator Johnson. Any other questions? Seeing none, thank you. [LB413]

KATHY SIEFKEN: Thank you. [LB413]

SENATOR KARPISEK: Any further proponents? Okay. Seeing none, any opponents? [LB413]

HOBERT RUPE: (Exhibit 3) I guess since my name has been used, I should probably come up and answer the questions. Good afternoon, Chairman Karpisek and members of the General Affairs Committee. My name is Hobie Rupe. I'm the executive director of the Nebraska Liquor Control Commission, and I'll try to answer any questions about what's a compliance check and how they're utilized and what the purpose is, and answer some of the questions. First of all, I do like to say, you know, we do call it a compliance check, they're not a sting. A sting sort of...uses...wants to use the term "entrapment." Entrapment is an action by a law enforcement officer inducing a person to commit an offense that the person would have otherwise been unlikely to commit. What happens on a compliance check? If it's being done in accordance with Nebraska State Patrol guidelines, which I believe most of the guidelines are and, hopefully, almost all of them will be very shortly, they utilize them...a cooperating individual who is under the age of 21. Now, they will use a 20-year-old, but not in the same year they turn 21. They're trying not to play that game. So if they're 20, they'll be turning 21 in the next calendar year, so they're not trying to play the date game. Most of the ones we've seen recently have been 17, 18 years old. They look 17 or 18 years old. I will take issue with Senator Schumacher's "assertation" that they're designed to look old, and, in fact, the guidelines specifically state they can't. You cannot have facial hair, you cannot wear a cap, you cannot be dressed to look older than you are. Girls shall not be wearing more makeup to appear...to enhance their appearance. It's designed to be as much of an even test as possible. You take somebody who is underage, who looks underage, and they go in and they attempt to buy alcohol. The only ID they have on them is their own existing ID, which, as we both know from earlier hearings, is in a vertical format. Unfortunately, a lot of people...we have two failures. One, they don't ask for the ID. That's problem one. The other type we get is, they ask for the ID, they get the ID of a 17-year-old in their hand and they look at it, they hand it back, and then they make the sale. We're still trying to figure out how you can do that, because, you know, we're trying to make them as easy as they can. But we still have a certain percentage of them still

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do fail. To answer the questions regarding how many fail, depends on where you're at. Most places...Ms. Siefken was absolutely right, she used Lincoln. Lincoln is a very good example of a community which shows regular and consistent compliance checks according to the guidelines. Therefore they have a relatively low failure rate, underneath 10 percent. That's sort of the mark we shoot for, trying to get underneath the 10 percent failure rate. To give an example of that, happened about six years ago, Blair, Nebraska, had not been checked in years. The first time they did check the area of Blair, Nebraska, they had a 48 percent failure rate. Six months later they went back, they had a 22 percent failure rate. Six months after that, a year later, they went down and had about 11 percent. What's that show you? One, compliance checks work if they're being done according to the guidelines and if they're being done with some regularity so people know that they're actually out there and they're being...and, more importantly, they're concentrating on the issue. Blair hadn't been checked in years and just under half of...I think there were 13 or 14 places checked, sold alcohol that day. How you get on the list to be checked. Generally, it's a...for instance, I'll just use Omaha just because I was speaking with them recently. The oldest side in Omaha they'll look at a ZIP...they'll randomly decide a ZIP code and one of the...one or two of the license types and run a list off all those in that ZIP code and that license, and then look at somebody who hasn't been checked in the last year. And that's the ones they'll start with, or longer, depending upon...some of those even longer than that. You do sort of get rechecked if you fail. If you successfully pass, the recheck probably six, eight months later, then you go back in the pool. And so the theory behind it when done by the Patrol, and that's the one whom I'm most intimately aware of, by working with Patrol, you know, that's how you get on the list and how you get checked. The commission's objection to this bill. If you believe the sanctions are too harsh, you have in front of you now a copy of the penalty guidelines that goes through everything we penalize. You'll notice we use progressive discipline for everything. I've been director now for nine years. We've never cancelled a liquor license for failed compliance checks. Some have gotten close, but none of them have actually gotten there. If the penalty...if you believe the penalty is too severe, the penalty for those guidelines...it goes right along with the statute. That's where we got...take our guidance from on the penalty. The two days mandatory for a second failed offense is so long; the third offense, mandatory. But this bill does more than that. It basically says you can't use progressive discipline at all. And my concern is, if you can't use progressive discipline, this might become considered a cost of doing business. Hey, we know, we're just going to factor this in because we're going to have this many places and because they always got treated as the first offense, therefore it's always \$50 a day and, you know, right now we're ten to twenty. So the commission might have to look at upping its first offense to something that's going to actually have a detrimental effect. Ms. Siefken said that she wishes they were learning mechanisms. So do we. As a fact right now, if you fail a first-time compliance check, not only are you probably looking at ten to twenty days' suspension, usually ten days, twelve days if you didn't even ask for the ID--that's 99.9 percent of the time which is going to happen for a first-time compliance check fail--you're also going to be ordered to take a certified training course

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within 60 days and show proof to the commission. Because we're going to say, hey, we need to get you in there because there's no reason why you should be failing this compliance check. All right. Progressive discipline works. Most entities that come before the commission come before us once. You know, there's something...you know, they identify there was a problem, they identify there was a training problem. Although, you know, oftentimes the complaints do happen that, how did you guys know that the Power Ball was going to be \$300 million. I'm pretty sure we don't have that kind of, you know, foresight. But other than that, I'll ask just a couple of questions that also came up. Mr. Moylan said that the minors who were helping with these compliance checks are violating the law. That's patently untrue. There is a specific provision that allows them to be in possession if they're working with law enforcement, to not be, you know, engaging themselves. And the second question was, does the calling tree exist? Yes, the calling tree exists. Oftentimes...that's one reason why they'll do multijurisdictional checks. They'll try to get as many teams out as quick as they can, because after the first couple failed ones, the calling tree is out there. A couple of months ago, we actually had a person who failed one who got sort of distracted by doing the transaction because she had to answer the phone because the place down the street was telling her the Patrol was in town doing compliance checks. That actually happened about three months ago in front of the hearing. She failed to check the ID because she got distracted because the phone call came through from her competitor telling her the Patrol was in town doing compliance checks. With that, I would be happy to answer any questions, especially any technical questions. [LB413]

SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Krist. [LB413]

SENATOR KRIST: A couple of straightforward questions. We spent a lot of time talking about compliance checks in the last few years. You've emphasized again and again in your testimony, when they're done in compliance with the Nebraska State Patrol guidelines, we are totally in...within the parameters of the law and they're good compliance checks. You and I talked about making sure that all jurisdictions were using the NSP guidelines, because there's no suitable substitute for that. Do you, as a commission, make provisions in those examples that we have found when a compliance check turns into a sting, quote, unquote? And I'll bring one to mind for you, the Lincoln patrolman, female, who brought her young nephew into a bar and bought him a drink and then busted the establishment for failing a compliance check because he was there, one that we know about. Then an Omaha situation where something very similar happened. Do you, as a commission, make provisions when a sting...when a compliance check turns into a sting? [LB413]

HOBERT RUPE: Yes. [LB413]

SENATOR KRIST: Okay. Second question. You were going to make an effort to make sure that those jurisdictions did have the standards and understood the standards and

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that there was no alternatives; and you were going to do that, I think, at a seminar or a meeting this summer. Did you have a chance to do that? [LB413]

HOBERT RUPE: We haven't done that. The reason...what we've done thus far is we've made sure that the new law books, especially the new small law books, are available and being disseminated. I worked with Sergeant Costello to work with his individuals who are each into troops to make sure that they're working. We're probably going to do the seminar probably after the first of this upcoming year because that's when the CLE requirements for law enforcement kicks in. So our hope is, we're going to try to do a dry run probably later this year, a smaller one with some specialized ones, to make sure the program is done. And then may...because then we can offer sort of continuing education for those...we think we'll get more people in. So we've done two things. One, we've prioritized it with Patrol as an outreach, you know, for those...because you might not realize there's a...in every troop area there's at least one investigator who is assigned primarily to alcohol duties. Oftentimes on these compliance checks, they sort of serve as a coordinator with local law enforcement because, you know, they'll try to get as many people out there at one time to make sure that, you know, the checks are working. So anytime that they're involved, they are informed and make sure that everything they're doing is in compliance with the guidelines. So therefore I think that we're seeing, as more of those are being done in conjunction with the guidelines, I think almost all of them are, that's why I think more and more of them are being done in conjunction. The second issue is where we looked at both the...there's a violation that comes in front of the commission. It's commonly called a tavern reports filed. That report is first looked at by Sergeant Costello with Patrol to sort of make sure that the law enforcement i's are dotted and t's are crossed. And he's specifically looking at it to make sure that if there's a problem with under the guidelines, he'll flag it right then and there. And then also, Milissa Johnson-Wiles, our assistant attorney general, is being very vigilant about making sure that if any things are being done outside the guidelines, she's just not charging them. She's not charging them. [LB413]

SENATOR KRIST: Then the last question and potential comment is, I've heard from both you and from previous testimony that you do want to make this an educational issue. So to that end, when you pass a compliance check, do you slap them on the back and say, "Good job. We've been here and you've done a good job"? [LB413]

HOBERT RUPE: We do. That's one of the things I've been working with Patrol to make sure that they notify them. It's hard to tell them that day, because they're, you know, they're trying not to...you know, if you successfully pass, they're trying not to let you know right then that you did. Most of the officers are going back. What they'll do is now there's a follow-up team that comes along behind, and the people...and we'll let them know, hey, you successfully did a good job. And they're supposedly making sure they're sending a letter back to the licensee saying, on this day you successfully completed...successfully passed compliance check, so they know. [LB413]

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SENATOR KRIST: Well, I guess then my comment is just this. There's nothing better than telling a young person or a person behind the bar that they've just been evaluated and they've done a great thing. And if you're done with the compliance check and you've done two or three and checked to make sure servers are doing it, I'd suggest that maybe you think about that process, because that really is immediate feedback: you did a really good job tonight. [LB413]

HOBERT RUPE: Yeah. And that's why I think there's the follow-up teams are coming behind a lot of times. You know, there will be...you know, there will be, like, a supervisor behind following up and saying, hey, 20 minutes ago, you remember that kid who walked in, compliance check, you just passed, good job. But they really don't want the minor there or that team because that team is trying to go to the next place before their calling tree gets out too bad on them. [LB413]

SENATOR KRIST: I understand. Thank you. Thank you, Chairman. [LB413]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? Senator Coash. [LB413]

SENATOR COASH: Thank you. Hobie, I like when you testify because you always have great historical knowledge on the Liquor Control Act. (Laughter) How long is...right now, with license suspension, it's fifty bucks. [LB413]

HOBERT RUPE: For the first offense. [LB413]

SENATOR COASH: They can waive it, fifty bucks for every day that you penalize them, and then... [LB413]

HOBERT RUPE: For your first offense ever. [LB413]

SENATOR COASH: ...then it's a hundred. [LB413]

HOBERT RUPE: It's a hundred. [LB413]

SENATOR COASH: How long has that been in place? I mean, we're all...is that as old as the act itself? [LB413]

HOBERT RUPE: It's as old as the act itself as far as I'm aware. It's a...the penalty was designed to be of an amount that would have a negative....you know, basically, negative reinforcement. You know, the commission, when we've done penalty guidelines, hasn't really gone back, because it would require legislation to change the amount. We probably would just up the amount of days that was suspended on. [LB413]

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SENATOR COASH: Putting you on the spot here, when you have license holders who come in front of the commission in their first offense or their second offense, is the...the majority of them are paying it, right? [LB413]

HOBERT RUPE: Yes, the majority of them are paying, yes. [LB413]

SENATOR COASH: You don't see license holders saying, that's fine, I'll close my doors for a week. [LB413]

HOBERT RUPE: No. We have had a couple of them say, hey, how about if we close on this day, this day, and this day, and we're saying, no, you don't set the days you're going to be closed. You know, here's the order and here's when the...the report has. Unfortunately, a lot of times when they'll actually serve it will be because they fail to get the money. By statute the waiver has to be in seven days before the suspension begins, and so we've had returned checks we've gotten two days, three days before the suspension because they didn't comply with the statute. So they had...because there's sort of an affirmative acknowledgement in the act that if the waiver and the money is not received on...seven days or more before the date of suspension is supposed to begin, it's affirmatively assumed...presumption that they have chosen to serve the suspension. [LB413]

SENATOR COASH: But most license holders choose... [LB413]

HOBERT RUPE: Most licensees will pay it off. [LB413]

SENATOR COASH: ...choose to pay rather than sit the time, so to speak. [LB413]

HOBERT RUPE: Just so you know, we weren't trying to be too hard on that one. I mean, even on...you know, generally those things start on a Monday, you know, especially even the mandatory ones. So if you're getting the second offense, and say you're getting a two-plus-twenty, the days you're not going to be able to sell are going to be usually a Monday and Tuesday, so... [LB413]

SENATOR COASH: All right. Thank you, Hobie. [LB413]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Senator Schilz. [LB413]

SENATOR SCHILZ: Thank you, Senator Karpisek. Good afternoon, thanks for coming in. When you talked about Senator Coash's question, and I'm just curious, having not been on the committee for too long, how much...you talk about paying their way or waiving and paying that, how much does that come up to? What are we talking about

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dollarwise? [LB413]

HOBERT RUPE: About \$350,000 a year. And those go to the local school boards, so... [LB413]

SENATOR SCHILZ: Right. So for one...so let's say a licensee gets caught, they decide that we're going to pay it off. What's it going to cost him, first offense? [LB413]

HOBERT RUPE: Well, let's use a first offense failed compliance check. That's one we get to see a lot. Let's say they actually...they actually checked the ID, didn't go through it, so...and there's no other extenuating circumstances, so they're going to be getting probably a ten-day suspension. If they've never had a violation before in the last ten years, it's going to be a \$500 fine. If they've had a...let's say they had a serving a visibly intoxicated the year before, although it's a first offense for selling to a minor, so it's a ten-day, it's going to be at the \$100 per day. Now, there's also something in there, we sort of give you a "good actor" advice. Let's say it's your first offense. Let's say you've been licensed for 15 years, it's the first thing you've ever been in front of us. You're probably, instead of looking at ten to twenty suspension, you're looking at a five- to ten-day suspension. Because if you've been a licensee for more than ten years and never had a violation, the penalty is half. So they'd be looking at \$250. [LB413]

SENATOR SCHILZ: Right. So then my next question is, okay, let's say you get to a second offense. How does that...then what happens? [LB413]

HOBERT RUPE: Well, if it's a second-offense sell to a minor, because there's a provision in the act which says that we can (inaudible) mandatory days of suspension. It depends on how frequently it was. I mean, if it's in the same...if it's within four years, it would be two plus...make sure I've got it there, two plus twenty. If it's in the same calendar year, you're looking at two plus, I think....two plus forty. [LB413]

SENATOR SCHILZ: So it gets pretty pricey. [LB413]

HOBERT RUPE: It can get pricey. [LB413]

SENATOR SCHILZ: Thank you. [LB413]

SENATOR KARPISEK: Thank you, Senator Schilz. Any other questions? Seeing none, thank you, Mr. Rupe. [LB413]

HOBERT RUPE: Thank you. [LB413]

SENATOR KARPISEK: Any other opponents? Welcome. [LB413]

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NICOLE CARRITT: (Exhibit 4) Good afternoon, Senator Karpisek, members of the committee. My name is Nicole Carritt, N-i-c-o-l-e C-a-r-r-i-t-t, and I'm here today representing Project Extra Mile, a network of community partnerships across the state working to prevent underage drinking and youth access to alcohol. Many of my comments have already been touched upon through your questions or through Hobie's testimony, so I'll try to keep this brief. But we're here today to oppose LB413. The research is clear. The vigorous use of compliance checks can reduce the illegal sale of alcohol to minors. Compliance checks are designed to encourage compliance by businesses, to encourage licensees to be diligent in complying with the law, and to, therefore, help reduce the availability of alcohol to minors. Ensuring that appropriate and increasingly severe consequences are applied to violators is essential, because it's those consequences that motivate licensees to...that might otherwise remain lax or noncompliant to change their behaviors. And as Senator Schumacher said, I think we have to reference that we're not...it's not a regular commodity. You know, we're not selling pencils. There's actually, you know, some devastating consequences that can come from a retailer becoming too busy or, you know, worried about flipping the hamburgers, or those type of things. I just think that we have to keep that in mind. These operations are done in a well-planned and well-coordinated manner, with criterion guidelines firmly in place. Those guidelines came from legislation passed several years ago requiring the State Patrol to promulgate the rules and regulations so that they're done with consistency across the state, in every jurisdiction, using those same guidelines. There's no ability to deviate from those. What you see in front of you, I've provided you data for sales to minors during compliance checks in the Omaha metro area over the years. While we've seen significant progress in the compliance rate of retail establishments selling alcohol to minors since collaborative enforcement efforts began in the 1990s, from the highest noncompliant rate of 41 percent in the Omaha area to a low of just 6 percent in the fall of 2010. You can see that in Nebraska we've experienced exactly what is seen in the national research, and that is, when you do consistent enforcement, you have the ability to reduce the availability of alcohol to kids. We do, however, continue to see businesses that repeatedly violate the law and put young people in harm's way. The fiscal note for this bill references the last calendar year, that there were 31 licensees cited for second or third violations for sales to minors as a result of compliance checks. So, senators, ensuring the penalties for this illegal action remain "enhanceable" is important for deterring businesses across Nebraska from making illegal alcohol sales to minors, and provides a means of getting retailers back into compliance. If we begin treating each of these violations as a first offense without having progressive penalties, soon it simply is seen as a cost of doing business. So, senators, progressive discipline really does work and, as Senator Krist said, can be the hammer, basically. So thank you for the consideration of my comments and I'd be happy to answer any questions that you might have. [LB413]

SENATOR KARPISEK: Thank you, Ms. Carritt. No questions? Well, just see...of course, this is just a couple of years old, do you know how many...how many compliance

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checks this is? [LB413]

NICOLE CARRITT: This would be over 2,000. I can't give you the exact number, but over 2,000. [LB413]

SENATOR KARPISEK: Okay. No, that's fine. I'm just a little surprised that we saw in 2010 from 6 percent back up to 13. [LB413]

NICOLE CARRITT: And using the Omaha metro area is basically because there was more checks done. So I give you this information just because it's a better representation of the numbers. And I know in 2010, I believe that that was just a smaller number of compliance checks done by the State Patrol. So, you know, just giving us more a number of done could impact that. [LB413]

SENATOR KARPISEK: Very good. No other questions? Seeing none, thank you. [LB413]

NICOLE CARRITT: Thank you. [LB413]

SENATOR KARPISEK: (Exhibits 13, 14, 15, and 16) Any further opponents? Anyone who wants to testify neutral? I have some to read in in opposition, from Jann Lawler, Brooke Eckerberg, Lydia Patrick, and Lanette Richards, who is the project coordinator for Monument Prevention Coalition. And that will end the hearing for LB413. We now have Senator Krist, LB6. Welcome, Senator Krist.

SENATOR KRIST: Thank you, Senator Karpisek. It's just really good to be here. Good afternoon, Senator Karpisek and members of the General Affairs Committee. For the record, my name is Bob Krist, that's B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha along with the north-central portion of Douglas County, which includes the city of Bennington, and I appear before you today in introduction and support of LB6. I'm going to apologize to you right away. This is not my style but it's a long introduction. It lays out the intent of the bill, the specifics of which will follow me. But I think you need the background in order to evaluate what will follow. Nebraska's problem gamblers and their families who need treatment for their addiction to gambling have expressed concerns about the assistance they are currently receiving. Rather than getting counseling or treatment in person in our state, the Nebraska Department of Health and Human Services, which currently oversees problem gambling services, decided to contract with a provider which answers a helpline and provides counseling for problem gamblers by telephone from Chicago, Illinois. Chicago is good at many things, but this is not suitable for the Nebraska citizens. LB6 would improve services for problem gamblers in Nebraska by establishing the Nebraska Commission on Problem Gambling, a division of the Charitable Gaming Division of the Nebraska Department of Revenue, to administer and oversee a newly created Gamblers Assistance Program.

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The commission would have nine members who are appointed by the Governor and subject to confirmation by a majority of the Nebraska Legislature. The members would include people with the following professional background or skills: medical care or mental health expertise, expertise in banking, legal expertise, expertise in the field of education, two consumers of problem gambling services, data analysis expertise, and two Nebraska residents and representative of the public at large. The commission would be enabled statutorily to develop guidelines and standards for the operation of the Gamblers Assistance Program and direct the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund. The commission would also appoint a director of the Gamblers Assistance Program, provide the director with some office space and equipment, and support and facilitate the work of the program. Under LB6 and by state rule and regulation, the commission would (1) provide for a process for the evaluation and the approval of provider applications and contracts for treatment and other services funded from the Compulsive Gamblers Assistance Fund, (2) develop standards and guidelines for training and certification, and (3) provide for review of these evaluation data, (4) provide for the use and expenditure of funds, (5) provide for the creation and implementation of outreach and educational programs regarding problem gambling in Nebraska. The Gamblers Assistance Program, as created in the bill, would (1) contract with providers and treat services to Nebraska consumers in Nebraska, (2) promote public awareness and the existence of problem gambling and the ability to treat, for treatment services, (3) evaluate the existence and scope of the problem gambling in Nebraska, and (4) perform such other duties and provide such other services as the commission determines. The main sources of funding for the Gamblers Assistance Program are the Charitable Gaming Operations Fund and the State Lottery Operation Trust Fund. It is the intent of the Legislature that such funding will be used primarily for counseling and treatment, ultimately providing in-state treatment for those who truly need it and are requesting it. In closing, I want to thank the proponents who are testifying today, as they will underscore the importance of LB6 and why I introduced it. LB6 properly restores the state's ability to provide quality treatment to Nebraska's problem gamblers in Nebraska. I will also further summarize by saying this: When the citizens of Nebraska voted for a constitutional amendment that would allow for gambling to exist in the state of Nebraska, along with that, statutorily, there was a portion of money set aside because we knew there would be problems. That was a condition and it was written right into the ballot. So, by statute, there's already money that is supposed to be spent on this program. That money is going into the Department of Health and Human Services and for the record today I will state I believe is not being used--is not being used--as it was intended to be used by the state Legislature at the time, and by us in our oversight capability...or responsibility. Therefore, this commission removes the existing committee from the Department of Health and Human Services, where the funds are going and being distributed incorrectly; puts it into the Department of Revenue--where it originally started, I might add--in Charitable Gaming. Its funds stay for that specific purpose in problem gambling. For those of you who were around last year, you know I spent a lot of time trying to put the Foster Care Review Board back on

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track: establish a committee that could oversee the Foster Care Review Office and provide us with better data. In line with what we are doing today, it is again restoring an essential service that was intended--and funds--that were intended to be used a certain way and are currently not being used that way. And I would ask you for your support. We'll have a chance to talk about the counsel's recommendations on those things that are ambiguous within different sections, and I thank you for those recommendations; but we can do that in exec, hopefully, as we're kicking it out. Thank you, Chair. Any questions for me? [LB6]

SENATOR KARPISEK: Thank you, Senator Krist. Any questions? You said it did start off in Revenue. And things seemed to be okay when it was there? [LB6]

SENATOR KRIST: Because I wasn't here during that transition time, there are others that will follow that will paint that picture for you clearly; and if not, then I'll give you my opinion during my closing. But I would hope you'd ask that same question in follow. [LB6]

SENATOR KARPISEK: Okay. Thank you, Senator Krist. [LB6]

SENATOR KRIST: Thank you, sir. [LB6]

SENATOR KARPISEK: First proponent, please. Welcome, Senator, to your committee. [LB6]

VICKIE McDONALD: Welcome. Welcome. And you're doing a nice job. Good to be here. [LB6]

SENATOR KARPISEK: Did everybody hear that? (Laughter) [LB6]

VICKIE McDONALD: (Exhibit 5) I left it in good hands. Good afternoon, Chairman Karpisek and members of the General Affairs Committee. My name is Vickie McDonald, V-i-c-k-i-e, McDonald, M-c-D-o-n-a-l-d, and I'm here today to testify in support of LB6. LB6 would create clarity and make much-needed changes in the authority and responsibility of the current State Committee on Problem Gambling and the management of the Gamblers Assistance Program and Compulsive Gamblers Assistance Fund. Before I explain why I strongly believe these changes are needed, I want to tell you a bit about my involvement with this issue while I served in the Nebraska Legislature. Following the death of my late husband, former Senator Rick McDonald, in 2001, I was appointed by then-Governor Mike Johanns to represent District 41, who I also left in good hands to Kate Sullivan. I was elected in my own right twice and remained in office until term limits ended my tenure in 2009. As true for many state senators, several issues caught my attention. I came to feel great passion about the challenges of problem gamblers, their families, and the people in this state who are

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trained to provide support and treatment for these individuals. We all know the Nebraska voters passed a constitutional amendment to create a state-sponsored lottery in the early 1990s. As the Legislature crafted enabling legislation for the lottery, it recognized that for some people gambling is an addictive disorder and provided a portion of lottery revenue to be earmarked to help problem gamblers. From that time, through 2009, at least 12 legislative proposals and a second constitutional amendment were passed to revise, in one way or another, the way in which funds and services for problem gamblers was administered. In Nebraska, problem gambling services consist of several key components. Right now, those components include: the Department of Health and Human Services as a host agency, a State Committee on Problem Gambling, the Gamblers Assistance Program, and the Compulsive Gamblers Assistance Fund. "Right now" is an operative phrase, because while laws and constitutional amendments were passed almost two decades ago, terminology changed and often caused confusion, and roles and responsibilities for managing the components changed as well, and caused even greater confusion. For example, the Department of Health and Human Services, and Revenue, alternated as host agencies. Sometimes a state committee was a state commission. Sometimes the members of the committee or commission were confirmed by the Legislature and sometimes they were not. The Gamblers Assistance Program was originally in Revenue and was known as the Division of Compulsive Gambling. The fund was moved around as well, but it always received only funds to support problem gambling services. A critical point to remember is that no General Funds have ever gone into the fund. My bill, LB332, in 2005, was to address a steadily increasing need for treatment and inadequate funds to pay for the services. The Compulsive Gamblers Assistance Fund has only received clearly defined proceeds from the state lottery and from charitable gaming, except for an annual appropriation from the Health Care Cash Fund. Despite all the changes imposed on the problem gambling components in Nebraska, a lot of very dedicated people took all of these changes in stride and made things work for the sake of serving the needs of the problem gambler in our state. On only two occasions have challenges arisen that have been so difficult to overcome that it was determined that legislation was needed to solve the problems. In 2007 and 2008, I chaired the General Affairs Committee. During that time, the first of the two challenging occasions occurred, so I introduced LB1058 to create clarity and make much-needed changes in the authority and responsibility of the current State Committee on Problem Gambling and the management of the Gamblers Assistance Program and the Compulsive Gamblers Assistance Fund. As introduced, LB1058 renamed the State Advisory Committee on Problem Gambling and Addiction Services to be the State Committee on Problem Gambling. The responsibilities of the renamed committee were broadened to make it quite clear that the committee was not to simply serve as an advisory body and was not responsible to the Division of Behavioral Health. Intent language was added for the Compulsive Gamblers Assistance Fund to be used primarily for counseling and treatment services for problem gamblers and their families. As might have been expected, the executive branch did not like the autonomy defined in LB1058 as introduced and made it abundantly clear to the General

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Affairs Committee that LB1058 would be vetoed if it was not watered down. Since compromise is the name of the game in policymaking, so, in order to achieve some level of improvement in the controversy about which entity held primary decision-making authority for the state's problem gambling components, the General Affairs Committee compromised by creating what it believed would be a collaborative relationship between the Committee on Problem Gambling and the Division of Behavioral Health. In 4 of the previous 12 legislative proposals regarding problem gambling services, the term "recommend" was used to indicate that the state commission or committee would form and offer recommendations, and the host agency at the time would carry them out. From 2008 until 2010, the anticipated collaboration between the State Committee on Problem Gambling and the Division of Behavioral Health appeared to be working reasonably well. Then an undercurrent of concern was felt and has increased steadily until the present day. The testifiers who follow me will describe the basis for the concern. But I will tell you that I was invited recently to a State Committee on Problem Gambling to attend one of their meetings to explain to the new members the understanding by the Legislature of their roles and responsibilities. During that meeting the discussion turned to the issue of the funding decisions. I told the committee members that they were responsible for recommending how funds would be used to provide services in this state. And the director of the Division of Behavioral Health corrected me by saying, "It is not your money, i.e., reserved for problem gambling; it's our money." I took that to mean the monies in the Compulsive Gamblers Assistance Fund are viewed by the Division of Behavioral Health and perhaps by the Department of Health and Human Services as being available to use in whatever way the division or department deemed to be appropriate. This, Senators, is an attitude that is the heart of the controversy that exists today. In LB6, Senator Krist has proposed a way to address and solve all the challenges that currently face the State Committee on Problem Gambling, the problem gambling treatment providers, and, most importantly, the people in the state who need the treatment services the Legislature told them they would make sure that they had if Nebraska chose to have state-sponsored gambling. At the 2008 hearing on LB1058, a General Affairs Committee member made the following statement and posed the following question to the director of the Division of Behavioral Health, and I quote: It appears to me that this advisory council was very effective in the past and then, for whatever reason, things kind of eroded and changed; do you have an understanding of what made them effective in the past and maybe where we need to go back to with this council? To which the director answered in his opponent testimony on LB1058: What helped them become effective? I don't fully know what made this group as effective as it was at one time, because that was not my area of expertise, and I didn't pay attention to it as much as perhaps I could have at that time, but I was doing other things in my job; what I want to do, though, is to find that energy and to give that rebirth again so we are aligned with regard to purpose, intentions, goals, and objectives, and that we're all on the same page, pulling in the same direction. Senators, I am here to tell you today that we made a mistake when we agreed to that compromise in LB1058 in 2008. We need to right the wrong by passing Senator Krist's LB6 in time for

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the Legislature to create a clear and permanent way in which services can be delivered to problem gamblers in this state. We made a promise to them and we need to keep that promise. Thank you. [LB6]

SENATOR KARPISEK: Thank you, Senator. Any questions? Senator Johnson. [LB6]

SENATOR JOHNSON: Thank you, Senator Karpisek. Is LB6 basically a rewrite of LB1058? [LB6]

VICKIE McDONALD: In its...pretty much in its original form. Yes. [LB6]

SENATOR JOHNSON: Tweaked to improve. [LB6]

VICKIE McDONALD: Tweaked to improve. [LB6]

SENATOR JOHNSON: Thank you. [LB6]

SENATOR KARPISEK: Any other questions? Seeing none, thank you, Senator, for the history behind this. [LB6]

VICKIE McDONALD: Thank you. [LB6]

SENATOR KARPISEK: Further proponents. [LB6]

DAVID GEIER: (Exhibit 6) Good afternoon, Chairman Karpisek and members of the committee. My name is David Geier, D-a-v-i-d G-e-i-e-r, and I'm appearing in support of LB6. I'm an attorney licensed in Nebraska but I'm appearing today on my own individual behalf, not as a representative of any person or entity. I was the attorney for the Nebraska Council on Compulsive Gambling in a court case here in Lancaster County, and I want to tell you a little bit about that court case, because it really turned out to be a test case concerning the effectiveness of LB1058 that Senator McDonald has just talked about. My client, the Nebraska Council on Compulsive Gambling, believed that a contracting process that the Gamblers Assistance Program manager and DHHS had followed was in violation of the statutes, specifically the contents of LB1058. And so they decided to pursue a lawsuit in Lancaster County District Court in order to raise that issue. I want to tell you a little bit about the case so you can understand what was going on. The case focused on two contracts that the Gamblers Assistance Program had made. These contracts were set up in 2011. My client's claim was that the management at DHHS decided to enter these contracts without following the procedure that LB1058 spelled out. The procedure in LB1058, and you can see it codified in two sections, 71-816, 71-817; they're side by side in the statutes. The procedure that the statute spells out is that the state committee is to make recommendations after studying proposals, make a recommendation about whether or not to go along with a proposal

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for a contract. Then, in 817, the administration--DHHS--is to enact their decisions based upon the proposal...based upon a recommendation of the state committee. So we looked at those two statutory sections side by side. The committee makes a recommendation; DHHS acts based on that recommendation. So we thought those two together set up the collaboration that LB1058 seemed to attempt to establish. And that was that the two would work together, the state committee and DHHS administration, and then they would get along. But, in the first place, the state committee would be the first reviewing entity about a contract proposal. Now in the case of the two contracts that were in question in the lawsuit that I was involved in, the procedure was not followed. In fact, what happened was requests for proposals were issued by DHHS; proposals were made. They were reviewed by subcommittees but never presented to the State Committee on Problem Gambling as a whole. So without having presented those proposals to the state committee, the state committee never had the opportunity to make a recommendation; and, of course, then therefore it never did make a recommendation. DHHS went ahead, entered the two contracts without any recommendation from the state committee. So we went to the District Court of Lancaster County and asked District Judge Merritt to make a ruling that by bypassing the state committee in its entirety, DHHS had violated the intent and purpose of LB1058. The problem was that, and as the DHHS counsel argued it through the Attorney General's Office, that the statute, LB1058, does contain the word "recommend." And so DHHS then took the position in court that the state committee only makes recommendations; a recommendation is only advice; advice can be followed or ignored; in fact, it need not even be given. And, as a matter of fact, then, the upshot of their position in court was that DHHS is the decision maker about issues such as funding a contract, and the district court judge went along with it. In other words, the ruling in the District Court of Lancaster County was that LB1058 failed of its purpose, which was to enhance collaboration, to bring the state committee into the process, to utilize the expertise and concern and interest of the state committee members into the process in making these decisions. DHHS then has excluded the state committee or it asserts the opportunity and the ability to exclude the state committee from making any of those decisions. DHHS then, with the sanction of the district court, and based upon the wording of LB1058, then has the sole authority to run the show. Basically that's the problem. Now one of the things that we emphasized in the court case was that LB1058 sought to make a clear distinction between the Committee on Problem Gambling and two other committees that exist in the behavioral health statutes. Sections 71-814, 71-815--again, side by side statutes--create two other committees--purely advisory committees. You can read the language of those statutes and you can see the intent is clear. Those are advisory only: Advisory Committee on Substance Abuse, Advisory Committee on Mental Health Disorders. They are only to give advice as directed and sought by DHHS. On the other hand, the gamblers assistance committee is on its own. It's an autonomous committee. It is entitled by statute to do what it thinks is appropriate, to do what it thinks is necessary to carry out its mission. Nevertheless, DHHS, because of the ambiguous wording in LB1058, it was held by the district court judge to essentially

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have the power and authority to relegate the gamblers assistance committee to the same status as the other two committees--give us advice; we'll follow it, or not, as we please. It's almost as if they are there just to have lunch, send us a greeting card, we'll do what we want. That's the upshot of the status today that exists under LB1058. This is how things have evolved since 2008, since the statute was enacted. There are a few other issues that we were concerned about: the bidding process that was used with the request for proposals was not consistently applied. The request for proposals was published; a bid was accepted. A contract was let to a bidder that did not conform to the standards that were spelled out, other bidders were expected to comply with, yet the contract was awarded to a bidder that did not. My client had a concern, and still does, about the outsourcing of a contract to Chicago. People are answering the telephone in Chicago. It's unclear what they're doing, but they're talking to people who are seeking help for problem gambling, sitting on the phone in Chicago. We have no way to know if those people in Chicago are held to the same standards that Nebraska counselors are held to. We have no way to know if those people in Chicago, for example, have the certification that Nebraska counselors must have before they can perform this service. We have no way to know if the people in Chicago are expected to keep a chart, to keep a record of what they do. Nebraska-based counselors have to make a face-to-face contact with people with problem gambling. There is no face-to-face on the telephone to Chicago. There is no record of what they're doing that we have ever been informed about. Nebraska counselors are subjected to audits, their offices are visited, their charts are examined. We have no way to know whether there's anything going on in Chicago even remotely comparable to that. So what HHS has done is outsourced this program, or at least a substantial amount of this program, to Chicago, treating it differently than our Nebraska counselors are treated. Nebraska counselors are concerned about their livelihoods, but they're also concerned about providing service to problem gamblers in this state. The lesson for the committee today, if indeed this Legislature means to separate the gambling committee from the rest of the pack, to make it distinct and different from the two behavioral health committees, give it real authority to engage in the operation of the Gamblers Assistance Program, it has to say so with clarity and force; otherwise, the message does not get across. LB6 does this by establishing a commission, spelling out its responsibilities, making that commission answer to this body rather than to DHHS, where this program is little more than a voice in the wilderness. Questions? [LB6]

SENATOR KARPISEK: Thank you, Mr. Geier. Any questions? Seeing none, thank you. Further proponents? Welcome. [LB6]

JERRY BAUERKEMPER: (Exhibit 7) Good afternoon, Senator Karpisek and members of the committee. My name is Jerry Bauerkemper, J-e-r-r-y B-a-u-e-r-k-e-m-p-e-r, and I'm here in support of LB6. I'm the executive director of the Nebraska Council on Compulsive Gambling, and I'll give you a snapshot of my experience in problem gambling. I have treated pathological or problem gamblers in Nebraska since 1986. I've

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been around longer than most people in working with problem gamblers. I was employed by the Department of Revenue and later by the Department of Health and Human Services. I was the first state director for problem gambling when it was in the Department of Revenue. I followed the legislative direction and I initiated the gambling programs from the initial statute, all the way to contracting and providing services throughout the state. That was the original intent and what I was to do, as well as begin the process of helping the certification and the quality of care. I also served as a member of the State Committee on Problem Gambling when it was the State Commission. I did that for four years, and I've been a gambling service provider for the state of Nebraska for 17 years. I managed contracts for the helpline, counselor trainings, and outreach programs from 1997 to 2011. While there, I volunteered my time for the development of the five-year strategic plans for both the Gamblers Assistance Program and DHHS. So I was asked by DHHS to be a part of their larger strategic plan. I tell you this because I've testified in front of this committee numerous times since 1997 when we were trying to figure out, do we have enough funding; how do we work through this process; how do we see the people we need to see. And I have been here advocating for the problem gambling program since 1997. Based on this experience that I have outlined you, I have a clear understanding of the needs of the problem gamblers. It has been my life since 1986, so I understand that process. And I have watched the decision making and how they serve the population, how it's changed and how it's eroded in the last several years. As the state director for the helpline for the Nebraska Council, we were located in Bellevue. We answered the 24-hour helpline, and we had successful results for 17 years. We were audited by the state numerous times. We passed each and every audit, and we were given positive remarks each and every time we were audited. We were also a regular resource for Nebraska students, counselors, members of the general public, who often called us for information on problem gambling, access to treatment, prevention, or further education. The 24-hour helpline was a catchall. So if a kid was doing an 11th-grade project, he would call and say, hey, help me to find the resources where I need to so I can pass this project. We would give them that as well as answering for the people who were in crisis. We used the national helpline number. The national helpline number is 800-522-4700. It is available and used as a primary number in all 50 states. Our affiliation with the national number allows Nebraska citizens to utilize our relationships with numerous entities, including all major league sporting associations who use the 800 number in all of their arenas. So the NFL, the NBA, Major League Baseball uses 1-800-522-4700. So if you happen to be at a baseball game in Kansas City, you still have access to that number. The national number is posted in every casino surrounding our state. If you go to Iowa's casinos or South Dakota's casinos, you will get 1-800-522-4700, and our number is a number that is promoted and utilized through most of the keno operations. So you will see, for example, Big Red Keno, who will run a "scrive," says if you have a problem call 1-800-522-4700. Now let's compare that with the current provider that took over in 2011. They do not use the nationally recognized 800 number that is available and well-known in our surrounding states. Instead, they use a number from New Jersey. That New

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Jersey number has implications for us. People who gamble in other states don't have access to that number, so it's not marketed anywhere. And the research tells us that people gamble outside of our state. They go to casinos and they find that number there. They will not find the new number there. In fact, no gambling establishment other than the Nebraska Lottery, which is required by law, has the current 800 number. So what happens is, is that where people go to gamble and where they manifest their problems, they don't have access to the Nebraska number. The second implication of this decision in 2011 involves money. Fiscally, the decision to change to an alternate number has required DHHS to double their marketing. It costs them more to market now than they were marketing before. And I challenge you to find the number. As an aside here, not in my testimony, but I was approached yesterday, or Friday, by the Channel 7 news reporter who wanted to talk about LB6. And she said to me, I've been looking for two hours for the state 800 number and I can't find it; do you know what it is? And they called us. Well, we're not the state contractor anymore--but we told them. This was done in order to reduce costs. They took a bid that was less than ours to reduce their costs, and then they spent twice as much advertising it. The reason for this was the bidding process in 2011 included a marketing budget. So the Nebraska Council wrote a budget that included marketing. The winning bid did not include a marketing budget, and so their bid was lower than ours. In addition to that, that immediately put the onus of the marketing onto the DHHS, because the Chicago-based company does not market in our area. Prior to 2011, the helpline contract required us to make referrals to in-state providers. In other words, we would get the call and we would say, let me tell you who's available in your area that can help you, who the qualified people are. That changed in 2011 when DHHS took a 180 turn and decided that the helpline people could, in fact, now provide the counseling. And they don't do that on a face-to-face process; they do that by phone. And they were allowed...they have a five-session phone conference where they work with their clients. Now even the state gambling people will tell you the average length of stay for a person who is in recovery is over six months in treatment; and now they're doing it in five sessions. If a citizen calls the new number, they get the five sessions. If this were true and if all addictions were like this, five sessions would save millions of dollars to the state substance abuse coffers; and yet they don't allow that same process in substance abuse that they do in gambling. They've moved that. And because of that, the referral process to the providers has gone down significantly. In fact, as I talked about this, they were...our two largest providers, one in Omaha and one in Lincoln, both have received one total referral from the Chicago-based organization in 19 months, whereas we used to provide them with between five and ten apiece, a month. And prior to 2011, the Nebraska Council advertised the number in all the yellow pages and the Internet yellow pages. That's not done now. The current contractor has no advertisement in the yellow pages and they're not accessible on the Internet Web site. You know as well as I do, if you want to find something, you Google it. And if you Google the number for the problem gambling helpline, if you don't find our number you're going to find the number that goes directly to a Web site in New Jersey. Now, as a Nebraska citizen, would you call a number that was from New Jersey?

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Probably not. In 2006, 432 families sought help. In 2012, 173 people...families sought help. There's been a dramatic change in the number of people actually seeking help. Let me give you an example of our marketing efforts. Currently, the DHHS, who does the marketing, has authorized advertisement services in billboards, newspapers, lottery tickets, and radio ads. They're not advertised in casinos, yellow pages, Internet, casinos...or kenos. Why is that important? Prior to...when we had the helpline, prior to 2011, the primary call number where they called from was the casino, at 55 percent--but they're not advertised there; the second, yellow pages; the third, Internet; and the fourth, keno. They're not advertised in any of those. They are, in fact, advertised in two of the bottom referral resources, which is billboards, which over the last 17 years has been less than 1 percent of the callers got the number off the billboard; and lottery tickets, which is 2 percent. So 97 percent of the people get the number from somewhere other than where the advertising is. [LB6]

SENATOR KARPISEK: Let's try to wrap it up, okay? Thank you. [LB6]

JERRY BAUERKEMPER: Okay. Let me move on to the counselor training program. In the last 17 years, the Nebraska Council has provided training for people around the state that wanted to learn about gambling. That changed in 2011. The current training process includes substance abuse counselors who are now training gambling people. In fact, the latest gambling "advanced training" has zero providers signed up for it because the person who's doing it doesn't know as much as they do. In summary, I've been the state director and I've been around the country watching this process, and I can tell you that this bill helps consumers; it helps the committee; it helps the process. I've worked for both the Department of Revenue and the Department of Human Services. I've seen both management philosophies, and I choose the Department of Revenue. [LB6]

SENATOR KARPISEK: Thank you, Mr. Bauerkemper. Any questions? I...Senator Bloomfield. [LB6]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. You said that the number of families being served who are seeking help now is about, oh, a third of what it was in 2006. Some would have us believe that the problem has gone away. Is that in fact true? [LB6]

JERRY BAUERKEMPER: (Laugh) No. What has happened here is the awareness, the process, the ability...gamblers are impulsive. In fact, it's an impulse disorder. And they only understand when they have a crisis. So all the advertisement we've done 25 years ago doesn't matter. It's what's in front of them now. And because of the fact that they're changing the whole process of outreach and awareness and everything like that, less people know where the number is, and so less people seek help. [LB6]

SENATOR BLOOMFIELD: I'm going to ask an "if-then" question then. [LB6]

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JERRY BAUERKEMPER: Okay. [LB6]

SENATOR BLOOMFIELD: There are several bills ahead of us that are hoping to increase gambling a little bit. Does that make this even more important, in your mind? [LB6]

JERRY BAUERKEMPER: Having access and having a program that's functional is paramount in this process. As you go forward and make decisions on whether to expand gambling, change gambling, etcetera, having a safety net for these people that are affected and afflicted is the most important piece of that. And if they don't have access, if they don't know where the number is, if they don't...if the dollars are being squeezed and routed somewhere else, it doesn't...it does do no good. You can expand it; they just won't come. [LB6]

SENATOR BLOOMFIELD: Okay. Thank you. [LB6]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any other questions? Mr. Bauerkemper, what...is there an age when people usually get addicted to gambling, or...? [LB6]

JERRY BAUERKEMPER: Well, let me tell you a couple of things. The average...according to the DHHS survey, the average age of onset for gambling, the largest pool of people who when they first start, is age 10. That's before they do substance abuse; that's before they smoke; that's before they have sex; and that's before they generally get into any trouble at all. It is a correlating process to all of the other processes, and that's the DHHS study that's saying that. And so they start at 10; they usually have problems before they get out of high school, but they're usually enabled by their parents and bailed out by their parents. And it usually shows up as they get autonomy either through college or into the business world. [LB6]

SENATOR KARPISEK: How can they start at age 10 when they can't get into a casino or a keno parlor or any of those places? [LB6]

JERRY BAUERKEMPER: Yeah. Because the common fallacy is that the only forms of gambling are casinos and keno. But, in reality, they play cards; they bet on sports. I mean, the largest betting event just happened Sunday, and kids are in the pools. They're putting their own pools together. An example: My daughter, when she was graduating from high school, she came home one day and she said, I know who the dealers are in substance abuse. And I said, yes, but do you know who the bookies are? And she said, I don't know. She came back the next day and said, oh, yeah, I know who they are now because I just asked one question and they told me where to find the school's bookie. [LB6]

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SENATOR KARPISEK: Now would these kids be eligible to receive treatment? [LB6]

JERRY BAUERKEMPER: No, not at this time. DHHS just decided that no child under the age of 19 can be served. [LB6]

SENATOR KARPISEK: And is that under the...well, I can't...you can't answer, I guess. But because they figure they can't get into... [LB6]

JERRY BAUERKEMPER: And I'm going to...I'm stepping off of what I know, and speculating. They don't believe that we're capable of handling children, even though many of the people who are working with gamblers are licensed and can do that legally, but they cannot do that via contract. [LB6]

SENATOR KARPISEK: Very good. Thank you. Any further questions? Thank you for your testimony. [LB6]

JERRY BAUERKEMPER: Thank you. [LB6]

SENATOR KARPISEK: Do we have any further proponents? We're going to try to pick it up a little bit, okay? [LB6]

DENNIS McNEILLY: I'll try to speak quickly. [LB6]

SENATOR KARPISEK: (Laugh) I'll try to listen quickly. [LB6]

DENNIS McNEILLY: (Exhibit 8) Good afternoon, members of the General Affairs Committee. My name is Dr. Dennis McNeilly, D-e-n-n-i-s M-c-N-e-i-l-l-y. I'm here to speak in support of LB6. I'm a professor of psychiatry and a clinical geropsychologist at the University of Nebraska Medical Center in Omaha. I wanted to be here today because I'm concerned that Nebraska's problem gamblers' and their families' access to treatment from certified professionals in the state of Nebraska has been significantly compromised, in that monies for treatment and prevention programs are being spent on ineffective and misguided initiatives. My background in problem gambling began in 1998 when we began to see increasing numbers of older adults presenting with gambling problems in our outpatient geriatric psychiatry clinic. In an attempt to treat those older adults who had developed gambling problems, approximately three years after the riverboats had opened in Council Bluffs, I began to undertake research in problem gambling. And since that time, my research and scholarship in this field has...which has primarily focused on older adult gambling, has been recognized both nationally and internationally. I've published on the attitudes and behaviors of older adult gamblers, served as a principal investigator of clinical trials for problem gambling, and since 2002 have been a regular reviewer for the Journal of Gambling Studies and the International

Journal of Gambling Studies. So from 2000 to 2008, I also served on the board of directors of the National Council on Problem Gambling, which is the national advocate for problem gamblers and their families since 1972. From 2006-2008, I also served as the president of the National Council on Problem Gambling, when I led a very successful strategic planning process of that organization's 35 affiliate members, which resulted in a major restructuring of the organization's national board of directors. Following my tenure with the National Council, I was asked, in 2007, then to serve on the Nebraska State Committee on Problem Gambling, and Nebraska Governor Heineman appointed me to that committee. Given my expertise, research, clinical trials, and background, I was happy to lend that expertise to the citizens of Nebraska through my service on that committee. As I understood the intent of LB1058, the original legislation that enacted the committee, members of the committee were to have a demonstrated interest and commitment and specialized knowledge or expertise related to the provision of problem gambling and addiction services in the state of Nebraska. Therefore I assumed that I might be able to offer my clinical expertise as well as research and scholarship and background to the state committee. My tenure with the state committee, however, has been quite different from what I had experienced at the national level. Over the course of the last four years, initially as secretary and then as vice chair and finally as chair of the state committee for the last two years, it became increasingly apparent to me that the expertise and knowledge of the problem gambling field were not incorporated into the DHHS administration of the Gamblers Assistance Program. Despite repeated suggestions of proven best practices for treatment and prevention approaches, despite repeated questioning of ill-advised state expenditures on DHHS initiatives, despite repeated requests to DHHS administrators to listen to how the impact of their actions would reduce and restrict the access of problem gambling prevention and treatment in the state, the DHHS administration of the Gamblers Assistance Program forged a path directed seemingly at dismantling the existing group of professionally certified gambling counselors and the generation of declining problem gambling prevalence rates to justify the use of those state monies for other programs. So I offer three brief examples or snapshots of DHHS administration decisions that exemplify how the published research, best practices of the field of gambling, have not been incorporated into the Gamblers Assistance Program. First example of where this research and background has been ignored involves the current state prevention programs funded through the state Gamblers Assistance Program: Despite repeated attempts and repeated State Committee on Problem Gambling discussions on particular needs and characteristics of Nebraska's problem gamblers, the DHHS administration has continued to rely on and continued to commit state program monies on advertising campaigns that do not reach problem gamblers. An example of this is the recurrent reliance on highway billboards to advertise the state's Gamblers Assistance Program. Simply put, while highway billboards may have been an effective advertising medium years ago, gamblers today, and particularly Nebraska's younger gamblers, access information on-line and through social media. Today's equivalent for the roadside billboard is now pocket-sized and located in the gambler's hand for immediate and

recurrent access. The problem gambler of today, the equivalent of the old roadside billboard, is a smartphone. Unfortunately, the state continues to expend precious state dollars on ineffective and inefficient advertising campaigns of its problem gambling prevention programs. A second example of how fundamentally DHHS administration misunderstands the field of problem gambling was particularly highlighted when the DHHS crafted its most recent RFP proposals for a problem gambling helpline and training contracts. In those RFPs, the vendors were required to stipulate how they would provide training that used the 12 core functions of substance abuse instead of the 5 core problem gambling training and knowledge-based domains that DHHS uses to certify their state gambling counselors. Essentially, then, the DHHS administration put out a substance abuse RFP rather than a problem gambling RFP, and when questioned about it by state committee members, the committee was told that it didn't matter. So the criteria on which gambling counselors in Nebraska have been trained and certified was not reflected in the RFP, and the contracted vendor would then train those same gambling counselors on criteria that didn't match their tests and certification. A third example involves the recent expenditure of state funds to include a problem gambling module in a state prevalence study. Despite a lengthy discussion by the state committee about the merits and disadvantages of a two-year expenditure, during their February 2012 meeting; despite attempts to explain to DHHS administration the methodological difficulties and flawed data that would likely result from the proposed prevalence study questions; despite the state committee's vote against any expenditure for funding of the gambling module in a state prevalence study; and despite the state committee's explicit desire and instruction to revisit the question in one year after more data had been gathered to answer methodological questions, DHHS administration contracted \$26,000 over two years with the Nebraska Behavioral Risk Factor Surveillance System for a two-year expenditure of state monies for the inclusion of a gambling module into the state prevalence study. This expenditure of funds, against the expressed and recorded direction of the state committee, wasn't discovered until their April meeting in 2012, when one of the staff members was going through the gamblers assistance budget. Buried at the bottom of a spreadsheet was "Fiscal Year '12 GAP Quarterly Report as of March 29, 2012," was an expenditure for \$13,000 for the Behavioral Risk Surveillance System. When asked about this expenditure of state monies in opposition to the state committee's expressed direction, DHHS administration then offered to find other DHHS funds to cover the \$13,000 Gamblers Assistance Program monies already paid to the Behavioral Risk Factor Surveillance System. While DHHS administration explained away this expenditure as an urgent matter due to contractual deadlines and the importance of gathering state prevalence rates, I highlight this example as illustrative of how DHHS administration has repeatedly and consciously taken another direction from that of the expertise and research in the problem gambling field. Let me be specific as to the state committee's objections to this particular prevalence study. As a researcher and as a colleague of the author of the gambling module that DHHS wanted to include in the prevalence study, as someone who has also undertaken the prevalence study research of problem gamblers in Florida with this same national author, I knew the

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methodological flaws that were a part of that particular type of survey research. I knew the criticism and the skepticism that this type of research had increasingly received in the published literature. As a result, I knew that what DHHS administration was about to spend \$26,000 on would result in flawed data, and the Gamblers Assistance Program would not ultimately find the numbers that they got from that prevalence study helpful for their prevention or treatment efforts. I knew this because the gambling module and the state survey would rely and reach out to Nebraska's problem gamblers by use of random-digit dialing on landline telephone numbers to survey and gather its data. Problem gamblers, for a host of reasons, which includes finances, age, lifestyle, are much more likely to rely on cell phones and may not be able to afford or are never at home to answer a surveyor trying to reach them on a telephone landline. As the computer science and communication technology and social science researchers succinctly put it: garbage in, garbage out. Unfortunately, the DHHS administration chose, once again, not to listen and to ignore the expertise or the recommendations of the state committee. I'd like to conclude my testimony with two observations of the differences that I encountered as I tried to bring expertise from the national level to the state level. First, in 2008 I was asked to testify before this same committee as they considered LB1058. At that time, I testified in favor of LB1058; and during that same hearing the director of the Division of Behavioral Health also testified in opposition to LB1058, and citing at the time, and I quote from that testimony: A volunteer committee, such as the state committee, should not be legally responsible for funds allocated by the department or to the department...we, the DHHS, still have strong concerns, because the amendment to LB1058 goes further in the direction of allowing volunteers, who are not held to the same level of accountability, training, and supervision as state agencies, to administer the program rather than providing recommendations, which is the function and role of most other state advisory committees. In the intervening years, then, I've learned repeatedly from quite frustrating personal experience just how true that opposing testimony in 2008 continues to reflect DHHS's belief that the state committee has been seen as overstepping its bounds; more importantly, that its members lack the expertise to make good decisions about problem gambling services in Nebraska and that the DHHS knows better. As I said at the beginning of my testimony, I'm here today because I have come to realize that DHHS has decided to enact measures that gradually dismantle Nebraska's problem gambling treatment program. I remain concerned that Nebraska's problem gamblers and their families and their access to treatment from certified professionals in the state has been significantly compromised and that state monies for treatment and prevention programs are being spent on ineffective and misguided initiatives. As a result, I believe the only course to take is a fundamental one, and that is to make a fundamental change as outlined in LB6. Thank you for your attention. I'd be happy to...I hope I went quickly enough. [LB6]

SENATOR KARPISEK: Thank you, Doctor. Senator Coash. [LB6]

SENATOR COASH: Thank you, Chairman Karpisek. Thank you, Dr. McNeilly. In one of

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the examples you gave, you talked about the RFP process of the different...or you talked about the difference in treatment for gambling versus substance abuse. [LB6]

DENNIS McNEILLY: Um-hum. [LB6]

SENATOR COASH: Are those fundamentally different addictions that require different expertise in order to treat them? [LB6]

DENNIS McNEILLY: Yes, for a number of reasons. Most simply and succinctly, the way in which psychiatric diagnoses are made is through the Diagnostic and Statistical Manual of the American Psychiatric Association. That current edition treats substance abuse and substance dependence as a separate...as a true addiction. Compulsive gambling or pathological gambling is still considered an impulse-control disorder. The distinction is, and...is that compulsive gambling would not be...would be seen more as a process addiction, even though they don't use the language of addiction. They don't really categorize it as an addiction even though in the popular culture that's how we would speak of it. The other part of it is, in terms of the treatment, is that there's a number of federal guidelines and federal regulations in terms of substance abuse treatment that have been put forth from SAMHSA. And so those are the guidelines by which substance abuse counselors are trained and how they treat, and there are no such federal guidelines that have ever been created for problem gambling. It's also a difference in terms of training and scope of practice, whereas a substance abuse counselor would not be trained or be necessarily comfortable in treating and spending a lot of time discussing an individual's finances, which is an urgent matter for a compulsive gambler and something that needs to be treated right away. [LB6]

SENATOR COASH: All right. Thank you, Doctor. [LB6]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you for your testimony. [LB6]

DENNIS McNEILLY: Thank you for your attention. [LB6]

SENATOR KARPISEK: Further proponents? How many others do we have who want to testify? You look like you're going to be it. Best for last. Welcome. [LB6]

JANELLE HOLT: Thank you. I apologize for my voice. I work in a hospital and this is frequently the result of working in a hospital. So get ready for something very eloquent. [LB6]

SENATOR KARPISEK: Okay. [LB6]

JANELLE HOLT: (Exhibit 9) Good afternoon, Senator Karpisek, members of the

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General Affairs Committee. My name is Janelle Holt, licensed clinical social worker, J-a-n-e-l-l-e H-o-l-t, and I'm here to speak in support of LB6. I'm currently employed as a medical social worker at Children's Hospital and Medical Center in Omaha. I am triple credentialed as a licensed clinical social worker, licensed drug and alcohol counselor, and certified compulsive gambler counselor. My LADAC and certified compulsive gambling counseling certification are currently in good standing on inactive status. I was a substance abuse counselor at the Nebraska Correctional Youth Facility for a year and a half. I did mental health counseling for approximately a year after that and then ended up working exclusively with problem gamblers for eight years. I have since taken a job working with families and youth at the Children's Hospital and Medical Center. In the summer of 2010, I was asked to be a member of the State Committee on Problem Gambling because of the expertise I could provide to the committee and, in turn, the Gamblers Assistance Program. I began my term in August 2010. I'm here today because I have concerns about the changes that have taken place since my appointment to the committee. I have seen drastic reduction in the decision-making power of the committee members. I experienced frustration at the lack of communication from the Gamblers Assistance Program and wondered how my expertise was to benefit the program. When I was oriented to the role that I hold as a committee member, it was explained to me that the committee members had the decision-making powers that included oversight of the Gamblers Assistance Program. Included in that oversight was the expenditure of funds for outreach and treatment of problem gamblers. Input on education, training, and reimbursement for providers was included as well. During my tenure on the committee, the committee's role in allocating these funds has been decreased to the point where the members have little say in how the Gamblers Assistance Program is run. There have been several instances where the committee's decisions were ignored or overruled. One instance was illustrated quite thoroughly by Dr. McNeilly and needs no more discussion at this time. Another instance involved the decision to change the hotline number, as Jerry spoke of earlier. Historically, on the state committee, RFPs are overseen by committee members and ad hoc work groups. Their recommendations are then to be brought back to the state committee and voted on. In this instance, the final vote for the work force helpline contract was made by the administration based on the RFP scores. This deviation--and I know that you've heard about this and this is probably something that you've heard too much of--but the deviation from a normal process of the state committee has impacted the livelihood of providers and created a barrier for treatment for the consumers. There's been a drastic reduction in those seeking help for gambling problems, due to the mismanaged advertising of the changed helpline. On a personal level, I did not renew my CCGC, my certification as a gambling counselor, for lack of available trainings that fit into my schedule. This has never happened in eight years as a CCGC, my years as a LADAC, and my years as a licensed clinical social worker. A review of the public comment portion of the state committee meetings indicate that providers had concerns with attending and providing training due to the changes made by the Training for Addiction Professionals, the TAP program, that is currently charged with providing the

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training for the gambling counselors. The trainings were changed from one-day sessions to multiple-day sessions, even sometimes up to four days in a row. The reimbursement rate offered to the trainers was not commensurate with the rate for providing therapy. Faced with those changes, several providers reported they could not afford to attend or provide training. Few people can afford to miss almost a week of time. The real issue with that is that you have gambling counselors that are in private practice. They're expected to take away their time from their private practice to provide training for four days, and yet they're not reimbursed at the same rates that they are reimbursed for therapy. Private business owners can't do that. So what we end up with are substance abuse counselors providing gambling training, and we end up with gambling counselors not wanting to learn about gambling from substance abuse counselors because we've been through the training; we could do the training if it was reimbursed properly. Another frustration faced as a member of the state committee is the lack of information provided to state committee members about GAP plans and providers. One such change was the lack of gambling services directed at our youth. And you stole my thunder when you asked about the youth services. It wasn't until the public comment portion of the committee meeting that it was revealed by a provider that GAP doesn't pay for youth treatment of gambling problems. That was never explained to the state committee. That was never even addressed. Nobody on that committee had any knowledge that treatment was being withheld from youth, and the state committee members were shocked when they heard that. As a professional who works with youth, I find this very counterintuitive. Research is very clear that early intervention can greatly reduce the consequences for a gambler. As a testament to this, the GAP, the Gamblers Assistance Program, is funding a Play It Safe campaign through the Nebraska Educational Television aimed at education of college students about the risk of gambling. When questioned about the reason that youth gambling was not reimbursed, DHHS answered that the providers do not have the expertise to treat youth. That is simply untrue. The majority of providers that do gambling counseling are dual credentialed. They are able to treat any age. I ask you, if a college student sees the Play It Safe campaign and presents for treatment, what then? Do we turn them away? Do we tell them to come back when they're 19 and they've created other consequences? Is that ethical? Is that ethical to market education to a population that when they present for treatment we say, no, our hands are tied? The last concern I bring before the committee is the frustration I felt as a committee member when the decisions have been ignored. If my appointment to the committee was based on the expertise that I can bring to the committee, I have to wonder why. I'm currently up for renewal this year and will not seek reappointment because I don't see a reason to maintain my status as a committee member. The continual wearing away of the committee's power by DHHS has turned the committee meetings into a "lunch bunch," of sorts. In evaluating the cost/benefit of missing work compared to the benefit as my role on the committee provides, I've come to one conclusion: Lincoln is a long way to go for lunch. [LB6]

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SENATOR KARPISEK: Thank you, Ms. Holt. Any questions? Senator Bloomfield. [LB6]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. You said you were considering not renewing, Ms. Holt. [LB6]

JANELLE HOLT: Correct. [LB6]

SENATOR BLOOMFIELD: If LB6 were to pass, would you consider serving on that board? [LB6]

JANELLE HOLT: Absolutely. [LB6]

SENATOR BLOOMFIELD: Okay. Thank you. [LB6]

JANELLE HOLT: Absolutely I would. [LB6]

SENATOR KARPISEK: And now he stole my thunder, so we're even. (Laughter) [LB6]

JANELLE HOLT: What goes around comes around, I just got to say. [LB6]

SENATOR KARPISEK: Any other questions? I don't have any either. Thank you. [LB6]

JANELLE HOLT: Okay. Thank you. [LB6]

SENATOR KARPISEK: Any further proponents? Any opponents? Anyone that would like to testify neutral? Seeing none, Senator Krist to close. [LB6]

SENATOR KRIST: For the record and to be as politically correct as I can be, the fiscal note on this whole thing is a joke. There is an implication here that by moving one operation from one code agency to another code agency, that it's going to cost us an incredible amount of money, and I think that's a poor attempt to kill the whole effort by fiscal note. We can deal with that in the executive session. The only other comment I would make is to thank Senator McDonald for not quitting when she was term-limited but continuing to pursue a worthwhile cause. And then to remind this committee and to make another public statement, this is what the people of Nebraska voted for. They voted for a quality problem gambling program that comes out of the revenue that is produced by all of the gambling. And as we have heard so many times in this committee, everyone is against expanded gambling, but it seems the Department of Revenue has added game after game after game. So the revenue has increased; so, logically, there is more money that can be used for this purpose. And with that I'll respectfully take any questions that you might have. [LB6]

SENATOR KARPISEK: Senator Coash. [LB6]

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SENATOR COASH: Thank you, Senator. So LB6...so you must have turned this in on the first day of bill introduction. [LB6]

SENATOR KRIST: Absolutely. [LB6]

SENATOR COASH: So this bill has been out there? [LB6]

SENATOR KRIST: Yeah. [LB6]

SENATOR COASH: Do you think that enacting LB6 will help more problem gamblers in our state? [LB6]

SENATOR KRIST: I think that in the current situation what you've heard, and in layman's terms...and you're in the industry or on the periphery of the industry much more than I am. But in layman's terms, I see three different addictions or afflictions lumped into the same pot, and the actual application of any technical expertise or medical expertise has been removed from the equation. So to answer your question very specifically, I say, yes. When we put the therapists, the doctors, the folks, those nine people that we outlined, back in charge of administering these kinds of services, I think we're going to get more bang for our buck and I think we're going to have better services. [LB6]

SENATOR COASH: I asked that because we get bills in here, as you know, every year to expand gambling, and we've got a whole line of people up here who will get up here and oppose it. And they'll say, you need to help problem gambling; you need to do more to help problem gamblers. I don't see any of those people here today and that frustrates me. That's not on you. Final question: How should we interpret HHS's lack of comment on your bill? We had a couple testifiers--well, all of them--say, you know, these are our frustrations with the department. The department may have some good reasons for doing what they did and chose not to testify. How do we take that? [LB6]

SENATOR KRIST: Sometimes when you come to a hearing like this, and we all know this all too well, you say things that go on the public record and you answer questions directly about how you've been accountable for the citizens' money, for the taxpayers' money and this process. And I can only tell you that from my investigation they have not administered this program in accordance with the statute nor the intent of the problem gamblers fund that was set up over two decades ago. And because it's hard to defend, I guess I wouldn't want to go on the public record as well. [LB6]

SENATOR COASH: All right. Thank you, Senator Krist. [LB6]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Senator

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Johnson. [LB6]

SENATOR JOHNSON: Thank you. Do you believe the tweaks that can improve LB6 over LB1058 will be written in there so this will not happen again? [LB6]

SENATOR KRIST: Senator Johnson, what's written into LB6 was the original intent of LB1058. [LB6]

SENATOR JOHNSON: Okay. [LB6]

SENATOR KRIST: And without compromise, if we stick to the principle and we have the resolve to go forward, it will go a long way to solve the problem. Yes, sir. [LB6]

SENATOR JOHNSON: We don't have to fix it that much. [LB6]

SENATOR KRIST: No. [LB6]

SENATOR JOHNSON: Okay, thank you. [LB6]

SENATOR KRIST: And again, I'd go back to Senator Coash's comments. Do I think...what I think is that that nine...the nine people are designed to have the expertise to fix those problems and use the funds that are intended to be used for the intent purpose of helping out problem gambling in the state. [LB6]

SENATOR JOHNSON: Okay. [LB6]

SENATOR KARPISEK: Thank you, Senator Johnson. I'll be waiting around when you hear about your fiscal note, if you get the same talk I usually get when I talk about them. (Laugh) [LB6]

SENATOR KRIST: We get them all the time. [LB6]

SENATOR KARPISEK: I know. [LB6]

SENATOR KRIST: Thank you, sir. [LB6]

SENATOR KARPISEK: Thank you, Senator Krist. And that will end the hearing on LB6. I'll turn the Chair over to Senator Coash. [LB6]

SENATOR COASH: Okay, Senator Karpisek. You are welcome to open LB579. [LB579]

SENATOR KARPISEK: (Exhibit 10) Thank you, Senator Coash and members of the General Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s

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K-a-r-p-i-s-e-k. And I am from Wilber, W-i-l-b-e-r, Nebraska, and I'm sure if the mayor of Wilber could hear me, he would appreciate my spelling it correctly. (Laughter) LB579 would provide the Nebraska State Patrol with 15 new members, which would allow for additional resources for liquor enforcement. The Liquor Control Commission raised this issue in its legislative letter and this issue came as a result of the increasing number of liquor licenses and the reduction in the number of State Patrol investigators. There are currently 477 sworn officers, which is the lowest that it's been since 1986. The commission is concerned that there are inadequate resources available to administer and enforce the Liquor Control Act. This is not to say that the State Patrol isn't doing its job. I believe the State Patrol is doing a tremendous job with the resources it has, but those resources aren't where they need to be. The intent of LB579 is to have a total of 15 State Patrol members who would spend a majority of their time enforcing the Liquor Control Act. The exact relationship between the Nebraska State Patrol and the Nebraska Liquor Control Commission regarding these 15 investigators would be spelled out in an agreement between the two entities. My understanding is how this would likely be implemented, would be for the State Patrol to assign a total of 15 members experienced in enforcing the Liquor Control Act to spend a majority of their time doing just that. The State Patrol could then have a new basic recruit class to hire 15 new State Patrol members for whatever needs the State Patrol may have. Since I wasn't sure if the green copy was clear as to the intent, I have an amendment available to make sure that it says what it does and does what it says. I believe that this bill will not only help address the commission's enforcement concerns but will help address the State Patrol's general needs as well. The Liquor Control Commission's executive director, Hobie Rupe, is here today and will be available to better articulate the commissioners' concerns. I had a bill last year that would move...or not move, but put some of the inspectors under the Liquor Control Commission, and it didn't go anywhere. I wasn't trying to move troops over, but since they are under the Patrol now, and as I've thought about it, I could see where we would be better off having more liquor control inspectors, officers, under the State Patrol and doing the majority of their time there because, especially, as I said, the troop being at its lowest number since 1986. And I've talked to both the Patrol and to the Liquor Control Commission, and you'll probably hear a little more about that today. But I'd be glad to try to answer any questions. [LB579]

SENATOR COASH: Thank you, Senator. Now, I'll ask the first question. How did you arrive at 15 troopers? I mean, is there a math to this, or...I mean, how did you decide 15 was going to be an appropriate number? [LB579]

SENATOR KARPISEK: What we really started to use was the money that used to be given from the feds, the Byrne dollars for the drug enforcement that has been taken away. So that was 15 troopers. Those jobs have kind of, through attrition or moving, been absorbed, but, of course, that's 15 jobs that weren't funded through Byrne. Talking to the Liquor Control Commission, Hobie will probably tell you that they need somewhere between nine or ten at least, and maybe some could have more than one in

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an area. [LB579]

SENATOR COASH: Okay. Thank you. Any other questions for Chair? Senator Johnson. [LB579]

SENATOR JOHNSON: Yeah, thank you, Senator Coash. We've lost some through attrition, and you feel that most of that, the Liquor Control has lost the most in that, or were we short for many years? [LB579]

SENATOR KARPISEK: No, I think we've been short. Like I say, last year I had a bill to actually put them under the Liquor Control Commission but more than they have now. So I think just with the Patrol being as low as it is on numbers, obviously, so too is their liquor inspectors. [LB579]

SENATOR JOHNSON: So it could be other phases of their responsibilities are short also? [LB579]

SENATOR KARPISEK: Absolutely. I don't want to speak for them, but I think so. [LB579]

SENATOR JOHNSON: Yeah. I mean, I guess, to me, saying we need 15, and it's Liquor Control is saying we're really deficient there, and I'll just...trying to process it. Thank you. [LB579]

SENATOR KARPISEK: And I'd like to make it more clear that that would be their...the majority of their time. I don't want, again, want to speak for them, but when things happen, emergencies happen, you know, it's all-hands-on-deck. So I would say that they have more emergencies when there's less of them, so obviously they spend less time on liquor control. My thought. [LB579]

SENATOR COASH: Senator Bloomfield. [LB579]

SENATOR BLOOMFIELD: Thank you, Senator Coash. Speaking of stealing thunder, that's a question I was going to ask, was your number question. And I look at our old friend the fiscal note and I see \$3 million, plus or minus, over two years. [LB579]

SENATOR KARPISEK: In over two years, yeah. [LB579]

SENATOR BLOOMFIELD: You think you could get by with eight or ten, is that a possibility, if we go there? [LB579]

SENATOR KARPISEK: I think it could be a possibility, you know. Numbers are always, (laugh) we can look at them. Again, I think Hobie can tell you more about what he would

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like to see and... [LB579]

SENATOR BLOOMFIELD: Okay. Thank you. [LB579]

SENATOR KARPISEK: Thank you. [LB579]

SENATOR COASH: Thank you, Senator Bloomfield. Other questions for Senator Karpisek? Seeing none, we'll start with the proponents. Mr. Rupe. [LB579]

HOBERT RUPE: Senator Coash, members of the General Affairs Committee, 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 I think I'll give you a little history of how it used to be and where we've gotten to and where I'm trying to come up with, in the words, I believe, Paul Harvey was the first person...the best guesstimate of what kind of people we would need for enforcement. Up until 1987, the Liquor Control Commission actually had its own inspectors. They were state deputy sheriffs, so they had general arrest powers. Their duties were the enforcement of the act. Back in the late '80s, which, you had, you know, you had a move, not only in Nebraska but also nationally, of trying to get a lot of people which...a lot of disparate agencies had general law enforcement authority, so underneath one agency, for a whole host of reasons including liability insurance, training, all sorts of that sort of thing. And so in '87...actually it happened in 1987, those inspectors were transferred from the commission over to the Nebraska State Patrol. And the budget for those 12...there were 12 of them at that time, were transferred over to the Patrol. In 1988 there were approximately 4,142 licenses of all types. That would break down to a ratio of about 345 licenses per inspector...investigator. All right. Today, through attrition, through other issues, there are probably eight or nine State Patrol investigators who as part of their principal job duties have alcohol enforcement. And I want to preface my further comments saying, I believe the State Patrol does a fantastic job. This is not to push a slight at the Patrol, it's just that as they're being reduced overall, they're being stretched. Oftentimes alcohol...or actually, you know, the premise investigations, background checks, long-term investigations of the hidden ownership are put to a secondary...put to the back burner. The Patrol in a lot of ways in liquor enforcement is in a reactionary stand. You know, they're going out putting out fires. You know, where somebody raised their head, it's, unfortunately, it's a lot like whack-a-mole, which licensees...are there places causing problems, they have to go out and deal with that one. They're not really being proactive on a lot of things by looking into other long-term complaints. And you can see that in the numbers. Let's assume that they have nine individuals who are currently employees, that means part of their enforcement...at least partially for liquor enforcement. If you compare that to the current number of licenses of all types, the ratio of, earlier where I said it was 345, that ratio jumps to 605 currently. Then you have to factor in also the rise in special designated licenses. Those are event licenses. Those are when people do wine tastings, they do street dances, they do fund-raisers. In 1987 there were 222 in the state of Nebraska.

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Last year there were 3,985. That ratio, if you want a ratio, would be about 19 per inspector, versus 443 per investigator currently. So what's happened? Well, we've gotten more licensees in the state because we've got more licensing types. Craft breweries weren't around in 1987. Farm wineries weren't around in 1987. Direct shipping issues, direct shippers weren't around in 1987. You've also seen an increase, actually, in the number of people who get licenses. Grocery stores. Up until the late 1980s, the Supreme Court law, couldn't get a liquor license in certain cities. So you've had a change in how it works. So that's where the...you know, just over 4,000 number back then to almost 5,500 licensees now. You've also seen the number flip-flop from twelve full-time people to nine principal part-time people. How many do I need...would I like to have? Fifteen. How many do I have to have? Well, I certainly would like to at least replace the nine or ten perhaps we've got now. But what you have to look at is the way the Patrol sort of sets up their guidelines. They set up in troop areas, and you have to factor in the number of licensees and the type of problems in there. For instance, you probably would need at least two, if not three, full-time investigators in Troop A in Omaha. You probably would need two and probably a supervisor in headquarters, two in Troop C, one in D, one in E; and although, by numbers, probably one could handle B, but what you factor in, just the absolute huge size of that troop area, you got to remember that one is the one that goes all the way from Valentine all the way to the Missouri River across the northern tier of the state, you know, you probably need two or at least one and a half. So do I think twelve would be a better...if you're wanting to move off the fifteen, would twelve be better? Yes. How would this work? People have asked, you know, how do we know you're going to do majority of them? The problem that happened back in '87, there was no memorandum of understanding between the commission. It was a gentleman's handshake agreement. Okay, we're going to transfer our inspectors over to you, the Patrol, and they became employees of the Patrol; and as they sort of retired or moved out, they were replaced by law enforcement, other troopers, but there was no set forth, what are you going to do, how much time are you going to be spending doing these? And I think that was probably the one error, I mean, if I could go back to 1987 to fix something, that would be what I would have fixed, because without that requirement that would link back to that funding mechanism, that funding back, then, to the twelve full-time, there was no reason...there was nothing to hold the Patrol to make sure they did that. And when they had to cut people across the board, they would cut people across the board including that. You will be hearing, as senators, a lot of requests for General Fund monies. I mean, I can tell you right now there's going to be a lot of people asking for it. I'm going to make you an argument why I believe the commission is somewhat different than almost every other agency. The commission is the second-largest contributor to the General Fund after the Department of Revenue. Last year, we contributed just under \$30 million to the General Fund. Back in 1987, that number was under \$20 million. So in the time period that it has gone, now the number of licenses have gone up, the number of revenues have gone up, the only thing that hasn't gone up is the number of enforcement agents. And that, I think, is the key part of LB579. We're trying to get a...you know, sort of a baseline of how much

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enforcement we're going to have. If you look at the Liquor Control Act, the duties are pretty clear what the state's job duties are. Of course, one is health, safety, and welfare. The other is a level playing field so that everybody is playing by the same set of rules. I think that if you're able to have more enforcement and more dedicated enforcement, we'll probably have more uniform enforcement across the state. That's something that has come up recently when I was going through this as I was working with Patrol to make sure that not only they, but also any law enforcement agency they were working with, was utilizing the compliance checks as we spoke about on the earlier bills. You know, that's an example of, if you have that expertise in the different parts of the state to help coordinate, you're going to have regular, impartial enforcement throughout the state. And so I think that's a very good policy reason, but...you know, you know, why this would be a good policy. I could go on, as you know, I can talk about the history of what happened, how we got here, and probably bore everybody, but it's getting a little bit late, so I would be happy to answer any questions that the committee may have. [LB579]

SENATOR COASH: Thank you, Hobie. How many did we transfer back in the late '80s? [LB579]

HOBERT RUPE: Twelve. [LB579]

SENATOR COASH: Twelve. How many of those are still with the Patrol? [LB579]

HOBERT RUPE: The last one of those retired about two and a half years ago. [LB579]

SENATOR COASH: So all twelve... [LB579]

HOBERT RUPE: All twelve of the old (inaudible). [LB579]

SENATOR COASH: ...with original expertise that went over, now retired. [LB579]

HOBERT RUPE: Are all gone, yeah. [LB579]

SENATOR COASH: All right. Thank you. Any other questions for Hobie? Senator Bloomfield. [LB579]

SENATOR BLOOMFIELD: Thank you. Mr. Rupe, I'm going back to our fiscal note. [LB579]

HOBERT RUPE: Okay. [LB579]

SENATOR BLOOMFIELD: That boils down over the biennium to about \$200,000 per individual, 15, by the \$3 million. If we were to cut that number to ten, is that a direct

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correlation? Am I taking off \$200,000 per body, or is there something else in that?
[LB579]

HOBERT RUPE: Well, yeah, I'd have to look at the fiscal note. I know there were some problems getting the fiscal note from the Patrol, because I believe the person who usually does those was ill and was out. The rule we sort of look at, you know, because we looked at this last year in Senator Karpisek's bill where they would create ours, is your cost of investigator. A Patrol investigator is roughly about \$100,000 per year, ongoing cost. That's going to be salary, benefits, ongoing vehicle at that time. You probably have a front-load in this case because these would be new positions, so there will be an initial outlay in cars, perhaps weapons, that sort of issue would be there. But the rough rule of thumb when I was speaking to the Patrol was the cost of an investigator is roughly about \$100,000 per year. So I think that's where they were coming from that. So ongoing, if you have fifteen, it would be \$1.5 million. It's probably a little higher in the first year because of the initial hardware outlay. So if you reduce it, say, to twelve, it would be \$1.2 million. [LB579]

SENATOR BLOOMFIELD: Okay. Thank you. [LB579]

SENATOR COASH: Thank you, Senator Bloomfield. Any other questions for Hobie?
Senator Johnson. [LB579]

SENATOR JOHNSON: Thank you, Senator Coash. Can you create a parallel, or it appears...and I think there's data out there, I know there is, the increase in crime, the increase in violence, increase of negative acts, and more of it seems to be tied to alcohol. Can there be any parallel between the change in enforcement to what's happening in society? [LB579]

HOBERT RUPE: Yeah, I think you can. You know, there are some great studies. Especially, there's one from...oh, gosh, I'm trying to remember her name, and Nikkie (phonetic) is gone, so I can't look back behind me for it, from UN...she's at Creighton now, was at UNO, which sort of did a study of the amount of crime, and it's based upon the percentage of liquor licenses. You know, the theory behind it is that if you have more liquor licenses, you're going to have a higher concentration of crime. Now, oftentimes, these aren't crimes at that, but they're surrounding crimes. So you just have to be very careful. If you have a bar, a large bar or a large venue, you're going to have more break-ins around as people break into cars, that sort of stuff as well. Where I would look at...why I think it's a...the best thing you can do is, most of the alcohol licensees...it's funny, you know, though, they'll be the first to create the calling tree when the compliance checks are out there, but they'll also be the first to call in if they think somebody is doing something in violation that they can't be doing. And a great example of where you've got a city, for instance, which does an excellent job of proactive alcohol enforcement is actually right here in Lincoln. Lincoln alcohol enforcement is part and

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parcel of LPD's mission. If you're ever in downtown, you'll see actually an on-duty officer walk into a downtown bar probably on a Friday or Saturday night. They're going there to make sure what's going on and what's going on. And the effect that has is twofold. One, the licensees know they're being watched and, two, the patrons know the cops are there, that they're watching them. And so you've sort of got a baseline of control. The same thing happens in areas where you're having common...where you have enough Patrol guys actually able to do enforcement inspections. If people are going in and they're making sure on a regular basis, you know, then the likelihood of them violating the law are lower. I mean, it's, unfortunately, I have to draw it almost to speeding. I mean, if you know there are speed traps out there, you're less likely to speed. And so, but, you know, it's a roundabout way to answer you. More enforcement reduces...equals less serious crimes. I think that's...there's enough studies out there, and I'd be happy to find...there's one doctor who did an excellent version of that and I'll find that and get that information to you, Senator. [LB579]

SENATOR JOHNSON: I think you could probably...if there's a parallel between enforcement and compliance. [LB579]

HOBERT RUPE: Yes. [LB579]

SENATOR JOHNSON: Thank you. [LB579]

HOBERT RUPE: Yep. [LB579]

SENATOR COASH: Thank you, Senator Johnson. I don't see any other questions. Thanks, Hobie. [LB579]

HOBERT RUPE: Thank you. [LB579]

SENATOR COASH: Any other proponents? Welcome, Mr. Brady. [LB579]

JUSTIN BRADY: Senator Coash and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers in support of this bill. They see Nebraska with our three-tiered system and the laws that we have in place are there. They think they're very reasonable, they think they can do what this body has set as the policies of this state. But what we understand from Hobie and through the history, what he needs, or what the commission needs, is people to be able to enforce those laws and make sure that not only licensees are following the law, patrons are following the law, but both taxes, excise and how we talk about the \$30 million, that's the excise taxes that are paid on products, not the sales tax. That would go through the Department of Revenue, which would be another large chunk that this industry puts into the General Fund. And for a reference point, I think that the liquor wholesalers pay...some remit about half of that

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\$30 million, or about \$15 million a year, to the Liquor Commission, and I would ask you to support increased enforcement. With that, I would try to answer any questions. [LB579]

SENATOR COASH: Thank you, Mr. Brady. I have one that, probably more appropriate for Hobie, but I thought of it while you were speaking, that the Patrol, obviously, has enforcement responsibilities with regard to service and compliance with the license requirements of selling to...either on-sale or off-sale. Do your...the group you're representing, does the Patrol interact with them in enforcement with regard to tax payment as well, making sure...you know, auditing books? You know, your members don't serve... [LB579]

JUSTIN BRADY: Correct. [LB579]

SENATOR COASH: ...alcohol, but they have to remit the taxes. Do the Patrol interact with them on compliance of remitting tax as well? [LB579]

JUSTIN BRADY: You know, I don't know that answer 100 percent. You'd have to ask Hobie. I do think...I think Hobie has at the Liquor Commission the ability to do the auditing and look now, yes, if there's, quote, an enforcement mechanism that says we need you to go out and check with this wholesaler as to why it appears 50 cases of something arrived and they only remitted taxes on ten of it, that part, yes, as well as with the licensing, whether it's renewing a license or somebody new moving in, a wholesaler moving into the state saying, I'd like to get a license to be a wholesaler. That investigation, as I understand, can and has been done by law enforcement. [LB579]

SENATOR COASH: Okay. Thanks, Justin. Any other questions? Seeing none, thank you. [LB579]

JUSTIN BRADY: Thank you. [LB579]

SENATOR COASH: Next proponent. Welcome. [LB579]

JOSEPH KOHOUT: Senator Coash, members of the General Affairs Committee, Joe Kohout, K-o-h-o-u-t, appearing today on behalf of the Associated Beverage Distributors of Nebraska and Nebraska's beer wholesalers. Much like what Mr. Brady just said, our members interact with the commission...or, excuse me, with the State Patrol at a very different level, and that is not only on the tax issue, which, to answer your question, Senator Coash, they do have that responsibility, but, too, impermissible ownership. You know, this body a couple of years ago passed LB279, which was very important to our membership in terms of who can and can't own a beer distributorship. That's the Patrol's...that's within the Patrol's control to...or within their bailiwick to go and negotiate or to investigate those things. So I would just say that. And the other thing, and I was

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just reminded by Mr. Rupe, you know, one of the largest liquor investigations in the state's history involved...was last year and it involved a distributorship, ensuring that the products that they had said had left the warehouse, in fact, did leave the warehouse. So one thing I would just say is, this is very important, and it's important to us at a different level than just service. And so for that reason we support the bill. [LB579]

SENATOR COASH: Thank you, Joe. Would that, the investigation that you refer to, so is the Patrol the lead investigation agency on that? Okay. Thank you. [LB579]

JOSEPH KOHOUT: Yes. Yes, that's my understanding. [LB579]

SENATOR COASH: Any questions for Joe? Senator Krist. [LB579]

SENATOR KRIST: So adding these investigators to the commission would speed up the process in the event that we do have another wholesale issue, and the products would be more available in a shorter period of time? [LB579]

JOSEPH KOHOUT: Well, I think from a...no, no, I think from a different perspective. I think when you have to...when you have a limited number of investigators, you have to triage those issues, so during that period of time are they able to do the other things that need to be done. So I think from that perspective, it's not a product question as much as it is about where the...the timing of the investigation. [LB579]

SENATOR KRIST: I'm kind of (inaudible) in the fact that while that was going on there were certain members of my constituency that couldn't get the product that they needed because things were locked up. (Laughter) So more investigators would mean...if we do have a...yeah, there you go. [LB579]

JOSEPH KOHOUT: Understood. [LB579]

SENATOR COASH: Thank you, Senator Krist. Any other questions for Joe? Seeing none, thank you. [LB579]

JOSEPH KOHOUT: Thank you. [LB579]

SENATOR COASH: Welcome. [LB579]

JON EDWARDS: Good afternoon, Vice Chair Coash, members of the committee, my name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm here today representing Anheuser-Busch companies in support of LB579. Just very briefly, Anheuser-Busch supports strong enforcement efforts as related to current laws, rules, and regulations associated with standards, guidelines, and laws that govern sale and consumption of alcohol. This proposal is a tool that will help to strengthen such enforcement efforts. And as such, in

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this case, we support the commission's efforts and support the current proposal before you. And with that, I'll conclude my testimony. Thanks. [LB579]

SENATOR COASH: Thank you, Mr. Edwards. Any questions for Jon? Seeing none, thank you. [LB579]

JON EDWARDS: Thanks. [LB579]

SENATOR COASH: Any other proponents? Seeing none, is there anyone here to testify in opposition? Welcome back, Mr. Moylan. [LB579]

JIM MOYLAN: (Exhibits 11 and 12) Jim Moylan again, J-i-m M-o-y-l-a-n, and I'm here to represent the liquor retailers in the state, which, of course, get the brunt of all the enforcement. I don't know that the wholesalers, who just testified, you know, get too much of the brunt of it, you know. There are so few of them and the commission has a pretty good handle on them. But, anyhow, we notice that's the Liquor Control Commission, not enforcement, not conviction commission, you know, or that type of thing. It's control. You got to just, you know, control it. Now, I've got a few things here I'd like to pass out for you to look at. Probably something that you can read at bedtime tonight. First, here is a list of all the cities and the class that they're in. And we're not against enforcement, but I think we've always said before, we think it ought to be local enforcement. Who knows the places in these localities better than your local police or your local sheriff? Now, here's the law enforcement's personnel and the law enforcement coverage as of October 31, 2011. And it will kind of show you, you know, what we have. Now, we have Omaha, a large police department, metropolitan-class city, then we got the primary-class city, Lincoln, and, of course, they have their own department. And then as you go through this, you'll see that there's 31 first-class cities. And, of course, those are large enough to have their own police department. And in here it will show you the number of personnel, sworn officers, female officers, in each one of those cities. All right. And then there's 35 cities under 5,000, called second-class cities. And most all of those have their own, you know, law enforcement also. Now, some of them contract them out, you know, to the sheriff's office. A total of 530 cities, 93 counties, in which we have sheriffs. Now the first couple of pages shows you the counties and the number of sheriffs and deputy sheriffs, you know, that they have. And there's plenty of them. All right. Now, the cities over 5,000 population, they're listed in here, and it shows the number of police departments, you know, that they have and how many sworn male officers, female officers, and other-type employees. Omaha is the largest, with 632 as of this report and 146 female officers. All right. Then you've got the cities under 5,000 population there, second-class cities, basically. And some of them are contracted out to the...some of them, not too many of them; they have pretty much their own police force also. But some of them also contract, you know, with the county sheriff to handle their enforcement. All right, and then we got the state agency. This shows 445 male, 25 female sworn officers, and it shows all of the other civilian

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personnel there. Now, the last few pages shows each county that has a contract with local subdivisions, and there are 125 local, small villages that contract with the county sheriff for their enforcement. Now, when you look at all this, we've got enough enforcement out there to take care of this. The commission is the only agency that I know of that has to have a second layer of enforcement, mostly over the retail industry throughout the state. And like I said, who knows the locals better? Most of the complaints that come to the commission come through your local police departments or the sheriff's offices, and there's just...there's no better now. Now, you're thinking about the cost of the thing; I agree, it's going to be a costly thing. And I was around when they had the twelve inspectors and I was here when Governor Kerrey said, I want them over at the State Patrol, and that's what happened back then, when Bob Tagg was the head of the Patrol. Now it looks like the commission wants to bring them back in and make them pretty much part of the commission, and it's really not needed. Now, if you want to give them some officers, why don't you give the State Patrol more officers and let them do their duties other than liquor? Because you've got enough, you know, persons around there to take care of it on a local subdivision basis. So we recommend that you save the money and not pass the bill, or give the money to the Patrol if they're short, let them hire new officers. That's not saying that they don't...can't function in this area. You know, if you find a county where the county sheriff is not doing his duty with respect to liquor licenses, they could still come in, but I don't think we need a second layer of bureaucracy out there. Just monitor, you know, all the liquor licenses, when they're, by and large, good solid citizens, you know, in every area of the state. So I recommend that you not pass the bill, or not advance it out, or if you do, give those people to, you know, the State Patrol and let them go about everything except liquor. If you have any questions, I'd be happy to try to answer them. [LB579]

SENATOR COASH: Thank you, Mr. Moylan. I think I understand where you come from. Senator Johnson, do you have a question? [LB579]

SENATOR JOHNSON: Question as a freshman that I should know, probably, the answer. Is it the responsibility of the State Patrol to do the compliance, or can it be given to the local sheriff or the local police department? [LB579]

JIM MOYLAN: Well, over the years when they had those federal grants of over a half million dollars a year to run those compliance checks, they were using county sheriffs, Omaha police officers in that area; Bellevue, Papillion, they used local police officers too. So they don't need the State Patrol to do it, you know, they can...and they were using them regularly. I don't know how many of those are taking place right now, because they've lost their funding. [LB579]

SENATOR JOHNSON: Excuse me, I was thinking broader than the compliance checks that we talked about earlier today. [LB579]

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JIM MOYLAN: Yeah. [LB579]

SENATOR JOHNSON: I'm talking about the other requirements that are out there in order to check to make sure that the license is being followed through the law and those type of investigations. Is that a, by statute, supposed to be done by State Patrol or can it be done by county or city officials? [LB579]

JIM MOYLAN: Well, no, I...well, the local police or sheriffs can enforce, you know, any law in the state of Nebraska, which, you know, they do, and includes...I mean, like I say, a lot of the complaints that come to the Liquor Commission come from investigations by the local police department of the local licensees and they'll make a report. Say there's been a fight in a bar in Omaha, you know, and they're some intoxicated people or something, they'll make up a report, send it to the Liquor Commission, and the commission then notifies that establishment, you know, to appear before them. So a lot of that is being done by the locals now anyhow, so I don't think there's any need for State Patrol. [LB579]

SENATOR JOHNSON: Thank you. [LB579]

SENATOR COASH: Thank you, Mr. Moylan. I don't see any other questions. [LB579]

JIM MOYLAN: Thank you. [LB579]

SENATOR COASH: Next testimony in opposition. [LB579]

KATHY SIEFKEN: Good afternoon. Kathy Siefken, Nebraska Grocery Industry Association, K-a-t-h-y S-i-e-f-k-e-n, and we are opposed to this bill simply because the Liquor Control Commission does a darn good job right now enforcing liquor laws in the state of Nebraska. Secondly, \$3 million is a lot of money. We think they are doing an exceptionally good job. Twenty years ago I wasn't a lobbyist, either. Life changes, your job changes, you evolve, and you do what...you do the best you can with what you've got. And frankly, I think the Liquor Control Commission has done a phenomenal job in enforcing liquor laws in this state. With that, if you have any questions, I'd be happy to try to answer them. [LB579]

SENATOR COASH: Kathy, I have a bill in Appropriations to appropriate a half million dollars to the State Patrol for enforcement of child pornographers. Are you going to come and oppose that one too? [LB579]

KATHY SIEFKEN: No, I'm not. [LB579]

SENATOR COASH: Okay. [LB579]

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KATHY SIEFKEN: You know, the thing is, they probably do need more money and more enforcement out there, but 15 officers and \$3 million? That's a lot. [LB579]

SENATOR COASH: Is there a number you're more comfortable with? [LB579]

KATHY SIEFKEN: That's up to you. [LB579]

SENATOR COASH: Okay. All right. Thank you. Senator Bloomfield. [LB579]

SENATOR BLOOMFIELD: That's the question I was going to ask, if you were more comfortable with ten than fifteen due to the fiscal note, and is the fiscal note your only issue here? [LB579]

KATHY SIEFKEN: You know, when you're in the grocery industry and your net profits are 1 percent, you try to get blood out of a turnip. That's all...you know, that's what it comes down to. And so we are fiscally frugal, to put it mildly. And again, \$3 million and 15 officers seems like a lot. It's up to this committee what you're going to pass out of committee. It just seems like that...that is a big number, and I would appreciate your consideration of those comments and those observations. [LB579]

SENATOR BLOOMFIELD: I concur that's a large number. Thank you. [LB579]

KATHY SIEFKEN: Thank you. [LB579]

SENATOR COASH: Thanks, Kathy. Thanks, Senator Bloomfield. I don't see any more questions. Thanks, Kathy. [LB579]

KATHY SIEFKEN: Thank you. [LB579]

SENATOR COASH: Any other opponents? Seeing none, any neutral testimony? Senator Karpisek, take us home. [LB579]

SENATOR KARPISEK: I was going to sing a song about going home, but we've had enough singing on the mike lately, so I won't. (Laughter) I agree, the \$3 million is a big number. You know, and we can talk about if there's a number somewhere lower, higher, whatever we want to talk about, and I'm fine with that. That's what we do. As Hobie said, they bring in about \$30 million a year now. That money goes all over. If I had my druthers, I'd earmark some money just for this, but if any of you have ever tried to earmark any money around here, you know better than to try that. So that would be, I think, the way to go, but there's only the earmarks that we like and the ones we don't like, so this would be one I'm sure that we wouldn't like. But I think that we do bring in the money and they do do a good job. And the Patrol does a good job and the Liquor Control Commission does a good job. I hope no one thinks that by bringing this bill I'm

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saying they're not, but I think that the job could be done better and maybe easier. One big problem is that new licensees have to go through background checks and that sort of thing. So sometimes it really takes a long time because we don't have the people to do things that the inspectors have to go out to the business and inspect. And when you don't have too many, it can take a long time. And if you're the person on the other end with a note coming due, and you can't get your bar open because you're waiting on the commission to get your license, you're not real happy, and you're not a very patient person, so...I think it all ties in with that our troops are low right now. It ties in that I think they need more inspectors. They, again, had them. They went over to the Patrol. Those people are all gone. We can argue that all day, it doesn't matter, it happened. I just think that they can do things a little easier, a little better for everyone. It is a...we sit here and we hear a lot of things about our liquor industry, how bad it is, those sort of things, and I get tired of hearing that and I think sometimes if we can be proactive and put out a good face, that maybe we can save a lot of those issues, and that's why I bring the bill. Thank you. [LB579]

SENATOR COASH: Thank you, Senator Karpisek. Any final questions? Senator Bloomfield's got one more for you. [LB579]

SENATOR BLOOMFIELD: If we were to increase this number up to the 15 additional you would like, is that going to increase the amount of proceeds they bring in? [LB579]

SENATOR KARPISEK: Not to the state, no. They might bring more to the schools but not to... [LB579]

SENATOR BLOOMFIELD: Not to the state itself. I didn't think it would, but I wasn't sure. [LB579]

SENATOR KARPISEK: No, no, it would just...maybe they could do it faster. I would say that they would probably find more violations; but, again, those go to the schools. So maybe you would be cutting property taxes, Senator Bloomfield. [LB579]

SENATOR BLOOMFIELD: It would be a wonderful idea. (Laughter) [LB579]

SENATOR COASH: Thanks, Senator Karpisek. I don't see any more questions. [LB579]

SENATOR KARPISEK: Thank you. [LB579]

SENATOR COASH: That will close the hearings for today. [LB579]