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General Affairs Committee
October 23, 2015

[LR287 LR289]

The Committee on General Affairs met at 10:00 a.m. on Friday, October 23, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR287 and LR289. Senators present: Tyson Larson, Chairperson; Colby Coash, Vice Chairperson; Matt Hansen; Dan Hughes; Mark Kolterman; John McCollister; Merv Riepe; and Ken Schilz. Senators absent: None.

SENATOR LARSON: Welcome to the General Affairs Committee. I am Senator Tyson Larson of O'Neill, Chairman of the committee. Thank you for attending. I'll introduce my fellow senators. To my far left we'll have Senator Kolterman of Seward; we have Senator Hansen of Lincoln; we have Vice Chair Senator Colby Coash of Lincoln as well; I have Josh Eickmeier, Mayor of Seward and my legal counsel; to my far right, Jeff Fryman, our committee clerk; Senator Riepe of Ralston/Omaha; Senator McCollister of Omaha; Senator Hughes of the great city of Venango; and Senator Schilz of Ogallala. Thank you all. And our...I'm blanking on my page's name and I know it.

RYAN MacDONALD: Ryan.

SENATOR LARSON: Ryan. Thank you. (Laugh) It's been too long since May. I'm sorry. There are three different sign-in sheets located on the tables in the back of the room. One sign-in sheet are for those who are not publicly testifying but want their presence and position noted as an exhibit in the official records of the committee; a second sign-in sheet for those who are present at the committee hearing and who offered written testimony in lieu of testifying, which will be noted on the committee statement; and the third sign-in sheet is for anyone planning on testifying before the committee. When it is your turn to testify, give your sign-in sheet to the page so that they can give it to the committee clerk. This will help us keep a more accurate record. After the introduction, the Chair will ask for testimony from the public. So I will introduce both our resolutions today and then I will invite testimony up. When you come up to testify, please speak clearly into the microphone. Please tell us your name and please spell both the first and last name. Also, please tell us whom you're representing, if anyone. When we are using...or, we will be using the light system today for our hearings. Testifiers will have five minutes, especially in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

the second hearing, which will be represented by a green light when you begin and an amber light when you have one minute remaining and then the red light and your time will be up, at which point I will stop you. Please turn on your cell...or please turn off your cell phones or any other electronic devices or put them on silent mode. Please keep your conversations to a minimum or take them out into the hallway. The General Affairs Committee is participating in a pilot program to go paperless as much as we can. Therefore, we are only accepting handouts and written testimony electronically. If you do have written testimony that you brought that you would like to get to the committee, please hand it to our committee...or the page and the page will get it to our committee clerk to get it scanned in and we will send it out to the senators. Due to this new policy, if you do want paper copies, we can try to accommodate you and we do not allow other visual aids or display items. Because this committee is going paperless, senators are allowed and even encouraged to use electronic devices during the hearings. Thank you for your cooperation. And as my legal counsel today, we will be switching the order today and we will begin today's hearings with LR289, which I will introduce. I will go to the testifier's chair and then I'll come back and run the hearing. So do you have any questions for me? Thank you, members of the General Affairs Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n. I represent O'Neill, Nebraska, and the 40th Legislative District. I understand that alcohol has a sordid past in this country and is still viewed by some as a tabu. I believe that this has led to a policy of inconsistencies in the United States such as someone who is 18 can vote and enlist in the military but cannot purchase or consume alcohol. I believe that the University of Nebraska also has an inconsistent policy when it comes to alcohol on campus. But before I go into that, I would like to share a little of my own experience from college in Washington, D.C. I attended a university that had an alcohol policy that taught its students about being responsible with alcohol by creating an environment where students who were 21 could consume alcohol with their friends in their campus residence by registering their party with campus authorities. I believe that many of the issues associated with alcohol consumption, such as drinking and driving, public intoxication, and other offenses, tend to be more prevalent...excuse me. I believe that many issues associated with alcohol consumption, such as drinking and driving, public intoxication, and other offenses that tend to be more prevalent when consuming alcohol off campus would be curbed by allowing consumption in campus residences by those who are 21 and older. When issues did arise, campus security was able to handle the situation and violations were pursued through campus disciplinary process. The college experience should be a healthy balance of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

academics and student life outside of the classroom. Whether people want to talk about it or not, alcohol is often part of that experience. So pushing students off campus to consume alcohol misses an opportunity to educate students on personal responsibility by providing a safe environment in which to consume alcohol on campus. This is where the inconsistency occurs. It would be easier for me to understand and accept the university's alcohol policy if it were 100 percent dry campus by never allowing alcohol on campus. However, the university does sanction drinking on campus. In fact, UNL has been for years the recipient of so many special designated liquor licenses over the years that the Liquor Control Commission had previously requested that the Legislature look at ways to reduce that number. This is why I believe that the University of Nebraska does have an inconsistent and perhaps hypocritical policy when it comes to alcohol. On a side note, it will be interesting to see how future debates go regarding alcohol at UNL sporting events. Venues such as the Pinnacle Bank Arena and Haymarket Park already sell alcohol for non-university events, so it isn't like the venues that are ill-equipped to handle it. Creighton University doesn't seem to have an issue with alcohol being sold at CenturyLink Arena for its sporting events. In fact, there is actually an exception in the Liquor Control Act to allow there to be a bar on Creighton's campus. Looking around the state, you see various policies regarding alcohol on campuses. For example, Doane College in Crete allows for consumption and possession of alcoholic beverages by a person of the legal age in their private room, suite, or quad area as long as everyone in the room is at least 21 years old. The room has to be...has to have been registered and approved by Residence Life as an alcohol-tolerant room. An alcohol-tolerant room contract is posted in plain sight in the room and is available for inspection by the Safety Office or Residence Life staff. And minors cannot be present when alcohol is visibly present or being consumed. If minors are discovered consuming alcohol then the residents will be referred to the Judicial Affairs Office within the university. Nebraska Wesleyan here in Lincoln has a similar policy that allows students to declare their rooms as alcohol-tolerant or alcohol-free. If they are alcohol-tolerant, they must comply with Wesleyan's alcohol policies. I know that it is tempting to say that these examples are private universities with relatively small student populations, so let me give you one more example. The University of Wisconsin-Madison had roughly 43,000 students in 2014 compared to the approximately 25,000 students enrolled at UNL. UW-Madison allows for the consumption of alcohol within a student's residence as long as they comply with the university policy and state law. So it seems to me that there are models out there that the University of Nebraska could consider if it wanted to explore

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

a more reasonable alcohol policy on its campuses. Thank you and I'd be happy to answer any questions from the committee before I resume the Chairmanship. [LR289]

SENATOR COASH: All right. Thank you, Senator Larson. I'm going to start. Where does the decision for whether or not alcohol is allowed on the university...in the university lie? Is this a president decision? Is it a Regents' decision? [LR289]

SENATOR LARSON: It's my understanding that it is the Regents' decision right now. I think Chancellor Perlman is going to address us. And you know, obviously, things can be affected by what the chancellor thinks or what our new president, Hank Bounds, thinks in terms of how they communicate with the Regents. But currently, it is my understanding that the dry campus is instituted by the Regents. However, the SDLs that the university gets, which is essentially an excessive amount, as we've heard from the Liquor Control Commission and whatnot, that's handled through the city and the Liquor Control Commission, as we've laid out through our legislative process. [LR289]

SENATOR COASH: So I'm just trying to get a little bit of foundation as to why we're having this interim hearing, because there's no prohibition under the current statute that prohibits the Regents to go to another...and to allow it under whatever... [LR289]

SENATOR LARSON: Oh, yeah. [LR289]

SENATOR COASH: ...rules and regs they want to. Is that correct? [LR289]

SENATOR LARSON: That's correct. Essentially, especially with the issues that I think we've seen on campus with the tragic occurrences that we've seen. And then I think we've seen an increase of, how do I want to say, incidents spreading off campus oftentimes that deal with alcohol-related topics, and whether that's fights or students receiving DUIs or things of that nature, I think this is an issue that we need to talk about with the university directly related to, as I said, the SDL issue of how many. When we have the Liquor Control Commission coming in to us and asking us, like, hey, how do we limit SDLs because the university is receiving so many, you know, I think that leads us to a larger discussion of what is the university's overall alcohol

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

policy. Could we tell them that it has to be a wet campus? Probably. Do we necessarily want to? You know, that's going to be up to the committee and the Legislature as a whole. That doesn't mean that we shouldn't be talking about the issue and the issues that are spilling out into the community around the university. [LR289]

SENATOR COASH: But...I appreciate that. I just want to be clear. If the majority of the Regents decided this was good policy, they don't have to come to the Legislature and ask for a change in statute to do so. [LR289]

SENATOR LARSON: No, they don't. [LR289]

SENATOR COASH: My second question then is with regard to the SDLs, because I've been on this committee seven years and we've heard about the...I don't want to say inordinate but a lot of SDLs that the university gets. And it's not always just the university. It's rentals of property on the university. Tell me if you know what...if the Regents tomorrow decided that alcohol was allowed on campus, would the SDL situation go away? [LR289]

SENATOR LARSON: I think that would then allow the university...I would have to...Hobie would know better, obviously. He's following. But if I follow the liquor laws the right way in my head, I think a lot of the SDL issue could go away because that would allow the university to just have alcohol on campus; therefore, they wouldn't need a SDL to... [LR289]

JOSH EICKMEIER: (Inaudible)...difference between the sale and the consumption? [LR289]

SENATOR COASH: Yeah. [LR289]

SENATOR LARSON: Yeah. [LR289]

SENATOR COASH: There's, I mean, we're talking about the SDLs allow for the sale. [LR289]

SENATOR LARSON: Yes. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR COASH: Right? And so that's a different issue than just permitting the consumption. [LR289]

SENATOR LARSON: If we were to allow that wet campus, most of the university issues, they have open bars anyway. [LR289]

SENATOR COASH: Uh-huh. [LR289]

SENATOR LARSON: So they need that to allow the consumption in and of itself, I would think. That's why they have to have that SDL. Again, Hobie might be better equipped to answer that. [LR289]

SENATOR COASH: All right. I'll tee that up for him, but I... [LR289]

SENATOR LARSON: But I think a lot of it could be solved with the...with moving that to the wet campus because the university themselves could own the alcohol possibly. [LR289]

SENATOR COASH: Okay. Okay. We'll let Hobie deal with that. Senator Riepe has a question. [LR289]

SENATOR RIEPE: Thank you, Senator Coash. Senator, a question I have, because obviously one size does not fit all, do we have a...and I know you said at Creighton, which is a private university, so I rather set them aside. And we talked about Madison and that's a little bit left of the left, and so I question that. But, you know, is there a benchmark that's used by the Nebraska system that is...maybe it's all the Big Ten schools that are public schools, that's a little bit broader than a Madison? I would expect Madison, quite frankly, anything goes, but. [LR289]

SENATOR LARSON: Have you been to Madison on game day? I recognize that mantra. (Laugh) [LR289]

SENATOR RIEPE: Well, maybe not just game day. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Well, that could be true. I think that as we move forward, I'm happy to continue to explore other Big Ten universities', you know, universe. I think when we actually look at many of those universities that we associate ourselves in the Big Ten, a lot of them are probably what we would in our state and you and I, Senator Riepe, consider left of the left considering how far we are on the other side. So...but I would be happy to look at, you know, University of Iowa and Illinois and Michigan and all those schools to help the university craft a more responsible alcohol policy. Because again, the concept comes to these decisions are driving individuals off campus that do create more problems and life-altering issues at some point for these kids, whether that's, you know, DUIs. And you know, we can thank Uber and Lyft to lower the number of those. We legalized those last year so that will help a little bit but...as well as crime and fights off campus and things of that nature that could...would be better handled within the university themselves. [LR289]

SENATOR RIEPE: We'll have the advantage of the chancellor's testimony as well that he will probably bring some insight on... [LR289]

SENATOR LARSON: Yes, I have been informed that Chancellor Perlman will be following... [LR289]

SENATOR RIEPE: Okay. [LR289]

SENATOR LARSON: ...to discuss the issue and we'll be able to...all of us will be able to question him. [LR289]

SENATOR RIEPE: Okay. Thank you very much. [LR289]

SENATOR COASH: Senator McCollister. [LR289]

SENATOR McCOLLISTER: Yeah, thank you, Senator. Mr. Chairman, certainly Nebraska isn't the only university that has considered changing their...the status of alcohol on campus. Is it...do you have any case studies to show that universities that have switched their policy and what the result has been? [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: We haven't found any specific ones that switched and did a case study. We focused a lot on, through the interim study, universities that had different alcohol policies and how that has related to the drop in, you know, DUIs, fights on campus, you know, just the more tolerant, how that has actually helped not let everything spill out into the community. Because when you can control it in a small area, as we've seen, you know, happen whether it's Doane or Wesleyan, it's not the larger universities such as Nebraska, but they don't necessarily have the same issues that the University of Nebraska has, and that's concerning. [LR289]

SENATOR McCOLLISTER: Yeah. In the research that you've done, does that fortify your assertions or... [LR289]

SENATOR LARSON: Yeah. [LR289]

SENATOR McCOLLISTER: ...is it inconclusive? [LR289]

SENATOR LARSON: No, I think that it does fortify those assertions that when you have a policy that is accepting of those that are at least of age, that it does make for a more conducive environment to even learning. I mean the whole point of a university education is to allow these young adults to grow and gain responsibility. And by telling them that even once they're 21 they still aren't responsible enough to drink on campus I think is taking away or telling them that they still don't know what the best decision for them is. And you can go and say, well, they're still making the decision to go drink off campus and then try to drive back on or whatnot. Well, that's not necessarily a good point by the university because that's not what they want either. It's about fostering a type of environment that can help make the right decision and offer the proper guidance. [LR289]

SENATOR McCOLLISTER: Thank you. Thank you. [LR289]

SENATOR COASH: Seeing no other questions, thank you, Senator Larson. [LR289]

SENATOR LARSON: Thank you. How many... [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: Could we have two people up here at the same time? [LR289]

SENATOR LARSON: Yeah. How many testifiers am I going to have on LR289? [LR289]

HARVEY PERLMAN: Two of us from the university. [LR289]

SENATOR LARSON: Just you two? [LR289]

HARVEY PERLMAN: I don't know about others. [LR289]

SENATOR LARSON: Yeah, for you and one more back there. [LR289]

JOSH EICKMEIER: Two more. [LR289]

SENATOR LARSON: Two more? [LR289]

HOBERT RUPE: If you want me (inaudible). [LR289]

SENATOR LARSON: Okay. Well, I'll probably have you come up, Hobie, at the end. And then who else? Nicole? All right. Where is Nicole at? [LR289]

JOSH EICKMEIER: She's right there. [LR289]

SENATOR LARSON: How long are you going to need, Nicole? [LR289]

NICOLE CARRITT: I'm (inaudible). [LR289]

SENATOR LARSON: I'm going to let, if it's okay with you, I'm going to let the university because if it's more than five minutes that's fine, Harvey, because there's only two testifiers. [LR289]

HARVEY PERLMAN: Okay. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: And then I'll open it up to questions from the committee. So take your time. And, Nicole, if you need a little more than five, since there's not many here for this one. [LR289]

HARVEY PERLMAN: Okay? [LR289]

SENATOR LARSON: Thank you. [LR289]

HARVEY PERLMAN: Thank you, Mr. Chairman. I'm Harvey Perlman, H-a-r-v-e-y P-e-r-l-m-a-n, and I have with me Linda Major, L-i-n-d-a M-a-j-o-r, and we're representing the University of Nebraska-Lincoln. Obviously, I'm chancellor of the university. Linda is in our Student Affairs Division and works actively and well with issues associated with alcohol and student activity on campus. She has got a lot of the data that you may want, and that's why I had invited her to join me here. But let me first talk generally about the policies and about my impressions of them. You know, I acknowledge, as I think all of us know, that alcohol is a serious problem on every university campus and it's one that we spend considerable time worrying about and trying to deal with. Anytime you gather a large number of students of this particular demographic age, alcohol is going to be an issue. They try new things. They are free from their parents' control and there's a wide variety of things that explain that. We've had, as other universities have had, serious, direct, tragic consequences from the use of alcohol. A young man died last year. We have other questions. We face right now a very significant inquiry by the federal government and others about Title IX and we know that...in terms of sexual harassment, sexual abuse. And we know that there is a direct connection in many cases between sexual misconduct and alcohol use. So this is not a...this is not a subject that we take lightly and it's one that we work hard on and consider our policies in a serious way. My sense is that this is not a problem that is subject to easy or simple answers and that most environments are contextual. So what happens at one university may or may not necessarily fit the traditions of the other. To clarify the university's policy, we are not a dry campus in the sense that no alcohol ever appears on the campus. Board of Regents has control over what the alcohol consumption policies would be. They have delegated to the president and to the chancellors decision about when and when not alcohol will be permitted. And so anyone who wants to serve alcohol on the campus must get my office's permission in order to do so. The SDL situation is a situation that applies only when you're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

selling it as opposed to just hosting it. And in partnership with the Liquor Control Commission, we have significantly reduced the number of SDLs we've had to request. These are things like the Alumni Association that would have a Friday event before the football game, or others where people would have to buy their liquor as opposed to having it provided by the host. So our rules are clear that if there are underage minors there then you can't do it. We require and have control over the supervision of the event. We are...we require that they be...that any of these events be...the liquor be served by a licensed provider of alcohol so that they have their own reputation at risk with respect to whether they sell to minors or not. You know, after talking with our people, again, I don't think there are simple answers. If you think about...and I don't think there are common answers. I think this is an issue that's best used...best left to the universities involved. If you think about the Lincoln campus, for example, the only students that are required to live in our housing are freshmen students. Largely...large bulk of them would be under the age of 21. There are clearly people over the age of 21 in our housing and certainly the fraternities and sororities have people living there that are over the age of 21 but probably not the dominant demographic in any of that housing. If you're concerned about the issue that Senator Larson is concerned about with respect to traveling long distances and then coming back to the campus, if you wander around our campus right now there are about 2,000 units of student housing that are not regulated by the university that are either under construction or have been constructed in the last two years. So students over the age of 21 who want to basically live adjacent to the campus and avoid the regulations that the university imposes are clearly free to do so. So I would just invite you to be cautious here. There are unintended consequences and I think the best way to deal with them would be through allowing the universities to adopt the policies that best seem to fit our circumstances. As Senator Riepe indicated, we are not Madison. We're not Ohio State. You know, I'm fond of telling the first trip I took to Madison for the football...first Big Ten football game, they had the 42nd annual medical marijuana campus...convention on campus that Saturday, and there were an awful lot of sick people there. So I would invite Linda, who really I...you know, the University of Nebraska has a national reputation for being successful in dealing with alcohol issues and Linda has been largely responsible for that. And I would give Linda an opportunity to make some remarks, and then we'd be happy to answer any questions you would have if that's all right, Senator. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

LINDA MAJOR: Thank you, Chancellor Perlman. Good morning. As Chancellor Perlman said, my name is Linda Major and I currently serve as the assistant to the vice chancellor student affairs at UNL and I, too, want to thank Senator Larson and the members of the General Affairs Committee for the opportunity to testify today. In my position I am responsible for coordinating UNL's comprehensive response to reduce high-risk drinking among our students. I've been involved in UNL's prevention and intervention effort since 1996 when I was hired to coordinate the campus alcohol and other drug program. UNL has a long and well-documented history of addressing high-risk drinking among our college students. Through funds provided by the Robert Wood Johnson Foundation in 1988, UNL, in collaboration with the city of Lincoln, adopted an environmental management approach guided by a campus community coalition often referred to as New Directions. Using a variety of data, the coalition employed a combination of policy, education, and enforcement strategies to impact the environments where students are most likely to engage in high-risk or binge drinking. These efforts continue today at the campus, community, and statewide level, including UNO and UNK, who have chosen to replicate our efforts. The collective efforts of the UNL campus and the city of Lincoln realized meaningful success. In 1997, our benchmark year, the UNL student binge rate was 62.4 percent. Today the UNL student binge rate remains at or below the national average. Our most recent data suggests that approximately 37 percent of UNL students engaged in binge drinking in the past two weeks, which is a 41 percent decline. In addition to our binge rate, we track primary harms, which are harms to the drinker, some of which were mentioned by Senator Larson, and secondary harms, which are harms to others, all of which continue to trend down along with the campus binge rate. UNL is nationally recognized for their efforts and we're often cited as a gold standard for the collaborative approach between the city of Lincoln and the campus. Within a nine-year period, 2005 to 2013, efforts to reduce young adult partying in the surrounding neighborhoods realized a 75 percent reduction in the number of wild party dispatches, and an equal decline in the repeat calls to the same address. Disruptions to neighborhood quality of life is a young adult problem involving students enrolled in area colleges and universities, as well as their peers who are employed in the Lincoln area. Based on ten years of law enforcement data, we found that approximately 25 percent of the disorderly house citations are issued to UNL students. We take this very seriously. Students found responsible for creating problems in the Lincoln community are also held accountable under our student code of conduct. Access and availability to alcohol is a predictor of both alcohol consumption and alcohol-related problems. We have approximately

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

150 liquor licenses within a one-mile radius of the campus, which provides plenty of options for students 21 years of age and older to enjoy alcohol in a controlled environment. Underage students typically consume in the neighborhoods surrounding the UNL campus. Permitting alcohol on the UNL campus will not solve this problem unless we are willing to ignore the enforcement of state underage drinking laws. Program evaluation data collected as part of our campus-based diversion program found that students who had contact with law enforcement in combination with the diversion experience, when compared with those students cited only under the student code of conduct, were less likely to commit a future offense. And to Chancellor Perlman's part about the Title IX environment, a recent study on "The Role of Institutional Factors on On-Campus Reported Rape Prevalence" found that campus alcohol policy was a significant predictor of reported sexual assault. Those schools that had an alcohol policy that allowed students of legal age to possess alcohol reported a greater number of sexual assaults on campus than those who had stricter alcohol policies. Given the Title IX environment, it seems dangerous or reckless to liberalize our campus alcohol policy. There is no silver bullet. There are no simple answers to preventing high-risk drinking among youth and young adults. An effective response requires a comprehensive approach guided by the most current research evidence. As demonstrated by the referenced data above, this formula appears to be working for UNL. Thank you. And I'd answer any questions you might have. [LR289]

SENATOR LARSON: Senator Riepe. [LR289]

SENATOR RIEPE: Thank you, Senator. Chancellor Perlman, first, thank you for your service to the university Lincoln campus. [LR289]

HARVEY PERLMAN: Thank you. [LR289]

SENATOR RIEPE: And we wish you much success in your retirement. [LR289]

HARVEY PERLMAN: Appreciate that. Thank you. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR RIEPE: The other question that I have is do you still believe in the state slogan that says the girls are the fairest and the boys are the squarest when we talk about sexual education, alcohol and everything else, or? [LR289]

HARVEY PERLMAN: Well, that's a stumper. I'm not sure I know what fairest and squarest means in today's environment. (Laugh) [LR289]

SENATOR RIEPE: Fair enough. [LR289]

SENATOR LARSON: Senator McCollister. [LR289]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. And welcome, Chancellor. [LR289]

HARVEY PERLMAN: Thank you. [LR289]

SENATOR McCOLLISTER: Thank you for your testimony. By what authority does the university exercise control over the, you know, the various sororities and fraternities? [LR289]

HARVEY PERLMAN: The only...you know, that's a good question. The only control we have is by whether we designate them as acceptable university housing or not, and that means only that freshmen can or cannot live in the house. All those houses are privately owned. They're on private land. And so the only regulation we have is through the ability to prevent freshmen from living there. [LR289]

SENATOR McCOLLISTER: So...but you also have some authority through the Interfraternity Council, don't you? [LR289]

HARVEY PERLMAN: Well, we certainly have authority to deal with safety conditions. We certainly have authority to regulate alcohol in those, at least in accordance with state law, to regulate alcohol on campus, yes. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR McCOLLISTER: But you can lift the charter of a sorority or fraternity? [LR289]

HARVEY PERLMAN: We can lift a charter but the only effect of that is that freshmen can't live there. [LR289]

SENATOR McCOLLISTER: I see. I missed the incidents of binge drinking, and the assertion was that binge drinking at the university has gone down over the last 15 or 20 years. Is that correct? [LR289]

LINDA MAJOR: Dramatically. [LR289]

HARVEY PERLMAN: Dramatically. [LR289]

SENATOR McCOLLISTER: Okay. As we look at peer institutions, the other schools in the Big Ten, have you compared their policy with University of Nebraska's policy? [LR289]

LINDA MAJOR: You know it's very difficult because the landscapes are very different. But as I understand it, there are a high percentage, I think it's 7 of the 11 institutions, do allow alcohol for their students 21 years of age or older. May I also add that the University of Wisconsin-Madison was part of the RWJ project, as was the University of Iowa. Neither of them were able to have the declines that we have today. In fact, we have been called to consult with Penn. State, University of Iowa, and several of our Big Ten colleagues because their binge rate remains stubbornly high. [LR289]

SENATOR McCOLLISTER: Have any of those institutions had...changed their policy recently? [LR289]

LINDA MAJOR: I'm not aware of it. [LR289]

SENATOR McCOLLISTER: Okay. Is the university's policy delegating...the Regents delegating that authority to the administration, is that unusual in any way? [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: You mean compared to our peers? [LR289]

SENATOR McCOLLISTER: Yes. [LR289]

HARVEY PERLMAN: I don't know that, Senator. I would be surprised if it's not done that way regularly across campuses. [LR289]

SENATOR McCOLLISTER: Okay. Thank you very much. [LR289]

SENATOR LARSON: Thank you, McCollister. Senator Hughes. [LR289]

SENATOR HUGHES: Thank you very much for being here today. Do you have percentages of students over 21 that live on campus for the various campuses, or is that...any general idea? [LR289]

HARVEY PERLMAN: I don't. I don't know. [LR289]

SENATOR HUGHES: I would assume it's probably fairly small. [LR289]

HARVEY PERLMAN: It would be fairly small. Certainly living in university housing would be fairly small. [LR289]

SENATOR HUGHES: Okay. And that would be probably the same across the total university system or maybe higher in Omaha and not... [LR289]

HARVEY PERLMAN: Well, you know, Omaha doesn't have the significant percentage of student housing at UNO as we have in Lincoln. [LR289]

SENATOR HUGHES: That's true. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: We're really the residential campus. They're building their dorms but they don't have the numbers. Kearney probably also doesn't have the same percentage of students living on campus as we do. [LR289]

LINDA MAJOR: I can add something to that. I think right now about 11,000 undergraduate students live in university-approved housing, including approved fraternities and sororities. I think the overwhelming majority of the 8,000 who live in residence halls are either freshmen or sophomores, and the smaller percentage are juniors and seniors. In our sororities and fraternities, our sororities in particular, there has been such demand for membership, there are about 3,000 total members who live on campus. And in the sororities there's been so much demand that the upperclassmen can no longer live in the house. So they're oftentimes living in the apartments that Chancellor Perlman referenced earlier. [LR289]

SENATOR HUGHES: So it probably would be a fairly accurate statement that the percentage of students living on campus over 21 is fairly small. [LR289]

HARVEY PERLMAN: I think that's a fair assumption to make, Senator. [LR289]

SENATOR HUGHES: Okay. Thank you. [LR289]

SENATOR LARSON: Thank you, Senator Hughes. Senator Coash. [LR289]

SENATOR COASH: Thank you, Senator Larson. Chancellor, I wanted to follow up on a question Senator McCollister had because I just...I want to be clear. A fraternity on campus, for example, that's privately owned, the university has say whether or not it can be approved housing... [LR289]

HARVEY PERLMAN: Yes. [LR289]

SENATOR COASH: ...for freshmen. Is the allowance of alcohol at that fraternity, for example, taken into consideration in that yes or no decision? [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: Absolutely. [LR289]

SENATOR COASH: So... [LR289]

HARVEY PERLMAN: In fact, many of the houses recently that have gotten into trouble are because of the use of alcohol in the house. [LR289]

SENATOR COASH: So does the university not allow a fraternity to be used for student housing if it allows alcohol? Is that the policy that they deal with? [LR289]

HARVEY PERLMAN: That's correct. [LR289]

SENATOR COASH: So all the sororities and universities (sic) on campus, if they want to remain in the good graces of the university and be allowed to have...be deemed student housing, they have to have an alcohol-free policy within their fraternity? [LR289]

HARVEY PERLMAN: You know it's...that's correct. We have on occasion allowed some fraternity alumni groups to have events at their houses that served alcohol under the controlled conditions that I have indicated before, but that's a one off and they need our permission to do that. [LR289]

SENATOR COASH: Okay. I understand. Thank you. [LR289]

SENATOR LARSON: Thank you, Senator Coash. Senator McCollister. [LR289]

SENATOR MCCOLLISTER: Yeah. Thank you, Mr. Chairman. Let's go into this topic just a little more, Chancellor. Okay. What triggers a review of a fraternity/sorority's charter? Is it an infraction, a liquor infraction by an underage student? Let's suppose that it's disorderly conduct or something by a student of drinking age. What occurs then? [LR289]

HARVEY PERLMAN: Linda may have better information. I may want to come back and correct. I don't know that we have the authority to lift charters either. That's normally a national

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

fraternity obligation and power. I mean it isn't...you know, it is contrary to what most people believe, the limit of our authority is to reduce...to say it's not approved housing. Where at least the events that I've known about in the past have been mostly associated with alcohol but people drinking in the house or fraternities sponsoring parties off campus that had alcohol for...with minors. [LR289]

SENATOR McCOLLISTER: But it has to include a minor in order to draw your attention. [LR289]

HARVEY PERLMAN: Well, you know, if it's a legal event then that's not a problem. [LR289]

SENATOR McCOLLISTER: I see. Let's go back to the housing issue just for a quick second. You indicated that UNO has a different housing situation than UNL. I understand that. Do freshmen live off campus or in approved university-sponsored housing, or does the policy apply to them if they don't live in approved or in university-sponsored housing? [LR289]

HARVEY PERLMAN: You mean on our campus? [LR289]

SENATOR McCOLLISTER: On UNO. [LR289]

HARVEY PERLMAN: No, I don't know what the UNO policies are. I think that, you know, it's a much different campus. Most...a very higher...a much higher percentage of their students are part-time. They live at home in Omaha. [LR289]

SENATOR McCOLLISTER: I see. [LR289]

HARVEY PERLMAN: And so I, you know, I don't know what their policies are. I'm confident that they don't have liquor in their dorms. [LR289]

SENATOR McCOLLISTER: So do the chancellors at each university then have...do they have the authority to determine the policies on that campus? [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: Yes. [LR289]

SENATOR McCOLLISTER: I see. Thank you, Mr. Chairman. [LR289]

SENATOR LARSON: Thank you, Senator McCollister. Well, I have a few things, Mr. Chancellor, and maybe the committee will follow up with a few of these. And, Ms. Major, did you say 7 of the 14 of our peer institutions within the Big Ten? [LR289]

LINDA MAJOR: The last study that I saw they were only looking at the policies of 11... [LR289]

SENATOR LARSON: Okay. [LR289]

LINDA MAJOR: ...and it was 7 of the 11 allowed it for students 21 and over. [LR289]

SENATOR LARSON: Do you know what three were not included in that? [LR289]

LINDA MAJOR: No, I do not. [LR289]

SENATOR LARSON: Okay. Were all 11 public or was...is Northwestern? They're the only private university within the Big Ten, correct? [LR289]

HARVEY PERLMAN: Yes. [LR289]

SENATOR LARSON: Was Northwestern included in that? [LR289]

LINDA MAJOR: I have no idea. [LR289]

SENATOR LARSON: Within that, obviously you mentioned Madison and Iowa, both very unique characters in and of themselves. I know Iowa, when I was in the university, it was ranked the number one party school in the nation a few years in a row. And whether alcohol on campus played a role in that is debatable. It's a lot of farm kids, so I understand that nature. (Laugh) So

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

have you guys had the discussions with...looks like Senator Schilz and Senator Hughes understand that nature too, the way they all grow up on the ranch or the farm. There you go. Chancellor Perlman, have you had a chance to talk with the chancellors of the other universities, such as Ohio State and Madison and the chancellor at the University of Iowa about the alcohol policies and the problems that they face? And you talk about, you know, different landscapes. What makes their landscape so much different than the University of Nebraska? And in some places it obviously...it might not work and we can say Madison is drastically different, but you know what makes us so unique that we shouldn't and what makes them unique that it's acceptable and that they can handle it? [LR289]

HARVEY PERLMAN: Well, I've not discussed...that's not been a topic of conversations among the presidents of the Big Ten universities, so I can't say that. And I'm not sure I am prepared to detail all of the elements that are different. I think what each president of a Big Ten university has to decide, or chancellor has to decide, is whether in the context of the university that they manage what's the best policy. Now if I thought for a minute that there was a policy decision that would reduce the amount of alcohol being consumed by our students, we'd carefully consider it. But, you know, I don't have statistical studies. I lived in Iowa City for a year at the University of Iowa. It's a small, very small, confined place. There's not a lot of private housing around so that may or may not make a difference. I do know...I mean my sense is that Nebraska families would prefer to send their freshmen students to university housing that did not include alcohol. [LR289]

SENATOR LARSON: And I'm going to press you a little bit more, but you made a comment that struck me. Do you think it's the university's role to...obviously, as you say, you want to reduce alcohol consumption on campus. That doesn't necessarily mean that it's being reduced. It's being reduced on campus. Do you think it's...the university has more responsibility to reduce alcohol on campus or educate its students how to properly consume alcohol in a responsible way? [LR289]

HARVEY PERLMAN: Well, you know, I guess there's nothing magic about reducing alcohol consumption on campus as opposed to trying to make students successful adults. That's what the university is about. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Do you think... [LR289]

HARVEY PERLMAN: And certainly in our society, under... [LR289]

SENATOR LARSON: Do you think a method of prohibition on campus is the right policy to teach kids in terms of dealing with a substance that is...does pose dangers? [LR289]

HARVEY PERLMAN: I think on balance, yes, it is the right policy. That doesn't suggest that we don't spend a good amount of effort educating students about the proper and modest use of alcohol. I mean that's what Linda has indicated, that part of the effort under our grants and sustained on our own resources is to try and educate students about how to become successful adults. That's part of it. [LR289]

SENATOR LARSON: Do you feel that in your efforts to...and I know that, you know, many on this committee have traveled extensively across the world and the United States as well, and I know you have as well. Having lived in Europe and gone to school in D.C., and...have you...I want to say you said you've spent a lot of time in Europe as well. Have we had that conversation? [LR289]

HARVEY PERLMAN: I haven't spent a lot of time, but I've spent some time there, yes. [LR289]

SENATOR LARSON: Oh. Do you think, having seen the culture, do you feel that there's more of a tabu towards alcohol in the United States versus other parts of the world that create more of the binge drinking attitude that you say is an issue, personally? [LR289]

HARVEY PERLMAN: Well, I can say personally I believe that the culture of the United States with respect to alcohol is different than the culture of France... [LR289]

SENATOR LARSON: Germany. [LR289]

HARVEY PERLMAN: ...or Germany and... [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: More Germany, we're talking more beer than wine probably here so.
[LR289]

HARVEY PERLMAN: Yeah. Yeah. Yeah. But I don't have statistical data to tell me that that culture is the critical feature in the level of binge drinking. Maybe it is; maybe it isn't. [LR289]

SENATOR LARSON: Uh-huh. [LR289]

HARVEY PERLMAN: But the fact is that this university lives in the culture that it lives in.
[LR289]

SENATOR LARSON: Do you, assuming that...I mean obviously you admitted that there are cultural differences and you have seen...you know, you might not have empirical data to say that it cuts down on binge drinking. But when you say that they are...you are living...we have to deal with the culture that we live in, do you think it is appropriate to, as I said, you talk about educating them about proper alcohol use. But does the university's policy perpetuate the tabu that alcohol is bad and instead of showing acceptance of an issue that a number of students can get in trouble with? By creating that do you think it increases binge drinking in and of itself because you're perpetuating that culture, whereas in other cultures that don't perpetuate it you see less?
[LR289]

HARVEY PERLMAN: Well, Senator, I mean I don't know that the culture at the university or our official position is that alcohol is bad. The state of Nebraska has made a decision that people under the age of 21 shouldn't drink. And we've never taken a position of prohibition. You know, we believe that responsible drinking is what students ought to learn about because it is part of the social culture of the U.S. [LR289]

SENATOR LARSON: Excellent. [LR289]

HARVEY PERLMAN: And that's how we approach the issue, but. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: So if you haven't taken the stance of prohibition and responsible drinking is part of the responsibilities that students should learn, what would be the issue of those over the age of 21 in their dorm rooms being able to responsibly consume an alcoholic beverage? Because, I mean, you did just say you haven't taken prohibition and you do want to educate your university students on the responsible use, but yet you tell them they cannot responsibly use it if they are of age. You do take that prohibition stance, correct? [LR289]

HARVEY PERLMAN: In university housing, yes. [LR289]

SENATOR LARSON: Okay. [LR289]

HARVEY PERLMAN: Affects a small number of students. They have a choice about where they live. It also impacts others. I mean if you live in a dormitory, yes, you can isolate it and say you can drink in room 305 but not in 307. That means the people in 307 are part of that environment and most of them will be underage. [LR289]

SENATOR LARSON: So you bring up... [LR289]

HARVEY PERLMAN: So it's a judgment call. [LR289]

SENATOR LARSON: You bring up a great point in terms of they have a choice to live there in the university housing. How would you tell the low-income individual that's on a scholarship that can't afford anything but university housing, because it's free because they are on a scholarship, that they are prohibited because they can't afford that off campus and they have that full-ride scholarship? Or you're saying because they choose to accept that full-ride scholarship that you are going to strip them of the ability to make responsible decisions on campus concerning their alcohol consumption? [LR289]

HARVEY PERLMAN: Senator, I would welcome being in the environment in which our scholarships were paying for student housing as well as tuition and books, but I think outside of athletics that's unlikely. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Okay. [LR289]

HARVEY PERLMAN: The second thing I would say is that if you were really trying to minimize housing expenses, living in university housing would not be the place you'd go. [LR289]

SENATOR LARSON: All right. Moving...so you...does...and maybe Hobie can answer this as well when he comes up. The SDLs are only for the sale of alcohol, so like at the...at the Champions Club one game days when they're selling alcohol. What about like President Bounds's tailgate party that we all, most of us I'm sure, we all get... [LR289]

HARVEY PERLMAN: We don't need an SDL for that. That's a hosted event. [LR289]

SENATOR LARSON: That's a hosted event. So you just go through the distributor and buy the alcohol as...the University Foundation probably, not the university. [LR289]

HARVEY PERLMAN: Right. We don't spend tax money on alcohol. [LR289]

SENATOR LARSON: (Laugh) So that would be the... [LR289]

HARVEY PERLMAN: But, yes. I mean it complies with the campus procedure so they would...they will get an approval and agree to certain conditions and one of those conditions is to use a licensed provider that has their license at stake with respect to how they serve alcohol with all the restrictions that any licensed provider would have. [LR289]

SENATOR LARSON: So you still have to have a caterer's license. Whoever you're running through has to have... [LR289]

HARVEY PERLMAN: You have to have a liquor license to purvey alcohol. [LR289]

SENATOR LARSON: Okay. And the university, in and of itself, doesn't have that license. You always go through a caterer that does have that license. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: We do for hosted events. We've worked with the Liquor Control Commission to work on getting liquor licenses I think for some venues where there are a lot of external people that rent them for parties. [LR289]

SENATOR LARSON: So the Foundation...is it the Foundation does have a liquor license? [LR289]

HARVEY PERLMAN: No, the Foundation does not. [LR289]

SENATOR LARSON: Oh, no. No. So are there any university institutions or subsidies or subsidiaries of the university that have a liquor license? [LR289]

HARVEY PERLMAN: No, I think we use... [LR289]

SENATOR LARSON: Well, it would be a caterer. [LR289]

HARVEY PERLMAN ...we use the providers to get the license. It's per place. [LR289]

LINDA MAJOR: Correct. [LR289]

HARVEY PERLMAN: Yeah. [LR289]

LINDA MAJOR: They have the liquor license. It's not the facility or the university. [LR289]

SENATOR LARSON: Okay. [LR289]

HARVEY PERLMAN: Right. The provider would have a license for the Champions Club, for example. [LR289]

SENATOR LARSON: Okay. So anytime that there's alcohol on campus, it's either an SDL or it's, when there's free alcohol, it's a caterer's license, correct? Otherwise, alcohol is not allowed on campus. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: It's not allowed on campus unless my office approves it. [LR289]

SENATOR LARSON: So it can be allowed on campus without...okay. So your office has to approve any other alcohol on campus. That includes a professor's office if he has a bottle of scotch in his office or... [LR289]

HARVEY PERLMAN: Yes. [LR289]

SENATOR LARSON: Do you approve it in your own office? [LR289]

HARVEY PERLMAN: Yes, occasionally. [LR289]

SENATOR LARSON: Okay. Thank you. Any further questions? Senator Schilz. [LR289]

SENATOR SCHILZ: Thank you. And I just want to...and you had mentioned before some of the Title IX stuff and I'm not exactly up to speed on that. Can you explain that further and what that has to do with the policies that we're discussing here today and how that all fits into this a little bit, Mr. Chancellor? [LR289]

HARVEY PERLMAN: Yeah. There's been a very significant pressure brought on public...on universities generally from the federal government under Title IX to address in a much more...a much more energetic way the concern about sexual harassment and sexual abuse and sexual misconduct on campuses, largely because of high profile events arising out of athletic departments,... [LR289]

SENATOR SCHILZ: Uh-huh. [LR289]

HARVEY PERLMAN: ...similar to the concerns in the military forces about that. And so we have strict reporting requirements. There are strict procedural requirements that we're required to go through. I'm not objecting to them because I think it's a serious problem. I don't want you to get that impression. But one of the things we know,...and as universities pay more attention to it we're probably going to experience more reporting, because it is an underreported event. So

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

you'll see those increases. And we do know that there's a very significant connection, correlation between alcohol use and sexual misconduct among this demographic age group. [LR289]

SENATOR SCHILZ: And as you talk about the reporting and things like that, what...are there consequences? I mean how is this... [LR289]

HARVEY PERLMAN: Well, the federal... [LR289]

SENATOR SCHILZ: ...and to what end, I guess, is...? [LR289]

HARVEY PERLMAN: Ultimately, the federal government enforces it through their...our ability to get federal funds. [LR289]

SENATOR SCHILZ: Funding, right. [LR289]

HARVEY PERLMAN: But our campus, like about now 103 other universities, are participating in an Office of Civil Rights investigation about our procedures and how we handle these events. And I think we...I mean I think we will do well under that investigation but, nonetheless, it's there. [LR289]

SENATOR SCHILZ: When you say "investigation," is this a random sort of audit type thing or this came from... [LR289]

HARVEY PERLMAN: No. No, it's a...they are based on complaints. A woman filed a complaint against us on the basis of whether we investigated her concerns in an appropriate way. [LR289]

SENATOR SCHILZ: A student? [LR289]

HARVEY PERLMAN: Yes. [LR289]

SENATOR SCHILZ: Okay. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HARVEY PERLMAN: Yeah. [LR289]

SENATOR SCHILZ: And your...and this is...so ancillary to this, alcohol becomes an issue that the university... [LR289]

HARVEY PERLMAN: Yeah. [LR289]

SENATOR SCHILZ: ...thinks it has to deal with in a certain fashion. [LR289]

HARVEY PERLMAN: I think it represents one of the consequences of alcohol consumption that is of great concern and one that makes tinkering with policies or liberalizing alcohol policies more problematic, sure. [LR289]

SENATOR SCHILZ: And as...and you talked before about the society and the culture that we live in and how to deal with that. Did we miss the train somewhere? How do you fix that? You know, in my mind, in my mind, law-abiding citizens that are of age should be allowed to have it. But I understand your concerns and where you're coming from. Thank you. [LR289]

HARVEY PERLMAN: Sure. [LR289]

SENATOR LARSON: I have one more. You stated that it's a very small number of individuals that are over the age of 21 on campus that... [LR289]

HARVEY PERLMAN: A small percentage. [LR289]

SENATOR LARSON: Small percentage. With such a small percentage, do you...are you worried about a snowball effect or is it more of the concept of they could live elsewhere so they shouldn't have it or...? I just...I guess I'm trying to find that disconnect. If it's not a large percentage, the university where I went a very large percentage of over age 21 lived there. There was three years guaranteed housing; obviously, a little bit different of a circumstance. But if it's a very small percentage of those that live on campus that are 21, what is your concern of allowing them to responsibly consume it within their own rooms or suites or whatever else? Obviously, other

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

universities do and they have university policies, if there's minors that they can lose that right to do so or things of that nature. I guess I'm trying to find...there's a small disconnect here in terms of if it's such a small percentage, what's the problem if they do it responsibly? [LR289]

HARVEY PERLMAN: Well, I guess I would say first that if it's such a small percentage what's the benefit of doing it relative to the risk associated with creating a different kind of environment in our student housing. And I, you know, I think...I mean I'm just sympathetic. I think adults ought to be able to do what adults are legally authorized to do, but I... [LR289]

SENATOR LARSON: As you choose to do so in your office at the university. [LR289]

HARVEY PERLMAN: I occasionally do myself, yes. [LR289]

SENATOR LARSON: Okay. [LR289]

HARVEY PERLMAN: But I don't think that means that adults do what adults can do everywhere. I can't do it in state parks because of the environment and I... [LR289]

SENATOR LARSON: Some state parks. [LR289]

HARVEY PERLMAN: ...my judgment, my judgment based on not just my instinct but my judgment based on what I see happening in universities and what I...what...the data that I see tells me that it would not be advantageous to change the policy at this point. [LR289]

SENATOR LARSON: Do you think that...I can understand the alumni events and things of that nature. I guess the question is, should not the leaders of the university be...if you're going to tell other individuals of the age of 21 that they cannot do it, do you not feel that the leaders of the university should follow the same policy? In terms of even if they are responsible adults but you're saying no, I know you're a very responsible adult, Mr. Chancellor. What gives you... [LR289]

HARVEY PERLMAN: I appreciate that, Senator. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: ...what gives you more of a right to do it than them? And what example are you setting then when you do it and don't let them? [LR289]

HARVEY PERLMAN: It is context, Senator, and the question is whether, you know, I mean I am allowed to have an alcoholic beverage in my home... [LR289]

SENATOR LARSON: Very much. [LR289]

HARVEY PERLMAN: ...and they are not. And that's just the way it is. I mean we have student housing and we're trying to create a culture there. We're not hiding the fact that alcohol is served on the university campus in the proper circumstance, in the proper event, and that's a model of responsible drinking. [LR289]

SENATOR LARSON: All right. Thank you. Oh, Senator Kolterman. [LR289]

SENATOR KOLTERMAN: Thank you, Mr. Chair. Chancellor Perlman, I wanted to compliment you and the Board of Regents for your position on alcohol at the basketball games this past year--... [LR289]

HARVEY PERLMAN: Thank you. [LR289]

SENATOR KOLTERMAN: ...a very difficult situation. And obviously you're hearing that here today. But I think there's a certain amount of the population in the state of Nebraska, a large population, that agrees with your position and I think you made the right decision. Thank you for that. [LR289]

HARVEY PERLMAN: Thank you, Senator. [LR289]

SENATOR LARSON: Thank you, Senator Kolterman. Any further questions? Seeing none, thank you for coming. [LR289]

HARVEY PERLMAN: Okay. Thank you. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Come back. [LR289]

HARVEY PERLMAN: It's always a pleasure. [LR289]

SENATOR LARSON: Oh, I know. Ms. Carritt, welcome to the General Affairs Committee again. [LR289]

NICOLE CARRITT: Good morning. [LR289]

SENATOR LARSON: Say and spell your name, please,... [LR289]

NICOLE CARRITT: Sure. [LR289]

SENATOR LARSON: ...as always. [LR289]

NICOLE CARRITT: Nicole Carritt, N-i-c-o-l-e C-a-r-r-i-t-t. Good morning, Chairman Larson and members of the committee. My name is Nicole Carritt and I'm the executive director at Project Extra Mile and we're a network of community partnerships across the state who work to prevent underage drinking and alcohol-related harms. Just wanted to take the opportunity today to share with you some of what the scientific literature says in terms of reducing alcohol (sic) age drinking and its related consequences. So first, it's important to recognize that college-age drinking negatively affects the health, safety, and academic success of both the students that drink and those that do not. According to a recent national survey, college students stood out as having maintained a high level of binge drinking since 1993. Further, research shows that an estimated 599,000 students between the ages of 18 and 24 are unintentionally injured under the influence of alcohol each year, and another 1,825 college students between those same ages die from alcohol-related unintentional injuries. Furthermore, each year an estimated 97,000 students are victims of alcohol-related sexual assaults, and over 100,000 students report having been too intoxicated to know if they consented to having sex. Alcohol misuse also leads to negative academic consequences. Research shows that approximately 25 percent of students who report missing class, falling behind, doing poorly on exams or papers, and receiving lower grades overall as a result of their drinking. These consequences come with heavy prices to pay, not just

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

for those who are directly involved in those incidents but also for parents, families, the school, and the state. Restricting access by prohibiting the possession and consumption of alcohol on its campus, the University of Nebraska system has one of the best policies for preventing underage drinking, excessive consumption, and their related harms. According to the literature, students at colleges that ban alcohol were 30 percent less likely to be heavy episodic drinkers and 80 percent more likely not to drink. Additionally, fewer students at banned schools experienced the second-hand effects, which were talked about earlier. Among those living on those campuses, residents in housing designated as substance-free, where alcohol and tobacco use are prohibited, had the lowest rates of binge drinking. Changing these policies and making access to alcohol easier for students on campus, where the majority, which we heard earlier, are under the legal drinking age, only exacerbates these harms within the university system, placing health, safety, and academic performance at risk. In late September this year, MLive, an on-line media portal, published "How the University of Nebraska cut dangerous drinking by a third." The lengthy article highlights the University of Nebraska's success in combating alcohol abuse, success that researchers cite as a model. It's clear that it's taken a whole community effort with success to big to have been done alone. In Lincoln, school officials, police, healthcare workers, some retailers, and others worked together to curb binge drinking. Bob Saltz, a highly regarding researcher from the Prevention Research Center, was quoted in that article as saying: They're very thoughtful and systematic and thorough. The collaborative approach between the city and the university is the gold standard. He continued by saying that, "Awareness stuff just doesn't work," in reference to the alcohol education programs that most campuses employ. "It's the most popular approach, but we know that, in itself, it's not effective." According to CDC data, Nebraska is ranked the ninth highest in terms of our adult binge drinking within...of across the country, so the university system in their efforts has not only had to address the freshmen students' newfound freedom but also an entrenched drinking culture. Last year the university's binge drinking rate fell to an overall binge drinking rate of about 37 percent, as you heard earlier, nearly identical to the national average, still too high, but it's progress indeed. If together we want to address underage and binge drinking by young people, there must be support of evidence-based strategies to changing the environment in and around college campuses by the colleges themselves, multiple community partners, and others. And we've seen that from the University of Nebraska system and their partners. So we would encourage you, the Legislature, to ensure that the university system's alcohol policies stay as they are and that we look to the additional evidence-based strategies to

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Rough Draft

General Affairs Committee
October 23, 2015

change the environment and we look to what the research says is effective, and that's really looking at the three best buys, as the World Health Organization puts it. That's looking at availability of alcohol, the affordability of alcohol, and looking at advertising and marketing of alcohol. So with that, I'd be happy to answer any questions that you might have. Thanks for listening to our comments and concerns. [LR289]

SENATOR LARSON: Thank you, Ms. Carritt. Do I have any questions from the committee? No. Thank you for coming. [LR289]

NICOLE CARRITT: Thank you. [LR289]

SENATOR LARSON: I appreciate it. Hobie, do you feel like you have something to add or...? [LR289]

HOBERT RUPE: Well, I could just clarify some of the law just to make sure, if that's fine. I wasn't planning on testifying but... [LR289]

SENATOR LARSON: Be short. [LR289]

HOBERT RUPE: I will be as short as I can. [LR289]

SENATOR LARSON: I've heard that before from you. (Laugh) [LR289]

HOBERT RUPE: I'll be much shorter on this than I will be on the next one. How do I...I'll guarantee you that. [LR289]

SENATOR LARSON: We always appreciate the knowledge, Mr. Rupe. [LR289]

HOBERT RUPE: Thank you, Chairman Larson and members of the General Affairs Committee. My name is Hobert B. Rupe, executive director of Nebraska Liquor Control Commission. And the only reason I'm going to testify--as I said, I wasn't planning on this--just so people know where sort of the legal parameters are. You know, when I was at the AG's Office, my mentor

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

there, John Thompson, I'd go in with a question and his first response was, well, what's the red book say, by pointing to the statute books. In this case here when you're looking at publicly owned property, the controlling statutes are 53-186 and 53-186.01. Eighty-six (sic), in pertinent part, says, "It shall be unlawful for any person to consume alcoholic liquor upon property owned or controlled by the state or any governmental subdivision thereof unless authorized by the governing bodies having jurisdiction over such property." So that's the statute. So that's one reason why regionally about a year or two ago where you had Game and Parks actually revisit their strict 100 percent prohibition on allowing somebody to consume at their campgrounds and they put the parameters up about certain places and certain rules, regulations. And so that's...they exercised their authority underneath that. Now compare that when an SDL, special designated license, is needed. A special designated license is needed, (A) if you're selling it at anytime, you as a private (inaudible). If you're selling alcohol you need a liquor license to do so. Or at an event which is open to the public. So in other words, you know, you can't really be...you know, you have a big keg of beer open on the street corner and saying, come on over and drink it. You would need a license for that even though, because it's open to the public. We worked very closely with the university. Remember, one the prohibitions, why there was such an inordinate amount of SDLs from the university at the time, was the 300-foot barrier law where you could not sell spirits for consumption. It was weird. You could have beer and wine but not spirits within 300 foot of a university campus. And the problem we were having was, especially as UNL campus was expanding, it was expanding that zone. So it was actually just sort of creeping into the Haymarket as the university expanded. So we worked very closely with them to change that prohibition, just to allow them to have some control about it but to allow them to actually have places licensed. The example I gave, you know, from the SDL overuse was Champions Club. Prior to that prohibition being lifted, they would be getting, you know, over 100 a year and that was running contrary to the commission's prior rules and regulations where if you have more than 12 SDLs in one year we're going to look at you to make sure they're not utilizing the SDL program just to sort of evade the other oversight of being a licensee, i.e., fire codes, health codes. You know, basically, you know, because we had a lot of places which were doing that. They were caterers utilizing, you know, substandard locations every single weekend under SDLs in an attempt to get around with not having to pay the money to bring the place up to the fire code. And so that was definitely a public health, safety, and welfare. So I just really wanted to let you know where we look at how public property is looked at underneath it. So technically in this

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Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

building here, I'm not sure if it's DAS or the Capitol Environs Committee who would have the authority to allow, say, a private reception in the Capitol. Hypothetically, they could under 53-186. [LR289]

SENATOR LARSON: Thank you. [LR289]

HOBERT RUPE: So I'd answer any questions. [LR289]

SENATOR LARSON: Senator Coash. [LR289]

SENATOR COASH: Thank you, Senator Larson. Thanks, Hobie, for coming down. And these are my words, not yours, but you complained to this committee about the inordinate amount of SDLs the university got. [LR289]

HOBERT RUPE: Yeah. [LR289]

SENATOR COASH: Did we...do we... [LR289]

HOBERT RUPE: Yes. [LR289]

SENATOR COASH: ...alleviate those concerns when we changed? [LR289]

HOBERT RUPE: You reduced a lot of them. Yeah, a lot of them have been reduced. [LR289]

SENATOR COASH: And that was because of the 300-foot rule that we changed and...? [LR289]

HOBERT RUPE: Exactly, for one thing. But by just changing the 300-foot long, you took out almost 100 applications just at Champions Club, I mean out of 4,000, I mean. So you know you usually had that. The university has also worked and you worked not only with UNL but also with UNO, Creighton and the other places which were getting SDLs for places which would now be licensed permanently, you know, especially on like on the Creighton campus, which is a little bit different because I think a vast...they have a...their percentage of minors (inaudible) underage

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

is a lot different. So you know one of the changes we made was to allow them to have that licensed location too. [LR289]

SENATOR COASH: Can you...I know you don't have it in front of you, but can you speak to any liquor license violations that have happened on any of the campuses, private or public, over the past couple years? [LR289]

HOBERT RUPE: Nothing stands out... [LR289]

SENATOR COASH: Okay. [LR289]

HOBERT RUPE: ...to my...you know, nothing on a licensed event. And one thing I will say is the university, because of their policies, they...you know, any SDLs they do, instead of having sort of amateur hour, they make sure they have an approved list of caterers you have to go through. And those caterers then, their license is on the line. If there's a sale to a minor, sale to an intoxicated, the commission can sanction that SDL, that license holder. So they very much have taken a professional look by making sure that only high-end caterers and other purveyors, you know, know what they're doing who are actually selling the alcohol. And that's the key thing from our perspective, is you professionalize the industry. [LR289]

SENATOR COASH: Thanks, Hobie. [LR289]

SENATOR LARSON: Thank you, Senator Coash. Senator McCollister. [LR289]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Bear with me if you will, sir. The athletic venues at UNL, Baxter, Pinnacle, the facility in Kearney, do they have the same regulations throughout the entire system? [LR289]

HOBERT RUPE: Yes. They're licensed. I think they're all Class I liquor licenses for on-premise consumption of beer, wine, and spirits. For instance, Pinnacle Bank, I'll use as an example, the license holder is SMG, who has the management contract, so they've got the license. So they've got the bar set up so for other...for events other than the university, because you remember

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

technically I think the university actually is a tenant on those days where they have a lease agreement, and whereas actually the quasi-governmental body owns it and then they've designated SMG to be the license holder. [LR289]

SENATOR McCOLLISTER: And...but it's a different regulation for Memorial Stadium.
[LR289]

HOBERT RUPE: Memorial Stadium, yeah, Memorial Stadium, right. I mean there's nothing that would...under the Liquor Control Act now that would stop the university from getting a license at Memorial Stadium if they chose to. I mean I believe it's currently owned by the university. The mere fact that it's owned by a governmental entity does not mean they can't have a license. A lot of government entities own liquor licenses, especially small towns' social halls, that sort of stuff. You know, there's nothing that would prohibit but, you know, nothing that would mandate it either. [LR289]

SENATOR McCOLLISTER: So that's under the authority of the Regents to determine that?
[LR289]

HOBERT RUPE: Yeah. If you're looking at 53-186, it's under the entity having control, in which case here, university, would be the Regents would have the ultimate control. I mean they have probably designated their people with different, like in this case, the Chancellor's Office at UNL to exercise their authority on approving consumption. [LR289]

SENATOR McCOLLISTER: I understood there was a move afoot to license alcohol sales, or at least wine and beer, at Pinnacle. Did I misread that article or is my information incorrect?
[LR289]

HOBERT RUPE: What they were trying to do was...Pinnacle Bank has alcohol sales. [LR289]

SENATOR McCOLLISTER: Okay. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HOBERT RUPE: They cease alcohol sales as part of their agreement with the university during university events. I think they also might not do them during like primarily childhood events, you know, if you're doing like a show or a traveling show, you know, designated for kids. [LR289]

SENATOR LARSON: Sesame Street. [LR289]

HOBERT RUPE: Sesame Street, something like that. I'm not sure they're going to do...I'm not sure they're going to be, you know, is going to be worthwhile. But that's a private agreement between the management company, SMG, and the person leasing or the show, in this case the university putting on the sporting events. I think they have an agreement. The way I understand it, and I could be wrong--the university might be able to answer this more--is that when we have...when we're putting forth our athletic events you're not going to sell alcohol. It's part of the agreement, part of the lease agreement. [LR289]

SENATOR McCOLLISTER: And so if they...if there was an effort to change that, that would have to be agreed to by the Regents, correct? [LR289]

HOBERT RUPE: I would think so, yeah. I think the Regents would be the ultimate decision maker on whether they want to allow, you know, change their existing agreement. I mean... [LR289]

SENATOR McCOLLISTER: Oh. Thank you very much. [LR289]

HOBERT RUPE: ...from our perspective, it makes nothing...from my perspective, Pinnacle Bank is a holder of a liquor license. Whether they choose to use it all the time is up to them as a licensee. [LR289]

SENATOR McCOLLISTER: I see. Thank you very much. [LR289]

HOBERT RUPE: Thank you. [LR289]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Any further questions from the committee? Seeing none, thank you.
[LR289]

HOBERT RUPE: Thank you. [LR289]

SENATOR LARSON: Not quite record time, but we're getting there. [LR289]

HOBERT RUPE: Well, I tried to be brief. [LR289]

SENATOR LARSON: Thank you, Hobie. Any further testimony on LR289? Seeing none, I'll close the hearing on LR289 and we will move to LR287. [LR289]

SENATOR COASH: Senator Larson, would you like to open on LR287? [LR287]

SENATOR LARSON: Quickly. Members of the General Affairs Committee, I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, representing the 40th Legislative District from O'Neill. Today I introduce LR287 at the request of the Liquor Control Commission over the concerns it had regarding the brewpub liquor license classification. The commission has seen drastically different business models, all falling under the brewpub license. While some brewpub licensees are simply small manufacturers, some are small manufacturers with tasting rooms, some are small manufacturers with restaurants, and others continue to grow and may bump against the 20,000 barrel limit for craft breweries. Hobie Rupe, the executive director of the Liquor Control Commission, is here to share with you his observations of the evolution of the craft brew industry and explain why it might make sense to revamp the license classifications for brewpubs. I will ask him to testify, to follow me in testimony. And I know we'll probably hear from...discuss a few other issues within LR287 dealing with brewpubs. And I know that the Craft Brewers Guild is going to testify as well as probably the distributors. So thank you. [LR287]

SENATOR COASH: Very good. Any questions for Senator Larson? [LR287]

SENATOR LARSON: Thank you. [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR COASH: Seeing none. [LR287]

SENATOR LARSON: Welcome back, Mr. Rupe, to the General Affairs Committee. [LR287]

HOBERT RUPE: Thank you, Senator. [LR287]

SENATOR LARSON: I won't put the lights on you but I'm counting. [LR287]

HOBERT RUPE: (Exhibits 1 and 2) All right. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. I'm also, you know, my undergrad degree was in history and so I actually liked giving the history, essentially bringing up sort of where we're sitting at here. The craft brewing license was originally part of a bill back in 1988, LB1089. It followed from a couple years earlier, the farm winery bill, which was 1985, LB279. And if you look at what those bills were back at the time, they were the first times when the state of Nebraska went in and made exceptions to the three-tier distribution system, which was pretty, you know, set forth. You're either a manufacturer, which means you to make the beer or import the product into the country; you're a wholesaler; or you're a retailer. And you can't have multiple rights at different levels. All right. The Farm Winery Act was pretty much, if you read it and you look at the legislative history, was they were going to be manufacturers primarily, people who were making the wine. And then, because they were going to be small, weren't going to try to compete, they're going to have limited rights at the wholesale tier, in other words only their own product, and at the retail tier they could sell at their location and at one other location as a tasting room, you know, sort of recognizing a lot of these were going to be rural and they might want to have a tasting room in the local largest town to help do the business. You compare that to the original craft beer license, brewery license. The Class L license was clearly designed as a retail license with limited manufacturing abilities. If you read back, the theory was these are going to be bars or restaurants who were going to make a little bit of beer. And any beer that they have that's left over, they were going to allow it to go through the distribution system, to a wholesaler, to be sold to other beers. Okay. And the reason you can look at that is it's clear the differences between those two acts is the craft brewery license can get an additional retail license on top of that to sell any product other than their own beer they make. So, you know, the theory was back then we might have four of us sitting at a table. One of us might be drinking the local

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

craft beer, somebody else could be drinking Bud Light, somebody else can be drinking a glass of wine, somebody else could be drinking a mixed drink cocktail. So that was sort of a retail-centric model. What's happened since then is you got three distinct business models...actually, before I go to that, I sent you over...you should see the growth over the last eight years. Nebraska is no different than almost every other state in the nation where we're seeing a large increase in the amount of craft beers being sold, manufactured in Nebraska. Just over the eight years we've seen probably, I will say, in excess of a 100 percent increase. Back in 2008, we had just over 340,000 gallons. Last year we had 784,000 gallons, and we're at 703 (thousand) gallons just through the first nine months of this year. So I anticipate it probably being over 800,000 this year. So you see a steady increase in the actual gallonage being produced by Nebraska breweries over the last eight years. You also would then look at just the number of licensees. Back when I became director in 2004, there were 21. There are currently 38. So in 11 years you've had almost a 100 percent, probably 98 percent roughly, increase in the number of licenses over the last decade. So you're seeing an increase in that. And so what's developed is you've got three distinct business models utilizing all the Class L liquor license. You've got the traditional license, which was designed to regulate, which is a brewpub. I'll give an example of an Omaha, one of the best examples would be like Upstream Brewery. You know, they're selling a lot of beer. They make their beer. But everything they make, they sell at the restaurant, at the brewery, or as a growler going out the door. They're not really selling it to a wholesaler. They're not canning, they're not bottling. It's sort of limited that way. Then you've got what I call the microbreweries. An example of that would be, just say in Lincoln, would be like Zipline as an example recently. They make...the vast majority of their beer is not sold at their taproom, at the location, but is going through the wholesale tier and being distributed. They both have a Class L liquor license. Then the third model you've got is sort of the weird huge monster that's got both of those, and I'm using "monster" now in a pejorative term, but sort of what are they? Are they a manufacturer? Are they a retailer? Empyrean Ales would be an example, Lazlo's. Lazlo's has multiple locations, retail locations. They are in I think six states now through their distribution tier, within the state and out of state. And so they are a small manufacturer if you at them at a national level, but they're a large retailer if you look at them in Nebraska. And so they're sort of the hybrid issue of both. And so it's sort of, you know, so what our concern is this is one where I actually like being able to sort of be the canary in the coal mine a little bit early before having to change something. Well, four years ago was the first major change to the craft brewery license.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

We...the limit beforehand was 10,000 barrels for a license. It was raised to 20,000 because of the steady increase. I've heard rumors, innuendos that they might be seeking to increase that again. You know, right now, once you get over that 20,000, you're going to become a manufacturer. And so the theory I would have is if you're going to...if we're going to be looking, instead of doing small fixes to this, this exception to this to a 30-year-old car, maybe it's time to buy a new car. Maybe it's time to look at what some other states have done and I'm in the process of trying to get at what best practices is to try to realize just what is the best model to these...to regulate these small manufacturers or these retailers, depending upon how they're going to go. For instance, one possibility, we actually have a manufacturing license in Nebraska, of which we have zero. (Laugh) We haven't had one of those for years, Class V liquor license. A lot of these smaller breweries, you know, they choose to get the farm...the craft brewery license so they can have the taproom at their premise, so they can sell the beer at the premise, do anything more than tastings. You know, a change to that bill to allow a manufacturer to have on-premise tasting location or location there where they would sell the product might be the way. And somebody says, well, what happens if Budweiser wants to open up one? I would say that would be economic development. If they would open a big brewery because we make one change, more power to them. So the issue that we are going to say is anytime we're going to be looking at changes, perhaps instead of just making small tweaks, continuing on the change, maybe it's time to actually look at the act completely. Do we need to rewrite? Right now it is one...it is two...it is like three paragraphs long, the actual, you know, the statute containing craft brewery licenses. And the reason I'm doing...we bring this to your attention is because in a lot of ways it's fit so far because we've been able to make it work, but I'm not sure how much longer we're going to be able to do this. As the business continues to evolve, continues to increase, I'm not sure the existing statutory structure of the Class L is going to be able to sustain, you know, the market forces going on. And if we're going to do it, maybe we need to have a...before we have to do something on the fly, maybe we should be a little more proactive and say how are we going to rewrite this to make sure it's going to work now and for the next 20 or 30 years. So trying to be as brief as possible on that one, I would be happy to answer any specific questions the committee might have. [LR287]

SENATOR LARSON: Thank you, Mr. Rupe. Senator Coash. [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR COASH: Thank you, Senator Larson. Hobie, do you have any proposals that you're working on to put in front of the committee to get there, or...? [LR287]

HOBERT RUPE: Well, the issue we would have to look at is, I mean, you know, you want to make sure that whatever proposals we would change, you're not going to kill the golden goose. I mean right now we've had strong growth in the industry. It's been a well-regulated, well-run industry. I mean they are a good bunch of people who are in there. So anything we're going to have to look at is how are we going to handle what happens when somebody gets close to 20,000 barrels? Right now they're opening up other breweries to sort of diffuse amongst multiple locations. You know, part of the reason we might be able to fix that, as I said, would be maybe to have a small rewrite of the manufacturing license to allow some of the existing craft beer guys, who are doing 98 percent of their sales in...through their distribution chain, to just get the manufacturing license so long as they can still have their taproom on the location. That would be one of the more simple ways to do it. The other ways we would have to look at is what happens if somebody goes over, you know, if somebody goes over the 20,000 barrels and has large retailers? Do we have to maybe figure out a way to grandfather or at least to, you know, keep those pieces, you know, so they don't have to divest completely out of it? [LR287]

SENATOR COASH: Right, because...let me just clarify something. You mentioned Empyrean. That's one of the...it's one of the oldest breweries here in the state... [LR287]

HOBERT RUPE: Number one. They were the first one. [LR287]

SENATOR COASH: ...and in my district. So I pay attention to what they're doing. Right now they have a manufacturing license or a brewpub license. [LR287]

HOBERT RUPE: Be a Class L liquor license. [LR287]

SENATOR COASH: Class L. So...but they are currently under 20,000. [LR287]

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Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

HOBERT RUPE: The last I checked, yeah. Nobody's raised over 20,000 yet, although, you know, one of the reasons we raised it to 20,000 was based upon their presentation at the time that they would be getting closer to that. [LR287]

SENATOR COASH: But as we sit here today, they're under 20,000. If their business blew up and they produced the next beer that everybody wanted and their demand went up, and then they, you know, within their license year are getting ready to hit 19,999. If they do one more barrel they hit their limit. [LR287]

HOBERT RUPE: Yep. [LR287]

SENATOR COASH: Then at that point that brewery has to make a decision about whether or not they want to be a manufacturer... [LR287]

HOBERT RUPE: Yep. [LR287]

SENATOR COASH: ...or continue with the brewpub, right? [LR287]

HOBERT RUPE: Exactly right. [LR287]

SENATOR COASH: So... [LR287]

HOBERT RUPE: That's what they're faced with under the current scheme. [LR287]

SENATOR COASH: That's what they're faced with under the current scheme. So if they are, and they are, good business people and are growing their business, they hit that, all of a sudden they hit that tier and they effectively what? Would have to get rid of their restaurants or sell them so that...? [LR287]

HOBERT RUPE: They would probably have to. They would have to divest themselves from one or the other. They would probably...you would see the company breaking apart into two probably, is what I would anticipate. [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR COASH: So by virtue of doing well in your business, you may risk busting it up by growth. [LR287]

HOBERT RUPE: That, yeah, exactly, and that's one...you know, and of course the easy way is to just kick the can down again and raise the gallonage limit. Well, I'm not sure that's really what we want to do here. Right now we've got some time. Maybe we should take time to look clearly as to what we could look, you know. Because I can tell you back in 1989 when we passed the first craft brew, we looked at what other states, which were ahead of us, had done, and that's what they were doing. And I think there's some other states, Arkansas has recently just has redone theirs. California is having to do some major changes to theirs because of these same growth industries. And then the key thing we want to make sure that we're looking at is that we're not creating an unintentional Granholm problem either. The...as beers in Nebraska have increased, so has craft beers all across the nation. I believe 2013 was the first year, pretty much since the late 1890s, that we actually had more breweries than before Prohibition. You know, we have to look to make sure that we're not, you know, being, you know, under Granholm, states have the grounds, the ability to regulate. But you can't regulate, you know, purely inconsistently with the Commerce Clause and be giving your in-state entities a benefit that you're not giving your out-of-state entities. So that's one reason I want to make sure instead of just doing it ad hoc and creating more problems, maybe we should have a more top-down review of the license completely. [LR287]

SENATOR COASH: Well, I would agree because the last thing I think this Legislature or this committee wants to do is have a scheme in place that punishes businesses that are growing and (inaudible). [LR287]

HOBERT RUPE: Exactly. [LR287]

SENATOR COASH: Thank you. [LR287]

HOBERT RUPE: Just to go on, that happened recently in Maryland. Basically a lot of the places in Maryland I believe had to divest themselves of some of their restaurant businesses because their breweries had finally gotten over their caps. [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR COASH: Thank you. [LR287]

HOBERT RUPE: Okay. Any other questions? [LR287]

SENATOR LARSON: Any further questions for Mr. Rupe? [LR287]

SENATOR KOLTERMAN: I just have a comment. [LR287]

SENATOR LARSON: Oh, Senator Kolterman. [LR287]

SENATOR KOLTERMAN: Thank you, Mr. Chair. We heard that Empyrean was the first.
[LR287]

HOBERT RUPE: Yes. [LR287]

SENATOR KOLTERMAN: The newest one is opening today in Seward, Nebraska, called Bottle
Rocket Brewery (sic--Brewing Company), so. [LR287]

HOBERT RUPE: I've been working with them since they started and they're a bunch of good
guys. [LR287]

SENATOR KOLTERMAN: And I agree. I really appreciate your approach to being proactive
with all this. [LR287]

HOBERT RUPE: Yeah. [LR287]

SENATOR KOLTERMAN: Thank you. [LR287]

HOBERT RUPE: Thank you, Senator. Seeing no other questions, thank you very much for your
time, sirs. [LR287]

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Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Thank you, Mr. Rupe. How many testifiers do I have on LR287? One, two--a lot of you in here for two. All right. Let's start. I'm going to give...oh, since...so only two. Anybody else? All right, I'll give each of you seven minutes actually. [LR287]

VANESSA SILKE: That should be fine. [LR287]

SENATOR LARSON: And then we'll open it up to questions of the committee to move after that. So you'll each get seven minutes, Jeff, and when that...you'll...that light will go yellow at six and then at red I'll ask you to stop and questions will have to follow. [LR287]

VANESSA SILKE: Sounds great. [LR287]

SENATOR LARSON: Thank you. [LR287]

VANESSA SILKE: (Exhibits 3-6) Good morning. My name is Vanessa Silke. My name is spelled V-a-n-e-s-s-a, and my last name is spelled S-i-l-k-e. I'm an attorney with Blankenau Wilmoth Jarecke here in Lincoln. I'm also the lobbyist for the Nebraska Craft Brewers Guild. The Nebraska Craft Brewers Guild is a nonprofit organization and it represents 25 of the craft breweries here in Nebraska. And I have here with me today the president of the guild, as well as representatives from Empyrean Ales, First Street brewery, and also Zipline today. We want to thank Senator Larson and the General Affairs Committee for your interest in addressing issues that are impacting the craft beer industry. I do also want to say that we appreciate Hobie's testimony and we agree with his thoughts on the goals for this committee in addressing how to best regulate this fast-growing industry. To that end, when we looked at LR287 we undertook our own review of Nebraska's liquor laws. We also looked at what other states are doing to manage the rapid growth in this industry and the adjustments that have had to be made to craft brewers' licenses, access to distribution chains, and any other efforts that are made to promote the craft brew industry on the ground in those states. Based on that review, we identified three main pieces of legislation that we think the General Affairs Committee should consider in the upcoming session to improve Nebraska's liquor laws. And as Hobie identified, any of these changes that we make to Nebraska's liquor laws, we want to make sure that we're accommodating and encouraging growth of the industry. We don't want to force successful

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Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

businesses to make hard choices that really aren't necessary if we're concerned with rapid growth in this industry. I also want to highlight another issue that Hobie brought up which is we have a number of these craft brewers who, as they grow, the bulk of their growth and their capacity in manufacturing will put them further into the distribution chain where they're going to have to rely even more heavily on contracts with the wholesalers throughout the state of Nebraska. Now to that end we see, like I said, some opportunities for the Legislature to improve on existing laws. And so we've circulated a memo to members of the committee that outline what we see in the current state laws and in other states. We also provide an overview of the draft legislation that we've also circulated. We provided that same packet of information to representatives of Nebraska's wholesalers associations, as well as Anheuser-Busch and MillerCoors representatives. Now we expect that the draft legislation we've proposed to address the manufacturing license, the craft brewery promotion board, and changes to franchise laws, that those are just a starting point for this discussion that Hobie just highlighted needs to occur in the upcoming session. And so we've approached representatives from the other stakeholders' groups with these general concepts and we expect to continue that discussion so that we can improve on the draft legislation that was circulated to your committee in advance of the session. We expected that that would be a better course of action to raise these issues and get right out on the table what we think needs to happen in this upcoming session. We do have a few months before the session starts and we imagine that we'll need to have a number of conversations with these different brewers and the wholesalers in this state. But we want to emphasize that the point of this legislation is (1) to accommodate growth; and, most importantly, (2) to foster solid relationships between the craft brewers in Nebraska and the wholesalers in this state. So with that, I'll take any questions that you might have. [LR287]

SENATOR LARSON: Any questions from the committee? Senator Coash. [LR287]

SENATOR COASH: Thank you, Senator Larson. Vanessa, since you have some time, do you want to briefly go through those, not in detail, obviously, because we all have that; we can take a look at it. [LR287]

VANESSA SILKE: Sure. [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR COASH: But you mentioned three initiatives, and I reviewed them. But it would be helpful for you to just kind of give a big-picture view of what those three are so the... [LR287]

VANESSA SILKE: Sure. The first one, as far as the items identified in LR287, we appreciate Hobie's concerns with the commission regulating the different types of business models under the Class L license. But our bigger concern is how we can accommodate growth of businesses. So to that end, we recommend making a change to the existing manufacturer's license rather than tweaking the current Class L license. And so that is one piece of legislation that we've offered is the ability for a craft brewer who grows beyond that existing 20,000-barrel limit to expand into the manufacturer's license and keep those existing brewpub operations in place that they had under the craft brewer license. They wouldn't be able to add new locations or expand beyond that, but they would be able to increase their production capacity. And as a highlight in the memo and as we want to emphasize to the committee, that would only expand the opportunities for wholesalers in this state to assist craft brewers in expanding their market share. And that brings me to the second piece of legislation. Changes to franchise laws are necessary in order to foster stronger relationships between the craft brewers and the wholesalers in this state. As I outlined in the memo, the franchise laws in Nebraska control all of the contracts between wholesalers and any producers or importers in this state. They were drafted many years ago with a view towards protecting wholesalers from large importers and large manufacturers. But the reality is the industry has changed in the past 30 years. We don't want to take away from those protections for the wholesalers, but we do see an opportunity to level the playing field for smaller producers in this state, such as the craft brewers and other craft brewer importers, in order to foster a better relationship between those two tiers. The last piece of legislation that is identified in that memo is the creation of a Nebraska craft brewery board. That is modeled off of the Nebraska Grape and Winery Board legislation that was passed a few years ago. It's an opportunity for Nebraska to do what other states have done, which is to channel a few different sources of funding into an opportunity to look at how this industry could be fostered in Nebraska, so developing business models or brewing technology. You could also look at sponsoring different tourism opportunities and promotional items. So again, as I said, this is just a starting point, and we imagine there may be ways to improve on the legislation. [LR287]

SENATOR COASH: Thank you. [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Thank you, Senator Coash. Senator McCollister. [LR287]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. And thank you for your testimony. Can you help me define some terms, if you would? [LR287]

VANESSA SILKE: If I can. [LR287]

SENATOR McCOLLISTER: Accommodate growth, does that mean reducing taxes, the tax? [LR287]

VANESSA SILKE: No. You'll notice that none of our proposed legislation involves reducing the tax, although we would appreciate some tax relief. We really see that the state will benefit from additional growth. [LR287]

SENATOR McCOLLISTER: You used the term "disadvantaged," "level playing field." In what way is the craft industry disadvantaged at this point? [LR287]

VANESSA SILKE: Well, as I outlined in the memo, the current franchise laws, which govern all contracts, they control regardless of the terms that are negotiated between wholesalers and the craft brewers. And because of the way the current statutes are drafted, it's very difficult for a brewer to address an issue when it arises. I want to emphasize that brewers value their contracts with wholesalers and for the most part those relationships operate very well. But the reality is, if push comes to shove or if there is an issue with the contract, the way the statutes are drafted now, they're weighted heavily in favor of wholesalers, which puts Nebraska craft brewers at a disadvantage because they cannot exit the relationship or enforce the contract. [LR287]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Chairman. [LR287]

SENATOR LARSON: Seeing...any further questions for Vanessa? Seeing none, thank you. [LR287]

VANESSA SILKE: Well, we appreciate your time... [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Yeah. [LR287]

VANESSA SILKE: ...and look forward to working with you more closely in the coming weeks.
[LR287]

SENATOR LARSON: Thank you. Welcome to the General Affairs Committee. [LR287]

MICHAEL MADIGAN: Thank you, Mr. Chairman. Good morning, Mr. Chairman, Senators. My name is Mike Madigan. I'm an attorney with Madigan Dahl and Harlan and I represent the Associated Beer (sic--Beverage) Distributors of Nebraska. Thank you very much for the opportunity to address some general issues this morning on behalf of my clients. We understand that the committee was provided with a memorandum and some draft legislation yesterday. We've just had an opportunity to look at it this morning so, rather than commenting specifically on its provisions, we'd like an opportunity to study that further, provide some written comments to the committee, and that will also permit us to have a dialogue with the other parties, which we'd appreciate the opportunity to do. [LR287]

SENATOR LARSON: That will be acceptable. [LR287]

MICHAEL MADIGAN: Thank you. But I would like to address a few large points, general points that were raised by that memorandum and by the previous testimony of Ms. Silke. As I understand it, the draft legislation is attempting to do three things. Number one, it's seeking to expand the existing exemption that craft brewers have to three-tier and tied house laws. And those types of exemptions--three-tier/tied house exemptions--are not available to any other distributor. No Nebraska distributor has an exemption from three-tier and tied house laws. No Nebraska retailer has an exemption from three-tier and tied house laws, and there are obviously some competitive advantages that are conferred by those exemptions. And then in addition to that there this, as I understand it, an interest in exempting craft brewers from franchise laws, so...and then the final proposal is seeking grant funding, tax credits, or other funds to market and promote craft products. And with your permission I'd like to address the first two initiatives and won't comment on the third. As the committee knows, three-tier laws are designed to prevent vertical integration within the liquor industry--and there's always been a tendency in this industry

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Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

to monopolize--and create a system where no one tier owns an interest in another tier. Each tier is limited to its own service function. So brewers brew, distributors distribute, retailers retail, and in that way we prevent suppliers from exerting undue influence over retailers to overpromote/ oversell their products which, of course, leads, to alcohol abuse and overconsumption. Tied house laws are a complement to three-tier laws and they prevent any one tier from owning an interest in another tier and they prevent any one tier from providing value to another tier so that they could exercise that undue influence. And distributors serve a regulatory function as a buffer between suppliers and retailers. We did used to have a tied house system in this country. Suppliers would own retailers, lock, stock, and barrel. That was the origin of that phrase. And what resulted from that were...there were three consequences, negative societal consequences that resulted from that. Number one, there was a tendency, because the suppliers would own the retailers, to overmarket/overpromote the product. Number two, there was a proliferation of retail outlets because, if a supplier owns a retail outlet, it's highly likely that they're only going to sell their products. And in order for a supplier to have a market for their product they would have to have a retail establishment, so there was an explosion of retail outlets. And obviously there's a correlation between the number of retail outlets in a community and consumption patterns. And then finally, it actually limited consumer choice because, in order to have an access...for a supplier to have an access to market for their product, they had to own a retail outlet, which created a very high barrier for entry. The Nebraska Legislature a number of years ago, as you know well, better than I, created an exception to three-tier and tied house laws for craft brewers, presumably to incubate new businesses. That exception and that permitted craft brewers to own retail outlets, so in essence it's a tied house exemption. Craft brewers are defined as brewers producing 20,000 barrels. And to put that in perspective for the committee, that's 250,000 cases of beer. That's quite a high level. Ninety percent of the brewers in the United States produce under 250,000 cases of beer. So this is...I'm not suggesting that that wasn't an appropriate level, but when you consider expanding that, please, keep that in mind. With regard to franchise laws, there are many different purposes to franchise laws, but let me just comment on one that I think is very important to the issues that are being raised for the committee's consideration. Brewers, large and small, require distributors to make very substantial investments in warehouses and refrigeration units, in trucks and forklifts, in a sales force and in a delivery force and in marketing and advertising dollars. Those investments often are hundreds of thousands, if not millions, of dollars. All franchise...and in addition to that, new craft brewers are now selling their

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

distribution rights. In other words, they're charging distributors the right to distribute their product. All franchise laws are designed to do is to provide that if a brewer wants to terminate the distribution rights of a distributor, and if they want to usurp for themselves the value of that very substantial investment, they have to provide the distributor with notice, they have to provide the distributor with an opportunity to cure in a very limited period of time, and they have to have a reason for it. In other words, the...whatever deficiency exists has to actually exist. And the distributor not...has cured it. So those are the reasons why you have a franchise law. I would argue that the justification for that is just as valid, if not more valid today, than at any time in the past. The last thing I would point out for the committee's consideration: According to the Brewers Association, which is the trade association that represents craft brewers nationally, the top five states with breweries per capita are Vermont...or, excuse me, Oregon, Vermont, Montana, Colorado, and Maine. Oregon has had a very strong franchise law since 1989. Vermont has had a very strong franchise law since 1975. Montana has had a very strong franchise law since 1974. Colorado has had a franchise law since 2007. Maine has had a franchise law since 1987. So my point here is that obviously franchise laws have not inhibited the growth of the craft industry. And I could tell you, as an attorney that's represented distributors for over 30 years, these distribution agreements, whether they're large or small, are very one-sided agreements with some egregious provisions from the standpoint of distributors. So we urge you to be very careful in considering these proposals and I appreciate your time this morning. [LR287]

SENATOR LARSON: Thank you, Mr. Madigan. Questions from the committee? Senator Coash. [LR287]

SENATOR COASH: Thank you, Senator Larson. I just had two quick questions for you, Mr. Madigan, because I was paying very close attention to your testimony. Are you aware of a brewer in Nebraska that is charging their distributor for the rights to distribute? [LR287]

MICHAEL MADIGAN: I'm not aware of a distributor in Nebraska. I do know, sir, that it's happening across the country, but I don't have any specific instance. And it happens two ways. In some instances brewers are outright charging for distribution rights and, in fact, there are a couple of states that have addressed that legislatively. The other way that it's done is, as a condition of being awarded distribution rights, a distributor has to make long-term marketing and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

promotion commitments, so they have to commit a certain amount of money per case, for instance, into the future, into a period into the future, in order to get awarded those distribution rights. And I'm not here arguing for or against that. What I am saying is, in light of that investment that those distributors are making in the up-front right to distribute the product, in addition to all the other investments that I referenced earlier, it's reasonable to have a law that simply provides that those distribution rights cannot be terminated for arbitrary or capricious reasons. There has to be a valid reason for that distributor to, in essence, get the value of that investment. Without a franchise law what could happen is a craft brewer could sell distribution rights to a distributor, induce them to make those investments, either create or expand the market for their product within the distributor's territory, terminate the distribution rights, and then go out and sell the distribution rights to another distributor. I would argue that that's unfair and it's the appropriate object of your franchise law. [LR287]

SENATOR COASH: Right. But just to be clear, there's no brewer that I know of that's selling their rights in our state. And under the current law, do you know if that's permissible or not? [LR287]

MICHAEL MADIGAN: I believe it is. That's my understanding. I'll defer to your executive director. [LR287]

SENATOR COASH: Okay, and then my only other question. I'm looking forward to your response to what was put out there. I am still working through all of those proposals as well. But with regard to the franchise laws, I didn't see...and you used the term exemption from franchise law. I didn't see that in my first...I got as far back as you did, so I'm not prepared to speak on the merits of that either. [LR287]

MICHAEL MADIGAN: Okay. [LR287]

SENATOR COASH: But on first blush of it I didn't see a wholesale--pardon the pun--exemption from franchise law. [LR287]

MICHAEL MADIGAN: Right. I... [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR COASH: What I saw was changes to the current franchise law. [LR287]

MICHAEL MADIGAN: Yeah, and, Senator, Mr. Chairman, Senator, we'd like the opportunity to look at that more carefully and certainly will respond to it. [LR287]

SENATOR COASH: No, I think that will be good. [LR287]

MICHAEL MADIGAN: But... [LR287]

SENATOR COASH: We're looking forward to working with both parties. [LR287]

MICHAEL MADIGAN: I understood the thrust of the memo to be that somehow franchise laws were unfair to craft brewers, and what I'm suggesting to the committee is, personally, on behalf of...and on behalf of my clients, I don't believe that's the case. So we'll certainly look with diligence at that proposal, offer our comments, and also engage in a dialogue with the craft brewers on those issues. [LR287]

SENATOR COASH: I think the best thing that could come out of that is that dialogue. I mean no nobody ever got hurt by talking, right? And it's good to see the two parts of the industry... [LR287]

MICHAEL MADIGAN: Right. [LR287]

SENATOR COASH: ...coming together on some things rather than...or coming together and talking about some things, which is something we need more of in this building in a lot of different areas, so. [LR287]

MICHAEL MADIGAN: Understood and agreed, Senator. Thank you. [LR287]

SENATOR COASH: Appreciate that. Thank you. [LR287]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

SENATOR LARSON: Thank you, Senator Coash. I think, as Senator Coash said, there's always...nobody's been hurt by talking, and that's something that I think this is starting to facilitate, which is good as I, Senator Coash, and members of the committee continue to learn about the issue. One thing that, you know, you hear from...I hear from both sides, you know, that the contracts that the craft brewers talk about, the difficulty of exiting a contract or near impossibility. You commented, what is the...I guess the first question is...I'm sure you guys could probably give us sample contracts or something we could look at. But how do you...how would a craft brewer go to get out of a contract? I know you skimmed over it real quick--you know, notice, chance to cure, and then termination. Can you just kind of go into that process... [LR287]

MICHAEL MADIGAN: Sure. [LR287]

SENATOR LARSON: ...a little more in terms of how a craft brewery does get out of a contract that it may currently be in,... [LR287]

MICHAEL MADIGAN: Sure. [LR287]

SENATOR LARSON: ...because I think that's something that, you know, I think all of us are still trying to grasp, you know, how difficult it is. And we want to make sure that both sides are protected as much as possible because we are protecting that three-tier system. So just kind of, how does that happen and what's that process look like? [LR287]

MICHAEL MADIGAN: Thank you, Mr. Chairman. Under the law a brewer that's dissatisfied with the performance of a distributor would provide notice. The notice has to state with specificity what the issues are. They have to provide an opportunity to cure within a short period of time. And then if it's not cured and if the deficiency exists and it constitutes good cause, the brewer can terminate. Respectfully, I believe it is a red herring to say that craft brewers can't terminate distribution rights. I have been representing distributors for 30 years. I represent the National Beer Wholesalers Association, and I can tell you that distribution rights are terminated and are transferred routinely without litigation and without controversy. I could tell you, as an attorney that represents distributors, if I get a call, just to give you an example, Mr. Chairman, from a distributor that says, I just got a termination notice, and I'll ask them if franchise law

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

applies, I'll ask them what the basis for the termination is, I'll ask the distributor if he agrees. Not surprisingly, they usually don't agree with that assertion, but...and then I'll indicate that they have an obligation under the franchise law to address that issue and they should cure it and, if they don't cure it, they risk termination. Let's say that the case proceeds to termination. [LR287]

SENATOR LARSON: As you continue, real quick,... [LR287]

MICHAEL MADIGAN: Yep. [LR287]

SENATOR LARSON: ...who decides if the deficiency still exists? [LR287]

MICHAEL MADIGAN: The brewer. [LR287]

SENATOR LARSON: Okay. That's...I think that was, as I...as you said, moving to termination. I wanted to get that cleared up before the...we moved on to that next point. []

MICHAEL MADIGAN: Right. And to state to that point, Mr. Chairman, and to state the obvious, all the brewer has to do is stop sending product and start sending product to another distributor. That's what a termination is. So the brewer has the leverage in that situation. They send a letter and say you're terminated, they no longer fulfill the orders of that distributor, and they appoint another distributor. Now there may be a dispute. Let me address that. Let's say at that point the two parties don't agree. The distributor doesn't believe. They either believe that they were...that they cured the deficiency or they believe that a deficiency didn't exist. Then the issue is, what's the remedy? Well, the only damage that a distributor could suffer would be the value of those distribution rights. If the sales figures are low figures they will not justify a termination because of the cost of termination...or the cost of litigation, which we all understand. So what happens in 90 to 95 percent of those cases is the new distributor that's appointed negotiates with the existing distributor and that brand gets transferred without any controversy. And the brewer's desire of appointing a new distributor is honored and the equity that the existing distributor has built is honored by virtue of that negotiation. And I would say 98 or 99 percent of the transfers are handled in that manner. It's very...it's infrequent when there is a

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Transcriber's Office
Rough Draft

General Affairs Committee
October 23, 2015

termination case in the...in this area. And when I say infrequent, I mean across the whole country there may be five or six termination cases in any given year. [LR287]

SENATOR LARSON: Thank you. That helps me kind of get a better idea. Do you...yeah. All right. Thank you. I was trying to think if I had phrased the question, but I think you've answered it. Are there any further questions from the committee? Seeing none,... [LR287]

MICHAEL MADIGAN: All right. Thank you, Mr. Chairman. Thank you, Senators. Appreciate your time. [LR287]

SENATOR LARSON: ...thank you. Do I have any further testimony on LR287? Seeing none, I'll close the meeting...or the hearing on LR287. I don't think we have any other interim studies in the General Affairs Committee, so thank you for... [LR287]

SENATOR COASH: And God bless you for that. [LR287]