

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 4, 2019

**BRIESE:** I'd like to welcome everybody. I'd like to welcome everybody, everybody here today. My name is Tom Briese, I'm the Chairman of the General Affairs Committee. I'm the senator for District 41, which includes nine counties in central and northeast Nebraska. We're here today for the purposes of conducting one appointment hearing and four bill hearings. We'll be proceeding in the order of the agenda that is posted outside this room. If you wish to testify on any of the matters before us, we ask that you fill out one of those green sheets of paper. The green sheets are located on either side of the room. If you're here and you do not wish to testify but you do wish to state your support or opposition for any of the matters before us, we ask that you fill in one of the white sign-in sheets. Again, the sign-in sheets are located on either side of the room. If you do testify, we ask that you begin your testimony by stating and spelling your name for the record, which is very important for our transcribers office. The order of proceedings is that the introducers will be given an opportunity to open on their bills. Then we will listen to proponent testimony, followed by opponent testimony, and then neutral testimony. And the introducer will be given an opportunity to close. We ask that you listen very carefully to try not to be repetitive. We do use the light system in the General Affairs Committee. Each testifier is going to be afforded four minutes to testify. When the yellow light comes on, you have one minute remaining, and we ask that you begin concluding your remarks. When the red light comes on, your time has expired, and we will open up the committee to any question they may have of you. At this time I'd like to encourage everyone to turn off or silence any cell phones or electronic devices, anything that makes noise. The General Affairs Committee is a committee that is equipped for electronic, so you may see some of our members referencing their iPads, iPhones, or other electronic devices. I can assure you they're just researching the matters before us. If you have a prepared statement, an exhibit, or anything you would like distributed to the committee members, we ask that you provide 12 copies to our page. If you don't have 12 copies, don't worry. Provide what you have to the page, she will make copies for you. Our pages today for the General Affairs Committee are Dana Mallett from Colorado. Dana could you stand up? Oh, she left. OK. She's a sophomore political science major at UNL. And our other page is Katie Pallesen. Katie is from Omaha, studying political science and history. And then with that, I'd like to proceed with the introduction of our members. First of all, on the far end, Senator Blood is not here. I assume she's introducing a bill

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in another committee and will probably be joining us here after a while. But Senator Arch.

**ARCH:** Senator John Arch from Sarpy County, District 14.

**HUNT:** Senator Megan Hunt, and I represent District 8, which includes the neighborhoods of Dundee and Benson in midtown Omaha.

**LOWE:** John Lowe, District 37: Kearney, Gibbon, Shelton, and all the surrounding farm area.

**LOGUEN BLAZEK:** Loguen Blazek, legal counsel for General Affairs.

**MOSER:** Mike Moser from District 22, that includes the towns of Clarkson, Leigh, Humphrey, Platte Center, Stanton, Pilger, Columbus, Monroe, Lindsay, and Newman Grove. And I apologize if I left any out.

**BRANDT:** Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

**WAYNE:** Justin Wayne, District 13, which is north Omaha and northeast Douglas County.

**ALEX DeGARMO:** Alex DeGarmo, committee clerk for General Affairs.

**BRIESE:** Thank you. And with that, we will proceed to the confirmation hearing for Mr. Harry Hoch to the Liquor Control Commission. I'd like to welcome Mr. Hoch to the table. Good afternoon.

**HARRY HOCH:** Good afternoon. Senator Briese, members of the committee, good afternoon. My name is Harry Hoch, that's H-a-r-r-y H-o-c-h. And I've prepared a few notes here so I can try and be as comprehensive as possible starting out. I've been married to my wife Janie [PHONETIC] for the last almost 43 years. We have four children and eight grandchildren keeping us quite busy. I know, I feel I'm very qualified to be the next commissioner on the, for the Liquor Control Board. I have 30 years of experience as president of our family beer distributorship. I was the youngest principal in the supplier network at that time, after my father's death. I lived by the Nebraska Liquor Control Act, and I was fair to both customers, employees-- and employees during my time in the industry. December 18, 2015, we closed on the sale of our business and we dissolved our corporation December 30th of the same year. That also pertained to the trucking company that we had that was tied to the beer business. I was a member of the Nebraska State Fair Board but I resigned from that as per statute only

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allows you to serve on one-- or one at a time. And I was a long-time member of the Fonner Park board, which was a big board, but I resigned from that also to eliminate any conflict of interest that somebody might feel I had. I feel that the liquor control book is the Bible for the industry. If you use common sense and the guidelines for the industry, hard decisions become easy because, generally, that's when you find there are numerous violations of law and information from the State Patrol that allows you to make those decisions. The agency also needs to be neutral and not picking winners and losers. Also while I was on the State Liquor Control-- or the State Fair Board, before I left I introduced an idea to them, and they want to follow through with this, and that is to have a craft beer competition for the 150th anniversary so they can, of the fair this year, so they can feature however many types they want to have. And I know there's something in the Legislature now dealing with home-brewers. And if the home-brewers wish to collaborate with a craft brewer, that would be great too, so everybody could be involved. This competition would naturally be held prior to the fair so that there would be enough time for them to produce product to be sold at the fair, along with the other brands that are sold there. That's the only thing that I have to do with that is helping them form the guidelines. And, and lastly, I'd just like to point out that other industries have industry professionals on their governing boards. Podiatrists are on, on a board that govern podiatrists. Realtors are, make up a part of that board. Barbers and beauticians make up a part of that board. And you can go up and down the line. I'm guessing that there's an excess, excess of 75 percent of the boards and commissions that help govern in the state have industry members. And since I've divested myself from the industry, I have no problem being neutral and making the whatever decision needs to be made. I do know that, that the majority of, of things that come before the commission deal with the retail tier. The wholesale tier generally helps do a lot of enforcement along the way and works in conjunction with the Liquor Control Commission. So with that, I'd be happy to entertain any questions you might have.

**BRIESE:** OK. Well, thank you for your comments, Mr. Hoch. Do we have any questions? Senator Moser.

**MOSER:** Well, I am just curious. I haven't had a lot of feedback about the hearing, but I had a couple of people question about putting an industry executive on the Control Commission. And I'm just curious if you feel that your previous business ownership could affect how you decide issues that come before the commission. Could you look at it

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with an open mind and, and make decisions on their merit rather than, you know, what made you a living for 40 years or whatever it is?

**HARRY HOCH:** Totally. I have no problem doing that. When we sold the business, when I handed the keys over to the company that purchased us, I did two things. I went to the bank to make sure that the money hit the bank. The second thing I did was go home and told my wife let's have a, let's have a drink and go up to the club and have dinner. And she said, are you upset? I said no, not in the least. I said, I have eliminated all kinds of stress that you have in running a business. And the only one crying in the room was my wife, and I think that was just because she's a little more sentimental about things like that. But I know that I can put all of that aside because, as I said earlier, the book, the liquor control book is the guiding, are the rules and regs. It's the sandbox that the industry plays in. And if somebody is not playing nice in the sandbox, we have to reprimand them. And if they continue to not play nice then we have to do whatever is, is necessary. And if it comes down to multiple violations and the only thing that will get their attention is to revoke their license or suspend it for a lengthy period of time, to let them think about what they're doing, then that's what we need to do.

**MOSER:** Do you think there are some pluses to having been in the business for a number of years?

**HARRY HOCH:** I do. I understand the industry. I lived by it when I was, when I was in the industry. And I think I was exemplary at the state level. I was respected by my peers because they elected me to be a representative to the National Beer Wholesalers Board. I served on their governing board several times. And so, yeah, I think there's a lot of benefit because you just know how, how the industry overall works. It's a, it's a wonderful industry. I'm guessing that of the 8,000-some licenses that are there, 85, 90 percent of them are trouble free. There's a few that step out of, have problems because maybe there's not the right training with some of the employees. Everybody, everybody has to run these. There's no single person that just runs the place from open to close. They have, you know, and they make a human error, they learn from it, then that's great. That's what we're there for, is to help them learn from it.

**MOSER:** There is there, is there-- make sure I have my subject and verbs agreeing in number here. Are there any previous cases that have

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come before the commission that you have any predisposition toward?  
That you would have any reason to have a bias as you move forward.

**HARRY HOCH:** No.

**MOSER:** OK, great. Thank you.

**MOSER:** Thank you, Senator Moser. Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. Thank you for appearing today.

**HARRY HOCH:** Thank you for the opportunity.

**BRANDT:** I guess, he has, he has asked a lot of the questions and you've answered pretty much. I guess the only one I would have is that in Nebraska we have given a lot of effort into our wineries and craft breweries, and it's, it's really developing nicely. You said yourself for the State Fair you're going to have a contest on the beers. I guess I would like to see the wines included in that also. How, how could we continue to grow that industry from your vantage point, being on the Liquor Control Commission? Is there things that we could do, or you could do in that capacity to further enhance that?

**HARRY HOCH:** I guess we could, we could listen to their ideas and make sure that they're approaching them within the law. But outside of that, if we start giving advice to different members of the industry, I think we're going to the point of starting to help try and pick winners and losers. We have to give it to the overall group, whether it's the association, of what they should or shouldn't do. But I think they're, the way they market, you know, both organizations. I know the craft brewers are well-organized, the, the wine growers are organized. They represent themselves well throughout the state, in their respective communities and across the state. So I think they need to continue doing that.

**BRANDT:** OK, thank you.

**BRIESE:** Thank you, Senator Brandt. Anyone else? Senator Hunt.

**HUNT:** Thank you, Chairman Briese. Thank you for being here today, Mr. Hoch. I've been getting the same e-mails and concerns that my colleagues have, and so I just want to thank you for all the clarification that you gave and everything you said in your testimony. For the record, do you agree that to have a strong and effective regulatory system we need to efficiently and fairly enforce the law so

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that there are no violations in the marketplace? And if they occur, if there are violations, that they can be remedied?

**HARRY HOCH:** Yes.

**HUNT:** OK, great. And most of the laws in our three-tier regulatory system were enacted in the '30s when that was created. So what are your thoughts on how we can make sure that these laws stay relevant in our modern society here with how different the landscape is culturally and how much technology is changing?

**HARRY HOCH:** Well, it's a system that has served us well for the last 75-plus years. And if we need to modernize something, that needs to be-- if it needs to be done, there's a process to do that. I think in order to keep it relevant for the industry it has to be-- we have to see how it impacts all aspects of the industry. And it can't just benefit one, one tier, or say it can't benefit retailers over production, over distribution, over anybody. It needs to work for everybody in order for the system to work properly.

**HUNT:** Thank you.

**BRIESE:** Thank you, Senator Hunt. Senator Lowe.

**LOWE:** Thank you, Chairman. And thank you, Harry, for being here today. It's good to see you. I have a question, but I'm going to save that for last. There are only a handful of people I could think of in this state, because I was also in this industry for almost as many years as you, who are more qual-- who would be anywhere near as qualified as you for this position. Knowing the rules and regulations that you have to live by, that you have to run your business by, and making it a success and dealing with the state. And I commend you for doing this, for taking on this position.

**HARRY HOCH:** Thank you.

**LOWE:** My, my question to you is, how do I get to be a judge at the State Fair for the craft brewers?

**HARRY HOCH:** Well, we could do that if you're totally neutral. But the idea, the idea would be to protect that would be to get judges from other states, surrounding states nearby. The people from the-- somebody from the craft guild in Kansas, somebody from the craft guild in Iowa or Missouri or Minnesota or Wisconsin, however many judges it's deemed are necessary. There's, there's wholesalers that have to

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be wholesalers not from the state of Nebraska. But there's wholesalers that are trained as Cicerones, which would be comparable to sommelier in, in the wine industry. So there, it's just a matter of, of getting some of those people together to come in on a given weekend and coordinating schedules on a time so we could have a, a fair and neutral judging system.

**LOWE:** That was not the answer I was looking for.

**HARRY HOCH:** I understand. I understand, but I took the time to explain why we would need to do that.

**LOWE:** Thank you very much.

**HARRY HOCH:** Because neutral, neutrality is really important.

**BRIESE:** Thank you, Senator Lowe. Senator Arch.

**ARCH:** Just like maybe one last question. I don't, I don't know that you said it. Why, why do you want to do this?

**HARRY HOCH:** Because of a love of the industry.

**ARCH:** OK, and--

**HARRY HOCH:** I grew up around this industry. I mean, I'm 65 years old. My father-- so I was born in 1953. My father started with Griesedieck brothers in St. Louis in 1957. He, he moved to Anheuser-Busch-- no he started with Anheuser-Busch in '57, prior to that he worked for Griesedieck Brothers. In '63 he was transferred to Omaha, and I grew up in Omaha. And in 1974 he had the opportunity to buy the business in Grand Island. And then after graduation from the university I went to work for him and, and then took over as president when he died in 1986. And then the children that I have and my brother's children, we told them to go out and make enough money we couldn't afford to hire them, because we didn't want to have all that sibling bickering at times. And then we decided that we had enough and found somebody-- well, we didn't. We hired somebody to find somebody, so we didn't make any decisions based on friendships.

**ARCH:** OK, and so the love of the industry, you want to, you--

**HARRY HOCH:** Help it preserve and grow.

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**ARCH:** OK. All right.

**HARRY HOCH:** And be, and have plenty of integrity.

**ARCH:** All right, thank you.

**BRIESE:** Thank you, Senator Arch. Anyone else? I may have a few follow-up questions here that might be a little bit repetitive on something, some of the things my colleagues have already asked. But just to summarize here. As a decision maker on the Liquor Control Commission, would you go into things without preconceived notions or biases?

**HARRY HOCH:** Absolutely.

**BRIESE:** OK, very good. And you would consider yourself willing to listen to the facts before making decisions?

**HARRY HOCH:** That's the only way you can make a good, informed decision, I think.

**BRIESE:** Sure. And then your children, they're not in the industry are they?

**HARRY HOCH:** They have nothing to do with it in any way, shape, or form other than they like to consume some of its beverages.

**BRIESE:** Sure. And would you agree with the statement that the craft brewers and the, the small home-grown wineries and distilleries are important to our state's economic growth?

**HARRY HOCH:** Absolutely. Without a doubt. They demonstrate some of the most entrepreneurial spirit in the state, I think.

**BRIESE:** OK, very good.

**HARRY HOCH:** And should be held up as an example.

**BRIESE:** And for the last several years, if not decades, Whiteclay has been controversial and been a concern to a lot of Nebraskans. Do you have any particular thoughts on that, how it was handled?

**HARRY HOCH:** You know, Whiteclay, I was an observer, just like a lot of other people. I wasn't privy to the 12 or 14 or however many hours of testimony there was about it. I wasn't privy to the information provided by the patrol in their investigations. But knowing the people



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that are on, that were on the commission, I believe they made the right choice.

**BRIESE:** OK. OK, very good. Thank you. Any other questions? Well, thank you for your testimony. Thank you for your answers, and we appreciate that. We'll open it up to any proponents of your appointment.

**HARRY HOCH:** Thank you.

**BRIESE:** Thank you for now. Any proponents in support of the nomination? Any opponents? Welcome and good afternoon.

**MAGGIE BALLARD:** Thank you. Good afternoon, Senator Briese, members of the General Affairs Committee. My name is Maggie Ballard, M-a-g-g-i-e, last name B-a-l-l-a-r-d. I work in substance abuse prevention, and I have been an active member of the Whiteclay Action Coalition since, I think, early 2016. Obviously I was one of many in a roomful of people that celebrated and was overcome with tears when the Whiteclay stores were closed. Before I go any further in my testimony, I want to make it clear that I have not met Mr. Hoch. I have absolutely nothing against him personally, but I just have concerns with his professional background and what I would expect to be a conflict of interest. Therefore, I oppose his appointment to the Liquor Control Commission. Much of my prevention efforts are spent focusing on marijuana prevention and, as you might guess, I have my work cut out for me with the perception of harm for marijuana going down, states that have legalized the substance relying on the marijuana industry to regulate itself, and the efforts in our Legislature trying each year to legalize marijuana for quote medical purposes. My job becomes pointing out that marijuana cannot be regulated like alcohol. And then, as if to prove my point for me, someone with close ties to the alcohol industry gets appointed to regulate an industry responsible for nearly 90,000 deaths each year. How can we expect our state to effectively regulate alcohol if we put someone with, if not his own interests, the interests of people who are in the same position that he once was in charge of the control? It seems inconsistent with our three-tier system and the goals of protecting public health.

**BRIESE:** Thank you.

**MAGGIE BALLARD:** Any questions for me?

**BRIESE:** Any questions? Seeing none, thank you for your testimony.

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**MAGGIE BALLARD:** Thank you.

**BRIESE:** Any, any other opponents? Good afternoon and welcome.

**ALAN JACOBSEN:** Good morning, Senator Briese and senators. I'm Alan Jacobsen. I'm here to testify in opposition to Mr. Hoch's nomination. I was a-- I'm a local businessman. My family has owned a business here for about 37 years that we operate. I'm also a member of the Fix Whiteclay group. In full disclosure, I voted for and support Governor Ricketts per Ronald Reagan's 90 percent of the time. However, I'm opposed to this particular nomination because I believe that it undermines the role the Nebraska Liquor Control Commission. Furthermore, my opposition is not personal. I do not know Mr. Hoch and, grandparent to grandparent, I'm sure he's a fine man. But I don't believe that it meets the criteria to provide an impartial voice on the Nebraska Liquor Control Commission. In a football analogy, we're all familiar with the blindside of a quarterback, where they protect the gov-- the quarterback when he's facing the opposite direction. Mr. Hoch does not bring a strong reputation for protecting the Governor's blindside, and political contributions should not be the ultimate test for that appointment. In September 2015, the Governor's blindside was exposed at Whiteclay. A town of nine residents, eight businesses, four of those businesses sold 3.5 million cans of alcohol to a dry Pine Ridge Reservation 200 yards to the north. One of the merchants in Whiteclay called the Governor and said, we have a growing violence problem. Governor appointed a task force. What happened if, to continue with the sports analogy, if you were a sportscaster you'd have to say that at this point Nebraska and the Governor sustained a brain concussion. It was discovered that the little border town was showing tax revenue of \$3,323 a year but law enforcement was costing a quarter of a million dollars. In June of 2016, the Governor's task force wanted Nebraska taxpayers to support the profiteering of four business stores. Subsequently, a 2012 lawsuit, attorneys for the brewers and wholesalers association acknowledged that it was indisputably a human tragedy what was going on at Whiteclay. Anyone associated with the industry in Nebraska could not claim they didn't know what was going on. Adding insult to injury, the National Beer Wholesalers Association in the 2015 report said that the NBWA is-- advocate before government and the public to encourage the responsible consumption of alcohol. However, they did nothing to protect Nebraska, nor did they try to help resolve the violent culture, sex trafficking, violence to women, unsanitary conditions, health risk, or the inequity tax receipts at Whiteclay. It wasn't until a Budweiser truck was

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vandalized-- I'm not making this up and it's not a commercial in my sports analogy. All hell broke loose and all the law enforcement came down on Whiteclay to find out who was the perp who vandalized the Budweiser truck. And yet, when a native woman, Sherry Wounded Foot in August of 2016 was beaten unconscious in Whiteclay, she was transported to Pine Ridge where it was determined that her, her condition required life support. She was airlifted to Rapid City and put on life support. She died three weeks later. The Liquor Control Commission didn't even know about it for three weeks. The fiscal impact exposed the irony. Trucks can be fixed relatively inexpensively. The cost to mitigate what happened at Whiteclay is going to take several generations to fix. The cost of fetal alcohol syndrome disorder alone is astronomical to all of us as taxpayers. In closing, it is difficult to resolve that a person who is part of an industry that failed to monitor itself during what was known as the "scourge of Nebraska" is now going to be the watchdog of the "good life" in Nebraska. It seems reasonable to ask three questions. Can Mr. Hoch faithfully and consistently carry out the role of the Nebraska Liquor Control Commission that has the authority and responsibility to provide truthful representations and honest dealings in a manner that generally will promote the public health and welfare of the community? Second, does Mr. Hoch believe that the NLCC-- and this goes to the heart of what happened at Whiteclay-- does the NLCC have the legal authority to request a long form with a liquor licensee or is it only at the inception of the license can this be done? And third, does Mr. Hoch currently or in the future during his appointment receive compensation from the alcohol industry that he will regulate, including stocks and any retirement benefits. I respectfully request that you protect the Governor's blindside by denying this appointment. Thank you.

**BRIESE:** Thank, thank you for your testimony. Any questions? Quick, sir. Sir, sir would like to have you spell, spell your name for the record, please.

**ALAN JACOBSEN:** J-a-c-o-b-s-e-n. Thank you. We're Danes. And a lot of times they put "son" and that makes us Swedes.

**BRIESE:** OK, thank you.

**ALAN JACOBSEN:** Thank you very much. I appreciate it.

**LOWE:** Moser.

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**BRIESE:** Sorry about that.

**MOSER:** Sorry to chase you back one more time.

**ALAN JACOBSEN:** No, no, that's OK. I need the exercise.

**MOSER:** So how has the Whiteclay situation changed since they closed those liquor stores there? Are things working out better or how are people adapting to not being able to buy alcohol there? Has the problem moved to other cities or what, what have you seen.

**ALAN JACOBSEN:** Well, I need, I guess I need to clarify something. When people say the problem moved to another city, is the problem did not move to another city but the sale of alcohol did. It appears that 10 percent of the sales of alcohol to Sheridan County went down 10 perc-- the sales went down 10 percent. Rushville probably has seen the most increase, and Gordon, are the two towns where you probably see the most increase in alcohol sales. There's still bootlegging going on. We actually have met with the State Patrol and talked to them about it. The new sheriff there, Sheriff Brewer, is working with the State Patrol and the tribal sheriff in Pine Ridge to help cut down on this. A lot of good things are happening in Whiteclay once they cut, they stopped the alcohol. There are-- I went up there and had lunch up there a couple of times. The little restaurant is packed, there's no bodies laying around. The first time I went there, there were 17 bodies laying on the ground. I don't know how you can go to Whiteclay and not see that. But today it's cleaned up. They got a \$100,000 grant, took a house out, cleaned the town up. You don't have people loitering. Whiteclay makerspace just bought a property where the old, Jason Schwarting's old beer store was. We're in the process right now of developing fetal alcohol syndrome help, Hope healing center and working towards that in an effort to try to curb and mitigate some of the damage that was done. And just for-- people don't know it, but the fetal alcohol syndrome on Pine Ridge is one in four births. It is, it is literally liquid genocide what's going on there. That was, that was actually being perpetuated there in Whiteclay. And it's more of a culture that was there in Whiteclay. Law enforcement was 22 miles away. One of the things that's benefited when I was recruiting and vetting protestants for the NLCC evidentiary hearing, one of the things I kept hearing is, you're going to move the problem from Whiteclay to Rushville and we're going to have a bloodbath on Highway 87. Hasn't happened. The tax receipts, remember that Whiteclay is an unincorporated town and so it had no way of collecting taxes, having a mayor, making any kind of decision. Fifteen days after the stores were

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closed, Rushville called a city council special meeting and they passed five ordinances: No urinating in public, no urinating on public property, no loitering. Write down a list of the things that were going on in Whiteclay. And, yet, none of those things have happened in Rushville or Gordon. Whiteclay couldn't do that. Right now, Gordon and Rushville receive about \$4,000 to \$5,000 more in local sales tax because the alcohol is being bought there in a controlled town that has the ability to control that than Whiteclay. It's benefited Sheridan County, they've reduced their law enforcement by nearly a quarter of a million dollars and they've increased their tax revenue. I could go on, but it's a much better picture. There's a lot of good things. There, there's a detox, treatment, and long-term care facility that's been purchased by the tribe. That's east of Pine Ridge, and they're in the process of developing that. And so it's just a lot of good things are happening once, once this got controlled.

**MOSER:** So are you concerned about the Liquor Control Commission reauthorizing retail sales in Whiteclay or, I mean, what would be your, your fears? I mean, where do you think this could go wrong?

**ALAN JACOBSEN:** You know, my concern is when we had the hearing in January, the, the Nebraska Liquor Control Commission required the county to have a hearing. And they wanted them to have a hearing about whether, what they should do with Whiteclay. Their, their attitude, the county commissioners there's were: Why are we having to decide this? A lot of peer pressure. But in January when we had that hearing, I went up to one of the commissioners when we took a break halfway through, and I said to the commissioner-- I won't say his name. I'm not trying to expose anybody or embarrass anybody. But I said, I can't understand how you can look your constituents in the eye and tell me that \$3,232 in tax revenue offsets a quarter of a million dollars in expenses of law enforcement. It doesn't make any sense. And he looked around to make sure there weren't any press. And he says, well, I've got to tell you, Alan, he said, my constituents are telling me that whatever I do, make sure you keep that problem up there north. We don't want those guys down here messing up our town. That's what concerns me, is a lack of regard for the Oglala Lakota people. And I think, I think one of the things that's troubling is even at the evidentiary hearing, what the Governor called "local" when he appointed the task, the task force, there was no one from the OST tribe. At the hearing we were actually able to get the person who did the, had, had the records for the ambulance service, for example, at Pine Ridge. The ambulance service would come down from, from Pine

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Ridge and it was going there three to four times a week for violent activity. And that was costing them a lot of money. And so the concern that I have is that we will have alcohol put back into a town that doesn't have the ability to regulate itself or control what goes on there, and that there are certain prejudices built into our culture that would not, not support keeping it from happening again. So that's why the concern.

**MOSER:** OK, great. Thank you. Appreciate your testimony.

**BRIESE:** Thank you, Senator Moser. Anyone else. Thank you for your comments, Alan, your narrative. And so you ultimately approve, though, of what the Liquor Control Commission eventually did, correct?

**ALAN JACOBSEN:** I do. But I really, I really believe that Bruce Bailey made a difference. And I know that it was reported that he had a liquor license. I know Bob Logsdon had one when the Grand Island case came through. They both had licenses, but they weren't breweries or brewers. But they understood the licensing.

**BRIESE:** OK.

**ALAN JACOBSEN:** The one thing that the Nebraska Liquor Control Commission did was listen to us. But we went there over and over and over testifying. And the thing that's troubling, Senator Briese, is the first time I went up there is the same thing that a lot of us went up there and did and said, oh, this, this is a mess. We're just going to go back and tell the authorities get this fixed. I remember telling an attorney when we were walking down the street. There was, when we, when we went up there it was determined that-- I said something. I went up there the night before, and so when we were walking the streets a gentleman came over, his name was Mark, who was one of the street people. And I just said to him, I said, you know, the place looks a lot better than it did last night. And he said, oh yeah, we-- they paid us to clean up the place. And being a business man, I was kind of curious what the wages were. And I said, so how much are they paying? He said, oh, they paid us all two beers apiece. So as we walk a little further down the road, I say to the attorney with me, I said, is that legal? He says, hell no. I said, well, then let's just go back and tell the authorities and get this stuff fixed and stop this nonsense. He said, you can't. That's hearsay. Even with six senators you-- state senators from Nebraska couldn't go back and do that. And that's the trouble. You know, I hear-- if we hear just, OK, there's a violation for example, somebody can pay \$500 and they're back in

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business the same day. They might have a three-week suspension. Pay 500 bucks, you're back in business. For some reason we, we say that they're overregulated, but I guess I don't see that. I'm in construction. OSHA is overregulating us, but another subject. But I guess that's the concern is that, that, that is, that's what concerns us.

**BRIESE:** OK. Very good, thank you. But, and then earlier you talked about the National Beer wholesell, Wholesalers group not doing anything. They're not a regulatory group, correct?

**ALAN JACOBSEN:** No.

**BRIESE:** And they're not an enforcement type organization, correct? What would you have expected them to do?

**ALAN JACOBSEN:** Well, regulate yourself. We do that in the construction industry all the time. They could have done something. They didn't do anything candidly. But they have, if you go, if you go on their Web site they brag about all the money they give away to communities. And yet, this community sat there being trashed, being the "scourge of Nebraska." And so nothing was there-- there's got to be more than just watching, you know? You need to monitor your own, your own industry and to prevent some of this from happening.

**BRIESE:** OK, thank you. Excuse me, Senator Lowe.

**LOWE:** I'm sorry one more.

**ALAN JACOBSEN:** Yes, sir.

**LOWE:** And I know this has gone on longer than most people thought it would. But wasn't Whiteclay basically because of two bad actors up there, the two stores that were selling to visibly intoxicated people? I mean, if they were selling a beer to these people a day there wouldn't have been this problem with people laying on the streets and everything else.

**ALAN JACOBSEN:** And I, I wish I would've brought it, and I'd be glad to send it to you. But I compared Whiteclay to the College World Series, and I wrote an op ed piece that got in most of the papers in Nebraska. It's kind of interesting, I got into it with one editor because he didn't quite see the comparison. But in the College World Series they wanted to increase revenue and they wanted to keep a family-friendly atmosphere. To do that, they made them wear armbands. They kept the

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drinks to two drinks a game, and they quit selling after the seventh inning. Sales went on there on and on and on all day, sunrise to sunset. Seventeen-- as I counted, 15 to 30 bodies every day. It isn't just two beer stores. It was a culture that was taking place there and they all allowed it. At some point you can't minimize the damage that was done and allowed to go on.

**LOWE:** But weren't they selling to visibly intoxicated people?

**ALAN JACOBSEN:** No question.

**LOWE:** And Mr. Hoch stated that he had nothing to do with, that was not in his territory.

**ALAN JACOBSEN:** And I'm not blaming Mr. Hoch for it. All I'm saying is that he's a part of an industry that did not regulate itself. To put him as a person that represented the industry, that was an observer and not an actor, now you're putting him in charge of the good life to be a, a regulator. I'm objecting to that. Just expressing my opinion.

**LOWE:** I understand that, and I appreciate your opinion. But in that case also, would we not point teachers to the school boards because there are bad teachers? But it seems like we do have teachers on school boards.

**ALAN JACOBSEN:** Yes, sir. I guess.

**LOWE:** And they're very good people. I'm not cutting down the school boards, but because of a couple of bad actors we shouldn't--

**ALAN JACOBSEN:** I got involved at Whiteclay because of an op ed, so I wrote a lot of op eds.

**LOWE:** I appreciate what you did at Whiteclay.

**ALAN JACOBSEN:** One of the op eds I wrote was I compared what was going on there to if the John Deere Company was putting out tractors that was killing people, they would stop making tractors. And the editor wouldn't let me print that, so we couldn't-- because he didn't want to offend John Deere. But that's what was going on. We don't have teachers destroying people's lives. That was destroying people's lives. Fetal alcohol syndrome, we have one baby that we know it costs us \$5 million. The fetal alcohol syndrome costs alone, people don't get it. It's a hidden cost. Everybody says, well, that's Indian Health Services. Well, who do you think pays for that? Our federal income tax



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are paying for that. At some point, we're not equating, we're not connecting the dots. I call it the blindside, that we don't see the costs that are incurred in this one thing that we didn't regulate like we should have. I remember where they, they, I asked about why the State Patrol didn't set up like a, not a sting operation, but observe it. Well, what happens is if you tell local law enforcement-- I don't believe it will be that way now-- but the past law enforcement would tell the people what was going on. Well, right then you clean up your act, and you can put on the good face for a couple weeks. But I don't know how you could have gone to Whiteclay. You had to step over bodies to get to some of the stores. Lance Moss, who owns the grocery store, he's the one that called the Governor and said, my wife's been accosted in the parking lot. It's getting violent here. It took that to get people to wake up and realize, hey, we've got a problem, a serious problem here. Not just in Whiteclay but in Pine Ridge. And that's where we need to address the fact that it affected a whole civilization of people, not just our little nucleus of nine people in Whiteclay.

**LOWE:** Thank you, Mr. Jacobsen. Appreciate your testimony.

**ALAN JACOBSEN:** Didn't mean to be preachy, but I am passionate about this.

**BRIESE:** And that you are. Thank you for your testimony. Thank you. Any other opposition testimony? Good afternoon and welcome.

**CHRIS WAGNER:** Good afternoon, Chairman Briese and members of the committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r. I'm the executive director of Project Extra Mile, a statewide nonprofit working to prevent alcohol-related harms through evidence-based policies. We're here today to express our opposition to Mr. Hoch's appointment to the Liquor Control Commission. I want to start, as others did, by stating our opposition is not based on the character of Mr. Hoch. Instead, our opposition is based on the principle that the alcohol industry should not be in a position to regulate itself. This is particularly true in our state, which experiences a lot of problems due to excessive alcohol consumption. As I have already shared with this committee, we have the dubious honor of being the fifth-worst binge drinking state in the country, with 20.6 percent of our population currently binge drinking. We're the second worst DUI state in the country, with 955 episodes of self-reported alcohol impaired driving per 1,000 population with an estimated population of 1.9 million, that equates to 1.83 million DUI episodes in our state. In

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2015, our state had an estimated 703 alcohol-attributable deaths and 2,400 hospitalizations due to alcohol. We also have an estimated annual cost of \$1.16 billion in work productivity lost, increased healthcare, and increased enforcement costs. Furthermore, between 2008 and 2017, our state had 721 alcohol-related traffic fatalities. So with these realities we truly need public health and safety voices at the commission, not former executives who spent their lifetime in the industry. Mr. Hoch compared the regulation of alcohol to that of podiatry and other goods and services. Podiatrists and their products don't kill 703 Nebraskans per year, so it's a very misleading comparison to make. At best, allowing the industry to regulate itself will maintain the status quo and, at worst, exacerbate the problems that I've outlined here today. We also have questions as to whether Mr. Hoch is eligible to serve as commissioner under section 53-110 (3)(a), and we would urge the committee to thoroughly review whether Mr. Hoch as an individual or as a shareholder currently has any interest whatsoever in the manufacture, sale, or distribution of alcoholic liquor. These are very broad restrictions that could easily disqualify Mr. Hoch, depending on the nature of his personal investments and or any retirement compensation he may have received. So for these reasons we feel that this appointment to the Liquor Control Commission is ill-advised and bad public policy considering the challenges our state faces. And we would urge the committee to vote against the appointment. Thanks.

**CHRIS WAGNER:** Thank you for your testimony. Any questions? Senator Wayne.

**WAYNE:** Do you consider yourself a part of the industry?

**CHRIS WAGNER:** I do not.

**WAYNE:** Isn't your whole purpose around here is to stop and lower alcohol? So if that industry didn't exist, your position wouldn't exist?

**CHRIS WAGNER:** You're correct, but I certainly wouldn't group us in the industry. We're, we're trying to prevent the harms that the substance creates.

**WAYNE:** So is it truly the bias of what you think might occur versus, I guess you wouldn't object to somebody from your side, fighting against it, to be on it.

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**CHRIS WAGNER:** Senator, I would say that we have a lot of established problems of looking at our statistics and the research that's out there. So, so no, certainly I would not disapprove of somebody from public health and safety, as I've mentioned in this, in this testimony and on LB635 as well, that it would be good, good for the health and safety of Nebraskans to have somebody from those.

**WAYNE:** So it isn't, it isn't whether he's biased or not. We just want the bias to be on one side versus the other?

**CHRIS WAGNER:** I'm not-- no, I don't think so, Senator. I think we're trying to make sure that we reduce the harms in our, in our state. That's the goal here.

**WAYNE:** But just because he's worked in the industry there-- I'm just not following--

**CHRIS WAGNER:** I see what you're saying and I believe, as was mentioned earlier, we've had, you know, commissioners that have had connection to the industry in the past. And, you know, I don't know where the line is. But certainly if you've spent your lifetime in the industry and you've made your living off of the sale of alcoholic products, I mean, that's, that's a majority of your income as a businessman versus, you know, having a connection to the industry through managing a place that maybe had a license, whose, you know, business wasn't, you know, 100 percent alcohol. You know, what alcohol may be a small portion of that. I don't, I don't know where we draw the line. But I just-- we feel as an organization that, that having so, such a deeply vested interest in the industry and considering the problems that we have, it would be in the best interests, in our opinion, of the state to not have Mr. Hoch serving in this capacity.

**WAYNE:** Thank you.

**BRIESE:** Thank you, Senator Wayne. Senator Moser.

**MOSER:** How long have you been working in your organization?

**CHRIS WAGNER:** Four years.

**MOSER:** How long?

**CHRIS WAGNER:** Four years.

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**MOSER:** Four years?

**CHRIS WAGNER:** Yes.

**MOSER:** Do you feel that the problem with problem drinking is getting better or worse?

**CHRIS WAGNER:** Well, we've certainly seen it get better under the, under-- in the underage population. And that's been the result of some good policies that were passed and the enforcement that's gone on. So when you do have good laws and those are enforced you do see a reduction in the problems. But in terms of the adults, so in terms of the CDC data statewide, no, we're consistently in, in the worst states in the country in terms of excessive drinking. And then that follows with the harms that we experience.

**MOSER:** And you see the trend getting worse or getting better?

**CHRIS WAGNER:** It's about status quo at the moment. We've gone up and we've gone down a couple, couple rankings. So, you know, in terms of the rates that we have, they're, they're pretty consistent. They have been, you know, over a number of years. You know, you ask-- and forgive me if I'm putting words in your mouth but, but in terms of if you look at the 703 alcohol-related fatalities that we had in just one year, I mean, I would think that, you know, look we would have, we would say one is too many. Let's fix this problem. How can we go about fixing this problem, what policies can we put in place? What regulations or who should we, who should we think if we're going to have a vacancy on the on the Liquor Control board, like, what, what can we do to try to improve this situation? And that's really the perspective we're coming from. Again, we, we don't know Mr. Hoch, just like everybody else that's come up here. You know, I have nothing against Mr. Hoch, but it's just the idea that the industry that, that produces a product that has such harm and consequences in our state is really where our focus is.

**MOSER:** But do you think the problem is centered around the Liquor Control Commission or do you think it's society in general's attitude toward alcohol or, I mean, do you think that the laws are not sufficient?

**CHRIS WAGNER:** I don't think there's one party that's completely to blame. I think this Legislature could, could do a good, a better job. And I know that there's a bill that would increase alcohol taxes.

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That's, you know, looking at price, looking at availability, looking at advertising. Those are the three main focus areas that you can, that you can concentrate on and pass policies to reduce the greatest amount of harms through those policies. We have a bill that would do that in this Legislature. So that, that's great. But at the same time, we also have a bill that would reduce taxes. So, so it's always a pull, a push and a pull in terms of, you know, the Legislature itself. The, the Liquor Control Commission certainly plays a role in, you know, how, how the Liquor Control Act is enforced and what penalties are, are given. They, they have the ability to change those. So, so yeah, they're, they're certainly part of the, you know, part of the focus that we should be looking at to try to, you know, reduce those harms that we have as a state.

**MOSER:** Thank you very much. Appreciate that.

**CHRIS WAGNER:** Thank you.

**BRIESE:** Thank you, Senator Moser. Anyone else? Seeing no other questions, thank you for your testimony.

**CHRIS WAGNER:** Thank you.

**BRIESE:** Any further opponents? Anyone wishing to testify in a neutral capacity? Good afternoon and welcome.

**HOBERT RUPE:** Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, I serve as the executive director of the Nebraska Liquor Control Commission. And it's probably inappropriate for me to come in in support or opposition to one of my potential bosses. So the commit-- so I will testify neutral to ask if there's any questions I can answer, maybe to would clear up if there's any issues that were raised by the earlier testimony.

**BRIESE:** Any questions for Mr. Rupe?

**MOSER:** One of the questions I asked the previous testifier, do you feel like alcohol problems are getting better or worse? Do you think we have appropriate legislation to address the use of alcohol currently?

**HOBERT RUPE:** Well, later on you'll be hearing at least one bill is that Senator Hunt and Senator Briese introduced, which for you to address one of the issues the commission has. So I'll wait to talk

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about that. Alcohol regulation is a balancing act. It really is. You're trying to maintain and be a neutral fact finder and make sure that the alcohol is being sold in a fair and impartial and safe manner. So and when an issue is raised we generally send our legislative letter, which issues-- which we think, you know, put up conversations for the, for the Legislature perhaps to look at. We enforce the act that you create as Legislature. A couple of things, I do think the alcohol problems have changed a little bit. I think Lyft and Uber have done a lot to help the DUI problem, which isn't so much a, you know-- oftentimes it's for people who drink too much, maybe not to the point where they're being served when visibly intoxicated. But that mechanism has helped a lot. You're also seeing a change, I think, in drinking demographics. Younger people generally aren't drinking as much. Conversely, you've seen some problems in that you've seen a shift from beer to more spirits consumption, especially amongst some of the youth who are drinking, which has a whole host of problems. As you're aware, it's easier to, you know, it's easier to get overintoxicated by drinking a lot of, you know, doing shots than it is, you know, drinking beer. So you're seeing a little bit of a change with that from the demographics change. It's a growing industry. You see the increase in Nebraska producers which have a different dynamic. But, you know, it's overall, I think, the industry, I mean, you know, you're always going to have-- it's an issue. It's, it's an item which causes problems if misused. And so you try to make sure as a regulator that the people who are reg-- who are selling it are doing in a proper, safe, and regulated manner. I guess I would leave it at that.

**MOSER:** Thank you.

**BRIESE:** Thank you, Mr. Moser. Anyone else? Senator Lowe.

**LOWE:** Thank you, Chairman. And thank you, Director Rupe, for testifying today. How long have you known Mr. Hoch?

**HOBERT RUPE:** I've known Harry Hoch since 2004 when I became director.

**LOWE:** OK. Would you say that he's a gentleman of good, good character?

**HOBERT RUPE:** I will say that my dealings with him have been exemplary. He has been a-- he has never been in front of the commission, either when I was the prosecutor for two years beforehand, or as the director. He's never been in front of us for a citation. The wholesale tier often works in conjunction with the regulators. You know, we've only got, you know, six NSP officers assigned. Wholesale beer guys are

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at these locations far more frequently than any of us or any investigators are. And so oftentimes if there's a, if there's a hidden ownership issue or some other problems often the entity which is causing that investigation to begin is a call from the wholesaler saying, hey, I've got this new guy running Hobie's Hooch Hut and I don't recognize him. Is there a new application on file or do we have a hidden ownership problem? So a lot of issues, the wholesale tier has been, you know, works with, in conjunction with the commission. They're also the entity which collects half the excise tax roughly. But my personal dealings with Mr. Hoch have been nothing but exemplary.

**LOWE:** I think you probably you've just secured your position for another year.

**HOBERT RUPE:** Well, you know, hopefully, but it's also the truth so.

**BRIESE:** Thank you, Senator Lowe. Anyone else? There has been concern expressed about somebody from within the industry taking on a position like this. Any precedent for that in past years?

**HOBERT RUPE:** Yes. Since I've been director there have been two commissioners who have had at least some prior relation to the industry. The most, the longest tenure of that would have been former chairman Bob Logsdon. If people remember, you know, when the Lincoln had the legion club back in the '60s and '70s it was the biggest club in the nation. And he was the general manager and ran that industry. He was out for quite a while, I think he was on the-- he might have been on th gambling or the horse racing commission then came on the Liquor Commission. And then our new chairman, Chairman Bailey, for about one year when he opened the Kearney, you know, where the pro football team is, he was the developer of that. And he had that held the license for the first year of its operation as a retailer.

**BRIESE:** OK, thank you. Thank you for your testimony today.

**HOBERT RUPE:** Thank you.

**BRIESE:** Any other neutral testimony?

**BRIESE:** And I would at this time invite Mr. Hoch back up, if he would like to do that. If we have any follow-up questions. Do we, do have any follow-up questions for Mr. Hoch? Go ahead, Senator Hunt.

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**HUNT:** Thank you. In respect to Mr. Jacobsen who testified, I'll pose, too, one of his questions. Do you believe that the NLCC has the legal authority to request a long-form liquor, from a liquor licensee, as in the case of the four beer stores in Whiteclay? Or is the annual renewal of a license automatic?

**HARRY HOCH:** Well, I, I believe there probably is a time and place for that, and it would need to be tied to violations. But to just ask anybody that operated a-- has a clean record of operation to fill out a long form would seem like you were picking on them. But the long form would, would help if you thought there were hidden ownership issues, things like that. And so I, I think you can be justified in asking somebody to do that. But, you know, not an every day, every renewal practice. I think that would be a lot of extra work for everybody.

**HUNT:** Thank you.

**BRIESE:** Thank you, Senator Hunt. Anyone else?

**MOSER:** I would just give you the opportunity to respond to some of the comments made by the testifier about the situation in Whiteclay. And I hesitate to ask you a question before you've even been nominated, but I think considering the, the attention that the situation got there and everything that it's on people's minds. And I'm just curious, you know, what your opinion would be if you thought that a licensee application, or if a licensee application came from somebody in Whiteclay.

**HARRY HOCH:** Now?

**MOSER:** Yes.

**HARRY HOCH:** I can't see how you could justify putting in a license back in there with law enforcement issues and unincorporated. That probably doesn't make any sense to do that. I wouldn't vote for putting anything in there now.

**MOSER:** OK, thank you.

**BRIESE:** Thank you, Senator Moser. Anyone else. And to be clear, you've divested yourself of any financial interest--

**HARRY HOCH:** Yes. I have no--



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**BRIESE:** --in the liquor industry.

**HARRY HOCH:** Correct. I mean, my investment portfolio probably has some beer stocks in it. But if that dividend on 400 shares of one of those companies is going to sway my opinion then I shouldn't be sitting here now.

**BRIESE:** OK, appreciate that.

**HARRY HOCH:** And I, you know, it's a little dividend stock in appreciation like everybody else wants.

**BRIESE:** OK. OK, thank you for your testimony today.

**HARRY HOCH:** OK, thank you.

**BRIESE:** You bet. And that closes the hearing on the appointment of Harry Hoch to the Liquor Control Commission. Next up we have LB149 and Senator Quick. Alex, I need to quickly reopen the hearing on Senator Hoch [SIC]. We have one letter in opposition to Mr. Hoch's appointment from the Monument Prevention Coalition. That should close a hearing on it. Now we will open the hearing on LB149. Good afternoon and welcome, Senator Quick.

**QUICK:** Thank you, Chairman Briese. And thank you, members of the General Affairs Committee. My name is Dan Quick, D-a-n Q-u-i-c-k, and I represent District 35 in Grand Island. I have introduced LB149 in order to address the unprecedented rate at which our children are using nicotine e-cigarettes. LB149 will restrict the access of youth under 21 to e-cigarettes and vapor products and will add these products to the Clean Indoor Air Act. I have an amendment to the bill that I've explained-- that I'll explain at the end. While most people may think that the use of vaping in e-cigarettes is primarily a smoking cessation device for adults, the reality is that many teenagers and children are getting e-cigarettes with nicotine and using-- using them at alarming rates. Ask any high school teacher in Nebraska and they will tell you of the vapor-filled bathrooms during pass periods or lunchtime and how many e-cigarettes are confiscated from students. While it is illegal for youth under 18 to purchase or possess an e-cigarette, the rates of youth-- of under 18 youth who are able to get, get them is alarming. I've introduced LB149 in order to prevent children and young people from, from accessing these dangerous devices. Researchers agree that nicotine is harmful for developing brains and most e-cigarettes contain nicotine. The leading brands of

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e-cigarettes, those most common among-- among youth, do not have nicotine-free flavors. Last year the United States Surgeon General released a report stating that in 2018 more than 3.6 million youth in the U.S. used e-cigarettes. One in five high school students and one in twenty middle school students are using e-cigarettes. These numbers led the Surgeon General to declare e-cigarette use among youth as epidemic-- as an epidemic in the United States. The Surgeon General has also reported that most e-cigarettes contain nicotine and nicotine exposure during adolescence can impact learning-- learning, memory, attention, and can increase risk for addiction to other drugs in the future. Nicotine exposure is harmful to the still developing human brain and brains continue to develop until around the age of 25. Nicotine isn't the only dangerous chemical inside an e-cigarette, however. The aerosol that is inhaled and exhaled from e-cigarettes can potentially expose both the user and bystander to other harmful substances such as heavy metals and ultrafine particles can be inhaled deeply into the lungs. E-cigarettes aren't yet as well researched as traditional tobacco products, but we know enough to know that they are unhealthy and dangerous for children and adults alike. JUUL, which is pronounced-- pronounced like "jewel" but spelled J-u-u-l, is the e-cigarette brand with the biggest market share which is widely popular among young users. The Surgeon General's report indicated that approximately two thirds of JUUL users between the ages of 15 to 24 didn't know that JUUL pods contains always-- always contain nicotine. This is alarming considering that each JUUL pod contains around the same amount of nicotine as a pack of 20 cigarettes and has proven to be very addictive. The Surgeon General has also called for indoor vape-free policies and adding vapor products to Nebraska's Clean Indoor Air Act is a logical step to, to combating underage vaping and e-cigarette usage. Since introducing this bill, I have held a number of meetings with stakeholders; and I have amendment-- an amendment for you today that I think addresses nearly everyone's concerns. The amendment, AM529, which would become the bill, makes it illegal to purchase or use, use an e-cigarette or tobacco product under the age of 21. The amendment also includes language that would require stores that sell vapor products to have a license making it easier to track stores that don't comply with the regulations in place to prevent underage cross-- access to these products. Finally, this bill adds vapor products to the Nebraska Clean Indoor Air Act in order to reduce the secondhand vapor smoke and make vapor-- vaping culture less available and less likely to impact children. By restricting the availability of these products to young people who are in high school or just out of high school, we can reduce the amount of kids in middle

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and high school who have-- who have access to both e-cigarettes and harmful tobacco products. Currently, you're seeing that 18-year-olds who are still in high school are buying these products legally and then selling or giving them to underage users which is how middle school and high school-- high schoolers are getting e-cigarettes. Increasing the age limit to ensure those who are in high school or just out of high school won't be able to-- won't be able to purchase them or resell them to other younger children and help curb the availability of underage youth to e-cigarettes and tobacco products. There are very few regulations currently on e-cigarette and vapor stores. Licensing them in the same way we regulate stores that sell cigarettes and tobacco products is just common sense and will allow proper regulations to be followed and help prevent underage access to e-cigarettes and vapor products. Adding vapor products to the Clean Indoor Air Act is another way that we can discourage our children and young people from taking up vaping. We don't yet know how harmful secondhand exposure to vapor products can be. By adding vapor products to the Clean Indoor Air Act, we will prevent exposure of both adults and children to the chemicals which will help to decrease the development of a vaping culture. In our tobacco statutes, we state that the Legislature finds that the growing number of minors who start smoking is staggering and even more at harm are the ages at which such children begin this deadly habit. This legislation is in line with the intent of previous Legislatures when passing antismoking legislation. Quite frankly, these devices have the potential to be dangerous and even deadly beyond the risk of nicotine exposure to the developing brains. In 2017, the U.S. Fire Administration reported that there were 195 separate incidents of e-cigarettes exploding and starting fires. And of those incidents, 38 severe injuries were reported. We know of at least two deaths that occurred as a result of e-cigarette explosions including just last month when a 25-year-old died after the e-cigarette he was using exploded and tore his carotid artery. You will hear from testifiers today who would tell you about their firsthand experience with this issue. And I have countless conver-- and I've had count-- countless conversations with constituents in my district about vaping use among students as young as middle school age and how the design of e-cigarettes makes it difficult to catch students who are blatantly using it in the classroom. I think it also speaks to the addictiveness of these products that kids feel the need to use them during the day inside schools in classrooms instead of after school or off school property. I'm handing out an article from The World-Herald back in November about the rampant use of vaping. The reporter talked to a 17-year-old in a park in Omaha who had started

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vaping when he was 15 because it gave him a buzz and said he uses his e-cigarette all day every day, even in school hallways, bathrooms, and classrooms. I want to make it clear that this bill does not target adults who choose to use vapor products in order to not smoke tobacco-- traditional tobacco products. The goal of this bill is to prevent youth from starting to smoke or vape. The risk for underage youth with developing brains is too great to ignore. By regulating e-cigarettes and raising the age limit for both e-cigarette products and tobacco products, we hope to curb the availability of these devices to youth and reduce their appeal. I hope the testifiers you hear today will help explain the epidemic and how important it is to address it soon. I may have to bring another amendment to clarify some language. But I look forward to working-- to continuing to work with stakeholders on this bill. I appreciate your attention to this important issue. I'm happy to answer any questions you may have.

**BRIESE:** Thank you, Senator Quick. Any question for Senator Quick?  
Senator Moser.

**MOSER:** When I was reading the amendment, it talks about the penalty. The-- if you're found in possession or buying this, could you be guilty of a Class V misdemeanor? Is that an amplification of what the penalty is now?

**QUICK:** No. It's currently what it is for like tobacco products if a child's caught [INAUDIBLE].

**MOSER:** So just the main thrust of the bill is to increase the age from 18 to 21?

**QUICK:** Yes. And that's the-- we feel is to get it out of the hands. I think when you have 18-year-old seniors who can currently buy the product and then sell it or give it to a younger child, if you're 21 you're less likely to be hanging out with the high school kids and that's what we're looking for is to create that age separation.

**MOSER:** Are the prices of the vapor products comparable to cigarettes or are they cheaper?

**QUICK:** That I couldn't tell you. I think what-- what we're seeing is that because they're flavored or because, you know, with smoking you may cough a lot or something I think kids are-- either think it's cool

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or, or it tastes good so that's why I think they're probably going to the vapor.

**MOSEER:** Thank you.

**BRIESE:** Thank you, Senator Moser. Anyone else? Senator Hunt.

**HUNT:** Thank you, Chairman Briese. I have a question for clarification. Did you say that the bill isn't targeting adults who use vape products to-- for smoking cessation?

**QUICK:** Yeah. It's not targeting them. We're trying-- we're just trying to raise the age-- age limit.

**HUNT:** OK.

**QUICK:** So, you know, of course with the Nebraska Clean Indoor Air Act is also what we're trying to do is reduce exposure from secondhand vaping like we would tobacco.

**HUNT:** Thank you.

**BRIESE:** Thank you, Senator Hunt. Anyone else? Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. Thank you for bringing this bill. So this would effectively raise the age for snuff and cigarettes and vape. Everything would be 21 now.

**QUICK:** That's correct.

**BRANDT:** All current tobacco products and future tobacco products.

**QUICK:** That's correct.

**BRANDT:** All right. Thank you.

**BRIESE:** Thank you, Senator Brandt. Senator Moser.

**MOSEER:** Just a follow-up. Are there different rules for possession than for buying tobacco?

**QUICK:** As far as if--

**MOSEER:** Well, I mean you have to be 18 to buy tobacco. Is the age for possessing tobacco the same?

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**QUICK:** Well, the age limit [INAUDIBLE] 21 to purchase tobacco now too. So it's all be the same. Right now it's to purchase tobacco 18; it's also with vaping products.

**MOSER:** And-- but it doesn't cover possession?

**QUICK:** Well, it would. I mean right now if you're below 18 and you're in possession of tobacco products, it's a--

**MOSER:** You're in violation.

**QUICK:** Yeah, you're in violation. So this will work the same way except it goes to 21.

**MOSER:** Thank you.

**BRIESE:** Thank you, Senator Moser. Anyone else? Senator Hunt.

**HUNT:** Thank you, Chairman. Have other states increased their smoking age to 21?

**QUICK:** Yes. Right now currently there are California, Hawaii, Maine, Oregon, Massachusetts, and New Jersey have raised both vaping and tobacco to 21 and actually three cities: Washington, D.C., Kansas City, and Chicago.

**HUNT:** My, my research here says 430 cities including--

**QUICK:** It could be. We only have three on our list.

**HUNT:** New York City, Chicago, Boston, Cleveland, Minneapolis, Kansas City, D.C. which surprised me. So I thought that was important get on the record. Thank you.

**QUICK:** Thank you.

**BRIESE:** Thank you, Senator Hunt. Any other questions? Seeing none, Senator Quick, you will remain for closing I assume?

**QUICK:** I am going to remain. I do have two bills up in Business and Labor if I have to leave. I would love to close.

**BRIESE:** Whatever works for you.

**QUICK:** Thank you.

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**BRIESE:** Any proponents in support of LB149 please come forward. Good afternoon and welcome.

**LISA ALBERS:** Good afternoon, General Affairs Committee. My name is Lisa Albers, L-i-s-a A-l-b-, as in boy, e-r-s. I'm on the Grand Island Public Schools Board of Education. Today I'm testifying on behalf of Grand Island Public Schools and the Nebraska Association of School Boards. First of all, I wanted to ask-- we sent a video. Grand Island Public Schools produced a video about the hazards of vaping and we sent it to everyone that had a Unicameral e-mail address. And I'm sure that you are all busy; so if you haven't had a chance to watch that, it's about six minutes long and I would encourage you to all take the time to watch that. Doing the right thing for kids seemed like a no-brainer when I undertook this notion of tightening the availability of vaping materials to kids 21 and under. This is a nationwide problem. This is not a Nebraska problem. Vaping products are flying or flying under the radar with little to no licensing required to sell the products, no taxation on these products, not being part of the Clean Air Act, and a quite unhealthy appeal to kids because of the kid-friendly flavors like mango and vanilla. The vapor from JUULs and other e-cigarette brands hook the user quickly. The vapor is inhaled deeper into the lungs than cigarettes causing extensive damage. The e-cigarette industry vigorously promotes vaping as a safe alternative to smoking regular cigarettes. Not true according to a study published in the American Journal of Physiology-Lung Cellular and Molecular Physiology February 2019, not to mention an increase in heart attack. Vaping causes lung damage that can be measured by multiple different tests that detect changes to lung tissue and pulmonary response. Even a short history of vaping has shown to cause physical and cellular changes associated with asthma, COPD, and lung cancer. By raising the age to be able to purchase vaping and JUUL products, maybe we can stave off the usage by an underage population. Young people sometimes believe they are immortal. They do not see that bad things happen to everyday people every day. Although the price to start vaping is expensive, \$50 for a JUUL starter kit and \$16 for a JUUL pod, coupons are available to anyone willing to look on-line. I even found a Groupon. In this highly organized-- is this a highly organized and well-orchestrated corporate business attempt to get new generations addicted to nicotine? One JUUL pod contains enough nicotine as one pack of cigarettes. Even if someone is using JUUL to quit smoking, many times their nicotine intake increases when they start vaping. I have had students tell me stories of kids coming to lunch visibly shaking because they had a few minutes in between their class to take

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several hits off of a JUUL. So that would be equivalent to smoking three cigarettes in a very short amount of time. They also say things to each other like why don't you do it? It's only flavored water. It can't hurt you. They don't understand what they are actually ingesting. They're just too young. They don't get it. You can tell them, but it is falling on deaf ears so we need to take the temptation away. Kids start vaping because of the head rush, makes them feel silly, giggly, they think it's funny. The head rate-- head rush goes away and then they're addicted. I have a student that is, not personally, but I have a student in college that told me she started vaping because all her friends were doing it and she goes, and here I am still vaping-- no head rush, no giggles, and I can't get off of it and I'm mortally embarrassed. As soon as the nicotine is introduced to the brain, things begin to change. New neural pathways are created, neural pathways that can lead to different addictive pathways. We are already in an opioid crisis. We are just beginning to understand the science of neuroplasticity. Our brains are constantly rewiring, especially between the ages of 18 and 25. We don't need an up and coming population looking for additional ways to get high and addicted. Adol--

**BRIESE:** I'd ask you to finish up in a few seconds if you can.

**LISA ALBERS:** Absolutely. Adolescence and young adulthood are hard enough without the fight of addiction, any kind of addiction. We can't depend on the federal government to protect our kids. The state of Nebraska can be a leader on vaping policy. Please support LB149.

**BRIESE:** Thank you for your testimony.

**LISA ALBERS:** Any questions?

**BRIESE:** Any questions? Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. Thank you, Miss Albers, for testifying. And yes, I did watch your video.

**LISA ALBERS:** Thank you.

**BRANDT:** And it was a six-minute video and it really does show what's happening in our high schools today.

**LISA ALBERS:** Yes.



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**BRANDT:** So I just want to tell you thank you for putting that together.

**LISA ALBERS:** I appreciate that very much. Thank you.

**BRIESE:** Senator Brandt.

**LISA ALBERS:** Yes.

**BRIESE:** Senator Moser.

**MOSER:** Do you know the comparable costs between cigarettes and, and vapor?

**LISA ALBERS:** Well, you have to-- you get a starter kit and those are \$50, but there's coupons can be found on-line to decrease it and then I found a Groupon as well that you can use on-line. And as I understand it, you can just present those like to a Kwik Shop or wherever you're buying it and get that discount. A regular JUUL pod is \$16 and I suspect you can find coupons for those as well and that's equivalent to one pack of cigarettes.

**MOSER:** Are those disposable or rechargeable or?

**LISA ALBERS:** You can recharge the actual stick that pod fits into. But they can put juice, e-juice into the actual pod. Sometimes they'll put marijuana into those pods. So yes.

**MOSER:** So when you consider the reuse and the reloading, is it comparable to the cost of cigarettes or less?

**LISA ALBERS:** I don't know what it costs, a pack of cigarettes cost.

**MOSER:** Five bucks I'm guessing.

**LISA ALBERS:** OK. So I'd say it's more expensive.

**MOSER:** More expensive.

**LISA ALBERS:** More expensive.

**MOSER:** So increasing the cost of them is probably not going to change the use of them that much.

**LISA ALBERS:** You can increase the cost of them. I'm fine with that.

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**MOSER:** Thank you.

**LISA ALBERS:** Thank you. Any other questions?

**BRIESE:** Thank you, Senator Moser. Anyone else? Senator Lowe.

**LOWE:** Thank you, Chairman. Thank you, Ms. Albers, for being here. And you were speaking on behalf of the school board association also?

**LISA ALBERS:** I was. Well, actually I was speaking on behalf, yeah, the Nebraska Association of School Boards but also Grand Island Public Schools.

**LOWE:** Grand Island Public Schools. And you were talking about the effects, the health effects of the nicotine on the body especially young people.

**LISA ALBERS:** Yes.

**LOWE:** I know we have a bill up with medical marijuana. And what, what's your feeling upon marijuana with the youth as being representative of the Nebraska School Board Association?

**LISA ALBERS:** Well, marijuana-- I don't know that-- I do think we need to tighten things. I think kids are always looking for an escape. I think what we actually need is greater access to mental health counseling, social work for kids in high school. Because if they're turning to drugs, what they're looking for is an escape. And so if we can have them get that escape in another manner by having the supports they need put into place, then perhaps a drug problem would take care of itself.

**LOWE:** So you think coun-- counselors will help--

**LISA ALBERS:** Absolutely.

**LOWE:** --with that--

**LISA ALBERS:** Yes, any type of mental health.

**LOWE:** --but this we want to raise the age of but we want to make marijuana more available?

**LISA ALBERS:** I wouldn't want to make marijuana more available. No.

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**LOWE:** All right. Is not the opinion of the school board association also?

**LISA ALBERS:** I don't know that.

**LOWE:** OK.

**LISA ALBERS:** I'm just speaking to this particular bill.

**LOWE:** To this, OK.

**LISA ALBERS:** Yes.

**LOWE:** Thank you very much for being here today.

**LISA ALBERS:** I appreciate that.

**LOWE:** I appreciate it.

**BRIESE:** Thank you, Senator Lowe. Anyone else? Seeing no other questions, thank you for your testimony.

**LISA ALBERS:** My pleasure. Thank you.

**BRIESE:** Any other proponents? Good afternoon and welcome.

**KATHY SIEFKEN:** Good afternoon, Chairman Briese and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing the Nebraska Grocery Industry Association. And we could have come in either in support or in opposition because there are parts of the bill that we like and there are parts of the bill that we think will cause problems. We do believe that vapor products should be sold by licensed retailers. We would like to clarify and it appears the way it is written in the bill that the tobacco license that retailers currently have would also cover vapor products so that we wouldn't have to get two licenses. One license would cover both products since-- just based on the way the terminology is in the bill. We would oppose the increase in the amendment that takes both tobacco and vapor products to age 21. We believe that that is an issue that should be addressed on a national level. Congress is talking about this and we believe that there will be something in the next maybe couple of years the way it sounds. FDA is also addressing this issue so we think that it would be better for the nation as a whole if this were addressed on a national level. And then there were a couple of comments that were made early, in earlier testimony and, and in the

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opening or, no, during questioning. There are fewer kids smoking cigarettes today than ever before. So I just wanted to clarify that. That number is decreasing year by year. And I also wanted to clarify that it is illegal for anyone under the age of 18 to either use or purchase tobacco products. It is not illegal for people under the age of 18 to possess tobacco products. So with that if you have any questions, I would be happy to answer them. Thank you.

**BRIESE:** Thank you for your testimony. Any questions? I have a question for you. So we're talking about an increase to the age of 21, correct?

**KATHY SIEFKEN:** Um-hum.

**BRIESE:** And you oppose that--

**KATHY SIEFKEN:** Yes.

**BRIESE:** --at this point, correct?

**KATHY SIEFKEN:** Yes.

**BRIESE:** Would there be a, an age somewhere in between that you might find more acceptable, for example, 19?

**KATHY SIEFKEN:** Probably not. And the reason for that is right now we train at the age of 18 that you don't sell to anyone under the age of 18. And our compliance in selling to minors is well above 90 percent. We do a very good job following the rules that we've been given. We've trained everyone in our stores and in our convenience stores not to sell to minors. And they're doing a good job. If you change that age to 21, you will get a lot of noncompliance. It would be very, very difficult. And then when you have stores that-- that have locations in multiple states it makes it even more difficult.

**BRIESE:** OK.

**KATHY SIEFKEN:** So it's basically setting us up to fail.

**BRIESE:** OK, setting-- setting us up to fail by changing to 21, but the same is true changing to 19 in your view?

**KATHY SIEFKEN:** Yes, yes.

**BRIESE:** OK. Thank you. Senator Brandt.

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**BRANDT:** Thank you, Chairman Briese. The previous testifier said one of the biggest problems is 18-year-olds buying the product for the underage kids. And I guess I sort of see Senator Briese's argument as 19. You don't have many 19-year-olds left in the school system. That would remove a lot of potential buyers particularly where Nebraska doesn't have any repercussions for possessing the product. You know, maybe that needs to be part of the bill that there needs to be a misdemeanor in there for possession. I don't know. But do you see--

**KATHY SIEFKEN:** If you--

**BRANDT:** Do you see the, the problem the schools have with this because most of your senior class is going to be 18 by the time they graduate.

**KATHY SIEFKEN:** That's, that's true. However, changing the age from 18 to 19 changes the training that we have given all of our front-end people. It, it basically sets us up to fail because by the time you get around and you change all of your training material, it, it would be very difficult.

**BRANDT:** I mean, I can appreciate the industry's problem. But, you know, I-- I-- the industry needs to also appreciate what the problem is on this side also.

**KATHY SIEFKEN:** And that's why we are not opposing this on a national level. We are not lobbying against this on a national level. So I think there will be very little opposition in, in Congress as to raising that age and they're talking about it right now. So if you-- if you give it time, I believe it will-- it will fix itself. There are some things in which you really don't want to be-- be a leader because you set people up to-- for additional violations and penalties.

**BRANDT:** All right. Thank you.

**KATHY SIEFKEN:** And that's what this would do. Thank you.

**BRIESE:** And to clarify, what portion of the bill did you say that you do like?

**KATHY SIEFKEN:** We, we support the licensing of anyone that sells vapor products.

**BRIESE:** OK.

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**KATHY SIEFKEN:** And we would hope that that licensing would-- that the tobacco license that we currently have through our cities and villages that that would suffice as the license because vapor is being de-- defined as a tobacco product. So we think one license should catch everyone but everyone should be licensed because you really do need to know who is selling the products so that you can go in and conduct the compliance checks.

**BRIESE:** OK. Very good. Thank you. Any other questions? Thank you for your testimony.

**KATHY SIEFKEN:** Thank you.

**BRIESE:** Any other proponents? Good afternoon and welcome.

**GAYE LANNAN:** Good afternoon. Senator Briese and members of the General Affairs Committee my name is Gaye Lannan, G-a-y-e L-a-n-n-a-n. I am principal of Burke High School in Omaha and I am appearing in support of LB149. The Omaha Public Schools joins schools from across the state and the country concerned with the rapidly growing problem of students vaping. We have consulted with our colleagues from surrounding schools and districts and they report having similar experiences with vaping and are increasingly alarmed. This problem necessitates serious attention and this legislation offers a substantial contribution to the solution. Please consider an analysis of the 2016 Tobacco Survey by the Centers of Disease Control and the Food and Drug Administration revealed some of the most common reasons for using e-cigarettes: their use by a friend, the candy flavors, and the belief that vaping is less harmful than cigarettes. Already this year we have documented 65 vaping-related code of conduct violations as compared to last year's total, 37. That's a 75 percent increase and the year is not over. We also believe this could be just a fraction of the overall number of students vaping because the devices and products are so easily concealed. Likewise as compared to smokers, vape users are-- are virtually odorless. Even one concern-- even more concerning is the recent discovery of students in possession of cannabis oil vaping devices. In terms of vaping effects on learning, students are distracted and preoccupied by how to get out of class to vape, how to meet up with their friends to vape or distribute, and how not to get caught. In a recent article titled "The Decoding of the Teenage Brain" published January 31, 2019, in a leading educational journal, Edutopia, a study showed adolescents and adults equally participated in risky behaviors when they a-- when they were alone or by themselves. However, in the presence of peers, risk-taking behavior

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dramatically increased among the teenagers while for adults risk-taking behavior remained unchanged. I have been in education for over 30 years as a teacher, a school counselor, and an administrator; and I have personally witnessed the power of peer influence. As educators, we work to harness-- harness this power of influence to help our students do what is right and good. In closing, youth across this country are experiencing some of the highest rates of depression and suicidal ideation. It stands to reason that vaping as well as other self-medicating and distracting behaviors are escalating. The vaping industry is primed to exploit adolescents' vulnerability to make money. This legislation is a significant action to decrease vape usage by teenagers and it addresses the exploitation of adolescents' vulnerability due to the unique stage of their brain development and the unprecedented social and emotional challenges they face today. I urge the General Affairs Committee to advance this bill to the floor for debate by the full Legislature.

**BRIESE:** Thank you for your testimony. Any questions? Senator Arch.

**ARCH:** Thank you for your testimony. What, what is your current policy if you-- if, if you discover a student vaping or using JUUL on, on campus right now?

**GAYE LANNAN:** Well, it's a-- it's a code violation and it depends on if this is the student's first incident. We generally start with confiscating, calling a parent, having the conference with the student, discussing, hopefully changing their mind about the use. We have discussions about how often they use. We refer them to supports if we feel that's something that they're willing to engage in. So we try to, to support the change in the habit if possible. If it continues, it can up to other kinds of consequences, in-school suspensions. We try to avoid suspension out of school as much as possible.

**ARCH:** Similar to if you saw students smoking--

**GAYE LANNAN:** Um-hum.

**ARCH:** I mean, that same level of concern--

**GAYE LANNAN:** Yes.

**ARCH:** And response.

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**GAYE LANNAN:** Yes.

**ARCH:** Thank you.

**BRIESE:** Thank you, Senator Arch. Any other questions? Any idea as to the incidence of vaping among your student population?

**GAYE LANNAN:** The rise, the rapid rise?

**BRIESE:** Well, not necessarily a trend but what-- the percentage that youth use it now.

**GAYE LANNAN:** Well, I think somebody mentioned a statistic one in five and I would-- I would-- I would say that's probably the case, probably 20 percent.

**BRIESE:** Twenty percent give or take.

**GAYE LANNAN:** The previous, if I can make a comment about the, the age change, I think this is something that I would certainly advocate for the change to 21 and that we lead that, get ahead of the curve sooner or later. I mean, I don't want to rely on the nation to, to correct this problem for us. But because of the peer pressures, if we go to 21 that's greatly less likely that our students are interacting and hanging out with students who could be vaping themselves.

**BRIESE:** Would raising the limit to 19 have similar impact or be of similar effectiveness?

**GAYE LANNAN:** I-- I would stand against that. I would lean towards the 21 simply because the brain development. One of the things that people think, well, if students just know the harms, if we just teach them about the harms. But what we know about the adolescent brain is that the limbic system which is responsible for the rewards of risk-taking behavior is almost fully developed and the prefrontal cortex is not developed until about age 25.

**BRIESE:** OK.

**GAYE LANNAN:** I think somebody reported and that's the one that's going to be able to override that limbic system. So the closer we get to that 24, 25 I think the better off we'll be.

**BRIESE:** Thank you for your testimony. Excuse me, Senator Lowe.



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**LOWE:** Thank you. And thank you for coming to testify today. And thank you for making our students better. You brought up the fact that they use these products for marijuana oils.

**GAYE LANNAN:** We're just recently starting to see some of those.

**LOWE:** Well, it's a brand new product.

**GAYE LANNAN:** Yeah. Can I tell you who schooled us on that? One of the students who we confiscated. He sat my dean of students and myself down and he taught us how to tell the difference between one that might have THC in it. It's more viscous than the others, and taught us how to smell and what they look like, and so I just thought that was ironic.

**LOWE:** They, they learn quickly.

**GAYE LANNAN:** Yes.

**LOWE:** Is there an ease of getting that oil. Have you found out, like from that same student? Did he tell you if it's easier to get that?

**GAYE LANNAN:** He said it's no problem. There's kids that-- there's easy access.

**LOWE:** And even before the Legislature is a bill this year about expanding marijuana. Do you think that would make it even easier for these students to get it?

**GAYE LANNAN:** Oh, absolutely. Yes.

**LOWE:** Thank you very much, and thank you for what you do.

**GAYE LANNAN:** Oh, thank you for your service to the state.

**BRIESE:** Thank you, Senator Lowe. Any other questions? Seeing none, thank you for testimony. Next proponent Good afternoon and welcome.

**RICH OTTO:** Thank you, Chairman Briese, members of the committee. My name is Rich Otto. R-i-c-h O-t-t-o, I'm here on behalf of the Nebraska Retail Federation and testifying in support of Senator Quick's legislation. We appreciate him bringing it. Again, we wanted to let you know that we are in support of requiring the license, licensing of all vapor products. Again, we would like the clarity on the tobacco license of retailers that currently hold that tobacco license would

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also be covered for the sale of vapor products. As was mentioned by the grocers, we're also concerned about the age. We would oppose the age change from 18 to 21. Again, we prefer that to be handled at a national level. I know the other proponents have stated it's a national issue and we hope that it gets addressed nationally. With that, I would answer any questions you may have.

**BRIESE:** OK, thank you. Any questions? Seeing none, thank you for your testimony. Next proponent. Good afternoon and welcome.

**ROBERT ARANDA:** How are you doing? Senator Briese and members of the General Affairs Committee, my name is Robert Aranda. That's R-o-b-e-r-t, last name is A-r-a-n-d-a. I'm the principal of William Jennings Bryan High School in Omaha Public Schools, and I am here to speak in support of LB149. According to the 2018 National Youth Tobacco Survey, nearly 21 percent of students nationwide use e-cigarettes. The survey found vaping among high schoolers increased by 70 percent from 2017 to 2018 and 48 percent among middle school students. I, along with administrators in the Omaha Public Schools, have experienced a similar increase in vaping incidents in our schools. According to Michael Blaha of John Hopkins University, there are three reason e-cigarettes are enticing to young people. First, teens believe that vaping is less harmful than, than smoking. There's a lack of education there. Second, e-cigarettes have a lower cost than traditional cigarettes. Finally, vape cartridges are marketed towards teens as, as in evidence by the use of flavoring that appeal to teens, such as apple and watermelon, and now they have the new flavoring of THC in those. According to the CDC, there's also many health issue concerns surrounding vaping. E-cigarettes contain high levels of nicotine, thus making vaping extremely addictive. Teens are more susceptible to addiction than adults because their brains are not fully developed. Addiction can impact the ability to focus, vaping increases heart rate and blood pressure. Vaping does in fact cause lung irritation similar to, similar found in smokers. Even the vapor, the vapor that the users inhale can still contain particles and chemicals that are harmful to people around, around the user. In closing, it is our duty as parents, educators, and lawmakers to protect the health and well-being of our children to the best of our ability. I would urge the General Affairs Committee to advance this bill to the floor for debate by the, by the full Legislature. Thank you.

**BRIESE:** Thank you. Any questions? Senator Brandt.

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**BRANDT:** Thank you, Chairman Briese. Thank you, Mr. Aranda, for all that you do for the kids. I know we drug test a lot of our school athletes. Does a drug test pick up vape products? I'm sure it picks up the THC products, does it not?

**ROBERT ARANDA:** We don't drug test in public schools. There's no drug tests.

**BRANDT:** No? OK, I'm sorry. I stand corrected then.

**ROBERT ARANDA:** But there's, you know, we do a physical and so forth.

**BRANDT:** OK. Thank you.

**BRIESE:** Thank you, Senator Brandt. Anyone else? Those numbers you cited, the percentages: 70 percent, 48 percent. Did I catch that correctly?

**ROBERT ARANDA:** Correct.

**BRIESE:** Was that the incidence of use or were those increases.

**ROBERT ARANDA:** What was that?

**BRIESE:** Is that the incidence of use or are those increases in use?

**ROBERT ARANDA:** The increases in use.

**BRIESE:** Increases, OK. Thank you. Anyone else? Seeing nobody else, thank you for your testimony.

**ROBERT ARANDA:** Have a good day.

**BRIESE:** Next proponent. Good afternoon and welcome.

**JORDAN ENGLE:** Good afternoon. Thank you, Senator Briese and members of the committee. My name is Jordan Engle, that's J-o-r-d-a-n E-n-g-l-e. I serve as the principal and also de facto superintendent at Grand Island Central Catholic Schools in Grand Island. This is my first year in that capacity. Prior to that, I taught five years in a small town in south central Nebraska. Both of these schools have enrollment far less than 500, with Central Catholic right now sitting in 275 in grades 6 through 12. I come to speak on behalf of many small school administrators, as an active member of the Nebraska Council of School Administrators, as well as a doctoral student at the University of Nebraska. Vaping as has been stated before in my own testimony, has

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become an epidemic not only in Nebraska but on a nationwide basis. I know that the statistic that gets pounded into the dirt again and again and again is that statistically one out of five students, actually just a little bit over that, are using these vapor products. And I am here to attest to the fact that even in our small schools and in our private schools we are not an exception to this rule. This year I have spent a significant amount of time that should be devoted to instruction in school improvement to combating what has turned into a serious legal issue in our school with vapor devices being used as commonplace. There are numerous difficulties that come along with addressing this within our schools. One of them being the, the ease of access, the ease of concealing these devices, the fact that vapor dissipates whereas if a kid is smoking a cigarette that's much, much harder to hide. There is the fact that these are available to students within my school who are at age 18. I can attest to the fact that the overwhelming majority of cases that we've had at Grand Island Central Catholic this year have been products that have been purchased by somebody who is under the age of 21. I am a strong proponent of lifting the age to 21 for that reason. One instant in particular is a 19-year-old student who graduated last year, came back for multiple band activities last year in the fall semester. We found out over Christmas break, when I was notified by local law enforcement, that the student was coming back specifically to sell vapor products. And the numbers that I were given suggested that up to 60 students out of 275 had either inquired or purchased these products from this person. Being as though most of that happened outside of my school, I'm held powerless at that point. And unless a student is brazen enough to bring a vaping device out in front of somebody else, which is unlikely, because kids are smart if nothing else, we, we are largely powerless in combating this. So I guess what I'm asking the committee is to advance this to the Legislature floor and to bear in mind that this is really an opportunity for us as a state to put a step forward in saying we understand that this is an issue and we want to be a part of the solution. And if we're, if we're on the cutting edge of that, then kudos to Nebraska. And I know that one of the, one of the aforementioned statistics was the decrease in the smoking epidemic amongst teens. And please know that in all of the education literature that I was trained on myself, the reason that those statistics are what they are today is the fact that policymakers step forward against the big tobacco lobby and said, hey, wait. We need to take a step back from this advertising, we need to take a step back from this stuff that is, that is geared specifically towards teens. Right now is a chance for us to do that again and to take the first step into helping

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out school administrators, helping our students, and moving forward to hopefully rid ourselves of what has become a true epidemic. And with that, I will take any questions.

**BRIESE:** Thank you. Any questions? Senator Moser.

**MOSER:** Do you find that it's a habit more prevalent among male students than female students?

**JORDAN ENGLE:** It is non-discriminatory. And I've had kids all the way down in sixth grade reported vaping. My wife teaches third grade and she has had students who have been reported vaping. This is, this is completely non-discriminatory. And, you know, there's, there's obviously a difference between reports and proof. And part of the, as I mentioned, part of the battle here with vaping is the fact that this is easy to conceal, it dissipates. It does not show up on drug testing, to your point. We do random drug testing at Grand Island Central Catholic, and it is not one of the indicators on our test. Not to say our test is the only product on the market but vapor products do not show up on those as well. So in terms of male versus female, age, all of those things, there really is no trend.

**MOSER:** Do you find parents to be supportive of your trying to control it or are they more permissive in the use of vapor products?

**JORDAN ENGLE:** I was on the aforementioned video speaking on behalf of Grand Island Central Catholic, and I actually put out another video prior to that over Christmas break where I went down to the Pump and Pantry at the corner of where I live in Grand Island and bought a JUUL myself because parents don't know what these things are. And I can attest to the cost, it's \$30. I'd love that money back because I'm not going to use it. But I went home and put this video on, on our school's Facebook page with the JUUL saying, hey, here this is, here's what this is. If you see this, it's not OK. And we, I actually on the spot there banned USB drives at Central Catholic because you can-- you cannot, without knowing the difference, distinguish between the two. So parents are very supportive. Part of the problem right now is a lack of awareness from parents. I received multiple comments after my first video and after the subsequent video which Grand Island Public Schools released this week where parents were shocked at the, at the concealability and the overall, you know, just, I guess for lack of a better word, innovation that these products have put forth in, in basically becoming invisible.

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**MOSEER:** Thank you very much.

**BRIESE:** Thank you, Senator Moser. Anyone else? Seeing no other questions, thank you for your testimony.

**JORDAN ENGLE:** Thank you.

**BRIESE:** Next proponent. Good afternoon and welcome.

**TIM KEIGHER:** Good afternoon, Chairman Briese a members of the committee. My name is Tim, T-i-m, last name is K-e-i-g-h-e-r, and I appear today before you as the registered lobbyist and executive director of the Nebraska Petroleum Marketers and Convenience Store Association in support of LB614. And like the other retail testifiers, I have spoken with Senator Quick about this bill a couple of times. I understand his problem in the Grand Island schools. We are supportive of the licensing issue, you know, provided that the current license we have, that the vaping products would just fall under that and that there wouldn't be an increase in the fee. And as for the age of 21, I guess we feel we'd rather see it be done on the national level so there's consistency throughout the country, as opposed to each state or each municipality, as Senator Hunt said, there was 400 and some different municipalities that had raised it. We would rather just wait and see the feds address that issue. So with that, I will conclude my testimony.

**BRIESE:** Any questions. Why is it so problematic to-- or why should we wait for the feds to do something about it? Why not as a state we do it?

**TIM KEIGHER:** Well, I have members that sell in other states, surrounding states, and just consistency for company policy that, you know, we don't sell to anybody under this age is really our reason. And I guess talking to my board members, they felt that if a person of 18 could go in the military that they should be able to buy cigarettes. That was predominant by half of them.

**BRIESE:** But essentially your first reason was to have a consistent company policy here between states, correct? OK. Thank you. Anyone else? Seeing no further questions, thank you for your testimony.

**TIM KEIGHER:** Thank you.

**BRIESE:** Next proponent. Good afternoon and welcome.

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**NICK FAUSTMAN:** Good afternoon. I'm Nick Faustman, N-i-c-k F-a-u-s-t-m-a-n. I'm the Nebraska government relations director for the American Cancer Society Cancer Action Network, which is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. ACS CAN cannot support LB149 as introduced because, in short, it would penalize persons under 21 for purchasing e-cigarettes but not other tobacco products. We understand, however, that Senator Quick will be putting forward an amendment to improve the proposal. Having not seen the new amendment, I am unable to comment on that specifically. However, I can tell you that ACS CAN supports raising the minimum age for sale of all tobacco products to age 21 as part of a comprehensive strategy to reduce youth initiation. The legislative proposal of this sort should protect youth and not benefit the tobacco industry. ACS CAN recommends that any legislation raising the minimum age of sale to 21 include the following provisions. Number one, it should cover all tobacco products, including electronic cigarettes. Number two, it should provide public education and training in technical assistance to retailers. Three, it should implement measures for active enforcement, such as retailer licensing and penalties, including license suspension and revocation. Four, it should not create new categories of products which would exempt them from other tobacco control laws. Five, it should not penalize youth. Six, it should pertain to all persons under the age of 21, including members of the military with whom we should be providing all necessary resources in order to protect their health and ensure military readiness. And number seven, it should not preempt other jurisdictions from passing strong tobacco control policies. But most importantly, raising the minimum age of all tobacco products to age 21 must be part of a strong comprehensive tobacco control strategy to adopt evidence-based programs and policies. Thank you for the opportunity to comment on this proposal and for your attention to this, this important topic. ACS CAN would be happy to assist Senator Quick and the members of the General Affairs Committee in the development of a strong legislative proposal.

**BRIESE:** Thank you. Any questions? Senator Moser.

**MOSER:** In your prepared remarks you said that you want to be-- to have included in the legislation that it does not penalize youth. Could you explain what you're trying to say there? I mean--

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**NICK FAUSTMAN:** Currently there are there are provisions in law that that penalize youth for possession, use or-- possession, use, etcetera. We would favor a policy that does not do that. In our, in our view what those youth need is access to cessation services and not a misdemeanor.

**MOSER:** So you would penalize the people who bought it but not necessarily the youth that might use it?

**NICK FAUSTMAN:** We'd like to put that burden on the retailer who is selling that product.

**MOSER:** Do you see health problems emanating from the use of vapor products?

**NICK FAUSTMAN:** We do, and the, well, for instance, a January, 2018 report by the National Academy of Sciences Engineering and Medicine concluded there is no substantial evidence that cigarette-- e-cigarette use increases-- I'm sorry, there is substantial evidence that e-cigarette use increases risk of using combustible tobacco products. And incurring-- and according to the Surgeon General, e-cigarette use among youth and young adults is strongly linked to the use of other tobacco products, such as regular cigarettes, etcetera. Some evidence suggests that e-cigarette use is linked to alcohol use and other substance use, such as marijuana. And certain e-cigarette products can be used to deliver other drugs like marijuana. The aerosol from the e-cigarettes is not harmless. It can contain harmful chemicals, including nicotine; ultra-fine particles that can be inhaled deeply into the lungs; flavorings such as diacetyl, a chemical linked to serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals such as nickel, tin, and lead. So in answer to your, your question, yes.

**MOSER:** Thank you.

**BRIESE:** Thank you, Senator Moser. Anyone else? Any further questions? Seeing none, thank you for your--

**ARCH:** Excuse me, I had a question.

**BRIESE:** Senator Arch.

**ARCH:** So I just had a chance to scan the handout you gave us here on raising the minimum age of sale of products, sale of tobacco products to 21. It has a, it has a March, 2015, where it models the potential



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impact of doing that and how many fewer people would use and so forth. We're not the first considering this. Actually, it says six other states plus the District of Columbia have already passed. Do we, do we, have you seen studies of results of passing that? Did it actually reduce the incidence of they being in that age or--

**NICK FAUSTMAN:** To, to be completely honest, Senator, I personally have not seen those. But I'd be happy to check on that with tobacco control experts.

**ARCH:** And maybe it's not been in effect long enough to really have that kind of study.

**NICK FAUSTMAN:** That could be. I mean, this is a fairly new phenomenon. I mean, it's, right now it's, it's really growing in popularity and so it started taking off very quickly.

**ARCH:** Thank you.

**BRIESE:** Thank you, Senator Arch. Anyone else? Seeing no further questions, thank you for your testimony. Additional proponent testimony for LB149. Good afternoon and welcome.

**BRIAN KRANNAWITTER:** Good afternoon, Senator Briese. My name's Brian Krannawitter, and that's spelled B-r-i-a-n, last name is spelled K-r-a-n-n-a-w-i-t-t-e-r. And I'm the government, government relations director for the American Heart Association. I have not had the opportunity yet to see AM529, which was referenced by Senator Quick. My understanding from the comments, his testimony, some of just a couple of key points I'll touch upon, that, in addition to e-cigarettes, it would include all tobacco products, which is certainly something we would like to see. And licensure as well. The one thing I would say with regard to nicotine and e-cigarettes, and that's been referenced a lot and with good reason, but if you go to the FDA Web site, fda.gov, even those without nicotine there is risk involved. And I'm quoting directly. It says: even e-cigarettes labeled as nicotine-free can still expose users to toxic chemicals known to cause serious health effects. This is something to consider in the definition, which I have not seen, in the amendment of e-cigarettes is to account for that. There is risk both with nicotine and the nicotine-free. And the other item I would mention just briefly is, I think it was state Senator Hunt who asked for the number of states and the number of localities that have passed T21 law. This is as of January 8, 2019. I believe Senator Quick referenced it as well, there

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have been six states. At that time also, two months ago almost, it listed-- this is from Tobacco-Free Kids-- 430 localities. Now, some of those include localities and states that, that subsequently passed a state law like, like Massachusetts for example. However, it's still a substantial number, and you're looking at New York City; both Kansas Cities; Minneapolis; Cleveland; Washington, D.C.; Boston; I believe in Topeka, Kansas last year. So whatever it's worth, I just wanted to share that with the committee. So with that, that will conclude my testimony. And I would be happy to answer any questions.

**BRIESE:** Thank you. Any questions? Seeing none, thank you for your testimony. Next proponent. Seeing no others, any opponent testimony? Good afternoon and welcome.

**ERIC JOHNSON:** Good afternoon. My name is Eric Johnson. I am-- E-r-i-c J-o-h-n-s-o-n, and I own a vape shop in Omaha, several of them in fact. But more importantly, I'm also a father. I have two children that are in the exact target range for this. My little boy is 13, my little girl is 15. I was made aware of JUULing, as the kids call it, through my daughter about a year ago. So this is something that I have become aware of recently and is something we have made active steps to try and stop in our area. One thing that I do want to caution though is that, while none of us ever want to have anyone start a new habit, whether you're old or whether you're young, I don't feel that this bill is one that will productively and adequately address not only the issue at hand but also it creates other problems for those kids that are currently smoking. You know, the FDA is taking a lot of steps right now in order to be able to address the issue, and they're doing a pretty good job in my opinion. The Iowa Attorney General probably said it best. He said: We write to urge the FDA to take carefully calibrated and proportionate action in response to what's going on right now. Basically what he's saying is, is let's not get the cart ahead of the horse. There are a lot of benefits to vaping, it's 95 to 97 percent or more safer than smoking. And to be honest, if we're going to look at what it's about for the kids, I think it's important to look at the actual facts. Most adolescents who vape do so infrequently. The latest published data from 2018 shows that less than 3 percent of ages 15 to 17 teens using e-cigarettes on 10 or more days per month. More 8th to 12th graders vape just flavoring or marijuana than they do nicotine. The past 30 days of the vapor products is significantly higher in 9 out of the 10 states that legalized marijuana. They're over 20 percent, we are less than 10, 9.4 percent. Teens also vape caffeine, vitamins, melatonin. The most intense

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adolescent vapors or far more likely to have been smokers. Have been, past-tense, smokers seeking a healthier alternative. Twelfth grade smokers are far more likely to vape nicotine, 61 percent, than nonsmokers, 18 percent, and never smokers, 14 percent. Likewise the 12th grade never smokers, 76 percent, and nonsmokers, 69 percent, were far more likely than smokers to vape just flavors. Adolescent smoking has declined sharply as youth vaping has increased. So when people tell you that people who vape also smoke, that's why. It's because they're quitting. They're getting off of the cancer sticks. Cigarette smoking by 6 to 8-- like I said, it has been declining. Thirty-four percent of high schools who used a vapor product in the last 30 days were 18-and-over adults. We, in my business, have recognized that this is a potential problem. We've taken steps internally last year in order to get, get to the bottom of this. We make sure that when someone comes in to buy a product that fits into the category where it may be used in schools that they are limited, one product within 30 days. We also keep track between stores to make sure that that person isn't going to multiple locations in order to get it. We are taking active steps, and our industry cares about people that we're trying to help, which is people quit smoking. The problem with this bill is, is that you're going to abandon a whole segment of the population that may end up being smoking and remove from them the ability for their parents or their physicians to be able to help them stop. Like I say, vaping is proven to be a safer alternative to smoking. And it is incumbent upon us to help every segment of our population to try and live a healthier life. Any questions?

**BRIESE:** Any questions for the testifier? You indicated that your store is taking steps to help minimize this problem we've heard about today. Your store, multiple stores doing that, the industry as a whole doing something like that?

**ERIC JOHNSON:** You know, we, rightly or wrongly we should have probably formed up an industry group before now, but we have done so. And, you know, a lot of other stores have existing policies against selling the type products specifically. What, you know, what you guys are talking about here is JUUL. I mean, that's really, we've said it again and again and again. It's JUUL, JUUL, JUUL, JUUL. The reason it's a problem is, is because it's so small, because it's high nicotine. That's the problem. The issue isn't this mass quantity of products that we have out here that helps people actually quit smoking. Problem is this one product or lines of products like it that actually have that type of issue. So from our perspective, the problem isn't vaping.

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The problem is that we have a product that's easily put in the hands of kids and we have a motivation for certain individuals in order to, to try and get it to them. You know, in that vein too, even if we did outlaw here in Nebraska, 80 percent of our population lives within 50 miles of the border. You know, if you're 18 years old and you're looking to make a couple hundred bucks, all you got to do is go across a border, pick up as much as need to now. You know, you fix the problem anyways. So to me, it, it becomes less effective, and you've heard other people talk about how it's probably better to have this done at a national level. I have to echo that. The FDA is taking steps and I would say, you know, table this. Not necessarily throw it away but just table it for right now. Let's, let's see what the feds do, let's see how this goes. And frankly, those of us here would love to work with the Legislature, with the schools to try and craft the policies and procedures that would work for everybody. So we can help people to quit and we can also help, help make the schools a safer and better place for all of our children too.

**BRIESE:** OK. Any questions? Senator Brandt.

**BRANDT:** Thank you, Mr. Johnson, for appearing today. I'm a little stunned by going through this one handout. Vaping is less harmful?

**ERIC JOHNSON:** Yes.

**BRANDT:** The last statement here says nicotine is not any more harmful than caffeine. It's the next sentence: There is no evidence daily nicotine or caffeine use increases health risks.

**ERIC JOHNSON:** Yeah. So the, the notable health risks that you get from caffeine and nicotine is very similar. It's a tightening of the cardiovascular system. So it lasts between 15 minutes and a half an hour, dependent upon how much you have in your system. The difference though is that caffeine, when you go to get caffeine from some place, you get it in a coffee, you know, you get it in your Pepsi, you get it in a Mountain Dew. Nicotine has a similar effects on your body's cardiovascular system and on your mental health. Caffeine and nicotine both actually have beneficial effects on the body, specifically neurologically speaking. You are far less likely if you are a smoker or if you are a consistent coffee drinker to develop neurological disorders such as Alzheimer's, Parkinson's, and other things like that. So it is not as bad as people can put it out there to be. Is it addictive? Sure. The same way that you meet a lot of people that are like, don't talk to me until I've had my second cup. So, yes, in that

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respect both of them have an addictive quality to it. But from a long-term health standpoint there doesn't seem to be any science that indicates that.

**BRANDT:** All right. Thank you.

**BRIESE:** Thank you, Senator Brandt. Senator Moser.

**MOSER:** On your handout, the slide here, it says: Vaping is at least 95 percent healthier than smoking, estimated to be 98 to 98-- 98 to 99 percent healthier. Can you reconcile that with some of the previous testimony that we heard?

**ERIC JOHNSON:** Yeah.

**MOSER:** How do those co-- coexist?

**ERIC JOHNSON:** You know, the, first off, you're talking about healthier. So when you talk about healthier, it kind of depends on what your perspective is on it. I've heard a lot of things owning a vape shop from people that are concerned about their health. You know, they have, they're always looking to get off the cancer sticks. And they've heard a lot of the things that people say about, oh, vaping is so bad. The problem is, is that some of these studies do things that are outside of the norm of how you would utilize the product. So one that I saw a little while back, and this was probably 2014, 2015 where it said that many carcinogens were being emitted by the vaping product. Well, the problem was is that they were utilizing the product at a higher wattage level than you would normally use a regular product. And so they were burning it. And the second that you burn it, you get the exact same results that you get from tobacco because that's where carcinogens come from it's because you've actually burned something. So my question would be, I would want to know how those studies were conducted. What were the methods that they utilized and are they applicable to actual daily usage when, when you talk about a regular product.

**MOSER:** Do you see a lot of young people come in to buy their products.

**ERIC JOHNSON:** Sadly we do. We, we card every single person. We are diligent about it. We see people, like I say, we have a specific set of products that we watch and we make sure that those are, to lack of a better term, they're managed products. The rest of the products, we don't seem to have much of a problem with. But when we see those, it's

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kind of a red flag. When you come into one store, we will always mark down, we will always look inside of your order history when you purchase that product. You have to create an account in order create that, use that, use that product. One of the other things that we do is we cycle our, our employees between stores. We know all of our customers. So when you see somebody that you had come, come into one store come into another store and utilize a different account, we know that they're doing something shady and they end up being banned. They're permanently banned. They are not allowed on the premises any longer and if they come back we'll call the police.

**MOSER:** So you own a chain of vape stores?

**ERIC JOHNSON:** We own four stores at this current time. Yes.

**MOSER:** And where are they located at, are they in Nebraska?

**ERIC JOHNSON:** Yes, sir, in Omaha.

**MOSER:** Omaha. Does Iowa regulate vaping differently than Nebraska?

**ERIC JOHNSON:** I honestly couldn't say to that. My understanding is that they do. Right now, things are basically equal, how they exist.

**MOSER:** Do you find a lot of customers from Iowa come to Omaha to buy vape products?

**ERIC JOHNSON:** They do, but they're specifically looking for particular flavors, devices, or they're just loyal customers and they've been coming for years and so they keep coming back. We try and make sure we provide the highest level of customer service and honesty and integrity in our business, and so we've got a lot of-- a large, loyal customer base.

**MOSER:** Thank you.

**BRIESE:** Thank you, Senator Moser. Anyone else? Seeing no further questions, thank you for your testimony.

**ERIC JOHNSON:** Thank you.

**BRIESE:** Any other opposition testimony? And anyone wishing to testify neutral or opposition, go ahead and come up here to the front row, if you'd like. Good afternoon and welcome.

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**TIM BOWEN:** Hi. My name is Tim Bowen, T-i-m B-o-w-e-n, the director of operations of Alohma. And I'm representing both Alohma and the Nebraska Vape Vendors Alliance here today. Alohma has 11 stores in the state of Nebraska, 113 stores nationwide in 18 states and three countries. Last Friday, Scott Gottlieb, the head of the FDA, took a package of his proposed policy to the White House to control the epidemic of youth vaping. And although it has not been made public, we know that, that the content of what he wants to enact is to restrict the sale of flavored vapor products from all convenience stores and, and all retail businesses that do not card their customers. The association of stores that we have, true vapor stores, the ones that work hard to get people that are-- that want to quit smoking, already card and live by that, that rule. Everybody comes in, everybody is carded, every sale and every transaction is verified that they are actually selling to an adult. Our company, by the end of this week will have a system in place in which a driver's license from any state in the, in the nation will be able to be scanned and the actual sale will be approved or not approved by the date of birth that's on the card. It takes away any problem with addition and subtraction which occasionally occurs from our staffs. So cigarettes are made up of an organic material that is rolled in paper. The common cigarette really only has 30 percent tobacco in it and the rest is made up of filler. Those are burned and we inhale that smoke. That's what a smoker does. The smoke and the inhaled mixture of this combustion has over 7,000 different chemicals and, and reactions in it. It makes a tar that sticks to the lungs and causes illness: 480,000 people die every year of tobacco-related disease. That is basically, you know, almost a 50 percent chance of dying if you smoke. I'm either going to live or I'm going to die. So it's not a very good, it's not a very good ratio. You know what I mean? You're not-- if you were a betting guy, you would probably wouldn't take that. What vaping offers and what has been proven, and it's, it's come up here several times today, is something that is at least 95 percent safer. And it is. It is not 100 percent safer. OK? There is nothing better than not smoking at all or not vaping at all. I'm out of time. I would entertain any questions that you might have.

**BRIESE:** Thank you. Any, any questions? Senator Moser.

**MOSER:** When you say your card all your customers, are you checking for age or are you identifying them as customers and what they bought or what's, what's the carding for?

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**TIM BOWEN:** When we card, we ID. We check the IDs of all the customers. And yes, there is a database that is by customer name of, of what they purchase. We use that for both warranty purposes, and frankly many people come in and they try different products and, I don't know what I bought the last time. What did I get? And we, we are able to tell them what it was that they purchased.

**MOSER:** So what age do you allow to buy your products?

**TIM BOWEN:** Eighteen years and older.

**MOSER:** Eighteen and older.

**TIM BOWEN:** We did-- we held onto that 18 age limit from the, from the day the stores were opened, even before and there were laws that prohibited, you know, or defined a legal age to buy the products we were at 18 years of age.

**MOSER:** Do you find youth trying to buy the product?

**TIM BOWEN:** We--

**MOSER:** Do you turn down a lot of potential customers?

**TIM BOWEN:** We did a year ago, even several years ago. Not so much now, because the word is out that you can't go into a vape store and buy the product. You know, do you, do they try, does somebody come in without an ID and think that they can pull one over on us? They can't. We will not service somebody if they do not have a valid identification. The JUUL, which has come up, is, has a great deal of available, availability and it has a different kind of distribution model than what the products are that we sell in our stores. Convenience stores, internet distribution, these things are what allowed them to sell 16.7 million units last year. So, and the motivation behind selling the units, a bottle of liquid, a 60-mil bottle of liquid at one of my stores would cost \$25, 60 mils. So a JUUL pod has got 1.5 mils of liquid in it. The same equivalent price of a JUUL, the, the JUUL liquid compared to the liquid, the liquid that you would buy in most of our vapor stores. Twenty five dollars versus somewhere between \$150 to as much as \$220. So there is a monetary reason. If you can, if you can make four or five times the amount of money on a little pod that people don't, I mean, they don't recognize it. Oh yeah, my, my refill is \$9.99 for my pods. Well, they're getting only a very small amount of liquid. Most vape stores



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do not sell the product that has been talked about today. Most do not because it is a closed-pod system. Most stores will carry open-pod systems, and any vape store owner or business will tell you that their average consumer buys either 3 milligrams of nicotine or 6 milligrams worth of nicotine in the juices that they buy. They do not buy 54 grams of nicotine, and that's the problem: 54 grams of nicotine.

**MOSER:** So their, their liquids are exclusive to their products that dispense them?

**TIM BOWEN:** That is correct.

**MOSER:** So it's like buying a printer and paying \$50 for the ink and the printer is \$20.

**TIM BOWEN:** Exactly. Exactly. So you-- if, if the distribution channel is controlled. Then you will see these problems that have been discussed-- and I feel for these people. I mean, I'm a resident of the community, I have children too. I feel for them. It's hard for me to just stay here and, and not say it's a good thing. But the truth is, it's a bad thing. It criminalizes 18-year-olds, 19-year-olds, 20-year-olds when they have been smoking since they are 13 years old or 14 and they want to stop. Vaping has been proven, the FDA says it, the American Cancer Society or Lung Association-- says in my notes there. One of them says that it is 60 percent more effective than any other means of smoking cessation. So that's huge. And the same nicotine that is in it transdermal patch or a Nicorette gum is in the vaping products that we sell that. The vaping is not tobacco. Is not tobacco.

**MOSER:** Are the distribution channels for vapor products similar to tobacco distribution. Are they regulated or are they owned by tobacco companies or--

**TIM BOWEN:** They are, they are owned by tobacco companies. You cannot buy cigarettes over the Internet. You can buy cigars over the Internet. OK? However, vaping is pretty much wide open. You can buy vaping products over the Internet, both liquids and hardware.

**MOSER:** And you buy those directly from the tobacco companies or you buy those through retailers?

**TIM BOWEN:** Yes, sir. In fact, that's the way JUUL basically was started. It was within the last several years that they were able to

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begin distribution channels into convenience stores, grocery stores, things of that nature, business.

**MOSER:** And tobacco is illegal to advertise on television but vapor products are legal to be advertised on TV?

**TIM BOWEN:** You can advertise vapor products. In fact, you, some of you, may have seen I used to do TV commercials for our customers and-- or for our business. And frequently I would say: If you don't smoke, don't vape. But if you do smoke and you're looking for an alternative, consider this, because the success rate is so much greater, so much greater.

**MOSER:** Why is vapor, vaping easier to quit than smoking?

**TIM BOWEN:** Because there are two things that are associated with smoking, really. One is the physiological habit of putting something in your mouth. Some people suck on pens, some people chew gum. Smokers are used to hand to mouth action, right? So vaping mimics that. It's about 50 percent of what a smoker remembers. It's a hard thing to break. The other part is the addictive-- is the nicotine. Most smokers are anxious. They have very high anxiety, and the nicotine and the motion lower an individual's anxiety, makes them relax. So nicotine is now being studied as having potential for Alzheimer's disease and Parkinson's disease.

**MOSER:** Well, let's get back. Let's--

**TIM BOWEN:** Sure.

**MOSER:** I don't want to let you testify too far here.

**TIM BOWEN:** I understand.

**MOSER:** --your time. But the question of how does the vaping habit help you quit smoking? Do you reduce the amount of nicotine in your vapor or is it more annoying than smoking, so you quit it eventually or--

**TIM BOWEN:** Yeah, it's more work. It's very easy to pull a cigarette out and light it up and go about doing that. With vaping, there is, there are more steps that one goes through. With regard to how does it help, many of us that are in the business of cessation reduce over time the nicotine consumption of the individual customer. So cigarette brands have different levels of nicotine in them. A full-flavored cigarette may have as much as 18 milligrams of nicotine in a, in a

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package. If you come to me as a smoker and you say, I use X, Y, Z brand; and I know that X, Y, Z brand has this high level of nicotine in it, I would provide for you a nicotine replacement that is similar or identical to what it is that you've used. And then over time, 60 days is usually the time period, cut that in half and then cut it in half again and then cut it in half again. And if the consumer, the adult wants to be nicotine-free, they can do it that way and it's very harmless, very painless.

**MOSER:** What percentage of your customers are trying to quit vaping?

**TIM BOWEN:** Trying to quit vaping--

**MOSER:** Or trying to quit smoking.

**TIM BOWEN:** Eight-eight percent. And this, this was submitted to the FDA last week. We had a meeting with them last week. Eighty-eight percent of our customers, once they begin to vape, they continue. In other words, they, they actually "cessate." They move away from smoking altogether. So we have an 88--

**MOSER:** But then they continue to vape.

**TIM BOWEN:** Well, they continue to vape until they decide not to anymore or until they are able to, to stop completely.

**MOSER:** OK.

**TIM BOWEN:** OK? So our, our success rate in, in making somebody a non-smoker is substantially higher than what really the national average is, and incredibly higher than using a, a nic-- a NicoDerm patch, yeah NicoDerm patch or the gum.

**MOSER:** OK, thank you very much.

**TIM BOWEN:** Certainly.

**BRIESE:** Any other questions. Thank you for testimony.

**TIM BOWEN:** My pleasure.

**BRIESE:** Next opponent. Good afternoon and welcome.

**SARAH LINDEN:** Good afternoon, Chairman Briese and members of the General Affairs Committee. Thank you for having us. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n. I also own vape shops. My vape shops

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are called Generation V. I have shops in Nebraska and Iowa. And my-- what I really want to try to talk about in my three minutes is some suggested alternatives. But I do want to touch on the current bill as it's laid out. One is that LB149 would define vapor products as tobacco products. But as you just heard from my colleague, Tim, we believe these products are actually nicotine replacement therapy, and they're much more effective than any other smoking cessation aid. Also, vapor products are not made from tobacco. Second, we don't think that the age should be raised to 21. This would restrict young adults, ages 18 to 20, from seeking healthier alternatives to smoking. And actually I have data that I'll show you in a minute that actually shows that the smoking rates will increase if you raise the age of vaping to 21. One point that I want to make is that 18 years old is old enough to do a lot of things. It's old enough to die for our country, it's old enough to vote, it's old enough to incur debt, it's old enough to play the lottery, it's old enough to move out of your parent's house, it's old enough to get married. It should be old enough to make a decision on whether or not you want to vape, and especially to make the decision on whether or not you want to quit smoking. There was a study done in June of last year that shows that, of the states-- and I think Senator Arch brought this up as a question-- of the states that did change the law to 21, what happened to the smoking rates? They increased because cigarettes are easier to get than vapor products. Vape shops do a very good job of trying to keep these products out of minors' hands, and so cigarettes, which are much more widely available, are what these individuals go back to. We also believe that the age to vape is not the problem. That's not going to be what's most effective in curbing teen vaping. We agree, we don't want teens to vape. However, teens will find a way to get it illegally. And so the best method is to take away the product that they're using, not to raise the age. So on this chart here that shows what adults use, what teens use, what the JUUL is, you can see that the type of device that adults use and the nicotine level, and their feature that they prefer, which is flavoring, all of it is different. Their retail channel is different. Teens are using closed systems like the JUUL, they're using way higher nicotine levels. The reason that they like the JUUL, the reason that they vape is because they can do it discreetly with, with a device that looks like a USB drive. They find out about it on social media from their friends. They buy it at convenience stores. All of this matches up with the JUUL. So the problem is not the age, it's really this product. And if you go to the suggested alternatives page, we believe that these alternatives-- you can skip the fourth one down because that had to do with taxes, but

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education programs to teens, we would be more than happy to help with that. Limiting vapor product sales to vape shops, that's what the FDA is proposing, and that would help because only one vape shop, 1 percent of all the retailers in Nebraska, sold to a minor in 2018. Also what Eric had proposed, my colleague, about monitoring purchase philosophies to eliminate straw purchases, we would be very happy to do that and institute it across all vape shops in the state of Nebraska to make sure that people aren't buying in bulk and then selling them to minors. And then lastly, we could restrict the closed-system vaporizers or we could get rid of high nicotine content e-liquid that's popular with teens. So those are our suggestions. We want to work with you. And I'm happy to answer any questions that you have. We want to be part of the solution. We understand that nobody wants teens to be vaping. So we don't and you guys don't and the schools don't. So we would rather come to the table with you and find a solution that works.

**BRIESE:** Thank you. Any questions? I have a question here of some of this information you gave us. One data point was historical data suggests raising the vaping age increased teen smoking by 1.1 percentage points. We, we don't know about those studies if they also increase the cigarette or tobacco age in conjunction with the vaping age there do we?

**SARAH LINDEN:** We do. They did, they increased--

**BRIESE:** Where, where do I see that?

**SARAH LINDEN:** I don't know. I might have put it, taken it off, but I did research that because the law had-- this bill was amended. So I looked at that specifically. And there is a source down here if you want to read more about it yourself. But it, 100 percent they raised the age of smoking and vaping at the same time.

**BRIESE:** OK. I don't see it on here, that's why I question that.

**SARAH LINDEN:** No problem.

**BRIESE:** And there was a previous testifier talked about utilizing vaping as a smoking cessation tool. What percent of kids under, 18 and under use vaping as a smoking cessation tool?

**SARAH LINDEN:** I believe Eric had that. I can't remember what the percentage was.

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**BRIESE:** And if you don't know it, that's fine.

**SARAH LINDEN:** Yeah, I'm happy to email it to you because I actually have it. I just didn't bring my presentation, that part of it up here.

**BRIESE:** Do you have any idea how many 12th grade or what percentage of 12th grade kids smoke?

**SARAH LINDEN:** I do not. I know that it is decreasing. It decreased about 64 percent last year.

**BRIESE:** But it's not a very substantial percentage, correct?

**SARAH LINDEN:** It's not anymore. It used to be. And what has happened is that a lot of them have turned to vaping. So vaping has increased and smoking has decreased.

**BRIESE:** Because one of the other data points here was that 18.1 percent of nonsmokers and 14.3 percent of never-smokers are likely to vape nicotine. And that entails quite a substantial percentage of our student population, I think, and they're telling us on average it's only 20 percent to start with that utilizes vaping, give or take. About one in five.

**SARAH LINDEN:** Those percentages are of vapors. So it's not--

**BRIESE:** But that suggests to me that there's not, it's not very high percentage of kids under 18 using vaping to quit smoking.

**SARAH LINDEN:** I believe there's a slide on there.

**BRIESE:** OK, I'll look--

**SARAH LINDEN:** I can look and find that information. All in all, vaping is-- I understand the concern, especially with it happening at the schools. But I would be more concerned about the 30 percent of teens who are drinking alcohol, the 20 percent who are smoking marijuana, the 40 percent who are texting while driving, the 5 percent that are drinking and driving. But we don't have bills in front of us in the state of Nebraska to do anything to curb any of that, you know? And most teens are using it to quit smoking. It's way healthier than cigarettes. But yet, we're going to put forth a lot of laws to try to get teens to not vape, but who is doing anything about the amount of teens who are drinking alcohol? By the way, alcohol is 21. Teens are still getting it. What does that tell you? It tells me that this isn't

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going to work. And I used to, I started smoking at 12 years old now. I wasn't getting it from friends that were 18. I was standing on street corners and asking anybody who walked by to go in and buy it for me at the gas station, or breaking into parked cars in the middle of the night and stealing them. I mean, kids will get it.

**BRIESE:** OK.

**SARAH LINDEN:** You know?

**BRIESE:** Any other questions? Thank you for your testimony. Any other opposition testimony? Good afternoon and welcome.

**TANNER WHITAKER:** Good afternoon. My name is Tanner Whitaker, T-a-n-n-e-r W-h-i-t-a--k-e-r. I don't have any fancy data points or any statistics or anything like that. I can grab them, if you like. But for me today I am just going to tell you my story. I'm in position-- and I am in opposition to LB149 simply because I started smoking cigarettes around the age of 15. Whenever I got my learner's permit, I was much-- whenever I got that first taste of freedom, it was much easier for me to go and give the average Joe any 10 dollar bill or 20 dollar bill, tell them to keep the change, I just need a pack of reds. And very rarely would I get turned away from doing that. The first time I was caught was around the age of 16 by my parents. They were incredibly concerned, as any parent would be, about their 15 to 16-year-old child smoking cigarettes. But at this point I was too far deep in the nicotine addiction to quit cold turkey as they wanted me to, so I kept smoking in secret before school, after school, in my car, what have you. And this was around the same time that vaping had first become more popularized as a smoking cessation tool and this was before the age of closed-pod systems. So I'm speaking more towards the conventional vaporizers here. But as it became more and more popular, I saw more and more of my peers who were older than me, who had graduated high school or were 18 at that point. By the time I was 17 I think I finally made the decision to switch over from smoking cigarettes to vapor products. The only issue is every single vape shop that I went to, they ID'd me right at the door or right at the counter. I was never able to even really peruse through their assortment of e-liquids or devices to even ask my questions. A lot of times they would free-- would flat out refuse me service. This was unlike any other convention-- convenience store, many of which in the city of Omaha I was able to just walk in and ask for a pack of smokes and they would just give it to me at those times. And then for my 18th birthday, I was finally able to get my vape. And ever since then, and

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three years later, which would be today, I have turned 21 as of yesterday, so I believe I gave you a very interesting viewpoint and perspective on this issue. And within the past two years I've been able to go completely cigarette free and have gone from 12 milligrams of nicotine when I first started, milligrams per milliliter of e-liquid, down to 1.5 this year and with goals of at the end of this year to be completely nicotine free. None of this would have been possible if I wasn't able to purchase these vaping products at the age of 18. I would have had those three years of additional cigarette addiction where I, it would make it much, much harder for me to actually end up quitting by the end of today or the end of this year. That is--

**BRIESE:** Thank you.

**TANNER WHITAKER:** --my testimony for you.

**BRIESE:** Any questions? Thank you for your testimony.

**TANNER WHITAKER:** You're very welcome.

**BRIESE:** Any other opposition testimony? Seeing none, any neutral testimony? Good afternoon and welcome.

**DANIEL MUELLEMAN:** Good afternoon, Chairman Briese, members of the committee. My name is Daniel Muelleman. That's spelled D-a-n-i-e-l M-u-e-l-l-e-m-a-n. I'm an assistant attorney general for the Nebraska Attorney General's Office, and I lead our tobacco enforcement unit. I'm here to testify in a neutral capacity on behalf of the Attorney General for LB149. The Attorney General takes no position with regards to Tobacco 21 or the clear, Clean Indoor Air Act incorporation of e-cigarettes. I'm here to talk about the pending amendment, AM529. I only was able to hear about the amendment at the beginning of this testimony and I've not seen the specific details. However, the Attorney General's Office has a continuing concern with any amendments to what qualifies as cigarettes or tobacco products within the regulated retail or wholesale space in Nebraska. This amendment sounds like it may touch upon this continuing concern, such that it may impact Master Settlement Agreement funding of the Health Care Cash Fund. And so the Attorney General's Office continues to look forward to working with all interested parties in the future. And that concludes my testimony. I'm open to questions.



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**BRIESE:** Thank you for your testimony. Any questions? Seeing none--

**MOSER:** I got one question.

**BRIESE:** Senator Moser.

**MOSER:** What is your-- I guess I didn't quite follow along with your comment there. You're cautioning us against what?

**DANIEL MUELLEMAN:** Changes to the definition of cigarettes or tobacco products in certain ways within existing state law could have unintended negative impact on what the Attorney General's Office and Department of Revenue do to maintain continued receipt of the Master Settlement Agreement funding, which is the sole funding source of the Health Care Cash Fund.

**MOSER:** So categorizing vaporized nicotine as a tobacco product might jeopardize that settlement?

**DANIEL MUELLEMAN:** Depends on how it-- it wouldn't jeopardize the settlement. What it would do is it could impact how the state enforces existing laws which work towards compliance on payment adjustments under the settlement.

**MOSER:** What do we get in tobacco settlement each year, do you recall?

**DANIEL MUELLEMAN:** Last year the state received \$41 million, the year before that was \$37, the year before that was \$36 million.

**MOSER:** And what happens to that money? Where do we spend it?

**DANIEL MUELLEMAN:** It's completely dedicated to the Health Care Cash fund, and the Health Care Cash Fund is distributed over a number of different--

**MOSER:** HHS and Medicaid, maybe, or--

**DANIEL MUELLEMAN:** Yeah, yeah. There's, there's, there's quite a few tobacco cessation products. It goes towards funding research grants and other public health. It also pays my salary.

**MOSER:** I hope that you have other input than what you've just given us today.

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**DANIEL MUELLEMAN:** Yes, yeah. Like I said, is the amendment, I just don't know the technicalities of the amendment at this time. But I'd love to continue the conversation.

**MOSER:** Yeah. Sometimes we're not real intuitive, we just like to hear exactly how it's supposed to be.

**DANIEL MUELLEMAN:** I look forward to talking more.

**BRIESE:** Thank you, Senator Moser. Senator Brandt, did you have a question?

**BRANDT:** Thank you, Chairman Briese. Real quick, Assistant Attorney General Muelleman. Your office would be more than willing to work with Senator Quick to make sure that that situation didn't happen?

**DANIEL MUELLEMAN:** Definitely.

**BRANDT:** OK. Thank you.

**BRIESE:** Thank you, Senator Brandt. Anyone else? Seeing no other questions, thank you for your testimony. Thank you. Any other neutral testimony? Good afternoon and welcome.

**BROOKLYN LARIMORE:** Hi. Thank you for having me. My name is Brooklyn Larimore, and that's B-r-o-o-k-l-y-n L-a-r-i-m-o-r-e, and I'm a freshman at UNO majoring in public health. And I also have cofounded an organization called Students Against Nicotine. And so before attending UNO, I've been active in tobacco prevention for the past six years and working as an advocate on local, state, and national level. So today I'm here to testify in a neutral position for LB149, knowing that changes are being considered to the bill and not having the opportunity to fully read those proposed changes, I just want to take that neutral stance. And I thank Senator Quick for his efforts to prevent youth smoking or from using tobacco products and wanted to provide my feedback on items to consider in a final bill for consideration by the full Legislature. The U.S. Surgeon General said that e-cigarette use has reached epidemic proportions among youth and he urges action to be taken. And this action includes including e-cigarettes in smoke-free indoor air policies, restricting young peoples' access to e-cigarettes in the retail settings, licensing retailers, and a few more points. But those are the main ones. So when it comes to including e-cigarettes and our smoke-free air policy, I would advise against using any language in the definitions that would

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exempt electronic cigarette-- or smoking devices approved by the FDA because exempting these products does not support Nebraska's goal of protecting our right to breathe clean air. Because although there is not very much research on the health impacts of these products, the research that we do have shows that it is still harmful. So we want to make sure that we can be, take that upstream approach and prevent the issue before we really are facing it just like we did with traditional cigarettes. Additionally, including an exemption of licensing for e-cigarette retailers is very problematic in restricting young people's access to e-cigarettes from both the enforcement and marketing perspective. The current retail setting without licensing makes e-cigarettes seem ubiquitous and should not be continued. Though, or through licensing, local government has a better idea of where and by whom products are being sold, as well as how the sales environment plays a role in the health behaviors of the community specifically among youth. Youth do have easier access to these products if the retail environment is not monitored, and both access and flavor restrictions are key in combat, combating youth nicotine addiction. Retail licensing is a must to ensure that these products, which again are being used by youth in epidemic proportions, are not getting into the hands of young people, because e-cigarettes do contained nicotine and nicotine is an insidious and very harmful product that has lasting and damaging effects on brain development. Which brain is not fully developed to the age of 25. And I personally have several friends who know what stores to buy their vaping products from because of a lack of monitoring, and which will continue if stores are exempted from licenses. And I'd just like to touch also that youth are not using these products with the initial, from my experience, initial intent to quit. I travel across the country giving presentations about e-cigarettes and this issue to kids everywhere, and the most all of them say, like, they started because they thought it was cool. And they can't stop because they're addicted and they don't know what to do. And that's the issue at hand. But finally, increasing the legal age is important to keep them out of the young people, so I do support that part of the bill because there's a lot of high schoolers that are 18. I was 18 in my senior year, and it's-- a lot of seniors do buy products for underclassmen and sell it at a higher price. And that's where mainly younger kids were getting their sources from. But also considering that 97-- or 95 percent of adult smokers started before the age of 21, onset is way less likely to occur after 18. And so it's really important to keep that age or increase the aid to 21 to keep people from ever starting. But ultimately I think that this bill has really good intent, but the

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language and use in the definition is a little murky. So moving forward, the bill does have potential but is not optimally where it needs to be to ensure that most beneficial change.

**BRIESE:** OK, thank you.

**BROOKLYN LARIMORE:** And please--

**BRIESE:** Any questions? So did you indicate that, based on your experience, very few youth vape users use it to quit cigarettes?

**BROOKLYN LARIMORE:** Yeah, from, like I, like I said, I travel across the country. I've talked to hundreds of youth about this issue. And they start out with, since their initial marketing was as a cessation tool, which has no, like, proven use as a cessation tool with, like, the FDA. It's never said that it is a proven tool, like to be used for nicotine cessation. But its original marketing was like, well, you can quit with it or it's just water vapor. And so kids perceive it to be harmless. And by the time they start using it they realize that it's, it's too late at that point because of the nicotine content in them. And then they don't know what to do because it's also not a product that you're going to tell your parents, like, I've been vaping and I think I have an issue because, like, because it is a harmful product and raises parents' concern. But you're also not going to go to your friends and say, like, I kind of want to quit vaping because then of course the peer pressure. If every, all their friends are using it they'll be like, what's wrong with it? And it's kind of the same pressure. I have several teens like my age or a year younger that I'm really working with on trying to quit vaping because they're not using it to cease nicotine use overall.

**BRIESE:** Very good, thank you. Any other questions? Seeing none, thank you for your testimony. Any other neutral testifiers? Seeing none, Senator Quick, would you like to close?

**QUICK:** Thank you, Chairman Briese and members of the committee. When I started looking into this bill, it was actually last, May of last year. And the school board member that brought it to me came and testified today, Lisa Albers, and it was a concern because-- concern for them because in the Grand Island, in the Grand Island middle school and high school it had become an issue for them because so many kids were, were vaping. They weren't smoking cigarettes, they hadn't smoked cigarettes before, but now all of a sudden they were using vaping devices in school. And most of it was because they were using,

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they were using the JUUL device which looks like a flash drive, and it was a big issue because kids were vaping right in the classroom, blowing it down their shirt or going into the locker rooms and doing it. And so that's the reason that we looked at, at doing this bill. Now we're not trying to keep people from, you know, quitting smoking. If that's what the problem is and they need a vaping device to quit smoking, that's, that's not what we're trying to control here or trying to, to handle. I think most of the kids that started, that start using this in school are looking at is it, you know, it's cool. Everybody else is doing it, I'm going to try it, isn't going to hurt us. I think little did they know, and I heard it said that, that somebody said that nicotine is not dangerous. It is dangerous. I'm going to tell you my wife is a labor and delivery nurse and she's seen babies born addicted to nicotine. And they tell those mothers, when you take that baby home, don't shake your baby, because that baby is going to cry. I mean, it's going, it's going to go through withdrawals from nicotine and there's nothing you could do to help that. So getting addicted to nicotine is a very serious thing. And not only getting addicted to nicotine, but what it can do to the, to those children's brains from until they're, until they get a little bit older and how it can affect them. I also heard someone say that raising the age limit on alcohol to 21 didn't, didn't reduce kids getting it in high school. I would say that is, that is not true also. I think it does reduce it. You know, kids, kids will be kids and they will get to get things if they really want it. But I think when you raise an age limit up and you put that separation in there, it's a lot harder for kids to get those, to get those products. And I think, and mainly it's because kids have been out of high school for, for three years, they're now on with their lives or in college. They don't want to really hang out with high school kids. So but an 18-year-old who's still in high school or maybe someone who's even 19 and just barely out of high school, they still have friends in high school. And so I think that's, that's one of the issues and why we, we sought to raise it to 21. You know, we've been working with people in the tobacco industry, with people actually with JUUL and vaping. And we've all agreed that we need to do something about raising the age limit. And so I think this is really an important, important issue to address and something that I really hope that this committee will seriously look at. And I know the AG came with their concern. I'm hoping that amendment takes care of that concern and that we can get this bill in shape that it will work for almost everyone. So with that, I thank you for your time, and I hope you'll pass the bill.

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**BRIESE:** Thank you, Senator Quick. Any questions for Senator Quick?  
Senator Moser.

**MOSER:** Did any of this testimony enlighten you at all. Is this, is  
this what you expected?

**QUICK:** Yeah, I didn't expect the opposition that, that there was to  
the bill. But I understand. I mean, there are vape shops, retail  
shops. So, I mean, I get their, you know, why they would be opposed to  
it. It's probably going to cut into maybe some of their sales, you  
know? And, you know, for me it's more about health. I mean, it's about  
that health issue for that child, and we need to be doing something  
about that.

**MOSER:** Thanks a lot. Appreciate it.

**BRIESE:** Thank you, Senator Moser. Anyone else? Senator Arch.

**ARCH:** Senator, if, if, if vaping was the target, why didn't you just  
target that for age and not all-- in all, instead of all tobacco and  
vaping?

**QUICK:** Well, actually when we started talking to tobacco about it,  
because we didn't know how they would feel about it. Actually it was  
their suggestion to go ahead and take it, why don't you just take  
tobacco to 21, because we don't see kids smoking in school? That's not  
the issue. And I think it would make it easier to pass the bill as  
both, raising both to 21.

**ARCH:** Thank you.

**BRIESE:** Thank you, Senator Arch. Any other questions? Seeing none,  
thank you, Senator Quick.

**QUICK:** Thank you.

**BRIESE:** We have letters for the record. Letters in support: Jeremy  
Maskel on behalf of Ralston Public Schools; Jane Richardson, Hall  
County Supervisor; Andy Hale on behalf of the Nebraska Hospital  
Association; Andrea Simpson [PHONETIC]; Megan Andrews [PHONETIC];  
Deborah Linsky [PHONETIC]; JUUL Labs; Altria; Connie Holmes  
[PHONETIC]. Letters in opposition: Dylan Kreikemeier; League of  
Nebraska Municipalities; JT International; Prime Time International  
Distributing, Inc.; Logic Technology Development. Letter in neutral: R

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Street Institute. And that closes the hearing on LB149. I will turn over the chairmanship to Senator Blood for the next bill.

**BLOOD:** Welcome, Senator Briese, to your General Affairs Committee. We will now open the hearing on LB397.

**BRIESE:** Thank you and good afternoon, Senator Blood and fellow members of the General Affairs Committee. I'm Tom Briese, Br-- T-o-m B-r-i-e-s-e, and I represent District 41. I'm here to present for your consideration my LB397. LB397 was brought to me by the Attorney General's Office. LB397 makes changes to and updates statutory provisions of nicotine, tobacco, and tobacco manufacturers in four major areas, and harmonizes some related provisions. This legislation is necessary to address tobacco product market changes and provide additional enforcement tools to the Attorney General's Office. To provide some background for LB397, in order to legally sell cigarettes in Nebraska a tobacco product manufacturer must annually certify with the Nebraska Department of Revenue and the Nebraska Attorney General's Office. The manufacturer must certify, among other things, that it is either a tobacco Master Settlement Agreement-settling manufacturer making payments to Nebraska under the agreement or establish that it will place funds into escrow based on its cigarette sales within the state. The Nebraska Attorney General's Office bears responsibility of enforcement of the tobacco Master Settlement Agreement otherwise known as the MSA. Annual MSA payments are the primary source of funding for the Health Care Cash Fund. The major changes made by LB397 are as follows. Number one: LB397 amends Section 28-1218 [SIC] to 28-1429.03 to provide new definitions and retail licensing terms to address existing potential legal loopholes and anticipate new and soon-to-arrive products in the consumer nicotine market by creating a new definition of electronic nicotine delivery systems or ENDS, E-N-D-S. LB397 requires ENDS retailers to obtain the same license as cigarette and other product retailers in order to prevent a resurgent of-- resurgence of unregulated nonparticipating manufacturers' fringe products in Nebraska and safeguard against future tobacco Master Settlement Agreement problems. Several other states require retail licenses for e-cigarettes, vapor products, or ENDS. LB397 does not seek to create a new taxable market in these items but rather safeguard against future MSA problems. LB397 also adds a new section, Section 12, to allow for NPM, nonparticipating manufacturer that is, escrow assignments. Nebraska currently has half a dozen nonparticipating manufacturers that are active in the state but the Attorney General must also continue to monitor dozens of additional

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inactive NPMs due to the continued existence of NPM escrow amounts on deposit for sales in previous years by companies that are no longer active. This new Section 12 would provide inactive NPMs with the option to assign these escrow accounts to the state and will likely lead to receipt of NPM escrow money in lieu of maintained oversight or prosecution. Several other states have implemented functionally identical escrow assignment laws and many nonparticipating, nonparticipating manufacturers have opted to take advantage of this option and given all those dollars back to the state. LB397 also amends 69-2707, which deals with the bond requirements for the Nonparticipating Manufacturer Adjustment Settlement Agreement, that's NPMASA. The NPM Adjustment Settlement Agreement is a secondary agreement to the MSA. Nebraska joined this NPMASA in October 2017. The intent of this is to motivate the states to act to offset the significant cost and marketing advantages nonparticipating manufacturers have over participating manufacturers, since the NPMs are not subject to the MSA's payment provisions or marketing restrictions. States with a certain excess percentage of noncompliant NPM cigarettes are subject to a penalty payment adjustment called the set paid adjustment. That NPMASA says that noncompliant NPM cigarettes are cigarettes on which state excise tax, SET, was paid but escrow is not deposited or is released by ways other than as provided for by state or assignment. The NPMASA allows for exclusion of cigarettes from the count of noncompliant NPM cigarettes that would have otherwise applied, but only if the relevant state has the appropriate bond statute in effect as described in the settlement. This provision allows for a real-time check on the numbers with those manufacturers and the state having access to see the data on a one-year delay. This is a safe harbor provision on the default laws. Nebraska needs to adopt the proposed NPM bond statute as drafted in order to avoid losing money each year under the set paid adjustment. The bill also amends Section 77-2601 paragraph 5 to update the definition of cigarette for tax and stamping purposes. LB397 changes Nebraska law to classify cigarettes for tax and stamp purposes in much the same way as a consumer market views and purchases their tobacco products. Included in this new definition is the entire class of mass-produced, high, high-consumable, affordable-priced tobacco-based nicotine delivery systems available such as a small filtered cigars sold in packs of 20 and cartons of 200 for half the price of the cheapest cigarette. LB397 also would include in such a definition the new class a product called the heat-not-burn tobacco product. Heat-not-burn manufacturers are currently leaning toward the position that existing cigarette tax laws like Nebraska's would not apply to their products. LB397 includes this



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category as taxable cigarettes and therefore fixes and avoids tax and escrow loopholes for current products on the market and those we anticipate will be products in the market. LB397 makes several other technical changes to harmonize additional necessary provisions of law with the appropriate language and process updates required by the bill. This bill contains important provisions to protect Nebraska and provide the Attorney General's Office with necessary enforcement tools. It is my understanding that an individual with the AG's Office will be testifying in support of this bill and will most likely be better suited to answer, answer specific questions posed by the committee. But I am happy to attempt to answer any questions you might have. And I would urge your, urge your support of LB397 and its advancement to General File.

**BLOOD:** Thank you, Senator Briese. Do we have any questions? Senator Brandt.

**BRANDT:** Thank you, Chairwoman Blood. Thank you, Senator Briese, for bringing this. We just sat through a lengthy testimony on LB149. If that bill were to pass, would that fit into LB397 seamlessly?

**BRIESE:** I don't know about seamlessly but we may have to make some adjustments to that bill to fit some of these definitions we're talking about here. I think these are the definitions really that we need to be working with, the ones that are contained in this bill that were provided to us by the Attorney General's Office. So seamlessly, yes, it will work, but might have to be a few alterations made.

**BRANDT:** OK. But it's close enough you could, you could get it to work?

**BRIESE:** Yeah, yeah, I would say so. I would say so.

**BRANDT:** And then, and then you mentioned we're bringing this bill because we could lose some money with the agreements. Do you have any idea what that amount is?

**BRIESE:** I believe it's around \$40 million a year, \$35 to \$40 million a year that we receive from the Master Settlement Agreement that goes into the Health Care Cash Fund.

**BRANDT:** And that's all at risk if we don't modify this?

**BRIESE:** I don't know about all of it. Portions of it. I'm thinking the next testifier could probably answer that specific question--

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**BRANDT:** Good enough. Thank you, sir.

**BRIESE:** --as to what is at risk.

**BLOOD:** Thank you, Senator Brandt. Do we have any other questions? With that, will you stay for your closing, Senator?

**BRIESE:** Yes. I will be here, Senator.

**BLOOD:** All right, I would ask that any proponents come forward, and I also ask that if you are testifying on this bill to please move forward to the front of the room. Welcome to the General Affairs Committee.

**DANIEL MUELLEMAN:** Good afternoon. Thank you, Chairwoman Blood, members of the committee. My name is Daniel Muelleman, spelled D-a-n-i-e-l M-u-e-l-l-e-m-a-n. I'm an assistant attorney general for the Nebraska Attorneys General Office, and I lead our tobacco enforcement unit. I'm here to testify on behalf of the Attorneys General Office in favor of LB397. LB397 makes four discreet adjustments to existing tobacco enforcement laws in order to better equip the state's enforcement agencies to ensure continued receipt of funds from the Master Settlement Agreement. As you may know, those MSA funds are the sole funding source of the Health Care Cash Fund, and the Attorney General's Office remains dedicated to the efforts protecting the state's interests therein. The first amendment I wish to discuss is the change in the tax definition of cigarette in order to mirror the MSA and nonparticipating manufacturer escrow deposit definitions of cigarette. When the MSA was signed and the escrow deposit laws were passed, some 20 years ago, the consumer tobacco market was different than it is now. Due to increased state and federal regulation over the past two decades the cost to bring a traditional paper-wrapped cigarette to market has risen considerably. In response the market has developed a secondary class of products, sometimes called small or filtered cigars, to deliver a similar nicotine consumption experience without the added costs. These products are not violating Nebraska's tax laws but they present a threat to the security of Nebraska's MSA funding. If you'll look at the first photo I have provided you'll see an array of cigar variant products as categorized by the FDA. If you'll look at picture number two you'll see an example of the on-the-shelf offering for cigar products on the far left of the FDA array. The product in picture number two is what LB397 focuses on. It does not capture the products on the far right side of the FDA array, otherwise known as premium cigars. Harmonizing the tax definition with

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the escrow definition will serve to eliminate the risks to continued MSA funding presented by these filtered cigars. Another reason to harmonize the tax definition is in anticipation of newly-developed tobacco products. One of these products is called heat-not-burn. If you'll look at the third picture I have provided you can see an example of this new product. These cigarette imitators heat a blended tobacco product to release nicotine on inhalation without igniting the tobacco. HNBS, heat-not-burns, offer a new product to consumers with an intended usage similar to cigarettes. And for purposes of the MSA and state escrow laws, state regulators like myself intend to treat them as cigarettes. Having a tax law in harmony with the other laws will allow consistent treatment across the board for these products and other cigarette-type products, allowing industry to develop alternative tobacco products for consumption without threatening the state's continued interests. The second amendment I wish to discuss is the change of vapor products definition to electronic nicotine delivery systems. The inclusion of ENDS in the retail licensing requirements hinges upon that. The current definition of vapor products is insufficient to cover the growing class of products colloquially referred to as e-cigarettes that you've been hearing about this afternoon. The ENDS definition understands that these new, new nicotine delivery systems can utilize vaporized nicotine emulsions, aerosolized nicotine salts, or any number of new or novel methods. The definition also understands that these new products exist as alternatives to the standard cigarette. As such, state tobacco enforcement efforts would be best served by placing cigarettes and these cigarette alternative products on similar regulatory footing in the retail sales space. The new law already-- or the current law already evidences intend to treat sales to minors the same for both categories. As the market continues to develop and new products and lines between e-cigarettes and cigarettes continue to blur, state regulators seek to prevent new and novel products from frustrating ongoing state enforcement of tobacco laws. While we recognize the developing interests of the e-cigarette market, the state is not willing to allow those interests to interrupt the state's continuing interest in MSA funding. As Senator Briese said, the third and fourth amendments are some pretty technical amendments, and he summarized them fairly well. And I would just like to close by saying these four amendments are intended to reinforce the state's tobacco enforcement priorities and protect MSA funding for the Health Care Cash Fund. They are not intended to create a new taxable market or increase burdens on the market as it exists already. I thank the committee for the

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opportunity to testify. I'm happy to answer any questions you may have.

**BLOOD:** Thank you. Do we have any questions from the committee? Senator Brandt.

**BRANDT:** Thank you, Chairwoman. It's the same question that I asked Senator Briese. What's at risk here?

**DANIEL MUELLEMAN:** It depends on what you're asking for. If you're, if you're talking about with the cigarette market as it exists now, Senator Briese mentioned the SET paid adjustment. That adjustment under the NPMASA, it functions on how well the state collects on its taxes for manufacturers and wholesalers that are selling taxable cigarette products. And that's just a couple million dollars every year. And it's a, it's a temporary adjustment. So with, with all these MSA payments, the \$40 million a year comes in and then the multiple AG offices argue about whether some potential adjustments to the order of \$5 million or so are necessary. But if the state fails a diligent enforcement arbitration proceeding then the state faces increased exposure. For example, right now the MSA payment for 2004 is undergoing arbitration for whether or not diligent enforcement has happened by the states. So as you can see, if, if the 2004 diligent enforcement is not decided until sometime in 2020, by the time the state figures out that it was not diligently enforcing certain parts of its own law correctly you could be facing 15 years of automatic exposure and you could lose \$40 million for the next 50 years.

**BRANDT:** OK, thank you.

**BLOOD:** Thank you, Senator Brandt. Do we have any other questions? Thank you for your testimony today.

**DANIEL MUELLEMAN:** Thank you.

**BLOOD:** Do we have any other proponents?

**KATHY SIEFKEN:** Good afternoon, Chairwoman Blood and members of the committee, my name is-- you're so far over there. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing the Nebraska Grocery Industry Association in support of LB397. There are, according to the statement of intent and, and everything that I read, there are four areas, and we support all of them. The licensing, which would include licensing vapor products and only people that are licensed

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would be able to sell both tobacco and vapor products or one or the other. The, the nonparticipating manufacturers in item number two. Three is a bond requirement. And four are the updated definitions of tobacco and vapor systems. I'm a little bit concerned that you didn't ask Daniel more questions, because he really is the expert on all of this. And, and what he said regarding the diligent, diligent payment aspect of the MSA is so true because we're right now the state is negotiating in 2004. And so it's important to us as a state that we are up to speed and doing what we need to do to meet all of the requirements as set out in the MSA. And then the last thing that I would like to add is the fact that definitions are really, really, really important, and the definition in this bill is for the electronic nicotine delivery system really has to remain unchanged so that it is the same all the way through, so that we are like-- this is what they're doing on the federal level. So it's really important that we do not change that definition, that we keep what's in this bill. And I would like to thank Senator Briese for bringing this bill. It's something that really needs to happen. With that, if you have any questions, I'd be happy to answer.

**BLOOD:** Thank you for your testimony. At this time do we have any questions from the committee? Seeing none, thank you very much for your testimony. Do we have any other proponents?

**TIM KEIGHER:** Good afternoon, Vice Chair Blood and members of the committee. Again, my name is Tim, T-i-m K-e-i-g-h-e-r, I appear before you in support of LB397 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. And I know I'm going to risk when I say this following Kathy, but I'll say ditto.

**BLOOD:** That's fantastic. Thank you for your testimony. Do we have any questions on that testimony? With that, thank you so much.

**TIM KEIGHER:** Thank you.

**BLOOD:** Do we have any other proponents? And again, I remind you to move forward if you're going to speak on this bill. Any other proponents? All right, then we're moving to opponents. Any opponents on this bill? Welcome to General Affairs.

**JOHN LINDSAY:** Thank you, Senator Blood, members of the committee. My name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing on behalf of the Winnebago Tribe of Nebraska. The-- this whole, as was mentioned, this whole area that, not just legislation but litigation, arose from

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the 1998 Master Settlement Agreement. The basic core of that agreement was a settlement between the states and the, the big four tobacco companies to-- in which there was an agreement to make these payments that, Senator Brandt, you were asking about that are paid in on an annual basis. In the, the states, or what the tobacco companies got in return for these payments was a release of liability for all the litigation that was pending there regarding Medicaid costs, etcetera, that states had incurred because, incurred because of tobacco. A lot of activity on the part of the tobacco companies that was resolved within that. What's happened over the years is that Master Settlement Agreement, it really hasn't settled much. There's still plenty of legislation that keeps coming back, plenty of litigation that continues to occur. In fact, the Winnebago Tribe through its subsidiaries, Ho-Chunk Distributing Company in Rock River, is in litigation right now with the state of Nebraska. And this legislation as it's drafted would penalize Ho-Chunk for exercising its rights to have a determination by the court. What is that determination? We found that over the years, and this is not the first time we've had to fight over MSA legislation, but we've seen over the years that tobacco companies because there's \$40 million to the state of Nebraska, hundreds of millions to other states, that's dangled there. And they say: Do as you're told, because otherwise we're not going to pay your payment. And then they have to go through arbitration and things like this. There are some changes, and I'm sure are, are maybe required, but there's others that aren't. And I have, we do have an amendment that would address our concerns as I go through them, as well as a letter from the tribal chairman. But the concern is that first there is no public health motivation behind this. A lot of that was determined years ago. This is about protecting big tobacco's market share. In a nutshell, that's what this is about. And they're concerned prime-- with nonparticipating manufacturers, which tribal tobacco companies or tribal, tribes would fall within that definition. And they want to make sure that we get rid of them. That's the goal, is to not have them around. So what's the concern, biggest concern here, is that this would make us, this would say: We're bad actors, so you can't get on our directory because you exercised your rights under the law to, to litigate. And unless, unless we satisfy the Attorney General, which right now we are in litigation with, unless we provide documentation to his satisfaction we can't get on that directory. And if we can't get on that directory, we can't sell off the reservation. We're not selling off the reservation right now and we may never want to, but tribal sovereignty, well-settled law by the U.S. Supreme Court, federal courts all over say that you cannot control what's

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happening by tribes on their reservations. We would urge that you adopt the amendment or postpone the bill. And my time is up, so I'll be quiet.

**BLOOD:** Thank you for your testimony. Do we have any questions from the committee? Seeing none, I do have a quick question for you. Have you discussed this amendment at all with Senator Briese's office?

**JOHN LINDSAY:** I have not. I advised Senator Briese that we would be testifying against the bill. We have-- I frankly have spent a lot of time the last couple of days trying to learn the subject matter before I can really get into the amendment. But I will discuss the amendment with Senator Briese.

**BLOOD:** Fair enough. Thank you again for your testimony. We'll move on to any other opponents. Do we have any other opponents on this bill? Again, I remind everybody to move towards the front.

**TIM BOWEN:** Welcome to General Affairs. Thank you. My name is Tim, T-i-m, Bowen, B-o-w-e-n, representing Alohma and the Nebraska Vape Vendors Alliance. My opposition to the bill is based really on the fact that I would like you all to consider what is nicotine and what is tobacco, and they are two separate things. Two separate things. You may not know it, but if you had a salad today or yesterday you were probably ingesting nicotine. Nicotine is in broccoli, nicotine is in potatoes, nicotine-- the second, the second-highest plant that contains nicotine is actually eggplant. So nicotine is very normal. Nicotine that we use in the product lines that we do with vaping is the same nicotine that's in transdermal patches and Nicorette gum. Because it is inhaled and blown out is, is, is that different than applying it to your arm where it's absorbed into your skin? I don't know. Or chewing it in your mouth and swallowing it? I think that technology and innovation has made vaping products different than tobacco products. That it has nicotine, it can't be the same today as it was in 1998. Since 1998, the state of Nebraska has received \$680 million in MSA payments. Last year alone, in treating tobacco-related disease from smoking, the state of Nebraska spent \$100 and-- I believe it's about \$115 million. Twenty percent of all the money that they have received over the years since 1998 was spent just last year alone on trying to help people that were victimized by tobacco. Our stance is kind of simplistic and maybe a bit of a fantasy, but if-- we see it as if there were no tobacco there wouldn't be any tobacco-related diseases. So if you get rid of tobacco, we're disease-free in that category. We can't say that somebody is dying of lung cancer,

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tobacco-related lung cancer again. So we're kind of looking for a Thomas Jefferson, a George Washington, a Benjamin Franklin, somebody that will stand up and, and really look at it and say nicotine is not the same as tobacco. Nicotine is different, and its intents and effects may mimic smoking but it is not tobacco. I thank you all, again.

**BLOOD:** Thank you. I didn't mean to speak over you. Thank you for your testimony. Do we have any questions? No questions, thank you.

**TIM BOWEN:** Thank you.

**BLOOD:** Any other opponents? Any other opponents on LB397? Anybody in the neutral position? Anybody in the neutral position on LB397? With that, Senator Briese, would you like to close? And while he's working his way over here, I'd like to say that we have no record-- no letters for the record on this bill.

**BRIESE:** Thank you. I don't really have a whole lot to close with except I'd like to go back to your question, Senator Brandt. It does sound like, you know, there are significant dollars involved here if we don't do this right. And as far as Ho-Chunk's concerns expressed by Mr. Lindsay, you know, I'd be more than willing to visit with him about, about the amendment and try to get that resolved to everybody's satisfaction. And working with the Attorney General's Office, obviously also, they truly are the experts on this issue. And so with that, I'm happy to answer any questions that I can.

**BLOOD:** Thank you, Senator Briese. Do we have any questions for the-- Senator Briese? No? With that, I will also hand the meeting back over to you, Senator Briese.

**BRIESE:** We will open the hearing on LB734, Senator Hunt. Good evening and welcome, Senator Hunt.

**HUNT:** Hello, Chairman Briese and my fellow members of the General Affairs Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in midtown Omaha. Today I'm presenting LB734, along with an amendment that makes some technical changes to the bill. The amended bill would provide for the licensure of charter and party buses under the Nebraska Liquor, Liquor Control Act. First, I'd like to explain the proposed amendment. It recently came to my attention that the Public Service Commission divides its regulated carriers into service classifications based on what type of transportation service



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they offer. A bus service may be hired on a charter or a special party basis. So this amendment simply amends the bill to encompass both types of bus services. It's a technical amendment that does not change the spirit of the bill at all. The public safety issue addressed by this bill was brought to my attention by the Liquor Control Commission. In 2011, the Legislature passed a bill authorizing the consumption of alcohol in party buses. Unfortunately, these spaces have become havens for overconsumption and underage drinking. Over the last few years, we've seen the names of young people flash across our screens as reports of deaths involving party buses have grieved our communities in Nebraska. You may be familiar with the young man from Wesleyan University who was tragically killed on I-80 after the party bus he was on left him behind. Not too long after this, an underage woman was pulled off a party bus, who was so over-served she had to be admitted to the hospital. Nebraska law enforcement's concerns with the lack of regulation or oversight of party buses has only grown with each tragic incident. The Liquor Control Commission was created in 1935, accompanying the repeal of the 18th Amendment, to address the need for regulation of alcohol consumption in Nebraska. Since then, its scope of regulation has grown to address the existence of new and changing businesses that serve alcohol. Under current statute, a license from the Liquor Control Commission is required to serve patrons in pedal pub vehicles, so those big picnic things that you see people peddling down the street-- we have a lot of those in Omaha-- boats, airplanes, and trains. Party buses are no different from these other vehicles, and they should be recognized under the law as such. And I also want to thank Senator Briese for joining me as a cosponsor of this bill. And with that, I'll take any questions.

**BRIESE:** Any questions? Seeing none, thank you for your opening.

**HUNT:** I must have done a good job.

**BRIESE:** You bet. You did. You bet. Proponents of the bill? Good evening and welcome.

**HOBERT RUPE:** Good evening. Thank you, Chairman Briese. Members of the General Affairs Committee, my name is Hobie Rupe, H-o-b-e-r-t R-u-p-e, I'm the Executive Director of the Nebraska Liquor Control Commission. And I actually like being able testify as a proponent occasionally. As Senator Hunt brought, and first I want to thank her for picking up this bill for us. She reached out to us shortly after she was elected, and as-- and saw our legislative letter regarding this. This issue has been a thorn underneath the saddle of the Commission since about 2013,

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2014. There was an attempt to regulate it before, it didn't make it out of committee. This is an example of the law of unintended consequences. Senator Karpisek really wanted to make it available. He thought it was bad that if you're getting married, and you're getting in the limo you can't crack open a bottle of champagne. And so he was, so he decriminalized the statutes which kept people from being able to drink in those vehicles. Well, what has happened though is you've had a rise of a, of a business model, that's the party buses. And these, if you ever see them go by, they're rolling nightclubs. They've got the neons, they got the loud music. Now, they're not selling alcohol, but they're allowing people to get on, charter them, and con-- and consume. There have been, one of the entities which brought this to our attention, which still have serious concerns-- and unfortunately, Melinda was unable to make it here to testify today, but she'll be gathering some more information from University of Nebraska. You know, it's a big issue for their student affairs. They say on a Friday or Saturday night, you know, they're sometimes parked five or six deep picking up parties on 17th Street, getting ready go out for parties. Their concern is the large amount of minors who have access because, you know, they're not being ID'd; the overconsumption because they're not being regulated. The key thing about this bill is it doesn't go back and say: You're not gonna be able to have a business model. What it says is we're going to treat you like anybody else is in the area of serving, or in this case, allowing consumption of alcohol, and have you regulated by the commission, which then allows patrol and law enforcement to make sure that the act is being complied with. That you're not serving to visibly intoxicated, you're not overserving, you're not allowing minors to consume. You know, it's a-- I'm sure we'll probably hear some horror stories of how we're trying to put them out of business. And that's really not the case here. This case is that, as Senator Hunt brought up, this is a change in the way people consume. And the Commission was, was designed to regulate to promote for public health, safety, and welfare. The industry note that's happening, and I don't have the numbers, but I'll, I'll supply them when I get them probably tomorrow or the next day. One of the things that the Bridge, formerly Cornhusker Place, numbers they keep is they call what's called: last drink data. What that data is, is when somebody is admitted to them because they're overly-intoxicated, they try to figure out where the last place this person consumed or where they served. Mostly that's private homes, or they say, if they can get an answer. Sometimes they look at a bar, they mentioned certain bars. Now, this isn't evidence that that bar served because, well, let's be honest, you really can't take that person who has been

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admitted, but it gives enforcement an idea of what places should we check. Is there a problem here, what's going on there? The issue here is party buses are starting to appear on that list, which is very concerning because people are being admitted to detox, and the last place they're saying they consumed was on one of these party buses. Which raises concerns because, unlike the bar, which may be having an overservice problem, the cops can't go out and check on that. They can't, you know, unless they see a moving violation, they can't go on that bus. If you have a liquor license from the Commission, you can go on and make sure. You can ID people, make sure they're in compliance. That's all we're asking for here. And once again, I really want to thank Senator Hunt and Chairman Briese for cosponsoring this bill. I believe this bill tries to address the unintended consequences which happened in 2013, and it's really being done for public health, safety, and welfare. It's a very simple theory. If you're going to, if you're going to look and act like a bar, you should be licensed in a way like a bar should be. With that, I see I just went to the red. So I will be happy to answer any questions.

**BRIESE:** Thank you. Any questions? Senator Arch.

**ARCH:** Who currently supplies alcohol on a party bus?

**HOBERT RUPE:** It's BYOB, and nothing on this bill would stop that. They would be able to bring it on.

**ARCH:** That was my question.

**HOBERT RUPE:** And so--

**ARCH:** In the future who would?

**HOBERT RUPE:** Well, I think this would, this bill here allows consumption, not the sale. If I remember correctly in the bill. And so you would still bring it on. There-- much like how last year we decided to regulate the bottle clubs, which were open, open for the public, for people to gather and consume alcohol. This would be an extension of that, that there is going to be some oversight. They're not going to be selling it. And I don't think the bus, party bus guys want to sell it because, generally, they have one or two people on there. They don't have bartenders on there.

**ARCH:** And that's a different, that's a different permit license--

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**HOBERT RUPE:** Yeah.

**ARCH:** --in order to sell--

**HOBERT RUPE:** Yes.

**ARCH:** --than just to consume?

**HOBERT RUPE:** Yes.

**ARCH:** Thank you.

**BRIESE:** Thank you, Senator Arch. Senator Moser.

**MOSER:** So who's going to be responsible for making sure that they're not drinking too much, and that they're not--

**HOBERT RUPE:** Well, I, that's going to be up to the bar, that's going to be up to the-- I mean, there will be some onus on the party bus. If you're going to have, you know, operate these, and maybe if there's an amendment maybe if they want to be able to sell or service, maybe that's the way to do it. But the key thing about it is, you know, the, you know, right now it seems that the bus driver is getting on there and he's saying: Whatever they're doing back behind me, I have no control over. And that's not where we're-- and that's the concern. There's no oversight. You know, the people on there are young adults, sometimes minors, overconsuming on a motor vehicle and driving around. And you're seeing tragic consequences.

**MOSER:** Are they, are they regulated at all?

**HOBERT RUPE:** They have to have a license, I believe, from the PSC.

**MOSER:** As a limousine service or something?

**HOBERT RUPE:** Yeah, I believe there's a, and Senator Hunt brought up there's a definition. That's the one that she used in the bill, and then in the act-- or in the amendment. But they look primarily that do you meet the requirements for road safety? They're not looking for the activity, they're looking does the bus meet the requirements that it's not a deathtrap rattling down the highway. You know, there's, you know, and so there's-- they're not looking at the activity going on it. They're looking primarily at the physical [INAUDIBLE] of the bus, the way I understand it.

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**BRIESE:** Senator Moser. Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. I'm from a rural area, and most of our party buses are some old 1968 school bus or something like that. And primarily that market is weddings.

**HOBERT RUPE:** Yep.

**BRANDT:** And it, it's really created a lot of safety because now you have 20 young people confined inside the walls of this bus and they drive around for a couple hours on a booze cruise. And then they go into the reception, which it keeps them off the road and you don't have five different cars, and they pretty much are pretty cognizant of that. So usually you've got a wedding party, and then there's going to be a cousin that's 18 or 19 or you've got a bunch of college kids where half are of age and half are underage. Does this bill prohibit anybody under 21 or they have to have a band system or how, how are you going to enforce the underage, underage people on these vehicles?

**HOBERT RUPE:** I believe it's-- it would allow the consumption of people 21 and over is what the bill says.

**BRANDT:** But are the underage people allowed to be in that vehicle with the alcohol?

**HOBERT RUPE:** I don't believe, and I would have to go back and look at-- I don't believe the-- it prohibits underage people from being present on it. It prohibits anyone under the age of 21 from being present and consuming.

**BRANDT:** OK, that's what I wanted to know. Thank you.

**BRIESE:** Thank you, Senator Brandt. Senator Moser.

**MOSER:** So are you gonna have to have, would you have to have more people on the bus to enforce the rules? One to drive it, one to walk back and forth and see who is--

**HOBERT RUPE:** If it's my business model, I would. You know, this is no different than what a bar does. I mean, a bar doesn't just when they're open for allowing people to come in and drink there, they have multiple people, they have security, they have bartenders, they have wait staff. You know, a lot of it's probably going to depend upon probably what the charter is. You know? I mean, if it's people coming down to a Husker game, you know, a bunch of 40-year-olds, 50-year-olds

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maybe they don't require it back there. But if it's a college fraternity, you might want to have somebody back there making sure that the underage drinking aren't getting it, much like a bar would have to make the business decision. And more importantly, if they fail, much like a bar, they can be subject to suspension, cancellation, or revocation of license.

**MOSER:** Do you think that they're a danger to the public when they're driving?

**HOBERT RUPE:** I think that most--

**MOSER:** Or is the danger to themselves for over, overconsumption and--

**HOBERT RUPE:** It's more of the second. I think the danger is that you, whenever you have consumption in a totally unregulated market, you're putting yourself at risk for not only overconsumption but for the other horrors which go around including: sexual assault, regular assaults, fights, other activities. Or as you heard earlier, in 2014 there was a young man who decided he, when they stopped at the bus stop, decided that he would walk back along I-80 and got hit by at least three different vehicles. And the bus didn't even know he wasn't on there when they continued their route. He was a football player for Nebraska Wesleyan. He, his alcohol level at the time when he was checked was 0.245.

**MOSER:** How did that, how would this be different than somebody having a private party and drinking too much?

**HOBERT RUPE:** Well, private party is at a home. Generally, there is host, social host liability, you know? I'm not sure, there probably is some liability insurance here. But what we're doing is this is less like me having people over for a, for a private party at my house. This is me holding my business out to rent for this purpose. This is far more to being a bar for private, or a private party room than it is somebody's home. And I think that's the difference. I mean, this isn't just somebody showing up at my house for a football party overconsuming. This is people coming there and renting this business to use for this purpose. And so I think that's the distinction.

**MOSER:** Thank you.

**BRIESE:** Thank you, Senator Moser. Senator Brandt.

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**BRANDT:** A quick follow-up question. What about unlicensed party vehicles? And by that I mean, your buddy has got a Winnebago or something that's not a party bus but they're functioning as, I mean, they're, they're doing it for that wedding party or, you know, it's Uncle Joe? Are they subject to this also?

**HOBERT RUPE:** They probably wouldn't be subject to this because you've got to be licensed by the PSC. They might be in trouble with the PSC.

**BRANDT:** It would take a chauffer's license.

**HOBERT RUPE:** Yes.

**BRANDT:** Or a bus license.

**HOBERT RUPE:** Yeah.

**BRANDT:** OK.

**HOBERT RUPE:** And so the PSC might be having objections if you're holding yourselves out for a bus without being licensed by one.

**BRANDT:** All right, thank you.

**BRIESE:** Thank you, Senator Brandt. Senator Moser.

**MOSER:** So can you load up your friends in your Winnebago and drive around town and drink in your motor home?

**HOBERT RUPE:** I don't believe so. I believe that the-- if I remember correctly, the rule that changed for the limos changed it so that if you're in one of these PSC-licensed vehicles you weren't violating the rules of the road. I don't believe that that was changed for just being in the back of your car driving around. I think you're still then open consuming on a public highway.

**MOSER:** But would a motor home be different than driving in your car, since you can't live in it?

**HOBERT RUPE:** No, motor home would be the same. But the thing about it is, once again, it's outside my jurisdiction to regulate it. It wouldn't be a license, it would be a criminal act, you know. So which would be the cops could stop you for that.

**MOSER:** All right, thank you.

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**BRIESE:** Senator Moser. Anyone else? Seeing no other questions, thank you for your testimony.

**BLOOD:** Do we have any other proponents? Welcome to General Affairs.

**LES MEYER:** Thank you ma'am. Chairman Briese, ma'am, and members of the General Affairs Committee. My name is Les Meyer, L-e-s, last name M-e-y-e-r, and I represent the Nebraska Wine and Grape Growers Association. We would like to support LB734, and would like to thank the Liquor Control Commission and Senator Hunt for bringing this bill forward today. All of our winery members have had experiences where party buses have pulled into their locations and created situations of concern. It's not uncommon that people get off of the buses with alcoholic beverages, beverages that they have purchased elsewhere. Most winery licenses will not allow for outside alcohol on their premises, so their actions put the farm winery licenses at risk. We try very hard to police them when, when they pull in and ask anyone with a drink to please put it back on the bus. But if we don't catch them, it's our license that could be revoked. Our hope is that you will advance LB734. I know our issue is a small one, but it is a problem that we face every day. With that, I'd certainly answer any questions you might have.

**BLOOD:** Thank you for your brief testimony. Do we have any questions from the committee? Seeing none, thank you so much for your testimony.

**LES MEYER:** Thank you.

**BLOOD:** Do we have any other proponents for LB734? And welcome to General Affairs.

**CHRIS WAGNER:** Good afternoon, Senator Blood and members of the committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r. I'm the executive director of Project Extra Mile, nonprofit working statewide to prevent alcohol-related harms, and we're here today in support of LB734. Underage drinking and excessive drinking were foreseeable consequences of the 2011 statutory change that eased restrictions on open containers in certain vehicles on Nebraska roadways. Our organization has been contacted by law enforcement desiring to do more to reduce the problems that these businesses can cause. An important first step would be for the committee to pass LB734 to require the licensure of charter bus services under the Nebraska Liquor Control Act. Doing so would allow enforcement easier access to the buses and will hold these companies more accountable. However, LB734 could be



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better, could better prevent underage and binge drinking through an amendment to prohibit those under the age of 21 from boarding the buses when alcohol is consumed. Doing so would drastically reduce minors' ability to access alcohol in an environment that until now has been relatively risk free. We would urge, respectfully, the committee to consider offering such an amendment. And just to give you a sense of the costs that we have in the state, according to the Pacific Institute of Research and Evaluation, underage drinking cost our state \$325 million in 2013 alone and resulted in an estimated 3 homicides, 13 traffic fatalities, 440-- 542 non-traffic, I'm sorry, non-fatal traffic injuries, and 2,700 non-fatal violent crimes, and 4-- 114 teen pregnancies. So we would urge the committee to advance LB734, and would appreciate your comments or your consideration of our comments. Thank you.

**BLOOD:** And thank you, Mr. Wagner. Do we have any questions from the committee at this time? Seeing none,--

**CHRIS WAGNER:** Thanks.

**BLOOD:** --thank you very much. Any other proponents? Proponents on LB734? With that, we'll move to opponents. Any opponents on LB734?

**LORI HIEBNER:** Good afternoon. Senator Briese, Senator Blood, I don't know who I am to address here.

**BLOOD:** I'm passing it back to Senator Briese.

**LORI HIEBNER:** OK. My name is Lori Hiebner, and I'm with Leisure Limousine and Sedan. My name is spelled L-o-r-i, my last name is H-i-e-b as in boy n-e-r. And as I said, I'm the owner of Leisure Limousine and Sedan located here in Lincoln, Nebraska. We are a transportation service that is regulated by the Nebraska Public Service Commission and the U.S. Department of Transportation. We provide all kinds of service. We do airport pickups, drop offs, limo service, limo bus service. And we provide kind of memorable experiences: weddings, transportation for weddings; birthdays; retirements; whatever. We rent our vehicles to people who are 21 years of age and older. We require that they take full responsibility for their guests and our vehicles. If our driver notices during the course of one of these reservations that someone is consuming alcohol that is a minor, we stop the run and take them back and end the night at that point. We are responsible business owners and take care of our passengers. We are keeping drunk drivers off the streets of Lincoln

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and many, many, many other cities throughout the state of Nebraska, since we are licensed across the state in not only our bus but our limos as well. One, one of our concerns with this is, you know, bringing the alcohol in, how do we control it now? How are we supposed to keep track of these people who are consuming at, let's say a bar, and, and have, you know, three or four shots before they jump into the bus? And now they're our responsibility when they drank somewhere else. As near as I can tell, when you get over-served at a bar, you get kicked out of the bar. Right? I guess I don't know how we're gonna kick somebody off of the bus. You know, leave them on the roadside, is that what we're doing? I'm not certain how that's going to work. I'm interested to see how that's going to work. We have spoken with many officers of the Lincoln Police Department, and encourage them get on the bus, check it out. We don't care. We're an open book when it comes to this. We are not a haven for minors drinking alcohol. I know there's other bus operators that are, but we are not. We are incredibly responsible for that. We have lots of things that affect our business. We are, we have lots of regulation because we're transportation. You know, we maintain, we have the highest standards for maintaining our own vehicles. I know this gentleman before me talked about being rolling nightmares. I can assure you our bus is not a rolling nightmare, and any of our vehicles are not because we don't want them to be. We don't want people getting into vehicles that are crap and not maintained well. We also have several minors that ride in our buses for prom; school dances; birthdays; weddings of their siblings, their older siblings that are getting married. Are they now allowed-- are they no longer allowed to be in the bus? And finally, I'd just like to say, how is this going to affect all of the illegal bus operators, the people out there who aren't regulated by the Department of Transportation or the Public Service Commission? Where's the oversight for that? That's all I got.

**BRIESE:** OK, thank you for your testimony. Any questions? Senator Moser.

**MOSER:** Is there just one of your employees on a bus, the driver?

**LORI HIEBNER:** Yes.

**MOSER:** And he's supposed to see, so you're saying if he notices a minor drinking that he's going to take him back? But he has to do that at the same time he's driving?

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**LORI HIEBNER:** Well, you know, if you're getting off the bus, you can tell who's been drinking. And you can also tell, like, let's say it's prom and someone pulls out a shooter, or you can find bottles on the floor. They're kicked out immediately or they're all taken back to their original pickup location. And we tell them that straight up, right at the very beginning.

**MOSER:** Do you have them sign a waiver when they rent your bus, that they're responsible for anything that happens on the bus that's not your fault?

**LORI HIEBNER:** Uh-huh.

**BRIESE:** Thank you, Senator Moser. Senator Blood.

**BLOOD:** Thank you, Chairman Briese. Just for clarification, you also have women that drive for you, don't you?

**LORI HIEBNER:** Yes.

**BLOOD:** I just wanted to clarify that, thank you.

**LORI HIEBNER:** OK. And you also talked about a chauffeur's license. Nebraska does not have a chauffeur's license requirement, it's a driver's license. And for buses or vehicles over 15 passengers, it's a CDL.

**BRANDT:** Thank you.

**BRIESE:** Thank you, Senator Blood. Any other questions? You indicated in your testimony that, you know, you-- well, it sounds like you guys operate responsibly and do the right things and, you know, there's not too many things we would consider violations of what shouldn't be or should or shouldn't be happening on your, on your vehicles. But you did indicate that some, some buses, I think your statement was, are a haven for illegal underage drinking. And so shouldn't we be trying to address that in some manner, and isn't this an appropriate way to perhaps do that?

**LORI HIEBNER:** Well, I'm confused why you can't address it directly with them.

**BRIESE:** OK, OK.

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**LORI HIEBNER:** I mean, if there's five or six lined up on 17th Street on a Friday night or Saturday night or Thursday night or the Sunday before Martin Luther King Day or, you know, when there's a school-- when there's a UNL holiday on a Monday. Sunday night is a big night for that. I don't know why LPD can't address that in Lincoln. I mean, OPD in Omaha, whatever.

**BRIESE:** OK, thank you. Any other questions? Seeing none, thank you for your testimony. Any other opposition testimony?

**JOEL BISGARD:** Good afternoon, Senator Briese--

**BRIESE:** Yes, good afternoon.

**JOEL BISGARD:** --and committee. My name is Joel Bisgard, J-o-e-l, last name Bisgard, B-i-s-g-a-r-d. Excuse me. I testified back in 2015. I do own Party Express Bus. Sorry, I'm a little nervous. Kind of listening to everything, so bear with me. I own Party Express Bus Nebraska, based out of Omaha. Some of the issues that are addressed, there is illegal party buses happening in Nebraska. I carry \$5 million worth of insurance on each one of my buses, and I'm proud to say that we've had very minimal incidences on my buses. I have four drivers that take my buses out, they're all over the age of 30. Actually, I think they're all over the age of 40. All parents, all understand kids are going to go out and do what they want to do. Growing up, 15 years old, four friends of mine went out drinking. Drunk, really drunk, overturned in a car, all four of them died in a ditch, three foot of water. I like what I do. I have no problem with anybody drinking. I don't drink much. I may have a drink with my wife when we go to dinner, that's about it. Friday and Saturday nights, you addressed, do we have a second person on the bus? Essentially my drivers do. I'm out with my buses every night. I don't sleep. Bus goes out at 8:00 at night, I'm somewhere in Omaha waiting for a phone call, a text message from, I have a manager who's also in the audience today, he's manning the phones. So we're ready to go at a moment's notice. We don't want to sell alcohol. We are regulated so much as it is now, between the Public Service Commission, the Nebraska State Patrol. Everybody's overwhelmed trying to do that now. The illegal party buses we have in Omaha, there's minors, they're riding the buses. They don't have to charge a certain rate. My rate is regulated. I can't give you a discount. You call me up, give you a discount, I've broken the law according to the Public Service Commission. They don't have that, they can do whatever they want and nobody can stop them. Public Service Commission doesn't work after 4:00 Monday through Friday. It is a

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state agency. I get it. They don't have the resources to go out and monitor what they need to monitor. Social media. I don't like Facebook, I'll be the first person to admit it. But I run my business through it, and it's very essential to my business. That's what it's there for. We need help with the law enforcement. It says in the bill they want to hire six new officers. Doing the math, just for a year, between the health benefits and the salary for six officers, is just shy of three-quarters of a million dollars. Why not we just hire a couple of people, pay them fairly to work for the Public Service Commission, and go out and get these illegal buses out there that are the havens for the minors. They won't tell you what bus company they're on, because they know that they'll get the company in trouble. Because they've got a good deal, they'll come back to them. They can do that. They get \$50 off or \$100 off here or there, whatever. They do it, but they won't tell us who's-- what company they were on. One quick example, and I'm sure it will be addressed upon again. The gentleman that got hit on the interstate. After everything, all the dust settled, everything else, all of the reports by law enforcement, the bus was still at Shoemaker's truck stop at the time when that gentleman got hit. Rescue workers were on their way, already dispatched. The bus was still there. He was texting people on the bus, people testified to that, told the officers that. That's a non-issue. Do minors get on our buses? Yes. Once we, if we can identify that problem, the bus does go back and drop them off. Do they lose their money? Absolutely. We have a digital contract that they get sent out. They are verbally told, any issues, doesn't matter. They're gone, they're done. We'll take the bad reviews, I don't care. Safety is my utmost concern for everything. If my son turns 21: Dad, I want to take a bus out. I'm all for it, because it will make me feel better.

**BRIESE:** Very good, thank you.

**JOEL BISGARD:** Any questions from anyone?

**BRIESE:** Thank you for your testimony. Any questions? Senator Brandt.

**BRANDT:** Thank you, Mr. Bisgard, for, for testifying. I'd just like to clarify one point. I looked at the fiscal note. I think you're mistaken on the six additional officers. I think they're going to enforce it with the officers that are already existing. So otherwise it would've been reflected in the fiscal note, and the fiscal note is only a couple of thousand dollars for enforcement.

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**JOEL BISGARD:** To be fair, it's an interpretation on my part.

**BRANDT:** Sure.

**JOEL BISGARD:** I've read through it, and again, just wanted to throw it out there.

**BRANDT:** And I just want to put that out for the record.

**JOEL BISGARD:** No, and I appreciate that.

**BRANDT:** You bet.

**JOEL BISGARD:** But can I address that real quick?

**BRANDT:** Yeah.

**JOEL BISGARD:** They are going to use officers. The State Patrol is overwhelmed as it is. I've had State Patrol officers that have regularly been on my buses for parties. I have police officers regularly on my buses. They love what we do. The higher ups, the sergeants and whatnot, they will not tell you that. They will hold the line that everybody wants them to say. But the officers that are out there, they're drinking, they're having a good time. We pick them up at home, we pick them up at a hotel. They love what we do. They just can't say anything they get in trouble. So with that being said, I will step away, unless there's any other questions.

**BRIESE:** Thank you, Senator Brandt. Senator Moser.

**MOSER:** How do, how do you think that the illegal buses advertise? How do they find their customers?

**JOEL BISGARD:** Through Facebook.

**MOSER:** All by word of mouth or--

**JOEL BISGARD:** Facebook. Facebook. If you rent to one customer, and let's say it's a 21-year-old person that doesn't have much money, and if the way you get it is: I'll take \$50 off your run. Fifty dollars is a lot of money to a 21-year-old high school kid, or to, excuse me, a college kid. That's a lot of money, 50 bucks is. Well, 50 bucks off here, hey, this guy gives me a bus for \$50 off. You get that volume, that all of a sudden they know your name, they know the phone number. They're not operating under the Web sites. Web sites you can go to

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through the state computer. I was a state employee, I know you cannot access social media sites with state computers. At least, you know, where I was at. So they can hide behind Facebook. Everybody uses Facebook. Everybody uses the social media, it's easy to do and they can hide that way.

**MOSER:** OK, thanks.

**JOEL BISGARD:** You're welcome.

**BRIESE:** Thank you, Senator Moser. Any other questions? Seeing none, thank you for your testimony. Thank you very much. Any other opponents? Good evening and welcome.

**TAMMY CASEY:** Good evening. I'm a little nervous, I don't do public speaking.

**BRIESE:** Oh, don't worry about that.

**TAMMY CASEY:** My name is Tammy Casey, T-a-m-m-y C-a-s-e-y. I am the owner of Elite Party Buses here in Lincoln. We've been in business for five years and currently have five buses. As a company, we strive to provide safe transportation for any kind of event. We do weddings, birthdays, anniversaries, corporate events, sporting events, as well as donating rentals to such organizations as the Lincoln Lighthouse. Every year we donate one to two buses to do their prom. We're actually scheduled to do their prom next week. And at Christmastime we donate buses to them to take their kids to Walmart to buy gifts. We've even donated buses to the Sunshine Kids Foundation to raise money for children with cancer, and have donated numerous buses to local charities to be auctioned off. As a bus company, we currently have to adhere to all regulations put out by the Public Service Commission and the Department of Transportation. This includes keeping detailed records of the driver qualifications, medical records, routine drug and alcohol testing for drivers, trip and log records, maintenance logs, etcetera. With all these regulations concerning driver safety, the bus maintenance, we feel adding on this arbit-- arbitrary law requiring us to have a liquor license is unfair and unjustly punitive and detrimental to our industry. Our industry helps drive businesses to small towns around, all around Lancaster County, southeast Nebraska. Every weekend we have buses taking 30 to 40 people to small-town bars and other establishments that otherwise would not have those customers. We get calls all the time from bars, breweries thanking us for bringing them business and message us before the

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weekend letting us know that they will stay open if we bring a bus to them. Enacting such a law would not only harm our industry, but would generally affect small-town bars in communities that rely on us bringing businesses to their doorsteps in a safe manner and not drive, drinking and driving. Concerning underage drinking. We as a company take underage drinking very seriously. At every step of the way we try to deter and weed out rentals that might have underage passengers wanting to take advantage of the situation. In all of our e-mails, whether it's a quote confirmation email or reminder e-mail, we have a notice saying underage drinking is not tolerated on our buses. On our Web site we have numerous places where we state underage drinking is not tolerated. In our rental terms and conditions, we require all renters to be 21 years of age to rent the bus. We are also extremely clear that everyone drinking on the bus must be 21 years or older. We also state if the driver suspects any underage drinking the rental, the rental will be terminated immediately without refund, and everyone will be taken to the drop-off location. Our drivers are extremely vigilant when it comes to monitoring for underage drinking. We also try to put fear into renters that we suspect might have underage drinking, and tell them that the State Patrol can and will come on the bus if they want to card everyone on the bus. And let me tell you that has deterred a lot of people from renting our buses. However, this does not mean we have an overwhelming issue with underage drinking. Rentals that are for 21st birthdays roughly make up only 25 percent of our business. Over 50 percent is weddings, bachelor, bachelorette parties, and the other 25 percent is birthdays for 30 to 70-year-olds, anniversaries, sporting events, and corporate events. I can't speak for the experience of other party bus companies, but this law would essentially harm our entire industry to simply go after a very small minority of individuals that take advantage of a 21st birthday party situation. And finally, I want to address Senator Hunt's comments, the young man that was killed on Interstate 80. Unfortunately, that tragic event was our company. We were absolutely devastated by the incident, and our hearts will ever be with that young man's family. It truly was a tragic situation. We do not bring this incident up lightly, but because of these proceedings we felt it necessary to clarify the facts surrounding this incident. The media portrayed this tragic event as our company and our bus driver leaving that young man at the gas station, would led him to walk home and walk onto the interstate, where he was struck by a car. The media ran the story without facts checking and did mostly speculation. The media did not report the Lancaster County Sheriff's Department found ATM video footage of that young man getting off the bus immediately, and it stopped-- after it



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stopped and started walking towards the interstate a full 10 to 15 minutes before our bus departed the gas station. The media also did not report that this young man had a medical condition that requires medication that reacts adversely to alcohol. That young man should have never been drinking alcohol in the first place, and he was 23. He was not a minor. All of these facts can be verified with the Lancaster County Sheriff's Department. The renter that night said that he had originally planned on driving to the bars, but decided that taking a party bus would be a safer, more responsible route. Everyone on that bus that night were serious at Wesleyan University-- or sorry, seniors at Wesleyan University, and were attempting to have a fun night out while ensuring everyone have a safe ride home. As tragic as this event was, a certain portion of personal responsibility has to be taken into account. Our society is so quick to blame everyone else except for their own actions. We now blame bartenders and party buses for people willing to choose to drink more alcohol than they can tolerate. Neither we, our drivers, or the bartenders that served that young man that night could have possibly known that he had a medical condition and was on medication that you're not supposed to consume alcohol with. And to go further, we are now blaming and punishing party buses for individuals who willingly choose to break the law and drink alcohol before they're at legal age.

**BRIESE:** We need to wrap up here.

**TAMMY CASEY:** OK.

**BRIESE:** But thank you.

**TAMMY CASEY:** All right.

**BRIESE:** Very good. Any, any questions here? Seeing none, thank you for your testimony.

**TAMMY CASEY:** Thank you.

**BRIESE:** Any other opponents, opposition testimony? Anyone wishing to-- seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Senator Hunt, you're welcome to close.

**HUNT:** Thank you, Chairman Briese. Thank you members of the committee. I want to address a couple of comments that were made also. We, we heard some talk about illegal party buses-- and first of all, I think that that just illustrates the need for this bill, kind of as you

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said, Senator Briese. This bill will help prevent illegal party buses because, unless there's probable cause right now, State Patrol can't go on the bus, cops can't go on the bus unless there's a primary reason that they've been pulled over. So if we license these buses then law enforcement will be able to, to make sure that people are safe on these buses. There's a small licensure fee, it's \$75. That's not per bus, that's per business to have the license. Seventy-five dollars, this will allow police and law enforcement to go on the bus and make sure that laws are being obeyed. And it's really our job as legislators to ensure the safety of the public by addressing new regulatory needs that are brought to us through the development of new services and new business models. And this is just an unintended consequence of what I think is a really great bill. I'm glad we have party buses. I agree that they keep people safe. But I, I-- there's also just a little loophole right now that we've got to close to make sure that overserving isn't happening, that underage drinking isn't happening. And if it acts like a bar, if it moves like a bar, if it's working like a bar, if it's making money like a bar, we need to regulate it like a bar. And \$75 per business I think is a very reasonable way to do that. Without any licensure or regulation, we're setting up a situation where the state doesn't have the ability to deal with unscrupulous operators who are putting the well-being of minors at risk. And it sounds like we didn't have any unscrupulous operators testifying today, but we also heard testimony that people know they exist. So it's time for us to take this important step, hold operators accountable, and make sure we can keep people safe in Nebraska. Thank you.

**BRIESE:** Thank you. Any questions? Senator Moser.

**MOSER:** How do you foresee being able to enforce this?

**HUNT:** Cops are going to be able go on the bus. Right now, they can't so--

**MOSER:** So they would see a bus driving around and they would pull them over and go in and see if--

**HUNT:** There has to be probable cause right now. So, so what this bill would do--

**MOSER:** No, I'm saying with your bill.

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**HUNT:** --is allow them, what this bill would do is allow them to respond to complaints, to go on the bus and card people to make sure that when we have proms that people don't have flasks, things like that. It would be just like a peddle pub or like a bottle club. It would regulate them the same exact way. And the agreements that operators have with their customers: no underage drinking or we're dropping you back off, whatever, that's still their prerogative. They can still do all of that, and I applaud them for self-regulating and doing that. Absolutely. This is just another mechanism to make sure we can enforce the law.

**MOSER:** So if they have rules against minors drinking or overconsumption, but minors do drink and people do overconsume, it's there-- it's gonna be them, the operator the bus that's gonna be held responsible, not the people who are doing it?

**HUNT:** I can't answer that for certain. But, but when we have the licensure in place it will create some accountability for sure.

**MOSER:** Thank you.

**HUNT:** Thank you.

**BRIESE:** Thank you, Senator Moser. Any other questions? Seeing none, thank you, Senator Hunt.

**HUNT:** Thank you.

**BRIESE:** And that closes the hearing on LB734. With that, we will open the hearing on LB137, Senator Blood. Welcome, Senator Blood. We'll go ahead, we'll go ahead and start the hearing on LB137. Thank you.

**BLOOD:** Thank you, Chairman Briese. And good evening to the General Affairs Committee. I am the last bill on your agenda, but I bring forward lots of information so I hope you're still awake enough to hear some of it. My name is Senator Carol Blood, that is spelled C-a-r-o-l B as in boy l-o-o-d as in dog, and I represent District 3, which is comprised of western Bellevue and southeastern Papillion, Nebraska. Today, I bring you LB137, which may look familiar to some of you as we've had similar bills come before the General Affairs Committee in years past. LB137 amends Sections 28-1101, 28-1105, and 28-1113 in order to create the Fantasy Contests Act. Now should this bill get passed, it would give the state another tool with which we can generate revenue without needing to raise taxes on the working men

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and women here in the state of Nebraska. The Fantasy Contests Act would set up a system where daily fantasy contest operators like FanDuel or DraftKings would have to register with the Department of Revenue in order to do business in this state. Any company wanting to operate a daily fantasy sports contest in the state would have to pay an initial \$10,000 fee. In order to continue operating year after year, these companies would then pay subsequent renewal fees of 6 percent of the fantasy contest operators' gross fantasy contest revenue for the prior 12 months. We have capped the renewal fees at \$10,000 as well. Not being new to the Legislature, I know there are going to be people coming out against this bill claiming that this is a textbook example of expanded gambling. And I want to set the record straight right off the bat: This isn't gambling. Fantasy games are games of skill. Managers of these games take into account a myriad of statistics, facts, and game theory in order to be competitive. There are thousands of Web sites, magazines, and other publications designed to keep their readers informed and competitive. For those of you young enough to remember certain Nintendo video games and Nintendo magazine-- I don't know how many of you are on here that actually will-- it's really not much different. They're showing you tactics and strategies that can help you win should you choose to learn those strategies. The highest levels of competition within fantasy gaming will routinely, routinely see top players win games more frequently than if the contests were random or based on chance. The highly-skilled fantasy player wins more frequently because they choose to learn that particular game, such as they would were they to play basketball on a court or football in a field. The more you practice, the more you study, the better you play. Regardless of our personal beliefs, it's very important to note that the federal government does not define fantasy games as gambling. The Unlawful Internet Gambling Enforcement Act of 2006 included carve-out language that clarified the legality of fantasy games and fantasy sports contests. It was passed by Congress and signed into law on October 13, 2006, by President George W. Bush. The Act makes transactions of banks or similar institutions to on-line gambling sites illegal with the notable exception of fantasy sports, on-line lotteries, and horse/horse harness racing. The federal bill specifically exempts fantasy sports games, educational games, or any on-line contests that has an outcome that reflects the relative knowledge of the participants or their skill at physical reaction or physical manipulation, never chance. Also, in the case of a fantasy or simulation sports game, has outcome that is determined predominantly by accumulated statistical results of sporting events, including any nonparticipants' individual

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performances in such a sporting event. Now current research shows that approximately three-fourths of fantasy game players are motivated to enter the hobby for reasons that have nothing to do with money or prizes. They enjoy winning and competing against other sports fans. In fact, frequent surveys of fantasy sports players show that the top reasons for playing include competing with friends; enhance, enhance my sports experience; and to be in a league with friends. The average annual, annual spending for these players is \$465 and have household incomes of \$75,000 or more. You'll also note in your handouts a study that was completed at Kansas State University that rebuts any argument about daily fantasy outcomes being based more on chance than skill. Remember the definition of gambling clearly states that it must be a game of chance. This paper used statistical probabilities that verified these types of games, game winners implement some sort of strategy. They are competitions between skilled participants. If other skilled participants compete, luck typically plays a big role in determining the outcome. The winner may be determined due to an athlete's error or a ruling by an official. It is not surprising that some anti-gambling organizations and lawmakers have mistakenly interpreted the randomness of outcomes between skilled participants for the gambling definition of chance. However, as you can see, science proves otherwise. You will see a listing of states in your handouts that already have this type of gambling, and I'm guessing that some of you are surprised that it's already going on in Nebraska. And that's a fact. That's the truth. However, you ever, if you want to regulate the activity, if you want to bring revenue into this revenue-poor state from it, and you want to keep the sector from growing in any way that is out of our control now with no laws in place to regulate it, then we need to do something about it now. This is not about expanding gambling. I'm not asking you for a casino or that slot machines be allowed in bars. I'm asking you to step up to the plate and regulate this sector before you can't. Do something before it slips through our fingers at the state level. There is a long list of examples that prove the Internet makes it harder and harder for states to have any control on important issues. There are Internet sales taxes that certain officials decided the Legislature should not address, while brick and mortar stores close down across our state. And now we have lost revenue from what was already an existing tax, but we refused to collect it. There is revenge porn, human trafficking, and sexting. Why do you think cryptocurrency is frequently used in the world of crime? Technology is moving faster than our legislation can keep up. How long is this body going to let the word gambling prevent us from taking hold of this industry and

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doing something about it? If you're looking for a new revenue source, Senator Briese, look no further. This bill adopts the Fantasy Contests Act, provides an exception for conducting or participating in games, since it is clear that these games are not gambling nor defined as gambling under the Unlawful Internet Gambling Enforcement Act, and generates revenue for the state of Nebraska. It puts the power in the state's hands, unlike the thousands of people who cross the river into Iowa and other states to play in casinos and then we get stuck paying for their addictions when they come back broke. It puts into law that anyone violating this statute will be held accountable and fined accordingly. That they will have yearly audits and turn those reports into the state each year, and that all money collected will be turned in to the Revenue Department and placed in the General Fund. On that note, after having reviewed the fiscal note, I understand why the researchers arrived at the numbers that they did. But our research showed a probability of 6 to 7 contest operators and not 4, which is what they based their numbers on. Secondly, we don't believe it would really take one full-time revenue agent to register review audits and submit funds to the State Treasurer as stated by the Department of Revenue. And apparently the Fiscal Office didn't think so either, as you will note at the bottom of page one on the fiscal note. That they also felt that it would require a part-time agent or a full-time agent who did this half of their job description at the very most. So with that, we have a clear road to revenue generation. And I know that people feel uncomfortable with the word gambling, when the word gambling is thrown at them, as I know it will be today. Because we don't want grandma to waste her life savings at the casino or our next door neighbor spending his or her paycheck on games of chance. Those are sad stories, and ones that are often addressed and help provided-- and help provided that is funded by the Nebraska Lottery. But those are stories that come from games of chance. These are games of skill. These are games defined at the federal level as not being gambling. These are games defined by science as being games of skill. It is time to quit confusing the two definitions and move Nebraska forward with this legislation to protect our consumers, generate additional revenue that we are currently missing out on, and regulate an industry that we would like to keep in front of instead of constantly trying to regulate an industry once it is too big to do so. I ask that you please vote LB137 out of committee. It deserves a full and fair debate on the floor. The other senators outside this hearing room also need to have a clear picture of what this regulation truly means and how it

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will help consumers and Nebraska families, not to mention the revenue that is desperately, desperately needed here in Nebraska.

**BRIESE:** Thank you, Senator Blood. Any questions? Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. Two quick questions.

**BLOOD:** Yes, sir.

**BRANDT:** How do we regulate something that primarily exists in cyberspace?

**BLOOD:** Well, you, you create a law and you say that you're not able to do this business in cyberspace unless you are registered to do so here in the state of Nebraska. And they do do this in other states, it's not-- we're not gonna be the first state doing this.

**BRANDT:** OK.

**BLOOD:** Right now we have no regulation, so they're free to do whatever they want, whenever they want. And we don't know who's out there. Well, we do if you look at the list. I gave you a list of everybody who is here in Nebraska.

**BRANDT:** So then the onus would be on the Department of Revenue to find these people to-- these companies today and let them know that they have to buy a certificate or they have to-- now, what do you want to call it? Yeah, register in the state of Nebraska?

**BLOOD:** They would have to register. I don't really feel the onus is necessarily on the Revenue Committee to seek them out. They have a very communicated body amongst all of these people that present these games. And so anytime legislation is passed, they're aware of that legislation and they know that they have to, to get in line and register and follow whatever that state's guidelines happen to be.

**BRANDT:** And then I guess the second question is what I discussed with you this morning.

**BLOOD:** Yes, sir.

**BRANDT:** About the cap on the revenue, that \$10,000. I mean, where did that, that number come from?

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**BLOOD:** That's a really good question. So we've looked at what other states were doing and what we felt, we felt were fair. You know, you have your really big people like, I think it's FanDuel, and I might be confusing the names--

**BRANDT:** DraftKings.

**BLOOD:** --DraftKings, yeah. But, you know, you do also have your smaller companies, and so we were trying to be fair to everybody. We were asked by some of the smaller companies to lower the amount even more, and I was unwilling to do that to be quite frank.

**BRANDT:** But if I read it right, it said 6 percent up to \$10,000.

**BLOOD:** Up to \$10,000.

**BRANDT:** Why not just strike \$10,000 and just make it 6 percent?

**BLOOD:** I would be open to an amendment.

**BRANDT:** OK. I mean, I don't know if that would generate more revenue or less revenue. I would think it would generate more because you don't have a cap in there anymore.

**BLOOD:** I, I would say that I doubt the companies would be in favor of that. But again, it's, you know, we need to regulate it and that's our job, and we do whatever the heck we want.

**BRANDT:** OK, thank you.

**BRIESE:** Thank you, Senator Brandt. Senator Moser, did you have a question?

**MOSER:** Yeah. How much revenue does a typical fantasy sports company do in our state?

**BLOOD:** It depends on the size of the company, and I think we have at least one here today. So that would be a good question for them.

**MOSER:** And you feel that we have the ability to enforce this on these gambling companies?

**BLOOD:** We do by the example of the other states that are already enforcing it, and they've not had any issue with the ones that we contacted. And then you should know as well that I think you're not really going to be spending as much time as enforcement. I mean,



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organizations like this know they have to register and that every year they have to turn in an audit. They don't turn in their audit, then that's when the department is going to go ahead and step up to the plate and take care of it.

**MOSER:** All right, thank you.

**BLOOD:** You're welcome.

**BRIESE:** Thank you, Senator Moser. Anyone else? Seeing no other questions, thank you for your opening. Proponents, please. Justin--

**WAYNE:** Welcome to your General Affairs Committee.

**SEAN OSTROW:** Thank you, Chairman Briese, or Chairman Wayne, and members of the committee. My name is Sean Ostrow, that's S-e-a-n O-s-t-r-o-w. I'm here today on behalf of FanDuel, DraftKings, and the Fantasy Sports Trade Association, which represents over 100 small businesses in the sports entertainment industry. So fantasy sports today are an undeniable way of, an undeniable part of the way that fans consume sports entertainment. Fantasy sports give casual fans the chance to be a general manager for a day. They get to pick their own personal team, and whether their team succeeds or fails depends directly on how their players perform on the field. Fantasy sports has been proven time and time again, whether through academic studies or in real life, to be a game of skill, where the decisions of the participant ultimately impacts how well their team performs. There are 60 million fantasy sports players in the United States, 300,000 of those people are here in Nebraska. So whether it's daily, weekly, or season-long fantasy sports, people like to play with their friends, family, coworkers. These people deserve to know that what they're doing is safe but also legal. That's what this legislation is about. It's about protecting consumers and ensuring that the companies that offer fantasy sports in Nebraska are operating honestly and according to appropriate standards of fairness and consumer safety. This bill requires all of our, all operators to register and do business in the state; submit to a background check; submit an annual audit; adhere to each of the common sense consumer protections, including age and location verification, protections for players' accounts and their money when they invest it with an operator, and also prohibitions against any insiders to prohibit them from playing in fantasy contests. So we first introduced this bill in 2016, when it was voted out of this General Affairs Committee. It was voted out again, a similar legislation to what we see today, was passed out of this

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committee in 2017. And while we've never had the votes for passage on the floor, we do believe this is good policy and deserves consideration still today. Since 2016, 20 other states have expressly authorized fantasy sports. They require all the companies that operate within their states to adhere to very similar consumer protections to what's contained in the bill today. And in these states it's been a win for everybody. A robust and safe fantasy sports industry has continued to thrive in these states. Consumers are happy that they have basic protections for their money and their personal information, and companies are pleased that they can operate and also expand their business with legal certainty. These states also benefit from registration fees and taxes. But meanwhile, in Nebraska, it's quite the opposite. There are no registration fees, there's no tax revenue, and consumers who want to take part in fantasy sports have no protections that what they're doing is-- or who they're at play-- placing their money with, is even legitimate. So to be clear, fantasy sports are wholly distinct from sports betting. You may have heard recently that several states have been looking into expanding sports betting, and there will probably be dozens more within the coming years that choose to do the same. But fantasy sports is quite different. Sports betting is considered gambling under most states' constitutions, whereas fantasy sports has always been defined as a game of skill. And under the predominance test, which is followed here in Nebraska, there are no legal concerns with what's happening right now. Furthermore, fantasy sports have to meet a very narrow definition that's contained within the bill. This also mirrors what's in federal law that expressly allows for fantasy sports. It has to: One, be predominant, it has to be determined predominately by the skill of the player; two, based on the statistical output of multiple athletes; and three, the value of all prizes must be established in advance of the contest. So I respectfully disagree with any of the opponents who are going to say this is gambling or that it's going to open the door for sports betting. Fantasy-- this bill is really about regulating what's happening right now and what 300,000 Nebraskans are currently taking part in. So I believe this bill is good policy that is long overdue in Nebraska, and I ask for your support.

**WAYNE:** Thank you. Any questions from the committee? Senator Arch, followed by Senator Moser.

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**ARCH:** Let me ask you the obvious question. It's not very often we have an industry come in here thanking us for considering regulating them and adding cost.

**SEAN OSTROW:** Right.

**ARCH:** Why?

**SEAN OSTROW:** Well, I mean it's hard to find another industry where people place their money, you know, with, with a company that's totally unregulated. You know, we feel that the industry as a whole has done a very good job of self-regulating. But we don't want to wait around for the next potential scandal. You know, we think it's important and, you know, to be honest, the cost of registering and paying a 6 percent tax is probably worth it for that legal certainty so that companies can continue to expand and grow without, you know, the possibility of a scandal derailing their future business prospects.

**ARCH:** So are there others in the industry that are not self-regulating?

**SEAN OSTROW:** Well, that's hard to say. It's a little bit like an unlicensed party bus operator. You know, that they're probably out there, but they're probably difficult to find. You know, I think this, this bill gives the state a little more teeth as far as the regulation goes.

**ARCH:** Thank you.

**WAYNE:** Senator Moser.

**MOSER:** Well, I was just doing a little math here. If the average fantasy player spends \$465, and if there are 300,000 players in Nebraska, it's \$139 million in revenue. And so why would we limit the revenue to \$10,000 per year?

**SEAN OSTROW:** So that's a great question, Senator. I was not familiar with the cap, or that was not done at our behest. But, you know, that's certainly something for, you know, the will of the body.

**MOSER:** Is this typically played for one game or for a season?

**SEAN OSTROW:** So there's very many different kinds of fantasy sports. There are some that last, you know, it may just be one game or one

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weekend's worth of games, or it could just be, you know, the Sunday 1:00 NFL games. Then, you know, there's some that go as far as a full season, there's some that go multiple seasons, if you're really invested.

**MOSER:** You would probably play more if it was for one game, and then you know you lost and then you would reapply, or rejoin. Is that \$139 million number anywhere near accurate, you think, in Nebraska?

**SEAN OSTROW:** I can't speak. I mean, I represent both companies and they're both privately held, so I have no access to, you know, what sort of revenue information they have. That does seem high in my estimation. Can't imagine--

**MOSER:** I just, I got the number out of a handout that we got that said the average player spends \$465. And you said there were 300,000 of them, so I just multiplied those numbers together. That's how I arrived at that. Thank you. Appreciate that.

**WAYNE:** Any other questions? I have some questions regarding, because we are going to hear some testimony this is gambling. I know with the recent Supreme Court decisions there are states who have passed sports betting. Can you tell me a little bit more about how that environment works and how the regulatory is? Because when-- I want to distinguish from what this bill is and what the law is like in New Jersey and other people have passed that are really true sports betting, how they differ.

**SEAN OSTROW:** Sure.

**WAYNE:** There's significant differences, and I want to get it from you.

**SEAN OSTROW:** Absolutely. Thank you, Senator. So essentially, fantasy sports has to meet the criteria that's within the federal law, which Senator Blood mentioned, which is you UIGEA, which was passed in 2006. So it has to be determined, you know, primarily by the participants' skill. The prizes have to be determined in advance. And it has to be based on the statistical output of multiple athletes. So that's a pretty narrow definition in what fantasy sports does, it tries to approximate the experience of being the general manager of a sports team. So, you know, that's, that's the genesis of that. Sports betting comes from a very different place where you can, you know, you pick winners, losers, point spreads, that sort of thing. It's a much broader universe of potential when it's sports betting. But fantasy

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sports is really just, you know, this niche product that has been recognized in federal law and also 20 other states as, you know, simply a game of skill that should be regulated and treated differently.

**WAYNE:** And so typically in sports betting, there's, you mentioned it, but just for those who might read it later, there's a spread typically, correct? Or there's win by six, down by six. They don't necessarily bet on somebody is going to get 10 points in the game. It's not truly based off of that. I don't-- I haven't seen that.

**SEAN OSTROW:** So I apologize, I'm not an expert on sports betting, but, you know, I think you can place those sort of bets on individual players. But fantasy sports is different in that you can't just bet on one single player, it has to be based on multiple athletes across multiple different contests. There's none, none of the integrity concerns with the potential for, you know, quote unquote, throwing a match. It's impossible to fix a fantasy contest because you have, you know, a whole team of athletes. And you can't bribe somebody to go out and hit another home run and score more fantasy points. So there is none of the concerns that might be present in some of the sports betting regulation that we've seen in other states.

**WAYNE:** Thank you, any other-- seems like we prompted some questions. Senator Moser.

**MOSER:** I was just, your question popped one in my head. Do we compete against other people who are also in the same league or are we competing against some standard?

**SEAN OSTROW:** So, Senator, you're, in a fantasy sports contest, as defined in this bill, you by definition are playing against other people. So it's not--

**MOSER:** And regardless of how big a group you're playing against the payout is the same?

**SEAN OSTROW:** Well, so before you enter a contest there are different stipulations. You can play a game for \$2, you can play a game for \$5, and there is different number-- they have caps on how many people can enter a contest. So you might be playing in a, in a league with 10 people for \$2, in which case you have \$20 as the pot. You might be playing with 10,000 people for \$5, in which case there's \$50,000

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that's distributed amongst the winners. Does that answer your question?

**MOSER:** Yeah. How do you decide who wins?

**SEAN OSTROW:** Well, it's based entirely on the statistics of what the players that you picked on your team.

**MOSER:** So you pick a quarterback and a line and receivers and all those sorts of things?

**SEAN OSTROW:** Correct. It's usually the skill positions, so you have quarterback, running back, wide receiver, and based on their points. You might pick a team defense as well. But based upon, you know, the statistical output, each event in the game is assigned a fantasy sports amount. So throwing for a touchdown is worth four fantasy points, running for a touchdown is worth six fantasy points. So everything that happens in the box score during the game correlates directly to your fantasy sports team's score.

**MOSER:** So what would be like the maximum you could win if you, say you entered some pool that's got 50,000 people in it. Could you win a couple hundred thousand? Five thousand?

**SEAN OSTROW:** Yes, Senator, there are certainly contests that high and that large that there's, you know, prizes in that ballpark.

**MOSER:** Is there a way to make a living doing this?

**SEAN OSTROW:** Sir, many, many have tried, and I think quite a few of them have succeeded.

**MOSER:** And lost.

**SEAN OSTROW:** Well, there is quite a few that have succeeded. I mean, there's a whole industry out there that is just fancy sports experts.

**MOSER:** Thank you.

**WAYNE:** I guess that prompted, just because maybe not everybody understands how fantasy sports works. So if you've got any other, I'm kind of giving you an open-ended question. We talked about teams, and I guess walk me through a week. Let's say me and you are playing, a group with all of us. Walk me through kind of what a person would do on the skill side of checking who's playing, and injury reports, kind

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of all the other [INAUDIBLE] to a football league, and assume that General Affairs is all playing in that, in that pool.

**SEAN OSTROW:** OK. So, well, we have about the right number of people, so that's a good start. So basically you would get the group together, you would send out an invite. For in the modern era, you know, 99.9 percent of fantasy sports happens on-line. So, you know, it's calculated on-line. Nobody has to go through and do the box scores one by one and tabulate fantasy points. That's one of the benefits, and that's what makes it so popular. So we would go, we would all join, you know, Justin Wayne's fantasy league for week one of the NFL. Or it could be a season-long league. We would either have a draft at the beginning of the season and that is your team for the entire season, or it could be just your team for that week, or you could do it on a salary cap basis where you go through and you have 60,000, you know, whatever, "Wayne bucks" to compile your dream roster. And then you have to spend that economically in order to pick the team that you think is going to win. With the salary cap model, you can't just pick all all-stars. You know, you have to be economical and kind of face the same issues that a general manager would face of a real, actual team. So essentially you would go through, you would have, like Senator Wayne mentioned, you'd have to be quite a bit of research. You'd want to look at defensive matchups, you'd want to look at who's injured, who's playing that day. You would check the weather. Some people go so far as to look at who's officiating. It's especially important in Major League Baseball, if there is, you know, umpires that are a little more, have a, have a bigger strike zone or, or something to that effect. So, I mean, there's a never-ending list of inputs that go into choosing your fantasy team. And that's part of what makes it a game of skill. So does that kind of--

**WAYNE:** To kind of give you an idea of, so it's not like one team versus one team. It's our team versus our team, and he could have two Bear players and I could have two Bear players, and they might both lose, so we don't get a whole lot of points. And you could have San Francisco players and Minnesota players, and they both did really well and you win. So it's not necessarily team-determined, it's truly players. And that's why they define it as a game of skill. So I just now that I'm thinking that everybody plays it, so I want to try to get a good explanation for the record of what it, what it really is.

**SEAN OSTROW:** Sure. I don't feel like I provided that, but--

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**WAYNE:** You were thrown on the spot there, so I appreciate it. Any other questions? Seeing none, thank you. Thank you for coming today. Any more proponents? Proponents? Seeing none, any opponents? Welcome to your General Affairs Committee.

**PAT LOONTJER:** Hi, I'm Pat Loontjer, and I'm from Omaha, Nebraska. I'm the executive director of Gambling With the Good Life for the past 24 years, and I think I'm, I think most of you guys are all new to me on General Affairs. And this is my first time this year testifying. We are a grass-roots organization established in 1995 to oppose expanded gambling. We've been successful for 24 years. We have a very broad-based coalition, with supporters from all walks of life. We include liberal, conservatives, all races, all social and economic backgrounds. During one of our past battles, there was an editorial co-written by Tom Osborne and Ernie Chambers in support of our efforts. I'm going to give you a copy of that, it's really a hoot. In the article, these two icons, which do not agree on a whole lot of things, virtually agreed and signed this and this editorial opposing any form of expanded gambling. At that time, it was the casinos and the slot machines that were coming in. But as you, as you read their, their whole editorial, you'll see that it's, it's they care about families, they care about kids. And that's basically what our premise is. Warren Buffett has also done a 30-minute video for us that's gone worldwide. And I come to you today to ask you to vote no and not allow LB137 out of committee. This bill, virtually the same bill that that Larson has carried for years, it's been debated on the floor for hours and days in 2016. And it got nowhere on the floor, but it did take up valuable time. And even though you have a 90-day session, I think you can see how fast the time, time will go. And this definitely, you know, will be filibustered if it did make it to the floor. Fantasy sports betting has the potential of putting a casino in, on every electronic device that, that's owned by, by kids, by family members. The saying goes that you can sit at home and lose your home all in one evening. It is possible when you're talking about the numbers that, that you can play. It's nothing but dynamite, and it has the power to destroy. Fantasy sports betting has been declared illegal in many states. And the potential litigation that Nebraska would face is not worth any of the false promises that's being promised by, as far as financial gain. The citizens of Nebraska have voted no to expanded gambling twice by an overwhelming majority when it was on ballot issues. In 2016, we saw a \$1 million effort by the Winnebago tribe to gather signatures to again change our constitution and put something on the ballot. That effort failed miserably. They couldn't even gather



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the signatures. Nebraskans have said enough is enough. When we reformed in 1995 there was, there was already horse betting, there was also the lottery was here, Keno was here, a number, you know, of gambling venues were here. And Gambling With the Good Life just drew a line in the sand and said, enough is enough, no more, no expanded. It's very, very difficult to roll anything back once it gets put on the books and, and trickles into the treasury. So we've not gone after any of those industries, but we have fought anything expanded. And we do consider this expanded gambling. There's also, which will be addressed a little later, the Department of Justice has ruled in, in January that fantasy sports betting, and sports betting in general, violates the Wire Act. So they put a-- my light is on. They did put it in discussion for, I believe, 30 to 60 days. They've extended that for another 30 days, which will be after our session. And the question is, why would we want to jump into this fray when it's still being hashed out on the federal level?

**WAYNE:** Thank you for your time. Any questions from the committee?  
Senator Brandt.

**BRANDT:** Well, thank you for appearing today.

**PAT LOONTJER:** Thank you.

**BRANDT:** I know it's late and there aren't many people left.

**PAT LOONTJER:** It was very interesting though.

**BRANDT:** It is for me also.

**PAT LOONTJER:** Had good, a lot of interesting bills today.

**BRANDT:** Previous, previously, Senator Blood said that this is already happening in the state of Nebraska. And if that's already the case, what would be wrong with the state garnering some income off of this, if it's going to happen anyway?

**PAT LOONTJER:** Yeah. You know, any time you make something legal or it, it's-- it's gonna become corrupted. They're, fantasy sports is just a gateway to the regular sports. They're, they're all in the same pot together. And from what we've learned, it's, it's going to cost the state money to try to regulate this. The bill that you had before, where you talked about how in the world are we going to regulate the buses or how are we going to check on the, on the party buses, how in the world are you going to check on this? And it's definitely going to

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take personnel, Department of Revenue is going to be in charge. It's definitely going to cost us money to even try to do this. Why don't we wait, see what happens on the federal level with this Wire Act thing? Because it could all be nil--

**BRANDT:** All right.

**PAT LOONTJER:** --if, if they, if they vote.

**BRANDT:** All right. Thank you.

**WAYNE:** So if the federal level comes back and says that everything is fine and that this is a game of skill, would you still be against it?

**PAT LOONTJER:** We'll see you next year. We'll be back if the bill comes back next year. I would hope that you weigh in, you know, and our session will be over by the time the Wire Act is decided. But we definitely do not see this as a, as a game of skill.

**WAYNE:** My question is though what authority-- so if the U.S. Supreme Court and other regulatory agencies across the country are saying this is a game of skill, what gives you the authority to say that it's a game of chance?

**PAT LOONTJER:** Well, we were referring to the Wire Act, when it said, and that's the ruling that came down recently. The sport, the Supreme Court ruled on the sports betting, that that would be up to each state to decide on that. And we don't have one of those bills in Nebraska as of yet. I, I believe the Wire Act will probably kill all of this stuff that goes on over the, gambling that goes on over the Internet.

**WAYNE:** So do you believe this is a game of chance or a game of skill?

**PAT LOONTJER:** Definitely chance.

**WAYNE:** And what authority are you?

**PAT LOONTJER:** I'm not an expert on fantasy sports at all. But that's, that's the consensus of our committee.

**WAYNE:** And I appreciate that. I'm just trying to find out the, the science behind it or the mathematical equation behind it, or the reasoning behind it.

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**PAT LOONTJER:** I think there will be other testimony after mine that, that will be able to address those issues.

**WAYNE:** Thank you so much. Any other questions from the committee? Seeing none, thank you for coming today.

**PAT LOONTJER:** OK. I'll leave some things for you.

**WAYNE:** Thank you. Next pro-- opponent. Welcome back, I think, to your General Affairs Committee.

**NATE GRASZ:** Thank you.

**WAYNE:** I think you've been here before. Might have been Urban Affairs.

**NATE GRASZ:** Not, not today, but this year. Yeah. Good evening, now, Chairman Wayne and members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z, and I'm the policy director for Nebraska Family Alliance. And I'm here to express our opposition to LB137. Season-long fantasy sports started as a hobby and a form of community. It was a social activity where the trophy and competition among friends mattered more than the money. Today, however, because of the introduction of daily fantasy sports gambling, fantasy sports have become just another gambling scheme which plainly incorporates the three elements of gambling: consideration, prize, and chance. Skill and chance are not mutually exclusive. The fact that an element of skill may be present does not negate the fact that users are still largely reliant on chance to win. Bettors have no control over how the athletes perform, nor over other external factors that affect the outcome of player performance, and exists independently of an athlete's ability or user's supposed skill. Daily fantasy sports contests restart constantly, last a day or only a few hours, and typically are played against strangers over the Internet. An analysis from the Bloomberg Businessweek found that the majority of daily fantasy sports customers lack the skill to ever have success and are relying largely on chance to earn their money back. Casino operators, problem gambling treatment providers, and even fantasy sports companies themselves, openly describe daily fantasy sports as gambling. However, questions surrounding the legality of fantasy sports contests, or how the state should seek to regulate them, have been answered by the United States Department of Justice. In January of this year, the U.S. Justice Department issued an opinion to re-strengthen the federal Wire Act, which prohibits the use of wired communications, including the Internet, to send bets, information

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assisting and placing bets, or money or credit resulting from those bets internationally or between states. This new opinion reverses a previous 2011 opinion, which overturned 50 years of law by reinterpreting the Wire Act to allow states to run Internet gambling operations. The Department of Justice is reinstating the original intent of the Wire Act to prohibit all forms of on-line interstate gambling, including fantasy sports. Department of Justice attorneys have been instructed to refrain from applying the new guidance until mid-June to allow businesses to bring their operations into compliance. LB137 stands in direct conflict to what the Department of Justice has said, and would likely entangle the state of Nebraska in time-consuming and costly litigation. Lastly, part of the stated intent of this bill is to generate, is to generate revenue for the state, but the fiscal note provided by the Department of Revenue concludes that LB137 would result in the state losing the money. For these reasons the committee should not vote to advance LB137. Thank you.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here today.

**NATE GRASZ:** Thank you. Thanks for your time.

**WAYNE:** Any other proponents? I mean opponents, sorry. Opponents? Anybody testifying in the neutral capacity? Seeing none, Senator Blood, you are welcome to close.

**BLOOD:** Thank you, temporary Chairman Senator Wayne.

**WAYNE:** As Senator Blood sits down, there is no letters of opposition and no letters of support for the record, or in the neutral. Go ahead, Senator Blood, on your closing.

**BLOOD:** Well, thank you. I have several issues I'd like to address. First of all, I thought it was curious that the Family Alliance said that many players lacked the skill but then told you it was gambling. They admittedly just told us that it's a game of skill. I think it's really curious that words are being put into a gray area. And I have to say, I don't agree with expanded gambling either. I don't believe in casinos, I don't believe in slot machines in Nebraska. But we're not talking about gambling. And unfortunately, the opposition compared this to sports betting. Sports betting is not what this is. Sports betting is gambling. This is not expanded gambling. And then I thought it was very interesting that you've been threatened with a filibuster,

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because last I knew, it was the senators who decide whether there's going to be a filibuster on the floor. And to be quite frank, one of the reasons that Senator Larson did not get this bill passed is because I think he did a poor job of communicating to people and bringing science forward, which I did this year, to show you that this is indeed a game of skill. And this, this research is done on numbers and it's done on science. It's not just done willy-nilly in somebody's opinion, they did research on this. And then the fiscal note says otherwise when it comes to income, even worst-case scenario is still the best-case scenario. But we feel it's going to make much, much more. And then lastly, it was just referred to the 2006 bill, that I brought forward in my presentation at the beginning, where it's really I think he-- again, the line has been blurred that this type of game of skill is exempt. Now, they're also putting up the red flag about the DOJ-- DOJ opinion, and I did a lot of research on that because I want to make sure I had an answer for that. So as far as the new Department of Justice opinion on the Wire Act is concerned, the fantasy sports industry isn't concerned that this will in any way apply to them because the federal authorization in 2006 for fantasy sports comes from the UIGEA, the Unlawful Internet Gambling Enforcement Act, that we've already talked about and you all have copies of, which specifically carves out fantasy sports from the definition of gambling. So this new DOJ opinion doesn't touch on this. It's being misinterpreted. However, the DOJ's new expansive reading is being challenged by the New Hampshire Lottery in the First Circuit, and New Jersey is prepared to file a similar lawsuit if the DOJ doesn't walk back their recent opinion. It's worth noting too that we found out through our research that this opinion possibly reeks of undue influence from Sands Casino CEO Sheldon Adelson, one of Trump's biggest donors. He has made it a point to oppose any form of on-line gaming, and this opinion was largely seen as a political favor that directly conflict, conflicts with a previous 2011 DOJ opinion upon which numerous companies, including most state lotteries, have relied. I expect a tangle of litigation to ensue-- ensue for possibly years. But in any event, the fantasy sports industry is not affected by this. So I think it's really important that we quit talking in code and we quit trying to gray what the facts are. You have a pile of information, a pile of facts. We know that this is not gambling. And again, I agree with-- I can't think of her name right now. I agree with Gambling With the Good Life. I don't, I don't agree with expanded gambling. But here's the other thing, I think it's curious that if you were worried about expanding gambling, and no matter how many facts we put in front of you, you thought this was not a game of skill, why

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would you not want to regulate it if it's going on in your state? That doesn't make any sense. We don't believe in it, so let's turn a blind eye and pretend it's not there. How do you think we'll pay for that? So I ask that you do vote this out. I think the body is different than it was previously, and Senator Larson was very enthusiastic about this bill in the past. I agree. But he also did not do a really good job of sharing the science, and I feel compelled to do so. And I think it's unfortunate that we have somebody from the public saying that we're going to be filibustered on the floor. I, I take that as a threat. And it's unfortunate, because I do like that organization. With that, I'd be happy to answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here again.

**BLOOD:** Thank you very much.

**WAYNE:** And this closes the hearing on LB137, and closes today's hearings.