

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BRIESE:** Good afternoon, and welcome to the General Affairs Committee. My name is Tom Briese. I'm the senator for District 41, which includes nine counties in Central and Northeast Nebraska, and I'm the Chairman of this committee. We're here today for the purposes of considering three bills. We will 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 these 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 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 Transcriber's Office. The order of proceedings is that the introducers will be given an opportunity, 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 this committee. Each testifier is afforded five minutes to testify. When the yellow light comes on, you have one minute remaining, and, 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 questions 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 electronics so you may see 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, and she'll make copies for you. Our page for the General Affairs Committee today is Nedhal, and Nedhal is from Lincoln-- must have stepped out for a second. She attends Southeast Community College, where she is a criminal justice major. With that, let's proceed to the introduction of members start-- beginning on the far right here with Senator Blood.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BLOOD:** Good afternoon. My name is Senator Carol Blood, and I represent District 3, which is Western Bellevue and southeastern Papillion, Nebraska.

**ARCH:** John Arch, District 14: Papillion, La Vista, and Sarpy County.

**HUNT:** Hi everybody, I'm Megan Hunt, and I represent Midtown Omaha, District 8.

**LOWE:** John Lowe, District 37: Kearney, Gibbon, and Shelton.

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

**MOSER:** Mike Moser, District 22, it's Platte County, little bit of Colfax County, and most of Stanton County.

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

**ALEX DeGARMO:** Alex DeGarmo, committee clerk.

**BRIESE:** And I see, Senator Wayne, is not with us this afternoon. He'll probably be here later. I'm assuming he's introducing a bill in another-- before another committee. And with that, we will proceed to LB252. Good afternoon, and welcome Senator Geist.

**GEIST:** Thank you, Chairman Briese and good afternoon, members of the General Affairs Committee. I am Suzanne Geist. For the record, that is S-u-z-a-n-n-e G-e-i-s-t. I represent the 25th Legislative District, which is the east side of Lancaster County including Lincoln, Walton, and Waverly. I'm here today to introduce LB252, which requires the Nebraska Lottery to disclose the odds of winning the prize with the largest value in their advertisements. Currently, the Nebraska Lottery does not have to disclose the odds of winning the prize with the largest value on advertisements. And to me that's a concern. Government transparency is important, and we as a state need to disclose these odds in a clear and conspicuous way because the Nebraska Lottery is a state program. Sometimes people in difficult financial situations look to the lottery as a quick way out of those situations. By having the Nebraska Lottery disclosed the odds of winning, it will help those who participate to make a more educated decision about how they spend their money. LB252 requires the disclosure of the odds of winning the prize with the largest value on advertisements, such as billboards and in-store wobblers to have the disclosure be no less than 35 percent of the largest font. On-line

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

advertisements shall be disclosed in a 10 point font when the ad is created. I have a handout that will show you what the advertisements would look like. The Nebraska Lottery sent me a few drafts of different types of advertisements and what they would-- how they would appear. I would also like to stress that this bill would not be retroactive and would only apply to advertisements going forward. With that, I thank you for your time, and I'd be happy to answer any questions you may have.

**BRIESE:** Thank you, Senator Geist.

**GEIST:** Thank you.

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

**BLOOD:** Thank you, Chairman Briese. And thank you, Senator Geist.

**GEIST:** Yes.

**BLOOD:** I have kind of an odd question.

**GEIST:** OK.

**BLOOD:** Based on what I know about people who like to gamble,--

**GEIST:** Uh-huh.

**BLOOD:** --which would not be me. I understand the reasoning behind putting the odds on there, you want people to know what they're risking. But are you concerned at all that if indeed a person is a gambling addict when they see, for instance, look in the [INAUDIBLE] money top prize, odds of winning are 1 in 2,600. Could you not just see them going towards the games that have the better chances of them winning?

**GEIST:** I suppose-- it's hard for me to get into the mind of an addict--

**BLOOD:** As it is for me. I agree.

**GEIST:** --a gambler. However, I suppose that, that it, it could shift them one way or another, but at least they're making an informed decision. Whether that's better or not for a problem gambler would be up to that individual, or that individual-- the people that they actually affect. My intent with this though is that since this is a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

program that's run by the state that at least we're being transparent about the reality of the odds. I think many gamblers-- actually an addict may not care what the odds are, frankly.

**BLOOD:** I agree.

**GEIST:** But, those that want to be informed can be. And at least as a state we're being responsible to those who choose to use their hard earned money to gamble. They know what they're getting into.

**BLOOD:** So if I hear you correctly, more of a buyer beware--

**GEIST:** Yes.

**BLOOD:** --type of warning.

**GEIST:** Absolutely.

**BLOOD:** I do-- I have worked with addicts in other areas and my only concern and I don't think the remedy-- this is going to change any of that, is that they'll discover things where they think the chances are better of winning, so. Thank you.

**GEIST:** Sure.

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

**HUNT:** Thank you, Chairman Briese. Thank you, Senator Geist. How-- do you know how frequently the Nebraska Lottery recalculates the odds of winning these games?

**GEIST:** That is an excellent question, and I do not. But I can find out and let you know.

**HUNT:** That's an interesting question to me because I suppose it's plausible that once we start including this information on scratch tickets and on advertisements-- this is just on advertisements, right?

**GEIST:** Yes, it's just on advertisements,--

**HUNT:** OK, understood.

**GEIST:** --not on scratch tickets, just on billboards. It's actually on broadcast, so any kind of advertisement.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**HUNT:** Thank you for correcting me.

**GEIST:** OK.

**HUNT:** So-- but once this is on advertisements, it might impact sales of cards, or it might decrease the sales, or it might increase the sales, or it might have some effect. So I'm just interested in the question of how frequently these odds are recalculated to make sure that they're accurate.

**GEIST:** OK, I'll find out and I'll make sure you get that,--

**HUNT:** Thank you.

**GEIST:** --because they'll let me know.

**HUNT:** Thank you, Senator Geist.

**GEIST:** Um-hum.

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

**BRANDT:** Thank you, Chairman Briese, and thank you, Senator Geist, for bringing this bill. And my question is relatively simple, the Lottery Commission was all right with this?

**GEIST:** Yes, they actually, I believe, are fairly neutral with this. They, they gave us the mockup that you have in your hand. They actually printed those off, designed them, and printed them off for us so we could see what it would look like. So, yes.

**BRANDT:** OK, thank you.

**GEIST:** Um-hum.

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

**MOSER:** What are the odds of being a problem gambler? I mean, how many--

**GEIST:** How many problem gamblers are there within the--

**MOSER:** Yeah, compared to how many million people play the game?

**GEIST:** May I get back to you on that exact statistic? There may be someone behind me who would give you better information or some

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

information about that. I do not know the statistic of problem gambling compared to the, the population. I do not know.

**MOSER:** OK. Is this something that you thought of or did somebody bring you this bill or--

**GEIST:** You know, at some-- I-- it's something that I-- that came up in discussions with some people who are interested in gambling, or interested in not proliferating gambling. And, and actually something I feel strongly about coming from-- I have an immediate family member-- not in my current family, but growing up who has an issue in this area and-- I have to tell you I, I must be among the uninformed, I didn't realize this was a specific state program. I knew the Nebraska Lottery. I knew it was there. But it just didn't-- I did not think about it enough, I suppose, to understand that this is a program run by the state, which is peculiar to me that it's a gambling program run by the state. And, therefore, that's when we started discussing transparency and odds which I think is a minimal requirement, so at least the taxpayer and the citizen have transparency from the state of what is a realistic odds of winning.

**MOSER:** Yeah. I mean-- I think it's an admirable goal, but-- and I think most people that gamble all think that they're gonna win.

**GEIST:** Sure.

**MOSER:** Everybody thinks their violin is a Stradivarius. Everybody thinks their kid is gonna be a Harvard professor. You know, it's just kind of the eternal optimism of the human being, and--

**GEIST:** And, and to be fair I was-- I-- I'm not an expert. I'm certainly not a therapist for people who are addicted to gambling. But I understand from a, a, a communication and a symposium sort of that I went to about problem gambling, it's not necessarily the winning that a problem gambler is about. They're about the gambling. The activity of it. My, my concern here is if, if this doesn't discourage a problem gambler, I'm not sure it's going far enough to discourage someone from being an addict. But it does inform the citizen of-- the average citizen of what the odds are of winning a, a prize from the state.

**MOSER:** Along the lines of Senator Hunt's question, the odds of winning some of those lotteries are based on how many people play.

**GEIST:** Um-hum.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**MOSER:** So how do you allow for variation in what the odds may be? I mean, the advertisement may not be timely compared to what the, the [INAUDIBLE] rises to.

**GEIST:** Right, which is an excellent question that I'll, I'll make sure that, that I ask the Commission that question and how frequently they do recalculate.

**MOSER:** Or maybe you could say something about the odds are no better than 1 in 300,000 when they really might be 1 in 20 million.

**GEIST:** Um-hum. OK, and we'll find out that information to make sure the committee gets that promptly.

**BRIESE:** Thank you, Senator Moser. Any other questions? Seeing none, thank you for your testimony, and I assume you'll be here to close.

**GEIST:** I will be here for closing.

**BRIESE:** OK, thank you. Next, next proponent.

**TOM BARBER:** I guess that's me.

**BRIESE:** You bet. Good, good afternoon, and welcome.

**TOM BARBER:** Thank you very much, Senator. OK, I don't do this much, so pardon me if I get it wrong. My name is Tom Barber, T-o-m B-a-r-b-e-r, and I rise in support of LB252. I am the CEO of People's City Mission here in Lincoln, Nebraska. At People's City Mission, we house about 80 percent of all of the-- all of the city's homeless, for those of you that don't live here in Lincoln. And then we have a program for the near homeless called the Help Center, in which we had about 24,000 unique individuals use-- and we gave away about five million pounds of, of, what I call stuff-- food, clothing, pots, pans, toys-- you name it, we give it out. Our overall reach was about 33,000 on duplicated people last year, so we have, we have a very good connection to those that are kind of struggling in poverty here in the city. And I've been there 15 years. I've been there for a while, and I've, and I've listened to many of the folks. And I just want to give you my observations. They're not-- they're anecdotal, they're not scientific, but I can just tell you what I've seen. It might answer a few of your questions. I guess the first thing that surprised me is that poverty looks different to the eyes of those going through it than it does through the eyes who aren't. It really-- they really see the world differently. And part of that look has to do with a, a keen

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

sense of the need to survive, their survival needs are much stronger. And you see that in some interesting and even sometimes harmful behavior. For instance, at the Help Center where people go they'll hoard, just because they're not sure what's gonna happen. When they eat in our Mission or sometimes at restaurants, you'll see them take far more food than they can use. And, and part of it's just the sense of they're not sure what's gonna happen. One of the things that happens gets to this issue of gambling. And I certainly have addicts at the Mission, but the vast majority of people that I'm worried about are not addicts. And I think sometimes we mistake desperation for addiction. What happens if you're poor and you're in a situation that's hard to get out of or you can't go get a nice job or something, is you feel helpless. But you know, that lottery ticket is the one thing that can you can do about poverty and you're certain that there's some golden ticket in that chocolate bar somewhere if you use Willy Wonka, it's there. And so you go for it because you're really hoping that'll make things good. And that in itself isn't bad if it's a dollar or two. But sometimes people will use money they don't have. They'll use grocery money or money for transportation, maybe money for diapers for their kids. They, they use different kinds of funding because this is, this is their chance and it's really not addictive as much as is that they're in a bad situation and they just want to get out of it. They're not interested in gambling for gambling sake. They're interested in changing their, their situation. And not everybody who is poor has these feelings. I'm not speaking that this is universal, but I've seen it in a lot of folks. And so it has some unintended consequences. And, and-- for example, at the Mission there was what-- four or five years ago, someone won the big lottery at our U-stop right down the corner-- and millions. And so they had us divvy out some cash to all the homeless there thinking it would do a good job, actually it had the opposite. They thought lightning is gonna strike twice and, boy, I'm sure we helped you guys tremendously with your lottery tickets for the next couple of weeks. And, and there's just this sense of-- it, it clouds your judgment. Good people make bad decisions just because they're in a bad situation. So I just want you to be aware of that, and that, that is certainly true for some people. And then there are a few people that are just addicted to gambling. There are people that don't gamble at all. What I tell people if they ask me, I tell them, look, your odds are about the same whether you buy a ticket or not, so why don't we buy a pop with it, we both have a pop and get something out of it. But, but basically few of them take me up on it. It is, it is an issue. And anyway, that's why I rise in support of this. I see the yellow light is on. I could wax a long



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General Affairs Committee March 18, 2019

time. Thank you guys for just listening to me, and I hope this is one of the many factors you consider. Bless you, thanks.

**BRIESE:** We may have some questions for you if you [INAUDIBLE].

**TOM BARBER:** Oh-- well, OK.

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

**TOM BARBER:** I don't need the yellow light, right?

**BRIESE:** You bet. Any questions? Senator Hunt.

**HUNT:** Thank you, Chairman Briese. I don't have a question. I just want to thank you for bringing your perspective and your experience--

**TOM BARBER:** Sure.

**HUNT:** --to this issue, because your point about addiction-- addictive behavior versus desperate behavior. I think that's one that shouldn't go unsaid, so thank you for coming today.

**TOM BARBER:** Sure. No, thank you.

**BRIESE:** Thank you, Senator Hunt. Anyone else? Seeing no other questions, thank you for your [INAUDIBLE].

**TOM BARBER:** Thank you for what all you guys do. God bless you, thanks.

**BRIESE:** Thank you. Next proponent. Seeing none, opponent testimony. Seeing none, anyone testifying in a neutral capacity? Seeing none, Senator Geist, you're welcome to close. And while we're getting ready for that we do have letters in support. A letter from Nebraska Family Alliance; a letter from the Open Door Mission; letter from Matt Talbot Kitchen and Outreach; a letter from Gambling With The Good Life. No opposition letters; neutral letter from the Nebraska Lottery. Senator Geist.

**GEIST:** Thank you. I appreciate you listening. I will make sure that I get the information, and sent to you promptly so you can make a decision about whether you'd like to forward this out of your committee. So thank you for your time, and I encourage you to support it. Thanks a lot.

**BRIESE:** Thank you, Senator.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**GEIST:** Welcome to any questions that you might have thought of.

**BRIESE:** Any questions for Senator Geist? Seeing none, thank you.

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

**BRIESE:** With that we close the hearing on LB252, and we'll open the hearing on LB591. And, Senator Lowe, Vice Chair Lowe, will take over the helm.

**LOWE:** Senator Briese, you may go on with LB591, and welcome to your committee.

**BRIESE:** Well, thank you, Chairman Lowe. It's good to be here. And, good afternoon, Chairman and General Affairs Committee members. My name is Tom Briese, T-o-m B-r-i-e-s-e. I represent District 41. I'm here before you today to introduce LB591. LB591 would allow for the creation of alcohol impact zones in an area when requested by a city council, village board of trustees, or county board, and approved by the Liquor Control Commission. A local authority as described must request an alcohol impact zone before one may be considered or created. An alcohol impact zone is defined as a geographic area that is located within a city, a village, or unincorporated areas of a county that is adversely affected by chronic public inebriation or illegal activity associated with the sale or consumption of alcoholic liquor. If requested and approved, the Liquor Control Commission may place special conditions or restrictions on a licensee under the Nebraska Liquor Control Act having an establishment or otherwise conducting business within the alcohol impact zone to discourage chronic public inebriation or illegal activity associated with sales or consumption of alcoholic liquor. Such conditions or restrictions imposed must be reasonably linked to the problems associated with the described chronic public inebriation or illegal activity. LB591 sets out procedures for the creation, maintenance, modification and repeal of alcohol impact zones and gives the Commission authority to promulgate rules and regulations to carry out this bill. The intent of this bill is to give local municipalities and counties a tool to use if and when it is necessary and appropriate to help mitigate issues in specified areas where chronic public inebriation and illegal activity associated with alcohol or a problem. This bill sets out specifics about what is considered an alcohol impact zone, who can request an alcohol impact zone, the application process, and what is required in an application requesting the creation of such a zone. Before a zone-- alcohol impact zone can be created, there is a requirement of a public

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

hearing before the Commission. Once an alcohol impact zone is created, it sets out the management of that zone and requires an assessment process to determine if that zone is effective, necessary, or should be modified or repealed every five years after its creation to help ensure that such zones are necessary and effective. The bill then provides a process for the modification or repeal of such zones when warranted. Some may insist that we don't have the need for these areas within our state and to that I would say, that there was no need for any-- if there was no need for any alcohol impact zones to be created in our state that would be great. However, if and when problems do arise we need a tool to help address them, and LB591 takes a proactive approach to provide a consistent tool to use and sets out the process so it is there when necessary. Currently, the Liquor Control Commission can put conditions on a liquor licensee that is before the Commission. However, that only addresses problems and concerns for one particular licensee who is currently in front of the Commission and therefore does not address a problem stemming from broader concerns within an entire geographic area or other locations within that area already holding a liquor license that may be contributing to the problem. The Liquor Control Commission as the regulatory body that deals with alcohol is the appropriate place to address such concerns, and they have the expertise and authority to manage and authorize any conditions within such a zone. The zone cannot be created by the Liquor Control Commission alone. It must first be requested by the local governing body and designated to a specific area in conditions that are tailored to address the specific problems that are demonstrated. There must be a public hearing before the Commission where affected parties, the public, and others can voice their thoughts and their reasons for or against a requested alcohol impact zone. Under LB591, the Liquor Control Commission would then determine if such a zone should be created and what conditions would be placed related to businesses in that area, area. Other states and municipalities have also looked to alcohol impact zones to address problem areas of chronic inebriation or illegal activity associated with alcohol. Washington State has utilized several alcohol impact zones. In Washington, there are alcohol impact zones utilized by three cities being Seattle, Tacoma, and Spokane. Within Tennessee, the city of Memphis created an alcohol impact area. Some municipalities within Nebraska have looked to address problem areas in a similar manner through various ordinances such as Good Neighbor ordinances. However, not all municipalities have such ordinances or have the authority and expertise in these areas to best address these types of concerns. LB591 gives a consistent approach to address concerns utilizing the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

Liquor Control Commission's authority and expertise in this area. Overall, these areas have seen, seen positive results of lowered crime and chronic public intoxication, loitering and other issues. The ability to modify these areas helps to address or tailor any changes that may be necessary, address additional concerns that may arise, or even repeal an ineffective or unnecessary alcohol impact zone. These areas are being utilized by other states and municipalities and provide another tool or option to our local communities to address the problems of chronic public inebriation and illegal activity. Again, nothing requires utilization of these zones or prevents local municipality or businesses from voluntarily agreeing to find workable solutions outside of this legislation. However, it does give those municipalities and counties a consistent tool to use when necessary to attempt to mitigate or prevent these types of issues and concerns. I ask for your support of LB591 and its advancement. I'm happy to answer any questions. I believe there's testimony following me that may address further questions. Thank you.

**LOWE:** Thank you, Senator Briese. Senator Blood.

**BLOOD:** Thank you, Vice Chair Lowe. Senator Briese, how did this bill come about to be?

**BRIESE:** This, this bill was one of the priorities of the Liquor Control Commission. It was set forth in a, in a listing of their concerns and priorities, I think delivered to probably several members of the body.

**BLOOD:** Was it in direct result of the Whiteclay issue?

**BRIESE:** I don't know from their perspective if it was. From my perspective, not, not really.

**BLOOD:** OK, thank you.

**BRIESE:** Yeah.

**LOWE:** Senator Moser.

**MOSER:** Thank you. How do you define what kind of behavior you're trying to control? And how do you-- I mean, if you picked somebody up in this zone for doing whatever-- I don't know, how would you prosecute that, or how would you-- what would be your probable cause for arresting them or scooting them up?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BRIESE:** Well, it's my understanding that the designation of an alcohol impact zone simply gives the Commission the authority to further regulate businesses within this area.

**MOSEER:** So they go to the licensees,--

**BRIESE:** Yes.

**MOSEER:** --and say, hey, we're having a problem with your customers-- they're fighting or, or drinking outside the building? Or-- of course, that's illegal anyway.

**BRIESE:** Sure, I, I, I will defer to Mr. Rupe's analysis of that or description or answer to that question. But it'd be my, be my understanding though that this zone would be created and then restrictions would be placed on everyone within this zone limiting this type of sale or that type of sale. They might limit or prevent or prohibit sales of certain high alcohol or single can, single bottle type sales. That'd be one example, I would think. But he might be a very good one to ask some of those questions, though.

**MOSEER:** OK, thank you.

**LOWE:** Any other questions? Thank you, Senator Briese. Will you be sticking around to close?

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

**LOWE:** We appreciate that.

**MOSEER:** He's stuck here for the duration.

**BRIESE:** Thank you.

**LOWE:** Good afternoon.

**HOBERT RUPE:** Good afternoon. My name's Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission. I want to thank this committee for entertaining this priority from the liquor-- from the Commission. This was in the Liquor Control Act's legislative letter this year. It's been on it in the past. We had a bill introduced years ago. Senator Kruse introduced a bill, it didn't go anywhere. At that point he was seen as a, quote, Whiteclay bill. Somebody tagged it that way. And that really wasn't the intent. This bill quite clearly follows-- I guess, if you're looking for who we're

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

trying to model after and what the Washington Liquor and Cannabis Board has done without pulling back zones. If anybody who's been to Seattle knows they've got a pretty large homeless population and they were seeing certain crimes affiliated primarily with off-sale locations. Not so much-- you know, bars and restaurants, but what you're seeing is a high impact of public consumption. Illegal-- you know, people would go into a convenience store buy one-- you know, one bottle, one, one can-- go outside, drink it, go back in buying one can. As now retired Deputy City Attorney Tom Mumgaard called it the convenience store had turned into the refrigerator for a homeless person to store their beer. What's happening is-- as we sit here today-- as you're aware, the cities can ask for-- you know, they can deny an application. So what they'll ask for is they'll ask us to put a condition on problem areas on new applications saying generally we-- you know, airplane bottles-- you know, the one ounce liquor bottles or no high-gravity beer single cans-- you know, the 20 ounce-- you know, 9 percent, 9 percent alcohol beers. And what they're doing is, we're just sort of putting small Band-Aids on the problem because-- you know, they've got a geographic area where they've got this problem and they're trying to not compound it by having additional people open up in that area but that's really not affecting in essence-- you know, the purpose of the businesses which been involved in the problem beforehand and more importantly puts the new business at a competitive disadvantage in a lot of ways. What this does is it identifies that the city may come to the city-- the city or county may come to the Commission and say, I-- we've got a problem bordered by here, here, and here where we've got a large transient population who's illegally consuming alcohol on the street. Which you're absolutely right, Senator Moser, is already a violation. And what they'll do is then you're seeing more aggressive panhandling, you're seeing some fights, you're seeing public urination, some fights coming out of that. And so what they're trying to do is-- what this bill is seeking to do is, is there a certain type of products being sold out of those place-- out, out of those locations which is helping to contribute to this population-- to this issue. What I've handed out, is you've got two reports, one was from the city of Seattle with their evaluation, and then one was from Everett, which I think is very interesting. Everett's the newest one out in Washington, just implemented, I believe in 2016, which showed a 40 percent decrease in the type of crimes they were seeking to address in that geographical area after their alcohol impact areas, as they call them, we call them zones, was instituted. It also goes through sort of the conditions that they put on it. And these are coming from law enforcement, these are law

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

enforcement stats. And so this bill or any zone would, I think, would be very much driven by the numbers. The city is gonna have to say, we are having an inordinate amount of crimes of a certain [INAUDIBLE] nature in an identifiable geographic zone. We think the problem is because of these small bottles of alcohol, these high-gravity singles. You know, instead of saying, no, to licenses, they're gonna say, let's restrict everybody in that area to the same-- you know, level, level the playing field in that area while trying to address that with most appropriate restrictions that they can see. These have been very successful in many states. I think, Senator Briese went through some of the states to address them. Earlier on somebody said-- asked if this was out of Whiteclay, and I, and I think the earlier bill in this [INAUDIBLE] was unfairly tagged as the Whiteclay bill. Would it have been effective in Whiteclay? Well, yes, but there it would have had to have the-- the county would've had to initiate it. So I'm not sure that would have ever happened. But really this is more, from my perspective, looking at urban areas primarily in Omaha and Lincoln which have geographic areas where they're seeing this kind of problem and they've got the numbers to back it up. I see I'm almost out of time. I'm sure there are some questions, I'll will do my best to answer those questions. Thank you.

**LOWE:** Thank you, Commissioner. Senator Arch.

**ARCH:** What kind of a, what kind of a case would they have to present for that to be considered? I mean, what are the factors that you-- that the Liquor Control Commission would look for?

**HOBERT RUPE:** A lot of the ones are what the cities are bringing forward on-- already on asking for restrictions on new licenses. There-- they'll point that they have a high incidence of disturbing the peace from transit populations, high instances of vandalism, littering, public calls for service from medical calls in, in and around a geographic area. And so they would have to say, we've got an area which-- you know, bordered by A Street, Z Street, and here, and here where we've got an inordinate amount of population. And it's not really so much the ones coming out of the bars or restaurants, but it's generally the transients who are causing the problems. So usually you're looking at property damage and-- you know, relatively simple minor cases, but it's a sort of compounding effect upon the area.

**ARCH:** Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**LOWE:** Thank you. Senator Hunt.

**HUNT:** Thank you, Vice Chairman Lowe. I had a similar question. I was just gonna say, could you talk more about the burden that would have to be met for an area to be designated as an alcohol impact zone? And have any cities asked for this?

**HOBERT RUPE:** Well, one thing-- as I said we're getting a lot of restrictions coming from Omaha and Lincoln on new applications. That-- our ability to do that is currently being challenged in the court. And so, hypothetically, we might even lose that ability. We're basing our current piecemeal restrictions on a case called F & T Corner Bar where the court said we can place reasonable restrictions on a license to ensure public health, safety, and welfare. Recently in an area in Omaha, we put the restrictions asked for by the city including no single cans of over 20 ounces--

**HUNT:** Um-hum.

**HOBERT RUPE:** --of under 20 ounces and no airplane bottles, and that licensee is appealing us currently saying that we overstepped and overreached our bounds, so this would affect it. So the city is already bringing these issues on the, on the, on them. Generally, where they're bringing it is, is-- local citizens are seeing it and bringing it to the city council. They're seeing, they're seeing increased vagrancies, they're seeing people-- honestly, we get reports, passed out on the streets-- you know, you know, and they've got four or five airplane bottles that they were able to get-- you know, because-- you know, they're sometimes those items are sold at an incredibly low price, \$1.00 each. You ask somebody for, for some money, they give you \$1.00. You walk in the liquor-- to the convenience store, you're walking out with a 100-proof bottle of whiskey that's a shot and a half or a shot. So I think the cities would have to say is, (a) is there a certain area that they're trying to, to address and is it-- and reasonably is it geographic? I'm not sure if somebody could say, the whole city of Omaha, or the whole city of Lincoln because that would make no sense.

**HUNT:** Um-hum.

**HOBERT RUPE:** What's gonna help us a lot--

**HUNT:** You wouldn't, you wouldn't approve that?



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**HOBERT RUPE:** No, we wouldn't approve that.

**HUNT:** No.

**HOBERT RUPE:** What's gonna help us a lot, actually, is the technology of-- the mapping technology where, where law enforcement can pinpoint certain types of crimes in certain geographical areas-- you know, where they can keep track of all those. And so, I think, the technology is gonna be there to help us make sure that the district is actually representative of what's causing the problems and also the type of crimes that they're trying to pre-- prevent. As you saw-- Everett's report-- you know, they identified certain crimes they're trying to do and then had a significant 40 percent decrease in those crimes after the implementation of the AA-- of the area.

**HUNT:** Would the Liquor Control Commission-- do you have a plan to work with law enforcement? Do they collect data about this in Nebraska?

**HOBERT RUPE:** They do collect data about this as you'll-- as part of the thing in the fiscal note-- you know-- generally on my own bills I try not to have much of a fiscal note, especially this thing. But there is one utilizing GIS tracking, tracking software, so we would be able to identify them. And we do work closely with law enforcement already. You know, there's a division of the Nebraska State Patrol assigned to the Commission and we work very closely with local law enforcement. And that's why I can't stress enough, this-- I, I'm really thinking the people who are gonna initiate this is gonna be either local citizens or local law enforcement going to their city council with the kind of words saying, we've got an area that's being problematic, can you help us try to be proactive without just saying no licenses at all?

**HUNT:** Right, which I think is kind of what happens now, unfortunately, like a new business wants to start and they have a legitimate business but there is pressure from the community to let them open because there's an alcohol problem or something. But if this law passed-- you talked about this business that was appealing something,--

**HOBERT RUPE:** Yes.

**HUNT:** -- that, I think, you've overstepped. If this law passed would that business have a case saying that, that there's no grounds for--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**HOBERT RUPE:** Well, I don't think-- what, what would happen then is instead of doing piecemeal restrictions to address these areas-- these [INAUDIBLE] areas, we would go to Omaha and say, if you've got a problem here, bring an alcohol impact zone.

**HUNT:** Um-hum.

**HOBERT RUPE:** You know, in-- instead of just picking on this new licensee trying to open up here--

**HUNT:** Right.

**HOBERT RUPE:** -- if you've got a geographic area causing you issues go through the process.

**HUNT:** There's a process to--

**HOBERT RUPE:** There's now a process for the city to bring that instead of just bringing a piecemeal.

**HUNT:** OK, that's my last question. Thank you, Hobie.

**HOBERT RUPE:** Thank you.

**LOWE:** Senator Arch.

**ARCH:** Just one more follow-up question from the questions that Senator Hunt asked. I would think that some of the businesses would be a little uncomfortable with the, with the Liquor Control Commission having the latitude without, without hard criteria. What, what really constitutes a problem area like this? And, and would the-- is the Commission gonna attempt to-- would the Commission attempt to establish that? Where's the bar?

**HOBERT RUPE:** With the bar-- I, I think-- you know, there are the [INAUDIBLE] of rules and regulations in there.

**ARCH:** [INAUDIBLE]. Right.

**HOBERT RUPE:** And, I think, we would look at that. I think what we're going-- you know, in my mind where we're going forward is, there's [INAUDIBLE] gonna have to come and show-- we've got a specific designated geographic area which is an anomaly. It's an outlier on certain types of crimes and we believe that those crimes are distinctly related to alcohol and perhaps as clearly as certain types

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

or certain sizes of alcohol. For instance, if they see a large amount of litter or a large amount of [INAUDIBLE], and they're all involved-- I mean, I'll be honest today, if I could wave my magic wands and get rid of airplane bottles, it would make my life a lot easier. Because those are the primary way that the homeless people get high, high alcohol, is because they're cheap. They're inexpensive. They drink them, and they throw them on the ground. So I think the city would have to come with an identifiable problem that they are trying to address, and they'd have to have numbers. I mean, they, they would have to say, in this certain area we are 40 percent higher in public urinations or in property crimes. You know, what-- we believe it's coming from this, this source. And-- so I, I, I, I really try and think that this bill would be very much trying to use a scalpel as much as they can to put the least restrictive conditions on there if they're going to achieve the goal. And that's what the Commission would like to do.

**LOWE:** Thank you, Senator Arch. Senator Blood.

**BLOOD:** Thank you, Vice Chair Lowe. Excuse my nose why I talk to you, by the way, I apologize.

**HOBERT RUPE:** I'm fighting a cold, too.

**BLOOD:** Yes, and with the flood, it's allergies in our part of the state, so.

**HOBERT RUPE:** Yeah.

**BLOOD:** So looking at page 2, and I'm looking at what demonstrates the need for an alcohol impact zone.

**HOBERT RUPE:** Um-hum.

**BLOOD:** So-- "Contributes to the deterioration of the general quality of life within the proposed alcohol, proposed alcohol impact zone; threatens the welfare, health, peace, or safety of visitors or occupants of the proposed alcohol impact zone; and demonstrates a pervasive pattern of public intoxication or public consumption of liquor." So the concern that I have-- I know that Omaha and Bellevue-- we actually have ordinances in places-- place for areas that end up being habitual areas of crime which is basically what we're talking about here.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**HOBERT RUPE:** Um-hum.

**BLOOD:** And first of all, I want you to know that it isn't that I'm against this bill in any way, I just think some of this language is problematic and could easily be used to run a business away from an area when there may not necessarily be a need to run that business away from the area. I'm not sure how business friendly this is, and I have some concerns. Who interprets this language once complaints are, are made?

**HOBERT RUPE:** Well, the, the, the zone-- I mean, this is the care criteria that the committee-- that the local governing bodies are gonna have to look at to bring--

**BLOOD:** Right.

**HOBERT RUPE:** -- it to the Commission. So it's gonna be your local elected officials.

**BLOOD:** So--

**HOBERT RUPE:** It's gonna-- I mean, so you're gonna-- I mean, and so it's not just some bureaucrat sitting in an office criticizing he didn't like a particular area, it's gonna be going through the process where the local governing body in this case is the City Council or County Board of Commissioners is gonna say, we've got a problem here and we need help. And this is what, this, this is what they're-- the issues which are causing the problems. It can't just be-- for instance, I don't think they'll look underneath here, like noise complaints. I don't think would, would qualify. Because it's not really affecting public health, safety, and welfare.

**BLOOD:** Right.

**HOBERT RUPE:** It's not showing a pervasive pattern of drug and [INAUDIBLE] intoxication. So the city would have to bring-- so-- you know, in a certain area if this were are all of our-- say Lincoln here where the vast majority of our intakes to the Bridge are coming from-- you know, and as-- you know, in our [INAUDIBLE], and Lincoln does a good job on [INAUDIBLE] data. There's can be showing that's it not coming from people in bars or-- you know, they're, they're just buying off sale and drinking illegally. So--

**BLOOD:** It-- and I definitely understand the intent of this and anything we can do to protect our communities is a good thing. I

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

just-- I do worry about how this can be interpreted and I think especially in some smaller communities-- you know, I see it happen here in, in Lincoln with just 49 of us. Sometimes people have personal likes and dislikes when it comes to things like gambling and alcohol and, and other vices and instead of voting for what's best for the constituency, they vote for what's best for their personal likes and dislikes. And I wonder-- I'm, I'm a little concerned about how the language could be used in a way that was not necessarily meant to benefit the community as much as to get back at somebody. And I have some concerns, and we can talk about that hopefully when we get back.

**HOBERT RUPE:** Well, I think that's one reason why it's a two-stage process, Senator. I mean, it's-- you know, the city has got to bring it, but the city can't justify it. I don't think that we see the Commission employing the zone. I mean, this-- the Commission gets in trouble for telling cities no all the time, like on recommendations where they're-- in all honestly, unfortunately, sometimes they're purely politically driven,--

**BLOOD:** Right.

**HOBERT RUPE:** --and they figure they'll throw it to the Commission and let the Commission handle it. And I don't see the Commission handling this any different. They're going to look at, is there a legitimate concern raised? Is it identifiable? And is there a way we can through reasonable restrictions try to curtail that?

**BLOOD:** Fair enough, thank you.

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

**MOSER:** Thinking along the same lines as Senator Blood, it would be to me kind of a question of how you define misbehavior because-- you know, some smaller bars don't allow their smokers, of course, to smoke inside, that's illegal. So they'll be drinking inside, then they'll want to smoke cigarettes so they go out in front of the bar-- you know, they're standing out on the sidewalk in front of the bar, and you get three or four or five people out there, then pretty soon they start talking about sports or politics or something and they start a fight. And so then, do you say that's unacceptable behavior? Do you want to impact those? Do you-- those bars, you want to tell them they can't have smoking areas in front of their buildings? Or what-- I mean--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**HOBERT RUPE:** Well, I, I, I don't think-- (a) I think a bar which is even one of the key things there they have to look at a pervasive pattern of public intoxication and public consumption. I don't think that's gonna happen there.

**MOSER:** Yeah, that's not public consumption because they can't drink-- you can't drink out on the street legally anyway, right?

**HOBERT RUPE:** Exactly right.

**MOSER:** So if they're drinking out in the streets you just arrest them as it is.

**HOBERT RUPE:** Yeah, but I'm just saying most bars aren't gonna have that as a pervasive pattern. You know, they might have an, an outlier, they might have a problem on a Husker game where people go out and-- you know, sneak their beers out and drinking out there and getting into a fight. You know, you know, also very certain to be visibly intoxicated, that's a whole other violation of the Liquor Control Act. But I think the key thing here which you're looking for isn't the occasional-- you know, dust up which happens, this is a pervasive pattern, which is one reason I go back that you're probably relying upon data from law enforcement showing that-- you know, they've got a persistent issue at or near this location, not just a one off-- you know, some guys-- you know, get in a fight. You know, I don't see that being what this, this is designed for.

**MOSER:** Yeah, I guess, I just personally haven't seen that kind of problem. So that's why I don't get it, I guess.

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

**BRANDT:** Thank you, Vice Chairman Lowe. Thank you, Director Rupe,--

**HOBERT RUPE:** Thank you.

**BRANDT:** --for testifying today. So let's be clear, a city council along with the police department and the community recognizes they have a problem. They do find it, according to their data, which I found was fascinating, a lot of that is trash pickup to identify how they do that. This law would allow them to establish a zone, probably in working with you, and then the Liquor Control Commission comes into the picture and says this is how we can help you inside of your zone. And every, every city may be unique. One city, it may be airplane

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

bottles, the next city, it may be beer bottles, next city, it may be rum. Is-- would that be accurate?

**HOBERT RUPE:** Mostly, I mean the actual-- the zone would be created by the Commission because through-- you know, they would, they would bring it to us, identify what it is-- there's the public hearing requirement, and then the Commission would, would, would sort of ratify the zone. And, and because the Commission has the authority-- the locals don't, to place reasonable restrictions on licenses in that area and that would sort of be the creation of the zone. We would say, let's just say if Omaha were to come to us and say we've got an identifiable area here where we've got a big problem with public intoxication, fights. We believe a lot of this can be curtailed through stopping airplane bottles and stopping single-can sales. They'd bring that evidence to the Commission, and if the Commission would agree with them and then the Commission would issue the zone and, and place restrictions on all licensing's within that zone. So it's not just picking and choosing which, which bar is a problem. We would say, OK, nobody in the zone can sell airplane bottles, not just the newest guy.

**BRANDT:** So then-- I think, there was some language in here for the duration of the zone. Was there not,--

**HOBERT RUPE:** Yes.

**BRANDT:** --for how long the zone would last? So if they're good for a period of years then the zone goes away. Is that correct?

**HOBERT RUPE:** Well, they, they continue till they're either-- the city can ask for the zone to go away. The-- there's also reporting requirements in there that they've got to keep giving it, and so in other words if the zone is not effective-- you know, what conditions can be changed, or if the zone-- if, if there's a negative impact to the zone, it's too broad, it can be modified. You know, it's, it's-- I think the oversight within-- because in one year and every five years thereafter-- you know, they've got to-- the cities have got to submit a report to the Commission about how it's either working or not working. And that's two, two of those examples you've got there, one from Seattle and one from Everett where those reports they made to the Washington Board. And so it's not just once we create it, we're just gonna forget about and not do it. There, there is a reporting requirement to make sure that it's still working. And does it still need to? Let's hypothetically say that an area were to be totally

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

redeveloped and the problems go away, maybe those restrictions can then go away. You know, nothing's ever permanent. And I think this case here-- you know, they would continue on but there's reporting requirements and then again the Commissioner or the city can ask to modify or change them or get rid of it.

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

**LOWE:** Thank you, Senator Brandt. I just have a couple of quick questions. So this would be for on sale and off sale?

**HOBERT RUPE:** You know, I think you're primarily gonna be looking at-- it could effect on and off sale, but your-- and this would affect all of-- but most the problems that are coming here are from either off sale or on sale places which aren't regulating their door and letting people take their alcohol out. The vast majority of the issues that are coming in front of the Commission are off-sale places, either a B or a D license, where people are going in buying, then going out or across the street into the park and drinking there. Not going-- not taking it-- you know, we're trying not to stop. I mean, people from stopping on their way home to buy a six pack to take home or take to a buddy's place. This is designed so people aren't going in buying something and going across the street or out on the sidewalk and then cracking it open and drinking it right there.

**LOWE:** And so if, if, if this law goes into effect and then you're able to create these zones. Those places of business, do they have a time period to comply with if, if a zone gets implemented? I mean, because-- you know, they're gonna have airplane bottles on stock and if, if--

**HOBERT RUPE:** Yeah.

**LOWE:** --they can no longer sell them--

**HOBERT RUPE:** I, I can only assume that the Commission-- you know, through the rules and regulations because-- you know, that's what we've got to throw that in there because we, we can't always identify everything we're going to do. For instance, Washington was a little bit easier for them because they are the wholesaler, or they used to be, now they're-- now they actually-- they-- when they implemented this they were a control state, now they're a licensed state. So I think there would be an implementation time where a stock would be gone. Basically, it would say after this date they can no



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

longer buy this product from the wholesalers. And so it would be a way to get that product out of the system. And if there was a transfer order or return it, we can also work with them on that, so. But I think the implementation would be staggered so they can get in compliance. That's the big thing that we're trying to, get the licensee into compliance for public health, safety, and welfare.

**LOWE:** Any other questions? Thank you, Commissioner Rupe.

**HOBERT RUPE:** Thank you.

**LOWE:** Are there any proponents?

**PORTIA CAVITT:** Hello.

**LOWE:** Hello, welcome.

**PORTIA CAVITT:** I'm Reverend Portia Cavitt, P-o-r-t-i-a C-a-v-i-t-t. Good afternoon, Senators, of the General Affairs Committee. I'm deeply concerned regarding the alcohol outlet density in my community, and having addressed this with the Omaha City Council as well as the Nebraska Liquor Control Commission. Therefore, I strongly urge that you would consider LB591 creating alcohol impact zones. I appreciate all of the questions that has come forth, thus far. Because it helps to increase the local control in the licensing process in areas that have alcohol-related problems. Having served as the pastor of Clair Memorial United Methodist Church over the last ten years in North Omaha, I'm also here on behalf of not only my members but the National Coalition of 100 Black Women where we address issues that affect women and children and then the North Omaha community. The neighborhood between 56th and 60th, off of Ames Avenue. I have been looking and working over these last ten years at the alcohol-related problems that are happening in that community. Yes, we do have persons that are inebriated, walking the street, sitting on the church's property, peeing on themselves, leaving trash. The church's property is a two-block radius, and so we have all kinds of bottles, especially the airplane bottles that we have to pick up weekly that are left around. And so when we look at it, the growth, not only spiritually and economically has stunned-- has been stunned by problems. There is a misconception that alcohol is a positive economic development. The truth is it brings a lot of problems to the community, too. In North Omaha, in North Omaha alcohol is too readily available and convenient within a four-block radius from my church which is at 56th and Ames. There are four liquor establishments before you even get to 60th

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

Street. And not only within a one-mile radius, there are another eight establishments: two grocery stores, two convenience stores as well as four gas stations. And I couldn't even begin to tell you how many establishments are in the Benson area providing alcohol on sale only, on and off sale, off sale only along Maple Street. This has led to a number of problems including drunk driving, traffic crashes, violent crimes, robbery, assaults, domestic and child abuse, etcetera. Currently, decisions about license restrictions are dealt with on a case-by-case basis which is burdensome for residents and communities that have these kinds of problems. Despite Omaha City Council's recommendation for a Tobacco Hut, number 19 license, the committee submitted over 200 protests and even testified against at various hearings not only in the city but also the Liquor Commission that was held during the day when people were trying to work. They're trying to provide for their families and they can't take off and show up if the Liquor Commission is looking for people to come and stand before them or to testify before them. The owner of the Tobacco Hut has applied three times in the last five years for a liquor license and there is nothing preventing him from applying again and again. That's why we are in support of this particular bill. Public welfare and safety should come before profit especially in low-income racial and/or ethnic minority, minority communities. Therefore, having a clear set of rules that apply to an entire zone would ease that burden and discourage businesses that desire to operate without restrictions from opening in these areas. We don't need any more alcohol establishments, and I'm only speaking for North Omaha. So if you could set up a zone, it is needed. Thank you.

**LOWE:** Thank you, Reverend Cavitt. Are there any questions? I'd just like to say thank you for your service to your community.

**PORTIA CAVITT:** Thank you.

**LOWE:** Are there any more proponents?

**CHRIS WAGNER:** Good afternoon, Vice Chairman Lowe and members of the committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r, and I'm the executive director of Project Extra Mile. It's, it's pretty much been said everything that I, I have in my testimony, so I'll try to be brief. Really, our organization supports this on the basis of the problems that come with excessive alcohol consumption, so a lot of these problems in terms of violence, public intoxication, police calls for service, alcohol poisoning, can, can be addressed by this bill. It's really returning some local control in, in a preemption state

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

where, where the Liquor Control Commission is the ultimate decider on liquor licenses to, to give local governments the ability when necessary to, to help shape how alcohol is sold, in particular limited and restricted areas of their communities. The bill-- that also requires that, that the-- they demonstrate by way of-- you know, evidence-- testable evidence about the problem, and, and also requires a public hearing before the Commission. So, so there'll be-- you know, opportunity for, for both sides to weigh in on the issue before the creation and finalization of any alcohol impact zone in the community. Furthermore, as Mr. Rupe mentioned, there's a, there's a one-year report that's required and then five, five years after. So there's any-- at any time really the Commission can decide to hold a hearing to-- you know, make any changes or amendments to the alcohol impact zone or even to, to-- you know, discontinue the zone in, in and of itself. So we, we don't really anticipate this being used by a number of communities across, across the state. It's really for those communities that are experiencing substantial alcohol-related problems in their communities that we would expect to then to pursue this. And I just wanted, I, I noted that Mr. Rupe mentioned he-- he's provided you some of the evaluation data so I apologize if it's duplicative of what you already have, but I did provide the executive summary for the Seattle evaluation that was done by Washington State. And I just wanted to highlight that, that they found that there was a significant reduction, over 100 percent reduction in EMS alcohol-related service calls and a consistent decline of police service calls after the restrictions were put in place. And both community members that lived in those zones and even the off-sale alcohol retailers in those zones noticed positive changes as a result of that-- those zones. So I just wanted to note that, and I'll conclude my comments, and happy to answer any questions.

**LOWE:** Thank you, Mr. Wagner. Senator Blood.

**BLOOD:** Thank you, Vice Chair Lowe. It's nice to see you again.

**CHRIS WAGNER:** Yes.

**BLOOD:** So hearing your testimony the way that you've explained it to us, and, and I'm thinking Senator Moser is probably thinking the same since he also has some municipal background. Not to speak for you, but municipalities already have the ability to do exactly you're talking about without this law being passed, correct?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**CHRIS WAGNER:** Right, correct, correct. So as was mentioned earlier, city of Omaha has land use and zoning ordinance which they can use. And I, I guess what I would say is that this is, I think, and echoing what Mr. Rupe said, that is this is not about picking winners and losers really it's about evening the playing field in an area that has these established problems.

**BLOOD:** Again, we still have the ability in municipalities to do this whether we're talking about picking winners and losers. There is an example in Bellevue, where there is a dance club that opened up to great, great support from the community. But when it became a, a noise problem, a problem with people highly inebriated, having sex in the backyards of people's whose houses backed up to the bar. You know, we were able to shut it down. I mean, why, why do we need to say a certain zone is the issue when we already have the GIS information from law enforcement, when municipalities already have the ability to shut down establishments or to not allow an establishment to bring in more alcohol? It's almost like we're saying the municipalities aren't doing a good enough job of enforcing that.

**CHRIS WAGNER:** Well, so what I would say is-- and you certainly have-- you know, more experience in this area and could speak to this, but my-- what I would suggest is that it's, it's sometimes it's hard to tie specific violations to a particular business. You may have an area in which there are a number of businesses operated, but you, you don't really have good information as to which business is causing the problem.

**BLOOD:** Can you give me an example of that?

**CHRIS WAGNER:** I, I cannot. No, it's just a theoretical description.

**BLOOD:** And it is theoretical. So I look at-- and, of course, we're spoiled in Bellevue because our, our police department is the best of the best. And if something was going on in a certain area they would put more law enforcement there to figure out what the problem is and who is causing the problem and also monitor the problem. And if something had to be shut down then the City Council would take that opportunity to do so. So I, I am-- I'm still listening to what everybody has to say. I understand the concerns. I certainly don't support people destroying neighborhoods through their-- I can't even think how I want to explain it, but-- you know, I've, I've had multiple people ask me why we just don't stop. You keep talking about the little airplane bottles. I've had multiple people that there are

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

proenvironmental folks who want us to eliminate those little bottles anyway because apparently they're tossed everywhere. So maybe that's the solution.

**CHRIS WAGNER:** If I, if I would also-- I'd just like to give a shout out to Bellevue Police Department. We work with them quite a lot and they're-- they are great to work with. And I would just, I would just close by, by saying that, that really this is-- as, as was said many times over, this is not about forcing any local government to-- local governing body to do anything that they don't want to do. So this is really for communities that, that have these problems and think that this is the best solution. And it's really to give them the option to do this and so we're, we're not trying to force anybody to do this and, and it certainly will still involve the Liquor Control Commission at every step of the way. So it's, it's not-- I guess, not going to be-- for lack of a better term-- you know, willy-nilly. This is really gonna be grounded in, in the evidence that-- you know, in the-- their statistics, and if this-- if the communities feel that this is the best way to go then we're hoping that the, that this-- that the Legislature gives them the ability to do it.

**BLOOD:** But they are to have the ability to do that, correct? Just not through a zone.

**CHRIS WAGNER:** They have the ability to, to, to, to restrict-- you know, to issue conditions, yes. And that, that does happen frequently [INAUDIBLE]--

**BLOOD:** And, and, and to report it to Nebraska Liquor Commission--

**CHRIS WAGNER:** Correct.

**BLOOD:** --if they believe that that license should be lost.

**CHRIS WAGNER:** Right. And, and-- I, I guess, my last-- unless there's re-- follow up, I, I would just say that again it's easy to put a, a restriction on a new business that's coming into-- to an area that might be identified as an alcohol impact zone. But there are a lot of businesses that, that may already be in that zone that are contributing to the problem, and so having the zone would, would also-- you know, kind of even the playing field so, so not, not just the new, the new businesses subject to these restrictions, but everybody operating in the zone would be.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BLOOD:** So one more question,--

**CHRIS WAGNER:** Sure.

**BLOOD:** --and I'm sorry, but the things that you say just bring out more questions.

**CHRIS WAGNER:** OK, fair enough.

**BLOOD:** So-- it happens a lot when you come and testify here. I'm not sure why. So you're saying that if there's three or four businesses that are already causing problems and there's another business that maybe also sold alcohol coming in that area you'd know it was a zone that was an area of concern. But don't you already know that without doing the zone?

**CHRIS WAGNER:** Right. If you've got it, yes. So if you've got an issue with a neighborhood that may-- that could be designated as-- you know, said zone and you have a new application coming in. You know, so the, the-- what the city council or the county commission could do is limit the-- you know, that business specifically. But it's-- I guess, it's not addressing those businesses that are already in the, in the area perhaps causing the problems, perhaps not. Because I'm sure there are plenty of businesses that are following the law and not contributing to the problem.

**BLOOD:** But again, there is already statute and ordinances that address those as individuals. Yes?

**CHRIS WAGNER:** Yes.

**BLOOD:** Ok, thank you.

**CHRIS WAGNER:** Um-hum.

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

**MOSER:** Well, let me ask that similar question what Senator Blood asked, but in a little different way. So maybe what you're trying to say and I hesitate to testify for you here, but let me ask you about this scenario. So there are three or four bars-- let's say, in an area, and customers may go from bar to bar to bar and then come out do things in the street that annoy the neighbors or whatever. So how would you know which bar to try to regulate when several of them may be equally at fault so to speak? Or somebody came out of bar number

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General Affairs Committee March 18, 2019

(a) and the police come and they think they came out of bar number (b) and they go into bar number (b) and they say, no-- you know, that we weren't the ones that did that. So does the alcohol impact zone give you a more encompassing way to address group behavior when you may not be able to assess the blame adequately to, to have probable cause to arrest them, or, or to impact the license [INAUDIBLE]?

**CHRIS WAGNER:** Take administration action. Yeah, yeah, yeah, I think that, that, that is essentially what-- I mean, a feature of the zone. Certainly having the zone can also-- you know, prevent, as Reverend Cavitt mentioned, it can possibly prevent businesses that, that are not interested in operating under any time-- type of restrictions from locating into an area as well. So I, I did want to mention that. But, but, yes, I think-- you know, this, this does say we have an established problem in this neighborhood. You know, maybe they're not able to address it through the regular licensing process because they don't have information about a specific business that's causing those problems. And so this, this could potentially be a solution to that problem.

**MOSER:** Thank you.

**CHRIS WAGNER:** Thank you.

**LOWE:** Thank you, Senator Moser. Any other questions? Thank you, Mr. Wagner.

**CHRIS WAGNER:** Thank you.

**LOWE:** Any more proponents? Opponents? Welcome.

**JUSTIN BRADY:** Vice Chair Lowe and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y, appearing before you today as the registered lobbyist for the Nebraska Liquor Wholesalers in opposition to LB591. And I'd start off with saying-- you know, the liquor wholesalers are not opposed to going after bad actors and making sure the liquor laws are enforced. I think the Liquor Commission and Mr. Rupe can attest to the fact of number of times that they worked with the Commission to say how do we go after the retailers that are being the bad actors that aren't following the laws or even wholesalers that they aren't following the laws. I guess what I'd say where this bill goes too far in our opinion and it's similar to what Senator Blood was talking about. If you look at this-- the process we have-- if you come in-- and I want a new liquor license, you currently-- and I won't read

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

through them all, but currently the Liquor Commission has to get a recommendation of the governing body. They have to be open to citizen protest. They take the existing population of the city, the number of licenses, the nature of the neighborhood, they look at all those things and they can put restrictions on that new licensee. They can say no airplane cocktails. They can-- as they just did-- as I read in the paper, just did what the, the strip club in Waverly. They said, you've got to paint. You got to change your signs. You can only have your license for four years and when you sell your business you can't sell it to somebody who's gonna operate a strip club. I mean so-- and the city of Waverly did that, and that's their recommendation to the Liquor Commission for them to even get a license. You then have the process of when you have bad actors, when they violate the law, when they're over serving, when they are serving to minors, when they are allowing fights. In all honesty, Senator Moser, as I understand it, if a retail establishment-- if there's a fight in a retail establishment's parking lot that is a mark against that retail establishment. Now they can go in and say, hey, we didn't have anything to do with it. It was two guys in a pickup pulled up, and this is the best spot they chose to fight. But, they at least start with the premise that that retail establishment was involved. So if there's violations, the Liquor Commission also can come in and say, we want to show cause here. And we want to take you back through all these criteria and they, too, can also put restrictions on their licenses. What's left, is what I would argue is, quote, the good actors-- the people who aren't-- don't have violations that currently have a, have a liquor license. And this bill would allow, with the recommendation of the city, the Liquor Commission to come in and draw a circle, triangle, whatever shape you want to do and say, we're gonna apply it to all of you. We're gonna presume all of you are contributing to the problem and, therefore, it's easier for us to just put these restrictions on you. And I guess from those-- that standpoint-- I know, Mr. Rupe referred to it as being a Band-Aid approach. I look at it as that's our system of saying we're gonna grant you the license, presume you're gonna operate it correctly and if not we're gonna come back and take it away. This-- if you-- that's, quote, the Band-Aid approach that was referred to, this would be carte blanche in this area. We're just gonna assume none of you are capable of being responsible and we're gonna make sure we take care of that. I know there's been some policy discussions on what type of restrictions or what the standards would be. I would argue that that should be left to this body. That if there are certain products or certain items that, that in essence, this body should be the one deciding those not



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

on a shape basis, if you will, city by city. So with that, I'll close and see if there are any questions.

**LOWE:** Thank you, Mr. Brady. Are there any questions? Senator Moser.

**MOSER:** Well, the reason I phrased that comment to the previous testifier was because we had a problem like that in Columbus. When I was mayor, we had an area where the bars did really well and they had a tendency sometimes to spill out of the bars on a nice night and then they kind of party in the street and they don't drink. They weren't drinking in the street. But, then they go back in and they drink and they come back out and they talk loudly and-- you know, make noise and then it got to be where we would send a policeman or two down there to try to kind of disperse all these noisemakers, and there might be 20, 30 of them, and one or two cops had a difficult time controlling them.

**JUSTIN BRADY:** Um-hum.

**MOSER:** And, and it got to be kind of an ongoing-- well, I don't want to say a legal battle, but a lot-- they arrested a number of these people and hauled them in. And, and so that's how I could see this procedure maybe being helpful in that sort of situation because they could just tell all of these bars that are in that proximity-- you know, that you need to police the area outside your bar and make sure that people are not out in the street drinking and getting into trouble. So--

**JUSTIN BRADY:** No, I understand what you're saying-- I guess, I would say from a legal standpoint from a bar owner, for the most part, their liability and responsibility ends wherever their licensed establishment, quote, ends. I mean, so to say now you're supposed to go out and police it in the streets and-- I mean, now you start asking them probably to do more than-- whether they're good actors or bad actors, probably more than what they ever agreed or signed up for.

**MOSER:** Sometimes-- yeah, and it gets to the point where maybe you're-- you know, trying to negotiate something that you don't have the authority to arrest somebody for. But it, it did work out in the end. The, the-- some of these bad actors were friends of the people who owned the bar and so they would just tell them, hey, just don't go out there and-- you know, start a ruckus-- you know, keep your loud conversations inside and they worked it out, and we arrested a few of them and that solved some of it, too. But, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**JUSTIN BRADY:** Um-hum.

**LOWE:** Thank you, Senator Moser. Any other questions? Thank you,--

**JUSTIN BRADY:** Thank you.

**LOWE:** --Mr. Brady. Good afternoon.

**VANESSA SILKE:** Good afternoon, Senators, of General Affairs Committee. My name is Vanessa Silke, that's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm an attorney with Baird Holm, and I represent the Nebraska Craft Brewers Guild. We're here in opposition to LB591. We appreciate Senator Briese and Mr. Rupe in listening to our concerns on this bill. It is an annual issue. We've testified on this before. I'm not gonna repeat everything that Mr. Brady just said on behalf of Nebraska Liquor Wholesalers. We agree with every one of the points that he made. I've got a couple of things I want to highlight and then I can certainly answer any questions that you all might have. One, we certainly can-- share Senator Blood and Senator Moser's concerns about what this bill would do especially in light and in context of what's already available in statute. And we think you've accurately described exactly how, in very different communities, you've had firsthand experience in handling these types of issues. The other concern that we have that I really want to highlight for the Guild's members, the Guild has 51 industry and retail supporter members, 46 brewery and brewery planning, planning members who invest a significant amount of time and capital in working with the state and the federal government, in addition to local governing bodies just to get their businesses up and running. I am representative of the effort that they've made voluntarily to work cooperatively with the state and the Liquor Control Commission to make sure that they are the good actors in this industry, and I think their track record in Nebraska overwhelmingly illustrates that. We're still opposed to this bill, though, because of what Mr. Brady described that there could be no proof that you were the bad actor or the source of any of these problems. But because you fell within that GIS [INAUDIBLE] file, suddenly you're looped into a contested case hearing process. I represent licensees and folks who want to become licensees before the Liquor Control Commission on the cost whether you're doing this on your own or hiring an attorney to help you is very real. And if you are dragged into these types of hearings without any proof that you were the bad actor that's a significant cost that we are assessing to each one of these businesses just by virtue of where they're geographically located, and that interconnects with the fiscal note on this bill. The fiscal note only

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

addresses the GIS mapping function that the Commission would have to undertake. It does not address the cost to cities, villages, or counties to participate in that hearing process and certainly does not address at all what the licensee's costs would be to participate in this. So with that, I think I've covered the notes that I have. I'm happy to answer any other questions you all may have.

**LOWE:** Questions? Seeing none, thank you, Miss Silke.

**VANESSA SILKE:** Thank you.

**KATHY SIEFKEN:** Good afternoon.

**LOWE:** Go ahead.

**KATHY SIEFKEN:** Pardon me, go ahead?

**LOWE:** Go ahead.

**KATHY SIEFKEN:** Chairman-- Vice Chairman Lowe and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director of the Nebraska Grocery Industry Association, and I'm also representing the Rest-- Nebraska Restaurant Association and Nebraska Retail Federation today. Trying not to repeat anything that any-- everyone has already said, this is a perennial bill. It is on the wish list of the Nebraska Liquor Control Commission every year and we come in in opposition for the very reason that Senator Blood and Senator Moser have come up with and, and that is the fact that the cities already have the authority and the power to do what this bill does. The Nebraska Liquor Control Commission has the expertise and the authority to do what needs to be done. After all, they did fix Whiteclay without impact zones, and we believe that impact zones make winners and losers out of even the good guys that are doing it right. And so we would oppose this bill, and ask you to hold it in committee. If you have any questions, I'd be happy to answer.

**LOWE:** Thank you, Miss Siefken. Senator Blood.

**BLOOD:** Thank you, Vice Chair Lowe. It's nice to see you again. Do you also represent some of the Kwik Shops? I don't-- not Kwik Shops, convenience stores? Not using a brand.

**KATHY SIEFKEN:** Yes, yes, we do. Um-hum.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BLOOD:** And, and that's where I-- one of the areas where I'm most concerned is something that's open 24 hours a day and, and has people coming in and out and being labeled as a bad area where we both know law enforcement comes when law enforcement needs to come. That if it's an issue the municipality is gonna bring it to the Liquor Control Commission. Is that true?

**KATHY SIEFKEN:** That's, that's very true, that's exactly what happens. And, and in several instances in the last couple of years where there have been local issues, the retailers in those areas have worked with the Liquor Control Commission and have voluntarily followed their requests to get issues under control. And again, that's why you don't really need this bill because things are being handled on a local level as they should be.

**BLOOD:** And if they're not being handled on a local level-- if the city councils in those areas aren't addressing it now, why would changing it to a zoning process make them to react any more efficiently?

**KATHY SIEFKEN:** I agree.

**BLOOD:** OK.

**KATHY SIEFKEN:** It, it-- this would make it less efficient than, than the process that they go through right now.

**BLOOD:** Thank you.

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

**MOSER:** Is there a prohibition against selling alcohol after a certain time? Isn't it 1:00 or midnight?

**KATHY SIEFKEN:** Two, I believe. Well,--

**MOSER:** Or 2:00.

**KATHY SIEFKEN:** -- the community-- the communities have to adopt a 2:00 close.

**MOSER:** But in Senator Blood's question about the Kwik Shops or whatever, they are prohibited from selling alcohol--

**KATHY SIEFKEN:** After 2:00.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**MOSER:** Two to whenever they open in the morning or--

**KATHY SIEFKEN:** Til 6:00--

**MOSER:** Two to 6:00.

**KATHY SIEFKEN:** --til 6:00 in the morning. But again, the, the local community, the local City Council has to approve that ordinance. So the close is at 1:00 unless they move it to 2:00.

**MOSER:** Well-- or the city could outlaw alcohol anytime they wanted to, I suppose.

**KATHY SIEFKEN:** Correct, that's very true. Yes, um-hum.

**MOSER:** Thank you.

**LOWE:** Thank you, Senator Moser. Any other questions? Thank you, Miss Siefken.

**KATHY SIEFKEN:** Thank you.

**TIM KEIGHER:** Good afternoon,--

**LOWE:** Good afternoon.

**TIM KEIGHER:** --Vice Chair Lowe and members of the committee. My name is Tim Keigher, that is T-i-m K-e-i-g-h-e-r, and I appear before you today in opposition to LB591 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. Here again, I'm not gonna repeat what the others have said, because I agree with what all they have said. I think an answer to Senator Moser's question, question and maybe Senator Blood's, where a convenience store is open 24 hours a day as are a lot of other retailers. There is a restriction as to what hours they can sell in and local ordinances do have restrictions on that beyond what the state is. The question that has come up several times is-- you know, are we punishing someone that is not in the area? I guess, sitting there listening to everyone, one of the first things I wrote down is, what if-- if someone's walking into one of my members' convenience stores and buying a six pack or whatever they're buying, they're probably already intoxicated when they got there. They're not walking in, purchasing that, getting intoxicated, and then going out and urinating in the parking lot. They may have been across town or somewhere else. And here again, maybe we're not punishing the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

person who over served them. So with that, that's all I have to say, and be happy to answer any questions.

**LOWE:** Thank you, Mr. Keigher. Senator Blood.

**BLOOD:** Thank you, Vice Chair Lowe. It's nice to see you again. We keep seeing the same faces over and over again.

**TIM KEIGHER:** It's a pleasure to be here.

**BLOOD:** It's like family, yeah. So I'm gonna ask you the same question then because I-- I'm not hearing any different answers. So the things that we're being told that, that would benefit communities are things that municipalities can do already. Yes?

**TIM KEIGHER:** Correct. I agree.

**BLOOD:** And do you have any examples of how maybe-- and I want to be careful I say convenience store, not a company. How a convenience store in Nebraska may have been affected by any of these laws? Can you think of a, a story that shows that--

**TIM KEIGHER:** I, I don't have any--

**BLOOD:** --the laws that exist work?

**TIM KEIGHER:** --I, I don't have anything off the top of my head. I know that my members like the previous testifier-- you know, we will work with the local communities and, and be as cooperative as we can, so.

**BLOOD:** As well as law enforcement.

**TIM KEIGHER:** Yes, exactly.

**BLOOD:** And I would say that that's been my experience in, in the communities that I serve. So, thank you.

**TIM KEIGHER:** You're welcome.

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

**MOSER:** Are your clients primarily in small towns or are they in the metropolitan class cities or--

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General Affairs Committee March 18, 2019

**TIM KEIGHER:** I have members in probably every community in the state: Omaha, Lincoln, Broken Bow, Grand Island, Kearney, everywhere.

**MOSER:** OK, well I was just thinking if this is a big-city problem maybe we should make it available for the big cities to handle it because in the smaller towns the police to population ratio may be higher and maybe we're better able to handle it, I don't know.

**TIM KEIGHER:** Well, I think that goes back to what we've said there. There's already a lot of things in place that could handle this problem that we don't need another law to.

**MOSER:** But, if somebody comes into your client's Kwik Stop, or whatever. Is that a trade name? Maybe I shouldn't use that.

**TIM KEIGHER:** There are several places that are called Kwik Stop with a K and not a Q.

**MOSER:** OK, convenience store, that's more generic. If they come in and they've already had a six pack of beer and they're drunk. There's a prohibition against selling alcohol to somebody who's obviously--

**TIM KEIGHER:** Intoxicated.

**MOSER:** --inebriated, yeah. So they shouldn't do that.

**TIM KEIGHER:** Correct.

**MOSER:** Even though they got drunk somewhere else or with somebody else's beer they come into my convenience store I'm not supposed to sell to them.

**TIM KEIGHER:** Correct.

**MOSER:** Yeah, thank you.

**TIM KEIGHER:** Um-hum.

**LOWE:** Thank you, Senator Moser. Any other questions? Thank you, Mr. Keigher.

**TIM KEIGHER:** Thank you.

**LOWE:** Any other opponents? Those in the neutral? Seeing none, we have two letters in support: League of Nebraska Municipalities, and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

Ames-Benson Neighborhood Association, Pamela Duncan. And with that, Senator Briese, go ahead and close.

**BRIESE:** Thank you, Chairman Lowe. And those of you that know me, know that typically I don't spend a whole lot of time on closings. We've heard it all and not a whole lot I can add. But, I do want to address a few, a few issues here. We did hear some fairly compelling testimony from Pastor Cavitt earlier, and I thank her for that testimony. And there were concerns brought up about the standard. What's the standard gonna be? You know, are they gonna be abused? But the locals need to show a pervasive pattern of public intoxication or consumption as they put their case-- as they present their case to the Liquor Control Commission. And someone suggested earlier, was this the way that locals can get back at one another? Is this about local politics? Well, that's one of the beauties of bringing the Liquor Control Commission in on this, it lessens the potential for abuse at the local level, I believe. Also pointed out, well, municipalities can already do this. Well, as Vice Chairman Lowe indicated, we do have a letter of support from the League. And as the pastor spoke of earlier, in her view, certainly the municipalities aren't getting the job done in preventing some of the, some of the problems she sees in her community. And there are concerns about-- you know, bringing people in on a hearing. You know, gonna bring the good actors in on a hearing at their cost, their expense. It's an inefficient system, so on so forth. But I think that's a beauty of an alcohol impact zone, it, it levels the playing field and it's a uniform standard. For example-- you know, they-- you have a uniform standard of what you can and can't sell within, within that geographic area, and I, I would maintain that it can make it more efficient. But anyway, we did hear some good testimony. I appreciate the testimony of everyone today. And I think it's good legislation, but obviously there's concern-- great concerns-- concerns raised on both sides. Thank you.

**LOWE:** Thank you, Senator Briese. Senator Blood.

**BLOOD:** Thank you, Vice Chair Lowe. Senator Briese, you said certain municipalities aren't getting it done and that's why you think we need this legislation. And I, I am definitely empathetic with what I'm hearing about this part of North Omaha. But, ultimately the bill has the exact same people bringing issues forward. Is that not true?

**BRIESE:** To some extent that would be true.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BLOOD:** And so if they're supposedly not getting it done now, why will passing this bill through change any of that?

**BRIESE:** Well, I, I think it-- I think it's important to give them this option, give them this tool. You know, perhaps local politics dictates, and maybe we don't go after that establishment or that establishment or that establishment, because Joe knows that business owner, and Sally knows that business owner. Let's just see if the Liquor Control Commission will come in here and we can declare an alcohol impact zone and let them decide what the standard ought to be-- what, what restrictions ought to be placed on here to solve this problem.

**BLOOD:** But, can we not do that now?

**BRIESE:** Well, like I said there might be reasons-- might be political reasons why, why some of those things aren't getting done. And this gives them another option, another tool to maybe circumvent some of those local concerns.

**BLOOD:** But it's the same body asking right away. Yes?

**BRIESE:** Yeah, yeah, but, but, but, but the ultimate result is a geographical area where everyone within that area plays by the same rules instead of going and trying to pick out certain ones and go after certain establishments. And I, I think, I think--

**BLOOD:** I'm not trying to be argumentative,--

**BRIESE:** No, I know you're not.

**BLOOD:** --but is it not, is it not true that they all play by the same rules that are under state statute now? That they are obligated to, they may not necessarily do so, but they are obligated to do so?

**BRIESE:** [INAUDIBLE] question is enforcement.

**BLOOD:** So maybe we need a bill to enforce that.

**BRIESE:** Well, that's a-- we, we could do that, too, I guess. But--

**BLOOD:** Instead.

**BRIESE:** --obviously, we all are supposed to play by the same rules. But enforcement is the variable there.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BLOOD:** Fair enough, thank you.

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

**MOSER:** I hate to keep up with her on questions.

**BLOOD:** Why?

**MOSER:** I'm not counting to see who's asking the questions.

**LOWE:** You are one for one right now.

**MOSER:** I know, I know. No, just one-- follow up to what Senator Blood asked. Could a city create their own impact zone? Do they need a state regulation on this? Could Lincoln or Omaha or whatever city that's having a problem, could they create their own--

**BRIESE:** I, I think--

**MOSER:** --by some zoning maneuver and say, OK, in this zoning we're not gonna sell liquor by the ounce or we're not gonna sell 24-ounce cans of beer or--

**BRIESE:** There's some municipalities I believe have, have ordinances intended to do that, but I don't, I don't know that they can do that to be honest. I, I don't really know. I think--

**MOSER:** I'm not an expert on them myself. So, thank you.

**BRIESE:** Yeah, thank you.

**LOWE:** Thank you, Senator Moser. Any other questions? Thank you, Senator Briese, for bringing LB591, and this closes the hearing on LB591. Thank you very much. We will now go on to LB722, and I give back the chairmanship.

**MOSER:** What a fine job you did.

**BRIESE:** Good afternoon and welcome, Senator Albrecht, to present LB722.

**ALBRECHT:** Yes, try to get started. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Senator Joni Albright, that's J-o-n-i A-l-b-r-e-c-h-t, and I proudly represent Legislative District 17 including Wayne, Thurston, and Dakota counties. I introduce LB722 on behalf of the Department of Revenue's

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

Charitable Gaming Division. LB722 prohibits definition games of skill or chance that make use of a gray device which is a mechanism that accepts currency and awards monetary prizes or something redeemable for monetary prizes and which uses casino type style gam-- games, card games, certain amusement games, or bingo, or keno, keno, or pickle card themes. Since the Bank Shot case decision by the Nebraska Supreme Court in 2011, the state has been at a disadvantage in dealing with such games without clear guidelines on topics such as allowable themes and play styles, product testing, financial reporting, appropriate penalties, and age limits. In the past few years, new manufacturers and distributors have entered the market and have exploited the opportunity creating a culture of what, what are essentially unregulated slot machines or gray machines-- gray devices, excuse me. I introduced LB-- I introduce LB722 in an attempt to bring accountability into this environment by sharpening the distinctions between acceptable and unacceptable devices and specifying penalties associated with the latter. Brian Rockey, the director of the Charitable Gaming Division, will follow me with testimony. He will be able to answer any technical questions that you may have, and I am happy to answer any questions otherwise. And I thank you for your consideration of LB722.

**BRIESE:** Thank you, Senator Albrecht. Any, any questions? Seeing none, will you be here to close?

**ALBRECHT:** Yes, sir.

**BRIESE:** Thank you. Good afternoon and welcome.

**BRIAN ROCKEY:** Good afternoon, Senator, thank you. Chairman Briese, members of the General Affairs Committee. For the record, I'm Brian Rockey, B-r-i-a-n R-o-c-k-e-y. I'm the director of the Nebraska Lottery and Charitable Gaming Division of the Department of Revenue. As the senator indicated, I'm here testifying in support of LB722 as a proponent. As the senator indicated, the bill prohibits by definition games that make use of a gray device which is a mechanism that accepts currency and awards monetary prizes or something redeemable for monetary prizes in which uses casino-style games, card games, certain amusement games, or bingo, keno, or pickle card themes. A gray device is any electronic gaming device, electro-mechanical gaming device, or video gaming device that: (a) Accepts or requires currency, credit, coins, tokens or other value in exchange for play; and (b) Directly or indirectly awards a monetary prize or credits, tickets, vouchers, or other items redeemable for a monetary prize in conjunction with the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

play of the device. A gray device is also any electronic, electro-mechanical, or video device that: (a) Accepts or requires currency, coins, tokens, or other value in exchange for play; (b) Plays, emulates, or simulates: Slot machines, coin pushers, roulette, craps, dice games, and wheel of fortune, including any game similar in form or content, or any other type of game ordinarily played in a casino; any card game including, but not limited to: poker, blackjack, twenty-one, faro, monte, or baccarat, or any variant of the game of the same; or keno, pickle cards, or bingo, or any game or activity similar in form or content, unless such device is operated in accordance with the Nebraska County and City Lottery Act, the Nebraska Pickle Card Lottery Act, or the Nebraska Bingo Act. And finally, directly or indirectly awards anything of value except for an immediate, unrecorded, and nonexchangeable right of replay. The 2011 Nebraska Supreme Court case, American Amusements Inc. v. Nebraska Department of Revenue, set the bar for what is skill. At the time and for the next few years it was believed there were a few hundred such devices, Bank Shot games, active in the state. Devices were required to bear the Mechanical Amusement Device, MAD, tax decal, \$35 per year. Over the past three or four years, the number of brand, brand variety of such devices has been growing. Different distributors and manufacturers began contacting charitable gaming regarding the MAD program. Retail locations began reporting contacts by distributors seeking to place devices. The number of MAD tax decals being purchased was increasing and, likely, not because of an increase in the numbers of pinball machines, pool tables, jukeboxes, or trivia games. A decision was made in 2017, to begin asking MAD tax licensees to report the types of devices for which MAD tax decals were being purchased. In August of that year voluntary reports by licensees had identified more than 380 devices. In January 2018, with that new reporting in place, 1,464 skill games had been identified. As of March 4 of this year that number stood at 2,303. The proliferation of devices from a variety of manufacturers and distributors with different styles in game themes which are not tested and can be altered at nearly any time has blurred the distinction of so-called skill games giving rise to gray devices. Transaction details between owners, distributors, and locations so the operators of gray devices are not subject to regulatory review. The payouts of such devices are not subject to review, nor are operators required to report prizes paid for tax purposes. And there is no reasonable assurance winners are reporting prizes as income. Unlike keno, bingo, and pickle cards there is no requirement that these devices generate any proceeds for the public good. Operators of these machines have the ability to access them remotely and set the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

difficulty level and pay out percentage that they want and enable, disable games instantly. This means it is possible for someone to alter the game while a player is playing on the machine and skew the game more in the owner's favor. I see I'm running a little short on time. A couple of other items I'd like to note there are no parameters to limit what a player can wager. There is no age restriction. Our investigators have seen a teenager playing one of these games for money. There are no administrative regulations. We have no power to seize a machine unless we think it happens to be violating one of our charitable gaming lottery acts. And recently resealed two devices owned by the same distributor, one in Omaha, and one in O'Neill for operating illegal keno. And immediately they changed the other 264 devices under their control because the devices are linked to the Internet. With more than 2,300 currently identified throughout the Mechanical Amusement Device tax, the implications for undocumented sales and price payments and unreported taxes are significant. In short, the lack of visibility into the functionality of these games deprives all parties to such arrangements of protection from violation of gambling and tax laws. I'd be happy to answer questions.

**BRIESE:** Thank you, for your testimony. Any questions? The Bank Shot game that we hear about so often, this, this would outlaw the Bank Shot game?

**BRIAN ROCKEY:** The-- under the Supreme Court decision, the Bank Shot games met the definition of, of skill. Without the ability to test these devices, we can't determine if brand Y is comparable to the Bank Shot brand. We have seen some of the distributors provide their own assurance that they've had the devices tested according to the standards that were applied to the Bank Shot devices, but we don't have a way of independently verifying that. So I don't know if that exactly addresses your question, but if the Bank Shot games are living up to the standard of the, of the Supreme Court decision then, then in this context that should not be an issue. But it's, it's the, the, the question of these devices being able to switch over to an active skill or an active chance, I'm sorry, that, that really complicates this.

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

**BRANDT:** Thank you, Chairman Briese. Thank you, Director Rockey, for being here today. The, the way the bill is written, if you were to go into an arcade that has 100 different electronic machines in it, as

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

long as all you got out of that was a free play, they would be legal.  
But if--

**BRIAN ROCKEY:** As this is.

**BRANDT:** Yeah. But if they would award any tickets or anything of that nature like in a kid's arcade, would they not be illegal underneath this law?

**BRIAN ROCKEY:** Actually, no, the intent of this and the way it's structured is to, to protect, if you will, that sort of activity. So because those, those arcades-- what you're getting is, is a, is a coupon that doesn't necessarily have a monetary value but you can exchange it for something else. But, but this is specifically aimed at something that would give you a cash value or a cash redemption.

**BRANDT:** So is your, is your problem that people under the age of 19 or 21 are using these machines or just the fact that the machines return cash?

**BRIAN ROCKEY:** That they, that they handle and return cash.

**BRANDT:** OK.

**BRIAN ROCKEY:** And, and employ instances that we've seen elements of chance. And again, we don't have a way of, of testing that to determine specifically if the proliferating devices are at the same standard of these, of these.

**BRANDT:** So then how did the Supreme Court rule that Bank Shot was a game of chance-- or excuse me, a game of skill?

**BRIAN ROCKEY:** They employed-- not they, the, the, the plaintiffs, the, the Bank Shot, American Amusements brought in testing of their own and, and made that argument independent [INAUDIBLE].

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

**BRIAN ROCKEY:** Um-hum.

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

**MOSER:** So you're not trying to get into an argument about whether these devices or are gambling or whether they're a game of skill. You're trying to regulate them as a, as a group.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BRIAN ROCKEY:** In a, in a more coherent fashion, yes. Because of the-- up until a few years ago we-- you know, when it was confined to a particular brand, we had a reasonable expectation of what we knew we were dealing with. Even though we don't have a lot of visibility into, into that. Other than [INAUDIBLE]--

**MOSER:** You're not trying to relitigate what you lost--

**BRIAN ROCKEY:** No, sir.

**MOSER:** --in the Bank Shot case. OK.

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

**WAYNE:** I have a question.

**BRIESE:** Senator Wayne.

**WAYNE:** Is there any other part of the Department of Revenue, and you may not know this answer, or where somebody has to prove something to you first versus you go out and find it?

**BRIAN ROCKEY:** Well, I guess one example would be a sales tax permit. So if a business is collecting sales tax they have to apply for that from the department and, and provide the status-- the necessary authentication that they're going to collect and remit that. And we do have personnel to go out and check that. Another example would, would potentially be the tobacco tax. The department collects that, and we have inspectors to check on retailers for compliance with the tobacco laws.

**WAYNE:** But this isn't clearly a tax, though, is it?

**BRIAN ROCKEY:** As a Mechanical Amusement Device tax it is.

**WAYNE:** So you're making them prove upfront that the device that they have meets the definition?

**BRIAN ROCKEY:** Currently-- I guess, yes. And, and the only reason I say, I guess, is there is one particular device that we, that we determined a couple of years ago didn't have to have the decal because they didn't-- it didn't handle cash, it didn't-- it was more of just a monitor game, and so it wasn't something that they, that they were engaging in, in the same fashion that you would an arcade game or a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

skill game or, or one of those. I don't know if that answers your question or not.

**WAYNE:** I'm just trying to figure out what, what-- I mean, you're making a legal determination about something [INAUDIBLE], and I just don't know how many other times that any decent Department of Revenue does that.

**BRIAN ROCKEY:** I guess I'd have to get a little more detail, Senator, and get back to you with that. The, the, the determination, it's kind of a two-step thing, as one is it's, it's a, it's a Mechanical Amusement Device because it involves a mechanism and takes cash and provides entertainment. The, the issue that we have in that we don't have a lot of visibility is, is determining or the authority to determine is it a game of skill or is it a game of chance.

**WAYNE:** You want that authority, I'm assuming?

**BRIAN ROCKEY:** Somehow would-- that would have to be the case if, if these are to continue to proliferate because we get-- as I pointed out, we had two instances where we confiscated and seized two, two games that were found to have illegal keno and keno can only be operated by the municipality that's, that's approved with voter approval. It's registered with the, with the Charitable Gaming Division.

**WAYNE:** And are those criminal charges if they're operating?

**BRIAN ROCKEY:** Yes, and I can't, I can't go into a whole lot of detail yet because we're still waiting on the, on the test results to come back in terms of exactly what all was on the, on the devices. But it is, it is felony charges.

**WAYNE:** And so if it's criminal, there would be search and seizure issues, there's all the legality issues, and your department is equipped to handle--

**BRIAN ROCKEY:** We are.

**WAYNE:** --that due process?

**BRIAN ROCKEY:** We are, we have a, a group of investigators that are actually deputy state sheriffs that conduct seizures and, and then obviously work with, with law enforcement-- local law enforcement.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**WAYNE:** [INAUDIBLE].

**BRIAN ROCKEY:** Um-hum.

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

**MOSER:** Well, we had a similar bill-- well, not exactly similar, a bill that also talked about the video gaming machines here that we heard about two-- a month ago or so-- I don't know how long ago it was. How does this bill contrast to that bill? And that one was trying to make these new video games a separate class and prohibit them. And then this is-- how is this different or what's--

**BRIAN ROCKEY:** This, this-- I believe it's LB538 that you mentioned. It, it-- I guess I would characterize it as it identifies these skill games, these gray devices in a more certain fashion and says that they require a different type of Mechanical Amusement Device tax and sets up penalties, but then also sets up the ability for our division to promulgate regulations and, and actually manage-- manage isn't the right term, but regulate them in an environment that's a little bit different from what they currently are as a, as a Mechanical Amusement Device. LB722 addresses the, the crux of the issue, I guess, and, and defines them as these-- by definition these devices do not-- are not allowed because they handle cash, because they-- you know, provide a monetary return and they cannot emulate these different types of games and styles and themes.

**MOSER:** So would you call a Bank Shot game a gray device?

**BRIAN ROCKEY:** No, probably not, because really the, the distinction that we're trying to draw here is that in the gray device we can't tell what level of, of--

**MOSER:** Skill or--

**BRIAN ROCKEY:** --skill is involved with these devices, yes. But again, again because the Bank Shot games theoretically-- presumably are functioning under the guidelines-- the parameters of the, of the court decision from, from eight years ago. And these other devices, we have no way of knowing-- even though they've represented to prospective retailers that they do meet that, we don't have the ability to be sure of that and based off of anecdotal information and our own observations we have concerns that that is not the case.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**MOSER:** So are you trying to regulate them so that they can't be used or are you suggesting that we create a different type of document stamp or something to mark these or--

**BRIAN ROCKEY:** Well, LB538 would create a different type of document stamp. LB722 basically would, would-- under the definition in the statute they would not qualify to operate unless there are certain, certain things that, that they change or meet within the, the parameters of, of this bill.

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

**BRIAN ROCKEY:** Thank you.

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

**BRANDT:** Thank you, Chairman Briese. I had asked you before about kid's games.

**BRIAN ROCKEY:** Yes, sir.

**BRANDT:** OK, I'm going way back-- my kids are much older now, but used to go to a Chuck E. Cheese or some of these places and it spits out these tickets that you would redeem for merchandise. And you probably don't have a copy of the bill in front of you, but on page 3, line 7 of the bill itself, it lists a monetary prize includes: cash, checks, gift cards, but on line 7, "Is redeemable for merchandise." And I, I guess-- how do you exempt-- I mean, if you're gonna do that you've sort of tagged these arcades and places like that that function at that level. I think that's probably something that needs to be reviewed.

**BRIAN ROCKEY:** Yeah.

**BRANDT:** It's sort of generic in its, in its application. But it could apply to a place like that, and I, I think we want to be careful.

**BRIAN ROCKEY:** Exactly. And we have had internal discussions on more than one occasion about that particular thing because that's not a direction that we intend to go.

**BRANDT:** Sure. And then on line-- same page, line 18-- 17 says, "Gray device does not include:" and on line 18 that says, "Any device commonly known as a smartphone or a personal computer." Couldn't these manufacturers then just say this is a personal, personal computer. To

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

get around, get around your gray device? I mean that just seems-- what's the definition of a personal computer?

**BRIAN ROCKEY:** I, I suppose I-- the-- I'm-- probably would have to get into the determination of what a reasonable person would agree is a-- you know, if you're, if you're bringing a 6-foot cabinet that weighs 200 pounds and says, well, this is a personal computer--

**BRANDT:** It's an old personal computer. But, yeah, then I guess my last one is just sort of a point of information. On the enforcement on page 7, the new language states, "any person placing in service or operating a gray device within this state shall be subject to a penalty of five thousand dollars for each day of such operation." Is that sort of a standard fine, or that's a killer fine? That just seems like a lot.

**BRIAN ROCKEY:** That, that would not be a standard fine under our existing.

**BRANDT:** So what is the existing?

**BRIAN ROCKEY:** Well, it, it varies a little bit. There are some that we can go-- here's an example, a couple of years ago we had a keno operator that had some egregious violations. The maximum fines, they were something like \$1.3 million, but that was a collection of instances applied to-- so I think-- you know, might have been in a couple of instances up to \$25,000. The-- with the Mechanical Amusement Device, if a location doesn't have a decal it's a-- I believe, \$75. But this is a completely different type of device than a pinball machine. So that's where the, the, the change in the scale of the, of the fine that would come into play.

**BRANDT:** All right. I guess my concern is if you have a VFW club in some little town out here in western Nebraska, and they aren't even aware that they're in violation of this, this machine's been there for two months and you're gonna come in and-- you know, these guys, they're gonna give you the keys to the VFW if you come in at \$5,000. But that's just an observation on my part. You have the expertise in that area, so. Thank you.

**BRIAN ROCKEY:** Thank you.

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

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**WAYNE:** OK, I keep going back to this thought process of-- and I'm a criminal defense attorney so bear with me when the government says I have to prove something, I feel like I'm guilty until proven innocent which is not how it's supposed to work. And unlike taxes, we're just asking to sell something, you want to verify that it's not a game of-- you want to verify that it is a game of skill. So, so walk me through the certification process on how long that's gonna take.

**BRIAN ROCKEY:** I, I, I can't say how long exactly yet, because it's-- but here's an example: the, the two devices that we seized we sought pricing from an independent laboratory, and just that process took a couple of weeks for them to get back to us. The equipment has been sent to them. And I, I don't remember offhand, I think we may have-- we may expect something in a couple of weeks. So four to six weeks, maybe eight-- I, and I could be mistaken. The cost for that is about \$9,000. Now that's a one-off situation in this particular case where-- you know, if we had a more structured testing cycle in place, we could be more along the lines of-- and we, we would obviously develop regs if-- you know, if under, under LB538, for example. We'd have, we'd have a set mechanism whereby if, if a, if a device or an operator had something that, that didn't fit the existing parameters then we'd have, have a mechanism in place that said, OK, we need to take a look at it by X date and we'll have a response to you by this date. And that sort of thing. So I don't know if that's exactly addressing it. We-- we'd have to take into consideration the time and process there-- two weeks, two months.

**WAYNE:** And so that-- and, and because-- OK, what happens if a device doesn't meet the certification process?

**BRIAN ROCKEY:** Then we would not allow it to have the appropriate Mechanical Amusement Device stamp and they wouldn't be able to legally operate it at the location.

**WAYNE:** But wouldn't that be admitting that I commit-- I'm committing a crime by having one? By having possessed one?

**BRIAN ROCKEY:** I, I think I know where you're going. I think the having possessed one would actually-- it sets in the context of operating. So if you, if you were to say to us, I would like to place this device in this location and I need a Mechanical Amusement Device tax stamp for the skill game, we would say, OK-- you know, give us two weeks or whatever the case might be. And if we came back and said, no, it's, it's not a skill game, it's a game of chance, you cannot have that. We

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

wouldn't then necessarily turn around and say, and we're going to charge you with possessing one. I think the idea is more along the lines of-- if you've, if you've got it and-- you know, let's say one of our inspectors or, or local police officers-- our citizen is in that location and says, hey, I saw somebody playing roulette on that device and reports it and then we follow-up. Then that, that falls into the, the context, I think, of that sort of prosecution.

**WAYNE:** So we, we don't know quite what the certification process would be, but it would be your discretion whether to charge somebody or not. And so I'm supposed to advise my client to send something in, in hopes that you don't charge him. In what other-- in what other industry world do we do that in, in the United States where you have to prove that you're innocent before you're guilty?

**BRIAN ROCKEY:** I think, and I understand, Senator. I think, the intent is send it in for certification or review if it passes certification or review then it's fine. If it doesn't, we'll let you know and you can't place it. But we wouldn't come out and say, hand it over.

**WAYNE:** And then your, and then your decision is appealable?

**BRIAN ROCKEY:** Correct.

**WAYNE:** Through the [INAUDIBLE]--

**BRIAN ROCKEY:** To the AG.

**WAYNE:** The AG.

**BRIAN ROCKEY:** Through the AG's office.

**WAYNE:** So we appeal it to the AG's office--

**BRIAN ROCKEY:** I think--

**WAYNE:** --[INAUDIBLE]?

**BRIAN ROCKEY:** I think it is appealed to the department, but the Attorney General's office reviews that process.

**WAYNE:** And then what happens from there?

**BRIAN ROCKEY:** Off hand, Senator, I couldn't tell you. I'd have to look it up.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**WAYNE:** I didn't see the-- I didn't read the fiscal note, but if you know off hand, does anybody know off hand, maybe, Senator Albrecht, if the fiscal note includes an additional attorney for the AG's office?

**BRIAN ROCKEY:** I don't believe it does, initially. I think, the, the fiscal note on LB538 we, we projected needing additional personnel because of the, the formalized testing and evaluation process that we'd have to manage if, if we go down that path where the devices are being tested and certified under this [INAUDIBLE].

**WAYNE:** I guess, I was just having a hard time believing that if a case went all the way to the Supreme Court and they spend thousands upon thousands that we're not gonna have-- cases getting appealed to at least the AG's level. So, I think, they'll be additional costs to this that aren't listed. Would you agree with that?

**BRIAN ROCKEY:** I suppose anything's possible, Senator.

**WAYNE:** Thank you.

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

**MOSER:** I can't recall if you testified in favor of LB538.

**BRIAN ROCKEY:** No, Senator, we provided neutral.

**MOSER:** Neutral.

**BRIAN ROCKEY:** Um-hum, testimony.

**MOSER:** So you prefer LB722 to LB538?

**BRIAN ROCKEY:** Correct.

**MOSER:** Were you involved in the development of LB538 at all?

**BRIAN ROCKEY:** No. We, we have seen language-- different variants of legislative bills over the last few years to address one thing or another, but actively engaged in LB538, no, sir, we weren't.

**MOSER:** If, if-- say, a distributor has-- wants to place these machines-- if they provide one of the same model for testing then they would all be approved or disapproved as a class, they wouldn't have to send in a dozen machines? Or--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BRIAN ROCKEY:** Most likely that would be the case is that there would be a prototype.

**MOSER:** To kind of address one of the questions of Senator Wayne, but--

**BRIAN ROCKEY:** Yeah, and we'd have to have, you know, some sort of supporting regulatory structure that would say-- you know, if, if the, the, the-- if the testing is done and the device meets the standard then other devices of the same type would get quarterly checks or semi-annual checks or the devices can have X number of games on them instead of 15, and that's, that's one of the things that we see now is you'll see one device and it may have six games and you see the device next to it and it may have eight or twelve and those change. And that's part of the challenge.

**MOSER:** So would you allow them to reprogram the machine once you've approved it?

**BRIAN ROCKEY:** I, I think the operators would definitely want to make changes, but I think what we would do is say you can't reprogram it without having the, the games that you plan to put on tested and evaluated.

**MOSER:** So if it does a dozen games now, you approve the machine in that mode, and then they come up with ten new games, you'd want them to provide another machine for you to look at? Or--

**BRIAN ROCKEY:** Whether it was another machine or just another program, yes.

**MOSER:** OK. Thank you.

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

**LOWE:** Thank you, Chairman Briese. And thank you, Mr. Rockey, for being here today. Along those same lines, you, you okay a machine, and it's got four games on it-- the, the stamp goes on it, and it goes out to a location or it is at the location, the stamp goes on it. On Thursday and Friday, they download a new game to it or two games-- roulette or keno. They play them just all those two days and after that it's gone. So when inspectors come in, it's no longer there. Is that a possibility?

**BRIAN ROCKEY:** I would say, yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**LOWE:** And would there be any record left on those machines saying that these two games were there?

**BRIAN ROCKEY:** That, that we don't know. And that's one of the things that we're actually looking at with the two devices that we seized, is to see what the electronic fingerprint is, if you will. And, and the, the time that there was a couple of days that elapsed between the time we first discovered the illegal keno on the device to where we then had a what we thought was a reasonable approach to make arrangements to revisit that location, seize that device and then find a different location with that same operator or same distributor and seize that device essentially--you know, the same-- roughly the same time. But in between times and in the, in the, in the intervening period we looked at other devices of similar brand and the games in question had been removed, and those devices are connected to the Internet. They're all, all connected by modem. So to your point that is, that is a possibility of what, what can be done to, to trace that back. I-- you know, that-- that's something we would hope to learn from one of the testing laboratories. The other thing, I guess, is the, the language of, of LB722 was fairly specific about what, what is not acceptable. Conversely the language of, of-- you know, the other approach would have to be very specific about what would be acceptable, and, and have a mechanism associated with it to allow us to reliably check and monitor that. It's, it's a much larger undertaking to go that route.

**LOWE:** I'm just "ballparking" here and thinking that if, if something gets turned in saying-- a customer comes in and sees that it was keno on there and reports it, and law enforcement comes in four hours later and it's no longer there, would that law enforcement officer be able to confiscate that machine or somebody be able to confiscate that machine, because it is no longer there, and so you'd be able to just confiscate it off with a report of somebody that saw it?

**BRIAN ROCKEY:** I'm not an attorney, Senator, so I, I-- I'm sure there's a mechanism to, to approach that. But I don't know how we'd go about that.

**LOWE:** OK, thank you.

**BRIESE:** Thank you, Senator Lowe. Anyone else? And so when we talk about sending these things in and get them certified or you certify them, but we're not talking about skill versus chance here are we on these machines under LB722?



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BRIAN ROCKEY:** In the context that we would want to be sure that the device is being tested, we're not games of chance. So send it in-- we'd look at the type of game, the number of games, the type of games on the device. Do they play and have an aspect of skill? If so, do they have an element of chance then they're not acceptable.

**BRIESE:** I guess I missed that in the, in the language here.

**BRIAN ROCKEY:** The a--

**BRIESE:** Gray, gray--

**BRIAN ROCKEY:** I thought I had the bill in front of me, Senator, and I apologize, I don't. But--

**BRIESE:** Basically, gray device is anything that awards a monetary prize, OK. Or a gray device is something-- you know, electric-- electronic device that essentially emulates a game played in a casino that directly or indirectly awards anything of value. And so it seems to me your determination would be whether something emulates a game played in a casino or it doesn't. And whether it, I guess, also whether it awards anything considered, quote unquote, a monetary prize.

**BRIAN ROCKEY:** Perhaps an example-- you mentioned something played at a casino-- say a slot machine, and the tumblers are spinning-- press the button and they stop, but you don't know what's going to happen. So that would be chance. The tumblers, tumblers are spinning and you press-- you know, you, you press the button slowly and it slows them down to where you think you can see what's going on, and then you press it completely to get them to stop. That might be the argument of skill. I mean, I'm just not advising how these manufacturers would go about doing this. But that's, that's kind of a distinction, I guess, that could be, could be drawn is that all of these products have themes and games that you would see in a casino, but what they try to offer is the, the appearance or the ability for the player to affect the outcome by stopping it or altering the mechanism, introducing an element of skill.

**BRIESE:** OK. Going back to the discussion on LB538, LB538 is considerably more problematic for your department in the determination of skill versus chance--

**BRIAN ROCKEY:** Well,--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BRIESE:** --becomes relevant.

**BRIAN ROCKEY:** --it, it, it broadens our level of, of involvement, you know, so it creates more, more responsibility for us and we require regulations and that sort of thing, which we can do. It's a, it's a different, different solution to the issue. I would, I would note that these devices are proliferating around the country, and lots of jurisdictions have said, oh yeah, we've got all kinds of skill games and gray devices. And one example, is the state of Georgia-- a few years ago, they had these devices and they, they didn't pay cash. They paid, you know, you won a receipt for store merchandise. And, and the state kind of felt that, that was really just a front for people to go up and say, well, I, I don't want that tube of toothpaste, I want a \$1.95, or whatever the case might be. The proliferation of those with such that the state stepped in and actually put it under the lottery, but there are over 22,000 devices functioning in the state. And a couple of years ago when I, when I spoke to the administrator of that, those devices were handling \$2.5 billion a year. Now Georgia is a much more populous state and much more-- you know, much larger, but it is, it is a very large arena.

**BRIESE:** OK. Do you know if any other state has a mechanism like LB722 in place?

**BRIAN ROCKEY:** I would like to say Kentucky and Pennsylvania perhaps have addressed these devices.

**BRIESE:** In, in the very similar mechanism that [INAUDIBLE]?

**BRIAN ROCKEY:** I couldn't say for sure, Senator. I'd have to-- we'd have to go back and check and see and draw a comparison.

**BRIESE:** OK, thank you.

**BRIAN ROCKEY:** Um-hum.

**BRIESE:** Anyone else? Senator Moser.

**MOSER:** So if LB722 doesn't advance, would that change your opinion on LB538?

**BRIAN ROCKEY:** I guess, I'd reserve judgment to say. I-- you know, we don't, we don't make policy, Senator. We simply carry it out. And so

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

if that's the path that, that is taken and is what is given to us then we'll make the most of it.

**MOSER:** Well, I think we're just looking to you for clues and-- you know, how you value these bills because to us they look a lot alike. You know, you're trying to regulate the same things and sometimes you're trading on some small differences that may not be obvious to us.

**BRIAN ROCKEY:** And I think maybe the, the small difference is an excellent point. After the 2011 decision and the environment in which the Bank Shot games operated, and then we started to see and hear contacts-- both from distributors and from retailers saying, hey, I've been contacted about this machine and I don't-- I mean, it seems like a slot machine to me. What-- what's going on? The, the subtle difference is, is, is that the-- I think that the new providers are looking at the same-- they may be offering different types of games then maybe as on the Bank Shot device but they've got that aspect or they're trying to provide an aspect that the player can affect the outcome. The, the distinction, I think, that, that maybe needs to be articulated, excuse me, is the-- without the ability to restrict those or define those devices as not being games of chance and not having an element and not-- it, it puts, it, it puts us at risk for opening up Class III gaming on a broader scale and, and making it very difficult to, to go forward with the direction that we've already gotten from the voters at the polls in, in not approving casinos and that sort of thing.

**MOSER:** OK, Well, thank you.

**BRIAN ROCKEY:** Yeah, thank you.

**BRIESE:** I have one, one last question. As I look through the, the bill, gray device also includes any electronic, etcetera, that plays, emulates, or simulates, etcetera, etcetera, etcetera, any other type of game ordinarily played in a casino. So of all the games that we're thinking about here and talking about here and you might one day have to consider, would essentially all of those fall within that definition that they emulate or simulate some-- something found at a casino?

**BRIAN ROCKEY:** They could. And I think-- but I think the distinction is going to be is there an element of skill that affects that game. Can you kind of-- is the game set up-- it might look like a, look like a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

roulette game but is it set up on the device where the player can actually do something that slows the speed of the wheel or changes the color of the wheel or whatever or the wind blows across the roulette table and changes the-- that, that introduces some element of that and that's-- that could be the difference.

**BRIESE:** But, but in the bill we say, "A device is no less a gray device if a player exercises any degree of skill." So I don't know. But anyway,--

**BRIAN ROCKEY:** Sure.

**BRIESE:** --thank you for your testimony.

**BRIAN ROCKEY:** Yeah, thank you. I'll be happy to answer questions after the fact. And, and it's--

**BRIESE:** OK, thank, thank you.

**BRIAN ROCKEY:** Thank you.

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

**PAT LOONTJER:** Good afternoon. I'm Pat Longer, and I'm the executive director of Gambling With The Good Life. For the past 24 years, we've opposed any form of expanded gambling.

**BRIESE:** Can I interrupt you one moment to spell your name.

**PAT LOONTJER:** Oh, I'm sorry.

**BRIESE:** No problem.

**PAT LOONTJER:** P-a-t L-o-o-n-t-j-e-r. It's pronounced "Lunger." I don't know why, I just married it.

**BRIESE:** Thank you.

**PAT LOONTJER:** We've been opposed to expand the gambling in any way, shape, or form for the past 22 years. We believe that Nebraska is the good life. We believe that, that gambling of any sort detracts from that. It hurts families. It hurts businesses. There's so many examples. Gambling for years was put it in the same category with all the other devices with drugs and alcohol. And somehow it's become very legitimate in this day and age, and I think that's to the detriment of our society. And what we've learned over the years is that this hurts

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

people. It hurts families. It hurts children. It hurts the businesses. And when that case came up in the Supreme Court in 2011, that's the only case we ever lost, unfortunately. And it, it was very sad because it, it was like the camel's nose getting into the tent. It's been expanding and expanding and expanding with those Bank Shot machines. It went from hundreds to now it's in the thousands and they're just proliferating all over the state. Our theory was always if it walks like a duck, talks like a duck, it's a duck, it's a slot machine. I, I wish that there-- this is a very complex issue and I thank, Senator Albrecht, for trying to address it because it's, it's very difficult with that Supreme Court ruling to determine the difference between chance and skill. My personal opinion is anything that requires monetary going in and monetary coming out is a gambling machine, and I don't have any problem with the kids-- my grandchildren love arcades and they get tickets. Recently I took them to an arcade, gave each of the three children \$10 which they blew in no time at all, but they kept coming back with hundreds of tickets that they had won and they were thrilled because they thought they were gonna get one of those big animals hanging from the ceiling, you know. When we went and cashed in my \$30, they got a bag of tootsie pops, and I was hoping that would have taught them something about gambling. I'm not sure it did since it was my money and not theirs, but so I don't have a problem with the tickets and the teddy bears. But when it's money in and money out, I, I consider that gambling and that's-- that leads to addiction. I don't think too many people get addicted winning teddy bears, but you can just see how this is gonna grow and grow across our state if we don't put an end to this and it's a very difficult issue. I, I thank, Senator Albrecht, for attempting this and for you for considering where do we go from here. We've got quotes from gambling counselors and also from people who, the tavern owners, who have said, it's a slot machine-- you know, pure and simple. There's no skill involved. It's, it's a game of, of, of chance. And I don't know if any of you have had an opportunity, I sent you all the addresses for Lincoln to see how successful you were. But, I personally have tried it, and I-- maybe I'm not that bright-- but boy, I couldn't get that thing to a point of skill in, in any case. It took the money just as fast as a slot machine would if not faster. So I, I just want to put it back into your hands and say, we would love to see these things out of the state. It's, it's hurting our people, it's hurting our businesses. How we do that-- it's a very, very difficult situation.

**BRIESE:** OK. Well, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**PAT LOONTJER:** Senator Blood.

**BRIESE:** Thank you very much. Senator Blood.

**BLOOD:** Thank you, Chairman Briese. I have to wait for him. So you know, you and I agree on a lot of things when it comes to gambling. I don't like casinos. I think that is expanded gambling. But I have a question for you after hearing you testify on multiple bills this year. So when a court comes out and says that something is specifically a game of skill, and you come in and testify and say the court is wrong. What do you base that on?

**PAT LOONTJER:** Well, you know we've heard testimony today that a particular machine can be programmed remotely. I don't know what machine they, they did to evaluate that Supreme Court ruling. But how in the world can you, can you check these machines out when someone from behind the bar can flip a switch and turn it into something that's, that's legal or illegal.

**BLOOD:** And do you think that that's going on? Is there proof that is going on, or is that just an observation?

**PAT LOONTJER:** It's, it's just an observation.

**BLOOD:** So that the things that I'm concerned about, and, and I mean this with all due respect, is that everybody's entitled to come and speak either pro or con or neutral on any bill, and, well, they should; but statements of opinion are not necessarily statements of fact. And I have grave concerns when anything that comes up is considered expanded gambling whether the courts say so or not. And I, I hope that we hear more testimony that really shows the statistics. We hear a lot about how horrible it is that there's any gambling in Nebraska, but yet statistics show only 1 to 3 percent of the whole population are considered gambling addicts. Correct?

**PAT LOONTJER:** We have the large-- the, the lowest rate of addiction in the nation.

**BLOOD:** Yeah, we're number 50 I believe out of--

**PAT LOONTJER:** Yes.

**BLOOD:** Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**PAT LOONTJER:** Yes, we are. So I'm very grateful for that.

**BLOOD:** Although they're states that have comparable types of gambling and games that are much higher than us,--

**PAT LOONTJER:** Yes.

**BLOOD:** --so sometimes I think that just has to do with good ole Nebraska values and that we work hard for our money and we don't want to spend it. So the question I have for you is, is it because this is a gray device or is it because even if they were to prove that it was a game of skill you'd still be against it?

**PAT LOONTJER:** Well, it needs regulation of some sort-- you know, an age restriction, a number of machines. A lot of things that I think we, we could do to, to limit the damage that these are being done.

**BLOOD:** So you believe in regulation-- because the way the bill is titled is more about seizure I think. So if they could regulate it and show that it could also generate perhaps extra income for the state of Nebraska that might be something that you would, would--

**PAT LOONTJER:** Well, I really believe any machine that requires dollar in, dollar out should be outlawed.

**BLOOD:** Well, then that would be Chucky E. Cheese machines. Even though it's tickets, it's still got monetary.

**PAT LOONTJER:** No, I don't have any problem with the tickets or the merchandise. Well in Iowa, this is the regulations that they've come up with in, in Iowa, there's no cash prizes for these machines. They can get under \$50 in credits for merchandise, no more than four machines at a location, and a 21 year age. If there's no cash prizes, I'm okay with that.

**BLOOD:** Would they give like hamburgers or free beers or--

**PAT LOONTJER:** As long as it's not cash.

**BLOOD:** Do you know what they give in--

**PAT LOONTJER:** [INAUDIBLE]

**BLOOD:** That's what I'm asking.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**PAT LOONTJER:** Pardon me.

**BLOOD:** Do you know what they give instead of cash?

**PAT LOONTJER:** It just says-- the article that I read just said that they get-- it can only produce under \$50 in credits and that can be used for merchandise. So I don't know if it's used for food or beverages or--

**BLOOD:** But still a prize.

**PAT LOONTJER:** Pardon me.

**BLOOD:** It's still a prize.

**PAT LOONTJER:** Oh, it's still a prize, absolutely. Just like what my grandchildren got, they got 800 tickets and a bag of tootsie pops.

**BLOOD:** So even if they, if they were indeed addicted to gambling, a prize is just as much of a trigger as cash. True?

**PAT LOONTJER:** I, I doubt that. I, I really doubt that.

**BLOOD:** OK. I, I think we'll differ on that one.

**PAT LOONTJER:** You know, I think it's the, the monetary thing that, that really would trigger an addiction. It's just-- that's my opinion. I don't know how many teddy bears you can collect, but, you know, when people are in desperate situations and in poverty-- you know, unfortunately it's the same what we heard with the lottery tickets and things like that. You're, you're looking to get out of your situation and, and getting teddy bears and tootsie pops is not gonna do it.

**BRIESE:** OK. Thank you, Senator Blood. Senator Hunt.

**HUNT:** Thank you, Chairman Briese. I don't have a question, but I did see your e-mail about the Bank Shot machines. Was it Bank Shot?

\_\_\_\_\_ : Yep.

**HUNT:** And I went and I did try one and I don't even know-- it-- like I blinked my eyes and it was over and it wasn't even fun, but--

**PAT LOONTJER:** How much did you win?



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**HUNT:** --more power to people who play it. I don't know. I just wanted to share that. [LAUGHTER] I don't know how those work. That's my only comment. Thank you.

**PAT LOONTJER:** We've had very intelligent people that have tried these machines and said it really questions your sanity, because I don't know where the skill lies.

**HUNT:** I think I just need more, I think I just need more time to develop the skill.

**PAT LOONTJER:** Oh. No, you've got better things to do.

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

**PAT LOONTJER:** Thank you.

**BRIESE:** --thank you for your testimony.

**PAT LOONTJER:** Thank you.

**BRIESE:** Any other proponents? Seeing none, any opponents? Good afternoon and welcome.

**JOHN LINDSAY:** Thank you, Senator Briese, members of the committee. For the record my, name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of All American Games. My client does operate these games and he'll be up to visit with you again. We both appeared on LB538, but he'll be able to explain the operation of the games are any questions you might have on that. I'd like to touch on just a couple of the legalities of, of the bill as drafted and, I think, Senator Wayne was going there. It's-- there's some vague areas, there's some unclear areas, and there's some significant constitutional issues with it. Senator Briese, you mentioned the, the, line-- the language plays, emulates, or simulates, and then it lists out several different areas. The, the problem with that is that whoever's, whoever's making the decision on playing, simulating, or emulating is not the person who's at risk placing a, a machine. And that's important to know that, that you find out-- you can very easily find out later if what you're doing is, is-- violates this, this act or this bill in retrospect, because somebody made a determination that, yes, it does emulate. Let me, let me suggest a hypothetical that for someone who has a game of skill comes up with the next Angry Birds type of, of, of game and it hits it. People see it, somebody develops it, and a casino emulates that and puts it in the-- puts it in their

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

casinos. It now becomes in violation of this, not because of what the game of skill was doing, but because of how it was transformed. And then, Senator Brandt, it gets into the problem that you were discussing that you now have an operator with a machine there that didn't know that it violated the act. It came in later and became-- because of somebody else's actions. Number two-- by the way, somebody mentioned something about age limitations, and we have no problems with that. If, if, if the committee wanted to put an age limitation on a game of skill we-- we're fine with that. I, I believe my client would tell you that he already imposes them himself. Second, I don't think that it's-- I think it's irrelevant, the certification process that we're talking about because that's not what this bill does. Under LB538 it's important. But this bill takes a class machine and says these are gray devices, can't use them. But what it doesn't do is on page 5, it says, that it's a violation if it's a gambling scheme which uses a gray device. Doesn't-- it still has to question of, is it a gambling machine? It's skirting the issue of whether or not it's a gambling machine which under the Supreme Court decision is whether it's predominately skilled or predominantly chance. So we're, we're skirting what is, I think-- what the concerns I've heard are addressing and that is that, that there is a cost associated with enforcement of, of gambling versus skill and it's something, by the way, that, that we are willing to talk about some, some potential solutions to that. Now-- I think picking up where-- down the path Senator Wayne started, is I think there's some significant issues not just with burden of proof and on the criminal side but with violation of due process under both the Nebraska and, and Federal Constitutions under the 5th Amendment, 14th Amendment, and Article 1, Section 3 of the Nebraska Constitution. And that is that the bill allows on page 7, it allows seizure without warrant, without warrant. A determination made by the Tax Commissioner that these violate, in his or her opinion-- allows the state to go seize personal property. No hearing, no prior right to be heard. It is a, a seizure. And, I think, that poses some significant problems under our constitution. And let me point out one other thing-- if we look to what's existing law, it's on page 7, subsection (5) "The Tax Commissioner" and, etcetera, "shall not be responsible for negligence in any court for the seizure or confiscation of any lottery equipment or supplies pursuant to this section." Meaning they can screw it up, and they're not liable for that which could end up in that VFW or bar or whatever being shut down. My time is up so I'll shut up, and I'd be happy to answer any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

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

**ARCH:** I, I just have one follow-up question to your testimony. In it, in it you mentioned that you would be willing to consider an age limit. Could you amplify, I guess, you're thinking on that? Why you, why you would be willing to entertain that?

**JOHN LINDSAY:** If it's a determination of, of the, the consensus of the committee that that's, that's an important aspect. There's a concern about that. We'd be fine with it, and we wouldn't obviously-- didn't bring a bill saying do that.

**ARCH:** Yeah.

**JOHN LINDSAY:** But if that's what the concern of, of some folks is,--

**ARCH:** Yeah.

**JOHN LINDSAY:** --we're not gonna stand in the way of that.

**ARCH:** Because to your knowledge, currently, we don't have any age limitation on other games of skill do we?

**JOHN LINDSAY:** I don't believe so.

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

**JOHN LINDSAY:** I don't believe so.

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

**LOWE:** Thank you, Chairman. And thank you for being here today. If we put an age limit on-- wouldn't that hurt Chucky E. Cheese franchise, because aren't those games a skill? And, and all the stuffed animal games you see around at the bowling alleys and--

**JOHN LINDSAY:** It very well could, and I'm saying we would not be opposed to that. The-- and there's a question whether this bill covers Chuck E. Cheese's and Dave & Buster's, etcetera. It's a-- it's an interpretation that they won't know until after the machines have been seized.

**LOWE:** OK, thank you, Mr. Lindsay.

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

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BLOOD:** Thank you, Chairman Briese. It's nice to see you again, as well. It's kind of like a rotating door when it comes to the gambling and stuff. It's always the same people. So I was listening to the testimony that was a proponent, and she had suggested that-- you know, maybe we could regulate, and we could do like Iowa did, where people could redeem it for merchandise. But doesn't this bill say clearly that that is the definition of a gray device on page 3?

**JOHN LINDSAY:** I believe so. Which by the way, I heard that testimony and, and being the profession I'm in, I try to think through where that would have come from, and I would bet you it was supported by the gambling industry in Iowa which is legal,--

**BLOOD:** Right, they haven't seen this.

**JOHN LINDSAY:** --because they would be trying to eliminate competition. And that would be my guess. But I think, yes, you're right.

**BLOOD:** We see that a lot. I-- there-- there's a casino that is trying to get a lawsuit through against fantasy gaming which has been proven not to be gambling through the courts. So if I hear both sides actually, correctly, it seems like there's just a lot of stuff in this bill that some say that they maybe we should regulate it, not necessarily seize it. Some say that it should be an either or thing, but the or is involved in the language as a description as a gray machine. So I think there's a lot of wonky stuff going on here--

**JOHN LINDSAY:** Um-hum.

**BLOOD:** --that maybe-- Senator Albrecht is really great at negotiating with people and maybe could talk to some folks about.

**JOHN LINDSAY:** Some of the opponents have met with-- I have not yet been engaged in those discussions, but those of us who have joined together to oppose this have had those discussions with Senator Albrecht, and would hope to be able to continue them. I do believe that both bills, LB538 and LB522 to LB538, and LB722-- so I should say all three-- do not, do not get to the issue that I think we're kind of dancing around and that is what is a game of skill, what is a game of chance and how do we make the determination?

**BLOOD:** Hasn't the court already decided that for us?

**JOHN LINDSAY:** Yeah, Bank Shot has,--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

**BLOOD:** Right.

**JOHN LINDSAY:** --and I think the enforcement is where-- my understanding and I'd, I'd actually would defer to the State Patrol and the Department of Revenue, but my understanding that the problem has been-- and it's expensive to prosecute these cases,--

**BLOOD:** I'm sure they are.

**JOHN LINDSAY:** --and that's what I'm saying there may be ways to-- for our industry to help address that and we'd be happy to sit down with Senator Briese and with Senator Albrecht and Senator Lathrop and [INAUDIBLE].

**BLOOD:** And with regulation comes additional revenue for the state.

**JOHN LINDSAY:** Exactly.

**BLOOD:** I can leave it with that one. Thank you.

**BRIESE:** Thank you, Senator Blood. Anyone else? You spoke of the concern over-- well, the standard may change. People might change their mind and all of a sudden you got an illegal machine out there. Don't we-- and you talked about-- you know, you're at risk any time you place a machine that that could happen. Well, don't we rectify that by saying that the presence of a stamp is an affirmative, affirmative defense to any issue with the machine?

**JOHN LINDSAY:** That's in LB538.

**BRIESE:** Then that would take care of that problem in this bill [INAUDIBLE].

**JOHN LINDSAY:** In LB722, assuming both bills passed.

**BRIESE:** Yeah. But I mean, we, we could put that in this bill and that would take care of that concern, wouldn't it?

**JOHN LINDSAY:** Well, and it would bring in all the concerns with LB538, yes. I mean it's-- and, and the problem is that in trying to enforce what we are trying to do without actually saying it, is we're very tacitly trying to enforce a criminal code violation against gambling. When doing that-- I do not believe the Legislature can constitutionally do indirectly what it can't do directly. And Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

Wayne was getting into that a little bit, that is you cannot shift the burden of proof. And in LB538, that's what [INAUDIBLE].

**BRIESE:** I'm not extremely moved by the burden argument, and you, you talk about due process. Well, due process is a fluid concept and,--

**JOHN LINDSAY:** Um-hum.

**BRIESE:** --you know, if you pass this, you pass this bill and you've got notice outlining the procedure for doing this a little better. The presence of a stamp is an affirmative defense to being implicated under this as procedure or criminal penalties. And I-- does-- doesn't that take care of some of those issues, some of those arguments?

**JOHN LINDSAY:** I think the affirmative, the affirmative defense brings in the question of is that now an element of the offense and, again, does that-- how does that have to be proven it's criminal? I do not claim to be any kind of constitutional expert and especially not in the area of criminal law, but I think criminal law when you're talking-- when we're talking about depriving people of their life, liberty, and property, the courts are very hesitant to, to infringe upon individual's rights. And I think they, they get very conservative on how much they'll allow the state to do. And so I, I do believe there's issues and I-- I mean, we're both trained in the law and I think we have a disagreement.

**BRIESE:** And under this bill if you think you have a legal machine or it falls in there somewhere, you get a stamp and go at it. If somebody changes their mind, you've got that stamp on there until it expires. Might have to revisit it then, but--

**JOHN LINDSAY:** Yeah, like I said, I think we, we-- because we know it's rare to get two lawyers in a room and have them agree totally so, I, I think, we just have a disagreement on the application of that.

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

**JOHN LINDSAY:** Thank you.

**BRIESE:** Any other opponents?

**LOWE:** Good afternoon.

**MATT KROEGER:** Good afternoon, everyone. Matt Kroeger, M-a-t-t-K-r-o-e-g-e-r. I won't take a ton of time, but-- so I've got to get

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

back up to Columbus we've got a lot going on up there. But I'm the owner, operator of All American Games based in Columbus, Nebraska. I do install and service skill games across the state primarily to single-store operators such as bars, convenience stores, bowling alleys, and many of the fraternal organizations here in the state. I don't want to get into the debate of what is skill and what is chance. I think we did that when I was here last time. But I'm here to answer any questions. I'm here in opposition of LB722 not only to save my business but as well as my customers across the state. And I think the-- I guess the bottom line for me is-- we, we were talking about regulations and rules, and I want to come to some sort of agreement so we don't have to continue to go through this time and time again. My background-- I was in the grocery business for 20-plus years. My dad passed away, I bought this business, and here I am in this new industry. And there just seems to be so much uncertainty, and I would like to have some certainty going forward for the long-term in my industry. So, thank you.

**LOWE:** Thank you, Mr. Kroeger. Any questions? Our heart goes out to you and your community.

**MATT KROEGER:** Thanks, we need it.

**LOWE:** Best of luck and--

**MATT KROEGER:** Yep, thank you.

**RUSSELL WESTERHOLD:** Good afternoon. Russell, R-u-s-s-e-l-l, Westerhold, W-e-s-t-e-r-h-o-l-d as in David, appearing before you today as a registered lobbyist on behalf of Winners Marketing. My client is a distributor of amusement devices in this state. Currently, they have approximately 300 of them in various locations and we oppose LB722 as drafted, I think. And that's where, I think, I have to go off script here after having heard the proponent testimony because I thought what I heard in the proponent testimony was that the Bank Shot game would be permissible under the language of LB722, and I'm-- I have read LB722 numerous times, I am not clear at all on how that game would not be a, a gray device that would be not permissible. But it gave me pause because having played Bank Shot, which I did last weekend, too. And having familiarity with my client's games, then perhaps my client's games would pass. So I don't know. But, I do know that it makes little sense to explain whether or not a game would pass or not simply because they've had to litigate the legality of their game all the way up to the level of the Supreme Court. There are

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

plenty of operators and plenty of machines who simply haven't had to go through those legal proceedings and get all the way to that stage. And so having that as the qualification for OK or not OK makes very little sense. The only other thing that I would add is, I think that all distributors of these devices are willing to support any reasonable legislation that ensures the responsible playing of their games. And as Mr. Lindsey mentioned, I think age limits are at the top of that list. I know that the games that my client distributes right now bear a sticker that say can't play under age 18. And so laws that would put that in place, we think would be an example of that, but. I will-- I guess stop there and answer any questions that anyone has.

**LOWE:** Thank you, Mr. Westerhold. Any questions? Senator Moser.

**MOSER:** Did you make any money playing Bank Shot?

**RUSSELL WESTERHOLD:** No, I'm not that skilled.

**MOSER:** I walked right into that.

**RUSSELL WESTERHOLD:** Yeah, yeah. No, did not, unfortunately.

**LOWE:** Thank you, Senator Moser. Seeing no other questions, thank you.

**RUSSELL WESTERHOLD:** Thank you.

**LOWE:** Any more opponents? Any in the neutral?

**WALTER RADCLIFFE:** Senator Lowe and members of the committee, my name is Walter Radcliffe, W-a-l-t-e-r R-a-d-c-l-i-f-f-e, registered lobbyist for American Amusements, and I hate neutral testimony. I don't think I've done it 10 times in 40 years. But when you hear this, I think you will understand why I'm testifying neutrally. We, we, my client, and other like-minded people, have the same feelings that Senator Albrecht has and I-- and we've had this conversation with her. We agree there's a problem out there that needs to be solved. We focused on LB538 because it was introduced first. It was heard first, and you-- and we were trying to work out some amendments on that. Now some of the things that Senator Albrecht has in LB722 have gone into LB538. We'll continue to work with Senator Albrecht with regards to other things that she might like to see in LB538. And I have to say this to the committee, we have worked with the Policy Research Office of the Governor and quite-- I'm just gonna say it, they've worked with us on LB538. I'm sorry if Revenue's been left out of the loop-- or I don't know, that's not my side of the street. But nonetheless if



Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee March 18, 2019

you're confused, I can understand why. But if you want to address the issue of gray area machines, you have advanced a vehicle to do so and that's LB538. We'll work with Senator Albrecht on any amendments to your committee amendments that you want. I hope you'll do everything you can to get LB538 heard by the Legislature this year. Give the administration, give law enforcement some standards that they can go out and use to apply to these machines. American Amusements are the ones who did Bank Shot. And I agree, when they were working to get that and went up to the [INAUDIBLE]-- I said who's gonna play this, it's boring. I mean, it is. I-- and yeah, I think you got to play it quite a while to get skilled with it. But they went over, they tried the case in District Court, they had competing testimony or different testimony saying whether it was a game of skill, whether it was a game of chance. The trial court determined that it was a game of skill. Goes up to the Supreme Court, Supreme Court is not a trier of fact, so they looked at the evidence that the trial court had and affirmed the decision. So you have a standard out there for what a game of skill is. And, yes, it is a costly endeavor to go out and litigate and test these machines. And I-- and that's, that's just a fact. But if you want to do anything to get the gray area machines out, you will do something with LB538. I'd be happy to try to answer any questions you might have.

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

**WALTER RADCLIFFE:** Thank you.

**BRIESE:** Any questions? Seeing none, any other neutral testimony? Seeing none, Senator Albrecht. We have one letter in opposition from Jeremy Smith.

**ALBRECHT:** May I lay this down and move this so that--

**BRIESE:** Sure.

**ALBRECHT:** --I can see you.

**WAYNE:** You're fine. I know it is kind of weird, I always look this way or go this way.

**ALBRECHT:** OK. First of all, thank you so very much for your attention to this bill. First of all, I'm gonna just cut to the chase. There are a lot of questions that are unanswered based on some previous testimony. This bill-- the way it was afforded to me to understand it

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General Affairs Committee March 18, 2019

was that a gray bill-- a gray machine, should I say, is a machine that gives you money back gambling. You put the money in, you get money back, that's gambling. And in the state of Nebraska you're not supposed to be able to do that, remember? You can do the lottery, but you can't take a machine and put it in your establishment and expect to allow people to play it. Now if the veterans want to play a skilled game they have all kinds of machines out there that I'm quite certain they can get their hands on. Because I certainly don't want to fine them \$5,000 for every machine in their facility. But we have got to work with this other bill of Senator Lathrop's, and I would be happy to sit down with anyone who comes to my office to talk to me. But, but if you're going to gamble-- I'm going to hand out a sheet here. You can certainly follow along with me or whatever you like, but I need to clear some things up here because this is, this is not the way it was presented. And if we're going to allow anything to happen out there-- if we get \$35 a year per machine that's out there-- in March of 2018, there were 1,680 machines registered. There are currently 2,253 skilled devices registered at \$35 per year for a stamp or a decal. This equates to \$78,855 in MAD tax stamps, decals per year. That is paid in lieu of them paying for any other specific tax on their machines. This is the only amount that the state is receiving from the operation of these devices. Examples from the field, one owner of a store said that he was making \$11,000 per month on his 2 machines. This was in a town of less than 10,000 people. One owner said he was making \$200,000 per year off of his 7 machines. He told our investigators that their machines are set up to pay out roughly 90 percent in order to keep people playing. This means that there is at least \$2 million that was wagered on these seven machines in order for him to clear \$200,000 dollars. This does not even include the cut for the owner of the machines themselves. So the number is likely much higher than \$2 million. This owner has three machines in three communities, none of which are in Omaha or Lincoln. One owner indicated that they were offered \$3,000 per machine per month by a device distributor if they put them in their business. In one convenient store they reported an income of \$2,500 per week from their machines which we believe approximately 10 machines. The potential problems: operators of these machines have the ability to assess-- access them remotely and switch the difficulty level the payout percentage that they want and enable and disable games instantly. This means it is possible for someone to alter the game while the player is playing on the machine and skew the game in the owner's favor. There is currently no age limit on these machines. Any person can play these. Investigators have observed a high-school aged child playing

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these games and making a profit. There are no regulations of these machines at all. Currently, when people call with complaints about machines, we have to tell them that we're unable to help or assist them. There is no oversight and nobody can make sure that the games are being run ethically. We actually don't really even have the power to seize the machines unless we think it's violating one of our charitable gaming/lottery acts. The State Patrol could investigate them as gambling device. But since the Supreme Court case, they're reluctant to do so. Just go looking for the, the chance game guys, don't go looking for the skill. And who's gonna determine what-- what's what. We have seen progressively growing jackpots, nearly \$2,000. In keno when someone wins a certain amount of money on a ticket, they're given a tax form. With these machines, that's not happening. We've heard from owners of bars and stores who have taken out tables and aisles and other items in their store to accommodate more skilled games. They do so because they are so much more profitable. Increase in wages-- wagers in skill games may drive down the wagers on charitable gaming such as keno. If this happens there is-- will be less money in the Community Betterment Funds for cities, villages, and communities-- or counties, excuse me. Here's just a list at the bottom of charitable gaming wagers in 20-- says 20 or 6 of 2018: bingo, 5.3 million; raffles, 8.5 million; pickles, 17.8 million; keno, 256.8 million. Assuming waging a \$1,000 per week per machine on the 2,252 devices, it would yield the wage earners \$117 million a year, although, this number is likely much greater. All I'm saying is, I would like to work with anyone who would like to work on this committee or with any of the proponents of the other bill that was already passed out of committee because this isn't right. To be able to-- if you want it a game of skill and somebody just wants to go play a game, you can go to an arcade, go to Chuck E. Cheese, have some fun and get a few little tickets then buy yourself-- get yourself a couple of toys, but we're talking about gaming gambling here. So if they're truly willing to talk to me and, and figure this deal out that's what we'll get done. But I'm surprised that the other, the other bill already was "execed" on, is that true? And not sure exactly if there are any amendments, I'd like to, to visit with the counsel and, and Senator Briese, and anyone else on the committee that would like to help me make that bill a better bill. With that, I'll be happy to answer any questions.

**BRIESE:** Thank you, Senator Albrecht. Any questions for Senator Albrecht? Seeing none, thank you for your testimony,--

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**ALBRECHT:** Thank you.

**BRIESE:** --and thank you for presenting LB22-- 722. And that concludes the hearings for today. Thank you.