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General Affairs Committee and Judiciary Committee
November 07, 2008

[LR389]

The committee on General Affairs and the Committee on Judiciary met at 1:30 p.m. on Friday, November 7, 2008, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR389. Senators present: Vickie McDonald, Chairperson; Russ Karpisek, Vice Chairperson; Annette Dubas; and Don Preister. Senators absent: Merton "Cap" Dierks; Philip Erdman; Mike Friend; and Ray Janssen. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Vickie McDonald; and Amanda McGill. Senators absent: Ernie Chambers; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. []

SENATOR McDONALD: I think we'll get started this afternoon. We're running a little late. We were waiting for a few more senators, but they might not show up, so we'll start without them. The General Affairs and Judiciary Committees will now begin the hearing on LR389. I'm Senator Vickie McDonald, chairman of the General Affairs Committee. Joining me from the General Affairs Committee is Senator Karpisek from Wilber; we have Senator--we got them all screwed up here--McGill from Lincoln is on the Judiciary Committee; we have Senator Dubas from Fullerton on the General Affairs Committee; Senator Ashford from Omaha on the Judiciary Committee... [LR389]

SENATOR LATHROP: Over there. [LR389]

SENATOR McDONALD: Oh, I'm sorry. Ashford, he's a chair. Sorry, Senator Lathrop. It's been a few months since I saw my colleagues. (Laughter) [LR389]

SENATOR ASHFORD: You know, I don't mind... [LR389]

SENATOR McDONALD: Senator Lathrop from Omaha. [LR389]

SENATOR ASHFORD: I wouldn't mind a transfiguration from time to time. [LR389]

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SENATOR McDONALD: Senator Ashford, the chairman of the Judiciary Committee; Senator Preister from General Affairs Committee from Omaha; Matt Rathje, our committee clerk from General Affairs. And our legislative page is Chauncey will helping us out today. As you know, the legislative hearing on resolutions is neither pro or con; it is always a neutral testimony because there are no supporting or opposing positions to take since there's no proposals on the table. If you plan on testifying, please pick up a sign-up sheet at the tables in the back of the room. Please fill out them before you testify, give it to the page to distribute to the committee. When you testify, please tell us who you are, please spell your first and last name, and tell us who you are representing. If you have handouts, make sure you have ten copies to give to the committee. Turn off any cell phones, pagers, or anything that makes noise. Keep your conversations to a minimum or step out in the hall. In order to get the information most effectively to the committee for study resolutions, I have this interim made it a practice to ask specific parties with pertinent information to attend and testify in each hearing. In following this practice, I have asked the following people to testify at this hearing and would like to hear their testimony in this order. First is Senator Kruse who introduced the resolution; Hobie Rupe, director of the Liquor Control Commission; Bob Jergensen, a liquor licensee; Captain Joy Citta with the Lincoln Police Department; Adam Chafetz with the TIPS training program; John Spatz with the...he's a Lincoln city councilman; Lez Maguire, a grocery retailer; Kathy Siefken, director of the grocery's association; and Jim Otto, director of the Nebraska Retail Federation and lobbyist for the Restaurant Association. After we hear all these testifiers, we will open it up to any one of the public that would like to be heard. Now, committee counsel Laurie Lage will open on LR389.
[LR389]

LAURIE LAGE: Thank you. I'm Laurie Lage, counsel for the General Affairs Committee, here to introduce LR389. This resolution was introduced in response to a 2008 session bill, LB810, introduced by Senator Kruse that in its original form would have created the Alcoholic Liquor Liability Act. The Judiciary Committee advanced the bill to General File

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with a committee amendment that substantially changed the bill. The original LB810 was reduced to a requirement of mandatory alcohol server training only. The committee amendment was not adopted, Senator Kruse opted to pass over the bill, and the bill died at the end of session. While the original intent of the bill was to assign liability to retailers who negligently or recklessly served alcohol to intoxicated consumers and an injury or loss results. Further, the intent was to create a defense against that liability by way of an alcohol server training program. And it is on the logistics of such a training program that this study focuses. The available research shows the training requirements in other states and details of the training programs accessible to the states. While this information is necessary and useful, Senator Kruse's main concern is that a workable program for server training is in place. To this end, the committee has asked an assortment of parties, as Senator McDonald mentioned, who would be most affected by this mandatory training or who have experience, server training in other states to testify. The goal is to find some agreement on what type of program would work most effectively in Nebraska. And as we stated, there are a number of experts here to provide information on server training. So with that, I'll close and I'll be turning the chair over to Senator Kruse unless you have any questions. [LR389]

SENATOR McDONALD: Any questions for Laurie? Seeing none, thank you. Senator Kruse. Welcome. [LR389]

SENATOR KRUSE: (Exhibit 1) Thank you. My name is Lowen Kruse, L-o-w-e-n is the way that's spelled, the hard part, representing Legislative District 13. And hello to all--Senator McDonald, Senator Ashford, colleagues on the committees and staff members. Thank you Senator McDonald for requesting and planning for this meeting, appreciate that. I think it's an important subject. The goal is very important to me to separate goals from strategies. The goal is to reduce the impaired driving, and we're talking about one strategy here. Impaired driving continues to be one of the major killers in Nebraska and the United States. It is also very expensive. Costs of alcohol-impaired driving in Nebraska come to at least \$300 million a year. The offsetting income to the

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state is small, only about 10 percent, so the rest of that comes out of our pockets. Our goal in this broad effort is to reduce this cost in lives and pain and dollars. The strategy we are looking at in this hearing is to better train that server, the one who is usually the last person to talk with the driver who is soon to cause a wreck. The training can be quite effective if it is taken seriously by the server and by managers. The course helps the server to identify where some persons may not have taken a look at that course. I have taken it and I have passed it. The training can be quite effective because it helps the server to identify someone who may be too impaired to drive safely. By far more important and far greater part of the training, especially for young adults, it causes the server to think through how to engage that person in a quiet, firm, and a winsome way. Two years ago, the Legislature set up a system for optional courses and registry for trained servers under the complete control of the Liquor Commission, very important thing to recognize here, they are in charge. Fees cover the expenses. The course and the test take about two hours, unless you are acquainted with the subject and then it's under an hour. So we're not talking about a big deal here. I would hope it would be examined regularly and strengthened, and I'm glad to see that in the list of things you are anticipating this afternoon, that will be addressed. However, that is a subject for another day. By our design, by legislative design, the commission controls the approval of courses and registration, very important for all of us to understand. We are not going to manage this. We are not going to tell them how to do it. They have complete discretion in deciding how it can be done best. The last proposal on which the Legislature voted was recounted by Laurie. It was to make server training mandatory. It failed, and I'm glad it did. We are here to examine mandatory and I see this as an open discussion. We're not going to be voting on it. But I personally am convinced that mandatory training is nearly useless as a strategy. Most retail alcohol businesses are very responsible in this manner, they train their servers, they learn how to spot problems, they warn clerks and servers who are careless. Owners want the respect of the public, and they earn it, they deserve it. We're all grateful for responsible dealers and I think we should say so more forcefully more often. However, they are not why we are here. Owners, operators who ignore appropriate training for clerks and servers will not pay attention to a law that

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has no enforcement, and there is no enforcement envisioned in what we're talking about here. They can ignore it with impunity unless they have a strong challenge to the renewal of license, about the only way it would come in. And I'll just remind you, there are others that can speak to this, but when we test these owners, we find those who want to sell to persons who are underage, who want to sell to persons who are over the limit and who will try to do so in front of witnesses. We have no system for checking whether new servers are trained or whether training is repeated on a regular basis. That system would be very expensive. Police officers have no inclination to do that, and they have far more important things to do than to examine records. What will motivated owners to run a safe operation is some sort of liability if their negligence causes damage to one of us. I've thought of all the various kinds of options and I come back to that one in possibly the lightest way we can make it. To date, we have done this for minors, but we have not done it for adult patrons. In fact, we have exempted owners from liability for overserving adults. And exemption of liability for businesses I would point out is truly unusual and encourages bad actors. All sorts of spooky stories have been created to scare us away from even modest liability. Stories are generated that would make the server liable. Not. Or we hear the servers judgment can be trumped by a BAC test outside on the street. Not. Or we hear the servers' judgment can be tested in other ways that take place later on. Not. Or that it is a liability to the bar when a patron leaves, pulls a drink out from under the seat of the car or goes to another bar. Not. This is not what we are talking about. We are talking about that server and how that server can do the job best at that very moment. A well-formed solution will put the liability in the simplest possible way. For example, that at least two patron witnesses at the time of the purchase of a drink or container will say the person was too intoxicated to move about in an even way. Then for motivation to do the training, I feel we must provide that the training and registering with the state and monitoring is an affirmative defense in court. We have made major improvements in the last 15 years in Nebraska laws relating to DUI, huge improvements. I think everybody around here are somewhat aware of this, but some of you have been at it a long time. We have come a long ways. The largest gap left in protecting you and me and citizens is public opinion. Every time we have

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tightened up laws and eliminated loopholes, public attitudes to effective enforcement have improved. The public wants us to take each detail seriously. Crafting a good piece of legislation on server training will be one more piece that protects Nebraska drivers. I thank you. [LR389]

SENATOR McDONALD: Thank you, Senator Kruse. Any questions? Seeing none... [LR389]

SENATOR ASHFORD: Lowen, the children or the minor's liability divisions that we passed, I can't recall that, did not include the server training defense? [LR389]

SENATOR KRUSE: It did not include the server training. [LR389]

SENATOR ASHFORD: So there's not affirmative defense. [LR389]

SENATOR KRUSE: There's no affirmative defense. [LR389]

SENATOR ASHFORD: If you sell alcohol to a minor and the minor is involved in an automobile accident, there's no... [LR389]

SENATOR KRUSE: You are in deep trouble. Yes. [LR389]

SENATOR ASHFORD: So almost to a degree we've gone...in that bill or that law which is now law, your efforts, we've gone beyond what would be applied with an adult. Theoretically in your analysis, the adult bill would have server training would be the appropriate way to do it. But in the liability for children, minors driving, there is no affirmative defense in the law now. [LR389]

SENATOR KRUSE: That's in place without excuse. I was stunned when we did that. Nobody seemed to pick up that. [LR389]

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SENATOR ASHFORD: I think it was Senator Lathrop again that came in at the last moment. [LR389]

SENATOR KRUSE: Well, it was a remarkable offer on our part to say we will provide an affirmative defense for minors. We did not. So it's at any rate... [LR389]

SENATOR ASHFORD: Well, I guess my point to your point is that I certainly recognized your argument and the argument of others that during that debate on that bill that minors...that serving to minors or selling to minors is something our state is very concerned about and that an affirmative defense is not appropriate in that case. So in some sense we've gone beyond other states. [LR389]

SENATOR KRUSE: We have. That's a fierce action, if I may use that word for it. And when it hits the paper for the first time in some case, people are going to be stunned. [LR389]

SENATOR ASHFORD: Well, yeah, and I think you're responsible for those efforts and I think you should be applauded for it. So the point is not that...we have in fact gone beyond other states in that area. [LR389]

SENATOR KRUSE: I appreciate that, and I don't feel that giving some affirmative defense is being nice to somebody. I think that's fair. If somebody is really doing their job, then they should be protected from nuisance suits. [LR389]

SENATOR ASHFORD: But we have drawn the line here on minors, serving to minors, and the injury that may be caused by doing that in effect, which is a significant...significant, seems to me and you should be applauded for that. That's all I had. [LR389]

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SENATOR KRUSE: We have done that. [LR389]

SENATOR McDONALD: Thank you, Senator Ashford. Thank you, Senator... [LR389]

SENATOR KRUSE: Thank you. [LR389]

SENATOR McDONALD: ...Kruse. Our next testifier will be Hobie Rupe, director of the Liquor Control Commission. [LR389]

HOBIE RUPE: (Exhibit 2) I have presents. [LR389]

SENATOR McDONALD: Rock them, Hobie. [LR389]

HOBIE RUPE: Good afternoon. As Chairman McDonald stated, my name is Hobert Rupe--Hobie please--director of the Nebraska Liquor Control Commission. I guess I'm going to give you a little history lesson first as to just what is the status of training in the state of Nebraska as we sit here today. As you're aware, when Senator Kruse was looking at dramshop, both the minor and the full, he was putting in the affirmative defense nature of having a certified program. He saw an opportunity in LB845 in 2006 which was dealing with a license density issue to attach the requirement that the commission promulgate rules of adoption of certified training programs. And what you're seeing in front of you is the copy of the rules that were adopted by the commission. These set forth the minimum standards. Please, people can always go further than that. These are the minimum standards to be a certified training program in Nebraska. And then you'll also see the approved programs, and then you'll see the three which actually we didn't approve that came up before us and were short. And then the third page will be the addresses of those if you have any questions about (inaudible) those. And then you'll have a copy of the current application form and the managers form that we do for licensing, and I'll get to that in a moment. How is LCC using the certified programs right now? We have certified the programs that you see there since 2007. We're using them

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in two ways currently because although they were part of the affirmative defense, you know, there was a requirement that we do it. But what are we going to do with them now? Well, we've done two things with them thus far. The first of them is why I have a copy of the application form which if somebody comes in and files an application and indicates that they have never been involved in the business, now that's usually not somebody looking to buy a bar or a liquor store. It's usually somebody trying to open up a restaurant or become a manager at a supermarket that never had any alcohol training before. As part of that when they indicate that they've never had training, we say, well, you need to take one of these certified training programs. All right. The other way which we've been doing over about the last three months now that we sort of have more capacity built into the certified system is on a case-by-case basis when individuals come before the commission, generally for a sale either to a visibly intoxicated or for sale to a minor and there's actually a finding that they violated the Liquor Control Act. As well as the suspension that's being placed down, the commission--and I've got to give primarily to our news commissioner Mr. Robert Batt was the one who really pushed for this idea--is a lot of times we go, well, that makes a lot of sense, is that we're mandating as part of the order that not only are they suspended for ten days which they can pay off as a fine as well, but they have to--the management and the staff--have to complete one of the certified training courses within 60 days. Because generally it's a case-by-case basis the facts are showing that basically there was a breakdown that somehow, you know, somebody who should have caught something that was even more moderately trained was slipping it through. Whatever they're being trained currently certainly isn't working. The example I'll give a lot to is in compliance checks where the cooperative individual is working with the Nebraska State Patrol. Rather law enforcement, when they go in and they make a purchase of alcohol. Now as you're aware, the rules and regulations and the statutes which allowed that to begin with were definitely set up that they're not playing gotcha. You know, they have to look age-appropriately, they have to be dressed age-appropriately. The only ID they can carry is their own ID. Well, five years ago we might have understood why some people could maybe make a math error, but now every compliance check is being done with a vertical ID. And so a lot of

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times when we're ordering training will be somebody will come in in a case where they do the right...they do step one right, they ask for an identification. They get handed a vertical ID which says this person is 18 years old, and they go thank you, that will be \$7.50 and sells them the six-pack of beer. And so we say, well, you know, maybe there's a problem there that this person isn't cognizant of the fact that a Nebraska vertical ID is clearly a minor and that they're asking for an ID, but they're still making the sale. So as well as a suspension, we're also saying, hey, you and your staff are going to be trained, take one of our certified training programs. You know, and that sort of goes in with the penalty structure of the Nebraska Liquor Control Act. The purpose of it is, especially early on, it's progressive discipline and the goal is to get these businesses back into compliance, you know. Unfortunately, you always hear about the bad actors which have multiple violations where it shifts to how do we get this person out of the industry because we've given them enough chances to rectify their actions and they're so bad. But early on, the theory is, you know, let's try to get these people back into (inaudible). These are small business people. You know, we want them to sell this alcohol safely, but we want to make sure that the training that they're giving their staff is appropriate. And so that's how we've been using certified training programs thus far. When I was asked...and Ms. Lage and I worked a lot, you know. She said, well, what other states are doing the certified training programs? Well, there's about 18 different states which use it. And I sort of looked at a little bit of them. I have an advantage in that I'm an officer in the National Conference of State Liquor Administrators, so people actually know to avoid my call or will actually take my call. I'm not sure which is which so that I can give them a call. In one of the similar states which I think Laurie might have supplied is the rules and regulations from the state of Tennessee, Tennessee does not regulate beer sellers, but they do regulate liquor places. And they have about 4,000 which we have about 4,200 retail licenses, so that's about the same amount of people that they're looking at. They're a state which has a couple of large urban areas, and then a lot of rural areas. So they also sort of pattern, fit into sort of a Nebraska model. And also they're what's called a licensing state much like Nebraska. There are two types of states: You either have a control state or a licensing state. Control states, they

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act as the wholesaler, where as we license our wholesalers. But generally they license retailers. Some control states you've heard like at Utah where they still have the state-run liquor stores. So in a lot of ways they're very similar to us and so...Danielle Elks is our director and she's a friend of mine, and I said, okay, if we're going to do this, I mean, what does the commission have to do if we're going to implement a mandatory server training program? I was shocked when she told me it required six full-time employees from the state of Tennessee when they adopted it in 1995. The key problem, and you'll hear from some other people later on, is when people come before us with a program...I mean, we're seeing exactly, you know, the pristine presentation. This is how we're going to train these people. What you see a lot of times is people who are then certified as training is third party vendors maybe not doing the whole program. They might be short shifting it so you have to add some oversight to make sure that what's actually being trained or that you approved as a program is actually being sent out. And so that was what I was a little surprised to hear when she said there was, you know, six FTEs is what required to save Tennessee. I think, you know, Nebraskans are work harder, we could probably do it with less, but that's just because that's the way I look at things. But it was a little interesting when I got that issue. And you'll hear from some other people who know much more about what trained modalities work. Currently, in the list of certified programs, most of them are live face-to-face programs--TIPS, ServSafe, CARE. One of the ones which I sort of will point out that we adopted as one of our own, LB845 sort of allowed the state, the commission to either create one or adopt one. We adopted one which we would help begin. We gave them \$25,000 when we first started, and that's one that's through the NU directions through the university. It's an on-line server training. The commissioners thought that was the...you know, the only program that we could guarantee would be available statewide would be an Internet one because you will have certain communities where there's some people who have passed a certified course to be a trainer and some places where they haven't. At least that one there, you know, so long as you have Internet connection, you'll be able to access it. And so that's...you know, we're very proud of that and actually we've...right now we're in the process of probably doing an update on that because the liquor laws

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change a lot, training modalities change, and (inaudible) in that regard. So I guess that's sort of the history right now of where we're at for what we've done with our certified training programs as they exist. Sort of an example, when we're talking to some other states trying to get an idea of what we're going to be looking at, one thing that's clear, I talked to both Tennessee, I talked to Washington, I talked to Oregon, they're saying usually you'll need about a year to a year and a half implementation time frame. According to the Department of Labor in the state of Nebraska, roughly 55,000 people would be covered by a mandatory server seller training act. That's their best guess as to how many people are involved in, you know...because that would be clerks at grocery stores, clerks at liquor stores, a bartender, a wait staff, security staff. You know, and given the very nature of the business, it's very transitory. You know, people leave those jobs and get hired at other places. So that's our best bet where we're looking right now. As to the numbers of who we would have to...who would have to be trained and we would also probably need some more lead time. I think the on-line training course could probably, you know, handle that capacity. But I think we would probably have to increase the capacity of certified trainers for those different programs to sort of be able to take care of it. As one of the programs, you'll see we've recently adopted, the Nebraska State Patrol adopted a program. They were able to get requests all the time to give those training programs, and unfortunately they're spread incredibly thin as it is doing just the law enforcement aspect of the act. The patrol is our investigative wing. There's probably eight full-time investigators spread across the state doing that position in different areas. So I guess that was just an aside. I didn't put out as to, you know, implementation time that most of the states are, you know...we have the advantage of some other states, you know, sort of went ahead of us. And so we tried to learn from their mistakes and try to get an idea of how to proceed in an orderly manner. And I guess beyond that, I'd be happy to answer any questions from the... [LR389]

SENATOR McDONALD: Any questions? [LR389]

SENATOR LATHROP: I've got a few. [LR389]

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SENATOR McDONALD: Senator Lathrop. [LR389]

SENATOR LATHROP: Good to see you again. Thanks for coming down. [LR389]

HOBIE RUPE: Thank you, Senator. [LR389]

SENATOR LATHROP: I want to try to understand a couple of things you talked about the server training. Is there anything about server training in Nebraska that's currently mandatory? Any circumstance right now that you'd say server training is mandatory if A, B, C or D are true? [LR389]

HOBIE RUPE: The commission is still looking through the penalty guidelines. And so it's, you know, it's on a case-by-case basis in their jurisdiction. I can tell you right now that if you come in right now and you've been in business for less than four or five years, in other words you're a new operator, you're having those problems as I described, you're going to be getting mandatory training. [LR389]

SENATOR LATHROP: Can a liquor commission order those people without any...well, let me put it differently, is there any regulation or statute that mandates server training currently? [LR389]

HOBIE RUPE: No. What the commission has been utilizing, there's a Supreme Court law which says the commission may, you know, we may suspend, cancel or revoke and we may also place reasonable conditions upon a license. And we've sort of been expanding that to order these case-by-case server trainings. [LR389]

SENATOR LATHROP: Okay. So other than using it as a form of probation for new licensees or problems licensees, there is not mandatory training? [LR389]

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HOBIE RUPE: Not statewide. There are certain local jurisdictions and you'll hear from some of those which have a requirement. Lincoln, for example, has a requirement that any managers take one of their approved course, which is also approved by us. [LR389]

SENATOR LATHROP: Okay. You compared Nebraska to Tennessee in the number of retailers, and you thought that was a pretty fair... [LR389]

HOBIE RUPE: Yeah. They would regulate about 4,000, and we're at 4,200, so. [LR389]

SENATOR LATHROP: Are the six full-time equivalent employees in the state of Tennessee, are they trainers or are they people that enforce the mandatory training? [LR389]

HOBIE RUPE: They enforce the mandatory training. In fact, as I said, we sort of are lucky that we're following other states. I spoke with Danielle earlier this week and she said, you know, if she had it all over to do again which she would have done instead of having them specifically being trainers, she would have had them be additional agents--unlike Nebraska, they have their own agents--and had that adopted into theirs. Because the original thought was that they would also be doing more training in areas where there wasn't...adequate trainers had not developed through the third party vendor program, and that just never materialized. They started theirs in 1995, so they've been going about 12 years on it. In fact, she said that as those positions become vacant, she's trying to get them reclassified as their regular agents. And then moving some of those job duties on to them. But she did say that the key is making sure that, you know, that what you think is being trained is actually being trained. And so what they'll do is they'll do blind audits. They'll get a listed one of these servers that are doing their training, and just show up and sit in the back of the classroom and make sure that the minimum standards that they have adopted are being followed. [LR389]

SENATOR LATHROP: Okay. And you just mentioned classroom, and you've been

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talking about our program as being on-line. Does Tennessee employ in-class class server training? In other words, having for example a community college do it versus somebody getting on-line for an hour or an hour and a half. [LR389]

HOBIE RUPE: I believe most of theirs are live. And as you'll see from ours, we've only got one that's on-line that's been approved. Most of the other ones would be considered live. TIPS for an example or ServSafe are live training. So there's two different modalities of it. [LR389]

SENATOR LATHROP: Does the law in Tennessee mandate that each person that's going to sell liquor be trained? [LR389]

HOBIE RUPE: Yes. [LR389]

SENATOR LATHROP: Tell me how effective that's been in reducing alcohol related crashes versus the situation we find ourselves in in Nebraska? [LR389]

HOBIE RUPE: The closest answer she came to that wasn't really looking at the crashes, but was looking at did they see a decrease in failed compliance check rates. A lot of states like Nebraska started in the mid-nineties doing compliance checks. They originally had about an 80 percent failure rate after...they had mandatory training; that reduced down to about 10 or 15 percent. But she said she didn't think she could put it solely on the training; a lot of it also was because of the actual enforcement. Nebraska has seen similar examples. I give a good example just from a couple of years ago. Blair had never really had any compliance checks done, and the first time they did compliance checks, I think there was like 55 to 60 percent failure rate. The next time they did compliance checks, it dropped down I believe into the 20s, and the third time they were just down into the 10. [LR389]

SENATOR LATHROP: Does that translate into fewer accidents? Senator Kruse told us

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that the objective is to reduce the number of automobile collisions that are alcohol related. Great goal. I appreciate it. I'm wondering to what extent does this translate into fewer automobile accidents involving alcohol. [LR389]

HOBIE RUPE: I'm not aware of any studies. One of your testifiers later on, Mr. Chafetz with TIPS, might have some better idea about this. I'm unaware of any studies which directly correlate that training programs reduce and result in less auto accidents. [LR389]

SENATOR LATHROP: When this subject came up during the last session, we also...I think you may have told me or at least I learned somewhere along the way that some retailers do their own training. Right? [LR389]

HOBIE RUPE: That's correct. [LR389]

SENATOR LATHROP: So I think an example you might have told me was Wal-Mart trains its own employees. [LR389]

HOBIE RUPE: Yes. [LR389]

SENATOR LATHROP: So all we got to do is make sure they have a good program and we don't have to train all the people that come and go as a cashier at Wal-Mart. [LR389]

HOBIE RUPE: And you'll see we didn't approve Wal-Mart's program when they brought it before us. [LR389]

SENATOR LATHROP: Okay. But that's...some large retailers may find it more advantageous just to train those people themselves, and that would reduce the burden on the state... [LR389]

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HOBIE RUPE: Yes. [LR389]

SENATOR LATHROP: ...to the extent setting up a computer two-hour course is a burden on the state at all. [LR389]

HOBIE RUPE: I'm not sure that (inaudible). Most of the utilization that Tennessee had where they had their problems with their manpower was making sure that the course were...as I said, they're being audited, the course are actually what's being taught. You know, it's all well and good to say this course is approved, but then to have a trainer out there saying, hey, it's \$25, if you want to sit here for all four hours it's \$200, you want to leave now and I'll sign off that you're approved. And so, you know, I think you would have to have some oversight of what's going on out there in the field if it's going to be mandatory. Nebraska and most other states have looked at having third party vendor because why have the state be the sole trainer. It's more burdensome on that, but there will be some state resources required just to make sure that...if it's mandated, we're going to make sure that it's being trained. And also some methodology to punish those license holders for having noncertified individuals. [LR389]

SENATOR LATHROP: And you're not aware of any studies, anything that suggests a correlation between...or can we just assume that that's the case? If we'd mandate training, that we'll see fewer crashes on the road. [LR389]

HOBIE RUPE: You know, it's one of those theories. [LR389]

SENATOR LATHROP: We say crashes on the road. By the way, we might have less domestic abuse. There might be a lot of different areas that translates... [LR389]

HOBIE RUPE: Training in and of itself is a laudable...I mean, it serves a lot of good functions because a lot...I mean, here's the weird thing is all those one we approved, I actually went and sat through all the programs of all of those. Making someone

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cognizant of the effects that alcohol can have on their patrons, making them aware of how to properly look for an identification, how to make sure that it's not a minor. You know, let's be honest, those are who chew up most of my day are problems with drunks and kids. Either minors getting alcohols or people abusing alcohol and causing problems, both to themselves and to other people. Training can always help because the theory that you've got, and I think you sort of hit on it earlier with some people have their own programs, it's not the vast majority of good responsible licensees who cause the problems. It's the people who are on the edge, who are promoting the dangerous drinking promotions, and a lot of times who are doing, you know, the real discount sales of alcohol. And so those I think all these thing try to look at, these programs, the impetus behind them as to how do you safely serve your clientele through customer service to make sure that, (a), they're having an enjoyable time, and (b), they're coming back. Most of these programs definitely say that, you know, one of the worst things you can have in a bar is an obnoxious drunk in the corner because he's going to drive other customers away. So these programs thus far try to emphasize that, you know, not only is this good health and safety for your patrons, but it's also good for your bottom line because if you're a responsible licensee, you're going continue to keep customers coming back healthy and safe. [LR389]

SENATOR LATHROP: Right. Just one more question. Is a pure dramshop more effective in reducing car crashes than would be mandatory server training? [LR389]

HOBIE RUPE: I'm not sure. You know, the commission and everyone are thinking are thinking a position on dramshop and that it's a civil liability recourse. Dramshop appears to be, you know, it's a reaction, we're going to punish you for something after the fact. Server training you hope is a preventative nature that's going to be looking and trying to prevent those crashes in the first times. I'm just not aware of any studies which show which is more effective, if either, at this time. Sorry I can't answer that question. [LR389]

SENATOR LATHROP: All right. Thank you. [LR389]

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SENATOR McDONALD: Any other questions? Senator Ashford. [LR389]

SENATOR ASHFORD: I want to follow up on a couple of things. How long has the server training issue been before the Legislature, how many years? Do you know? [LR389]

HOBIE RUPE: Well, the commission sort of... [LR389]

SENATOR ASHFORD: Just tell me. I mean, the last... [LR389]

HOBIE RUPE: Okay. The certified program, it first came out in 2006 as part of LB845. [LR389]

SENATOR ASHFORD: But prior to that. [LR389]

HOBIE RUPE: Prior to that mandatory server training had never come up. The commission had sort of under its general authority had approved programs. You know, without a mandate we sort of say which ones we give our staff. [LR389]

SENATOR ASHFORD: Let me just try to get this down to...get through this. But this issue of training servers has been an issue for several years, has it not? I mean states have done this sort of thing. [LR389]

HOBIE RUPE: Yeah. A lot of states adopted these starting in the mid-1990s. Tennessee, for example, in '95. [LR389]

SENATOR ASHFORD: Okay. So this has been out here for 15 years. [LR389]

HOBIE RUPE: Yeah. [LR389]

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SENATOR ASHFORD: Wouldn't you think that somebody should do us...how much do the commissioners make now, liquor control commissioners? [LR389]

HOBIE RUPE: I think they make \$500 more a year than you do, \$12,500. [LR389]

SENATOR ASHFORD: Okay. And they meet once a month? [LR389]

HOBIE RUPE: They meet once a month for about two days, and then they usually have to endure many phone calls and e-mails from me during the week. [LR389]

SENATOR ASHFORD: All right. How many in this organization that meets, this national organization that was made up of liquor control commissions across the country. Is that correct? [LR389]

HOBIE RUPE: Yes. [LR389]

SENATOR ASHFORD: And do they...and in now case has anyone ever commissioner or thought about having a study to correlate these kinds of initiatives with safer streets or less drinking and driving or... [LR389]

HOBIE RUPE: You know there might be something that I'm not aware of, Senator, and I'll look into that and I'll try to supply it. [LR389]

SENATOR ASHFORD: Why don't you look into that because I think one of the problems in all these kinds of things that I think we have in the Legislature is that none of us, or I'm not, are experts on this issue. And so when we try to make policy based on no data, and it seemed to me that the Liquor Control Commission, it's incumbent upon the Liquor Control Commission to gather data on these tough issue. And if it means having data from advocacy groups on one side and groups that would be less supportive of this kind

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of legislation if those studies are on opposite sides or in the middle or whatever to gather that kind of data. So instead of coming in and having hearing somebody saying this will save lives, then someone else coming in there and saying this will not save lives, and you say the Legislature, you guys figure it out. That's ridiculous, if I might say so. So I think...now let me just finish. So from now on it seems to me that I think we need to be better prepared and we need to have data because we are not magicians and we're not experts. And this isn't...I'm not critical of you, but I'm talking about the whole issue to say let's get some data out there that we can rely upon so that we're not just, you know, favoring somebody we like better than somebody else we don't like. That's just my point. [LR389]

HOBIE RUPE: Okay. One thing I am going to...you know, perhaps and I'll put him on the spot again, that's one of the reasons why Mr. Chafetz who has been a trainer and involved with TIPS for over 25 years and I believe in every state which does have mandatory server training they are a certified program. He might be able to answer some of your questions. [LR389]

SENATOR ASHFORD: I mean, if Lincoln has a manager, certified training program, somebody ought to commission a study to see whether it's had a correlation...if there's a correlation between that manager program and reduced DUIs. That would be very helpful kind of information for us to have. [LR389]

HOBIE RUPE: I'm not sure they'll have on the DUIs. I know that most of the studies look at are, and I think Captain Citta will be able to testify on that, was do you see a reduction in calls to service at those establishments, i.e., are you dealing... [LR389]

SENATOR ASHFORD: Well, whatever, and I'm not... [LR389]

HOBIE RUPE: Well, I'm saying is a lot of times it's easier to quantify that if you're having a training at an establishment and then you're seeing a decrease in law enforcement

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calls to deal with drunken disorderliness or for minors in the premise, it's easier, you know, taking the next step beyond. Because, you know, the problem you have is once they leave the establishment and get behind the car, are they drinking somewhere else. I mean, are they drinking their own...yeah. [LR389]

SENATOR ASHFORD: I don't know. All I'm saying is when it becomes a political problem, it's not in the right area. This needs to be resolved by the experts on either side of the issue before it comes to the Legislature. [LR389]

HOBIE RUPE: Yes. [LR389]

SENATOR ASHFORD: That's all I'm saying. [LR389]

HOBIE RUPE: And I will endeavor to see if there's any training on any of those and I'll get to you, Senator. [LR389]

SENATOR ASHFORD: Thank you. [LR389]

SENATOR McDONALD: Senator Karpisek. [LR389]

SENATOR KARPISEK: Thank you, Senator McDonald. Hobie, I guess we're talking about Lincoln has the manger training program. [LR389]

HOBIE RUPE: Yeah. [LR389]

SENATOR KARPISEK: We're talking now all servers I on this. [LR389]

HOBIE RUPE: Yes. [LR389]

SENATOR KARPISEK: How do you...would it even be someone that maybe for a

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fund-raiser, I know there's a church in Omaha that has fish fries, they serve beer. Would those people have to be trained, someone that helps out at a street dance? [LR389]

HOBIE RUPE: That would be an issue...as you're aware, we have roughly 4,200 retail licensees. We also issue approximately 3,600 special designation licenses per year. Now, a lot of those go to the same...you know, I'll give you an example, Chances Are in York gets multiple ones of those because they run the one of the champions club there at the University of Nebraska every year and they are all trained. There are two sorts of people who can get special designated licenses. The first is existing retail licenses, and the second one is certain nonprofits--churches, political parties, museums. And it would be arguable...if you're looking to stop abusive alcohol problems, I would say that would be almost the exact people you would look to who you'd want trained. There's a reason why a lot of the police call the local street dance amateur night because you've got people who are not normally in the service of alcohol all of a sudden back there, you know, slinging beer. You know, they're not trained to look for signs of visible intoxication. They're not trained to look at an identification to see if it's been altered or augmented. And so if you're looking at training and if you're trying to pinpoint where we see a lot of violations and a lot of problems come out, a lot of the times that's almost, you know, (inaudible) hiding because those are the people that don't it on a day-by-day basis. [LR389]

SENATOR KARPISEK: Okay. Thank you. [LR389]

SENATOR McDONALD: Senator Dubas. [LR389]

SENATOR DUBAS: Thank you, Senator McDonald. Thank you, Hobie. Do you have any idea or is there an tracking done of how many establishments do the training? [LR389]

HOBIE RUPE: Right now we've had about 300 which have paid the \$5 to be certified by

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us. All right. Three hundred licenses issued since the beginning of 2007. A lot more places do that I'm aware. The patrol is almost always having to say no because of time constraints to do the training. A lot of them like the patrol to do the training because they figure that these are the guys who are going to come in and write me the ticket, so I want to know what they think I have to do. There are a lot more people who are trained out there than we have certified. But the reason why is because although we certify the programs, you know, unless we make these licensees take one of the programs either at the licensing stage or at the punishment stage, there's no mandate, there's not a stick or a carrot either way to make them take these courses as is currently set. [LR389]

SENATOR DUBAS: So through a mandatory process we'd be able to track things much better and know what kinds of training is occurring. [LR389]

HOBIE RUPE: Yeah, exactly. [LR389]

SENATOR DUBAS: The ones that are doing the training now, you would assume they're doing it just because they think it's going to be good for their business and help them be better. [LR389]

HOBIE RUPE: That's one of the reasons you hope they do it. There's also, there is one small carrot that lives out there still in that if you have sold to a minor, failed a compliance check, and then you have that clerk go through a training course and then they subsequently sell, they're still getting hit for the second offense. But the mandatory days of closure...usually what happens is if you sell to a minor for a first offense, you're looking at probably 10 to 20 days suspension, usually 10 to 14 is what the commission give out. If you're a second or subsequent offense, say within two years, you're looking at 2 days mandatory closure with no buyout plus 30. If you have at least had that clerk who screwed up a second time, if you've at least attempted to fix that person beforehand, the commission will waive the two days mandatory closure. They'll make it 32 days with taking the serve or payoff instead of the two days hard closure. So there is

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a small incentive to these people to have them trained. But most people, you know, if they are being trained there because they're trying to do the right thing. Most licensees in the state of Nebraska want to do the right thing. And I think that's one thing we want to try to do. I mean, there's a small, very miniscule...I always say that probably 98 percent of the licensees want to do the right thing, about 80 percent do. So you've got about 18 percent who just got lazy or complacent, and then you've got 2 people who just don't give a crap. [LR389]

SENATOR DUBAS: Thank you. [LR389]

SENATOR McDONALD: Senator Lathrop. [LR389]

SENATOR LATHROP: Just want to follow up. It sounded like you made an offer to Senator Ashford to look to see if there are any studies and maybe what I'll do is ask you to look and see if there are any studies, and this would go with anybody in the room, that have been done that show what is effective, what kind of regulation of the retailers is effective, including dramshop or suspensions under a dramshop situation as opposed to civil liability that if effective in reducing alcohol related car crashes. [LR389]

HOBIE RUPE: I will look at that as well. I think there might something from the National Highway Safety Association on that one. [LR389]

SENATOR LATHROP: I would expect that there's been studies and if you could share that with me, I'd appreciate it. [LR389]

HOBIE RUPE: I will try to, and I apologize not having it here beforehand. But a lot of times there's a whole bunch of studies, unless you know exactly what you're looking for, it's literally like looking for a needle in a haystack. [LR389]

SENATOR LATHROP: And I share Senator Kruse's concern about the number of

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alcohol related fatalities and crashes. And so whatever studies demonstrate what's effective because it strikes me listening to your testimony that if we mandate training, we train all the servers, and then there's no consequence if they don't observe the attendance of the training, then we're putting people through an exercise with no outcome. It's not changing any of the outcomes. So I'd be interested in what the studies demonstrate actually works. [LR389]

HOBIE RUPE: I will find that for you and get that to you as quick as I can. [LR389]

SENATOR LATHROP: Thanks. [LR389]

SENATOR McDONALD: Thank you. Any other questions? Thank you very much, Hobie. [LR389]

HOBIE RUPE: Thank you very much. [LR389]

SENATOR McDONALD: Our next presenter is Bob Jergensen. Bob is the former owner of PO Pears. He will cover highlights of how the city of Lincoln has required training. In addition, he will address this from the small business perspective and how fairness comes into play. Welcome, Bob. [LR389]

ROBERT JERGENSEN: Thank you. Good afternoon, Senators. Real quickly, I did want to point out that I'm the ex-owner of PO Pears. I'm now semi-retired, enjoying it. I started there in 1993 as a cook...excuse me, in 1986 as a cook and bought the business in '93. So I'm a fortunate person. I would like to thank you for the opportunity to have a license in the state of Nebraska. Just real quickly, I would like to point out I understood today was going to be about training issues and training of servers. And I guess what I'm going to come forth in front of you and say is that I'd like you to take a look at instead of worrying about training servers only, starting with training managers. The program that's on the liquor commission's Web site allows a manager to go in and set

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up training for his employees, and then he can have the employees do that training. I hope that makes sense as to what I'm saying there. What we're looking at is to try to find if going to do training would it a mandatory certified training for managers with a minimum of one trained manager per location. So if you had six locations like a gas and shop or something, you'd have to have a trained manager for each location. A certified training fee we do in Lincoln is a maximum of \$75 is all that's required per location, and that's done every three years. So if you go through training which is mandatory in Lincoln, you pay \$75, covers you three years and gives you the free use of the state's web-based training for your employees. And that web-based training, you are allowed to manipulate it to be specific to your establishment. The current web-based server training is upgraded and maintained by the Liquor Commission. And the servers and sellers will have access to this training at no charge. And that was something that as an owner it gets to be kind of expensive if I'm having to pop \$5, \$10 per employee. With a turnover rate at my establishment, it could be you know quite pricey over the years as you go in and out. Plus, I want to make sure that everybody is trained. I can say before you start working for me, you need to go through and do the training on-line at no cost. They can go to a library. They can go do it at home. They can start it and retake it again, and the reason I know all that is because I'm also a trainer in Lincoln for the managers. Just a little background in the city of Lincoln. This all started in Lincoln and started with the designated driver program. I was approached by Mothers Against Drunk Drivers to work with them. And that was important to me because it felt like they were stepping across the aisle, and it was a nice approach and I felt that I could do something for them too. Then when the Supreme Court ruled that the arbitrary and capricious and the loss of local control, the city of Lincoln was looking for ways to control their license a little better. At the time that I bought my license, there was approximately 135-some licenses, and when I was done, there was over 400. And what I found personally was that the number of licenses...the more licenses that were there, and there wasn't really a bigger piece of pie to cut up, the competition for the \$1 and the customer started to be a little bit more risky than I was comfortable with. And that's why I was for having a training that said a playing field that was level for everybody, that said

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if you're going to have a license, these are the rules and regulations that you have to follow and you need to be updated and you need to know them so that a licensee couldn't say I didn't know what I was supposed to do. The nice thing about that was is that you could choose to follow the rules or not follow the rules. If you followed the rules, great, you never went in front of the Liquor Commission. In fact, in the 15 years I had a license, I had one violation in the first year, I never had a violation after that. And if you did choose to break the laws, then the people that were there to deal with you were the police officers. And that was good for me too because if you're a risky business in Lincoln, Nebraska, and you're taking my customers down the road of, hey, it's okay to do shots until you're falling off the chairs. And then I'm trying to cut that person off, you know, it's a little bit harder for me to run my business. Anyways, the RHC is also something in Lincoln that's a Responsible Hospitality Council, and you're looking at the president of that. In other words, I seem to be way too many things with my free time for being retired. The RHC was developed to allow every side to sit at the table including the licensees and say, what's going on in Lincoln, what can we do, and what things should we be training on? We also have had some forums when there have been issues that came up. I'd say that in the past two or three years we had an issue of all of a sudden in my opinion (inaudible). Then we started having, okay, we're going to start watching more for overintoxication. Which was fine, but we never really discussed it before, all we did was roll right into, okay, we're going into an enforcement. And we would hope that the RHC was an area that you could say to the licensee, we're having problems, can you guys work on this before I have to work on enforcement? The Lincoln City Council charged the committee to investigate the mandatory seller/server education policy. It was a diverse group of stakeholders that met over an extended period of time, and recommended at this time a mandatory seller/server training program wasn't feasible due to the cost. The availability and the high turnover rate at industry, and suggested that they develop implementation of the web-based program. Then after that came along, NU Directions where they got a grant from the Robert Woods Foundation. And the NU Directions did studies--yes, by the way, I am a member of the NU Directions also--NU Directions would collaborate with the Nebraska Office of

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Highway Safety and the Liquor Control Commission for on and off sale retailers, wholesalers, prevention professionals, law enforcement, and other interested parties to create an on-line curriculum for frontline sellers and servers of alcohol. And that's where the web-based server training was developed from. So in Lincoln if you have a license, every three years the manager is the person that is trained. And if a manager turns over, then the new manager. It's the manager on record with the state of Nebraska. And it's the manager's responsibility to make sure his employees are trained. So if you have an establishment that doesn't have any problems, then the manager is aware of the laws and regulations. If you have a place that's having problems or it's a new license, make sure you can then make sure that everybody goes through the web-based training also. So I guess what I'm saying to you is that is something that is available out there to you, and I guess I'm a resource. I put my web address on there, my e-mail address, and if there's anything that I can answer for you, I'd be welcome to do that. [LR389]

SENATOR McDONALD: Any questions for Bob? Senator Karpisek. [LR389]

SENATOR KARPISEK: Thank you, Senator McDonald. Bob, we talked about in Lincoln you have to have one person per...trained manager per location. Does that have to be...obviously you don't have to have one there all the time. [LR389]

ROBERT JERGENSEN: No. You don't required to have someone there all the time. I would never have slept if I had to be there all the time. [LR389]

SENATOR KARPISEK: Okay. Thank you. [LR389]

SENATOR McDONALD: Any other questions? Can you tell me that Lincoln has this program, are there any other cities in the state of Nebraska that have the mandatory training? [LR389]

ROBERT JERGENSEN: Mandatory server training? Not to my knowledge. In fact, I

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believe we've had a few contacts from outside the city of Lincoln saying can they run their employees through our training. And the city of Omaha, I believe, the Hyvees came down. And that's one of the areas we're weak on right now is the retail, the off sale. This is really based a lot around the on sale. There are some things that apply both to on and off sale licenses. [LR389]

SENATOR McDONALD: Thank you. Thank you, Bob. Our next presenter would be Captain Joy Citta. She's with the Lincoln Police Department. She will discuss the success of Lincoln's requirements that manager be trained. Welcome, Joy. [LR389]

JOY CITTA: Thank you. Good afternoon, and thank you for this opportunity. Actually I'm really here representing the Responsible Hospitality Council. I am the vice president. So Bob's the president, I'm the vice president of that council, which is an organization to make sure that we are able to work together as partners in the alcohol server and training and information piece for Lincoln. Lincoln does have a mandatory server manager training and it is either the owner or manager of record, as Mr. Jergensen said, that we require to be trained and to be trained every three years. So what we have is a face-to-face dual taught class with law enforcement and a licensee or distributor, somebody in the liquor industry. It is a chance for us to...oh, I'm sorry. [LR389]

SENATOR McDONALD: I'm going to stop you just a minute. Would you spell your name? [LR389]

JOY CITTA: I'm sorry. Citta, C-i-t-t-a, Joy, J-o-y. It is a chance for us to work cooperatively and meet the folks who are doing the day-to-day server and training with their own staff. The reason we believe management should be the folks that are trained first is because we can train the servers all we want, but if the management doesn't believe that they should be checking IDs and not overserving the liquor and making sure that somebody who has maybe had a little too much to drink finds a safe ride home, if that's not coming from the very top, it's not probably going to happen. So we

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want to make sure that that happens at the management level. We certainly believe in server training for everybody, but we think that if the managers on line with this that that's certainly the first place we want to start and do that. What happens with our training is we go over not only our state laws and the rules and regulations of the Nebraska Liquor Control Commission and how you can tell whether you've got a fake ID and how to handle a difficult customer and all the different things that we want them to do, but we talk to them about policies and establishing the policies that will help their employees do a good job. We also go over our local laws. So it's a chance for us to build a partnership and a relationship because we've got a person from the liquor industry and we have a law enforcement officer in that room. And we are talking to them about how things work in Lincoln: What are the rules? What do you have to do? How is things process? What happens when an officer makes a tavern check? How does all this work through the system? So they're getting some very good information about what happens in their local area. We also give them lots of contacts, people that they can talk to at the Lincoln Police Department and within the industry to try to help them get through any issues or problems they have. We believe that we've had some very good success with this. I know Senator Ashford asked do we have any data on this, and coincidentally our city council holds a meeting called an internal liquor meeting, and they had asked us to take a look at something similar. We don't have it quite compiled yet. Be more than happy to share with you whatever we end up being able to pull together. Because in Lincoln we also have our detoxification center does what we call last strength data, and they actually take a look at everybody that's checked in and ask them, where did you have your last drink. So we do have some information that goes back a number of years where we can take a look at that. And because in the Lincoln area, most all of the DWIs are processed at this detox center, they also have all of them. So we do have the DWI, some DWI data that may be helpful. So I just wanted to let you know that we have done this for a number of years. We find it successful. We think it's been important that we have I'd say on average the Lincoln Police Department probably writes less than 100 tavern violation tickets to the licensees in our city. So we certainly think that the training has a huge impact on folks ability to do the right thing,

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being able to recognize it, knowing when to call the police, know how to get us in there to be a partner and to help them in making sure that things are handled appropriately. Do you have any questions? [LR389]

SENATOR McDONALD: Thank you, Joy. Are there any questions? Seeing none, thank you for your presentation. [LR389]

JOY CITTA: Okay. Thank you. [LR389]

SENATOR McDONALD: Our next presenter will be Adam Chafetz with the TIPS program. He will discuss the need for face-to-face training and how different individuals learn. Welcome, Adam. [LR389]

ADAM CHAFETZ: Thanks, thanks for having me. Let's see, just real brief history. I'll try to be brief. I worked my way through college being a bartender and a waiter. And my father who was considered one of the world's leading authorities on alcoholism and alcohol abuse, he was the founding director of the National Institutes on Alcohol and Alcohol Abuse, created this program called TIPS, and he asked me to take a look at it. And this was 26 years ago, and I looked at the program and I thought it was a crock. I said this is how people make their money, they're not going to respond to this. And then I went through the training. And the training wasn't telling you what to do, it was getting you to think about how you would deal with a situation. And one thing, I don't know if any of you have ever waited on tables or bartended, but one thing that always bothered me when I was a waiter and a bartender is I was kind of treated like a piece of dirt. I was not important. It was kind of like just do what I say, and I was like, wait, I know what your customers respond to and what they do and they don't like about your business. And that's what I really liked about what component was added to the program is recognizing those individuals as experts and professionals because they are. They're the ones that can make the difference. Okay. The two people before talked about management training. That's great. But the person who serves the alcohol makes the

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difference. And we need to touch those people in their heart so they respond to this. We've trained quite a few people. We're in over 40 countries. We've trained about a little over 3 million people, over 50,000 trainers in all 50 states and those 40 different countries. Currently in Nebraska, we've trained over 3,500 people and there are 1,250 currently active servers throughout the state. It's interesting when you talk...and there have been a lot of questions about how it's effective and whether it's effective and how programs work. The main goal of our program that I really like, and I've been through probably close to 30 different programs out there because I like to see what the competition does, is a lot of people say, well, yeah, I can recognize when somebody is underage or when somebody is intoxicated. And I even know what to do. My question is, when have you done something and what we build into our program is it causes the server to have confidence to step in and do something. You can tell people all you want the consequences or what you're going to do, but if don't have the confidence to step in, it's useless and it's worthless. People, that's the tough thing is getting them to have the confidence. We've all been in situations we didn't want to step into, and the question is whether we did or not. And that's what we build into our program, and that's what you have to build into any program that you use. Because you can teach them the best things in the world and if they don't use it, it's a waste of time. You know, looking at the pros and cons of making it mandatory, I have been involved in the first state that went mandatory which was Oregon in 1987; the first city, Madison, Wisconsin, in 1985. I didn't like what they did because it was, you know, one state you had to train a server how to recognize when somebody is an alcoholic and then sign them up for an AA class. And the servers just thought that was ridiculous, but they felt it was right. Oftentimes what happens is you get clouded with a lot of stuff that people feel is important, whether it's treatment stuff or other things. The important thing is what Senator Lathrop said is the underage drinking is an important thing, but you know intoxication is the key, not just drunk driving. Eleven percent of all drunk driving fatalities are drunk people stepping out in front of sober drivers. The majority of falling deaths are related to intoxications. Fires, drownings, it's not drunk driving. And as Hobie mentioned earlier, who wants to go out and be around an intoxicated person when you're in an

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establishment. Is that the image that an establishment wants to set forth? That's why we try and use it as a business model to get people to say, hey, we want our customers to come back and enjoy our establishment in a responsible manner so they're not bothered by intoxicated people. They get all sorts of insurance discounts with our program. That encourages them to go through the program whether it's mandatory or not. I like carrots rather than sticks. Sometimes sticks work and there are lots of different ways to go, whether you go mandatory as a reward, you know, get out of jail free card which I go back and forth on. But using carrots I find is much more effective. You also talked about the cost of server training. You know, there's lots of different ways to use it. I personally think free training is an embarrassment. You know, that's what the value is. If they don't...if the servers, I'm talking about, if they don't have any skin in the game, they don't put any value in it. It helps me out too because if the server is paying for training and they don't get what they thought they were getting for, they call us up and they say, you know, I paid this money and the trainer didn't train me correctly. And we figure out a way to get them retrained so they do get their money's worth out of it. But if they don't have any skin in the game they feel they don't put as much value in it. The same thing with on-line versus classroom. On-line training, we have an on-line training program. I'm a classroom trainer, so I'm not a big fan of on-line training. I feel serving is a person-to-person situation. The best way to learn is face-to-face and a machine isn't going to be able to answer a question that a particular server has a question in their heart, and if you can't answer that, their confidence won't be complete. Our on-line program does do a good job of having interactivity and have people respond to that. It's the closest of the 14 on-line programs I've been through that I thought really helped a server feel that. It's good for remote locations. It's good for recertification, particularly if you have young servers. I don't feel it's as good because as I believe you asked about volunteer organizations, those people are the people who need it the most, the green horns that are out there or the volunteers. They definitely need to have some kind of face-to-face training on how to deal with other human beings. And today with on-line classes and the way education has become, they have less and less contact with human beings. And if they're going to be serving alcohol, at least I found it's too

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important. We also train everybody in a community. We not only train on premise establishments like bars, restaurants, gaming institutions, we have a different program that trains concession groups and county fairs. We also have program that trains off premise establishments--convenience stores, grocery stores, a social function program dealing with private clubs, catered events. We also have a university program for university students, parents in the home, people in the workplace, and senior citizens. And the reason being we want everybody in the community to be speaking the same language so that when a server does step into a situation and a customer hears it, they reinforce that and they step in and reinforce the confidence the server already has. There are also some questions about whether it's effective. I find that a real interesting question because there's been a ton of studies out of there and I'm happy to provide them. Most of the one I have are on our program. There are some that show it's ineffective. There was a Navy program that shows the training was ineffective. It was a very informational type training. Ours have been for the most part effective. I can share with you, if you're interested, some of the results. But I actually don't put a lot of value in those things. What I put value in is the phone calls that we get on a weekly basis from servers where they tell us where they've stepped into a situation where somebody was intoxicated. Now, I'm sure that's not all the people that we get that have done that, but they actually feel so confident that they actually call us and tell us what they did. And I don't know if they saved a life that night, but they definitely stopped somebody from going out of the road and driving behind the wheel that was definitely intoxicated. That, to me, says so much more about whether it's effective or not. And I personally agree that preventing intoxication is the number one goal. And underage is certainly important, but intoxication is the most important thing that we need to prevent. The mandatory states that have gone, all have stuff on compliance checks, they don't have anything on has it reduced intoxication. There was one study I heard about in one meeting and I've been trying to find the study. It was on Oregon where they had all these compliance checks and they were doing great on compliance checks. But for some reason drunk driving problems had gone up and fatalities had gone up, and that was a good many years after it had gotten mandatory. And so there was a big concern saying, is the

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training too focused on underage and not so much on intoxication. And if you read, I believe it was in the Wall Street Journal about six weeks ago, there was a big thing on stadiums where everybody in the stadiums, there was a study done by PIRE, Pacific Institute for Research and Evaluation, where they went in and they were doing a great job checking IDs, but they were serving everybody that was intoxicated. And they said, what is the point of this? We're focused so much on underage that we're negating the fact that these are the people that are causing the problem in the stadium. I think that's all I wanted to cover. Yeah. I don't know if you have any questions. [LR389]

SENATOR McDONALD: Thank you, Adam. Are there any questions? Well, welcome to Nebraska. [LR389]

ADAM CHAFETZ: Thank you. It's a great state. []

SENATOR McDONALD: Is this the first time you've been here? [LR389]

ADAM CHAFETZ: No. I've trained here a couple times before. It's a great state. [LR389]

SENATOR McDONALD: If someone receives the training as an employee, do they take that certificate with them? I mean, is it something that they have for a couple of years until they have to retrain again? If they leave that employer and have that certificate and move onto the next bar or grocery store or convenience store, does that certificate allow them to begin working right away or do they have to go through the training again each time that they change jobs because as many people do on a part time basis do change jobs? And so do they have to be retrained every time they work with a new employer or does that certificate go with them for a short period of time? [LR389]

ADAM CHAFETZ: Not only does that certificate go with them, their certification goes with them and actually people put it on their resume and some employers require it. So when they come, they, you know, require you to have TIPS certification or whatever

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certification they require. And yeah, it's a value to the server. When they go to the employer, the employer goes, okay, I know this guy has my best interests at heart is preventing illegal alcohol sales or irresponsible alcohol sales. And that, you know, is a value to the server they take with them which, you know, I've even gotten people applying for jobs with me that have that on there. [LR389]

SENATOR McDONALD: Okay, very good. Thank you, Adam. Our next presenter would be John Spatz from the Lincoln...he's a Lincoln City Councilman. Welcome, John. [LR389]

JOHN SPATZ: Good afternoon. Senator McDonald and Senator Ashford and members of the two committees. And my name John Spatz. It is pronounced Spatz believe it or not even though it is spelled S-p-a-t-z. During the day, I'm the legal counsel with the School Board Association. I'm also a representative on the Lincoln City Council. I represent the northwest district which includes the O Street area and the concentrations of bars downtown Lincoln. But I think all that's irrelevant because I think I was asked to testify today because I was a former bartender for Bob Jergensen, believe it or not, at PO Pears. So I think that's why I'm here today to give my thoughts on manager training. And if you think about it for a moment, the job of a bartender or somebody serving alcohol can be very challenging, primarily in two aspects. One, making sure no minors consume alcohol, or two, preventing the overconsumption. Now, in an establishment it's almost impossible to guarantee that that's going to be done perfectly on a regular basis. With the fake IDs that there are out there and somebody buys a drink or a pitcher and takes it to somebody else, you may not see somebody who's consuming too much. So it is very challenging. And the last speaker brought up a good point. Sometimes confidence of the server is very important. But we have 21, 22-year-old servers who may need to cut off maybe a 40 or 50-year-old bombastic individual, and sometimes that can be very challenging for somebody to do that. That's why I think having a strong manager training system makes a lot of sense. And I think it does for three reasons, and some of them have already been addressed. Obviously the turnover. There is a great

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deal amount of turnover amongst the regular servers. Does it make sense to train somebody who's going to be there for a few weeks or a few months versus the managers who are there usually for a longer period of time? And I also think it could be more effective. What I mean when I say that is let's assume if I am a bartender and I have not had training, but I have a manager, say Senator Ashford is my manager who has had the training and enforces the rules, making sure that I don't server minors and making sure that I'm not overserving, I'm going to be held more accountable I believe as a server. Versus if I was a server and took an on-line course and had a manager who wasn't very involved. I think it would be a lot easier for me to push the envelope in a circumstance like that. And also number three, the resources, if there's testimony earlier that there could be 55,000 servers annually in Nebraska. The resources that we have that are very limited, they get spread very thin over those 55,000. If we're focusing on the managers, it's more of the laser approach and I think that could be more effective in that way. And I also serve on the ILC--somebody brought that up earlier--the Internal Liquor Commission here in Lincoln. And I think it's very effective for a variety of reasons. We also take kind of the carrot versus the stick approach. And if this is an area that you're very interested in, I would invite you to one of our ILC meetings with the city council that we have around once every month and a half or so. Because we do get the last drink data from the detox and we see a list of bars that people have said are establishments where they said they had last had a drink. And if we are beginning to identify a problem facility here in Lincoln, a lot of times we will invite either the owner or one of the managers in to say, we're your partner here, we want to help you have a successful business but yet make sure that the people here in Lincoln are safe. I'm really quite amazed and I would like to see some of the data that you brought up, Senator Ashford and Senator Lathrop. I think some of that data would be very useful. But kind of anecdotally, I'm pretty amazed with how well they've done here in Lincoln for several years. If you think of the conditions, the elements that we have here with the concentration of bars serving college students right next to a college. The fact that we have 80,000 people come to Lincoln six or seven times a year, and a lot of them are consuming alcohol, and the system that we have in place is really a credit to our police

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and to the Responsible Hospitality Commission and others who have preceded me at the city council who have done amazing work. So I am a proponent of strong manager training because I think it really does start there. One thing I'd also invite you to, several months ago as a city council member, I was invited to what they called a bar walk. And the police took a couple city council members and I, some members of the university, and others to the bars at midnight, and we went into some of the bars. And something that struck me, when the police escorted me into many of the bars, the staff there at the door who were carding people knew the names of the police officers. The police officers knew their names. They have built a relationship and I think that is very important. And I think we've seen results in Lincoln because we have a relationship with the bar owners and the managers. So I would certainly be happy to entertain any questions if you'd have any. [LR389]

SENATOR McDONALD: Thank you, John. Senator Ashford. [LR389]

SENATOR ASHFORD: That's a great idea. It would seem to me the Liquor Control Commission as one of their...they could initiate statewide a program similar to what you've done in Lincoln. With the looking at the data I'm talking about is looking at what's out there, what's real, the raw data. You have someone arrested for a variety of liquor offenses. What was the last place they were? That cannot be that hard to do, and that's something the Liquor Control Commission should do statewide and to encourage...because a system like which is...in your case you've initiated it yourself, it seems to work, the data. Does that data...do you have that in some sort of report or... [LR389]

JOHN SPATZ: Yes. We get that at every meeting we have. We have I believe it's a quarterly report of the last few months, and usually you can see trends a lot of times. Certain bars, you know, if they've been at the top of that list for a period of time, we will invite somebody to come in and say, is there anything that we can do to help. And it usually is that we try to establish a partnership and a relationship to say, we're here to

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help. But there's also an understanding that they think we know somebody is watching us, the city council is calling me in. [LR389]

SENATOR ASHFORD: Yeah. It would seem to me that the Liquor Control Commission...and maybe they don't feel they have the authority to do it, but if you have an establishment that has this kind of history, that I think maybe they're the ones that should be given the added attention, extra training or whatever it is. I mean, that to me is more effective kind of interdiction than some other things that... [LR389]

JOHN SPATZ: I think it's very effective, I really do. They may have that data. We may...come through us or I don't know. I'm sure they'd have access to it at the very least. [LR389]

SENATOR ASHFORD: Well, after you talk to these establishments about their issues, have you seen a reduction on it? [LR389]

JOHN SPATZ: It's just anecdotally, but yes. I tend to think...and I wish I had some charts, I wish I would have just thought to bring it because... [LR389]

SENATOR ASHFORD: But is there... [LR389]

JOHN SPATZ: There has been some circumstances where we have identified some establishments. In my recollection though, some of those establishments aren't at the top of the list, which I think says something. [LR389]

SENATOR ASHFORD: Well, maybe that works then. Maybe that's a solution. [LR389]

JOHN SPATZ: It certainly doesn't hurt. It certainly doesn't hurt. [LR389]

SENATOR ASHFORD: Well, it sounds like it works. [LR389]

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JOHN SPATZ: I feel like it does. And really it's not one thing. That's an element of it, but the relationship I think the enforcement side has with the managers and with the owners in downtown Lincoln makes a big difference. They know them by their first name.

[LR389]

SENATOR ASHFORD: Good job. [LR389]

JOHN SPATZ: And I'd encourage you to come to an ILC meeting. And if any of you would like to do a bar walk, I'm sure we could get that arranged. [LR389]

SENATOR McDONALD: Thank you, Senator Ashford. [LR389]

JOHN SPATZ: Okay. Thank you. [LR389]

SENATOR McDONALD: Thank you, John. In some small communities, it's not hard to figure out which bar because there's only one. (Laughter) Our next presenter is Lezlie Maguire who's a grocery retailer. Welcome, Lezlie. [LR389]

LEZLIE MAGUIRE: Thank you. I'm Lezlie Maguire, L-e-z-l-i-e M-a-g-u-i-r-e. Good afternoon, Senator McDonald and Senator Ashford and members of the committees. I am Lezlie Maguire. I'm the regional territorial manager for Cubby's Inc. I'm here today to share information on how our company works. Our company is a retail company that's a member of the Nebraska Grocers Industry Association. We're located primarily in Nebraska. We have 19 stores consisting of 10 convenience stores, 5 truck stops, 2 small grocery stores, and 2 larger grocery stores. They're located in urban, rural, and within the city. They are located in three states from Greenwood to O'Neill in Nebraska, from Red Oak to Odebolt in Iowa, Mitchell, South Dakota, and lots of them in between. Fifteen of these stores are located in Nebraska. This year, we will do an excess of \$4.5 million in liquor and beer sales, and as you can see, this is a category that were very

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important to us. Currently we have 321 employees as of last Monday. And at the end of our fiscal year last June, we had a 78 percent turnover rate. This may seem high to you, but some stores are as high as 200 percent. The shift that we have most turnover is 4:00 to 11:00 p.m. for our cashiers. And we at Cubby's understand that the liquor license granted by the state in Nebraska is a privilege and not a right. We understand that a violation of the law can terminate our license. Thus our managers and employees have the following guidelines: Our managers at each location provide age-sensitive training, rules and regulations of the state, and reviewed before a new employee even goes to the register. In our handbook, we state that if you sell to a minor and are ticketed, it is your responsibility. If it's your first offense, they receive a three day suspension without pay, they're retrained when they come back to work. If it's your second offense, you have an immediate termination. This applies not only to outside compliance checks, but also internal. Our managers have been trained at managers meetings, We Card, TIPS, and the TAM program. We scan all of our merchandise at all of our locations. And when we scan a liquor or a beer item, it prompts for the birth date and we cannot finish the transaction unless that's input. This is an upgrade to our register system that we felt was a necessity. We call every store on a Friday evening from 6:00 to 8:00 p.m. of every week to remind our cashiers not to sell to minors or an intoxicated person. We fell this is a very worth the time as we are good corporate citizens in our communities and feel responsible for their safety. We favor the certification of the manager at every location by either a face-to-face training, but would favor this for all other employees. This would be difficult due to times we hire a part time person one day and put them into training the next. We will use the web-based server seller training program for all of our employees as soon as it is upgraded. We think this form of training would give us as a company and our stores a consistent training program due to the widespread distance that our stores are located. In closing let me say this, the safety of our employees and keeping alcohol out of the hands of minors are two of the most important reasons Cubby's are supporting the face-to-face or the on-line training to receive a consistent training program. Thank you. [LR389]

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SENATOR McDONALD: Thank you, Lezlie. Any questions? Senator Dubas. [LR389]

SENATOR DUBAS: Thank you, Senator McDonald. Thank you, Lezlie. Very interesting the policies that your company has. Do you know how you compare to other businesses similar to what you run with Cubby's? [LR389]

LEZLIE MAGUIRE: I just know I have worked in two convenience store chains and they're very comparable. That's all I can tell you. [LR389]

SENATOR DUBAS: I was just wondering if...I would think that you all pretty much be on the same page since you are competitors too. [LR389]

LEZLIE MAGUIRE: The two that I've worked at are. [LR389]

SENATOR DUBAS: Okay. Thank you. [LR389]

LEZLIE MAGUIRE: Outside of that, I don't know. [LR389]

SENATOR DUBAS: Thank you. [LR389]

SENATOR McDONALD: Senator Lathrop. [LR389]

SENATOR LATHROP: I got a question. That was one of the questions I was going to ask you, whether yours is a typical policy or not. But I'm wondering whether or not...how long have you been with Cubby's? [LR389]

LEZLIE MAGUIRE: A year. [LR389]

SENATOR LATHROP: You may or may not be able to help me on this one then. Did the change in the law, the Minor Liquor Liability Act that we passed in Nebraska, did that

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change the...heighten the scrutiny with minors? [LR389]

LEZLIE MAGUIRE: You're right. I can't answer that. Kathy after me probably will be able to. [LR389]

SENATOR LATHROP: Okay. I'll ask Kathy. Thanks. [LR389]

SENATOR McDONALD: Any other questions? If not, thank you, Lezlie. Kathy Siefken, director of the Grocery's Association. Welcome, Kathy. [LR389]

KATHY SIEFKEN: (Exhibit 3) Senator McDonald and Senator Ashford and members of the committee, good afternoon. My name is Kathy Siefken, S-i-e-f-k-e-n, and I'm the executive director of the Nebraska Grocery Industry Association. And what is being handed out there is a little bit of what I'm going to talk about, but I'm just going to kind of fly through this. We as an industry are in support of training, and we train all the time. Mandated server/seller training is not something that we would be in support of because there are so many issues that would cause problems for us. And that is what the two pages that we just handed out, I gave you a little bit of history of where it's all come from for people that aren't familiar with it. I don't know how many of you could not be familiar with this issue. And then I listed there the different problems that we have with server/seller based training. One of the problems that we have is there don't seem to be quite enough trainers in Nebraska for off sale alcohol sales. There's a big difference between on sale and off sale. We are a lot different than when someone goes in and sits in a bar and consumes alcohol. We have a six second period of time where our clerks are going to have to judge whether some is intoxicated or not which causes some problems for us. But there aren't enough face-to-face, we don't believe, off sale trainers in the state of Nebraska. As far as I can find in the city of Omaha, there's only one certified TIPS trainer in Omaha for off sale alcohol sales. There's a on-line web-based TIPS program, but that is a little bit expensive when you have to run the number of people through that people in our industry would. An example would be we have one

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employer in the state of Nebraska that has 3,000 people, and they figured that of those 3,000 employees, 2,000 of them would have to be trained. And at a minimum of \$25 a head, it becomes very, very expensive. Even though it's every three years and you can carry that certification with you, in our industry the turnover is right around 100 percent. In the c-store industry it's much higher than that, sometimes as high as 200 as Lezlie had just said. There is on-line training that the Liquor Control Commission has paid for and has tried to come forward with. The on sale side of that is okay, but it's minimum requirements. The off sale side of that training program--and if you don't believe me, go on-line and take it--it is not a good piece of work for training people not to sell to minors or intoxicated people. Therefore, even though it's free, people in our industry do not use that program because it is too frustrating and there just...it's just not good training. Even though it's free, we still have that cost factor of trying to train across the state 55,000 people. It's a huge number. And then we also have the issue with the new hires. In some of the c-stores, they may have to hire...someone quits today and you may have to have somebody behind the register tomorrow. So that means you have to get them trained, and there really isn't a good way to get good training. You don't want to put someone behind that register without good training. We don't have that. And so I guess my point here is shouldn't put the cart before the horse. We need to get good training. Now, last year you were kind enough to pass legislation that allowed the Liquor Control Commission to use their funding dollars to go ahead and upgrade that program. And that has not taken place yet and we are hoping that that will take care of some of the issues that we have here. One of the other things that I wanted to talk about is that the Liquor Control Commission for the last three months has actually on a case-by-case basis when people come before them and they are in violation for whatever, on a case-by-case basis the Liquor Control Commission has required that the individual clerks get trained before...if they want to keep their license. And so the Liquor Control Commission is kind of stepping up also and taking care of some of these issues. And the point is, those people that have violations are the people that need the training. And the Liquor Control Commission is now taking that extra step and requiring that that training be done. The people that are having trouble are the people that are being

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required to get help. And I think that's a real important thing for people to be aware of. There are some statistics that...I'm a member of several different groups that try to find solutions to alcohol abuse or alcohol prevention. There's a new group that is starting up, Linda Major with NU Directions is heading that up, and it is trying to control alcohol abuse issues. And during that...I kind of hesitate to talk about this but it's rather interesting. During that meeting, there was a PowerPoint presentation that was given. And they were new figures that no one had seen. Linda had a conflict in her schedule and wasn't able to come today. But the statistics in those PowerPoints were interesting in that it said that 87 percent of 12th graders either drink at home or they drink in someone else's home. And my point for bringing that up is we've got problems, but let's make sure that we're focusing on what the problems really are. Now, I understand that our industry is in charge of selling alcohol and we shouldn't sell to minors and I think we've made some great strides. We're not done making those strides. We are constantly looking for ways to stop those sales to minors. However, there are other things that are going on with minors consuming alcohol within our community that really isn't something that retailers can be blamed for. We've got a problem and that problem really ought to be addressed. I can tell you from personal experience that there are parents out there that want to be cool moms and dads, and those are the people that are allowing kids to drink alcohol in their homes and they are providing alcohol to kids. And there is one instance from Southwest High School where one mother was convicted of having drug paraphernalia. She was convicted twice of contributing to the delinquency of a minor. And every time you would think that she'd get a little bit more scared, but she didn't because it was only a misdemeanor. And every time she would go, oh, well, it's \$100, she'd pay her fine and she could continue to be the cool mom. I think that's an issue that we should address. Even though this is a hearing about server/seller training, I think we've got some big problems out there that really should be looked at and we should try and find solutions to some of those bigger problems. In that same survey, 63 percent of the kids said that they had someone buy for them or it was given to them. Those are pretty huge percentages. And I just think we need to be aware of what the real problems are and we should find solutions to some of those problems.

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Getting back to the retail aspect of it, right now it is not legal for retailers to electronically scan and hold information from a drivers license. One of the things our people are trying to do is take the decision of whether or not to make that sale to a minor out of the hands of the clerk. And in order to do that, what we would like to be able to do is develop and install software that would allow us to scan the drivers license, hold the drivers license number and the birth date for 30 days, and post notices that say, you buy here, you're going to get your license scanned and we're going to hold the information. And so we're going to try to find someone that will come forward with that kind of legislation this year. But those are the kind of tools that we as retailers really need to stop sales to minors. Because if you require a drivers license being scanned every time, even the fake IDs that are really good are not going to pass through those scans. Another way that you can stop people getting in a car drunk, be it a minor or an adult, interlocking ignition. It takes care of the problem. If you're drinking and if you've done it once, you put it in the car, problem solved. And then I just want to quick circle back to what this whole group has been talking about, the line up of people that have come before you today so far. We got together and we tried to find a good...what we thought was a compromise that was not overburdensome for anyone. And that's where we came up with the idea of having a manager at each location being certified. And if we would limit...and it's in your handouts that I think that got put into your notebooks. And there's five or six points there. And the point is, it's cost effective. If management buys into and is trained statewide, than those philosophies are adopted by the staff because that's how they're trained. And rather than training 55,000 people and with the turnover that we've got, if you focus on the mangers and the managers are held accountable and they train their clerks, I think you're going to get a better reduction in sales to minors and intoxicated people. And given the fact that we've improved drastically in the last ten years, as Senator Kruse said, we have made a lot of headway and we will continue to work in that direction. Because until we get to zero, there's still corrections that can be made. With that, if you have any questions, I'd be happy to try to answer them. [LR389]

SENATOR McDONALD: Any questions for Kathy? Seeing none... [LR389]

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SENATOR ASHFORD: I just...we did pass interlock bill. [LR389]

KATHY SIEFKEN: Okay, well that should take care of most of the problem. I would think second offense, there wouldn't be anymore. [LR389]

SENATOR ASHFORD: And we did pass the civil liability bill regarding social hosts and providing alcohol. [LR389]

KATHY SIEFKEN: Um-hum. []

SENATOR ASHFORD: We've done that. [LR389]

KATHY SIEFKEN: Yes. [LR389]

SENATOR ASHFORD: That was number two (inaudible). []

KATHY SIEFKEN: Yes, you've made great strides. [LR389]

SENATOR ASHFORD: Okay. Well, I'm not saying it for that reason. I'm just suggesting that the problem still persists. So maybe those laws that you suggested that we pass, which we passed, aren't enough. So your suggestion is that we require that managers be certified. [LR389]

KATHY SIEFKEN: We would support manager mandatory certified training. [LR389]

SENATOR ASHFORD: By state law. [LR389]

KATHY SIEFKEN: By state law, yes. [LR389]

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SENATOR ASHFORD: And that's basically it. That will solve... [LR389]

KATHY SIEFKEN: Oh, no. Because you're... [LR389]

SENATOR ASHFORD: I mean, that you could do. [LR389]

KATHY SIEFKEN: You know, for what we could it's not going to solve the problem of kids getting alcohol because we're not the largest percentage of the problem, we're some of the problem. [LR389]

SENATOR ASHFORD: Okay. Okay. But that's your suggestion though. [LR389]

KATHY SIEFKEN: For our industry. I think that you need to go beyond our industry I guess is my point. [LR389]

SENATOR ASHFORD: No, but I'm just asking about your industry. [LR389]

KATHY SIEFKEN: Yes, yes. [LR389]

SENATOR ASHFORD: Your suggestion for your industry is that managers be certified. [LR389]

KATHY SIEFKEN: Yes. [LR389]

SENATOR ASHFORD: Okay. [LR389]

SENATOR McDONALD: Senator Lathrop. [LR389]

SENATOR LATHROP: I do have a couple of questions. Did you...Senator Kruse introduced a bill that had to do with identifying kegs. Do you remember that? [LR389]

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KATHY SIEFKEN: Yes. [LR389]

SENATOR LATHROP: We were going put some kind of a sticker on the keg so that when we raided a keg party that we would know where it came from and then we could go back to the retailer and find it. Weren't you opposed to that? [LR389]

KATHY SIEFKEN: No. [LR389]

SENATOR LATHROP: No? [LR389]

KATHY SIEFKEN: No. We were not opposed. [LR389]

SENATOR LATHROP: You're okay with that? You're okay with the... [LR389]

KATHY SIEFKEN: We sat silent because we sell some kegs, but it wasn't really our issue. [LR389]

SENATOR LATHROP: That wasn't your fight. [LR389]

KATHY SIEFKEN: It wasn't our fight. so we sat back and watched, but we were not opposed. [LR389]

SENATOR LATHROP: Did the Minor Alcohol Liquor Liability Act change the training or the way the convenience stores conducted their business when it came to selling alcohol? [LR389]

KATHY SIEFKEN: I would say no. [LR389]

SENATOR LATHROP: Didn't make any difference at all? [LR389]

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KATHY SIEFKEN: They are already doing everything that they can possibly do. They're training their people. They're terminating them when they make the sale. They're doing everything that they know how to do right now. One of the reasons we're in support of manager training is because a good share of our people are already trained. Maybe not through a certified training program that the Liquor Control Commission has already certified, but we are big on training. [LR389]

SENATOR LATHROP: But your position today is go ahead and mandate that the managers be trained, but don't mandate that the help is. Just count on the managers to train the help, but don't mandate it. [LR389]

KATHY SIEFKEN: Yes, because I think that's a good first step. Why wouldn't you start with the managers first and see if that works? [LR389]

SENATOR LATHROP: Okay. [LR389]

KATHY SIEFKEN: And I think you'll find that it does according to Lincoln Police. [LR389]

SENATOR LATHROP: Do you have any information that suggests that we'll have fewer DWIs or fewer alcohol-related injuries or deaths with manager mandated training? [LR389]

KATHY SIEFKEN: None. [LR389]

SENATOR LATHROP: Okay. Thanks. [LR389]

SENATOR ASHFORD: Let me just follow up. [LR389]

SENATOR McDONALD: Senator Ashford. [LR389]

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SENATOR ASHFORD: And that's what worries me is that again is that we pass things or don't pass things because it's a way out of the problem. If we just let the Legislature do mandatory manager training, then oh my God, we've gotten through another two years and they're not going to...that's just not a way to make policy. And I think we just need more data. We need more information to pass anything anymore. And to just say, let's pass this so we can say we beat the...this group beat that group and this advocacy group beat...those days have got to be over. I mean, let's get at the real problem and not just pass something because we think we can sate our industry. Gosh! We're successful. Look what a wonderful job I did. That's just a little bit of a message. I think we need to start getting to real problem solving. So okay. Thanks. [LR389]

KATHY SIEFKEN: And I would agree. [LR389]

SENATOR ASHFORD: Okay. Thanks. Okay. [LR389]

KATHY SIEFKEN: And you know, we really want everyone to understand that we want to be part of the solution not part of the problem. [LR389]

SENATOR ASHFORD: Okay. [LR389]

KATHY SIEFKEN: But it also has to be something that we can deal with. We don't want to close the doors because we can't... [LR389]

SENATOR ASHFORD: That's a fair point, but I just think it's the same old thing over and over again. [LR389]

KATHY SIEFKEN: You're right, you're right. [LR389]

SENATOR ASHFORD: Okay. [LR389]

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KATHY SIEFKEN: You're absolutely right. [LR389]

SENATOR ASHFORD: Thank you, thank you. [LR389]

SENATOR McDONALD: And other questions for Kathy? Seeing none, thank you. [LR389]

KATHY SIEFKEN: Thank you. [LR389]

SENATOR McDONALD: Our last testifier on our list is Jim Otto, director of the Nebraska Retail Federation and a lobbyist for the Restaurant Association. And then we will open it to anyone else that would like to present. Welcome, Jim. [LR389]

JIM OTTO: Thank you. Senator McDonald, Senator Ashford, members of both committees, thank you for allowing me the opportunity to testify. And I am a registered lobbyist for the Nebraska Retail Federation and also the Nebraska Restaurant Association and am testifying on behalf of both. I'd just like to...I'll be very brief. I don't want to repeat everything that's already been said. I would just like to reiterate what Kathy said that the industries, our industries, support training and actually are already implementing training. The Nebraska Restaurant Association has a course called ServSafe Alcohol that is approved by the Nebraska Liquor Control Commission. And as Senator Lathrop said earlier, some larger stores like Target and Wal-Mart already have training programs that they have all of their employees who sell alcohol take. So I'm here to indicated to you that we are supportive of the concept of mandatory manager training for one person in each location. We think that going further than that is not feasible at this time. We have to train 55,000 people, and we think that the concept of manager training make sense and is reasonable. A few of the things that we would want to make sure it included is that training courses could be accredited, like Safe Alcohol by the Nebraska Liquor Control Commission. Like I said, I think Hobie mentioned that

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Wal-Mart's didn't get approved, but they would just need to bone up their course so that it could get approved. That both on-line delivery and classroom courses are provided for. There's one standard of training across the state. This is important to us. As you heard, the city of Lincoln has a very aggressive program and seems to be successful. But if you get trained by the city of Lincoln, you are accepted by the Liquor Control Commission. But if you get trained by an accredited course of the Liquor Control Commission, you're not accepted by the city of Lincoln. So just uniform training across the state if that were...we mentioned a three-year cycle renewal. Costs approximately \$75 or \$25 a year, and adequate time to complete training before enforcement actions are allowed. With that, I guess I'll just sum up and say...well, I wanted to bring up, Senator Lathrop, you mentioned frustration or maybe a little concern over the fact that would manager training be successful and would it solve the problem. I guess I would just call you back to councilman Spatz testimony. And I thought it was very impressive with what the city of Lincoln has done, not just with training, but with interaction with law enforcement and maybe that needs to be some part of it too. I don't know. But it does appear that manager training is working in the city of Lincoln. I guess to just sum it up, I think I'm safe in saying that you will get support of the concept of manager training from the industry--the retail industry, the restaurant industry, the grocery industry, the...but there will be significant opposition to training everyone. And that would just have to be our position. And so I would end just with saying that we're supportive of the concept, but we have to withhold our support of actual legislation until that legislation is introduced and we could review it. Any questions, I'd try to answer. [LR389]

SENATOR McDONALD: Thank you, Jim. Any questions? Seeing none, thank you. At this point in time we will open the seat up to anyone that would like to come and present. And could I have a show of hands of those that are thinking of presenting? We have one, two, three, four. Okay. So if you'd make your way to the front, hopefully we can continue on. Welcome. [LR389]

TIMOTHY REGLER: Good afternoon, senators. My name is Tim, T-i-m, Regler,

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R-e-g-l-e-r. I run the Parents and Communities Together program in Otoe County. We are a nonprofit organization that is dedicated to the cause of reducing teenage alcohol use in our county. We are funded through...we began five years ago through funding through the state incentive grant program, and we continue funding through the SPF-SIG program, which is kind of phase two of that state incentive grant program. More on that in a little bit. I became interested in this issue after the passage of the Teenage Alcoholic Liquor Liability Act. And I started to read the legislation and study it, and the one sentence dramshop provision was in that really jumped out at me that retailers would be held responsible for sales to minors that resulted in fatalities or personal injuries in terms of liability. And I got to thinking about the total ramifications of that in my county and I realize, wow, we have a situation where I thought of Germanfest that goes on every year in Syracuse where there's a beer garden. And I thought what would happen to the community of Syracuse in the event of a wrongful death lawsuit because one of the volunteers for Germanfest might have been ill-prepared or not properly trained in server training sold to a minor. We have street dances everywhere in Nebraska. What were the possibilities of a volunteer fire department simply ceasing to exist in a small Nebraska town because at their annual fund-raiser street dance somebody sold illegally to a minor. That minor got into a crash, there was a fatality, and the volunteer fire department of that community was sued in a wrongful death lawsuit. So I started to check some of these things out. And sure enough, those were all possibilities according to the insurance and legal people that I spoke with. Shortly after that, we had a compliance check in Nebraska City, and it wasn't a good one. Out of 24 businesses, we had 10 failures that night. And that was a real wake up call for me as well, and I thought, well, I better go talk to some business people. And I went to the business people and I said, well, what was up with that? What happened? And they said, well, one thing is if you'll look back, you'll see that two years ago we had a compliance check, it came on the heels of server training. And we had 100 percent success with our compliance check. We hadn't had a server training since. And now here we are with a 43 percent failure rate. And also they pointed out to me as has been pointed out earlier the transient nature of the employment, that it's very difficult to keep

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people and properly train people in those jobs. Well, I didn't necessarily agree 100 percent with those because I can give a server training in 30 seconds that will help you never to fail a compliance check in the state of Nebraska. It's simply the horizontal/vertical rule. But I didn't know that the public would foresee that. And so how can we take that argument off the table? And then also, how can we protect these civic organizations and people who hold the street dances and keep them from a lawsuit that could deprive a community of a vital service? And I thought, boy, we really lack--and I was two years ahead of it on this one--we really lack the capacity in Nebraska to properly train all the people who need to be properly trained in server training. And I thought, okay, well, how can I be part of that solution? And I realized that, hey, I'll just get trained. I said, if I can just get myself properly trained to teach server training in my own county, I can have a class once a month in Nebraska City. I can offer a class once a month in Syracuse. I can offer it free of charge, and I can train these people. It seemed like a pretty simple solution. And I've been working on it ever since, finding somebody who can train me. I would offer that the problem in capacity is not so much in people...in programs, it's training of trainers. But as I started bouncing this idea around with some of my colleagues, I think I have a solution or at least a step toward a solution that I would like to share with you today. There are some things that are necessary within this training. And one of the things...and I disagree with the gentleman who testified earlier, I think it is absolutely essential that these programs be offered free of charge because there's no guarantee on who's going to pick up the tab. And when we're talking about people who work in convenience stores and grocery stores, liquor stores, bartenders, waitresses, we're talking low-wage jobs. And if we charge \$25 for them to get certified, that's money they need. And so I think in all fairness we need to offer these programs absolutely free of charge. And I think the nice thing about what has happened through the state incentive grant is that it created all of these community coalitions around the state of Nebraska. And when I talked to my colleagues around the state of Nebraska who do the same thing I do, there's enthusiastic response of, yeah, we could teach these things. And so we've taken it a step further now and we're working. Another colleague of mine from Grand Island and I and another colleague from Burwell and

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somebody from North Platte...by the way, North Platte does have mandatory server training. It's a city ordinance in North Platte. So you might want to check and see how it's worked out out there. But they do have a program under way, and it is the law in North Platte. But we've also worked with them in seeing how we can develop a training of the trainers. Now, we've brought in officials from Health and Human Services. We've also entered into discussion with Liquor Control Commission just to try to find out what are the requirements necessary and how can we get these people trained. We still don't have all the answers, but I think there's a solution here in terms of narrowing this gap of capacity that faces us in the state of Nebraska. And the solution lies within our people. One of the things I didn't mention when I said about this being free of charge, I heard it said that people will get what they pay for. Those of us who do this work under the state incentive grant agreement and now the SPF-SIG agreement, which is federal dollars, we are stewards of taxpayer money and we take that very seriously. And I can assure you that the taxpayers will get exactly what they pay for should we be the ones to facilitate these trainings for our business community. Again, it just really seems to be...needs to be free. It needs to be in person. Every community is unique, and the idea behind the state incentive grant program in the first place was that local communities can best solve local problems. So the feds saw the wisdom in bringing the monies to the state to be distributed to local communities so the monies could be used directly on the problems. It seems to be the same thing that would make the server training successful at the local level. And that is is that we know the communities, we know the businesses, we have personal relationships with these businesses. We are all part of community coalitions. The business community is a vital part of those community coalitions. We are here to form partnerships. We're not adversaries; we are partners. We want to help these businesses protect their bottom lines, and I think we have the ability to show them how this can help their bottom line. And I would simple close with while I do want to make this offer that we have this capacity solution already within the state of Nebraska. And I hope you would possibly look at this because I think that as the server training issue goes forward in the Unicameral, there will be no lack of beverage industry programs at the ready to train the people in the state of Nebraska from the likes of

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Anheuser-Busch and Seagrams and Adolph Coors and what have you, and I don't think those are the ones you want to have training your servers. If you have people that are already servants of the state doing that, community organizers such as myself, I think you come out way ahead on the issue. Finally, while I do support this approach to server training, I just want to say that if you have dramshop, server training will follow. However, my fear is is that if you start with server training, dramshop doesn't necessarily follow. Dramshop makes it necessary through lowering liability costs and lowering other responsibilities that come with dramshop legislation, as Nebraska joins the vast majority of states who already have dramshop, server training them becomes necessary. And so you kill two birds with one stone that way. And while I support the concept of server training, I more heartily support dramshop. And I just...like I said, I've been working on this issue and trying to figure out a solution for a long, long time, so I just felt I'd be remiss if I didn't come up and at least express myself today on that.

[LR389]

SENATOR McDONALD: Thank you, Tim. Any questions? Seeing none, thank you for your presentation. [LR389]

TIMOTHY REGLER: Thank you. [LR389]

SENATOR McDONALD: Next. Welcome. [LR389]

DIANE RIIBE: Hi, Senator McDonald. I'm Diane Riibe, the director of Project Extra Mile. We are a network of coalitions across the state working to prevent underage drinking. I'm going to share with you just a little bit of our experience in terms of what we're seeing. We work and partner with law enforcement across the state to conduct the compliance checks. We don't conduct them, law enforcement does. But just to give you some of that experience. As just a small snapshot, in August and September, there were 22 businesses that failed compliance checks in our area, and 17 of those had been trained. When our law enforcement go in, part of the standard process is they ask if that

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clerk has received training, so the clerk actually there, making that sale. Of those 22 that failed, 17 indicated they had received training. Eight of them checked ID and went ahead and sold to the minor as well. By the end of this calendar year, we should in the Omaha metropolitan area have checked virtually all of the 1,400 businesses in that area. So we can provide some larger data, if that's needed. We have kept that information for some time. Didn't know that that might be immediately necessary, but can do that if we need. We would agree that training should include both the servers and the managers. I think you've heard that consistently. And according to the Alcohol Policy Information System, which is supported by the National Institutes of Health, 18 states in the country have mandatory server training, 22 states have voluntary. Nebraska's would be considered voluntary because we provide some type of incentive. As Mr. Rupe explained, we allow for kind of a mitigating of those penalties after they've had a violation if they can prove that they've trained their staff. So that's important just to note. I would say that in terms of the questions that have been asked about dramshop and the social host, which we're extremely grateful not only for the passage of that and look forward to the second portion of that, thank you especially for the conversation. It's extremely important, some good stuff has come out of today. But I think what we see is that oftentimes dramshop is certainly a deterrent. Unfortunately we may have to see the first case coming for the courts. And then of course that publicity really sets on notice all folks that in fact Nebraska is serious about this issue, serious about it from a civil liability perspective. There is some pretty good data out there in terms of research that indicates that dramshop is effective and does reduce the kinds of things that you've been looking at here today. I would also say that Nebraska has an affirmative defense in the Minor Liability Act that we put in. It's not based on server training. So that we just want to be clear about. There is an affirmative defense, but it's based on current statute. And I don't have that statute number memorized, but it's the statute that already requires clerks and businesses to check ID and to make certain that they have any reasonable person would believe that that young person attempting to purchase is either presenting a fake ID or and in some fashion is trying to trick that clerk. So there's already standards in the statute, and that's the piece that was actually inserted into the

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Minor Liability Act. So that is there. I would say because there were a large number of things brought up when Ms. Siefken was here, we would pretty strongly oppose retailers being allowed to capture the information that's in the Nebraska drivers license. I was in on the discussion, as was the industry at the time that those drivers licenses were created, and we adopted a different format. And there was a strong, strong desire that that information not be accessible and kept by anyone but law enforcement or people in an official capacity, which is why currently it's a felony to capture and keep and store that information. So we would, again, strongly oppose that. I would also say in reference to the fact that the majority of seniors or high school students would say that they have consumed alcohol at home. And I apologize. I hadn't planned on talking about this, but I think it's important to clarify since it's been brought up. When you're looking at where kids access alcohol, that's different than where they might consume it. So that they consume it in a private home, their own or someone else's, is not surprising. When you find access issues for those under 21, the younger a young person, and the average age of onset for consumption is between 12 and 13 years of age, those kids are accessing it most often from home. The older they get, the more apt they're to get it from either friends because their social network gets larger; when they're in college, anywhere. So those 18-, 19-, and 20-year-olds, anywhere. About 20 to 30 percent of all alcohol that's consumed is purchased by minors is actually obtained directly from retailers. So yes, there is an imbalance. The social part is important. But when we're talking about the retail, we ought to talk about the components that at least are necessary. I would say the piece that's somewhat been missing is that fact that training without enforcement. If we look at...if I had my wish, I would hope that this particular conversation was about the need for enforcement on this whole issue because we have a decrease in enforcement capacity in this state that could be very concretely, empirically outlined. And we also have a very concrete bit of information as to the increase in liquor licenses in the state in the last three to five years. It's about 25, 27 percent. At last note, we have six to eight FTEs in the state for the State Patrol that do liquor enforcement. I would tell you I can only think of one of those FTEs that is actually full time. The other individuals have multiple, multiple duties and are stretched beyond

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truly frankly human limit. It's virtually impossible to think of enforcement on this issue as a proactive step that's taken. And that's a continuing really very genuinely severe concern that we ought to have as a state. We know that that training without enforcement simply just doesn't work. And that's not our opinion, it's steeped in research. There's a good body of research that's out there already in terms of...I know Senator Ashford asked about the impact on DUIs, there's nine pieces of literature we can find for you pretty quickly that talk about the direct correlation between. In its multicomponent interventions, it's not simply a training intervention, it's multicomponent that includes training as part of that. But enforcement has to be an important piece of that. And so that data is there. It's really solid. It's pretty easy to get to, so. And I would just close by telling you that we have, at Project Extra Mile, secured grant dollars and we will be bringing together a working group to work over the next year and a half to look at some particular limited pieces of the Liquor Control Act to look at some of the gaps that we have in the state. We have been hoping that that would happen for a long time, and finally secured some grant dollars and will be doing that and beginning that process very shortly. And also we'll be contracting with a national expert to provide for us at the end of that process some really solid information about what's there, what we know works, and what's actually in our state in here where might some of those gaps be. So hopefully doing our part. [LR389]

SENATOR McDONALD: Thank you, Diane. Any questions? [LR389]

SENATOR ASHFORD: One question. Diane, what would be your thought on putting the enforcement back in the Liquor Control Commission and enlarging that enforcement capability? [LR389]

DIANE RIIBE: The second portion of it, Senator, enlarging the capacity... [LR389]

SENATOR ASHFORD: Well, so it's in the same place where the rules and regs are being... [LR389]

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DIANE RIIBE: Not supportive, not supportive. [LR389]

SENATOR ASHFORD: Do you think it should be an independent enforce... [LR389]

DIANE RIIBE Yes. [LR389]

SENATOR ASHFORD: Just out of...that's all right. I mean, go ahead. I mean, I'm just asking. [LR389]

DIANE RIIBE: Well, and this would be our opinion. And I know I will make fewer friends having said it. [LR389]

SENATOR ASHFORD: I don't know if it's that controversial of question, but maybe it is. [LR389]

DIANE RIIBE: Well, the regulatory portion of our liquor control and alcohol policy control in this state is heavily, heavily influenced by the industry. And to include the enforcement component into that would not seem like a wise move. [LR389]

SENATOR ASHFORD: Okay. Thanks, Diane. [LR389]

SENATOR McDONALD: Any other questions? Seeing none, thank you, Diane. Our next presenter, and I see we have one after that. Is that correct? Okay. Come forward. [LR389]

DOUG KRAMER: Hello, senators. I wasn't planning on speaking, but my name is Doug Kramer. It's D-o-u-g, last name is K-r-a-m-e-r, and I reside in Kearney, Nebraska, basically speaking as a parent, as myself. I'm also a certified TIPS trainer, have been for...actually next week it'll be exactly a year. Was trained in Des Moines and have

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taught...actually I have 96 students that I have trained. I did go through the training here in Lincoln as well. I think it's a great training program. I'm not going to be a person that says which program to pick. I'm going to leave that up to wiser folks such as yourselves. But I'm also an educator. I graduated from the University of Minnesota. I can say that since we don't play them in football. But I just think any training and education is going to help. I'd almost like to see the parents trained, and we've talked about that or heard that. But obviously if we have got 55,000 clerks that need to be trained, I know it's not going to work if all the parents trained as well. So I'm not going to go there with that. I also am the administrator for the Juvenile Services programs through the Buffalo County Attorney's Office. So I see firsthand youth that come with minor in possession offenses, position of marijuana. I appreciate the laws that you've done with that. That's made it I guess much easier for me as a job with youth coming in. Instead of them just paying the \$100 fine, or the \$50 fine and the \$44 court cost for possession of marijuana and going on with their life, they want to do diversion now because they want to get either treatment, they want to get help. We've got some issues not just with alcohol, there's some other drug things too. But I like teaching the TIPS class because it's interactive. The students do role playing which I can actually see that light bulb go on. That's why I prefer the TIPS. I know the Buffalo County Community Health Partners that I'm a board member of did a lot of research. Amy Minors (phonetic) when she was in our coalition. I know we had another individual that talked about that. We've also established responsible beverage server training. We actually have establishments that sell alcohol, meet with us and tell us what's working and what's not working. I take issue with not including them at the table because they're very involved, they have the product. We work with them. I just hate to see a prohibitionist approach. Didn't work 75 years ago. I don't know if it would work again. I know it won't. Training I think is needed. That's all I have to say. [LR389]

SENATOR ASHFORD: But it is needed. [LR389]

DOUG KRAMER: It is needed. How you guys do that or set that up, I think the more

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training we have, whether it's just the managers, I think the people that actually hand the alcohol to people, they make that decision. And you've heard that with people looking at the IDs. I also bartended for a year in Kearney. I know what it's like on a Thursday night when you have a line of ten people. You got to have them get their IDs out and get ready. And you got to make split decisions. But you've got to make the right decisions and the correct decisions. [LR389]

SENATOR McDONALD: Thank you, Doug. Any other questions? Seeing none, thank you for coming in, present. Welcome. [LR389]

MIKE KELLEY: Good afternoon. Madam Chair and Chairman Ashford, my name is Mike Kelley, K-e-l-l-e-y. I'm here, I'm a registered lobbyist for a small group of bars in Omaha and Lincoln called Responsible Beverage Operators of Nebraska. I'm personally a retailer. I've got part interest in six licenses, most of them called Clancy's up in Omaha, are restaurants up there. And also I have probably at least half of my practice is liquor law, hospitality, and I appear in front of the commission just about every month. And mostly I just want to make a couple of observations. First of all, I guess the industry has resisted mandatory training for a long, long time. The law ran around, the longer I've seen it, I think the time for mandatory training has come. For our part, we don't have any objection to mandatory training. Logistically though as Mr. Otto said, it is a nightmare. I mean you've got a lot of folks out there and you can't do it for free, you've got to have some expense involved. But it might be a good way to start with the managers and then maybe have a, you know, phase it in with the managers first, and then everybody. Because I agree with the TIPS person. I think you've got to train everybody. A chain link fence is only good as its weakest link. So you've got to train everybody. I don't think there's anyway around that. I think that's just part of it. Will it have any affect on drunken driving, you know, all that kind of stuff? I don't know. I mean, we have a death penalty and people still get murdered. So I don't know if that's ever going to be the effect. But I think the overall effect, what they were saying, the training affects everything as far as abuse of alcohol. So that's a great worthwhile goal. I don't know if we can measure it in

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lowering drunk driving or whatever, but I think you can certainly measure it with an overall societal goal of responsible use of alcohol. So I think it is time that we have it. A couple of questions that were asked, State Patrol moving over, going back to the Liquor Commission. I've been around long enough I've seen it done both ways. I think it was more effective, quite frankly with no offense to the current folks, when the commission had it. And contrary to Ms. Riibe's opinion, I think the commission does an outstanding job, and they beat up the industry, they beat up everybody without regard. So I think they do an outstanding job and I would gladly defend them even though they beat me routinely every month. And I think it was more effective because you had experts in the Liquor Control situation and they were tough and they knew what they were doing. A lot of the guys now that come into the patrol, they've been on other assignments for a lot of years, takes them a long time to catch up. Where otherwise you had people that were lifelong in the industry. So I think that's something you ought to look at. One of the things that I do agree with Ms. Riibe about though is we have a proliferation of licenses in the state. These really exploded which also probably exacerbates the need for training. Other states like Arizona, a situation we used to have in this state where you had to purchase a license. That may be a system it's time to go back and look at. Of course, that's self-serving on my part, but I think that's as a state policy, that's something we ought to look at. And, again, I think people on all sides have pretty much agree with that. When you start increasing licenses by 25 percent, you know, we don't need 4,300 liquor outlets in Nebraska. We really don't, so. And that is when the risky behavior, as Mr. Jergensen said a long time ago today, that's when the risky behavior starts with competition. So you know, I guess it's not real easy to do at first, but I think we have the capability to get it done. But you've got to give some lead time into it because that is going to be kind of a mess at first. So we need some lead time, but I feel very comfortable. Mr. Rupe has got a good handle on it and the commission is capable of putting together a real good effective program for everybody. With that, I'm mostly here for questions... [LR389]

SENATOR McDONALD: Thank you, Mike. [LR389]

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MIKE KELLEY: ...if you have any. [LR389]

SENATOR McDONALD: Senator Lathrop. [LR389]

SENATOR LATHROP: I got a few. It's good to have you here and to have you endorse the idea of mandatory training. Would you...and it sounds like you're thinking it ought to apply to everybody, but initially to the managers. [LR389]

MIKE KELLEY: That's kind of where I'm at. I think, you know, Kathy and everybody, they made a good point. I mean, you know, to start out with, maybe that's the way to go. But I think the goal has to be everybody because I think the TIPS person said it exactly right. It's the people that are trained. You know, you're only as good as the weakest link, and you've got to train everybody. And you can't always...maybe 75 percent of the employers will be faithful and train. But maybe some of them won't and I think, you know, if you make everybody have to be trained, then it's easy. [LR389]

SENATOR LATHROP: We talked about this when that dramshop bill was up last time. The two of us had an opportunity too, and I don't know why we couldn't train, use the community colleges to train the managers, allow the new employee to take the on-line course for 30 days. And then within 30 or 60 days, they go to a community college and take a two-hour face-to-face course. [LR389]

MIKE KELLEY: Excellent idea. [LR389]

SENATOR LATHROP: Somebody brought up a point, and you can help me out with the law on this, but if I work at a particular bar and I serve to a minor and the police for some reason realize that I've done that, who gets the ticket? Do you as the operator or does the person that actually sold... [LR389]

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MIKE KELLEY: There's two separate proceedings. Currently it is a Class I misdemeanor, punishable up to a year in jail to server to a minor. One of the problems is we don't make any difference whether you've made an accidental sale to a compliance check which maybe just an oversight or you misread the ID or something versus someone who knowingly did it. If you knowingly served a minor, that probably ought to be jail time. I'd be the first guy to concede that. But there aren't too many of those. That's pretty rare. Most of it's is just an accident. People just overlooked, didn't see it right. They weren't trying to do anything wrong, they just did it. So that's the one criminal proceeding. Then you have a separate action. The police forward that information to the commission. [LR389]

SENATOR LATHROP: Against the license. [LR389]

MIKE KELLEY: The commission then comes in with a whole different standard of proof and everything against the licensee. [LR389]

SENATOR LATHROP: If I'm the employee though, do I get the ticket? [LR389]

MIKE KELLEY: Yes. [LR389]

SENATOR LATHROP: Okay. That seems like a lot of incentive to obey the rules if I'm an employee in a bar. [LR389]

MIKE KELLEY: True, except the...and again, I hate to be caught agreeing with Ms. Riibe more than once in a day, but (laughter)... [LR389]

SENATOR LATHROP: I'm shocked. [LR389]

MIKE KELLEY: But the penalties and I'm a defense lawyer, I'm part of the problem. But frequently the courts don't take the, you know, sale to a minor too seriously. And of

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course, again, I think if you have a young person's first offense, maybe diversion or something is appropriate. But sometimes we've got second and third offenders and they still get \$100 fine. And it's kind of different from judge to judge, but they get off pretty easy. In fact, a lot of retailers get very upset about that because they're facing a \$4,000 fine and ten-day closure or something like that for something they didn't really do. They had a total failure or breakdown and in some cases even intentional--sold to their brother, sold to their friend. And they're getting punished huge fines and that person may be getting off with nothing or \$100 fine or next to nothing. And that's probably not appropriate either. The penalties are certainly severe enough. I mean, you don't need to make it a felony. I mean, the penalty is there, it's just not...you know, maybe there ought to be some minimum on a second offense or something. There's another issue to look at. [LR389]

SENATOR LATHROP: Okay. Thanks, Mike. [LR389]

SENATOR ASHFORD: I know I only have about 30 seconds. The Chairperson is giving me, be quick. (Laughter) Actually I think this is an excellent hearing, and I agree with you. There ought to be a limit on licenses and even if you get a benefit from that, I guess that's just the way it goes. But I do think we do have too many licenses. It needs to be capped. We need to go back to where we were so that we can better control the situation. [LR389]

MIKE KELLEY: It was so much better when I first started practicing law, and you actually had to come and you paid for a license and... [LR389]

SENATOR ASHFORD: Well, I remember in practice in those days, so what if somebody makes money on selling the license, that's not the point. The point is it controllable and I think we ought to go back to that, maybe we can legislate it. And then I agree with you on mandatory training. I think it does need to be beyond managers. And so I really appreciate your comments. [LR389]

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MIKE KELLEY: It might be a process getting there, but I agree. [LR389]

SENATOR ASHFORD: Well, yeah. And I appreciate your comments. [LR389]

SENATOR McDONALD: Thank you, Mike. Any other questions? Seeing none, are you our last testifier? Anyone else? We have one more. We're kind of hoping to be done by 4:00 because we'd like to watch Dr. Phil (Laughter) because we're... [LR389]

SENATOR ASHFORD: We always watch Dr. Phil. Don't we, Senator? [LR389]

SENATOR McDONALD: ...because of the Safe Haven issue which we're kind of involved in. [LR389]

SENATOR LATHROP: It's Oprah, Dr. Phil, that's our afternoon. [LR389]

SENATOR ASHFORD: We're all very wise, but we still need to watch Dr. Phil. [LR389]

TAD FRAIZER: (Exhibit 4) I will try to be succinct. Good afternoon, senators. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm with Updowntowners, Inc. here in Lincoln, and for benefit of the transcribers, that's U-p-d-o-w-n-t-o-w-n-e-r-s, all one word. And I'm going to touch on kind of an arcane area within this regulation that I think, Senator McDonald, you've touched on in floor debate and Senator Karpisek wondered. Some of the nonprofits that conduct festivals and events and fund-raisers that might be impacted under any legislation you consider. Updowntowners is a Nebraska nonprofit corporation based in Lincoln. We're primarily volunteers. Our mission is to enhance the vitality of downtown Lincoln through the production of festivals and special events. We put on things like the Celebrate Lincoln Ethnic and Cultural Festival. For 15 years, we put on the July Jam Music Festival in summers. We also staged the Star City Holiday Parade that's coming up in about four weeks here in Lincoln. At some of our events, we serve

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alcohol both as an amenity and as a revenue source, at some of our events we do not. But for those purposes we do get special designated licenses, formally referred to as special designated permits under the Nebraska Liquor Law. And I passed out the relevant section. It's 53-124.11. And you'll notice I've underlined towards the bottom: All statutory provisions relating to retailers will apply to those of us who receive the special designated license. In affect, we become retailers for a day or actually we're allowed up to six calendar days in the course of a year. So anything you do as far as mandatory training with regards to brick and mortar retailers, if you will, would also apply to any church, any nonprofit organization, any political party that gets its own special designated license. And as part of that process, you know, people always say they want events--as an amenity, as an improvement to quality of life, as economic development, as attracting and keeping, you know, young people in Nebraska and such. Flip side is people don't want to pay for events as much through tax dollars and such, so you have to generate revenue from your events. Obviously there's gate admission, but a large portion of your revenues come from food and beverage sales, both alcohol and nonalcohol sales. So we do obtain these licenses. As a volunteer group, we obviously need a lot of bodies to man these events. For some of our events that run one or two days, we'll have between 600 and 700 possible shift slots, you know, a two to three-hour shift that needs to be staffed by one person. Now, you may get multiple people in the course of an event. But theoretically if you only had one person per shift, you'd be going through 600 or 700 people. Obviously you're not getting that many from your own membership. We often recruit from the community to help staff our events. And that's not purely alcohol sales, that's everything from gates to concessions to, you know, backstage crew, anything like that. But it does require a great community outreach for these events. And it's difficult enough as is recruiting volunteers, you know, when you need 600, 700. You're begging, you're pleading. You're calling their friends and neighbors. You're putting out things on the Internet and such. It's difficult to imagine saying to people not only are we asking to come in and give three hours of your time on a hot summer day or a cold winters night, but we also want you to go through three hours worth of training and be certified in advance of selling beer at the bar or

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something. We've had a very constructive relationship with both the Liquor Control Commission and the Lincoln Police Department. We do conduct training sessions for our volunteers. Over the years, we've done it either through Lincoln Police Department or through local representatives of the Responsible Hospitality Council and we try to train as many people as possible. But I don't think it is feasible for us, or any other event for that matter, to be able to guarantee that we can train every single person who might somehow be involved in alcohol service. Just the nature of volunteers showing up for events. Sometimes you're long on volunteers. Sometimes people don't show up and you have to pull people over from another position, can you help staff this bar or something. So we can't guarantee that everyone we'd like to get trained would get trained. Unlike an employment situation, obviously we don't have either the incentive of paying people or the club of saying your pay is going to be docked if you don't get trained within a certain time period or whatever. So we do want to make you aware of that. That's just a feasibility fact of life situation that we have to deal with and that you would have to deal with in considering what you legislate with. I have attached to my handout the list of rules and regulations that the Nebraska Liquor Control Commission already applies to SDL holders and the type of events we do in terms of wrist banding, in terms of fencing, in terms of not drinking while on duty, in terms of having minimum security personnel. Some of these rules and regs are subject to waiver or modification and we have obtained various waivers and modifications based on the particular circumstances of our events. We've had a very good track record with Lincoln Police Department and the Liquor Control Commission. So on some of these things they've let us bend, maybe not wristband everyone for events where there are not a lot of alcohol consumption or maybe wristband at different points within the perimeter as compared to some of the basic regs. But we do have a fair number of rules and regs we do try to comply with. And although we did not hear about this proposal to simply come up with manager training prior to this hearing really, to me that would be a more feasible approach for holders of SDLs to have at least some managers trained. We do have kind of bar captain supervisors who try to supervise our bars who go through additional training internally or who are experienced. And we think that it would be a more feasible

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route to follow for people in events like our. And I'd be happy to answer any questions you might have. [LR389]

SENATOR McDONALD: Thank you, Tad. Any questions? [LR389]

SENATOR LATHROP: Nope. [LR389]

SENATOR McDONALD: Seeing none, but I think that's a great observation and I think that's something that needs to be looked at when we move forward for the senators that are still going to be here because I think weddings and those types of things, I think you have to make sure that the training is acceptable for those in those different positions. Thank you. [LR389]

TAD FRAIZER: Thank you very much. [LR389]

SENATOR McDONALD: Thank you. And that closes the hearing today, and thank you for coming. [LR389]