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General Affairs Committee
February 09, 2009

[LB198 LB355 LB404 LB600]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 9, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB198, LB404, LB355, and LB600. Senators present: Russ Karpisek, Chairperson; Kent Rogert, Vice Chairperson; Colby Coash; Tanya Cook; Merton "Cap" Dierks; Annette Dubas; Mike Friend; and Scott Price. Senators absent: None.

SENATOR ROBERT: Welcome to the General Affairs Committee. I am Senator Kent Rogert of Tekamah. I am the Vice Chair of the committee. I'll first introduce the members of the committee that are present. Starting on my far right we have Senator Coash from Lincoln; we have Senator Friend from Omaha; we have Senator "Cap" Dierks from Ewing; we have legal counsel Josh Eickmeier; and Senator Dubas from Fullerton; and Senator Cook from Omaha; Senator Price from Gretna; and our committee clerk is Joan; and our page today is Courtney Ruwe of Herman. We're going to hear four bills today; LB198 and LB404 we're going to hear together. But we'll have each one introduce them separately, and then when you...as you introduce them, please specify which bill you are doing. I'm going to ask everybody to turn off their cell phones or put them on vibrate. We'll start off with support testimony, followed by opposition, and then some folks in neutral, if they wish. If you're planning on testifying at all, please pick up a sign-in sheet at the table in the back of the room by either entrance. Fill out the sign-in sheet before you testify, and when it's your turn to testify, turn in the sign-in sheet to one of the pages and she'll get it to the committee clerk. If you have handouts, please make sure you have ten copies, and give it to the page for everybody in the committee. When you testify, speak clearly and spell your name. If you don't spell your name, I'm going to have to stop you and have you do that for us. Okay, let's get going. Senator Stuthman, you want to come up first with LB198? And then Senator Cornett, you can follow. [LB198 LB404]

SENATOR STUTHMAN: (Exhibit A) Thank you, Senator Rogert and members of the General Affairs Committee. For the record, my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District. I have introduced the bill LB198, and LB198 creates the Reduced Cigarette Ignition Propensity Act. It would require that all cigarettes sold in Nebraska meet the performance standard of the American Society of Testing and Materials Standard, which is spelled out in detail in Section 3 of LB198. Section 4 requires manufacturers to submit to the Fire Marshal certification in writing stating that each cigarette has been tested and meets the performance standards set forth in Section 3. Each cigarette listed in the certification shall be described with the brand or trade name; style; length in millimeters; circumference in millimeters; flavor; whether it is a filtered or non-filtered cigarette; package description; whether it has been approved, markings; and the name, address, and phone number of the lab that conducted the test, along with the date that the test took place. The certification shall be made available to the Attorney General and the

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Department of Revenue. When the manufacturer submits the certification, they shall pay to the State Fire Marshal a fee of \$1,000 for each brand family of cigarettes. The fee shall apply to all cigarettes listed in the brand family identified in the certification, and shall include any new cigarettes certified within the brand family during the five-year certification period. Section 4 also creates the Reduced Cigarette Ignition Propensity Fund. The fund shall consist of all certification fees submitted by the manufacturer, in addition to any other funds made available for such purposes. The Fire Marshal shall use the fund to carry out the act. Section 5: cigarettes certified by the manufacturer shall be marked to indicate compliance with the requirements set forth in Section 3. They can be either any marking in use and approved by...for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes, as such standards existed on January 1, 2009, or the letters "FSC" which signifies Fire Standards Compliant. The manufacturers shall use only one marking and shall apply these markings uniformly for all packaging. The manufacturer also shall provide a copy of the certificate to all wholesale dealers and agents to which they sell cigarettes, and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer for each retail dealer in which the wholesale dealer or agent sell these cigarettes. Wholesale dealers and agents shall provide a copy of these markings received from the manufacturers to all retail dealers in which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall submit to the Fire Marshal, the Department of Revenue, and their employees to inspect markings of cigarette packaging. Section 6: A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes in violation of Section 3 of this act shall be liable of a civil penalty not to exceed \$1,000 for each sale of such cigarettes for the first offense. The civil penalty or any subsequent offense shall not exceed \$10,000, except that this penalty shall not exceed \$50,000 in a thirty-day period. The civil penalty for retail dealers who knowingly sell cigarettes in violation of this section of this act shall not exceed \$250 for the first offense, and for any subsequent offenses it shall not exceed \$500, except that this penalty could not exceed \$25,000 during any thirty-day period. Any corporation, partnership, sole proprietor, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes false certification pursuant to Section 4 of this act shall be liable to a civil penalty of \$75,000 for false certification. Any person violating any of these provisions of this act shall be liable of a civil penalty not to exceed \$10,000 for a first offense, and to a civil penalty not to exceed \$5,000 for any subsequent offense. Section 7: The Fire Marshal may adopt and promulgate rules and regs necessary to carry out this act. The Tax Commissioner may inspect such cigarettes to determine if the cigarettes are marked properly, and if not, they shall notify the Fire Marshal. The reason that I have brought this bill forward is by the request of a cigarette manufacturer, and I think it's kind of a coincidence that since this bill was introduced, you know, we have lost one individual to a Lincoln fire that was because of...she had left a cigarette lay on a mattress. And then a few days later...a week later, just several weeks ago, two people lost their lives in a Grand Island trailer house fire. I did have the pages pass out some information as to what states already

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have it and some...when it was signed into law. Those are my opening comments, and I would try to answer any questions if you have any. [LB198 LB404]

SENATOR ROBERT: Thank you, Senator Stuthman. Are there any questions from the committee? Senator Dubas. [LB198 LB404]

SENATOR DUBAS: Thank you, Senator Rogert. This was really interesting to me, because I had never heard about it before until the bills came into play. So just looking at the number of states who either already have this legislation or who are in the process of looking at it...it looks like most of the nation is moving that direction anyway; so am I to understand that there are cigarettes made that don't meet these standards and then there are cigarettes made that do meet these standards? [LB198 LB404]

SENATOR STUTHMAN: Yes, at the present time there are. There are...the cigarettes that are made for the states that have regulations already, they have to comply by law there. But there is the possibility, which I am positive of here in Nebraska, there may be cigarettes sold that are compliant with it already, but there's a lot of them that do not have that paper in there that allows them to go out if they're not...air is not going through them on a regular basis. [LB198 LB404]

SENATOR DUBAS: Okay, that was my next question. Is there the possibility that those cigarettes are already being sold here but we...one way or another it doesn't matter because... [LB198 LB404]

SENATOR STUTHMAN: Yes, that's right. [LB198 LB404]

SENATOR DUBAS: ...we don't have this in place. Okay, thank you very much. [LB198 LB404]

SENATOR ROBERT: Senator Price. [LB198 LB404]

SENATOR PRICE: Senator Rogert, thank you. Yes, Senator, I had a question on the expansive nature of penalties laid out in this legislation. Is that currently reflected across all the states? Is that more stringent or less stringent? Could you give some...having a law and having the penalties be the same as outlined here are not the same thing. [LB198 LB404]

SENATOR STUTHMAN: And in my information...and I will apologize, I do not have all the information as far as what other states have as far as penalties or anything like that. That is a little bit of the difference between my bill and the next bill, Senator Cornett's bill, that was brought to her by the fire department...or the State Fire Marshal. There's quite a difference in the penalties, into the fees, and everything like that. But these are things that we need to work out, as far as what will be the amount of charge for

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certifying these cigarettes, penalties, and those are the issues that need to be ironed out yet at the present time. [LB198 LB404]

SENATOR PRICE: And which brand is the one that is currently compliant with this? [LB198 LB404]

SENATOR STUTHMAN: The company that brought this bill to me was the Reynolds Company. [LB198 LB404]

SENATOR PRICE: And do you perceive that this would, perhaps, give them a market advantage--if you would have this pass--over the competitors? [LB198 LB404]

SENATOR STUTHMAN: I don't feel it would, but I'm sure that there's a possibility that there are some very small companies that maybe will not be able to pay the fee to get certified. And that's why I think, to get certified, we don't want to make that fee so terrible high. Because I think cigarette companies and cigarette smokers, people that buy these cigarettes, will demand that those cigarettes would go out when they just happen to fall down. And I think it's an issue also which...you know, I serve on the fire department, and I've gone to many fires where the cigarette was thrown out in the road ditch in a very dry time and it's burned a quarter-mile of road ditch. [LB198 LB404]

SENATOR PRICE: All right, thank you. [LB198 LB404]

SENATOR ROBERT: Any other questions? Thank you, Senator Stuthman. [LB198 LB404]

SENATOR STUTHMAN: I will waive closing on mine. [LB198 LB404]

SENATOR ROBERT: Senator Cornett, do you want to open on LB404? Go ahead. [LB198 LB404]

SENATOR KARPISSEK: (Exhibit B) All right. I will read into the record a letter of support from the American Lung Association on LB198 and also on LB404. Thank you. Senator Cornett, whenever you're ready. [LB198 LB404]

SENATOR CORNETT: Good afternoon, Senator Karpisek and members of the General Affairs Committee. My name is Abbie Cornett, and I represent the 45th Legislative District. I'm here this afternoon to introduce LB404. LB404 requires all cigarettes sold in Nebraska, on or after July 1, 2010, to be tested for and meet specified requirements for reduced ignition propensity. LB404 was drafted in accordance with model legislation which is based on New York State law and has been adopted by 37 other states. Cigarettes have long been the leading cause of fatal fires in the United States, killing nearly 900 people and injuring 2,500-3,000 annually. In Nebraska, the Fire Marshal's

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office has reported that in a two-year reporting period, 2007 and 2008, 74 fires were started due to burning cigarettes, and tragically there were two civilian fire deaths. Already in 2009, there have been three deaths, eight civilian-related injuries, and \$970,000 in property loss. It has been documented for decades that cigarettes are the leading cause of fatal residential fires in the United States. For over a quarter century, attempts have been made at the state and federal level to regulate cigarettes and fire safety. These efforts have usually been advanced by public health and tobacco control organizations, with fire service playing a significant role. In 2004, New York State became the first political jurisdiction in America to require cigarettes to meet a fire safety standard. Data released after the passage of the New York law has indicated a significant reduction in fire deaths as a result of this passage. To date, 37 states have enacted reduced ignition propensity legislation. Of those 36 states, plus the District of Columbia, 22 state laws have already become effective; 9 become effective during 2009; and 6 additional states become effective in 2010. A reduced ignition propensity cigarette has a reduced propensity to burn when left unattended. The most common fire safety technology used by cigarette manufacturers is to wrap a cigarette with two or three thin bands of a less porous paper to act as a speed bump to slow down the burning cigarette. If a safer cigarette is left unattended, the burning tobacco will reach one of the speed bumps and self extinguish. Reduction ignition propensity cigarettes are a proven, practical, and effective way to eliminate the risk of cigarette-ignited fires. The use of such cigarettes will help prevent thousands of cigarette-ignited fires each year. The use of reduced ignition propensity technology provides a tremendous reduction in the risks by cutting off the burning time before most cigarettes are able to ignite things like furniture or bedding material. The bill is comprised of four major sections. Section 3 establishes the criteria for flammability, by requiring cigarettes that are sold in Nebraska to meet the requirements of the American Society of Testing and Materials, ASTM Standard E2187-04, the Standard Testing Method for Measuring the Ignition Strength of Cigarettes. Section 4 outlines the certification process that requires cigarette manufacturers to verify the state that the cigarettes have offered for sale in Nebraska meet the provisions of the ASTM Standard. This section also provides for an assessment of fees to be paid by the manufacturer to the state to defray the actual costs of enforcing the act. Section 5 requires markings on cigarette packages to indicate the compliance with the act. Section 6 outlines the penalties for noncompliance with the requirements of the act. Senator Price, I believe you ask where this...I wasn't sure if you were asking where Senator Stuthman's or Senator...my bill related in regards to what other states have been doing. The bill that I am offering has been brought based on model legislation that has been adopted in 37 other states in regards to the fees and requirements addressed in the bill. And the bill was brought by the State Volunteer Firefighters Association. Cigarettes are the leading cause of home fires in Nebraska and in the nation. However, we have the opportunity to prevent these terrible situations through simple but effective technology found in reduced ignition propensity cigarettes. I'd like to thank you for your time and consideration on LB404. There are several people here today that will speak about the type of cigarette discussed in LB404, and I would

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be happy to answer any questions you have at this time. [LB198 LB404]

SENATOR KARPISEK: Thank you, Senator Cornett. Do we have any questions for Senator Cornett? Okay, we will take the proponents, and as you come up, please state which bill that you are testifying for or both. And I assume, Senator Cornett, you intend to close? Or hold...you're going to waive? [LB198 LB404]

SENATOR CORNETT: Waive. [LB198 LB404]

SENATOR KARPISEK: Well, how about you waive? [LB198 LB404]

SENATOR CORNETT: All right. (Laugh). [LB198 LB404]

RUTH ALBRECHT: (Exhibit C) I'm testifying for LB404. My name is Ruth Albrecht, spelled R-u-t-h A-l-b-r-e-c-h-t. I have been a burn nurse at St. Elizabeth Regional Burn Center for over 20 years with about half of that time also coordinating outreach programs for the state of Nebraska for the Burn Center. Today, I am here in support of LB404 introduced by Senator Cornett, which would require the adoption of cigarettes in the state of Nebraska to have a reduced ignition propensity. As a nurse in the burn unit, I have seen lives lost and forever changed by fires that have been started by smoldering cigarettes. I would like to share a personal story with you. I once cared for a patient who sustained a burn injury. She was very lucky that her injuries were minor. However, she was devastated about the damage to her apartment, and felt very responsible for this fire because it occurred when she was smoking a cigarette and had a seizure, which caused the fire to start. Her children were at home and her children, thankfully, knew what to do and got her out of the fire safely; and that's why she is alive today. This legislation could prevent this type of fire and injury from occurring again. I don't believe that we can abolish cigarette smoking, but doesn't it make sense to make the habit safer for its users and those who are around them? In addition, please consider those firefighters that have put their lives on the line every day in the line of duty. We all recognize that they take on risks in the course of their jobs. However, should we not make their risk less if there is technology available to do so? If low propensity cigarettes were required, then the fires caused by smoldering cigarettes would be reduced, thereby reducing the risk of injury and death to our firefighters. The technology has been available to supply this type of cigarette for many years, and many states have already adopted legislation, which you've already heard. Regarding reduced cigarette ignition propensity, Canada has adopted legislation to protect all of its residents, so they have it completely. Please consider passing this important lifesaving legislation. Thank you for giving me this opportunity to talk to you today. [LB198 LB404]

SENATOR KARPISEK: Thank you, Ms. Albrecht. Do we have any questions for Ms. Albrecht? I guess if not, I will ask, do you have any statistics on how many of the burn unit patients come from a cigarette-smoldering fire? [LB198 LB404]

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RUTH ALBRECHT: Not exactly. I mean, I haven't for sure put together those statistics recently. Last year we had a death from the...from cigarettes. We've also had a number of patients who have come in who have been smoking while they're on oxygen and, you know, they'll put down their cigarette, and so I guess we've had several deaths this last year related to that, in particular, so. And it's hard to know how many other fires actually were started out there by cigarettes which maybe we didn't know in the end, so. [LB198 LB404]

SENATOR KARPISEK: Okay, thank you. [LB198 LB404]

RUTH ALBRECHT: Um-hum. Thank you. [LB198 LB404]

SENATOR KARPISEK: Any other questions? Thank you for your testimony. Next proponent. Welcome. [LB198 LB404]

JERRY STILMOCK: (Exhibit D) Thank you, Senator. My name is Jerry Stilmock, J-e-r-r-y; Stilmock, S-t-i-l-m-o-c-k; registered lobbyist on behalf of my client, the Nebraska State Volunteer Firefighters Association, requesting that...we have requested that Senator Cornett introduce this bill. Those conversations started back last summer, actually May 2008, with Senator Cornett. Certainly the men and ladies of the volunteer fire service and rescue service thank her for introducing this important measure. The origination of the bill...if I may, just a side note. I requested a gentleman by the name of Dave Nuss, N-u-s-s...he was here to testify two years ago in 2007. He is traveling from Denver, and in respect to the committee I have turned off my cell phone, but he is traveling from Denver--he's delayed--my cell phone's vibrating at this very moment and I'm hoping that he's telling me that he landed in Lincoln. So I'm not going to draw out the record to any length that it becomes uncomfortable for the senators to listen to me, but I'd be most appreciative, and I'd indulge the Chair, if it's possible, that if Mr. Nuss does show up and we've already moved on to opposition or perhaps neutral--if there is any opposition I'd be surprised--but if there is any neutral testimony...and I don't know that it's even possible, but given the length of his travels to be here with us today...he brings a wealth of information, and I just ask the Chair to consider if it's possible to bring him in at another point in his testimony due to his delay in travel. He was supposed to be here at noon. Thank you. [LB198 LB404]

SENATOR KARPISEK: Sure. [LB198 LB404]

JERRY STILMOCK: The predecessor to this bill was LB584 that Senator Don Preister brought in 2007, so it's...this is the second time around for this type of legislation. And the history is such that our association has a fire prevention committee. And that committee brought to our association as a whole this piece of legislation during the summer of 2007 saying, look, Jerry. At that time, there were six states that followed the

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lead of New York, that introduced this type of legislation and actually adopted it. And we need some help. Because we have people out there in the communities that are killing themselves, or injuring themselves, or having property damage, when there is an item out there that we can stop the ignition source. Ignition source and fuel: If we look at fuel, just think back in your own minds, growing up. What has changed on the fuel side in people's homes? Mattresses, bed...sleep time attire, night time attire by children; bedding; sofas. The fuel concept has changed. But we're still...Nebraska's still behind on the ignition, that part of the fire that we're talking about today in these two pieces. I have a handout for the committee. I wanted to include updated information, and as those items are being circulated...those to my right are getting them first so I want to be courteous to those on my left. The fiscal note from Senator Preister's bill, LB584, looks solely upon cash funds. And I think that's important because LB404, brought by Senator Cornett, it shows up as General Funds. And I'm not quite sure...I don't know that it's in my protocol to go to the fiscal analyst and say, what happened? 2007, 2009...explain it to me, because I want to be able to explain it to the senators. But yet I think it's important to note, at least, that in 2007 when the predecessor was introduced, it was all cash funds. This year it shows up, if I'm correct, as General Funds. And certainly everything that the manufacturer pays is going to come in the form of cash funds. So with that as a side note, I want to address the first page of my handout, and that actually gives an illustration of what this particular cigarette, type of cigarette, looks like. I've asked Mr. Nuss, traveling in from Denver, to actually bring a couple of packages of the cigarettes so that any of you that are inclined to indulge have that opportunity at another point in time. The second page refers to those states that have adopted the fire safe, safer cigarettes. And you see the listing there in four different columns: 37 states have already passed legislation similar or following LB404, including the District of Columbia. The next item in my handout lists a series of articles of the tragedies that have happened, most recently, that I was able to document. And I share those with you because already in 2009, we've had three fire deaths...three deaths related specifically to fires being ignited by smoldering or improperly discarded cigarettes. So I wanted to share that information with you. I've taken the courtesy of highlighting so it jumps out, so we see the tragedies that families and communities have suffered through. And lo and behold, of course, we just started our session. Senator Cornett, I'm not even sure if she introduced LB404 at the time, but it was certainly in the mix, and we had the tragic loss here, only two blocks away in an apartment...high-rise apartment structure for the elderly and low-income; and that lady lost her life. I don't need to go through and dwell, but I want to make sure that...there was a death in Nebraska in 2008--a fire out of Auburn. And in that fire, the wife was killed, her husband was critically injured. And in 2007, the last article in your packet, Senators, a gentleman out of Norfolk, Nebraska, was killed, all under investigation that showed because of improperly discarded cigarettes. The standard of what this testing and how this happens in LB404, Senators, if I may...almost 50 years ago, at the federal level, there was an attempt to pass legislation nationwide, so it would be one footprint covering the whole country. That was not successful. So individually, states started picking it up, based upon the push of

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those having to deal with the aftermath of ignited cigarettes, or cigarettes left unattended, or smoldering cigarettes. New York took up the ball, and there is documentation--I have not included it in the report or the information that I've shared with you this afternoon, but the fire deaths in New York have been reduced. The testing method, of going in and testing the cigarettes, initially...we'll just fast forward. I don't know of a manufacturer today that has any problems with the testing method. It was a method that was created back in 1993; it's the same method that's used today. The manufacturers are familiar with it. The Fire Marshal's office would serve as a conduit to make sure that the piece of paper that says the cigarettes are certified is properly filed with the Fire Marshal's office. A couple of the items that are in the two bills: LB404, brought to you by Senator Cornett, refers to a three-year recertification process in which the manufacturers would have to come back; after the initial year certification, they would recertify every three years. That was one of the areas of contention before, and unfortunately that's one of the areas of contention, at least discussion, today. Contention's kind of a negative, strong word, so one of the areas of discussion. In the other bill by Senator Stuthman, it's five years. I can just tell you the important thing to the volunteer firefighters and the volunteer rescue personnel across the state is to pass legislation. I think the Fire Marshal's office and, you know, what the impact is on legislation that would, hopefully, be adopted...I can tell you that the three-year recertification process is what's in the model act. And obviously, if the recertification is pushed out to four years or five years, that would have an impact on the cash funds collected by the Fire Marshal's office. The amount of the certification, I'll just share with you, some states pay for certification on per cigarette; some few states pay for certification based upon a brand family. Bear with me...there's approximately, I'm told, 700 cigarettes that are produced, manufactured, and available for sale; there's about 170 brand families. So a brand family, if you take Marlboro and the different types of, you know, whether it's menthol or whatever that would be...whatever carries the Marlboro, that would be in a brand family and that would, under both bills actually, show up at \$1,000 per brand family. A great many of the states don't, as I said to you earlier, a great many of the states do not go with brand family, they go with each cigarette. And typically the cost is \$250 per cigarette. The other area of difference is, in LB404, because it follows model legislation, it has a provision that the Fire Marshal, on an annual basis, could increase the amount of the certification fee. And we know from what's gone forward in Senator Langemeier's bill, LB105, there was a cap put on there for what the Game and Parks could do in terms of increases so they wouldn't jump out of the moon. And I just throw that offering for those senators that...I happened to catch LB105 and there's a mechanism in there to put a cap on there, so if that's a concern to the senators or listening to the testifiers that would...with the Reynolds Company that would support LB198 instead of LB404. This bill was heard last time in 2007 in front of the Health Committee, and we're hopeful that not only with the change of scenery over to General Affairs, for our interests, but also for the people of the state of Nebraska, that you all see fit to take the measure. And let's not be the last state, I'd request of you, let's not be last state to do this; let's be number 38. Thank you, Senators. [LB198 LB404]

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SENATOR KARPISEK: Thank you, Mr. Stilmock. Any questions? Senator Friend.
[LB198 LB404]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Stilmock, you said that in New York, after this bill was passed, that fire deaths were reduced. Wouldn't it be true, from 2004 to 2009 that there are probably less people smoking? I mean, there were less...there are a lot less people smoking in 2009 than there were in 2004. It looks like the effective date of the bill in New York was June 2004. I mean, are there benchmarks...I've got reams of paper here, and I don't have any benchmarks or anything indicating any studies or empirical data that show any significant changes between 2004 or 2005 in New York. I guess I'd like to see that. [LB198 LB404]

JERRY STILMOCK: I'll be able to put that together, Senator, and provide that to you and the members of the committee. I'd be glad... [LB198 LB404]

SENATOR FRIEND: Okay. [LB198 LB404]

JERRY STILMOCK: Yes. [LB198 LB404]

SENATOR FRIEND: Thanks. [LB198 LB404]

JERRY STILMOCK: Thank you. [LB198 LB404]

SENATOR KARPISEK: Senator Dierks. [LB198 LB404]

SENATOR DIERKS: Thank you, Senator Karpisek. Jerry, this speed bump...the band?
[LB198 LB404]

JERRY STILMOCK: Yes, sir. [LB198 LB404]

SENATOR DIERKS: Is that a chemical or is that a extra piece of paper or what's the...
[LB198 LB404]

JERRY STILMOCK: Yes, thank you for asking. It's an extra piece of paper that has different...less porous, more porous...the bands are just bands of paper. That's all it is. It's not chemical related whatsoever. [LB198 LB404]

SENATOR DIERKS: Okay, thank you. [LB198 LB404]

JERRY STILMOCK: Yes, sir. [LB198 LB404]

SENATOR KARPISEK: Any other questions? Senator Dubas. [LB198 LB404]

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SENATOR DUBAS: Thank you, Senator Karpisek. Thank you, Mr. Stilmock. So these are just pretty uniform standards that these cigarettes would have to meet? [LB198 LB404]

JERRY STILMOCK: Absolutely, yes. [LB198 LB404]

SENATOR DUBAS: So there's not different types of processes that it would go through. So I guess what I'm trying to get at is, there's an inspection process here to make sure that the cigarettes have the stamp and all that...that other thing. As we continue to move towards, what seems to me to be a nationwide move this direction would that lessen the need for inspection as we look at these? [LB198 LB404]

JERRY STILMOCK: Senator, I think perhaps it would. The nice...if there is a nice thing, if that's the appropriate word, but...I visited with the Department of Revenue in regard to your questioning. The Department of Revenue now, be for taxation purposes on cigarettes, has a work force out there that's already inspecting. And the Department of Revenue inspects for a lot of things; they don't go out just checking for cigarettes to make sure the stamp is affixed to each package. But in speaking with Cliff Thomas of the Department of Revenue here in Nebraska, he had said, yes, we will just add on to another item of which we inspect. So I'm anticipating that the Department of Revenue...actually, in their fiscal note, they said they could deal with the measure without having any increase of expenses on its part. But I think if there are...and I asked him, he wasn't able to provide it to me in the short phone call, but whatever number of inspectors out there now inspecting for whatever they inspect with, if they inspect now for safer cigarettes...I don't know if we will get to the exact issue of what you brought up because they will be inspecting for other issues. But it was good to hear from the Department of Revenue that they don't expect any other additional costs for their involvement in this type of legislation should it be adopted, Senator. [LB198 LB404]

SENATOR DUBAS: Okay, thank you. [LB198 LB404]

JERRY STILMOCK: Thank you. The other correlation to that is Mr. Nuss--I'm still going to hope that he arrives in a timely manner--but he has indicated that in the states...he goes on a regional basis for the United States, and he has indicated that in other states, their Fire Marshal's office has the certification...person in charge of the certification process...it has amounted to a half or at the most a full time employee in terms of monitoring and keeping track of the records and so forth for certification. Senators? [LB198 LB404]

SENATOR KARPISEK: Any other questions? Mr. Stilmock, if this is implemented in so many other states, could there be one central location--a test lab, something that would do that and certify, kind of like UL tested, rather than each individual state having the

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expense of testing it on their own? [LB198 LB404]

JERRY STILMOCK: A very good question, Senator, because there will be no testing by the state of Nebraska. As long as the certification comes in from the manufacturer, Phillip Morris, Reynolds...they show that that certification has met...was carried out according to the tests adopted in Nebraska. There is no separate testing in Nebraska. It's merely the manufacturer signing off and certifying that we followed the requirements of LB404, and those requirements are certified as to being true and accurate. So very good question, and the clarity is so very important. There is no independent testing in Nebraska. The certification is based upon tests that have already been completed. The manufacturers are already up to speed and they are already, as we've heard, generating...manufacturing these cigarettes already, across the country. [LB198 LB404]

SENATOR KARPSEK: So I guess my question is then, the \$1,000 for each brand family for the act, what does that go toward? [LB198 LB404]

JERRY STILMOCK: Toward the Fire Marshal to generate funds for the...I assume the cash fund for the Fire Marshal in order for him to go out and hire one or one and one-half FTEs, as he's indicated in his fiscal note. [LB198 LB404]

SENATOR KARPSEK: Just real quick, it says here, "the actual costs of processing, testing, enforcement, and oversight activities required," so... [LB198 LB404]

JERRY STILMOCK: Yeah, that word "testing." There will be no testing in Nebraska. The only way there would be testing in Nebraska, senators, is if a manufacturer says, you know what? We need to update this puppy since 1993; we have a new test and we want to come in and do that. They sure as heck aren't going to do it in Nebraska. They're probably going to start in New York or in a more populous state. [LB198 LB404]

SENATOR KARPSEK: I guess my...the thousand dollars for each brand seems rather high, and that's why I asked. [LB198 LB404]

JERRY STILMOCK: It was a piece of...going back and forth, of trying to get Senator Preister's bill finalized last year so we wouldn't have to come back again this year to take your valuable time. But the manufacturer was resistant of paying \$250 per cigarette. So there was movement, actually, that the cigarette manufacturer involved had proposed \$1,000 per brand family, and so that's at least how that number was inserted in LB404, Senator. [LB198 LB404]

SENATOR KARPSEK: Okay. Thank you, Mr. Stilmock. Senator Price. [LB198 LB404]

SENATOR PRICE: Thank you, Senator Karpisek. Jerry, quick question... [LB198 LB404]

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JERRY STILMOCK: Sure. [LB198 LB404]

SENATOR PRICE: Would you proffer an opinion of why this failed in Health and Human Services and now we're going to come here? I mean, happier hunting grounds...can you share with us why it failed there? [LB198 LB404]

JERRY STILMOCK: Time. We were on wit's end, not wit's end, we were at the finish line of last year's short session. The bill had not made it out of committee in Health because of the discussions about how these fines are too high, says one of the manufacturers. But the fines in the...fines, f-i-n-e-s; the fines in the bill last year and the year before, it was the same bill; it wasn't killed in the first year, it was the same bill that...were fines that had been proposed in model legislation in the other states. So because we could not get a harmonious agreement among all parties, there wasn't sufficient time last year to try to get the bill out and then haggle on the floor. Because I knew that all parties were going to have to agree in order to have a home for the bill--in order to try to insert it in a bill from Health and Human Services that was already prioritized; bring in an amendment to bring in Senator Preister's bill. But I knew it had to be crystal clear or it wasn't going to be accepted; not only by Senator Preister, but by the chair of the Health and Human Services. So we just...it just stalled out, Senator, unfortunately. [LB198 LB404]

SENATOR PRICE: Which brings a great segue, thank you. You talk about harmonizing model legislation, and earlier I had asked, how different is the legislation proposed from the model legislation everywhere else? Obviously, already we see some changes from per cigarette to brand, and I'm wondering what other changes are there that, if we dig deeper, we'll see as far as the penalty phase, and the cost as compared to the other states that have enacted it and what they have. [LB198 LB404]

JERRY STILMOCK: Senator, I agree wholeheartedly. We go from...in terms of...hopefully, we can get this...Massachusetts, \$3,000 per cigarette is what I found. Most of the other states are at \$250 per cigarette, some at per brand family. But the information made available to me by the National Fire Protection Association has said there has not been a manufacturer that has been reported that has been fined. So I guess it cuts both ways. Why have high fines if nobody's being penalized, but yet why argue against high fines if no one has been penalized? So our position is to stay with the model. We'd request the senators stay with the model legislation, sir. [LB198 LB404]

SENATOR PRICE: Fine, thank you. [LB198 LB404]

JERRY STILMOCK: Thank you, sir. [LB198 LB404]

SENATOR KARPISEK: And Mr. Stilmock, I would just like to say that the chair of the

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committee was trying to get some bills to our committee is why it changed committees. So it wasn't anyone with the bills, rather than myself trying to set a precedent to get tobacco bills to our committee. [LB198 LB404]

JERRY STILMOCK: Thank you. [LB198 LB404]

SENATOR KARPISEK: Any other questions? If not, thank you, Mr. Stilmock. [LB198 LB404]

JERRY STILMOCK: Thank you, senators. [LB198 LB404]

SENATOR KARPISEK: Next proponent. [LB198 LB404]

JIM MOYLAN: (Exhibit E) Mr. Chairman and the members of the committee, I'm Jim Moylan, M-o-y-l-a-n, first name, J-i-m. And I'm here representing Reynolds American, which formerly was R.J. Reynolds Tobacco Company. We're for a fire-safe cigarette. Now whichever bill, you know, you choose, to the question of why it probably never got moving last year, the cigarette companies weren't quite ready. Nationwide, Reynolds wasn't in order to have the cigarettes for all the states. Now, by the end of this year, all their cigarettes will be fire safe. And that's why we have kind of a lag date, so they can get it all coordinated with the states that are having them. I think, as you know, there's 38 states that already have adopted...I think there's eight states that have it introduced this year. And there's three states that nothing has been done yet: Arkansas, Wyoming, and West Virginia. We're supporting, really, LB198. Now what I've handed you there is a copy of LB198. I took LB198 and LB404 and I've kind of compromised the penalties throughout the whole bill, you know. We've always thought they were a little high. Every time the bill's been in, we thought the penalties were a little bit high. So what I've done, I've picked a figure in between each one of the two bills, which I think are more than sufficient. The changes are on the front, and we can go through them, and it won't take very long if you want to go page by page. My changes in LB198, which is upping the penalties from what I had in there originally and lower than what LB404 is, are in red in the act, and it's only a few pages. [LB198 LB404]

SENATOR KARPISEK: And Mr. Moylan, can I ask...did...the introducer is aware of these? [LB198 LB404]

JIM MOYLAN: Yes, he is. [LB198 LB404]

SENATOR KARPISEK: They're on LB198. [LB198 LB404]

JIM MOYLAN: Yes. [LB198 LB404]

SENATOR KARPISEK: But not LB404. [LB198 LB404]

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JIM MOYLAN: Well, I've talked to Jerry Stilmock about this over and over, and I gave him a copy of what my suggested recommendations were some time back. So I don't know what... [LB198 LB404]

SENATOR KARPISEK: Okay, just so we know who knows what. [LB198 LB404]

JIM MOYLAN: Yeah, well, everybody knows. I mean, I gave them to Jerry. He was the promoter of, you know... [LB198 LB404]

SENATOR KARPISEK: Sure. [LB198 LB404]

JIM MOYLAN: ...the bill for the firefighters. [LB198 LB404]

SENATOR KARPISEK: Thank you, carry on. [LB198 LB404]

JIM MOYLAN: And I was the one for (inaudible). On page 7, we had the Fire Marshal reporting to the Legislature every four years, which would be consistent...instead of every three-year period, be consistent with even years or consistent with odd years. It's not a big deal, but I don't think they'd have to report to the Legislature any "oftener" than every four years. I changed the operative date of the act...no, page 8 is just a change. We had the bill taking effect on the operative date of the act. And that January 1, 2009, is implemented in accordance with the New York Fire Safety Standards Act, as such act existed on January 1, 2009, instead of on the effective date of this act. So you won't have to go to the effective date to see what New York had; it's what they have on January 1, 2009. So you'll have a set thing that you can work off of. Page 9, down on line 22, we're asking...we had certification every five years in LB198. They had three years, I think. I thought maybe recertification every four years ought to be often enough, you know. I don't think there's going to be any problems over the period of time. If you got a Camel cigarette and it's fire safe with the standards of New York, it's not going to change. So I don't know what you're going to have to recertify. There is a provision that you have to...any new cigarettes that you bring out, you're going to have to certify with the state. So I think that's kind of important. On page 9, we're consistent with the other brand: \$1,000 for each brand family of cigarettes. Send them in as brands, and don't send, you know, a Camel here, and a Camel light over here the next day, and a Camel here another day. Send the whole brand family in; charge \$1,000 for it and, you know, for the certification. We don't agree that the Fire Marshal ought to be able to raise that fee automatically. That's always been a prerogative of the Legislature, you know, the set fees in most of these cases. And I think when you're talking about a high fee as this, whatever the fee is in the law, if they need more money sometime then they can come back and ask for it. But I think that's something that's your prerogative to set and not allow an agency, nonelected agency, to go ahead and raise the fee. Line 22 on page 9, well, that's the same thing at the bottom: recertification every five years. The brand

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family up on 15: which is certified and shall be recertified every four years, we've changed it to (inaudible) four, and including a new cigarette within the brand family every four years. Some of them were three, some were four, some were five. Page 10, line 10: That's just a cleanup measure inserting Reduced Cigarette Ignition Propensity Act. We've added that instead of just "the act" in there, so it's pretty clear. Now on page 11, line 25, they had a \$10,000 fine, we have \$1,000 fine in our bill, so I agreed to a compromise of a \$5,000 fine. That's in line 25 on page 11. Page 12, line 2: The penalty, civil penalty, not to exceed...we had \$10,000, we thought it was sufficient at that. They had a \$25,000 fine, so I changed ours to \$15,000, which I think would be pretty standard for Nebraska. Page 12, line 4: They had \$100,000 civil penalty, we had a \$50,000, so we've agreed that \$75,000 would be a good compromise. Like Mr. Stilmock said, there's probably never going to be any penalties anyhow, because most all the companies are, you know, they're going to be fire safe. I'll clear that up later on. The next one on page 12, line 8, a retailer...I'm leaving that fee at \$250. And down under 18, they had a division under the retail section. If you're selling more than a...under a thousand cigarettes, the penalty was \$250 or \$500 was it? And then they had a section B if you were selling more than a thousand cigarettes. Which I don't think retailers are going to be able to keep track of how many cigarettes they're selling, you know, and it just would be a burden on them to set up a system...and I represent the liquor retailers, too, by the way, on this little section to have two different categories of cigarettes. Make it the one penalty for the retailers. I had \$250 for a first offense in the bill, and I wanted to leave it at that, and the civil penalty not to exceed...I raised ours from \$500 to \$1,000 for each subsequent offense, except that the penalty against any retailer shall not exceed \$15,000, I suggested, as a compromise in there on line 12, page 12. And then, of course, I already explained deleting the over and under a thousand cigarettes. Page 12, line 18, we had \$75,000, and I put not to exceed \$50,000. And then...for a false certification, and then I add in there: and for any subsequent offenses be liable to a civil penalty not to exceed \$150,000 for each false certificate. So that's a pretty stiff penalty, so. I think my recommended penalties would probably be pretty good. And then I had...I changed the operative date to January 1, 2011. Now that's flexible. You can move it up, move it back. I had a July 1, 2011. Now, we were talking about the fiscal aspect of it. I have the fiscal note here and they claim it's going to be \$50,000...\$90,000, close to it, annually, in order to take care of it. I would think that the fees, \$1,000 per brand family, would probably be...it's not probably sufficient to bring in all the cash that they need, but I have a feeling they're not going to need that much money in the long run. Because they're all going to be fire safe anyhow. And that gets to the point; I talked to Senator Stuthman about this. If we didn't do anything for two years, we wouldn't have to do anything. Most all the states are going to have it. All the cigarettes are going to be fire safe. And we could have a short, probably one-page bill, that would give the Fire Marshal the authority to go around and periodically check cigarettes and see if one of the two markings are on there--the New York marking or the CSF marking, which has to be on each package, carton, case, whatever you send in. And you could add some penalties in there if you ever find one, you know? Go after the company then. If you find

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one in here...now there might be a renegade company out there or two that are going to try to, you know, slip cigarettes in here, but they won't last long. Everybody...with the number of states that already have the act, they're going to have to...every company is going to have to...if they're going to sell cigarettes, they're not going to be able to sell them anyplace. So we might be one of those states that should, maybe without even an act, except a one-page act maybe a year or two years from now. It would take care of it and you wouldn't have to set up a bureaucracy of going through the whole thing. The testing has been done in accordance with the standards of American Society of Testing Materials and Standards, and then there's a number after it. Also, the laboratories have to be certified by the International Organization for Standardization, and there's a number after that too. So then any laboratories have to be certified, and they have to follow the American Society of Testing Materials Standards. So, it's coming...it's here. And you might save a lot of money by just looking at it. And I talked to Senator Stuthman about this and he said, fine, if you want to mention it; he didn't have a problem with it at all, so. I'm suggesting in two years, most of them are going to have it. They're all going to be fire safe. Save ourselves a lot of money, trouble for the Fire Marshal, and we'll do a one-page act...maybe next year even, so. If not, we're for fire safe, and we know people have had accidents. You know, I thought you slept in bed and not smoke, but I find out, I guess people do both, you know, so. And we just had the incident here in Lincoln, so. If there's any questions, I'd be happy to try to answer them. [LB198 LB404]

SENATOR KARPISEK: Okay, thank you, Mr. Moylan. Any questions for Mr. Moylan? Senator Price. [LB198 LB404]

SENATOR PRICE: Thank you, Senator. Mr. Moylan, you talked about being overcome by events in two years, everybody doing it. What's the shelf life of these products that are not meeting this standard? [LB198 LB404]

JIM MOYLAN: Oh, I think there's a...it's not too long, because they get stale. But there is a provision in the act that requires...you can't...if you're a wholesaler, you can't load up on anymore cigarettes than you pretty much bought in the...a period of time, you know. I mean, you can't even go out and buy the non-safe cigarettes in a great big batch before the act takes effect. You've got to just...but you can deplete what you have. But it's got to be your standard, ordinary...it can't be just...you can't order ten times... [LB198 LB404]

SENATOR PRICE: Why I asked that question, I was concerned that we would become a dumping ground if we just let things go. All of a sudden, everybody say, where can I get rid of these cigarettes I can't sell somewhere else, but you can sell them in Nebraska, you know, and that's the thing to being sure. That's why I want to know the perishability of the product and where that might impact retailers for dumping in Nebraska. [LB198 LB404]

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JIM MOYLAN: Yeah, I don't think you could see that happen. You've got to...they're already out there among the wholesalers, and they've got to get rid of them in their own states because they've already paid the tax on them. And whatever we have to do, you've got to pay the tax on them here, too, and they're going to have to have the markings, so I don't think we could be a dumping ground even, so. [LB198 LB404]

SENATOR PRICE: Thank you. [LB198 LB404]

SENATOR KARPISEK: Thank you, Senator Price. Senator Dubas. [LB198 LB404]

SENATOR DUBAS: Thank you, Senator Karpisek. Mr. Moylan, if the handwriting is on the wall already as far as being able to sell these cigarettes that aren't safe anymore, why are the manufacturers still making those cigarettes? Why aren't they just going to the safe cigarettes? [LB198 LB404]

JIM MOYLAN: Well, Reynolds, the end of the year, they're all going to be safe. [LB198 LB404]

SENATOR DUBAS: They all will by the end of this year? [LB198 LB404]

JIM MOYLAN: This year they're all going to be fire safe. And I have to say just about every company's going to be, because they can't...I mean, it's too expensive to make both types, you know. Even a small company. But you sell over the country; you've got to have them fire safe. You can't afford to run two different types. I'm sure, by the end of the year, they're all going to be fire safe, yeah. [LB198 LB404]

SENATOR DUBAS: Do we import very many cigarettes or... [LB198 LB404]

JIM MOYLAN: From out of the country? Somehow, they'd have to...not that I'm familiar with, no. I think they all come from licensed manufacturers and wholesalers here in the state. I'm not familiar of any. Now, you got the Indian reservations; I don't know about them. [LB198 LB404]

SENATOR DUBAS: Okay. Does this just apply to cigarettes or are cigars included in this? [LB198 LB404]

JIM MOYLAN: No, this is just cigarettes. [LB198 LB404]

SENATOR DUBAS: Just cigarettes. All right. [LB198 LB404]

JIM MOYLAN: Yeah. [LB198 LB404]

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SENATOR DUBAS: Thank you. [LB198 LB404]

SENATOR KARPISEK: Thank you, Senator Dubas. Any other questions for Mr. Moylan? Seeing none, thank you. [LB198 LB404]

JIM MOYLAN: Thank you. [LB198 LB404]

SENATOR KARPISEK: Next proponent. Welcome. [LB198 LB404]

KATHY SIEFKEN: Senator Karpisek and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association, here today in support of both LB198 and LB404. And the reasoning for our support is pretty simple. Right now, we are double slotting. That means that we are carrying both the reduced ignition and the regular cigarettes. We'd just as soon cut the pain of transition in half, and get this bill passed so that we will only have to carry one kind of each brand. If you have any questions, I'd be happy to answer them. [LB198 LB404]

SENATOR KARPISEK: Thank you, Ms. Siefken. Any questions? Seeing none, thank you. [LB198 LB404]

KATHY SIEFKEN: Thank you. [LB198 LB404]

SENATOR KARPISEK: Next proponent. Welcome. [LB198 LB404]

MARK WELSCH: Good afternoon. Thank you, Senator Karpisek. My name is Mark Welsch, it's M-a-r-k W-e-l-s-c-h. I'm the president of GASP of Nebraska. And this bill would, LB404 would, prevent secondhand deaths from fires from cigarettes, so I support this bill. Something...I'm sorry, I missed the first part of the testimony today because of the wind. It was blowing so hard I couldn't go the speed limit coming in from Omaha. There's one car in the ditch because of that, I assume, that I saw go in. So something that you may have heard already that I'd like to point out is, range fires are also caused by cigarettes. It's not just the hazards of living near somebody or yourself smoking in bed or in a chair or a sofa...dropping it and starting a fire. But as people drive down the road, especially in western Nebraska I've seen, as I've travelled this great state, I've seen places where fires have started, I think, obviously, because somebody threw their cigarette butt out the window and it started a fire. So this would reduce the expense that the firefighters have to spend money and time away from their jobs, if they're volunteers, to fight a range fire. The farmers, the ranchers would not have the damage to their property if these fires could be...the numbers could be reduced. So I urge you to pass this law this year and not wait, as Senator Moylan (sic) has suggested, because if you wait, more people will probably die in Nebraska. As Senator...Mr. Stilmock mentioned, three lives have already been lost this year. So I think it's urgent that this get passed, and quickly. Thank you. [LB198 LB404]

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SENATOR KARPISEK: Thank you, Mr. Welsch. Any questions? Seeing none, thank you. Next proponent. [LB198 LB404]

DAVE NUSS: (Exhibit F) Thank you, Mr. Chairman, members of the committee. My name is Dave Nuss, N-u-s-s. I'm with the National Fire Protection Association and the Coalition for Fire-Safe Cigarettes. We are the group that developed the model legislation that has gone state to state, in terms of states adopting a law specific to their state, that would require reduced ignition propensity cigarettes or fire-safe cigarettes. And I have a couple of handouts that I'll give to you as well. Just to kind of...and actually, I have a prop that I brought along as well. I've got a pack of...these are New York State compliant cigarettes, and I'm about out of them, but I want to hand these around to you just so you can kind of get an idea of how simple the technology is that really works with these. And if you take the...I dissected one in my kitchen the other night, so if you take the paper and hold it up, you can see the banding. And I think you have a couple of pictures of that from some other handouts as well as mine, so I'll pass that around. And I'll point out, the only difference in this pack is that this does not have the FSC stamp, this was prior to the changing of that. It has a straight bar across the UPC code that indicates that it's a compliant pack. That's sort of the old standard in terms of... [LB198 LB404]

SENATOR KARPISEK: If you can, Mr. Nuss... [LB198 LB404]

DAVE NUSS: Yep. [LB198 LB404]

SENATOR KARPISEK: ...we're not supposed to have any visual aids. [LB198 LB404]

DAVE NUSS: Okay, all right. I'll hold those then. [LB198 LB404]

SENATOR KARPISEK: So we will have them in my office if you want, afterwards. [LB198 LB404]

DAVE NUSS: (Laugh) We'll do that. [LB198 LB404]

SENATOR KARPISEK: If anyone wants to come over and take... [LB198 LB404]

DAVID NUSS: And take a look at them. [LB198 LB404]

SENATOR KARPISEK: ...and take a look at them. [LB198 LB404]

DAVID NUSS: Very good. All right, thank you, Senator. In terms of the problem, again, NFPA developed the model legislation after New York State, which was the first state to pass the bill, in 2004, that required compliant cigarettes. The smoking, fire death related

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problem is fairly major. It's the number one cause of deaths and property loss in one in two family homes in the country. And I'm sure someone will follow up with some statistics specifically to Nebraska. Every year we kill somewhere between 700 and 900 people as a result of careless smoking material fires, and the property loss is in the hundreds of millions of dollars annually. That's why we targeted this particular issue, to try and reduce that number of particular fire deaths related to careless smoking materials. I think it's important to note that one in four victims is not the smoker; 34 percent of the time it's children; 25 percent of the time it was neighbors; 14 percent of the time, a spouse; and 13 percent of the time, parents that were living with or associated with the smoker. Even more striking, one in three or roughly 34 percent of the victims, are 65 years or older. So it's definitely a problem that targets older adults in this country. And in 47 percent of the time, alcohol or drugs are related with the fire death. The solution, and you've heard a lot about the technology...and again, in my handout I have some information for you. One is a map that shows sort of the current status of what's going on with other states in terms of similar legislation. And I would like to report to you that as of late last week, South Dakota did file a bill, so that would be another little brown state there we have that recently filed a bill as well. The concept or the technology of reduced ignition propensity cigarettes has actually been around since the seventies. There were a couple of federal attempts to try and get laws passed; those went nowhere. So NFPA and the Coalition for Fire-Safe Cigarettes, after New York State's success with their bill in 2004, decided that we would try and go state to state and get states to require them individually. And we've had a great deal of success since that time. So currently 38 states, covering approximately 85 percent of the American public, have laws that are...have been passed. In 23 of those cases, the law is currently in effect, you can only purchase compliant product. Just to kind of walk you through some of the nuances of the bill, and again I think you've had some of that as well. There's really kind of four major parts to it that we really rely on in terms of our model legislation. Section 3 on page 3 of, I think, both of your bills refer to the ASTM testing standard, and that's really the crux of the thing. What that standard does is provides a test criteria to assure that the ignition temperature at the end of the cigarette only reaches a certain standard if it's not actively smoked. The theory is that if I drop that cigarette on upholstery, bedding, clothing, whatever it happens to be, the tip of the cigarette is not hot enough and doesn't burn, continue to burn, long enough to reach the ignition temperature of the material that it falls on. So that's how it works. Theoretically, I guess you could say it goes out or it self-extinguishes, but the real science behind it is that it just reduces the ignition temperature of the tip of the cigarette enough that it doesn't ignite other material that it may come in contact with. Section 4 on page 8 of both of your bills basically outline the process that the manufacturers have to do to certify to the state of Nebraska that they only sell or provide for sale compliant product with that ASTM standard in the state. Most of the time, and then again in most states, the majority of that process rests with the State Fire Marshal's Office; that's the most appropriate place to put it. It's a fire safety issue, not a tobacco issue per se. And then Section 5 stipulates the marking, and again, I gave you a little picture in my handout

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there that shows a couple of packs of cigarettes. And the marketing strategy now is to include the three letters, FSC for Fire Standard Compliant on the pack of cigarettes itself above the UPC code. So it's very easy to tell if you have a compliant pack of cigarettes or not; you just pull them off the shelf, take a look at them, look for the letters, and you can tell. And then Section 6 on page 11 of both of your drafts talks about penalties, not only for the manufacturer if they provide noncompliant product for sale in the state, but also for the retailer if they would happen to sell noncompliant product as well. So that sort of, basically...and I think, again, both of your bills that you have before you really do that, really follow the model that we provided fairly nicely in terms of how the overall program works, so. So with that, I will rest, but would be happy to answer any questions that you may have of what other states are doing, what the model was intended to do, the technology, or whatever I can answer for you, so. Thank you.
[LB198 LB404]

SENATOR KARPISEK: Thank you, Mr. Nuss. Any questions? Senator Friend. [LB198 LB404]

SENATOR FRIEND: Thank you, Mr. Chairman. Mr. Nuss, glad you could...did you fly in? [LB198 LB404]

DAVE NUSS: I did--I blew in from Denver, Senator. (Laugh) [LB198 LB404]

SENATOR FRIEND: Yeah, I was going to say that it's good to see you. [LB198 LB404]

DAVE NUSS: Thank you. [LB198 LB404]

SENATOR FRIEND: I'm hearing the whistling outside. In your bullet points, the stuff that you handed out relating to your testimony...I asked Mr. Stilmock, and I think it was before you got here, and he said he was going to provide some data and some studies that show how New York or Vermont or California have actually reduced the fire deaths--the benchmarks. I mean, something that will indicate...is it...under this solution, the first bullet point says, "Reduced ignition propensity cigarettes are a proven, practical, and effective way to eliminate the risk of cigarette-ignited fires." The testimony is that if we...maybe I'm blowing it out of proportion, but if these are adopted, we will not have another cigarette-related fire death in this state? [LB198 LB404]

DAVE NUSS: Senator, through the Chair, I wish that were correct. The New York statistics show...and again, they really probably are the most reliable because they have the longest track record in terms of having a bill in place. What they have seen is an 84 percent reduction in the number of cigarette-related fires in the state of New York since the passage of the law. Now, the hard part is to extrapolate from that how many deaths would have occurred in those fires or would not have occurred, but not all fires relate in death, obviously, so it's kind of hard to extrapolate. But they've also seen a decrease in

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the number of deaths. Not as easy to correlate in terms of the effectiveness of the law as it is for the number of fires, but significantly, again, an 84 percent reduction in the number of fires associated with smoking in New York State. At the same time, good statistical evidence that there had been no reduction in the number of sales of cigarettes, they saw no reduction in tax revenue as a result of the passage of this law. So good or bad, I guess depending on your perspective, it did not have an effect on reducing the number of people that smoked, but it certainly had a very positive effect on reducing the number of fires associated with that activity, so. [LB198 LB404]

SENATOR FRIEND: Okay, thanks. [LB198 LB404]

DAVE NUSS: So I hope that answers your questions. [LB198 LB404]

SENATOR KARPISEK: Any other questions for Mr. Nuss? I will go off of Senator Friend's question before of Mr. Stilmock about...does...we have to think about that there's less people smoking now, since then, but 84 percent is still a huge number. But does that take into any account the decline in smokers? [LB198 LB404]

DAVE NUSS: It does. Well, yes and no. If you look...generally, we do our data and our statistics based on percentage of the population. So again, if we looked at the percentage of smokers, and that's what we would be looking at in terms of where is the risk associated with careless smoking material...that would be where the 84 percent reduction would go. I mean, obviously, if you have less people smoke, you have less people at risk. So that would bring the overall numbers down. But if you look at the risk population specifically, there's also a significant reduction in that group as well, so. Yeah. [LB198 LB404]

SENATOR KARPISEK: Very good. Any other questions? Seeing none, thank you. [LB198 LB404]

DAVE NUSS: Thank you very much, and I appreciate it. [LB198 LB404]

SENATOR KARPISEK: Next proponent. Welcome. [LB198 LB404]

JACK MOORS: Thank you. Mr. Chairman, members of the committee. My name is Jack Moors, J-a-c-k M-o-o-r-s. I'm a registered lobbyist for the Nebraska Association of Tobacco & Candy Distributors. We're here in support of this bill. I have no prepared testimony. I come up to answer some questions that I heard about. We have a problem with inventory; we're carrying both types of cigarettes now. Obviously, selfishly, we'd like to carry one type. And it appears that the cigarette that is being talked about today will become the cigarette. And in answer to one question, we prepay for our cigarettes for most major manufacturers, which is one controlling factor; we want to keep our inventory so it moves. The second factor is we do all the stamping and we have to

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prepay the stamps, so we don't buy stamps way in advance. We try to keep the inventory control system with stamps and our purchases somewhat within reason for our cash flow. We do carry these cigarettes now, we have had some requests. The biggest problem we're having at the moment, which is not relative to this, is the theft of cigarettes. The black market has become very good. It will become much better as we see the decline in sales of...pick up because of the SCHIP which passed by the federal government. And I guess we would ask, if this bill is going to become reality and it appears it is, is that you expedite the date which it's going to begin. Just selfishly it makes it easier for us and I guess that's why I'm asking it, throwing it right out there. Any questions? [LB198 LB404]

SENATOR KARPISEK: Thank you, Mr. Moors. Any questions? Senator Price. [LB198 LB404]

SENATOR PRICE: Mr. Chairman, thank you. Sir, just to make sure we clarify...earlier we heard that RJR already carries these in their brand families. Do the other makers also all have this readily available in their inventory? [LB198 LB404]

JACK MOORS: Not all brands, but to the best of my knowledge, the major brands do have it available. And a couple of our suppliers supply more than one state; in fact, we have multi-states, so our people are carrying those brands with that type of paper. [LB198 LB404]

SENATOR PRICE: All right, thank you. [LB198 LB404]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you. [LB198 LB404]

JACK MOORS: Thank you. [LB198 LB404]

SENATOR KARPISEK: Any other proponents? Seeing none, do we have any opponents of either bill? Seeing none, do we have any neutral testimony? Seeing none, that will close the hearings on LB198 and LB404. We will now have LB355. Senator Lautenbaugh. Welcome, Senator Lautenbaugh. [LB198 LB404 LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, members of the committee. My name is Scott Lautenbaugh. I'm the introducer of LB355. Thank you for having us today. LB355 is not a new idea. I did introduce this last year as an amendment to the smoking ban that we passed. I believe it was interpreted, at the time, to be part of a filibuster attempt, and cloture was invoked before we ever got to my amendment. It was not part of a filibuster attempt. LB355 is basically the same as the amendment was last year, with some variations, but it's the same thought process. It sets up a separate class of liquor license, if you will, for cigar bars. And cigar bars are defined as entities that

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receive 15 percent of...and this leads right into the first friendly amendment here...the bill says "profit", it should say "revenue," that makes a big difference, 15 percent of the revenue from the sale of tobacco and tobacco-related products. This would be enforced by the Nebraska Liquor Control Commission. I have been speaking to individuals from the Liquor Control Commission to work with them to make sure that there is an enforcement mechanism in place and this would be doable, and it certainly appears it would be. I believe you'll hear that the fiscal note may be substantially less than what's reflected and with good reason, and I'll address that later if I have to. Please recall, under the current Clean Indoor Air Act, smoke shops are exempted. For some reason, smoke shops are exempted, cigar bars are not. I would submit to you that cigar bars are different than any other entity that was affected by the smoking ban in that they exist for smoking. I don't believe restaurants can make that claim; I don't believe keno places can make that claim. These entities are for the purpose of smoking, much like smoke shops, but somehow they were not part of the exemption. We aren't talking about a huge number of places. This is a very narrowly crafted exception. It's very difficult to make this amount of revenue, as you'll hear from the witnesses behind me, from tobacco products. This would not be something where every bar in the state could say, hey, we're a cigar bar now, and they'll put a humididor on the corner of their bar. That wouldn't work. And the Liquor Control Commission will be able to verify that it is a bona fide cigar bar with the revenue targets that we set forth in the bill. You're going to hear testimony about the damage that's been done under the Clean Indoor Air Act. At the time, part of the compromise to get it through last year, we generously gave these businesses until June of this year for the bill to bite. Unfortunately, the city of Omaha's ban snuck in, after a court ruling, sooner than anyone anticipated. So we have the direct evidence right now of what this ban is doing, what it will do, because the city of Omaha ban is already doing it, to these very specific entities. And I will defer a lot of the testimony regarding the damage to the witnesses to come, but it is stark and it is unwarranted. And I would urge you to look favorably upon this exception. I'd be happy to answer any of your questions now. I will stay to close, too, so if you want to ask me after the testimony, I'll still be here. [LB355]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Any questions? Senator Price. [LB355]

SENATOR PRICE: Mr. Chairman. Senator Lautenbaugh, do you expect that this would set forth, be preemptive in nature, for the Omaha ban? [LB355]

SENATOR LAUTENBAUGH: Yes. [LB355]

SENATOR PRICE: All right, thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? [LB355]

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SENATOR COOK: I have a question. [LB355]

SENATOR KARPISEK: Oh, Senator Cook. [LB355]

SENATOR COOK: Thank you. Thank you very much, Senator, thank you very much for bringing the bill. Perhaps I missed it, and I apologize for being tardy to your introduction, but did you mention the purpose of the bill when you first started, and could you say what the intended purpose might be for the interest that brought it, and for the public at large? [LB355]

SENATOR LAUTENBAUGH: The interest is very...the purpose is very simply this: There are entities that currently exist that have large walk-in humidors and are in the business of selling cigars that patrons consume on the premises. A lot of these businesses have liquor licenses so they are bars as well, and under the state ban that's going to come in in June or the city of Omaha ban which already now is in existence, they are prohibited from having smoking on the premises. And I think, actually, there was a misunderstanding when the ban passed last year, because I did have colleagues argue with me saying there's no way that this applies to cigar bars, because there's an exception for tobacco shops. But those are defined very narrowly to only the entities that sell tobacco and tobacco-related products, and that would not include cigar bars. So the purpose is to include them in the same exception, basically. [LB355]

SENATOR COOK: Thank you. [LB355]

SENATOR LAUTENBAUGH: To provide a mechanism to do that. [LB355]

SENATOR KARPISEK: Thank you, Senator Cook. Any other? Senator Coash. [LB355]

SENATOR COASH: Thank you, Chairman. Senator Lautenbaugh, and maybe I can ask a following testifier here, how many cigar bars do we have in the state that you're aware of? [LB355]

SENATOR LAUTENBAUGH: That I'm aware of? Probably...well, it depends on how you define it at this point since they're not allowing smoking in them. I mean, I would think this would apply to about a half dozen entities would be my guess. [LB355]

SENATOR COASH: And any new cigar bars would have to meet the requirements of 15 percent of their revenue, not profit, as you... [LB355]

SENATOR LAUTENBAUGH: Yes. [LB355]

SENATOR COASH: You're an attorney so I want to ask you, are there any loopholes in this? Or is somebody going to be able to sell a \$200 cigar and say that... [LB355]

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SENATOR LAUTENBAUGH: It's not designed to have any loopholes in it; if there are, we'll close them. I don't know how many \$200 cigars you can sell before people would stop buying them. That's not the intent of this. [LB355]

SENATOR COASH: Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Seeing none, thank you, Senator Lautenbaugh. [LB355]

SENATOR LAUTENBAUGH: Thank you. [LB355]

SENATOR KARPISEK: We'll have the first proponent of LB355. Welcome. [LB355]

BRADLEY BOYUM: (Exhibit A) Thank you, Chairman. Chairman Karpisek, members of the committee, my name is Bradley Boyum. I'm an attorney in Omaha. My last name is spelled B-o-y-u-m. I'm here to testify in favor of Senator Lautenbaugh's bill to allow liquor licenses for businesses that produce 15 percent of their revenue or more from the sale of tobacco. My testimony will be very brief but it focuses on the actual smoking bans and, more specifically, some of the exceptions to the bans. Smoking...as you know, smoking ban has become very common; has been well publicized throughout the country over the past seven or eight years. But just as prevalent, and much less publicized, are the exceptions to those bans. Lawmakers across the country have recognized niche businesses like Jake's and Cigarros, the owners of which will be testifying behind me, to allow them to stay in business. These are businesses that cater to premium tobacco smokers that are not a regular bar or a discount tobacco shop that also sells gas or something like that. While lawmakers are recognizing that there's a certain culture and a following that goes along with cigar smoking or pipe smoking, it is very similar to wine, actually. There are magazines that are published about cigar smoking and wine making or the product itself. For instance, Cigar Aficionado is published and edited by a gentleman that also publishes and edited Wine Spectator, so the two overlap quite a bit, both in people that use them and the lifestyle that goes along with it. As far as wine goes, the construction of wine is done in a way so that food brings out the taste of wine. The same is true with cigars. They're made in a way that a certain drink or a certain spirit will bring out the flavor of a cigar. And to be honest with you, they're meant to be smoked inside in a controlled environment; temperaturewise and with ventilation. Also, the social aspect of smoking a cigar, it's not a quick ordeal. It's similar to drinking a bottle of wine with your friends; it's an interaction. You go after work, it takes 60, 90, 120 minutes to smoke a cigar. It's not something that you run outside at 10:00 and 3:00 every day and smoke one for ten minutes on your smoke break. The point is, cigars are different, and lawmakers across the country are recognizing that. Of the 50 states and Washington, D.C., 16 states have no statewide smoking ban. And of the states that have a smoking ban, they all have exceptions to the

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law. The exceptions include something as simple as just having a liquor license, private clubs, hotels--a certain amount of hotels, veterans homes, obviously smoke shops, and the one that we're interested in is a cigar bar. Using the specific language of cigar bars, there are nine states or eight states and Washington, D.C., that have...that use this language or something very similar, whether it's a smoke bar or smoking lounge. And currently there are three states with proposed legislation: Pennsylvania, Washington, and obviously, Nebraska. The question, the first question is, if lawmakers are recognizing the need for this exemption, why isn't there more use of the cigar bar exemption? Well, the answer's in the details. If you look at the states that border Nebraska: Colorado is on the list, South Dakota, Iowa, Kansas, Missouri, and Wyoming. Of the remaining five, how many is it legal to go out, walk into a humidor, buy a cigar, light it, and order a drink in those states? None of those five states have cigar bar exemptions. The answer is all of them. It is legal to walk into South Dakota, buy a cigar and sit down and smoke. The ban in South Dakota is a very loose ban; it's called a partial smoking ban. It exempts gambling facilities, casinos, and basically anywhere that has a liquor license that doesn't serve food. Thus there's no need for a cigar bar exemption. Iowa has what's called retail shop exemption. Under their retail shop exemption, you're allowed to serve alcohol; no need for a true cigar bar exemption. Kansas, and Missouri, and Wyoming don't have statewide bans. They are all exempted on a city-by-city level, so. In closing, I just want to say follow the logic of our neighbors, and please allow these businesses to offer a good cigar and a drink in the same establishment. Thank you. [LB355]

SENATOR KARPISEK: Thank you, Mr. Boyum. Any questions? Senator Dubas. [LB355]

SENATOR DUBAS: Thank you, Senator Karpisek. Mr. Boyum, can you smoke cigarettes in cigar bars? Is it just... [LB355]

BRADLEY BOYUM: Some states, they are not allowed, but most states do allow you to smoke cigarettes in cigar bars. [LB355]

SENATOR DUBAS: So in Nebraska, you're allowed to smoke a cigarette in a cigar bar? [LB355]

BRADLEY BOYUM: Yes. In Omaha, there's no smoking, but yeah, you can smoke a cigarette in a cigar bar. [LB355]

SENATOR DUBAS: Okay, thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Dubas. Any other questions? Seeing none, thank you. [LB355]

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BRADLEY BOYUM: You're welcome. [LB355]

SENATOR KARPISEK: Next proponent. [LB355]

JOHN LARKIN: (Exhibit B) Thank you. Good afternoon, members of the General Affairs Committee. My name is John Larkin, J-o-h-n L-a-r-k-i-n. I'm the co-owner of Jake's Cigars & Spirits. I'm here to offer my comments in support of LB355, introduced by Senator Lautenbaugh. Jake's was founded in 1988 by my partner, Alex Roskelley, in downtown Lincoln. We were originally just a full-service smoke shop providing people with quality cigars, imported cigarettes, and other tobacco-related goods. In 2004, I returned from a tour of duty in Iraq with the Army Reserve and bought half the business, which is when we began to stock wine, spirits, as well as craft and imported beers. We felt that cigars and the high-end alcohol was a logical match to help us grow our business. So far, the pairing has worked, giving us the opportunity to open a second location in the Benson neighborhood of Omaha in the summer of 2006. At the Omaha location, we incorporated a small, 20-person cigar bar into the design, specializing in single-malt scotch and bourbons, as well as the off-premise sale of cigars and liquor. The bar did very well for us, and in May 2008 we completed the build out of an expansion, adding 1,400 square feet of seating as well as another bar. With the statewide smoking ban looming, we incorporated an indoor-outdoor smoking area that was heated, as well as a small beer garden. We did not allow indoor smoking in the new area, while continuing to give our cigar smoking patrons the option to enjoy their smokes indoors in the original bar. When the city of Lincoln enacted their smoking ban January 1, 2005, our Lincoln store saw a 10 percent drop in cigar sales. The ban had the effect of eliminating any haven for adult smokers to enjoy a legal product in the comfort of a bar or any other indoor area. And telling somebody they're going to have to stand outside in the middle of the Nebraska winter was a bit tough. After the complete ban in Omaha of 2008, our cigar sales have dropped 19 percent, compared to an overall growth of 25 percent of our business. Cigar sales have always been our bread and butter, now have become less of a focus because of these laws. I do not agree with any smoking ban in the principle. To tell adults that they cannot use a legal product on private property goes against the personal freedoms guaranteed to us by the constitution. In actual practice, I love what the ban has done to clean up the air in bars and restaurants. I enjoy being able to come home from a night with my friends and not smell like an ashtray. I enjoy going out to dinner with my wife and not having to smell cigarette smoke. What kills me is not being able to hang out in my own bar, founded as a cigar store, and relax with a good smoke and a glass of whiskey. There should be places where people can still congregate and smoke indoors. I and all my customers were well aware that when you went to Jake's you would be in a smoking environment. Offering a cigar-friendly atmosphere was a big part of our business. I feel that LB355's stipulation of 15 percent of cigar bar sales coming from tobacco products is quite fair, as well as not being an easy loophole. As it stands now, our Omaha location receives 20 percent of its revenue from tobacco. That will almost certainly go up if this bill is made

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into law, and we can resume doing what we do best, which is selling cigars. I think that most people, whether smokers or not, would agree that an exemption for cigar bars is an extremely reasonable compromise on the statewide ban of indoor smoking.

Nobody's going to go to a cigar bar or work in a cigar bar unless they're willing to take the risk of being exposed to secondhand smoke. I would appreciate the support of you, the committee members, on LB355 to help give smokers some of their rights back, and help businesses like mine regain lost sales. Thank you. [LB355]

SENATOR ROBERT: Thanks, Mr. Larkin. Are there any questions from the committee? John, how many smoke shops in Lincoln and Omaha do you estimate have liquor licenses? [LB355]

JOHN LARKIN: Six or less or so. [LB355]

SENATOR ROBERT: Okay. Senator Price. [LB355]

SENATOR PRICE: Senator Robert, thank you. Sir, first, thanks for your service. Secondly, in previous testimony we'd heard, and the question had been asked, about imported cigarettes. [LB355]

JOHN LARKIN: Um-hum. [LB355]

SENATOR PRICE: To the best of your knowledge, would these cigarettes be impacted on...your sales be impacted by having these banned, banded cigarettes available or not available? [LB355]

JOHN LARKIN: I think it certainly would on a lot of imported. We've already lost a lot since the Master Settlement Agreement where cigarette companies that do not pay into the Master Settlement Agreement cannot sell their cigarettes in Nebraska. And so if you don't have a huge market share here, there wasn't much of a point of spending all that money just to sell to us, and I think it would be the same thing; we'd lose some more of these imported cigarettes that were not complying with that. [LB355]

SENATOR PRICE: All right, thank you. [LB355]

SENATOR ROBERT: Senator Coash. [LB355]

SENATOR COASH: Thank you, Senator Robert. Just had a question regarding your experience in running your cigar bar. Of the customers that came into your establishment when they could smoke, were the majority of them smoking cigars or were there a lot of cigarette smokers in there? [LB355]

JOHN LARKIN: We certainly had cigarette smokers, but mostly a lot of cigars. And a lot

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of people that didn't smoke, which is why when we opened the new side we did not allow smoking, just to give everyone an option and people would enjoy our place with or without the smoke. [LB355]

SENATOR COASH: So out of the cigar versus cigarette, I mean, was it half and half? [LB355]

JOHN LARKIN: 50/50. [LB355]

SENATOR COASH: Thank you. [LB355]

SENATOR ROBERT: Any other questions? Thanks for your testimony. [LB355]

JOHN LARKIN: Thank you. [LB355]

SENATOR ROBERT: Next proponent, please. [LB355]

CURT WERNER: (Exhibit C) Members of the committee, General Affairs Committee, thank you. My name is Curt Werner, C-u-r-t W-e-r-n-e-r. I am the owner of Cigarros, located at 132nd and Maple Street, an upscale cigar lounge in Omaha. And I'm here to offer testimony in support of Senator Scott Lautenbaugh's proposed legislation, LB355. Cigarros has been an anchor in the strip mall on 132nd and Maple Street for all 12 years of its existence. I started the business in 1996 with my then-partner Randy Rattiken. From its inception, Cigarros was designed to be a true cigar lounge. Not a bar that sold cigars on the side, but instead a concept focused on the cigar aficionado who expects and demands a total cigar experience, complete with the complement of fine wines and spirits. To further enhance this experience, behind the scenes is a state-of-the-art air filtration system to keep our employees and patrons comfortable. The interior is designed to evoke sophisticated nuance, complete with beautiful mahogany wood detailing and high-back leather chairs, an extraordinary selection of wine and premium spirits and, of course, a world-class selection of cigars inside our large, walk-in humidor. Cigarros, upscale and sophisticated, represents Omaha well to both the resident cigar aficionado, the business professional entertaining, and out-of-town visitor. Prior to the removal of the smoking ban exemption, Cigarros regularly employed 12 employees, most of which were students working their way through college--our manager, David Salber, who relies on the income of this position to support his family and who is here today, and an accountant. Equally important, Cigarros provided income opportunities to multiple Omaha vendors. Now, because of the substantially reduced clientele caused by the removal of the exemption, we have only three regular employees and Mr. Salber. The business we provide to vendors has been drastically reduced as well. Cigarros gives back to the community by way of charitable support to the Autism Action foundation, Boys and Girls Club, Play Smart, and Catholic Charities. We are members of the BBB and the Omaha Chamber of Commerce. Cigarros, its

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employees, and vendors have suffered the immediate, drastic economic impact of not having a cigar bar exemption included in nonsmoking laws. Total revenues are substantially down, to the tune of \$168,000 over a six-month period. Please, if you would, refer to the total revenue graph, in the presentation material provided to you, on the last page. The negative economic impact of the removal of the smoking exemption to Cigarros is clearly represented. First, note the lines representing 2006 and 2007 which closely track, and now focus on the yellow line, which represents 2008. Obvious is the consistent drop in revenues which began concurrent with the removal of the exemption in May 2008. Accordingly, our contribution to jurisdictional tax revenues has also been substantially reduced. As all of you can understand, a small business cannot sustain these types of continual losses and expect to remain in business. If the cigar bar exemption is not passed, Cigarros and businesses like it will fail in short order. In closing, please remember the Unicameral has already made a decision to allow smoking in retail tobacco stores. We are asking you to address an area that was, unfortunately, overlooked by adding a liquor license to that exemption to save niche businesses like Cigarros. Please vote in favor of LB355; it will revive Cigarros and businesses like it across the state. Thank you for your time and consideration. [LB355]

SENATOR KARPISEK: Thank you, Mr. Werner. Any questions? Senator Rogert. [LB355]

SENATOR ROBERT: Thank you, Mr. Werner. Before...we'll say, before you got...a year ago, before the smoking ban in Omaha kicked in and covered you, what percentage of your revenue was tobacco? [LB355]

CURT WERNER: Typically that ran anywhere from 35 percent to near 50 percent. [LB355]

SENATOR ROBERT: What is it today? [LB355]

CURT WERNER: The current percentage, Dave, would be 25-30 percent. So both...the important point to make is both the tobacco sales are down and alcohol sales are down concurrently, both, so. [LB355]

SENATOR ROBERT: Thanks for coming down today. [LB355]

CURT WERNER: You bet. Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Rogert. Any other questions for Mr. Werner. Seeing none, thank you. [LB355]

CURT WERNER: Okay. Thank you. [LB355]

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SENATOR KARPISEK: Next proponent. [LB355]

BILL PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, P-e-t-e-r-s. I'm appearing here today on behalf of the Cigar Association of America. It's hard to add much...in fact, it is hard to add anything to what you have previously heard. Smoking and consumption of alcohol are adult activities, and they are legal adult activities. This legislation provides an appropriate, though stringent, venue for adults who choose to consume our product. I'd be happy to answer any questions. [LB355]

SENATOR KARPISEK: Thank you, Mr. Peters. Senator Price. [LB355]

SENATOR PRICE: Chairman. Thank you very much, sir. I do have a question for you, and I feel you're probably more than capable of answering this. My understanding of cigars is length and the diameter of cigars, there's a lot of different aspects--has a Maduro wrapper, etcetera, etcetera. Could you please expound for me the smallest cigar in an inventory that would be seen here in the United States? [LB355]

BILL PETERS: I can't...not being a user of the product right now. It's called a small cigar. As I understand, it's slightly larger than the standard cigarette size, but the big difference is the way it's prepared, like other cigars, with a wrapper. Which I have to add is, all cigars have a propensity to go out if not regularly drawn. [LB355]

SENATOR PRICE: Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions for Mr. Peters? Seeing none, thank you. [LB355]

BILL PETERS: Thank you. [LB355]

SENATOR KARPISEK: Next proponent. Welcome. [LB355]

JAY LERNER: Thank you. Senator Karpisek and members of the General Affairs Committee. My name is Jay Lerner, last name is spelled L-e-r-n-e-r. My comments will be very brief. And please bear with me, I have not appeared in front of a legislative committee ever before. At the onset, I'd like to make clear the fact that I do not have a vested interest in any cigar establishment; I'm not a liquor distributor; I'm not a tobacco wholesaler. And I wanted to make that clear because I am coming as, really, a patron. You all heard of the saying: Nebraska, the good life. And I'm an avid outdoor person. I love to hike with my dogs. I ride my bicycle about 3,000 miles a year. And part of the good life for me and the reason that I'm here today is that I enjoy, on occasion, smoking a cigar and having a drink with either good friends or relatives. In my case it might be hereditary. I remember my grandfather smoking a cigar while he was piling tomatoes and peaches in his produce market. And my dad was a smoker also all his life; he's 90

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now. I started going to Cigarros when they opened in 1996. It was a very nice place to socialize, and smoke a cigar, and have a drink. I'm not there anymore, because I can no longer smoke a cigar at Cigarros. Seems odd you can't smoke a cigar in a cigar bar. You can get a drink inside but not smoke or you can smoke outside, but not get a drink. Currently, it is obviously legal to serve liquor in a bar, and it is also legal to smoke a cigar in a tobacco shop. However, if you combine these two legal activities, it then becomes illegal. I encourage you to support this bill, LB355, which is extremely limited in scope and is by no means a carte blanche to allow smoking in all bars across the state. Thank you very much for your consideration. [LB355]

SENATOR KARPISEK: Thank you, Mr. Lerner. Any questions for Mr. Lerner? Seeing none, thank you. Next proponent. Welcome. [LB355]

LEE POLIKOV: Thank you. Mr. Chairman, members of the committee, staff. My name is Lee Polikov, P-o-l-i-k-o-v, and I'm here representing myself. I, like Mr. Lerner, am a patron and feel that there are certain inconsistencies in the law that's coming upon us and they could be addressed by the committee by forwarding LB355. And I would encourage the committee to do so and give it a broad inspection through the whole body. I have submitted a letter, and I would just submit my testimony as a letter if that's all right. [LB355]

SENATOR KARPISEK: We can read it in as a proponent. However, you're already here, so that's great. Thank you. Any questions? Did we get...did you spell your name for the record? [LB355]

LEE POLIKOV: I did. [LB355]

SENATOR KARPISEK: Thank you. I'm sorry. [LB355]

LEE POLIKOV: That's okay. Thank you. [LB355]

SENATOR KARPISEK: (Exhibits D, E) Okay, thank you. Any other proponents? Seeing none. Do we have any opponents? And while they are coming forward, I will read in two letters of opposition, one from the American Lung Association, and one from the Lincoln-Lancaster County Health Department. Welcome. [LB355]

TERESA ANDERSON: (Exhibit F) Thank you. Good afternoon, Senators. I am Teresa Anderson, A-n-d-e-r-s-o-n. I'm the executive director of Central District Health Department, which is located in Grand Island, serving the counties of Hall, Hamilton, and Merrick. Thank you for allowing this opportunity to discuss this very important subject of secondhand smoke exposure once again. As a public health official, I have been involved in several policy campaigns to limit public exposure to secondhand smoke. I would like to give you a brief background on the Grand Island experience with

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going smoke free. About three years ago, the issue of making Grand Island smoke free in all places of employment came before our city council in Grand Island. And, as you know, there was generally some spirited debate about the dangers of secondhand smoke exposure versus the rights of retailers to determine what happens in their own establishments. This was most certainly the case three years ago. It may seem strange to hear, but at the time this was being discussed, we at the Health Department actually slowed the policy development process in order to get more information from retailers. We also wanted to promote acceptance of the policy by providing science-based information to the retailers on the issue of health and secondhand smoke exposure. In the end, we wanted to assure that the most even and enforceable policy was implemented. We were pleased when the city council gave us the opportunity to conduct an interim study of retailer attitude toward going smoke free. In order to complete that study, we visited with owners of restaurants and bars in our area and listened to their concerns related to eliminating smoking in their facilities. Over the course of the interview period, several themes started to emerge. We heard repeatedly that it is inevitable that we will be smoke free. Bar and restaurant owners told us that they felt smoke-free status was only a matter of time, but they added: We are concerned that our business will suffer and that our patrons will go where they can smoke to eat and drink and hang out with their friends. Their request for us as a city ordinance was about to be crafted: Make sure we have a level playing field. We were able to provide that level playing field in Grand Island. We have been smoke free now since last June 1. Employees and patrons alike are protected against the very real health dangers of secondhand smoke exposure without exception. We have at least one retailer with a number of pool tables, and we have a cigar bar. To my knowledge, they're both still open and operating. Every retail establishment in Grand Island is following the same rules. The Grand Island ordinance works, due to a large part, because everyone follows the same rules. Once in a while, we will have a creative attempt at a beer garden that falls short of the regulations, but those cases are easily corrected because of our ordinance. Our Grand Island ordinance mirrors the state's smoke-free law going into effect this coming June. There is no wiggle room for retailers. The ordinance is clear, as is the state law. Please know that going smoke free universally, in all places of employment, does work and is successful in reducing health hazards to the people we serve, protecting both patrons and employees. It certainly is working in Grand Island, and we believe that it will work across the state. Please assure that LB355 and LB600 do not advance. Thank you for your time. [LB355]

SENATOR KARPSEK: Thank you, Ms. Anderson. Any questions? Senator Price. [LB355]

SENATOR PRICE: Mr. Chairman, thank you. Ms. Anderson, in your testimony you have a statement here where they are both...where these facilities are still open and operating. Can you characterize how well they are or aren't operating? [LB355]

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TERESA ANDERSON: Since it's been since last June 1, we really haven't had a lot of time, and I cannot provide you with any numbers regarding their revenues. [LB355]

SENATOR PRICE: Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Price. Senator Rogert. [LB355]

SENATOR ROBERT: You mentioned in Grand Island there's also a cigar bar and pool hall. Do either one of those places serve food to your knowledge? [LB355]

TERESA ANDERSON: No. [LB355]

SENATOR ROBERT: Okay, thanks. [LB355]

SENATOR KARPISEK: Thank you, Senator Rogert. Any other questions? I would just have to ask...you said that it's certainly working in Grand Island, but you don't have any evidence of sales receipts or sales tax or anything like that to say whether it is or it isn't. [LB355]

TERESA ANDERSON: We don't. And those will be collected at the end of the year, so we can look for those probably August or September of next year. But we also have to be careful because of all the other variables that may be interfering with...compounding the issue, I should say, related to whether or not secondhand smoke prohibition is the difference. [LB355]

SENATOR KARPISEK: Okay, thank you. Senator Price. [LB355]

SENATOR PRICE: Yes. Just, again, to follow up, Ms. Anderson. When you say you don't have any data, have these owners tried to provide you any information? I mean, we have another owner here who has data right now on sales, so I didn't know, did they actually come to anybody...the city council? Because we're only hearing from one point of view, so collecting this data, I mean, this data exists in the universe; has anybody asked for it or have proffered it? [LB355]

TERESA ANDERSON: You know, and again, I cannot provide you with specific details. When I say it's working, it certainly is working from the health perspective, which of course is our chief interest in this. But we have not had, to my knowledge, any specific complaints related to drops in retail industry in that area. [LB355]

SENATOR PRICE: So that it's clearer to state in your testimony, here in your statement you say that it's working in a health way, not in a business concern. [LB355]

TERESA ANDERSON: I can't comment on the business portion of it. [LB355]

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SENATOR PRICE: Okay, thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Senator Coash. [LB355]

SENATOR COASH: Thank you, Chairman. Do you have any smoke shops in Grand Island? [LB355]

TERESA ANDERSON: We do. And in Grand Island, smoke shops are prohibited from allowing smoking. That's part of our local ordinance, so it's comprehensive in Grand Island. [LB355]

SENATOR COASH: Okay, so it's universal in Grand Island. [LB355]

TERESA ANDERSON: It is. It is, yes. [LB355]

SENATOR COASH: Okay, thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Seeing none, thank you, Ms. Anderson. [LB355]

TERESA ANDERSON: Thank you. [LB355]

SENATOR KARPISEK: Further opponents. [LB355]

MARK WELSCH: I've got one handout that I'd like help to distribute these to the senators. I'd like to give you all what I think is probably one... [LB355]

SENATOR KARPISEK: Sorry, Mr. Welsh, we cannot allow any visual aids. [LB355]

MARK WELSCH: Really? [LB355]

SENATOR KARPISEK: Really. [LB355]

MARK WELSCH: But you take paper visual aids. [LB355]

SENATOR KARPISEK: I don't set that rule. If you want to bring that up with the Exec; I didn't let the fire... [LB355]

MARK WELSCH: Okay, okay. Well, I'll simply set these aside then and continue with my testimony. My name is Mark Welsh. I'm from 5611 Howard Street in Omaha, Nebraska. I'm the president of GASP of Nebraska, the group to alleviate smoking

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pollution. And Cigarros was here, but...and I haven't been to their business, I don't think, but if it is in a strip mall, it shares a wall with another business. And I have worked with another business, a State Farm Insurance Company, who shared a wall with a different...it's a La Cabana Cigars in Omaha. And the smoke from that cigar store was coming into the insurance company, and it was bothering one of the employees there to the point where she had to quit her job to get away from the smoke before we were able to...until the city ordinance was modified due to the Supreme Court's ruling and smoking is no longer allowed in that store. But that person still is not employed there. They've gone on to other endeavors. So if you advance this bill, which I hope you will not, but if you do, I would hope that you would amend it so that a cigar bar or any other business that is allowed to have smoking would not be able to share a wall with another business. Because every business that shares a wall also shares air with that business. And if smoking is going on in one of those businesses, they're going to share smoky air, and that just shouldn't be right and shouldn't be allowed. There's a huge loophole, as I see it, in this law or in this bill, and that is where a business could take a 5-cent cigar and put it on their menu as a \$10 cigar that comes with a steak or a hamburger at \$5, and they could sell the cigar with a free meal attached. And if they do that, then their profits and their total retail sales are going to be, for that 5-cent cigar, would be very high so that they would meet that requirement. A Village Inn, if they wanted to start selling alcohol and little cigars along with their meal, could just change their menu. Any restaurant could do this with an alcohol license...where they could start to sell little cigars with the meal, where the meal is free if you buy a filet mignon cigar or a hamburger cigar, and get those things for free. If you're interested in making other changes...we talked about how other states allow smoking...I don't believe Iowa's law...and I just looked it up in my computer, the way I read Iowa's law they do not allow smoking in a cigar bar. They do allow it in tobacco stores, which is one of the loopholes in our state law which you now have the opportunity to fix with an amendment here, where you could make those places also smoke free with an amendment to this. And make it really a health bill rather than a cigar-profit bill. So I urge you to kill this bill and not allow smoking in any place in Nebraska, in anymore places than are already allowed. Thank you very much. [LB355]

SENATOR KARPISEK: Thank you, Mr. Welsch. Any questions? Senator Price. [LB355]

SENATOR PRICE: Mr. Chairman. Mr. Welsch, GASP is a statewide organization? [LB355]

MARK WELSCH: Yes, it is. [LB355]

SENATOR PRICE: Then can you tell me how many fewer cases of smoking-related illnesses have been reported in Grand Island in the last year? [LB355]

MARK WELSCH: I do not know that. I would hope that what has happened in other cities and states where they've researched this, such as in Pueblo, Colorado, in Helena,

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Montana, where a city has gone smoke free and there aren't really any other cities close by so it's an isolated case and a good test study. They've seen somewhere around a 50 percent or a 40 percent reduction in health...in heart attacks in those cities after they went smoke free. Helena, Montana, is a really good case because they were smoke free, I think, for six months and they saw this decline. And then the state judge said, no, you have to allow smoking, and their heart attack rates went right back up to where they were before. So secondhand smoke in businesses causes heart attacks. It causes, in some studies, close to 50 percent of the heart attacks. And I think our great state doesn't need anymore heart attacks, and this bill would cause more of those. [LB355]

SENATOR PRICE: Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you, Mr. Welsch. [LB355]

MARK WELSCH: You're welcome. Thank you very much. [LB355]

SENATOR KARPISEK: Further opponents. [LB355]

DAVE HOLMQUIST: (Exhibits G, H, I, J, K) Good afternoon. My name is Dave Holmquist, that's spelled H-o-l-m-q-u-i-s-t. I appreciate the opportunity to appear today before you, Senator Karpisek, and other members of the General Affairs Committee. I'm a registered lobbyist and act on behalf of the American Cancer Society of Nebraska. According to its title, LB355 relates to cigar bars, and would provide for smoking in locations which hold a Class C liquor license. However, if we're realistic, it's not really just a cigar bar exemption from the Nebraska Clean Indoor Air Act of 2008. The bill would allow smoking of any kind of tobacco product in any location holding a Class C license, if they decide to sell tobacco products. And it's an unknown how many of the existing 1,640 Class C liquor licensees would decide to sell tobacco products, and then be able to show that 15 percent of their gross profits from the sale of these products and related merchandise is available for them to allow smoking. Here are a few points to consider. In May 2008, the Nebraska Supreme Court ruled that, quote, the enactment of special legislation is prohibited by Nebraska Constitution Article 3, Section 18, which provides in relevant part that the Legislature shall not pass local or special laws in any of the following cases. That is to say, granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever. In all their cases where a general law can be made applicable, no special law shall be enacted. The focus of the prohibition against special legislation is the prevention of legislation which arbitrarily benefits or grants special favors to a specific class. The Supreme Court ruling on Omaha's exemption calls into question whether or not similar legislation for some liquor licensees would be constitutional. I am not an attorney; I can't answer that. I simply am quoting from the Supreme Court decision. Annual receipts from the sale with defined products must total at least 15 percent of gross profits. The

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bill includes no legal requirement for proof of this percentage of annual gross profit, simply a report from the license holder. Interestingly, defined products are not restricted to cigars, but would include cigarettes, other tobacco products, and tobacco-related products. Here's a scenario. Mr. Welsch beat me to it a little bit, but let's just say Joe Doe's Bar & Grill makes an offer you can't refuse. You buy a premium cigar or a pack of cigarettes for \$50 and receive two free steak dinners in exchange. That's another 50 bucks that goes toward the bottom line of the 15 percent threshold, not toward food sales. Only existing holders of Class C liquor licenses would be required to include proof of the cigar bar's annual gross profits. Apparently, based on the bill's draft, initial applicants would not need to demonstrate proof and would only need to define themselves as a cigar bar at the time of application. In addition to gutting a portion of the Nebraska Clean Indoor Air Act, LB355 would overturn local legislation already enacted and successful, certainly from a public health standpoint, in Omaha, Lincoln, Grand Island, and Humboldt; and would risk a return from the Nebraska Supreme Court to test the constitutionality of such exemptions. Finally, LB395 does not...does include a common sense exemption for tobacconists so that customers can sample products. We feel this does provide some leeway for those businesses that cater to tobacco customers. Based on the above information, I can only conclude that what LB355 proposes is not an exemption for cigar bars, but is really an attempt to suck the air out of a law supported by 34 members of the Legislature, the Governor, and more than 80 percent of Nebraskans. I also have some letters of support here from Health Education Inc., from the American Heart Association, and their letter is in opposition to LB355 and LB600; from the Public Health Association of Nebraska; Friends of Public Health in Nebraska; and the Metropolitan Omaha Tobacco Action Coalition. And with that, I would be happy to answer any questions. [LB355]

SENATOR KARPISEK: Thank you, Mr. Holmquist. Senator Rogert. [LB355]

SENATOR ROBERT: David, thanks for coming down today. I just want to comment a little bit on some of the things you mentioned. I'm also not an attorney, but I think the court ruling last year on the Omaha exemption did rule out a certain entity, and that was keno bars. And I think this is not a special entity, it allows anybody who wants to try and do this, they're welcome to do that. I do want to comment, on the record, towards...I haven't seen some of these letters, but I have a feeling they're going to say something similar to this letter that just came right here, and you mentioned it earlier...that...this one happens to be from the Lung Association, and it specifically says that this will turn 1,600 bars and restaurants into smoking places. And I think that this absolutely does not do that. And I know that a bunch of us have been getting e-mails from members of these organizations because this has been going out to their members, and I think that, on the record, is wrong. That this is a lie; that's not what this bill does, and to tell everybody in the state of Nebraska that it does that doesn't make me very happy. Now I know you didn't do that; this is not your group, but I just wanted to make that note. [LB355]

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DAVE HOLMQUIST: And I would repeat what I said. The possibility exists just because there are that many Class C licensees. Realistically, would that many do it? I doubt it. But it could certainly be... [LB355]

SENATOR ROBERT: Well, I don't think that many are going to be able to get to 15 percent. I doubt hardly any will. [LB355]

DAVE HOLMQUIST: Well, when we talk about the 15 percent, my concern is that it's not just cigars, it's cigarettes, spit, you name it, tobacco products as well as tobacco-related merchandise, similar to what's in the tobacco shops. [LB355]

SENATOR ROBERT: Sure. Okay. [LB355]

SENATOR KARPSEK: Thank you, Senator Robert. Any other questions for Mr. Holmquist? Seeing none, thank you. [LB355]

DAVE HOLMQUIST: Thank you. [LB355]

SENATOR KARPSEK: Do we have any further opponents? Welcome. [LB355]

BILL HARVEY: Thank you. Mr. Chairman and members of the committee, my name is Bill Harvey, H-a-r-v-e-y, and I'm general counsel for Big Red Keno. And I'm here today to oppose LB355 and also LB600. My arguments against the two bills will be very similar, and so I'll try not to repeat too much. First of all, let me tell you just a little bit about our company. Big Red Keno is a Nebraska company. We have about 300 employees, and we work in about 230 locations across the state. We...most of those are independent bars and taverns. We lose money for community betterment, for cities, counties, and villages. And last year alone, we raised about \$10 million for community betterment, for the cities that we serve. We have been following the smoking issue for some time because we work in bars and because a number of our keno players are smokers. And we ask one thing of this committee today, and it's to not...please do not start the process of granting exemptions to Nebraska's comprehensive statewide smoking ban. That's our request to the committee today. We came to the Legislature last year with a number of other businesses, and business groups, and health groups, and we supported LB395. And the reason we supported LB395 is because it created a level playing field for all businesses across the state of Nebraska with regard to the issue of smoking. There were a number of attempts to create exemptions to that and to create opt outs, and we opposed those attempts because we felt that it was a bad idea then, and we feel like it's a bad idea now to do that. We support having a level playing field. That's all we ask is that you require all businesses to play by the same rules. No one can make a better argument for an exemption to the smoking ban than our business. I can show you through publicly available data that's on the Web site of the

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Nebraska Department of Revenue that when Lincoln enacted their local smoking ban, our business went down nearly 20 percent. Okay? One of the cigar bars mentioned their business had gone down 19 percent; our business went down nearly 20 percent in Lincoln when they enacted their smoking ban. In Omaha, our business went down 15 percent under their local smoking ban. But I'm not here today to ask you for an exemption, and the reason I'm not is this: If you grant an exemption to the cigar bars, and then you grant an exemption to the pool halls, then I'm going to come--and as I've said, I can make a better case for an exemption than they can--so I'm going to ask that you grant me an exemption for our keno business and for other keno businesses. That's another 230 locations just from our business. And then there will be other locations who will come and ask you for exemptions. There's dozens of them out there who would love to have an exemption from the smoking ban. I can think of veteran's organizations, organizations that sell pickle cards, bingo halls. There are...the list goes on and on, as far as locations that would love to have an exemption. If you're going to start handing out exemptions to this law, as soon as you do that, the line forms and there will be many organizations that would love to have an exemption. It's a bad road to go down, because once you do that, you lose that concept of a level playing field. And what you'll end up with is not a smoke-free law that has a couple of exemptions, you'll end up with a mess. You'll end up with an amalgam of conflicting rules and laws that will be very difficult to enforce let alone understand. On the understand part, I've read through LB355 and LB600, and let me just pick on LB355 for purposes of this testimony because that's what this hearing is about. There are a number of terms in LB355 that I think could use a lot further definition. One term that's in there is gross profits. And I was very confused about the term gross profits, and Senator Lautenbaugh indicated that he was going to change that term to gross revenue, which I think is a good change. But I think that even with gross revenue, and some of the earlier testifiers have alluded to this, that can be manipulated in terms of what a business brings in, how they allocate their revenue to different items. It's certainly...businesses are certainly able to price things differently and adjust those revenue numbers and what they receive their gross revenue from. So that certainly is a possibility. There's also this question of tobacco-related products, and there's no definition, again, of tobacco-related products in the bill. It seems to me to be a very broad term and subject to, again, quite a bit of manipulation and subjectivity. And so that's a great concern we have is, what is a tobacco-related product? We talk a lot about cigar bars and, you know, I've enjoyed a cigar on occasion in my life. I have nothing against cigars; I think they're great. But this also applies to cigarettes, it also applies to tobacco-related products and other tobacco products. And so I think the possibility clearly exists that this exemption...we're kind of opening up the small door for...you know, they say about six locations...if we could limit it to that, that would be great. But this bill doesn't limit it to that. This bill will create a small exemption, and I think there will be a truck driven through this by other locations that will, you know, that will try to use that exemption to get their own exemption to the smoking ban. We also have a question of who really regulates this exemption and I don't really understand that, because we create part of this under the Liquor Control Act.

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So the Liquor Control Commission seems to have a hand in this, but then the reporting goes to the local cities, counties, and villages when they're actually reporting what their gross profits or gross revenues are. So my question is, who sets the rules for what gets reported and how that's reported and so forth? Is that the local communities or is it the Liquor Commission? Would the Health Department have a hand in that? The Health Department doesn't seem to have a place in this bill but, you know, maybe that raises other questions as to why they're regulating all the Clean Indoor Air Act, but they're not regulating these exemptions. So I think the way the bill is written certainly creates a lot of questions in my mind that would need to be cleared up. And there was an indication that from liquor...that liquor alone would incur \$80,000 in costs on this bill. Their fiscal note came back at \$80,000. And Senator Lautenbaugh said it would be less than that, and I wouldn't be surprised if it's less than that; but clearly there is some cost to somebody enforcing this exemption. All of these problems I've identified apply to LB355, but they would also apply, in some form or fashion to LB600 or to any exemption that we would talk about. Because once you start creating exemptions, number one, you do have the legal issues that the Supreme Court mentioned. And I understand the commentary on that case and believe me, I understand that case pretty well because it pretty dramatically affected our business. But I do think there's questions about the legality of the special legislation and so forth. I do think there's questions about whether this can be done legally. But I also think whenever you go down the road of creating exemptions you're, by nature, going to have to create arbitrary definitions. You're going to have to have a cutoff to that exemption, so you're going to have to create some kind of arbitrary definition. This guy's in, this guy's out, as opposed to the level playing field concept. You're going to have to have some kind of reporting so you know that people meet the exemption. You're going to have to have somebody enforcing compliance, which is going to cost money. And you're going to treat one type of business differently than another type of business. If their business is entitled to an exemption because they're down 20 percent, my business is entitled to an exemption because we're down 20 percent. And like I say, the line forms to the right, because there are many, many other businesses out there that will have the same issue. We think this is a bad road to go down, and we urge you to kill these two bills. Thank you. [LB355]

SENATOR KARPISEK: Thank you, Mr. Harvey. Questions? Senator Rogert. [LB355]

SENATOR ROBERT: Thanks, Mr. Harvey. Yeah, I think there's some stuff we might need to look at to narrow this down a little bit. Would you have less opposition if these folks weren't allowed to sell keno? [LB355]

BILL HARVEY: If these folks weren't allowed to sell keno? [LB355]

SENATOR ROBERT: Because that would create more of a level playing field, I believe, for...because I would agree that this could be something that could whack on the keno guys. But if we took that out of there, would it be less of a problem for you? [LB355]

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BILL HARVEY: You know, it's certainly something I can talk to you about. I think if the committee is intent on moving this forward, which I would hope you would not do, because like I said, going down the road of exemptions is a bad road to go down. But if you were intent on moving this forward, obviously, the more you could narrow that and actually craft this...because this proposition is not a narrow proposition despite the fact that it's been presented as that today, it's not a narrow proposition. The more that it could be narrowed, obviously, the better that would be. [LB355]

SENATOR ROBERT: Okay. [LB355]

SENATOR KARPISEK: Thank you, Senator Robert. Senator Coash. [LB355]

SENATOR COASH: Thank you, Chairman. Two questions: Do you have any problem with the smoke shop exemption? [LB355]

BILL HARVEY: You know, regarding the smoke shop exemption, it's not something that I personally was in favor of, that our business was in favor of. We preferred the level playing field. I do think the smoke shop exemption is different than this exemption. It's very narrowly crafted. If you'll look at that exemption, there are some very narrow definitions of what a smoke shop can sell. It can really only sell tobacco. They're not allowed to sell gas. They're not allowed to sell pop. They're not allowed to sell liquor. It's a very, very narrow exemption, whereas this is much broader. [LB355]

SENATOR COASH: Okay. Second question: In Lincoln anyway, the ban has been going on for quite a while. You mentioned a 20 percent drop. Has it bumped back up or are you...comparatively? [LB355]

BILL HARVEY: What we've seen in Lincoln is that finally, after four years, our business got back up...you know, gained that 20 percent back. But really, we lost it. It's just gone, and the reason is because what happened was we created a situation where businesses inside the city had to comply with the ban and businesses outside were essentially exempt by reason of geography. Okay? They got that business. What happens is over time the whole market goes up. So we want a growth curve of about 4 or 5 percent a year, just a normal growth curve. We drop 20 percent and, of course, over four years we go back to our normal growth curve and get 4 or 5 percent back a year. Well, of course we got back to that 20 percent level. But really, overall, our market share is gone. [LB355]

SENATOR COASH: I understand. Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Mr. Harvey, I just want to, on record, talk about the level playing field, because we had one before

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any of this started. So with me, that holds zero weight. Different businesses are different businesses; they are not all level playing fields, but if it is unconstitutional to have an exemption. Then in your opinion is it unconstitutional the way it's written because we have the exemption for the smoke shops...tobacco shops? [LB355]

BILL HARVEY: You know, I wouldn't be in a position to second-guess the Supreme Court on that. [LB355]

SENATOR KARPISEK: All right. Thank you, Mr. Harvey. Anyone else? Seeing none, thank you. Further opponents. Welcome. [LB355]

ROGER WELLIVER: Hello, Senator Karpisek. My name is Roger Welliver, W-e-l-l-i-v-e-r, 2474 North 45th Avenue, Omaha, Nebraska. I am a former smoker. Our best, the original Sultan of Swat, Babe Ruth, was a cigar smoker and he died from esophageal cancer. In 1990, I quit smoking because I either quit smoking and get the polyps on my vocal chords off or I ended up with esophageal cancer also. So whether you smoke cigarettes or cigars--I smoked cigarettes, but I didn't inhale them all the way--you can get cancer. And I do not believe in having a cigar bar for the simple reason that if we're going to have a smoke-free environment, let's have it smoke free. I understand the exception on a smoke shop because they're selling the smokes, so they can...that's all they do. That I understand and I can see that. But I can't see it any other way because once we start creating exemptions for everybody else, whether it be cigar bars, keno, or anything else, we start polluting the whole idea behind the law that was crafted last year. And I understood your position on business. I watched very closely, by the way. I also believe...know that we are a country that believes in the ruling by the majority or majority vote. Currently, the majority of the people in the United States are nonsmokers. And my position is, why should the minority rule the majority? I think, going beyond that, I just can't believe in even creating this as an exemption. And I also would state that I believe that, even though it has been stated that they think that the state Supreme Court ruling last year on Omaha's ban doesn't meet...but I do believe it has and will have an effect on this law also. I thank you for your time. If you have any other questions I'm just, like I say, a person talking against it. [LB355]

SENATOR KARPISEK: Thank you, Mr. Welliver. Any questions? Seeing none, thank you. Further opponents. [LB355]

JIM OTTO: Senator Karpisek, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Restaurant Association and I noticed you didn't say welcome to me. (Laughter) [LB355]

SENATOR KARPISEK: Oh, sorry, Mr. Otto. I guess I forgot. [LB355]

JIM OTTO: Two years ago, when the Nebraska Restaurant Association took the

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position to support a smoking ban in the state of Nebraska, one of the conditions or in fact the primary condition was that it be a statewide ban of all places that sold liquor or food. And I'm just here to encourage you to oppose this legislation because...just so that we're consistent on what our position is. So the Nebraska Restaurant Association is in opposition. [LB355]

SENATOR KARPISEK: Thank you, Mr. Otto. Any questions for Mr. Otto? Seeing none, thank you. Further opposition. Seeing none, do we have any neutral testimony? Welcome. [LB355]

LYNN REX: Thank you. Members of the committee, my name is Lynn Rex, representing the League of Nebraska Municipalities. And we'd just like to convey to you that we do have concerns about language on page 11, lines 11-13, which is Section 4. It reads that, "Nothing in the Nebraska Clean Air Indoor Air Act or any similar city ordinance prohibits smoking in indoor areas shall apply to cigar bars as defined in Section 53-103." In our position with this, as it is with LB600, is basically that if the Legislature decides to advance LB611, which you introduced, Senator, then we want to make sure that municipalities also have the option to regulate cigar bars, as they would with pool halls as well. So from a consistency standpoint, I'd be happy to respond to any questions you might have. [LB355]

SENATOR KARPISEK: Thank you, Ms. Rex. Senator Rogert. [LB355]

SENATOR ROBERT: Ms. Rex, with what ways would you seek to regulate these guys? [LB355]

LYNN REX: I'm sorry? [LB355]

SENATOR ROBERT: With what...how would you seek to regulate them? [LB355]

LYNN REX: Well, I'm saying that if the Legislature passes LB611, which would allow municipalities to have the right to, basically, opt out of the Nebraska Indoor Clean Air Act, then municipalities should also have the right to regulate cigar bars, pool halls, just across the board. [LB355]

SENATOR ROBERT: So if/then is what you're saying? [LB355]

LYNN REX: Yes. [LB355]

SENATOR ROBERT: Got it. [LB355]

SENATOR KARPISEK: Any other questions? Seeing none, thank you. [LB355]

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LYNN REX: Thank you. [LB355]

SENATOR KARPISEK: Further neutral testimony. Welcome, Mr. Rupe. [LB355]

HOBERT RUPE: Thank you, Senator Karpisek, members of the General Affairs Committee. My name is Hobie Rupe, Executive Director of the Nebraska Liquor Control Commission. First off I want to say, as is our past history... [LB355]

SENATOR KARPISEK: Can you spell your name, Mr. Rupe? Sorry. [LB355]

HOBERT RUPE: I'm sorry. H-o-b-e-r-t, last name is Rupe, R-u-p-e. My apologies. [LB355]

SENATOR KARPISEK: Thank you. [LB355]

HOBERT RUPE: The commission has, thus far, maintained a neutral stance on the smoking bans because although it seems that everything that gets brought up into legislation or in arguments has to do with bars, the smoking ban was broader than just specifically to the Liquor Control Act. LB355 specifically does impact the Liquor Control Commission in certain ways, and we wanted to testify in a neutral capacity, sort of raise some of our issues. First off, I want to say that Senator Lautenbaugh...we thank Senator Lautenbaugh's office for already, just before we started at least, addressing one of our concerns through his friendly amendment which was the 50 percent of gross...I believe it was gross profits, where it was earlier. We believe gross sales, if this does pass, will be an easier way to enforce and make sure that somebody is in compliance with it, in that if it's by the gross sales they'll have income tax returns for existing businesses, and even for new businesses they would have their quarterly returns which would show impact. Gross profits...I also was having concerns of to the 25-cent cigarette for a \$10 cup...I wasn't smart enough to throw steaks into it. I just was thinking instead of charging a \$10 cover for the band, you're charging a \$10 cover...a \$10 cigarette fee for a 25-cent cigarette and putting the \$9.75 into your profits. By going by gross sales it will be easier for the commission to enforce because it's much cleaner and they can't have as much, how should I phrase this, ingenuity as they could have on their profit and loss statements, which would require more efforts by the commission. A couple of concerns we do have, and I think from the drafting...it looks like on page 2, line 16-19, those reports are going to a local governing body and not the commission. It would be our preference, I guess, if you're going to pass this bill, and basically what you're adding is a sort of an endorsement on top of an existing license--in this case an existing Class C liquor license--so it's a lot like giving us a CDL on top of every driver's license, that that information would go to the commission. A couple reasons why. A lot of times I think we have a bigger hammer. If somebody falsifies an application to the commission, it generally results in cancellation of the entire liquor license so maybe we might see less games being played with that. And I think the commission's concern was...I think that

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Senator Lautenbaugh's addressing some of them, is making sure that it is narrowly focused. We do have approximately 1,600 Class C liquor licenses for those who...Class C is sort of the largest and most, I guess, powerful of the other retail licenses. It allows both beer, wine...it allows beer, wine, and spirits, both on and off sale sales. So it's sort of the biggest...you pay the most for it, but it also gives you the most rights under the act. And so we would look at that. It was raised earlier, our fiscal note...and just to let you know, I'm not in the habit of introducing \$80,000 fiscal notes, but the reason that we had to do that is because under the proposed budget currently in front of the Governor, we're going to be having a significant staff hit under the proposed budget. Well, sort of going on the last position created is the first person...job eliminated, and for the fact that currently our second auditor position is not currently filled, it's easier to let someone go who doesn't have a job. We've held up on filling it until we see what the budget is going to do. We would be losing one of our audit positions whose primary job duties have been to do...has been retail audits, not specifically for a 15 percent sales, but for false ownership and hidden ownership and that kind of stuff. And so I didn't want a bill come back out and then later on say, hey, wait, we need an auditor's position; I at least want to put it out there. If it doesn't get cut in the regular budget, then that would go down here. So I just wanted to make sure that you're aware of why that \$80,000 was in there. And plus, I believe that if the act or the legislation is crafted more narrowly, perhaps there will be less need for an auditor. You know, I guess I was looking at worse case scenario of having a lot of people trying to comply with a cigar bar by using such, you know, the \$10 cover charge...the \$10 cigarette fee for one cigarette. But, so...any questions? [LB355]

SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Rogert. [LB355]

SENATOR ROBERT: Mr. Rupe, thanks for coming. Couldn't you go, at the Liquor Commission, call up the Department of Revenue and find out what the tobacco sales are of any entity because they have that tax on every single thing you can sell? [LB355]

HOBERT RUPE: Believe it or not, the Department of Revenue doesn't like sharing with other state agencies. [LB355]

SENATOR ROBERT: Well I can fix that. [LB355]

HOBERT RUPE: Yeah, I know. But I will let you know that, although for the most part we do have a pretty good relationship with the Department of Revenue, a lot of times getting tax returns from the Department of Revenue is not that easy. You know, currently, the commission, of course, if you have a Class C liquor license, the commission or law enforcement can enter onto those. We have subpoena powers. We can look under the fact that they...as in this case, they would have a Class C liquor license, we would have sort of a tool to use that. But it's...I don't want to say too much bad about the Department of Revenue, but sometimes getting information from them

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isn't the easiest thing to do. [LB355]

SENATOR ROBERT: Okay, thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Robert. Any other questions? Mr. Rupe, I would ask...you obviously have gone through and figured out that you would probably be in charge of this, because some of the opposition testimony said they didn't know who would really be in control. [LB355]

ROBERT RUPE: Based upon my reading, other than the first section which sort of has the reporting requirements going somewhere else, it was amending the Liquor Control Act. The Liquor Control Act, with the exception of certain things like 53-180, which is minors in possession, some of that kind of stuff, at least from the regulatory scheme is almost entirely underneath the Liquor Control Commission. So I was assuming that if you're adding it, and the requirement was that they have a Class C liquor license to begin with, they would sort of be an addition on that. I'll give you an example. We have a lot of licenses that are called CKs, it's caterers. Caterers have benefits. If they're a true caterer, they can get more specialty licenses for parties and that kind of stuff. That requires them to have an existing license already for them to do it. And so that's the way we were sort of looking at this within the staff, whether this would be an additional endorsement. It would be a specific thing. You had to qualify for the C, and then you had something else on top of that. And that was our reading of the statute upon my purview. [LB355]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any further questions? Seeing none, thank you. [LB355]

ROBERT RUPE: Thank you. [LB355]

SENATOR KARPISEK: Do we have any further neutral testimony? Seeing none, Senator Lautenbaugh to close. [LB355]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. I was taking notes back there, and there are a few things I would like to respond to. Keno parlors don't exist for smoking. Keno parlors...I don't even know if they sell tobacco products. That's a very clear distinction right there. And to hear the keno parlors say their revenue is down 20 percent, well, that is what it is. We can argue about the advisability of the ban. I think you heard that the damages to Cigarros, which exists for the purpose of selling tobacco unlike a keno parlor, exists for the purpose of selling tobacco...the percentages are much higher than what keno has experienced. So to say they should be first in line doesn't even make any sense. The smoking ban was not out to ban keno, regardless of the wisdom of keno. The smoking ban was not targeted at keno. These entities are smoke shops that have liquor licenses, and they're being

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forced out of business. I can't make it any plainer than that. And this very minimal step, this very minimal exception, is being defined as gutting the Clean Indoor Air Act. I would submit to you that that's a overstatement, to say the least. And a level playing field...we heard that phrase bandied about today...these folks won't be on the field. That's not a level playing field. We're forcing them out of business. That's not a level playing field. And of course, you did hear from advocates on the health issue on this. And you heard anecdotal evidence of the supposed worker next door to a smoke shop that thought the smoke was coming into her place of business. Landlords can enforce that type of thing. You didn't hear any complaints about the places that are here today, no anecdotal, you know, the woman with some odd tie to that place. And the beauty of it is, I don't have to sit here and give you anecdotes about something I heard once from someone; these people are sitting right here, you heard from them. And they're suffering because of what we did, all out of proportion to everyone else because of the business they're in. I have an anecdote of my own. I was taking the deposition of a doctor once and it was on my nickel and it was going nowhere. I was not getting what I wanted from the doctor. But he did say that this gentleman's back wasn't healing because he smoked, because smoking's bad for you. I'll admit that. But the "depo" wasn't going my way anyway, so I said would it be better if he smoked cigars? And everyone looked at me like what does that have to do with anything? But I thought I might as well get something out of this. So the doctor answered it, yes, you don't inhale those things. You smoke one or two cigars a week, you're not going to have a health problem from it your whole life. I heard it; I was there; and it was under oath. So, I don't know if I'm under oath today or not, but I was there and I heard it. This is a personal issue to me, because this is one of the first things that I...one of the first bills I tried to amend last year. And it didn't take a psychic to see what was going to happen to these businesses, so I'm not saying I saw this coming and no one else was aware of it. If we were inclined to look, we all would have been aware of it. And I tried to point it out, and if cloture hadn't been invoked I would have pointed it out. There was a judge in Douglas County who used to say: The shiniest jewel in democracy's crown is the right to be let alone. And what he was saying was, you know, people do have rights to make their own mistakes, to make their own choices. And if it's not affecting others, generally, I thought we were to let them do it. And in this case, the gentleman who said, well, I thought the majority ruled in this country. Yes, but not always at the expense of the minority's rights. And if these cigar smokers were coming to that gentleman's house, he would have something to talk about. And if they were following him to his place of business, he'd have something to talk about. And if they were wherever he went, he'd have something to talk about. We are talking about a very narrow exception here. Despite the testimony you heard, and by the way, the Liquor Control Commission didn't just fall off the turnip truck. Do you really think they're not going to know if someone's charging \$50 for a cigar and throwing in a couple of bonus steaks, even if ultimately this applies to places that serve food, which it probably won't. You heard a lot of testimony today about all the ways people are going to get around this. That's absurd. Do you know what happens if you get around this and get caught? You lose your liquor license. And there's probably criminal

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charges involved for defrauding the Liquor Control Commission. This is narrowly tailored, and don't let anyone tell you differently. And it's to address a wrong we did last year. We're already doing it with smoke shops; we're just trying to save these other businesses too. And they've got the best claim of anyone because this is the business they're in. And I'd be happy to answer any questions you might have. [LB355]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Senator Friend. [LB355]

SENATOR FRIEND: Thank you, Chairman Karpisek. Senator Lautenbaugh, in subsection (42) of Section 53-103 is the definition of a cigar bar. Just so we're on the record with it, a cigar bar means a holder of a Class C liquor license which, in addition to selling alcohol, annually receives 15 percent or more of its gross revenues...or we can talk about that later... [LB355]

SENATOR LAUTENBAUGH: Yes. [LB355]

SENATOR FRIEND: ...from the sale of cigars, cigarettes, and other tobacco products and tobacco-related products, period. Would you have an issue if this committee changed that definition to put a period right after the term cigars? And I know I'm putting you on the spot, but let me elaborate and then...there's a difference between a cigar and a cigarette because the difference between all these things, we've established this over and over again. I've been to Cigarros; I've been to other establishments of that nature. I don't go there to smoke cigarettes either. I don't mind the smell of cigars. Your comments...I mean, if we put a period right after cigars, what's the problem with that definition? [LB355]

SENATOR LAUTENBAUGH: Well, the definition was taken from the Clean Indoor Air Act; that's the definition of a smoke shop--tobacco-related products which would include lighters, humidors... [LB355]

SENATOR FRIEND: But, Senator, we're providing a new definition in subsection (42) of what a cigar bar is, so...I'm not trying to, again, put you on the spot, but we create the definition here within Section 53-103. I guess I'm not seeing a problem if we differentiate with that definition. [LB355]

SENATOR LAUTENBAUGH: Honestly, you're not bound by what's in that act. I hesitate to answer because I don't know how much of the revenue we've been talking about. I don't know if that makes the 15 percent unreasonable, because I don't know how much of that is cigars and how much is tobacco-related products as defined in the Clean Indoor Air Act. So I can't answer your question and say, yeah, that would be fine. My suspicion is it is, but I'd have to check it out. [LB355]

SENATOR FRIEND: Okay. [LB355]

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SENATOR LAUTENBAUGH: And that would...I'm sorry Senator Dubas is gone. She asked, would cigarette smoking be allowed. Really, that would be up to the owner. The owner could say, I only want pipes; the owner could say, I only want cigars. [LB355]

SENATOR FRIEND: Not if we changed this definition and put a period after cigars, it wouldn't be. [LB355]

SENATOR LAUTENBAUGH: Well, actually, I don't think... [LB355]

SENATOR FRIEND: If we change the definition in subsection (42) and we put a period after cigars, Cigarros cannot allow somebody to smoke cigarettes in that establishment. [LB355]

SENATOR LAUTENBAUGH: That's possible. [LB355]

SENATOR FRIEND: Fair enough? Probably, not. I mean, we'll just humor ourselves at this point. Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Friend. Any other questions? Senator Coash. [LB355]

SENATOR COASH: Thank you, Senator Karpisek. Senator Lautenbaugh, you mentioned this in your closing, but we heard Mr. Welsch, Mr. Holmquist say look, if this goes through we're going to have a 10-cent cigar with a \$50...and that's the kind of loophole that I was asking about. Just for the record, is that your intent in this bill is to allow that? [LB355]

SENATOR LAUTENBAUGH: No, my intent is not to deceive you or game the system here. And that was my point when I said the Liquor Control Commission didn't just fall off the turnip truck. There are, as Senator Rogert suggested, revenue tax payments for tobacco products so it will be apparent what these entities are doing. And the loopholes that you heard about would not be feasible, and there would be severe penalties, so. [LB355]

SENATOR COASH: So as you see the bill as you've crafted it, you don't see it opening for those kinds of loopholes as you've crafted the bill? [LB355]

SENATOR LAUTENBAUGH: Not without severe consequences. I don't know who would risk it, because you're risking your liquor license. It wouldn't be one of those, okay, you've deceived us, you don't get to smoke anymore. It would be you lied to the Liquor Control Commission, that's a different deal. [LB355]

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SENATOR COASH: Very good. Thank you. [LB355]

SENATOR KARPISEK: Thank you, Senator Coash. Any other questions? Senator Lautenbaugh, I also don't want to put you on the spot, but what if we were to increase the 15 percent that has seemed to cause some heartburn to 20 percent or 25 percent? [LB355]

SENATOR LAUTENBAUGH: You're talking about tightening this up, sure, to address that. I understand. My response would be 20 percent would be more than 15 percent. [LB355]

SENATOR KARPISEK: I was right. [LB355]

SENATOR LAUTENBAUGH: You were correct, yes. There are a lot of ways that you could do that. I mean, I hesitate to think out loud. Just between all of us, I guess, but you could make an application fee so that you'd have to be a serious applicant. And once again, the Liquor Control Commission isn't just going to take your word for this. If you say I want to be a cigar bar and I want to meet these revenue levels, be it 15 or 20 percent, you're going to need a walk-in humididor. And that's something everyone can see. And it's going to have to be full of cigars, by the way. So I mean, this is not something that someone could just acquire, you know, take our word for it, we're going to be a cigar bar and say six months later, well, we failed, sorry; we're not going to allow smoking to happen here anymore. You would have to make a good faith effort at it, demonstrable effort. And the Liquor Control Commission would be able to tell, very readily. And once again, as we raise these barriers, we aren't going to have a lot of businesses that want to go this route for a variety of reasons. The whole auditor position probably would not be necessary if we're still...I mean, look at how many cigar bars existed before we had the ban, a half dozen. I don't know that it's reasonable to say a lot of other places are going to spend the money on a walk-in humididor and try to meet these revenue levels. So the auditor is not going to be the busiest man on the state payroll, I'm thinking, for this level of activity. [LB355]

SENATOR KARPISEK: Thank you, Senator Lautenbaugh. Any other questions? Seeing none, that will close the hearing on LB355. [LB355]

SENATOR ROBERT: Senator Karpisek, you may open on LB600. [LB600]

SENATOR KARPISEK: (Exhibit A) Thank you, Senator Rogert, members of the General Affairs Committee. My name is Russ Karpisek, spelled R-u-s-s K-a-r-p-i-s-e-k, and I am the senator from LD32, and I'm here to introduce LB600. LB600 attempts to do the same thing for pool halls that Senator Lautenbaugh is trying to accomplish with LB355 for cigar bars. LB600 does not create a new liquor license for pool halls, but defines what a pool hall is and allows them to have smoking. While many people like to point

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out the positives of having a statewide smoking ban, we can no longer bury our heads in the sand and act as if there are no negative consequences. The fact is that at least one business in Lincoln has been devastated by Lincoln's smoking ban. With LB600, I am not trying to undo the smoking ban, but merely allow a business that has relied heavily on customers who smoked a way to keep its doors open. I think it is important to note that during the discussion on the statewide smoking ban, claims were made on the floor that such a ban would not hurt businesses. Specifically, the introducer of LB395 stated during debate: The next is to rely on fear--tell the bar owners and restaurants that they are going to be hurt. I can assure you, in the states that have passed similar legislation as this, there are still restaurants and believe it or not, the bars are still open. That senator was mistaken. You do not have to look at other states for examples of businesses that would be hurt by a statewide smoking ban. Look no farther than Lincoln and Omaha for businesses that have been hurt by local smoking bans. For example, one Lincoln pool hall's gross yearly income was \$604,000 in 2003, and \$582,000 in 2004, prior to the Lincoln smoking ban. The pool hall saw a gross yearly income drop to \$288,000 in 2005, the first year of Lincoln's smoking ban. And revenues continued to decline to \$228,000 in 2006, saw a slight increase to \$256,000 in 2007, before dropping again to \$191,000 in 2008. I have a bar graph showing the total sales tax revenue per fiscal year, by quarters, starting in 2003. And that's what I was looking at committee counsel for--my bar graph that I have somewhere. As you can see, there was a dramatic decrease in revenue when comparing the same quarter from each of the six years. You may note that there is no data from the fourth quarter of 2008. That is because that is when the pool hall went out of business. If it were truly the intent of the Legislature not to harm businesses or force them to close, then it is our duty as senators to ensure that our intentions are realized. If closing pool halls were not the intention of the senator who introduced the smoking ban legislation, then the closing of Big John's Billiards in Lincoln is clearly an unintended consequence. Now that Omaha no longer has an exemption allowing for pool halls to allow smoking, Big John's Billiards in Omaha has already seen a substantial decrease in first quarter revenues. It would appear that too many face a similar fate as its Lincoln counterpart. The question for this committee and the Legislature is, what are we going to do to change this? I've introduced one possible answer. I request that the committee consider advancing LB600 out of committee, and give the Legislature an opportunity to change what we have started. I'd be glad to take any questions. [LB600]

SENATOR ROBERT: Thank you, Senator Karpisek. Are there any questions from the committee? Seeing none. [LB600]

SENATOR KARPISEK: Thank you. [LB600]

SENATOR ROBERT: Are you going to stay for close? [LB600]

SENATOR KARPISEK: I will stay for close. [LB600]

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SENATOR ROBERT: First proponent, please. [LB600]

WALT RADCLIFFE: Senator Rogert and members of the General Affairs Committee, my name is Walt Radcliffe, W-a-l-t R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist on behalf of Big John's Billiards. I just have a few comments before the witnesses that are here behind me get up, and we've probably got only about three or four, so...and we'll be brief. You heard a lot of arguments, commentary, on the previous bill. Very honestly, what the case that we're trying to make here today is a pretty simple one. And that is, that the Legislature should adhere to the arguments that were advanced when LB395 was passed. If you were here, which some of you were, and those of you who weren't, if you read the record you will see that it is replete with references to the fact that LB395 would not, quote, harm businesses, that businesses would not go out of business. And that was certainly not just an undercurrent, but it was thematic with the bill when it passed. And so, I mean, there were attempts made to say this isn't true, and those attempts were put aside. I would submit to you that if, after the fact, we can come back and an entity can show to you that they were, in fact, harmed and, in fact, put out of business as a proximate result of the smoking ban, that the Legislature should consider an exemption to that. The statutes...if you took out all the exemptions in Nebraska statutes, it would probably be one book. I mean, look at the sales tax exemptions. I'm not saying there's anything the matter; this is what the Legislature does. It listens to citizens that come and make a case for a particular law, a particular exemption. Senator Pahls's bills in the Revenue Committee, if you repeal all the sales tax exemptions, you can generate enough money we won't even need any property taxes. I'm not advocating that, but I'm saying the long line of potential exemptions is no reason to fear this bill. In fact, I'd submit to you if anybody can come to you, given the floor debate on LB395, and demonstratively show that they have been, in essence, been put out of business because of that, they should be given an exemption. The Legislature doesn't exist to put people out of business who are conducting a legal business in a legal way. The people, the Prouts and their attorney and CPA, is going to follow me, and keep in mind what they're going to demonstrate and prove to you is that they were irrevocably harmed as a result of this. And that's why they're asking for the exemption. Just a couple quick things. There's probably fewer pool halls, by definition, than there are cigar bars, because one of the things we say is that they have to have 20 pool tables. Well, there's probably not any way to fake a pool table that I've figured out, so I'd urge you to keep that in mind as you listen to my client's testimony. And I thank you very much for your attention. I'd be happy to attempt to answer any questions, Senator. [LB600]

SENATOR ROBERT: Thank you, Mr. Radcliffe. Are there any questions? Senator Dierks. [LB600]

SENATOR DIERKS: Thank you. Walt, these charts we got, and it shows the decrease

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in the income...is that income decrease all tobacco or is a lot of that... [LB600]

WALT RADCLIFFE: No. No, Senator Dierks, in fact their CPA is here to explain it. No, that is not tobacco, and probably very little of it is tobacco income. It is decrease in gross revenues for the business, corresponding to the before and after of the smoking ban, total gross revenues. [LB600]

SENATOR DIERKS: So there's just less business. [LB600]

WALT RADCLIFFE: Exactly. [LB600]

SENATOR DIERKS: Thank you. [LB600]

SENATOR ROBERT: Seeing no others. Thanks, Walt. [LB600]

WALT RADCLIFFE: Thank you, Senator. [LB600]

SENATOR ROBERT: Next proponent, please. Welcome. [LB600]

ANDREW LOUDON: Thank you. Senator Robert, members of the committee, my name is Andrew Loudon, L-o-u-d-o-n. I'm an attorney with the Baylor Evnen law firm, 1248 O Street, Suite 600, in Lincoln. Senators, I'm an estate planning attorney. I work with the Prout family of Omaha, which is the owner of Big John's Billiards, Inc., a Nebraska S corporation. And earlier this afternoon, you heard about decreases in business of 15 percent, 20 percent. You're going to hear about, this afternoon, devastating decreases over 30 percent in business, as Senator Dierks was asking Mr. Radcliffe about, that have indeed forced our client to close its operations in Lincoln. And when the statewide smoking ban goes into effect on June 1, and if it does not contain an exception for our client and at its two potential locations and one existing, then Will and Lynne Prout will be forced to close their business and will not be able to pass that business along to their son, Bill. Again, what I do is business succession planning, but none of the legal work that I have done with the Prouts is as important as me here today as to ask you to save this Nebraska business and allow it to be passed to another generation. Since the early 1980s, Will Prout has been a law-abiding citizen. I saw some interesting comments in Lincoln JournalStar about last Friday's hearing about how maybe some bars and smaller communities were just going to have Altoid cans and hide cigarettes. Will Prout and his son Bill have never had a liquor violation since the early 1980s. They have taken this seriously in attempting to follow the law. When the Lincoln store was shut down and we saw that this was coming, we applied with the Nebraska Department of Health and Human Services for a waiver from the Clean Indoor Air Act. Rather than try to go around or skirt the regulators, we worked with them. We were encouraged by the Douglas County Department of Health to do that. They were quasi-supportive of it. Unfortunately, we lost that battle with the department and took it all the way to the

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Supreme Court. And last year, the Nebraska Supreme Court, in ruling against us, in effect said, go to the Legislature and ask for an exception. And ladies and gentlemen, that's why we're here. This is really the last stop for Will, Lynne, and Bill or they'll be forced to close their business. Indeed, it is a trend across the country to have smoking bans, but as you heard earlier, almost every state that has smoking bans has exceptions. And those exceptions are mainly for economic hardship. No greater example in the state of Nebraska is going to exist for you than Big John's Billiards and pool halls of this size for an economic hardship related to the smoking ban. The evidence is clear, as will be testified to in a few minutes by our client's accountant, that the smoking ban in Lincoln was the reason that revenues went down by hundreds of thousands of dollars. So we are here asking for your help. Will Prout only hires smokers. He posts signs on the front of his building, making it clear that it is a smoking establishment. His smoke eaters clean his facilities immaculately. He does not allow minors into his facilities, and he wants to cater to a smoker-friendly business. And we submit that he should be given that opportunity. I did want to briefly address a question that I believe legal counsel had on one specific definition in the bill, and that related to the definition of non-mechanical devices. Specifically, the Nebraska Supreme Court held in the year 2000, in Big John's Billiards v. Balka, that hourly pool tables are different than coin-operated pool tables, and that Big John's Billiards had a non-mechanical pool table, meaning that as our client does, we collect money so that you can play for a certain amount of time, and that is as opposed to putting quarters in a pool table, so. Those types of pool tables would not fit under the definition of this bill. And with that I'd be happy to answer any questions, Senator Rogert. [LB600]

SENATOR ROBERT: Thank you, Mr. Loudon. Any questions from the committee? Seeing none, thanks for coming. [LB600]

ANDREW LOUDON: Thank you. [LB600]

SENATOR ROBERT: Next proponent. Welcome. [LB600]

BILL PROUT: (Exhibit B) Good afternoon, senators. Thank you for hearing me today. My name is Bill Prout, B-i-l-l P-r-o-u-t, and I'm here today in support of LB600. I would like to first give you a little bit of a history about Big John's Billiards and pool halls. First off, I'm going to ask you if you can think of any other business where smoking is associated other than a pool hall? Cigar bars, I can think, maybe, yes they would be, but as far as where people are smoking...if you think of pool halls, you think of smoking. Smoking has been associated with pool halls all the way since their start back in the 1830s. It was the original place for men to smoke, drink, play pool, and it's much the same today. It's a great place for both men and women to go to have fun. My father ran one of these pool halls for his dad in California in the 1970s, until he came to Nebraska in 1980 and built Big John's, the pool hall, his way. A first class, freestanding building center that addressed the typical stereotypes of the smoking environment. He

hard-wired six high capacity smoke eaters into his building back when most people or businesses had never even heard of a smoke eater. We did this all to cater to our clientele, the pool-playing smokers. In fact, all the things we have done to our building are for the pool players. We serve food. We are not a restaurant with pool tables. We are a pool hall that serves food. The food is delivered down to the pool tables. We serve alcohol, but we are not a bar. The alcohol is for the enjoyment of the pool-playing smokers. We do have a seating area above of the large, lower floor of 30 pool tables. This seating area is for our clientele so they have a place to wait for a pool table to become available, as they have every weekend for the last 25 years. Now that area sits empty. We are a first-class pool hall that has survived the ups and downs, but has always profited. With this smoking ban, we are not even making it during our normally busiest time of year, and we will not make it to spring without help. There are states that do have some kind of exemptions for either hardships or smoking establishments, and I think we would qualify under both these examples. There are also other states that do not have exemptions, and in these states, pool halls have been going out of business right and left. These are businesses that have thrived, like ours, for many years just to be effectively closed down by the 80 percent majority of people that do not smoke. They have voted in laws that affect the smoking businesses. These laws have also affected the industry of billiards itself. This is noted in almost all the billiard publications that I have received. Now to Mr. Mark Welsch, who will probably come up after us--the person on every chance available personally slandered me and my family, my business in public form to further his agenda, I challenge him to please tell me where these nonsmokers are. These people that he told me I was keeping out by allowing smoking and that would come back into my forced nonsmoking business. The only thing that has changed is that most of my smoking customers have left, leaving me with a fraction of the business we once and have always had. Mr. Welsch will tell you that he cannot come into my business because he or his girlfriend are affected by secondhand smoke. As the sign says in the front window, Mr. Welsch, his girlfriend, or anyone that has a problem with secondhand smoke are not welcome in our business. It's a business that is privately owned and not publicly owned. We have the right to refuse service or entrance to anyone as long as we're not discriminating, according to the laws of discrimination. A person's smoking preference is not a protected class. In the past six months, we have gone from employing over 30 people to around 10. These were people that paid taxes, enjoyed, appreciated their jobs--especially in a time that jobs are hard to find, harder for smokers since many companies will not hire you if you smoke. We have now closed our Lincoln location. It has not been self-supportive since the Lincoln smoking ban passed. As you can see from one of the graphs I've handed out and as Andrew also talked about, we immediately lost almost 30 or more percent of our revenue. Since our Lincoln Big John's was supported by our Omaha location with the hopes of a change, it can no longer be that way. Now that the Omaha location is also struggling and is no longer able to keep the Lincoln location open, we have been forced to close. Our Omaha location has also suffered. With the start of the smoking ban in Lincoln, our business in Omaha fell, some due to local publicity over the fight to keep

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our Lincoln location as a smoking establishment. When Omaha finally did pass their ban two years ago, even with the Keno exemption, many people said they did not know they could still smoke in Big John's. This also caused a negative effect on us. It took some time, money, and advertising to let the public know they could still come play pool and smoke in Big John's. Business did start to improve. That was until we were required to go nonsmoking last July, and we saw income fall below a level that we can operate at. For the last four years, we have fought to keep our business a smoking establishment and have taken steps to address the factors of employee health. As you can see, on one of the pages I have marked in there--and I apologize, the pages are not marked with numbers--we do have a warning on the top of our employment application. A warning of the potential hazard of long-term exposure of secondhand smoke. By signing this application, they accept these risks. Who are these nonsmoking laws protecting? Our clientele are smokers; our employees are either smokers or adults who can make decisions to work where they may be exposed to secondhand smoke. As you can see in the letter from the Equal Opportunity Commission in my packet, it's stating that we can hire only smokers or those that choose to waive their right to a smoke-free air, the same reason that companies can hire only those that do not smoke. We're not adding anything to our business, but just asking to keep it the way that it's always been for many years. Tobacco is still a legal product that's about to have an additional tax added to it in order to support sick children who need help. The smokers that pay these high taxes and use this product should not be lowered to second-class citizens and made to go outside. Pool players will not leave their game of pool just to go outside and smoke. They will stay home or they will go somewhere else where they can smoke. I come before you today to ask for your help, help from those that have been appointed to represent us, represent us in a government that was founded as a republic, not a democracy, but a republic, where representatives are elected to protect us from government, overregulation, and majority rule. I have spent most of my life with the expectations that I would run my father's business, the same as my children are expecting to run it from me when they get older. If you do not pass this bill along, you will be sealing the fate of my business, everything that my family has worked for, displacing me and my wife and my four children. Please advance this bill through, and vote for its approval. [LB600]

SENATOR ROBERT: Thank you, Mr. Prout. Any questions from the committee? I have one. How many pool halls do you suppose there are in the state? [LB600]

BILL PROUT: Right now, that would apply to this? [LB600]

SENATOR ROBERT: Yeah. [LB600]

BILL PROUT: None. There's just us. [LB600]

SENATOR ROBERT: Just you guys? [LB600]

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BILL PROUT: Yeah. The one in Kearney is a restaurant, I believe, that has pool tables. [LB600]

SENATOR ROBERT: Okay. [LB600]

BILL PROUT: I looked that up online last week. [LB600]

SENATOR ROBERT: And can you attest to the one in Grand Island that the lady was here before talking about? [LB600]

BILL PROUT: That would be...that's the one. [LB600]

SENATOR ROBERT: Is that the one? [LB600]

BILL PROUT: It was the one in Grand Island, yeah. That was the only one that I had heard of that was big like ours, but I looked it up online and it's like a steak house and it has like a section with pool tables on it, so. [LB600]

SENATOR ROBERT: Okay. Senator Coash. [LB600]

SENATOR COASH: Thank you, Senator Robert. Would a bowling alley...I've been to bowling alleys with pool tables, would a bowling alley with 20 pool tables qualify for this exemption, in your opinion? [LB600]

BILL PROUT: Well, I mean, it depends on the area, I guess. I mean, if it...I don't know if the area had the pool tables and the bowling next to each other, I don't know how that would work. I mean, we don't...we're not a bowling alley, we're a pool hall. I don't think a bowling alley with pool tables is a pool hall. It's a bowling alley with pool tables. [LB600]

SENATOR COASH: Okay, okay, great. [LB600]

BILL PROUT: Thank you. I'm sorry, I was a little nervous. (Laugh) [LB600]

SENATOR ROBERT: No, no, not at all; don't worry about it. Thanks for coming down. Further proponents. Welcome. [LB600]

RON FERDIG: Ladies and gentlemen, my name is Ron Ferdig, F-e-r-d-i-g. I am a partner in the firm of O'Donnell, Ficenec, Wills, & Ferdig, 4815 South 107th Avenue in Omaha. I'm a Nebraska CPA. I graduated from Wayne State College in 1966. I've done Will's accounting work since 1984. As I recall, Will and Lynne and his family came to Nebraska from California because they were looking for a more solid life. Will used his start-up capital and his youthful energy to construct the buildings which housed the Big

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John's operations in Omaha in 1980, and later in 1984 in Lincoln. These buildings were constructed at the cost of well over a million dollars, and today they generate real estate taxes totalling \$30,000 a year. These buildings, along with their parking lots, were specially designed to be modern day pool halls. At Will's request, we have studied the financial impact of the smoking ban on Big John's Billiards. With the caveat that accounting is an art, it's not a science, and that it is not possible to measure cause and effect precisely, we have concluded that the smoking ban cost each location about \$4,000 per month. Cumulatively through October 31, 2008, the losses, which we had attributed to the ban, have cost Big John's owners \$336,000. To measure the impact of the smoking ban, we compared the financial data for periods immediately before the ban with financial data after the ban. Then using established business valuation methodology, we attempted to take the anomalies out of the data by making what are referred to as normalizing adjustments. For example, rent is adjusted to fair market value regardless of amounts recorded. And amounts recorded as compensation for family members is adjusted to an amount that would be paid for the same services provided by a nonfamily member. As an example for you of a big picture fact, gross profits dropped from \$567,000 for the fiscal year ended October 31, 2003, to \$335,000 for the fiscal year ended October 31, 2007. This cost does not take into account the cost of closure, which has already happened in Lincoln. This unmeasured cost is the ability of Will's children and his grandchildren to earn a living doing something they are very good at. This cost does not measure the impact of the smoking ban on the underlying value of the real estate. I'd be happy to take any questions you have. [LB600]

SENATOR ROBERT: Thank you, Mr. Ferdig. Any questions from the committee?
Senator Coash. [LB600]

SENATOR COASH: Thank you, Senator Rogert. I just have a quick question I should have asked Mr. Prout but I didn't think of it until just now. Is pool time a taxable event, an hour of pool time? [LB600]

RON FERDIG: Yes, that's one thing that is quite interesting, actually. A mechanical amusement device pays taxes to the state of Nebraska by buying a sticker; at one time it was \$15. I don't know whether it's still \$15 today. But if you have a coin-operated pool table and you put a \$15 sticker on it, that pays...it's a replacement for the sales tax for an entire year. Whereas if you have time-kept charges, the Supreme Court ruled that these are subject to sales taxes. So we pay...so Big John's pays sales taxes on all of its gross billiards revenue, whereas they would not in a mechanical amusement device or a coin-operated pool table. [LB600]

SENATOR COASH: So the answer is yes? [LB600]

RON FERDIG: The answer is yes. [LB600]

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SENATOR COASH: Okay. Just checking. Thank you. [LB600]

SENATOR ROBERT: (Exhibits D, F) Thank you, Senator Coash. Any other questions? Seeing none, thanks for coming. Next proponent. Are there any opponents? And while they're coming up, I've got a couple of letters I'll read into the record here in opposition, one from the American Lung Association, and one from the Lincoln-Lancaster County Health Department. [LB600]

MARK WELSCH: Good afternoon, again. My name is Mark Welsch, M-a-r-k W-e-l-s-c-h. I'm the president of GASP of Nebraska, the group to alleviate smoking pollution. I live at 5611 Howard Street in Omaha, Nebraska. First of all, I take great exception at Bill Prout saying that I've slandered him or his family; I've never done any such thing. I'm very sorry that his business is declining; I truly am. I've been to his business here in Lincoln, after they went smoke free, even though there is a sign on his door that said, Mark Welsch can't come in. It also said, Joann Schaefer cannot come in, at that time. But I wanted to play pool. So my brother and I went in and we played pool. We did that, and we spent money; we bought drinks--nonalcoholic, for me at least. And we had a good time. It's a good business. It's a good smoke-free business. I'm sad to hear that the Lincoln store has been closed. I went in another time, and I was recognized and kicked out of his business. He did not want my money. And I think that's just a sad statement on the way they've decided to run their business. I think there are many things in play here in why this business is going down, that can't be looked at in a spreadsheet on their financials. There used to be other pool halls in Nebraska. Now, I understand from his testimony, there is one in Nebraska. Now why is that? It's not because...they didn't go out of business because of any smoking law--the other ones didn't, because they've been out of business a long time. You know, did they go out of business because they allowed smoking and families became more health conscious so they stopped going themselves? The adults stopped going...they stopped going because they used to take their kids, you know? A young family with some children...what fun is it to go and play pool if your kids come home sick? Maybe that...and I don't know, I haven't studied this industry like Will Prout or his son Bill have. But perhaps that's part of the problem was because they allowed smoking they've driven away their own customers who used to smoke and then they quit. Or they've never smoked and they just realized I don't want to breathe that smoke anymore, so I'm not going to go to that smoky business; I'm going to take the money I used to spend there...I'm going to go out to eat more. Or I'm going to go to another movie. Or I'm going to buy a VCR machine, years ago. Or I'm going to buy a DVD machine. Or I'm going to buy a Wii machine. And I'm going to play in smoke-free comfort in my own home; I'm going to watch movies, etcetera. So I think there are many factors in play here, not just the smoking ban, that is causing pool halls to disappear, and I think it's a sad thing because, as I said, my brother and I had a good time when we were able to finally go to a smoke-free pool hall in Nebraska...until I was kicked out. So I think that to make an exception for one business is not good policy for the state. And I would urge you to not do that. I could have helped Will Prout. If he

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would have allowed me to, we could have gotten GASP smoke-free pool leagues. But because I was treated the way I was, I didn't want to help Will Prout or his family. And perhaps, you know, there's just so many things going on there that...I don't know the reasons, but there are many, many more besides this smoke-free law that's affecting his business. And, you know, the numbers of smokers are falling and falling and falling throughout this country and in Nebraska, so if he continues to chase a shrinking number of people and a shrinking percentage of people who smoke as his only clients, well, his business is probably going to shrink along with his number of potential customers. So instead of shutting the door to nonsmokers, I would urge him to do more to reach out to young families, to reach out to grandparents who haven't been playing pool for years, to parents who haven't been playing pool for years because of the smoke in that place, and their doctors have told them stay away from secondhand smoke. And maybe there can be a bounceback with a new life in this business. Thank you very much. [LB600]

SENATOR ROBERT: Thank you. Are there any questions from the committee? Seeing none, thanks. Next opponent, please. Welcome. [LB600]

CINDY JEFFREY: (Exhibits E, F, H) Good afternoon, Senator Robert and members of the General Affairs Committee. My name is Cindy Jeffrey, J-e-f-f-r-e-y. I represent the American Cancer Society as the State Lead Ambassador, and Health Education, Inc. as the executive director. I come before you today to ask you to vote against LB600, which would give a special exemption to pool halls that have 20 or more pool tables. I'm also having distributed comments in opposition to this bill from PRIDE-Omaha, the Friends of Public Health in Nebraska, the Public Health Association of Nebraska, and I've also been asked to register the opposition to this bill from the Nebraska Restaurant Association. A special exemption to allow smoking for a particular type of hospitality business runs against the intent of the Nebraska Clean Indoor Air Act, which is to protect the public health and welfare by prohibiting smoking throughout public places and places of employment. It would also mean pool halls so defined would, at a time when smoke-free air will be protected at work sites throughout Nebraska, be allowed to have smoking in their entirety. In fact, the Nebraska Supreme Court, as you heard earlier, has denied the request, even under the existing law, that provides for designated smoking sections for a pool hall. In Will Prout and Big John's Billiards, Inc. v. the Nebraska Department of Health and Human Service Regulation and Licensure, the Nebraska Supreme Court upheld the department's denial of a request of allowing smoking in the property's entirety. The Nebraska Clean Indoor Air Act of 2008 was passed with strong support of the Legislative body on a vote of 34-14. It was passed with the partnership of Public Health and hospitality interests, and with the support of local communities, including the city of Grand Island, the city of Hastings, the city of Lexington, the city of North Platte, Scotts Bluff County Commission, and the United Cities of Sarpy County, which includes Bellevue, Gretna, La Vista, Papillion, and Springfield. That broad support came because protecting smoke-free air is the right thing to do, and because legislation established a level playing field, in particular for

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hospitality establishments. Beyond that, this legislation would undermine a vote at the ballot of the people of Lincoln who voted on a 62 to 38 percent margin for smoke-free work site legislation that went into effect four years ago that provides for a level playing field, including pool halls. I will also speak to a point that was raised earlier regarding the exemption that exists in the Nebraska Clean Indoor Air Act for tobacco retail outlets. That particular narrowly-crafted exemption mirrors, almost exactly, the exemption that's in Omaha's ordinance, and that exemption was left standing by the Nebraska Supreme Court decision. And in that Nebraska Supreme Court decision regarding Omaha, the test that the Supreme Court was looking at was whether exemptions put in place in the Omaha city ordinance met the intent of the ordinance, which was very similar to the Nebraska Clean Indoor Air Act, intended to protect the public health and welfare by prohibiting smoking throughout public places and places of employment. On behalf of the American Cancer Society and Health Education, Inc., I ask you to maintain that protection for health, and the level playing field for business, and to vote against LB600. Thank you. [LB600]

SENATOR ROBERT: Thank you, Ms. Jeffrey. Any questions from the committee? Seeing none, thank you. [LB600]

CINDY JEFFREY: Thank you. [LB600]

SENATOR ROBERT: Next opponent. Welcome. [LB600]

ROGER WELLIVER: Roger Welliver, 2474 North 45th Avenue, Omaha, Nebraska, R-o-g-e-r W-e-l-l-i-v-e-r. I am...like I said previously, I am against all exceptions to the smoking ban when it comes to businesses that provide services, other than buying cigarettes and smoking paraphernalia. I don't think that the reason that billiards as a business in the state of Nebraska is unpopular because of the smoking ban. I think billiards in themselves have traditionally been unpopular because of the unsavory aspect of pool halls before...in the past, over the history of pool halls. I've lived in Omaha all my life. There were pool halls in other areas in what we would consider the nicer parts of town, and it had nothing to do with smoking; they just did not survive. And I think it was because...basically because of its former reputation, and it's not a smoking issue. So I'm just totally against all smoking exceptions. Thank you. [LB600]

SENATOR ROBERT: Thank you, Mr. Welliver. Any questions from the committee? Seeing none, thanks for your testimony. Any further opposition? (See also Exhibit I) Any neutral testimony? Mr. Rupe. [LB600]

HOBERT RUPE: Thank you, Senator Robert, members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t, last name is Rupe, R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. Similar to the earlier testimony, the way it's drafted here, it looks like this would be sort of...it requires a liquor

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license and alters the definitional clause of 55-103 which commission, I would assume, would put it under its purview for administration. You'll notice there is not a auditor's position here because, although we might need an auditor to look at percentage of sales, any premise inspection should be able to count up to 20, whether or not there are 20 or more pool tables there, to the exception so we don't see a large impact on the commission. Only thing we would probably see would be probably some rule making regarding the forms, what documentation would need to be supplied, but it would be relatively administrative so I don't see a large impact, at least on our operations, by adding this to an existing liquor license, so. With that I'd answer any questions. [LB600]

SENATOR ROBERT: Thank you. Any questions from the committee? Seeing none, thank you. [LB600]

HOBERT RUPE: Thank you. [LB600]

SENATOR ROBERT: Any other neutral testimony? Senator Karpisek, do you wish to close? [LB600]

SENATOR KARPISEK: I will, briefly. Thank you, Senator Rogert, members of the committee. I would just like to also say that unsavory reputation of pool halls obviously must have finally caught on in 2005 when their gross income dropped half. So 2005 must have been the year that that finally...for the 200 years of this country...figured it out. The other part is the work force smoking...if this is what we really want, it's working well, because we've closed at least one business. We have zero jobs there. So those people are not in a smoking environment, they're unemployed. I don't think that's what we want. I think this is a very narrow, very narrow way to leave this open. The numbers don't lie. They just brought their numbers, I really have to say, for them to show their gross income is something very good (laugh), and then bring their CPA in to say what really happened to them. So I know that it does sound like another way to kick the door open; it is not. LB611 is that, of mine. So I already have that idea, this is not that idea. But to try to keep some more businesses open and employ some more people. Thank you. [LB600]

SENATOR ROBERT: Thank you, Senator Karpisek. Any questions? Seeing none, that closes the hearing on LB600 and the hearings for the day. Thanks for coming. [LB600]

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Disposition of Bills:

LB198 - Placed on General File with amendments.
LB355 - Placed on General File with amendments.
LB404 - Indefinitely postponed.
LB600 - Held in committee.

Chairperson

Committee Clerk