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General Affairs Committee  
March 02, 2009

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[LB286 LB287 LB415]

The Committee on General Affairs met at 1:30 p.m. on Monday, March 2, 2009, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB286, LB287, and LB415. 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. [LB286]

SENATOR KARPISEK: General Affairs Committee, and my name is Russ Karpisek of Wilber. We'll go through the senators a little later when they get here. We'll be hearing three bills today. Committee bills LB286 and LB287 that Josh Eickmeier, our legal counsel, will be presenting, and then LB415 introduced by Senator Christensen. After each bill is introduced we would like to hear testimony in support of the bill, then testimony in opposition, and then neutral. If you're planning on testifying in any capacity, please pick up a sign-in sheet that is on the table at the back of the room at both entrances. Please fill out the sign-in sheet before you testify. When it is your turn, give your sign-in sheet to one of the pages so they can give it to the committee clerk. This will help make a more accurate record. If you have any handouts, please make sure that you have at least ten copies for the page to hand out to the committee. When you come up to testify, please speak clearly into the mike and please tell us your name and spell it, first and last name, spell them even if it's a common name. Also, please tell us who you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that makes noise or beeps. Keep your conversations to a minimum or take them out in the hallway. We will, hopefully, be joined by more senators. There are other committees going on now and they'll be presenting in others. I will be leaving here shortly to go present a bill in Banking and Commerce. So hopefully the others will get here; we need to get better at this, don't we? While we're here, Senator Friend from Omaha is here; as I said, Josh Eickmeier, our legal counsel, from Seward; Senator Cook from Omaha; and Joan Snyder, our committee clerk, from Lincoln. Our page is Courtney Ruwe--I think that she's got help but I don't know...it's the other Courtney, isn't it? Courtney Schuster. To my far right is Senator Coash from Lincoln; and our Vice Chair Senator Rogert from Tekamah. I think now we've got it all ready. Senator Rogert, I have a bill up pretty soon in Banking so I'll be cutting out, all right? We will start with LB286, Mr. Eickmeier. [LB286]

JOSHUA EICKMEIER: (Exhibits A and B) Good afternoon, committee members. My name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r. I serve as legal counsel to the General Affairs Committee and one of my duties as legal counsel is to introduce committee bills at the direction of the Chair. Today I appear before you to introduce LB286. LB286 eliminates a sunset clause in the State Lottery Act as it applies to the distribution of lottery funds to the various beneficiaries which include the Education Innovation Fund, the Nebraska Scholarship Fund, the Nebraska Environmental Trust Fund, the Nebraska State Fair Board, and the Compulsive Gamblers Assistance Fund.

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The lottery act already contains a hold harmless provision that guarantees beneficiaries will receive annually, at a minimum, the same amount they received in 2002, 2003 which is \$20.2 million. LB286 states that if revenues permit, the beneficiaries would receive between 22 and 25 percent of revenues. The Tax Commissioner and the Lottery Director may also authorize more than 25 percent to be distributed among the beneficiaries. This hold harmless provision has been in place for a number of years, and the sunset clause was intended as a safety net. The lottery division uses the additional funds for promotions, to develop new games, and to increase prizes. The sunset clause forces the lottery division to return to the Legislature so that it could demonstrate that this arrangement was, in fact, working and effective. I have a handout here for committee members which I will hand you myself. (Laughter) We're a full-service committee. As you can see on the chart, it shows with the first year of '03, and again, that's 6-30 of '03, so it's a '02, '03 actually would be the fiscal year, if you will, and that's the \$20.2 million and it was 25 percent, which was required at the time. As you see through the years from '04, '05, '06, '07, and '08 the revenues have continued to go up ending with, most recently, \$31 million. And that happened to be 25.44 percent. But while the percentages do change, part of that depends on the size of the pie. You may have a smaller percentage of a bigger pie could actually be more lucrative than having a larger percentage of the smaller pie; it just depends on the size of the pie relative to the percentage. So that's demonstrated there. It is important to note that, for example, in '04 and '05--in '06, I should say--the percentages drop below 25 percent but you still saw an increase in the distribution to the beneficiaries. And this is because the lottery division is able to grow the pie through offering bigger prizes and, as I mentioned, other promotions. Essentially, why we are here now is because the lottery division has demonstrated through a successful track record that the sunset clause, which was put in place in '03, is no longer necessary. They feel they've demonstrated that this arrangement works, has been lucrative for the beneficiaries, and that having to come back every so many years is just no longer necessary. I would also mention that Jim Haynes, director of the lottery division is here to provide you with additional information as to how this works, and if you have any questions I'm sure he'd be able to answer them. I also have one letter of support from the Gamblers...it's the committee on problem gambling, but that would be the Gamblers Assistance portion of this. That beneficiary group has a letter of support and I believe there are other beneficiaries here who will be happy to testify in support as well. Do you have any questions for me at this time? [LB286]

SENATOR KARPISEK: Thank you, Mr. Eickmeier. Any questions? Seeing none. Could we have the first proponent, please. And while you're coming up I will introduce Senator Dierks has joined us from Ewing; Senator Dubas from Fullerton; and Senator Price from Bellevue. And now we're up to full force. [LB286]

JIM HAYNES: (Exhibit C) Good afternoon, Senator Karpisek and members of the committee. My name is Jim, J-i-m, Haynes, H-a-y-n-e-s, and I am the director of the

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Nebraska Lottery. I am here to testify in support of LB286. LB286 eliminates a sunset date in a section governing the minimum amount of funding that is to be transferred to lottery beneficiaries. The bill then adds language requiring the lottery to transfer the greater of a) the amount transferred during fiscal year 2002-2003, which is approximately \$20.2 million; or b) any amount which constitutes 22-25 percent of sales. To the extent that funds are available, the Lottery Director and Tax Commissioner may authorize a transfer exceeding the 25 percent of sales. The bill does not change which entities receive lottery funds or what percentage of funding each beneficiary is to receive. LB286 essentially allows Nebraska lottery to continue to transfer funds to lottery beneficiaries in the same manner it has since 2003. Prior to that year, the lottery was required to transfer an amount that equalled at least 25 percent of sales. This requirement forced the lottery to limit prize payout percentages below the optimum payout level. To address the situation, the Legislature enacted LB367 which required only that the amount transferred shall not be less than the dollar amount transferred in '02-'03 fiscal year, or approximately \$20.2 million. This new \$20.2 million transfer floor which continues in effect is commonly referred to as the hold harmless provision. The enactment of the hold harmless provision has enabled the lottery to boost sales by setting a higher price payout levels, which has in turn allowed the lottery to transfer greater amounts to the lottery beneficiaries. By fiscal year '04-'05, for instance, the amount transferred by the lottery had increased to \$26.3 million, followed by \$27.6 million in fiscal year '05-'06 and \$29.3 million in FY '06-'07. For this last fiscal year, the lottery transferred a record \$31 million to the Environmental Trust Fund, Nebraska Scholarship Fund, Education Innovation Fund, State Fair Board, and Compulsive Gamblers Assistance Fund. This represents an approximate 53 percent increase over the amount transferred during the '02-'03 fiscal year. Much of this growth can be directly attributable to the hold harmless provision. The enactment of the hold harmless provision has also benefitted lottery retailers, as the lottery is now able to provide participating locations with an additional 1 percent sales commission in return for carrying a minimum number of scratch games and meeting certain point of sale requirements. This additional sales commission has since been incorporated in to approximately 1,200 lottery retailer contracts. For these reasons, we believe that the hold harmless provision has been successful. Yet when the provision was enacted in 2003, the Legislature included a sunset date of January 1, 2008. The sunset date was extended and is now set to expire on July 1, 2009. LB286 not only eliminates the sunset date, thereby allowing the hold harmless provision to continue in effect, it also provides an important additional safeguard for our beneficiaries. Instead of merely requiring that the transfer floor shall equal what was transferred during the '02-'03 fiscal year, which is the only current statutory requirement, LB286 mandates that the transfer shall be equal to any amount constituting at least 22-25 percent of sales if that amount is greater than the \$20.2 million figure. Thus, LB286 is not merely a continuation of status quo, but rather holds the lottery to a higher standard. In short, LB286 represents a measured and responsible approach to fund transfers from beneficiary lotteries...lottery beneficiaries...I would therefore urge the advancement of this bill. Thank you for allowing me the

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opportunity to testify, and I'll be happy to answer any questions that you might have. [LB286]

SENATOR KARPISEK: Thank you, Mr. Haynes. Any questions? Senator Price. [LB286]

SENATOR PRICE: Mr. Chairman, thank you. Sir... [LB286]

JIM HAYNES: Yes, sir. [LB286]

SENATOR PRICE: ...I want to play kind of a what-if game, if you would, to help me out here. With the floor being where it is at the '02-'03 levels, if something...if we were to enact the casino gambling with the one-arm bandits, the slot machines, and there is a \$2.2 billion played through as they were projecting, have you looked at how that would impact your lottery ticket sales and therefore that floor may be in jeopardy? [LB286]

JIM HAYNES: That floor could be in jeopardy; that's a good question, Senator. And as far as projections, all we know is that we don't know the extent that it would have an impact on a lottery, but it could have a dramatic effect. If I may continue, the one thing that we know about the lottery is there is a marked difference between scratch tickets and Powerball tickets as opposed to casino-style gambling. And many of the patrons of the lottery might continue on as they are because it's a different style of play. With the slots in the casinos those are very fast, they're electronic, they don't measure up to human...when people are playing the lottery they have a scratch ticket, they scratch it off--it takes a long time to scratch it off. They play it, they play it back. Powerball tickets--if you buy one today, you know, you're not going to know the outcome of that until the next draw which would be Wednesday, so, yeah. But there would be an impact, but we just don't know what. [LB286]

SENATOR PRICE: All right, thank you. [LB286]

SENATOR KARPISEK: Thank you, Senator Price. Any other questions? Seeing none, thank you. [LB286]

JIM HAYNES: Thank you, Senator. Thank you. [LB286]

SENATOR KARPISEK: Next proponent. [LB286]

RITCHIE MORROW: (Exhibit D) Good afternoon, Senators. My name is Ritchie Morrow, that's spelled R-i-t-c-h-i-e M-o-r-r-o-w. I am the financial aid coordinator with the Coordinating Commission for Postsecondary Education. And before I start my testimony on LB286 I did, since this is the first time somebody from our agency has appeared before you, I did just want to tell you a little bit about who we are and what we do here in the state of Nebraska. We are not a unique agency to Nebraska. Every state in the

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nation has some type of organization that oversees higher education in their state. And as a matter of fact, there are 30 states that have coordinating agencies just like Nebraska does. We are in the State Constitution. Some of our job responsibilities are in the Constitution as well as in statute. Some of those are, we do do higher education planning for the state, we administer the two student financial aid programs for students from Nebraska attending Nebraska colleges, we approve new degree programs, approve proposals for construction projects that rely on tax funds, review institution's budget proposals and make recommendations to the Legislature, and we assemble and analyze statewide data and publish reports. And a matter of fact one of our major reports, The Higher Education Progress Act, will be presented to the Education Committee next Monday. And I think you'll find a lot of good information in that when you receive your copy. Our commission agency is made up of 11 commissioners. They are appointed by the Governor and confirmed by the Legislature, and all of these job responsibilities are done by 13 staff members, which is the same number of staff members we had when we first came into existence in 1991. And we are also the smallest coordinating agency in the country. So Nebraska gets a pretty good bang for its buck. Talking about LB286, in 2008-2009, this current fiscal year, Nebraska is awarding \$12.7 million through the Nebraska State Grant Program authorized by the Nebraska Scholarship Act. These funds are awarded to Federal Pell Grant eligible students--Federal Pell Grant means that they come from low-income families--who are residents of Nebraska and who are attending a postsecondary institution in the state. These students attend all five sectors of postsecondary education within the state: the University of Nebraska, the state colleges, the community colleges, proprietary colleges, and nonprofit, independent colleges. Of the \$12.7 million that we are awarding, 43 percent or \$5.5 million is from the lottery program. The remaining funds come from the State General Fund and federal funds. In 2007-08, this grant program assisted 13,158 students. The average grant that those students received was \$944. And 82 percent of the recipients came from families with an income of less than \$40,000. Nebraska provides less financial aid to support needy students than do many of our neighboring states. And I have a handout, a three-page handout there, and if you look at page one that gives you an idea of where Nebraska ranked a couple of years ago, which is the most recent information that we have. We ranked 37th in the nation, and in '05-'06 we ranked 35th. So even though we are getting a lot of funds for our students, compared to other states in the nation we do have a little bit of a ways to go. So we encourage the continuation of financial aid support by the state, including use of the lottery funds, and therefore we support the passage of LB286. Thank you for your time and I'll be more than happy to answer any questions you may have. [LB286]

SENATOR KARPISEK: Thank you, Mr. Morrow. Any questions? Senator Dierks.  
[LB286]

SENATOR DIERKS: Thank you, Senator Karpisek. Mr. Morrow, would you...and in the charts you handed out, would you explain what \$123.45 represents for Nebraska?

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[LB286]

RITCHIE MORROW: I will. What we do is we supply data to...actually, the state of Illinois runs a report for us for the National Association of State Student Grants and Aid Programs, and what they do is they take the total amount of need-based financial aid that we award to students and divide that by the full-time equivalency enrollment that we have in this state. So based on that, we have available to award \$123.45 per full-time equivalency enrollment student, which ranks us about 37th in the nation. [LB286]

SENATOR DIERKS: Oh, I see. But that doesn't...I mean, you do this in larger grants, though, than that per student though? [LB286]

RITCHIE MORROW: Yeah, like I said, in '07-'08 the average grant that we awarded was \$944, so not every student who is attending are we able to help. [LB286]

SENATOR DIERKS: Another question I have, I think I understand all the colleges but I'm not sure I understand what the nonproprietary or the proprietary colleges are. [LB286]

RITCHIE MORROW: Proprietary institutions are for-profit institutions. For example, College of Hair Design, Kaplan University, ITT, those kinds of schools that are for profit. [LB286]

SENATOR DIERKS: Thank you. [LB286]

RITCHIE MORROW: You bet. [LB286]

SENATOR KARPISEK: Thank you, Senator Dierks. Any other questions? Seeing none, thank you. [LB286]

RITCHIE MORROW: Thank you. [LB286]

SENATOR KARPISEK: Next proponent. Good afternoon. [LB286]

MARK BROHMAN: (Exhibit E) Mr. Chairman and members of the General Affairs Committee, my name is Mark Brohman, it's M-a-r-k B-r-o-h-m-a-n, and I'm the executive director of the Nebraska Environmental Trust. And I'm here today in support of LB286. My board took a position to support this bill and Mr. Haynes did a good job of laying out what this bill does and we think that they're doing a good job. We've seen our revenues continue to increase each year and so we like to see additional funds coming into the Environmental Trust. I'm passing out a copy of our annual report which I provided to all of your offices earlier this year, but I just wanted to bring a copy today so that you can see some of the things we're doing. This year we're going to be giving out about \$14.5

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million. We met back in early February and the board approved the preliminary list of grants across the state and so that list is out there. We're taking public comments and we'll finalize that list and the money will be awarded in April. And last year we were a little over \$14 million, this year we're at fourteen and a half. So the way we see this bill was that it would increase the size of the pie even though our percentage may be a little bit less, but our overall revenues will probably increase. And one of the things that the lottery has done recently is they've changed their mission statement to reflect that they're in existence to benefit the beneficiaries. So it's not just the players in collecting the money, but it is providing those revenues for the beneficiaries which we're one of those. And so with that I guess I would just say that we support the bill, would ask you to move it on to the full body, and with that I would entertain any questions. [LB286]

SENATOR KARPISEK: Thank you, Mr. Brohman. Any questions? You answered mine about the smaller piece of the bigger pie, so... [LB286]

MARK BROHMAN: Yep, I think that's a good analogy. Thank you. [LB286]

SENATOR KARPISEK: All right, thank you. Any other proponents? Welcome. [LB286]

JOSEPH McDERMOTT: Thank you. Good afternoon, Chairman Karpisek and members of the General Affairs Committee. My name is Joseph McDermott, J-o-s-e-p-h M-c-D-e-r-m-o-t-t. I am the executive director of the Nebraska State Fair Board and I come before you to support LB286. The Nebraska State Fair has been a benefactor of funding from the Lottery Operation Trust Fund since 2005, after Nebraska voters approved AM4 in November of 2004. Since having access to this funding, we have made significant improvements to the programming and operations of the Nebraska State Fair as well as the facilities at State Fair Park. These improvements have resulted in increased attendance at the Nebraska State Fair for five straight years. Our attendance has increased from 238,000 in 2003 to 309,000 in 2008, or by approximately 30 percent. The funding will be more important than ever as we build facilities in Grand Island and strive to continue to improve our fair programming. Here in Nebraska and across the country, history shows that lottery sales have increased when larger prizes are awarded to lottery players. This creates a win-win scenario for lottery players as well as the benefactors of the Lottery Operation Trust Fund. I ask for your vote to advance LB286 out of committee and on to the floor for full debate. Thank you, and I'll be happy to answer any questions. [LB286]

SENATOR KARPISEK: Thank you, Mr. McDermott. Any questions? Seeing none, thank you. [LB286]

JOSEPH McDERMOTT: Thank you. [LB286]

SENATOR KARPISEK: Any further proponents? Seeing none. Any opponents? Seeing

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none. Any neutral? Seeing none. That will end the hearing on LB286. We will now go to LB287. [LB286 LB287]

JOSHUA EICKMEIER: (Exhibits A and B) Good afternoon, committee members. My name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r. I serve as legal counsel to the General Affairs Committee. Today I appear before you to introduce LB287. Before I begin, I would like to direct your attention to AM536. This amendment becomes the bill, and it is the same amendment that was e-mailed to committee members on Friday, and a copy can also be found in your binders in the front of this bill section. AM536 amends LB287 by increasing the allowable expenses percentage for community organizations that sell pickle cards from 10 percent to 12 percent, and the sales agent's commission from 4 percent to 6 percent. Currently, the allowable expenses percentage is 8 percent, and LB287 would increase it to 10 percent, and the amendment would increase it, then, to 12 percent. Keep in mind that currently, up to 4 percent or half the allowable expenses, can be used for the sales agent's commission, which only leaves 4 percent for expenses. It has been 14 years since the last time the allowable expenses percentage was increased. That was in 1995 when the allowable expenses percentage was increased from 6 percent to 8 percent. During the last year, when gas prices skyrocketed, there were concerns that expenses, along with the 4 percent sales agent's commission, would exceed the allowed 8 percent. Therefore, it was felt that increasing the allowable expenses from 8 percent to 10 percent--which is what the underlying bill did--would provide the necessary flexibility that these community organizations need to better manage and plan their operations. Keep in mind that the allowable expenses percentage is merely a ceiling and that the organizations may not need to max out that percentage. Any leftover money is then passed on to the community projects and programs that these organizations fund. In preparing this bill, it was brought to our attention that the sales agent's commission had not been increased in 20 years. While the cost of living has continued to go up during this time, the percentage for sales agent's commission has been capped at 4 percent. Therefore, it was determined that this percentage should be increased to 6 percent, which is part of the amendment. However, in order to increase--and this is where the...hopefully the chart will help--in order to increase the sales agent's commission from 4 percent to 6 percent, it was then necessary to increase the allowable expenses from 8 percent to 12 percent, because that additional 2 percent from the sales agent's commission comes out of the same pool of money that the allowable expenses have. So if you were to increase the allowable expenses by 2 percent but also increase the sales agent's commission by 2 percent, you're just shifting 2 percent from the allowable expenses to the sales agent's commission. So in order to have a net gain of 2 percent for the allowable expenses, you have to actually increase it by 4 percent--which is why we go from 8 to 12. So I'm sure that's as clear as mud for everyone, (laugh) so I guess I should probably just stop there and see if there's any questions regarding how that works. [LB287]

SENATOR KARPISEK: Thank you, Mr. Eickmeier. Senator Rogert. [LB287]



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SENATOR ROBERT: How may I direct this? Who's going to testify here on this bill? All right, I'll ask questions of those that follow behind you. [LB287]

JOSHUA EICKMEIER: I agree. (Laughter) [LB287]

SENATOR KARPSEK: Any further questions? Seeing none. [LB287]

JOSHUA EICKMEIER: (Exhibit C) I would just point out that Jim Ritzman from the Sowers Club will be here, is here, and he will be able to try to answer your questions. I believe he was there in the beginning of pickle cards, it's my understanding, so. I also have a letter of support from Jerry Stilmock that I can pass around to committee members. Thank you. [LB287]

SENATOR KARPSEK: Thank you. Okay, proponents. [LB287]

JIM RITZMAN: (Exhibit D) Good afternoon, Senators. My name is Jim Ritzman, J-i-m R-i-t-z-m-a-n. I represent the Sowers Club of Lincoln who has been in the pickle business since almost the beginning. We got in in 1991. I have passed out a sheet which, hopefully, helps explain this definite profit. Everything in the pickle card business is based off of definite profit, and if you look at the...we start out with LB287...started out by raising the expense limitation from 8 to 10 percent. So that would've left 6 percent for expenses and 4 percent for the salesman's commission--up to 4 percent for the salesman's commission. Those two items cannot be commingled. If you do not spend 4 percent on the salesman's commission, as an organization you do not have an option to use that other percentage, or whatever you pay them less than 4 percent, for something else. In 1988, the expense limitation was established at 4 percent. If you can see there, 1 percent went for expenses and 3 percent went for commission. And then in 1989, it was decided that the expense limitation was not large enough so it went from 4 percent to 6 percent and 3 to 4 for commissions. But to the right we see I broke it out expenses and commission--I think that's the easiest way to understand how that works. And then in 1995, the expense limitation was raised from 6 to 8 percent and the salesman's commission remained unchanged at 4 percent, but the expenses went up to 4 percent. Now, definite profit--unless you work with it on a daily basis--is fairly confusing, so what I did is I just broke it down in a fairly simplistic way. A box of pickle cards goes to a bar or to an operator and let's say that it contains 6,000 cards and they're a dollar apiece. So that's going to make the gross income \$6,000. Out of that \$6,000, there's what they call a flare card next to the game and it shows what the winners are. Let's say there's \$5,000 in winners so that leaves \$1,000 left as a net profit. Okay, that is the definite profit. The net profit is the definite profit. From that profit, 30 percent goes to the bar, by law. So \$300 goes to the bar; 4 percent goes to the salesperson that delivers that unit, so that's \$40; 4 percent can be used by the organization for expenses such as office supplies, etcetera, and Tracy's going to hit on that in a minute; and that leaves 62

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percent left to the organization for the charity. But out of that they also have to pay all the state taxes for the pickle cards, etcetera, etcetera. So what's happening is that we raised the limitation to 4 percent in 1989, which was 10 years ago...or 1995, excuse me, to 4 percent while it...if you go down here to the Consumer Price Index you can see how things have just continued to escalate, year after year. Well, if we hit that 4 percent expense that we're allowed to pay by law, then we have to take it out of something other than pickle card money. For instance, our dues bring in roughly \$14,000 a year. Well, instead of being able to spend that on other things--because pickle money is severely limited on what it can be spent on, by state law, then we're cutting into our own profit, our own dues money, etcetera. So that's why we're asking for a percent increase. And then I did hit on the 2 percent raise on commission but I see that's part of the amendment, so I will stop there and ask if anybody has any questions. We do have one of our charitable organizations here that would like to testify on the benefit of the money that we donate to them, plus we have someone else from the Sowers Club, so. But I would ask if anybody has any questions at this point. [LB287]

SENATOR ROBERT: Thank you, Mr. Ritzman. Are there any questions from the committee? I have a couple. [LB287]

JIM RITZMAN: Okay. [LB287]

SENATOR ROBERT: If you said it, I missed it: raising the two percentages of 4 to 8--that'll pull the 62 down to 58 on the organization money? [LB287]

JIM RITZMAN: That's exactly what it will do. [LB287]

SENATOR ROBERT: Okay. What's an example of an expense? Fixing a machine? [LB287]

JIM RITZMAN: Well, you know, fixing the machine, but office expense, you know--office products, promotional expenses, anything to do...the flyers that we passed out. Did you see the flyers that showed the charities? That type of expense. Gasoline, cell phones for the sales people--anything to do with trying to get that pickle unit out on the street and get it sold. Unfortunately, we don't use numbers like the previous bill had, into the millions and millions of dollars, but pickle card sales have really decreased in the last few years and that really hurts expenses. Because expenses...while expenses go up, the sales go down, and when you're tied by the expenses to the sales that you have, it's kind of a no-win situation, so. [LB287]

SENATOR ROBERT: What...who is a salesperson? Anybody can do this? [LB287]

JIM RITZMAN: They have to be licensed... [LB287]

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SENATOR ROBERT: Okay. [LB287]

JIM RITZMAN: ...by the state Nebraska. They go through a criminal background check. They're licensed by the Department of Revenue, and the organization pays for their license fee--there is a license fee. [LB287]

JIM RITZMAN: The charity organization pays for their salesperson? [LB287]

JIM RITZMAN: Yes. [LB287]

SENATOR ROBERT: Okay. [LB287]

JIM RITZMAN: They also have a utilization of funds agent which is one step higher than a salesman. They're in charge of all the money to make sure that the accounting with the state...the state comes in and audits us, I know at least once a year--maybe more than that. And the utilization of funds agents are the ones that are in charge of making sure that the money is spent appropriately and that we do not go beyond the 4 percent in this case and etcetera. [LB287]

SENATOR ROBERT: Great. This is a very helpful piece of paper. Any other questions? Seeing none, thanks for coming in. [LB287]

JIM RITZMAN: Thank you. [LB287]

SENATOR KARPISSEK: All right. Thank you, Senator Robert. Further proponents? Welcome. [LB287]

TRACY REFFIOR: Thank you. Good afternoon, Senators. My name is Tracy Refior, T-r-a-y R-e-f-i-o-r. My current position with the Sowers Club is board member and past president of the Sowers Club. Since about '91, the Sowers Club of Lincoln has been involved in pickle cards. We are the largest distributor of pickle cards in the state. We gross about \$2 million a year in gross sales and since '91 have given back over \$2.3 million to other nonprofit organizations. A proponent of LB287, the reason I would like this to be advanced is because these expenses, as you know, gasoline price, utilities, other office expenses that we have, we are still capped at that 4 percent as far as for our expenses totalling the 8 percent right now--4 percent going to the sales commissions. As well as, as you know, I'm sure you've seen it in your own lives that even though sales have declined, your expenses still stay the same. And those have got to be paid. The only way to change that--because pickle cards, as far as the monies that come in, what they classify as restricted monies--we can only pay those expenses as directed by the Department of Gaming. To reiterate what Mr. Ritzman had discussed with you, you can see on your form--the handout, as far as how things are broken down, like the LB286 we're not talking about millions and millions of dollars, but since the

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introduction of casinos across the river, pickle cards have consistently went down but our expenses still remain the same. So I ask you to advance LB287 to the floor for a discussion and with that I ask you for any questions. [LB287]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thank you. [LB287]

TRACY REFIOR: Thank you. [LB287]

SENATOR KARPISEK: Next proponent. Welcome. [LB287]

CAREN BARNES: (Exhibit E) Hi, my name is Caren Barnes, C-a-r-e-n, Barnes, B-a-r-n-e-s. I don't represent the Sowers. I am a professor at the UNMC College of Dentistry. And for about the last five years we have been the beneficiaries of a grant, annually and sometimes biannually, from the Sowers that we have leveraged into dental treatment for children who would otherwise fall through the cracks. I've given you some copies of the press releases about this program that we have and I'll give you a brief rundown on how we leverage this money and how the Sowers money is spent. Our venue for helping children is called Dental Day. And this originally started out just in Lincoln and has now expanded to three Dental Days a year. One is in Lincoln, one is in Hastings, and then one is in Gering. What we do is we have dentists in the counties that surround these cities identify children--they go into the school systems, they go into daycares--they find children that have no dental insurance, do not qualify for any program whatsoever and otherwise would never receive dental care. We go in and treat those children in one day and provide all of their dental needs, even hospital care. We just had a dental day February 6 and approximately \$100,000 worth of dental treatment was delivered to 200 children. Children that are in pain cannot learn. They can't turn out to be productive citizens if they've not gotten a good education and, of course, I don't have to tell you that the fundamentals of education begin as youngsters--kindergarten, elementary school. These children need to be able to pay attention in school and be pain free and to also be able to have the benefits of good nutrition that they can't get or receive if they can't chew properly. What we do is leverage about \$15,000 a year in donations from companies that provide toothbrushes, toothpaste, that sort of thing, for the delivery of dental treatment to these children. But importantly, we had no way to get these children to the facilities where we provide the care. Obviously, in Lincoln it's provided at the College of Dentistry, but in Hastings and in Gering we use public health facilities and some private offices. We take the money that we receive from the Sowers--it's \$2,500 annually--sometimes we'll get another \$1,500--and we use that to transport these children to and from these facilities to receive care. We would not be able to do Dental Day if it weren't for the Sowers. We simply wouldn't have the cash to do it. And this is a well-oiled machine, but it's so interdependent on people stepping up to the plate and doing their part for us to be able to continue to do this. I want to point out too that the Dental Day activities and the care that's delivered is at no cost to the taxpayer of the state of Nebraska, which I think is remarkable. The Sowers, as far as I'm

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concerned, their name is synonymous with Samaritan. I am fortunate enough to attend the events where they hand out the grants and I can assure you that every other program, if they don't mind me speaking on their behalf, there are beneficiaries of their grants are important to each and every one of the communities in Nebraska. The Sowers don't just select out Lincoln or Omaha. They make sure that children all over that state of Nebraska are the beneficiaries of their fund raising. And I appreciate your consideration of the approval of LB287 and thank you for your time. And I'll be happy to answer any questions you may have. [LB287]

SENATOR KARPISEK: Thank you, Ms. Barnes. Any questions? Senator Rogert. [LB287]

SENATOR ROGERT: Not a question, but a comment. Ms. Barnes, the program you guys do is wonderful and I hear a lot of great comments about it and I just wanted to commend you on the record for that. [LB287]

CAREN BARNES: Thank you so much. We appreciate that. [LB287]

SENATOR KARPISEK: Thank you, Senator Rogert. Any further statements? Seeing none, thank you. [LB287]

CAREN BARNES: Thank you. [LB287]

SENATOR KARPISEK: Any other proponents? [LB287]

JOHN ADAMS: Good afternoon... [LB287]

SENATOR KARPISEK: Good afternoon. [LB287]

JOHN ADAMS: ...Senator and committee members. My name is John Adams, J-o-h-n A-d-a-m-s. I'm vice president and general counsel for International Gamco located in north Omaha. And we're a company that manufactures the product that the Sowers Club sells. And I'm not going to repeat a lot of what Mr. Ritzman and others said but it's true that charitable gaming has decreased dramatically within the last, not only few years, but actually the last 15 years and there's a number of reasons for that. A large reason would be the casinos located across the river. But organizations like the Sowers need all the help they can get. Other charitable organizations that support volunteer fire companies, schools, sports teams, and other charitable causes also need this type of help. As they testified, expenses have gone up and they need a little more latitude, so we're here to support LB287. And that's all I have. [LB287]

SENATOR KARPISEK: Very good, Mr. Adams, thank you. Any questions? Seeing none, thank you. [LB287]

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JOHN ADAMS: Thank you. [LB287]

SENATOR KARPISEK: Any further proponents? Any opponents? Anyone testifying neutral? Seeing none, that will end the hearing on LB287. We will now have Senator Christensen's bill, LB415. Here he comes. Take your time, Senator Christensen; we're doing pretty good. [LB287 LB415]

SENATOR CHRISTENSEN: Thank you, Chairman and fellow Senators. I'm Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. LB415 would make it unlawful to sell cigarettes and other tobacco products from a self-service display, decreasing the chance that these products will get into the hands of minors. In addition, it defines self-service display to prohibit only those displaying providing tobacco products that are openly accessible to consumers at retail without the needed assistance of the owner, operator, or employee. Penalty for violating the bill would mirror the penalty currently in Section 28-1429.02 prohibiting the dispensing of cigarettes and other tobacco products from vending machine. First conviction is a Class III misdemeanor, the second adds on a six-month suspension of the vendor's license to sell tobacco, and the third and subsequent offenses shall be a permanent (laugh)...sometimes words get me... [LB415]

SENATOR KARPISEK: (Laugh) I know. [LB415]

SENATOR CHRISTENSEN: ...revoking of such license. LB415 has two exemptions to the self-service display prohibiting tobacco products. The first exemption is self-service displays located in a tobacco specialty store that derives at least 75 percent of its revenue from sale of cigarettes and other tobacco products. Secondly, the self-service display is exempted if it is a vending machine permitted under the current Section 28-1429.02. I believe LB415 is an additional step that would help us enforce laws currently in statute that prohibit the use of cigarettes and other tobacco products by minors. I encourage you to advance LB415 to General File and thank you for the opportunity and the consideration. [LB415]

SENATOR KARPISEK: Thank you, Senator Christensen. Any questions? Senator Rogert. [LB415]

SENATOR ROBERT: Senator Christensen, I don't know if you know the background on these things or not. I thought, many years ago, we made some restrictions on these to try and keep cigarettes out of the hands of minors. Can you fill me in on that at all? [LB415]

SENATOR CHRISTENSEN: Well, I guess I don't know what's all been done in the past, but like the vending machines can only be used in places where minors can't be, and... [LB415]

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SENATOR ROBERT: Okay, that makes sense. So it had to be places where there was a liquor license? [LB415]

SENATOR CHRISTENSEN: Yeah, I have the actual rule here if you want a copy of it or you want me to read it, but the cigarette machines are very limited, to like a bar, inside, or something that way, yes. [LB415]

SENATOR ROBERT: Okay, thanks. [LB415]

SENATOR KARPISSEK: Thank you, Senator Robert. Any other questions? So, just thinking about in a convenience store where you go grab your candy bar and take it up and ring it out. Cigarettes or chew or pipe tobacco, I guess, wouldn't be...like, that would be behind the counter? [LB415]

SENATOR CHRISTENSEN: Correct. Right, unless it's in a locked display case then it can be on the side of the customer. It just make it real easy so you can't run up, grab a pack and run out the door or try to slip it into your pocket and provide that access to minors. Just another safety step of preventing the addiction of early age. [LB415]

SENATOR KARPISSEK: And it seems to be that most places already are that way but that doesn't mean that we shouldn't have a rule that it has to be. [LB415]

SENATOR CHRISTENSEN: They can still be in display, they can be back behind the counter--you can see. Just like most stores, they got a rack of cigarettes and they may have their cigarettes displayed here and the chew containers and racks here and they easy can be seen--it doesn't prohibit anything that way. It just means it can't be where I can just grab it and bring it up to pay for it, hopefully, but it prevents that from sticking it in the pocket and going on. [LB415]

SENATOR KARPISSEK: All right. Senator Dierks. [LB415]

SENATOR DIERKS: Thank you, Senator Karpisek. Senator Christensen, refresh my memory a little bit on giveaway samples of tobacco. I know what it is on snuff tobacco because I got that done myself here in '88, I think, but what about...are there ways for tobacco companies to give away free samples of cigarettes by a coupon or something like that? Does that not happen in Nebraska? [LB415]

SENATOR CHRISTENSEN: I guess I can't answer that; I don't know. [LB415]

SENATOR DIERKS: Well, I'll find somebody who can. [LB415]

SENATOR KARPISSEK: Okay, thank you, Senator Dierks. Any further questions?

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Senator Price. [LB415]

SENATOR PRICE: Senator Karpisek, thank you. Senator Christensen. So just to make sure we're perfectly clear: this is about pilferage; it is about stealing, not sales. [LB415]

SENATOR CHRISTENSEN: Yeah, it shouldn't affect sales at all. It protects it from getting into the hands of minors--that's the direction I'm going. Because if it's back behind the counter nobody can reach it and, you know, it's just...you can't do every item like that to prevent stealing and stuff, but if they steal a piece of candy, worse case scenario they can get if they eat too much sugar is maybe an upset stomach--not like getting addicted to something at a young age, you know. That's the direction I'm going. [LB415]

SENATOR PRICE: Well, I was just curious because we had that Class III misdemeanor and then things like that, well, we're talking about the sales, and so I...again, I understand what you're saying. We're making it...on one hand you're saying it's sales, on the other hand it's pilferage, and... [LB415]

SENATOR CHRISTENSEN: But the difference here is if the store places them in reach that's where the penalty comes in. If it's in a display right here where a kid could grab it or it's in reach, that's where the penalties come in. It's not on someone grabbing it and stealing it, that's a different... [LB415]

SENATOR PRICE: Right, but now you just now said it. It was on the place where you place it and make it accessible to the minor versus the sale of the tobacco to the minor. [LB415]

SENATOR CHRISTENSEN: Right. [LB415]

SENATOR PRICE: Because we already have that in statute for the sale to a minor, so then I'm questioning why do we need...my questioning is why are we talking about sales here when we already have sales--we're talking about placement. [LB415]

SENATOR CHRISTENSEN: We're talking about placement; that's correct. [LB415]

SENATOR PRICE: Okay. [LB415]

SENATOR KARPISEK: Thank you, Senator Price. Senator Friend. [LB415]

SENATOR FRIEND: Thank you; thank you, Mr. Chairman. Senator Christensen, I can't...I mean, if we are talking about placement, and that's where your discussion was going, I'm having a little...I've been on this committee for six years and it seems like we deal with something like this every year and then I go out in public and I cannot



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remember in recent memory, in the last two years, where I could actually reach out and grab a pack of cigarettes or a can of Copenhagen or anything else. I'm asking you, is this a problem in your district? [LB415]

SENATOR CHRISTENSEN: Yeah, there's...it's available in the convenience store in Imperial where I can just walk up and grab it on the counter. There's chew on the counter; there's all kinds of a number of things. [LB415]

SENATOR FRIEND: Because I'm going to have to go back and do some...I mean, I had read this, but I'm going to have to go back and do some research because, I could be wrong, but I'm wondering if they're violating state law now. [LB415]

SENATOR CHRISTENSEN: Then that should've showed up with this, shouldn't it, in the drafting? [LB415]

SENATOR FRIEND: Well, I don't...that's a good question. [LB415]

SENATOR KARPISEK: Thank you, Senator Friend. [LB415]

SENATOR CHRISTENSEN: I don't know where it's at, but even in Lincoln--I know who told me, I can't think where it was at, said right here there's a grocery store in this town you can... [LB415]

SENATOR FRIEND: Okay. [LB415]

SENATOR CHRISTENSEN: I haven't been there to check it, but I took his word. [LB415]

SENATOR KARPISEK: Any further questions? Seeing none, thank you, Senator. [LB415]

SENATOR CHRISTENSEN: Thank you. [LB415]

SENATOR KARPISEK: Proponents. Welcome. [LB415]

RON JENSEN: Thank you. Senator Karpisek and members of the committee, my name's Ron Jensen, J-e-n-s-e-n. I'm a registered lobbyist appearing before you this afternoon on behalf of Altria Client Services and its tobacco affiliates. It's been...I think that Senator Christensen explained this bill quite well and its purpose. It has been shown in a study published in American Journal of Public Health that stores with counter self-service displays may be nearly 40 percent more likely to experience shoplifting than stores without counter displays. Also in the American Journal of Public Health there's been an article that has shown that self-service display bans have a

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tendency to help reduce youth access to tobacco products. Further, other research has shown or theorized that when a young person must ask for tobacco products from a clerk, this interaction with the clerk tends to increase the chance that the clerk will notice that the customer is underage. Finally, a position paper from NorthBay Health Resource Center cites a 1994 study finding that a ban on self-service displays significantly increased the chance that a young purchaser will be carded and discourages young persons from attempting to buy tobacco. We believe that this research, along with common sense, argues strongly that LB415 will serve to help reduce youth access to tobacco products. We urge you to consider it favorably and advance it to General File. [LB415]

SENATOR KARPISEK: Thank you, Mr. Jensen. Any questions? Senator Friend. [LB415]

SENATOR FRIEND: Thank you, thank you, Mr. Chair. Mr. Jensen, what is the...there's a state law that says if I am going to purchase a pack of cigarettes or a can of tobacco that I should be carded? [LB415]

RON JENSEN: Um-hum. [LB415]

SENATOR FRIEND: Okay. What...we're making a state law... [LB415]

RON JENSEN: Just...can I clarify that for just a second? [LB415]

SENATOR FRIEND: Sure. [LB415]

RON JENSEN: The law prohibits the sale to an underage person. I don't believe it says they must be carded. Okay. [LB415]

SENATOR FRIEND: Okay, okay; good distinction. So we're potentially making a state law here, and I can tell you just...the path that I was going down with Senator Christensen is, I cannot tell you the last time I walked into an establishment in Omaha and been able to reach out and grab a pack of cigarettes or a can of Copenhagen or whatever the case might be. Now it doesn't mean in his district it's not happening. What would preclude any proprietor from moving this stuff away to make sure that people aren't going to pilfer it or try to steal it? I mean... [LB415]

RON JENSEN: It makes sense that they would and, you know, I travel Nebraska. [LB415]

SENATOR FRIEND: So you see what I'm saying, and we're creating a state law that...for what purpose, then? Just for the sake of creating one and mandating something that these convenience stores and grocery stores in small communities

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should be doing anyway. [LB415]

RON JENSEN: I think you'll be told in opposition testimony, Senator Friend, that some of them are not. And in my own experience it's like yours--particularly here in Lincoln--I never see a self-service cigarette display, at least. I believe... [LB415]

SENATOR FRIEND: It's been years since I've seen one. [LB415]

RON JENSEN: I believe at Walgreens you can buy pipe tobacco, from a self-service counter. But the chew products and the cigarettes are behind the counter. But apparently there are those who have not yet...and you'll note that the bill becomes effective January 2010 to give those outlets a chance to change the way they're selling these products. [LB415]

SENATOR FRIEND: Okay, thanks. [LB415]

RON JENSEN: Um-hum. [LB415]

SENATOR KARPISEK: Any other questions? Seeing none, thank you, Mr. Jensen. [LB415]

RON JENSEN: Thank you very much. [LB415]

SENATOR KARPISEK: Further proponents? Seeing none. Opponents? Welcome. [LB415]

KATHY SIEFKEN: Hello. Senator Karpisek and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association in opposition to this bill because it's not needed. The only places...Senator Friend, the reason you don't see any tobacco products out in Omaha is because they passed an ordinance--I want to say, maybe, four or five years ago. And I ran it by all of my members and there was one store in the entire city of Omaha that had their tobacco products out. It was a store that had not had a problem with theft and so they didn't move the tobacco behind the counter because they didn't need to. Tobacco products are so expensive nowadays that retailers can't afford to have them shoplifted, any more than they can afford to have anything else shoplifted. So what they've done voluntarily, as they remodel and as they go through, they put these items behind the counter. The only place in the state of Nebraska where you're going to see these kind of products not behind the counter are the small stores in small, rural Nebraska. They don't have room to put them behind the counter, they don't have the money to go through and do the remodels that the bigger stores have, and so if you mandate that these products be put behind the counter, those stores will, in all likelihood, have to stop selling them. And there goes one more income stream. And you know what's happening in rural Nebraska

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to our grocery stores, they're closing. At a pretty scary and rapid rate. If you have any questions I'd be happy to try to answer. [LB415]

SENATOR KARPISEK: Thank you, Ms. Siefken. Any questions? Senator Coash. [LB415]

SENATOR COASH: Thank you, Mr. Chair. Ms. Siefken, how many stores are we talking about that would need, if this bill were passed, in your estimation would need to come into compliance and do a remodel? Are we talking about dozens of stores, a few here and there, I mean... [LB415]

KATHY SIEFKEN: Wow, it's hard to say. Off the top of my head probably a couple of dozen, if even that. Because as the stores go through and do remodels, they are putting them behind the counter. In the city of Lincoln I'm not aware--and I'm in those stores all the time, and I look for tobacco products and the placement, and I talk to members about making sure that they are behind the counters if I see anything. I've been in every store in the city of Lincoln. Now, I'm not talking about Walgreens and some of those other places, but tobacco products...I've not seen any that have not been behind the counter. And Lincoln did not pass an ordinance. I know that Plattsmouth did and Omaha did, and I'm thinking North Platte maybe did. [LB415]

SENATOR COASH: So a couple dozen stores... [LB415]

KATHY SIEFKEN: Yeah. [LB415]

SENATOR COASH: ...have to do a remodel? [LB415]

KATHY SIEFKEN: Um-hum. [LB415]

SENATOR COASH: Is there any, just to ask you a question in general about the grocery industry, is there licensing requirements or anything like that where every so many years a grocery store has to reapply and with like... [LB415]

KATHY SIEFKEN: For tobacco? [LB415]

SENATOR COASH: Not with tobacco, but with, like, health and safety to make sure... [LB415]

KATHY SIEFKEN: Yes. [LB415]

SENATOR COASH: ...things like that? [LB415]

KATHY SIEFKEN: Yes, absolutely; every year. [LB415]

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SENATOR COASH: Every year? [LB415]

KATHY SIEFKEN: Um-hum. [LB415]

SENATOR COASH: Okay, all right; thank you. [LB415]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Dierks, I think, was first. [LB415]

SENATOR DIERKS: All right. So Kathy, your opposition to the bill is mostly because it might close rural stores, is that mainly the opposition? [LB415]

KATHY SIEFKEN: That's one of the reasons, but I guess the main reason is that you don't need it. People are already doing it. There are a few instances across the state where you might have tobacco products out in the open. I haven't been in every store in the state of Nebraska. But there might be a few, and the only reason people are not putting them behind the counter is because it costs money to do that. And the tobacco companies, way back when, used to provide cabinets and shelving and that type of thing to the retailers that were selling their products. They no longer do that. So it is a direct cost, out of the pocket of the retailer, to sell those tobacco products. [LB415]

SENATOR DIERKS: And so for the most part that would be the smaller, more rural community store? [LB415]

KATHY SIEFKEN: Absolutely, yes. [LB415]

SENATOR DIERKS: Thank you. [LB415]

SENATOR KARPISEK: Thank you, Senator Dierks. Senator Friend. [LB415]

SENATOR FRIEND: Thank you. Kathy, if I owned a grocery store in any area in Nebraska where this could be a problem, you know, let me play Devil's Advocate a minute. Well, you know, maybe the law isn't totally necessary but how difficult would it be to accommodate this language? I mean, I go up on a wall, put a shelf up and put all of my cigarette products and tobacco products up on the wall. I mean, are you exaggerating the idea that...look, I've already pointed out that I'm not sure that legislation like this is mandatory or necessary, but are you exaggerating the idea that we're going to run people out of...I mean, is this a... [LB415]

KATHY SIEFKEN: I don't think I am. But what I'm talking about is we've got grocery stores that's one aisle up and one aisle back. [LB415]

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SENATOR FRIEND: Well, I understand... [LB415]

KATHY SIEFKEN: You understand what I'm...so these are tiny... [LB415]

SENATOR FRIEND: They have walls. Kathy, the point is they have walls. You put a shelf up and you say if you're going to get up there...if a 13-year-old kid is going to get up there and get those, if there's somebody working in the store somebody's going to see them. You see what I'm saying? [LB415]

KATHY SIEFKEN I understand what you're... [LB415]

SENATOR FRIEND The language in here doesn't say it has to be behind glass and it doesn't say you have to put it, necessarily, behind a shelf. It's just got to be in an area where it's unattainable, I guess, without help in some way. [LB415]

KATHY SIEFKEN: That would have to be locked up, then. [LB415]

SENATOR FRIEND: Okay. [LB415]

KATHY SIEFKEN: And in every...they're going to place the tobacco products within line of sight of the cashier. If they don't have room behind the counter, they'll place it in line of sight. Because they can't afford to lose these. I mean, I'm not sure, but I think it's like between...it's close to \$4.00 for a pack of cigarettes. That's a lot of money. We're making 1 percent profit. You lose a \$4.00 pack of cigarettes you're going to have to sell \$400 worth of groceries to make that up. Because that's how close our margins are. [LB415]

SENATOR FRIEND: Okay. Well, I gave up candy for Lent and I'm telling you what--I wouldn't mind amending this and telling them to put that behind the counter because I'm about to break. (Laughter) I need an M&M or something right now. Thank you. [LB415]

SENATOR KARPISEK: Thank you, Senator Friend. [LB415]

SENATOR ROBERT: Here's an empty wrapper though. (Laughter) [LB415]

SENATOR KARPISEK: (Laugh) Oh, we know how to get at him now in Exec. Senator Price. [LB415]

SENATOR PRICE: Thank you, Mr. Chairman, Ms. Siefken. When you say the smaller stores, are you saying stores with one cash line, cash register line, or two, or which ones? Is it one and less? Or only one? [LB415]

KATHY SIEFKEN: One. [LB415]

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SENATOR PRICE: Or more than one. [LB415]

KATHY SIEFKEN: One. [LB415]

SENATOR PRICE: Okay. You know, I've been able to go around the world and I've seen where they can put these cigarettes on the floor, or they put them underneath the counter. I've seen them mounted on the wall behind and I used to own a small store and where we had to put things up it was four mollies, two brackets, and a shelf and which probably...I was out six bucks. So I call or question that, but again, and look at the language and I heard what you had to say before, but the idea of being with one counter, then there should, hopefully, be a way that they could secure these. So there are...how many one-line stores are there, then? [LB415]

KATHY SIEFKEN: Like I said, maybe...I don't know. How many one-lane stores there are? I know that they're out there. There was one up in Bassett, for example, that I was in a few years back and they didn't even have a cash register--they had a calculator to add up the groceries. We've got a lot of little tiny stores in little towns that aren't really full-fledged grocery stores and so if they're selling tobacco, it...you know, they still have to be inspected, but they don't even have an agreement with the wholesaler because what they do is they team up with the grocer in the next town and they go over with their pickup and pick up the groceries and bring them back to the next town. Osceola does that. We've got a lot of places like that. [LB415]

SENATOR PRICE: Okay, so if we take this requirement and we took it...we resolved it to the other aspects of owning a grocery business: we were talking about health inspections and everything...if you have a mop, you need a mop, you need a mop sink to go in. Because you cannot dump mop water, generally speaking, in the sinks you wash dishes in without an air gap of six inches, give or take, plus or minus. Putting one of those in is 1400 bucks; that's the cost of doing business. So I'm just...you know, that's the other aspect when you talk about these things is this is a cost of doing business. [LB415]

KATHY SIEFKEN: That would be true. [LB415]

SENATOR PRICE: Okay, thank you. [LB415]

SENATOR KARPISEK: Thank you, Senator Price. (Laugh) Senator Dierks. [LB415]

SENATOR DIERKS: Thank you, Senator Karpisek. Kathy, what you're telling us then is that the price of these products is so high that any common businessman's going to have them out of the way already. [LB415]

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KATHY SIEFKEN: Correct. [LB415]

SENATOR DIERKS: Thank you. [LB415]

KATHY SIEFKEN: If he's having a theft problem, they're not out there where anybody can grab them. Because you can't afford to do it. You go out of business. [LB415]

SENATOR DIERKS: Um-hum. Thank you. [LB415]

SENATOR KARPISEK: Senator Coash. [LB415]

SENATOR COASH: Okay, thank you, Chair. Kathy, one last question. Do grocers get...are they able to purchase cigarettes at a discounted rate if they agree to put those products behind glass? [LB415]

KATHY SIEFKEN: Yes, they do. [LB415]

SENATOR COASH: They do? [LB415]

KATHY SIEFKEN: Um-hum. [LB415]

SENATOR COASH: So you can...if I'm a grocer and I say, hey, I'm going to put this behind glass, I can buy them cheaper? So it increases... [LB415]

KATHY SIEFKEN: Yes, you can. You have to sign the contract and what Philip Morris is doing right now is if you are caught failing a compliance check they will take your discount money away from you, which is very painful. [LB415]

SENATOR COASH: Sure. [LB415]

KATHY SIEFKEN: For a larger grocery store that could be \$2,000-\$3,000 a month. I mean, there are things put in place here to make sure that grocers are doing what's right. Now in addition to that, a couple of years ago Philip Morris decided that they were going to...they hand out coupons for discounts on tobacco. And they decided that if any of the retailers were caught in a compliance check and failed that they would take the coupon money and not reimburse that to the grocer. So the monetary penalties are huge. [LB415]

SENATOR COASH: But that's voluntary, if you want to enter into that contract to get the discount rate. [LB415]

KATHY SIEFKEN: Well, to get the discount you have to enter into the contract, you're correct. [LB415]



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SENATOR COASH: But feasibly, the increased revenue you get by buying it cheaper could, then, offset the costs of putting it behind. I'm sure that's, maybe, why they do that. [LB415]

KATHY SIEFKEN: Well, yes, but those contracts and those discounts are not offered to small retailers. It's based on volume. [LB415]

SENATOR COASH: Okay. [LB415]

KATHY SIEFKEN: So the bigger stores that sell a larger amount of these products are offered the contracts, the smaller stores do not get to participate. They're not offered the contract. [LB415]

SENATOR COASH: So feasibly what we're saying is the stores that would need to come into compliance here wouldn't be able to enter into those discount rates? [LB415]

KATHY SIEFKEN: That's correct, yes. [LB415]

SENATOR COASH: Okay, thank you. [LB415]

SENATOR ROGERT: Senator Dierks. [LB415]

SENATOR DIERKS: So, Kathy, that means it costs more to smoke in rural Nebraska than it does in urban Nebraska. [LB415]

KATHY SIEFKEN: That's true. [LB415]

SENATOR DIERKS: How about that? [LB415]

SENATOR ROGERT: Thank you, Senator Dierks. Senator Price. [LB415]

SENATOR PRICE: Senator Rogert, thank you. Then Kathy, can you tell us what that special is to get a Philip Morris discount? [LB415]

KATHY SIEFKEN: I do not know. I can find out. [LB415]

SENATOR PRICE: Good, because...I think that would be good because you're talking \$4.00 a pack and they go through \$10,000-\$20,000 cigarettes in a month, or something like that. That's pretty easy to go through \$20,000 of revenue at \$4.00 a pack. What is that special, and what other incentives might there be out there from the other companies? [LB415]

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KATHY SIEFKEN: Philip Morris is the leader in tobacco products. [LB415]

SENATOR PRICE: They're not the only one, though. [LB415]

KATHY SIEFKEN: They're not the only one, but when you sign the Philip Morris contract then you don't sign the other contracts. Because it's all about placement of product. Because Philip Morris wants to have the premium space for their brands so that that's the product that customers see when they walk in the door. [LB415]

SENATOR PRICE: And getting that threshold would be nice. [LB415]

KATHY SIEFKEN: Okay. I will check on that. [LB415]

SENATOR PRICE: Thank you. [LB415]

SENATOR ROBERT: Thank you, Senator Price. Any other questions from the committee? Thanks, Kathy. [LB415]

KATHY SIEFKEN: Thank you. [LB415]

SENATOR ROBERT: Next opponent, please. Welcome. [LB415]

BILL PETERS: Thank you. Senator Robert and 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 in opposition to the legislation under discussion, LB415. Even if cigars were included--excuse me, excluded, they are included--we would still have definite reservations about not only the philosophy, but the dangerous precedent that's already being set. The discussion is focused on Philip Morris. I know the difference between a monopoly and an oligopoly and it's an oligopoly. I think that's a pretty big market share. We're talking about a company that, I think, has more of the cigarette market and tobacco market than all other companies put together. The numbers, I think, run as high as 60 percent on cigarettes. They just purchased a cigar/pipe company that had 23 percent of the market, they have just completed the acquisition of U.S. Tobacco which has the Skoal line of products. The slotting fees are substantial. And when you do look behind the counter, I didn't realize they quit buying the racks--maybe they had the place filled up--but their contracts determine what signs are put up in the store, what part of that rack behind the counter that you see, what product is there. And the product that's there is most likely to be bought. People have a tendency not to look underneath or at the edges. So it provides a competitive problem for the cigarettes. Now try to sell a cigar in that environment. That is rather difficult. The Philip Morris contract has a clause in it--it's the NSS Clause: no self-service. So everyone that's participating in the Philip Morris program is already a no self-service. Which is probably a primary reason why we see, around town, most of the cigarettes are secured either behind the counter or in a

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locked case. Now there's two Walgreens stores that I frequent--they moved even their pipe tobacco behind the counter. I'm not aware of any of the major grocery stores in Lincoln, the chain stores, that have other than access to tobacco through a controlled area, much the same as they do on videos. Oftentime, it's the same counter that you go to. This is occurring not only because of the slotting agreements which also, by the way, includes transaction space which I'll get to in a moment. But as Kathy mentioned, the ease of shoplifting. And shoplifting is not just a minor's problem. If this was a significant minor's problem I have the unfortunate or fortunate history of having represented the tobacco industry since 1981, often discussing this issue. And back in '94--Ron referred to the study in '94 when there was ease of acquiring tobacco products. And Senator Dierks, there used to be the giveaway barrel out at the race track on that chew that you beat us up on quite easily. But that's not the situation that we have today and part of it's because of cost. And by the way, the costs are getting ready to go through the roof. There's a new federal tax coming in, with some costs going up 24 times the tax. But that's not to be worried about--that's on roll-your-own: it goes from \$1.00 a pound to \$24.00 a pound, federal tax. Cigarette tax goes up, I think, 61 cents. From my particular industry, the cigar industry, we're anticipating--without any of this--of losing 25 percent of the market because of the tax increase. And small cigars, we're looking at more of a loss because of the tax increase in that area. In marketing of cigars we have too much variety, I suppose. We have different sizes, different shapes, and different products. We believe it should be left up to the retailer to make the decision. And because of the value there's usually quite close control of these. But in the smaller, not country, grocery store the transaction space--which is also controlled by the slotting agreements, by Philip Morris--is this would prohibit a box of Dutch Masters from sitting next to the cash register. And normally the cash register's pretty well monitored, if you're going to have a theft situation. A display of Swisher Sweets--that's one of my old favorites when I used to use the product--they come in a little five-pack sitting on a display: those are no more. So the cigarette industry...also, not only do we have a size we have a packaging problem. You can't put many boxes behind the counter. You're probably not going to have all that many boxes unless you're a specialty store. But it certainly makes it more difficult to deprive the retailer of the opportunity to sell the product. And in the past there's been a conventional wisdom that all companies gave retailers a certain amount of product so it could hook the kids: that's never been true. There's no tobacco out there on consignment. Tobacco is prepaid. So net loss is entirely the loss of the retailer. So I hate to disagree with Kathy, but there is a little more than a 1 percent markup on cigarettes. By law, I think the retailer gets 8 percent. But that's still quite a loss if somebody provides any shoplifting. And it's shoplifting that's the problem to a large extent. And retailers naturally take care of things. The liquor is not under control except those half-pints. If you're so disposed to a half-pint or a pint, you'll find if you look as you go through the stores that they're out of a reach and difficult. I would view this bill, is that if you can't buy the space, legislate it. And we're opposed to legislating how a retailer retails a lawful product. And with that I would conclude my testimony. [LB415]

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SENATOR ROBERT: Thank you, Mr. Peters. Any questions? Senator Dierks. [LB415]

SENATOR DIERKS: Thank you, Senator. Bill, refresh my memory on the slotting fee that you're talking about. [LB415]

BILL PETERS: Well, it's a contract. It's also shelf space, would be the old term. The slotting fee agreement is the contract that's entered into. And they have different variations: whether or not a rack is supplied, where the rack will be, what percentage of the rack and they classify the space on the rack. It can also encompass whether or not there's a sign in the window. And keep in mind under the Master Settlement Agreement, there's a limitation on the amount of signage that can be there, so that becomes sort of a prime...some of the agreements say that your display case, or space, that we'll have X percent. One of their better contracts that they pay more for is the 90 percent rule. Now as... [LB415]

SENATOR DIERKS: You mean the tobacco company pays more. [LB415]

BILL PETERS: Oh yeah, yeah, because they get 90 percent of all tobacco space in the store. The other thing that the retailers face is the loss of the incentives that come along when they decide to run specials, and they're called buy-downs. And you have to have one of these agreements to participate in a buy-down. I don't know what the current market is, but three or four years ago I know they were running in the neighborhood of \$5.00--they could be more or less per carton. That's real change. And as Kathy says, Philip Morris does an excellent job of enforcing their contracts. They'll do the checks and you're either going to do it according to the contract or you're not getting paid. [LB415]

SENATOR DIERKS: One other question: is it going to cost more to smoke a cigar in rural Nebraska than it does in urban Nebraska? [LB415]

BILL PETERS: Yes, but not necessarily because of this bill. It'll cost you more to smoke, probably, a Dutch Master or a Swisher Sweet. It's still going to be expensive to have to mail-order a premium. [LB415]

SENATOR DIERKS: Thank you. [LB415]

SENATOR ROBERT: Thank you, Senator Dierks. Any other questions? Seeing none, thank you. [LB415]

BILL PETERS: Thank you. [LB415]

SENATOR ROBERT: (Exhibit A) Are there any further opponents? Anybody here in a neutral capacity? Senator Christensen, while you make your way up to close I'm going

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to read into the record this letter of support from Nebraska Hospital Association. Go ahead. [LB415]

SENATOR CHRISTENSEN: Okay, thank you. I appreciate the opportunity to bring this bill forward. I might leave you a thought: are the kids in rural Nebraska--who heard this as a small store, rural type scenario, but are the kids of rural Nebraska important? You know, I think it's very important to make sure they don't get a hold of it. You know, I don't know if I buy the agreement that remodeling's very expensive and difficult, and I appreciate Senator Price's efforts on that. And if you ever get to the small towns, I'll ask you how many times have you walked into a convenience store, there's only one person working, and when nobody's in there they're back stocking shelves. Or there's two of them in there and nobody's at the counter--at least in Imperial, in my district, that happens a lot. They're away from there because they're trying to clean up, they're trying to do some of the work so they can get out of there when the store closes or their shift's over, so they're away from that counter spot. And it's...you know, I was asked back here behind: is there permanent shelving, quite often, in Imperial? I said no, a lot of the displays are the discounts for sale or the new products are setting there that they have out there that's in reach. And that's the part that I get concerned about is, I know how easy it would be if I wanted to do that, to grab one and take off. I realize they get to know some of the kids in smaller towns that they maybe need to watch, but you don't always know who first comes in--what they first do when they walk in. So that's been my concern, about the kids and protecting them, and I just appreciate your time and consideration and ask if there's any further questions? [LB415]

SENATOR ROBERT: (Exhibits B, C, D) Thank you, Senator Christensen. Any questions for Senator Christensen? Seeing none. I have a few more letters of support I'll read into the record from the Nebraska Pharmacists Association, from Cedars Association, and from the American Cancer Society. And that closes the hearing on LB415 and the hearings for the day. [LB415]

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Disposition of Bills:

LB286 - Placed on General File.

LB287 - Placed on General File with amendments.

LB415 - Indefinitely postponed.

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Chairperson

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Committee Clerk