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General Affairs Committee
February 01, 2010

[LB783 LB786 LB869 LB870 LB900 LB906]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 1, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB783, LB786, LB869, LB870, LB900, and LB906. Senators present: Russ Karpisek, Chairperson; Kent Rogert, Vice Chairperson; Colby Coash; Tanya Cook; Merton "Cap" Dierks; Annette Dubas; Bob Krist; and Scott Price. Senators absent: None.

SENATOR KARPISEK: All right. Good afternoon, we're going to get started. Welcome to the General Affairs Committee. My name is Senator Russ Karpisek of Wilber, and I am the Chair of the committee. Committee members who are present: Senator Coash from Lincoln; next to him is Senator Krist of Omaha; Senator Dierks of Ewing; Senator Kent Rogert, the Vice Chair of the committee, from Tekamah who will be chairing most of the day today. To my immediate right is Joshua Eickmeier, committee legal counsel, of Seward. To my far left is Joan Snyder of Lincoln. She is going to be our committee clerk today. Next to her is Senator Price of Bellevue; Senator Cook of Omaha; and Senator Dubas of Fullerton. Pages helping us today are Justin Trauernicht of Pickrell, and Leslie McIntosh of Syracuse. After each bill introduction, we would like to hear testimony in support of the nominee, then testimony in opposition, and finally neutral testimony. If you're planning on testifying in any capacity, please pick up a sign-in sheet that is on a 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 to testify, give your sign-in sheet to one of the pages so that they can give it to the committee clerk, and this will help us make a more accurate public record. If you have handouts, please make sure that you have ten copies for the page to hand out to the committee. When you come up to testify, please speak clearly into the mike, tell us your name and spell your first and last name, even if it's a simple name. We need it for the record. Also, please tell us whom you're representing, if anyone. Please turn off your cell phones, pagers, or anything else that beeps, and keep your conversations to a minimum or take them out in the hallway. Finally, while we do allow handouts, we do not allow visual aids or other display items in the committee. We will also be using the light system this year. With the number of bills we have introduced, we need to get through them. When the green light is on, you have five minutes. When the yellow comes on, you have one minute left. When the red comes on, that's been your five minutes. The questions from senators will not count as the five minutes. Thank you for your cooperation. If you need anything else, please get one of the page's attention. All right, we'll now start with the first bill up today, LB783, and I will pass the chair to Senator Rogert.

SENATOR ROGERT: The floor is yours.

SENATOR KARPISEK: Thank you, Senator Rogert, members of the General Affairs Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am

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the Chair of the General Affairs Committee. Before I begin today, I want to provide an explanation of some background as to why I've introduced so many laws pertaining to the Liquor Control Act. This year I introduced ten liquor bills, six of which are on today's agenda. My office has received a number of inquiries as to why so many liquor bills. Actually, I could have introduced all of these bills in just one or two large bills, but it was important to me that these bills are as transparent as possible. In fact, each liquor bill, with the exception of the Bill Drafters' suggestions heard last Monday, can mostly be summed up by the accompanying one-line summaries. The plan is to take the bills that the committee advances and amend them into an omnibus bill that is a committee bill. Doing it that way, I feel, allows for public discussion on each bill separately. The reason I didn't want to introduce one large bill was because sometimes important aspects of a bill get hidden or lost and don't get sufficient discussion at the hearing due to time constraints. The down side of having so many bills is that we will likely have a lengthy hearing today, but that is why we get paid the big bucks, right? As for where these liquor bills originated, all but one that I or the committee introduced came from the Liquor Control Commission, their letter of suggested legislation that is sent to the Governor. That explains some of my reasoning. Whether you agree or disagree is up to you. Now for LB783. Currently, the Liquor Control Act prohibits the sale of alcoholic liquor for consumption within 300 feet of a college or university. Last year the Legislature passed a bill that established the western boundary of the University of Nebraska as 10th Street. The reason for this bill was the prohibition of the 300 feet, since the university was considering expanding into the Haymarket. Had last year's bill not passed and the university carried out its plans to have Sheldon Art Gallery in the Haymarket, it could have jeopardized future liquor licenses and those licenses fewer than two years old. This was not the first time the Legislature established an arbitrary boundary for the university either. Previously, the Legislature established a southern boundary so as not to encroach on the downtown area. It is conceivable that if the university were to encroach on commercial areas to the north or east of campus that the Legislature would again be asked to establish arbitrary boundaries on those sides as well. Keep in mind that the current prohibition applies only to alcoholic liquor and not beer. Right now one could open a beer-only bar within 300 feet of campus. It should also be noted that there are establishments within 300 feet of campus right now that receive, in my opinion, an excessive number of special designated licenses, or SDLs, so that alcohol and beer are ready available within 300 feet of campus. The Liquor Control Commission brought this bill to me because it would like to require these establishments to get a regular liquor license so that it may be more effective to enforce or they could more effectively enforce the Liquor Control Act. Hobert Rupe, executive director of the Liquor Control Commission, is here to testify and provide you more detailed information. Finally, my intent with this bill is not to allow the sale for consumption of liquor or beer on campus. Although LB783 would lift the 300-foot buffer, without an amendment the bill suggests one could sell beer on campus, assuming university or college allowed it. Therefore, I will offer an amendment to close this potential loophole. Again, I'm bringing this bill not to make liquor, any alcohol easier, closer to the campus, but to cut down on the SDLs. I

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have talked to the university since introducing this bill, and they have thought about bringing an amendment to maybe still include residence halls. I'm not real sure what they've come up with. If we can't get anywhere on that, we may hold this and do an interim study over the summer. Again, it is not my intent to put a stand-alone bar right across the street from the residence halls. I would be happy to work with them on that amendment. With that, if there's any questions, I'll try to answer them. [LB783]

SENATOR ROBERT: Thank you, Senator Karpisek. Are there any questions from the committee? Seeing none, I suppose you'll be here for closing with all these, huh? [LB783]

SENATOR KARPISEK: I will be here for closing. [LB783]

SENATOR ROBERT: All right. [LB783]

SENATOR KARPISEK: Thank you. [LB783]

SENATOR ROBERT: We will now move to the first proponent of LB783. And I'll take this opportunity to remind everybody, we are going to use lights, if you weren't here last week, so... [LB783]

HOBERT RUPE: I won't take that personal or (inaudible). [LB783]

SENATOR ROBERT: Take it however you want, Mr. Rupe. [LB783]

HOBERT RUPE: Good afternoon, Senators. My name is Hobert Rupe, H-o-b-e-r-t, last name Rupe, R-u-p-e. I am the executive director of the Nebraska Liquor Control Commission. I think Senator Karpisek did a wonderful job in explaining what the concerns the commission has in regard to this issue. And in your packets, what you're going to see is sort of a, you know, a copy of the bill as it sits right now. And so I think what we should do is just what is allowed and what's not allowed within 300 foot of the campus. No alcoholic liquor other than beer shall be sold for consumption on the premises within 300 feet from the campus of any college or university in the state, except that this section is an exception. Okay, let's look at the first part. What does that mean? An on-premise liquor or wine is prohibited. On-premise beer is allowed; off-sale is allowed; on-premise beer is allowed. I mean, an example of that, that you will probably be aware of, is the Valentino's at the current corner of 33rd and Holdrege. They have a beer-only license because they're within 300 feet of East Campus, technically. And there's some convenience stores out there, too, which have off-sale privileges, and they have off-sale privileges. So what this really does is, as it sits right now, is it says you can't have a place which has liquor or wine. And liquor, generally, in this case means spirits or wine. I believe that Senator Karpisek did a wonderful job on the exceptions about the boundary issues, as you are all aware of. I mean, technically, if

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you read the Liquor Control Act, the Wick Alumni Center, the Lied Center, the Mary Riepma Ross Theater, they're not on the campus of the University of Nebraska-Lincoln for purposes of the Liquor Control Act because they're all south of R Street. Sheldon, too, in the Haymarket won't be part of the campus because of what they're doing. The commission's concern, quite frankly, is there...how soon until we see another request for exemption once Innovation Park starts going on? That's going to be a public-private mixture up there, and if you're going to have that kind of businesses up there, I can...you know, if I were to do my own forecasting, I could see there would be a bar or restaurant which are going to service that population either during lunch or right after work. And so are we going to then have to come up with another definition what the northern boundary is which it doesn't truly accurately reflect with the campuses? The other reason we're here is special designated licenses. Right now we give out almost as many SDLs as we do regular liquor licenses for retail. There's 4,500 retail liquor licenses. We're over 3,300 SDLs, as we're sitting right now, that are given out on an annual basis by the commission. Special designated licenses were designed for street dances, a wedding reception, a fish fry. They were not designed to be allowing someone who would fall within one of these zones to basically operate a liquor license in every other way, shape, or form. And I hope it doesn't sound like I'm picking on them, because I know in the past they've actually asked to get liquor license and we've had to deny them, would be the Champions Club. Champions Club is not part of the university, but it is within 300 foot of the university, so every single event that they have up there requires a special designated license. And in that packet, you'll sort of see a breakdown of the different licenses, and they sort of deal with all the different ones. The first one you'll see there...let me rephrase before I go...the other problem with SDLs is we've got a lot of on-campus places which are already using those, and so there's already these products being sold on the campus. And so, you know, the idea that they're being able to have it on the campus and having this 300-foot zone sort of doesn't make a lot of sense, and so you'll see how many SDLs are instituted since 2009. The first page will be, I believe, if it's in order, will be the Thompson Center. There were 48 liquor licenses in the Thompson Center. That's right there on UNO's campus. The next page is Ken's Liquor, how many SDLs they got. They are sort of spread all over the place on downtown Lincoln campus. The next one is Sodexo. Those are almost all on Creighton's campus. They went through 79 special designated licenses. Chances R--that's the Champions Club. I mean, they're not on the university, but they're within that 300-foot zone, and they received 64 special designated licenses over...in 2009. That's more than one a week. I mean, in all intents and purposes, they're running and operating exactly like a social hall would be, but they're not licensed on a permanent basis. The next page is...or next set of numbers is Premier Catering. You'll see most of those were at the Wick Alumni Center, the Lied Center, some at the Law College, and they had 56 special designated licenses in 2009. Part of those were probably legitimate SDLs. Some of them aren't, and the purpose of why we preferred to have them licensed...there's a couple of reasons. One, if they're permanently licensed, they're subject to inspection by not only the Nebraska Liquor Control Commission but by the

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Nebraska State Patrol, by Lincoln Police Department or Omaha Police Department where they're at, in this case probably also the campus police, since I believe they are deputy sheriffs, to go in at any time and make sure that compliance with the Liquor Control Act is taking place for minors, drunks, other issues. The other issue is, and I'm not really saying there's a problem with Champions but was an issue with earlier places, is by utilizing SDLs, the requirements that they get approved by the Fire Marshal and the Department of Agriculture foods and dairies isn't there. The commission recently did a rule change where we had some places which were utilizing special designated licenses through caterers to run bars. They weren't within the 300-foot zone, and so we promulgated a rule that you can only have 12 days of SDLs at any one location, you know, without having to come to a hearing and explain why you can't do that, because we had some places that we're using special designated licenses to run weekend-only bars. And so the purpose of this is definitely to have more control, not less control, and we thought that it was important to bring this up to the commission's attention...committee's attention. And since I see I'm running out of time, you know, you always think you have...five minutes is a lot longer than that, I would be happy to answer...oh, one last thing before we do that. We have spoken with the university. We are willing to work with them on some of their concerns they might have. We were unaware that with...on the university grounds of UNL there are a couple of pockets which are actually privately owned. I think their concern would be that those places might become eligible to have liquor licenses since they're not actually owned by the university. We thought that they sort of owned everything that they, you know, surrounded, but there are a couple of small properties in there which they might be concerned about, as well as the idea of having a, you know, bar just outside, right next to a residence hall. So I see my red light has come on, so if you have any questions. [LB783]

SENATOR ROBERT: Thank you, Mr. Rupe. Senator Dierks. [LB783]

SENATOR DIERKS: Welcome to the party. What's the procedure that goes to get a special designated license? [LB783]

HOBERT RUPE: Special designated license must be applied for at least ten calendar days before the event. They make an application with the local governing body. This is sort of a strange one from the...where usually they just make a recommendation, for SDL, it must be approved by both the local governing body and by the commission. So in a lot of ways, it's sort of a converse. It's sort of where the commission is the final say on a regular liquor license. It's almost the converse because, if the locals deny it, we never even see it. There's no right to appeal it. So it goes through local governing bodies. There are certain classifications who can get liquor licenses. Existing licensees are limited to a certain amount of days...I believe six days unless they have a catering endorsement. The other people who can get liquor licenses are political parties, churches, nonprofit groups. You know, they can get SDLs as well. [LB783]

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SENATOR DIERKS: Well, when I look at your packet, and I'm looking at the Hy-Vee sample, it looks like everything is just a copy of the item before it, and it's sampling and tasting. [LB783]

HOBERT RUPE: Hy-Vee is a strange case. That's the one out at 50th and O. What we did, because we were getting inundated with the number of SDLs for tastings at the high-end supermarkets--and this came from the city clerks, primarily, who were also having to deal with all those--we created a separate license that's called a limited C where they have the on-premise, but it's limited to just tastings. Because they are 255 feet away from a Doane College adjunct which has over 25 percent of their people there, Hy-Vee could not qualify for the Class C liquor license, so they have to go back the old way and get SDLs every time they want to do a wine or beer tasting or liquor tasting in their area. [LB783]

SENATOR DIERKS: They just about need a full-time clerk to get those, don't they? [LB783]

HOBERT RUPE: They probably do...they do. It's, yeah, I can say that...the city of Lincoln was less than happy when they found out that they would have to be processing all those. [LB783]

SENATOR DIERKS: I think it shows...there's over 200 of them... [LB783]

HOBERT RUPE: Yep. [LB783]

SENATOR DIERKS: ...234, 239 applications. Thanks, Hobie. [LB783]

SENATOR ROGERT: Senator Dubas. [LB783]

SENATOR DUBAS: Thank you, Senator Rogert. Thank you, Hobie. Would there be any reason that you would turn down an SDL? [LB783]

HOBERT RUPE: Yes, we turn down SDLs usually if there's been a past history of violations. The most recent ones which we dealt with that was out at, oh, the Windmill Festival. Comstock was having those problems, and so before just automatically assuming those, we'd have them come in. Within the last couple of years, actually, after we put certain conditions on them, they were a much safer event. I mean, they would probably blame us, that's why they're no longer going because we sort of limited down the party atmosphere. But for the most part, you know, on SDLs, it's usually...you know, we usually find out that something happened bad afterwards, and we have a couple of ideas. If it's a licensee, we can cite them the same as if somebody sold, you know...doesn't matter whether there was a, you know, a sale to minor. If it's a nonprofit,

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like the Windmill Festival does, what we'll do is we'll send them a notification that prior to any more issuances of SDLs there will be a hearing had beforehand to give them time to make the application to, you know, take care of it, because that's the big problem is on the nonlicensee SDLs is, you know, the hammer has gone away. As long as there's a liquor license, there's an entity...there's a way for the commission to sanction the licensee for failure to comply with the act. So, a couple of years ago, we actually had a suggestion to do away with the nonlicensee parts that didn't go anywhere. [LB783]

SENATOR DUBAS: How much time does it take you to process an SDL request?
[LB783]

HOBERT RUPE: I think it depends a lot of times. Most of these we're dealing with here probably don't take a long time because these are places...these are pretty professional caterers for the most part. I know, to give UNL their credit, they have pretty stringent requirements on who they'll let get SDLs and the requirements they go through. You know, they don't take a lot of time, but they do take some time because you have to make sure what the dates are, especially if it's an outdoor event because you have to make sure that the fencing requirements are satisfactory, that there's an alternative day, there's a rain day or, you know, because a lot of times those will happen, you know, things will get rained out, and they want to reschedule it for the next weekend. Well, hopefully, they had that in the original application, so that's a backup plan. So a lot depends on the specific SDL in question. [LB783]

SENATOR DUBAS: Why is it that beer is okay, but spirits are not? [LB783]

HOBERT RUPE: I can only assume, and this is based upon a lot of the research I've done which you'll hear about in some other liquor bills. When the Liquor Control Act was originally promulgated in 1935, beer and spirits were different. Today we look at them all as an alcoholic product. Back then, there was a lot of people who thought that beer was how you got away from drinking spirits, it was a safe alternative, especially the 3.2 beer which was originally allowed direct to prohibition. There was a report from the University of Chicago Med School which said an average male could not get drunk on 3.2 beer. But the idea, what it was, is it was...it was primarily cultural, and it still affected there that beer was, you know, was a safer product. In a lot of ways it is if used correctly because it doesn't have nearly the high alcohol content, but that was one reason why beer would have been different. And I think the other...and, you know, as I said, you know, pizza places would have beer and they might have been better than having a bar or restaurant, other than that. [LB783]

SENATOR DUBAS: So this law was probably put in place because the university involved young adults. We were trying to keep them from having access or whatever the reason might be. So do you feel it's doing anything today? Is it achieving the goal that

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was probably in place originally? [LB783]

HOBERT RUPE: Well, do I...no, (laugh) quick answer. You know, I think that the more outlets or their close density might require...might be an issue. But as I said, you know, the university has all these other SDLs on campus already. You know, unfortunately, I don't think we can stick our head in the sand and say that, you know, 19- or 20-year-old kids aren't going to be exposed to alcohol; they are. They're going to make a choice whether they want to break the law or not. And whether they have to walk 300 feet or 280 feet I don't think is going to make a whole lot of difference for them. [LB783]

SENATOR DUBAS: One last question. Okay, if we eliminate this need for maybe all of these SDLs, this would give these businesses an opportunity to apply for an actual liquor license, correct? [LB783]

HOBERT RUPE: Correct. [LB783]

SENATOR DUBAS: So then do you ever...do you look at the concentration of liquor licenses within a certain area? Does that come into play at all with your decision about granting a license? [LB783]

HOBERT RUPE: It's coming in more. There was a recent case a couple of years ago called Hampton Outlet Tobacco which gave us a little more clear discretion as to new licenses, and so we've been doing that. The other thing which a new application will do will be to allow a citizen's protest to take place. You know, under an SDL, unless somebody decides to protest at the local governing body, there's not the same mechanism for public protest. And so this would allow the full process to take place, as well as the, you know, the review by the fire and the Department of Agriculture foods and dairies. [LB783]

SENATOR DUBAS: Thank you very much. [LB783]

SENATOR ROBERT: Senator Price. [LB783]

SENATOR PRICE: Senator Rogert, thank you. Thank you, Mr. Hobie. The question I have, in your opening remarks, you talked or I seemed to gather that there may be some difference in the application or the law or the requirements if you have a license versus an SDL. I mean, if I have an SDL and I'm serving alcohol, I have to follow all the same rules that you have to follow under regular fully licensed or is there a difference of like, you know, I have to...you can do fewer things or there's less oversight? [LB783]

HOBERT RUPE: There's not really less oversight. Through an SDL, you can waive anything other than the age of consumption, so that's how you can have it within churches, schools, you know, Sunday sales, that issue. The issue is...primarily is

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professionalizing it. You know, in this case,...not so much the cases here where there actually are licensees, but the commission has really been trying to put, you know, make people responsible, basically have something at risk. If you are a licensee and you are doing an SDL, your license is at risk. You could be suspended, cancelled, or revoked for what happens at that SDL. If it's a nonprofit type thing, there's not that same onus upon you. And the other issue is, is we prefer...we think that people, you know, for the most part, that people who should be selling alcohol are the people who are in the business of selling alcohol, who, hopefully, have had the training, who have the experience in how to do that. And so that's why we're looking at it that way. We think that by being permanently licensed you heighten the professionalism that's going to be involved because there is something to risk. You, I mean, if you sink a lot of money into a location and there is the chance that you'll lose it because you're not following the law, I think, you know, I mean, it's definitely heavier on the stick than the carrot, but I think it's a pretty heavy stick. [LB783]

SENATOR PRICE: Well, the natural follow-up to that for me is, when you have a license you have an inspection. If I have an inspection cycle, you have all your licenses (inaudible)...you only have so many inspectors. Do you end up having a different way you apply inspecting? I mean, if you have an SDL, you have 30 of them in a weekend, you only have two inspectors, it might be a little more difficult than if you're doing...so does that play also into your desire...and when you say professionalism, I see manpower impacts. [LB783]

HOBERT RUPE: Yeah. You're absolutely right. It does manifest...I mean, you know, some places...the places which have large SDLs are either the large ones we know about or ones where there have been problems in the past, because you're absolutely right, there's not enough members in the Nebraska State Patrol who are assigned to our duties. There's not enough members in the Nebraska State Patrol just doing regular road duties a lot of times on certain summer weekends to check where all the street dances or all the SDLs would be at. But, you know, I think this is a step towards reducing those numbers. Is it places where in all intents and purposes are acting like a regular licensee? Let's get them licensed because then, you know, I mean, it's a...one of the big things a licensee gives up, a member of law enforcement can enter at any time in one of those premises and make sure the Liquor Control Act is being complied with. So they've got a complaint, they can go in the next day, they can try to find out what's going on. They don't have to wait until there's a next SDL or something like that. And so it's more efficient and more constant enforcement. [LB783]

SENATOR PRICE: So it actually would enhance the enforcement abilities of an establishment. Like you said, I guess, like Senator Dierks had brought up that we have some establishments that have one a week, that it would enhance it because, from what you just said, you'd have to have another SDL permit in place before you could go in and inspect. [LB783]

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HOBERT RUPE: A lot of times you would, yes, you're absolutely right, unless they have another type of license. You know, I mean, there's, you know, it...you know, the lovely...not really lovely, but the instrument says is you know...you don't require a search warrant. If I have a suspicion...if I'm driving by a location at 1:30 in the morning and there's ten cars still outside, and I'm a law enforcement guy, I can enter into that establishment to make sure that there's not after-hours consumption. I don't need a warrant. I can go in there. I have a suspicion that there's probably Liquor Control Act being violated, and if I go in, and there's nobody in there drinking, I leave, you know. But if they go in there and they're consuming after-hours, there's usually a sanction and a citation comes forward. [LB783]

SENATOR PRICE: Thank you. [LB783]

SENATOR ROBERT: Any further questions? Thanks, Hobie. [LB783]

HOBERT RUPE: Thank you. [LB783]

SENATOR ROBERT: Next proponent. [LB783]

MIKE KELLEY: Mr. Vice Chair, members of the committee, my name is Mike Kelley, K-e-l-l-e-y. I'm appearing here today just as an attorney with the law firm of Kelley and Jerram. When I'm not lobbying you all, one of my day jobs, my main day job, is practicing law primarily in the area of liquor. I guess I'm sad or glad to say I've been doing it for over 30 years, just hate to admit that. But this is a law that's been on the books for a long time, and I think Mr. Rupe's comments were right on point. I think it's probably time we take a look at removing this. You'll recall...I'll give you a couple of reasons. The first reason is, universities aren't the same thing as they were in 1935. In those days, we kind of knew where a campus was and what we meant by university. Now you have ITT Tech, and you have all these different satellite...which probably qualify technically as universities, but they go into strip centers; they go in all over the place, and then technically, you can't have any...a license within 300 feet. I saw one retailer spend a lot of money and then not be able to license his place. He could have beer, but couldn't have anything other than beer because an ITT Tech School was across...way across the street, 290 feet across the street in a shopping center. Well, I don't think it really...you know, it shouldn't matter. So that's the primary reason I think this law is working a hardship. You also have other problems like on the UNO campus. The new campus where Ak-Sar-Ben used to be recently we had to do mental gymnastics to get a license in there for a Marriott Hotel. You're going to have more other stuff going in other development stuff, I just don't think this is needed anymore. The commission will actually have more control, not less, if you get rid of this law, in my opinion, just exactly what Mr. Rupe said. Again, you have a tough commission--let them regulate it. The other thing that happens is every time we want to...we clearly see a

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good need for something. Like last year, this committee...on the last page of this bill, you'll see the exception this committee granted last year for the Metro Community College which I think was a very good thing, and they'll be up and running. Their building is done. They'll be licensed here shortly. But every time some idea like that comes up, we have to come back to the Legislature and go through the whole legislative process, which I don't think we really ought to have to do. A few years ago, we put a license actually...a restaurant right on the campus at Creighton, and that's next to residence halls. So that's doing okay. So I guess I understand the original reason for it, but I think we've kind of gone beyond that, 2010. I don't think we need the same kind of restrictions just because we live in a whole different kind of society, and it's not very practical. That's why the commission is coming to you to try to change it. Now if you want to leave it in place, rules like this are good for my business because I have to try to figure out a way around them, so if you want to leave it in place, I'm not here as something that really makes a benefit to me. But I think it's something we ought to do because, clearly, what they're asking you is correct and it's only good public policy. That's all I have. I'd be glad to answer any other...any questions you might have. [LB783]

SENATOR ROBERT: Thank you, Mr. Kelley. Are there any questions from the committee? Seeing none, thank you. [LB783]

MIKE KELLEY: Thank you. [LB783]

SENATOR ROBERT: Next proponent. [LB783]

KATHY SIEFKEN: Good afternoon. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I'm the executive director of the Nebraska Grocery Industry Association, here today in support of this bill, simply because...well, Hobie already gave you the example that I was going to give, and that is Hy-Vee. When they went to build from the ground up over at about 50th and O Street here in Lincoln, they discovered after the fact that they were so close to Doane, that they would not qualify for just a regular liquor license. They ended up getting it...they had to do some scrambling, but the point is, they ended up getting the liquor license that they needed. So rather than going the route of all the SDLs, this would streamline the entire process and, in the end, we end up getting what we need. But this would cut down on the SDLs and the paperwork that we end up doing. So if you have any questions, I'd be happy to answer. [LB783]

SENATOR ROBERT: Thank you. Any questions from the committee? Seeing none, thank you. Next proponent. [LB783]

TIM KEIGHER: Good afternoon, Senator Robert and members of the committee. My name is Tim Keigher. That's T-i-m K-e-i-g-h-e-r. I appear before you today as the executive director and registered lobbyist for the Nebraska Petroleum Marketers and

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Convenience Store Association in support of LB783. I guess I don't have anything to add other than we feel that, you know, no businesses should be restricted by the campus rule. And I can't say that I have a member right now that's in that situation, but if that should arise, you know, we do not want to be restricted by that. So thank you. [LB783]

SENATOR ROBERT: Okay. Are there any questions? Seeing none, thank you. Any further proponents? Can I see a show of hands on number of opponents? Okay. First opponent, please come on up. [LB783]

DIANE RIIBE: Good afternoon, Senator Rogert, members of the committee. My name is Diane Riibe, and I'm the director of Project Extra Mile. We're a statewide network of community coalitions working to prevent underage drinking across the state. We're here to oppose LB783. Our law currently provides some form of control to address the onslaught of alcohol that we see across the state. We've experienced, as we have shared with many of you, a nearly 25 percent increase in liquor license outlets since 2002. The level increase of alcohol access harms our communities, and we must as a state at some point begin to weigh the concerns for the public's health and safety with business interests. A study conducted by researchers at Harvard identified outlets within a two-mile study area and found that outlet densities correlated with heavy drinking, frequent drinking, and drinking-related problems among college students. The law we currently have on the books is a sound alcohol control policy, and by removing that we open the door to increased consumption and related problems that we already see with our college-age population. To give you some of those numbers, and I would just say as I'm about to present them, it's important that we remember that there's a large body of research out there on these issues, and it would behoove us as a state to expect that to be brought forward if there's a proposal to change really significant pieces of law. We know that every year 1,700 college students, age 18 to 24, die from alcohol-related injuries. We know that nearly 600,000 are injured under the influence of alcohol. We know that 97,000 are victims of alcohol-related rape and sexual assault. We tell you this not to bog down the discussion with statistics; certainly not to slow business, but to show you that working to institute further policies that protect our young people, not decimate these policies, would be important. If you take a look across the country, you'll find a number of states have buffer zones prohibiting alcohol sales surrounding their colleges and universities. In fact, our neighboring states--Colorado and Kansas--have 200- and 500-foot buffer zones respectively. Across the country, there's a movement to maintain these policies and for good reason--to alleviate the high costs both socially and monetarily that are associated with the harms that we've mentioned. I'd just like to make a couple of points in terms of some of the discussion that's been brought up. There are no inspectors, if you will. There are law enforcement officers who do liquor enforcement, although few...very few, and less than a handful in the state that are directly, specifically identified for liquor enforcement. And so if we have an increase in outlets as we've talked about, and we believe that we're going to enforce the laws and bring a balance,

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it's just not happening. In all reality, if a law enforcement officer were sitting here, I would think you'd have a difficult time finding one who would tell you that they, in any routine fashion, check any SDL...any. And I feel comfortable saying that without it even coming across as an exaggeration. It's just not possible, just not possible. I'd also tell you and encourage you that we would hope at some point we'd begin talking seriously about getting some control in the discussions we have, so that we can actually have a discussion about what's good for public health and safety. And, again, I think we can do that and talk about how we have good business and that that discussion does not have to be mutually exclusive. And, finally, I would just say that our college students, even though they do seem to be kind of mini me's as we look at them, they still are young people. They still have the developing brain and, again, I would beg you to pay attention to the research. We know it's not just about, do they make good decisions? We know what the research tells us in outlet density. It does make a difference; it makes a huge difference when they're next to our colleges. And we would urge you to oppose the bill. Thank you very much. [LB783]

SENATOR ROBERT: Any questions? Senator Dierks. [LB783]

SENATOR DIERKS: Diane, have you read the amendment that Senator Karpisek brought to the bill? [LB783]

DIANE RIIBE: I have not seen it. [LB783]

SENATOR DIERKS: I think it excludes...it says other than beer. It takes that out of the language. Would that matter, do you think in your? [LB783]

DIANE RIIBE: Tell me more what it says, Senator. I'm not understanding what you're telling me. [LB783]

SENATOR DIERKS: On page 14 of the bill...I'm sorry, page 11, line 14. And it says that...it starts out...it says, "No alcoholic liquor, other than beer, shall be sold for consumption on the premises of any college or university in the state, except that this section:" goes on to some other things. But they strike "other than beer" in there. So what it actually reads with that amendment is "No alcoholic liquor shall be sold for consumption on the premises of any college or university in the state," except with exemption. I think the exemptions are your SDLs. [LB783]

DIANE RIIBE: So you're saying, it at least eliminates the potential that it would be on the campus itself? [LB783]

SENATOR DIERKS: Yeah. [LB783]

DIANE RIIBE: That certainly...we would be grateful that Senator Karpisek would have

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introduced that. There's still just a serious concern, and again, there's...and I would ask the committee to spend some time looking at it because there's a large body of evidence about the density of alcohol that's around college campuses and other locations that provide increased harm to young people. So it still remains. Is it improvement? It certainly is to what's being proposed, but the concern is still there. [LB783]

SENATOR DIERKS: Thank you. [LB783]

DIANE RIIBE: Um-hum. [LB783]

SENATOR ROBERT: Any further questions? Senator Krist. [LB783]

SENATOR KRIST: Thank you, Senator Robert. It seems that...and I will do this investigation, I promise you that I will. But it seems to me that one of your concerns is that the SDL is not being monitored, policed, enforced, checked. Yet as I understand this bill, it is going to require more people to get liquor licenses to do the same things that they have to now obtain an SDL to do. So that, to me, is counterintuitive to your argument that it's the SDL's problem. [LB783]

DIANE RIIBE: Well, actually, Senator, that's a good point you raise. That really wasn't my argument. It was really a response to Mr. Rupe's. He tied the SDL and the need to be more stringent on those permit licenses and the ability to, to the problem that we have a lot of SDLs and a lot of exemptions, which we certainly do and they grant. That isn't the issue as we see it, is that a part of it...my point in bringing up the SDLs at all was that there is no ability virtually at all in the state to do enforcement around those SDLs. There's very little...increasingly very little opportunity to do real enforcement around permanent licenses. Again, it's really a simple issue of math if we look at the increase in outlets across the state. Again, I would ask that someone bring forward what's the increase in enforcement capacity we've had? We don't. The bottom line is, is we all pay for it. As taxpayers, we pay for it. As those of us who work in public health or prevention, we understand the direct consequences. So it doesn't go for naught. It doesn't have no result...it does have result. It's not just the SDLs. The permanent licenses and the increase in those is a serious concern. I just didn't match that with the rest of that comment. [LB783]

SENATOR KRIST: How would you then defend or approach the issue that a licensee has much more to risk than an SDL permit holder would have? Mr. Rupe's point is that, in terms of having better control, it might not be the observation of law enforcement or security that would be on scene, although that would be a possibility. It would be that a licensee would have long-term ramifications while an SDL might not. Do you see no benefit in that? [LB783]

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DIANE RIIBE: Well, I'm not saying we see no benefit. I don't want to misunderstand here. I'm not saying no benefit. I'm saying that we have engaged and watched this process for about 15 years or more, and I can tell you, and certainly without...you could certainly ask Mr. Rupe to bring you the records as to how many licenses actually have been revoked every year over, say, the last ten years. It's extremely minimal. And so it's not a matter of opinion; it's a matter of the consequence is very real for a licensee that does awful things. I could sit here and take some time and give you a number of cases where we've lost people, young people, following sales to minors out of businesses, and the result for that licensee has been virtually nothing. And in some cases, they have not even approached or been brought forward before the commission. So it's a very serious concern, and there just isn't enforcement. In all practice or theory, would that be a good thing? Absolutely it would. In practice, we are at a dire position in this state for our enforcement capacity to be able to meet the needs that we have for our liquor license outlets. It's just a reality. [LB783]

SENATOR KRIST: Okay, thanks. Thank you. [LB783]

SENATOR ROBERT: Any further questions? Seeing none, thank you. [LB783]

DIANE RIIBE: Thank you. [LB783]

SENATOR ROBERT: Next opponent. [LB783]

JULIA SHEAR: Never done this before. My name is Julia Shear, J-u-l-i-a S-h-e-a-r. I am the campus minister at Wayne State College in Wayne, Nebraska. I'm here to put a face on the statistics for you. Although I am very much appreciative of the fact that there were proponents here from the Liquor Commission and from the liquor industry and from the C-store industries, I heard no one on the proponent side from a college or university, and there's a reason behind that. It's because we walk daily with those young people who are impacted by alcohol, and unless you've sat in a hospital room at 2:00 in the morning with the family of a young person who has overdosed on alcohol or went with a young woman who had to tell her parents that she was sexually assaulted after a night of binge drinking and did not know who her assaulter was, you can't say that it's okay to put alcohol within 300 feet of our colleges and universities, because it's not. I don't understand a lot about the SDLs, but I will tell you this. The events that happen around our college campuses where alcohol are served and special license are "gived," my students aren't going to. The students that I am impacted and worried about are the kids that are going to the bars and participating in binge drinking, and 44 percent of our college students who drink, 44 percent--and to be quite honest with you, I would say it was higher, from the things that I see--practice binge drinking on a regular basis. Putting alcohol closer to our colleges and universities is just one more step of saying it's okay, it's okay for us to drink, it's okay for us to overdrink. I'm also just a little bit concerned that we're writing some bills here that are based only on Lincoln and Omaha. And I was

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born in Omaha and I was raised in Lincoln. I think they're wonderful towns. But there are lots of other communities in Nebraska that are going to be affected. I think of the other places in the state that have state colleges that are going to be impacted by these rules. Off the top of my head, I can think of five locations near our college campus that could begin to serve hard liquor on a regular basis if this law was passed...this bill was passed into a law, and that concerns me greatly. The other point that I would like to make here is that it's not about the fact that our kids aren't going to go and find some place to drink, but they are. It's about the fact that we as a state, Nebraska as a state is a place that's a wonderful place to raise your family and raise your children. It's a wonderful place to send your children to college. And in the last year, what I heard was that we've had a 25 percent increase in our liquor license. I can guarantee you that our funding for state colleges and universities has not increased 25 percent since that date. We are responsible for these young people when they come onto our college campuses in so many ways, and we try to do so much to protect them. And the main thing that we can do is come and tell you that these statistics have names, and they have faces, and they are lives that are impacted forever in the most negative ways by alcohol and binge drinking. I would ask that each and every one of you would really look at those statistics and also in who's opposing and who is supporting this bill. I don't like to have a lot of laws that take up a lot of time and effort, but I think any time it's a law that requires some enforcement of alcohol issues, especially when it's pertaining to our young people, it's important to keep it on the books and leave it there. That's all I have. [LB783]

SENATOR ROBERT: Any questions? Senator Dierks. [LB783]

SENATOR DIERKS: Well, thank you for your testimony, Julia. I...and I agree with you about the problems with youngsters. Where the problem starts, though, is in the high schools of our state, the rural high schools. It's so difficult to control it there. We don't have...the campuses aren't designated, but we have big problems that start there. I mean, it continues in college, take my word for it. I've been involved with it in small communities, and it happens there, too, as well as drugs. [LB783]

JULIA SHEAR: I would agree with you. I've done youth and family ministry for the last several years prior to becoming campus minister, and I would agree with you. But one of the concerns that I have is, when we bring our kids to visit college campuses in their sophomore, and junior and senior years, and as they're driving up to campus they're inundated by bars; they're inundated by places that sell alcohol. And we expect to give them the message that come to school, do good at your work and be safe, when we're potentially allowing the surrounding of our colleges by places that would sell hard liquor. And I will tell you, there was a question asked about the difference between beer and hard liquor. The people who are drinking the hard liquor are our young ladies. They're drinking that because oftentimes those drinks can be mixed and made a little bit sweeter and taste a little bit better than beer. And it is to a terrible detriment to their

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health, both physically and mentally, that this is happening. So, yeah, it is a concern, and it is something that we can do. But limiting the number of retail outlets...a 25 percent increase, did I hear that right, since that year? I'm shocked. And I will tell you that I have gone down and I have sat in the commission when we were opposing a retailer, another liquor retailer in our community, and we were basically shut out by the Liquor Commission. I know for a fact that there are several city councils in the state of Nebraska that no longer even address the issue of whether or not people can have liquor license because they say people can't have a liquor license, they appeal it to the Liquor Commission, and they get it anyway. That concerns me. That is not the state that I was born and raised in, and that is not the state that I do ministry in. [LB783]

SENATOR DIERKS: Thank you. [LB783]

SENATOR ROBERT: Senator Coash. [LB783]

SENATOR COASH: Thank you. Thanks for coming down from Wayne today. You mentioned some things about Wayne, and since I didn't go to college there, I'll ask you. Do you know, does Wayne...are there any places on campus there that permit the SDLs like for wedding receptions or anything like that? Do you know? Does Wayne College permit SDLs on campus? [LB783]

JULIA SHEAR: My understanding is, is that they do allow SDLs on campus, but I don't believe that they've had one in the last three years since our new president came on board. And that's a great pleasure to us, so yes. [LB783]

SENATOR COASH: Okay. And then you said in your testimony that you knew of, and I just wanted to get this right, there...you said in your testimony there would be five places that would all of a sudden pop up around Wayne if this bill was in place. Are you telling me that there's five different like property owners or business owners within 300 feet of the campus that you think would all of a sudden pop up and start...turn into a bar or off-sale or something like that? [LB783]

JULIA SHEAR: I think there are vacant buildings and buildings that could be converted for that use very close within that campus area that I was talking about. [LB783]

SENATOR COASH: Okay. [LB783]

JULIA SHEAR: There's one that sells beer now that would possibly go to hard liquor as well. [LB783]

SENATOR COASH: Okay, all right. Thank you. [LB783]

SENATOR ROBERT: Senator Dubas. [LB783]

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SENATOR DUBAS: Thank you, Senator Rogert. Thank you, Ms. Shear, for being here, and I really do appreciate the work that you do for our young people. I am a family member who has experienced a loss due to alcohol, so I was one of those people that was in the hospital. And I devoted a lot of my time, as my children were growing up, trying to help them understand the choices that they were going to be faced with, so I definitely support your efforts and the efforts of other groups across the state. But I guess my question comes, I feel very strongly that we as adults send many mixed messages to our children. And I see these SDLs as one of those mixed messages. We will give a special license for certain people to drink, but...and then we put this 300 feet or 500 feet or whatever figure you want to throw out there as some sort of sense of security or that we're protecting our kids when, in essence, I don't believe that we are. I mean, if you go 305 feet, you know, there could be a place. So while I totally support the efforts that people such as you do, and I see the mixed messages we send to our kids, are we not better served to try to put more of our efforts into helping our young people understand the ramifications of their choices? And does this 300-foot limit really...does it really make that much difference? I guess I'm asking for your input on that. [LB783]

JULIA SHEAR: I certainly wouldn't...I've driven down on icy roads, so I have felt very passionate about the 300-foot rule. I think, for me, what it means for me and in the conversations...I've had conversations with other campus ministries who could not make it down today and with students and faculty and staff. I sit on the trust coalition at the college, which is a group that is specifically created to prevent risky behaviors from students with drugs and alcohol. And I think what the 300-foot rule says is that we do care; that our colleges and universities are precious to us and the students within them are very important, so we're going to set...you know, to be quite honest with you, I would much rather it be a hundred-foot rule...or a mile rule, not a hundred foot, but a mile rule around our campuses. But I think what it says is that you are important to us and that this is important to us. As far as enforcement goes, I have been married to my husband for 28 years. He's been in law enforcement for 27 of those years. They are not going to be able to do the enforcement unless we start increasing 25 percent our number of law enforcement officials that can actually do this whole thing with making sure that people aren't breaking the laws and be a little stronger on these people that do break the rules that own the bars and things and do things they shouldn't. But in relation to your question, 300 feet seems like a small thing to say to our kids that, you know, we do care about you, and we're going to set this buffer zone, and this buffer zone is going to be very important. I don't believe that alcohol should be served on any college campus, and what I did find in research was the colleges that abolished the 300-foot rule very quickly were actually having pubs on campus, and that concerns me greatly. And I know that this bill says that it won't happen, but it's just one more step. We're taking one more step closer to that, so the 300-foot rule is kind of our line in the sand of saying, this is...you don't get to cross this line. Our kids are too important to us. No more funerals, no more rape counseling, no more students who are not productive and good students

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anymore because they are too busy drinking and having risky behaviors; that we would set that buffer zone, and that the Legislature would agree with us that this is too important to allow this invasion to happen. [LB783]

SENATOR DUBAS: Well, I would agree, whether we keep it the way it is or whatever we do, we still have all of those issues that you just named to deal with. We have to make sure our law enforcement has the necessary resources. I have relatives in law enforcement also. I know the challenges they face. So we still have a lot of work to do. And again, I appreciate your efforts because you are...you are that front line. You are that person that is there for our kids when we really need them, so thank you for your efforts in coming down today and for your testimony. [LB783]

JULIA SHEAR: Thank you. [LB783]

SENATOR ROBERT: Any further questions? Seeing none, thank you. Next opponent. [LB783]

LANCE WEBSTER: Senator Rogert, members of the committee, my name is Lance Webster, L-a-n-c-e W-e-b-s-t-e-r. And just for the record, the previous testifier rode down with me. So she didn't drive. I'm the chief of police in Wayne. I've been in law enforcement for 30-plus years and almost half of those have been spent as the chief of police. I'm a graduate of the FBI National Academy, and today I'm here representing the city of Wayne. So on behalf of the city of Wayne and Mayor Lois Shelton, I want to thank the committee for the opportunity to address the issues raised in LB783, so I'll get my disclaimer in there. I'm here in opposition to LB783, specifically the removal of the 300-foot restriction from the sale of alcoholic liquor other than beer near a college campus. Having listened to the testimony this afternoon of Mr. Rupe and Mr. Kelley, it does appear there are specific instances involving the University of Nebraska-Lincoln and maybe UNO, and those seem to have a different reflection, if you will, of the town that I live in, in Wayne and our state college that is there. Some of the things, the growth of UNL and in moving to the neighborhoods and things like that, we're not seeing at Wayne. So those issues, I think to be taken in total statewide, where they're more applicable to UNL or UNO, is not fair to the city of Wayne or to Wayne State College for that matter. In most communities that I'm aware of with college campuses, most of them are near family neighborhoods. Certainly that is true of Wayne and Wayne State College. By having a slim separation of licensed establishments and residential neighborhoods, it is much easier to maintain peace and quiet in neighborhoods. And as the chief of police, if the peace and quiet in neighborhoods is not maintained, I'm the one that gets the phone calls. There was a significant body of evidence to show that high density levels of alcohol in neighborhoods create a higher crime rate, higher problems in those neighborhoods. And speaking from the city of Wayne, we certainly don't want to see a higher concentration of on-sale or off-sale alcohol retailers surrounding our college. When Ms. Shear talked about the five locations, Senator

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Coash, she was correct. There's five properties that could very easily become bars or whatever, not saying they will be, but they certainly could easily be that, and they are right across the street from the college, and right across...it borders residential neighborhoods, so that has a concern for us. I would point out, for a taste of what living near a college campus with a high volume of alcohol sales is like, I would ask the committee members to listen to National Public Radio's, an American Life show, its episode...the episode that I believe was aired on December 18. I can certainly e-mail you a link to that and you can listen to that. That was done at Penn State University and the conversations that the students are having relative to alcohol issues is absolutely frightening. One of the things that I look at with this issue is it is a local control issue. Certainly, the things that apply to UNL and UNO may not be applicable to Chadron State or Wayne State, and I would ask that, as part of this amendment, you would certainly consider leaving that local option for the local entities to regulate the 300 feet. That could be done with Lincoln vis-a-vis some of the strip mall campuses, if you will, but that really truly is a local option that I think we should explore if there's going to be any further discussion on this. Thank you. [LB783]

SENATOR ROBERT: Thank you. Any questions from the committee? Seeing none, thanks for coming down. Next opponent. [LB783]

KAREN BOWLING: Hi, I'm Karen Bowling, the associate director at Nebraska Family Council, K-a-r-e-n B-o-w-l-i-n-g, and I'm here in opposition to this bill. Now, I will tell you, Senator Dierks, I have not had a chance to read the amendment to see if that would change my view. I think some of those that have testified before me have highlighted some of the statistics, but I want to, at a minimum, request that this committee do an interim study. The case for alcohol on campuses is of growing concern. I want to report from the U.S. Department of Health and Human Services on their National Institute on Alcohol Abuse and Alcoholism Study. The harm caused by alcohol consumption among college students may exceed previous estimates of the problem. Researchers report that unintentional fatal injuries related to alcohol increased from 1,500 to now to over 1,700 and continuing to grow with college students, age 18 to 24. Over the sample period, national surveys indicate the number of students who drove under the influence of alcohol increased by 500,000, from 2.3 million to 2.8 million. Those findings now are available in the 2005 issue of the Annual Review on Public Health. I'm going to skip down just a little bit here too. There's another...I'll just reference it here for the public record, but Dr. Ting-Kai Li, who is the Director of National Institute on Alcohol and Abuse and Alcoholism with the National Institute in Health, has done also a review with Boston College indicating the abuse of alcohol consumption, when it is more easily accessible, has an impact on college campuses. Now I just want to have a little dialogue. We mentioned about the 300-foot buffer, and does it have any impact. Now I'm going to talk to you as a mom, one that has been affected by alcohol consumption. And I want to reverse the question and say, what if 300 feet prevented one fatality? Would it be worth it? I think there is growing empirical evidence that suggests that a

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buffer zone is an asset to reducing alcohol consumption, so once again, I just encourage you to do an interim study. William DeJong, Ph.D., and Linda Langford with the sciences of Boston University School of Public Health relate: With relatively modest progress being made, colleges and university presidents are under pressure to lower high-risk drinking among their students. A key source of pressure has been emerging case law regarding legal liability. Increasingly, U.S. courts are ruling that colleges and universities cannot ignore high-risk alcohol consumption but, instead, have an obligation to take reasonable measures to create a safe environment by reducing foreseeable risk. Further on in the study they highlight that new laws and regulations will affect the committee as a whole and can perpetuate changes in social norms, thereby affecting students' alcohol use. The report in the 2001 business journal revealed that a nationwide survey by American Medical Association shows college drinking is among parents' top concerns. Of the parents surveyed, 95 percent said excessive drinking is a serious threat to their children, and easy access to alcohol in college community contributes to the problem. The University of Nebraska was one of the ten institutes that participated in the MAA survey. The other growing factor is, in increasing the ability to normalize the use of alcohol consumption for minors, there is an emerging evidence of what they call environmental management strategies which is concluding that legislative law, both federal and state, is demanded in order to change what is perceived as a norm for children entering college age. And so I, in closing, would just like to make a comment. One of the things those that are proponents I heard, this legislation would help streamline; it would help remove legislation that maybe is old, 1930s, and that is, I see that there's some room to work here. But what I wanted to say, I think from my heart is this afternoon, what we are doing that action--does it also send a message to our students? It's just a little bit closer. It's just a little bit easy to access. And with that, I'll conclude my testimony. [LB783]

SENATOR ROBERT: Are there any questions from the committee? Thanks for coming down. [LB783]

KAREN BOWLING: Um-hum. [LB783]

SENATOR ROBERT: Next opponent. [LB783]

DARRYL HUTTON: I'll be brief. My name is Darryl Hutton. I live at 3216 California Street in Omaha, Nebraska. I'm opposed to the removal of the 300-foot rule, and there are many other cities, states that have a 500-foot, a 1,000-foot, a one-mile radius. So we're looking at eliminating it, and I think we should be expanding it to a further distance. You should be able to walk from your dorm to college without being, I guess, met with somebody who's walking out of a bar tanked, for example. I think it does send the wrong message. I live near a university, and I enjoy the fact that whether I'm walking that way or others are walking my way, I'm not running into drunken behavior. If I walk the other direction, which is where we start running into liquor licensing, I run into

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assaultive behavior, I guess. You know, I'm constantly being, I guess, accosted from this bad behaving crowd that's clearly just run out of a bar. I don't have that heading toward a university, and I don't think college students should have to run into that. We talk about, you know, the reason to issue a license or not issue a license. One of them deals with the adequacy of existing law enforcement. Well, clearly, if we've increased licensing by 25 percent, we certainly have not increased law enforcement by 25 percent. By its own definition, every time you keep granting and adding additional licenses, obviously, there's not enough law enforcement. So I said I'd keep it brief, but I just state I'm opposed. [LB783]

SENATOR ROBERT: Thank you. Are there any questions? Can you spell your name for us for the record? [LB783]

DARRYL HUTTON: Yes, D-a-r-r-y-l and then Hutton is H-u-t-t-o-n. [LB783]

SENATOR ROBERT: Thank you very much for coming down. [LB783]

DARRYL HUTTON: Thank you. [LB783]

SENATOR ROBERT: Any further opponents? Anyone here today on a neutral capacity? [LB783]

RON WITHEM: Senator Rogert, members of the General Affairs Committee, my name is Ron Withem, R-o-n W-i-t-h-e-m, here representing the campuses of the University of Nebraska in a neutral capacity, asking that you not move forward with the legislation as drafted, but that we convene a process over the interim to discuss the issues involved with removing the 300-foot limit, why there are perceived problems with the 300-foot limit and what might be some of the unintended consequences. I realize we probably started this dialogue a year ago at this time when we came forward, asking for the definition of the western boundary, and we thank you for that. And the logical next question was, do we need the 300-foot boundary? And that's what your...this bill is asking about. I'd ask you go slowly on this. For one thing, you heard from the folks from my alma mater up at Wayne, how there may be a different impact at Wayne State than at UNL. And I would submit it's probably a different impact at UNO, too--an urban campus that doesn't have a lot of retail space right around the campus but is expanding and developing into the Ak-Sar-Ben property, different at the Med Center, different at UNK, and we'd like to have the opportunity to look at the impacts on all of those campuses. We're also concerned about unintended consequences. I believe, you know, I forget if it was the senator or the director of the commission who indicated they didn't realize that there are properties inside the UNL, what you would normally consider the UNL boundary, that are privately owned and aren't university property that without the 300-foot limit might have the potential of hosting one of these licenses. Final comment I guess I would make is there's a lot of talk about SDLs, and if there are, in fact, problems

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with those, the administration of them, the number of them that we are somehow a part of, we're more than happy to address that during the interim study. But it's my impression, and I'm by no means an expert in this section of the law, but it's my impression that when you're talking about an SDL, you're usually talking about a special group of individuals, not open to the general public. And if you abolish the 300-foot limit, you are, in essence, opening that up to create an establishment where any individual 21 years of age can enter and take part in. Usually, these SDLs are special groups of individuals and not open to the general public. With that, again, we are not opposed, and we generally are not in favor of at this point. We'd prefer that we not move forward, but that we do engage in a dialogue. [LB783]

SENATOR ROBERT: Thank you, Mr. Withem. Any questions from the committee?
Senator Coash. [LB783]

SENATOR COASH: Thank you, Senator Robert. Thanks, Ron, for being here today. I have a question about the process of the SDLs on the university campus. If I want to...who gets to say first, the Liquor Commission or the university? [LB783]

RON WITHEM: You know, I don't know. There is an individual from UNL here today if she would come forward and identify her...if that's okay, Mr. Chairman, if she'd be... [LB783]

SENATOR ROBERT: No problem. [LB783]

RON WITHEM: Linda? [LB783]

LINDA MAJOR: Hi, I'm Linda Major, L-i-n-d-a M-a-j-o-r. I'm assistant to the Vice Chancellor of Student Affairs. [LB783]

SENATOR COASH: Did that question make sense if...? [LB783]

LINDA MAJOR: It does make sense. [LB783]

SENATOR COASH: If I want to run out to the Wick Alumni Center or something like that, do I have to go to the Liquor Commission first and say, hey, I want to do this, or do I need to get permission from the university and then the...what's the process? [LB783]

LINDA MAJOR: We have an on-campus permit process first that must be completed 30 days in advance, and then if the alcohol will be sold or served by a licensed establishment, we have five caterers that are approved to work on the UNL campus. And our permit process, you have to meet a set of criteria. Food has to be served; 21 years of age and older, 75 percent of the guests must be 21 years of age or older. There must be nonalcoholic beverages made available, and they need to be signed off

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by the senior administrator so they're in the aligned and the signatory authority. And then we have five caterers that can then take that permit process and request an SDL from our Lincoln City Council. [LB783]

RON WITHEM: That's pretty much what I was going to say. [LB783]

SENATOR COASH: Okay. Thank you. [LB783]

SENATOR DIERKS: I figured that out. [LB783]

SENATOR ROBERT: Thank you. Any further questions? Senator Krist. [LB783]

SENATOR KRIST: In your opening statement, you said it was probably you that brought part of this as an impetus to your discussion. [LB783]

RON WITHEM: It was. [LB783]

SENATOR KRIST: So how do we deal with...and I'm asking your opinion. You've been here, done that, worn that T-shirt. How do we deal with Wayne, who says, can't go 300 feet from a known boundary, the university...and other colleges or small campuses, and the university, where God knows where your boundaries begin or end, and some private land, some not,... [LB783]

RON WITHEM: Right. [LB783]

SENATOR KRIST: ...and send a message, a clear message, that over the past 30 years, three decades, we have tried to stop drinking and driving and deglamorize alcohol, as we used to call it in the military? How do we send that message clear? Do we keep the 300 foot in place? Do we empower the civil authority to maintain the 300 feet? Is that what you're suggesting that the interim study would actually do? [LB783]

RON WITHEM: Well, I think...I don't have the answer to your question. And I think it certainly isn't to either, you know, pass this bill or, you know, kill this bill and say we've solved the problem. I think it does involve the convening of a group of people and having the dialogue. [LB783]

SENATOR KRIST: Thank you. [LB783]

RON WITHEM: Good question. Thank you. [LB783]

SENATOR ROBERT: Any further questions? Thanks, Ron. [LB783]

RON WITHEM: Thank you. [LB783]

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SENATOR ROBERT: Anyone else here in a neutral capacity? Senator Karpisek, do you wish to close? [LB783]

SENATOR KARPISEK: I do. Thank you, Senator Rogert. I'd like to thank everyone for testifying on both sides, and I will also throw the university under the bus a little bit because they did start this. Anytime. I would like to point out that there are still city and zoning regulations in these areas. As far as the Wayne idea, I would think that there may be city zoning issues that could cover it, and if not, they could do it. Now, I'm not trying to push it off on them. I do believe in local control. Anyone that's been here more than two days knows that I yell about that all the time, maybe one day. Also, three people can oppose any license. Now I realize there has been some problem on that. The Liquor Commission was down to two commissioners at one time; they're up to three. I feel that they are running better, so I...just in the grand scheme of things, I think that they're handling these things; 300 feet is roughly one block. Is one block...a good question, Senator Dubas. Is it that big a deal? It may be, and it may not be. Also heard that we don't want to see any more funerals, rapes, etcetera. The 300 feet is there, and it's happened. I'm sorry, taking it away...leaving it there will not stop it. These are also underage kids we're talking about. They shouldn't be in the bar in the first place. Now I understand that that isn't always the case. Again, is the 300 feet all that important? Now, the one that I really want to talk about is the 25 percent increase in licenses, and is it a fact? It may be a fact. However, in that period of time we've had S-1 shipping licenses, roughly, 380 direct shipping licenses that were not even a thing before we started taking this into account. Also, lawsuits about grocery stores and C-stores being able to sell alcohol, probably also figured in that fact. So I heard 25 percent numerous times, and one person says it and everybody grabs it. I think that's where a lot of those came up. Again, I'm very willing to talk about 300 feet around residence halls. Hey, if everybody thinks it's a terrible idea, I'm fine with that. I also...the local option, I agree with that, and we'd like to...I would like to do an interim study and see how all this does impact, and how we can work around it. I do feel, though, that the SDLs when we're reaching up to 200 and 300 at one particular spot is getting a little out of control, and that's what I'm really trying to address in this bill. With that, I would be happy to take any other questions. [LB783]

SENATOR ROBERT: Any questions? Seeing none, that will close the hearing of LB783. Senator Karpisek, next bill, LB786. [LB783]

SENATOR KARPISEK: Thank you, Senator Rogert. Members of the General Affairs Committee, once again for the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the Chair of the General Affairs Committee and represent the 32nd Legislative District. LB786 would eliminate the prohibition on adding alcohol to beer. Based on my discussions with Hobert Rupe, it would seem that this law stems from a bootlegging practice during Prohibition of the '20s and early '30s. This bill has

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nothing to do with encouraging drinking or underage drinking; however, passing this bill would allow bars to serve drinks consisting of a glass of beer with a shot of liquor dropped in prior to the consumer drinking it. Keep in mind that currently one could order a beer and shot and drink one right after the other, but it's only illegal to mix the two prior to drinking it. There is no law about mixing liquors. A Long Island iced tea has four or five shots of liquor--not against the law. It is against the law to add liquor to beer. Since introducing this bill, my staff and I have had conversations with people who didn't realize that you couldn't already order a shot dropped in a beer. Based on those conversations, I don't believe passing this bill would have much of an effect on the bar scene. Mr. Rupe will also talk about needle beers, I'm sure, and some of the other reasons brought by the Liquor Commission for this bill. Any questions? [LB786]

SENATOR ROBERT: Thank you, Senator Karpisek. Any questions? Senator Dierks. [LB786]

SENATOR DIERKS: Thank you, Senator Karpisek. My only question is why would anybody want to? [LB786]

SENATOR KARPISEK: Because everybody likes something different, I guess, Senator Dierks. We have boilermakers. People like boilermakers, Irish car bombs. I don't like those but I just feel that it's a little bit ridiculous that you can add two shots of liquor to each other, be fine, but not add a shot of liquor to beer and be illegal, and I don't think people know that and I don't know what the advantage of this is. [LB786]

SENATOR DIERKS: Thank you. [LB786]

SENATOR ROBERT: Any further questions? Thank you, Senator. [LB786]

SENATOR KARPISEK: Thank you, Senator Robert. [LB786]

SENATOR ROBERT: First proponent. And in the essence of time, I will ask those who are going to testify to please move to the front of the hearing room. Thank you. You're a fast mover, Hobie, so I'll let you stay back there. [LB786]

HOBERT RUPE: (Exhibit 1) That's why I sit over there, so I can get around here. Thank you, Senator Robert, members of the committee. My name is Hobert Rupe, H-o-b-e-r-t, last name is Rupe, R-u-p-e. I am the executive director of the Nebraska Liquor Control Commission. You're handed out just sort of a copy of the statute so you know what the statute is, as it looks, because you know oftentimes I know the green copy just says we're striking it, and so you can see what it is. What is the history of why we're looking at this? As some of you might recall, about three years ago I believe Anheuser-Busch instituted a bill to look at abolishing it and at that point in time I sort of called it, well, it's the boilermaker bill. It's anti-boilermakers. That's what it says. It's the way we treat it.

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Well, after being asked to look in it, I, you know, we sure had more question about it and this is the second year, not the first year, the second year it should have been in our legislative letter. It's the statute I always point at as a vestige of what might have been good policy in 1935 which doesn't really make sense in 2010. Why did they have the policy in the first place? All right, I'm going to wax somewhat historical here. When I did the research on this, the legislative history was...to say it was silent would be giving a disserve to silence. There wasn't really anything in the legislative history, so I started looking historically and, as a result, I've become a quasi-expert on the history of why some of these products happened during and immediately post-Prohibition. If you read the statute, "It shall be unlawful for any person or for any licensee to sell or offer for sell in this state any beer to which has been added any alcohol or permit any person to add any alcohol to any beer on the premise of such person or licensee." The closest thing I can look at is this is a prohibition against a method that happened during Prohibition called needle beer. As you're aware, Nebraska actually was the last state needed to ratify Prohibition, so Nebraska has always been sort of out there on the forefront of liquor policy, and with...the Eighteenth Amendment said you cannot have intoxicating liquors. A lot of the individuals, when they voted in support of that, thought that did not include beer. There was a big debate whether beer, especially low-alcohol beers, you know, small beers or the 3.2 beers, would even be considered an intoxicating liquor. When Congress enacted the Volstead Act, which was the act which actually, you know, implemented the prohibition and the Eighteenth Amendment, they included anything that had more than one-half of 1 percent. And to get to that point, they didn't rely on scientific methodology. They relied upon how it was taxed. Got to remember, prior to that time, there was no income tax and beer was taxed as one of the primary methods that the federal government raised money. What happened was, as we're well aware, Prohibition was a law which was flouted by many people. They...people still drank, they drank illegally, the speakeasies, it raised the gangs and the mob and everything else. One of the things that happened was during that time frame a lot of your large beer companies started making what they called cereal malt beverages. They couldn't call it beer because beer was bad under the Volstead Act. Basically, you would know it today as a nonalcoholic or a near beer. A lot of those products came corked. What would happen was these legal products, they had such lovely names as Bevo, which was Anheuser-Busch's name; Vivo, which was manufactured by Miller; and Pablo, which was manufactured by the Pabst Company, by Pabst, would then be sold and then they would "re-alcofy" the beer by adding alcohol through the cork through a syringe, i.e., a needle beer. So it was a method during Prohibition to get around the ban on having intoxicating liquors and there was some history. If you look back at some of the newspapers in Nebraska at the time where there were some problems with that product happening right here in Nebraska. Okay. Fast-forward, 1933, Volstead Act is amended at that point in time which allows 3.2 beer to be sold. At that point in time it was said, as I stated earlier, they based it upon a University of Chicago Med School that 3.2 beer was not an intoxicant. So beer was actually legal somewhat earlier than actually the repeal of Prohibition and the Twenty-First Amendment. Okay. Nebraska, like every

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other state, when the Twenty-First Amendment is passed, they start crafting their Liquor Control Act and they start looking at what causes problems. Well, hey, these needle beers were a problem when people were getting around Prohibition and now, although beer is widely available in Nebraska, each of the cities and towns have to vote in liquor by the drink to have anything more powerful than a beer. Maybe they'll use the same way. Maybe they'll add more and more alcohol to these needle beer, to these 3.2 beers, to get around that prohibition. That is my best historical analysis and quasi-legal analysis as to why this prohibition exists. So did it make sense in 1935? Yeah. It was based upon past practice, which had already been a problem for people skirting the law. They thought it might continue be done, so they were preemptive in having it in the act. I have been involved for the last eight years, six of which as director, two of which as a prosecutor. I can tell you we have never seen a law enforcement officer bring us a case against 53-174. If they see it, if (a), unless you're one of the state troopers who's assigned to it, you generally don't even know it exists. Local police often might not even know it and, if they do see it, they won't say, hey, stop it or we'll come back and get you. And so what does it happen right now? We've heard Senator Karpisek, you know, the Irish car bomb is a popular cocktail which has some alcohol in it, the Dr. Pepper which is beer and I believe amaretto, you know, where you're mixing some alcohol with beer, and so what you've got is people trying to use beer as an element in a cocktail. Technically, right now it is against the law. Just because something is against the law, you have to look at do we still really need it on the law as to what the purpose of it was. And I think the purpose that this law might have had back in 1935-36 is no longer relevant today. It's why have a law on the book that doesn't make a whole lot of sense and really isn't enforced? As I said, you know, this is at least the second year that it's been in our legislative letter and it sort of spawned because earlier on, as I said, Budweiser asked to get rid of it. At that point in time they were going to have a product that they were at least test marketing, I don't believe it ever made national marketing, called Spikes, which was adding flavorings to beer to sort of change the flavor profile. I sort of laughed at the sort of the wink and a nod, because another term for needle beer was spiked beer. It was the same purpose. And so I guess with that, I would be happy to answer any questions regarding this issue. [LB786]

SENATOR ROBERT: Thank you, Mr. Rupe. Any questions from the committee? Seeing none, thank you for your testimony. [LB786]

HOBERT RUPE: Thank you. [LB786]

SENATOR ROBERT: Any other proponents? Any opponents? [LB786]

DIANE RIIBE: Hi, Senator Rogert, members of the committee. Diane Riibe with Project Extra Mile. [LB786]

SENATOR ROBERT: Diane, can you spell your name for us. [LB786]

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DIANE RIIBE: Yeah. [LB786]

SENATOR ROBERT: I know you've been here a lot. [LB786]

DIANE RIIBE: Last name is R-i-i-b-e. [LB786]

SENATOR ROBERT: Thank you. [LB786]

DIANE RIIBE: Uh-huh. We're here today to oppose passage of LB786 for two reasons primarily. Number one, the statute is currently part of a lawsuit to address the misclassification of "alcopops" where Nebraska has, we believe, erroneously classified the products as beer even though they have a substantial portion of distilled spirits in them, sometimes more than 75 percent distilled spirits. And two, removing the statute and allowing alcohol to be added to beer encourages further binge drinking at a time when Nebraska needs to make progress in this area, not take several steps backwards. The proposal does not extend just to mixing alcohol with beer on the premises of a licensed establishment. That particular language is included in the second half of the reference section, 53-174. The first half of that section refers to the prohibition in Nebraska that, "It shall be unlawful for any person or for any licensee to sell or offer for sale in this state any beer to which has been added any alcohol." The section refers to both products sold or created for on-sale consumption as well as prepackaged products sold at off-sale locations. Alcopops are a mix of the brew process, beer, and the distillation process, distilled spirits, created and packaged to reach a youthful market and also quite illegal to be sold in Nebraska at all, according to 53-174. We believe this section of the statute speaks directly to a prohibition against selling any product in Nebraska where alcohol is added to beer, either again already packaged or on the premises of a licensed establishment. Further, the proposal refers to a section of the statute that is currently part of litigation, as I mentioned, being considered currently in the Lancaster County District Court to address "alcopops" and the targeting of young people with the products. The suit, filed by the Public Health Association of Nebraska, PRIDE-Omaha, Project Extra Mile, and a parent taxpayer, addresses what we believe is a violation of Nebraska law with the misclassification of "alcopops." The ignoring of Nebraska statute in this instance costs taxpayers in this state an estimated \$2 million annually in uncollected taxes. Statute 53-174 does express some intent by the Legislature on the issue and in a time when Omaha was named fourth drunkest city in the nation in 2008 and where our high school students rank seventh in the nation for their binge drinking rates, it would seem a poor time to encourage yet another means to increase the alcohol by volume in a drink and the public health impact seems like a high price to pay. With a lawsuit still under consideration with absolutely no one aware of a ticket ever being written for violating the law, and with the Nebraska public health and prevention communities trying to get the attention of Nebraska officials for years on the issue, why now? This law, archaic or not, is current law and yet it is ignored, not just in

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bars but in our statehouse. The people of Nebraska care about their children. They are and they care about this issue even when it feels technical and arcane, because the bottom line is about their children and their communities and they want to protect the first and preserve the latter. We ask that you support Nebraskans, our children and their health and safety, and oppose LB786. I'd like to just quickly briefly, since it came up just before, the 25 percent number we use in terms of increase in liquor license outlets, licenses granted, comes from the Liquor Control Commission Web site. The number pulled yesterday was 5,540 and the number given to us by them in 2002 was 4,498. And if our numbers are off, we'd be happy to work with them to get a more accurate number. Our concern continues to be that that increase has not been paralleled with an increase in outlet...or enforcement capacity. That's the issue. Thank you. [LB786]

SENATOR ROGERT: Are there any questions from the committee? Senator Coash. [LB786]

SENATOR COASH: Thank you, Senator Rogert. Ms. Riibe, I know you don't control the courts but can you give me your best guess on when we might see a resolution to the lawsuit that you gave... [LB786]

DIANE RIIBE: Uh-huh. [LB786]

SENATOR COASH: ...so that the committee might have an idea of...I mean what the courts do does impact what we do here. So... [LB786]

DIANE RIIBE: Uh-huh. Uh-huh. [LB786]

SENATOR COASH: ...any guess? [LB786]

DIANE RIIBE: Senator, if I had any information I would share it, but I don't have that so I don't know. [LB786]

SENATOR COASH: Okay. Is there a hearing scheduled? Is there... [LB786]

DIANE RIIBE: Not at this time, no. [LB786]

SENATOR COASH: ...a trial? Nothing? [LB786]

DIANE RIIBE: Not at this time. [LB786]

SENATOR COASH: Nothing. Not on the schedule. Okay. [LB786]

DIANE RIIBE: Uh-uh. [LB786]

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SENATOR COASH: Thanks. [LB786]

SENATOR ROBERT: Any further questions? Thank you. Next opponent. [LB786]

JULIA SHEAR: My name is Julia Shear, J-u-l-i-a S-h-e-a-r, from Wayne, Nebraska. Once again, my issue here is, is that we are providing alcohol in greater quantities in ways that can mask the taste and make it more appealing to our young people. Statistically, it will show you that the number of people who begin drinking, especially our young girls, I think it's from age 15 to 24, the majority of these young women will tell you, I believe it's 78 percent, will tell you that their first drink was a drink that was a sweet drink, an "alcopops" type drink or a beer with flavored...flavor added to it to make it more sweet. I am not a teetotaler, I am not opposed to people who are of age and responsible drinking, but I just have real concerns when ten things come before the Governor's Office for perusal for becoming law and is brought in by people with a vested interest in the alcohol community. I don't really care if Anheuser-Busch wants to market some new sweet drink in my community. What I do care about is, is Anheuser-Busch going to be willing to help us pay for some rehab facilities for young people who become addicted to alcohol? Are they going to help us pay for the injuries that occur annually from our young people who are drinking too much alcohol? Are they willing to come in and pay for some of the counseling that happens when these kids are sexually assaulted because of the binge drinking? And I will tell you, without a doubt, being able to add hard liquor into beer will cause the binge drinking problem to skyrocket. It will be much worse than it is now. Because you can drop that liquor into that glass and it's going to make it less expensive for the kids to be able to drink it. And, yes, they can do it now but now you got to take that shot and it's not masked into the beer. You got to take it and drink it and sometimes the taste of that will prevent them from doing it. I just...I think this is one of those things that as long as there's a lawsuit going on, that was just spoken about by Diane, that perhaps this is something that just needs to be let go also and not looked at as seriously. I'm just appalled that we're even talking about abolishing any laws that prevent alcohol being...or hard spirits being added to beer. [LB786]

SENATOR ROBERT: Any questions from the committee? Seeing none, thanks. [LB786]

JULIA SHEAR: Thank you. [LB786]

SENATOR ROBERT: Next opponent. Is anyone here in a neutral capacity? Senator Karpisek. [LB786]

SENATOR KARPISEK: Thank you, Senator Robert, members of the committee. I would like to remind you again that this bill was brought to me by the Liquor Commission, not Anheuser-Busch. We are the only state with this prohibition. I often say that we're the

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only state with a Unicameral and I wouldn't have it any other way, so I'm not making that argument, but we are the only one. I don't know that other states see widespread problems that we hear about. I guess that's about all I have. We know what this is. I don't know that it's any different than being able to mix 2 or 3 or 100 different liquors, hard alcohol, than mixing hard alcohol with beer and that is the reason I brought the bill. Thank you. [LB786]

SENATOR ROBERT: Thank you, Senator Karpisek. That will close the hearing to LB786. And we'll turn to Senator Karpisek for LB869. [LB786]

SENATOR KARPISEK: Thank you, Senator Robert. Members of the General Affairs Committee, my name for the record is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. LB869 increases the application fee for a liquor license from \$45 to \$500. This is for an original liquor license, not the yearly renewal. Increasing this fee was part of Senator Gwen Howard's LB605 from last year. The Liquor Control Commission also recommended increasing the fee since it currently costs approximately \$300 to process a liquor license application. You might be wondering why, if it costs \$300 to process the application, that the bill doesn't simply increase the fee to \$300. The reason is that these fees don't get increased very often and I thought it prudent to increase the fee to have enough wiggle room so that as costs go up we don't find ourselves back in this situation every year. Another option would have been to give the Liquor Control Commission the ability to set the rates. I thought that it should come to the Legislature to make that determination. This bill also makes the application fee nonrefundable. Currently, one could apply for a liquor license thinking that the commission won't find out about their felony in Colorado or another state. If the commission does find out about the felony, which would lead to denial of the application, the applicant can then withdraw the application and ask for a refund. Since the commission has already incurred the expense of processing the application, I feel that the application fee should be nonrefundable. If you wanted to, you could turn in an application every day. They go through the same process. They know you're not going to pass but they have to go through it, do what they need to do, and then the money goes back. I don't think that that's right. If you want to put the money up for a liquor license, go through it, have the state incur the expense, it should be nonrefundable. Also, \$45 for an application fee now is very minimal. Senator Howard's argument in this bill was that we may keep some people out, the bad actors, by raising it and making them have a little skin in the game. Again, part of LB605; we split it up this year. Senator Howard took some parts and I offered to take the other parts for her since it did not make it out of committee last year. Another reason why I did this many bills, because there were parts of LB605 that the committee could agree on, parts that could not, and so the whole bill did not move. With that, I'd be willing to take any questions, Senator Robert. [LB869]

SENATOR ROBERT: Thank you, Senator Karpisek. Any questions from the

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committee? Seeing none,... [LB869]

SENATOR KARPISEK: Thank you. [LB869]

SENATOR ROBERT: ...see you in a few. First proponent, please. [LB869]

HOBERT RUPE: (Exhibit 1) Thank you, Senator Rogert, 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. What the page is handing out is I actually had my...since when LB605 came up, we sort of had it right around \$300. I had my accounting staff rework the numbers. It's actually closer to \$350. The important part, as you'll see in red, that does not include the State Fire Marshal, which is also a general funded agency, for the costs for them doing a premise inspection, or for the Department of Agriculture, foods and dairies. Just so I can give you an idea of just what happens when you apply for a liquor license, a liquor license, we try to get them out within 45 to 60 days of a new application. You make an application with the Nebraska Liquor Control Commission and that time frame sort of starts kicking once it's complete. I would like to say that every applicant, when they file a license, is complete, but that would be the rarity. Most times they're forgetting parts and our licensing staff works with license applicants on a daily basis as they shepherd these processes through. Once it's complete, we send it out to some different state agencies, as well as the local governing body. That's when the time starts ticking on it. The State Fire Marshal gets a copy of it. The foods and dairies of the Department of Agriculture gets a copy of it. The local governing body, whether it's a county board or a city council, depending on where they are, get a copy of it. The city council has 30 days after receipt to have a hearing on it and make a recommendation to the commission. A recommendation to the commission, if it's for denial, results in an automatic hearing. If it's a no recommendation or a recommendation for approval, then it just goes through. Licenses right now take closer to 60 days than 45 days and that's primarily because of the fingerprint process. They also have to submit fingerprints. Those fingerprints are ran by the Nebraska State Patrol. As you're well aware, more and more people have to be fingerprinted all the time, not just for liquor licenses but for a whole host of other employment issues, and so that's sort of the bottleneck, I guess, in the system right now. The local...the officers will do a premise inspection. Fire Marshal will do a premise inspection. A lot of times a holdup on a license will be from a Fire Marshal's hold because, until a Fire Marshal signs off, the license isn't issued. Department of Agriculture foods and dairies, i.e., you know, the sanitation issues, depending upon whether they're going to be a restaurant, a bar only or whatever, those have to be met first. So there's a lot of effort that a lot of state entities are utilizing to help someone get a license to open a business and I guess, unfortunately, a lot of people misunderstand what the difference between a tax and a fee is. A fee is something that government charges because they're performing a service to you. Right now, I think \$500 is a closer, accurate reflection of the fee when you look at our costs of \$350, not counting in two

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other state agencies who have to come make a process. And the thing about it, all four of those state agencies are general funded and that's one...and these funds do go to the General Fund. Senator Karpisek also did say that oftentimes people will ask will their \$45 be refunded when they withdraw the application. People must think that I ask for those fingerprints to wallpaper my office. They don't expect us to find a conviction from another jurisdiction which would render them ineligible. And so I guess I'd be happy to answer any questions. And just so people don't think we're...the commission is trying to aggrandize themselves, out of this, we get a whole \$5, which goes to our publishing cost, printing fees, and training, the same. You know, out of the \$45, we get \$5 of it and the other \$40 goes to the General Fund. Of this we would get \$5 and \$495 would go to the General Fund. [LB869]

SENATOR ROBERT: Thank you, Mr. Rupe. Are there any questions from the committee? We're getting tired. You're welcome to go. [LB869]

HOBERT RUPE: Either that or I'm just boring them incessantly. (Laughter) Okay. [LB869]

SENATOR ROBERT: Substantially. [LB869]

HOBERT RUPE: Thank you very much. [LB869]

SENATOR ROBERT: Thank you. Are there any other proponents? [LB869]

KATHY SIEFKEN: Senator Rogert and members of the committee, I walked up here really fast instead of moving up. [LB869]

SENATOR ROBERT: Did well. [LB869]

KATHY SIEFKEN: Anyway, Senator Rogert and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n. I am the executive director and lobbyist for the Nebraska Grocery Industry Association and we would support this bill. It is a increase in the application fee. That fee should not be subsidized by taxpayers. Last year when this bill came before you in a different bill, we said that we would support this if it came back again this year, and so I'm here. I said we'd support it and we do and my board has approved that. When it comes to an increase in general fees, the renewal fees year to year, that's a different story, but this part of it and all of the changes that are coming about this year, this is one aspect that we would support. [LB869]

SENATOR ROBERT: Okay. Are there any questions from the committee? Thanks, Kathy. [LB869]

KATHY SIEFKEN: Thank you. [LB869]

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SENATOR ROBERT: Next proponent. [LB869]

MARGIE MAGNUSON: Margie Magnuson, M-a-r-g-i-e, Magnuson, M-a-g-n-u-s-o-n. I'm here on behalf of the Alcohol Impact Coalition as well as a resident of this state. I came and testified in front of you when it was Senator Howard's bill, LB605, and we support the increase in fees. It's a no-brainer. Don't have to read the newspaper more than about once a week to know that we need help and the fact that we're actually losing money with these applications is ridiculous. So as part of the Impact Coalition, we support this. Thank you. [LB869]

SENATOR ROBERT: Thank you. Any questions from the committee? Seeing none, thanks. [LB869]

MARGIE MAGNUSON: Thank you. [LB869]

SENATOR ROBERT: Next proponent. [LB869]

DARRYL HUTTON: My name is Darryl Hutton. I live at 3216 California Street, Omaha, Nebraska, and just short and sweet, I support this. Obviously, if the state is losing money to licensing cost versus actual fees, again, I have to agree with the no-brainer. I'm a little concerned about the amount of the increase on renewal because, as far as I know, in general, it's kind of a rubber stamp process. It's not the long form. So the increase from \$300 to \$1,000, I believe, for renewal seems a little exorbitant but, all in all, I support it. Thank you. [LB869]

SENATOR ROBERT: Any questions from the committee? Thank you. Next proponent. [LB869]

SEAN KELLEY: Good afternoon, Mr. Vice Chair, members of the committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, lobbyist for the Responsible Beverage Operators of Nebraska, come in support of LB869 because we think it ensures liquor license applications are professional and financially capable of holding a liquor license responsibly. We think if LB869 is enacted, less unqualified applicants will apply and the commission will not be burdened with the review of unfit applications. If you have any questions, I'd be happy to try to answer them. [LB869]

SENATOR ROBERT: Are there any questions from the committee? Thank you, Sean. [LB869]

SEAN KELLEY: Thank you. [LB869]

SENATOR ROBERT: Next proponent. Are there any opponents? Anyone here in a

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neutral capacity? [LB869]

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, appearing on behalf of the Nebraska Licensed Beverage Association, a state association of liquor retailers. We're really neutral on it but hearing the evidence here today and looking at the evidence, I think maybe \$500 is a little bit high. Hobie said \$300 to \$350 would probably cover it. Now as I understand, all these fees go into the school fund, correct, except the \$5? [LB869]

SENATOR ROBERT: I'm sorry. Yeah, the rest of it is going to go to the General Fund. [LB869]

JIM MOYLAN: Pardon me? [LB869]

SENATOR ROBERT: Only 5 bucks goes back to the commission. The rest goes to the General Fund. [LB869]

JIM MOYLAN: General Fund. And then General Fund goes into the school fund I think later on. [LB869]

SENATOR ROBERT: Well, it goes to the General Fund and General Fund funds...well, it pays my salary, so here we go. (Laughter) [LB869]

JIM MOYLAN: Yeah. Yeah, okay. So \$300-\$350 sounds like a good figure for us and the refundable aspect, I don't know, it seems a little bit stiff, you know, but I won't object to that. So if you have any questions, I'd be happy to try to answer them. [LB869]

SENATOR ROBERT: Any questions for Mr. Moylan? Thank you, sir. [LB869]

JIM MOYLAN: Thank you. [LB869]

SENATOR ROBERT: Anyone else here to testify in neutral? Senator Karpisek waives closing. That closes the hearing on LB869. I'll be darned, it's Senator Karpisek for LB870. (Laughter) [LB869]

SENATOR KARPISEK: Well, that way I can bring all my fans on one day, Senator Rogert. LB870? [LB870]

SENATOR ROBERT: Yes. [LB870]

SENATOR KARPISEK: Thank you. Thank you, Senator Rogert, members of the General Affairs Committee. Once again for the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB870 would create

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a temporary operating permit for when a buyer purchases an establishment in which the seller has a liquor license. Currently, when a buyer purchases an establishment in which the seller has a liquor license, the buyer continues operation of the establishment under the seller's license. Therefore, if the buyer violates the Liquor Control Act, the violation goes on the seller's license, not the buyer's. In my opinion, this is wrong. The buyer needs to be held accountable for his or her actions and the actions of his or her employees. Under LB870, the seller's liquor license terminates immediately upon the sale of the establishment and the buyer may then apply for a temporary operating permit while his or her liquor license application is being processed. LB870 first appeared as part of Senator Gwen Howard's LB605 from last year. She has agreed to allow me to reintroduce this concept in a stand-alone bill this year. Thank you. Any questions? [LB870]

SENATOR ROBERT: Senator Karpisek, I have one. I think the reason always that we've had just a continuing operating license from one to the other was in order for anyone to invest themselves into a possible purchase and changeover of a business, that they would be concerned that they spent a bunch of money, all of a sudden, for whatever reason, they may not get approved for a new liquor license. What does this do to that process, in your opinion? [LB870]

SENATOR KARPISEK: You still go through the process so if you wouldn't get your liquor license under the system we have now, you could only run under their license for the period of time when the Liquor Commission would say, oh, no, you don't qualify. This would not change that timing there except now, if there are any violations in that window between the purchase and the Liquor Commission granting or disapproving your license, anything happening in that period would go on your record, not the previous owner's. [LB870]

SENATOR ROBERT: So it eliminates some liability from a seller's standpoint as well. [LB870]

SENATOR KARPISEK: It would, yes, and I've just seen some buyers who are not that careful because it will go on the old owner's license so it won't be reported to the Liquor Commission on their license so it won't affect their new license. [LB870]

SENATOR ROBERT: Gotcha. Thank you. [LB870]

SENATOR KARPISEK: Thank you. [LB870]

SENATOR ROBERT: Any other questions? First proponent, LB870. You guys should just sit together. [LB870]

HOBERT RUPE: We probably should. Some people sometimes would get us confused

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anyway, but he's much better looking than I am. Once again, my name is Hobert Rupe. I'm executive director of the Nebraska Liquor Control Committee, H-o-b-e-r-t R-u-p-e. As Senator Karpisek said, this was actually not part of our...actually we didn't include this in our act...bill this time, legislative. It was a great idea that came out of LB605. The current process is what's called a temporary agency agreement. It's been around for about 30 years. If I'm going to apply to, say, you know, say Mr. Eickmeier owns a bar, I'm going to buy his bar, I would have to file an application, I would have to open an escrow account where both of us had access to it. If I were to screw up, it would be on his license and so that was the theory behind it 30 years ago. It was a way that an existing license didn't have to shut down for the 45 to 60 days for processing. The theory was, is that if you shut it down, the value of it goes down, you know, it's not that good of a financial investment, you're going to have some issues going on. Okay. It's worked mostly. Most places, you know, when...actually if Mr. Eickmeier were to sell his bar, you know, he really doesn't want to have to come back and take care of it because by then he'll have been retired down to Florida after he sold his bar to me, expecting me to get it. What this does, it clearly states that the person who's...and they're operating under a temporary operating permit, is responsible for any actions. That license, when he gets his final license, he could get his license right away and go into a suspension right away. There could also be a reason to deny it, depending upon the nature of it. For the most part, the commission does practice progressive discipline on violations and they try to get people into compliance through the use of a stick. In this case here, you know, we think the temporary operating permit is the cleaner way to go. It's the appropriate way to go. You know, and the person, you know, there is no guarantee you're going to get a license. You're going to have to make a decision whether you think you're qualified. And if it has the secondary effect of professionalizing the industry more, then I think that's probably a good thing. So with that said, I guess I would answer any questions you might have. [LB870]

SENATOR ROBERT: Are there any questions from the committee? Seeing none, thank you. [LB870]

HOBERT RUPE: Thank you. [LB870]

SENATOR ROBERT: Next proponent. [LB870]

MIKE KELLEY: Mr. Vice Chair, members of the committee, my name is Mike Kelley, K-e-l-l-e-y. I'm an attorney with Kelley and Jerram. Again, as I stated before, I do a lot of practice in this area. I think this is a long overdue move by the commission. It's really a cleanup bill. And some of you know, I'm involved in restaurant business in Omaha here. We also just purchased a place in Phoenix. They have this exact thing down there and it works great. And you come in, you take over the license and then you're responsible for it. If you make any...if there's any problems with the license, it's your fault. Currently, that's not what we do in Nebraska and that's wrong, as has been suggested to you. I

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think it's a much more honest, forthright way to do. It solves a lot of problems. Again, it's long overdue. I'm glad to see the commission brought it forward and I definitely, as one who practices in this area, support it. [LB870]

SENATOR ROBERT: I have one question for you. [LB870]

MIKE KELLEY: Yeah. [LB870]

SENATOR ROBERT: I would have asked Hobie, but I'll ask you. Will there be some folks denied full licensure because of this change? [LB870]

MIKE KELLEY: I don't think because of the change, no. I think it... [LB870]

SENATOR ROBERT: Rather...since the issue... [LB870]

MIKE KELLEY: It will stand on its merits either way. [LB870]

SENATOR ROBERT: And I'm fine that if it is. Now maybe that means that the issue goes on the actual...the applicant rather than the seller, so will that just actually force people to be more careful or will it get some folks maybe out of the business that shouldn't be? [LB870]

MIKE KELLEY: I tell you what it might do. If someone gets in and is operating improperly, might lead to that party being denied, because we've seen for 90 days how they operate. So I think it helps the commission enforce the act. So I don't see any downside to it. [LB870]

SENATOR ROBERT: Great. Thank you. Any other questions? Seeing none, thanks. Next proponent. [LB870]

JIM MOYLAN: Mr. Chairman, members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n, representing the Nebraska Licensed Beverage Association again. First, I'd like to start out, I've been in this business for many years and the temporary agency agreement--I remember when it came into effect--you know, was a wonderful thing, and I have to say to this day it still works fine. However, this would be a change and this really just takes care of the exceptions. You know, I think there's very few violations of people who are in the process of buying a license, you know, that get into trouble and then it reflects back on the purchaser. There's one thing that bothers me here and I think for one thing take line 18, "to continue the business which was conducted on the purchased premises under the terms and conditions of the terminated license." I think...and there are occasions and I've had occasions when the commission has turned down licenses, applicants that might have filed for a license, and under the temporary agency agreement then the license just stays there. Here it's going to terminate. So I

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think you're going to have to figure out a way, if a licensee is turned down by the commission, that, you know, that it reverts back to the original license, that they keep that on hold or I don't know how you're going to do it. But I think you do have to cover that. Other guy, you've got a little bar and a restaurant in a little town, you know, and maybe it's the only one, and all of a sudden somebody wants to buy it and he files an application and all of a sudden it's denied. All of a sudden the old license is terminated and they don't have a place anymore. So I think that has to be rectified. The other thing, I think I would just take the 120 days out and...until the purchaser has obtained a license on its own. You know, if you hit the 90 days and it's sooner, and the application process is not completed because you haven't gotten everything in, little town councils only meet once a month sometimes you know, I don't think you need the 90 days. Let it go until the license is granted. So if you have any other questions, I'd be happy to try to answer. [LB870]

SENATOR ROBERT: Any questions? Senator Krist. [LB870]

SENATOR KRIST: My question is actually more of a comment for legal, following on with your point. It's true and it's confusing to me. If I were a bar owner, a restaurant and bar owner, had a liquor license, this is suggesting that my liquor license has been terminated and that there's...and that that other person who's applying for their license is open under what was granted to me for that establishment for X number of days until I could have my own in my name. Don't we actually mean there that the liability has been terminated? There's still a license in effect to serve alcoholic beverages on premise, but we're releasing the first owner or the seller, I'm sorry, of his liability? [LB870]

SENATOR ROBERT: Well, yeah, you can. Go ahead. [LB870]

JOSH EICKMEIER: The intent of the bill is to have...the actual license of the seller is terminated at the point of sale. The buyer ahead of time could apply for this temporary operating permit and essentially is automatic to get the temporary permit, is the intent. And therefore, the seller is out. [LB870]

SENATOR KRIST: Okay. [LB870]

JOSH EICKMEIER: Liability, license, everything is out unless you would go with Mr. Moylan's suggestion, which is to...if the buyer's permit is denied, application is denied, to revert back to an original license holder. [LB870]

SENATOR KRIST: I see. I see. Thank you for your comments, sir. [LB870]

SENATOR ROBERT: Any other questions? [LB870]

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JIM MOYLAN: Thank you. [LB870]

SENATOR ROBERT: Thank you. Next proponent. [LB870]

KATHY SIEFKEN: Senator Robert and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. We are here in support of this bill. This is the bill that my members like better than any other bill that we've seen introduced this year because, while the interagency agreement may work for Moylan's people, it doesn't work for mine. It works to a degree because it does allow some of my grocery stores that buy a business to continue to sell alcohol, but it doesn't allow all of them because the process is cumbersome. And in addition to that, the liability is on someone that doesn't own the business anymore. And actually, at that point it doesn't make sense to make someone that doesn't have a vested interest responsible. So if you give a temporary license to the new owner, they are the people that control the front end of the grocery store. They are the people that are responsible for all of those sales and it would only make sense that they be...that they also have the liability. We have seen instances where a store has been purchased and you've got new owners, they're small business people, and they will go in thinking that they can sell alcohol and they can't. And for the first month, while they're trying to get their license, because it is a 30- to 45-day process and if you don't do it in the appropriate order, you don't get to sell liquor. And we have had some stores that are no longer in business because those alcohol departments are part of the bottom line and they can't survive without those sales. And so when you have a brand new store owner that doesn't have the income that that store owner is expecting to have, because their liquor is covered up with paper and they can't sell the alcohol, it causes a problem, and this is what happens in rural Nebraska when you get new people that haven't been in a grocery store before. They don't understand all of the rules. They don't know that they have to start 45 to 60 days out. This temporary license would put the liability where it belongs and it would allow those people to sell alcohol as soon as they open the doors, because it would just automatically go over. And as far as if they don't...if they're turned down for the license, and again, this is one of those things that happens in small businesses, if they don't get their alcohol license, that business could revert back to the original owner and they would just simply apply for that license again. So I'm not sure that that's really an issue. If you have any questions, I'm happy to... [LB870]

SENATOR ROBERT: Any questions? Seeing none, thanks. [LB870]

KATHY SIEFKEN: Thanks. [LB870]

SENATOR ROBERT: Next proponent. [LB870]

TIM KEIGHER: Good afternoon, Chairman Robert, members of the committee. My name is Tim Keigher, it's T-i-m K-e-i-g-h-e-r. I appear before you today as a registered

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lobbyist and executive director of Nebraska Petroleum Marketers and Convenience Store Association in support of LB870. I think all the issues have been covered. Just want to know that we do support this, that the liability should stay with the person who is operating the business. So with that, I'll answer any questions. [LB870]

SENATOR ROBERT: You go last on purpose so you don't have to say near as much? [LB870]

TIM KEIGHER: Well, I don't know...I'm color-blind, so I don't know the light system so I can't time myself. (Laugh) [LB870]

SENATOR ROBERT: (Laughter) Any questions from the committee? Thank you. [LB870]

TIM KEIGHER: Thank you. [LB870]

SENATOR ROBERT: Any further proponents? Are there any opponents? [LB870]

DIANE RIIBE: Diane Riibe with Project Extra Mile, Senator Rogert, members of the committee. We would oppose the bill as it's presented currently. Although we would agree that the temporary agency agreement needs to go away, there's enormous abuse of that process. A number of questions we would have: First would be, why would we give a temporary permit to a business if we've not had the opportunity to do the security background and the investigative processes that are required and expected by law enforcement in the state as well as municipalities? It seems a little foolhardy to allow that and to provide liability anywhere if we haven't done that very basic investigative process. And one would also have to wonder why the business owner simply can't apply for the license ahead of time, plan a little, prepare for it. Another option is that the real estate transaction could be contingent specifically upon the granting of a permit license. So there are ways that a business owner could get around some of the issues that are there and presented. I can tell you in doing research, we know that Iowa grants no such temporary permits to facilitate the transfer of a license, the state of Colorado does not grant such permits, Kansas does not, Missouri does not. It is not a common practice. That we have it at all is a little absurd. That we would try to facilitate that with a new twist without some real research to it seems a little bit as though we would not want to do that. One of the concerns that we've had on the temporary agency agreement and I think we have to mention, even though there is a belief that the temporary operating permit might be a bit different, there are some pretty egregious abuses of the temporary agency agreement and we would have concerns that that would continue. If we have a business that is a poor business owner and they have done bad business, in part allowing that kind of temporary transfer allows for the state to essentially kind of grease the skids for a profitable business sale. Our concern ought to be that business is done well. Again, we can mention several cases. The one that comes to me most quickly is a

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case in Morrill, Nebraska, a business, Cheema's, that actually was operating and sold alcohol to a 16-year-old and the 16-year-old then later drove, killing his 14-year-old female passenger. That individual, the 16-year-old, was charged and convicted of a felony motor vehicle homicide. The 14-year-old girl, Katy Cullom, of course died. The clerk in that situation was charged and convicted of selling alcohol to a minor under the criminal violation and did jail time. The business owner, on the other hand, had absolutely no repercussions, none. In fact, he went into the very quick process, to avoid any implications at all, of selling his business and Nebraska granted him a temporary agency agreement to go ahead and sell and facilitate that sale, and he didn't have any penalty whatsoever. I will also say that the mother of Katy did make contact with the Liquor Control Commission in an attempt to have them facilitate and help, and had not and in fact to this day has not heard back a response. That was in 2007. We would oppose the bill and would ask that you would give some serious consideration to some of the implications of what this proposal might do. Thank you. [LB870]

SENATOR ROBERT: Any questions from the committee? Seeing none, thank you. [LB870]

DIANE RIIBE: Thank you. [LB870]

SENATOR ROBERT: Next opponent. [LB870]

MARGIE MAGNUSON: Margie Magnuson, M-a-g-n-u-s-o-n. I'm here on behalf of the Alcohol Impact Coalition. Again, I came and spoke to you when this was part of Senator Howard's LB605 bill. We were adamantly opposed to the temporary agency agreement. We'd had several instances in Omaha dealing with different businesses that had some of these problems. We see that this bill is really sort of a redressing of the same thing. We can call it a permit but I think it's the same thing. I mean we're still allowing someone to sell alcohol before they're approved to do so. If Senator Karpisek wants to go forward on this bill, if the committee agrees to go forward on this bill, I think we really need to look at more specifics in this bill. Currently, when you look at the power of when you're selling a corporation or business, the language that is now in the law or in the Liquor Control Act, it talks about that the commission may require information and document that it deems necessary, it may require the corporation to submit an application for new, it may require that they do these things. It doesn't say they shall. It doesn't have...there's no specifics about this permit. I'd like to see that they'd actually have to have an application on file. I'd like to see that they've done at least a background check or the fingerprints have been done. There should be some kind of clarification in this bill, specifics in this bill that kind of bring this permit to have them further along in the process instead of leaving it ambiguous, as it is. I really urge you to have those kind of specifics in the bill if we do move forward with this bill. The other thing I have is the accountability. We keep talking about and we've seen this in Omaha, the temporary agencies, violations happen, the people who are responsible really aren't

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held accountable. We talk about this bill, that they are going to be held accountable because of this permit, but I have no faith that that would actually happen. I've got an instance right now that just happened, actually it's Mr. Kelley's client, down on a store in Omaha. They did not have a license to sell alcohol. We had two purchases of alcohol at their place during the time they did not have a license. We brought this to the attention of the Liquor Commission. I was told the Liquor Commission could do nothing because they didn't have a license at that time. If we're really going to hold these permitholders accountable, then let's see something in the language that actually holds them accountable. I have no faith that that will happen. I will have no faith that if they don't have the license that it will go on their record. What happens if they withdraw and decide, if they've sold to a minor, there's a death, and they've decided, whoops, I don't want to be held accountable? Who is held accountable? Who is held accountable for that death, for that sale? There should be something written into here. Let's not leave it ambiguous. Let's be more specific. Let's not give people loopholes. Let's not give their attorneys loopholes to get around accountability. Let's not give them loopholes to...let's get some specifics into this bill if we want to continue forward on this. So I really urge you to look into that and to maybe firm up this bill a little bit. So thank you. [LB870]

SENATOR ROBERT: Thank you. Are there any questions from the committee? Seeing none, thank you. [LB870]

DARRYL HUTTON: My name is Darryl Hutton. I live at 3216 California Street, Omaha, Nebraska. I'm opposed to this for several reasons. First of all, I believe that there should be no temporary agency agreement. I guess the easiest way to think of it is when you look at, oh, let's see, what is it, 53-132, for anybody that would traditionally have a license, that the license may be issued to any qualified applicant. Well, when you do the temporary agency agreement, you have no knowledge of the abilities or adequacy of that person on the temporary agency agreement, so I would equate it to if I said I was a childcare provider. You don't know anything about me whatsoever. Are you going to entrust me with your child before I've shown some kind of merit, for example, that I'm not a level III sex offender? You're certainly not going to let me care for your child when you don't know what my qualifications are or disqualifications are. So I think they need to earn this license on their own merit and not simply because, well, let's just see how this goes until we find out whether you qualify or not. As far as whether there's actually...I think the wording in this, I'd be concerned that I still think it's kind of a watered-down version of what's currently there. Just changes it from 120 days to 90 days. But I think this, unless I'm misreading it, I don't believe this actually has the verbiage that would state that there is any liability on the new or the temporary agency agreement holder. You know, it certainly eliminates the seller of that, but I don't believe it actually has any ramifications in the verbiage of it that would apply directly to that person that would have that temporary agency agreement. And again, I would be opposed. Thank you. [LB870]

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SENATOR ROBERT: Thank you. Any questions from the committee? Seeing none, thanks. Any further opposition? Anyone here today in a neutral capacity? Senator Karpisek to close. [LB870]

SENATOR KARPISEK: Thank you, Senator Rogert, members of the committee. I guess I'm really surprised on the opposition on this one, seeing it was Senator Howard's bill and...anyway, the Liquor Commission doesn't do any background prior now. All this bill is saying, or what I intend it to say, is that in between a new owner and them getting their permanent permit, the liability would be on them. As we do it now, it doesn't go on them. It goes on the prior person. If you want to wait, you can wait. It takes at least 60 days for the fingerprints. The Liquor Commission has all that on file. It's just like it is now. They have to give their fingerprints, they have to do everything that they do right now. It's just that it would go on their record. You're just still waiting for the processing. It just isn't going back and on the other...the old owner. I think that this is a good way to go. If it needs to be cleaned up, certainly I could, I would be willing to work with anyone on that. Again, I am surprised that we heard this. I guess I wish I would have heard that sooner. But we can work on that and see what happens. With that, I'd take any other questions. [LB870]

SENATOR ROBERT: Any questions for Senator Karpisek? Seeing none, that closes the hearing on LB870. Moving on to LB900, Senator Karpisek. [LB870]

SENATOR KARPISEK: Thank you, Senator Rogert. Once again for the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. LB900 creates a different annual liquor license fee based on whether the establishment is located in a city of the metropolitan class, a city of the primary class, or any other location in Nebraska. Currently, Omaha is the only metropolitan class city and Lincoln is the only primary class city in the state. The new annual license fees would be as follows. For a Class A liquor license, which is on-sale only beer, the fee would be \$300 in a city of the metropolitan class, \$200 in a city of the primary class, and \$100 in any other location in Nebraska. The current Class A liquor license fee is \$100. So it goes through, through all the different licenses. I think Class C is probably the most prevalent one. For a Class C license, which is on-sale and off-sale beer, wine and distilled spirits, the fee would be \$1,000 in a city of the metropolitan class, \$500 in a city of the primary class, and \$300 in any other location in Nebraska. The current Class C liquor license fee is \$300. Under current law, the political...local political subdivision may assess a fee twice the amount, therefore, a Class A liquor license fee, which is increased from \$100 to \$300, could actually cost the license holder a total of \$900, \$300 from the commission and up to \$600 from the political subdivision. The argument behind this bill is that a liquor license in Omaha is worth more than a liquor license in Lincoln, is worth more than a liquor license in small town Nebraska. Whether you agree or disagree with that is the reason why this bill was brought forward to discuss it. Any questions, I'd be glad to try to answer them. [LB900]

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SENATOR ROBERT: Thank you, Senator Karpisek. Any questions for the senator? Seeing none, first proponent, please. Could be a short list. [LB900]

HOBERT RUPE: Good afternoon, Senator Rogert, members of the committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. Over the last year, and as you've seen from most of the other bills that have been brought forth, the commission has been looking at some of the issues in an effort to try to professionalize the industry more than it currently is. A lot of the bills have grown hodgepodge over the 76 years that the act has been in place and we thought it was time to look at some of them and have them. Liquor license fees, the last time they were at least arguably raised in any way would have been about six years ago and that really wasn't a raise. At that point in time, the types of licenses had grown sort of like, you know, a ball of yarn that was loose. There were 13 different types of retail licenses. At that point, the committee at that time took it down to five types of liquor licenses: beer on-sale; beer off-sale; beer, wine and spirits on-sale only; beer, wine and spirits off-sale only; and beer, wine and spirits on- and off-sale. And as a result of that, there was some raises in some of the fees but most of them stayed roughly the same. The only ones that's really raised was some of the on-premise beer were based upon the...I guess it goes back to the question Senator Dubas asked for earlier, why beer was different, some beer-only licenses were \$10 because they were based upon the size of the city. So basically again it's where it's been located that has not been different. They were raised to \$100. And in most of those places, ones that just went from \$10 to \$100, will not be changed by this proposed legislation. What happened was the commission has been really looking at are all liquor licenses treated, you know, the same based upon where they're located, and I think Senator Karpisek brought it up. I mean I've used it before. You know, is a liquor license...what's the value of a Class C liquor license at 120th and Dodge? What's a liquor license at 12th and O Street even, and 12th and Main in Wilber? Is there a difference in what the value of those licenses is based upon where they're located, as to the access they have and what else is going on? And so in this respect, the commission brought forth the idea they need to be raised. Senator Karpisek came forth with the rates you see you in front of you. And you have to remember, this isn't a way that we're trying to pocket this into the state system. The state is really seeing none of this money. License fees go to the local school board. The occupation tax goes to the local governing body. And what's the purpose of that occupation tax? The occupation tax, at which they can charge up to twice, doesn't say they have to charge twice, they can turn...you know, charge nothing, is designed to offset the cost of policing and other costs that that license may have on the local community. Once again, this is part of an ongoing premise where the commission thought that it was important for this committee to look at ways to try to professionalize the industry more, and Senator Karpisek said it earlier on, in regard to the temporary operating permit. If someone has a little more, like they say, scratch in the game, it might make a more professional licensee. But the key thing is, is does it accurately

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reflect the true value of the license? The commission has been lucky enough to have a very good bunch of commissioners, but the last couple years we've had two individuals who are actively still in the businesses. You know, they actually own retail type of businesses. One is involved in retail. One is involved as a real estate agent. And one thing was that the comment was we're sort of giving away...the state is giving away the franchise on these things by treating everything exactly the same. And so that was the reason why the commission brought this forward. We think it is a legitimate issue and, quite honestly, the two issues where we get the most complaints regarding oversaturation of liquor licenses is in the cities of the metropolitan and in cities of the primary class, where every...where there's a feeling that every place there's being more and more of those in that area. This has some way to make sure that we're getting responsible licensees who are going to come into the business and stay in the business by making sure that they've got a vested interest, they've got, you know, they've got even more of a financial interest in the game to operate this in an effective manner, we think that's a very good system. So with that, I would answer any questions. [LB900]

SENATOR ROBERT: Are there any questions? Senator Dubas. [LB900]

SENATOR DUBAS: Thank you, Senator Rogert. Thank you, Hobie. So you said none of these fees will go into the General Fund, they all stay at the local...? [LB900]

HOBERT RUPE: They all stay at the local level. Retail fees, the actual license retail fee goes to the school board, the occupation tax goes to the city government. [LB900]

SENATOR DUBAS: Thank you. I just wanted a clarification on that. [LB900]

SENATOR ROBERT: Any further questions? Thank you. [LB900]

HOBERT RUPE: Thank you. [LB900]

SENATOR ROBERT: Next proponent. [LB900]

TOM MUMGAARD: Good afternoon. My name is Tom Mumgaard, deputy city attorney for the city of Omaha, that is T-o-m M-u-m-g-a-a-r-d. The city of Omaha supports LB900. The city of Omaha is the only metropolitan class city in the state of Nebraska, has 967 liquor licenses currently. About 77 percent of those, 748, are licenses that allow on-premises consumption. These licenses present a direct and indirect administrative and enforcement cost to the city and its citizens. The city clerk, for example, has one full-time employee who does nothing but oversee the liquor licenses in Omaha. The city council regularly has 8 to 12 license applications, managers' applications, those types of things, liquor-related items on an agenda every week. Each one of those applications are reviewed by several departments within the city. The law department devotes about 25 percent of one of its attorney's time to advising and enforcement with regard to

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liquor. And the police department, of course, has a significant amount of time invested in responding to liquor-related activity, problems, and those problems that come directly from the businesses that sell alcohol. We currently receive about \$500,000 per year in occupation tax from the licensees. That is the only revenue we get directly from liquor licensees. That amount has not changed dramatically over the past years. The only ways it can change...that is set at two times the state license fee. The only way that amount can increase is either we have a dramatic increase in the number of licenses, which of course we're not looking forward to, or secondly you increase the state liquor license...state license fees. So we come to you in support of LB900 so that that revenue stream can increase because obviously our costs have increased significantly over the years. We believe that people who sell alcohol in Omaha certainly can add to the quality of life in Omaha, but they ought to pay their own expenses. They should not be subsidized by general tax revenue. For example, the typical bar in Omaha would hold a Class C license. They would pay the city of Omaha \$600 per year in occupation tax. One fight in that bar with a couple cruisers dispatched to that bar to take care of that fight quickly blows through that \$600. So you can see that currently we believe that it's hard to put a hard figure on the cost but we believe that significantly the activity that is generated by liquor retailers in Omaha is being subsidized by the general taxpayer and that needs to stop. This increase is overdue and we would encourage you to advance LB900. And I would answer any of your questions. [LB900]

SENATOR ROBERT: Thank you. Are there any questions from the committee? Senator Krist. [LB900]

SENATOR KRIST: Thank you. Would you anticipate going to the maximum allowed? [LB900]

TOM MUMGAARD: We have been at the maximum allowed 25-plus years. Our ordinance is in fact set that we...the amount of our occupation tax is always double the license fee. We would be at the maximum amount. [LB900]

SENATOR KRIST: Okay. Thank you very much. [LB900]

TOM MUMGAARD: Thank you. [LB900]

SENATOR ROBERT: Any further questions? Thank you. Any other proponents? [LB900]

MARGIE MAGNUSON: Margie Magnuson, M-a-g-n-u-s-o-n, here for the Alcohol Impact Coalition. We support the increase in these, short and sweet. [LB900]

SENATOR ROBERT: Any questions? Thank you. [LB900]

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MARGIE MAGNUSON: Thank you. [LB900]

SENATOR ROBERT: Next proponent. [LB900]

DARRYL HUTTON: Darryl Hutton, 3216 California Street, Omaha, Nebraska. I support the increase of the initial license. I'm a little hesitant on the increase of the amount that would be for a renewal of license, given the, I guess, kind of a rubber stamp process compared to a long form initial application, and I think I just kind of worry that it may take your small mom-and-pop kind of shop, give them too much burden to be able to make it. But thank you. [LB900]

SENATOR ROBERT: Appreciate your comments. Thank you. Any further proponents? We'll move to opposing testimony. Are there any opponents? [LB900]

SEAN KELLEY: Good afternoon, Vice Chair, members of the committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, lobbyist for the Responsible Beverage Operators of Nebraska. We are primarily comprised of retailers in the Omaha area. Our opposition to this bill comes simply due to the economic times and the burden this would cause on the retailers in our organization. You know, in total it would be up to \$3,000 a year annually. We're all for professionalizing the industry, but we think the better way to approach that would be for new applications coming in. With that, I'd be happy to answer any questions you may have. [LB900]

SENATOR ROBERT: Any questions from the committee? Seeing none, thanks. [LB900]

SEAN KELLEY: Thank you. [LB900]

SENATOR ROBERT: Next opponent. [LB900]

JIM MOYLAN: Jim Moylan, J-i-m M-o-y-l-a-n, 8424 West Center Road in Omaha, representing the Nebraska Liquor Retailers Association. Fees in Omaha would probably put a lot of the small local bars out of business. They really don't make that much money. Sure, there's big ones that make a lot of money, but there's a lot of the smaller ones that this would really hinder them and make it pretty tough for them to continue in business. Now as Hobie mentioned, six years ago Ray Janssen had a study committee and we revised the liquor laws. He cut from 14 licenses down to 5 and he raised the fees at that time, a third again. So we just had a fee increase six years ago. Now our fees are pretty much higher than most any other fees for a small business throughout the state. It just seems like everybody thinks if you got a liquor license you're making a billion dollars and you ought to just pay a lot of fees. Well, that isn't true. They're out there in the community and it's a tough business. And they're serving the communities all over the state of Nebraska. They're the ones, you go into a small town, who's one of

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the main people that are supporting all the projects in town? It's the people with the liquor license. So I would recommend that the bill be indefinitely postponed. Now the occupation taxes or if you want to take the occupation taxes away from the city, why, I don't have any objection. I assume Mr. Mumgaard would but (laughter) those funds also go into the school fund in Omaha. I can refer you to LB869 here where that section is, page 11 and 12, which states the State Treasurer shall credit all fees to the cash fund (inaudible). First it says at the bottom of page 11, all retail license fees received by the city or village treasurer, as the case may be, shall inure to the school fund of the district lying wholly within the subdivision. A little further down is the distribution by the State Treasurer to...and they're cleaning up school fund and going with Article VII, section 5. So the conspicuous parties, by their absence here today, are the schools. They benefit from all of this. And if they were here and really wanted it, I think they ought to be here, you know? But I'm going to recommend that we leave the fees like they were established six years ago and allow the businesses to continue without this exorbitant fee. Have any questions, I'd be happy to try to answer them. [LB900]

SENATOR ROBERT: Any questions for Mr. Moylan? Seeing none, thank you. [LB900]

JIM MOYLAN: Thank you. [LB900]

SENATOR ROBERT: Next opponent. [LB900]

KATHY SIEFKEN: Senator Rogert, 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 LB900. First of all, I'm not sure that the value of all the licenses in Omaha are equal, so how are you going to go into Omaha and say, okay, all the licenses in this city have this value, the licenses in the city of Lincoln have another value, and in rural Nebraska you've got another value? There are businesses inside the city of Omaha whose value is no more or no less than some of our rural communities, so I'm not sure that this is putting everybody on the same playing field. It's separating people and it doesn't seem like that should be fair. In addition to that, times are tough. We all know that we're in an economic downturn. I was talking to one of my members the other day and some of you might know him, it's Dick Cosaert. He owns the Cubby's, the Phil's and the Louis grocery stores, or he doesn't own them, he's the general manager, and we were talking about the additional fees. And with the fuel surcharges that they're paying for food that gets shipped into their locations in the last couple of years, his health insurance last year went up \$100,000. His unemployment went from \$20,000 a year to \$54,000 a year. Every time we turn around the prices are being increased, and this is just one more fee that you're getting the retailer for. And it's not just the grocery stores. It's all of the license holders. And I guess what we're saying is times are tough enough, don't add to the burden. People are having a tough time hanging on and if they can get through this downturn and this bad economy, they need all the help they can get to make it through it. So if you have any questions, I'd be happy

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to try and answer them. [LB900]

SENATOR ROBERT: Any questions from the committee? Seeing none, thanks.
[LB900]

KATHY SIEFKEN: Thanks. [LB900]

SENATOR ROBERT: Next opponent. [LB900]

DAVID WITT: Good afternoon, Mr. Vice Chairman, members of the committee. My name is Dave Witt, D-a-v-e W-i-t-t, and I own Beer and Loathing in Dundee in Omaha. I also sit on the board of the Responsible Beverage Operators of Nebraska. I echo her sentiments. Obviously, I'm not going to beat the economy drum too hard but it's getting tougher and tougher by the year to make your way and, you know, it's no different for liquor retailers. We have seen our numbers steadily decrease. So while I understand the need for a rise, I'm not opposed to a gradual increase. I think this is a large one-time hit and to be able to do that every year. You know, the \$1,000 state, we're doing \$3,000, being from Omaha, and I would urge you guys to oppose this or at least amend the fee to a lower cost. Of the \$600 that we pay to the city of Omaha, I know I write a pretty big check for sales tax as well every month and we try and make our way along. Thank you. And I would be happy to answer any of your questions. [LB900]

SENATOR ROBERT: Any questions from the committee? Seeing none, thanks for coming down. Next opponent. [LB900]

TIM KEIGHER: Good afternoon, Senator Robert, members of the committee. Again, my name is Tim Keigher, T-i-m K-e-i-g-h-e-r, and I appear before you today as a registered lobbyist and executive director of the Nebraska Petroleum Marketers and Convenience Store Association in opposition to LB900. And I don't think I'm last this time. I guess we look at the fee for a license should be based upon the cost of administering that license and not necessarily the value of that business. I try to equate it to a driver's license. You have to get a driver's license, provided that we're all getting a driver's license just to drive a car, we pay a fee for that. It doesn't matter whether you have an income of \$25,000 a year or \$50,000 a year. It doesn't matter whether you drive a \$50,000 car or a \$25,000 car. I guess we would be willing to work with Senator Karpisek at looking at raising this fee, you know, based upon costs and some things like that. So with that, I would conclude my testimony and answer any questions. [LB900]

SENATOR ROBERT: Are there any questions from the committee? See none. Thank you. Next opponent. [LB900]

JIM OTTO: Senator Robert, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and the Nebraska

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Restaurant Association. I appear today on behalf of both associations in opposition to LB900. Don't want to waste your time. I would be reiterating a lot of the things that have already been said so, for those reasons that have already been mentioned, we just want to exercise our right to oppose. With that, I'd be glad to answer any questions. [LB900]

SENATOR ROBERT: Are there any questions? Seeing none, thanks for coming. Are there any further opponents? Anybody here today in a neutral capacity? Senator Karpisek to close. [LB900]

SENATOR KARPISEK: Thank you, Senator Robert, members of the committee. I would agree that it does seem to be a large jump at once and I would be willing to sit down and talk with everyone. Again, I wanted to bring this up for conversation. We have had conversations in the past about density, especially in Omaha. I guess this would be my way of looking at that rather than limiting the number of licenses. As a business owner, I don't like the idea of limiting how many there are. So that's why I brought this bill and I'd be glad to sit down and talk. [LB900]

SENATOR ROBERT: Senator Dierks, a question. [LB900]

SENATOR DIERKS: Well, Senator Karpisek, when I heard that these dollars were all going to those schools, I got to thinking maybe we got that price up there high enough we could reduce our property taxes out there. [LB900]

SENATOR KARPISEK: That's always a thought, Senator Dierks. You're picking up what I'm putting down. [LB900]

SENATOR DIERKS: Thank you. [LB900]

SENATOR ROBERT: Senator Krist. [LB900]

SENATOR KRIST: Just out of curiosity, how many of the opponents actually came in and talked to you about proposing a difference in the way that the bill was presented prior to today's hearing? [LB900]

SENATOR KARPISEK: Quite a few just told me that they would have to oppose it and said that they would be willing to look at a different number but thought that it was too high. So I would say maybe three-fourths of them talked to me prior. [LB900]

SENATOR KRIST: That's good. Thanks. [LB900]

SENATOR KARPISEK: You're welcome. [LB900]

SENATOR ROBERT: Any further questions? Seeing none, that closes the hearing on

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LB900. The final bill today, LB906, Senator Karpisek. [LB900]

SENATOR KARPISEK: The last one, Senator Rogert. We're clipping through, huh? [LB906]

SENATOR ROBERT: Yeah. [LB906]

SENATOR KARPISEK: (Exhibit 1) Senator Price, you just got here, what are you excited about? LB906. First of all, for the record my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District in the Legislature. LB906 would eliminate the 150-foot buffer of selling alcohol near churches, homes for aged or indigent persons or veterans, their wives or children. The reason for this bill may actually surprise some people. The Liquor Control Commission brought this bill to me based on an issue that likely didn't exist in 1935 when the Liquor Control Act was being drafted. During the current economic turndown, the downtown areas of communities are being riddled with empty storefronts which are now being occupied by a number of small churches. The result is that downtown economic development is being stymied since restaurants and bars are unable to obtain a liquor license. Did you pass out the map? Mr. Eickmeier will pass out a map of downtown Grand Island which shows where all the churches are located. As you can see, there is virtually no place in the downtown district where a liquor license could be obtained. I believe there are individuals from Grand Island here to testify that can shed more light on the ramifications the 150-foot buffer around churches has on downtown economic development. I also have this problem in...if you want to call it a problem, I do, in Geneva in my district and potentially in Milligan also in my district. Should also be noted that a substantial number of SDLs are issued to churches or religious organizations, often for fish fries. Hobert Rupe can speak to this in greater detail. We will see how much hypocrisy we have in the room today. As for hospitals, homes of aged...for aged and which I assume would be nursing homes, homes for indigent persons which I assume would be homeless shelters, and homes for veterans, their wives or children, which I don't know how that would apply today, I don't know that these buffers are still necessary. I am interested in hearing testifiers' comments on these aspects and would consider having the 150-foot buffer for these areas if deemed pertinent, since my primary focus with this bill is on that of churches. If there...this same legislation also deals with the schools. If there would be a way that someone would like to increase that for schools, I would be open for that, too, to increase the distance between a bar and a school. And a school, as recognized by the Supreme Court, is about everything except for a home school. So again, as we were writing this bill, the homes of the indigent, all...some of those things were kind of up in the air. We took them all out. I'm not going to fall on my sword over that one. The churches are really making a tough time in rural Nebraska. It's even happened in Lincoln. A church moved in, in between a liquor establishment moving, and I think it cost them a lot of money to move the church so they could be there. A hundred and fifty feet is about a half a block. That doesn't sound like a whole lot but in small town Nebraska

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half a block each way can take up quite a few businesses, especially when they're scattered throughout. Crete has many of these churches that have popped up downtown in empty storefronts. With that, I would take any questions. [LB906]

SENATOR ROBERT: Senator Karpisek, if a...for example, a lot of small town communities have businesses that have moved out, they're losing their businesses, and they make homes to...fairly good homes to newer or different churches that move in and look for a spot that's open and relatively low priced. If a church moves in, like you just mentioned in your other example, it doesn't affect the renewal, it just would affect a new application? [LB906]

SENATOR KARPISEK: Right. It would not affect... [LB906]

SENATOR ROBERT: What about a changed application in terms of if you sell a business and you're next to a church, or a church moved in, in between? Say a bowling alley sits in one spot, next door was an open area, it used to be a grocery store, a church moved in. Bowling alley sells some time later. Are they able to transfer or continue their liquor license? [LB906]

SENATOR KARPISEK: You'll have to ask Mr. Rupe but I think that that could really affect the sale of the business and the new person getting the liquor license, because it's not a continuation. [LB906]

SENATOR ROBERT: Okay. Thank you. [LB906]

SENATOR KARPISEK: Thank you. [LB906]

SENATOR ROBERT: Any other questions? Seeing none, thanks. [LB906]

SENATOR KARPISEK: Thank you. [LB906]

SENATOR ROBERT: First proponent. [LB906]

HOBERT RUPE: (Exhibit 2) Good afternoon. My name is Hobert Rupe, H-o-b-e-r-t, last name is Rupe, R-u-p-e, executive director of the Nebraska Liquor Control Commission. To answer your question, I guess I'll answer it right away, depends on how long that previous place was licensed. If it was licensed for more than two years, it would be grandfathered in. If it wasn't, it doesn't. If you look at 177, I mean you know that it's got a date even, what is it, May 24, 1935. That's when it was originally...this draft was put in, that no liquor license shall be issued for sale at retail of any alcoholic liquor within 100 (sic) feet of any church, school, hospital, or home for aged or indigent persons or for veterans, their wives or their children. This prohibition does not apply to any location within such distance of 150 feet for which a license to sell alcoholic liquor at retail has

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been granted by the Nebraska Liquor Control Commission for two years continuously prior to the making of application for license and, (b) to hotels offering restaurant service, to regularly organized clubs, or restaurants, food shops, or other places where sale of alcoholic liquor is not the principal business carried on if such places of business so exempted were established for such purposes prior to May 24, 1935. This has been a percolating issue for a while in front of the commission. It really has sort of bubbled to the surface, to continue that analogy, during the recent economic downturn. Just to give you an example of the case that Senator Karpisek alluded to, it was...I mean I think almost anybody who has spent any time in Lincoln, Nebraska, is aware of where N Street Liquor is. It's at the corner of 19th and N Street. It's been there...originally it was across the street and then it moved. It's been basically at that corner for I believe over 30 years, if not more. Recently the city of Lincoln is exercising its eminent domain power because they're going to widen 19th Street because they're going to move a lot of the traffic from 17th over to 19th. Okay, so what...but they'd still like to stay near where they're at, and so what N Street wanted to do was they wanted to buy Kirk Motors, an empty automobile place, exactly one block to the northwest at the corner of 18th and O Street. The problem was in the interim a small church had opened up into a small, formerly retail place. They had no objection, but by the statute the commission could not give a license because that new location had not been licensed. Okay. As was said, I don't know how much, I do know that N Street paid for that church to find a more larger and more spacious and more amenable accommodations elsewhere. I don't know what they paid. But at the same time, you've got the issue that came forward. I know Senator Gloor brought the issue. You know, he contacted my office regarding what's going in Grand Island. It's the same issue in Crete. And so the purpose is to look back at what is the purpose of this bill. I'm going to hand out the package here, and it's sort of funny. This brings us sort of full circle for the oral argument we had earlier on the SDLs and colleges. Currently, and these are our best guess because it's a little bit hard, we had to do a little in why they had to have it. Last year, in 2009, the commission issued 309 SDLs to churches. They can get it. They can get it, you know, for events there. They're one of the people in there. You have to remember that's almost, not quite, 10 percent of the total number of SDLs we issued last year. We issued 3,300. So churches are already utilizing the SDLs. In fact, we're coming, you know, we were coming up on the first phase of the SDL season as we're coming up on fish fry season. We're starting to get applications for those locations already, so a church is already utilizing these licenses. Okay. Now does this mean that somebody could move in right next to a church scot-free if you get rid of this provision? No. The church could protest it. The citizens could protest it, you know, based upon the nature of the application. Now they might not have much of an argument if they're in a business district clearly zoned for retail and they chose to move in there, but if you're trying to get a place, moving into a more residential neighborhood, you know, (a) it probably won't be zoned for commercial business there anyway. And if you're trying to move into a church and there's a protest, the commission is going to...that shall be heard before the commission. I can't speak for the commission because they'd have to hear the case. I can't really see them granting a

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liquor license if the local church is coming in, in opposition, because it's right next to some of their activities. What we're trying to do is trying to look forward as to is it...is this having an unintended consequence, and I think it's clear that it is. The unintended consequence is, is that a church, back in 1935, everybody had an idea in their mind what a church was, and that's not what we're seeing now. Back then the Ben Franklin store that had been closed for five years wasn't reopening as a church. It was reopening as another retail store. And so you're seeing those issues come forth. I guess I'd be prepared to answer any questions the committee would have. [LB906]

SENATOR ROBERT: Well, that part concerns me, the fact to where I see a lot of these things moving around in these retail spots and small towns and the fact that you have changing establishment hands quite often due to the economy or whatever happens. I don't think it would be the intent of any...really, it shouldn't be the intent of some of these churches that find a low-cost alternative in a retail area to house themselves, they found it and three or four doors down or around the corner there's a bowling alley or something like that. It changes and now all of a sudden they're out of luck. So that would be addressing this. [LB906]

HOBERT RUPE: I think it would. You know, the...it's 150 feet, and by the Supreme Court, we have to measure it from nearest external wall to nearest external wall. You know, the problem that the commission actually has faced in denying--and a lot of these never go to hearing because they withdraw the application after they find it, they get the report--is we'll get letters from the churches saying, we have no objection. But the statute is clear, no license shall be issued, and so that's directed to the commission and says you can't do it. And so that's when the commission was seeing more and more of these becoming problematic we felt it necessary to bring it to this committee's attention. [LB906]

SENATOR ROBERT: Would there be a possibility of leaving the language the way it is and changing "shall" to "may"? [LB906]

HOBERT RUPE: "May" would give a discretionary upon the commission. It would, you know, it might issue some of those...address some of the issues. [LB906]

SENATOR ROBERT: Just a question. I was curious. Okay. [LB906]

HOBERT RUPE: You know, my problem would be on the "may." I would be...we definitely don't want anything, you know, the school thing, we'd definitely like it to say "shall" for a school. We like to protect the schools as they're put there. You know, the issue has been the churches recently. Hospitals, I don't think there would be a hospital in opposition to it. In fact, we've actually been inquired by hospitals who want to be able to sell glasses of wine with their dinner as they're trying to upgrade their menus to their...especially some of their heart patients who are supposed to consume wine and

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we've had to tell them they can't really charge for it. I do have it on good authority that at least I think there might be one place which is using...is writing prescriptions for it and using that (laugh) as a way that they're giving wine to their heart patients. The home for aged or indigent, I think we might want to keep that in there. That wasn't the intent of this. You know, retirement homes, I guess I'm not really sure why that would still be in there. I mean given now I think you have a much larger population in the...in the retirement age, and if my own parents are an example, they're probably drinking more now at 70 than they were at 35 because they don't have us screaming little kids to bother them. They're out taking trips and having more fun. So I'm not sure that would be there. So, you know, I think there are certain parts of the thing which need to stay there, the schools. I think the home for aged or indigent should probably stay there perhaps, but that's not what's causing a problem. Then especially when you factor in that the exact entities which are being protected--churches--are utilizing nearly 10 percent of the total SDLs for their own purposes. [LB906]

SENATOR ROBERT: Now I will comment also, before I get to you guys, that I do know nearly every retirement home in my district has alcohol available. So you're saying for them to do that, they're having to take the folks' money, go down and get it for them and bring it back or...? [LB906]

HOBERT RUPE: They might be doing it. You got to remember, in the retirement home, it's their home. You know, that's their place of residence. You know, more than likely...and we've had this come up, they've got to be at least 150 feet, so it's... [LB906]

SENATOR ROBERT: Okay. Senator Price. [LB906]

HOBERT RUPE: ...they've got to, you know, walk and go back for it. I mean it's...like I say, 150 feet (inaudible). [LB906]

SENATOR PRICE: Thank you, Senator Rogert. Sir, just off the top of your head, what is the percentage...or it seems that the church issue takes a large percentage of the requests here or have the biggest impact. Can you size that for me? Can you say in the last two years all my requests have been because of a business wanting to move in next to a church or half of them, you know, something like that? [LB906]

HOBERT RUPE: I guess, if I understand your question, how many of these that have been denied have been the church issue, I would say most of the issues that come under 53-177, it is the church is an issue. Most people know about the schools. They're not going to the schools. Most places, you know a large retirement home, they would recognize that or a hospital, would recognize that. The problem is, is why you're seeing the upgrade is, is to a lot of people, when they're first looking at buying a property, aren't considering that a small storefront is a church. And so a lot of times they'll go ahead and make the deals. They're going forward with it and then, you know, when the Nebraska

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State Patrol goes out and does their new premise inspection and they measure that it's 138 feet, which was the particular case in the N Street liquor case, then it's a, you know, it poses a problem, you know. So I think most of the problems that were coming under 53-177(1) are church related, so... [LB906]

SENATOR PRICE: Thank you. [LB906]

SENATOR ROBERT: Senator Krist. [LB906]

SENATOR KRIST: If I look at this map of Grand Island or review the discussion of the definition of a church, which is where people worship, and I'm sure we're going to hear the opposition tell us a church is a church is a church, when this legislation was written, Blackberry was the name of a rabbit in Watership Down, I mean so we've come...my point is that we have evolved to a point where the traditional church with the steeple and pillar or whatever is not necessarily the traditional church anymore. Anyone can worship in a strip mall. That's the issue. [LB906]

HOBERT RUPE: That's the issue. And the Supreme Court in Nebraska has opined on it. It says it's a place where religious services are regularly scheduled and are actually held. [LB906]

SENATOR KRIST: Yet those same places, those churches, are 10 percent of the nonlicensed requests to serve alcohol. [LB906]

HOBERT RUPE: They're part of the total number of special designated licenses. Almost 309 out of 3,300, based upon our references, were located, for special designated licenses, at churches. Now at the risk of going bad, not all churches are created equally because I know some churches will...(inaudible) won't even get involved and some churches do more of them. You know, we do a lot of licenses for fish fries. We do a lot of licenses for summer events, carnivals. [LB906]

SENATOR KRIST: And as the dude what's in charge of Liquor Commission, you're also telling me that most of those churches, if you went back and asked them a question, would not have a problem having a liquor distribution point within 138 feet of their front door. [LB906]

HOBERT RUPE: I can say that most of the places, especially the ones which are causing the problems, where they're going into the business districts in the old storefronts, of those where, you know, a lot of times what will happen is the licensee will find out he's in trouble and they'll try...they'll have the church write a letter. Most...I don't think I've gotten a letter in opposition. Most of the letters have said, hey, we don't, you know, we don't care about that; they were here...you know, they're a business, we know it's going on. Okay. They're not opposed and they're actually saying, asking us to waive

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something that we can't waive because it says "shall." [LB906]

SENATOR KRIST: Thank you. [LB906]

SENATOR ROBERT: Senator Cook, do you have a question? [LB906]

SENATOR COOK: Yes, I do. Thank you, Mr. Chairman. Hobie, I got a question this afternoon about the definition of an indigent, homes for the indigent... [LB906]

HOBERT RUPE: Yeah. [LB906]

SENATOR COOK: ...and how that might go against the prohibitions for liquor consumption or some of the guidelines that they have in place related to alcohol on their premises. Is there a definition already in statute that you use as it relates to... [LB906]

HOBERT RUPE: No, there's not. [LB906]

SENATOR COOK: ...a home for the indigent? [LB906]

HOBERT RUPE: No, what we've used is the homes which, you know, you know, the Open Door Mission, People's City Mission. There are some housing areas where you have to meet certain of those criteria to get the more permanent housing. There's not a clear definition in the act. We've been using what we think is a logical interpretation is to those places, which is serving (a) people who don't have a permanent home or have that temporary housing only because they've...you meet those certain criteria. [LB906]

SENATOR COOK: Okay. So you're thinking temporary versus... [LB906]

HOBERT RUPE: We're thinking temporary versus...although there is the... [LB906]

SENATOR COOK: ...a subsidized place, placement. [LB906]

HOBERT RUPE: Yeah, or some of the subsidized places, we've been using those as, you know, we've been objecting on those as well, so... [LB906]

SENATOR COOK: Okay. Thank you. [LB906]

SENATOR ROBERT: Senator Coash. [LB906]

SENATOR COASH: Thank you, Senator Robert. Hobie, here in Lincoln I know that there's some churches that operate in temporary places, theaters for example. Where you know downtown, we've got Marcus Theatres, they rent out on Sunday mornings one of their auditoriums. People go in there and they worship and then the church pays

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them a fee. But, you know, six and a half days out of the week it's a movie theater.
[LB906]

HOBERT RUPE: Yeah. [LB906]

SENATOR COASH: Have you run into any problems with churches of that nature?
[LB906]

HOBERT RUPE: No, not really. The Supreme Court clarified that in the case where they said it's regularly held and that argument was made and they've sort of...and I can't remember the exact phrase they use, it's got, you know, religious instruction and services needs to be the primary purpose of the location. [LB906]

SENATOR COASH: Okay. [LB906]

HOBERT RUPE: So...because that was the concern, was that somebody could have a regularly scheduled prayer service at their home. Would that then create a church? And you know, when they dealt with that argument, the Supreme Court said, no, its primary purpose there is a dwelling, in the case with you it's a theater. You know, six and a half other days a theater is the primary use of it. So they did give us some issue there but, you know, in the case of where they're causing the problems, you know, that's what those places are. They're primarily used as churches, you know? [LB906]

SENATOR COASH: Okay. Thank you. [LB906]

SENATOR ROBERT: Senator Price. [LB906]

SENATOR PRICE: Senator Rogert, thank you. Sir, real quick, when we think about the 150-foot, you said from outside wall, nearest outside wall? [LB906]

HOBERT RUPE: Nearest external wall to nearest external wall. I believe the case cite is Intercessors of the Lamb v. Nebraska Liquor Control Commission, 1955. [LB906]

SENATOR PRICE: The reason I ask that, it would seem when we're looking at the...if you have multiple businesses in like rows in downtown it seems to have a definition, but what would happen like in a strip mall? [LB906]

HOBERT RUPE: In a strip mall, we've sort of, and you know perhaps erroneously, we've looked at, you know, more of the footprint of the license because, you know, you know, whereas (a) even if they're next to each other in downtown, it's clear that those are one property, you know, separately owned properties, where the other ones are broader. We've looked at more at the areas of the license because, you know, you know, we were trying not to take it to its ridiculous conclusion, where if you're at one end

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of a strip mall and two blocks later, you'd have to measure from that point to a location, we looked there from the nearest primary hard wall in the strip mall. See, we sort of...we don't believe that the Intercessors case, which was a 1955 case, strip malls were...had been contemplated, and so we've tried to use at least somewhat of a reasonable basis, Senator. [LB906]

SENATOR PRICE: Would you then say that's the same approach you would take on a regular mall? The reason I ask, we just opened up a church in the Mall of the Bluffs, now not a Nebraska place but it's in a great big indoor place. We took over an empty spot, you know, an old Foot Locker. Does that mean that any business that wanted to be there...because they're all under the same roof? [LB906]

HOBERT RUPE: Yeah. We think anybody within 100...based upon our interpretation, you're a mall. We would probably measure it from the actual...from the actual where the church is at. So in other words,... [LB906]

SENATOR PRICE: Okay. So the storefront. Okay. [LB906]

HOBERT RUPE: ...the guy clear at the other end might be okay. The guy in the middle might, you know, he might be in trouble. [LB906]

SENATOR PRICE: Okay. Because in election law it goes from the exterior wall of the whole thing for it. [LB906]

HOBERT RUPE: Yep. Yeah. [LB906]

SENATOR PRICE: So just wanted to make for harmony, stuff like that. [LB906]

HOBERT RUPE: Well, like I said, you know, we...the commission, you know, tries to utilize as much logic as we can in interpreting statutes until it gets to a point where it's just getting to the point where we need to say help us, Legislature, because this is becoming an untenable situation. [LB906]

SENATOR PRICE: Okay. Thank you, sir. [LB906]

SENATOR ROBERT: Any further questions? Seeing none, thank you. [LB906]

HOBERT RUPE: Thank you. [LB906]

SENATOR ROBERT: Next proponent. [LB906]

KATHY SIEFKEN: Senator Rogert and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. I'm

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going to make this short and sweet. We specifically like that section that deals with the churches, that's the problem our industry has to deal with, for the reasons that Hobie stated. Thank you. [LB906]

SENATOR ROBERT: Thank you, Kathy. Any questions from the committee? Seeing none, thank you. [LB906]

KATHY SIEFKEN: Thanks. [LB906]

SENATOR ROBERT: Next proponent. [LB906]

JAY VAVRICEK: (Exhibits 3, 4, and 5) And I've got a handout too. There's the first. I'll give you that set, this set and that set. Nice to see you and my name is Jay Vavricek and the first name is spelled J-a-y, last name V-a-v-r-i-c-e-k. Live at 2719 Brentwood Boulevard in Grand Island, Nebraska. And once again, I appreciate your leadership in weighing in on this issue because indeed I think...well, first off, I think each one of us have deep respect for places of worship. And also, when I think about hearing the testimony of Project Extra Mile and, occasionally I sit on the different meetings in Grand Island, I respect their mission and restriction of alcohol as it affects our total community. And also I think of the time when I first came to Grand Island 35 years ago from a small town and how the downtown of Grand Island has evolved and changed, and much of the rules before you that's being discussed here is impacting not only the ability to retain businesses within a downtown business district but potentially the future of that district. So I'm passing out a couple handouts, I want not to be redundant, but a little bit more description on the downtown map. There are seven churches within the proximity of that Third Street area downtown. There are six, quote, storefront churches, one longstanding church that's been there for many, many years. Thirty-five years ago there was one church within the proximity of downtown. Obviously, other churches located throughout our community's history, much like they have in each one of your communities, in isolated areas, in residential areas, because long ago some of the efforts that we saw in the 1800s of saloons, we wanted to avoid worship in areas outside of the scope of some of the activity that may not have been permissible to go ahead and promote family values. What we're seeing today is, once again, our downtown districts, probably much like many rural Nebraska settings where it's no longer...well, years ago it used to be primarily local ownership of business firms. Retailing was a destination, banks, service, on and on, but also an entertainment district. The reason that this is important in Grand Island...and let me also back up. I'm here just on behalf of myself. While I served as mayor four years ago, I'm not representing any organization. While I sit on the Main Street Economic Vitality Committee, which is a committee within the chamber of commerce that's trying to promote a vibrant downtown business district, this has been an issue that has curtailed the ability to grow that district into an entertainment district. You don't have this problem probably at the Old Market area, you probably don't have this historical problem in the

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Haymarket because those are vibrant entertainment districts. But if we were to look at trying to promote more economic activity within the downtown area of Grand Island, you look at entertainment, dining, potential hotel accommodations, but also you look at meeting space or being able to go ahead and have catering events that may or may not have the choice of serving alcoholic beverages under regulations as you provide and as are mandated locally. As you can tell, as a mayor, I believe in strong local control and I think there are measures, just like when the city council determines a recommendation to the commission, the Liquor Commission, of approving a license. I'd like to think there are ways that maybe within a municipality that would handle that, but short of that ability, I think we need to ask you for legislation that allows the opportunities to go ahead and compete and grow in business districts. As we talk about this, we don't also want to underestimate the fact that we may have this situation occur in strip malls and other commercially zoned business districts within our city. And so you folks know, Grand Island is kind of like a large town but it's too small to be a city, but I think we're very unique but also we're symbolic of rural Nebraska. It's not rosy right now on main street. We need jobs. And if we don't promote entrepreneurship with some new business developments in downtown business districts because we're impacted with regulations on a state level, then we can't control our own destiny and we can't, you know, provide jobs. So I want to go ahead briefly, in the time I have allotted, just to remark about this handout because indeed what I'm talking about is the impact of storefront churches that are there primarily because, one, lack of development, as you said, they're accessible, typically very inexpensive. When you look at the first picture, this, the Inglesia Cristiana, is no longer in operation and the reason I point this out, this is on Third Street in downtown Grand Island. Once a church is there, and even if it operates for two months or six months, it negates the possibility that anyone may go ahead, within 50 paces, put a dining establishment or look at a convention hall that may have alcoholic beverages. Second page shows it's for sale. You can buy that right now on the corner of Third Street in Grand Island. Iglesia Evangelica Pentecostes, and once again, I'm not being prejudicial in any way, it's just the fact that of the six storefront churches in Grand Island, as I said, we're a community that's very diverse and most of these are Latino worship service locations, but it's...the reason I point this out, this is right next to Sweet Dreams Lingerie. The fourth shows Inglesia Evangelica on Fourth Street, and in the distance you can see that there's a bar within 500...or 50 paces, excuse me, within 50 paces of that location. The next location, Inglesia Penticostal, that location, and I wish other folks could see this as well, this is a former liquor store and it's within 50 paces of Skagway, a grocery that has a liquor license. The next location, if you look at 410 Third Street, we have a bar that's being rejuvenated and right next to it is a church. You'll next look at Inglesia Evangelica Pentecostes, and if I'm mispronouncing these I'm sorry, my Spanish isn't too good, this is a former furniture store and now is a church, and it's located in the same building which right around the corner is a longstanding bar in Grand Island. It's right next to the Grand Theatre. Literally, the Grand is prohibited from being able to go ahead and expand into hosting receptions because of that proximity to that church location. And right across the street, for

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\$64,900 you can buy what was formerly the Gambles location, a Carpets and More location, but within the confines of the 150-foot, it falls within that umbrella that restricts anyone from potentially seeking that for new economic development activities. So the point in being here today is that we try to think how we can grow our city, how we can go ahead and be able define new opportunities for local entrepreneurship but also how we can bolster our tax base. Because as you know, most church locations receive status, they no longer pay property taxes. So we're seeing more and more properties come off our tax rolls, which makes it even more difficult for municipalities to provide services. So it's jobs, it's also being respectful of places of worship in such a way that in business districts it is impacting us, I believe, in a very unique way from when this legislation was drafted 75 years ago. [LB906]

SENATOR ROBERT: Any questions from the committee? Thanks for the information. Oh yeah, wave harder. Senator Dubas. [LB906]

SENATOR DUBAS: Thank you, Senator Rogert. Thank you, Jay, for coming down. I want to make sure I understood a point that you made that, okay, you have a building, a church has been in it, then that church moves out. That still is technically considered a church building? [LB906]

JAY VAVRICEK: No. [LB906]

SENATOR DUBAS: Okay. [LB906]

JAY VAVRICEK: You would have to ask the Liquor Commission... [LB906]

SENATOR DUBAS: Okay. [LB906]

JAY VAVRICEK: ...that specifically. But my point was that during the time of existence, if anyone is looking at potentially being within 150 feet, that opportunity is long gone. [LB906]

SENATOR DUBAS: Okay. [LB906]

JAY VAVRICEK: And also my other point was that many churches have no issues locating within 50 paces of existing liquor establishments and so, in effect, we're protecting certain churches from that infringement but yet many churches have no issues locating within proximity to locations that serve alcoholic beverages already. So we have a freedom of religion but not freedom of the ability to go ahead and operate within a commercial business district. [LB906]

SENATOR DUBAS: And because of the statutes, the way they're worded now, that kind of takes your local zoning control or the ability for your zoning boards to control what's

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going where. Would that be correct? [LB906]

JAY VAVRICEK: Well, if I'm mayor and there's a request to go ahead and locate a liquor establishment within proximity of a church, the city council will weigh in on that policymaking decision. And so between commercial zoning, residential zoning, all the different applications of local government, there would be a recommendation made to the Liquor Commission, and so people can weigh in on that. So indeed, I think there's ways potentially with zoning, but also local control measures that can maybe, you know, weigh in on this in such a way that it can handle there. If not, then it comes down obviously to your consideration and also to be aware of the fact that storefront churches are today, I think it was remarked, are completely different from the traditional sense of a church of what it was 75 years ago. While the mission is the same, the location is completely different. [LB906]

SENATOR DUBAS: Thank you. [LB906]

SENATOR ROBERT: Thank you, Senator Dubas. Any other questions? Thanks for coming down. [LB906]

JAY VAVRICEK: Thank you very much. Thank you for your leadership. [LB906]

TIM KEIGHER: Senator Rogert, members of the committee, my name is Tim Keigher, it's K-e-i-g-h-e-r. I appear before you today as the registered lobbyist and executive director of the Nebraska Petroleum Marketers and Convenience Store Association in support of LB906. Basically, it's because of the church situation in Grand Island. I have a couple members in Grand Island who brought it to my attention and I think, you know, you've heard enough about where the churches are, etcetera. So with that, I'd be happy to answer any questions. [LB906]

SENATOR ROBERT: Any questions? Senator Dubas, you have any questions? [LB906]

SENATOR DUBAS: No. [LB906]

SENATOR ROBERT: Okay. Thanks. [LB906]

JIM OTTO: Senator Rogert, members of the committee, my name is Jim Otto, J-i-m O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association. I appear on behalf of both associations in support of LB906. Don't need to repeat anything. You've heard all of the reasons. I do want to share one quick story with you. Those of you who remember Senator Kruse, who got term limited out but was always a very big advocate for stopping liquor from getting to minors, etcetera, also he is a retired Methodist minister. Anyway, he introduced a dram shop bill

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which some of you probably remember and when I went to him to talk about it because we were concerned about some of the things, he actually, if you recall, one of the things that he later withdrew was that he actually introduced a bill that would stop churches from serving wine at communion, and that got a lot of opposition. (Laugh) And...but I told him us Lutherans wouldn't care because we would say it was water when we started. So anyway, with that, I'll be glad to answer any questions. [LB906]

SENATOR ROBERT: Any questions? Seeing none, thank you. [LB906]

JIM OTTO: Thank you. [LB906]

SENATOR ROBERT: Next proponent. First opponent. [LB906]

MARGIE MAGNUSON: Margie Magnuson, M-a-r-g-i-e M-a-g-n-u-s-o-n, here on behalf of the Alcohol Impact Coalition. Obviously, we're opposed to the repealing of this 150-foot rule. When our coalition, I'll remind you, is Omaha based, about 12 to 13 neighborhoods, mostly east of 72nd in Omaha, our initial concerns when we started forming our coalition was the alcohol density in big...in our community. As we kind of got our legs under us and, you know, attended hearings and stuff, there's very few places for residents to stand, to take a stand against alcohol density and we kind of feel this bill is a step backwards. We've been asking the city, we've been asking the state to kind of address this and we feel this would be a step backwards in that process of trying to address the buffer zones that are in place. I realize a lot of the conversations has been around small communities, I've heard Grand Island, probably even smaller communities. I understand that they might have some different issues than we do in Omaha, but another thing kind of concerns me and I've heard this a lot and I hear it in Omaha, of tying liquor licenses with economic development. I have an issue with that. Our group is not opposed to good economic development but we don't believe that certain liquor licenses is really a good economic development. I've looked at a lot of material, there's tons of material out there dealing with alcohol density and the negative effects it has in certain neighborhoods, especially neighborhoods that are struggling, that a lot of our neighborhoods that are east of 72nd have. But there is so much data out there and I just grabbed a couple things that I wanted to read to you. This is through the Institute of Public Strategies, a report that was research that was done in 2003. The leading thing on it is research shows a high concentration of alcohol outlets in a location can hamper economic development. While such businesses may be heavily patronized, they add little intrinsic value to the community as a whole and they make the area less attractive to other types of retail business. I've also got another research by PIRE talking about alcohol effects on neighborhood violence: Government agencies with authority over land use, that's our zoning, and other liquor licenses can help fight crime, blight, and improve the quality of life by controlling licenses to sell alcohol and the location of these licenses. If there is an issue in Grand Island, if there's an issue in Wayne, if there is an issue in some small towns that is hampering their economic development, I'm

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assuming these towns would like maybe a restaurant that would serve alcohol, but would these small towns want another beer...another bar? Would they want another package liquor store? It's sort of like, again, I'm kind of going back to do we need some specifics here? Do we need to kind of narrow down our thinking instead of throwing the whole law out to accommodate some, you know, maybe cities that are 10,000, population of 10,000 or less? Maybe we need to kind of look at sort of being a little bit more specific. Maybe we need to look at what is good economic development. You know, I'm...we're all for having restaurants in my neighborhood. We're all for having good economic development. But would a package liquor store, would a bar, would that be good economic development? Is that what downtown should be, you know, littered with? So I kind of think that if this is something that is really affecting the smaller communities then let's look at specifics with that community. The other thing I wanted to bring out, too, was the SDLs. Those for churches, usually they're very short term. We're not looking at these SDLs that churches have are 365 days out of the year, so those are a little bit different. There's other cities that have bigger zoning things for schools and churches, 1,000 feet, 600 feet, 300 feet, so we have a very small...150 feet is not a big space so I guess I urge that let's not throw the whole law out. Let's look at some specifics if we can address that to our small communities, but let's not throw the whole thing out. Let's keep some buffer zones in place. Thank you. [LB906]

SENATOR DIERKS: Thank you. Are there questions? Senator Krist. [LB906]

SENATOR KRIST: Statistics are plentiful on both sides of the fence. [LB906]

MARGIE MAGNUSON: Right. [LB906]

SENATOR KRIST: Put yourself in my position and I'm asking you to do that, I'm not...truly. I have a friend who says that this is a good thing. The reason he says it's a good thing is because he's a pretty acknowledged Chinese restaurant in an Omaha area where before he could apply for his liquor license a church moved in, in the strip mall. The reason that he's going to have to fold up camp and move some place else is that he can't make ends meet because a Chinese restaurant, another oriental restaurant that's several blocks away, offers the option of having a glass of wine or a beverage with that meal. So even in the greater Omaha area there are people who, because of nontraditional church structures, and I stress that because you heard my question earlier,... [LB906]

MARGIE MAGNUSON: Right. [LB906]

SENATOR KRIST: ...are asking for some kind of a understanding of their economics and their economic development. What would you say to that specific statistic? [LB906]

MARGIE MAGNUSON: Well, and I guess it kind of goes back to I'm not necessarily

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opposed to a restaurant who's majority of their income is from food because I don't think they bring a negative element into the community, for instance, as a bar or a package liquor store, convenience store does. So I think there's room to maybe negotiate on certain types of licenses. I mean, again, it goes back to being more specific. You know, we did have an instance in a neighborhood where we had a storefront church that was across from a convenience store. What Omaha did was, since they were within 150 foot, they moved the beer coolers and they drew an imaginary line in the middle of the business and said, okay, this works. So there's certain ways they get around that. But you know, it's hard. Does it have to be black and white? Do we have to have one or the other? I guess I understand a restaurant and I support a restaurant. I have no problem with a restaurant who's well managed and wants to have alcohol served with their dinner. And I think most communities would welcome that. I'd welcome that in my neighborhood. I wouldn't oppose that. It's these others, I mean, so if you throw the whole law out and then suddenly in Grand Island we have, you know, 16 bars, I mean there has to be...I think we, again, we can kind of narrow our laws down, be a little bit more specific and to accommodate your friend. And I guess that's what I'd say to them, is I do support the restaurant and his liquor license but, you know, I don't know, is there room in the law to make those...? [LB906]

SENATOR KRIST: I hope so. [LB906]

MARGIE MAGNUSON: I hope so too. [LB906]

SENATOR KRIST: Thank you. [LB906]

SENATOR ROBERT: Further questions? Thank you. [LB906]

DARRYL HUTTON: Hi. Darryl Hutton, 3216 California Street, Omaha, Nebraska. I'm opposed to this. I just wanted to clarify a couple things in case you needed to reference them later. As far as like the case law that established the distance of 150 foot from exterior wall to exterior wall, that would be Calvary Baptist Church v. Coonrad, if you wanted to look that up. Margie made reference to the former Kum&Go which is a block away from my home where the designation of 150-foot from a church and it would be a storefront church, that the church has been there for 20-some-odd years and then basically they sat there and, like she said, they carved out this imaginary L-shaped license on paper that you couldn't designate...there's no tape in the store, there's no wall, but they said, okay, I'm standing over here, I'm in a licensed area; I'm standing here 1 foot over, I'm not in a licensed area. And so it was like, okay, well, it's a little confusing how you designate a section of a building and I think I always go back to what the intention of the act is, and the intention of the act is to clearly give that buffer, give that space. People in a bar, for example, tend to degrade in their, shall we say, language abilities or what they may say. Just as you may not like it if I sit here and would just cuss, just rant and rave and cuss, I think you need to also need to bear in

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mind that earshot distance that if you're a church, if you're a school, if you're...whatever it may be, what are you exposed to, not just the people and their different levels of intoxication but their behaviors. So like I said, I think the earshot of a negative comment, a cussing scenario is something that you would want to have that buffer from. As to your issue as far as certain businesses...obviously, no matter what you do, no matter what you do, somebody is going to benefit from it and somebody is going to get basically knocked down for it and that's going to happen on any legislation. Something is good for somebody; something is good for...or not good for somebody else. But I think if you have to get to that issue, I think you do look at the type of licensing, of the type of license. I agree with Margie that a restaurant condition or something where you have X percentage of sales of food, where food is your primary, so that somebody doesn't mask it as a bar that sells potato chips, whatever, but if your primary business is food and you happen to have an alcoholic beverage to go with your meal, I don't think that that's as negative of an impact as a liquor store, a bar. I live in a neighborhood with both and, in fact, they're close to a church. And of course the church moved in after the business, it wasn't the other way around, but I've seen the negative impact and if you're...and if you're looking at an economic boon in, for example, I keep hearing about Hastings, I don't know if a Class C license is going to be an economic boon for you. When we look at, you know, Whiteclay, we can say, well, look at how much revenue comes in from all the sale of beer in Whiteclay. Look at how much state money is used to try to clean that mess up. I think we need to be careful about where we go with this. I don't know if it's something where you address it by a population issue. I know from what you said that, you know, that could happen in Omaha so I don't know if you can say, you know, if you have a population of 30,000 or less, that's acceptable; if it's more, it's not. But just all in all, I'd be opposed to it. I think there should be some clear distance. What that may be I couldn't tell you but I think if a business moves next to a church, they obviously know they're not going to be able to get a license, and I think that we do need to keep that clarity because otherwise we're going to start carving up our cities, just like we did this Kum&Go, with imaginary lines and you can do this but here's how we're going to get around that. But I think however you do it, dot the I, cross the T and I'd like to see some changes on it. So thank you. [LB906]

SENATOR ROBERT: Any questions from the committee? Seeing none, thanks. Next opponent. We're surpassing 5:00 here so if we can keep our comments brief and nonrepetitive, we'd appreciate it. [LB906]

BENJAMIN RICE: Good afternoon. My name is Benjamin Rice. I am the youth representative for Partners for Otoe County. I'm here to speak as an opponent, quite obviously. First, I just want to present the question as we think about this: What do we value most in our society? Do we value our kids, our elderly, our veterans, and our traditions and heritage, or do we instead value our free enterprise and dollar signs above our morals? And quite simply put, the language of this bill is fine the way it is. I believe that to amend it would be sacrificing the integrity of our society's values. And it's

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come to my attention that the main argument as churches, when in all reality this is a foolish argument when you consider the distance. One standard city block is about 440 feet long. So an alcohol outlet and a church can exist on the same block with being well over 150 feet apart. And this isn't really an argument, I don't think, about a religion but instead one of public health and safety, and I ask which endangers the lives of our citizens more, churches or bars and package liquor businesses? I think that even atheists would agree that an increased number of churches is better for our community than an increased number of liquor outlets. And my question is that if churches are our main...are the main concern in this argument then why are we cutting out everything else? Why are we cutting out the home for the elderly, hospitals, etcetera? I don't understand that. And I think something that must be said is with these SDLs, it's not necessarily the churches that is requesting these or that are obtaining these. It is individuals from the churches. Say my older cousin, for example, is getting married here pretty soon. She's getting married in her church and the reception will be at that church. Perhaps she gets an SDL from that. They will request it to have the reception at that church. It's not the church and what the church stands for, so we can't hardly call the churches hypocrites in that. So with that being said, I would appreciate your consideration of not amending this and leaving it the way it is. I think that if you are to vote to amend this, I would say please do not go back to constituents and preach about traditional values because I believe this goes far against all traditional values that I can think of that I have learned from my history classes over the last 13 years. So thank you. [LB906]

SENATOR ROBERT: Any questions from the committee? Thanks for coming down. Next opponent. [LB906]

DIANE RIIBE: Senators, again, Diana Riibe with Project Extra Mile. We would oppose the bill, the proposal. Again, many of the comments and many of the points have been made. I will just bring up a number of them as a reminder. Current law does allow if a location has been licensed the two years previously to an application, that location can be a liquor license again, establishment, so there are provisions for continuous business in that location. I would just also make note that SDLs, in terms of churches being granted SDLs, again, we watch that process very carefully and most all of them are the Catholic Church specifically, and I would just say that likely most of those storefront operations are small upstart churches and probably not mainstream, established, longstanding churches. So there is a difference in terms of who is getting SDLs versus who are those churches who are there. I would also say that we probably shouldn't assume that most churches would have no problem being next to a liquor license establishment of whichever kind because we don't know that. And again, I would hope that the commission and others who proposed the proposal might bring us some hard data in terms of what the requests are and what the problems are with some very specific information. As a quick background, just to give you a sense of what other states are doing: Colorado has a 500-foot rule for schools, colleges, universities,

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seminaries; South Carolina, 300-foot, 500-foot for churches in a nonmunicipal area; Montgomery County, Maryland, has a 300-foot rule; Iowa has a 300-foot rule; the city of Chicago has a 100-foot rule; Missouri has a 100-foot rule; Tennessee has a 275-foot rule; Kansas has a 200-foot rule; and Utah, a 200-foot rule. So we are not out of sync. We are certainly in a standard that says these are expectations that many communities have to make certain that places that are either places of worship or places or healing or both be in some fashion separated in a small way. So we would urge your consideration and opposition to the proposal. Thank you. [LB906]

SENATOR ROBERT: Any questions from the committee? Seeing none, thanks. [LB906]

RON DRURY: Good afternoon. A few comments. Ron Drury, R-o-n D-r-u-r-y, here for myself. I am a pastor. I do serve a congregation. I have served in the community of Hickman for 20 years. Our community is struggling and what's the biggest problem with downtown mostly is that there are bars down there that do not foster family entertainment or family values or family encounters. The congregation I serve is a Lutheran congregation and we do have the Eucharist every Sunday, however, it's done in an appropriate manner as Jesus did 2,000 years ago. My main concern is, as a former drug and alcohol counselor is, is that we allow that buffer zone to remain in place because almost every person who recovers from alcoholism or alcohol disease does need that buffer zone, does need a place of sanctuary. So simply put, all I'm asking you to do is to keep the sanctuary in place and enlarge that sanctuary to that 150 feet that is there now. The back of this room is about 50 feet long, so we're asking three times of that. Just allow that sanctuary to stay in place for those people that are seeking refuge, that are seeking help, that are seeking healing, that are seeking a place to find help and wholeness. Thank you. [LB906]

SENATOR ROBERT: Thanks. Are there any questions from the committee? Thanks for coming. [LB906]

RON DRURY: Thanks. [LB906]

SENATOR ROBERT: Any further proponents...opponents? Excuse me. Anybody here neutral? Senator Karpisek to close. [LB906]

SENATOR KARPISEK: Thank you, Senator Rogert, members of the committee. Quickly, I've been told by Mr. Rupe that the Omaha C-store that was talked about and the imaginary line that was drawn was approved by the city, not by the commission. I'll have to find out more about that but don't know that that place is up. Small town Nebraska, often the same place is a restaurant or it's the bar. You go there for noon for burgers, you go there at night for beer. We don't have the Lone Star Steakhouse. We don't have those sort of things. We've got Gary's Place that makes burgers during the

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day and at night makes you a pizza if you get hungry. I'm a little bit incensed by the Omaha people again about small town Nebraska. I was asked what do we value more? I value my freedom, freedom to have a business where I choose and how I run it as I choose. I did say that I am mainly after the church part of this and said that maybe it shouldn't have been in the bill in the beginning. I think I stated that in the beginning, that I would be willing to take that out. The four hundred and some eighty-five feet is wall to wall. Be pretty tough to get them on the same block if it's wall to wall. It's not door to door. About the SDLs, I knew that I'd get somebody riled up on that, and they riled me up back. The church does let them have that SDL there. Maybe they're not the ones that put in for it but they let them have it there. If they're so against it, you would think they wouldn't let them have it there; say that's not right, we don't want it on our property. I do have to say that I just went to a wedding that the pastor just did a couple weeks ago and he did a great job, so that was fun. I do think that this needs to be looked at. It is really bothering small town Nebraska economic development. Again, we are not Omaha, we are not Lincoln, we don't have other things that we can put in there. If you get a steakhouse in there or just another bar, some thing in that small town that may not have much there, it's going to make a huge difference. That's about all I have. I'd take any further questions. [LB906]

SENATOR ROBERT: Any questions for Senator Karpisek? I have a letter here I'll read into the record and pass out from the Economic Vitality Committee chairperson from Grand Island in support. (Exhibit 6) And that closes the hearing for the day and all the hearings for the day. [LB906]

SENATOR KARPISEK: Thank you. [LB906]