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Health and Human Services Committee
March 07, 2013

[LB630]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, March 7, 2013, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB630. Senators present: Kathy Campbell, Chairperson; Bob Krist, Vice Chairperson; Tanya Cook; Sue Crawford; Mike Gloor; Sara Howard; and Dan Watermeier. Senators absent: None.

SENATOR CAMPBELL: We will go ahead and open the hearings this afternoon for the Health and Human Services Committee. I'd like to welcome all of you here. My name is Kathy Campbell, and I serve as the senator from the 25th Legislative District, which is east Lincoln and eastern Lancaster County. And before we introduce the other senators, I just want to go over the rules a little bit and the committee procedures. If you're going to testify, we need the bright orange sheets completed legibly, please. And if you do not plan to testify but would like to just leave us a message, you can do so on the white sheets on the other side of the room. As you come forward, please bring your orange sheet with you. And if you have handouts, you can give everything to the clerk, Diane Johnson, who is to my far left, and she and the pages will take care of it. As you come to testify, please identify yourself, your name, and spell it, because the transcribers, as they listen, need to have the correct spelling of your name also. Our pages today are Deven and Kaitlyn, we think two of the best. And we're getting really fond of them because they are so helpful, particularly to the people who come to testify. And we appreciate that kindness. With that, we'll go with introductions, and we'll start on my far right. Senator.

SENATOR WATERMEIER: Dan Watermeier from Syracuse, District 1.

SENATOR HOWARD: Sara Howard, District 9, midtown Omaha.

SENATOR COOK: Tanya Cook, District 13, northeast Douglas County and Omaha.

SENATOR KRIST: Bob Krist, District 10, and pledge chairman.

SENATOR CAMPBELL: Okay, we're going to remember that.

MICHELLE CHAFFEE: Michelle Chaffee, I'm legal counsel.

SENATOR CRAWFORD: Sue Crawford, District 45, Bellevue, Offutt, eastern Sarpy County.

DIANE JOHNSON: And I am Diane Johnson, the committee's clerk.

SENATOR CAMPBELL: Can we tell it's, like, the day before a four-day recess? Yes. All

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right. With all of that out of the way...and Senator Gloor will be here shortly to join us. We will open the hearing this afternoon on LB630, Senator Kolowski's bill on...to redefine the place of employment for Nebraska Clean Indoor Air Act. Senator, welcome. We're glad to have you. [LB630]

SENATOR KOLOWSKI: (Exhibit 1) Thank you. Good afternoon, Senator and Chairwoman Campbell and members of the Health and Human Services Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent District 31. LB630 requires home day cares and their vehicles, if used to transport students, to be smoke free during and after hours of business in accordance with the standards for commercial day-care centers. Currently, the Nebraska Clean Indoor Air Act protects employees and the general public from secondhand and thirdhand smoke in the workplace and public places, but the act has a loophole for in-home day cares. Even though in-home day cares are defined in this act as businesses and public places, people are still allowed to smoke anywhere in them until the first day-care child enters the home and after the last day-care child exits. Before and after work we can't smoke in our offices, but people can smoke in home day cares. So for adults we have clearly defined protections from secondhand and thirdhand smoke, but not for our most vulnerable citizens, our children. Most of you are familiar with the term "secondhand smoke," which occurs when people come into contact with the smoke and other airborne products that come from being close to burning tobacco products such as cigarettes. In an average home, it takes six hours for the fresh tobacco smoke to be exhausted from the home. In a newer or more airtight home, it takes 25 to 50 hours to clear the smoke from these homes. Thirdhand smoke is the residual nicotine and other chemicals left on a variety of indoor surfaces by tobacco smoke. Thirdhand smoke residue builds up on surfaces over time and resists normal cleaning. It cannot be eliminated by airing out rooms, opening windows, using fans or air conditioners, or confining smoking to certain areas of the home. Secondhand and thirdhand smoke causes increased incidence of ear infections, colds, asthma, and cancers. Children are more vulnerable to these harmful effects because their bodies are growing and they breathe faster than adults. The most fragile children in day cares are infants, and they usually spend their whole day inside. Studies have shown that up to half of all SIDS deaths are caused by breathing secondhand smoke. The only way to protect nonsmokers from secondhand and thirdhand smoke is to create a smoke-free environment, whether that's your private home or vehicle or in public places such as businesses, hotels, and restaurants. Children don't have a voice or a choice in this matter, and it is my goal to be their voice today as I urge you to give them the same protections that adults have when it comes to secondhand and thirdhand smoke. So what do parents want? Ninety-five percent of parents with children in their home do not allow smoking in their home at any time. This figure is from the 2010-2011 Nebraska Adult Tobacco Survey from DHHS. This is true even though 18 percent of adults still smoke in Nebraska. Ninety-eight percent of parents who do not smoke and have children under 18 living in their home do not allow smoking in their homes or their

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vehicles at any time. Seventy-six percent of parents who smoke and have children under 18 living in their home do not allow smoking in their home. Twenty-seven percent of parents who smoke and have children under 18 living in their home do not allow smoking in their vehicle at any time. These figures bear repeating. The vast majority of parents with children, 98 percent of the nonsmokers and an astounding 76 percent of smokers, do not allow anyone to smoke in their home at any time. This survey drives home that most parents, even ones that smoke, do not want their children exposed to secondhand and thirdhand tobacco smoke. My staff has gone through DHHS's listing of licensed day cares by zip code and pulled together a long list of zip codes and, in most cases, towns where there is only one day care available, and that day care is an in-home day care. If any of these day cares allow smoking in their home...in the home, the parents in these towns do not have a choice to take their children...their child somewhere else. And we have quite an extensive list that has been compiled that helps us to understand the difficulties in certain locations. Nebraska has approximately 88 percent of all parents in the work force, and we consistently rank among the top five states with the highest number of mothers in the work force who have children less than five years of age. This means the majority of our children under age six are in someone else's care during the day. With over 60 percent of day cares in this state being in-home day cares, many of these children will spend their days in the care of these facilities. This bill advocates for those working parents and their children to have a safe place for their children to learn and to grow. This is a public health issue because these children are the future of our state and we want them to grow up with sound health so that they can be happy, healthy, and productive citizens. I thank the committee for their time and consideration and would be more than happy to answer any questions. Keep in mind we have several experts, hopefully, that will be testifying after me and can talk in depth about child care, health, and the history of this particular legislation. Thank you very much. [LB630]

SENATOR CAMPBELL: Thank you, Senator. Questions from the other senators?
Senator Gloor. [LB630]

SENATOR GLOOR: Thank you, Senator Campbell. And thank you, Senator Kolowski...
[LB630]

SENATOR KOLOWSKI: Yes, sir. [LB630]

SENATOR GLOOR: ...for introducing this bill. But you talked about the evaluation that you did and your staff did of the number of communities that had one day-care provider. Let me turn that issue around the other way, which is, are we...unintended consequence is my big theme this year in a variety of areas. But is the unintended consequence that we have people whose tobacco addiction is so strong that they may say, in those communities, I'm just closing down my day-care center because I like my cigarettes more than I like providing day care? I mean, are we...have you thought through the

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reality of we may leave some communities without day-care services because that addiction is so strong? [LB630]

SENATOR KOLOWSKI: Yes, sir. And in our discussions, we did bring up the fact that that could be a reality in certain situations. We've had comments all the way from...it's already been on TV in a Omaha location, as far as the projections on this. And one person said, you know, I don't think it's the state's right to tell me if I can smoke or not. And I couldn't agree with them more. Just don't ask for a day-care license because that's your home and what you do in your home is your business. And your personal right to smoke is your personal right to decide to do that. But I think the bigger issue is, in this case, in our world today--especially with the healthcare issues that we're examining and having many hours spent on as far as the affordability of our healthcare in the future--to set up an environment where this would be a potential issue for young children; and having long-term health issues with those children far outweighs, in my mind, the difficulty we might have with incidents in certain places. Although we have quite a few...quite a listing of cities...towns with only one day care, we don't know if they were smoking or nonsmoking places... [LB630]

SENATOR GLOOR: Okay. [LB630]

SENATOR KOLOWSKI: ...but we only know that it's a day care. [LB630]

SENATOR GLOOR: Okay. [LB630]

SENATOR KOLOWSKI: So that would be another stage or another step in the whole process, or in any part of Omaha or in Lincoln we're the same way as far as the status of those particular day cares might be. The one incident on TV that did make the news in Omaha when this first came out, the lady running the day care had been a smoker. She quit, but her husband still smoked. And now she might have the day care in her lower level of her home, of a "tri-story" or some kind of split-level or something; but if her husband is upstairs, I think they still only have one air conditioner, one heating unit, all those kind of things. The circulation of the air is right there and still among those children if he smokes while they're in the house. Now if they don't smoke while the kids are there, it's still the residue issue. So you start getting into all those things. I use the example in a sample of thinking of my own 18-month-old grandson--one of them--and I said, when I walk into a room, my nose is six foot from the floor. When he's in that room, he's all over that floor. Hands, knees, feet, pants, shirt, drool, I mean the whole nine yards is there for him. And he's active, and he's all over on the rug, on the different places all through that room and all the toys or anything they would have there. And there is that residue that does impact, and it can be picked up and can have a detrimental effect upon a child. [LB630]

SENATOR GLOOR: Okay. [LB630]

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SENATOR KOLOWSKI: And I think we need to really be asking the question of the long-term effects and the long-term issues that come with the one person smoking versus the number of kids that could be in that environment. [LB630]

SENATOR GLOOR: Okay, thank you. [LB630]

SENATOR KOLOWSKI: Thank you, sir. [LB630]

SENATOR CAMPBELL: Senator Krist. [LB630]

SENATOR KRIST: For those that would read the transcript and may not have a copy of...the green copy in front of them, this is an immediate thing. You're proposing that once the bill is passed, of course, without an E clause, 90 days after session it becomes law. [LB630]

SENATOR KOLOWSKI: Yes, sir. [LB630]

SENATOR KRIST: So we're asking those people that potentially would be on this list in those towns to comply or not comply with the licensing for day care. And I mean no judgment by that. [LB630]

SENATOR KOLOWSKI: Sure. [LB630]

SENATOR KRIST: I am in favor of the effort, but it's a reality... [LB630]

SENATOR KOLOWSKI: Absolutely. [LB630]

SENATOR KRIST: ...as this comes on the floor, people need to understand that this is what's going to happen. And I don't think this is a consent calendar item. So are you prepared to prioritize this? [LB630]

SENATOR KOLOWSKI: I could, and it's part of a discussion we're having in my office as far as the power we want to put behind this or even a modification of the time limit of an amendment of something as far as the phasing in of this law over time. [LB630]

SENATOR KRIST: Okay. [LB630]

SENATOR KOLOWSKI: I'm kind of open for any issue that we could possibly look at. But I know...I'll flash back to my earlier days in the Millard Public Schools, where this...where the teachers' smoking lounge was in the building. That cloud of smoke was not good for anyone, including the kids that walked by when the door was open and all those things that happen. When the district, through our health education committee

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and process, said we're going smoke free--stadiums, smoke free; gyms, smoke free; schools, smoke free; vehicles owned by the district, smoke free--a number of people needed time to get into a smoking cessation program and to adjust their habit, because it was a real challenge for a lot of them. Today it's like a different world, as you know, in restaurants, as we all do, as well as what's happened at school. So I think, trying to be reasonable, I'm not opposed to an amendment or any kind of phase-in, but I also think in terms of those kids. And we're in a world where that...the incident of those things happening, I don't want to see that built up on another set or another range of age of kids while we're putting it into place. [LB630]

SENATOR KRIST: We had conversations off-mike, off-line... [LB630]

SENATOR KOLOWSKI: Yes, sir. [LB630]

SENATOR KRIST: ...about my experience with flying airplanes and telling someone they couldn't smoke on a 12-hour sortie, particularly in a combat zone, is pretty stressful. But it was black and white one day to the next. The interesting thing I think I mentioned to you was the outflow valves which control the air coming in and out of the airplane were...if you've ever seen one after 14 guys on an airplane were smoking, you just didn't want to have anything to do with the tar and the buildup, so I understand. I didn't have an opportunity to sign on. I just might do that. [LB630]

SENATOR KOLOWSKI: Happy to have... [LB630]

SENATOR KRIST: But I think we should think about...the worst thing in the world I know is to be flying next to the guy who's having a nicotine fit after he's been told he can't have a cigarette. So we should have that discussion. Thank you. [LB630]

SENATOR KOLOWSKI: Yes, sir, or buy him a lot of gum. [LB630]

SENATOR CAMPBELL: Senator Howard. [LB630]

SENATOR HOWARD: Thank you, Senator Campbell. Thank you for introducing this bill. My question is, this appears to do a lot with licensing. And what was your reasoning behind attaching it to the Clean Indoor Air Act versus the child care licensing statutes? [LB630]

SENATOR KOLOWSKI: The...making it a health issue, it's probably a lot stronger that way because it's connected to a very definite set of issues that cause certain things to happen, especially to the most vulnerable and youngest members of our society. So I think the lean was that direction rather than not. [LB630]

SENATOR HOWARD: Okay, thank you. [LB630]

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SENATOR CAMPBELL: Senator, we just want to note for the record, on the list that you provided to us, these are all licensed... [LB630]

SENATOR KOLOWSKI: Yes. [LB630]

SENATOR CAMPBELL: ...child care. So... [LB630]

SENATOR KOLOWSKI: Correct. Yes, they are. [LB630]

SENATOR CAMPBELL: ...Senators, you need to keep that in mind, because, for instance, in my county on the first page you list Hallam. Well, there may be more than one provider in Hallam, there's only one licensed provider. [LB630]

SENATOR KOLOWSKI: Yes. And certainly, thank you, Madam Chairman. I think that's a very important point, because there's a lot of places that children are dropped off, with aunts and uncles, grandmas and grandpas, on a daily basis that would be perhaps just their own kids or some other neighborhood kids because school let out at this time, parents are working until a later time, and the kids have to go somewhere. And so you're absolutely correct. There could be other situations, and that is not under our control, that's a family choice. The vast majority of interest, in people I've talked to on this topic, they were...some were in shock and some were just plain-out very surprised that this wasn't in the law when it was originally passed. And they are disappointed that that hadn't happened and that we had to come back and do something like this. [LB630]

SENATOR CAMPBELL: Okay. I'm sorry. Senator Howard. [LB630]

SENATOR HOWARD: I apologize, one more. Can you speak to the penalties if this is violated? [LB630]

SENATOR KOLOWSKI: Well, that would be up to Health and Human Services as far as how do you check on a location or a place. I don't think anyone...the vast majority of parents that we talked about, those percentages, do not want their children in a place...if they walked in and smelled that when they thought the place was supposed to be smoke free, I think you'd probably hear about that. And I think the vast majority of parents I know would not want their child in a place like that. So they're usually asking or sniffing it out earlier to make sure that it's as clean as possible. So I think the penalties and the enforcement is out of our realm. But it certainly would fall within HHS to solve that issue, just like the state Department of Education would with any educational violations. [LB630]

SENATOR HOWARD: Okay, thank you. [LB630]

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SENATOR CAMPBELL: Senator Krist. Oh, Senator Crawford. You're pointing to Senator Crawford. [LB630]

SENATOR CRAWFORD: So currently this act prevents smoking while the children are in the day care. Is that correct? And this is to expand it... [LB630]

SENATOR KOLOWSKI: Yes. [LB630]

SENATOR CRAWFORD: ...to include when they're not there. [LB630]

SENATOR KOLOWSKI: Right, because of the second and thirdhand smoke. Yes, it is. [LB630]

SENATOR CRAWFORD: Right, right, right, right. [LB630]

SENATOR KOLOWSKI: And their vehicles, if they're transported. [LB630]

SENATOR CRAWFORD: Right. And the vehicles. [LB630]

SENATOR KOLOWSKI: If they do not transport, and some places don't... [LB630]

SENATOR CRAWFORD: Okay. Do you have any information about the extent to which day cares were reported under this act before when...because there was smoking going on that shouldn't have been going on during the day? [LB630]

SENATOR KOLOWSKI: How many violations in numbers? [LB630]

SENATOR CRAWFORD: Right. Right. If there were any violations reported. Okay. [LB630]

SENATOR KOLOWSKI: I don't have that. We could ask and see if our resources can find that, if you'd like that. [LB630]

SENATOR CRAWFORD: Okay. That just kind of addresses the enforcement issue of whether it's an option. [LB630]

SENATOR KOLOWSKI: It does. We don't know how much of a burden that would be, all told. And you also have the situation, of course, if someone buys a home that's been existing for a while. If there were smokers in it earlier, the difficulty is, as Senator Krist said, of trying to remove that residue. If the new owners are nonsmokers and they want to open a day care in their lower level or whatever else...you have all these kind of things that come into play. But I hope they'd not become obstacles that people couldn't open a place and take care of business as they would desire to do that. So there's a lot

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of scenarios out there. I don't want to put any more on the table, because things happen like that. [LB630]

SENATOR CAMPBELL: Any other questions? Just for everyone's benefit, the legal counsel has provided to me that it already is in statute the penalties that would be in place. A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Act is guilty of a Class V misdemeanor for the first offense and Class IV for the second and subsequent. And then it goes on to talk that they would be able to go to a smoking cessation class. A proprietor who fails or neglects would be a Class V misdemeanor. And each day that a violation continues to exist shall constitute a separate and distinct violation. And every act or omission constituting a violation of the Nebraska Clean Indoor Act by an employee or agent of a proprietor is deemed to be the act or omission of such proprietor. So you may want to review that, Senator. [LB630]

SENATOR KOLOWSKI: Thank you. Thank you. [LB630]

SENATOR CAMPBELL: Thanks to the legal counsel for bringing that to our attention. It answers one question at least. [LB630]

SENATOR KOLOWSKI: Thank you, Madam Chairman. [LB630]

SENATOR CAMPBELL: Uh-huh. Thank you. I assume that you will be staying, Senator. [LB630]

SENATOR KOLOWSKI: I will. [LB630]

SENATOR CAMPBELL: Okay. [LB630]

SENATOR KOLOWSKI: Thank you. [LB630]

SENATOR CAMPBELL: All right. We will go right ahead and ask for the first proponent. We do use the light system in the Health Committee. While we don't have an overflow crowd today, we still use the light system. You have five minutes. It will be green for four; yellow for one; and red, we'd ask that you bring your comments to a conclusion. Good afternoon. [LB630]

MARK WELSCH: Good afternoon, Senator. And thank you, Chairwoman Campbell and Senators, for being here today. This is a very important bill. I'm glad we are able to have a public hearing on it. My name is Mark Welsch. That's spelled M-a-r-k W-e-l-s-c-h. I live at 5611 Howard Street in Omaha, and I'm here representing a nonprofit organization, GASP, the Group to Alleviate Smoking Pollution. And we've been working to clear the air and prevent children from beginning...becoming addicted smokers since 1989, quite some time. And we've had some great successes along the way. And you might ask

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why I'm here today and why I brought this bill and found Senator Kolowski to introduce it for us. This summer I went to help a friend in a home where he was doing some remodeling work. I had no idea that he was taking me into a very smoky house until I opened the door and that smoke hit me in the nose. But I told him I was going to help him, so to hell with my health. I went ahead and went in there even though I knew I was going to suffer later because I am quite sensitive to tobacco smoke. What shocked me even more was that as the person that owned that house greeted us, she was smoking a cigarette. There were all kinds of kids running around in this building, in her home. Come to find out that that's a day care. She was smoking right in front of the kids, breaking current law by doing so. But, you know, I was not there as an enforcer, so I just said nothing to her. I mentioned it to my friend later, and he says, oh, don't mention her name or my name later. And I said, okay, I won't. But I just had to say, you know, this was something that was on our radar, you know, five or more years ago and we did bring it to the Legislature. It failed to get passed, so I decided that it was time to bring this to the fore again. In the past, senators have decided to allow smoking in day cares before any of you became senators. And people have been allowed to smoke inside in home day cares, as far as I've been able to determine, since the state of Nebraska was formed. And we've had a long history of allowing smoking in businesses and in homes. Only recently have the laws changed to protect the innocent bystanders' health and lives by making more businesses and public places completely smoke free. People have demanded a change to the law to require smoke-free throughout. Aren't we glad that the phrase "smoking or nonsmoking" is no longer part of the restaurant businesses in Nebraska? It's great just to go in. Sometimes I have fun and I ask them, is...could I sit in nonsmoking? And they sort of smile and say, it's all nonsmoking. So it's great for that big change to have happened. Nebraska has not allowed smoking in almost all businesses, even after hours, since 2009, when the law was changed, or, actually, when it went into effect. It was changed in 2008. There are a few exceptions, including cigar bars and in-home day cares. What's wrong with this picture? In theory, cigar bars should not have any children in them. But, of course, there's no law that says they can't have children in them. Day cares, on the other hand, are geared for children to be in them, and yet we allow smoking there. Children don't have a choice, but the parents may not have a choice either, as the senator mentioned. There are thousands of chemicals in the air. Let's see, I better speed this up. I guess, in conclusion, I'd just like to say that for the sake of the children, the most vulnerable, the most precious people in our state, I hope you will advance this bill to the floor of the Unicameral quickly. I don't see any downside to this other than being a little inconvenient for smokers who still may want to smoke inside. Although, to answer your question a little more fully, there has been a very recent change in the rules and regs that does not allow them to smoke anywhere in the building at all when there are client children in the day care. Even though only the first floor may be licensed, they can't smoke upstairs, they can't smoke downstairs, effective, I think, less than a month ago. And they're phasing that in also as they take time to educate all of the people with day cares. Breathing secondhand smoke increases the risk of children to develop asthma and other breathing problems, ear

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infections, cancer, and, as the senator mentioned, even death from SIDS. The children in Nebraska need your help to be able to grow up in healthy, smoke-free environments, protected from toxic secondhand smoke pollution. I believe the children deserve the same protection that adults have when they go into a workplace. Please protect children, not the smokers. Please protect the children. Thank you very much. [LB630]

SENATOR CAMPBELL: Thank you, Mr. Welsch. Is there...are there questions from the senators? Any questions? Thank you very much for your testimony today. [LB630]

MARK WELSCH: Thank you. [LB630]

SENATOR CAMPBELL: Our next proponent? Good afternoon. [LB630]

DAVID CORBIN: (Exhibit 2) Good afternoon, Senator Campbell and members of the committee. My name is David Corbin, D-a-v-i-d C-o-r-b-i-n. I'm here on behalf of the Public Health Association of Nebraska, in which I'm the Nebraska governing council member to the American Public Health Association, the largest and most prestigious public health association in the world. Some of the things I'm just going to reiterate because they've already been said. But I do think some bear repeating. Children are the most vulnerable to thirdhand smoke exposure. They crawl on carpets and furniture. They frequently put things in their mouth, including their hands, which have been on the furniture and toys. And, as mentioned earlier, they breathe faster. But they also have a smaller body mass, they have less-developed defenses against environmental pollutants, and they spend more time indoors. To...if you've ever looked on-line or if you know anybody that's been in an apartment building where there was smoke damage--not fire damage, but smoke damage--you know how much it takes for that cleaning company to come in and then free that apartment--that wasn't even in the fire but just got smoke from a nearby apartment--all the things that those professionals have to do to clear the toxins out of that. Although that's from a one-time, more major event, this is prolonged smoke after time, after time, after time, and it builds up over and over. As also mentioned, I also was a teacher, and so I was in the schools in those days when there were teachers' lounges where there was smoking. And it didn't take long for the kids who--me, as a health educator, was teaching them about not smoking--to see the hypocrisy of teaching in the schools about not smoking and then having smoking in the schools and smelling it on the teacher and smelling it by the teachers' lounge when you go out. That...although young kids don't have the sophistication of being able to see that hypocrisy early on, they do start smelling it. They do start saying, well, people tell me not to smoke, and then they are seeing that it's going on in the cars that they're riding in or in the building in which they are supposed to be protected. So on behalf of the Public Health Association of Nebraska, we think this is a good bill. We think it is something that you should send forward. And I thank you for your time. [LB630]

SENATOR CAMPBELL: Thank you, Mr. Corbin. Questions from the senators? Thanks

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for coming today and for your testimony. [LB630]

DAVID CORBIN: Thank you. [LB630]

SENATOR CAMPBELL: Our next proponent? Good afternoon. [LB630]

DAVID HOLMQUIST: Good afternoon. Excuse me while I fall into the chair. [LB630]

SENATOR CAMPBELL: That chair is very tricky. [LB630]

DAVID HOLMQUIST: Well, and the reason I sit in back is because I have a really gimpy knee right now and I try to keep it straight. So anyway... [LB630]

SENATOR CAMPBELL: Oh. [LB630]

DAVID HOLMQUIST: Good afternoon, Chairwoman Campbell, members of the committee. It's my pleasure to appear before you today in support of LB630. My name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t. I'm a registered lobbyist, I represent the American Cancer Society Cancer Action Network. I appear in support of this bill today with some reservations, and I'll give you the reasons for the reservations. My biggest reservation is that any time we look at opening up the Clean Indoor Air Act, we open it wide for other, perhaps less worthwhile things to happen to it. As you may remember seeing on the television when we were debating this bill several years ago, it was very contentious. There were many, many amendments attempted to be made to it. It took us two years to get it done, and I don't think the dust has settled yet on it. And this is the reason I have some concern. So I wondered if there might be an alternative to putting this in legislation. It seems to me that in looking at the statutes that were mentioned earlier in terms of licensure: the department shall be the state's coordinating agency for licensure and regulation of programs in this state as they relate to child care. That is statute 71-1914. Further on in the chapter is...Chapter 71, is 71-1916, and I think this is the important...I'd just like to pull this out as a possibility for consideration: the department shall adopt and promulgate such rules and regulations, consistent with the Child Care Licensing Act, as necessary for (a) the proper care and protection of children in programs regulated under the act. And then it goes on in the second section to say: the department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children in the programs. I think that that really kind of gets to what I'm trying to say. I respect and thank Senator Kolowski for bringing this to our attention. It certainly is an issue of great importance. I'm a grandfather. I have five grandchildren, many of whom have been in day-care programs, one of whom continues to be in a respite-care program because he's special needs. And the possibility of an exposure in those environments is abhorrent to me. I, and along with Mr. Welsch and others in this room, worked diligently several years ago to pass the Clean Indoor Air Act, and my real concern is opening that up to the possibility

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of senators applying amendments that would take bars back to being smoking facilities and other kinds of potential hazards. So my support is, I suppose, somewhat tempered by my concern over the overall effects of the Clean Indoor Air Act and the possibility of perhaps looking for another solution to this clear-cut problem. It is a problem, I don't want to deny that. But I'd like to find a solution that would call on the department to promulgate rules and regulations that is their job when they're dealing with licensed day-care providers. So with that, I encourage you to do what you feel is right. And that's your job; we simply give you our opinions on these issues. And with that, I'd entertain any questions you might have. [LB630]

SENATOR CAMPBELL: Questions from the Senators? Mr. Holmquist, that's an interesting proposal. We had a bill slated for, I believe, the last day of hearings, by Senator Mello, that dealt with child-care regulations. And Senator Mello had put it on, wanting to ensure that we got those regulations in place. The Governor has already signed the regulations. And so Senator Mello then withdrew the bill because the Governor had taken care of that. I do not know whether those new regulations touch upon this at all. I have to be honest with you, I don't. And so it may be that the senator's office would follow up and visit with the department to see whether these new regulations touch upon this topic. I don't see anyone from the department here today, so we'll probably have to make an inquiry, and I'm sure the senator's office...but it's an interesting question. [LB630]

DAVID HOLMQUIST: It's just...it's a cautionary tale. And while I certainly respect the senator introducing this and respect the intent, and in support of the idea, I do have a grave concern about the possibility of opening up the existing...what is one of the strongest laws in the nation. These laws have been...well, in Nebraska we've had relatively little contention since the bill passed, other than the amendment from the cigar bars, which I, of course, didn't support either. But nevertheless, other states, surrounding states, for instance, Kansas, they've been fighting their clean indoor air act in the legislature for four years now. Every year there's some new bill filed to weaken the law. Hawaii has been clean in terms of its clean indoor air for many, many years, and yet every year there is a bill filed to try and whittle away at it. So that's my caution. It's certainly...I believe that a licensed day-care facility should not allow smoking after hours. It should not have secondhand or thirdhand or firsthand smoke in any way, shape, or form. I just would like to find a resolution that would be a little more user friendly for those of us...for you who would end up having to fight it on the floor. [LB630]

SENATOR CAMPBELL: Okay. Any other questions or comments? Thank you, Mr. Holmquist, for coming today. [LB630]

DAVID HOLMQUIST: Thank you. [LB630]

SENATOR CAMPBELL: Our next proponent? [LB630]

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DON WESELY: Chairman Campbell, members of the Health and Human Services Committee, for the record I'm Don Wesely, D-o-n W-e-s-e-l-y, representing the Nebraska Nurses Association, which supports the bill. And I don't have anything to add in terms of the issue itself other than to say having been around for as long as I have, the evolution of this social change has been remarkable. And those of us who have got some years on us have seen...my first year down here, we had just--the year before, I think--implemented the ban on smoking in the elevator. Remember, that was our first step. Who could even imagine that happening. But I still remember people on the elevator with a cigarette and then thinking, oh, gosh, that changed; I have to put it out. And then through the evolution of all this, it's just been remarkable. And now we're taking the step of saying you don't even have to be smoking. The secondhand...but it does stay in the home and in the furniture. And I think this is the logical next step for our children. But it's a big change, yet I think society has accepted it, and I don't think that we're going to go back to where we were before, hopefully. And so I commend you to support the bill and hope it'll pass. [LB630]

SENATOR CAMPBELL: Any other questions? Thank you, Senator. [LB630]

DON WESELY: Before I go, I've got to tell you, though...Shirley Marsh, who represented your district before you...we allowed smoking on the floor of the Legislature. I mean, of course, smoking was allowed everywhere. But she used to have a little fan on her desk over there and used to have the fan...I can still remember on the floor, having this fan blowing, and you'd know somebody was agitating her a little bit by smoking next to her. So it was everywhere. And they'd do it on purpose just to irritate her and walk over by her. So she had this fan going all the time trying to keep the smoke away. So we've come a long way from those days. [LB630]

SENATOR CAMPBELL: Absolutely. Thank you very much. [LB630]

DON WESELY: Thank you. [LB630]

SENATOR CAMPBELL: Our next testifier? Good afternoon. [LB630]

BRUCE RIEKER: (Exhibit 3) Good afternoon. Chairman Campbell, members of the Health and Human Services Committee, my name is Bruce Rieker, B-r-u-c-e R-i-e-k-e-r, appearing on behalf of the Nebraska Hospital Association in support of LB630. It's been an interesting conversation, maybe, about the means to an end. We would urge that the committee find the best means possible to achieve this public goal. We applaud the senator for doing this. It's our responsibility to protect those who cannot protect themselves. And I think children definitely fall in that category, and for that reason we support this bill. [LB630]

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SENATOR CAMPBELL: Okay. Further questions? Thanks, Mr. Rieker. Our next proponent? Okay. Anyone in opposition to the bill? Anyone in neutral position? Senator, we're back to you, I think. [LB630]

SENATOR KOLOWSKI: Madam Chair. Thank you again to the entire committee and thank you to those who testified today. I think it's absolutely paramount that we move this forward and try to make a difference in our state to the next level, the next generation, the next step in continuing to care about this aspect of our health and security of our children for the future. When I think of the, as Don said, the evolution of where we are, I flashed back, because last Saturday I spent a lot of time on an airplane flying around the country as I got bumped in one city and had to fly halfway across the country to get home. And I thought of the number of hours that in earlier days that people were smoking on airlines. And as was talked about by Senator Krist from Air Force experience, but this was just commercial. And I remember one international flight I was on, that I was so glad to get out of that plane because it was pre-nonsmoking days. And just think back to those times, and it doesn't take long to remember some of the...if you were like me, you hated that smell and how it got onto everything that you were wearing and all the aspects of working around that. It's a key issue and, again, every time I think of this, I flash back to my 18-month-old grandson and him on that floor, wherever he might be, and how he's rolling around and all that with all the zest and energy that he has. But I think of how terrible that would be, because I've had friends...at a young age, I lost some friends with cancer--college age--where they were killed by their smoking habit. It happened that early in some of their lives. And it's a tragic situation to see and to have to go through. And it's ridiculous to put anyone in those environments that may induce that or provide that to happen to them on a daily basis when such a simple thing could be taken care of. My last comment would simply be, within our health world today, with all that's changing, do we not need to go back to this level as well to try to do all we possibly can to keep all of our citizens at whatever age out of harm's way, when especially they're this young and cannot decide for themselves, to do the things that are possible to give them as long and healthy a life as possible? Thank you very much. [LB630]

SENATOR CAMPBELL: Thank you, Senator. Senator Gloor. [LB630]

SENATOR GLOOR: Thank you, Senator Campbell. Have you had a chance to think a little bit about Senator Holmquist...Senator...Mr. Holmquist's suggestion on the Clean Indoor Air Act and his concerns about that? [LB630]

SENATOR KOLOWSKI: We will discuss that. I appreciate that very much. And we would not want to do anything to put anything at risk that's currently in place. And we will certainly examine that as an alternative and come back and report back to the Chair and the committee as to any alternatives that might come up. [LB630]

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SENATOR GLOOR: Let me ask you. If nothing were to change and your bill found its way to the floor and an amendment was slapped on your bill that would change the Clean Indoor Air Act in some significant way, would you be willing to kill your bill if that amendment were successfully slapped on your bill? [LB630]

SENATOR KOLOWSKI: If it looked like it had a chance for success, yes, I would. I think it's that important that we keep intact what we already have. And we'll find another way to come back and fight on another day to get this done. [LB630]

SENATOR GLOOR: Okay. Thank you. [LB630]

SENATOR KOLOWSKI: That's my attitude, sir. [LB630]

SENATOR GLOOR: Thank you. [LB630]

SENATOR CAMPBELL: Any other questions? Thank you, Senator. [LB630]

SENATOR KOLOWSKI: Thank you very much. [LB630]

SENATOR CAMPBELL: That concludes our hearing and our hearings for the day. We would ask that you all leave quietly because we will be going into Executive Session. (See also Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20) [LB630]