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Judiciary Committee
January 26, 2018

[LB832 LB906 LB931 LB933 LB934 LB970 LB971]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 26, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB934, LB933, LB906, LB931, LB832, LB970, and LB971. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: (Recorder malfunction)...red light comes on, we ask you to wrap up your final thought and stop. At three minutes and 30 seconds, a beeper will go off, an audible alarm, so you'll know that about that time we'll be dragging you off. As a matter of committee policy, I would like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. Senators may use them to stay in contact with their staff or to take notes. At this time I would ask everyone to take a look at their cell phones and make sure that they're on silent or vibrate mode. Also, verbal outbursts or applause are not permitted in the hearing room and such behavior may be cause for you to be asked to leave the room. One more thing, you may notice committee members coming and going. That has nothing to do with the importance of the bills being heard, but senators may have bills to introduce in other committees or other meetings. And so with that in mind, we will begin today's hearings. Senator Kuehn, LB934. [LB934]

SENATOR KUEHN: (Exhibits 3 and 4) Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. I am John Kuehn, J-o-h-n K-u-e-h-n, and I represent District 38, which is seven counties in south-central Nebraska. Today I bring for your consideration LB934. It is the first of a series of bills that you will be hearing today addressing the opioid epidemic that are brought by myself and several of my colleagues, and I appreciate your attention to this important issue. I have a couple of handouts that will be coming around. As this committee and its members well know, addiction to prescription opioid painkillers has reached the level of a public health crisis. According to the U.S. Department of Health and Human Services, 11.5 million people annually misuse opioids, with 2.1 million Americans misusing them for the first time each year, impacting both urban and rural communities. A recent survey of farmers and farm workers revealed the magnitude of this problem has permeated throughout the agricultural

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community, in addition to our urban areas, as 74 percent of farmers and farm workers surveyed reported having been directly impacted by opioid abuse. Annually, the opioid epidemic costs the national economy over \$504 billion and, closer to home, Nebraska has seen a 25 percent increase in the rate of death due to opioid overdose since 2005. One of the handouts that I have coming around includes an info graphic on some of these and other statistics from the Department of Health and Human Services. I hope, as you're considering a number of bills today, that those numbers stay at the forefront of all of our minds as we address the epidemic we are trying to confront. Prescription painkiller addiction begins with a healthcare provider prescribing an opioid painkiller to a patient. Although highly effective at managing pain, these medications have a high addictive potential if not used judiciously and patients are not carefully monitored. An International Narcotics Board report found that the United States consumes 83 percent of the world's use of oxycodone, despite comprising less than 5 percent of our global population. According to national statistics from the Department of Health and Human Services, over 650,000 opioid prescriptions are dispensed in the United States every day. Prescription painkillers and the diversion of those prescriptions by someone other than for whom they were prescribed is a significant contributing factor to opioid addiction, overuse, and death. When we talk about diversion of opioids, this may be the use of unused opioids by a family member; this may be the theft of medications; this may be the intentional sale of opioid medications to another individual; or, in some cases, diversion of opioids may be a written prescription given or sold to someone other than for whom it was written. It is difficult for us to measure the actual prevalence of all of these different methods of diversions of opioids. For most who struggle with opioid addiction, it is likely a combination of all of these methods of diversion. However, data does support that the ability to obtain diverted prescription opioids is a significant contributor to this public health crisis. In the aforementioned survey, more than three out of four respondents said that it would be easy to access a large amount of prescription opioids in their community without having to obtain a direct prescription from a doctor. As we talk about the potential for diversion, I want to put some of the numbers in a little bit of perspective. So using the number of over 650,000 dispensed prescriptions a day in the U.S., if 0.01 of a percent of those prescriptions are diverted by someone picking up or obtaining a prescription that was not in their name, that still amounts to 65 prescriptions a day, so we're talking about a lot of medications, a lot of prescriptions contributing to this problem. In order to address this issue of the potential for individuals receiving opioids from which they were not prescribed during dispensing, I've

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introduced LB934. LB934 requires an individual who takes receipt of a Schedule II-IV opiate to show a photo identification. The language in the bill is identical to the currently existing Nebraska statutory language which is associated with the receipt of over-the-counter Sudanese. Twenty-five states have identification laws for the receipt of prescription painkillers. All but one of these states has at least one law that mandates the pharmacist to request identification, generally or under specific circumstances, before dispensing prescription painkillers. Oregon is the sole state with one identification law that is entirely discretionary. I've provided for the committee a handout which shows the states that currently have opioid identification laws for prescribing, and the back of the handout has the specific statutory references for you to look at if you so desire. Please note that this list does not include states that may have indirect statutory language that implies a pharmacist may check a patient's identification to meet the requirements of that state's Prescription Drug Monitoring Program, nor are ID laws that regulate over-the-counter substances, such as those containing ephedrine, included in that list. Identification requirements have been utilized as an effective tool to combat drug addiction for several years. As stated prior, current federal and Nebraska state law requires identification for the purchase of over-the-counter products containing ephedrine, including Sudafed. You also may be aware that you can't receive a shipment of wine delivered to your home, even though legally purchased, unless you have someone present with a valid photo ID over the age of 21. It only makes sense that positive identification should be required before someone is handed a bottle of a highly addictive controlled substance. The language of the green copy of the bill before you intentionally mirrors the existing Nebraska statute regulating Sudafed. If the committee evaluates that more permissive language, including statements such as "unless the individual is known to the dispenser" or a similar approach, as many of the other states have included in their language, I am certainly open to the revision and input from the committee. I want to state that the intent of this bill is not in any way to reduce or impede access for painkiller medication for legitimate medical purposes. Rather, the objective is provide a tool for dispensers to ensure the drugs are going into the hands of individuals to whom they are intended, as well as an additional step that may provide a check for an individual who may be considering using a prescription written for someone else to obtain these addictive painkillers. With that, I welcome any questions that the committee may have about the issue or LB934. [LB934]

SENATOR EBKE: Senator Chambers. [LB934]

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SENATOR CHAMBERS: (Exhibit 2) Senator Kuehn, good bill. Have you seen this letter form Dr. Thomas Williams with HHS supporting your bill? [LB934]

SENATOR KUEHN: I have a copy of it, yes. [LB934]

SENATOR CHAMBERS: Okay. I'm going to read the paragraph that...the part of the next-to-the-last paragraph that I'm interested in, and I can read it quicker than trying to say it. "Currently, both federal and state law allow for controlled substances to be sent through the mail. We strongly recommend adding language to the bill that will either clarify how the requirement applies to mail service pharmacies or to exclude mail service pharmacies from the requirement." What do you think should be done, or do you think in effect mail delivery, which is allowed now, should no longer be allowed in Nebraska? [LB934]

SENATOR KUEHN: I, as a matter of pragmatism, I encourage looking at the language of the bill. In my professional opinion, I think we need to examine the distribution of highly addictive controlled substances through the mail. We do already have regulations which require...regulate the mail-order shipment of Sudafed, so if you actually go to the DEA they have specific regulations. So if you were to order, say, Sudafed and have it delivered to your home, it's legal but there is a dual identification process which is required. So you would have to provide positive identification of the person at the residence receiving it, as well as the person that ordered it. So they've already addressed this issue with the Sudafed issue, which is attempting to address the methamphetamine problem. [LB934]

SENATOR CHAMBERS: Well, not to cut you off, does the Nebraska law say anything about what you're saying or the federal law covers it adequately? [LB934]

SENATOR KUEHN: It does not in regulation to opiates, and I think that is an oversight in our current, in my opinion, that's an oversight in our current law that allows opioids to be delivered through the mail, so at minimum I would want an identification requirement. On the opposite end of the spectrum, I think we need to seriously consider, as we're addressing the opioid problem, whether it is appropriate to distribute opioids through the mail. I think that's a reasonable question. [LB934]

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SENATOR CHAMBERS: Well, because of your knowledge and of how other substances may be regulated now for mail shipment, could you and your staff draft some language if you think that would be appropriate to add to the bill? [LB934]

SENATOR KUEHN: Would be happy to do so and be happy to work with your legal counsel, as well, to ensure that it is appropriate, yep. [LB934]

SENATOR CHAMBERS: Okay, that's all I have. [LB934]

SENATOR KUEHN: Thank you. [LB934]

SENATOR EBKE: Any other questions? Senator Pansing Brooks. [LB934]

SENATOR PANSING BROOKS: Thank you for bringing this, Senator Kuehn, and trying to deal with a very serious problem in our state and nation. So I'm concerned about just a couple things. As I had mentioned before, my mom lived with us the last ten years of her life and she couldn't...she could barely walk at the end. And so how do you deal with something like this? I mean I used to go pick up her medications for her. I feel like the Sudafed thing is different because I could go get Sudafed and show my ID. It isn't particularly prescribed to me, so in the case of something like my mom who was at my house, it would be prescribed in her name and then I couldn't go get it. [LB934]

SENATOR KUEHN: Actually you could. [LB934]

SENATOR PANSING BROOKS: Okay. [LB934]

SENATOR KUEHN: So the way the language is, it is simply the ID of the person taking receipt. So the ID does not have to match the individual to whom it was prescribed. [LB934]

SENATOR PANSING BROOKS: It doesn't? [LB934]

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SENATOR KUEHN: So you would still be able to take receipt of those medications for someone for whom you are providing care. It would not in my perspective--now I know there are some who may disagree--it would not impede the ability of, say, a healthcare worker who is receiving a shipment at a care facility or a nursing home who would be signing for that shipment and then distributing it to patients within. It would not because the bill does not read it has to be the name of the person to whom it was prescribed. We're simply...I'm simply asking that the individual who is physically taking possession of that opiate show a positive ID. So if you were to pick that up for your mother, the pharmacist would ask to see your ID and that would be a step in the process. Part of my intention is we know from human behavior studies that there are things and ways you can influence behavior by making people pause. There are some great studies, if you ever care to read them, about putting a teddy-bear in a classroom and students won't cheat because they think they're being watched. So for me, the opportunity if you are an individual who is considering obtaining dispensed medications that are not intended for you, the possibility of having to show photo ID may serve as a significant deterrent. So the bill should not deter individuals, caregivers and others, from obtaining the medications that are prescribed for loved ones but does provide that additional check. Now if you're a pharmacist and you are...think something is not right, you can certainly make a note in the record to whom picked up the opiates and make that note should there be a problem that develops further. [LB934]

SENATOR PANSING BROOKS: So just explain to me. The problem you're trying to stop is... [LB934]

SENATOR KUEHN: So there's a... [LB934]

SENATOR PANSING BROOKS: ...by requiring this... [LB934]

SENATOR KUEHN: Yeah. [LB934]

SENATOR PANSING BROOKS: I just want to clarify that. [LB934]

SENATOR KUEHN: Yeah, there are a number of diversion methods, so some people, when they think about diversion, they think about someone who goes and gets their script fills and just sells

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the bottle of pills, and that does happen. One of the unique things about the actual physical prescription associated with our scheduled controlled substances of opiates, Schedule IIs, for example, your physicians, you can't just call on the phone and say I want to refill this particular prescription. There's actually a physical paper script which is required. So there's many diversion points. Some are the individual goes and fills the prescription and pays for it and then sells the pills. Another method is someone who simply walks out, hands someone the prescription for a price, and they go and have the prescription filled and walk off with the pills. Again, and I will freely acknowledge, it's almost impossible to say how often that happens. Anecdotally, I have certainly been told by pharmacists and providers that they know it happens and it happens on occasion. I'm simply trying to provide a tool so that we can stop in whatever way possible those loopholes and methods of diversion. [LB934]

SENATOR PANSING BROOKS: Okay, thank you. [LB934]

SENATOR KUEHN: Thank you. [LB934]

SENATOR EBKE: Other questions? Senator Halloran. [LB934]

SENATOR HALLORAN: Thank you, Chair Ebke. Thanks for bringing this bill, Senator Kuehn. I don't suppose there's any way to aggregate between all the pharmacies if Steve Halloran picks up a prescription, having bought one from somebody else to do this, so that they can capture? [LB934]

SENATOR KUEHN: Well, some states do and I did not include it in this bill because we're working very successfully right now with our Prescription Drug Monitoring Program. So Nebraska has what has now become a model Prescription Drug Monitoring Program in terms of allowing the exchange of information between prescribers. Some states, if you look through the statutes, actually do require that information related to the identification be entered into the PDMP, so prescribers can identify who is picking up the medication prescribed to an individual. That's not included in this bill and I think that's a whole nother discussion relative to the operation of the PDMP. You can go much further in terms of mandates or information with this

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type of approach. I took a very basic approach to introduce the concept and idea with this particular bill. Thank you. [LB934]

SENATOR EBKE: Other questions? Okay, thanks. [LB934]

SENATOR KUEHN: Thank you. [LB934]

SENATOR EBKE: You going to stick around? [LB934]

SENATOR KUEHN: Absolutely. [LB934]

SENATOR EBKE: Okay, great. Okay, first proponent. And then could I see a show of hands about how many people are planning on testifying on this bill? Okay, it just gives us some sense of when to call the next...the sponsor of the next bill. Thank you. [LB934]

ANDY HALE: Thank you, Senator, members of the committee. The Nebraska Hospital Association...oh, sorry. My name is Andy Hale, A-n-d-y H-a-l-e, and the Nebraska Hospital (Association) is the influential and unified voice for Nebraska's hospitals and health systems, providing leadership and resources to enhance the delivery of quality care and service to our Nebraska communities. On behalf of our 42,000 members and over 10,000 patients our hospitals serve daily, we would like to offer the following testimony in support of LB934. Every day hospitals and health systems see the effect of the nation's opioid epidemic. According for the Centers for Disease Control and Prevention, more than 33,000 people died from an opioid-related overdose in 2015. That's more than 90 people a day and approximately 4 people each hour. Hospitals nationwide have recorded over 1.3 million emergency room department visits or inpatient stays for opioid-related issues. The sharpest increase was among people age 25-44. The data also shows that women are now as likely as men to be admitted to a hospital for opioid-related problems. This is an issue that truly affects everyone. It is also true that Nebraska hasn't seen the worst of the epidemic but it is coming. In fact, Nebraska had 38 confirmed deaths from opioid overdoses in 2016. The number could be higher because death certificates don't often specify which drugs are used and many of our smaller counties can't afford toxicology tests. The Nebraska Hospital Association is taking active steps to be proactive with this opioid issue. We've

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been working with numerous stakeholders on the Dose of Reality campaign. And we would like to thank the Governor, the Attorney General's Office, the Department of HHS, and Nebraska Medicine for helping us lead this campaign. One issue that I would like to bring to the attention has to do with the ID requirement, obviously, which is a component of the bill. But we'd just like some clarifying language that would let us know. As you know, most times you're admitted into our hospitals, into our emergency room departments, you're given a bracelet and that bracelet has identifying information such as your first name, last name, middle initial, and date of birth, and oftentimes includes other information. So we just want to make sure that this bill wouldn't drag in our providers if you're, say, sitting in a hospital bed and you're getting prescribed opioids, that you would have to get out of your bed, find your purse or your wallet, and show a form of ID. We would think that the ID that the hospital provides would be good enough. In closing, I want to thank Senator Kuehn and his staff for bringing this bill and the passion that he's shown on this issue, and I urge your members to support the bill. [LB934]

SENATOR EBKE: Okay. Thank you, Mr. Hale. Any questions? Senator Chambers. [LB934]

SENATOR CHAMBERS: Excuse me. Is there any distinction between what apparently would be accidental overdoses and those that apparently may be intentional, suicide? [LB934]

ANDY HALE: As of now, I don't believe they make that distinction. [LB934]

SENATOR CHAMBERS: Is there any way to distinguish? [LB934]

ANDY HALE: That's probably not a question I can answer. [LB934]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB934]

ANDY HALE: Thank you. [LB934]

SENATOR EBKE: Other questions? Okay, thanks for being here. [LB934]

ANDY HALE: Thank you. [LB934]

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SENATOR EBKE: Any other proponents? Okay, we'll move to opponent testimony. [LB934]

EDWARD TRUEMPER: I thank everyone for the opportunity to come to speak today. I am speaking in opposition. My name is Dr. Edward Truemper, E-d-w-a-r-d T-r-u-e-m-p-e-r, and I'm testifying on behalf of the Nebraska Medical Association in my position as the chair of the legislative committee. First I want to applaud Senator Kuehn for his very dramatic and excellent testimony today. There is not a word that I disagree with except for one thing, and that's the issue of where we know the various nefarious uses of prescribed opiates come from. We know they come from illicit prescriptions. We also know that they come from prescriptions that are written ostensibly for a prescriptive reason that are then sold. And the last course is medications that are written for an individual who has a legitimate reason but then are diverted for nefarious reasons. The one that he has written for in this bill (inaudible) is a very tiny minority, doesn't mean that it doesn't require some attention to detail, and this bill attempts to do that in quite specific language. The problem with the specifics of this language deal with, from the standpoint of the NMA, deals with the issue of the term "customer." A customer in this case, is that the person that the prescription is written for? That is what we believe the NMA infers from this, therefore, any person under the age of 16 without a driver's license, what would they do? That would be a parent. And then, of course, as Senator Pansing Brooks identified, she mentioned that she had to get her mother's prescription and that happens quite a lot. I'm a pediatrician by practice. I don't practice elder care. But for this bill to actually work where it's supposed to and prevent diversion, what we need is to have some identification of what a customer is. And if we're going to say it's somebody who shows an ID, then how is that ID going to be...whose ID is that going to be? Is...can it be a girlfriend? Can it be a boyfriend? Can it be somebody who's not a family member? And then where is it recorded? And then after it's record the question is, what are you going to do with that afterwards? How do you know if that prescription has been diverted, or not, or used for illicit reasons? I think the issue it comes down to, as previously mentioned, is we need to define the customer very well here. It's...the term is too vague. And then, of course, what is the pharmacist going to do with that information after he dispenses the...he or she dispenses the medication? Thank you. [LB934]

SENATOR EBKE: Thank you, Dr. Truemper. Questions? Senator Krist. [LB934]

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SENATOR KRIST: Doctor, thanks for coming. And I would agree that the definition of "customer" needs to be expanded or delineated in some way because of the situations that, essentially, that Senator Pansing Brooks brought forward. However, I find that...and I'm making the point only to highlight what I think we've misplaced in the last few years. I watched as a woman was refused an over-the-counter Sudafed by showing her driver's license, so obviously somewhere in that database she'd been identified as having too many of those, that particular over-the-counter drugs and was denied. She made the comment she was going to go across the street to CVS. Well, we all know that she would have received the same treatment on that side. I'm operating under the...not as a doctor or as a physician--I didn't even stay at a Holiday Inn Express last night--but I'm operating under the proposition that the more people we can control in terms of distribution, that it's kind of the lock is the thing that keeps an honest man out. I just think that we can expand on the "customer" and we can use the same thing that some of the pharmacies use in terms of "familiar customer" and they know that that familiar customer is picking up for their mother. But I think we have to do something after we clarify what you have highlighted as the definition of customer and just start trying to track where those drugs are going. I watched 60 Minutes, as I'm pretty sure most of the people in this room did because they were interested in the subject matter, about two months ago that showed an overshipment to a particular jurisdiction someplace in Colorado where, if it would have been dispensed, it would have been, I don't know, 100 pills per month per person in that county. So the concept, I think, is a valid one and I think we need to have these kinds of discussions, and that's not really all a question, it's more a statement, but I'll allow you to respond to anything you'd like to. [LB934]

EDWARD TRUEMPER: Well, thank you very much, Senator. First off, I don't disagree with anything that you've said. The issue comes down to, which is legislation has a tendency to be, once it's written, once it's passed, that's it. In medicine, we operate under divine a solution and then monitor afterward to see if it's actually doing what it's supposed to. The question I have as this bill is currently written, the proviso is "as it's currently written," is how are we going to determine whether this bill is effective or not and what it's supposed to do. If the language is changed, for instance, on customer and you work out the ID, you still have to know how many of...how many people who weren't supposed to get the prescription for opiates actually got diverted. And I think that's the metric that's often lost in a lot of legislation is we don't build in appropriate monitoring system afterwards. And in my mind, what Senator Kuehn is wanting to

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do, which I think everybody in this room agrees on, is limiting the illicit use of prescription opiates. The issue is, as Senator Kuehn pointed out, is we don't have an idea of the scope of where, how many of these medications are actually being diverted, by what route. Some of that data does exist. There's 25 states that have that legislation and he couldn't decipher out of that, and I couldn't either, how many are being diverted because somebody picks up the script for an illicit use. And I think that is a secondary issue that, to me, is predominant. If you want to know how good your bill is doing in actually solving the problem, build in a metric to be able to find that. Thank you. [LB934]

SENATOR KRIST: And just to follow on, and I don't disagree with anything you're saying, either, but I do think that our approach to limiting the amount of Sudafed that went--and I'm going to use Sudafed as an example--the amount of Sudafed that went over the counter has been very effective and law enforcement will tell you there's less of it on the street being converted into things it's not being converted to. That metric is difficult to assess, I guarantee you, I'd agree with you, but I still think that there has to be a starting point. So in some ways, I think we're saying the same thing. [LB934]

EDWARD TRUEMPER: We are, just different words. [LB934]

SENATOR KRIST: We're just defining...let's define the customer. Let's figure out how we can measure how much is going across the counter and let's stop those that we can stop in terms of the amount of medications that are going out. But I do appreciate you taking your time. Thank you very much. [LB934]

EDWARD TRUEMPER: Thank you, Senator Krist. [LB934]

SENATOR EBKE: Other questions? Thank you for being here today. [LB934]

EDWARD TRUEMPER: I appreciate the committee's time. [LB934]

SENATOR EBKE: Other opponents? And if you're planning on testifying, if you could move to the front, that would be great. Go ahead. [LB934]

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BOB LASSEN: Chairman Ebke, members of the Judiciary Committee, my name is Bob Lassen; that's B-o-b L-a-s-s-e-n. I'm here today to testify as a pharmacist and AARP member on behalf of AARP Nebraska in opposition to LB934. AARP is a nonprofit, nonpartisan organization that works across Nebraska to strengthen communities and advocates for the issues that matter most to families and healthcare givers. It is common knowledge in this country that the opioid abuse through diversion and illicit sources kills scores of Americans, all ages, on a daily basis. This waste of human life must stop and preventative measures need to be put in place to limit the access to these drugs. I would caution that in our haste we do not implement well-intended legislation with unintended consequences. LB934 in this present form will lead to unintended consequences. As a pharmacist who has practiced retail and long-term care pharmacy for over 40 years, it has been abundantly clear that there is no perfect delivery model that addresses all of our patients' needs. LB934 requires a customer, in order to take receipt of dispensed opioids, to display a valid driver's or operator's license, a Nebraska State identification card, a military identification card, an alien registration card, or a passport as proof of identification. The bill does not make provisions for individuals living in assisted living, long-term care, or hospice, all who rely on the delivery of their medication to their living units. This special group of patients may or may not have the identification that would be required under this bill and many would not have the physical or mental capacity to deal with the additional requirements. We also raise concern with our aging population, many of who all reside in homes but no longer drive or have any type of photo identification that would be required under this bill. If a photo ID requirement is enacted, the most likely form would be a driver's license. Persons of advanced age are the least likely to hold a driver's license. In 2015, there were 42,224 Nebraskans over the age of 85. According to its annual report for 2016, the Department of Motor Vehicles reported that it had issued driver's licenses and photo identification cards to 9,000...or, excuse me, 29,418 Nebraskans over the age of 85. While some of those individuals may have had other forms of identification, many will not. Many of the steps that are taken in a normal fill of a prescription by a pharmacy take into consideration all of the possibilities that illicit forces are working against the administration of the medications. Many safeguards are built into that system. We feel that the additional requirement that LB934 would impose on our senior citizen population would hinder the delivery of care. Thank you for your time and I would be happy to answer any questions at this time. [LB934]

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SENATOR EBKE: Senator Krist. [LB934]

SENATOR KRIST: A couple of simple questions because I'm pretty familiar with several of the assisted living and retirement communities around Omaha for personal and family reasons. There's someone there at the facility who accepts the drugs or the prescriptions for the individuals. In the case of all four of our parents, those drugs were administered by the folks in the facility, so I'm...I fail...I mean it's very much like a hospital or a hospice environment. I fail to see the caution there in terms of how those drugs are dispensed. There are provisions, as well, for people who are in caretaker status that live in the home or visit the home periodically to make sure that they're there. So if you'd like to give me an example of how you think that that is going to be a problem based upon this identification, I relate back to what Mr. Hale talked about in terms of the ID bracelet. Not all facilities ID the bracelet, but most facilities know Irma and Arthur in the facility and, therefore, there is a recognition in the room. So, if you could, highlight on that particular concern, because I'd like to hear that dialogue. [LB934]

BOB LASSEN: Okay. Our concern primarily is the restriction on the elderly population (inaudible) some of those like 80 years old, they're still living at home, who may not have this additional information needed to pick up the prescriptions. I guess the definition of receipt, you know, who's receiving the medication, is something that we would like to see fleshed out a little bit better. I would like to also say that we see the pharmacist as being the person that's going to be in the middle and responsible for doing this and, as I understand the bill presented by Mr. Kuehn, that the enforcement portion of this really is pretty lax or nonexistent. And there is language in other states that have similar language to this that say if the pharmacist recognizes the individual, then this doesn't apply. We would like to see some similar language to that to enable a pharmacist to fill a prescription without going through this process. [LB934]

SENATOR KRIST: So the last part of...the last sentence, basically, is probably the most valid of your comments--my opinion--in the fact that I know for a fact that if you frequent the same pharmacy, there is a familiarity that is...that's used, in some cases, to allow you to pick up a significant other's prescription. So I think that goes back to Dr. Truemper's issue, and Senator Kuehn was nodding during that, in terms of the definition of the customer, representative, whatever, however that floats out. There is also the question, I think, of other states because

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we're pretty mobile in terms of where we get our medications. And that, we can't deal with that issue. That issue, I think, is beyond our control. But thanks for that description. I appreciate it. [LB934]

BOB LASSEN: Yeah. North Dakota has that provision in their bill that somebody known to... [LB934]

SENATOR KRIST: You said which state? I'm sorry. [LB934]

BOB LASSEN: North Dakota has... [LB934]

SENATOR KRIST: North Dakota. [LB934]

BOB LASSEN: ...that specific provision in their bill that states that if the pharmacist recognizes the person, they don't have to address the identification. [LB934]

SENATOR KRIST: Great. Thank you, sir. Thanks for coming. [LB934]

SENATOR EBKE: Other questions? Okay, thanks. [LB934]

JONI COVER: Senator Ebke, members of the Judiciary Committee, my name is Joni Cover, J-o-n-i C-o-v-e-r, and I am the CEO of the Nebraska Pharmacists Association and I'm here today on behalf of the NPA to oppose LB934 as written. I'd like to thank Senator Kuehn for his many conversations we've had prior to this hearing and letting me express our concerns about the bill. As you all know, the bill requires customers picking up Schedules II, III, and IV opiate prescriptions to, in order to take receipt, have to show an ID. And in theory, it sounds like a reasonable request, but just some practicality issues that we have with the legislation, Bob touched on a few of them, but again I'd like to remind you that patients that live in long-term care facilities, under Nebraska law, those are prescriptions that are written. The customers are the patients, so if you took this as literal, the patients would have to show ID. I believe they're paying for them, so while they get delivered to the nursing home, I don't know if we would interpret it that the patients themselves would have to show ID or not, but that's a question. We also have the

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same arrangements in many of our assisted living facilities and in group homes, so I think that there needs to be maybe some carve-out language or some additional discussion about that. Hospice prescriptions are another concern of ours. Sometimes the nurses come and pick them up from the hospice programs. Other times, they're delivered to the hospice programs, which could be in a facility, and so, again, we have some concerns about taking receipt if the patient is a hospice patient. On occasion, in a pharmacy, people come in to the pharmacy that do not have identification, so we have homeless, we have people who are just dismissed or like out of a correctional facility or people maybe that are moving here from some other country into the United States and haven't gotten identification as yet. I have had pharmacists tell me that if they have patients that come in and they have not met them before or they're concerned, they will call the prescriber if they don't have ID and ask, did you see so-and-so? And they have a conversation with the prescriber. So, you know, we sort of have mechanisms in place to address that. But I think that the language that says "In order to take receipt of" is problematic. We also raise the issue about mail-order prescriptions. I don't know if this now requires the FedEx driver or the UPS driver or the mail person to drop those off and require ID. And Senator Kuehn talked about wine. I'm glad they don't deliver wine because I used to have two underage kids at my house that didn't need to have wine delivered to my house, but that's another hearing for another day. So we just, you know, would just ask that we give some consideration to this policy. Man of my small-town pharmacists tell me that they know their patients and if somebody comes in that they don't know, they will ask for ID; and the same thing in large communities, you get to know your pharmacist. So we want to make sure that this is good policy. Senator Kuehn talked about the states that require identification. I did a real quick perusal of those different states and the different requirements, and many of them have exceptions, so if the pharmacist knows their patient they don't have to ask for identification. And the red light is on, so I will stop talking. [LB934]

SENATOR EBKE: Thank you, Ms. Cover. Any questions? I have one, I guess. [LB934]

JONI COVER: Okay. [LB934]

SENATOR EBKE: If...conceptually, it doesn't seem like there is a lot of disagreement about the value of the bill, that the opposition seems to be more around the edges in terms of definitions of

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who can receive, how you determine. If that could be cleaned up, would the pharmacists still oppose the bill? [LB934]

JONI COVER: Well, it would depend on what the language was. [LB934]

SENATOR EBKE: Okay, so, for instance, let's say we could say that at a nursing facility that the person who shows the ID is the person who receives it on behalf of the patient and they show the ID. Would that cause heartburn? [LB934]

JONI COVER: What we'd rather see is there be no ID requirement... [LB934]

SENATOR EBKE: Okay. [LB934]

JONI COVER: ...for nursing homes or assisted living facilities or group homes where you have a relationship between the facility and the pharmacy, because the pharmacy delivers to the facility, the facility has a process for who takes receipt and then who stores them. So I think that there's that process already in place, so I'm not sure that the ID requirement is really necessary. [LB934]

SENATOR EBKE: Yeah, I suppose, I mean, I suppose it depends on the facility at some level because... [LB934]

JONI COVER: Right. [LB934]

SENATOR EBKE: ...you know, is it the LPN or the RN or the facility pharmacist who is receiving it on behalf of... [LB934]

JONI COVER: Right. [LB934]

SENATOR EBKE: ...the patients and so (inaudible)... [LB934]

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JONI COVER: I guess I would like to see some deference paid to the pharmacists because I feel like the majority of the pharmacists that I've spoken to about this bill have said, you know, we feel like we know our customers, and if somebody comes in that we suspect shouldn't have this prescription or, you know, we just have questions about, now we have a Prescription Drug Monitoring Program we can look something up. But we certainly have the right now to ask, or we can have other mechanisms in place. So maybe you'll go pick up your prescription and they'll ask you for your date of birth and your address of the patient that...for the prescription. That's what happens at my pharmacy. And so, I mean, I think there's various ways to handle this. And I just would...I'd rather see some, you know, deference to say let's let the pharmacies set their policies, because many of them do, but yet not mandate that this happen. And I realize that there's not penalty provisions put into this, but my pharmacists like to follow the law, so if the law says you have to show ID, you're going to have to show ID. And, you know, we've got some good things in place already. We have the PDMP. We've been working. Lots of stakeholders were mentioned. Mr. Hale talked about the daily...the Dose of Reality campaign and, you know, the opioid programs that are going on and we have a drug disposal project, so there's things happening in the state of Nebraska and I applaud everybody that's stepped up, because we certainly would never deny the fact that we have an issue and we don't want it get out of hand. But we also feel like this is maybe just trying to solve a problem we may not have yet. [LB934]

SENATOR EBKE: Okay. Other questions? Senator Krist. [LB934]

SENATOR KRIST: You and spoke previously to this. [LB934]

JONI COVER: Yes. [LB934]

SENATOR KRIST: And I will keep going back to a problem that we...a bigger problem that we had that we were able to focus in on and minimize, which is Sudafed. I'd just as soon people grab as much Sudafed as they can as grab as much opioids as they possibly could. I say the standard should be at least the same. And again, the conversation that we had earlier, I watched the pharmacist say, even after an ID was presented, I'm sorry, I can't sell that to you because...okay. And if we were able to make that statement after that pharmacy and others were able to track in and say this person has received over 100 tablets of X in the last 20 days from

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three different pharmacies, it goes a long way to controlling the dispensing of the drug. This bill is probably not perfect; admittedly, it's not perfect. Senator Kuehn understands that there has to be maybe a redefinition. But I'm following Senator Ebke's line of questioning in terms of do you oppose the idea of controlling the drug the way that we're trying to minimize the exposure to potential abuse, or do you oppose the way this is written, and, if there's a better way to write it, then can we do that? [LB934]

JONI COVER: We oppose the way it's written because I think there is a better way to get the issue of people picking up prescriptions, but I'm not sure that we have an issue, a problem with people picking up prescriptions that shouldn't pick them up. I don't know if that...I don't know if I said that clearly. I don't think that made sense. I don't know that we have a problem of people going and picking up somebody else's prescriptions. I guess I don't know that we have that problem. With the example of Sudafed, you know Sudafed is an over-the-counter drug, and the reason that it got...now we track it is because people were stealing it off the shelves. So now you have to have, you know, the log and the tracking so that they don't do that anymore. But that hasn't...I mean, it's cut down on our meth problem somewhat. Now we're seeing it trafficked in from other places. So it's gone from sort of a smaller mom-and-pop to a bigger problem of, you know, lord knows where it comes from. And of course we'd like to stop that, but it's stopped somewhat. We have a Prescription Drug Monitoring Program that can let us know if Joni Cover received way too many opioid prescriptions. [LB934]

SENATOR KRIST: We do? [LB934]

JONI COVER: We do. Prescription Drug Monitoring Program started... [LB934]

SENATOR KRIST: PDMP. [LB934]

JONI COVER: PDMP, yeah, it started last year, January 1. All controlled substances dispensed were reported and starting this year, January 1, all prescriptions were...are being reported, so. [LB934]

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SENATOR KRIST: Okay, so now we're getting at the heart. The opposition here is that we're already taking measures to control the amount of drugs being dispensed. [LB934]

JONI COVER: Right. [LB934]

SENATOR KRIST: And we don't have the teenager that volunteered to go get grandma's drugs and takes four or five pills out of the bottle and takes them home to grandma. [LB934]

JONI COVER: Right, I mean, and I can't say 100 percent of the time that, you know, that never happens, but I believe that we have situations where, if it does happen, we have laws now that say, you know, you cannot possess a controlled substance that's not yours. So it's a matter of then getting law enforcement involved and doing something about that, so. [LB934]

SENATOR KRIST: Okay. Thanks, Joni. [LB934]

JONI COVER: You're welcome. I'm happy to work with the committee and continue to discuss, so. [LB934]

SENATOR EBKE: Okay, thanks. Questions? [LB934]

JONI COVER: Thank you so much. [LB934]

SENATOR EBKE: Thanks. Next opponent. [LB934]

GREGORY LAUBY: Good afternoon. Chairman Ebke, members of the committee, my name is Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I'm here to oppose this bill, certainly as it's written and, frankly, in concept, primarily because it imposes such a burden that's unnecessary on the most disadvantaged of our population who may be in most need of the very medication that they may be finding more difficult to receive if they have to show an ID which they do not have. And that includes, as has been mentioned, everything from the homeless to the immigrants to infants to people suffering of dementia. And perhaps the definition of "customer" can be expanded so broadly that it begins to cover all of those individuals, but I'm not sure then you

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haven't defeated the very purpose of the regulation. The other thing is the limitations on the types of ID that would be required. If you look at Senator Murante's bill for identification that he's proposing be required for voting rights, LB1066, it's much more expansive than what would be required to get this medication. And I would let you know that I come from a very small town. It's about 1,600 in population. There's an adjoining town of about 400. We're served by one pharmacy and I suspect at that pharmacy and his staff of two or sometimes three people, knows absolutely everyone that walks in the store door, unless they're a complete stranger. And if he does and if that should arise, I'm sure he's very alert to ensure he isn't dispensing a drug inappropriately. Also, recently I had a toothache so I had to get some pain medication and an antibiotic. I picked that up. It didn't solve the problem. In fact, I'm still enjoying it this afternoon. I had to get a refill. I had the pleasure of having to go back to the dentist about 15 miles away and personally receive the prescription from him before I could take it back to my pharmacist and get it filled. And when I got it filled, I had to sign in at the pharmacy signifying that I had received that particular drug as prescribed. So I think there's a pretty good control already in existence, and so I would hope that you would add at least an exception for those who are personally known to the pharmacist and really consider whether or not this is a particular measure to address the problem that needs to be addressed. Any questions? [LB934]

SENATOR EBKE: Thank you, Mr. Lauby. Any questions? Okay, very good. Thank you. [LB934]

GREGORY LAUBY: Thank you. [LB934]

SENATOR EBKE: Next opponent. [LB934]

JOHN MASSEY: Good afternoon. My name is John Massey, J-o-h-n M-a-s-s-e-y. I'm a physician. I'm also here to testify as an opponent to this bill, and really primarily here to testify for the other bills but I thought I could answer a couple of questions that you brought up that I thought were very helpful. I'm a pain physician here in Lincoln. I've been involved in chronic pain treatment as a specialist for 20 years throughout many communities in this state, and I completely and wholeheartedly agree that the opioid epidemic, especially prescription opioid epidemic, is something that is a national emergency and we need to be doing everything we can

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to prevent this and reduce this. One of the things that I've been involved with, not only in my private practice but also over the last year, I've been the task force chairman for the Pain Guidance Document that was formed through HHS and through a CDC grant that we had that's an effort by medicine to address this issue directly. It was a group of 15 or 20 physicians of all specialties, emergency department, pain specialists, psychiatry, addiction specialists, OB. We made a document, a very comprehensive document. It's about 100 pages and it really addresses these kinds of issues and what can be done medically to avert this crisis and to get ourselves back into a better position with respect to the opioid epidemic. What we were able to do with this document is make a very good document that talks about risk stratification, a document that talks about when is it a good idea and when is it a bad idea and how do you tell. And now our job, also through a CDC grant, is taking that, as an educational effort, forward to all the prescribers in the state to make sure that we're all using the same data to come up with data-driven reasons and answers to this very complex problem. One of the problems I have and one of the things you'll hear me talking about today is that when we use solutions that sound good but they aren't well founded in data, we make mistakes and these mistakes can have the opposite effect of what we intend. I often, when I'm lecturing about this, I talk about heroin. Heroin was the first synthesized opioid and it was synthesized 100 years ago and named heroin because it was going to be heroically saving us from the ravages of morphine addiction. It didn't work. When we see diversion, diversion is certainly a problem with opioids and having...knowing who you're giving your medications for is very important. But this bill seems to assume that people will be going in with the...with...and picking up medications without a prescription or without some sort of relationship to the prescription. This is being answered by our PDMP. Diversion really occurs when family members or people related or people are selling these agents, and they will probably have the ID to pick that up. So I'm afraid that it isn't analogous to the Sudafed situation like we would hope it would be. We need to be focusing on those kinds of things that really can make a difference for our patients and reduce the opioid prescribing inappropriately. Does that answer that question about the Sudafed for you, Senator? I'm sorry. [LB934]

SENATOR KRIST: That's okay. Are you done testifying? [LB934]

JOHN MASSEY: I am. That's my,... [LB934]

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SENATOR KRIST: Okay. [LB934]

JOHN MASSEY: ...yeah, red light. [LB934]

SENATOR EBKE: Yeah. Senator Krist. [LB934]

SENATOR KRIST: So it does answer my question about the parallel universe of trying to do one or the other. It still...and I understand your point and the physicians' prerogative. And what we're trying to do, though, is to minimize the amount of drug also that's going across the counter. Would you agree with that? [LB934]

JOHN MASSEY: Going across the counter, yes, sir, yeah, absolutely. [LB934]

SENATOR KRIST: Okay, either by a prescription or not? [LB934]

JOHN MASSEY: Without a doubt, yes. [LB934]

SENATOR KRIST: And so it all falls down, I think, to the description of what that customer is and who we're serving... [LB934]

JOHN MASSEY: Sure. [LB934]

SENATOR KRIST: ...and who is picking up the drug. So if there is a problem, we stop this one over here,... [LB934]

JOHN MASSEY: Yeah. [LB934]

SENATOR KRIST: ...and then we move on to...and then we move on to...but I think there's some merit in relating...I think personally there's merit to relating into that situation that we exist...that exists right now in terms of monitoring what goes across the counter. [LB934]

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JOHN MASSEY: I think that makes sense. Our fear is that we might be diverting our attention from the important communication that needs to occur between pharmacy and physician and patient at that moment. I would answer that to say that really what we need to be doing is concentrating on other moment, other parts of that interaction, rather than just the ID. For example, how many different people are getting a prescription for an opioid? Benzodiazepines, are those being coadministered? That's something that a pharmacist would be thinking about with a clinician. And if we're just looking...if...I think we get a false sense of security if we say, okay, this is John Smith, this is a prescription for John Smith, everything is okay. And I also think, incidentally, we probably make a mistake when we assume that it's patients, when we talk about diversion, that it's patients who are intentionally trying to deceive us at the counter, at the pharmacy. Really, diversion is about people who have family members who they can leverage to get meds when they shouldn't and, therefore, put themselves at risk, or friends or things like that. So while diversion is a big problem, I don't think this is going to address that in the way we hope it might. That's my only point. [LB934]

SENATOR KRIST: Okay. My only...my last comment would be the reason that we paired up all of these bills into a single day is that, just like our college curriculum, we've got a 101, a 202, a 303, and a 404, and when we put it all together we're going to have a graduate and we're going to take care of the problem, hopefully, if we do it sensibly. [LB934]

JOHN MASSEY: Absolutely. [LB934]

SENATOR KRIST: And I appreciate you coming up... [LB934]

JOHN MASSEY: I'll be back. [LB934]

SENATOR KRIST: ...and making your point. Thank you. Yeah. (Laugh) I'll be back. [LB934]

SENATOR EBKE: Other opponents? Anyone testifying in a neutral position? Senator Kuehn, would you like to close? [LB934]

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SENATOR KUEHN: Thank you all for a great dialogue and question. I am going to send this to the committee, in answer to Senator Chambers' earlier question. This is actually the current guidelines for Sudafed in the mail and the committee can have that to consider how the current issue with mail order is addressed and we be able to move forward. I would like to just reiterate again, as I stated in my opening, I am absolutely open to that "customer" word or adding an "unless known to the pharmacist." I think we need to look at all of those. I used the language from the Sudafed statute just to give us a parallel to compare to. I do have one other comment with regard to the idea. As I also acknowledged, as most of you know, I'm really big on having research and data to support policy decisions and I openly acknowledge that we don't have a really good handle on the magnitude of this particular aspect of the problem, but I'm not willing to wait around till research is done and see how many more people die of an opioid overdose before we act upon it. To wait another several years to get epidemiological data or survey data and process it and decide we're going to do something is simply not an acceptable policy solution. I hope I don't go off the rails here a little bit for you, but you're going to be hearing a couple other bills this afternoon from some of my colleagues, which I have cosigned, and these are bills, as I think Senator Krist did a very eloquent job of describing it, as progressing forward and different levels of a total package. And each and every one of us who is active in the issue of addressing the opioid epidemic comes to this from a different reason and most of them are very deep and very personal. And we're not here today discussing this opioid epidemic because it happened by accident. And what I get really frustrated with when we start talking about these issues, especially with some of the healthcare providers and groups, is this isn't a problem that was created by patients. This is a problem which starts with a prescription pad and a provider. It's a problem that starts when people are giving prescriptions and then they're not adequately monitored. You will hear stories of individuals who have boxes upon boxes of pill bottles prescribed by people with medical licenses. And I, too, have a DEA number and a prescription pad. We have all of this finger-pointing among the healthcare industry with people saying, well, it's not our problem. It doesn't...it's not a problem what happens at the level of pharmacy. It's the prescriber. We have prescribers saying, well, don't talk to us about prescription caps, don't have us do further education, because that's just impeding upon our individual abilities. When are we going to step forward collectively and say we have to address this problem on every front possible? We can walk and chew gum in this state; we can walk and chew gum as legislators. And if we're going to address the issue and prevent family members, our friends from dying,

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from having lifelong addictions, from having the total cost to our families and our communities across this state, we have to quit making excuses and throwing mud at every solution that's put forward and do something. Is this perfect or is it a cure-all? Absolutely not. I've never advertised it as such. Is it an idea and is it a step? Absolutely. And I really appreciate your consideration. Sorry I got a little emotional on that one, but this is a very important issue. And I really respect everyone who is willing to step forward and engage and take what sometimes seems like constant criticism of we can't do that, we...that's just impossible, that's too much. People are dying. Families are being torn apart by this epidemic and we have an obligation to do everything within our power to help solve it and to address it in a means that is not obtrusive but certainly is proactive. So with that... [LB934]

SENATOR EBKE: Thank you, Senator. [LB934]

SENATOR CHAMBERS: Senator Kuehn, I said right away I think it's a good bill. I do. We're not going to have a panacea whenever we have a serious problem. I really liked what you said about we can't wait around forever before we do something. What is available to be done should be done. You are not saying anything about what I'm going to say now, but because of the kind of positions that I take on different issues, I have different constituencies come to me and one which has persuaded me because the situation involves so many children. A hard life makes a hard man. But no matter how hard a man may be, there could be chinks in his armor and somebody can find a way through it. And the ones who find their way through to me are children. And I have talked to families, I've seen children who have seizure after seizure after seizure, and medical cannabis, from my position, has been shown to be something that can offer relief, and in other places it has. So to allow the medical--I'm not going to call it a profession--medical industry, and I'm saying it like that so it won't seem like I'm saying every physician. I'm talking about those entities that make money primarily by developing various drugs for sale. And when I turn on television now--and I stay up late and get up early--maybe these kind of commercials are for people who don't sleep well, because they will feel vulnerable or whatever, but I started, and then I stopped, writing all the side effects to all these drugs, every one of which is available, advertised on television. And if the government did not require that side effects be presented, they couldn't advertise on television and that's why they present them. I will temporarily lapse in my attention because commercials don't grab me, and they're still talking

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about side effects. And the side effects in some cases are fatal and the disease or the condition is not itself fatal. It may cause your tongue to swell, your lips to swell, difficulty in swallowing, sight problems, hearing affected. And it could be like a cartoon, but a person takes this drug and cannot see how to dial a telephone but does it by feel but, because of the impact on hearing, cannot hear if somebody answers the phone, and then if somebody does, the speech ability is affected so you cannot communicate with anybody. And it might sound facetious, but sometime sit down and write all of the side effects. Medical cannabis has never, by anybody, been shown to result in death on a large scale, and yet it has been shown to actually alleviate problems that children have. And we've had veterans come here who have pain from injuries that they contracted while in combat or in a combat zone and an IED exploded and left them with limbs missing, parts of limbs missing, chronic pain, and they have found that cannabis gives them relief. I take the position that you expressed in this area. I don't want to see us wait forever, until the industry that feels threatened by the acceptance of medical cannabis says, okay, we can accommodate because now there's a way that we can get involved in terms of reaping financial benefits. In the states where even recreational marijuana is allowed, maybe they can be considered laboratories to test whether or not what is said about medical cannabis, the oils, the derivatives, actually do benefit people. But the ones whose testimony I take are not those who have any financial interest in medical cannabis not being allowed, not the testimony of people in law enforcement, not the testimony of Attorneys General, but mainly looking at the people who are suffering. So when those bills come before us, as I'm sure they will, the same fervor that you feel on this opioid situation, understand that there are people who feel this way on the medical cannabis situation. If there was only anecdotal evidence, if you want to call it that, where nobody had ever seen a person benefited from it, I don't think parents will deliberately tell lies about what is benefiting their children. I've been contacted by people. For some reason, people, I'm glad they feel free to contact me, but I almost wish they wouldn't because I don't have a magic wand to wave and solve their problem. But they have moved from where they lived to Colorado or a different state just so that their child can have access to this, what I would call medication. And I think, if I had a child with that kind of problem, I would have to risk going to prison, because I'd do anything I could to get anything available to help my child. My children, when they were young, would get ear aches. And I've made it clear I'm not a religious person, I'm not, and I'm not superstitious, but I was so deeply attached to my children, affected by everything that happened to my children, that not in the form of a prayer but almost in the form of a challenge,

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whoever is responsible for this, do to me what you're doing to my child. And it made no difference. My child would still be feeling pain, ear aches, ear infections. They had to get tubes in their ears. I would sit up all night and I would...there was...I had a mattress and springs and I would bounce that spring for them all night, literally. The ones who didn't like it in that fashion, fortunately, they were not all going through this at the same time. They'd reach an age and then these problems developed. I would rock them and I would hum to them. And I don't know what it was, but I found a way of making a sound that was comforting to children, and I've tested it on other people's babies when little babies are fretful. And I take the little ones. They thing I'm magical, but I know how to make a sound that creates a vibration. And I don't know if the child is caught by a feeling of awe or wonderment or what. I'm not going to say this to everybody. I want to get it out one time because this is an area where we have several bills. But as a black man, I was in the Legislature when the so-called crack epidemic developed. I fought against bills that tried to put exceedingly harsh punishment. Chris Abboud was here and I fought him on these bills. And because white people perceive crack as a black people's drug, they don't believe that. Now I was here. They put harsher punishments. But when the white people who used that substance that you sniff...see, I can't afford to know too much. But they take razor blades and chop it up and then they sniff it through paper. I think it's called...Senator Morfeld, what is that, that they call, that they sniff in their nose? (Laughter) [LB934]

SENATOR MORFELD: I don't know why you're looking at me. [LB934]

SENATOR CHAMBERS: Somebody knows. (Laughter) You're a youngster, (inaudible). [LB934]

SENATOR MORFELD: Yeah, not familiar with crack. [LB934]

SENATOR CHAMBERS: But anyway, people know what I'm talking about, whether I name it or not. And at that time, it was called dope. People who use it were dope heads, they were dope fiends, and they needed to be locked up. People who use heroin face a similar thing because heroin was deemed to be the drug of the ghetto. Then white children started becoming addicted. And when I talked many years ago, in the early days of my being in the Legislature--I've been here 43 years now--so I used to always go out to Westside. These children would come up to me

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and tell me about their problems. It didn't have a name then except drug addiction. Their parents had drugs in their medicine chest. And I would be talking about the problems of black people in the community. They'd say, Senator, your kids aren't lucky like us because we can get what you're talking about at home in the medicine chest and we...the police don't bother us, if more drugs are needed then our parents get them, so we get it out of the medicine chest. I said, you mean to tell me that the same problems I'm talking about in my community would be in yours if you couldn't get it in the medicine chest? They said, uh-huh. They weren't even hiding it. Some of them would say it while we're having a question/answer session, so I began to see it as a problem that young people confronted. Then when white people started getting addicted, sometime athletes for pain and then others, they're going to test it, but however they get hooked. Then they started, some of them, going to get heroin because it was cheaper. And then even when they were addicted to heroin, then they started trying to decriminalize it. And there was a particular small New England state and a city where they said it was drenched in drugs and then they started saying, and they're opiate derivatives or they're opiates. And I'm saying, are they talking about dope or medicine? Then pretty soon it was called the opiate epidemic. It wasn't even a crime anymore. The very thing which made our children dope fiends and dangerous to the community now has become a medical condition. You cannot arrest your way out of it. In other words, we can't even make criminals out of all of our white children. They can't go to college. They can't get jobs. But if they have a medical condition, then it's different. So if this had been the approach when it was happening in our community, maybe we wouldn't be where we are now because white people used to come into our community to buy those drugs from the black dope dealers. And I hated dope dealers. I didn't want them selling it to anybody. But that's the way it was in those days. So now every bill that we have will say opiate. It won't say dope. But that's still the way it might be looked at in my community, and that's why my job is so hard in this Legislature. I have been here long enough not to read about something, to have experienced the change, to have watched the change, to have talked about the change, to have condemned the change, because it was so...I don't want to use the language of your President. It was so devastating to our community and we have people serving time, hard time, still now in federal and state prisons, whereas white people doing the same thing now not only can get medical treatment, hospitalization. And I'm glad this is happening. But in Philadelphia, they have got drug-administering facilities where dope addicts, if they were our dope fiends, can go and under medical supervision have drugs administered, clean needles, medical supervision, and all of the

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things that you're going to do if you look at these human beings as human beings with failings who, for whatever reason, made the mistake of thinking that they could handle the demon drug, that their mind was strong enough, their willpower was strong enough, and didn't realize that their very body would work against them, because no matter what's happening in the brain, in your thinking areas, there are reactions in your physical being that you're not going to be able to control with your brain and you're going to be caught and, once you're caught in the coils of that serpent, you'll never get free unless you wind up in the cemetery, or in a prison yard if you're black. But if you're white, and that's what we're dealing with now, it's different because the ones with the power have children who are white, and they don't want to see their white children treated the way they saw black children treated. So they don't want to talk about what I have to talk about. Their children are not to have this stigma, and they shouldn't, but nobody's child should. So I've always said to the people in my community, the white powers that be sharpen their tools of oppression on us because nobody cares. Then if they're to be used on selected white people, then they polish them to the point where every argument or defense the white people can make, they've heard those offered by us and they can handle the white people. Then when you flip it and the problems are here and they're us primarily, they say, well, you all are immoral, parents don't care about their children, if you had a better home life, if you went to church. But now white children who live in neighborhoods where the addresses have five digits, have huge churches, have parents, both of whom are professionals with respectable jobs, with the same problems but they're looked at differently because when the monster slouches into our home, we see it differently, we see it for what it is. We don't make our children responsible because, if they're bitten by a venomous serpent, the poison kills them. We look at the snake or the serpent that bit them. And I'm glad that it's happening this way, because some of it will spill over and benefit us incidentally, only incidentally. This final thing, because I'm not going to say something on all of these bills, but I feel so strongly about the sociological, the psychological problems and the difference in treatment between white people and black people, wealthy people and poor people of whatever race, that I've got to get something from me on the record. I haven't been questioning people, none of it. But you're a senator so I'm saying it to you and not a person who came up here to testify and will feel that I'm taking advantage. But as much as I speak against prisons, when it came to black people, prisons were a step up for us because they take us out, they torture us, they break our limbs, they would burn us alive, they would do all of these horrible things. But then they had prisons for white people, so when the time where, instead of

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taking us out and treating us worse than they'd be allowed under the law to treat an animal and we went to prison, that was an improvement over the way we had been mistreated. Then the prisons became the place where you warehouse black people. But they had to have white people there, too, so now the white people in prison are suffering the way ours did. And the prisons were designed to make us suffer. So we have concern about prison reform, humanizing prisons, don't call people who work in prisons guards or screws but, rather, correctional employees, not penitentiaries but correctional facilities, not places just designed to punish but, rather, to rehabilitate and equip somebody to come back into society. That's not for us and in the prisons it doesn't work that way now, but I'll fight hard so maybe some of the spillover might help us. We shouldn't have to eat slop, but maybe you'd eat slop in preference to starving. So you all's slop is what we have to consume in order to survive. So I'm going to do everything I can with the limited knowledge that I have--I'm not a scientist, not a doctor, obviously--to get any kind of treatment that might help people who have these problems. And then this, what I'm saying now, I don't care about their race, I don't care about their religion, I don't care about their ethnicity, I don't care about their sexual orientation, when I'm asked am I my brother's keeper, I say, my brothers and my sisters. And I don't care about any of these other considerations. They are human beings. Every person's pain affects me. Every person's death diminishes me. And I would diminish myself if I let my bitterness which I feel become so overwhelming that I say now the worm has turned and white people are getting their just desserts. That's not what I feel. And although I may say that on the floor in making a point, look at my record and how I fight harder than anybody on that floor. And you've never heard me say, like that Hillboro (sic: Westboro) Church down in Kansas or wherever it is, this is God's punishment because you all don't kill homosexuals or you let people marry. What...you've never heard me say that. I don't say God's punishing anybody. But sometimes to make a point I'll say that: If you're God, then... But I want it clear to everybody in this room, if there's anything that anybody can think of that might work, I'm willing to give it a try. And now this comes back to what you said that gave me my opening. We cannot wait forever. If there are things we can do, if we move with halting steps, if we make missteps, we've go to do something, then those who have an interest, even if they start out by opposing, we say, what can we do then to improve it, because we've started this journey and we're not gong to stop till we reach the end of it. You and I have had differences. I applaud you for what you're doing. And I will work with you in any way, and any of the other people here or wherever they are. And if there's anybody who gets in the way, you all know that, just verbally, I

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can put a whipping on them and that's what I'm prepared to do. And now you all in this room, you won't have to listen to me say anything else because I don't have much to say on any of these bills unless somebody, in a way that I think is uninformed, will attack and say, you know, nothing should be done. Maybe I'll not be able to hold my piece. My views are known, made known now, and I do have a vote in this community, in this committee, and on the floor. So I'm going to try to go back to my meditative mode and let you all take it from here. (Laughter)
[LB934]

SENATOR KUEHN: I... [LB934]

SENATOR MORFELD: Chairwoman, just for the record, I have nothing to do and no clue about dope, cocaine,... [LB934]

SENATOR EBKE: Anything. [LB934]

SENATOR MORFELD: ...anything that... [LB934]

SENATOR CHAMBERS: Oh, cocaine! That's what I was trying to think of. (Laughter) That's the word there. [LB934]

SENATOR EBKE: And in looking around the room while Senator Chambers was speaking, it seems that we all felt those comforting sounds of his humming and we're all taken in and comforted, so thank you. Anything else? [LB934]

SENATOR KUEHN: Senator Chambers, I will gladly work together with you on this. I look forward to our cooperation. [LB934]

SENATOR CHAMBERS: Okay. [LB934]

SENATOR EBKE: Okay. And we have one letter of support from Thomas Williams of the Department of Health and Human Services. That will close the hearing on LB934. Thank you, Senator Kuehn. That brings us to LB933, Senator Lindstrom. [LB934 LB933]

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SENATOR LINDSTROM: Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing Legislative District 18 in northwest Omaha. I'm bringing LB933 for your consideration today. LB933 requires prescribers to notify patients, or their parent or guardian if the patient is under 18, of the potential risks of addiction and overdose when the first prescribing...when first prescribing a Schedule II controlled substance or opiate and again prior to the third prescription. Specifically the discussion needs to include that the controlled substance or opioid is highly addictive, even when taken as prescribed, there is a risk of developing a physical or psychological dependency, and taking more than prescribed or mixing other drugs or alcohol with a controlled substance or opioids and can be fatal. The prescriber must also discuss why the prescription is necessary and any alternative treatments that may be available and make a notation in the patient's medical record that such discussion occurred. It is no secret that prescription drugs, drug abuse, specifically with opioids, is a national crisis. In 2015, 33,000 people died of opioid overdoses across the U.S., which is a 200 percent increase over the past 15 years. According to the CDC, at least 75 percent of new heroin users were first addicted to pain pills. In 2016, the director of the Office of National Drug Control Policy recognized the importance of education and our efforts to move our country from crisis to recovery, stating that ensuring prescribers and patients understand the risks involved with prescription opioid pain medications will go a long way toward ending this crisis. My family has firsthand experience with opioid addiction and I'm a strong advocate of prescription drug reform. I am proud of the progress we have made in Nebraska with our Prescription Drug Monitoring Program and the work Nebraska has done to stay on top of the growing epidemic. I understand there may be some opposition to this bill and I'm willing to work with those organizations to find a solution that addresses their concerns. I encourage the committee to move forward on this bill and other bills that you'll hear today. And with that, I'll take any questions you may have. Thank you. [LB933]

SENATOR EBKE: Thank you, Senator Lindstrom. Questions for Senator Lindstrom? Okay. You going to stick around? [LB933]

SENATOR LINDSTROM: I will, yeah. [LB933]

SENATOR EBKE: Okay. [LB933]

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SENATOR LINDSTROM: Thank you. [LB933]

SENATOR EBKE: First proponent. Do we have any proponents for this legislation? Okay.
[LB933]

ANDY HALE: Chairwoman Ebke, members of the committee, my name, again, is Andy Hale, A-n-d-y H-a-l-e, and I am vice president of advocacy for the Nebraska Hospital Association. And in the previous bill, Senator Kuehn's bill, I gave some numbers and rationale why the Hospital Association is...feels this is an epidemic and wants to work with our legislators on trying to fix that problem. So essentially I want to thank Senator Lindstrom and his staff for bringing this bill. We're always a big proponent of education and we feel that this is what this bill exactly does, provides our patients with the education about what's happening. So with that, I'll answer any questions. [LB933]

SENATOR EBKE: Questions for Mr. Hale? I see none. Thank you. [LB933]

ANDY HALE: Thank you, Senator. [LB933]

SENATOR EBKE: Any other proponents? Opponents? [LB933]

SENATOR PANSING BROOKS: (Inaudible) still coming. Yeah, he's coming. [LB933]

SENATOR EBKE: What? [LB933]

SENATOR PANSING BROOKS: He's coming. [LB933]

SENATOR EBKE: Are you a proponent? [LB933]

SENATOR MORFELD: Proponent? [LB933]

SENATOR EBKE: Proponent? [LB933]

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GREGORY LAUBY: Yes. [LB933]

SENATOR EBKE: Okay. Okay. [LB933]

GREGORY LAUBY: Yes. Again, Chairman Ebke, members of the committee, my name is Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I'm testifying in favor of this bill even though I might question what happens when a patient is incompetent to understand the advice and whether or not it's necessary to give it on those occasions, and some of the wording about what kind of advice is required. But I support it because I think it may be the most critical thing that can be done to actually address one of the major causes of the opioid addictions. I have had operations that have...I have come away from the hospital with an opioid prescribed, but it was not labeled an opioid, and it wouldn't have mattered if it had. At that time, I didn't know what an opioid was. I didn't realize that it was in the family of heroin and meth, morphine, and that it could be addictive and even deadly if I overdosed. And no one told me. No one gave me that information. The most recent warning that I had was that you should not drive when you leave the hospital as long as you're taking this medication, you need to have somebody pick you up and drive you physically. I think it would go a long way if physicians or nurses or someone at least alerts the person who is receiving the medication about what dangers it can pose and caution them to follow the prescription procedures that are set out in it. And with that, those are my comments. [LB933]

SENATOR EBKE: Okay. Thank you, Mr. Lauby. Any questions? Thank you very much. Other proponents? [LB933]

KIM ROBAK: Chairman Ebke and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I'm here today on behalf of the Nebraska Dental Association in support of LB933. There was a long discussion about this bill and another bill that's coming shortly before you on the subject of opioids before the Nebraska Dental Association. And the question was, would we come in, in support of the bill, and ask for some changes or do we come in, in opposition to the bill, and ask for some changes? So I'm here today in support of the bill to ask for a couple of things, in particular, on this bill, and we'll do the same thing on the next bill. Particularly, the Nebraska Dental Association would ask that there be a sunset on this bill. The practice of

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medicine changes quickly, or maybe not quickly, but it changes over time and when that happens we have language in bills that sometimes don't make sense anymore or sometimes are in a place where we place physicians and dentists and other prescribers in a situation of violating the law without intentionally doing so. So there's some language of this bill and the later bill that we would hope would be effective and, if it's effective, maybe we continue with the bill. If the bills are not effective, if we have some data, as Senator Kuehn said earlier, if we have the data that shows us something else is better, let's put a sunset on this bill, let's come and look at it in five to seven years, and then let's say if we've addressed the problem we can let the bill sunset; if not, we'll reinstate the bill. I will give you an example. Ten years ago, or so, there was evidence that showed, and it still shows, that if you are in pain, you do not recover as quickly as if you are not in pain. So it was told to dentists, in particular, that they need to be prescribing opioids and drugs in order to ensure that people who were having major dental procedures, that they would receive these particular drugs. Now today it's been made clear that these particular drugs are now potentially, and are in many instances, causing addiction. So medicine has changed and dentists are learning how to make those changes. But when you put that in statute, we run the risk of setting people up to accidentally violate the law. So with that, I would be happy to answer any questions. [LB933]

SENATOR EBKE: Thank you, Ms. Robak. Questions? I actually like the idea of sunseting a lot of things. I think we ought to do that, so thank you. [LB933]

KIM ROBAK: (Laugh) Thank you, Senator. [LB933]

SENATOR EBKE: Other proponents? Are there any opponents to this bill? Welcome back. [LB933]

JOHN MASSEY: Once again, my name is John Massey, J-o-h-n M-a-s-s-e-y. I find myself very much in the position that Ms. Robak was just in, that I'm here on behalf of the NMA. We did have a great discussion about this, as well, and we essentially had the same discussion and I'm primarily here, again, as a proponent for everything we can do to reduce the problem of prescription opioid and prescription medication abuse. We, you know, we thought 15 years ago that these medications weren't addictive when they were given to patients in pain, and we've had

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this terrible experience where we now know that that's a big mistake. I can't imagine there being a physician right now who would not feel it is standard of care to give this exact discussion to patients when he is handing out this prescription. And to make it a statute, I think, again, might be a step backwards because we won't be concentrating on the things that we can do that will really affect this. And in every instance, it would be important for physicians to make clear to any patient that receiving these medications, for the first time especially, that this is one of the risks of these medications. To make it a statute, I think, takes...makes the valuable discussion, the patient-physician relationship, it kind of intrudes upon that moment and it might make it easier for a patient to get the misperception that this is being told because of a statute or a rule rather than something that's very important to communicate. So it's not a very strong opponent stance to this position, but we're concerned that we're missing the point in our ability as physicians to take a very strong leadership role in reducing this problem among our patients. With that, I'll take any questions. [LB933]

SENATOR EBKE: Thank you, Dr. Massey. Any questions? I see none. Thank you very much. [LB933]

JOHN MASSEY: Okay. [LB933]

SENATOR EBKE: Other opponents? I see nobody moving. Anybody in the neutral position? I see nobody moving. Senator Lindstrom. [LB933]

SENATOR LINDSTROM: Thank you, Chairwoman Ebke and members of the Judiciary Committee. I appreciate what you do in all sessions, because I know you're here for a lot of bills. So I appreciate you listening to this in particular. And this does hit home for me. Like I said, I've experienced this firsthand with a family member who started out on opioids for back pain and was...became an addiction over about a decade, which then led into drug shopping and that prescription drug monitoring, but it was really one of the reasons I go involved in this particular bill, along with Senator Howard a couple years ago. And it's always interesting when you come down to the Legislature, finding allies and the issues that you find allies with. And so that was one that Senator Howard and I came together on a couple of years ago and we're trying to build on that. But the story isn't dissimilar to what other families face with the opiate addiction which

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leads into heroin. I know you hear a lot about different things in this committee, but I just want to go on record. And I've seen the drug court work. The individual that I'm speaking of graduated from the drug court here last summer and through that process has been clean for two years. So I just...my two cents is that it is working, so I know you see a lot of those issues. But anyway, with that, I'd be more than happy to work with the opposition on this bill. If a sunset satisfies the opposition, I'd be more than happy to work with them on that. So with that, I appreciate your time and be happy to answer any following questions or ending questions. [LB933]

SENATOR EBKE: Thank you, Senator Lindstrom. Senator Chambers. [LB933]

SENATOR CHAMBERS: I can't resist. I do this only with Senators. [LB933]

SENATOR MORFELD: Oh, we know. [LB933]

SENATOR CHAMBERS: I'm going to make a reference to something that happened in the Bible, not to proselytize anybody, but when Pilate was trying to determine what he should do with Jesus, his wife came to him and she said, hath thou nothing to do with this just man, for I have suffered much in a dream because of him. Romans were hardheaded, down-to-earth people, but they were also superstitious. So as he began to examine Jesus, he didn't see really anything that troubled him as a Roman. Then he found out where Jesus was from, and it was the territory presided over by Herod. So Pilate said, aha! And he sent Jesus to be handled by Herod. And as they had conversations, it said that, as a result of this, they became friends, for before that there was enmity between them. Now I'm not going to say there was enmity between us, but I did kill, help kill one of your bills. (Laughter) This is the one that might remove that enmity between us and we can become friends again. [LB933]

SENATOR LINDSTROM: I appreciate that, Senator Chambers. Thank you. [LB933]

SENATOR CHAMBERS: Okay. [LB933]

SENATOR EBKE: (Exhibits 1 and 2) Any other questions? We have two letters in support: one from Richard Aziz Khan and Liz Lyons of Children's Hospital and Medical Center; and one from

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Thomas Williams of the Department of Health and Human Services. Thank you, Senator Lindstrom. This closes the hearing on LB933. We will move to LB906. I see Senator Williams is here. Welcome back. [LB933]

SENATOR PANSING BROOKS: Wow. [LB906]

SENATOR WILLIAMS: That's my chair you're sitting in. Thank you, Chairman Ebke and members of the Judiciary Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36, and I'm here today to introduce LB906. And I understand you've had a very eventful afternoon and we'll try to calm all of that down right now. LB906 was introduced at the request of the Nebraska Pharmacists Association. The NPA introduces legislation every few years to update the Nebraska Uniform Controlled Substances Act to mirror federal law. These updates are particularly important now that Nebraska has a Prescription Drug Monitoring Program and tracks all dispensed medications, including controlled substances. LB906 adds language to the Nebraska Controlled Substances Act to allow differences of the Drug Enforcement Agency's exempt products list to recognize controlled substances that are deemed exempt and no longer need to be listed as a controlled substance. It also adds several substances to the Schedule II, III, and IV listings, and it also corrects a misspelled word. If you have questions about the details or particular substances or would like someone to pronounce the names of all of those, there is a pharmacist that will follow me with testimony, Marcia Mueting. The pharmacist, she is also a pharmacist and with the Nebraska Drug Utilization Review director for the Nebraska Pharmacists Association. This simply harmonizes the federal legislation with our state legislation, and I would encourage you to move LB906. Thank you. [LB906]

SENATOR EBKE: Thank you, Senator Williams. Senator Chambers. [LB906]

SENATOR CHAMBERS: Only to senators do I do this. When I was a small boy, there was a story about the billy goats gruff. And there was a troll that lived under a bridge, and heard this little tap, tap, tap, tap. Who's that walking on my bridge? It is I. Who are you? I'm the little billy goat gruff. I'm going to eat you up. Please don't eat me up, Mr. Troll. My bigger brother is coming. Eat him up. I'm not the troll, and you're not the little billy goat gruff. Sacrificing somebody who's coming after you, are you? [LB906]

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SENATOR WILLIAMS: I would never pretend to do that. [LB906]

SENATOR CHAMBERS: Because every move... [LB906]

SENATOR WILLIAMS: I wouldn't ever pretend. [LB906]

SENATOR CHAMBERS: Because every move you make,... [LB906]

SENATOR WILLIAMS: ...every breath you take,... [LB906]

SENATOR CHAMBERS: ...every smile you fake,... [LB906]

SENATOR WILLIAMS: ...every cake you bake (laughter),... [LB906]

SENATOR CHAMBERS: ...every claim you stake,... [LB906]

SENATOR WILLIAMS: ...every yard you rake,... [LB906]

SENATOR CHAMBERS: ...I'll be watching you. [LB906]

SENATOR WILLIAMS: I am watching you. (Laughter) [LB906]

SENATOR EBKE: Okay then. (Laughter) First proponent. I always wonder what the people who read these transcripts in 20 years must...will think about some of these things. [LB906]

SENATOR PANSING BROOKS: I actually have a song on that troll thing. I'll do that later. [LB906]

SENATOR EBKE: (Inaudible.) [LB906]

MARCIA MUETING: That's a tough act to follow. [LB906]

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SENATOR EBKE: (Laugh) Okay. [LB906]

MARCIA MUETING: (Exhibit 1) Senator Ebke, members of the Judiciary Committee, my name is Marcia Mueeting--that's M-a-r-c-i-a, my last name is M-u-e-t-i-n-g--and I'm a pharmacist with the Nebraska Pharmacists Association. On behalf of the members of the Nebraska Pharmacists Association, I offer support for LB906. Thank you, Senator Williams, for sponsoring, and, Senator Bob Krist, for cosponsoring this legislation to update the Nebraska Controlled Substances Act to mirror the federal Controlled Substances Act. You're being handed out kind of a grid, a little cheat sheet that outlines the changes that we're proposing. LB906 accomplishes the following. It adds language to the title of the Nebraska Controlled Substances Act that recognizes, if a substances appears on the DEA's exempt products list, then that product is exempt in Nebraska, even if the substance is listed in Nebraska. For example, there is a medication called Fioricet given for headaches. One of the ingredients is listed in the schedules for Nebraska: butalbital. But when used in combination with acetaminophen--Tylenol--and caffeine, the DEA feels that this medication does not pose a risk for addiction. So the combination itself is on the exempt products list, even though one of the products in the medication is listed in the schedules, and we'd like to make sure that Nebraska law recognizes the DEA's exempt products list. The next thing that this bill does is it strikes language in Schedule I to recognize dronabinol, in various forms, placed in other schedules. As Senator Williams noted, it does correct the spelling of "5-(2-Aminopropyl)benzofuran, which is also known as 5-APB." It adds "ecgonine" to Schedule II. This is a medication...or it's not a medication. It's a substance that is federally recognized as a substance in Schedule II. It's...it was added to the schedules on July 31, 2007. It's a metabolite of cocaine. This bill also adds "Thiafentanil" to Schedule II. It was federally scheduled on August 18, 2016, and it is an opioid for animal use only. It adds "Dronabinol in an oral solution in a drug product approved by the" FDA to Schedule II. That was federally scheduled in July 2016 and again on March 23, 2017. This updates a date reference for the DEA, exempts products listed in Schedule III. It adds "Brivaracetam" to Schedule V. It's an anticonvulsant that was federally scheduled on February 22, 2017. And I would be happy to answer any questions that you have. Yes. [LB906]

SENATOR EBKE: Senator Chambers. [LB906]

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SENATOR CHAMBERS: Since Senator Williams put you into this,... [LB906]

MARCIA MUETING: Yes. [LB906]

SENATOR CHAMBERS: ...do you have a copy of this chart? [LB906]

MARCIA MUETING: I do. [LB906]

SENATOR CHAMBERS: Could you look at the far right-hand side, column? Now you see the words in heavy type "USE FOR DRUG." [LB906]

MARCIA MUETING: Right. [LB906]

SENATOR CHAMBERS: What is the first word in the first line underneath that? How do you pronounce that? [LB906]

MARCIA MUETING: (Laugh) It looks like a misspelled word for "language": "Adding this 'langauge'..." [LB906]

SENATOR EBKE: No. No. [LB906]

SENATOR CHAMBERS: No, the very first word. See, there's an oblong box. [LB906]

MARCIA MUETING: Uh-huh. [LB906]

SENATOR CHAMBERS: What's that first word in that box? How would you pronounce it,... [LB906]

SENATOR EBKE: It's a trick question. [LB906]

SENATOR CHAMBERS: ...the very first word? [LB906]

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MARCIA MUETING: Oh, "Note"? [LB906]

SENATOR CHAMBERS: How? [LB906]

MARCIA MUETING: "Note." [LB906]

SENATOR CHAMBERS: You're right. You could pronounce the words that Senator Williams didn't know how to pronounce, and I thank you for it. [LB906]

SENATOR EBKE: Any other questions? So to be clear, this is really just harmonizing and making sure that we are in...we are consistent with what the federal DEA guidelines are, right? [LB906]

MARCIA MUETING: That's exactly right. The federal, the DEA schedules drugs. They put them in the respective schedules. Nebraska has its own set of schedules. This bill will not make it more restrictive than the federal language. It won't make it less restrictive. It can't make it less restrictive. [LB906]

SENATOR EBKE: What's the advantage of being in...consistent with the federal guidelines? What's the advantage to pharmacists, law enforcement, patients, whoever? Just... [LB906]

MARCIA MUETING: Well, I can't speak for law enforcement. [LB906]

SENATOR EBKE: Okay. [LB906]

MARCIA MUETING: But for pharmacists, that means that we are following one set of rules that they're harmonized. There's been an issue with whether Fioricet should be recognized in Nebraska, in particular, as a controlled substance. When a prescriber writes a prescription for a controlled substance, that medication is limited. It can't have more than five refills and the prescription itself is only good for six months. If it's not scheduled, if it's not in a controlled substance, when that prescription is written, it can be good for up to 12 months with an unlimited number of refills. We file prescriptions differently based on their...whether they're scheduled or

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not. We file our invoices of our drugs that we get, that come to our pharmacies, differently, so having that harmonized such that Nebraska is not more or less restrictive than what the federal government schedules these medications at, is extremely helpful. It's one set of rules to follow. [LB906]

SENATOR EBKE: Thank you. [LB906]

MARCIA MUETING: Sure. [LB906]

SENATOR EBKE: Questions? Okay, thank you for coming. [LB906]

MARCIA MUETING: You're welcome. [LB906]

SENATOR EBKE: Other proponents? Okay, do we have any opponents? [LB906]

GREGORY LAUBY: Madam Chairman, members of the committee, my name is Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I'm here to oppose this bill basically on two grounds. One is the opening section ties the Nebraska controlled substance list to the list of exempt products on the Drug Enforcement Administration list as it existed as of November 9, 2017. I don't know what that list was. I don't know that judges would know. I don't know that defense lawyers or even prosecuting attorneys would know. That's not a list that's readily available. Maybe it is to pharmacists, but it's certainly not to the average person in the street who is trying to make a decision about whether or not he's going to handle the drug and whether it's legal or illegal. And it almost seems that the language could be interpreted to be tying the authority of this Legislature to exempt drugs to that which the DEA had exempted as of November 9, 2017. That's a concern to me that somehow it could suffer that type of interpretation. The other thing is that there has been a long list of drugs added to the controlled substance list here in Nebraska by this legislation, but there has been at least no oral testimony about why those specific drugs are dangerous. I think just simply because they may be on a DEA list, without even knowing for sure that they've been named a controlled substance by Congress and why that determination was made, is a hasty decision, and that that kind of information and evidence ought to be required, especially when I heard reference to cannabidiols. And if we were talking about something from

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the cannabis plant itself, with all of the evidence that is emerging about its ability to relieve pain dramatically and even replace the use of prescription drugs, and specifically opioids, I would be very hesitant to place them on Nebraska's controlled substance list without knowing a lot more than what has been presented that I've heard today. And I feel so strongly about that I'll pass out a little reminded of the strength of that belief, if the page would. Any questions? [LB906]

SENATOR EBKE: Senator Chambers. [LB906]

GREGORY LAUBY: Yes, Senator Chambers. [LB906]

SENATOR CHAMBERS: You are a man of a certain age. [LB906]

GREGORY LAUBY: Yes. [LB906]

SENATOR CHAMBERS: And I'm not going to ask. Have you ever heard of a singer, he died last year, named Leonard Cohen? [LB906]

GREGORY LAUBY: Yes, I have, Senator. I have listened to him since his first album. [LB906]

SENATOR CHAMBERS: Had I ever discussed him with you before? [LB906]

GREGORY LAUBY: You mentioned that you felt there was some resemblance in my voice and his. [LB906]

SENATOR CHAMBERS: Why do you think I looked up from my meditations here? (Laughter) I said, don't tell me Leonard is being streamed here. It shows you that I wasn't kidding, that I meant it, and it came back to me. It's good to see you again. [LB906]

GREGORY LAUBY: It's good to see you, Senator. Thank you very much. [LB906]

SENATOR CHAMBERS: Thanks for coming. [LB906]

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SENATOR EBKE: I'm mostly impressed that Senator Chambers just used the word "streamed."
(Laughter) That's... [LB906]

SENATOR CHAMBERS: Well, that came before all of this. That was when dead people went to these psychics and somebody who was somewhere else would... [LB906]

SENATOR EBKE: Stop while you're ahead. [LB906]

SENATOR CHAMBERS: Oh, okay. [LB906]

SENATOR EBKE: You're sounding very hip here, you know, so... [LB906]

SENATOR CHAMBERS: Oh! (Laughter) [LB906]

SENATOR EBKE: Okay. [LB906]

SENATOR PANSING BROOKS: I think... [LB906]

SENATOR EBKE: Yeah, streaming audio. [LB906]

SENATOR PANSING BROOKS: ...thought it was amazing that...we're talking about the River Hades, is that what you're talking about, that stream? [LB906]

SENATOR MORFELD: We're not quite sure what we're talking about. [LB906]

SENATOR EBKE: We're not sure. [LB906]

SENATOR PANSING BROOKS: Okay. So what my question...did you talk to Senator Williams? Thank you for coming, first off. But did you talk to Senator Williams about your concerns? [LB906]

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GREGORY LAUBY: No, no. I didn't realize this bill was coming up for hearing until yesterday, as a matter of fact, and so, no, I have not had an opportunity to discuss it with him. [LB906]

SENATOR PANSING BROOKS: Okay, thank you very much. [LB906]

GREGORY LAUBY: You're welcome. [LB906]

SENATOR EBKE: Any other questions? Okay, thanks for being here. Any other opponents? Do we have anybody testifying in a neutral capacity? I see no one moving. We have a lot of people here yet, so we must be up for something. (Laughter) Okay, Senator Williams. [LB906]

SENATOR WILLIAMS: Unless there are any questions, I'll waive closing. [LB906]

SENATOR EBKE: Okay, Senator Williams waives. Do we have any...we have no letters, so that closes the hearing on LB906. Senator Howard. And after we get done with Senator Howard's bill, we will take a brief five-minute, or so, break, and then we'll do the three Senator Wayne bills. [LB906 LB931]

SENATOR HOWARD: (Exhibits 2-4) Okay. You ready? [LB931]

SENATOR EBKE: Go for it. [LB931]

SENATOR HOWARD: Okay. Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm presenting to you LB931, a bill that puts a cap on the number of days that a prescription for an opioid may be issued to a child. In LB931, unless a minor is being treated for chronic pain, pain associated with a cancer diagnosis or in palliative care, they shall not receive a prescription for more than a seven-day supply. Additionally, if the prescription of the opiate is being written for the first time, the prescriber will discuss the risks associated with the use of opiates with the parent or guardian of the minor. If a prescriber does decide that more than a seven-day supply of an opiate is required to treat a patients' condition, they may issue a prescription for more than a seven-day quantity and document as such in the record, in the

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medical record, and indicate that a nonopioid alternative was not appropriate. This law does not apply to drugs that are used to treat substance abuse addiction. So I thought a lot about how I wanted to approach this hearing because this, as most of you know, is a really personal issue for me. And so one of the things that I don't think we do very well in the era of term limits is actually talk about ourselves and what...why we're here in the first place. And so I just thought I'd tell you a little bit about myself and why this is so important. So the first thing you should know is that my dad was killed in a car accident three months before I was born. And so my mom was pregnant, my sister was five, and my mom never remarried, so it was always just my mom, my sister, and I, and we were this, like, perfect unit, right? We knew each other really well. We were whole. And so it makes a lot of sense because when my sister got into a few car accidents and she had a lot of back pain and the doctors recommended that she get a spinal fusion, that, when I graduated from college in 2003, I came home to take care of Carrie. So mom was a social worker for the state of Nebraska, which is why I do a lot of that work, and she couldn't take time off of work. And so I was the person who do that, and it was after that surgery that Carrie was first introduced to OxyContin. We didn't know what it was; 2003 was a very different time when you're thinking about opioids. They were...people were not talking about it the way that they talk about it now. And my job was to feed her, make sure that she didn't go downstairs because when you have a spinal fusion you can't go up and down stairs. So I would help her bathe, and I was also supposed to make sure that she took her meds and took her meds the way that she was supposed to. And the minute she met OxyContin, it was like she just wanted more of it. And sometimes it felt like she loved it more than she loved my mom or me or anything else. And so what she started to do was she would call different doctors and she would say, I need a prescription, I need another prescription, and they would mail them to her or my mom would go pick them up for her. And she was certainly overprescribed and the outset. And I remember calling the doctors, because this was when HIPAA was very new, and saying, I think she's getting too many drugs, I think if I give her everything that I'm told to give her, I think she will die and I will be killing her. And they said, we can't talk to you because of HIPAA. And so my family went through that really silently, right? Nobody was talking about this. And addiction is something that's really shameful for a lot of people. And so eventually Carrie got better, right? She was able to go up and down stairs again. She was able to go back to work. And she weaned off of...we thought she had weaned off all of the opioids. And so I happily trotted to law school in Chicago and my first year of law school she had her first overdose from OxyContin and

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Vicodin. And so I went home for a couple of...well, for a month, which is why I still have a hard time with evidentiary procedures, because I think I missed that whole section, and so that's not my strong suit. And then she got better and this is what happens with addicts--they get better. And then my third year of law school she overdosed again and she had been overprescribed and it was more than a human being should ever consider taking. So when we lost her, I had been one month...I had taken my Illinois bar. I had passed it, which was a Christmas miracle, and I had been at my dream job for a month. I got a job at a policy group for moms and babies. Can you believe it? And I was trying to get healthcare for moms and babies in the state of Illinois--shocking. And when my mother called me, and she was in the Legislature at this point, and when my mother called me and said she's gone, we had been dealing with this issue for so long I didn't ask where, like I already knew what she meant when she said that she was gone. And so when you think about that we have a recess day on Monday, my mother spent her recess days of that session cleaning out my sister's house with me. So I had a really weird day on Wednesday here in the Legislature. I had one of those days where you go out to the lobby and everybody is tapping your shoulder and they want you to come talk to them about something that's totally disparate and doesn't make any sense. And I got really excited because I found out that the Department of Health and Human Services was coming, gave us a letter of support on this bill, and I think I've worked here for six years and I've never gotten a letter of support from them, so I was really riding a high at that moment. (Laughter) But then I was also brought out to the lobby to talk to a group that I had sent the language of this bill to, had made some modifications to the bill per their request, and they had decided to come in opposed, which was very difficult for me. So I "sad-texted" my mom, which you should not do that when your mom cares about this issue as much as you do, and I said to her, I wish they could see how much Carrie had been prescribed, I wish...if people could just see it, they would know why some type of cap, at least for children, makes sense. And my mom said, they can see it, I have all the pill bottles in the basement. And so could I borrow a page? Sam? So we brought them down. So if next week you guys want to visit my office, you can see what my sister was prescribed and given for the last five months of her life. It is terrifying. What we did was we made a list for you. She was given over 40...4,500 pills in the span of five months. It's terrifying how much she got. And I asked my mom, like, why, like...and she said, I always thought that someday somebody might need to see them because it is so unbelievable how much she was given. And so we put them out in my office and it was really hard to look at them. But those pill bottles are a reminder of why the work that

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we're doing here is important, why the seats that we sit in matter. And so I would invite all of you to come down to my office, if you have time, to see them. So in happier news, the past three years in Nebraska...the past three years Nebraska has taken great strides in the fight against opioid addiction. By passing LB471 in 2016, we completed implementation of the first-of-its-kind comprehensive Prescription Drug Monitoring Program. I would argue we have the best in the country. Beginning in...beginning last year, we were...we are successfully collecting all controlled substances dispensed to patients and then, beginning this year, we are collecting all medications that are being dispensed to patients so that you can really consider medication interactions. It's...we've closed the gap because what we wanted to do was make sure that doctors and pharmacists were on the same page with our Prescription Drug Monitoring Program. It is free to doctors and pharmacists, and that is due to the great work from the Department of Health and Human Services. They got grants from the Department of Justice and the CDC in order to do that. I feel that LB931 and a few of the other bills that you've heard today are the next step in addressing the opioid epidemic in our state. By limiting the amount of opioids prescribed to minors, we're also trying to limit the amount of these drugs that young people's brains are exposed to. It's important to start this conversation and this process with young people because, unlike adults, the brains of children and teenagers are still developing and their minds can be permanently altered by these pharmaceuticals. I believe this is the first step in a longer process. Once we see if prescription caps are effective for children, we can look at whether or not that should be an option for all individuals who receive a prescription for opioids. According to the CDC, the likelihood of long-term use of opioids increases based on the length of the initial prescription, so, in fact, the likelihood of long-term use increases sharply after the third and fifth days of taking a prescription, and it spikes again after the thirty-first day. So, Sam, could I borrow you again? Thank you. By the end of 2016, seven states had passed legislation limiting opioid prescriptions, and the trend continued in 2017. I'm...I asked the page to hand out a chart of what states are really look at prescribing guidelines and that sort of thing. More than 30 states considered at least 130 bills related to opioid prescribing in 2016 and '17, and as of July 2017, 23 states have enacted some type of legislation with limit guidance or requirements relating to opioid-prescribing laws. Alaska, Connecticut, Indiana, and Louisiana, are the states that explicitly limit prescriptions for minors. I want to be clear that LB931 doesn't create any duties for pharmacists to ensure that the providers are abiding by the quantity cap, nor is there any penalty for not doing so. Also, while this new language is contained in the criminal code, which

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(inaudible) asked about that. And I don't have a copy of this, but I can pass it out. The Bill Drafter who was in charge of this felt that it was most appropriate in the Uniform Controlled Substances Act, rather than the Credentialing Act, because of the use of the word "opiate." Violations of this statute would be left up to the Board of Health, who handles disciplinary procedures for violations of such credentials. So you may think that we're a state that really hasn't been touched by the opioid epidemic, or that maybe my family is an anomaly, but the Health and Human Services, the department came to our committee last week and said that one of our challenges is really around death certificates. So we don't really have a check box for overdoses on our death certificates, and we certainly don't have one that reaches into whether it was because of an opioid. And so DPH has actually gotten a grant so that they can not only modify the death certificate so that we can know, according to Vital Records, but they will also give grants to county attorneys to conduct that toxicology exam so they can know exactly why a person passed away. The other pieces that you will hear from other folks, and maybe you already have--I apologize, I wasn't here--about the state of Nebraska's pain management guidance. And so I wanted to--Sam, this is the last one, I promise--I wanted to pass out the pages of that guidance, and there are only two, that talk about treating pain in children and adolescents. From what I can tell, they are absolutely silent when they come to prescribing a cap specific to minors, and so this legislation would really fill in a gap in terms of that guidance that was released in October of 2017. So as I stated earlier, I do think that LB931 is an important step in a long process in this state in combating opioid addiction. I appreciate your time and patience and attention, especially in listening to my own personal story, which is difficult, and I'm happy to try to answer any questions you may have. [LB931]

SENATOR EBKE: Thank you, Senator Howard. Questions? You must have answered them all. [LB931]

SENATOR HOWARD: I try to be thorough. [LB931]

SENATOR EBKE: There we go. [LB931]

SENATOR HOWARD: All right. Thank you so much. [LB931]

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SENATOR EBKE: Can I see a show of hands how many are intending to testify in either, any position on this bill? Okay, let's get started. First proponent. [LB931]

ANDREW MACFADYEN: Madam Chair, members of the committee, my name is Dr. Andrew Macfadyen, spelled A-n-d-r-e-w M-a-c-f-a-d-y-e-n. I'm the medical director of the pediatric intensive care unite and the pediatric palliative care program at Children's Hospital and Medical Center. I am speaking here today on behalf of Children's Hospital and Medical Center in support of LB931. Opioids play an important role in the treatment of pain, even in children, making life better for the millions of children who have to undergo painful procedures and/or suffer through the effects of painful diseases like cancer. Unfortunately, they're a double-edged sword and come with serious side effects. Opioids at even appropriate doses can have side effects that can lead to hospitalizations and it doesn't take a much higher dose than that to lead to death. The speed at which opioids can kill is astonishing as well. They--opioids--become completely absorbed in the body through the stomach within an hour. Why are we at Children's worried about opioids? Well, the percentage of Nebraska adolescents age 12-17 who have experienced a major depressive episode has increased 50 percent between 2011 and 2015, according to the Substance Abuse and Mental Health Services Administration. At Children's Hospital and Medical Center, as early as about five or six years ago, we used to admit, on average, 20-30 teenagers a year who attempted suicide. That number has been rapidly climbing. In 2016, it was 131. In 2017, that number had risen to 155. Four of those children attempted suicide with opioids. All four of them were able to get the help that they needed. For adolescents taking drugs to attempt suicide, most change their minds and tell someone in time for medical attention to be obtained, to prevent death or permanent injury. For people who take opioids, that change of heart may not come in time because opioids can be a quick and quiet killer. For those taking opioids recreationally, the opportunity to misjudge the dosage is huge. I've been a doctor for nearly three decades, and one of the things I have learned over the years is that medical safety problems, because they involve human behavior, require complicated solutions. There's no one-size-fits-all, there is no silver bullet, no one thing that will fit it, fix it. Instead, all the recent advances in medical safety have employed a multipronged approach, a bundle of solutions that each, on its own, contributes to only a fraction of the solution but combined can solve real problems. I think Senator Krist had a great analogy with his degree earlier. Bills like LB931, along with some other bills and programs like the Prescriptions Drug Monitoring Program, combined, can make a real difference. We

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foresee several positive impacts from LB931: (1) actually limit the amount of opioids available to be abused; (2) reinforce to providers that opioids can be dangerous; (3) encourage providers to move towards pain-relief alternatives that are less risky by breaking them out of their current prescribing habits; (4) reinforce with parents and children that opioids are drugs to be used cautiously, even if it comes from a doctor. The numbers I quoted from you earlier, from Children's, are not large. Most people probably are not going to be impressed by them, but the hard truth is this: Other states have seen much larger problems with opioids, opioid use in their children, and there's no reason to believe that our children are different. So thank you for your time and especially for your attention. [LB931]

SENATOR EBKE: Thank you, Doctor. Questions? I see none. [LB931]

ANDREW MACFADYEN: Okay. [LB931]

SENATOR EBKE: Next proponent. [LB931]

JULIA TSE: (Exhibit 5) Good afternoon, Chair Ebke and members of the Judiciary Committee. My name is Julia Tse, J-u-l-i-a T-s-e, and I'm here on behalf of Voices for Children in Nebraska, here in support of LB931. We believe that protecting and supporting childhood health is key to ensuring that Nebraska's work force needs are met in the future. During these critical developmental years, pediatricians agree that the most effective means of ensuring childhood health is to take steps to prevent serious illness as early as possible. Voices for Children in Nebraska supports LB931 because it puts safeguards into place for the prescription of highly addictive opioids/opiates to children. Although the opioid epidemic has largely been at the center of national attention in recent years, children remain largely in the background on this issue. We've talked a bit about parental substance use disorders in this Legislature, which often co-occur with a number of other adversities. We know that this is one of many adverse childhood experiences that we now know to leave children with poor physical and mental health outcomes that last into adulthood. Seldom discussed is the use of opiates among children. The CDC estimates that the rate of fatal poisonings among teens has increased by 91 percent in less than one decade, primarily due to an increase in prescription drug overdoses, and other research suggests that today one in four high school seniors in the U.S. have used medical and

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nonmedical prescriptions opioids. Similarly, much of the research on the opioid epidemic has centered on adult use and we know far less about the epidemiology of the issue among children. One of the few studies that examined this specifically looked at the 188,000 instances in which there were pediatric opioid exposures that were reported to the Poison Control Centers over a 16-year period. The study noted that the most concerning exposures were those among teenagers who are most likely to experience an intentional poisoning, rather than an unintentional one, and accounted for more than two-thirds of exposures that were intentional. Addressing the misuse and addiction of opioids among children requires a multifaceted strategy, as others have referenced, that should include proper education of parents and healthcare professionals, affordable access to mental health treatment services, and restricting access to opioids among children. LB931 would take an important first step in preventing exposures to harmful opioid prescriptions. We would like to thank Senator Howard for her leadership on this issue and her heart and her courage for sharing her story, and for the...and to the committee for this, their time and effort. We respectfully urge the committee to advance LB931. [LB931]

SENATOR EBKE: Thank you. Senator Krist. [LB931]

SENATOR KRIST: Julia, could you give us a copy of, the committee, me, in particular, of your footnote, would be "iv," and that I think is a study that you referenced in your testimony. [LB931]

JULIA TSE: Yes, absolutely, I can send that to you and the committee (inaudible). [LB931]

SENATOR KRIST: That would be great. Thank you very much. [LB931]

JULIA TSE: You're welcome. [LB931]

SENATOR EBKE: Other questions? Thank you for being here. [LB931]

JULIA TSE: Thank you. [LB931]

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SENATOR EBKE: Other proponents? (Alarm beeping) Oops, wait, (laughter) is it 4:00?
[LB931]

SENATOR HALLORAN: Time's up. [LB931]

SENATOR MORFELD: Same 15 seconds we gave Bob. [LB931]

KIM ROBAK: Whoa, okay. [LB931]

SENATOR KRIST: It was great testimony. Thank you. [LB931]

DICK CLARK: Sudden-death overtime in the last hour of the day. [LB931]

KIM ROBAK: Senator Ebke and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I'm here on behalf of the Nebraska Dental Association in support of LB931. I want to thank Senator Howard particularly for her work with the Prescription Drug Monitoring Program. She spent years on that program and what that program will do for the opioid epidemic is unbelievable and we're just starting through that process. With that said, the Nebraska Dental Association, as I mentioned earlier, has...would like to see a sunset on this bill and has one other concern. The reason for the sunset, and I'll tell another story, a number of years ago I was in Minnesota. I was there for a meeting. I had a terrible toothache. I went to a doctor. The doctor said, you need a root canal and I'd be happy to do it for you. And he was a baby dentist. He had just gotten out of dental school and he said he was going to do a root canal on me and I said, I don't think so, I think I'll wait till I get home. But he gave me a bottle of hydrocodone or oxycodone or one of those opioids, and it was...they were massive, a massive dosage, and he gave me enough for two weeks, and I'm going home tomorrow. So I had this, this...these drugs. I took one that night. It was a mistake but...and I felt terrible and I didn't take any more. Fast-forward, last year I had another root canal. I have terrible teeth, obviously, so I had a root canal. I went to the dentist. He took care of it. And not only did he not give me any drugs, he said, alternate acetaminophen with Motrin, or Advil. I said, really? I was little nervous about going home and having...being in a lot of pain. And it worked. So I didn't get any drugs. So medicine has changed over time. Again, we are learning how to do things. I'm not suggesting that this is

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not a good bill. The Dental Association thinks that there are good things in this bill. But five years from now or seven years from now, seven-day prescription may be wrong. It may be two days or one day and it may become the ceiling and not the floor, or the floor and not the ceiling, and so we want to make sure that we can look at this five years from now and make sure that it is doing what we want and it's not causing some harm that we didn't intend. Finally, there is a discrepancy between this bill and Senator Lindstrom's bill with regard to age. This bill says under the age of 19, Senator Lindstrom's says under the age of 18, in terms of giving you notice. If I'm a senior in college or a freshman in college and I go away to school, I'm 18 years old, I go to see a dentist because I need to have my wisdom teeth pulled, I don't have parents there that I can give this information to. So I think the language under 18 makes more sense than under 19, and we would just suggest that, that change, as well. With that said, I'd be happy to answer any questions. [LB931]

SENATOR EBKE: Thank you. Questions? Thanks. [LB931]

KIM ROBAK: Thank you. [LB931]

SENATOR EBKE: Okay, next proponent. [LB931]

ANDY HALE: Chairwoman Ebke, members of the committee, thank you again. My name is Andy Hale, A-n-d-y H-a-l-e, and I'm vice president of advocacy for the Nebraska Hospital Association. This is the third time for my testimony on the opioid bill, so I will make reference to the transcript about my statistics that I provided in Senator Kuehn's bill, LB934. Just wanted to thank Senator Howard on this bill. One of the things I did comment in my previous testimony is that we don't perceive to have the problems that other states do, but we know that it's coming. And listening to Senator Howard's story, it's already here and it's been here. Knowing Senator Howard and her family in my community, we all had been familiar with the story that she told, and it never gets easier hearing it for another time. But I just want to thank Senator Howard and for her passion with this and her family's efforts to really move the ball forward. I think all of us know someone, some of our family members that have been impacted negatively because of opioid abuse. And if you're fortunate enough to not know one, hopefully, you won't and we'll be able to move this legislation forward. So if there's any questions...? [LB931]

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SENATOR EBKE: Questions for Mr. Hale? I see none. Thanks for being here. [LB931]

ANDY HALE: Thank you again, Senator. [LB931]

SENATOR EBKE: Are there any other proponents? I see nobody moving, so how about opponents? [LB931]

JOHN MASSEY: Hello again. I'm John Massey, J-o-h-n M-a-s-s-e-y. I also want to thank Senator Howard for her leadership in the state of Nebraska with respect to the PDMP and the opioid epidemic at large. Who can hear that story and not be moved by it and not understand that we need to do everything possible to make this problem better? I also want to use the testimony to kind of underscore the point that I would make. Our essential point is that, yes, with pediatric patients in particular, and actually the population at large, the smallest amount of opioids for the shortest period of time and the most appropriate prescribing guidelines is the most important thing that we can do as providers to our patients and the citizens. But when we use this, I'm afraid this bill isn't going to accomplish what we want it to, or it might actually accomplish the opposite of what we're trying to do. And I'll use the comment you made about the pediatric section in the PDM...in our pain management guidelines. If you look at page 19 on our pain management guidelines, not just for pediatric patients but for all patients, the guidelines read that opioids should be used for acute pain for the shortest period of time and generally not more than two to three days and up to seven days for acute pain patients. And furthermore, in the guidelines when we're talking about chronic pain treatment, we make this point over and over throughout the Guidance Document that very often chronic pain treatment, opioids are not a good treatment for these. And if we are making the mistake of just reading this bill, I think it would have the opposite effect of what we want where a clinician would say, okay, I'm going to write prescription for opioids for seven days for patients...with pediatric patients, and if they have a chronic pain condition it's okay to write the opioids. So inadvertently I'm afraid this bill would be doing the opposite of a very good goal that she's trying to get. Opioids for chronic pain shouldn't be accepted or exempted. That's exactly the pain population that's at risk for developing addiction. So this underscores why we think this bill could be counterproductive as written and it needs to be thought about in a little bit more in-depth fashion in order to get the very worthwhile goals that Senator Howard is trying to achieve. [LB931]

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SENATOR EBKE: Thank you, Dr. Massey. [LB931]

JOHN MASSEY: Any questions? [LB931]

SENATOR EBKE: Any questions? Senator Hansen. [LB931]

SENATOR HANSEN: Thank you, Chair Ebke, and thank you for coming, Dr. Massey. Just start off, to clarify, are you representing yourself or are you representing a group? [LB931]

JOHN MASSEY: I'm representing the NMA in my testimony,... [LB931]

SENATOR HANSEN: Sure. [LB931]

JOHN MASSEY: ...and also myself. This is a situation I face daily in my clinical practice. [LB931]

SENATOR HANSEN: Okay, I just wanted to specify. I know you'd mentioned the NMA in previous ones but I didn't catch it here. [LB931]

JOHN MASSEY: I'm sorry. [LB931]

SENATOR HANSEN: No, no, I appreciate that. I guess I'm kind of approaching this question, so you think that...so I guess you think that a state statute putting a limit on prescribing opioids to children, in terms of duration, would actually increase duration rather than limit duration? [LB931]

JOHN MASSEY: I think when you look at this document, the bill itself,... [LB931]

SENATOR HANSEN: Sure. [LB931]

JOHN MASSEY: ...to me, it...here's the nuts and bolts of what you have. You have a clinician, in my estimation...I get referral patients who aren't doing well with pain. You see two kinds of

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situations. One, you see a situation where there's a clinician who's reluctant to use opioids when they might be appropriate and can help somebody. And the other is somebody who doesn't really pay attention to the risk of these and overprescribes them. What I think would happen in the situation of an acute pain situation, if somebody is reluctant to write these medications, they'll write in, they'll just say, well, I'm going to give everybody seven days of the medicine no matter what because that's what it says I can do. So more patients will end up with seven days of medications rather than just two or three or none at all if that's more appropriate. But more importantly, and where we really run into problems, if I have a patient, and we see patients, unfortunately, all the time who are under the age of 18 who are getting chronic medication for opioids, if I just write down that this is a chronic pain patient, I, under this bill, feel like I might be covered because that's okay, it's indicated for this. I would make the argument in my daily practice that most of the time, especially for pediatric patients, opioids are not a good choice for chronic pain management. And if you use this as an option to sort of justify that, you're going to end up overprescribing or people are going to...who have a tendency to over prescribe will feel justification for that. So in some ways I am fearful that this might have the opposite effect.

[LB931]

SENATOR HANSEN: Okay, so you just take for...as granted for a fact that there are physicians that overprescribe opiates right now, including to children? [LB931]

JOHN MASSEY: Yes. [LB931]

SENATOR HANSEN: Okay. So what should we as a state be looking for if it's not the seven days? I'm trying to narrow it down because I...now I believe, just to track you throughout the day, I believe the Nebraska Medical Association took opposition to all three opioid epidemic bills?

[LB931]

JOHN MASSEY: Well, yeah. The main...understood. The main thing that we want to do is we want to be sure that we're using good medicine, evidence-based medicine to move this problem forward, and we're using good principles to make selections about what to do and what not to do.

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SENATOR HANSEN: Okay. [LB931]

JOHN MASSEY: And it is simply very difficult with a blunt instrument of a law to say, if we do this, that will make it better. We really strongly feel this document will change behavior for the better and safeguard our patients and citizens and this is one instance where I think we can really prove that Guidance Document is superior to the current bill in terms of giving reasons, as well as guidance to physicians, as to what not to prescribe. I find myself in a very uncomfortable position because I'm far more often testifying, hoping that people will limit prescribing opioids because this is a problem and an epidemic. What I'm finding with these bills is I think they're not getting at the problem, the real problem, in a way that can make meaningful change. And if we're not careful and we don't use evidence-based principles, we might...it is worse than doing nothing because, such as with this, we might be moving in the wrong direction rather in a better direction. [LB931]

SENATOR HANSEN: Okay, I guess I'll just have one final one because you keep talking about getting at the real problem and kind of the general consensus I get of these three bills is both limiting amount and limiting, kind of, access. If...are we going down the wrong track entirely or are we just nitpicking seven days, three days, two days? Where are we at? [LB931]

JOHN MASSEY: Yeah. I think we're missing the real...what our Guidance Document gets at, which is a clinical moment, is to say really what happens is we're trying to make this molecule, this very risky molecule, do something that it cannot do. Opioids cannot fix many different kinds of problems that are loosely wrapped around pain. So if we make all these kind of side ways to limit it, we're not really getting at the problem, which is not prescribing these medications when they aren't indicated or when they aren't safe. This document tries to do that in a way that helps clinicians on a daily basis with every kind of patient, rather than just under these certain circumstances. Does that answer your question? [LB931]

SENATOR HANSEN: Um... [LB931]

JOHN MASSEY: Maybe not. (Laughter) [LB931]

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SENATOR HANSEN: I don't think we got to a specific answer, but I see where... [LB931]

JOHN MASSEY: My specific answer is that we are completely in agreement that limiting opioids is an important thing for us to do as a society. How we do that is important, as well, and if we do it the right way we'll get meaningful changes in our risk to our patients, and we want to participate in that and we will support everything that we think moves it in the right direction. [LB931]

SENATOR HANSEN: Okay. Thank you for your time, Dr. Massey. [LB931]

JOHN MASSEY: Thank you, sir. [LB931]

SENATOR PANSING BROOKS: Okay. [LB931]

SENATOR EBKE: Senator Pansing Brooks. [LB931]

SENATOR PANSING BROOKS: Thank you for coming, Dr. Massey. [LB931]

JOHN MASSEY: Yes. [LB931]

SENATOR PANSING BROOKS: So I missed when this report was created. [LB931]

JOHN MASSEY: This report was created starting in February and it was finally approved by HHS in October. [LB931]

SENATOR PANSING BROOKS: Okay, and so has it been disseminated to the other doctor...to the doctors across the state? [LB931]

JOHN MASSEY: Yes, it's available on the HHS Web site, and I believe an e-mail was sent to every clinician in the state with a link to it that's tabulated, so under every circumstance they can use that to help guide them in their... [LB931]

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SENATOR PANSING BROOKS: Do you believe that doctors who are, you know, in the throes of work are going to stop their day and go look at that to get help? [LB931]

JOHN MASSEY: Well, I certainly hope they are. [LB931]

SENATOR PANSING BROOKS: You hope so. [LB931]

JOHN MASSEY: I understand your point that that's a challenging thing. But that's what we need to do to help them make good decisions. [LB931]

SENATOR PANSING BROOKS: Okay. So is it basically you don't want the state to tell the... [LB931]

JOHN MASSEY: No. [LB931]

SENATOR PANSING BROOKS: ...the doctors not to...or to do something, because the crisis is a mess, it... [LB931]

JOHN MASSEY: Yeah. [LB931]

SENATOR PANSING BROOKS: We're waiting till February of this year. That's...it's good that there is a document. I wish we...you didn't pass this out to us? [LB931]

JOHN MASSEY: It's 100 pages so I... [LB931]

SENATOR PANSING BROOKS: Okay. [LB931]

JOHN MASSEY: ...didn't want to... [LB931]

SENATOR PANSING BROOKS: Well, maybe you could pass it around to us or something. Maybe we can get a page to let us see that. [LB931]

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JOHN MASSEY: Okay. [LB931]

SENATOR PANSING BROOKS: Is that appropriate, please? [LB931]

SENATOR EBKE: Sure. [LB931]

SENATOR PANSING BROOKS: So if he could...I'd be interested in at least looking at it. So it just seems like is there a way that we could fix it, or you just think the Legislature should basically sit it out then? [LB931]

JOHN MASSEY: No, no, that...I'm very sensitive to the idea that this needs to be something that we all do together. I can tell you when we...the process that we used to take this, we had to take this forward to the Board of Dentistry, Board of Medicine, Board of Public Health finally. Dr. Williams approved it. We're trying to get buy-in from clinicians. We're trying to make clinicians really look in depth at this problem, like this document does. One of the things that we did face was clinicians saying, okay, so now we have to do this, right? And we say, you know, it's a guidance document, this isn't mandatory, we're not using the force of law to do this, although, if we don't do a good job with that, that's a reasonable response. That hasn't had a chance to work through the courts. And I'm not opposed to any oversight on this because I think it is an epidemic crisis, but I am also more committed to what's a pragmatic way to move this farthest down the ball as fast as possible. And I think that we can do a better job if we let his course run and we get clinicians to look into this and use this on a daily basis. I absolutely believe they'll use this to make better decisions than any set of laws can accomplish. [LB931]

SENATOR PANSING BROOKS: Okay. We just...there were a couple of us that went on a reading tour across the state and some of the newer teachers are using best practices. Some of the teachers that have been around a long time are pretty much set in their ways. They know what they've been doing. [LB931]

JOHN MASSEY: Yeah. [LB931]

SENATOR PANSING BROOKS: That's that. [LB931]

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JOHN MASSEY: Yeah. [LB931]

SENATOR PANSING BROOKS: So I'm sure that that is true of the medical profession, as well. It's true of attorneys. It's quite clear if you have somebody that they get set in their ways. So how long should we wait before determining that it isn't enough to have posted this document that gives recommendations? How long is appropriate? [LB931]

JOHN MASSEY: I don't think I want to say hold off because we'll handle it by ourselves without your help, but let's think about the ways that are most effective at addressing this. And I can't decide for you when is the right time to do this. I generally applaud the concept that you are looking at this and this will make clinicians and the patients, as well, take better notice of this as a problem. It's just very hard to think about how many dozens of hours a committee of 20 clinicians spent looking through literature saying, what's the best way to change behavior, and we come up with this document and then try to look at a couple of bills and say, okay, yeah, that can accomplish something or the same thing. I think if we can do anything to help this problem from the standpoint of the Legislature, I think increasing the education that you ask of us on treatment of pain would be a very positive step. And I think if we knew, as a house of medicine, that you were really putting your foot down and making us do that, I think that would change behavior more quickly. And my hope would be that the follow-on to this, which is the educational piece, the continuing medical education piece, would be something that clinicians would really pay attention to. [LB931]

SENATOR PANSING BROOKS: I would hope that too. It feels like it's so late in finally coming. So did you talk, did you go to Senator Howard and try to work with her on this? [LB931]

JOHN MASSEY: I know the...I know other members of the NMA did. I wasn't able to attend the meeting, although I would like to continue to have those discussions. [LB931]

SENATOR PANSING BROOKS: Okay. Thank you very much for coming, appreciate your (inaudible). [LB931]

JOHN MASSEY: Thank you. [LB931]

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SENATOR EBKE: Is it...can I ask a question? [LB931]

JOHN MASSEY: Yeah. [LB931]

SENATOR EBKE: Is it safe? I mean, I'm not...I'm trying to figure out where everybody is coming from here. I mean it seems to me like the NMA is suggesting that a better course of action is to focus, at least for the time, on training the providers. And, you know, I wonder if there is an analogy to be had here. I mean seven days, is that a magic number or is it somewhat... [LB931]

JOHN MASSEY: Well... [LB931]

SENATOR EBKE: I mean I guess I look at it this way. You've got...you go out on the interstate and the signs say 70 miles per hour so everybody thinks that traffic needs to move at 70 miles per hour. Well, what happens if it's raining or it's snowing or it's icy or there's a...you know, I mean, do the drivers have to...do we expect drivers, physicians, providers, to look at the situation and see 70 is, you know, 70 maybe isn't a good idea, in some cases maybe it's, you know, 20? So... [LB931]

JOHN MASSEY: Right. So make no mistake, as a pain physician, when it comes to opioids, I'm a 20-mile-per-hour guy. [LB931]

SENATOR EBKE: Yeah. [LB931]

JOHN MASSEY: I don't want us going to 70 or 75 with this and I think that's an important point for us to make. The thing I would...the way I'd take that analogy is it's very difficult to say, yeah, travel at 75 miles an hour. What I want to do is teach clinicians about what it means to have an icy road, what it means to have dark, what it means to have bad brakes, what it means to...and that's what our Guidance Document gets into and this is how we measure that and this is how we act in a way that makes it safer. So if we have people concentrating just on a number--seven days, rather than two to three days or the least amount of time possible--I think we might miss the point and we might not change behavior in a way that's as meaningful. [LB931]

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SENATOR EBKE: And you know, you have a...I have a perspective as the spouse of a physician who, a family practice physician, who has his DEA, you know, license, certificate, whatever it is, whatever it's called. [LB931]

JOHN MASSEY: Right. [LB931]

SENATOR EBKE: And I'm wondering if general, more general primary care-type folks have a different perspective than you do, and if putting these numbers--as a pain specialist--if...and that putting the seven-day, the seven-day number, then assumes, you know, gives them, sort of signals to them that,... [LB931]

JOHN MASSEY: Yeah. [LB931]

SENATOR EBKE: ...yeah, seven days is okay... [LB931]

JOHN MASSEY: Yeah. [LB931]

SENATOR EBKE: ...when maybe they only need two, sort of...I mean I, you know,... [LB931]

JOHN MASSEY: If we...I don't think the seven days by itself is bad language. I think if we said for the shortest period of time and generally not to exceed seven days, but maybe shorter, and then the real problem I have is except in the treatment of chronic pain. Chronic pediatric pain is a very risky area with respect to chronic opioid use. It, you know, addiction is a juvenile disease. Children are the people who are at risk. We all know if you start smoking cigarettes before you're 17, you're much more likely to continue to smoke throughout your life. And it's not fundamentally too different with opioids except, you know, there's death from respiratory depression. So we can change this, I think, but most importantly I think we really need to get the clinicians in the state to use these tools and to make very meaningful changes, because it's not just this type of situation where people are being placed at risk. It's people who have unrecognized mental health disorders that manifest as pain. And we have people who have a misperception about I need to be pain free instead of have pain reduction, so we really have to do a lot to make a change in this. And so that's why I'm sensitive about coming up opposed to this

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bill. I want to make a change and I want people to be safer and I want to reduce opioid use in the state of Nebraska. [LB931]

SENATOR EBKE: Okay. Thank you, Dr. Massey. Any other questions? Senator Hansen. [LB931]

SENATOR HANSEN: Thank you, Chair Ebke. And, Dr. Massey, as I sit here, I think I almost feel like you're making a case for this bill and then saying, but I'm opposed throughout your question of mine and Senator Brooks's and Senator Ebke. So I just kind of like...so you practice in this field? [LB931]

JOHN MASSEY: Yes. [LB931]

SENATOR HANSEN: So, okay, so do you see... [LB931]

JOHN MASSEY: I'm a pain specialist. [LB931]

SENATOR HANSEN: You're a pain specialist and...but do you see children? [LB931]

JOHN MASSEY: Yes, I do. [LB931]

SENATOR HANSEN: Okay. Do you often or ever prescribe opiates for more than seven days to a child? [LB931]

JOHN MASSEY: Very rarely. [LB931]

SENATOR HANSEN: Very rarely, okay. [LB931]

JOHN MASSEY: I would advise against it for chronic pain situations in the great majority of instances. [LB931]

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SENATOR HANSEN: Okay. And so...and this bill, and I could pull it up or go through it, but this bill also create...contains some exemptions where you can go beyond seven days. [LB931]

JOHN MASSEY: It does. [LB931]

SENATOR HANSEN: Do you know of any...are there situations where those exemptions aren't lined up and there's something in your professional area you would go beyond those exemptions? [LB931]

JOHN MASSEY: I'm sorry, I don't understand your question. [LB931]

SENATOR HANSEN: So I guess this bill puts a cap at seven, which you already say you rarely exceed, and provide some exemptions for that cap at seven. [LB931]

JOHN MASSEY: Yes. Well, the main exemption is for chronic pain... [LB931]

SENATOR HANSEN: Okay. [LB931]

JOHN MASSEY: ...first, and it's probably important that we say in end-of-life care and cancer care it's absolutely appropriate that we continue to prescribe opioids for pediatric patients and patients, at large, you know, in that situation. Chronic pain, I think, is a problem here because chronic pain is far more typically opioid resistant. So if we're using opioids, not only does a patient often not get better, but they actually, physically, get worse with the use of opioids for chronic pain. So if I'm a clinician who maybe isn't as informed as they could be, hasn't taken time to look at the Guidance Document or is set in my ways, I may end up inadvertently prescribing more opioids for pediatric patients because it says, if it's chronic pain, it's accepted, so I can do that. In other words, by looking at the bill rather than at the work that we've done in our committee, we might, conversely, get more opioid prescribing and more risk for the citizens. [LB931]

SENATOR HANSEN: So I guess I have just a...I guess I'm kind of struggling from this point where we have, as far as I know, one of the main other prescribers of opiates, the dentists, came

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in and seemed to understand these restrictions and not worry about it encroaching their practice.
[LB931]

JOHN MASSEY: Right,... [LB931]

SENATOR HANSEN: I guess... [LB931]

JOHN MASSEY: ...because I think the distance...the difference is, if we were just talking about the acute pain setting... [LB931]

SENATOR HANSEN: Okay. [LB931]

JOHN MASSEY: ...and you said we just...you know, you shouldn't give opioids for more than seven days, you know, for dental extractions, that makes sense. If I break my ankle and I'm a 12-year-old, I should get two or three, maybe four or five or six or seven, days' worth of medications, maybe yes, maybe no. Dentists don't generally treat chronic pain. The chronic pain part of this bill I think is the problematic part in terms of how many people might be negatively affected with respect to we might inadvertently be prescribing more opioids for them based on that language. [LB931]

SENATOR HANSEN: Would eliminating the chronic pain kind of resolve your concerns with the bill? [LB931]

JOHN MASSEY: Would... [LB931]

SENATOR HANSEN: ...eliminating the chronic pain exemption resolve your concerns?
[LB931]

JOHN MASSEY: Largely, yes, and if we could have some language consistent with page 19 in our Guidance Document that says generally, with acute pain in adults and children, if we just prescribe these medications for two to three days and generally not more than seven, I think we'd be very consistent with our document. [LB931]

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SENATOR HANSEN: All right. Thank you, Dr. Massey. [LB931]

JOHN MASSEY: Thank you, sir. [LB931]

SENATOR EBKE: Okay, I don't see anybody else. Thanks. Other opponents? I see nobody moving. Anybody in the neutral position? [LB931]

EDWARD TRUEMPER: Again, my name is Dr. Edward Truemper. That's E-d-w-a-r-d; last name is T-r-u-e-m-p-e-r. I am a member of the NMA. I did attend the meeting and I did have reservations about this bill. But I'm testifying as a pediatrician with 30 years of practice and to talk about something that leaves a hole in this bill and I don't think it can be resolved with this bill, but in the future you folks are going to have to deal with this. And this gets back to what my former partner, Dr. Andrew Macfadyen, talked about, which is, this is a really hard problem, it's going to require multiple solutions. The first thing is, in my practice, I've never prescribed more than ten doses of any opiate medication. And why is that? As been previously pointed out, most pain is about two to three days. The issue with this bill is that it goes out to seven days, and I freely understand that. And some states, like Kentucky, have three; some have five; others have seven. The vast majority of opiates that are written for children and, in fact, written for everyone, are written under the phrase "PRN," which stands for pro re nata, which means as medically indicated, which means, if your pain is severe enough, take it and, if not, use something else or let it go. So if a physician writes for 30 doses over seven days of Tylenol with codeine, or any other prescriptive medication, after two or three days, they're left with all of these additional medications. And where do they sit? They sit in the medical cabinet. And the thing that I want to highlight, which is, I agree with Kuehn, we need data, is that 2.9 per 100,000 children die of opiate ingestion. The vast majority are adolescents and the vast majority of those opiates come from medications that come from other folks other than their families, I mean, other than what was self-prescribed for their medical condition if they have one. And the vast majority of those are with other medications, anything from any antihypertensive to antidepressants, and, again, all of these medications are diverted from largely leftover medications, are being prescribed for somebody else's medical condition. So this is the thought that I want to give you. The fact is that even if you limit it to seven days, you're still not going to be able to get at really the heart, which is diverted medications, leftover medications. This bill is not going to solve that and I don't think

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the bill should be amended to change that. But in the future, what is going to have to be worked out is a system to where we can get these opiates and these other Class II, III, and IV medications out of those medicine cabinets and away from the household. Then you're really going to make a difference in at least adolescent attempted suicide. And I thank you all for the time to give my opinion, and ready to answer any questions. [LB931]

SENATOR EBKE: Thank you, Dr. Truemper. Questions? Senator Hansen. [LB931]

SENATOR HANSEN: Thank you for coming in, Doctor, and thank you, Chair Ebke. I guess what I'm struggling with in both yours and Dr. Massey's testimony is we're kind of...it seems like opioids have a very limited scope in what they're actually effective at, so it seems to be acute pain over very short amounts of time. [LB931]

EDWARD TRUEMPER: Well, I can speak on outpatient pain. I'm an inpatient pediatric intensivist and oftentimes pain is much more severe, it's much more prolonged. And I will speak freely to the data that we have. We use a drug, fentanyl, for the treatment of those kids' pain, and we know that 50 percent of those kids will develop withdrawal syndrome after just five days and it's dose related. So it is a specific issue and it's much...has much more utility on inpatient than outpatient medicine. I personally think that the pain is the fifth vital sign and, as a result of that, if you're still experiencing pain or even increasing pain where you're having to take more, the answer shouldn't be more opiates; it should be go back and see the doctor. [LB931]

SENATOR HANSEN: Okay. I guess kind of fundamentally, and as I'm learning more about this issue, it kind of seems like we're doing a lot of work and a lot of effort to correct a problem that is admittedly, in part, driven by overprescriptions for... [LB931]

EDWARD TRUEMPER: Sir, it solely overprescribing. Let's not wince on this. [LB931]

SENATOR HANSEN: Okay. [LB931]

EDWARD TRUEMPER: It is overprescribing. It is based on what the patient's perception of pain is, what the expected duration of that pain is. And what we're left with, what I'm talking about, is

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regardless of the duration that you put it on, you're going to be left intentionally with leftover medications. What...the hard part is what are we going to do with that leftover medication because it sits in the cabinet and that medication is not going to be used for the intended use, which is the acute pain. That's what needs to be resolved as well. [LB931]

SENATOR HANSEN: Okay, I guess I am just, and this is not necessarily a question for you and I'm just kind of talking out loud at this point, but kind of struggling with the overall concept of opiates in our society, period, if they have such a limited use and benefit and such downsides that everyone can recognize, so thank you for your time, and any response to that, you're welcome. [LB931]

EDWARD TRUEMPER: Well, when you talk about limited use, you have to realize that there is tens of millions of surgeries done a year, hundreds of thousands of patients who have chronic medical conditions that do require some sort of pain control. We are only now getting, within the last ten years, the kinds of nonopiate medications, whether it be nonsteroidal anti-inflammatory agents or other neuroactive medications that can handle neuropathic pain. And really the explosion of understanding pain has really occurred just in the last ten years. In the last ten years, we've learned more about pain than we have in the previous millennium. We're only now catching up to where we have adequate substitutes. Unfortunately, during this period of time, the opioid epidemic has occurred. And as an outgrowth of that, we have been left with now folks going, transitioning from opiates to using heroin and fentanyl, which can be obtained without-- obviously, heroin--without a prescription but from other illegal sources. So anyway, it's a very complex issue and we're behind. I'm not opposed to this bill. I'm just saying after all of this is done with all three measures, if they do pass, you've still got a struggle, a struggle which I would say the medical community needs to help with, which is what do we do with diversion, because that's where the problems are. It's (inaudible) and a lot of it is what's in the medicine cabinets. [LB931]

SENATOR HANSEN: Thank you. [LB931]

SENATOR EBKE: Okay. Senator Halloran. [LB931]

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SENATOR HALLORAN: Thank you, Chair Ebke. Now this...it's not uncommon for me to ask stupid questions, so forgive me this, but these drugs are pretty expensive? [LB931]

EDWARD TRUEMPER: Not necessarily. [LB931]

SENATOR HALLORAN: Not necessarily? [LB931]

EDWARD TRUEMPER: Not necessarily. [LB931]

SENATOR HALLORAN: Okay. I was hoping you'd say yes. Maybe there would be some way we could incent the customer or the patient to return them for their money back on the leftovers. And, you know, I know that sounds stupid, but you, you know, you...this comment that the leftover drugs are a problem, but... [LB931]

EDWARD TRUEMPER: Well, I think Senator Kuehn pointed out an issue which is understanding the motivations of the patients. Okay, they paid for them, therefore, they're mine. Now what we have to do, and I don't have the answer--I wish it came to me 20 minutes ago, I'd look like a star--but we have to incentivize, we have to find a very easy way to get the medications away from the patients after they finished the original purpose and get them to a place where they can be safely disposed of. And I don't have that answer, but that is one of the ways, as Senator Kuehn points and others have. It's a very complex issue. This is one of those issues that in this bill was highlighted, even though you wrote for seven days, that will help some kids, but there's still the leftover medications, and that's why I'm testifying in a neutral position to talk about something beyond this. Maybe this was not the place to do it, but I decided I would leap forward and say something. [LB931]

SENATOR HALLORAN: Thank you, sir. [LB931]

SENATOR PANSING BROOKS: Okay, any other questions? Thank you for coming. [LB931]

EDWARD TRUEMPER: Thank you for your time. [LB931]

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SENATOR PANSING BROOKS: Appreciate it. Any further neutral testimony? Okay, Senator Howard. [LB931]

SENATOR HOWARD: Thank you for your time and attention for this important issue. I think I'll start by giving a plug to the prescription drug take-back program in the state of Nebraska that the Nebraska Pharmacy Association has championed. You can get a mail-back bag and send in any unused prescription drugs that you have. It's been in effect for a year, maybe two, and that is funded through the state, although I do think that the question of diversion is actually very interesting because when you have a cap there's generally less to divert, right? You're only going to use the amount up to that cap. My concern, though, is that...is the implication that doctors will stop using their good judgment if we say that they can only use seven days. I would hope that physicians in this state will still use their good judgment when they're working with patients and not say, statutes say seven, I'm giving you seven; they would say, my recommendation is that you have two days. Right? We believe the best in our physicians and I continue to do so. I would be happy, so happy to align the statute with the guidance of two to three days, whichever is less. I would be happy to put a sunset on it so that we can continue talking about this important issue. I would be happy to eliminate chronic pain. I would have loved that feedback sooner, but of course I appreciate that. You have had a person in the body since 2009 who has cared deeply about this issue, whether it was me or my mother, and we...this is actually the first time that we've really had a conversation about putting any type of onus on physicians. In 2011, my mother actually brought a bill about training for physicians and they fought it for two hours on the floor, so, and this year that bill was brought back and they were very excited about it. So I think, you know, this is an opportunity for us to have a broader conversation. What's important, as well, to remember is that that guidance is not binding, there is no penalty for not using it, there's nothing that will happen to you if you don't follow the guidance, if you never read the guidance. And so I think that's something that is the difference between guidance and a statute. Further, the guidance was created by the Nebraska Department of Health and Human Services, who is in full support of this legislation. And with that, I'm happy to try to answer any final questions you may have, but I am very, very grateful for your time and attention to this issue. [LB931]

SENATOR PANSING BROOKS: Thank you. [LB931]

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SENATOR EBKE: (Exhibit 1) Any questions for Senator Howard? We have one letter of support from Dr. Thomas Williams at Department of Health and Human Services. [LB931]

SENATOR HOWARD: My first,... [LB931]

SENATOR EBKE: There you go. [LB931]

SENATOR HOWARD: ...first-timer for everything. [LB931]

SENATOR EBKE: Okay. Thank you. [LB931]

SENATOR HOWARD: All right. Thank you so much. [LB931]

SENATOR EBKE: This closes the hearing on LB931. We are going to get up and take a little stretch break and then we'll see Senator Wayne. [LB931]

BREAK

SENATOR EBKE: Okay, we're back. Am I going to have to hit the gavel again? Okay, thank you. Okay, we are here for LB832. Senator Wayne, would you like to open? [LB832]

SENATOR WAYNE: Yes. Can you waive opening? [LB832]

SENATOR EBKE: If you want to. [LB832]

SENATOR WAYNE: Oh, I was just...I just always wanted to ask that question and since it's Friday I felt like I could ask that. [LB832]

SENATOR EBKE: Waive opening and closing and we could all just go home. [LB832]

SENATOR WAYNE: (Laugh) Good evening, Chairwoman Ebke and members of the Judiciary Committee. My name is Justin Wayne, spelled J-u-s-t-i-n W-a-y-n-e, and I represent the 13th

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Legislative District which encompasses north Omaha and northeast Douglas County. I'm here to introduce LB832, which makes simple changes to the definition of marijuana. This bill does not legalize marijuana but merely creates a much-needed, commonsense exception to the interpretation of marijuana. This bill would only legalize low doses of CBD products. I am working with committee counsel to remove in the section that deals with 10 percent cannabinoid oil or cannabinoid, to remove that because that was part of a UNMC study in which where we got that language. So I just want the audience to know that. If you're testifying about that section, we are working on an amendment to see how that can be better defined. But CBD is found to be effective in reducing the occurrences of seizures in patients and many other medical conditions. But specifically, the University of Nebraska Medical Center had also saw some of these same results. But I'll keep just very short because I know it's Friday and many of you have heard this about CBD oils and the effect of medical marijuana. This is not medical marijuana. This is CBD oil. This is CBD, cannabinoids in general. Nobody can get high off of these. And in fact, in 2017, last couple months ago, December, the World Health Organization released an extensive study in which researchers said that evidence from well-controlled human experimental research indicates that CBDs are not associated with any abuse potential. They also noted that they have therapeutic value. So when you have a leading organization like the World Health Organization saying CBD oils are effective in treating some diseases and medical conditions without any or hardly any chance of abuse, we as a body need to take that seriously. I can tell you that I've had two knee surgeries, three knee surgeries, two in one leg, and CBD oils are something that I have used and it makes the...when it's cold and rain, my knees don't hurt. I can still go out and play basketball and sometimes I forget I'm not that young anymore and wake up a little sore the next day, but those kind of oils, which do not change or alter my mind-set, are just used truly for therapeutic purposes. So I would encourage you to listen to some of the testimony today and, more importantly, vote this out. And I'll answer any questions. [LB832]

SENATOR EBKE: Questions for Senator Wayne? [LB832]

SENATOR CHAMBERS: Justin, are you going to close? [LB832]

SENATOR WAYNE: Only if some questions arise during the testimony; otherwise, I will waive closing. [LB832]

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SENATOR CHAMBERS: And if that doesn't happen, you and I can talk anytime. [LB832]

SENATOR WAYNE: Yes. [LB832]

SENATOR CHAMBERS: Okay. [LB832]

SENATOR EBKE: And he's going to be here till the end now, till we're done. Okay. Any other questions? Okay. Thanks. [LB832]

SENATOR WAYNE: Thank you. [LB832]

SENATOR EBKE: First proponent. [LB832]

SCOTT HATFIELD: Hello. My name is Scott Hatfield, S-c-o-t-t H-a-t-f-i-e-l-d. Madam Chair, esteemed members of the committee, Counsel Clark, I am Scott Hatfield and I'm here representing CV Sciences and CBD and hemp manufacturers. And I applaud this body for taking the time to look at CBD and CBD derived from hemp for what they are, which is a commonly used supplement with no psychoactive effects. For far too long CBD and hemp have been lumped into the same category as marijuana smoked as a recreational drug, which is inaccurate and, in fact, limits the citizens of Nebraska from finding a natural relief to a number of common issues. CBD...or, excuse me, hemp today is being developed with high cannabidiol content, and that is the CBD that we're talking about that has therapeutic effects, and low THC content. The THC is the chemical that gives you the high with marijuana. And so what we're talking about when we talk about CBD is high therapeutic effect and low...a low effect of what traditionally marijuana is considered. There's been a great deal of scientific data of late that shows the effectiveness of CBDs providing a wide...a solution to a wide array of common problems, all the while not giving people that common high associated with marijuana use. According to the National Cancer Institute, just to give an example, CBD has been shown to increase appetite and decrease nausea, all with no psychoactive effect, which is an important element in the recovery of many cancer patients. CBDs have been proven to bind to what are called CB1 receptors in the body to relieve pain. It's also shown, CBDs have also been shown to have an anti-inflammatory effect that reduces swelling. CBD use has been shown to alleviate the condition of social anxiety

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disorder, an ailment which, according to the National Institute of Mental Health, affects some 15 million Americans. And while the use of regular marijuana has been shown to enhance or increase the effects of social anxiety disorder sometimes, the use of CBDs has been shown to lower those effects with none of the other derived effects. A university study in Germany showed that CBD reduces the effect of psychotic symptoms found in individuals with schizophrenia and many other studies have been done which show that CBDs have therapeutic benefits in the treatment of various conditions from chronic pain, anxiety, nausea, rheumatoid arthritis, schizophrenia, diabetes, strokes, cardiovascular disease, cancer, and seizures, which we have talked about a lot, obviously, over the past few years here in Nebraska. CBD use has been ongoing in Nebraska for years. And when we talk about CBD, we talk about substances with less than, typically, 10 percent cannabidiol by weight, 0.3 percent by weight of tetrahydrocannabinoids, which are the things that actually make you high. I would just ask that this committee consider strengthening our laws and making it clear that hemp and CBD-related products used in Nebraska are not under the auspices of the Controlled Substances Act so that we're not putting good people in jail for trying to find alternative therapies for their conditions. I see my time is up so I will cut it there. Thought I'd have a tough time talking for three minutes. That wasn't really tough. Any questions? [LB832]

SENATOR EBKE: Thank you, Mr. Hatfield. [LB832]

SCOTT HATFIELD: Thank you so much. [LB832]

SENATOR EBKE: Questions? I guess not. Thanks. [LB832]

SCOTT HATFIELD: Thank you. [LB832]

SENATOR EBKE: Next proponent. [LB832]

FANCHON BLYTHE: (Exhibit 2) Madam Chair, members of the committee, my name is Fanchon Blythe, F-a-n-c-h-o-n B-l-y-t-h-e. I'm here today in support of LB832. Thank you for allowing me to share my personal story with you. I've been in the health and beauty aid business for 35 years, 17 years here in Lincoln. Many new products are hitting the market that contain

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cannabidiol. I personally in the last ten years was a former patient of Dr. Massey. I have had chronic pain. As I've aged, my lifestyle and being a salon owner, I've suffered with pain, inflammation, arthritis, and insomnia. I've taken pain drugs, muscle relaxers, Advil, sleeping pills. I've had many cortisone shots by Dr. Dave Clare. In 2014, I had a procedure for my left elbow called Tenex by Dr. Butler. Seven months ago, I went back to see Dr. Butler for my right elbow and my shoulder. After examining me, he told me that the right elbow is ready to be done. And then I was introduced to CBD oil last July and today I can tell you all I am pain free and drug free. CBD oil is a nonpsychoactive whole-plant extract. It doesn't give you a high. It's something that it's a liquid that I take. I put it under my tongue twice a day, count to 60-90 seconds, and swallow. I praise Dr. Sanjay Gupta for his positive documentaries on CBD oil. In one of his documentaries he states that in the early '90s scientists discovered that we all have CBD1 and CBD2 receptors in our body, and that's why when you take more CBD oil, it helps with so many things. I gave you guys a little bit of information you can look at. But when you have the highest amount of CBD in your body is when you have mother's breast milk. As of today, I personally know of over 100 people taking CBD oil with success. Sanjay Gupta really brought this toward the forefront when he talked about little Charlotte from Colorado who suffers from Dravet syndrome. I'm friends with her mom. She was having over 300 grand mal seizures a week and they were putting her in a comatose state and looking at end of life, and then CBD oil came into their life. Some of the people that I know that take CBD oil, I have a dear friend in her early 80s with Parkinson's. She's consumed, starting her fifth bottle, and just to see her on a weekly basis, it just brings tears to my eyes to see what it's done for her. I have a close friend that used to take two Tramadol every night to go to bed. Her first bottle of CBD oil, she stopped taking Tramadol. My parents, my mom has neuropathy, arthritis, my dad has hand tremors--gone. My daughters and coworker all suffer from anxiety. Two of those...oh, that's a red light, isn't it? [LB832]

SENATOR EBKE: Yeah. [LB832]

FANCHON BLYTHE: Yikes. Okay, sorry. I could go on and on about CBD oil because it works. We all need to be on it. It's amazing what it does. The problem is we just need to be educated on it, including my personal friend Doug Peterson. The language before you provides needed clarification for consumers and for businesses like mine. I believe this clarification is necessary

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in order to allow us to use these products within the health and beauty aid industry and allow us to provide our clients with the level of customer service they desire. I'd like to thank Senator Wayne for bringing this legislation and thank the committee for allowing me to speak today in favor of LB832, and I welcome any questions. [LB832]

SENATOR EBKE: Any questions? Senator Pansing Brooks. [LB832]

SENATOR PANSING BROOKS: Thank you for coming today, Ms. Blythe. [LB832]

FANCHON BLYTHE: Thank you. [LB832]

SENATOR PANSING BROOKS: We appreciate it and it's...I appreciate your testimony about this. Did you...was a customer somebody who told you about it, or how did you find out about it? [LB832]

FANCHON BLYTHE: It was. It was a young woman in her 30s with chronic pain and I was giving her a manicure and I was showing her some CBD stuff that I had got in another state that was mailed to me. And I rolled some on the back of her neck and I sat down and she said, I'm already using CBD oil. I said, you are, where did you get it? She said Fresh Thyme. So I sent people there for the next two weeks to Fresh Thyme, completely sold them out twice, and now everyone in town is afraid to sell it because of what happened in August. But it's amazing stuff, yeah. [LB832]

SENATOR PANSING BROOKS: Thank you for coming and talking about this, appreciate it. Does it...is there a dosage that you...that they talk about or how... [LB832]

FANCHON BLYTHE: The product that I take has three different. You can buy them in 11 milligram, 28 milligram, and 50 milligram. My Parkinson patient and my parents are on the 50 milligram. I'm on the middle one and you take it twice a day, under your tongue, and you can only drop the amount that you are allowed to take...not allowed to take. Everybody has their sweet spot, they call it. Some people take more, like I wish I would have taken some before I came here. My hands are wet. (Laugh) [LB832]

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SENATOR PANSING BROOKS: Do you feel it's addictive, at all, or anything like that?
[LB832]

FANCHON BLYTHE: Oh, no, it's nonpsychoactive. It can't be. [LB832]

SENATOR PANSING BROOKS: Yeah. [LB832]

FANCHON BLYTHE: No, not at all, you know, so... [LB832]

SENATOR PANSING BROOKS: Thank you very much for coming to testify today. [LB832]

FANCHON BLYTHE: Thank you. [LB832]

SENATOR EBKE: Thank you. Next proponent. Okay, do we have any opponents? [LB832]

COREY O'BRIEN: (Exhibit 4) Good afternoon, Chairwoman Ebke. Members of Judiciary Committee, my name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I'm here today representing the Nebraska Attorney General's Office, as well as the Nebraska County Attorneys Association, in opposition of LB832. I want to be clear from the outset that my opposition to LB832 has nothing to do with cannabidiol. We do not, have never taken the position about cannabidiol. And just to give the committee a little bit of a history, until last year, in August of last year, cannabidiol, as far as I know, has been legal in Nebraska. Last year, through LB487, brought by Senator Ebke, that changed, and the law now holds that cannabidiol is illegal unless it is contained in a drug product approved by the FDA. We were asked to give an opinion of that language. And the Attorney General's Office and the county attorneys have been blamed for banning CBD, but we didn't really have anything to do with it. I guess our major contention with the bill as it is now is that, one, it doesn't fix the problem because it still contains the language. And if you look at the bill, on page 3...strike that...yeah, page 3, line 29 and 30, it still says that cannabidiol is illegal unless it's "contained in a drug product approved by" the FDA. But then at the end it provides some contradictory language and says marijuana does not include cannabidiol that is in an amount of "ten percent or less" and contains less than "three-tenths of one percent or less" of THC. Practically speaking, the implication of this bill isn't on CBD but it's on testing of

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marijuana. This bill would make the testing of marijuana virtually impossible by our criminal justice labs that do forensic drug testing. And I'll have Christine Gabig from the Douglas County Crime Lab Come up and testify about how they basically would not be able to do the test because we do not do (inaudible) testing and that technology just does not exist here in Nebraska and it's cost-prohibitive. So I just want to be clear that there appears to be some confusion in the language. I'm hoping that maybe we could resolve that confusion because, again, our beef is not with CBD; it is with what implication it has on marijuana. So with that, I would be happy to answer any questions. And as always, we'd be willing to work with the committee, as well as with Senator Wayne, to try to fix any of the issues with the hope of accomplishing, you know, what we think is a good product in the CBD. [LB832]

SENATOR EBKE: I have some questions. [LB832]

SENATOR PANSING BROOKS: Oh, no, go ahead. [LB832]

SENATOR EBKE: Last year when we were working on LB67, which turned into LB4...whatever it was,... [LB832]

COREY O'BRIEN: Sure. [LB832]

SENATOR EBKE: ...okay, we specifically asked the Attorney General's Office if this was going to change any enforcement. We wanted to be very careful. We were told no, that all my bill did was add an exception to already existing statute. [LB832]

COREY O'BRIEN: So what it did is it said that and... [LB832]

SENATOR EBKE: So cannabis... [LB832]

COREY O'BRIEN: I don't remember having a conversation with you about that directly. [LB832]

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SENATOR EBKE: Well, someone from the Attorney General's Office had several conversations with us, with the folks who were running this. [LB832]

COREY O'BRIEN: Okay. [LB832]

SENATOR EBKE: And we were told that it wasn't going to change any enforcement. We also, all we did was added exception to the already existing definition of cannabidiol as being a controlled substance. So somewhere along the line there's a disconnect here, either in the Attorney General's Office or elsewhere, but we didn't...we were creating an exception to the already existing statute, from our perspective, and that's what we were told was happening by the Attorney General's Office and it wasn't until some months later that you changed your opinions, or somebody in the office did. I'm just... [LB832]

COREY O'BRIEN: Okay. I'm mystified. [LB832]

SENATOR EBKE: I mean I'm not blaming you for it. I just want to put this on the record... [LB832]

COREY O'BRIEN: Sure. [LB832]

SENATOR EBKE: ...that it wasn't my bill that all of a sudden created... [LB832]

COREY O'BRIEN: Okay. [LB832]

SENATOR EBKE: Okay, I'm done. [LB832]

COREY O'BRIEN: I just...I'm not finger-pointing or anything. I'm just pointing out that prior to last year CBD was not covered in the definition of marijuana; it was not regulated. [LB832]

SENATOR EBKE: Well, we can talk about this afterwards, but I can show you the bill that was the existing Controlled Substances Act, and all we did was... [LB832]

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COREY O'BRIEN: And it says marijuana shall not include CBD. [LB832]

SENATOR EBKE: Yeah. What's that? [LB832]

COREY O'BRIEN: And what the language always said until last year was marijuana shall not include CBD, or cannabidiol. [LB832]

SENATOR EBKE: Okay. Can you come and talk to us on Monday (inaudible). [LB832]

COREY O'BRIEN: Sure, absolutely. [LB832]

SENATOR EBKE: Okay, thank you, because if this is a problem, we're going to clean it up. [LB832]

COREY O'BRIEN: Sure. [LB832]

SENATOR EBKE: I'm done. [LB832]

SENATOR PANSING BROOKS: Oh, thank you. Sorry. I'm still confused. [LB832]

COREY O'BRIEN: Yes, ma'am. [LB832]

SENATOR PANSING BROOKS: So you're saying that...can you repeat that? You say it's now illegal because of this, because of what went into statute last year? [LB832]

COREY O'BRIEN: Yes, because there aren't... [LB832]

SENATOR PANSING BROOKS: This says it does not include CBD. [LB832]

COREY O'BRIEN: Well, the language say it shall...it does not include CBD and then the language that was added last year says, unless it's contained in a drug product containing...an FDA-approved drug product. So that was the language that was added last year. So basically it

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did not include cannabidiol, but then when that language was added, it meant that only a product that was approved by the FDA would now be legal. [LB832]

SENATOR PANSING BROOKS: Okay. [LB832]

COREY O'BRIEN: So that's where the confusion came in, because the cannabidiol now became illegal unless it was contained in a drug product approved by the FDA, and the FDA has never approved a CBD product, and so that was the problem. [LB832]

SENATOR EBKE: It was part of the--I'm sorry--but it was part of the exception from Senator Crawford's study a few years ago and it was an "or," so it shall...it created an exception. [LB832]

SENATOR PANSING BROOKS: It does say "or." [LB832]

SENATOR EBKE: Huh? It does say "or," right? [LB832]

SENATOR PANSING BROOKS: (Inaudible.) [LB832]

SENATOR EBKE: So it was an additional exception to the already exception. Senator Krist. [LB832]

SENATOR KRIST: So have you prosecuted the University of Nebraska Medical Center for testing CBD oil because it's not legal in the state of Nebraska? [LB832]

COREY O'BRIEN: No, but they're exempted; they're specifically exempted. [LB832]

SENATOR KRIST: You know, I don't follow it either. I think that basically arguing about whether we did something and you did something and you interpreted something right now is just irrelevant and that's not the big animal (inaudible). I just (inaudible). [LB832]

COREY O'BRIEN: Well, we'd like to fix it. [LB832]

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SENATOR KRIST: Well, I think we should. [LB832]

SENATOR EBKE: So would we. If there's something to be fixed, we want to fix it. [LB832]

COREY O'BRIEN: But we also don't want it to derail our ability and kill our crime lab, either, and that's the bigger concern of why we're in opposition is because... [LB832]

SENATOR PANSING BROOKS: Kill the what? [LB832]

SENATOR EBKE: The crime lab. [LB832]

COREY O'BRIEN: ...the way that the bill is written now, in order to prove that a substance is marijuana, now we have to disprove that it's CBD under the definition that Senator Wayne put in there. [LB832]

SENATOR KRIST: Now that brings about another question. The expert is coming up to talk to us. Is hemp marijuana by your testing? [LB832]

COREY O'BRIEN: No. [LB832]

SENATOR KRIST: So hemp is the hemp that is the behind the CBD oil, not marijuana. [LB832]

COREY O'BRIEN: CBD is derived from hemp. [LB832]

SENATOR KRIST: So hemp is not illegal. [LB832]

COREY O'BRIEN: It is not illegal if the cannabidiol is under...unless it's in an FDA-approved drug product. [LB832]

SENATOR KRIST: How can a product of something that is not illegal be illegal? [LB832]

COREY O'BRIEN: Because the Legislature said so. [LB832]

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SENATOR KRIST: Okay, well, we can fix that. [LB832]

COREY O'BRIEN: I know. [LB832]

SENATOR KRIST: That's not a big deal. Okay, thank you. [LB832]

SENATOR EBKE: Any other questions? Senator Chambers. [LB832]

SENATOR CHAMBERS: I am going to show what, for me, is tremendous restraint and constraint. [LB832]

SENATOR EBKE: Because nobody else is. [LB832]

SENATOR CHAMBERS: I have listened to that Attorney General's Office. I said the office, not necessarily Mr. O'Brien specifically, but you're representing him. I fought for a year to get that office to acknowledge that sodium thiopental had been banned for importation by the FDA and his boss told you all's Governor to continue trying to import a substance that the FDA had banned. Now they're saying the FDA said this so you can't do that. We need to send these bills out there fight for them and tell the Attorney General's Office take us to court. We, too many times, we'll get these contradictory statements, these contradictory positions, but, since the drug was to kill somebody, the Attorney General was advising the Governor to import an illegal drug and they couldn't. I fought them for months and finally the U.S. Attorney told them what I told them and she said, if you do, we'll prosecute. Then it took that to make the Attorney General's Office say, okay. I don't trust them. I don't think they're ethical. I think they're moved by politics in everything that they do. And I think it would be shameful if this committee does not advance these bills just because the Attorney General's Office says something. Let his minions see what they can do to stop us on the floor. They went against the federal law and it was a court decision and they continued to try to import an illegal drug. If I did it, they would want to prosecute me. I think they are worthy of more than that because when the ones who are assigned to uphold the law want to violate the law, that is beneath contempt and it is heinous. Mr. O'Brien, you happen to be the one sent here to do the work of that office, but if I'm a member of the U.S. Army and the U.S. Army is carrying, conducting itself in a way that violates international law, I can't say,

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well, I got orders from above. There were Nazis who wanted to say they were merely carrying out orders and some of them hanged by the neck in botched executions until they were dead. And they had a guy from Texas who claimed he knew how to hang, and they had one of those German people hang for 12 minutes before he was dead. That was at the hands of the United States government. So because somebody says I'm a member of law enforcement, means nothing to me. I have seen too much criminal conduct by people in law enforcement and I want to give a shout out for the head of the Lincoln Police Department right now trying to root out the wrongdoers in the Omaha Police...I meant in the Lincoln Police Department. But, Mr. O'Brien, if you continue to come here to do that work which you are assigned to do, you're going to have to hear some things from me. And it makes you no difference. I don't pay your salary. Your boss can laugh. Let him come here and explain why he advised the Governor to seek the importation of a drug that FDA had banned. It was illegal and he was continuing to tell the Governor we can get it, we can do this. And you got people sitting in the Legislature following that kind of stuff and think that they can make a face at me. I see them as contemptible also. If I sound like I'm sick of it, I am. I'm just dealing with mere men, that's all, and politicians at that. Now I want the Attorney General to write--he can send it to Senator Halloran because he's a conservative--tell Senator Halloran to tell the Legislature that Chambers is crazy for saying that the FDA banned the importation and the Attorney General's Office never tried to go against that man. I've got the letters that I wrote. I've got the documents that I provided. I submitted a letter from the company that produced sodium thiopental showing how it had been stolen by a crook who had said that it was to be used for medicinal purposes in a controlled test in Africa. Then he began to sell it to states in the United States for executions. And when the manufacturer found out, he wrote to the Attorney General at that time and said, we want these drugs returned to us, they were obtained under false pretenses--in other words, stolen--they were not to be used in executions, we want those drugs back. That's what this no-good Attorney General has done, and he's running for reelection, and that's why he's saying we're going to try to get all these people under an execution warrant, knowing they don't have the drugs, knowing that the protocol has not been examined legally and that will delay it. But these conservatives in the Legislature and the Governor and the simpleminded Nebraskans say, get the death warrant. I want to see if the Nebraska Supreme Court is going to issue death warrants to carry out the political goals of Governor...what's his name? I can't even call the Governor's name. [LB832]

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SENATOR EBKE: Ricketts. [LB832]

SENATOR CHAMBERS: Who? Oh, Ricketts. All I could do is remember crickets because that's what I said: The senators who follow him are Ricketts' crickets. But, see, I'm getting old. And the reelection attempts of the Attorney General, I believe it's the Attorney General, not the Governor, who requests that a death warrant be issued. They've notified two prisoners. I want to see when they're going to ask the Supreme Court to issue a death warrant, and I want to see if whether the Supreme Court is going to bow to a crooked Attorney General and issue a death warrant to help their political ambitions. And I'm deliberately saying these things publicly because I want to provoke your boss, Peterson, I think that's his name, isn't it,... [LB832]

SENATOR EBKE: Yeah. [LB832]

SENATOR CHAMBERS: ...to tell the Supreme Court, well, the protocol has not been approved by any court yet, it's never been used before, we're not going to tell the public where we got the drugs, we're not going to tell the public who tested them but we say they were tested, we're not going to tell whether there was a private compounder who put this stuff together and, if so, we're not going to tell where the drugs came and the elements that that compounder used, whether the compounder has any kind of license, is certified, has any training, but, members of the Supreme Court, since the Governor and his daddy spent almost a half-million dollars to get the death penalty reinstated over the objection of the Legislature, which followed the law in enacting the law, to ban the death penalty, we want you to overlook that because the Governor needs to be reelected and so does the Attorney General and it's essential to their plans that you issue a death warrant. I dare...you're not a betting man, but if you become a betting man, I will bet you \$100 against \$1 that your boss does not ask for a death warrant. Now you don't have to respond to that, but if you want to take \$100 out of my pocket, and I'm a man of no means...I'm a man of means, by no means, but I'll give him \$100 just to get...I'll give him \$500 against \$1 and let him go seek his death warrant and he'll kill two birds with one stone. I used to say there's...you can crack two nuts with one blow because I don't like those images of killing animals. But I'm violating that principle to say he'll kill two birds with one stone. He'll take \$500 from a poor man whom he can't stand, he'll get a death warrant, and he'll be able to chortle to the public: We got a death warrant, and all you Catholics who were told by the Pope that the death penalty should never be

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used, what do I care about what the Pope says except when it comes to abortion, because that's what the public at large in Nebraska likes. But when the Catholic Conference, when the Pope, several Popes have said the death penalty should never be used, well, the Governor, he's a Catholic, but he doesn't have to go along with that because back in the 11th century somebody said that the death penalty is okay. Now I'm saying it on this bill, Mr. O'Brien. There are other bills. You won't have to hear it again. And I emphasized, I think, to the point where you even got it that this is not directed at you. But when you come with the message, I'm attacking the message and not the messenger. If I saw you stuck on the highway and it was freezing cold and I could stop my car and start it again, I'd say, now, Mr. O'Brien, if you don't mind accepting a ride in a warm, functioning car driven by me, get in. [LB832]

COREY O'BRIEN: Well, thank you. [LB832]

SENATOR CHAMBERS: Okay. (Laughter) Now I'm through. [LB832]

COREY O'BRIEN: I would do the same for you, Senator. [LB832]

SENATOR EBKE: Thank you. Let me just refer you to the Attorney General's clarification to the Nebraska law enforcement agencies and county attorneys, September 1, 2017, second paragraph: "Generally, cannabidiol has and continues to be included in the Uniform Controlled Substances Act's legal definition of 'marijuana.' See, Neb. Rev. Stat. 28-401(13). This means that, with two exceptions, cannabidiol is a Schedule I controlled substance. The first exception is for cannabidiol obtained pursuant to Neb. Rev. Stat. 28-463 to 28-468. This exception was enacted in 2015 pursuant to LB390, which authorized the University of Nebraska Medical Center to produce or possess cannabidiol for a limited four-year medical study of seizures. The second exception is for cannabidiol 'contained in a drug product approved by the federal Food and Drug Administration.' This exception was enacted in the most recent legislative session, pursuant to LB487 which prospectively reclassifies cannabidiol in an FDA approved drug as a Schedule V controlled substance," which took place on August 24, 2017. It goes on to note that, "To date no drug products containing...have received FDA approval," so... [LB832]

COREY O'BRIEN: I wrote that memo. [LB832]

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SENATOR EBKE: Okay, so it means that it is and continues to be a controlled substance, cannabidiol is a controlled substance, and that LB467 was an exception to that. [LB832]

COREY O'BRIEN: Right. It became a controlled substance. [LB832]

SENATOR EBKE: It became an exception to it being a controlled substance according to the memo. [LB832]

COREY O'BRIEN: It wasn't a controlled...it wasn't a controlled substance before. [LB832]

SENATOR EBKE: That's...(laugh) that's what the memo says. [LB832]

SENATOR KRIST: Memo says it. [LB832]

SENATOR EBKE: The memo says it. I mean I...so, okay. Thank you, Mr. O'Brien. [LB832]

COREY O'BRIEN: Okay. [LB832]

SENATOR EBKE: Any other questions? Yeah. [LB832]

SENATOR PANSING BROOKS: I'd like a copy of that memo... [LB832]

SENATOR EBKE: Okay. [LB832]

SENATOR PANSING BROOKS: ...from the clerk (inaudible). [LB832]

SENATOR EBKE: Thank you. [LB832]

SENATOR CHAMBERS: One thing: Mr. O'Brien,... [LB832]

COREY O'BRIEN: Yes, sir. [LB832]

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SENATOR CHAMBERS: ...would it offend you if I write a letter to your boss and tell him, based on the hard work that you have to do and how well you do it under the circumstances, I think you're entitled to a 5 percent raise in salary? (Laughter) Would that offend you? [LB832]

COREY O'BRIEN: It would probably offend my other employees that work just as hard as I do and I don't feel that I deserve it. [LB832]

SENATOR CHAMBERS: I don't see them but I see you and you have to listen to this. I might do what my conscience tells me to do because I am what I am. [LB832]

COREY O'BRIEN: Well, I appreciate the sentiment, sir, and... [LB832]

SENATOR CHAMBERS: You said what? [LB832]

COREY O'BRIEN: I appreciate the sentiment, sir. I wish you could get a 5 percent raise, too, so why don't you guys vote for yourselves a 5 percent raise as well? [LB832]

SENATOR CHAMBERS: We'll talk about it at another time. [LB832]

COREY O'BRIEN: All right. [LB832]

SENATOR PANSING BROOKS: Five percent raise! [LB832]

COREY O'BRIEN: Five percent of \$12,000 is, what, \$600? [LB832]

SENATOR PANSING BROOKS: \$600. [LB832]

COREY O'BRIEN: Okay. [LB832]

SENATOR EBKE: Thank you. [LB832]

COREY O'BRIEN: Thanks. [LB832]

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SENATOR PANSING BROOKS: Thank you. [LB832]

SENATOR KRIST: Make it 20. [LB832]

SENATOR EBKE: Next opponent. [LB832]

STEVE HENSEL: Madam Chair,... [LB832]

SENATOR EBKE: Welcome, Chief. [LB832]

STEVE HENSEL: ...committee, thank you for allowing me to testify today. My name is Steve Hensel, S-t-e-v-e H-e-n-s-e-l, and I represent the Police Chiefs Association of Nebraska and I'm here to testify in opposition to this bill. And before I start, I'm not a chemist. Some of the words used by chemists frighten me, so I will say THC, tetrahydrocannabidiol. [LB832]

SENATOR EBKE: Yeah, cannabidiol or something, yeah. [LB832]

STEVE HENSEL: Right. The bill defines marijuana by concentration rather than the presence of substances such as THC. The Nebraska State Crime Lab only tests for presence, which is the common practice of the majority of states in the nation. For many years, I know that our crime lab achieves quality results with the resources they are provided. A few years ago the state rightfully built a new crime lab and that is to achieve and maintain better service. Even so, this brand-new crime lab can't test for concentration, as this bill would require. To do so, the lab would need more space, more equipment, increased staff, and time is an issue as well. As been said earlier, perhaps some work can be done. I don't know. It seemed that there was a bit of confusion back and forth as I watched. [LB832]

SENATOR EBKE: And then what happens? [LB832]

STEVE HENSEL: We are concerned that the lab meets your standard. Whatever you expect them to do, we'd better be able to do it and at present we can't and that concerns the Chiefs Association. With that, open to any questions. [LB832]

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SENATOR EBKE: Thanks, Chief Hensel. And with a little bit of full disclosure, Chief Hensel is the chief in Crete. [LB832]

SENATOR CHAMBERS: I couldn't hear you. [LB832]

SENATOR EBKE: Chief Hensel is the police chief in Crete,... [LB832]

SENATOR CHAMBERS: Uh-huh. [LB832]

SENATOR EBKE: ...in my town,... [LB832]

SENATOR CHAMBERS: Uh-huh, so... [LB832]

SENATOR EBKE: ...so I...so I'm just saying. [LB832]

SENATOR PANSING BROOKS: Full disclosure. [LB832]

SENATOR EBKE: Just full disclosure, that's why I'm being nice to him. [LB832]

SENATOR PANSING BROOKS: Because we all like him, so that's why. [LB832]

SENATOR EBKE: That's right. How about that! Senator Chambers, did you have a question? He's thinking. He's trying to decide whether to... [LB832]

SENATOR PANSING BROOKS: Oh, God. [LB832]

SENATOR CHAMBERS: Strange things are happening. What I want to...I couldn't hear you very well when you started, but Senator Ebke told me you're the chief of police in Crete. [LB832]

STEVE HENSEL: Yes, sir. [LB832]

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SENATOR CHAMBERS: Who did you say sent you here to testify? [LB832]

STEVE HENSEL: The Police Chiefs Association of Nebraska. [LB832]

SENATOR CHAMBERS: Okay, you've never testified before this committee before, have you? [LB832]

STEVE HENSEL: Only once, sir. You weren't here that day. [LB832]

SENATOR CHAMBERS: I wasn't here? [LB832]

STEVE HENSEL: No, sir. [LB832]

SENATOR CHAMBERS: Was...how long ago was that? [LB832]

STEVE HENSEL: That was quite a while ago, maybe a year. [LB832]

SENATOR CHAMBERS: When? [LB832]

STEVE HENSEL: Maybe a year ago. [LB832]

SENATOR CHAMBERS: Okay, because I don't remember seeing you. Do all the chiefs get together and take a vote? [LB832]

STEVE HENSEL: We wish we could. We... [LB832]

SENATOR CHAMBERS: Well, how did they decide on you? [LB832]

STEVE HENSEL: I'm the first vice president. How did I decide to do that? I'm not sure, because that's...I chose to be involved in the leadership of the group and I live close to Lincoln, so. [LB832]

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SENATOR CHAMBERS: Okay. [LB832]

STEVE HENSEL: But we do, do teleconferences, and the leadership group gets together and with the time available to us since the bill was introduced and now, we talked about it and made a few phone calls. I talked to some lab people at difference places... [LB832]

SENATOR CHAMBERS: Okay. [LB832]

STEVE HENSEL: ...and tried to understand better. I understand that the state of Colorado is trying to test for concentration. The state of Washington is trying to do that as well, but that's pretty limited. [LB832]

SENATOR CHAMBERS: Why? Why? Why are they trying to test for concentrations? What are they looking for? [LB832]

STEVE HENSEL: I would imagine, and I'm not a chemist, sir, I'm just trying to understand the situation,... [LB832]

SENATOR CHAMBERS: I understand that. [LB832]

STEVE HENSEL: ...pretty much what's being discussed now as concentration being a marker for determining what is and isn't considered marijuana. [LB832]

SENATOR CHAMBERS: and their current testing methods will not detect a concentration this small, is that what it is? [LB832]

STEVE HENSEL: They're unable to test for concentrations. They can test for the presence of but not the concentrations, and that's a dilemma given this bill. [LB832]

SENATOR CHAMBERS: Well, the presence of and the concentration seem important to me because they make marijuana a controlled substance because of its psychoactive...well, the fact that it can make you high. [LB832]

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STEVE HENSEL: Yes, sir. [LB832]

SENATOR CHAMBERS: If they cannot even detect...can they...you said they can detect the presence. [LB832]

STEVE HENSEL: Of THC, that I know, yes, that's one of the tests. [LB832]

SENATOR CHAMBERS: But not the concentration? [LB832]

STEVE HENSEL: Not at present, sir. [LB832]

SENATOR CHAMBERS: So what difference does it make to you whether we pass this bill or not? [LB832]

STEVE HENSEL: Meeting standards, state standards, is important to us, and when a standard is leveled and my colleagues in different fields, like the crime labs, if they are concerned that they're not going to be able to meet standards, that concerns us... [LB832]

SENATOR CHAMBERS: Well, then... [LB832]

STEVE HENSEL: ...and is...us as well. [LB832]

SENATOR CHAMBERS: But the Legislature is setting the standard. You don't believe the Legislature has the power to do that? [LB832]

STEVE HENSEL: No, sir. I believe you certainly do. [LB832]

SENATOR CHAMBERS: And shouldn't the law enforcement people who are to uphold the law, not make the law, comply with the law that the Legislature puts in place? [LB832]

STEVE HENSEL: Sir, that is exactly what law enforcement should do as the executive branch. We are not the legislative branch and I understand that and so does the association. [LB832]

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SENATOR CHAMBERS: So if we pass this bill, then whether the lab can do whatever they want to do or can't do what they want to do, is irrelevant. We will have made a policy decision and it will be up to law enforcement to obey the law. [LB832]

STEVE HENSEL: Yes, sir. But at present, as someone who is testifying as a representative of the chiefs as well as a resident of the state of Nebraska, I'm availing myself of the opportunity to say what I wish to say. And once the Unicameral makes its decision, it becomes law and we're behind it. [LB832]

SENATOR CHAMBERS: And I'm glad to have you come and give us your take on this and the position of the chiefs. [LB832]

STEVE HENSEL: Yes, sir. [LB832]

SENATOR CHAMBERS: But I think they may have been misled by the way the Attorney General's Office conducts itself into thinking that somehow they could say, we don't like it, so the Legislature won't do it. Are you here to advise the Legislature not to change the law? Is that what you're saying, that it's... [LB832]

STEVE HENSEL: No, sir. [LB832]

SENATOR CHAMBERS: ...unwise if we pass this law? [LB832]

STEVE HENSEL: No, sir, I'm mentioning a concern that the chiefs have regarding this particular bill, and so that you could hear our concern. What you do with it, as a body, that's certainly your decision. [LB832]

SENATOR CHAMBERS: But you said you're against the Legislature doing this. [LB832]

STEVE HENSEL: I'm opposed to the bill as written at present. I'm not against the Legislature or law. [LB832]

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SENATOR CHAMBERS: I said you're against the Legislature doing this. To be opposed means you're against what we are considering doing. [LB832]

STEVE HENSEL: That's one interpretation, sir, yes, if that's what you... [LB832]

SENATOR CHAMBERS: Okay, that's all I want. [LB832]

STEVE HENSEL: I'm not against what's happening here, sir. I'm...I'd really like this. [LB832]

SENATOR CHAMBERS: Then, okay, you're opposed, you're opposed to what we're considering doing then, aren't you? [LB832]

STEVE HENSEL: At present, sir, with this bill, yes. [LB832]

SENATOR CHAMBERS: And if we go ahead and enact it, then will you lose sleep over it? [LB832]

STEVE HENSEL: No, sir. There are greater issues in life to lose sleep over. [LB832]

SENATOR CHAMBERS: I don't have another question to ask you. You are a wise man. You just got the short straw. I understand now. So welcome. [LB832]

STEVE HENSEL: Thank you, sir. [LB832]

SENATOR CHAMBERS: Okay. [LB832]

SENATOR EBKE: So is it safe to say that the big concern of the police chiefs comes with the designation of, let's see, "three-tenths of one percent or less" of tetrahydrocannabin... [LB832]

STEVE HENSEL: THC, yeah. [LB832]

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SENATOR EBKE: Whatever, yeah, THC, "by weight," and that it would be difficult for you if somebody had, if somebody used cannabidiol that had "three-tenths of one percent or less" and you tested them for it, it would be difficult to test. You'd be able to see that there was a presence but you wouldn't be able to designate the weight or the... [LB832]

STEVE HENSEL: Just like in the field, ma'am, when we do a field test, we can test for presence. We'll send the product to the lab and they will test further, with greater depth, and they identify, yes or no, that it is or isn't that substance. [LB832]

SENATOR EBKE: It's binary; it's not a range. [LB832]

STEVE HENSEL: Yes, ma'am. [LB832]

SENATOR EBKE: Okay, gotcha. [LB832]

STEVE HENSEL: And if they're unable to do that, that stops action and we're kind of at a standstill, and that would be every case. [LB832]

SENATOR EBKE: Right. [LB832]

STEVE HENSEL: That's a little difficult. [LB832]

SENATOR EBKE: Gotcha. Okay. Thank you. [LB832]

STEVE HENSEL: Yes, ma'am. [LB832]

SENATOR EBKE: Any other questions? Okay, thanks. [LB832]

STEVE HENSEL: Thank you. [LB832]

CHRISTINE GABIG: Good afternoon, Chairman Ebke and members of the Judiciary Committee. My name is Christine Gabig--it's C-h-r-i-s-t-i-n-e, Gabig is G-a-b-i-g--and I'm a

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forensic chemist at the Douglas County Sheriff's Office. That's the crime lab up in Omaha. I'm here to testify against LB832, but I want to be clear that...because I...just from listening to the other testimony, it's not about cannabidiol and whether cannabidiol should be legal or not. It is simply about the wording in this bill that is an issue. And so the reason that it is an issue is because of what Senator Ebke just said where it talks about how something has to contain 10 percent or less cannabidiol by weight and "three-tenths of one percent or less" THC by weight. We can't prove that in the lab currently. All we do is we identify that a product contains THC, so that would mean that every sample that's submitted to the lab, if somebody pulls someone over and they have suspected marijuana on them, it would be submitted to the lab and we would no longer be able to call anything marijuana because we can't do the testing to prove that it's not marijuana, that it's just this here, so we would not be able to say it is marijuana either. So that would put an end essentially to us being able to identify marijuana in the lab with our current capabilities. So I guess I would take any questions about that. [LB832]

SENATOR EBKE: Any questions? Senator Krist. [LB832]

SENATOR KRIST: I'm going to go about this not necessarily in the Socratic method but to lay some brickwork down. What are CBD oils made from? [LB832]

CHRISTINE GABIG: Good question. So the marijuana plant, the genus sativa has THC in it and it has a whole bunch of other cannabidiols. [LB832]

SENATOR KRIST: What is CBD oil made from? [LB832]

CHRISTINE GABIG: CBD oil is made from the marijuana plant but it's called hemp because it's been bred over time to be low in THC and high in the nonpsychoactive compound CBD. [LB832]

SENATOR KRIST: So as a scientist you're telling me that this marijuana plant and this hemp plant are the same. [LB832]

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CHRISTINE GABIG: Correct. The only difference is the percent of THC that would be in those plants. [LB832]

SENATOR KRIST: Ma'am, the genus of the two might be the same in terms of its Latin differentiation, but I know when I look at marijuana as a leafy plant and I know when I look at hemp as a fibrous product, that the two of them are completely different. [LB832]

CHRISTINE GABIG: Right, and... [LB832]

SENATOR KRIST: So you're going to have to agree...we're going to have to agree to disagree. If I'm making something out of hemp, I'm not making it out of marijuana. And I will further say that the bill that we passed and the percentages that we put on the...or the money that we've put into our research at UNMC, they are well capable of telling us what that THC level is in CBD,... [LB832]

CHRISTINE GABIG: Absolutely. [LB832]

SENATOR KRIST: That's...the efficacy and the dosage were also important. [LB832]

CHRISTINE GABIG: Absolutely. [LB832]

SENATOR KRIST: Okay. [LB832]

CHRISTINE GABIG: I'm in agreeance with you on that. [LB832]

SENATOR KRIST: So I'm also looking at home healthcare testing here on-line and it's a marijuana drug test. It says urine drug test for marijuana, for THC, results in five minutes, 98 percent accurate, FDA cleared and approved, long shelf life, current inventory expires January 20, 2018. I can't believe, I cannot believe, I'm not calling you a liar, I'm just saying I have a hard time believing that when you use that premise and say this is hemp and this is marijuana and CBD oil is produced not from the marijuana plant but from the hemp plant, that you can't test for THC because that's exactly what they're doing at UNMC. And if we need to combine the

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criminal labs, again, have that conversation, and let UNMC take over the testing, then let's do that. [LB832]

CHRISTINE GABIG: We can absolutely test for THC. We do the same thing that UNMC does with testing for THC. [LB832]

SENATOR KRIST: So what's your testimony? [LB832]

CHRISTINE GABIG: What we are not doing is determining what percent of THC is in seized marijuana samples. UNMC is doing research on products and that is what their research products are set up to do and that's what their instrumentation is set up to do. [LB832]

SENATOR KRIST: So I'm not asking you to test the marijuana leaf. You're missing my point. I'm asking you to test the CBD oil that would be on the shelf that was produced from hemp, which is the same... [LB832]

CHRISTINE GABIG: I think we're saying two different things because this bill says marijuana does not include any of these things, so for a forensic chemist to go into court and say this is marijuana, I also have to prove that it did not contain 10 percent or less cannabidiol by weight or 0.3 of 1 percent or less. I have to prove what it didn't have, as well, and that's not something that we currently do in our crime labs. [LB832]

SENATOR KRIST: So tell me what the wording needs to say so that I can ask you to take this little product that was on the shelf, that was such a big hassle in August for all the vendors and the people who want to take it, what do I have to give to you in order for you to prove that that has low THC? [LB832]

CHRISTINE GABIG: That's possible. It's just a matter of writing the language. [LB832]

SENATOR KRIST: That's all we're asking for. [LB832]

CHRISTINE GABIG: But this language in this particular bill does not... [LB832]

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SENATOR KRIST: Then I just asked you, what does that need to say in order for us to put it into the statute so you can test for it? [LB832]

CHRISTINE GABIG: Okay. [LB832]

SENATOR KRIST: You told us, to begin with--we can look at the records and look at the transcript--you can't test marijuana for THC. [LB832]

CHRISTINE GABIG: No, I'm sorry, I said I can't test for the percent of THC, the percent level of THC. [LB832]

SENATOR KRIST: But you can test CBD oil for the level of THC. [LB832]

CHRISTINE GABIG: No. Nope, they're two different tests. [LB832]

SENATOR KRIST: Wow. [LB832]

CHRISTINE GABIG: I could talk about the presence of... [LB832]

SENATOR KRIST: UNMC can tell me exactly how much THC is in CBD oil. [LB832]

CHRISTINE GABIG: UNMC is not testing criminal cases of marijuana, which is the bulk of the cases that are submitted, for to go into court to say this is marijuana. The perp... [LB832]

SENATOR KRIST: The Attorney General already said hemp is legal and the byproduct from hemp is legal. I've said it on the record. I'm not asking you to test marijuana or an illegal activity. I'm asking you to test the content of THC in CBD oil. [LB832]

CHRISTINE GABIG: I under... [LB832]

SENATOR KRIST: We've actually have all both agreed now, UNMC can do. [LB832]

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CHRISTINE GABIG: I...this is different. We're talking about two different things. We're talking about...you're talking about CBD oil as a product and that...whatever language the people that write legislation choose to write about how that could be made legal, great. I'm telling you that the way that it was written in here, I heard Senator Wayne testify that that was his intent, was to make CBD oil legal and something that people can use. Fine. [LB832]

SENATOR KRIST: Now... [LB832]

CHRISTINE GABIG: But this language also, I don't know that it would make CBD oil legal because it's still listed back here. But this language also prohibits the crime labs with the marijuana samples that are submitted criminally; we're not going to be able to call them marijuana anymore. We will not be able to say that's marijuana because we do not determine that every marijuana sample that we get...we're not going to sit...you'd have to order new instrumentation and we're talking LC-MSes, we're talking possibly millions of dollars in instrumentation, additional staff, and turnaround times on those things. [LB832]

SENATOR KRIST: And we've already determined that UNMC can do all of that right now with (inaudible). [LB832]

CHRISTINE GABIG: I'm telling you UNMC is not performing purity testing on criminal samples of marijuana. [LB832]

SENATOR KRIST: I'm not asking for criminal samples on marijuana. You're missing the point and we're going to go round and round, so let's just stop. [LB832]

CHRISTINE GABIG: Fair enough. [LB832]

SENATOR KRIST: Let's just agree to disagree that there is the capability in this state to test for the THC level in CBD oil, which, by the way, is produced from hemp, not from marijuana plants. [LB832]

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CHRISTINE GABIG: Yes, but we are talking about...correct. But we are talking about marijuana being seized off the streets, criminal marijuana, that would...every single one of those samples would have to be tested for the THC percent. Do you... [LB832]

SENATOR KRIST: No, it's...we're not talking about a criminal activity. We're talking about a medical application of something that is produced from the hemp plant, a fibrous hemp plant, that ends up in a bottle and it ends up as an oil, a CBD oil. We're talking about testing for the level of THC in there. Now as far as going back to the Attorney General's position and the...and law enforcement's position on taking something off the street, separate yourself from that conversation, because we have to go back to that legislation from a couple years ago and prove to the Attorney General that CBD oils are not part...CBD is not part of an illegal drug or an illegal substance. [LB832]

CHRISTINE GABIG: Fine. [LB832]

SENATOR KRIST: That's a different conversation. [LB832]

CHRISTINE GABIG: Great. Absolutely. [LB832]

SENATOR KRIST: Okay. [LB832]

CHRISTINE GABIG: Absolutely. And I'd be happy to help with the language because, then again, what you're going to have is you're going to have police officers seizing CBD oil and they're going to submit it and say, does this have THC in it? And we'll test it and say, nope, it's just CBD. [LB832]

SENATOR KRIST: So you have the capability of doing that? [LB832]

CHRISTINE GABIG: Absolutely. [LB832]

SENATOR KRIST: Perfect. Thank you. [LB832]

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CHRISTINE GABIG: I cannot tell the percents and that's what required with this legislation. [LB832]

SENATOR KRIST: Okay. Language needs to be cleaned up but we know what final goal we're going to and appreciate it and we'll probably solicit your help in order to do that. [LB832]

SENATOR EBKE: Senator Chambers. [LB832]

SENATOR CHAMBERS: Did you call on me? [LB832]

SENATOR EBKE: Oh, I did, yeah. Go right ahead. [LB832]

SENATOR CHAMBERS: I'm not a chemist. I'm not a scientist. And to bring it into the American realm of politics, I am not a crook. I don't use marijuana. I don't smoke cigarettes. I don't consume alcohol. I don't do any of the things that Christians do. What would be the occasion to make a Douglas County sheriff, a Crete police officer, an Omaha police officer, a member of the State Patrol seize a bottle of this oil and feel that it's illegal marijuana? What would be occasion for an officer to do that? [LB832]

CHRISTINE GABIG: The reason that that...I'm speaking as a chemist. I'm not a police officer. I have no...not sworn. [LB832]

SENATOR CHAMBERS: And here's why I'm saying it. I'm not saying it. You keep saying the police officer would have this problem. You're testifying representing the police or the criminal function. That's what you continue to say. So all I'm asking, what would be the occasion to cause a police officer to seize this oil and try to get somebody charged with having illegal possession of marijuana? [LB832]

CHRISTINE GABIG: Sure, because it's not regulated by the FDA, and so there's so many products out there anymore that are labeled as CBD or some kind of a window cleaner, they have labels on them that aren't regulated, and so a lot of times you run into law enforcement saying, I don't know, this might contain THC too. [LB832]

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SENATOR CHAMBERS: All right, now... [LB832]

CHRISTINE GABIG: That's how that happens usually. [LB832]

SENATOR CHAMBERS: ...you're improving my education. Let's take it a step further. Is...do you...do people drink marijuana? [LB832]

CHRISTINE GABIG: Yeah, there are marijuana extract beverages, um-hum. [LB832]

SENATOR CHAMBERS: And so the bottle, this bottle could be marijuana that people would be drinking. [LB832]

CHRISTINE GABIG: It could contain THC instead of cannabidiol, correct. You don't know because it's not approved by the FDA. That's... [LB832]

SENATOR CHAMBERS: How many officers have arrested people...well, the sheriff. How many sheriff's deputies have arrested somebody and charged that person with drinking marijuana? [LB832]

CHRISTINE GABIG: I have no idea. I know that we do see cannabidiol products in the lab pretty frequently more recently. [LB832]

SENATOR CHAMBERS: You... [LB832]

CHRISTINE GABIG: And we test them and report them out as containing cannabidiol. [LB832]

SENATOR CHAMBERS: No, you're getting away from what I'm asking you based on your testimony. We're talking about an oil. Is that what we're talking about with this product? [LB832]

CHRISTINE GABIG: That's what you're talking about, right. [LB832]

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SENATOR CHAMBERS: Okay. So sheriff's deputies are not arresting people with oil and saying we think this person is drinking marijuana. Omaha Police don't do it. [LB832]

CHRISTINE GABIG: If I'm seeing it submitted to the crime lab, it has been seized from somebody for a reason. [LB832]

SENATOR CHAMBERS: Well, that's in the realm of theory, speculation, and scientists. We're dealing with reality and that's what this bill is going to deal with. And if there's a change necessary in a word... [LB832]

CHRISTINE GABIG: Yes. [LB832]

SENATOR CHAMBERS: ...or two words, that can be done. [LB832]

CHRISTINE GABIG: Yes. [LB832]

SENATOR CHAMBERS: And I think I heard Senator Krist more than once say, what is the wording that should be employed? Do you have any idea? [LB832]

CHRISTINE GABIG: Absolutely. I'd be happy to help with that. If you're asking this right now, on the spot, I would suggest that cannabidiol needs to be... [LB832]

SENATOR CHAMBERS: Well, let me ask you this. Since I am having this exchange with you--I don't want to say interrogating, that's not what I intend to do--would you, when you have time to think about what the wording change should be--not saying that it would be accepted, but it will at least make clear what you're getting at--would you put together a brief memo to me saying that based on your understanding of what we're saying our intent is, this is the way this language should be drafted to convey that intent, because the present language does not. And I'm putting it like that not to put words in your mouth but so you'll know what I'm requesting of you. And I'm not being argumentative because you said there is language that could accomplish what we're after. [LB832]

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CHRISTINE GABIG: Correct. [LB832]

SENATOR CHAMBERS: That's what I'm asking of you. [LB832]

CHRISTINE GABIG: Okay. [LB832]

SENATOR CHAMBERS: And the other conversations with others, that will be for them, but I'm trying to speak for myself so I can understand. [LB832]

CHRISTINE GABIG: Okay, yeah, if...I... [LB832]

SENATOR CHAMBERS: Okay. [LB832]

CHRISTINE GABIG: If my sheriff would let me do that, I'd be happy to. I don't see any problem with that at all. Like I said, the concern was just with some of the words in here, some of the numbers, like the percent, so. [LB832]

SENATOR CHAMBERS: Okay, and it doesn't have to be a treatise, either, just... [LB832]

CHRISTINE GABIG: Okay. [LB832]

SENATOR CHAMBERS: Okay, thank you. [LB832]

CHRISTINE GABIG: You bet. [LB832]

SENATOR CHAMBERS: That's all that I have. [LB832]

SENATOR PANSING BROOKS: And I would like to have a copy of that, so maybe if we could have it sent to the whole, I'd like to read it as well, so the whole Judiciary (inaudible). [LB832]

SENATOR CHAMBERS: Then here's what you can do to make it easy. You can address it to the Chairperson of the Judiciary Committee and then she will share it with us. [LB832]

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SENATOR EBKE: I'll distribute. [LB832]

SENATOR CHAMBERS: But I didn't know whether I was the only one with that interest. That's why I was...I said that I wanted because I feel an obligation, based on the questions that I've asked you, to give you a chance when you're not here being grilled to do what I'm asking you to do. [LB832]

CHRISTINE GABIG: Uh-huh. I intend to seek input from, you know, State Patrol and Celeste Laird and some other folks, too, but I would absolutely love to help out with that, so. [LB832]

SENATOR CHAMBERS: And I appreciate it. Thank you. [LB832]

SENATOR EBKE: I don't see any other questions. Thank you. [LB832]

CHRISTINE GABIG: Okay. [LB832]

SENATOR EBKE: Any other opponents, if you dare. I see none. Anybody in the neutral capacity? [LB832]

GREGORY LAUBY: Chairman Ebke, members of the committee, my name is Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I came here today, this afternoon, determined to testify against this bill in some length, so much so that if I ran out of time I was going to ask for a waiver of the three-minute limit. I am that opposed to any kind of designation of a limit on CBD being specified in this bill, principally because of the Attorney General's Opinion that was issued at the first of August, that Senator Ebke and Mr. O'Brien have referred to, in which he seemed to take an exception that was made for CBD in an FDA-approved product being placed on Schedule V as a reason to make the legislative determination that all other CBD was a Schedule I controlled substance and prosecute accordingly. And that was not, was not an idle threat. I would ask, frankly, and I...this is a role reversal, but if I might ask the senator who chairs this committee to pass around her copy of the memo from the Attorney General to all the members of the committee, I think you might find it interesting that that came out of a logo of both the Attorney General's Office and the State Patrol. It was in a memo form but there was no

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attribution as to who wrote it, nor was the memo signed. And it was not an idle threat and immediately resulted in the Lincoln Police, and as well as police all across the state, going to vape shops and tobacco shops and any other small distributor and warning them that any kind of CBD product on their shelf or anything that contains CBD could be considered illegal. Now I haven't heard that they went to Cost Cutters or Walmart or Hy-Vee and made them the same warnings, but certainly the smaller merchants took heed of those warnings and acted accordingly. And those that didn't suffered some consequences, including four people up in Herman, Nebraska, a small town just north of Omaha of about 300 people, that are now facing felony charges, Class IIA, and two of them are facing two charges, the others are just one, but those are carrying a possible 20 years max on each charge for selling, according to the only information I have, which is a newspaper article out of that locality, for selling apparently just (inaudible) or CBD. There was no reference to any other type of a controlled substance. And that was the result of the county attorney acting in accordance with the Attorney General's Opinion that he was receiving. I also brought the full cannabidiol report from the World Health Organization that Senator Wayne so aptly summarized. And because of his summary and the fact that he has assured me that he is determined to now completely submit an amendment, I'm not going to ask you to read all that, nor am I going to try and summarize it beyond what he so aptly did. I also brought a certificate that shows CBD can be derived and is being derived from the mature stalk of industrial hemp, both of which can be exempted, and are exempted, from our definition of marijuana in the state statutes. You've also heard from some of the health benefits, but it's not just the health benefits, it's also, the CBD is, in every hemp product from cloth to paper at some level or another. And so trying regulating it would really subject all those products to it. And finally, I brought a four-page article... [LB832]

SENATOR EBKE: Time is up. [LB832]

GREGORY LAUBY: ...from the Nebraska Farmer talking about a North Dakota farm family that raised 300 acres of industrial hemp, under state license, and they expect to profit \$250-350 an acre on the seed alone, and they're baling up the fiber, hoping that a processing plant will erect in the next two or three years, before it rots, and they can also make money off of that. So with that, I thank you for your time and I wish you luck with the amendment. [LB832]

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SENATOR EBKE: Thank you, Mr. Lauby. Any questions? Thanks for being...oh. [LB832]

SENATOR PANSING BROOKS: I thought he said neutral. You came up...would be opposed. I thought he...then he said he was opposed. [LB832]

SENATOR EBKE: Neutral. [LB832]

GREGORY LAUBY: Well, I'm neutral based on the fact that I've been assured that there's going to be an amendment and based on what Mr. O'Brien said, that hemp was not an illegal substance, nor was CBD. But I wanted to make it clear what my objections would be if that changes. [LB832]

SENATOR PANSING BROOKS: Thank you. [LB832]

SENATOR EBKE: Would you make sure to fill out one of the yellow forms and bring it up, please? [LB832]

GREGORY LAUBY: I will, I will do that. Thank you. [LB832]

SENATOR EBKE: Okay, thank you. Is there any other testimony? [LB832]

BILL HAWKINS: Chairman Ebke, members of the committee, I appreciate you for being here and taking our time. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. It's been a long day. I'm speaking here on a neutral position. I appreciate Senator Wayne bringing this bill and the members of the committee looking at it. And it's an important issue. I think some of these amendments and the discussion that has taken place has maybe changed my position a little stronger. I've interviewed people all over this state and around the country on this issue of pain relief and things that CBD has proven to work with. There's a study out and new studies that are taking place that states that have medical cannabis, and particularly CBD, have reduced rates of opiate deaths of 25 percent. Most of this hearing has been on opiate problems and so I appreciate the committee looking at this issue. The day...the Friday before this memo was put out by whoever drafted the memo from the Attorney General's Office, I had an extensive conversation

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with the communications director of the Attorney General's Office, Suzanne Gage, and I've had repeated conversations with her. We are particularly discussing the CBD issue of Senator Ebke's bill taking place. She assured me that the Attorney General's Opinion was that technology did not exist to extract a CBD molecule without having a trace of the dangerous THC molecule, so she assured me that their opinion was, and had always been, that CBD was illegal. And so I was in Fresh Thyme when the raids and the memo went out and there were people in tears, crying, older people than me who had gotten off of opiates, had gotten relief from pain, and now all of a sudden they were accused of being illegal drug users. And so it was quite a shock and there are people all over this country using CBDs, all over this world, and we don't have the abuse and addiction that we have from the opiates. And so you would think that the Attorney General's Office would be happy to have a safe, scientifically proven alternative to opiate abuse and addiction. So I commend this committee and for the long hours and I would certainly take any questions. [LB832]

SENATOR EBKE: Thank you, Mr. Hawkins. Any questions? Thanks for being here. [LB832]

BILL HAWKINS: Thank you, and you have a good evening. [LB832]

SENATOR EBKE: Anybody else testifying in a neutral capacity? Senator Wayne. That was fun, huh? [LB832]

SENATOR WAYNE: (Exhibit 3) That was great because I...that was great. I'm going to get the transcripts as soon as possible. Thank you for the wonderful questions. And what I handed out, I had the pages hand out, was a simple fix that I think solves all our problems. First, where my bill adds the 10 percent and THC, on page 4, all the new language, we simply remove all that like it's never existed, on page 4 of the bill. Then what we would do on page 3 is, line 29, where it says "or cannabidiol," we'll just put a comma, delete all of the "contained in a drug product approved by the" FDA, and then we have to go "or," it's going to sound kind of weird, but we have to add another "cannabidiol" which would include the UNMC exception. According to that, what the Attorney General's Office testified, cannabidiol is now legal. We would also have to remove it from Section 28-405, which is the Schedule Is...Schedule V, because it's included in there, but

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you...we do those two things on an amendment, CBD is now legal in Nebraska and that is according to the Attorney General's Office who spoke here today. [LB832]

SENATOR PANSING BROOKS: Okay, so moved. [LB832]

SENATOR EBKE: Senator Krist. [LB832]

SENATOR KRIST: So just to make a point on as far as the UNMC piece is concerned, we're going to have to do something about UNMC because they are on a four-year exception anyway, which this will handle that as well. [LB832]

SENATOR PANSING BROOKS: Yeah. [LB832]

SENATOR WAYNE: That's on a different section. That will be in the 28-463, because I do read; I mean I was over here on my computer learning a lot as we were listening. [LB832]

SENATOR KRIST: So you're saying we have to say that again in a different section. [LB832]

SENATOR WAYNE: In a different section we would have to change that but...because the four-year... [LB832]

SENATOR KRIST: Then it would be like four-year... [LB832]

SENATOR WAYNE: ...was in that section. [LB832]

SENATOR KRIST: ...four-year (inaudible). [LB832]

SENATOR WAYNE: It was in that section. But in this section the issue is an interpretation according to the Attorney General was because it said contained in drug products "approved by the federal Food and Drug Administration," and since they haven't done that, therefore, it's illegal. So we removed that. It's no longer illegal. And we have to add the word "cannabidiol" back so make sure it's clear that the UNMC is separate from that. Then all we have to do is

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remove it from the Schedule V, 28-405, I mean, and cannabidiol is now legal back in Nebraska and families can use it for the necessary treatment that they need. So I appreciate this committee for negotiating this for me (laughter) on a Friday night. [LB832]

SENATOR EBKE: We kept you busy, kept things busy while you were... [LB832]

SENATOR WAYNE: With that, thank you. [LB832]

SENATOR KRIST: So, you want to speed through the next two so we can go home? [LB832]

SENATOR WAYNE: No, I was hoping to Exec on this one tonight. [LB832]

SENATOR EBKE: (Exhibit 1) We do have one letter in support from Spike Eickholt of the ACLU of Nebraska. That concludes the hearing on LB832. Senator Wayne, LB970. [LB832 LB970]

SENATOR WAYNE: So this one I am asking if anybody is here to testify, to not testify. I'm asking the committee to hold this bill for this year. The intent of this bill is correct and I think the way it's written is okay, but there is some confusion among some other attorneys, and I can see why there is confusion. The purpose of it was we were trying to...at the end of the day, why should someone convicted of selling less than an ounce of marijuana, even if it's their third offense, face 20 years? We think, I think, that's out of line with what our...even our current drug laws are. But because of the section it was in, I think it's confusing. And I've talked to legal counsel and the committee Chairwoman and because of the number of bills you have and the short session, there just isn't really time for it to get to the floor anyway. So I don't want committee counsel being bogged down with changing and making amendments and I'll just bring this back next year. [LB970]

SENATOR EBKE: Thank you, Senator Wayne. Without objection,... [LB970]

SENATOR PANSING BROOKS: Second. [LB970]

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SENATOR KRIST: Hallelujah, amen! [LB970]

SENATOR EBKE: ...we will...so that's your close, right? That's your close on LB970. Okay, so do we want to start with LB971? [LB970 LB971]

SENATOR WAYNE: Yes. [LB971]

SENATOR PANSING BROOKS: That's awesome. [LB971]

SENATOR WAYNE: Thank you. My name is Justine Wayne, J-u-s-t-i-n W-a-y-n-e. I represent the 13 District which includes north Omaha and northeast Douglas County. And what this is, is LB971 will reduce the penalties for possession of a controlled substance. It will base punishments off of how much of what they had versus what the law is as it stands right now, which means there's no real distinction between when someone has a small amount or even a residue of marijuana versus someone caught with large amounts. And it's not just marijuana, but that's just in-general controlled substance. LB971 would change the existing statute to bring punishment in line with modern times. This does not mean we are making marijuana legal. It does not absolve someone caught with a controlled substance at all. They still have the responsibility and they still will be punished, but it brings down realistic charges in tow with the crimes they committed, which is not currently the case. The number of people being charged with a gram or less of a controlled substance has skyrocketed. I believe members of the Lancaster County and Sarpy County Public Defender's Office are here behind me to testify about the burdens these create on a case. With prosecutorial restraint seeming nonexistent in this area, these laws are desperately needed. Just to be clear, we are talking about changing the penalties for a gram or less, which is oftentimes what is left in an ashtray. It's not smokable, it's not usable, but yet they're penalized as if it is. Most of these cases actually involve just residue--that's what I just said--which means the substance has already been used, you cannot get high from it, the quantities are too small to even be weighed but it's literally residue. Imposing large fines that people have to sit out in jail or sentencing people to incarceration is accomplishing nothing to help the situation. No public good is coming from this, yet we are spending thousands and thousands of dollars of sending people with residential...residue amounts of drugs to prison. The way the law is written and the way the prosecutions are executed are massive burdens on our

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system. They clog our courts. Prosecution drains taxpayer resources and the cost of incarceration is substantial. As you'll see in the fiscal note, the cost of an inmate is roughly \$37,000 per year and Lancaster County thinks this bill, at least from the Public Defender's Office, believes this bill could save hundreds of thousands of dollars. Public defenders often have high caseloads as it is. When they reach their limits and file overload motions, outside counsel must be appointed to fill the gaps. They bill by the hour and it costs taxpayers more money, and this is often the truth whether in Douglas County, Sarpy County, or Lancaster. In conclusion, the system is broke. We know that if you're African-American, you're four times more likely to be charged with a drug charge than non-African-American. We know that residue charges in the African-American community are extremely high versus everywhere else. That's part of the reason why I looked at this. The other reason I looked at this is that what this bill accomplishes. We have an overcrowding system, of which I was a part of the special committee to oversee this or to go in and tour all these prisons across our state, and the fact of the matter, we have plenty of people in there for drug offenses, but to have something in your car or have something on you that you can't even use and be charged as if you could be is not justifiable. If these offenses are still prosecuted, even with (inaudible) classifying them as misdemeanors, that means smaller bonds, shorter jail sentences that will reduce the jail population and save the counties thousands of dollars. I would appreciate your support on this and I'll be willing to answer any questions. [LB971]

SENATOR EBKE: Thank you, Senator Wayne. Does anybody have any questions on LB...go ahead, Senator. [LB971]

SENATOR PANSING BROOKS: Gosh, maybe we could save the county thousands of dollars, Senator Wayne, and then provide access to counsel for juveniles with that money--just a thought. [LB971]

SENATOR KRIST: Don't give an answer. [LB971]

SENATOR WAYNE: (Laugh) I'm going to listen to my elders and not answer the question. [LB971]

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SENATOR PANSING BROOKS: I know he agrees (inaudible) with me. This is...thank you for bringing this. I think it's a really good bill and we...our prisons are overcrowded with nonviolent crimes like this and appreciate you bringing this. [LB971]

SENATOR WAYNE: Thank you. [LB971]

SENATOR EBKE: Other questions? Okay, first proponent. [LB971]

JOHN HASCALL: Good evening. Chairwoman Ebke, members of Judiciary Committee, my name is John Hascall. I work, a deputy, in the public defender's office in Sarpy County. Right now I'm assigned to major cases, but for the last seven years I've been doing felony cases. One of the best parts of this crime...or this crime change is that for a lot of individuals that get caught with an empty baggie or a pipe with residue or even a straw or something, it's charged as a misdemeanor. Everyone knows that once you're charged with a felony or convicted of a felony, it's like a scarlet letter against you; it will follow you everywhere, whether you're applying for school, applying for jobs, licensing boards, day-care providers, medical boards, trying to go for the Bar Exam, or even the military. If they see that you've been charged with a felony, they automatically say, nope, we don't want you. This is kind of second chance by just calling it a misdemeanor. No judges are giving anybody with this type of charge a significant amount of punishment, but it is clogging up the court systems and the jails. Right now in Sarpy County, if someone is charged with a felony, they get arrested, they get taken to jail, they spend probably 48-72 hours in jail waiting for the probable cause affidavit, waiting for the judge to agree on probable cause, and then going to a bond hearing. If this is changed to a misdemeanor, officers would be able to cite people. They would be able to take them to jail or have a scheduled bond so they could not sit in jail for three to four days before they're able to get out. And even as a misdemeanor, I have a lot of clients who just want to plead out, just be done. They can't do it while it's a felony. They have to wait till a preliminary hearing gets set, then they have to wait till after the preliminary hearing, till it gets arraigned. So we're talking six to eight weeks before this individual can even plead to this. By making it a misdemeanor, a county court judge who does bonds or bail, they can do it right away. As Senator Wayne said, this, the residue, is a nonusable portion of whatever is left. This, we're not dealing with the heavy user anymore, we're not...not this type of crime. And currently we have--I looked at it yesterday--we have 140 drug cases;

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eleven of them we didn't have police reports on; another three we didn't have labs. So that left us with 126 cases. Eighty-seven of those would have fit in the category that Senator Wayne is proposing. So that's about 70 percent of the cases that this would affect, so that's...that can move things quite a bit. Of that 70 percent, about 35 percent are individuals between 18 and 25, so, you know, all the new science about the brain is not fully developed till 25, people act with emotion or impulse and not rationale of what the long consequences are, so 40 percent, basically kids in high school, college, you know, the same, done these every...Tide, you know, pods, that aren't looking at the big picture, they don't know how this is going to affect them. So by changing this from a felony to a misdemeanor, it's going to give those opportunities back to people who were a felony, would have affected their lives. I will open up for any questions. [LB971]

SENATOR EBKE: Thank you. Any questions? Thank you. [LB971]

JOHN HASCALL: All right. Thank you. [LB971]

SENATOR EBKE: Next proponent. [LB971]

JOE NIGRO: Good afternoon, Senator Ebke, members of the committee. I'm Joe Nigro, N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB971. The crime rates have been going down for 25 years--this is true in Lancaster County--but felony filings have significantly increased the last three years. It's been driven by an increase in the filing of possession of small amounts of controlled substances, particularly, especially residue cases. Now residue is what's left after the substance has been used. By definition, you cannot get high from it, and there isn't enough to weigh. I don't believe drug use in our community has increased. It appears that more items of paraphernalia are being sent in for testing. These cases are burdening the system. The Lincoln Police Chief has done presentations showing the same thing. It's not other crimes. It's these particular kinds of cases that have gone up. It takes three to four months to get a lab report from the crime lab and that's because they have an overwhelming number of pieces of paraphernalia they have to test. One of our attorneys had a case last year where they sent a Q-tip in and it tested positive and the case started as a felony. Now when they're filed as felonies, these cases start out clogging up county court and then if they stay with a felony, obviously, it's going to get to district

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court. Our office has workload standards, and so each month, when we reach our limit, we file overload motions. And about half of our felonies are drug cases and, of the drug cases, 80 percent are possession, and about two-thirds of our possession cases would become misdemeanors under this bill. You know, when we reach those case limits, outside attorneys are appointed, they bill by the hour, and so this is costing the county thousands and thousands of dollars, and a lot of these people wind up sitting in jail. They're unable to make bond. Many of these cases get resolved with a plea to a misdemeanor, and that's probably going to result in about \$1,000 fine. Our clients are never going to be able to pay a \$1,000 fine, so they're going to serve time in jail. That might be the first time. The next time they're going to get a more significant jail sentence and so those are clogging up. And then some of these people do wind up going to prison on this, and very few receive probation. Now, a gram is a tiny amount. I mean, if you took out a scale and measure some kind of substance, like sugar or something, you'll see how small it is. And again, most of these cases are residue. And I suspect if these small amounts are reclassified as misdemeanors, many prosecutors won't even bother to file them. I know when I was a young attorney, they didn't mess with this stuff and, if they did, fewer of these people, if they only...if they start as a misdemeanor, fewer of these people are going to go to jail and none will go to prison. Now it would be one thing if all of this was reducing drug use and making our communities safer. It's not. This is a classic example of the failed war on drugs. We are spinning our wheels, spending millions, trying to treat a health problem in the criminal justice system. If anyone comes up here and tells you that we need to prosecute these tiny amounts as felonies and that we're winning the war on drugs, I hope you will ask them if they're familiar with General William Westmoreland's comments and pronouncements during the Vietnam War. What we're doing isn't any more effective than Prohibition was. Instead, we're destroying lives by prosecuting and convicting people of felonies. Who does this primarily hurt? It's the poor and people of color. Senator Howard earlier this afternoon gave powerful testimony about her sister and the drawing attention to the fact that these people need help. I see I'm out of time. I don't know if somebody would like to ask me if I would like to finish. (Laughter) [LB971]

SENATOR EBKE: Would you... [LB971]

SENATOR CHAMBERS: Please continue. [LB971]

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JOE NIGRO: Thank you. I thought Senator Howard did an excellent job of drawing attention to the fact these people need help, not felonies and incarceration regardless of the substance. I thought it was really striking this afternoon on these bills about the opioid epidemic, about the tenor of the conversation about drug abuse. It was about being caring, not punitive. Now what difference does it make whether somebody gets addicted to meth or crack or opioids? I mean, shouldn't we treat them all as a health problem? We should be trying to help these people. When you passed LB605, there were projections about reducing the prison population. It hasn't reduced it as much as projected. Steps like this are going to be necessary to reduce those numbers. But the big thing is we need to stop incarcerating small-time users. These people, again, they need help. They don't need felony convictions. And so I urge you to advance this bill. Any questions? [LB971]

SENATOR EBKE: Thank you, Mr. Nigro. Senator Krist. [LB971]

SENATOR KRIST: I can't help but make the point. We have a stakeholders group that you were a part of, many of us were a part of, that the Governor decided to disband because, of course, he's got the answers to all the questions. But during that stakeholders meeting, time and time again, with prosecutors, defense attorneys, judges, law enforcement, what you said earlier in your speech in terms of the crimes are going down but the prison population keeps going up and there's no felony convictions, we talked about that at least a dozen times over a two-year, three-year period. And residue, the term "residue," continued to come up over and over again. This is one of those areas that when we negotiated LB605 and we started sitting down and looking at the difference between being tough on crime and being adequately tough on the issues that we needed to look at for social safety and for safety and social well-being, this residue thing came up over and over again. And I know you've been an advocate for this and we have talked about it in the past, but this is yet another example of how stakeholders can get together to create an atmosphere that this bill hopefully will create, and have some common understanding for what in essence does not have to be...it can, I'm sorry, can be a rehabilitative situation at the very beginning. So that's a whole lot of words and no questions. You can respond to it if you'd like to. [LB971]

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JOE NIGRO: Well, I remember speaking with the CSG people when they were here doing the research that led to LB605 and talking to them about these things and ultimately they decided not to include this. They were trying to show an impact on the prison population and the problem with possession cases is when somebody is convicted of possession, it just says possession. You really would have to go into police reports case by case to see what the quantity was. [LB971]

SENATOR KRIST: Right. [LB971]

JOE NIGRO: But I suspect, you know, most of the...a lot of those people are going to be people with very small quantities and we're talking about people who are really, when you're talking about these tiny amounts and residue, they're just harming themselves. And I, you know, I just see this as an enormous waste of resources and it's not making our communities safer. And sticking somebody in jail or in prison because they have a drug problem is not going to fix the drug problem, so it's just...it's misguided. I mean it would be wiser for us to spend money on treatment and education, but treating these as felonies is foolish. And I know there are other states, like California and I think Colorado, that have lesser penalties for smaller amounts, because I think they've seen the folly of what we're doing. [LB971]

SENATOR KRIST: Thank you. [LB971]

SENATOR EBKE: Other questions? [LB971]

JOE NIGRO: Thank you. [LB971]

SENATOR EBKE: Thank you, Mr. Nigro. Are there any other proponents? How about opponents? How about opponents? [LB971]

COREY O'BRIEN: Good evening, Chairman...Chairwoman Ebke. Members of Judiciary Committee, my name is Corey O'Brien, C-o-r-e-y O-'B-r-i-e-n, and I am the criminal bureau chief for the Nebraska Attorney General's Office and I appear also on behalf of the Nebraska County Attorneys Association in opposition to LB971. I want to preface our objections as lukewarm on LB971 because I want...I was hoping that this committee would think about a few

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things as they go forward on this bill. Those of you who have seen me testify before, I've testified numerous times about my involvement in starting the first drug court in Nebraska in 1997 up in Douglas County. One of the things that makes the drug court program work, and there's a lot of research on this, is kind of that thrown into the deep end of the pool, shock of the cold water fact that they're staring down the face of a felony conviction that actually motivates them to finally get clean. Those of you who have never been to a drug court graduation, it is...when I was a young attorney, when we first started this, I was a little bit skeptical on whether or not it would work, but then you actually see people's live transform through going through the process and you see people that came in broken and defeated and they end up walking out as people with jobs and that are paying into the tax rolls rather than depleting the tax rolls. So I worry a little bit about whether or not that hammer that was available to us to motivate individuals to succeed in the drug court program might be jeopardized by this. Some other fundamental problems with LB971 that I'd ask the committee to think about is, again, this is going to be a substantial burden on our crime labs, particularly with having to test the ten pills as it talks about in there. I also ask the committee to consider whether or not all substances should be treated the same. Obviously a small amount of Adderall should not necessarily, in our opinion, be treated the same as Dilaudid or some of the harder opiate drugs, and perhaps maybe we need to recognize that certain drugs that are more hazardous should potentially have the ability to be escalated to a felony depending on the amount. Finally, I would point out that there seems to be a narrative that most people that get picked up the first time for controlled substances violations or possession are going down on a felony. In my experience, I spent six years as the head of the drug division in Douglas County before I came to work at the AG's Office. Most of those individuals first were sent to a diversion program. If they didn't succeed in the diversion program and they came back again, then they'd face the possibility of going to drug court, the next time perhaps a misdemeanor. It would take four, five, six, seven occasions before they actually went down on a felony. So I ask this committee to think about some of those things and whether or not there is some ability to make this bill better with respect to recognizing distinctions between the crimes. Thank you. [LB971]

SENATOR EBKE: Thank you, Mr. O'Brien. Any questions? It's less painful this time. Thank you. [LB971]

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COREY O'BRIEN: Thank you. [LB971]

SENATOR EBKE: Other opponents? [LB971]

CHRISTINE GABIG: Thank you, Senator Ebke and members of the Judiciary Committee. My name is Christine Gabig, C-h-r-i-s-t-i-n-e G-a-b-i-g, and I'm still a forensic chemist at the Douglas County Sheriff's Office Crime Lab. Similar to the last bill, I think, as Corey kind of hinted about some of the language in here, is going to be something that could be pretty cumbersome for our crime labs to deal with, and there might be a better way to address residues than using some of the language that's in this bill. Specifically, the language differentiates penalties based on the weight of controlled substances and the weight and the number of tablets. This would mean a big change in the way that we, our crime labs, test these substances. We...it says here in the amount of fewer than ten pills or tablets, weighing not more than 80 milligrams each. We get a lot of tablets submitted to the crime lab. We don't weigh them. It doesn't matter. The statutes don't say if you have a certain weight of a tablet that it's a higher charge or less penalty, so we don't weigh tablets. In addition to that, we don't test them all. If I get in ten Adderalls, we just test one Adderall, because that's all that matters, report that out. If the language stayed as it is here, that would mean that we would need to test, if there were more than ten pills, we would have to test at least 11 pills fully, every single time, and we'd have to get weights on each of those pills. And the weight really doesn't matter because the size and shape of...you know how different pills look different. The size and shape of the pill has nothing to do with how serious the ingredient is in the pill, so there's really no probative value to the weights of these tablets or pills. So that section there about the weight and the milligrams of the pills is a problem. Also, I would suggest...I mean addressing residue, like I said, is fine. It could be maybe done in a different way. And I believe here we have, you know, less than one gram, "more than one gram but less than ten grams," on the top of page 3, on line 1, so this is for the Class IV felony, "If the controlled substance is in an amount weighing more than one gram but less than ten grams," we're going to have a higher penalty. Fine. There's just some things maybe that weren't thought of, like LSD, for example. That's a pretty serious drug, we'll all agree, a Schedule I control substance. It's on little, teeny pieces of paper. I'm not ever probably going to get enough of those little, teeny pieces of paper to rise to ten grams. And so by this, then LSD

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would always be a misdemeanor. So there's just some things like that with the way that the language was written where it doesn't seem to do what it was maybe set up to do. [LB971]

SENATOR EBKE: Okay. [LB971]

CHRISTINE GABIG: If anyone has any questions... [LB971]

SENATOR EBKE: Questions? Senator Hansen. [LB971]

SENATOR HANSEN: Thank you, Chair Ebke, and thank you for testifying. Just to nitpick a little bit, but in terms of the weights, I mean, you are capable of weighing small amounts. [LB971]

CHRISTINE GABIG: Oh, absolutely. [LB971]

SENATOR HANSEN: Okay, so if there's a...if there are...you'll currently weigh the certain amount of pills, but I'm struggling to see where that particular provision would be necessarily an undue burden on you. [LB971]

CHRISTINE GABIG: There is no undue burden to us weighing the pill. That is not a very big deal. That would take an insignificant amount of time. The problem is, though, is that you have penalties based on the weights of the pills and the weights of the pills don't matter. I mean a Dilaudid pill that contains oxycodone, which is really addictive, might weigh a certain amount, but then a smaller oxycodone pill might weigh less. Those, the weight of those, isn't what matters. What the active ingredient is in those should matter. And in addition to that, fewer than ten tablets or more than ten tablets means that we now have to fully test each of those tablets, and that we're talking about going from an hour analysis per case to possibly seven or eight hours per case if I have to sit and test 11 tablets to show that they all contain Adderall or whatever. Does that make sense? [LB971]

SENATOR HANSEN: Okay, thank you. That helps. [LB971]

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CHRISTINE GABIG: Sure. [LB971]

SENATOR EBKE: Any other questions? Thanks for being here. [LB971]

CHRISTINE GABIG: Okay, thank you. [LB971]

SENATOR EBKE: Next opponent. Can I see hands how many others are planning on testifying on this bill? Okay. [LB971]

GREG GONZALEZ: It's almost good evening. [LB971]

SENATOR EBKE: Oh, it's past good evening. (Laughter) [LB971]

GREG GONZALEZ: I'll make it quick, Senator Ebke and members of the Judiciary Committee. My name is Greg Gonzalez, Omaha Police, deputy chief. I'm here in opposition of LB971. On behalf of the chief and the Omaha Police Department, we feel that it's important to be on the record for this bill. I'm not really going to talk about the prosecutory side of it because the legislative branch, I just want to bring to your attention some of the concerns we have, and that is we have an opioid problem now in the Midwest. Over the weekend in Omaha we had four overdoses, fentanyl, so that's a problem and people can die. In each case it was less than a gram of a controlled substance, so that's concerning to us; in fact, we're talking milligrams. So when we consider probably the unintended consequences of the bill, although from ten years working narcotics, I spent about half of my career in violent crime and I will tell you 10-15 years ago this bill actually makes a lot more sense. Today, just because of the pure toxicity levels and the purity levels of methamphetamine and other controlled substances, we're really posing a big problem, at least in our jurisdiction. I think what made it real clear today is every jurisdiction is different. I don't see anybody here necessarily from Douglas County, but I can guarantee you... [LB971]

SENATOR EBKE: Senator Chambers. [LB971]

GREG GONZALEZ: ...on the prosecutorial side of county attorney's office, but I can tell you they're inundated with cases. They have a lot of cases, too, so I can appreciate that. I just want to

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make sure that the legislative branch really considers what we're facing in Omaha for the Midwest and America when it comes to controlled substances. And I was talking to Corey O'Brien in the hallway and Class I misdemeanor, and I'm not an attorney, but at least on the Class IV felonies there is a presumption of probation. There is not for a Class I misdemeanor. We have a lot of probation violators in our community. I want to make sure that, at least for...on behalf of the Omaha Police Department you take that in consideration. And I can tell you there's a big difference between residue and one gram of a controlled substance. And I'll end it on that. You have any questions, let me know. [LB971]

SENATOR PANSING BROOKS: Actually I have a question. [LB971]

SENATOR EBKE: Senator Pansing Brooks. [LB971]

SENATOR PANSING BROOKS: Thank you for coming today. [LB971]

GREG GONZALEZ: Yeah. [LB971]

SENATOR PANSING BROOKS: I appreciate it. So...and for being here this long. So when I hear residue case, I think of residue in a pipe or something like that, and so I don't know how we're all...I see what was written. What would you feel about if it were changed to the point of residue in a pipe or something like that that's...I mean I think that's what...at least part of what was intended was something like that where we're putting people away for scraping off the bowl of a pipe. [LB971]

GREG GONZALEZ: Yeah. [LB971]

SENATOR PANSING BROOKS: You can't even really prove that that person smoked it. Somebody else could be. [LB971]

GREG GONZALEZ: I can appreciate that and I can tell you that there is so much illegal narcotics in Omaha that we don't have a problem, we don't worry about residue. So now I'm not going to respond for other jurisdictions, Lancaster County or Sarpy. But I can tell you there's a

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big difference between residue, scratching off a pipe, a crack pipe, and one gram of crack. That's what I'm saying. So if you wanted to really talk about the thresholds, certainly something that we would want to talk about, but I think it needs to be looked at. [LB971]

SENATOR PANSING BROOKS: Okay. So you don't think people are being arrested for residue, at least in Omaha? [LB971]

GREG GONZALEZ: I can't say that. I can tell you in Omaha that residue doesn't really resonate with our county attorney's office. [LB971]

SENATOR PANSING BROOKS: Okay. That's not what...it's just interesting... [LB971]

GREG GONZALEZ: Yeah. [LB971]

SENATOR PANSING BROOKS: ...because that's not what we're hearing publicly and in the news and everywhere else, so that would be a really good PR campaign. [LB971]

GREG GONZALEZ: Well, I could tell you that statistically speaking it used to be that oftentimes our county attorney's office in Omaha would not necessarily prosecute for less than a gram. And Corey O'Brien was in Omaha, Douglas County, for a long time. So I, you know, we appreciate drug court, appreciate those low-level offenders. I'm not here to tell you that a low-level offender shouldn't receive resources and drug court and, you know, receive some help for their problem. But I will tell you that if we make a blanket statement that controlled substances less than a gram should be a misdemeanor I, think about the potential problem you can have as heroin hits the Midwest and we have a lot of people in possession of less than one gram of heroin and it's lethal. That's all I'm saying. [LB971]

SENATOR PANSING BROOKS: I don't think that was the intention... [LB971]

GREG GONZALEZ: Yeah. [LB971]

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SENATOR PANSING BROOKS: ...that residue is something...thank you very much for being here. [LB971]

GREG GONZALEZ: Yep. I appreciate it. Thank you. [LB971]

SENATOR EBKE: Thank you. Oh, wait. [LB971]

GREG GONZALEZ: Sorry. [LB971]

SENATOR EBKE: Senator Krist. [LB971]

SENATOR KRIST: Just for the record, we're both from Douglas County (inaudible). [LB971]

GREG GONZALEZ: No, I know. I apologize. I meant Don Kleine, I'm sorry, prosecutor's side. [LB971]

SENATOR KRIST: Prosecutor, no, but to your point, in the ride-alongs with the gang units and the ride-alongs with the county sheriff or the ride-alongs that I think that everybody should participate in. If they're going to participate in the judicial process, they should also participate in the ride-along programs. And it would be, and I'm saying this...I'm not weighing your testimony. It's too late to do that. I'm just saying that what would be really an eyeopener is to...in fact, I'll give you Senator Hughes, Senator Friesen, Senator Halloran, a few folks that are from districts that have no level of your criminal experience and criminal activity and the diversity of that criminal activity. And I know Senator Halloran (inaudible) just invite the people from western Nebraska into downtown Omaha, into north Omaha, into my part of town which is relatively medium to upper income, and watch what happens on a nightly basis on a weekend. [LB971]

GREG GONZALEZ: Right. [LB971]

SENATOR KRIST: And again, I'm not taking sides on this particular issue. But when you and Wells and a few others come here, I get it. [LB971]

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GREG GONZALEZ: Okay. [LB971]

SENATOR KRIST: And I think that in order for us to get it across the state and really think about kids, and I'm going to pitch Senator Pansing Brooks's issue, kids need representation--and particularly in your environment, they do get representation, in Douglas County--but for them to understand in western Nebraska or in the small-town Nebraska, which is a different environment, why it's important, for just those issues like that, because it is a different perspective, and I appreciate what you're doing. [LB971]

GREG GONZALEZ: Good point. We will work around everybody's schedule here to get you on a ride-along, be more than happy to do that anytime. [LB971]

SENATOR KRIST: They'll even give you a vest. [LB971]

GREG GONZALEZ: Yeah. (Laugh) Take care. [LB971]

SENATOR EBKE: Thanks. Any other opponents? Neutral? [LB971]

SENATOR PANSING BROOKS: She said with trepidation. [LB971]

SENATOR EBKE: Senator Wayne. [LB971]

SENATOR WAYNE: I was supposed to waive closing but I had to correct something for the record. [LB971]

SENATOR EBKE: Let me just make a correction. If anybody...we pulled LB970 pretty fast at your request, but it was published as a hearing. So if there's anybody here who would like that made...would like their testimony made part of the record on LB970, even though it's been pulled at Senator Wayne's request, please send that to us and we'll take care of it, make sure it's part of the record. [LB971 LB970]

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SENATOR WAYNE: So I am a practicing attorney in Douglas County. My criminal practice was hit hard recently: (1) I was down here last here; but (2) I did some ride-alongs and many of my clients saw me in a cruiser, so the trust kind of went out the window there. (Laughter) Thank you, Aaron Hansen (phonetic). But it was a great ride-along and the reason I did that was to get a different perspective. But the fact of the matter is adult drug court isn't offered to anybody unless they're first charged with a felony, unless they go to preliminary hearing, which is four to six weeks out, and they sit in jail, then they go to drug court, then they're entered into the WRAP Program where they're actually in a halfway house...well, it's not really a halfway house. It's...you go back to jail every night, but it's a different part of the building. So the problem is a residue, you still get a felony charge. Now what makes it different than the federal system, which I also practice in and it's kind of shocking because I forgot, that we don't test all the pills or the entire amount of drugs. See, in federal court you have to because that weight matters. That weight matters for sentencing and that weight matters for everything else. And so maybe that's a law we need to look at. And it may cost more to the state, but at the end of the day, what if only one of those pills were the actual drug and the other nine weren't? That's an important distinction that our federal courts recognize, but for some reason I forgot, and it dawned on me to that testimony, we don't, so maybe we need to look at that, too, about how do we have progressive scheduling to make sure people we're putting away are putting away for the right reasons and the right amounts, not the presumption that they have a whole bunch of weed when only a portion of it was. So that's a good reminder. I'll answer any questions but the fact of the matter is, is many of the services that are offered not just in Douglas County, because in Sarpy County that I represent, many people on diversion isn't even an option. Diversion isn't even an option. And most of the time in Douglas County diversion is not an option unless you have a good relationship with the prosecutor and you know your client pretty well and you can sell the story. So that's a falsehood that all these preservices...but when it comes to opioid and everything else, I wanted the testimony earlier, it was a completely different feel. And that just bothers me, so I am going to say this. It didn't become a problem until it hit west Omaha or western Nebraska. But when crack cocaine was in the inner cities where I lived, it was tough on crime. We were...not me, but when people were smoking weed and doing things and cops got busted, busting it, it was tough on crime. But when it hit Regency, let's figure out how to counsel and not put felony charges on people. I have a huge problem with that, and this body should have a huge problem with that. If we want to call drugs what they are and figure out how to make sentencing

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right, then no way should a residue value have you locked up for two years to a maximum of two years on a Class IV. You can still get probation on a Class I misdemeanor; in fact, most of the time you do. But to be locked up for two years on a Class IV penalty because you had a pipe in your car that sometimes you didn't even know was there and you're 21 and you never cleaned out your car, that's a problem. So as we attack the opioid addiction, which we need to attack, and we attack it in a sensible, caring way, I think that same approach needs to happen when we're dealing with any other drugs that affects my community or I'm (inaudible) I'm going to chamber it, (laughter) as I've learned in the last year and a half. Thank you. [LB971]

SENATOR PANSING BROOKS: Hear, hear! [LB971]

SENATOR EBKE: Any questions for Senator Wayne? Okay, so we have a letter of support from Spike Eickholt of the ACLU of Nebraska, one opposed from John Wells of the Omaha Police Officers Association, for LB971. (Exhibits 1 and 2) And I don't remember if I read the letter from LB970 into the record, but we had one in support from Spike Eickholt of the ACLU of Nebraska. (Exhibit 1) That closes the hearing on LB971. Thank you and have a nice weekend. [LB971 LB970]