

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

BRIESE: Good afternoon and welcome to the General Affairs Committee. My name is Tom Briese, I'm the senator for District 41, which includes nine counties in central and northeastern Nebraska. And I'm the Chairman of this committee. We're here today for the purposes of conducting three bill hearings. We will be proceeding in the order of the agenda that is posted outside this room. If you wish to testify on any of the matters before us, we ask that you fill out one of these, those green sheets of paper. The green sheets are located on either side of the room. If you're here and you do not wish to testify but you do wish to state your support or opposition for any of the matters before us, we ask that you fill in one of the sign-in, white sign-in sheets. Again, the sign-in sheets are located on either side of the room. If you do testify, we ask that you begin your testimony by stating and spelling your name for the record, which is very important for our transcribers office. The order of proceedings is that the introducers will be given an opportunity to open on their bills. Then we will listen to proponent testimony, followed by opponent testimony, and then neutral testimony. And the introducer will be given an opportunity to close. We ask that you listen very carefully to try not to be repetitive. We do use the light system in this committee. Each testifier is afforded five minutes to testify. When the yellow light comes on, you have one minute remaining and we would ask that you begin concluding your remarks. When the red light comes on, your time has expired and we will open up the committee to any questions they may have of you. At this time I'd like to encourage everyone to turn off or silence any cell phones or electronic devices, anything that makes noise. The General Affairs Committee is a committee that is equipped for electronics, so you may see members referencing their iPads, iPhones, or other electronic devices. I can assure you they are just researching the matters before us. If you have a prepared statement, an exhibit, or anything you would like distributed to the committee members, we ask that you provide 12 copies to our page. If you don't have 12, copies don't worry. Provide what you have to the page, she'll make copies for you. Our page, pages for the General Affairs Committee are Dana Mallett-- go ahead and stand-- from Colorado. She is a sophomore political science major at the University of Nebraska at Lincoln. Our other page is Brigita Rasmussen, she is a sophomore at UNL majoring in ag education. Thank you. With that, we will proceed to the introduction of our members, beginning on my far right with Senator Blood.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

BLOOD: Good afternoon, I'm Senator Carol Blood, and I represent western Bellevue and southeastern Papillion, Nebraska.

ARCH: John Arch, Legislative District 14: Sarpy County and Papillion.

HUNT: I'm Senator Megan Hunt and I represent District 8 in midtown Omaha.

LOWE: John Lowe, District 37: southeast half of Buffalo County.

LOGUEN BLAZEK: Loguen Blazek, committee counsel for General Affairs.

MOSER: Mike Moser, District 22. I represent Columbus, Stanton, Creston, Humphrey, towns in that area.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

ALEX DeGARMO: Alex DeGarmo, committee clerk.

BRIESE: And Senator Wayne is not with us. He is introducing a bill in another committee

BRANDT: No, he's coming.

BRIESE: He is coming, great. And I also have to leave to introduce a bill, and I will turn it over to Senator John Lowe, our Vice Chairman of this committee, to begin with LB682.

LOWE: Thank you. Senator Vargas, please join us in--

VARGAS: This is hospitality. OK. Good afternoon, Vice Chairman Lowe and members of the General Affairs Committee. My name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I'm proud to represent District 7, the communities of downtown and south Omaha. I'm here today to introduce LB682, a bill that modernizes the methods by which spirits are taxed by adopting a proof gallon measurement. Now, I want to take a moment and ask the committee to use, use your imagination with me. Let's imagine you are starting a small business in Nebraska. I'm going to call it "Brandt's Brews." Let's do that. Brandt's Brews has taken off like much of the local brewery scene in Nebraska has. Brandt's Brews has become a place that contributes both to the economic and cultural success of the community. In fact, this small business has decided that it's going to try distributing its products locally and across Nebraska. Among the products they are going to try and sell is a

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

canned mixed beverage, like a gin and tonic or a whiskey and gingers, products that both have under 10 percent alcohol. However, when Brandt's Brews looks to get their products into stores, they're saddled with having to pay \$8.44 per case or about 35 cents per can in excise taxes. An unreasonably high amount. Now, that is because of the way that our current statutes are written. Any product that contains an amount of spirits is taxed unilaterally by wine gallons. In other words, so the standard case is \$2.25-- or 2.25 gallons and spirits are taxed at \$3.75 per wine gallon, unless you adopt LB723, which we'll hear next, that means that the brewery would have to pay \$8.44 in excise taxes regardless of the amount of alcohol contained in the product. Now, for mixed beverages like a canned gin and tonic, that typically only contains around 5 percent alcohol, that is an unfair burden. That is why I introduced LB682, which changes the method by which spirits, spirits are taxed to proof gallons. A proof gallon can be determined as a liquid gallon of spirits that is 50 percent alcohol at 60 degrees Fahrenheit. In other words, the lower percentage of alcohol, the lower the proof gallon. Or the higher percentage of alcohol, the higher the proof gallon. This is a much fairer system for allowing breweries into the marketplace with mixed beverage products and other similar items. A proof gallon can be figured by multiplying the gallons of spirits by the percentage of alcohols of the spirits and then dividing that by 50 percent alcohol. Let me walk you through how our previous scenario would look under LB682. Set the scene again in the case of Brandt's Brews. Gin and tonic is the drink, it is 2.25 gallons, and then the gin and tonic contains only 5 percent alcohol. So to figure the proof gallon, you would multiply 2.25 gallons by the percentage of alcohol, or point 0.05. You would then divide that 50 percent and get to 0.225. Therefore, a case of gin and tonic would be 0.225 proof gallons. I want you to then multiply the 0.225 by the state excise tax on spirits, which is \$3.75, and our small business only ends up paying 84 cents per case. On the other end, I'd like to walk you through another scenario in which you have that product that is more often thought of when you think of spirits, a 9 liter case of whiskey packaged at 59 percent alcohol. Remember, one proof gallon is a gallon of spirits that is 50 percent alcohol. So this case of whiskey will actually be just a bit more expensive than it is now. For example, if you follow the same formula that I used before, instead of paying just under \$9 in excise taxes under current statute, our businesses, our business would now pay \$10.92 using the proof gallon system. Now, I gave these examples to show you that LB682 is simply a matter of fairness. It's not aimed to drastically lower the price of all alcohol, in fact it raises the excise taxes paid in some

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

scenarios. Instead, this is a bill that is a commonsense approach to how we tax alcohol as a product that now, when it only contains 5 percent alcohol, should not be taxed at the same rate as one that is 59 percent. It's time that we invest in our local breweries and help facilitate the growth of an industry that will contribute to the overall economic and cultural environment of our state. I look forward to working with the committee. And I will say that we'll have a couple of different brewers coming behind me. One in particular that will talk about this scenario and be able to shed a little, a little, a little bit more light on the percentages and how this would particularly impact their business. With that, I want to thank the committee.

LOWE: Thank you, Senator Vargas. Are there any questions? Senator Moser.

MOSER: What would be the reason for converting to proof gallons and just, instead of just the percentage of alcohol and the volume rather than proof gallons?

VARGAS: So the way I understand it is that by doing it this way we are still being equitable to the way it's currently done but not it being unfair to the scenario where we have like a mixed drink that has a specific amount of alcohol by volume, and it wouldn't be unduly taxed. So the example that I gave is \$8.44 per case or 35 cents per can would be the excise taxes if we didn't change anything. But changing it would make it a little bit more equitable. And I think that having this undue formula onto, on a scenario that wasn't expected is hampering the ability for this to be a market. So this is one way to then change it so that it's not upending the existing system for proof gallons but is making, making it easier for these sort of one-off scenarios. And there will be somebody that talks about one example of this following me. So they will shed more light--

MOSER: So somehow dividing it by half makes it easier to understand?

VARGAS: It makes it more equitable. But not necessarily just dividing it by half but, but yeah.

MOSER: OK. Well, thank you.

LOWE: Senator Blood.

BLOOD: Thank you, Vice Chair Lowe. How are you today, Senator Vargas?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

VARGAS: Good. How are you?

BLOOD: I am well, thank you. OK, I've got a couple questions for you. What has the response been from the Nebraska Liquor Control Commission on this? Has there been any at all?

VARGAS: The Nebraska Liquor Commission, we have not been able to contact them or talk to them. We haven't had a meeting with them yet. They'll be testifying, I'm assuming, and then we'll learn a little bit more about their take on this. This is, this is more of a one-off, rather than a rule applied to the entire brewery industry. It's not on behalf of any specific entity, moreso something that I think is going to help it make it easier for certain specific instances where it's hampering certain ability to have certain products.

BLOOD: So would you agree with their estimate that they would need two full-time employees each year for oversight compliance on the fiscal note?

VARGAS: I will let them or another entity talk to about that. That I think-- I have my opinions on fiscal notes, so I won't insert them here. But that is, that's the information that we have.

BLOOD: You are certainly qualified to comment.

VARGAS: It's because I'm on the Appropriations Committee.

BLOOD: Do you see that it perhaps might be overestimated?

VARGAS: I think they try to do their due diligence to be as conservative as possible. So that is probably what drives this fiscal note.

BLOOD: All right. Good to know, thank you.

LOWE: Any other questions? I've got one. So let's say I make Wild Turkey, the liquor. One bottle is 80 proof, another bottle is 101 proof. So those two will be taxed differently? Would that be correct?

VARGAS: So based on their proof, if it's actually-- I'm trying to make sure, if we're dividing it by the 50 percent alcohol and they meet that then proof gallon can be determined as liquid gallons of spirits that is 50 percent alcohol at 60 degrees Fahrenheit. If both of those are at 50 percent alcohol then we're going to base it off of that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

That's the determination. I don't know if both of those are both 50 percent alcohol based on what proof they are.

LOWE: One would be 50.5 and the other one would be 40.

VARGAS: So then they would be taxed differently. You're right.

LOWE: And then something like a Baileys that is like 26 proof would be even taxed less than what it's taxed now?

VARGAS: Yeah, it will change the formula. Yeah, that will, that will apply to that.

LOWE: All right, thank you. Any other questions? Will you stick around to close?

VARGAS: Yeah, I'm going to stick around. Well, I have my next bill up, so I'm going to stick around.

LOWE: All right. Proponents?

ZAC TRIEMERT: Good afternoon, Vice Chairman Lowe and the senators that preside over the General Affairs Committee. My name is Zac Triemert, that's Z-a-c T-r-i-e-m-e-r-t. I am president and founder of Brickway Brewery and Distillery in Omaha's Old Market, and I'm here today to speak in support of LB682, which would change how spirits excise taxes are calculated. The proposal is to switch from calculating volume of spirits from wine gallons to proof gallons. One thing I do want to clarify from Senator Vargas' testimony is this is applying only to Z-Class distilleries, not L-Class breweries. So right now it's a smaller group of people, but only distilleries would apply. This would not apply to beer. Going back, the first time that I was in this hall in the General Affairs Committee was in 2006 to testify on behalf of LB549, the craft distilling bill. I made a number of strong statements that included starting a new industry in Nebraska, increasing jobs, tourism, income taxes, and the use of Nebraska agricultural products. I'm proud to say that all of those things were true. Today, there are an over 10 distillers in Nebraska either operating or in planning. LB682 is another bill that will create a new industry segment in Nebraska and strengthen all the current local distilleries. New products are emerging from other states, principally from large manufacturers. They're called RTDs, ready-to-drink alcoholic beverages. Some products that I'm interested in doing are whiskey and ginger beer and gin and tonic pre-mixed in a can and packaged at 5 to

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

6 percent alcohol. The issue is that the tax price tag is overwhelmingly higher than beer and malt-based RTDs. I use beer as an example because the concentration of alcohol in a typical beer is in that 5 to 6 percent range, so your average craft beer on the shelf retail today is about \$1.50 a piece, whereas the RTD is going to be almost double that because of the excise taxes. I think Senator Vargas talked about the economics. We're paying 70 cents in excise tax on a case of beer. And for a similar alcohol concentration, we are paying \$8.44 per case. That's a difference between \$3 per can versus 35 cents per can. That's over 10 times as much. Similarly to LB549, LB682 would create a whole new viable business in Nebraska. Currently, Nebraska is collecting very few dollars from spirits-based RTDs, and I'd like to change that. People are drinking differently. Canned cocktails is one of the fastest-growing trends and I'd like to see Nebraska become a part of it. A good example is the state of California where spirits are taxed by proof gallon just as the federal government does. I've seen many more of these spirits-based RTDs in California than anywhere else in the country. In the packet I gave, I included a federal tax packaging form to illustrate how simply the difference between wine gallons and proof gallons can be recorded for auditing. And this is the biggest concern for my conversations with Mr. Rupe, the director of the Nebraska Liquor Control Commission. And this one form doesn't spell it all out, but I am dedicated to helping Mr. Rupe and the Liquor Commission figure out the best ways to audit this. And in closing, LB682 would vitalize a new product segment, create more jobs, more income tax, more sales tax, and more utilization of Nebraska agricultural products. I respectfully ask that you support LB682 to change taxation on spirits from wine gallons to proof gallons. I thank you for your time and I'm happy to answer any questions.

LOWE: Thank you, Mr. Triemert. Senator Brandt.

BRANDT: Thank you, Vice Chairman Lowe. Thank you, Zac, for coming today. I guess I've got a couple of questions. You mentioned California is a state that currently does this. How many states currently use proof gallons?

ZAC TRIEMERT: I wish I could answer that with a direct number. I wasn't able to do-- I did a lot of digging on that and I couldn't find. I don't think there's a lot of them currently, though.

BRANDT: So most states do wine gallons?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

ZAC TRIEMERT: I believe so.

BRANDT: I mean, that's sort of the standard for the industry? And I guess my, my second question and I don't know if you'll be able to answer this is, if we convert from wine gallons to proof gallons, what effect will that have on the state revenue stream? Will we decrease the amount of dollars we're currently getting or will it increase or will it stay the same?

ZAC TRIEMERT: Well, as Senator Vargas stated, on some products the state will get a little less and other products there will be more. And I think initially there might be slightly less revenue, as most spirits average around 40 to 50 percent alcohol. But with this new product segment, I see a whole new set of taxes coming in. So I'd like to believe that we'll be net neutral on revenue but really support local distilleries with this bill.

BRANDT: All right, thank you.

ZAC TRIEMERT: Thank you.

LOWE: Thank you, Senator Brandt. Any other questions? Seeing none, thank you very much.

ZAC TRIEMERT: Thank you.

LOWE: Any other proponents? Any other proponents? We'll now switch to opponents.

CHRIS WAGNER: Good afternoon, Vice Chairman Lowe, members of the General Affairs Committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r, and I'm the executive director for Project Extra Mile. Our organization, just to let you know, our, our mission is actually to promote-- or and to advocate for evidence-based policies and practices to prevent alcohol-related harms across our state. And one of the most effective evidence-based strategies is increasing the price of alcohol through increased alcohol excise taxes. By changing the method for taxing spirits in our state, LB682 will reduce annual revenues by \$1.6 million according to the fiscal note. Alcohol taxes are an important factor in determining the price of alcohol. And we know from the scientific literature that cheaper alcohol leads to higher rates of excessive drinking and more alcohol-related harms in our communities, including but not limited to: car crashes, assaults, domestic violence, alcohol poisoning, and several types of cancer. The

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

bottom line really is that LB682 is a tax cut on spirits that will cost our state millions of dollars in the years to come and contribute to alcohol-related harms statewide. Therefore, we'd urge you to indefinitely postpone LB682. And we thank you for your consideration.

LOWE: Thank you, Mr. Wagner. Are there any questions? Senator Brandt.

BRANDT: Thank you, Vice Chairman Lowe. And this is just sort of a follow-up to what I'd asked the previous testifier. You have in here this will reduce annual revenues by \$1.6 million, but you use that number across all spirits in the state of Nebraska, not just that one class that he was talking about. Is that correct?

CHRIS WAGNER: Correct. My understanding is the bill would, it would apply to all spirits regardless of the nature of if it's coming from a distillery here in locally in Nebraska or just a product that's sold at the wholesale level.

BRANDT: All right, thank you.

LOWE: Thank you, Senator Brandt. Any other questions? Seeing none, thank you, Mr. Wagner.

CHRIS WAGNER: Thank you.

LOWE: Any other opponents?

PORȚIA CAVITT: Hello. I'm Reverend Portia Cavitt, pastor of Clair Memorial United Methodist Church. P-o-r-t-i-a C-a-v-i-t-t. I'm here in opposition to LB682. As I stated last week, it's good to see each of you. And as I heard you say to those that came that you see often, I figured I better come back so I could get used to seeing some of your constituents, those that voted and allowed you to serve and speak for us. And so in looking at this one, I guess the most important part that I have a problem with is the cut in taxes. And I appreciate Senator Brandt asking that question. No, we don't know the total amount. I'm not going to sit here and say that I know. But what else will affect the general funds if you take this tax cut? So I just wanted you to look at that and the fact of how it affects our community, your constituents that you serve. That if you lower the taxation from gallons to proof gallons, what is that really going to do to the average person? And how is it going to affect our lives, our livelihood as we live and move in this, in our area or in our state

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

overall? So just wanted to make sure that you are concerned and that you are looking at it in that sense. Thank you.

LOWE: Thank you. Are there any questions? Seeing none, it's good to see you again.

PORTIA CAVITT: Thank you.

LOWE: Any other opponents? How about those in the neutral? Good afternoon.

HOBERT RUPE: Good afternoon, Vice Chairman Lowe and members of the General Affairs Committee. Welcome to, I think, the last hearing day for liquor issues. You guys will be glad you don't have to put up with me anymore. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, I'm the executive director of the Nebraska Liquor Control Commission. We're officially neutral on this, as tax rates are a decision that is made by the Legislature how they're set. I'm here to go through a couple of issues we would have, primarily mechanically. And perhaps able to answer some of the more esoteric questions because it is, you know, rocket surgery. First off, Nebraska, we tax in an easy manner right now. We don't care about your percentage of alcohol in your different drinks. We care about whether it came from the fermentation of grains, i.e. beer; whether it came from the fermentation of wine or of fruit, i.e. wine; or from distillation. Furthermore, the current statute clearly says if we can't neatly fit something into a beer or into a wine it defaults to the spirit. That's the Supreme Court there was a case on that. People might remember years ago the flavored malt beverage issue where we were following how the feds had done it as a, and based upon an Attorney General's Opinion that we could treat them as a beer because they were primarily beer-based. The Supreme Court said we were wrong and then the Legislature had to change that to allow, to fold them into the beer definition. So under this proposal right now, you heard about these RTDs. Right now they come, they're taxed at \$3.75 cents. If they're coming into the state and they're made with distilled spirits as the alcohol base, they're taxed. So if you're making an RTD here in Nebraska, it's being taxed at the same rate as an out-of-state RTD. The tax rate is the same. One issue we have about the specific drafting of the bill. Their definition of a proof, of a proof gallon is probably a little small. It probably should mirror, if they're going to go this way, with what the federals do because proof gallon can change dependent on taxes-- upon temperature, I mean. And so if it's warmer, you can get a higher proof out of a read than a lower. So that's how they, the feds have sort of

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

factored that in. You know, they sort of follow the federal and we recommend following the federal. The fiscal note issues. I hope this commission would realize that the commission-- or this committee would recognize the commission's not one of those people who try to do death by fiscal note. We try to do our due diligence to come forth. There would be a decrease based upon our review of just overall revenue. Primarily, we reached out to our three largest liquor wholesalers in the state and tried to get an average of how much of their percentage they sell of product is at or below 80 proof, which would be a win, and how much of that is over. And it's roughly about a 70/30 split. Most of your stuff, when we go, when you go into a bar you see the speed rack, most of the vodkas, the gins, the whiskeys are somewhere that 70-80 proof range. Although that is changing as a lot of people are using rum one, Bacardi 121, which is 121 proof. Most of your other alcohol which is above 80 proof, then looking at your higher-end bourbons; some of the horrible mixing things like Everclear, which is much higher; some of the higher rums are over that. So you do have a mix. And also a lot more of your premium tequilas are over that 80 proof. So, you know, that's where we came up with a number about the revenue loss was try to extrapolate out that 70/30 split which we got from our industry partners. The computer changes. We have a very old, antiquated computer system. It was put into effect back when I was a sophomore in college, and unfortunately that was more years ago than I want to acknowledge, 1987. And so any time we go in there and make major changes to it, it's you-- we just can't do, go in and override a program. We've got to go in and make substantive changes to the C1 system. In this case here, we will be changing two of our reporting systems, and so that number comes from Nebraska Interactive and the office, and the OCIO's office gave us that information of what it would cost. As to whether we would require bodies. Because we tax simply, we are one of a handful of states which does not have label registration. A lot of states, they have to register their label for product when they bring it into the state. And the reason they can do that is so and the part of that label approved by the feds is the ABV. So we can characterize where that's at. If we were to go down this path we would then have to institute, in order to properly audit those, a label registration process. And we spoke with Kansas, Missouri, and Iowa, so neighboring states. How many full-time people do they have maintaining those databases? And depending on the size, it was anywhere from two to three. We went on the small size based on the population, so that's where we came up with the two. We reached out to other states which have the same system which we would have to

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

create to respond to this. I see I'm in the red. I'd be happy to answer any questions.

LOWE: Thank you, Director. Senator Moser.

MOSER: The same question I asked Senator Vargas. Why would we tax it on proof gallons rather than just the quantity of alcohol by volume?

HOBERT RUPE: I'm neutral. That's a decision you have to. Currently we do tax it just on the volume. Basically a wine gallon is the equivalent of water, of a gallon of milk, liquid gallon. Other places have made the determination, the feds do it for their taxation, and other states do it, that they think that the higher-- the more alcohol should be taxed at a higher rate, lower alcohol should be taxed at lower rate. That's just a policy decision those states have made.

MOSER: And it's done by proof gallon there too?

HOBERT RUPE: Yes. Most of states, what they're going to do, they're going to follow the feds. Which is one of the reasons I say we might want to change that if we go down this route, to make sure we're consistent with the federal guidelines. Because, you know, our, the proposed bill doesn't have the temperature aspect in there, which is a part of the federal. And the reason we would do that is if we have to do a label registration, it's going to be those federal-approved labels and that's how they're going to have gotten that ABV out. It's to be consistent.

MOSER: OK, thank you.

LOWE: Thank you, Senator Moser. Any other-- Senator Brandt.

BRANDT: Thank you, Vice Chairman Lowe. And thank you, Mr. Rupe, for testifying today. And maybe you can help me out. We talk about proof and then we talk about percent of alcohol. Is there a direct correlation between proof and percent of alcohol?

HOBERT RUPE: Mostly. I know that's not really an answer to the question. The basic rule of thumb is a proof is twice the percentage. So something which is 80 proof would be 40 percent alcohol. Once again, there could be some variations on manufacturing and time and temperature, but that's generally where it's going to be. So 80 proof would be 40 percent alcohol. Like I said, most of your vodkas that

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

you'll see are probably in that 70-80 proof, although you can have some variation on either side.

BRANDT: And then a follow-up question. Would this proposed law just affect small distilleries or the entire industry?

HOBERT RUPE: The entire industry the way I read it. It changes how we tax distilled spirits.

BRANDT: So then based on the numbers today we would receive less revenue to the state if we adopt this?

HOBERT RUPE: Based upon our projections. That if we were to just change to proof gallons, you know, absent the cost of the agency, you would see a decrease because you have roughly a 70 to 30 percent split differential above or below the 80 proof line.

BRANDT: So do you have a dollar amount or--

HOBERT RUPE: That's dollar amount that's in there, the \$1.1, almost \$1.2, \$1.2 million would be the difference.

BRANDT: Less?

HOBERT RUPE: Yes, less.

BRANDT: OK, thank you.

LOWE: Thank you, Senator Brandt. Senator Moser.

MOSER: Do, do the feds tax alcohol in the same way that we do or do we have some anomalies how we classify certain things?

HOBERT RUPE: They tax on proof gallon. This would make us consistent with the feds. More consistent, more consistent with the feds. I mean, they do different things. But they've also got brand label registration, you know, they are actually the principal licensee of the distilleries under the TTB. So this would be more consistent with that because they actually do have a graduated tax structure based on alcohol.

MOSER: Because I can recall this, or variations of this bill, coming up before and there were questions of fairness that some alcoholic beverages seemingly got taxed a lot more than had similar alcohol contents to other drinks so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

HOBERT RUPE: That would have been the, probably the, the flavored malt beverage debate we had a couple years ago because what they were was they were right around beer, and they were made with 50 percent or more of a beer base. And they were adding alcohol flavorings. We were going to treat them as a beer because the preponderance of the alcohol was coming from fermentation. The Supreme Court clearly said that we could not do that because they had some distilled spirits. So the Legislature had to make the change then.

MOSER: OK, thank you.

LOWE: There any other questions? I just have one. So you're a microbrewer and, and you have seven different types of beer that you, you make and can or bottle, and none of them are the same ABV. So each one would be taxed differently?

HOBERT RUPE: No, because you're talking beer.

LOWE: OK.

HOBERT RUPE: Beer, beer-- this bill does not change the beer tax rate. The beer tax rate would be 31 cents a gallon. It doesn't change that at all. Doesn't change wine, it just changes spirits.

LOWE: Spirits. Senator Hunt.

HUNT: Thank you, Chairman Lowe. Thank you, Mr. Rupe. It's good to see you.

HOBERT RUPE: Thank you, Senator.

HUNT: I have a question out of a place of ignorance, just like a little bit of clarification for me. So you're talking about needing two more full-time employees and you were connecting that with the label registration system.

HOBERT RUPE: Yes.

HUNT: Can you talk a little bit more about what that label registration system will do and how you're going to implement that if this is passed?

HOBERT RUPE: Yeah.

HUNT: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

HOBERT RUPE: Right now, as I said, we just-- if it's a spirit, I don't care if it's 45 percent alcohol, 65 percent alcohol, it's taxed the same. So, so long as it's categorized in the spirits, it's pretty easy. What this would do is we would then have to take that character, that spirit characterization down and percentage out those. And the only way we're going to be able to do that is to either federally approve the label, which is going to show how much they should be paying. When we do auditing, it's actually called a cross-check. When a case of vodka is shipped into Nebraska we get a report from the, from this, from the manufacturer or the importer. And so we know how much of that vodka lands at Southern, Southern Wine and Spirits. Southern Wine and Spirits then holds that product and the tax, unlike beer, doesn't become payable until they sell it to a retailer because it sort of sits there in a tax-free state. Right now we don't care what its ABV is because it's taxed at the same rate. Under this proposal, that would be two different, so we'd have to be, have a way to cross-check to make sure that when they do sell that that they're selling-- that they're paying the appropriate tax. And the only way we can do that is by cross-check back to the shipment.

HUNT: Thank you.

LOWE: One, one more question. Did you say you'd have to create a label?

HOBERT RUPE: Yes, a labeling system, a labeling registration system.

LOWE: The system. So there's no label placed on the product itself?

HOBERT RUPE: No. No, what happens is when somebody is bringing a new, well, let's use Mr. Triemert's theory. He's going to bring a new RTD to market and he wants to sell it to more than just Nebraska. He wants to sell it to Iowa, Nebraska, Kansas, and the whole area. He will submit a label registration to the TTB, the Trade and Tax Bureau, who will make sure that it meets the requirements and it meets, you know, meets their requirements. And so that is sort of the guidance that other states uses. Once we know what's in it, how it's coming from, and in this case what the ABV would be, we would how to properly tax it. So it's the label, it's not what we're sticking on, it's what's, what they're putting out there so they can get that out into interstate commerce.

LOWE: Thank you. Senator Moser.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

MOSER: Would there be some way to include that in the barcode of the product so you don't have to go look it up? So you could just have an app or something to do it?

HOBERT RUPE: We never see a barcode. We are, we are just getting shipping reports. Shipping reports and distribution reports. The only time we're seeing barcodes is when we actually go out and do the field audit, where we'd have to double check it that way. And that would be even more expensive with auditors. Right now, this is the way we-- label registration, when this bill was introduced we reached out to neighboring states which have it. And this is sort of the guidance they gave us, the most economical, best way to do it.

MOSER: So does each label get a unique name or a unique number or--

HOBERT RUPE: For the test? I think for a TTB they do. There is an identifier that TTB uses. So that's how we would track it.

MOSER: OK, thank you.

LOWE: Thank you, Senator Moser. Senator Arch.

ARCH: Thank you. Do you happen to know other states' practice on this? Do you happen to know how many other states do it by one or the other?

HOBERT RUPE: I could find out for you. I think there's a mix. I think a lot of it probably depends upon whether they're a control state or a licensing state. You know, control states such as Iowa and Wyoming, which actually are the liquor wholesalers, they have to have the liability registration because that's how they know when-- because they're buying the product themselves and have to track it. More and more states are doing it. California, I think, does it this way. Kansas has a labeling. I could reach out and find out what the, what the breakdown is between the wine gallon versus proof gallon. I think you've got a mix, and I can't really tell you what-- I can't remember off the top of my head what the breakdown is.

ARCH: Thank you.

LOWE: Thank you, Senator Arch. Thank you very much.

HOBERT RUPE: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LOWE: Any other in the neutral? Seeing none, Senator Vargas, would you like to close?

VARGAS: Thank you, everybody. I'll try to keep this part short. I think this is-- there's a couple things that we heard and I really appreciate the Liquor Commission testifying and providing a little clarity on this. We tax it a certain way and there is a reason behind it. But the way we heard, the reason isn't sort of technically uniform. Other states do it different ways, the federal government does it a different way too. There is a way to do it. It may be cost-prohibitive right now if we're just looking at the fiscal note, that doesn't mean it's not a good pathway forward. I know that the Liquor Commission just came in front of us in Appropriations and is always making sure we're advocating for funds to then improve the system. And that's something we will continue to take up. But for the purpose of this, we're talking about changing the way that we are taxing it so that it's a little bit less prohibitive for new business market. That's all this is. I'm more than willing to look, to work with the committee and find a pathway to work on this this year and next. I think this is a good, a good way to support a new market within the liquor and specifically spirits. The last thing I'll say is I think it's easy to look at the fiscal note and say that we're going to be losing \$1.1 to \$1.5 million in revenue. Again, that's more based off of what point of the year. If you look at the entire year, it's probably closer to \$1.5. We don't take into account here, and which we try to, is when we are losing revenue because of a change and there's a new market. There's the question mark of how much we get in by expanding to a new market. So I just want you to consider the number of distilleries that might be considering making more of this product and making more of these cases at the cost that I explained to you. The eight dollars and change approximately for the, for the case is cost-prohibitive, which means they're not going to make them. That's a whole market they don't create in the state. And if we were to make it easier for them this can create a whole new revenue market for our state, and be a good thing for another market for a distillery to then be able to sell. And so with that I ask for your support and ask for your help so we can work on this. I think this is a good thing that we can work on together. Thank you.

LOWE: Thank you, Senator Vargas. Any other questions? Senator Hunt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

HUNT: Thank you, Chairman Lowe. Thank you, Senator Vargas, for bringing this bill. Is it correct that Mr. Triemert from Brickway is in your district, his business?

VARGAS: Yes. He lives a little less than a mile from my district. Sorry, his business is a little bit less than a mile from my district.

HUNT: I was wondering a little bit about the origin of this bill. Is this something that comes up a lot or is this something that you had the idea to do with stakeholders? Or how did you, how did you bring this bill?

VARGAS: So this bill came from conversations with, with, with Zac and Brickway. And then looking a little bit deeper into it across the country we realized that this is a market that is not really fully being utilized in the state. And we realized there's something we can do in state statute that can make it more competitive.

HUNT: OK, thank you.

LOWE: Thank you, Senator Hunt. Senator Moser.

MOSER: Did you give any thought to adjusting the tax so that the bill would be revenue-neutral or are you-- I mean, are you doing this out of fairness because you felt spirits were taxed unfairly compared to other alcohol? Or are you doing it as an economic development to make their alcohol sell better?

VARGAS: Well, not any of those mutually exclusively. I would say it is for economic development but it didn't seem fair to me that we are, based on the way that our statutes are currently written, that if a product contains this amount of spirits that we just unilaterally tax it as a wine gallon. Especially that's not the standard. So why wouldn't we tax it at a, you know, a proof gallon if it is a spirit indeed? It just made more sense for us to then, not necessarily to try to get to revenue-neutral, but to be equitable. That was the reason why.

MOSER: Fairness then?

VARGAS: Fairness.

MOSER: OK, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LOWE: Thank you, Senator Moser. Any other questions? Seeing none, thank you, Senator Vargas.

VARGAS: Thank you very much, Vice Chair.

LOWE: Will you stay to open up your next bill?

VARGAS: Yeah.

LOWE: All right, good.

VARGAS: Do you want me to get back up and sit back down again?

LOWE: We have two letters. None in support. We are two in opposition: American Distilled Spirits Association and Monument Prevention. With that, we close the hearing on LB682 and open LB723. Senator Vargas, good to see you back again.

VARGAS: Thank you very much. I, maybe this one is easier. I will just tell you, this is about lowering excise taxes and that's it. But I'll, I'll walk through this and tell you why. LB723-- so good afternoon, Vice Chairman Lowe, members of the committee. For the record, my name is Senator Tony Vargas, T-o-n-y V-a-r-g-a-s, I represent the 7th Legislative District in Omaha, which are the communities of downtown and south Omaha. LB723 facilitates economic growth by lowering the excise tax on beer, wine, and spirits imposed by the state in Nebraska under Section 53-160. And also brings Nebraska's excise taxes on alcohol in line with other states. This bill will make Nebraska more competitive in a growing market and will increase economic activity throughout the state. Now, we know that lowering excise taxes will result in economic growth because of recent federal legislation. On December 20, 2017, Congress passed legislation that included a two-year provision of the Craft Brewer [SIC] Modernization and Tax Reform Act, which lowered the federal excise tax for breweries, wineries, and distilled spirits producers for a period of two years. As a result of the temporary federal excise tax decrease, Nebraska producers have been able to hire more employees. Say it again, they've been able to hire more employees for their businesses. They've been able to buy new equipment, they've been able to expand their operations and their markets and/or add new processes and procedures. The following are a few examples, and testifiers who will follow me that will provide some more details. The Zipline Brewery Company was able to hire their first, first full-time lab manager and as a result have exponentially expanded their lab capabilities through guidance.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

This is a long-term investment strengthening their position in the competitive brewing market through the production of high-quality beer in Nebraska. Farnham House Brewery Company outside of my district, but close, is working to add an additional brewery to their team with their federal excise tax savings. Infusion Brewery Company was able to purchase a grain silo, which allowed them to significantly reduce the costs of their grain and invest more in their staff. Scratchtown Brewery Company made \$25,000 in new purchases for their brewing operations and made two full-time hires last year. Lazy Horse Brewing Company was able to hire an additional full-time employee. Now, these are just a few examples of what producers in Nebraska are able to accomplish because of federal excise tax decreases. And I know there's going to be more stories that exists out of breweries, but I do have a penchant for breweries. A state excise tax decrease would help Nebraska producers increase their work force, invest in expansions, and contribute even more to Nebraska's economy. I ask for your vote in favor of LB723 and I'm happy to answer any questions you may have.

LOWE: Thank you, Senator Vargas. Are there any questions? Seeing none. Oh, no. Senator Moser.

MOSER: I'm not sure this is the right question to ask you, but if lowering these taxes-- I don't know what the average is around-- somewhere around 10 percent will cost \$3.8 million, does that mean that the total liquor tax is somewhere around 10 times that or \$38 million? Is that what the total is, do you know about it?

VARGAS: I don't know, but that's a fair extrapolation. I don't know.

MOSER: Well, maybe, maybe we can ask a subsequent testifier.

VARGAS: But you--

MOSER: I'm surprised it's that much money, I guess.

VARGAS: Yeah. Yeah, again, and I think these are really hard, right? Sometimes we do this when we're talking about investing in businesses and we talk about tax incentives. And it's not always a hollow number where we just say, this is how much we lose by then foregoing revenue. And this is not a question of whether or not taxes or revenue or things are bad or good. I think we've seen that we're not as competitive as we can be in the state of Nebraska when we look at

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

these different excise taxes. And when we're not as competitive and we're looking at our current, the sector, can we be more competitive?

MOSER: Are the neighboring states about these rates? Are we in line with those other states with these rates?

VARGAS: We are, we're among the highest in many, in many of the different categories.

MOSER: Even with these adjustments?

VARGAS: With these adjustments they'll make us more competitive in the Midwest, that much is for sure. And people will testify to that.

MOSER: More competitive? Still higher but closer?

VARGAS: Yeah.

MOSER: OK, thank you.

LOWE: Thank you, Senator Moser. Any other questions? Thank you, Senator Vargas. Will you be sticking around to close?

VARGAS: Yes.

LOWE: Are there some proponents?

LINDSEY CLEMENTS: Good afternoon, Vice Chairman Lowe and members of the General Affairs Committee. My name is Lindsey Clements, L-i-n-d-s-e-y C-l-e-m-e-n-t-s. I'm the co-founder of Vis Major Brewing in Omaha, Nebraska, and I am here in support of LB723. My husband Tom and I were living in Chicago when we caught the craft beer bug. And we decided to return to our home state in 2012 to pursue our dream of opening a brewery. Over a five-year period we worked to develop recipes, research the industry, and search for a location throughout the midtown and downtown Omaha. Early on in the process we planned to start with a moderate 10-barrel system. After being turned away by many banks we realized we would have to adjust our expectations and our business model if we wanted to see this dream through. Luckily, we found a boarded up building from 1913 on the corner of 35th and Center between Hanscom Park and Field Club neighborhoods. These two community-centric neighborhoods are rich with history and tradition, and we wanted to create a space for the community to come together. We renovated the building from top to bottom, investing over \$300,000 dollars to transform it into the relaxing and inviting space that it

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

is today. We opened our doors in August of 2017, with a four-barrel brew system, and have quickly become a living room of our neighborhood that attracts visitors from all over the metro. Since our opening, extensive efforts have been made in our district to bring new businesses into the fold and to renovate other buildings that have sat empty for a number of years. We have further entrenched our lives into our neighborhood, leaving west Omaha for a home just two blocks from our brewery. Needless to say, we are devoted to our district. We are very proud of the investment we have made in our community and the contributions we have made to our industry. The growth of the craft beer industry in our state and across the nation is a result of culture fostered in our tap rooms. Tap rooms can spark rev-- revitalization in business districts of any size and I see them as a key to invigorating downtown corridors, especially in rural communities. LB723 makes a clear statement that craft beer is welcome in our state and that our leaders want to see our industry grow. By lowering our excise tax you will encourage others to invest in Nebraska. For our company, it is an incentive to expand our production, something we have hoped to do since opening. Based on 2018's gallonage, the savings equates to a little over \$500. It's not massive amount. The savings may not finance a bright tank or pay for a full-time employee, but it does strengthen our faith in our future. And as we can someday achieve our goal of opening an additional location with a larger brewing capacities here in Nebraska. We want to thank Senator Vargas for listening to us and supporting our growth in midtown in Omaha, midtown Omaha, and for introducing LB723. I thank you all for your time and happy to answer any questions.

LOWE: Thank you, Ms. Clements. Any questions? Senator Moser.

MOSER: So help me with the math a little bit here. Beer is 25 cents a gallon. And what do you get, eight glasses of beer out of a gallon or so, about 16 ounces? Four quarts in a gallon, two pints in a quart. And so the tax on one beer is 4 cents, under this plan then it's 5 cents under current tax rates. And you think a penny difference is going to help you sell more beer?

LINDSEY CLEMENTS: I think that it's not necessarily about selling more beer necessarily. I think, to support what Senator Vargas said, is that it's going to make us more competitive. Our surrounding states are significantly lower. Especially with Omaha being so close to Iowa, you know, it might be a coin toss for certain future brewery owners to choose Iowa because they would save so much more money via the excise

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

tax than opening in Nebraska. Iowa, I believe, is 19 cents a gallon and we're currently at 31 cents. So it would make us more competitive.

MOSER: So you pay tax when you brew the beer and sell it, not necessarily just retail it?

LINDSEY CLEMENTS: It's, yes. So this tax is, we have additional taxes for when we sell it. This tax is, we do monthly reports based off of how much we produce. And so we calculate the tax based off of that monthly production. And then of course there's additional taxes upon selling it.

MOSER: What's the tax for retailing it?

LINDSEY CLEMENTS: Our local sales tax is 7.25, I believe. And then we, in Omaha we have an additional tax.

MOSER: Restaurant tax.

LINDSEY CLEMENTS: Yeah, so it's 9--

MOSER: And so beer is taxed like food?

LINDSEY CLEMENTS: It is, yes.

MOSER: Or, well, no. Not like food.

LINDSEY CLEMENTS: Yes.

MOSER: Like other items.

LINDSEY CLEMENTS: Yeah, exactly.

MOSER: OK, thank you.

LINDSEY CLEMENTS: Yes, thank you.

LOWE: Thank you, Senator Moser. Senator Brandt.

BRANDT: Thank you, Vice Chairman Lowe. Thank you, Ms. Clements, for testifying. Thank you for locating in Omaha.

LINDSEY CLEMENTS: Yeah.

BRANDT: And I guess my observation is you could have located in Iowa. Why didn't you? You could have saved 6 cents a gallon.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LINDSEY CLEMENTS: For us, I think honestly coming back to Nebraska from Chicago had a big influence on us in terms of selecting where we wanted to be in, in terms of the city and the neighborhood. We, coming from, you know, living in Wicker Park, you know, saw like the energy of those business districts. And so we saw so much potential in the business district that we ended up locating in, and looked at a number of different locations throughout midtown and downtown and ultimately, just as I mentioned in my testimony, due to our financial restrictions found, found our vintage building that we rehabbed. But Omaha is, has been our home, and so for us I think that it's not so much about the--the tax at that time was not a huge determination. We wanted to plant ourselves in Omaha.

BRANDT: And I guess this is just an observation on my part. It seems like every industry in the state of Nebraska is at a competitive disadvantage. I as a farmer am at a competitive disadvantage in so many ways with neighboring states on, let's say property tax, we pay three times in Nebraska what Kansas does. We can all make that argument, but the bottom line is, you know, I don't have to be a farmer, I chose to be a farmer. And I didn't do that based on taxes. And I think most industries, while it's nice to get a tax cut, and we can always put a number and say we're going to create more jobs or buy this or, or do that, the bottom line is we like our state and we want to stay here. And I guess I'm thrilled, you know, if this was such a backbreaker, why are-- we just had a new brewery open up in Beatrice last week. It's great. You know, this industry is expanding. So, you know, I think the people that came before me in the Legislature did something right. We've got a program here that works. We've got a lot of wineries in the state, we've got lot craft brewers in the state. We just opened this up for home brewers, I believe, we're in the process of doing that. We recognize this industry and sort of the cost of doing business in the state of Nebraska is everybody needs to kick it a little bit to help pay the bills. So, I mean, that's an observation on my part. Thank you for testifying today.

LOWE: Thank you, Senator Brandt. Any other-- Senator Hunt.

HUNT: Thank you, Vice Chair Lowe. Thank you so much for being here. I just wanted to commend you for your entrepreneurship and your faith in this state as an entrepreneur. And for putting down roots in a place that isn't necessarily the most business-friendly for your industry. I thought that your point about being so close to Iowa was really good. When you're in Omaha or Lincoln and it's not a big, you know, jump to

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

make it over to Iowa and pay much less in taxes, for you to invest in this state is really, really cool. I have a comment. I think that it's important for us to remember that there's a cost of doing business but we also don't know what business we're missing out on when we, when we have high taxes. Whether, you know, whatever industry that's for. This is an argument that we've heard a lot on the floor and in committee this session, is if this was a big enough problem why are people still doing it? But at the same time, we don't know how much business and how much economic development we're missing out on because we have these laws in place. Whether that's workplace discrimination, whether that's high taxes on specific industries like craft brewers. And I don't know if you have any thoughts about that, if that's something that goes through your head.

LINDSEY CLEMENTS: I mean, I think that for me I see just an immense value in, in what the taproom environment provides. It's so much different than the traditional bar because I think it just-- and that's why we have, I mean, the craft beer began to really explode coming out of a recession even, you know? Which the cost to start up a brewery is, is incredibly daunting. And so but for us, you know, it was just regardless of that cost we were going to adjust. And as I mentioned, you know, we were going to modify our expectations in order to open our doors. And so I think that for me it's really about we, so much of Nebraska is small town and how many of these small towns need something, an anchor for their small town districts? And so for a brewery to come into these small towns and say, you know, I'm going to, to create this same kind of impact, a cultural environment, is something that we really want to encourage. I think that it can really help foster more economics in these small towns especially. So that's where I see a bill like this helping encourage other people to, to take a leap. And even maybe we attract more brewers from other states that are oversaturated. Give them an opportunity to open up something that would otherwise be unattainable in a larger market. We have an advantage of the fact that we're not yet saturated and there's a lot of room for growth within our state.

HUNT: Thank you.

LINDSEY CLEMENTS: Yeah, thank you.

LOWE: Thank you, Senator Hunt. Any other questions? I'd just like to make a comment of congratulations and welcome back to Nebraska.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LINDSEY CLEMENTS: Thank you.

LOWE: And looking at your Web site it looks like you have a very beautiful place and I can't wait to visit.

LINDSEY CLEMENTS: Yeah, you're welcome any time.

LOWE: Yeah.

LINDSEY CLEMENTS: Let's do it. Happy hour.

LOWE: You said that it cost a lot to get your business up and running and get your building up and running. It's, I know it's quite an investment and it's more so just because the equipment and what you do with your buildings to make them appealing. You said you would be willing to do this again if these taxes are not reduced. Would you be still willing to make that investment in our communities?

LINDSEY CLEMENTS: I'm not going to say that I wouldn't be willing to invest. I mean, I, I feel like--

LOWE: Good for you.

LINDSEY CLEMENTS: --this, this tax reduction is more so, it's going to encourage more people to, to join Nebraska in opening new breweries. For me, I still have ambitions to expand to our business. And, you know, frankly when we had the big dream of this 10-barrel system with distribution model and everything, I'm glad it worked out this way. I'm glad we're small because, really, like we're, we don't do any distribution. It's all sold on premise and we've created a great community and culture in our taproom. So I'm grateful for that and, but I still have, have sort of visions for, for expansion. So thank you.

LOWE: Any other questions? Thank you.

LINDSEY CLEMENTS: All right, thank you.

LOWE: Next proponent. Welcome back.

ZAC TRIEMERT: Good afternoon, Chairman Lowe. Zac Triemert, Z-a-c T-r-i-e-m-e-r-t. I'd like to thank you and the other senators presiding over the General Affairs Committee and also Senator Vargas for introducing LB723. So LB723 is here to reduce excise tax for craft brewers. It's actually quite a small decrease but I'd like to

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

illustrate how it could be really impactful for my brewery and others in the state. Brickway first opened in Omaha's historic Old Market District in 2013 with nine staff members. Last week I signed a new lease to an adjacent building in the Old Market doubling our production space that would create two more full-time jobs, getting Brickway to 20 people on our team. As you have heard, the 2018 [SIC] Tax Cuts and Job Act gave alcohol producer a reduction in the federal tax rate. For Brickway, this saved us nearly \$50,000. The federal reduction is only in place for two years. With this temporary tax savings we were very deliberate in how we utilize this extra capital. I immediately hired a new full-time brewer and invested in an SAP accounting software. The new full-time brewer allowed me to take a step back from daily production and to focus on growing my company. Mitchell has now been with us for a full year. In that time, I have worked out a full expansion plan that will be on-line in the next 90 days. I'm also investing another \$250,000 in equipment almost entirely from Nebraska-based manufacturers. The increased capacity will allow me to produce 35 percent more beer and 400 percent more spirits. With two, with two buildings in the Old Market our tours and tastings will be greatly improved and I believe will grow tourism as well. The new SAP accounting software has helped me to streamline production, has greatly improved our inventory processes, and made growing the manufacturing side of our business much easier. It will also help with the expansion of new taproom opportunities in Nebraska. Every new taproom that we open will add additional 12 to 15 people to our staff. We already provide healthcare for our full-time staff, but with this savings of \$6,000, the amount I estimate we would be saving under LB723, what I'd first like to do is start a 401(k) and have company-provided matching. I know that ESU is a tough decision to make as far as the budget is concerned. I'm not asking for a handout. I'm asking you to help me grow Nebraska. The \$50,000 that I have saved under temporary federal tax relief has a net result of higher capacity, and the amount of taxes that we gain in Nebraska is \$35,000. That's real money. Simply put, the reduction of Nebraska's excise taxes will increase overall tax revenue, it will add more jobs, more income tax, more sales tax, more utilization of Nebraska agricultural products, and more tourism. In closing, I respectfully ask you to support LB723 to reduce our excise taxes. I will invest every single dollar in Brickway, our team, and in Nebraska. Thank you for your time and I'm happy to answer any questions that you have.

LOWE: Thank you, Mr. Triemert. Senator Brandt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

BRANDT: Thank you, Vice Chairman Lowe. Have you had an opportunity to read this bill?

ZAC TRIEMERT: Yes, sir.

BRANDT: So the beer tax, does that apply to just craft beers made in the state or all beers in the state?

ZAC TRIEMERT: I believe it's all beers made in the state of Nebraska. And right now the only beer made in Nebraska are craft breweries.

BRANDT: And let me read this to you. It would be page 2, lines 3, 4, and 5: For the purpose of raising revenue a tax is imposed upon the privilege of engaging in business as a manufacturer or a wholesaler at a rate of 25 cents per gallon. And they scratched out 31 cents. So that's about 80 percent of what we had before. But if I read this right, where it says "or" anybody that's a beer wholesaler would also receive that reduced rate, wouldn't they?

ZAC TRIEMERT: That sounds correct.

BRANDT: OK. So, I mean, is a wholesale Budweiser?

ZAC TRIEMERT: A wholesaler would sell Budweiser, yes.

BRANDT: OK. I just, I'm just trying to wrap my mind around how big the impact could be on the revenues for the state of Nebraska. So thank you.

ZAC TRIEMERT: Yeah, thank you.

LOWE: Thank you, Mr. Brandt-- Senator Brandt. Any other questions? Seeing none, thank you, Mr. Triemert.

ZAC TRIEMERT: Thank you.

LOWE: Any other proponents? Seeing none, opponents? Welcome back.

CHRIS WAGNER: Good afternoon, Vice Chairman Lowe and members of the General Affairs Committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r, I'm the executive director of Project Extra Mile and we're working to advocate, advocate for evidence-based policies in Nebraska to help prevent and reduce alcohol-related harms. So I'd like to start off with a quote. A state senator recently addressed a graduating class of public health scholars saying: Public health

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

services are critical to moving this country forward. Science is under attack and you are tasked to defend, defend the facts. Stand your ground and remind the country that we have problems that need to be addressed. We're here to remind you of the science behind increasing alcohol taxes because there is abundant research pointing to their effectiveness in reducing alcohol-related harms. As you're probably aware, there are three bills that have been introduced that are being currently considered by the Revenue Committee that would increase alcohol taxes in Nebraska. And in many ways these, these bills have been framed as a means to an end so. With the end being, the ultimate end being, property tax relief. But I want to really emphasize that there, there are other reasons for increasing alcohol taxes in Nebraska that have nothing to do with property tax release, relief. We have a lot of problems in Nebraska, many of which I've detailed in all my trips up here to the microphone. And, and so decreasing taxes contributes to decreasing the price of alcohol. And when you do that, you have a lot of these alcohol-related harms, that we already have high numbers of, that will increase. And so in a way, LB723 is a, is a, I believe, a reaction to those bills that were introduced. As you consider this bill, keep in mind that over 100 studies have been done, peer-reviewed studies, that show that higher alcohol prices through increased taxes save lives and reduce alcohol-related harms to both innocent bystanders and excessive drinkers in both urban and rural communities. Consider the following facts. Higher alcohol taxes are recommended by a number of nonpartisan research bodies. The American Medical Association; the American Public Health Association; the American Society of Clinical Oncology; the Community Preventive Services Task Force; the National Academies of the Sciences, Engineering and Medicine; and the World Health Organization. As I mentioned, cheaper alcohol leads to increased harms. And that's something that we as a state we really need to get our arms around to start to address this, the problems that we have in our communities. As was mentioned by proponents of the bill, there was a recent federal tax, excise tax decrease. It is temporary in nature, so it goes through the end of this year. But there has already been a bill introduced in both the House and the Senate at the federal level which would make these tax, these tax cuts permanent. And just so you know, you probably are already aware, Congress is not, is not like the Unicameral. Right? Every bill does not need to have a hearing. This bill that, that enacted this temporary relief, that was a part of a larger tax cut bill that was passed at the end of 2017. This bill had no hearing so advocates weren't able to talk about the harms that come from these alcohol tax

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

cuts. And it was added to the conference report. There was no hearing and it was added behind the scenes and enacted into law. And I'm-- and certainly it has had benefits, as was, was noted. And I'm not disputing that there is an economic development side to alcohol taxes. But at the same time, I feel it's, it's incumbent upon me to really let you know of the flip side, so that the harms that, that come from using alcohol as a develop, economic development tool. I also wanted to note that the federal tax cuts actually show that the industry is facing its lowest, its lowest excise tax bill since our, our state excise taxes were raised in 2003. We've actually as a state experienced a 30 percent drop in inflation-adjusted value across all beverages in our state since 2003 because it's done at the wholesale level and not indexed to the, to the price, to the retail price. I also want to point out that we have \$1.16 billion in economic costs every year. So the study year was 2010 for this, and in that same year the state only collected \$27.5 million in excise tax revenues. And it's about, it was about the same in 2018 as well. So you're really looking at, in terms of the costs that we have, you know, over a billion dollars every year, we're getting about 5.5 percent of those costs back in terms of the excise taxes we're getting as a state. So it's, it's definitely there's an imbalance. We also had 703 alcohol-attributable deaths in 2015 and we averaged 77 alcohol-impaired traffic fatalities over the last five years. So as I see that my light is on, so I believe I'll just close and, and ask that you, based on the evidence I've presented, indefinitely postpone LB723. And thank you for your consideration.

LOWE: Thank you, Mr. Wagner. Are there any questions? Seeing none, thank you very much.

CHRIS WAGNER: Thank you.

LOWE: Any others in opposition? Those in neutral?

HOBERT RUPE: I wasn't planning on testifying on this one but it needs me to answer a couple of questions upon the mechanics of tax collection. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, I'm the Executive Director the Nebraska Liquor Control Commission. As I said, the commission is neutral on excise taxes. That's a policy decision made by you. I can give you a little historical guidance where we sit compared to other states surrounding us, especially, and also how we came up with the fiscal note. I've always said, when somebody asks how we, where we sit tax-wise, we're sort of middle of the road nationally but we're high in our neighborhood. Nationally on spirits we're number

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

38, we're pretty low. And really the difference on spirit tax isn't that large because we're, we're bordered by two control states where you have to do a little-- try to figure out with their effective tax rate is, and it skews it because they actually don't charge a tax on it because they sell it. So I-- but usually have to factor in their other costs, so they end up being higher on the accepted tax. For wine, we're number 23 nationally; and for beer, we're number 20. But we are high in our neighborhood. At the risk of, you know, casting a little shade to our neighboring states, when you border both Colorado and Missouri you might wonder why they have the number one and number two lowest beer taxes in the nation, given the fact that of the homes court of Anheuser-Busch and Coors. But I'll let you guys make that determination on that. So in our neighborhood on beer, we are pretty high. Iowa is like-- as one the testifiers earlier from Vis Major, they're 19 cents a gallon. Where we came up with the numbers. Last year we collected just under \$32 million in excise tax, \$31-- in the fiscal note you'll see it was \$31,655,253.94. The commission does collect some other revenues but this is just on the excise tax that would be applicable here. We had less guesswork on this one. We basically took on the assumption that if 2018 consumption rates remained the same which, you know, they could fluctuate up or down depending upon what's going on, and then calculated that, that reported gallonage, against the new numbers. Which that's where you see the \$3,827,929.84 reduction. It's based just upon if we had the same gallons that was reported as being Nebraska taxable under the reduced rates as compared to the amount under the previous rates. So that's the best, you know. I'm assuming that it might be slightly less than that. Generally we see a small increase in consumption over the last couple years. That's often dependent upon economic concerns. And so, you know, without trying to play guess work, we had the solid gallonage numbers for 2018 and that's what we used. Just so everybody knows how tax is collected, we heard some of the craft brewery taxes. You're absolutely right, Senator Moser. This would change the taxes on all of them, no matter whether they're Nebraska or out-of-state. Beer, well, I'll use beer as an example because it's, well, the easiest. When Budweiser ships a train out to Quality Distributing here in Lincoln, they file an excise tax report. They file a tax report with us which is received that basically at the dock at the wholesaler. That's when their tax becomes due in owing unlike spirits, which are sort of held a tax nonpayable state. Beer tax is payable right away because it is perishable, as opposed to spirits. And so they would generally do the same. They would pay for it then. So they pay for the tax when it lands at the Nebraska wholesaler. A Nebraska craft brewery

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

will only pay their taxes to Nebraska once it's released from bond. So they're making it in their breweries, they're releasing it to, from-- from bond for sale in Nebraska. So let's say you got a larger craft brewery who has sales also in Iowa and Missouri, we don't collect that tax because that's shipped from their brewery or to Iowa which will collect the beer tax, Missouri which will collect their beer tax. We only collect the tax that's released from bond to be sold in Nebraska either through the wholesale distribution chain or through their taprooms. And they pay the tax even if it goes to the wholesaler. The wholesaler doesn't pay that tax, the craft brewery does once it's released. That's sort of the mechanics of how it's taxed when it's left. I'd be happy to answer any questions. I can try, trying to-- one thing on the fiscal note. We've got about a \$60,000 computer changes. We would have to go back in and change five of our on-line reporting systems. That's the vendor's estimate as to what it would cost to go in and hardwire those changes. So with that, I would be happy to answer any questions.

LOWE: Thank you, Director Rupe. Senator Moser.

MOSER: I was just listening to your comment. Beer that's shipped out of the state but brewed here is not taxed?

HOBERT RUPE: Not by Nebraska. It's taxed by the feds. It's only beer which is, which is entered into the Nebraska consumption stream. So it's taxed when it, when it's released. It's easy on a wholesaler because when it lands at the wholesaler it's going to be distributed to Nebraska, that's when the tax is paid. So the craft brewery guys, you know, when they remove it from their bonded warehouse, either by shipping it to a wholesaler or by taking into their taprooms to be consumed, that's when that tax attaches. Until that point its on a bonded warehouse. But for instance, so whenever you're looking at numbers-- Vis Major, we're seeing every ounce of theirs. As you said, she said she's selling everything through the taproom. So everything they're making is being taxed the Nebraska rate. Mr. Triemert, who I believe, and I hope I'm not speaking for him, does sell to multiple states. He's not, we're not double taxing his-- a keg he's shipping to Iowa is not taxed by Nebraska, it's taxed by Iowa when it lands over in a Nebraska wholesaler-- or Iowa, that Iowa wholesaler.

MOSER: OK, Thank you.

LOWE: Thank you, Senator Moser. Senator Brandt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

BRANDT: Thank you, Vice Chairman Lowe. You said nationally Nebraska is, what, 23rd in wine and beer we were--

HOBERT RUPE: Twenty.

BRANDT: Twenty. And that includes the farm wineries and the craft brewers or does not include that?

HOBERT RUPE: Craft breweries are taxed exactly the same. We don't differentiate their tax rates. The only tax rate we differentiate is the farm wineries because they have a requirement that 75 percent of their product must be from Nebraska agricultural products. And so they've got a different tax rate, a beneficial tax rate. For this numbers we sort of, that's why if you look at the fiscal note you've actually got four columns there. You've got beer, spirits, wine, and then farm wine.

BRANDT: OK

HOBERT RUPE: For the difference.

BRANDT: All right, thank you.

LOWE: Thank you, Senator Brandt. Any other questions? Thank you, Director Rupe.

HOBERT RUPE: Thank you very much.

LOWE: Any other in the neutral? Saying none, Senator Vargas, would you like to close?

VARGAS: Sure would. Thank you, everybody, for having this conversation. A couple things I want to touch upon. First, I want to thank the Director of the Liquor Commission and particularly Zac and Lindsey. I think sometimes, and then Senator Brandt, I really appreciate your questions. I think sometimes we look at individual people that invest in our state and we view them as they must have done-- been here and done this for a reason. So there must not be as big of a problem if they're investing and doing something here. I don't want to view it is that, that yes or no or black and white, because I think the Zacs and the Lindseys of the world are-- that might have a connection or a root, a root in Nebraska and that's why they're here. The data tells us something completely different because, even though they're here, there's a barrier for other people that want to invest in here. So if we want to take Iowa, for example.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

And if we look at the, at the, the cents, the 19 cents that they're being taxed differently than Nebraska's 31 cents. If we use that as just the very singular data point. Now, I want you think of 2011. In 2011, Iowa had approximately 25 brewery, craft breweries in the state. From 2011 to 2017. They're now upwards to somewhere between 80 or 90. During that same exact period the state in Nebraska saw an increase as well, but almost half. We have 49 craft breweries in the state of Nebraska. One of the major differences between the two states is the excise tax. There are other different mitigating factors. But the data is telling us that, even though we saw a 100 percent increase in the number of, you know, let's say growth in breweries in Iowa, we didn't see as much of a growth. We saw 100 percent, they saw somewhere around 200 percent. Outliers are helpful, they're not the rule. And so most of you know that Colorado is a very big craft breweries state. They're helpful for trying to understand what are we potentially missing out on potentially. Colorado has about 348 craft breweries. In 2011, they had about 120 in the state. That seems like a lot. Now if you think about it, they're all, all over the place. They've increased to 348. They've had almost a 300 percent increase in the number of craft breweries. Their excise tax is 8 cents. They've also seen the third most in production and actual gallons of craft-brewed beer in the same time where Nebraska is ranked 41st in production. I'm not saying it's easily black and white. What I'm saying is that there are some correlations that we can gather from some data points here. Something is hampering not the Lindseys, not the Zacs of the world to come here, but the others that are making decisions on where they might want to invest. And I know this argument applies to other industries, but in this industry we're seeing a very stark contrast. We are not yet competitive as we potentially can be for this industry and it's incumbent upon us to then study what's going to make us more competitive. I didn't make this a huge tax cut for excise taxes, I made it a reasonable cut because I think a reasonable cut is a step in the right direction and it's telling people that might be investing in the state that we are more open for business for this specific market. So with some of those data points, I want to thank the committee. I want to ask you to support this bill. And hopefully we can move forward to becoming more competitive and saying that we beat Iowa for once. OK, thank you.

LOWE: Thank you, Senator Vargas. Are there any questions? Seeing none, thank you very much. And this closes the hearing for LB723. We do have one letter in support from the Associated Beverage Distributors of Nebraska; and one letter in opposition from Monument Prevention. We

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

will now open up LB592. And Senator Briese, welcome to your committee on General Affairs.

BRIESE: Thank you, Senator Lowe. It's great to be here. Good afternoon.

LOWE: Glad to have you back.

BRIESE: Thank you. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent District 41. I'm here today to introduce LB592. Currently, the Liquor Control Commission may order suspension, cancellation, or revocation of a license for violations of the Liquor Control Act. If it's not a second or subsequent violation of Section 53-180 or 53-180.02, which deal with the providing of alcohol to minors, the licensee may elect to pay a cash penalty in lieu of suspension. The penalty in lieu of suspension is \$50 per day for a first, for a first violation and \$100 per day for a second or subsequent violation. Currently, for a second or subsequent violation occurring within four years of the first suspension for violation of the statutes involving minors, the commission may require suspension, actual suspension of sales. And currently, the commission can only require these mandatory suspension days in lieu of cash penalties on those provisions involving access to alcohol by minors. In other words, if a violation of the Liquor Control Act is a second offense not involving the statutes regarding minors, the commission may, may not order mandatory closure days. LB592 would allow the Liquor Control Commission the discretion to order mandatory closure days instead of allowing the election to pay a fine for a second or subsequent violation of the entire Liquor Control Act that occurs within four years of the first offense. This bill was one of the priorities of the Liquor Control Commission and simply gives the commission more discretion when dealing with multiple violations of the Liquor Control Act. This does not require the commission to issue mandatory closure days but gives them additional enforcement tools and options when necessary to ensure and encourage compliance. LB592 requires a second or subsequent violation of the Liquor Control Act before such mandatory closure days would even become an option for the commission. Therefore, a licensee without a second or subsequent violation of the act would not be affected by this bill. Again, LB592 simply gives the commission an option to order those closure days for a second or subsequent violation. It does not require the commission to do so. The commission in its discretion could still choose to allow a licensee to pay a cash penalty in lieu of the suspension as it sees fit, given the situation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LB592 is about affording the commission appropriate discretion and providing a tool to the commission to encourage compliance with the act. I urge your support of LB592 and its advancement. I am happy to answer any questions, but I do want to note that Hobie Rupe with the Liquor Control Commission will follow me and should be able to answer more specific questions about how the commission may apply LB592. Thank you. I'd be happy to try to answer any questions.

LOWE: Thank you, Senator Briese. Senator Blood.

BLOOD: Thank you, Vice Chair Lowe. It's nice to see you again, Senator Briese. I feel like I just saw you. I am looking at the Nebraska Liquor Control's penalty schedule. And I'm a little puzzled, so maybe it's a misprint on the penalty schedule. Maybe you can help me with that, are you familiar with that?

BRIESE: No, I'm not overly familiar with that.

BLOOD: So it has several columns in the penalty schedule. It would be first violation, second violation, third violation, or fourth violation. And obviously with each violation the penalties increase. When you go down to sales to a minor or minor consumption or possession--

BRIESE: Sure.

BLOOD: --it already shows 10 to 20 days that they have the ability to suspend the license.

BRIESE: OK.

BLOOD: So I'm confused. When you suspend somebody's license they can't, they can't sell any liquor, which is basically closing them down.

BRIESE: Well, it's my understanding, based on Nebraska Revised Statute Section 50-- 53-1104, which is the statute we're dealing with here, on a first infraction dealing with a sale to a minor the licensee can pay a fee or a fine in lieu of suspension, allowing them to remain open, I think it's \$50 a day for the first, for the first, first offense.

BLOOD: But isn't that already up to the Liquor Control Commission whether they do that or not? Or is that just their option, they get to pick their punishment, it isn't dealt to them?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

BRIESE: Well, according the statute the licensee may elect to pay a cash penalty if it's not otherwise prohibited by order of the commission. So I guess that, yes, it would be up to the commission to allow that.

BLOOD: And so do you see my confusion?

BRIESE: But this, the statute currently on, on a first offense, whether it's the sale to a minor or a sale to anyone else or any other-- I should say any other provision. The commission can allow that individual to pay a fine in lieu of suspension.

BLOOD: So it's still the commission doing it.

BRIESE: But on a second offense the commission now has the ability currently, currently has the ability to actually suspend sales of alcoholic liquor for a time not to exceed 48 hours.

BLOOD: It says two days closed plus 20 days. Within three years, two days closed plus 30 days. Within two years, two days closed plus 40 days. Within one year, two days closed plus 50 days. So depending on--

BRIESE: And according to the statute the commission has the ability to suspend sales for 15 days on a third offense if it, if it's a provision dealing with the sale to a minor. However, all other violations, they don't have the ability to actually suspend sales according to my reading of the statute here. And this, this bill would give them the ability to suspend sales on other violations as they currently can on sales to minors. And I keep saying sales to minors but it's 53-180.02 and 53-180. I can read them to you here but they deal with providing access to alcohol by minors.

BLOOD: It can be possession or consumption, right?

BRIESE: Yes, I believe so.

BLOOD: Not to cut to the chase but. So I'm still hearing that they're the ones that decide whether it's in lieu of or not. And I'm just concerned that if it's not working why are they giving people that option? So I think that might be a question for Hobie.

BRIESE: Well, I would suggest that probably is also.

BLOOD: Thank you, Senator Briese.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LOWE: Thank you, Senator Blood and Senator Briese. Are there any other questions? Senator Moser.

MOSER: So the purpose of this is to increase the penalty for transgressions of the law?

BRIESE: Yes, I would say that.

MOSER: Do you think some people are lax because it's only a \$50 fine or a \$100 fine?

BRIESE: Well, that doesn't seem very burdensome to, in my mind to some of these folks. It should-- it wouldn't be, I wouldn't think.

MOSER: Well, I was just, you know, sometimes I listen for 15 minutes and it comes down to you're trying to slap their hands if they get out of compliance. Thank you.

LOWE: Thank you, Senator Moser. Are there any other questions? If not, Senator Briese, are you planning to stay for closure?

BRIESE: I will be here for closing.

LOWE: All right. Glad to have you. Are there any proponents?

HOBERT RUPE: Thank you, Vice Chairman Lowe, senators of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, I'm the executive director of the Nebraska Liquor Control Commission. I'll try to go through my own points, then of course hopefully I'll be able to answer some of the questions that were raised by Senator Blood. You very clearly, you know, people always think the commission can fine. We can't. We can suspend, cancel, revoke. There is an option for them to do a buy-out provision. And I think the concern that comes into this is, although you could read the language, and trust me I would like to read the language the way Senator Blood reads it, about unless otherwise prohibited by the order of the commission, that same statute then clearly goes on to define what the commission can do for a second subsequent sales to a minor. And I'd be worried that they would rule that we're going, that if it says specifically you can only do it for minors, that you're overstepping your bounds, therefore, this bill is probably appropriate. You've got a copy of the penalty guidelines. This is a penalty matrix. This is a guideline the commission tries to use to be consistent, so it's not arbitrary and capricious on similar offending situations. Knowing that it is a guideline, they can and have deviated from that if necessary based upon generally concerns

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

about public health, health, safety, and welfare issues. And later on, if somebody asks, I can give you a couple of issues on that one. What we've seen on the minor side, somebody will get hit with a two plus 30. They don't care about the 30. That \$3,000 fine they're paying because it's the second or subsequent offense, that's the cost of doing business. They're upset for two days they have to suspend sales of alcohol. They're really upset that they had to put up this nice little red and white sign with my signature at the bottom spending-- suspending sales in that location. That's the hammer. We're not looking to do this on a first offense. We, the commission uses progressive discipline, as you see by the penalty matrix in front of you, to try to bring a licensee into compliance. And even if we get this power I don't anticipate the commission using the two-day mandatory on all offenses. On somebody being a day late on filing something, they're not going to do that. But the issues where we do see repeat offenses that involve public health, safety, and welfare are very concerning. Sales to the visibly intoxicated, allowing fights, allowing drug use, allowing prostitution, refusing entry by a law enforcement officer, those are the ones which raise serious concerns which, if they've already been suspended one time before and have failed to change their actions in that four-year period, perhaps a more significant penalty is needed. Also I think this is a more fair system. Right now, the beauty of a penalty matrix is if you can comply with it most of the time and only deviate when it's ab-- it's absolutely necessary is you're not arbitrary and capricious, you're treating the offense, which happens exactly the same. I sell to a minor, if it's at a Hy-Vee or if it's a mom and pop place, it's treated exactly the same. The problem with it, where it sort of falls down a little bit, is the financial resources of those two licensees might be vastly different. A \$500 fine, or let's say it's a second plus 30, two plus 30, a \$3,000 fine to a place like Hy-Vee is easier to absorb than a \$3,000 fine to a ma and pa bar. However, that two days, that's fair and that's going to be looking-- that's going to treat them both equally. Also, I'm going to give you guys a little secret behind the curtain. A two-day mandatory order that goes out, from the close of business on Sunday to the opening of business on Wednesdays, we're closing them for Mondays and Tuesdays. We're not going in and saying, oh hey, this is going to be the Wednesday before Thanksgiving. Let's make sure they're closed on that one there. We treat them all the same. We start, we start at the close of business on Sunday and go to the opening business on a Wednesday. So it's a Monday and Tuesday they can't sell. One of the examples I would like to give you where I think this could have given us more discretion was

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

a recent case where for a second offense we went to cancellation on -- I don't know if anybody remembers the Heidelberg's bar case which came out a couple of years ago. Heidelberg's hosted a Terence Bud Crawford after party after he fought his fight here in Lincoln after being told and warned by the Omaha gang unit, Lincoln Police Department, and other law enforcement agencies that this was a bad idea because of the effect of what had happened previously up in Omaha, where they had a lot of gang fights. What happened basically is this licensee turned his bar over to a promoter. His promoter was charging at the door. Every single law enforcement officer present in Lancaster County and some outside of the county had to respond that night because of the fights. There was pepper spray used because the promoter's hired security couldn't control the fight. The minute it got 10 minutes to last call the fight started and law enforcement officers were put in jeopardy. Because it was a second offense we could have just suspended him 10 to 20 days, but they went for cancellation. That's an example of a deviation from the guidelines because of public health, safety, and welfare concerns. This person was placed on notice by law enforcement, ignored it, and went forward. We're looking for a tool to try to bring people into compliance. The commission never looks to put somebody out of business unless it is a health and safety issue. But sometimes we feel that the hammer needs to be a little heavier and it's not just the cost of doing business. I see that I'm in my red, I would be happy to answer any questions.

LOWE: Thank you, Director. Are there any questions? I just have-- Senator Blood, go ahead.

BLOOD: I can wait my turn.

LOWE: No, that's fine. Ladies first.

BLOOD: Thank you, Vice Chair Lowe. So I'm going back and forth. I'm looking at the existing statute and looking at the changes. I still don't understand why you guys can't do this now.

HOBERT RUPE: Arguably we could, based upon a reading. My concern is the way that the courts have read that statute. For instance, they've put in there because we can only look back four years--

BLOOD: Right.

HOBERT RUPE: --on the minors. They've, they've put that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

BLOOD: It's four years on almost everything, isn't it?

HOBERT RUPE: They put that to four years on everything. They put that, the court did. The way the court read it was because we, the Legislature specifically said you could do-- you can only go back four years, they applied it to the whole statute. And also the fact, and we're worried that they would apply the fact that we can only do mandatory suspension of minors if they were to read that case the same way. I think you are, you're absolutely-- it would be an interesting legal decision. The cleaner way is to clearly state that we can do it.

BLOOD: So what court cases could I look at that would show me that this has been an issue?

HOBERT RUPE: I could bring those. I'll send those over to you. I can't remember off the top of my head.

BLOOD: All right, thank you.

HOBERT RUPE: Some of those were primarily just out of the District Court of Lancaster County, so they wouldn't have been reported. As you're aware, all appeals from us go to the Lancaster County District Court.

BLOOD: Thank you.

LOWE: Thank you, Senator Blood. I just have a question. Let's say-- you said that the suspension dates are from midnight Sunday to--

HOBERT RUPE: Close of business on Sunday, which we would we look at as actually probably being 1:00 a.m. or 2:00 a.m. depending upon the jurisdiction on Monday morning. But we consider that part of the Sunday day, you know, it bleeds over. So it would be-- so if your type of thing was you're a bar here in Lincoln, it would be at 2:01 Monday morning technically until 6:00 a.m. Wednesday.

LOWE: What do you do in the case of an establishment that's only open Thursday, Friday, Saturday?

HOBERT RUPE: They're probably not going to have the same situation. I can tell you that right now on minor sales, most of the minor sales violations we're getting, I mean, if you're looking at the highest percentage are the convenience stores. They have a higher failure rate. Bars do better with minors than they do. Most places are open 24/7. And more importantly, if your license is suspended, you can't

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

receive beer, you can't go buy from your wholesaler, you can't deal with your wholesaler. Your license is suspended, that includes the ability to buy from a wholesaler. So your source, your source is frozen. That's just for alcohol sales. If you're a restaurant and you get two-day suspension, you can still be open for food service. It's just for the alcohol service.

LOWE: Thank you, Director. Any other questions? Seeing none, thank you very much.

HOBERT RUPE: Thank you once again. I really appreciate you giving me the time you heard, not only today but throughout the session thus far. Thank you.

LOWE: Thank you. Are there any other proponents?

PORTIA CABITT: Hello again.

LOWE: Welcome back.

PORTIA CAVITT: My name is Reverend Portia Cavitt, P-o-r-t-i-a C-a-v-i-t-t, and I come representing not only Clair Memorial United Methodist Church but the National Coalition of 100 Black Women where we advocate on behalf of black women and girls. And I can't believe that I'm agreeing with the Liquor Control Commission but they have asked you and they have pleaded that they need help in following through on their work. And so, Senator Lowe, thank you again for this opportunity, and members of the General Affairs Committee. I'm in support of LB592 and urge you to consider allowing the Liquor Control Commission to use mandatory days of closure for all violations, not just sales of minor violation of the Liquor Control Act. I've listed in my written document that the Tobacco Hut has periodic violations. Like I stated last week, I am watching what is happening in my community and wanted to make sure that you understand that these establishments are indeed repeatedly breaking the law. When individuals break the law sometimes the book gets thrown at them and they can't seem to get out and they are incarcerated. And so we need to do a little bit better job in holding liquor establishments and businesses accountable. For some of them, they are not forced to stop selling alcohol, it's just a slap on the wrist. But to put up a 48-hour notice and to post signs explaining why, that will indeed allow all of their customers to understand what is happening. Take for instance if it was Godfather's Pizza and they sold liquor to a minor or sold liquor repeatedly after hours that it would be listed up.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

Families go in there to eat, they would know what that business has done to break the law. And so I'm just asking you on behalf of your constituents again that you would take this into consideration and approve LB592. They asked for your help. And let's stop those that are violating and benefiting and beating this system because the law is not as clear as it should be. Thank you for your time.

LOWE: Thank you, Reverend. Senator Blood.

BLOOD: Thank you, Vice Chair Lowe. And Reverend, it's good to see you again. So I'm going to ask you a question because I'm really trying to get some of this clear in my head.

PORTIA CABITT: Appreciate it.

BLOOD: And first of all, I empathize. There are definitely a lot of issues, especially in some of the areas that you've brought forward, and something needs to be done. But with that said, I know you were here for LB591 for the impact zones and now today's bill of LB592. So why, why should we change the law if it's not necessarily already being enforced properly the way it, the way it already exists, and that many of the issues, especially that you have brought forward, are local control issues? Why are we not holding those local people accountable instead of constantly trying to trade-- change state statute? What would be your opinion on that?

PORTIA CABITT: Well, I would hope that we could work with both the local as well as the state. But if there are still loopholes around it then we have to address it from the state level to have it set as a law. And so that's what I'm hearing the Liquor Control Commission is asking you to help them, so that attorneys or others cannot get beyond the law.

BLOOD: Do you, so you think it's a loophole when they don't pursue the existing bills that already say they can do the very thing they're asking us to do again?

PORTIA CABITT: Well, I mean, evidently it's not working. And the fact that you're giving some aid or some of the business are paying the financial, which is not really detrimental to them as it is to some of the communities. And so that's why I believe that we're asking for the state to change the statute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

BLOOD: I think that's fair enough. I, I want you to know upfront I have concerns. Not because I don't think there's issues. I think that we can continue to change our state statutes, but if they're never being enforced properly to begin with it really won't matter if we change it because they aren't enforcing what we have already. Do you see what I'm saying?

PORȚIA CABITT: I see what you're saying but then that means that we have to work harder in making sure that everyone is following the law and putting forth that effort. If the Liquor Control Commission is not, then we need to get on them. If the local government is not, the local city, then we have to get on them. And I'm trying to do what I can and just found out that another establishment in my area got a third violation for selling to a minor. And they are automatically up for renewal. Most people don't have the time to do the work of the city council nor of the Liquor Control Commission but somebody has to do it.

BLOOD: Well, I just I want to praise you for, for being part of the answer. I share some advice that you can ignore. But I think a lot of the things that have come before this committee this year are issues that have to do with holding our local officials accountable to do the job they're supposed to do.

PORȚIA CABITT: OK, thank you. I'm trying.

BLOOD: And I speak from experience. I was on the city council for eight years before this. So thank you.

LOWE: Thank you, Senator Blood. Any other questions? Thank you, Reverend. Have a great day. Are there any other proponents?

CHRIS WAGNER: Good afternoon, Vice Chairman Lowe and members of the committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r, and I'm the executive director of Project Extra Mile. I believe everything that's, that's been said in terms of the introducer and proponents. I would simply echo that. I believe that really these days of suspension are really seen as the cost of doing business and so the commission feels it needs an additional tool that it doesn't currently have or that it's apprehensive to use. And so we are here to support the commission in its desire to be able to hold repeat violators accountable and to bring them into compliance with, with the law. And so I just want to, I want to urge you to advance LB592. And I also really want to use the opportunity to thank the chairman and members of this committee. It's

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

been a breath of fresh air to be able to come up here and speak on individual bills in, you know, versus one bill that has, you know, 10 or 12 bills that have been combined into one for one hearing. So we really appreciate that, you know, from our side of things, being able to speak to individual parts of these bills and really share with you our concerns that we do have and the research that's applicable to those provisions. So I do want to thank you all for that opportunity. And I'll be happy to take any questions.

LOWE: Thank you, Mr. Wagner. Are there any questions? Seeing none, thank you.

CHRIS WAGNER: Thank you.

LOWE: Are there any other proponents? Opponents?

KATHY SIEFKEN: Good afternoon, Vice Chairman Lowe and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today in opposition to LB592. And we are in opposition to this bill because we believe that it gives the Nebraska Liquor Control Commission the ability to suspend a license after the initial suspension for small violations. And what you have before you is probably on your laptops, but I always want to make sure that you can see what I'm talking about. So the violations are listed here. And so if in fact their license is suspended for, say, selling to a minor, all it would take would be them for, for our license holders to be delinquent on credit, failure to keep records of quantitative sales, late renewals. So if they're late renewing their license it can be suspended. That's what this bill does. And there are some things there that, that we don't want them selling to minors and, and there are some things that they should probably have their license suspended for. However, if you go further down it, it talks about other violations not specifically listed. So what this bill would actually do would it would, it would allow the Liquor Control Commission to spend-- suspended license because they didn't frame and hang their license. I had a meeting in and Omaha member's store with the Liquor Control Commission, and this has been several years ago. And the commissioner walked the store-- and this is, this is a member that said, yeah, sure, you can meet in my, in my open space here. He walked the store. He couldn't find the license hung because the manager had hung it back in his office and he reprimanded that licensee and threatened him with a violation. So just because Mr. Rupe can come here and say, but we wouldn't do that, doesn't mean that they wouldn't do that, because I've seen some of those consequences. Failure to have

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

a warning to minor sign hung, they can suspend the retailer's license. And again going down, the pregnancy poster, it's, it's important. But should a retailer really lose their license because that poster may have fallen off the wall or maybe pallets were put up in front of it and you can't see it? I'm not sure that that, I think this is overreach. That's what I think this bill does. And then there are those-- and as you go down the list, purchase from other than a wholesaler. We had a retailer that was found guilty of selling to, without their actual knowledge, one of the bars in town. One of the people, they ran out of alcohol so they came into the grocery store. They bought the alcohol and nothing was thought of it because it wasn't that big a deal, it was a couple bottles. And then the same person came back later and bought more because they had run out again. Unfortunately, there was law enforcement in line. They saw what happened and both the clerk and the bar were ticketed. And again, they could have lost their license under this bill because they didn't know that it was another license holder that was purchasing the alcohol. And so for those reasons we just think that right now the Liquor Control Commission has the authority to do what they need to control all liquor sales in the state of Nebraska. If they didn't have that authority Heidelberg's wouldn't be open-- or they would be, they wouldn't be closed. After the fight that Mr. Rupe described they lost their license, it was suspended. So for those reasons we think that this is overreach and we would encourage you to hold this bill in committee. If you have any questions, I'd be happy to answer.

LOWE: Thank you, Ms. Siefken. Questions? Senator Moser.

MOSER: How would a retailer know if a competitor is buying alcohol from them?

KATHY SIEFKEN: They don't. So on the list of violations, if they unknowingly sell to another license holder they're just as guilty as if they had known. The penalties are half but it's still a violation.

MOSER: Is the person buying alcohol there held to a higher penalty than the person selling it?

KATHY SIEFKEN: That would be purchased from other than a wholesaler, and that's 5 to 10 days on first offense. Without knowledge, it's 5 to 10 days. So no, they're not. It's, if you, if the clerk in the grocery store or the licensee that sold it actually knew then it would be double the violation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

MOSER: So it was person of their knowledge that worked for. Another bar or another.

KATHY SIEFKEN: No, they didn't know.

MOSER: Yeah.

KATHY SIEFKEN: Law enforcement knew and law enforcement was in line buying groceries. Knew both people and knew that where-- understood that the, the spirits that were being purchased were for the bar down the street. The clerk didn't know and the clerk was guilty. They were in violation.

MOSER: Is there some tax advantage in buying alcohol from another retailer?

KATHY SIEFKEN: It's not really a tax advantage. What happens is you, you run out of alcohol on a Saturday night so you send your clerk down to another license holder to buy a couple of bottles to get you through. It's not that taxes are trying. It's not like they're trying to get around taxes. But in Nebraska, and all over the nation, the, the liquor control commissions are tasked with knowing exactly where every bottle of alcohol goes. They are the control aspect of alcohol. So it's all about making sure it goes through the system, that the taxes are paid, and that the commission knows exactly where every bottle of alcohol ends up.

MOSER: What if an individual who didn't work at the bar bought alcohol, took it to the bar, and sold it to the bar.

KATHY SIEFKEN: That individual would be, I would imagine, breaking the law.

MOSER: Not a license holder.

KATHY SIEFKEN: But they're not allowed to do that. The bar is not allowed to, to purchase from anyone other than their wholesaler to protect that three-tier system, I believe. So that's a big no-no too. The only, the way the system works is the manufacturer sells to the distributor, sells to the retailer. And you never cross those lines with the exception of microbreweries. That's a little bit different.

MOSER: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LOWE: Thank you, Senator Moser. Senator Brandt.

BRANDT: Thank you, Vice Chairman Lowe. Thank you, Ms. Siefken, for testifying today. Are these penalties in statute?

KATHY SIEFKEN: I think they're under rules and regulations.

BRANDT: So the Liquor Control Commission sets these penalties?

KATHY SIEFKEN: Guidelines, yes.

BRANDT: Guidelines.

KATHY SIEFKEN: These are guidelines, yes.

BRANDT: So they could change the guidelines, could they not?

KATHY SIEFKEN: I believe they probably could with a hearing.

BRANDT: So then if, for example, your example of a grocery store which, you know, I do believe the clerk probably didn't know where the booze was going and probably in all honesty that's the least of their problems. The big, big picture is they're going after minors. That's what we want to do, keep minors from buying alcohol. But if, if, if that was a unique problem, you guys could probably go to the Liquor Control Commission and petition them to change the penalty for that one situation. Could you not?

KATHY SIEFKEN: We've never done that. The Liquor, the Liquor Control Commission has their own guidelines. We follow the guidelines that they set out. We never want to be in violation.

BRANDT: But if, if, if there was a unique situation that that occurred infrequently you could probably talk to them to get that changed, could you not?

KATHY SIEFKEN: Probably. That probably would not be a successful endeavor.

BRANDT: Because on the bottom of the sheet that also Director Rupe handed out it said: These are general guidelines used to establish penalties, penalties for violations of the Nebraska Liquor Control Act and the rules and regulations of the Nebraska Liquor Control Commission. The commission reserves the option to deviate from these guidelines to encourage voluntary compliance with the act and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

regulations and ensure the public health, safety, and welfare as necessary when circumstances merit such a deviation. That sort of tells me they allow leeway to determine this.

KATHY SIEFKEN: That's true. It's their rules and regulations that they set up and they're approved through the hearing process. But yes.

BRANDT: Your testimony is they will do this under no uncertain terms, and I guess I'm sort of looking at this they may elect to do that under some of those terms.

KATHY SIEFKEN: They may, but the reality is that these are the guidelines and this is what everyone follows.

BRANDT: OK, thank you.

LOWE: Thank you, Senator Brandt. Any other questions? Seeing none, thank you, Ms. Siefken.

KATHY SIEFKEN: Thank you.

VANESSA SILKE: Good afternoon, members of the committee. This is our last hearing day for General Affairs. So congrats, you made it. My name is Vanessa Silke, that's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm an attorney with Baird Holm and I represent the Nebraska Craft Brewers Guild. And we're here in opposition to LB592 as written. We appreciate Senator Briese for listening to our concerns, the members of the committee that I've reached out to, and certainly Director Rupe and the Liquor Control Commission. I work regularly and directly with the commission on behalf of individual members and certainly on behalf of the Nebraska Craft Brewers Guild to develop sound regulation for this industry in Nebraska, whether it's through statutes that your committee looks at or through rules and regs that are adopted at the commission which have the force of law once they are adopted. We do oppose this bill though because on its face it is very broad. And that's the backstop for all of our concerns in dealing with the Liquor Control Commission and in representing licensees when there is an issue and a violation. So as we've seen, and as it states plainly here on line 16 of LB592 on page 2, it says "For a second suspension for violation of the Nebraska Liquor Control Act." Now, I appreciate and I certainly deal with this on a regular basis, basis. Typically, the commission is really reasonable and they do want to work towards voluntary compliance. But the way this statute is written if it's adopted, it includes anything. So when my members, if someone,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

they have a new staff member that forgets to file the tax reporting paperwork by one day or one week and they correct it or they forget to go into Payport because they don't understand how that process works. If they have two employees do that twice in a four-year period this statute says they can suspend your license and you can't buy your way out of it. Now, certainly we hope that people continue to be reasonable. We want our regulators to work cooperatively with folks here in the state in Nebraska. But when you give them a statute that says you can shut people down for two days for any violation twice in a four-year period, that would include something as small as what I just described. And so for that reason we're asking that you hold this bill or at least this language of this bill in committee. And with that, I'm happy to answer any questions that you might have.

LOWE: Thank you, Ms. Silke. Are there any questions? Senator Brandt.

BRANDT: Thank you, Vice Chairman Lowe. Do you have any specific examples of that happening?

VANESSA SILKE: Not at this time, because right now this, this provision is limited to second violations of 53-180 or 53-180.02. Those are specific to sales to minors, which we have no opposition to that language staying in the bill.

BRANDT: But I guess on these other minor offenses not, you know, missing your paperwork by a day and things like that. Are you aware of the Liquor Control Commission coming in and shutting somebody down for two days?

VANESSA SILKE: They can't do that right now. That's their interpretation of the bill. They regularly pull people in for a show cause hearing, even for something that is, that does seem that minor because that is technically a violation of the Liquor Control Act. And so they regularly bring licensees in to confirm what their process is, how they're training employees, what they've done to correct it if it's been a repeated issue or if it's a one-time issue. But the hammer behind that is what the statute allows them to do. And for that reason we think this is overbroad that they would have a mandatory shut down as an option. They still have plenty of other options as far as probation and canceling licenses. There is a provision that they can write right into their orders on their show cause hearing that said you cannot violate the Liquor Control Act during this time. And they

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

have additional authorities if someone repeatedly offends under that type of an order.

BRANDT: All right, thank you.

LOWE: Thank you, Senator Brandt. Any other questions? Thank you, Ms. Silke.

VANESSA SILKE: Thank you very much.

RICH OTTO: Vice Chairman Lowe, members of the committee. My name is Rich Otto, R-i-c-h O-t-t-o. I'm here representing both the Nebraska Retail Federation and the Nebraska Restaurant Association in opposition to LB592. As previous testifiers in opposition have mentioned, we feel that the commission has a variety of tools available currently. And as the matrix was pointed out, they can deviate from those currently. We feel that this would just apply the standard of the 48-hour closure as a typical piece that they would go to going forward and then we'd see more closures. And for those reasons, we're opposed. Happy, if you have any questions.

LOWE: Any questions? Seeing none, and our panel is getting tired.

KEN SCHILZ: Good afternoon, Vice Chair Lowe, members of the General Affairs Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm a registered lobbyist for the Nebraska Licensed Beverage Association or the NLBA. Excuse me. The NLBA is a nonprofit trade association representing liquor retailers and bar owners across the state. Our members are small businesses who provide jobs in hundreds of communities throughout Nebraska, contribute to the tax rolls, and are good stewards and community leaders. We certainly understand the need for regulating liquor establishments and have no object, objection to the current law that's in place. However, we, as others, believe LB592 is too broad. The period for counting violations as we've heard does not reset for four years. By granting the Liquor Control Commission the power to require mandatory closure of an establishment for any second, any second violation of the Liquor Control Act, it becomes a burden for Nebraska's small businesses. The current law focuses on major violations, including sales to minors or incompetent persons. LB592 would open up harsh penalties for violations such as delinquent credit or, as we've heard, failing to hang up your license. We know that the current executive director and the board members are reasonable and fair, but you never know what the future might bring or what a future board might do. We believe that

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

the framework of this bill is unfair and overly broad. And for this reason, the NLBA is opposed to LB592 at this time. And thank you for the opportunity, and I would like to answer any questions if I could.

LOWE: Thank you, Senator. Senator Blood.

BLOOD: Thank you, Vice Chair Lowe. It's nice to see you again. It's like a little revolving door. So I'm reading again, I keep listening to what everybody is saying. I'm reading the statute. If I read this to you, I want your opinion as to what you think it means.

KEN SCHILZ: OK.

BLOOD: Because you're obviously here against it, so you must have an opinion. For a second suspension occurring within four years after the date of the first suspension the commission in its discretion may order that the licensee be required to suspend sales of alcohol, liquor, alcoholic liquor-- I don't know if there's any other kind of liquor but-- for a period of time not to exceed 48 hours. The licensee may not elect to pay a cash penalty, because it's up to the commission already. So if this is already in state statute I don't understand the change. What is your interpretation of why there needs to be a change?

KEN SCHILZ: Well, and I as, as you heard from my testimony, I'm not sure that there needs to be a change. And we heard from the director that in the Heidelberg case that they were able to use discretion of that and go that way. What, what the NLBA is concerned about is, and to Senator Brandt's point as well, the NLBA is concerned that if the framework is changed to allow this to happen then at some point, depending on who is, who's representing that board, that could just become the way it works. And all of a sudden if you've got someone that doesn't hang up their license properly or does one of the other small infractions that could just become the way it is. And I think we want to be careful of that because we understand that there's different levels of violations here and we need to, we need to keep that in mind as-- I believe that as senators you need to keep that in mind as you make these decisions that affect how the board will do its job.

BLOOD: And aren't there going to be new people on the board this year?

KEN SCHILZ: I would guess there's always a--

BLOOD: At least one.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

KEN SCHILZ: There's always an opportunity for people new people to come on board that board as folks either term out or as they resign and new folks. Not only that, it also depends on who is appointing those folks. And that changes as well. So we have to be mindful of that.

BLOOD: The concern that I have is not that people are being held accountable, it's that the more I read-- and I keep listening to what I'm-- I keep listening to the pros and the cons, I keep going back to what everybody says and it just, again, it seems just like when we were here last week that people aren't enforcing what we already have. And I don't know if changing statute changes any of that.

KEN SCHILZ: Yeah, and I, I am not here to speak to whether or not the enforcement is happening today.

BLOOD: Right.

KEN SCHILZ: But just looking at the, looking at the introduced bill as it is we're just concerned that, that we, we create more burdens for our businesses than should be there.

BLOOD: Sounds fair. Thank you.

LOWE: Senator Blood. Any other questions? Thank you, Senator Schilz.

KEN SCHILZ: Thank you. Have a good day.

TIM KEIGHER: Got all his secrets right here. Good afternoon, Vice Chair Lowe and members of the committee. My name is Tim, T-i-m, last name is K-e-i-g-h-e-r. I'm the executive director of the Nebraska Petroleum Marketers Association and as their registered lobbyist, and appear before you in opposition to LB592. I guess I won't reiterate all the previous testifiers' comments. But like they have all said, we feel that maybe this is going a little too stringent when you can get down to issues of is your license hanging up, were you late on your tax return? Do we agree there are probably some bad actors out there that the Liquor Control Commission is going after? And evidently it's my members as he pointed out earlier, so I'll have to figure out which ones it is. But, but on the serious side, we just don't want to penalize the whole to try and get the few. I guess going to what Senator Lowe said, you know, if they're taking away their license from 1:00 a.m. or 2:00 a.m. on a Sunday, Monday morning until Tuesday night, if they have the ability to take it away on a Friday and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

Saturday I think they have a pretty good punch there. So I think there may be some other ways that they could enforce some of the things they're trying to enforce upon some of the quote bad actors that are out there. So with that, I'll be trying-- happy to answer any questions you may have.

LOWE: Thank you, Mr. Keigher. Any questions?

TIM KEIGHER: You're hoping I'm last and you're out of here, right?

LOWE: I didn't say that. Seeing none, thank you. Any other opponents? Seeing none, any in the neutral? Seeing none, Senator Briese, would you like to close?

BRIESE: Thank you, Senator Lowe, members of committee. Well, I appreciate the testimony and the good questions today. And the opponents to this, I certainly understand their position. If I'm a retailer, I'd certainly want to retain my ability to essentially buy my way out of a suspension. And that's understood. And Senator Blood, your point is well-taken over there on the language here. But I would suggest that by expressly granting the commission the authority to suspend sales of repeat offenders of 53-180 and 53-180.02. If I was a judge, I would probably conclude the clear implication and intent is that the current statutory scheme, within that scheme they lack the authority to suspend sales in other contexts. So they would have made it clear in the other context also. And so I would suggest if you think the commission needs clear statutory authority to suspend sales of alcoholic liquor by repeat offenders, we need, we need to move this bill forward. And I heard testimony earlier that this is overreach and there is some concern that the commission would use this where not warranted. But note that this authority is discretionary. They have the discretionary to utilize this tool, this hammer, so to speak. And, you know, discretionary just like much of what else they do. And really, if we can't trust the Liquor Control Commission to use this authority judiciously, seems to me we've got bigger problems than this bill. And anyway, I ask for your consideration of this bill. Thank you.

LOWE: Thank you, Senator Briese. Any questions? Seeing none, thank you very much.

BRIESE: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee March 25, 2019

LOWE: We have one letter in support from Monument Prevention. And with that, we close the hearing on LB592 and our year in this committee.