

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 3, 2020

BRIESE: Good after-- good afternoon and welcome, everyone, to the General Affairs Committee. My name is Tom Briese. I'm the senator from District 41. I'm the chair of this committee and will be conducting today's hearing, at least to start out. I'll be introducing some bills, and at that time, Vice Chair Lowe will take over. We're here today for the purpose of conducting five bill hearings. We'll be proceeding in the order of the agenda that is posted outside this room, with an exception. Is it posted that way? OK. If you wish to testify on any of the matters before us, we ask that you fill out one of the 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 will ask that you fill in one of these sign-in sheets. If you do testify, we ask you to 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 hear the proponents, then opponents, and then neutral testimony, if any. Following the testimony, 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 the General Affairs Committee. Each testifier is afforded four minutes to testify. When the yellow light comes on, you have one minute remaining and we 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 that 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 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 committee clerk. If you don't have 12 copies, don't worry. Provide what you have to the committee clerk. And with that, I would like to introduce, directly to my right, legal counsel Loguen Blazek. And on the far left end, committee clerk Alexander DeGarmo. And with that, we'll proceed with the introduction of the members of the committee, starting with Senator Blood.

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BLOOD: Good afternoon. My name is Senator Carol Blood, and I represent western Bellevue and southeastern Papillion, Nebraska.

ARCH: John Arch, District 14: Papillon, La Vista, in Sarpy County.

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

MOSER: Mike Moser from Columbus. I represent Platte County, Stanton County, and a small slice of Colfax County.

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

WAYNE: Justin Wayne, Omaha, District 13: northeast Douglas County.

BRIESE: And our pages on the wall there, we have Angenita. Go ahead and stand up, if you would, guys. She attends Union College. And we have Taylor, who attends Doane College. Thank you. And with that, we will begin our-- today's hearing with LB862. Senator Hughes, good afternoon and welcome to the General Affairs Committee.

HUGHES: It's a pleasure to be here. Good afternoon, Chairman Briese, members of the General Affairs Committee. For the record, my name is Dan Hughes, D-a-n H-u-g-h-e-s, and I'm here to introduce LB862. This bill will prohibit possession of tobacco, electronic nicotine delivery systems, or alternative nicotine products by minors. It was brought to me by the Nebraska Council of School Administrators. Our schools are having a difficult time dealing with the problem of underage vaping, and this bill will give them one more tool to combat that problem. There will be others following me who can expand upon the problem in our schools. Additionally, there are towns within our state who are creating their own ordinances to fight this problem. And by setting this standard in statute, we prevent a patchwork of rules. I don't have to tell you how dangerous using these products are, especially for our youth. Nicotine is highly addictive, is a highly addictive drug, and if we can keep our youth from starting at such a young age, we may prevent them from becoming lifelong smokers. According to the CDC, young people who use e-cigarettes may be more likely to smoke cigarettes in the future. This past fall, after several sharp increase-- after a sharp increase in emergency department visits due to vaping, there has been a gradual decline. It is believed that, due to increased public awareness of risks, the rapid public health response and law enforcement actions related to some illicit products has helped reduce the number of visits. Although cases related to the

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outbreak are decreasing, new cases continue to be reported to the CDC by state health departments. Among the 2,668 hospitalized cases or deaths reported to the CDC, 15 percent of the patients were under 18 years of age. Recently, a 17-year-old Michigan-- a 17-year-old in Michigan received a double-lung transplant due to damage caused by underage vaping. As of 2018, more than 3.6 million youth, including 1 in 5 high school students and 1 in 20 middle school students, currently use e-cigarettes. I have an amendment that I would like the committee to consider. This bill is not intended to limit minors in their ability to do their job. The amendment states: The prohibition on possession of cigarettes, cigars, electronic nic-- nicotine delivery systems, alternative nicotine product, products and tobacco in this section does not prohibit a person under the age of 19 years from handling or selling such items in the course of such person's employment at a licensed established-- establishment. I'd be happy to try and answer any questions.

BRIESE: Thank you, Senator Hughes. Do we have any questions of Senator Hughes? Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Senator Hughes, for being here today. It's really a pretty easy question, and I don't know if you know the answer to it. On your amendment on somebody in a, in a store being able to handle tobacco items, what does the law say today? Do they have to be a minimum age to sell cigarettes?

HUGHES: I, I do not have-- I do not know the answer to that question, but I'm sure there is someone behind me that can answer that.

BRANDT: Yeah. All right. Thank you.

BRIESE: Thank you, Senator Brandt. Anyone else? Senator Arch.

ARCH: Thank you. Thank you, Senator Hughes. This obviously is a national issue. Are there-- do we know what other states are doing? Will there be others that will testify to what's happening in other states?

HUGHES: I, I don't know what the people behind me are going to testify to. And I'm not aware of what other states are doing. I'm just trying to get ahead of the problem here in Nebraska.

ARCH: OK. Thank you.

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BRIESE: Thank you, Senator Arch. Anyone else? Seeing no other questions, thank you for your opening.

HUGHES: Thank you.

BRIESE: We'll move on to proponent testimony. Good afternoon and welcome.

KYLE MCGOWAN: Good afternoon, Chairman Briese and members of the committee. My name is Kyle McGowan, K-y-l-e M-c-G-o-w-a-n, and today I'm representing the Nebraska Council of School Administrators, the Nebraska Association of School Boards, and Nebraska Rural Community Schools Association. We'd like to thank Senator Hughes for bringing LB862 forward. Tobacco has always been an issue in schools, that vaping has become very prominent. Our membership is very concerned of what they're seeing in schools and how often students are involved with-- I don't know if I should call it a fad or not, because the health risks are now well-documented with vaping. So I think that issue of whether it's safe or not is then decided. Our concern is trying to keep our students safe. Every school district would have policies relating to, currently, even vaping and tobacco, and they would be school-related consequences. So we feel this legislation would be-- what do I want to say-- have more consequences for students' actions than just maybe spending time after school or possibly having some in-school suspension, and would certainly reduce the amount of use that we would see, hopefully not just in school, but for minors in general. So I did ask a practitioner, a senior high principal come, to come and talk to this committee, and she would be able to describe what's happening in her school, which would be typical in a lot of schools. Otherwise, I'd be happy to answer any questions.

BRIESE: Thank you, Mr. McGowan. Any questions of Mr. McGowan? Senator Moser.

MOSER: Well, currently, you have rules in schools against vaping and possessing tobacco products?

KYLE MCGOWAN: I think it'd be very prevalent in most every school.

MOSER: Yeah. And the penalties for that are imposed by the schools?

KYLE MCGOWAN: Correct.

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MOSER: And they are-- probably are kind of a continuum of a good talking to, all the way up to--

KYLE MCGOWAN: Call your parents to, you know, etcetera, yeah.

MOSER: Yeah. So but this law, would that give you a way to legally have them prosecuted?

KYLE MCGOWAN: What we would expect to happen is not only would you have school consequences, but when criminal activity takes place at school, you would turn over that crime, so to speak, to local law enforcement, and then they would decide those next steps. But it would certainly go beyond the school walls and in terms of what the consequences could be.

MOSER: Now, when it's one of your policies, you pretty much have it under your control, what happens, how you handle that discipline, and that sort of thing. If it becomes a legal thing, a legal issue, then are you going to have to report everything that you find to the authorities or, or not report it and get yourself in trouble?

KYLE MCGOWAN: Right. If it's a criminal activity, we report-- sometimes county attorneys will determine whether they're going to prosecute or not.

MOSER: OK, so are you, are you trying to have another line of defense or are you trying to duck it and let the law enforcement take care of it?

KYLE MCGOWAN: Well, we won't be ducking at all because the consequences that exist now will still be in place. Our hope is that students will see this as a more serious activity, you know? To have an in-school suspension or to stay after school or have your pack of smokes taken away, you know, really, it tends not to be as big as a deterrent as maybe turning it over to the police.

MOSER: OK. Thank you.

BRIESE: Thank you. Senator Moser. Senator Wayne.

WAYNE: Thank you. So right now, if two seventh graders were to get in a fight, do you turn that over to law enforcement?

KYLE MCGOWAN: Possibly yes, possibly no. So here, here would be the-- because as I was a longtime administrator myself, we would like to

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address things in school and be age-appropriate for things that happen in school. On occasion, in the scenario that you're talking about, parents would say: My student has just been assaulted. And why aren't you turning it over to the police? And what we would say is: If you think this warrants going to the next level, please go make a complaint to the police and we will help with the investigation.

WAYNE: But when it comes to vaping, you're going to automatically turn it over?

KYLE McGOWAN: Yeah, if there is a law that a 17-year-old should not have an e-cigarette, and that's a, you know, that's a black and white piece, then we would give the school consequence. I'm saying what I'm supposing would happen.

WAYNE: Right.

KYLE McGOWAN: And they turn it over to the police. And, and frankly, I have to tell you, I think that different county attorneys will handle that differently.

WAYNE: I guess that's my, my-- my concern is that we have different levels of assault. And actually there's a third degree assault, mutual assault, in the state statute. So if two people fight mutually, it's still a violation.

KYLE McGOWAN: Correct.

WAYNE: Yet we choose not to prosecute or we choose to, and this discretion is where I'm a little concerned. This seems to be a school issue. And, and I hate to start criminalizing school issues because that record stays with you forever, even if it's a juvenile. And once somebody enters into the juvenile system, they pretty much can't get out, at least every area I represent. So I'm, I'm really having a hard time putting my head around criminalizing something that--

KYLE McGOWAN: Yeah.

WAYNE: --if it's on school property, it should just be a school issue.

KYLE McGOWAN: I understand that. I guess our position would be that, particularly with vaping, this has grown exponentially. So we feel it's a health issue. We're, we're on the side of trying to keep kids healthy. The idea of what are we going to make, you know, a criminal activity and not, there certainly is a gray area in terms of not only

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interpretation at the school, but interpretation with not only the county attorney, but the courts, I would say, so--

WAYNE: Thank you.

BRIESE: Thank you, Senator Wayne. Anyone else? So what is typical policy in the event, under current statute, in the event of the use of these products in school? You know, Senator Moser was asking you about that, but do you sometimes turn that over to authorities also?

KYLE MCGOWAN: Well, if we're talking about--

BRIESE: I say you, but school systems in general.

KYLE MCGOWAN: Right, right. An SRO, a school resource officer, if, if-- students can certainly be in possession now of tobacco and it's not illegal.

BRIESE: Right, but what if they're using it in violation of--

KYLE MCGOWAN: I would say it would be--

BRIESE: --statute?

KYLE MCGOWAN: --very unusual to turn that over to law enforcement.

BRIESE: OK.

KYLE MCGOWAN: Because, again, I'm kind of speaking locally in, in terms of what might be done. We're not trying to put an extra burden on law enforcement. Again, I think there's-- the schools use their judgment. I'm trying to handle age-appropriate misbehavior. Is that, is that an oxymoron? I don't know. But you understand that communicating with parents and students in, and in communication with local law enforcement, tries to keep misbehavior at the, at the lowest level.

BRIESE: Sure. OK, very good. Thank you. Anything else? Senator Lowe.

LOWE: Well, thank you, Chairman. And thank you for being here today. Can a school have a policy against possession of--

KYLE MCGOWAN: Yes.

LOWE: --tobacco products?

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KYLE McGOWAN: Yes.

LOWE: And at that point in time, can you take them away?

KYLE McGOWAN: Yes.

LOWE: OK. All right, thank you.

BRIESE: Thank you, Senator Lowe. Senator Moser.

MOSER: How does this new law correlate with alcohol use? So let's say you find a student at school that has alcohol in them and they're under age. Would you treat that differently than if you found them with vaping products or tobacco?

KYLE McGOWAN: Well, my understanding with possession of alcohol is different than possession of tobacco. Maybe somebody can correct me on that behind, behind me. The first level of consequences has to do with your school policy. And I would say some schools might automatically turn, currently, if they caught somebody with cigarettes, they might automatically, you know, as a matter of process, turn it over to law enforcement. I don't think that would be very common. I think with alcohol, there are a range of policies with schools that often differ in terms of how you handle a student in the classroom or, or a school-related. If you, if you're selling it, you know, that's a different level. I don't know if I'm answering the question or not.

MOSER: I was just curious, you know, if you, if you found somebody with, say he had a bottle of beer in his coat pocket or something, would you typically call the police and turn him in or would you just take it away and call his parents? Or what's the typical procedure there?

KYLE McGOWAN: I can tell you only what we did at our district, and we would typically have done-- contacted the parents, looked for a school consequence, turned that over to local law enforcement of which nothing would have been done other than a record of that being turned over.

MOSER: As far as the school is concerned. OK, thank you.

BRIESE: Thank you, Senator Moser. Anybody? Seeing no further questions, thank you for your testimony. Any further proponent testimony? Good afternoon and welcome.

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MEGAN MYERS: Good afternoon. Thank you. Hi, I'm Dr. Megan Myers, M-e-g-a-n M-y-e-r-s, and I am coming today to talk to you on behalf of NCSA, but also as a principal from School District 145. I am the principal at Waverly High School. I am coming today primarily just to talk to you about my experiences with vaping in my position as a school administrator in a couple of different districts over the last five years. What I have seen, coming through my office, is a pretty steep incline and increase in vaping. And what I've seen specifically is more of our younger students vaping than used to happen. And so I have quite a few freshmen and sophomores who are 14, 15, 16-year-olds coming in with issues with vaping. We have had some concerns with some of our students at the senior age group being able to legally purchase vaping products and then providing them to our younger students. I know that there was a comment made that maybe vaping was on the decrease, but I also know that there are several strategies out there to vape undetected. And so I have several accounts of students vaping in classrooms, where they can hold their vape within their sweatshirt sleeve, blow the vapor down their sleeve, or just hold it in their mouth for a little while and then the vapor dissipates and there is no evidence of vaping within a classroom. We do have a school resource officer, who doesn't typically get involved with our vaping situations because she can't issue a ticket unless she sees it actually in action, which is very difficult to do. We had some situations last school year with students vaping THC oils in their e-cigarettes. We had some trips to the emergency rooms because the THC oils are 90 percent concentrated and so pretty intense for someone to vape. And so, so just from my experience, we have seen quite a rise. What I also know is I can give an in-school suspension for a student being in possession of, or being caught in the act of, vaping. But oftentimes this comes as just kind of a slap on the wrist, and students will come back for multiple offenses. The idea in my mind, from a principal's perspective, is that if they were also issued a ticket or there was a consequence outside of school as well, that would be helpful to maybe regulate e-cigarette use within our buildings.

BRIESE: Thank you, Dr. Myers. Any questions? Senator Blood.

BLOOD: Thank you, Chairman Briese. And thank you for your testimony. I'm curious, and I'm specifically asking your personal opinion. Why do you think that there are repeat offenders, that the in-school suspension doesn't seem to be very effective? Do you feel it's because there is an addiction issue?

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MEGAN MYERS: I think there's a variety of answers to that. Some students will tell me they're addicted and that they've tried to quit multiple times and are unable to. Some students will tell you kind of the age-old: I do OK when I'm by myself, but when I'm around my friends who are still vaping, then it's very difficult for me to say no to peer pressure. But I think sometimes there is so much of it happening. And, you know, we have some students who will avoid certain bathrooms because they are the vaping bathrooms. But when we post an adult in the bathroom then a different bathroom becomes the vaping bathroom, you know, so, so it's, it's just difficult for us to get ahead of. And then I think there's students who just aren't maybe strong-willed enough to say no.

BLOOD: Fair enough. Thank you.

BRIESE: Thank you, Senator Blood. Anyone else? Senator Brandt.

BRANDT: Yep. Thank you, Chairman Briese. Thank you for testifying today. So if a student comes to you-- and we will be in a transition, obviously going to this new law-- and says: I'm, I'm addicted to nicotine.

MEGAN MYERS: Um-hum.

BRANDT: And they have to take, like an adult would, patches or pills or gum or whatever form of this to break them of that habit. Is the school going to allow that on school grounds?

MEGAN MYERS: We don't. Right now, we are working on partnering with maybe some mental health support community-- in the community. And some of those offer, like, chemical evaluation and counseling. But right now, we don't have anything in place to offer an alternative to an addiction.

BRANDT: And then if I could follow up with a second, really quick question. The bill says they shall be convicted of a Class V misdemeanor. What does that do to a student's record? That would not make him ineligible for scholarships or anything down the road, would it?

MEGAN MYERS: Not that I'm aware of, but that's something I'd have to look into.

BRANDT: All right, thank you.

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BRIESE: Thank you, Senator Brandt. I think we have Senator Blood down here.

BLOOD: Thank you, Chairman Briese. I'm sorry, it just made me think of another question. So but if they had a doctor's note that said this is a prescription for an addiction, you'd have to allow that, right?

MEGAN MYERS: I don't know that I've--

BLOOD: Under the care of the physician?

MEGAN MYERS: I guess I don't know that I've ever come across that situation where they've diagnosed an addiction that would allow-- I still think, like, if you're in a school building, that's a tobacco-free area. But I don't know if we would allow-- that would have to be something that I would talk with my superintendent about to see. I've never seen that situation come across.

BLOOD: I was just curious. I was gonna say, I would think under a doctor's directives and under a doctor's care--

MEGAN MYERS: Yeah, I don't know.

BLOOD: --something that was prescribed to a child to quit addiction would be accepted. But I'm not a doctor or a principal.

MEGAN MYERS: No, I don't know. And I guess I don't know if that would be-- so let's say someone was addicted to alcohol, we wouldn't have other alternatives within the building for that. I don't know how that would--

BLOOD: But they would fall under behavioral health. And if you look at the truancy statute, they're allowed to miss up to 20 days before they have to sit down and meet with the county attorney's office. And under behavioral health is addiction. Is that true?

MEGAN MYERS: Um-hum. Um-hum.

BLOOD: All right, thank you.

BRIESE: Thank you, Senator Blood. Senator Moser.

MOSER: What's the typical parental reaction to your call from school that their child was caught with nicotine products or vaping products on them?

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MEGAN MYERS: Um hum. It depends on, on the parent, on the situation. Some parents are well aware that their student is-- engages in vaping activities. Some parents support it, but just don't support it at school.

MOSER: Some parents buy it for their kids?

MEGAN MYERS: Sure. I've never had a parent tell me that they've purchased it for their student, but I wouldn't be surprised if there were some out there. I have had some parents say that that was their e-cigarette or vape pen or whatever you want to call it.

MOSER: Oh, and the kid stole it and took it to school.

MEGAN MYERS: Yes. I have some parents who are shocked, that had no idea. I do have some parents that are aware that their son or daughter might be working through an addiction issue. So it's across the board.

MOSER: Thank you.

BRIESE: Thank you, Senator Moser. Senator, Senator Wayne.

WAYNE: How would you feel about a "shall," an amendment that says you have to report it to law enforcement? That you guys don't have discretion?

MEGAN MYERS: I mean, I guess I don't know that that would be much different. I mean, we would do that with alcohol, with marijuana, with other types of drugs that we would come across. We have an SRO in our building who gets involved anytime we have one of those other situations happen. So I think this would just include more involvement from our SRO with situations of vaping.

WAYNE: So help me distinguish why tobacco would fall underneath the "shall" but a fight doesn't, when that's an assault.

MEGAN MYERS: Well, our SRO gets involved if there is a fight that breaks out.

WAYNE: No matter what the fight is?

MEGAN MYERS: I mean, I guess anytime that there's a fight, what she does is, is what was mentioned before, is if somebody would like to kind of become or say that they were the victim of an assault, they're

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welcome to press charges. And so she always kind of has-- gives that option.

WAYNE: How many tickets do you guys off-- you guys give out a year?

MEGAN MYERS: Not very many. I would say maybe five to ten, ten max.

WAYNE: On fights or just everything?

MEGAN MYERS: Everything.

WAYNE: So if this were to pass, how much more tickets would you have to give out?

MEGAN MYERS: Quite a few more. But I, I don't know. I don't have a number in front of me, but it would be, oh, at least a couple a week that come our way. But the problem is much more rampant than that, it's just very difficult for us to regulate it and catch it in the act.

WAYNE: Thank you.

BRIESE: Thank you, Senator Wayne. Anyone else? Seeing no other questions, thank you, Dr. Myers, for your--

MEGAN MYERS: Thank you.

BRIESE: --testimony. Next proponent. Good afternoon and welcome.

BOBBY TRUHE: Thank you. Chairman Briese, members of the committee, my name is Bobby Truhe, B-o-b-b-y T-r-u-h-e, and I work at a law firm here in Lincoln known as KSB School Law, so I have the privilege of getting to answer on behalf of many school districts in this state the very good questions that you're asking up here today. So I would be happy to do so. I come at a time when you've got dozens of schools and multiple states, literally, filing lawsuits against companies like JUUL, because of all the lost administrative time and resources committed to this issue. So I'm in support of LB862 for a couple of important reasons that many of you have asked about already. The first is that our current statute doesn't prohibit the possession of a carton of cigarettes or of a JUULing device or of a can of chewing tobacco. So there certainly are school rules that will address some of these things, but those consequences are significantly less under the Nebraska Student Discipline Act than they would be if a student committed a crime. All right? So hypothetically speaking, you've got a

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principal that is walking down a hallway and sees a JUULing device in a student's backpack. They're going to call somebody like me who's going to say, you need to call law enforcement because, Senator Wayne, to your questions, we actually have mandatory criminal law reporting obligations in the Student Discipline Act. If you look at Section 79-293 and Section 79-262, they require schools to develop a reporting policy with your county attorney. So there are some county attorneys that say, call me every time on a fight. There's some county attorneys that say, I don't care about a fistfight, handle it in-house. So most schools that call me about vaping issues though, my answer is, do you know if the kid used it? I'm not sure. How many kids walk around with them and not use them? Probably not very many, Bobby, so you better make a report. Because you're required to report any possible suspected violation of Nebraska law. The problem we have now is that law enforcement officer is not going to come down to the school and that SRO is not going to tag in and help you, because it's not a crime to simply possess the stick. So it could be that that law enforcement official coming in to help you will actually give the school a few more tools to address it. They also don't come because we're not sure what's in that little device every time. Right? So it could be nicotine, it could be flavored juice, it could be THC oil with a 90 percent concentration. It could be crazy stuff that kids do, like put Robitussin and bleach into these things by following a simple YouTube video. Part of the problem in our definition section of these laws right now is it doesn't clarify whether something actually must contain nicotine before any of these triggers start in the first place. So even if you see a student using it, oftentimes the SRO or law enforcement says, I'm not going to send 100 of these a year to the crime lab. They have much more important things to do than test that kid's little vapor packet. So what we have, in my opinion, is a bit of a blind spot in the law and this will help fix that. And I'll get to that in a second, too. The second thing it does is it clarifies that possession of that little device is unlawful, regardless of whether we can identify the contents of the cartridge or the vape that's coming out of it. I think that's significant because you're seeing students out there in schools-- we've had it happen in Nebraska-- that have been hospitalized for weeks because they get a device from somebody. They didn't get a JUUL from off the shelf that-- and they're vaping nicotine. They got something like what we call a "dank vape" that has vitamin E acetate and THC in it, or any of the other crazy substances, and we don't know what's in it for sure. So the big important thing here to me is, if you look at our law like we've talked about, possession of alcohol, Senator Wayne, that's an automatic referral;

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has to be under 79-293. Possession of the vaping device, not necessarily an automatic referral because if you haven't seen them use it, it's not a crime. The other important thing here is that the Nebraska Student Discipline Act actually doesn't allow increased consequences for possession of tobacco. Alcohol? You bet. Drugs? Absolutely. Tobacco is nowhere in the Student Discipline Act statute. So schools are kind of between a rock and a hard place. Law enforcement oftentimes won't come help because we can't identify the substance, and they can only stick with less consequences. If you've got a kid who's walking around with 20 of these things that you suspect is selling them, you can't expel that student from school for a number of reasons because, in the Student Discipline Act, we don't have that ability. I'd be happy to answer questions that you have.

BRIESE: Thank you for your testimony. Any questions? Senator Arch.

ARCH: Thank you. A question on the legality. Class V misdemeanor, is that the same as a minor in possession of alcohol?

BOBBY TRUHE: I, I was about to look that up, Senator. I'm not exactly sure--

ARCH: OK.

BOBBY TRUHE: --to be perfectly honest with you. In my world, it's a report under the current law because we don't know if it's a crime or not. I would assume they're similar, but I'm not sure and shouldn't say definitively.

ARCH: So if this, if this bill were to pass, it would be another category, though, of minor in possession?

BOBBY TRUHE: Correct. That would be my understanding, yeah, because it would now be unlawful to possess that little stick versus having to identify the substance before we'd know.

ARCH: Like, like we do with drugs, like we do with alcohol?

BOBBY TRUHE: You catch one student with drugs, one student with alcohol, one student with a vaping device, these two are subject to consequences. You have no idea what you can do with that one until we can get that liquid tested. It's just a frustrating position because I think for school purposes in terms of deterrence and awareness,

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they're just fundamentally treated differently under the law, which is why I call it a blind spot, so to speak.

ARCH: Thank you.

BRIESE: Thank you, Senator Arch. Anyone else? Senator Lowe.

LOWE: I just started thinking that if the marijuana petition drive passes, would this make it more stringent for a vaping device than to have marijuana in school?

BOBBY TRUHE: It's kind of a two-part answer, Senator, and it goes back to one of the questions that Senator Blood answered. What we have is difficulty right now reconciling laws like the Individuals with Disabilities and Education Act, the Americans with Disabilities Act. I think if the law passed in Nebraska-- and we've had the pilot medical marijuana program here in Nebraska-- and some schools have had to answer this question: Can I allow my school nurse to help this student either rub on the oil or take a vape even, because it's prohibited under state law, prohibited under federal law, but arguably required if the doctor says they need to have it? So I think what we would do is actually get a little more clarity, candidly, if that law passed and this law passed, because we would know that to the extent that it's been prescribed by a doctor, it's probably a reasonable accommodation under the Americans with Disabilities Act or Section 504 to the extent that it would be administered lawfully in school, based on a doctor's order. But if a student gets medical marijuana from their friend who has, has a prescription and brings it into school to use the device right now, we would either have to get the liquid tested, which is incredibly difficult and a huge use of resources, or we wouldn't know what we can do with that student, as the school, because you're not sure what's in the cartridge. Right? So I think what it would do is give schools more tools to involve law enforcement that aren't necessarily answering the call now, because they don't know if it's a crime in the first place, to come in and say: Hey, possession of this device is enough for us to confiscate it, a Fourth Amendment activity to take that away and test it if we want to, especially if we can support it with evidence, say, from the student who gave it to him or her: Yeah, this is part of my THC oil.

LOWE: All right.

BRIESE: Thank you, Senator Lowe. Senator Wayne.

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WAYNE: You said you're an attorney?

BOBBY TRUHE: I am.

WAYNE: OK. So does constructive possession apply to this, since that is part of our Nebraska case law?

BOBBY TRUHE: Yeah. Good question, Senator. To be honest, I haven't thought a ton about that. What I would say is to the extent that you actually have to see it used now, if the school called me and I would say, well, what if somebody, you know, you had two students sitting at a table and one of them left it there, my advice to them right now under the current law is you need to notify law enforcement because you, school administrator, are not an expert on constructive possession. In other words, if I'm not sure, the answer in their case is you have to call. So would a county attorney say that I'm going to prosecute for constructive possession? I'm not sure. But I can tell you that from my perspective, rather than risk my administrator not making a report, which their county attorney says they should, I'm going to say call and let them sort it out to the extent you have questions.

WAYNE: But under this law, right, if a 21-year-old is driving in a car and he has people under 18, he gets out of the car and go into the gas station, leaves the device there, all the minors can be charged with constructive possession underneath current law-- I mean underneath this bill. Correct?

BOBBY TRUHE: I think that is a possibility, yes. I mean, that to the extent they could if it was a bottle of Budweiser or anything else.

WAYNE: Absolutely.

BOBBY TRUHE: Yeah, I, I think that's probably right, Senator Wayne.

WAYNE: OK. So then applying that to the school setting, anybody who shares a locker, you could be constructively convicted if somebody else who you share a locker with brought a JUUL product and put it in your locker?

BOBBY TRUHE: Yeah, assuming the school, after an investigation that would be required, couldn't identify whose it was.

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WAYNE: I don't think it matters, does it, underneath constructive possession, as long as it's in the locker? You constructively possessed it.

BOBBY TRUHE: May, may, maybe not for criminal law purposes, but I can tell you that my principles aren't really out to bring the hammer down in cases that aren't clear, which is my perspective. But, but could a county attorney say we're going to charge both of them? Possibly so.

WAYNE: But underneath this bill, it would no longer be their discretion. They would have to turn it over.

BOBBY TRUHE: I'm saying schools are going to turn any device that they get over right now. That, that's the state of the law. What this does to me is specify that if you find somebody with a stick, you can call law enforcement and they'll help you figure out if that's Robitussin or menthol, you know, in the liquid. They're calling right now, it's just that they're not getting the back support because, unless you catch him using it, it's not a crime.

WAYNE: So at what point do we stop criminalizing schools?

BOBBY TRUHE: I think it's a great question. I mean, changing the Student Discipline Act would help address this, but, but I, I don't talk to many school administrators that say we need more crimes. I talk to school administrators that say we need help solving this problem.

WAYNE: So there would be a better solution in a bill to change the Student Administrative Discipline Act versus this?

BOBBY TRUHE: Possibly. I would argue that the Student Discipline Act, what it says right now is, if you look at 79-267, it's got your 13 things that you can be expelled for. Tobacco is not in there, but a violation of any of the state criminal laws or any state law, for that matter, if it causes a substantial interference with school purposes, could already serve as a basis. So if you catch a kid vaping right now, they can be expelled,--

WAYNE: Correct.

BOBBY TRUHE: --regardless of what happens, because it's a violation of state criminal law. So it would help, sure, to the extent that we put possession or use of tobacco and alternative nicotine products in the Student Discipline Act. Part of the reporting problem that we have,

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though, is it doesn't always happen right there neatly on school grounds. And so--

WAYNE: But you would agree, even your clients don't-- every time that there is a state violation, they don't turn it over to the police.

BOBBY TRUHE: Every time there's a state criminal code violation that could subject them to an expulsion at school, they're required by law to turn it over to law enforcement unless the county attorney says we don't want to hear it. 79-262 says every violation, unless your county attorney says we don't want to hear it.

WAYNE: So a kid walking up to a kid and punching a kid, that's an assault.

BOBBY TRUHE: Yep.

WAYNE: All right, they don't turn that over everywhere in the state.

BOBBY TRUHE: Hundred per-- any person that calls me is going to turn that over every single time, because that is an assault and you're required to report it as a principal of a public school. Now there could be county attorneys that say, I don't want to hear about every fistfight or stolen pencil or, you know, lobbed spitwad. There's some county attorneys that take the exact opposite approach of that. So what you're required to do under our current law, under 79-262, is have a conversation with them. What do you want us to report and not? It used to be that there was no discretion. A principal has to report everything. And so I think it's a good change to have the county attorney say, I don't want to hear about every lunchroom shoving match.

WAYNE: Thank you.

BRIESE: Thank you, Senator Wayne. Senator Moser.

MOSER: I don't know if this is something that's in your field of opinion or not. But if I was thinking deviously and trying to get away with something, not that I've ever had those kinds of ideas, but what would, what would happen if somebody packaged these inhalation nicotine systems in something that looks like something that an asthmatic or a person who has breathing problems use? Because a lot of those people carry those little puffer things, they have a little canister and a little funnel on the top and they breathe that stuff. Then you, then you'd wind up testing for steroids or whatever is in

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those huffing-- or not huffing, that's not a good term-- inhaler, thank you. Can you see that there could be a problem there?

BOBBY TRUHE: I would argue, Senator, that that problem may already exist. If, hypothetically, you were asking, have I ever gotten a call because students have manipulated the cartridge in an asthma inhaler to be able to ingest unlawful substances? The answer is absolutely yes.

MOSER: That's already happening?

BOBBY TRUHE: YouTube is a fundamental game-changer for allowing students to put crazy things in asthma inhalers and the little JUULing cartridges as we sit here today. The, the problem that we have in terms of a, a vaping device, whether it's created, self-created or, you know, somebody hands it to you or you buy it off a shelf with a fake ID, is it's not clear that just the possession of that right now is unlawful. So to the extent you've got kids doing crazy things like manipulating these devices, I'm telling you, it's happening as we sit here today.

MOSER: Those inhaler products are probably prescription?

BOBBY TRUHE: Typically, yes. A student with asthma, for example. Yeah.

MOSER: So you could check to see if they have a prescription for being in possession of that?

BOBBY TRUHE: Yeah, absolutely. And going back to Senator Lowe's point earlier, I think that would be something that schools are pretty comfortable dealing with. The notion of adding things that can be prescribed is not uncomfortable to them. They get requests like that all the time.

MOSER: OK. Thank you.

BOBBY TRUHE: Sure.

BRIESE: Thank you, Senator Moser. Anyone else? Seeing no further questions, thank you for your testimony.

BOBBY TRUHE: Thank you.

BRIESE: Any other proponents? Good afternoon and welcome.

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JULIE GORTEMAKER: Good afternoon, Chairman Briese and senators. Thank you for inviting me to speak on behalf of Grand Island Public Schools and the Nebraska Association of School Boards. My name is Julie Gortemaker, J-u-l-i-e G-o-r-t-e-m-a-k-e-r, and I'm a member of the Grand Island Public Schools Board of Education. I'm here to go on record and speak in favor of the passage of LB862, which would prohibit the possession by minors of nicotine and e-cigarette devices. The principals in Grand Island Public Schools and schools across the state have a difficult time enforcing the current law because visual evidence of a student actually using the product isn't always available. While district policies vary across the state with regard to possession of the devices, schools try to deter the possession and use of these products through school-related consequences. However, making the mere possession of these products against the law could act as another reason for students not to use. When trying to help students make good choices or steer them clear of the danger they are walking toward, it is always nice to have an extra tool to convince them, or in this case, a law. In Grand Island, our high school has dealt with a large number of students who use e-cigarettes. The addiction to high doses of nicotine seen in certain vaping devices is alarming. We see significant changes in student character, as in moodiness, laziness, and they give up easily, grades drop, and they damage relationships with friends, family, and teachers. We firmly believe that we need to keep these dangerous products out of the hands of the youth of Nebraska. I encourage you to move this bill out of committee and see that it becomes a law. Thank you, and I would be happy to take any questions.

BRIESE: Thank you for your testimony. Any questions of the committee?

WAYNE: I have a question.

BRIESE: Senator Wayne.

WAYNE: What area are you from again? I'm sorry.

JULIE GORTEMAKER: I'm from Grand Island.

WAYNE: Grand Island?

JULIE GORTEMAKER: Yes.

WAYNE: So let's say, hypothetically, this bill passes and somebody is cited. Do they get an attorney?

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JULIE GORTEMAKER: Are you speaking about the population of our schools kind of? About--

WAYNE: No, I'm speaking, if they go to-- if it's referred to the county attorney, do they get an attorney?

JULIE GORTEMAKER: I can't speak to that. You know, beyond the board of education, I don't see every single one of these. It gets referred, you know, principal and then to the SRO at the school. I'm not certain about exactly what the process would be for each individual student.

WAYNE: All right. Thank you.

BRIESE: Thank you, Senator Wayne. Any other questions? Seeing none, thank you for your testimony.

JULIE GORTEMAKER: Thank you.

BRIESE: Any other proponents? Seeing none, any testimony in opposition to LB862? Good afternoon and welcome.

NICK FAUSTMAN: Good afternoon. I'm Nick Faustman, N-i-c-k F-, as in Frank,-a-u-s-t-m-a-n. I'm the Nebraska government relations director for the American Cancer Society Cancer Action Network, which is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. And I'm here today to testify in opposition to LB862. Laws that penalize young persons for the purchase, use, and possession of tobacco are commonly referred to as PUP laws. That's PUP, the acronym for that, for those three. ACSCAN has always opposed these types of laws for several reasons, some of which were discussed last year during the General Affairs Committee hearing on Senator Quick's LB149. But nevertheless, we appreciate the opportunity to-- what this legislation presents to discuss why, or in greater detail the-- why the PUP laws are antiquated and ineffective. First, PUP laws divert the attention away from where it should be. Evidence-based best practices should focus penalties on the tobacco retailer who profits from the illegal sales, rather than the youth who is likely addicted to that product. What has been proven effective is holding retailers accountable with a dedicated enforcement entity, conducting active enforcement with penalties for noncompliant retailers, including graduated fines as well as license suspension and revocation for repeat offenders. Second, PUP laws are more difficult and systematically to enforce than

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sanctions against retailers. It is easier and more effective to conduct compliance checks for retailers who are fewer in number, compared to youth, and whose locations are both known and constant. The ease of discreetly possessing and using some tobacco products makes PUP laws even more challenging to enforce than laws restricting sales to minors. And lastly, there is little evidence that these types of laws are effective in deterring youth from using tobacco products. Tobacco is addictive and deadly. And just like adults, many youth tobacco users struggle to quit. And some research even suggests that penalizing youth could deter them from seeking support for cessation. Funding evidence-based tobacco prevention and cessation programs would be a far more beneficial alternative in helping youth and youth smokers quit-- youth and young adults quit.

BRIESE: Thank you, Mr. Faustman, for your testimony. Any questions?
Senator Blood.

BLOOD: Thank you, Chairman Briese. How are you today, Nick?

NICK FAUSTMAN: I'm doing well. How are you?

BLOOD: I am well, thank you. Hey, I, I am listening to your testimony and part of it, I agree with, and, and part of it, I'm not sure.

NICK FAUSTMAN: OK.

BLOOD: So did you hear the testimony earlier in reference to how people are gaining access to these products?

NICK FAUSTMAN: Yes.

BLOOD: They're likely not walking up to their local Walgreens or the liquor store down the street. They're likely getting them from the Internet. Would you say that that's true?

NICK FAUSTMAN: That's, that's one probable source, yeah, along with, you know, others.

BLOOD: And so part of the issue is, is that I hear what you're saying, that we should focus on retail, retailers. And as you know, Chapter 28 does a lot of focus on like what retailers can and cannot do when it comes to tobacco and nicotine products. But it really doesn't address the products that come from the Internet. And as you heard also in one

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of the previous people who spoke, kids are getting very creative with how they sneak things in.

NICK FAUSTMAN: Right.

BLOOD: Unfortunately, and a lot of kids have nothing but time on their hands, they're kind of like inmates in a prison. Right? They have nothing but time on their hands to try and figure out how to screw somebody over. So-- not that I think kids are inmates. But the point being, they have time on their hands, unfortunately, lots of times. And what I worry about is how, how do we stop this if we don't start holding the people who are actually accountable, accountable? I don't think in this particular case it's a matter of I'm selling you a bottle of beer, I'm selling you a pack of cigarettes. I think we have a different issue where we kind of have like an invisible retailer providing these things. And so we, we can't do anything when it comes to the federal government and commerce, because that's not our job as a state legislators. So how do we stop it? Does it not make sense to hold the young person accountable, who is knowingly doing it accountable?

NICK FAUSTMAN: Right. In this situation, as mentioned before, there, there are several schools, I think most schools in Lancaster County, for example, do have policies here. I, I do, I would say that my organization does see this more as a school issue, to use a phrase that I heard earlier. But to answer your question, what needs to be done to get a grasp on this issue is, is a lot of things. We need to be taking a comprehensive approach, and that would include funding cessation services at the state level, things like our quitline, tobacco quitline. And you have to be 16, by the way, to access that. You know, there are things that affect the pricing for these products that, that deter kids, keep them from smoking, or starting in the first place. And certainly smoke-free laws, for instance, as well. I mean, it's got to be a comprehensive approach to really get a handle on this problem.

BLOOD: So I don't disagree with a lot of what you say. I refer people to the smoke-free line all the time, and I think it's funded well. But I, I'm not hearing answers to where this, the vast majority of this is really coming from. And it's not-- I think the answers that you're giving me, I agree with storefronts, but it's not tackling the big issue where all of this is truly coming from. It's, it's our invisible

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retailer called the Internet. So you and I should talk outside of this.

NICK FAUSTMAN: Sure. I'd be happy to.

BLOOD: I appreciate your testimony. Thank you.

NICK FAUSTMAN: Thank you.

BRIESE: Thank you, Senator Blood. Senator Moser.

MOSER: I'm kind of surprised that you would testify against the bill when it attempts to correct things that you think are wrong.

NICK FAUSTMAN: Well, keep in mind, this is an addictive product. And we're concerned with helping that individual seek help to quit and--

MOSER: And you think penalizing it would promote it more than make them not want to do it?

NICK FAUSTMAN: I'm sorry?

MOSER: Well, making it illegal to possess and to use these products for anybody under age 21. Do you think that's going to cause more people to want to use it?

NICK FAUSTMAN: No, I don't necessarily think that. I just think that what we need to be doing is encouraging those folks to seek help to quit this addiction. If I, if I were a, a, let's say, 15-year-old who had been smoking since I was age 9, and I knew that I would get in trouble for having. If I wanted to seek cessation services or help from whatever service that is out there, I'm less likely to seek that service if I'm going to be hit with a, what is it, a misdemeanor level 5?

MOSER: All right. Thank you.

BRIESE: Thank you, Senator Moser. Any other questions? Seeing none, thank you for your testimony,--

NICK FAUSTMAN: All right.

BRIESE: --Mr. Faustman. Any other opponent testimony? Seeing none, any neutral testimony? Good afternoon and welcome.

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KATHY SIEFKEN: Good afternoon, Chairman Briese and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, and I'm here today on LB862 and representing the Nebraska Grocery Industry Association and the Nebraska Retail Federation. The bill, as originally written without the amendment, would have made it illegal for our clerks to be able to sell the product, stock the product, or perform carry-out services. Senator Hughes worked with us and brought the amendment. So with the amendment-- and this is one of those things where you're not sure how to come in and testify based on the original bill or the amendment. So if the amendment gets adopted, we would support the, the overall idea. However, I do understand the problems that Senator Wayne brought up. Maybe I've been doing this job a little bit too long, but I remember the day when the only people that came in to support making possession illegal were the people that sold the product. Because we've always felt that if you made possession illegal, it would cut down on the number of people that started using the product to begin with. In, in earlier testimony, I think, Senator Brandt, you had asked if there was a minimum age to sell. And there is not a minimum age to sell tobacco in the state of Nebraska. And there is not a problem with retailers selling. Our compliance rates are well over 90 percent. We are checked because of the Synar Amendment, so we've got the State Patrol out there doing compliance checks. We have FDA coming in on a regular basis doing compliance checks, and we also have local law enforcement who have grant dollars that are available to them to pay law enforcement to come in and check. So every time we turn around, we are, are used to being part of a compliance check. And the compliance check penalties if you, if you sell to a minor, are hefty enough where if you can't get it right, we have some stores that just completely quit selling tobacco because the fines are that hefty. So your first offense from FDA is a warning letter. Your-- and then it goes up to your sixth offense within 48 months is over \$11,000. So the penalties gradually increase until the hammer is so heavy that you just simply can't afford to continue to make those mistakes. The other thing I wanted to mention was that in about, I believe it was about 85 percent of-- CDC came out with statistics and about 85 percent of those people that have had serious illnesses as a result of vaping, they're adding THC oils to those open systems. These aren't the closed systems that you go in and, and purchase. So that's just an FYI so that you understand that, that the people that are really getting sick from vapor products are doing things that normal people probably wouldn't do. It's just a-- it's a health risk. So if you have any questions, I'd be happy to answer.

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BRIESE: Thank you for your testimony. Any questions? Senator Blood.

BLOOD: Thank you, Chairman Briese. So Kathy, I think you're probably a good person to ask this question to you. And I talked a little bit about this with Nick. I think part of the concern, and I'm assuming you have an opinion on this-- maybe I'm wrong-- is that the retailers we need to focus on aren't necessarily the grocery stores and the corner pharmacy, but the invisible retailers, the ones that are selling on the Internet, with very little restriction, to pretty much anybody. Would you say that that's--

KATHY SIEFKEN: I, I can't argue with that. I can tell you that your traditional, regular brick-and-mortar retailers are doing everything they can to not make those sales to minors. The products are now behind counters, they're locked up. There's usually an adult in the store. You get out into rural Nebraska and it, that changes a little bit. But I can't argue with that assessment.

BLOOD: And so, in your opinion, is it creating the state having to make laws to compensate for those irresponsible retailers that are not our brick-and-mortar stores?

KATHY SIEFKEN: Well, I think there are some things that could be done requiring signatures. We've already tried that, restricting those kind of shipments. I don't know how you do that.

BLOOD: Exactly.

KATHY SIEFKEN: It's very, very difficult.

BLOOD: It sounds like your answer is yes.

KATHY SIEFKEN: I guess the answer would be yes. But, but you also have to understand that when minors get ahold of these products, it's not your brick-and-mortar retailers.

BLOOD: Right.

KATHY SIEFKEN: It is family, it is friends, it's relatives. That's where a lot of them in the past have gotten products that they should not have been able to purchase.

BLOOD: I would disagree. I think that there's a large amount of that coming from the Internet, that--

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KATHY SIEFKEN: I think--

BLOOD: --people are able to bypass.

KATHY SIEFKEN: --t, and times have changed, and more of it is coming, probably, from the Internet.

BLOOD: I think when it was cigarettes, I think that that's true.

KATHY SIEFKEN: And I, I am talking about cigarettes.

BLOOD: Sales? OK, I appreciate it. Thank you.

LOWE: Thank you very much, Senator Blood. Senator Moser.

MOSER: Would the rules be the same for selling tobacco as for selling alcohol in retail stores? I mean the age limits of who can sell alcohol. Do you have to be 18 to sell alcohol now?

KATHY SIEFKEN: No. Well, no, you have to-- well, it, it's different. Alcohol is a completely different product. So right now, you have to be 19 to sell alcohol to someone that's over the age of 21. However, our carry-outs have to be 16 years of age or older and in the company of a 21-year-old, who is the purchaser, that's already been carded. So things are different in the alcohol world. And, and the penalties are fairly stiff also. And I believe if you sell three times within a four-year period, you lose your license. And, and locally, when alcohol is involved, if you are in violation of selling to a minor or an intoxicated person, you are required by the Liquor Control Commission to obtain training so that you know exactly what the laws are. And if you don't do that, you lose your license.

MOSER: But do you anticipate the system for selling tobacco products to be similar to alcohol once this law would pass, or you think these would be less stringent than alcohol?

KATHY SIEFKEN: I think, I think you run the risk of it being almost the same thing because DUIs and MIPs are very expensive to defend. People get attorneys.

MOSER: But now tobacco can be sold now by anybody that's running the register?

KATHY SIEFKEN: Yes.

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MOSER: There's no age limit?

KATHY SIEFKEN: There is not.

MOSER: And in this new law, there still would be no age limit for that?

KATHY SIEFKEN: As long as the amendment is adopted. But keep in mind, we have taken steps to make sure that the product is not sold to underage people. The product is locked up behind the-- is either locked up, lock and key, or it is behind the counter.

MOSER: OK.

KATHY SIEFKEN: And our concern really is when you get into some of the rural stores, some of our C-stores have one or two people working. And if the age to sell is not exempted out of this, they wouldn't be able to sell these items.

MOSER: OK. Thank you.

LOWE: Thank you very much, Senator Moser. Are there any other questions? Seeing none, thank you very much.

KATHY SIEFKEN: Thank you.

LOWE: Turn it back over to you, Senator Briese.

BRIESE: Thank you, Vice Chair Lowe. Any other neutral testimony? Good afternoon and welcome.

MAGGIE BALLARD: Good afternoon. My name is Maggie Ballard, spelled M-a-g-g-i-e, last name B-, as in boy, a-l-l-a-r-d. I work at Heartland Family Service, which I'll talk a little bit more about on the next bill that's on the agenda. But I just wanted to provide some information. Obviously, I'm here in a neutral capacity. Wasn't planning on testifying at all, but with some of the conversation that's been had, I think it's important to note that what I do as a prevention specialist. I am very passionate about the work that is done with the Legislature. So fortunately, my job allows me to oversee bills that would affect any of the 50 programs that Heartland Family Service has. But 80 percent of my time is spent in substance abuse prevention, and a lot of that time is spent going into middle schools. I do presentations to seventh and eighth graders, we're in about 16 different middle schools across the Omaha metro area into the Iowa

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side. And overwhelmingly the substance that principals and teachers are always talking about that they're seeing in their schools is it's, it's vaping. And it's something that, you know, when I'm giving presentations, the seventh and eighth graders will talk about-- I mean, that's the example that they're always using. That's their temptation, that's what they see their friends using. That's, you know, one of the earliest substances that they're exposed to. I, like I said, I don't have the answer for whether or not this is the best way to address it. But obviously there are-- have been testimony today talking about how this is an issue in schools. And I think that if the Legislature has an opportunity to do something that can help the schools, that needs to be done. I also feel compelled to come forward and share some information based on a question that Senator Lowe had asked a gentleman behind me about what happens if, for instance, a student is prescribed something like Nicorette or another cessation product and how that compares to what happens if someone is-- if the ballot initiative were to pass and medical marijuana were to become legal in Nebraska. So I thought that it was really important to provide information about that, because that's another misconception that revolves around marijuana and the policy around marijuana. So with marijuana currently being a schedule 1 substance, even in states that have legalized it, it cannot be prescribed. So I'll say that again, marijuana, no matter where in the United States, it cannot be prescribed. What happens is that a patient goes in, they have a list of conditions that are decided upon not by medical professionals, but by legislators who say, if you have this condition then you can go to your doctor and the doctor says, yes, you have that condition, then if I have that card signed, I could go to the dispensary, the pot shop, and then that's where I would get, you know, my pot brownies or my THC oils that I could vape, you know, 90 percent THC, whatever that is. But I just wanted to give some clarification on that process.

BRIESE: OK, thank you for your testimony. Any questions? Seeing none, thank you again. Any other neutral testimony? Good afternoon and welcome.

TIM KEIGHER: Good afternoon, thank you. For the record, my name is Tim Keigher, it's T-i-m K-e-i-g-h-e-r, and I appear before you today as the registered lobbyist and executive director of the Nebraska Petroleum Marketers and Convenience Store Association. I guess I kind of debated as to whether to weigh-in on this issue or not. We as retailers are fined in stings, we are fined all the time for various things. And it does frustrate us that the people who are possessing

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these items have no consequence. I do understand where Senator Wayne is coming from. You know, do I want to make it a, a huge crime for them to possess a pack of cigarettes? No. But I guess after the health community got up here and opposed the bill, I really question their motive on that. It's no different than alcohol, I guess. You know, the retailer is fined for selling alcohol to underage people, the person possessing alcohol is fined. And I guess, you know, at the end of the day, I'm probably more supportive of the bill than I am neutral. But that's, that's kind of where I'm at. So I'd be happy to answer any questions.

BRIESE: Thank you for your testimony. Any questions? Senator Blood.

BLOOD: Thank you, Chairman Briese. Do you sell glycerin and propylene glycol in your store next to--

TIM KEIGHER: I'm sure we do in the antifreeze, yes. I believe that is a part of--

BLOOD: But not next to any of the vaping products.

TIM KEIGHER: I couldn't answer that for sure, but I would assume not. It's probably in the automotive section, section, yes.

BLOOD: So knowing--

TIM KEIGHER: I couldn't speak for every one of my members on what exactly they do in every store.

BLOOD: So knowing that a child can go onto Amazon and order two 16-ounce bottles for \$20 to vape with, and you just said exactly where it should, automotive.

TIM KEIGHER: Right.

BLOOD: Because we, we're all smart enough to know we don't drink propylene, propylene glycol, right?

TIM KEIGHER: I try not to.

BLOOD: Yeah, not purposely, no matter how delicious it looks. So knowing that, do you personally feel that there's a greater need for this bill, knowing that a lot of what we're talking about really has nothing to do with you guys? It has to do with the ne'er-do-wells that

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are able to hide behind the Internet and sell this stuff to kids and poison our children.

TIM KEIGHER: I mean, that is a totally different avenue, I guess. I mean, I don't know how you can control what is sold by the Internet. I know if you have alcohol shipped, I belong to a few wine clubs, and I have to sign for it or an adult has to sign for the wine when it comes. But, you know, is that going to totally solve the problem? I don't know. It would help,

BLOOD: But we're trying to make people who are doing it responsible, who obviously know it's against the law because they're buying the stuff from the Internet.

TIM KEIGHER: Correct. Yes.

BLOOD: All right. Thank you very much.

BRIESE: Thank you, Senator Blood. Any other questions? Seeing none, thank you for your testimony.

TIM KEIGHER: Thank you.

BRIESE: Any other neutral testimony? Good afternoon and welcome.

TIM BOWEN: Hi. My name is Tim Bowen, T-i-m B-o-w-e-n. I represent both the Nebraska Vape Vendors Association, Vape Vendors Alliance, and also a company called Alohma, which was Nebraska's first brick-and-mortar vape store. There are several things that are in the works that you may all be aware of, or may not. The first is that there is legislation now and control over the JUUL pod device, which is like this. And the decision has been made to disallow the selling of flavored pods. We anticipate that if flavors are the reasons that children are going for the JUUL pods, that we should see a significant reduction in them getting those. OK? There are several other devices that are on the market that are prefilled pods, and those pods come with flavors. So all of these guys that were in the business of selling these high-nicotine devices are going to see reduction in sales, we believe. Now, those pods are still available on the Internet, and it has been, you know, an issue. This is my fifth year of coming to visit you all, has been access, access, access. My personal feeling is that we should put this lifesaving technology only in the hands of vapor stores. That, however, denies people, others that are in the retail business, you know, from selling the product,

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distributing it, making money. The, the vapor industry has not been subject to many-- well, we've been subject to a lot of stings. We have not been cited for many stings, meaning that the, that the vapor industry in the retail format does a pretty good job of identifying its customers and getting the required age verification. We've heard several testimonies today about a failure to follow through on enforcement. For example, I was unaware of the student disciplinary act. I was unaware of the fact that our, our schools are mandated legally and directed to report such things as possession of tobacco, alcohol, etcetera, etcetera. I would in some way consider that before you make decisions on, you know, possession of these devices solely, in 2015, we came up and I discussed parents that are-- that have children that have been smoking since they were 13, and those parents coming in and trying to obtain these devices so that their kids could cessate or at least use something that was less harmful. And one of the senators that afternoon-- I'll never forget-- said, you know, I guess that falls-- because this provision says that you can get off scot-free if you just tell on who it was that gave you the device or sold you the device. And one of the senators said that day, well, I guess that falls under "what stays in the home--" or "what happens in the home stays in the home." With that, if there are any questions--

BRIESE: Thank you for your testimony.

TIM BOWEN: My pleasure.

BRIESE: Any questions? Seeing none, thank you again. Any other neutral testimony? Good afternoon and welcome.

SCOTT LAUTENBAUGH: Good afternoon. Mr. Chairman and members of the committee, my name is Scott Lautenbaugh, excuse me, L-a-u-t-e-n-b-a-u-g-h. I represent the Nebraska Vape Vendors Association. And we are neutral on this. I am neutral on this as well. I understand the pressure you feel to do something. Something needs to be done. I've been where you are. I was here for Safe Haven and it's much less popular sequel, Safe Haven 2: the special session. So sometimes we rush to do something. I don't think that's this bill. What I would say is this. I don't vape, you don't vape. Some adults choose to vape. My clients employ people in Nebraska. They're responsible Nebraska business people who do not want kids vaping. We, we compromised on the 19 years last session; we were fine with that. We're neutral on this bill as well. All we would ask is, we are a stakeholder in this process as well. So as these things move forward or as other ideas about vaping come to mind, we are Nebraska

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businesses. We employ people. And we're not trying to get kids hooked on anything. We're trying to help some adults, and we do. And some adults choose to do this activity. And we should be careful not to run rush-- roughshod over their ability to choose to do that, if they choose to do it. I'd be happy to take any questions you might have.

BRIESE: Thank you for your testimony. Any questions? Seeing none, thank you again. Any other neutral testimony? Seeing none, I think we do have a couple of letters for the record: one in support, from the Nebraska County Attorneys Association; and one in opposition, from the American Heart Association. Senator Hughes, would you like to close? Senator Hughes waives closing. Thank you. Thank you for being here with us today. We'll turn the chairmanship duties over the Vice Chair Lowe, and see you accordingly.

LOWE: Welcome, Chairman Briese, to your committee. Begin when you are ready.

BRIESE: Thank you, Vice Chair Lowe, and good afternoon to yourself and committee members. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent District 41. I'm here today to present for your consideration LB1064. This is a simple bill which raises the legal age for use of cigarettes, cigars, electronic nicotine delivery systems, alternative nicotine products, and tobacco products to 21 years of age. Last session, this committee heard LB149, which considered raising the legal age for use of cigarettes, cigars, ENDS devices, and tobacco products to 21 years of age. The committee reached a compromise and advanced the bill with the legal age for such products at 19. That bill passed the full Legislature, went into effect January 1st, 2020. Following the passage of LB149, the legal age for use of such products in Nebraska was raised from 18 to 19 years of age, and this was done in an effort to help discourage and reduce youth access to such products, especially ENDS vaping devices, while maintaining the choice to use such products by adults. However, change at the federal level on December 19-- 2019, raised the federal age for use of such products to 21. This created enforcement confusion at the state level. In order to demonstrate the important need to raise the legal age to 21 through LB1064, I'll walk you through some background and timing information. In an effort to curb youth use, excuse me, youth use of traditional and e-cigarettes, Congress included a raise in the age to buy tobacco and broader legislation funding domestic programs. President Trump then signed the underlying measure, which included raising the age to use or purchase tobacco to 21 years on December

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20th, 2019. Shortly after the legislation was signed, the FDA released a statement on its website indicating that the change would take place immediately, making it currently illegal at the federal level to sell tobacco to those under 21. However, Nebraska state law, pursuant to LB149, went into effect January 1st, 2020, to raise the age to 19. This created confusion for retailers, purchasers, and enforcement officers on what legal age to enforce here in Nebraska. Nebraska Attorney General Doug Peterson issued a statement on December 31st, 2019, which indicated that since, that since Nebraska law stated 19 as the legal age, Nebraska law enforcement and agencies would only be enforcing the age of 19 unless a change is made by the Legislature. This inconsistency leaves Nebraska businesses and enforcement officers somewhat unsure of how to proceed. Even if Nebraska state enforcement officers were only to enforce the age of 19 on retailers here in Nebraska, the FDA can still enforce a federal age of 21. The FDA can do compliance checks in Nebraska businesses, enforcing the federal age limit and can issue a civil fine if that business is selling to 19 or 20-year-olds, even though under current state law that's legal in Nebraska. This is causing continued confusion and uncertainty for businesses. Several businesses have already switched to selling only for those 21 years and older, while others indicated an intention to continue utilizing the Nebraska legal age for purchase of 19, thus allowing a patchwork of age limits to be present across Nebraska. Many retailers are also unsure what signage to display and how to move forward with training employees. There's additional consequences if Nebraska does not match the federal law regarding the age to purchase tobacco or cigarette products. If we do not raise and enforce a new federal age of 21, we will at-- we could at some point risk losing certain federal block grants. Similar additional penalties and consequences are likely in the future if we do not match up with the federal law. The Attorney General's Office encourages and supports this change for purposes of consistency and clarity. The operative date of this bill would be June 1st, 2020. That date was a result of discussion with the AG's Office and retail groups to ensure that proper signage, training, and enforcement mechanisms would be in place to ensure a smooth transition to the new federal age limit. Matching state and federal law on the age limit for tobacco and cigarette products helps ease confusions for Nebraska residents, businesses, and enforcement officers and protects Nebraska retailers from federal civil penalties. This change would also further support an effort to curtail teen tobacco and e-cigarette use that continues to be identified as a major issue in our schools and communities. Without these changes, we're putting Nebraska retailers at risk and allowing

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confusion to continue for these retailers, enforcement officers, and the public. Therefore, I ask for your support of LB1064 and its advancement to General File. With that, I'm happy to try to answer any questions you may have.

LOWE: Thank you, Chairman Briese. Are there any questions? Seeing none, will you stick around to close?

BRIESE: I'll certainly be here.

LOWE: Thank you.

BRIESE: Thank you.

LOWE: We are now open for oppo-- for proponents. Well, welcome back.

MAGGIE BALLARD: Yeah, quick turnaround.

LOWE: You may begin when you're ready.

MAGGIE BALLARD: Good afternoon, Vice Chairman Lowe and members of the General Affairs Committee. Once again, my name is Maggie Ballard, M-a-g-g-i-e, last name B-a-l-l-a-r-d, and I work at Heartland Family Service. I thank you for the opportunity to come speak to you today about a topic I'm passionate about. And I thank Senator Briese for bringing this bill forward. As I stated earlier, Heartland Family Service, we're a large nonprofit agency that serves 54,000 individuals and families in east-central Nebraska and southwest Iowa. We have 15 locations and 50 programs, including substance abuse prevention. I serve as our agency's legislative advocacy facilitator. But most of my time, like I talked about, is spent in the area of substance abuse prevention. And Heartland also serves as the fiscal agent for MOTAC, the Metro Omaha Tobacco Action Coalition. MOTAC has provided me with information and data I have attached to this testimony, which I encourage you to look over, especially if you have any doubts as to why increasing the age to 21 can make such a positive difference. I think we can probably all agree that raising the age of purchasing tobacco and nicotine products to 21 is not only good public health policy, but also sound legal policy, as like Senator Briese pointed out, it puts Nebraska in law-- in line with the newly implemented federal law. We also very much feel that increasing the legal age to 21 will be good for our clients at Heartland, of whom a disproportionate amount use nicotine. But I wanted to address a common argument or concern that I often hear when tobacco 21 laws are

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mentioned, which is the issue of inconsistency. And I'm sure that all of you have probably heard people complain about that as well. People say things like so, you know, a young person can sign away their life and they can join the military at age 18, but they can't smoke a cigarette. You know, young men must sign up for the draft at 18. You can sign up for the military at age 17. The legal age of adulthood in most states is 18, but in Nebraska it's 19, the drinking age is 21. You can't rent a car till you're 25. I mean, there's so many numbers and we need more consistency. So that's something that I often come across. And to that I would argue that, if consistency is what you're after, then each of those things would or should be raised to the age of 21 or 25, and that's because we have so much scientific evidence that maybe hasn't caught up to our laws yet, but that shows or demonstrates that the human brain is not fully developed until the age of 25. So I would also point out that there are some powerful industries that may agree on paper to abide by the law of not wanting anyone but adults to use their products. There is, you know, a man here who talked about his businesses wanting to make sure to sell to adults. And I think that that's true. But when you go to, you know, the top of the corporate ladder, I think that, well, it's no secret that there have been a lot of strategies put into place to advertise to people who are not of legal age. So like I said, if you would like to get me very riled up, I could spend some more time talking about that. But for the sake of time, I will simply conclude by asking you to please support this bill and voting it out of committee so that Nebraska can be added to this list of states that puts the health of its residents first. And I'd be happy to answer any questions.

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

MAGGIE BALLARD: Thank you.

LOWE: Next proponent.

KATHY SIEFKEN: Good afternoon, committee members.

LOWE: Good afternoon.

KATHY SIEFKEN: My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today in support of this bill. And we would like to thank Senator, Senator Briese for bringing the bill. Since FDA came out with their, their change in federal regulations that have not had a final rule published, which brought the AG's Opinion up that we're-- that the age

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of 19 is the age to sell in Nebraska, our members are-- it's just sort of a toss it up in the air and decide what you want to do in your community. That's how they make their decision. This bill will level the playing field from, for all retailers across the state. And it brings us into compliance with FDA prior to the time that their final rule will be published. And it, it really is something that we need to do in this state. So if you have any questions, I'd be happy to answer.

LOWE: Thank you very much. Questions? Senator Arch.

ARCH: Thank you, thank you. So do you have any idea what the anticipated publishing of the final rule would be?

KATHY SIEFKEN: Well, when you do the math and the time constraints and publishing, the earliest they could come out is mid-June. And that's one of the reasons we asked for early June.

ARCH: June 1.

KATHY SIEFKEN: June 1, because, number one, it's an easy date to remember. Number two, we'll be there before the feds mandate it. And that means that everyone will be in compliance by that time. It also allows us to transition and for people to update their point-of-sale systems.

ARCH: Thank you.

LOWE: Thank you very much. Any other questions? Thank you very much.

KATHY SIEFKEN: Thank you.

LOWE: Welcome.

ANDY HALE: Thank you. Good afternoon, Senator Lowe, members of the committee. My name is Andy Hale, A-n-d-y H-a-l-e, and I am vice president of advocacy for the Nebraska Hospital Association. I want to thank Senator Briese and his staff for bringing this bill. Hospitals were part of a healthcare coalition. We're always supportive of cessation and those sorts of attempts, and so we are in support of this bill. We think it's good policy. And again, following on the previous testifiers, we think this will help overall with the healthcare needs and costs. So I'll be brief.

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LOWE: Thank you very much. Are there any questions? Thank you.

ANDY HALE: Thank you, Senator.

TIM KEIGHER: Good afternoon, again.

LOWE: Welcome back.

TIM KEIGHER: My name is Tim, T-i-m K-e-i-g-h-e-r, representing the Nebraska Petroleum Marketers and Convenience Store Association here in support of-- I'll have to look at the number, I forgot it already; apologize for that. But I guess our association took a stance last year, moving the age from 18 to 21, in opposition. We were one of the organizations that said, you know, if you can go to war and you can do other things, that you ought to be able to buy a pack of cigarettes. But now that the feds have come out and moved it to 21, we feel that moving it to 21 in the state of Nebraska is the right thing to do to keep the consistency. Like Ms. Siefken's members, I have some that are following the Nebraska state law and some that are following the federal law. It's confusing. So we're in support of the bill. Thanks.

LOWE: Thank you very much. Any questions? Seeing none.

TIM KEIGHER: Thanks.

LOWE: Welcome.

MEGHAN STOPPEL: Good afternoon, Chairman Lowe and members of the committee. My name is Meghan Stoppel, M-e-g-h-a-n S-t-o-p-p-e-l, I'm an assistant Attorney General and chief of the Consumer Protection Division in the Nebraska Attorney General's Office. I'm here to testify in support of LB1064. Senator Briese thoroughly covered much of the content of my anticipated testimony, including the dilemma faced by law enforcement, state agencies, businesses, and Nebraska consumers following the enactment of H.R. 1865 at the federal level at the end of last calendar year. To put it succinctly, LB1064 resolves this dilemma and the differences between Nebraska state law, as it's currently written, and the new federal law, as it will be implemented and enforced by the FDA. I want to hit on something that Senator Briese men-- mentioned briefly in passing, though, that in addition to the benefits of harmonization, LB1064 also ensures that Nebraska's-- Nebraska continues to receive those federal block grants that we have been consistently receiving. And while this is certainly not explicitly contemplated in the text of the bill, it is a significant

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incidental effect of implementing LB1064. The U.S. Congress enacted-- or conditions the state's receipt of certain block grants regarding mental health and substance abuse on states' record of enforcing compliance with underage sales laws for both cigarettes and tobacco products. Known as the Synar Amendment, this conditional grant system was established in 1992, with Nebraska subsequently receiving millions of dollars as a result. Not only did H.R. 1865 at the federal level establish the minimum purchase age of 21, it also amended the Synar Amendment grant conditions. Formerly, states simply needed to have a successful compliance program for meeting an age 18 minimum. Now states need to successfully meet compliance requirements for an age 21 minimum. Nebraska does not have a specific enabling statute for its compliance program. Instead, Nebraska law enforcement, state agencies, and concerned public health groups work collaboratively to ensure compliance. That work relies upon minimum age enforcement authority gained through Nebraska Revised Statute Sections 28-1418 to 28-1429.03. LB1064 will not only raise the minimum purchase age to 21, it will allow these compliance program partnerships to work in harmony with both state law and the federal grant conditions. Our office understands that public health, commercial industry, as you've heard from before, and many other stakeholders support LB1064. We, too, support its implementation. Thank you for your time today.

LOWE: Thank you, Ms. Stoppel. Are there any questions? Seeing none, you covered it.

MEGHAN STOPPEL: Thank you.

LOWE: Are there any more proponents? We will now move to opposition. Seeing none, anybody in the neutral? Seeing none, Senator Briese, would you like to close?

BRIESE: Thank you, Chairman Lowe. I don't really have any closing. I think the testifiers really gave us some great testimony here today and probably answered most any questions anybody would have. But if there's anything I can try to answer, I would.

LOWE: Thank you very much. Any questions? Thank you, Chairman Briese. We have letters in support from the League of Nebraska Municipalities and JUUL Lab. We have a letter in opposition from the American Cancer Action Network, and we have a neutral letter from the American Heart Association. That does it for LB1064. We'll move on now to LB1176, Senator Briese.

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BRIESE: Thank you again, Vice Chairman Lowe. And good afternoon again, Vice Chair and members. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent District 41. I'm here today for your consideration of LB1176, which bans certain flavored vapor products from sale here in Nebraska. I'm sure you've already heard there's been a lot of discussion, and we talked about it on the last bill, but especially over the last year, about the increasing issues associated with teen use of vaping, e-cigarette, and ENDS products rising, according to many, to epidemic levels. There is a general overall view that one of the leading causes of this teen vaping epidemic is flavored vapor products, especially systems using an enclosed cartridge pod or unit sealed by the manufacturer for use in an electronic nicotine delivery system. The intent of LB1176 is to help address this vaping epidemic by prohibiting the sale of vapor-- excuse me, flavored liquid here in Nebraska. Under LB1176, flavored liquid is defined within the bill. I would read that to you, but you'll be able to find it in there. Flavored liquid does not include such liquids that are menthol or tobacco flavored or intended to be used in and that are used in open tank-based refillable electronic nicotine delivery systems, rather flavored liquid is defined specifically to chocolate, vanilla, honey, cocoa, or any fruit, candy, dessert, alcoholic beverage, herb, or spice, including but not limited to those items. Under LB1176, whoever shall give, sell, or furnish in any way, any flavored liquid as defined is guilty of a Class 3 misdemeanor. The language of LB1176 was drafted to mirror as closely as possible current FDA enforcement priorities on these products in order to help curb youth use and access to such products while still allowing legal adults a choice to use such products, especially when using as a smoking cessation device. Since 2016, the FDA has required all cigarettes to get premarket authorization, it's my understanding that so far no manufacturers have attained this authorization. But beginning in 2017, the FDA started to see a market increase in complaints about ENDS products, especially when pertaining to minors' access to and use of these products. As of 2018, the FDA had data that e-cigarette use had increased considerably among U.S. middle and high school students. Specifically, e-cigarette use among high school students had increased by 78 percent between 2017 and 2018. In 2019, two of the largest surveys of tobacco use among youth found that e-cigarette use has hit the highest levels ever recorded. As of December 2019, there have been approximately 2,500 reported cases of hospitalization for lung injuries associated with vaping products, including 54 confirmed deaths. As a res-- much as a result of this, in January, 2020, the FDA issued a guidance document for the industry indicating that for ENDS

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products marketed without FDA authorization, the FDA intends to prioritize enforcement against, quote, any flavored cartridge-based ENDS product other than tobacco or menthol-flavored ENDS products. Under this policy, the FDA has announced that companies that do not cease manufacture, distribution, and sale of unauthorized flavor cartridge-based e-cigarettes other than tobacco or menthol within 30 days risk FDA enforcement action. It is this policy and language where LB1176 draws its intent. And note that the FDA exempted the tank-based flavored vapes from their prioritized enforcement. This was in recognition of the potential for these flavored vapes to perhaps help adult cigarette tobacco and vape users to overcome their addictions. In doing so, the FDA has found that tank-based vapes are unlikely to be accessed by youth. It is also more difficult to conceal and use tank-based refillable ENDS systems, which would help address the frequent concern by schools with the use of the products in school and on school grounds. And note that the FDA also exempts menthol and tobacco-flavored pod vapes from their prioritized enforcement. This was based on a finding that youth preference for menthol on tobacco flavored e-cigarettes is much lower than that for mint and fruit-flavored e-cigarettes. By not prioritizing menthol and tank-based products, the FDA, and I quote, attempted to balance the public health concerns related to youth use of ENDS products with considerations regarding addicted adult cigarette smokers who may try to use ENDS products to transition away from combustible tobacco products, unquote. This bill, LB1176, also excludes menthol- and tobacco-flavored products and the tanks-based system, zeroing in on the flavored cartridges instead, in an effort to balance the same competing interests recognized by the FDA. With that said, I'm happy to work with interested parties on this bill. The particular approach here in LB1176 is an attempt to consider what is being done at the federal level, as well as weigh the potential benefits of these devices and flavors in smoking cessation by adults with the negative effects of access and addiction to youth. And I think some of the same arguments and considerations we talked about on the last bill are true here. The clarity and consistency trying to make state, state law consistent with FDA regulations on, on the flavored cartridge vapes. And I ask for your consideration of this bill and believe this is an important discussion to have, and I encourage the advancement of LB1176 as an option to help address a youth teen vaping crisis currently facing Nebraska constituents and communities. And with that, I'd be happy to try to answer any questions that you might have.

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LOWE: Thank you, Chairman Briese. Senator Blood.

BLOOD: Thank you, Senator Lowe. Thank you, Senator Briese, for bringing another bill today. So a lot of what you read was from the January 2nd, 2020, press release from the FDA, correct?

BRIESE: 2020.

BLOOD: The 1/2/2020 press release from--

BRIESE: I believe so, yes.

BLOOD: And so-- which is one of the things I read to get ready for this hearing. So the concern I have, and I've actually heard you say this concern on the floor before, so I'm a little confused. So the FDA has said that they're going to consider these product, products illegally marketed and that they are subject to enforcement. Correct?

BRIESE: Yes.

BLOOD: And it's at the FDA's discretion?

BRIESE: The FDA's discretion?

BLOOD: That's what their press release says.

BRIESE: At some point I assume they'll be doing compliance checks on these products. And whether it's their discretion or not, retailers, Nebraska retailers will be at risk.

BLOOD: I'm sorry. How are the retailers at risk?

BRIESE: If they decide to do compliance checks relative to the sale of flavored cartridge-based vapes.

BLOOD: But they would be doing that because they chose to ignore the FDA regulations, would that not be correct?

BRIESE: Nebraska retailers?

BLOOD: Yes.

BRIESE: Yes, that would be true.

BLOOD: So what I'm confused about is why do we need this in state statute. You say to be consistent with the federal government. But

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I've heard you say on the floor before that if it's already at the federal level, why do we need it at the state level?

BRIESE: I think I have said that in the past before.

BLOOD: I know you have.

BRIESE: Well, I can't recall exactly when I said it, but I think I did it. But anyway, but in this situation you're gonna have retailers that choose to ignore FDA pronouncements and FDA enforcements, thinking that the feds aren't going to come visit me, I'll take my chances on this. On the other hand, you're going to have retailers who are going to say, well, that's the F-- that's the federal regulation on this, and I'm going to comply with it. And to me, that creates an unfair advantage for those retailers choosing to roll the dice, so to speak. So I think it's important to have that in there for consistency and clarity. So our retailers know what to do, and so we aren't giving some of these retailers, really the option under state law to go ahead and snub their noses at the FDA.

BLOOD: Oh, how are we giving them the option, just by not codifying it--

BRIESE: Right.

BLOOD: --in our state statute?

BRIESE: Right. Yeah.

BLOOD: But wouldn't those same retail, retailers have the same option to ignore us just like they would the federal government?

BRIESE: Well, their--

BLOOD: Are you saying ours is more likely to impress upon them?

BRIESE: It would-- they can do that at their own peril. Local law enforcement is charged with enforcing state law, and if we codify this in state statute, they could be prosecuted locally.

BLOOD: So is that your personal opinion that everything that's in federal law should be codified in state statute?

BRIESE: In this situation, yes. I'm not sure about everywhere, everything.

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BLOOD: What is the defining difference for you?

BRIESE: Defining difference? You would have to give me examples. I don't have a standard. I hadn't really thought about that as far as this relative to anything else.

BLOOD: I don't know, technology? Technology, maybe?

BRIESE: No, I had thought about it.

BLOOD: OK. So-- and we can talk, because I know all of us eventually want to go home today, we can talk more about it on the floor. But I have to say that, unlike the previous bill, I see law already put into place, and I have not been compelled yet. I, I will talk to you tomorrow about it to see why we need to codify something that's already-- has the ability to be enforced by the federal government.

BRIESE: Um-hum. Well, well--

BLOOD: So kind of mull that over, and maybe we can talk about it tomorrow.

BRIESE: My response is the tobacco 21 can also be enforced by the federal government. So we're talking about a very similar situation here, in my view. And the same arguments in support of 21 in Nebraska, I think also lends, lend themselves well to the discussion here.

BLOOD: But I think you talk about two different things, you're talking about people and product. This bill's about the product, your previous bill is about people. That's where I see the difference.

BRIESE: Yeah, a distinction without a difference, perhaps, but--

BLOOD: Thank you, Senator.

LOWE: Thank you, Senator Blood. Are there any other questions? Senator Wayne.

WAYNE: I just-- I was reading through this bill and I was just slightly confused. So at the federal level, it was my understanding that they were trying to ban or go after, like, JUULs, the closed pods. And I'm unclear if this bill goes beyond that.

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BRIESE: The intent of this bill, anyway, is to be limited to the enclosed flavored pods, excepting menthol and tobacco flavors. But yes, the enclosed parts is what this bill addresses.

WAYNE: So it isn't trying to go after all flavors?

BRIESE: All flavors except menthol and tobacco flavor.

WAYNE: Well you--

BRIESE: Well, in the closed pod.

WAYNE: In the closed pod.

BRIESE: Yes, yes. Yes, very true.

WAYNE: OK. And then I know the FDA wants to do that, but I thought there was like this-- I don't know the name of it, but there's some kind of either application or Q and A or something in the rulemaking where they're extending it to like 2022? Is this premature?

BRIESE: I wasn't aware of that, but it's possible that the FDA could, could-- it's my understanding, anyway, that the FDA could possibly back away, for example, from some of these flavors or even the pod-based flavors in general. They could back away from that. But I think eventually, I think it's very likely that they're gonna begin enforcement of the, of the flavored or pod, enclosed pod systems.

WAYNE: OK.

BRIESE: But again, I think they can back away at some point. Right now, we're just simply matching up with them. And there's you know, there's some folks that, who have suggested that maybe, maybe this ought to be drafted or amended in such a way that we back away if the FDA does also. And so that would be a reasonable thing. That's something that the committee should consider, I think.

WAYNE: OK.

BRIESE: That's a reasonable request.

WAYNE: OK. Thank you.

LOWE: Thank you, Senator Wayne. Senator Moser.

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MOSEER: What are tank-based?

BRIESE: Tank-based. I'm not a vape guy. You know, I've never, I never used it.

MOSEER: [INAUDIBLE].

BRIESE: But it's my understanding that they are, they are bigger item, they're more difficult to conceal. I think you go to the vape store, you fill them up, take them home with you, as opposed to the little pods that, you know, are more concealable.

MOSEER: All right.

BRIESE: And it's my understanding that, I think Senator Wayne maybe can--

MOSEER: Yeah, I just look to him as an expert, yes.

BRIESE: Thank you, Senator.

MOSEER: Quite often I rely on his advice.

BRIESE: But I think the FDA made the finding that when you're talking about youth use of these products, the enclosed pods are much more attractive to youth, and along with the flavors.

MOSEER: OK.

BRIESE: I think the FDA originally started out banning all flavors, but then they recognized the potential for some of these items to be able to be helpful in smoking cessation, cessation activities. And, you know, that was a reasonable place to be. We're simply trying to match up with that and with what we're trying to do here.

MOSEER: OK. Thank you.

BRIESE: And possibly going back to Senator Wayne's thought about what I-- that discussion there that, you know, FDA may back away at some point a little bit, and maybe we ought to sort of write that in also. But that's something we can talk about as a committee.

LOWE: Thank you very much, Senator Moser. Any other questions? I've got one. Last year we had-- there was a lot of discussion on, on vaping because we had problems across the country and people were dying. And it was focused on like the JUUL because students could

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conceal it and everything else. Wasn't a lot of that because they broke into the JUUL container and put in THC-level things with the, with the additives in it?

BRIESE: Yeah. I, I, I'm not sure what, you know, I, I talked about some stats here as far as injuries and death. I'm not sure what those are mostly attributable, honestly. But, but again, you know, I, I think there's a very-- quite a bit of concern about just vaping among our youth in general. But yeah, some of, you know, some of the really incidents that made the news, you know, again, I'm not sure exactly what the culprit was there.

LOWE: OK.

BRIESE: Good question.

LOWE: Thank you, Senator Briese. Any other questions? Seeing none, will you stick around for close?

BRIESE: You bet.

LOWE: All right.

BRIESE: Thank you.

LOWE: And now we'll have proponents. Welcome back.

ANDY HALE: Thank you, Vice Chairman Lowe. Member of the, members of the committee, my name is Andy Hale, A-n-d-y H-a-l-e, and I am vice president of advocacy for the Nebraska Hospital Association. It was kind of similar, along the same lines to my previous testimony. We believe this goes into our cessation package, and we thank Senator Briese and his staff for bringing this. And so we would like to get healthcare costs as low as we can. And this is one step by reducing vaping and reducing cigarettes, so--

LOWE: Thank you very much.

ANDY HALE: Thank you.

LOWE: Are there any questions? Seeing none.

ANDY HALE: Thank you.

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LOWE: Next proponent. He has changed his mind. [LAUGHTER] We, we will now see if there is an opponent.

KINN ELLIOTT: I waited long enough, I did it right.

KATHY SIEFKEN: If you want to go first--

KINN ELLIOTT: No.

KATHY SIEFKEN: --I'll wait.

KINN ELLIOTT: Thank you. My name is Kinn Elliott, K-i-n-n E-l-l-i-o-t-t, and I represent the Vapor Technology Association. I want to tell you what the Vapor Technology Association is and is not. So we're the industry association for retailers, manufacturers, importers, distributors, a wide variety of folks involved in the, in the supply chain of electronic cigarettes. We do not have big tobacco companies as members. JUUL is not a member of our association. So we're really smaller mom and pop-type shops and businesses. I want to talk through a little bit about sort of the safety, a little bit about the CDC, and a little bit about this youth vaping and, and what we feel like this bill may, may or may not address in, in that world. First of all, the Royal College of Physicians has determined that e-cigarettes are 95 percent safer than a traditional cigarette. I want to be clear, I didn't say it was safe compared to nothing. It's safer than a traditional cigarette. So they've done a complete evaluation of all the relevant data out there. They've reaffirmed this position a number of times, including, in October of 2019, in the middle of the, the concerns about vaping that existed in this country. The, the UK has a little bit different perspective on the use of these products than we do here in the United States. In fact, there, these products are widely embraced as an alternative to traditional cigarettes there. And of the 3.6 million vapers there, they determined that 54 percent have completely quit smoking as a result of these products. So they've also reaffirmed their position that the long-term risks associated with vaping are significantly less than that of traditional cigarettes. In fact, that's 5 percent. They don't-- they say they won't exceed 5 percent of the risk of traditional cigarettes, so that's where that 95 percent safer figure comes from. The CDC has made a definitive statement about what happened last summer and fall with these products. There was this healthcare, healthcare scare that arose out of these products and they have definitively term and, determined that the cause of those illnesses and deaths was related to vitamin E acetate oil. And I'm glad to expound upon why that was the case. But

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that's a cutting agent for THC to be used in these products in which they were never designed. If you want to discuss that more, I'm glad to explain that. But these are designed to vape nicotine, not THC, and so the product has to be cut to be used. The VTA is very concerned about youth usage and we want to work with the Legislature. We appreciate Chairman Briese bringing this bill forward and bringing a discussion forward about youth usage. But we don't believe that this flavor ban is, in fact, the way to do that. What we do know from the National Youth Tobacco Survey, the recent study showed that 22.4 percent of teens that use this product come to it because of flavors. In other words, 78 percent come to the product for some other reason: peer pressure, curiosity. So it's not the presence of flavors that are attracting kids to the product, it's the availability of the product through social sources. And the FDA has determined that 86 percent of youth usage is social sources, which is why we fully support the T-21 measure. It creates greater distance between the availability of the product and somebody underage to people that can legally buy it. So we don't believe that the flavor ban is actually the way to prevent kids from getting the product or actually addresses the issue of access to the products. And that's the thing that we need to figure out the way to cut off. And I would say that we would offer several meaningful reforms that we think do, in fact, do that. The federal ban on pods, and during the discussion beforehand, is actually a ban on manufacturers making the pods, not necessarily on retailers selling the pods. So major manufacturer JUUL has already removed their flavored pods from the market. They did so last year and the ban is on them manufacturing. We're for age verification at the point of sale, we're for the elimination of sales in third-party retailers online, we're for penalties for retailers caught selling the product underage, we're for ending bulk sales, and we're end-- for ending any unlicensed person actually selling the product to minors. So with that, I'll take any questions that you might have.

LOWE: Thank you very much, Mr. Elliott. Any questions? Senator Wayne.

WAYNE: Did you say you were from the UK?

KINN ELLIOTT: I am not from the UK.

WAYNE: Oh.

KINN ELLIOTT: I'm from South Carolina, which might seem equally as far away.

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WAYNE: No, no. I was gonna have a-- I just thought you were here on behalf of the UK, I was gonna have some conversations around Prince Harry and Meghan Markle.

KINN ELLIOTT: We can do that after, if you'd like to, Senator.

WAYNE: No, don't worry about it. I will leave it alone.

KINN ELLIOTT: I was quoting UK statistics and the difference in the attitude.

WAYNE: Understood.

KINN ELLIOTT: Yes.

WAYNE: Thank you, Senator Wayne. Any other questions? Could you expand a little bit more about the vitamin E acetate?

KINN ELLIOTT: So these products are designed to-- thank you, Senator. These products are designed to vape nicotine. And if you look at the liquid nicotine consistency compared to THC oil, it's essentially like looking at the consistency of water and olive oil. These products typically only burn for-- to vape liq-- liquid nicotine around 250 degrees. And you need to be significantly hotter than that to generate vapor out of THC oil. And as a result, to use those products, THC products, illegal THC products in a device that they were never designed for, that THC oil has to be cut with something else. Vitamin E acetate oil was the product that people were using to cut THC oil for use in a vapor product. And that creates a coating inside the lungs when it's vaporized, inhaled, and creates an pneumonia-type effect, which is essentially what, what folks were getting sick from was a disease called lipoid pneumonia as a result of that vitamin E acetate. So thank you.

LOWE: All right, thank you very much. Have they found something else to cut with the THC?

KINN ELLIOTT: There are other entities out there that do that. I should say that our industry association doesn't represent people that vape cannabis or THC. We're only for electronic nic, nicotine products. That doesn't mean that some of the manufacturers in our, that are members of our company don't engage in that practice, but we don't do that. And so in states where it's legal, they have found more acceptable cutting agents for that product. But I would also say that in states where it's legal, they're also selling a device that burns

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hotter, that's designed to vape that liquid. So the, the need for a cutting agent is reduced as a result of that. There is a specific device designed to vape THC oils that will burn hotter, and it's more expensive. This is trying to use a product and a device that it was never meant for.

LOWE: Thank you for educating me.

KINN ELLIOTT: So thank you.

LOWE: Any other questions? Senator Blood.

BLOOD: Thank you for your testimony. Did you hear me earlier refer to the propylene glycol?

KINN ELLIOTT: I did.

BLOOD: And is that not used for some of the THC that they're cutting right now?

KINN ELLIOTT: It-- propylene glycol is used in a variety of products, including food products. It's in salad dressings and sweeteners and sodas and that, that sort of thing.

BLOOD: And I'm aware of that.

KINN ELLIOTT: Right.

BLOOD: But don't they promote it on the Internet, such as on Amazon, that you can buy, I think it's glycerine and propylene glycol?

KINN ELLIOTT: To cut THC?

BLOOD: To make vape juice in general, both for THC and other products.

KINN ELLIOTT: It is used in e-liquids for e-liquid nicotine products. I don't represent cannabis and THC, so I can't speak to that. It is used in those products, but it's also a food grade preservative. Both of those are.

BLOOD: Thank you.

LOWE: Thank you, Senator Blood. Seeing no other questions, thank you, Mr. Elliott.

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KINN ELLIOTT: Thank you, Senator Lowe.

LOWE: Welcome back.

KATHY SIEFKEN: Good afternoon, again. Kathy Seifken, Nebraska Grocery Industry Association and the Nebraska Retail Federation, here again in an odd position because LB76 [SIC] is a bill that mirrors most of what the FDA came out with. And the second page of my handout is the actual posting that FDA put out for your information. And then I also handed out a white sheet with yellow highlighting so that you don't have to read the whole thing, and we can focus just on the part that we're concerned about. And that is that LB1176 very closely mirrors what the feds are doing, except for the fact that it does not allow open or refillable flavored vapor cartridges back into the market, even if FDA approves them at a later date. This bill would actually permanently ban those products in Nebraska. And when FDA goes through that application process, it is a very detailed process. And they would, if their application is approved, they basically would determine that some of these products are appropriate for the protection of public health. And in that instance, we would like to be able to sell them in the state of Nebraska. Now, I can also tell you, just from what goes on in my family, I have a son that started vaping. He was a heavy smoker. He got down to zero nicotine as a result of using an open-system vaping, vaping product. And he's down to zero nicotine. He would not have been able to quit without this product. So I think that there are good uses for it. There are some that are not so good. And we would actually support this bill if Senator Briese would consider an amendment that would allow the sale of those products if FDA approved them. So with that, if you have any questions, I'd be happy to answer them.

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

KATHY SIEFKEN: Thank you.

SARAH LINDEN: Good afternoon, Senator Lowe and members of the General Affairs Committee. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n, and I am president of Nebraska Vape Vendors Association and owner of Generation V, a Nebraska-based chain of eight vapor stores with 50 employees and property in the state. I am just a small business owner who invested in Nebraska. I'm the president and the CEO, the board of directors. The buck stops with me, basically. Flavors are a key element in helping smokers switch to vapor products. A study by J.C. Chen in 2018 found that smokers who used vapor products with one or

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more non-tobacco, non-menthol flavors were significantly more likely to have reduced or quit smoking over time. Only 14 percent of adults used a tobacco or menthol flavor when making the switch to vapor products, and only 4.6 percent continued to use those flavors over time. The reason for this is that tobacco-flavored e-liquid uses an artificial flavoring that actually tastes quite horrible. I've tried it myself and it makes me want to puke, honestly. Some vapers quit smoking because they are tired of the smell and the taste of cigarettes. Therefore, they don't want to continue vaping these flavors. Also, flavors that taste like a cigarette can actually be a trigger for some adults who are trying to quit smoking. Teens are not vaping for the flavors. In fact, only 22.4 percent of teens have cited flavors as their reason for vaping. Teens vape prime-- vape primarily for the buzz they receive from high-nicotine products like the JUUL. The 2019 National Youth Tobacco Survey shows that when specific flavors are taken off the market, like JUUL's mango-flavored pods, teens switch the next best-tasting flavor, JUUL's cool mint. This proves that teens will continue to vape whatever flavors are available as long as high-nicotine products remain on the market. Twenty-nine point eight percent of teens drink alcohol and 88,000 people die from drinking alcohol every year, yet nobody is proposing to ban birthday cake flavored vodka. The reason is that adults like flavors, too. Furthermore, this bill is not necessary. As others have already spoken, the FDA's final guidance already banned flavored closed-pod systems from the market until they submit and receive an approved marketing order called the PNTA. And this is starting February 7th of this year. Most retailers have already sold through these products and are not restocking. Additionally, the manufacturers of these products have already stopped producing them for sale in the United States. So as a retailer, even if I wanted to skate the FDA regulation, I can't purchase these products anymore anywhere. The reason we oppose this bill is that the FDA may one day approve these products through that PNTA process, and we don't want Nebraska law to be more strict than federal law. That will only push our customers to purchase vapor products at one of the hundred, even thousand online retailers, which Senator Blood has mentioned several times today. And many of these online retailers don't adhere to specific state laws. In closing, flavor bans are bad for public health. With the age increase on vapor products and the federal flavor ban, people will return to smoking and/or resort to purchasing unregulated vapor products from the black market. Both can be devastating results. I would invite you to come visit one of our shops and we would love to work with you on legislator-- legislature that will more effectively reduce underage

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use of these products. My colleague Eric will speak in a few minutes about some of the alternative solutions we propose. I kindly request that you oppose this bill and add my testimony to the official record. And I'm happy to answer any questions that you have.

LOWE: Thank you, Ms. Linden. Are there any questions? I have just one. So you can right now buy flavored vaping products online, right now?

SARAH LINDEN: So right now, the FDA's final guidance doesn't go into effect until February 7th. So right now, you can buy them in stores and online. But after February 7th, they will be removed. And all of the retailers that I'm aware of in the state of Nebraska, that are represented by Nebraska Vape Vendors Association, have already severely discounted these products to try to clear their shelves. On-- if I go to my distributors right now to try to purchase these products, they're sold out and they're not restocking. The manufacturer of, of these products are not making more products, so these products will be removed from the market as of February 7th.

LOWE: All right, thank you. Thank you very much. Next opponent. Welcome.

ERIC JOHNSON: Good afternoon. My name is Eric Johnson, E-r-i-c J-o-h-n-s-o-n, and I'm the secretary of the vape-- Nebraska Vape Vendors Association and the owner of Caterpillar Vapes, with multiple locations in the Omaha area. Currently you have before you the proposed flavor ban for the closed-pod systems. We are very appreciative that there is an acknowledgment here that closed-pod systems are what underage people are predominantly using. However, we do believe that the approach being taken to help curb underage usage of nicotine products is misguided. And there's a couple of reasons why. First, it's important to talk about why flavors are not the issues. While flavors are sort of the low-hanging fruit that's something easy to focus on, the reality is that most users of closed-pod systems are after the higher nicotine levels. In all of the vape shops in Nebraska, our biggest seller is 3 milligrams per milliliter of vape juice. Three. Closed-pod systems such as JUUL are as high as 59 milligrams per milliliter and have been tested to be as high as 69 milligrams per milliliter. Additionally, standard nicotine is not tolerated by the body at higher levels, which makes it self-regulating, keeping the body from ingesting too much. However, closed-pod systems use a type of nicotine called salt nicotine, which is nicotine that has been treated by an ingredient called benzoic acid. What this does is it help makes the salt nicotine both more

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tolerable by the body and also makes it easier to absorb, allowing the user to take in much larger amounts than they otherwise could. What this means is it's basically easy to get high, which means flavors are not the problem. As such, we would actually propose certain solutions. The first one is to follow, as we already discussed, some of the UK procedures that they've got going on. They limit their nicotine levels to 20 milligrams per milliliter. At the outside, we would actually endorse 25 milligrams for milliliters as a good place to limit the levels in Nebraska, as most adults use open-pod systems while the teens use closed salt nic systems like JUUL, which has the equivalent of a pack of cigarettes or more. Additionally, we would limit the sale locations. Fifty-nine percent of teens who vape are using JUUL, which is not sold in the majority of vape shops. In Nebraska, less than 1 percent of vape stores were cited for selling to underage minors. What this means is that there are hundreds of convenience, drug, and discount stores that have received citations and sold to children. Per the Tobacco Control Act, the FDA cannot restrict tobacco sales to specified retailers, but the Nebraska Legislature can. We also would look at sales bans. The biggest thing we talked about earlier is social media and online sales and how the primary places where teens can purchase illegal drugs and services-- substances like nicotine vapor products are located there. Cracking down on these third-party marketplaces like Amazon, eBay, Craigslist, Instagram, Facebook, Snapchat, TikTok, and all the online retailers will help to really limit the outside providers to these kids. Lastly, we'd also look at tougher penalties. Minors get their products primarily from retailers who don't either care who they sell to or from a straw man. Straw man is the larger, larger aspect of that. That person may be a friend, may be a family member. More often than not, it's somebody who's actually out there purchasing and then selling, reselling back to kids. One of the things that we have done is implement a process whereby if we get someone in, they get marked into a system, and they are not allowed to purchase more than specific products in a certain time period. So we make sure that they're not actually out there selling to kids. We would like to see something like that codified, and so we can help make sure that these guys aren't doing things like that. More importantly for these offenses, the first offense is only \$50. Fifty dollars for effectively selling to kids. That's a, that's a slap on the wrist when somebody is gonna make hundreds of dollars in a weekend selling this. In closing, I'd like to reiterate that the limiting the flavors is not the solution. Between restricting nicotine levels, securing the sales locations, and policing outside vendors, along with increased consequences for those who sell directly to minors, we

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actually achieve the goal of limiting availability to minors in ways that limiting flavors won't. I did write a couple extra notes here. The FDA guidance and regulation does not need to be codified at the state level. The 21-plus is a federal law, whereas the FDA guidance is just that, it's guidance. And they can regulate independently. It also allows them to be more nimble about things. And additionally, the lower the nicotine levels also means that the larger the device is more likely to be. So we talked about it being hard for people to catch them because they have smaller devices. The lower the nicotine level, the more likely you are to have a larger device.

LOWE: All right. Thank you, Mr. Johnson. Are there any questions? Seeing none, thank you.

ERIC JOHNSON: Thank you.

LOWE: Are there any more in opposition? We'll now start neutral. Is there anybody in the neutral? Seeing none, Senator Briese.

BRIESE: Thank you again, Chairman Lowe and committee members. I've heard some great testimony here, and I guess that's what we're here for, to hear the stakeholders come in and tell us why we're doing things right or why we're doing things wrong. I appreciate that. I heard some great arguments against this bill. It seems like a lot of those arguments should be directed at the FDA. As far as, I think, Kathy Siefken indicated, you know, the desire to be able to bring these products back in if the FDA would let them brack-- back in, we have an amendment that somebody presented to us that we would present to the committee at some point. I think that's a reasonable request. And so we'll have, we'll have to weigh this out, continue to discuss, discuss this. But I, I-- you know, for a bill that people suggest is not necessary, you know, there's certainly some concerted opposition to it. And I think that this bill, marrying federal regulation on it, federal guidance on it could be helpful in enforcing what we, what I would perceive as something that is detrimental to some of our youth. It could be helpful in that regard, and also provide some clarity to some of our retailers. And anyway, I would ask for your consideration of this and we'll, we'll discuss it further. So thank you for now.

LOWE: Thank you, Senator Briese. Is there any questions? Seeing none.

BRIESE: Thank you.

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LOWE: Thank you very much. We have letters in support from: Nebraska Chapter of American Academy, Academy of Pediatrics; the Nebraska Regional Council of the American Academy of Child and Adult, Adolescent Psychiatry; Nebraska Medical Association. A letter in opposition from the American Cancer Action Network. And Senator Briese, you're back with LB1174.

BRIESE: OK, well, thank you again, Vice Chairman Lowe, and good afternoon. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent District 41. I'm here offering your consideration of LB1174, which updates the State Electrical Act and authorizes certain specialty electrical licenses. LB1174 is the culmination of work arising out of discussion on interim study LR231, research and survey responses by the Electrical Board from the General Affairs Occupational Licensing Report required under Nebraska Statute Section 84-948, and comments from various individuals and businesses involved in the industry. I will point out that LB1174 is not yet in its final form, and there are ongoing discussions and revisions being worked on for an amendment to the bill to help perfect language and address concerns by interested parties while maintaining the intent of the bill. These revisions are being worked on with the State Electrical Division and others, and are not overly substantive in nature, but include technical language and adjustments to ensure the proper phrasing is utilized for statutory consistency, and necessary and appropriate training and safety mechanisms are put in place for such specialty licenses. LB1174 accomplishes the following. First, it includes a technical amendment to Nebraska Statute Section 81-2108 to specify that a fire alarm installer licensee may supervise up to three apprentices. This was a change requested by the Electrical Board to clearly codify what is the current practice of the Electrical Division, allowing firearm [SIC] installers to supervise apprentices in a 3:1 ratio. This is the same as other forms of electrician-to-apprentice ratio provisions. Second, the bill amends Section 81-2112, dealing with special electrician licenses, to specify particular specialized licenses which shall be authorized by the board, and the requirements for such a specialty license. LB1174 specifically authorizes the following specialty licenses: irrigation system electrician license; sign installer license; solar electrician license; Type S journeyman electrician license. An irrigation system electrician license authorizes the licensee to install service and connect electrical wiring and components of a sever-- center pivot-type irrigation system. An applicant shall have two years' documented experience and pass any examination if required by the board. The sign installer license

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authorizes the licensee to connect power to a sign as authorized by the board. An applicant shall have six months' documented experience and pass an examination if required by the board. The solar electrician license authorizes the licensee to plan, install, connect, and repair solar electric systems as authorized by the board. An applicant shall have two years' documented experience and pass an exam if required by the board. Type S journeyman electrician license authorizes the licensee to hang electrical conduit and pull electrical wire as authorized by the board. An applicant shall have six months' documented experience and pass an examination if required by the board. LB1174 specifies that, in lieu of the stated specialized license requirements, the board may consider any relevant education, certification, or experience as-- that is acceptable to the board for a special electrician license. This ensures that the board maintains regulatory authority and flexibility in these-- in these matters. This bill also specifies that a special electrician license may supervise up to three apprentices for the same specialty electrician license. I'm working with the State Electrical Division and others on proposed amendments and language to help LB1174, including ensuring that electrical work done under these specialty licenses have proper inspection requirements, when appropriate and required under the Electrical Act. Many of these licenses, specialty licenses, previously existed in state statute here in Nebraska. However, as updates and changes were made to the State Electrical Act and the State Electrical Division became an independent state agency, those specific specialized licenses were not retained. LB1174 would simply reinstate and add these licenses back into statute, giving the board authority to authorize individuals meeting specific requirements to perform a limited class of electrical work within the state. This bill helps to ease the shortage of electricians in the state, ease the transition for qualified individuals from other states through reciprocal licensing, and provide a beneficial building-block approach to electrical work and licensure within Nebraska. Of the states which license electricians at the state level, many of those have some form of similar specialized electrical licenses authorized for particular specialized classes of electrical work that is limited in scope. LB1174 would simply further define and authorize those licenses within our state. It is well documented and agreed upon that across the country and here in Nebraska, there is a shortage of electricians and inspectors for the amount of electrical work needing performed and inspected. This shortage can be even more problematic as more new commercial projects are being developed. LB1174 is intended to and can help encourage more individuals into the electrical field, aid those

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with specialty licenses in other states with reciprocity and licensure here in Nebraska, support economic development and help ensure needed electrical work can be performed and completed by electricians with the proper skill and training in a timely manner. The work of electricians is vital to the function and economic development of this state, and this bill is an attempt to support and grow this industry while maintaining important safety requirements and protections. Again, LB1174 is being revised with interested parties in order to ensure proper statutory terms and safety and training measures are taken while helping to support and encourage the electrician field here in Nebraska. With that, I'm open to any questions, and I will point out there will be several behind me who may be able to better answer certain technical, electrical, and licensing questions, but I'm happy to attempt to answer any questions the committee may have at this time. Thank you.

LOWE: Thank you, Senator Briese. Questions? Senator Blood.

BLOOD: Thank you, Senator Lowe. Thank you, Senator Briese. Do you have a notepad handy? Because I have a lot of questions.

BRIESE: Oh, my. I've got a paper here.

BLOOD: But I'm glad to hear that you're working on it, so you may very well have answers for all of my questions. So 81-2112, the first thing I'm looking at is the solar electrician license.

BRIESE: Yes.

BLOOD: Can you tell me, please, what would be the limit on the size of the system that would be eligible for this type of license?

BRIESE: I would defer that question to someone behind me.

BLOOD: OK. Do you have any concerns that there doesn't appear to be a limit of the size? Because obviously a bigger one would be the same requirements, say, as for something commercial or industrial.

BRIESE: That's something we could consider as we further develop the bill, I would suggest.

BLOOD: OK. Also under that section, I'm looking at the sign installer license. So can you kind of walk me through what a sign company would do if they had to work on a sign or do like the LED retrofitting?

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BRIESE: Well, it's my understanding that Iowa has specialty licenses such as this for sign installers. And again, I would have someone behind me walk you through that.

BLOOD: I have some concerns because I'm not sure it addresses how we do it in Nebraska. And so who would be a good person to ask that question to that comes behind you?

BRIESE: You can ask as we-- as they testify, I'm sure.

BLOOD: OK. So I like-- I like the 3:1 ratio, because we talked a lot about that last year, and so somebody was listening, so if that was you, well done. But one of the concerns I have is I look at 81-112 [SIC], the special licensures. Doesn't the JA license-- license already cover this type of work?

BRIESE: Not to my understanding, it does not.

BLOOD: OK, that might be a question for somebody else then too. And then section (d) has me concerned because I think that was the bone of contention last time, and I'm not seeing any really good changes on that part of it. The special licensure-- licensure to run and pull-- to run conduit and pull wire-- can't read my own notes. Do you feel that, as is, it doesn't need to be changed or--

BRIESE: Well, six months is a considerable amount of experience there, in my opinion, but I think folks behind me might have other opinions on that. That's something that we could talk about.

BLOOD: The-- the concern that I have with some of what I'm reading is I'm not sure it's comprehensive enough. I'm not sure I have a clear understanding of what each thing does. But I hear you saying that you are working on some of these issues.

BRIESE: Yes.

BLOOD: Can you tell me which issues you are working on?

BRIESE: As far as the characterization of what the special licenses entail, we're open to further defining what-- what-- what those items entail. As far as the amount of experience, that's something we could be talking about also. But some of these require two years. And the type S journeyman, six months, well, maybe that's something we need to further discuss.

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BLOOD: So-- so one of the questions I have in reference to irrigation and sign installations that I'm not seeing is it doesn't include all the service, the repair, and the maintenance of like the irrigation systems as well as the new systems. And I would have that same question with when it comes to sign installations.

BRIESE: Yeah, OK. Yeah. That's something we could discuss further. It could be helpful to look at Iowa and what they do, and I think I have Iowa's back in here somewhere, but without digging that up--

BLOOD: Mostly, I'm just making sure that whatever we have in Nebraska is clearly defined. And I found myself having to look a lot of things up to try and get explanations on some of your-- the sections of this bill.

BRIESE: Sure.

BLOOD: So for me, I'm really looking for better clarification, Senator Briese.

BRIESE: Yes. As I look at my description of the Iowa specialty license for irrigation system wiring, it is no more detailed than what we're dealing with here. In fact, I think what we have here pretty much mirrors some of the descriptions in Iowa. But again, that doesn't make it right and doesn't necessarily mean that's all we need.

BLOOD: Do you think that maybe part of the change in reference to like the sign installer might be that we could put a voltage limit on it, like what are we talking about when we're talking about said signs?

BRIESE: Be-- be something to look at, I would think.

BLOOD: I told you I had a lot of questions. I'm sorry.

BRIESE: No, that's all right. It's what we're here for.

BLOOD: But the more I read this, the more questions I have, and I'm looking for greater clarification. And --I and I'm still concerned that we've not properly addressed the section (d) about the licensure to run conduit and-- and to pull wire.

BRIESE: Sure.

BLOOD: I feel like we're going in a really good direction with a lot of this stuff, especially, again, the 3:1 ratio. But I wonder if we

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need the special licensure in 81-112 [SIC] because I'm reading it that the journeyman's license already covers those.

BRIESE: OK.

BLOOD: So maybe someone can explain that, comes up after you, to me.

BRIESE: Yeah. But-- but I think it's fair to say no one in this room wants to jeopardize safety in the name of efficiency and economic development. But you know, like a lot of things we do, is a balancing approach is required. We need to balance the interest of safety with the interest of efficiency and maintaining cost in some of these projects, and so it's a balancing approach. And I think that's our job here to try to figure out where the-- where the best balance is to address some of the concerns I think you're raising, which are probably related to safety.

BLOOD: And I don't disagree with that. I have to say that my main concern is clarification. I don't feel that we're clearly defining our wants and needs as much as kind of throwing some words in. I kind of almost-- and I could be totally wrong. I kind of get the impression this might have been put together more quickly than we think. I-- I don't know if it was given to you. Or did your office write it?

BRIESE: Our-- our office worked extensively with stakeholders [INAUDIBLE]

BLOOD: I hope I was not offensive in any way.

BRIESE: Oh, no, never, never.

BLOOD: So--

BRIESE: But again-- but--

BLOOD: But I-- I have great concerns about this bill, and I'm hoping we can hear it through the testifiers and get some [INAUDIBLE] answers.

BRIESE: But again, I think-- I think the goal here is to strike the right balance between, you know, putting together a product that-- that is safe and user-friendly and the public is protected, our workers are protected, that balances those interests of public safety

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with the interests of efficiency and economy in our efforts to help grow our state.

BLOOD: And comprehensive descriptions.

BRIESE: Yeah, the comprehensive descriptions could be-- could be considered part of our effort to ensure that things are done right, in a manner that is safe and protects the public interest.

BLOOD: I appreciate that. Thank you, Senator.

LOWE: Thank you, Senator Blood. Are there any-- Senator Moser.

MOSER: Kind of along the same lines as Senator Blood's questions, I assume that the intent here is to come up with separate licenses because the need to know is different when you're wiring a sign versus wiring an irrigation system or wiring a solar panel.

BRIESE: That would be my assessment. Yes.

MOSER: Yeah, because the irrigation systems are three phase, high voltage. Signs are usually not over 220, I don't think. And solar, I haven't wired any of them, so I don't know. But-- so I-- you're saying it's for better training for a specific purpose rather than more general training for a lot of things that may not cover--

BRIESE: Yeah, I--

MOSER: --all the areas where you need to know more.

BRIESE: Yeah, I-- I think that's a fair assessment, to help facilitate folks into these areas and facilitate availability of folks to work on these particular-type projects, like you say, to not require as expansive of training, more specific training that could help bring more people to bear on some of these types of projects.

MOSER: OK. Thank you.

LOWE: Thank you, Senator Moser. Any other questions? Seeing none, will you stick around to close?

BRIESE: I will be here.

LOWE: Thank you very much. We'll now start on proponents of LB1174. Good afternoon.

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JESSICA KOLTERMAN: Good afternoon. Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. My role has been, for the last four years, working with the Costco project, Lincoln Premium Poultry, on our barns around the state. The size and scope of our project was pretty unprecedented in the state of Nebraska and also came at a time where there was a lot of other construction taking place. So we had around 520 barns that were needing to be built, in addition to a feed mill, a hatchery, a chem and mic-- microbiology lab, and a 400-square-foot facility for processing. And in that, we discovered a, a-- really, for lack of a better word, a shortage of electric-- people that are qualified to do electrical work in the state of Nebraska. It's been a constant struggle throughout the entire process, but most specifically in the rural areas. And so we were in a similar hearing to try to look at that a couple of years ago. And what became evident to us is that we wanted to work more closely with the Electrical Board, which is what we have tried to do in, you know, looking at this issue more closely. Their recommendation at one point was to look at a specialty license, like some of the other states do. We suggested to Senator Briese that might be something that would be helpful in the rural areas specifically. There's absolutely no desire to compromise anything related to safety. I think there's a pathway here where we could provide the Electrical Board some flexibility to look at solutions for large-scale projects that happen, not just like ours, but also the Googles and the, and the, you know, data centers that are developing around the region as well. For our situation specifically, I think when it really became evident that this was not just about the rural areas is when we had the flooding. So we're in Fremont. We got a call from the mayor, requesting us to release some of our electricians to go be available to help make sure that some of these people could get back in their houses in an expedited way. So there's-- you know, certainly what we saw this past year with the flooding certainly exacerbated the problem. And I would just like to see some solution. This-- Senator Blood, I agree, we can work on our language and do better definitions in that, in the bill. We're certainly willing to be at the table on that. So with that, I will answer any questions.

LOWE: Thank you very much. Questions? I just have--

JESSICA KOLTERMAN: Sure, of course.

LOWE: How many electricians did you employ?

JESSICA KOLTERMAN: Well, on our site, any given day, there were 300 to 400 people, and that's just on the construction site in Fremont. In

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terms of out in the rural areas, that was done through a general contractor and a subcontractor, and I wasn't quite as intimately involved with that. But I can tell you that we've had situations where, literally, the electricians are in the barn with the electrical inspector who is finalizing the checklist while our newborn chicks are sitting, waiting on trucks. So that's how tight it, it can become. And some of that's weather, you know, and just physically being able to get onto those sites and such, which backs things up. But, you know, it's not uncommon to go into those barns right before a placement and have, you know, two or three dozen people working on one barn at a time. And some of that's equipment; some of that's electrical.

LOWE: I was just curious. When you released the electricians, how many went to help in the city of Fremont?

JESSICA KOLTERMAN: We-- you know, we put out the word that there was a need in the community. I-- and it was-- it wasn't, you know, like, go do this. It was more like there is a need here, if you can be helpful, you know, certainly we're willing to work with you on some flexibility on that.

LOWE: Ok. All right. Thank you very much. Thank you.

JESSICA KOLTERMAN: All right. Thanks.

LOWE: Next proponent. Good afternoon, Mr. Rieker.

BRUCE RIEKER: Good afternoon. Members of the General Affairs Committee, my name is Bruce Rieker; it's B-r-u-c-e R-i-e-k-e-r. And I'm here testifying on behalf of the Nebraska Farm Bureau Federation, as well as the Nebraska State Dairy Association, in support of LB1174. And I would just add my appreciation for Senator Briese's opening comments because they covered everything and more than what I would be able to share here. But we are in support of this bill. And with that, I'll close.

LOWE: Thank you very much. Any questions? Senator Moser.

MOSER: I would just say that's one of the best speeches we heard all day. [LAUGHTER]

LOWE: Thank you. Thank you.

BRUCE RIEKER: Thank you.

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LOWE: Next proponent. Seeing none, we'll start on opponents. Any opponents?

DAN HUSE: Give me just a second, if you will. I've got some testimony from Chris Callahan, the business manager of Lincoln IBEW. He had to leave and asked me to submit his testimony. Can I do that now as well?

LOWE: Yes. Give it to one of the pages.

DAN HUSE: OK, I will. OK. I've got-- so I need ten copies of that.

_____: OK.

DAN HUSE: [INAUDIBLE] Apologize for that. Good afternoon, Senators. I'll start out with-- my name is Dan Huse. It's spelled D-a-n; last name is spelled H-u-s-e. I'm a business representative for the International Brotherhood of Electrical Workers Local 22 in Omaha, Nebraska. We represent approximately 1,930 members and 207 nonmembers in Nebraska and western Iowa, here on behalf of the IBEW Local 22 in opposition of LB1174. From what we understand, this bill is much like the previous LB921: seeks to lessen the requirements of a licensed professional to perform electrical work in the state of Nebraska. Once again, we are concerned about the potential of creating unsafe workplaces and conditions from faulty wiring practices that could lead to serious injury or death. It's our belief that we currently have all the electrical licensing in place for all the work scopes covered in LB1174. What this bill seems to do is create loopholes or exemptions for parts of that work. The type S journeyman license is another attempt at putting big business before the safety and the lives of the people in Nebraska. And this bill, like its predecessor, seeks to fix problems that do not exist. We-- I respectfully ask this committee to indefinitely postpone this bill and thank you for your time. I would do my best to answer questions.

LOWE: Thank you, Mr. Huse. Senator Blood.

BLOOD: Thank you, Senator Lowe. Thank you, Sen-- I started to call you "Senator"-- Mr. Huse.

DAN HUSE: That's OK.

BLOOD: It's been a long day.

DAN HUSE: I understand.

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BLOOD: So maybe you can answer some of the questions that I have. Can you walk me through the difference between a JA license and a-- the S journeyman license?

DAN HUSE: I-- the JA I'm, I'm not as familiar with. We operate mostly with the-- with the journeyman electrician license. So that, that requires four years of experience by the state. Through our training program, we actually require five years, so we require a year more than the state does before you can take that exam. So our-- you know, coming to some of the questions you asked previously, as far as, you know, some of these items, they're asking for two years of experience; some are asking for six months. We have a, a real issue with that when, you know, a journeyman, even a residential electrician, has to have three years. Through our training previous-- in previous years, and-- and Mr. Booker might be able to answer better to some of this, but I was talking to our training director this morning. Our telecom guys, in their three-year program, used to get credit towards electrical experience. So if they came out of that program and then decided to become-- go through the journeyman program, they would go into that program with a year credited by the state. The state has actually tightened those restrictions and do not give them that experience anymore because they did not carry an apprentice license. Now they can-- if they will go ahead and carry that license, I believe they will get that credit. But so, you know, the-- things have gotten tighter on that end, and I believe that is also the case with the residential apprentice if they did not carry that apprentice license. They are not-- they're not credited for that time either. So the state's actually gotten more stringent on some of that, so it surprises us that they would-- you know, that we would want to go backwards and make it, you know, two years, or even six months in some cases. You know, the scopes on a lot of these things, they are, in fact, different. And that's partly what makes it specialized, and, you know, in fact, at times dangerous is, yeah, there's-- there are just different things to all this. And that's why, you know, six months-- and, you know, two years is hard enough to swallow, but six months' experience handling electricity on any capacity just does not make sense to me that we would turn around and license somebody after that. So that's-- that's where we stand on that.

BLOOD: So if I hear you correctly, you're basically saying the journeyman's license, if you have a journeyman's license, you can

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basically do what all these special licenses are saying that you can do.

DAN HUSE: Yeah, that's correct.

BLOOD: OK.

DAN HUSE: Correct.

BLOOD: But you don't take any issue with the 3:1 ratio.

DAN HUSE: The 3:1 ratio, that's-- you know, there was a time where it was a little stricter than that. And of course, you know, we-- we preferred that. But, no, we-- you know, we-- the 3:1 ratio is-- is the state mandate and that's-- that's what we follow. I-- my question in what's in here about the telecom or the low voltage having a 3:1 or being able to supervise three apprentices, my question is, is, are those telecom apprentices or are they inside electrical construction, electrician? You know, I'm not sure about that. I-- I'd, you know, have possibly have a little concern with-- with somebody who's not experienced, again, in the, you know, general electricity, supervising somebody that they might not completely know the scope of what they're doing kind of a thing. But that's-- that's my question on that. But otherwise, the-- the state's ratio of 3:1 is-- is-- we're OK with that.

BLOOD: So-- and I'm sorry I'm asking you all these questions--

DAN HUSE: Yeah, that's OK.

BLOOD: --but you seem to know the answers, so--

DAN HUSE: Well--

BLOOD: And if not, hopefully someone after you will come.

DAN HUSE: Right, right.

BLOOD: So did you hear my questions about sign installations?

DAN HUSE: Um-hum.

BLOOD: That-- I never really got a good answer on that. Could you kind of walk me through how that works in Nebraska?

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DAN HUSE: A little bit. We don't do much on the sign side. Generally, what happens with that is, you know, our guys would, of course, you know, take everything from-- from the service, and where the power company leaves off, we'd pick up. We'd run the conductors, set any gear or any transformers, anything would have to be done to that. Now these signs can be-- you know, they can be 120 volt, they can be 220 volts, they could be, you know, a single phase or a three phase. They can-- you know, they might be-- they might be 480 volts, I mean, it-- or the 277. It just depends on the-- on the electrical system that they're-- they're being hooked up to, so they can be different. My understanding with the sign guys is generally, like I say, they-- they will make the-- possibly the final connection. But a lot of times, we are hired to take care of the-- any of the electrical so that they can physically place and remove that physical sign. I'm not saying there's not any sign companies that do electrical, but we work with quite a few of them that we handle the electricity so they don't have to touch it.

BLOOD: So did you hear my question earlier about possibly putting in like it doesn't exceed a certain voltage or--

DAN HUSE: Yeah, I mean, that would be one thing we would definitely be interested in seeing in there. Some of the places where-- I think in some of this language there-- there were some instances where those exceptions or exemptions were there, and I believe there's a few cases where they've actually been removed. So that concerns us.

BLOOD: Yeah, isn't this like 1993 language, is what I know.

DAN HUSE: Yeah. So, you know, yeah, we definitely-- if, you know, if we were to proceed with anything like this, we would definitely like to see some-- some kind of restrictions or-- or things like that. Hundred and twenty volts on the signs would definitely be something we would want to look at. The solar applications where, you know, some-- we'd be-- the limit somewhere around the 20 kilowatt range would be, you know, something we'd be interested in seeing. The type S journeyman license, we're-- we're not interested in, in looking at that from our end. But--

BLOOD: And that's because you feel that the qualifications need to be stronger than what's--

DAN HUSE: Yeah.

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BLOOD: --within the text of the bill at this time?

DAN HUSE: Correct.

BLOOD: So what I couldn't find in the bill, and maybe you can help me, and I haven't heard this yet, is when we're talking about 81-2112, that section of the bill, can you show me in the bill-- I'm not sure that it includes any changes when it comes to like the service or the maintenance work, like the irrigation systems and I think on the fire-- I'm starting to get tired, but I think also on the fire alarm installation.

DAN HUSE: Yeah.

BLOOD: So-- yeah.

DAN HUSE: I guess--

BLOOD: Do you see that in the bill? Because I feel like I can't find it in the bill.

DAN HUSE: I guess I'm not understanding the question you're asking. I'm not--

BLOOD: So, for instance, on the irrigation system, the electrician license, it says it authorizes the-- whoever is licensed to install service and connect electrical wiring and components of a center pivot-type irrigation system, then it goes on and says what you need to have. But I'm not clear that it says-- is-- does this include like any changes, like service or maintenance work, as well, on the irrigation system?

DAN HUSE: Yeah, well, that's--

BLOOD: [INAUDIBLE] about installation.

DAN HUSE: You know, again, that's stuff that seems to be left out on-- on some of that stuff and-- and--

BLOOD: So I'm not missing it. You're not seeing it either.

DAN HUSE: I don't believe so.

BLOOD: OK.

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DAN HUSE: And as some-- somebody else may be able to point that out. But we-- we were kind of-- you know, it's a lot of things that just don't seem to be there. And again, that's where I talked about it before, seem to be maybe exemptions or loopholes that-- that kind of leave a door open that-- that we're not comfortable with.

BLOOD: I'm sorry to put you on the spot. I just--

DAN HUSE: That's OK.

BLOOD: It seems like we have some of the same concerns.

DAN HUSE: Yeah.

BLOOD: So I just want to make sure that I'm not the only one that's not seeing some of this stuff. So, OK, I think that's all the questions I have for you. I appreciate your--

DAN HUSE: Yeah, you bet.

BLOOD: --helping me out with this.

DAN HUSE: No problem.

LOWE: Thank you, Senator Blood. Is there any other questions for Mr. Huse? Mr. Huse, I just have a couple.

DAN HUSE: OK.

LOWE: I'm in outstate Nebraska and we have trouble finding enough electricians, the way it is. Is there anything that-- that the union is doing to get more electricians out there?

DAN HUSE: Yeah, we are actively out there looking for and recruiting people. I don't have the numbers in front of me to tell you, as of late, how many we've gotten. But we are putting on apprentices and we are out there recruiting people to-- to fill those-- those-- those needs. And-- and we are growing. You know, we're not growing as fast in western Nebraska as we would like, but we are growing. So, I mean, we're out there promoting. We've got-- you know, we've got a good wage and benefit package that's attractive to a lot of people. We've settled into a contract that should make, you know, recruitment even more attractive. We're working on, you know, things that are important to people, like healthcare and stuff. And we're making strides and making that better for people out there in-- in western Nebraska. And

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so I think that little by little work we're gaining. You know, we'd definitely like to be doing it faster like everybody else. But it's definitely a priority of ours. Between us and Lincoln, we're definitely working that, you know, what we call the greater Nebraska area, the-- you know, the rural areas. And-- and we're-- we're doing everything we can to increase the interest.

LOWE: I just think if we get a large product-- you know, a project, we may be struggling for electricians and-- and--

DAN HUSE: Yeah. And, you know, to be honest with you, I mean, I-- I understand that. But, you know, we can-- we can dumb it down all we want, but that's not going to-- you know, that's not going to find us people that aren't there. You know, I mean, it's-- we still have to maintain a certain degree of safety and-- and-- and that kind of thing. I mean, you know, I hate to-- you know, I-- to-- but, you know, we've got a seat belt law. You know, I've never been in an accident that I believe that seat belt probably did a whole heck of a lot for me. But does that mean it shouldn't be there? I mean, that's-- you know, these-- these rules that we've instituted them for-- for a reason and-- and more over anything, it's-- it's-- you know, we're-- we're trying to prevent something that could be pretty kind of catastrophic in the end from happening. I mean, if-- you know, if somebody doesn't know what they're doing with electricity and they're not paying attention to what they're doing or they just don't know, you know, you can cause a fire and explosion and-- and nobody wants that. Nobody wants that on their mind and to be responsible for that or to know somebody that's suffered from that. I mean, those are-- you know, you get a-- you get an electrical burn, it's-- you know, it's not even just putting your hand on a hot surface. I mean, that-- an electrical burn can burn you from with, inside your body and-- and can injure you long after the-- the initial injury happens, I mean, so it's-- it's something to just-- you know, it's not something to play with, you know. This is the-- what we've always been told. We're not playing with electricity. It's-- it's-- it's definitely a dangerous object, so.

LOWE: I know you represent the IBEW. So you're an electrician?

DAN HUSE: I am an electrician. I'm a licensed journeyman.

LOWE: You're a licensed journeyman.

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DAN HUSE: Correct. Yeah. I'm not in the field right now, but-- but, yes, I'm still a license-carrying journeyman electrician.

LOWE: All right. All right. Thank you very much. Senator Moser.

MOSER: Well, not to testify in his stead, but the IBEW does have a training center in Columbus, I know.

DAN HUSE: That is correct.

MOSER: And they help because we have a lot of commercial projects going on in our area and they were trying to train more electricians to [INAUDIBLE].

DAN HUSE: Yeah, and-- and that even covers-- and with that-- you know, and with that greater Nebraska area, I mean, we-- we have apprentices all over the state through that apprenticeship, so.

MOSER: Yeah, the-- the fellow who was organizing that even came and talked to me--

DAN HUSE: Yeah.

MOSER: --a couple of times about what they were doing.

DAN HUSE: Yeah, you bet, and that's-- yeah. And you'll see-- and I imagine you'll see more and more of him as we're-- you know, we are definitely concentrating out in that area and-- and trying to-- trying to get people.

MOSER: Yeah, so thank you.

DAN HUSE: Yeah. You bet.

LOWE: Thank you very much. Appreciate it.

DAN HUSE: Yeah, you're welcome.

LOWE: Are there any other opponents? Seeing none, we'll move to neutral. Mr. Booker, glad to have you back.

KEVIN BOOKER: Thank you. My name is Kevin Booker. I'm the executive director from the Nebraska State Electrical Division. So I am testifying neutral on this. There are things that the Electrical Board has asked for to be in the positive and against in this. And I'm-- I'm sure I can answer many of the questions that I've heard while I've

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been in the back of the room. We have submitted some recommendations. We do appreciate the work that the committee and Senator Briese and his assistants have worked on this. We've heard testimony at the Electrical Board level over the last two years on, you know, our needs in the state of Nebraska and what we can do to work with it. Our agency feels the same pain everybody else does. As local jurisdictions are relinquishing authority back to us--

LOWE: Did he spell his name?

KEVIN BOOKER: --my workload has drastically increased, too, as with a lot of electrical contractors. Just to give you an idea, currently, we have--

LOWE: Can I stop you--

KEVIN BOOKER: Yes, sir.

LOWE: --you and have you spell your name?

KEVIN BOOKER: Oh, I'm sorry.

LOWE: Sorry.

KEVIN BOOKER: Kevin, K-e-v-i-n, Booker, B-o-o-k-e-r.

LOWE: All right. Thank you very much. It's for the transcripts.

KEVIN BOOKER: We-- we currently have 13,734 electricians in the state of Nebraska. And as I've heard the testimony earlier, prior to 1993, two of these current licenses that you're looking at were licensed by the state of Nebraska, our sign and our irrigation one. So even though we haven't issued any new licenses since 1993, we still currently have-- of the special electrician licenses that were issued back then, we still have 161 fire alarm installers, which is currently being licensed; we have 8 of our special heating and air licenses are still out there; we have 4 of the old irrigation system licenses that were out there; and we have 0 of the old sign contractors. I heard earlier on the discussion there was some concern over the voltages of signs. The original proposed bill did include voltage limitation. The board asked that that be removed from there and the reason that it was asked to be removed is, as some of you are aware, we don't see too much of anymore, but we used to have the old neon signs. Some of them could be 1,000 volts. They used a spark plug wire. Very few signs do we see out there that are in excess of 240 volts. So the majority of the signs

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that are out there are 240 volts or less. Some of them are down, you know, 12 volt, 25 volt. We have quite a few different voltages in there that we can deal with as far as those signs go. The-- the board has looked at some of these and made a few comments. The industry is asking that we've heard from those doing the irrigation side of it-- we do have a well driller's licensing issue to the Department of Health. We do deal with them, which limits the pump to water wells and that to the control side of the first point of control. And that was brought in a number of years ago by the Department of Health when they started licensing water well. So what we've heard from the irrigation installers, they would like to be able to install everything, including the electrical service to the equipment. Currently, we are regulating them at the first point of control, but they would like to install that electrical service because of a lack of electrical contractors. The board has looked at their proposal and one thing that we came back with, if it's not going to require an electrical contractor's license, let's look at requiring an inspection of those before those get energized. We have the same issue with-- the solar installers have asked for it. I have submitted in the package being passed around that-- some of the language that the board come out with and what the board has suggested for possible permitting for these installations. So I realize my time is up. If anybody is--

LOWE: I-- I let you go on because--

KEVIN BOOKER: I-- I'm sorry. I--

LOWE: You're-- you're good.

KEVIN BOOKER: There's a lot of issues on this whole bill that--

LOWE: All right. Thank you, Mr. Booker. I appreciate it. Senator Blood.

BLOOD: Thank you, Senator Lowe. Hopefully you know the answer to this question. So I couldn't tell when I read the bill as written whether we allowed-- for example, the one that you just gave us in reference to the irrigation guys, or people, will they be allowed to also do maintenance? Because it talks about initial wiring and setting it up, but I'm confused about whether service and maintenance is also part of that.

KEVIN BOOKER: Yes, it is included on it. There-- there is--

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BLOOD: Is it written that way?

KEVIN BOOKER: I'm sorry?

BLOOD: Is it written in that way? Because that's not clear to me.

KEVIN BOOKER: Well--

BLOOD: Or is that just an assumption that I don't understand?

KEVIN BOOKER: The-- OK. It kind of leaves it to the board as far as the exam-- examination part. But it does leave it open, as, like you said, as far as what they can do. What the board heard was that they wanted to be able to install the electrical service, service and maintain. We do have a portion in our existing State Electrical Act--

BLOOD: OK.

KEVIN BOOKER: --that does allow people to maintain all types of electrical equipment without a license, as long as the components they are replacing are like for like. So on that specific bill, they-- they currently-- under state law, they can still maintain that equipment and wire on the-- after the first point.

BLOOD: So it doesn't need to be in this part of statute because you're saying it's covered in another part of statute or in policy.

KEVIN BOOKER: Right. And, you know, the board has asked, too, that they be able to set a set of rules. Otherwise, we'd have a statute that would be extremely lengthy that the board would like to see the limitations set by board rule, saying that it gives the board the authority to set what they're permitted to do. But when we get into that section where it does allow them to repair and maintain, which is currently anything, the same thing applies to signs right now, industrial machinery, anything like that, without having to be a licensed person. And the, the whole bill, we've had to look at the same issues.

BLOOD: Right.

KEVIN BOOKER: The sign people have the same issues right now as-- and their concern was they're doing more than changing like for like. Now they're modifying a sign to make it LED.

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BLOOD: OK.

KEVIN BOOKER: We still have language in there dealing with the limitations, as you asked about earlier, as far as what that person could do. And they can only wire from a junction box where the conductors are installed, by an electrical contractor, to their sign. So it doesn't allow a sign guy to install the entire electrical service to it. It's a very limited portion. And as we heard the discussion over the time frames, we-- we looked at that. I-- I don't want to go too far out of what your question--

BLOOD: No, and I appreciate it.

KEVIN BOOKER: You know, I'm--

BLOOD: Sorry, and I had a lot of questions, so--

KEVIN BOOKER: And I'll try--

BLOOD: --I think I need to just pick up the phone and call you tomorrow, so all right. Thank you.

LOWE: Thank you, Senator Blood. Is there any other questions? Yes, Senator Moser.

MOSER: Well, currently, when you have a sign installed, the sign installers can mount the sign, you know, physically and kind of check it out, but the actual energizing of it from the power has to be done by a licensed electrician?

KEVIN BOOKER: Up to the junction box.

MOSER: So the-- the sign installer can wire from the junction box to his sign?

KEVIN BOOKER: Yes, they can attach the--

MOSER: And have no license?

KEVIN BOOKER: Right.

MOSER: Well, then what do we need this law for? If they can already do all that, I would wonder-- the-- OK.

KEVIN BOOKER: Would you like me to answer the--

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MOSER: Oh, yes, please. Yeah.

KEVIN BOOKER: OK. OK, so--

MOSER: No, I wasn't telling you. I was--

KEVIN BOOKER: I-- I didn't want to, you know--

MOSER: You won't offend me.

KEVIN BOOKER: OK.

MOSER: Interrupt me when I'm wrong. I like that.

KEVIN BOOKER: So as we're getting into the new technologies with-- and all of these proposals, we've got new technology coming up. The sign installers used to have a license to do all this type of work, but then it got to the point of where we have a listed piece of equipment. So these sign shops are UL-listed sign shop in order to build the sign in their shop. So when it comes out to the field, it's one connection. Everything else is done in their shop and one final connection to the junction box installed by the electrical contractor. But now with the new technology we have out there, it's no longer replacement of like for like for them to repair signs. The sign folks would like to be able to modify the sign in the field to do a LED conversion kit, which takes away the old high output ballast and it allows him to put a LED driver in. And throughout this conversion, they are actually lessening the ampacity of the sign without having to modify any circuitry of-- coming to the sign, so it actually makes them more efficient. But it's no longer a like-for-like conversion as maintenance is defined already in our statute. This is actually a modification of a sign; therefore, they're asking for a licensure in order for them to be able to do the field maintenance. If they take the sign down, haul it back to their shop, they could do that same work in their shop and then bring it back and put the sign back up. So the Electrical Board looked at it and says, you know, what's the difference if they do it in their shop compared to if they do it in the field? If-- if they're qualified to do it in their shop, let's look at licensing them and say, OK, you can do it in the-- the field. So that's kind of--

MOSER: OK. Thank you.

KEVIN BOOKER: Thank you.

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LOWE: Thank you, Mr. Booker. I've got a couple of questions. How has elect-- electricity and electrician work changed in the last 10 to 20 years?

KEVIN BOOKER: Drastically, you know.

LOWE: Do we need to keep up with the changes and-- and-- and keep moving forward?

KEVIN BOOKER: Yes, sir.

LOWE: Because I-- I-- I see more things are more plug and play, where you just plug them in and go. And so I think we need to keep up with those times. The type S journeyman's electrician license that's in here, how much time now is spent on apprentices learning how to run conduit and wiring to qualify to be a journeyman?

KEVIN BOOKER: So we don't break it down into time for anything specifically. So if you're going to be a residential wireman, which is like a residential journeyman, that takes three years, 6,000 hours' electrical experience for doing residential-type electrical work. To be a regular journeyman electrician, it's four years and 8,000 hours. So as far as time spent, it would be really, really hard for me because it's so broad, the time spent for somebody doing residential work compared to somebody installing raceways and conduits in a hospital compared to the data center work done at the data center. They need to know more for-- it takes more time to learn the rules that apply to wires in a conduit, per se, compared to wires that are just stapled to a rafter or something in your home. So it's-- it's a tough-- at what point do we say is enough time?

LOWE: Could an apprentice go all the way through his apprenticeship and never run conduit?

KEVIN BOOKER: Yes.

LOWE: Could he also go through his apprenticeship with never running wire?

KEVIN BOOKER: Yes.

LOWE: So wouldn't a license to-- just for running conduit and wire make sense--

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KEVIN BOOKER: It--

LOWE: --if that's what they'd like to have him focus on?

KEVIN BOOKER: Right. And that's a very-- I'm trying to think of how I could phrase it. It's-- there-- where are they going to be installing the raceway? Right now, it doesn't say if the raceway is going to be installed in a hog-type building, if it's going to be installed outdoors, or if it's going to be installed at the data center or at a hospital. So the raceway we install and the requirements for installing a raceway in a hospital is a lot different than taking two sticks of PVC, gluing them together. And anymore, a lot of our work that we're seeing is pre-engineered, telling them what to put in there. But if it's not, they need to be able to know what can go on that conduit. I'm sorry to make it such a long answer, but--

LOWE: Well, wouldn't that be with the six months' documented experience and-- and education that would be required?

KEVIN BOOKER: I-- I know the board was against it on two things. They said the opinion on what the restrictions was, that they didn't see anything less than almost two years on anything, you know, like I say, what-- the conduit that we're going to do at a data center or hospital. I, I think right now, under what we're looking at, we're too broad on what we're asking for. If-- six months running Romex wire in a house would probably be-- you know, an apprentice should know that. But in commercial, it all depends on-- you know, right-- like I say, right now, on-- it's too broad as far as what type of installations we're looking at.

LOWE: Thank you very much for that. We're seeming to get larger proj-- projects in the state of Nebraska. You know, we've got the Costco chicken plant. We've got Google. We got-- have Facebook. How has that electricity running in those facilities changed?

KEVIN BOOKER: So, you know, when you get to the-- and I'm not just going to the chicken farms.

LOWE: No. Yeah, yeah.

KEVIN BOOKER: I'm taking it to our hog, all of our agricultural buildings. It has changed so much in the last ten years. I mean, I grew up on a family farm many, many years ago.

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LOWE: It was before light bulbs.

KEVIN BOOKER: And things were a lot different back then than they are today. So there's been a lot of changes in technology, and everything is electronic anymore, I mean, so it's a lot different today than it was 20 years ago.

LOWE: Being that, that everything's electronic anymore, do we have enough electricians, if we were to get two or three of these projects going at the same time in the state of Nebraska, electricians?

KEVIN BOOKER: We don't have enough the way it is. We-- we've created reciprocal agreements trying to bring more people into our state. But the same issues we face here in Nebraska, I hear from other states. We're part of a 20-state compact for reciprocity agreements with other states. And we all struggle. And many states have proposed very similar language to what we're looking at here for some of our special licenses, as was pointed out earlier, like Iowa and Wyoming. I came here from the state of Wyoming and they had special licensing for many years within certain scopes of the job. We have large apartment buildings going on right now. And the key word that I always hear is the word, it's "redundant." So, you know, some of the work is redundant, but some of it isn't, and, I mean, it's-- I wish I was better at proposing language to try to clean things up, but unfortunately I don't have the answers either.

LOWE: That's where we leave it up to Senator Brandt. Senator Brandt, I'll call on you now.

BRANDT: Well, thank you, Vice Chairman Lowe. Thank you, Mr. Booker, for-- for being here today. And I apologize. I was on another bill in Transportation and Telecommunications, and they aren't nearly as efficient as this committee. So I just have-- when I read through this last night, just-- just the last part of this is-- is the one thing that bothers me a little bit on having three apprentice-- apprentices underneath a special electrical license. So does that mean that somebody can get a special electrical license just to supervise these apprentices, oh, so like in a hog barn or a chicken house or something of that nature? Is that what that-- that means?

KEVIN BOOKER: The way the proposed language, my assumption of it is. And I believe that they brought that in from what our apprentice

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supervision is from, you know, other types of licenses for our fire and our contractors and that.

BRANDT: OK. No, I'm just asking for-- for clarification on that point. So that would be-- that would be a-- a regular electrician still supervising those apprentices, wouldn't it?

KEVIN BOOKER: Well, not under the proposed special electrician, I do not believe it would be.

BRANDT: OK.

KEVIN BOOKER: And that was some of the concerns that the board had, was I got somebody with six months' experience and now they're supervising three more.

BRANDT: Yeah, right.

KEVIN BOOKER: So I--

BRANDT: And that-- and that was my concern and I apologize for-- you guys have probably already discussed this, so thank you.

LOWE: Thank you, Senator Brandt. I just have one more to continue on. You stated that we are in a 20-state compact right now trying to get electricians to come into the state, and Nebraska is trying to grow our economy to take relief away from property tax, and we'd like to do that safely. How do we get more electricians-- Nebraskans to become electricians?

KEVIN BOOKER: So it's a kind of a two-- this is my personal, not on behalf of the board, but as somebody that's come up in the trade and from somebody who's worked in other states. We have a number of programs going on in other states. One of them is, South Dakota has a deal through their correctional facilities that trains construction people, not only in electrical, because we need them in everybody; they train plumbing, mechanical, electrical, construction, everything. I-- and I think the other thing that we're not doing that we could do a better job is to promote our jobs to high school students, because we are a shortage of not just electricians, but all construction people. And anytime I get the opportunity to speak to any, any group of young people, I encourage it. And the same thing with those in the correctional facilities, you know, they're in trouble because some of them never really had-- and if we look at trying to train people to get a profession, we could do that. We're one of the few states that

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will still let a felon work as electrician. So we do get a lot of them that have gotten in trouble elsewhere coming here and as of right now, we really haven't had any issues as a result of that, so-- but there are-- I mean, we, not only as a state, but us as an agency needs to do a better job of promoting the industry than we are.

LOWE: All right. Thank you very much. Any other questions from Mr. Booker? Seeing none, thank you very much. Is there anybody else here to testify in the neutral? Going once, twice. Senator Briese, would you like to close?

BRIESE: Yes, thank you, Vice Chair Lowe. Very briefly, I want to thank all the testifiers today. Heard some great testimony. Appreciate them coming in. And I think we're all in agreement here. You know, we're not going to compromise safety in the name of efficiencies and saving-- saving dollars, cost control or timeliness. We're not-- we're not talking about unregulated, untrained workers here, but I think we're talking more so with these specialty licenses about workers that are trained to do a limited-- something in-- limited in scope. But anyway, we're all looking for that right balance. And I think, you know, I'm confident we can arrive at something here and we'll keep working on it in the committee, so thank you.

LOWE: Thank you, Chairman Briese, and that concludes-- well, we have letters in support from the Platte Institute, the Corn Growers Association, and Nebraska Soybean Association. And that concludes our hearing on LB1174. And I will turn it back over to Senator Briese.

BRIESE: Thank you, Vice Chair Lowe. Next, we have LB1056. Good afternoon and welcome, Senator Lowe.

LOWE: Thank you, Chairman Briese and fellow members of the General Affairs Committee. My name is John Lowe, that's J-o-h-n L-o-w-e, and I represent District 37. LB1056 allows for the temporary expansion of a liquor license for farm wineries, breweries, microdistilleries, bottle clubs, and other entities that already have a liquor license. The temporary expansion can only occur if it is approved by a local governing body. The expansion would only be allowed for 15 days in a calendar year. I am bringing LB1056 due to conversations that were held over LR98 this summer. LR98 was the General Affairs Committee resolution that looked into special designated liquor licenses, or SDLs. There was a lot of challenges identified with SDLs, and LB1056 is designed to help to address just a few of those issues. LB1056 will benefit small businesses in Nebraska who have liquor licenses.

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Currently a company with their liquor license that wants to have an event in their parking lot or a piece of land next to their business has to apply to get an SDL. To get an SDL, they have to apply with their local governing body and pay whatever fee that entity requires. They then have to get permission from the local governing body during one of the hearings. Following this, the company then has to apply to the Liquor Control Commission and pay whatever fees that is. They then have to get permission from the Liquor Control Commission during one of those hearings. This process costs the company time and whatever fees are required. It makes sense to go through this process when a company with a liquor-- excuse me. It makes sense to go through this process when a company with a liquor license wants to go to a new location to serve their processed-- products. I believe that this is burdensome for companies who want to do a one-day event in their own parking lot or a parking lot next to them. Why would a company want to have an event in an adjacent parking lot, alley, or street? Examples where we currently see this already happening is for Husker football games, the College World Series, St. Patrick's Day, or to celebrate the anniversary of when that company opened. LB1056 will allow companies to skip the Liquor Control Commission process. It does require the applicants to get permission from, from their local governing body. Language dealing with that application process in LB1056 is taken from the approach we use with the SDLs already at the local level. This was done to make this process easy for political subdivisions to implement, since they are already doing it when they process an SDL. This is also a benefit to the Liquor Control Commission who will get less SDL applications. Many of the companies that are going through this process are using the catering SDL, which means the state is filing the paperwork and holding the hearings, but not having a fee paid in order to accomplish this. This means the commission is forced to use general funds to offset the lack of fees. Allowing the commission to avoid this process in instances that they almost always grant an SDL seems to make sense. It is important to note that the commission will still receive notif-- notification of any expansion at least 5 days before the event occurs, which will allow the commission to keep the police departments notified. This process addresses another concern that I heard during this process. An S-- an SDL can make almost all liquor laws besides age and time consumption not apply to the holder. This has long been a concern for those who want to protect the three-tier system. LB1056 simply allows the current liquor license to temporarily expand, which means no further rights or exemptions are granted. This ensure, this ensures the current laws dealing with our three-tiered system still apply. At

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the end of the day, LB1056 is a benefit to small businesses, the Liquor Control Commission, Nebraska taxpayers, and our three-tiered system. LB1056 also main-- maintains local control, government oversight, and public safety. With that, I'd be happy to answer any questions.

BRIESE: Thank you, Senator Lowe. Any questions for the senator?
Senator Brandt.

BRANDT: Thank you, Chairman Briese. One real quick one. I see you've got a \$3,000 fiscal note.

LOWE: That's just to change paperwork, basically.

BRANDT: OK.

LOWE: And I think that the Liquor Control Commission, which normally would charge \$5,00-- or \$100--, they expect maybe it will reduce their load by 50. So it should be about a \$5,000 makeup.

BRANDT: So it would be a wash.

LOWE: Should be a wash.

BRANDT: All right. Thank you.

BRIESE: Thank you, Senator Brandt. Anyone else? Seeing none, thank you for your opening. I assume you're going to stay with us to close?

LOWE: No. [INAUDIBLE].

BRIESE: See you later. Proponent testimony. Good, good afternoon and welcome.

VANESSA SILKE: Good afternoon, members of the committee. 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 the registered lobbyist for the Nebraska Craft Brewers Guild. I also regularly represent clients before the Nebraska Liquor Control Commission. So I want to start by thanking Senator Lowe and Patrick Roy for their efforts to meet-- pretty exhaustive efforts-- to meet with various stakeholders in the industry and to convene meetings with all of us to discuss the different ways in which we might be able to improve the SDL process in the state. There were a lot of ideas. This bill represents one version of those ideas that had consensus in the industry. It does, as senator-- just very

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specifically described, include a local control and, and minimal oversight that's necessary for these very limited circumstances. And beyond that, it saves small business owners time, effort, and money. It also reduces the likelihood that they'll have to hire me to go help them with the Liquor Control Commission. So with that, I'm happy to answer any questions that you might have. But I certainly wanted to make a record of our thanks and our support for this bill.

BRIESE: Thank you for your testimony. Any questions? Seeing none, thank you.

VANESSA SILKE: Thank you all.

BRIESE: Additional proponent testimony? Good afternoon and welcome.

HOBERT RUPE: Good afternoon. Good afternoon. 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. And first, I, I really want to thank, to echo Vanessa's thanks for Senator Lowe and his staff to try to start dealing with this issue. As you're seeing, I'm passing out sort of just the expanse of how many licenses continue to expand, both permanent and SDLs. As you can see, the numbers continue to rise, for the most part, in a relatively uninterrupted upward chart. One of the issues that we brought forth in the interim study was trying to address is there a way we could deal with SDLs better. I will be-- I will tell you we have a lot more ideas that did not make it to this bill, and hopefully we'll be working with the Legislature and hopefully the industry to get those done before it goes forward. But we think this is a very good first start. These licenses in question, they're getting an SDL just so they can have it in their parking lot. Their rights and abilities are the same. They're not seeking any additional rights. If they do seek additional rights, let's say they're an off-sale location only trying to do an on-sale event, you know, then they would still have to get an SDL because they're seeking more rights. In this case here, it should, should, you know, these are generally low-problem events. The main issue that we would have is there is a fiscal note and unfortunately the fiscal note primarily goes to we utilize a mainframe that was put in place when I was a sophomore in college. Trust me, we've been trying to get a new one for that. And any time we have to crack it open to redo or redo things on that one for the website, how it would feed to the website, CIO cost, you know, it starts about two grand and goes up from there for the fees to, to change our website. In this case here, the big part would be we'd have to have it feeding information. So when we get the

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notice, the main issue then is the law enforcement and-- local law enforcement and the Patrol can access our website so they can see there's an SDL at that location for that date under the database, or in this case here an, an expansion, not an SDL. But because it wouldn't be an SDL, it requires us to go in there and, you know, monkey around in the mainframe. But as I said, it's a one-time expense at this time, just to go in and redo some changing on the mainframe. But overall, as I said, we really want to thank-- you know, the, this issue was one of the best types-- descriptions of trying to herd cats. And so I give Senator Lowe and his staff kudos for that. There's a lot of competing interests. The main issues that the commission had was trying to reduce the number of SDLs if they're not necessary, and also trying to make sure that the taxpayers weren't sort of subsidizing normal business practices. And this is an attempt to at least recognize some of those. And so with that, I'd be happy to answer any questions.

BRIESE: Thank you for your testimony. Senator Arch.

ARCH: Thank you, Senator Briese. Thank you for your testimony. Just technical, so I understand, is this a, is this a one-time granting of an expansion that could be used for 15 consecutive days? Or--

HOBERT RUPE: I, I think we do-- you can do 15 days in total. And so I think how they're going to split up would be different. So, for instance, if it's a place during College World Series, that was going to do a four-day thing, that would be four of their days. They might have another day on March 17th, for St. Patrick's Day, they're doing an event out there. The key thing was, is, is they didn't want to have-- the 15 days came around primarily because we didn't want to just have them to be able to willy-nilly do this. Because if they're going to do that, just license the thing permanently, you know, seek to meet those requirements. So this was sort of a, a discussion as to how many days do you think they would use that? And then maybe they're not going to get SDLs for those days. Most of these places, at least from the testimony, would be like places like brewpubs and retail establishments, bars and restaurants trying to do special events, that they might want to do a, you know, a local homecoming dance, you know, for the, for, you know, for, you know, and they want to do it in the parking lot. A lot of times these will be utilized for bike nights. A lot of bars will do bike nights, where people will pull up there. They want to have access into that, so they can pull the bikes up there so everybody can "ooh" and "ah" at how cool they are, while they're

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having their beer or cocktail. So I think 15 was sort of the discussion point. You know, how many of these can be seen still as being a temporary expansion versus when you maybe should have to go get a permanent expansion.

ARCH: And, and so, so would there be different applications every time, but those couldn't add up to more than 15? Because that--

HOBERT RUPE: That's the way I understand it, yeah.

ARCH: OK. So you may apply for College World Series and then three separate Husker games or whatever.

HOBERT RUPE: Yeah.

ARCH: But you just can't add up. But every time you would go in, you would you would seek permission for that day or those days or--

HOBERT RUPE: Yeah, from the local governing body. And remember, that's exactly the same as it is under an SDL right now. If the local governing body denies an SDL, it never even gets to us. And so most of these are just pro forma from our perspective because the city is approving it. It's a licensee in good standing, it's an identifiable space.

ARCH: So when do you get, when do you get the information? When does the application get to you? After?

HOBERT RUPE: We're not getting applications on this.

ARCH: You grant that, you grant the authority to the local governing body?

HOBERT RUPE: What this is going to do, if I'm-- "Hobie's Hooch Hut" is going to open up and do a St. Patty, Patty's Day party in the parking lot. I would apply with my local city, city government for the area under this proposed bill. They would grant or not grant it, maybe they put restrictions on it. Maybe they say, OK, yeah, but the band has got to stop at 11:00 or something like that. And then all we would be doing, from the commission's standpoint, would be we would be having to maintain-- they notify us five days in advance so we can get it on the website so the police and everybody who knows that there's an expansion there. So they're not going to come up there and say, hey,

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you're violating your liquor license. So-- but that's, that would that be our role. And our role is relatively minimal on this.

ARCH: So who's tracking the 15 days?

HOBERT RUPE: That would be the one question. Right now, probably since they are going to be limited to one location, the cities should look at it. But we will probably also track those because we have to enter them into the-- for the expansions on our website. So, you know, we'll be tracking those as well.

ARCH: Thank you.

BRIESE: Thank you, Senator Arch. Any other questions? Senator Brandt?

BRANDT: Thank you, Chairman Briese. Thank you for testifying. To continue somewhat with what, what his mindset is, so Hobie's Hooch Hut is out there and they want to do every Saturday night through the summer because it's nice outside and they can get a band in there, they go to their local authority. And so can you block out all 15 Saturday nights in a row on one permit, use your whole year allotment that way?

HOBERT RUPE: I think they probably could.

BRANDT: If that local town approves it and the town says the band play after this. And then who's responsible to notify the Liquor Commission, the city or the guy that holds liquor permit?

HOBERT RUPE: OK, we need to take a look at that because-- pardon? The city has [INAUDIBLE]. [LAUGHTER] I'm sorry, the city has to notify us.

BRANDT: I heard that. Yeah, yeah.

HOBERT RUPE: So did I. I thought it was the city but I didn't want to be mis-- misstate that, you know.

BRANDT: OK.

HOBERT RUPE: Because, you know, the city is the entity which has to approve it.

BRANDT: Sure.

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HOBERT RUPE: And you know, you know, hey, you know, the city says it's fine. Well, no, the clerk said it was fine when you dropped off your application, but the city itself hasn't made a decision, so--

BRANDT: Well, I, I think-- I guess I can see a real advantage for economic development, tourism--

HOBERT RUPE: Yeah.

BRANDT: --a number of things all across the board here, whether it's a craft brewery or a winery, a beer garden or, or to develop that special event.

HOBERT RUPE: Yeah.

BRANDT: And it's gonna be super easy if they only have to do this, if they know a year ahead what dates they want to block out, they can do it at one time, get approved. Am I reading that correctly?

HOBERT RUPE: I think you're reading it correctly.

BRANDT: Right. And then the Liquor Commission would spot-check them or the police would, to say that they've got their fences in place and no minors are there.

HOBERT RUPE: Yeah.

BRANDT: And it's just an extension of their existing liquor license, would that be a correct statement?

HOBERT RUPE: Exactly right. If they are a beer-only license, hypothetically-- those are as rare as hen's teeth anymore-- they would be limited to beer. They wanted cocktails and wine, they would have to begin then to go through the normal SDL process if they're seeking rights in excess of their underlying license.

BRANDT: All right, thank you.

BRIESE: Thank you, Senator Brandt. Any other questions from the committee? Seeing none, thank you for your testimony.

HOBERT RUPE: Thank you very much.

BRIESE: Any other proponents? Good afternoon and welcome.

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KATHY SIEFKEN: Good afternoon, Chairman Briese and members of the committee. It's getting to be a long day. Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, in, in support of LB1056, representing both the Nebraska Grocery Industry Association and the Nebraska Retail Federation. My testimony is really short. We agree with everything that's been said so far. I appreciate this bill and think that it is a solution to a SDL problem out there. If you have any questions, I'd be happy to answer.

BRIESE: Thank you for your testimony. Any questions? Seeing none, thank you again.

KATHY SIEFKEN: Thank you.

BRIESE: Good afternoon and welcome.

LYNN REX: Yes, thank you. Senator Briese, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today in strong support of this bill. We thank Senator Lowe for introducing it. We think this addresses kind of a longstanding issue of having to go through one NS-- one SDL, one SDL after another. And I know, as mayor, when you were mayor of Columbus, I know you went through that situation. It's just very high maintenance. So this is a much streamlined process. It works very well. And Senator Arch, I think your question has been answered, but basically we would see that one application for 15 different days, or you may have three applications for five different days, whichever way you do it, but no more than 15 calendar days in a year. So it's up to the city to make sure that they advise the commission. And it is totally local control, which we really appreciate. So with that, I'd be happy to answer any questions that you might have.

BRIESE: Thank you. Senator Arch.

ANDY HALE: I just have one for clarifying. Thank you.

LYNN REX: OK.

ARCH: It-- there is an application, though, that is made at the beginning?

LYNN REX: That's correct.

ANDY HALE: OK.

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LYNN REX: So for example, if you look on page 5 of the bill, and this is for the farm, this applies to farm wineries, the same, the same language is repeated again on page 7 as applying to retail bottle club, craft brewery or microdistillery licensees. So looking on page 5, lines 9 through 22, this outlines what is in that application, Senator Arch. The licensee shall file an application with the local governing body which will contain-- and it goes through the name of the applicant, the premises, that sort of thing, sufficient evidence that they're going to carry on the activities as authorized by the license. You know, the type of activity. Number 6 on line 20: sufficient evidence that the temporary expansion will be supervised by persons or managers who are agents of and directly responsible to the licensee. And I think the next lines are very important, lines 23 to 25, and again, all this language is mirrored in the next section, as well, that no temporary expansion provided for by this subsection shall be granted without the approval of the local governing body. And the local governing body establishes what their criteria is. Also, I would also encourage you to look on page 4, starting on line 25, and this outlines the process of when, when you can actually do this and how you do it. So in other words, it's going to be in an area immediately adjacent, on line 28, to the area owned or leased by the licensee or to an immediately adjacent street, parking lot, or alley, not to exceed 15 days per calendar year.

ARCH: All right. So the, so the applicant applies to the local governing body, not to the Liquor Control Commission. The local governing body notifies the Liquor Control Commission when those days are being, are being exercised, or--

LYNN REX: That's correct.

ARCH: --for lack of a better term.

LYNN REX: If you look on page 5. Yes.

ARCH: OK.

LYNN REX: Page 5, lines 6-8, as an example. The county, city or village shall electronically notify the commission within five days after the authorization of any temporary expansion.

ARCH: OK. Thank you.

LYNN REX: No, you're welcome.

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ARCH: I think I understand now. Thank you.

LYNN REX: No, thank you for your questions. They are very good.

BRIESE: Thank you, Senator Arch. Any other questions? Seeing none, thank you for your testimony.

LYNN REX: Thank you. Thanks to Senator Lowe and others for their hard work on this effort, on this bill. Thank you.

BRIESE: Very good. Thank you. Any other proponent testimony? Seeing none, opponent testimony? Seeing none, neutral testimony? Seeing none. Looks like we have at least one letter for the record-- record of a letter in support from the direct-- the Nebraska Travel Association. And Senator Lowe, you're welcome to close.

LOWE: Thank you very much. I'll make this very quick because we all want to get out of here tonight. I forgot to thank somebody who worked very hard on this, and that would be my LA, Patrick Roy. Over the summer, we had our interim session and, and he worked very hard on trying to solve some of the liquor problems that we have in the state and making it run smoothly. Sometimes you can't get a first down, but you can move the ball. And that's what we did today, is we moved the ball a little bit down the field. We're getting close to a first down, but we're not going for a touchdown. We're just trying to make a first down at this point in time. And we're moving the ball forward. And right now, the process takes a little over a month to do, to get an SDL, as you apply and, and do everything else. Wouldn't you like to shorten that down a little bit if you have something come up in a shorter time period and, and just apply to the city, and the city says, yeah, that's, that's good. And with weather the way we've had, wouldn't it have been nice if you were in western Nebraska to have a Super Bowl party in the first of February outside in a parking lot? Because you would've had time to figure that out. As right now, you can do all of this by applying for separate SDLs. You could have 30, you could have 52, 1 every Saturday. But you have to apply for each individual SDL, and it has to go through the Liquor Commission and back. A lot of it, a lot of these people now have a catering license, which costs \$100. The SDL costs \$45 per day. So after three SDLs, you're better off to have a catering license, and then it doesn't, after you pay the \$100, that you don't have to pay any more. So by this, it just simplifies everything, and it creates less work for the Liquor Control Commission. Basically, that's it. Thank you very much.

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BRIESE: Thank you, Senator Lowe. Senator Brandt.

BRANDT: Thank you, Senator Lowe. So these 15 days, there is not a fee? You're using your regular liquor license, so you don't have to pay an additional fee to get these SDLs if your city council basically says there is no fee, right?

LOWE: Well, yeah, if-- locally there may be a fee.

BRANDT: Right. But I'm saying there is no \$45 fee that, that you're paying. But so you could use those 15 days, and let's go back to the 30-day scenario. If I wanted to do 15 more, I could do that if I burned through my first 15, I just have to do it the traditional way,--

LOWE: Traditional way.

BRANDT: --and do--

LOWE: The way it's always been done.

BRANDT: --a \$45 if I, if I choose to do that.

LOWE: Yes.

BRANDT: So this does limit me to the 15.

LOWE: Yes.

BRANDT: It's just sort of like 15 is the good deal, and then after that it costs you more money.

LOWE: Yes.

BRANDT: OK. Thank you.

BRIESE: Thank you, Senator Brandt. Are there any other questions? Seeing none, thank you, Senator Lowe.

LOWE: Thank you very much.

BRIESE: That closes the hearing on LB1056 and closes all the hearings for today.