

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee October 20, 2023
Rough Draft

LOWE: [RECORDER MALFUNCTION] General Affairs Committee interim hearing. My name is John Lowe and I'm chairman of the committee. Our hearing or our interim hearing today is part of the public legislative process. This is your opportunity to express your thoughts and opinions on the proposed legislation before us today, even though it is just invited testimony. Committee members might come and go during the hearing, during the hearing. This is just part of the process. They have other things to do. Today we will be discussing the skill games. Please silence and turn off all your cell phones or electronic devices. Please, for those testifiers, please move up to the front. If you are planning to-- so much doesn't apply to this. So I'd like to welcome Sally Schultz to our committee today. She-- we are without a committee clerk so Sally said that she was able to do it. On my right is Laurie Holman. And on my left, I'll let the senators introduce themselves.

HUGHES: Senator Jana Hughes from District 24.

BREWER: Tom Brewer, District 43.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

LOWE: Thank you. And I'd like to invite the first testifier up. Brian. You know, if you'd please state and then spell your name for the record.

BRIAN ROCKEY: Good morning, Chairman Lowe and members of the General Affairs Committee. I am Brian Rockey, B-r-i-a-n R-o-c-k-e-y, and I'm the director of the Nebraska Lottery and Charitable Gaming Division of the Department of Revenue. Senators, our time limit, I'm not going to go real long. I just-- I want to-- you'll wave at me if I'm going too long.

LOWE: Yeah.

BRIAN ROCKEY: OK, great. Thank you. You may recall we provided testimony on LB685 back in, I believe, February. And the material today is, is not a great departure from that, with the exception of updated numbers and some comparisons that I think the committee will find interesting. So in the-- in the binder before you the first three pages, probably you can look at it at your leisure because it really is historical information. Page 4 the present situation, just a thumbnail sketch of the devices. We have about 5,000 right now and actually we'll have specific numbers in a moment. And as we've worked

to establish the regulatory framework, we've been mindful of, of the committee's and senators' statements on the floor and hearings that the idea was not to have many casinos sprout up. We can address some of that as we go. As you may recall, the department conducts-- we conduct field inspections. We have inspectors across the state that visit locations that are licensed for tobacco and charitable gaming, as well as cash device locations. And there's a table there you'll see in a little bit here that talks about-- that speaks to the number of inspections completed. Item 5, slide 5 is progression of the cash device numbers by month since the first of this year. There's also some historical information on there. So as of the end of September, there were 4,752 devices active in the field at 1,578 locations. The 5,623 number that you see is decals. Devices have to have a decal once they're approved. And so those are devices or decals that are either in waiting for-- to be affixed to devices or they're on devices that might be in a warehouse waiting to be-- waiting to be placed. Page 6 is a comparison of locations around the state of all the different gaming activities. So lottery has 1,180 locations; keno, 538; bingo, 54; pickle cards at 477; lottery raffle, there's 438 licensees, and those are more incidental than ongoing activities; racing, I plugged in 6 because of the 6 licensed tracks; 3 casinos to this point. And then the last column is cash devices at 1,578. I thought it would be useful to kind of see a side-by-side comparison. Item 7, page 7 is discussion of our enforcement activities. I would direct your attention to the table at the bottom. It gives you a month-by-month breakdown of the number of devices that have been inspected by our folks in the field. To date, and that's as of the end of September, 3,120 of the devices have been inspected. If you compare that to the numbers to the right there in 2022, the total was 3,312. So we're ahead of the pace there. And of course, more so in 2021 at 1,000; 1,505 in 2020. So as the numbers have grown, the inspection rate has, has grown as well. The table up above is just some information on some enforcement activities that we've been involved in. I think that was a question that came up, I believe, during the hearing in February. As you can see there, they're across the state. A number of them have resulted in devices being seized because they were not decaled. A decal can't be affixed to a device until we know that it's been through the testing process or that the prototype has been through the testing process. And I would-- some devices, excuse me, in the Norfolk area, for example, those were improperly, improperly installed. I believe those devices were configured with three screens. And we found that one of the screens that actually was critical to the player's knowledge of how the game worked was not on-- was not placed on the

device. And so that resulted in a fine. Excuse me. North Loup, that was an unlicensed location and there were no decals on the device. We seized devices and the distributor paid a fine. Bellevue, unlicensed location, no decals on the device, fine. Grand Island, similar. We've-- our activities have been across the state. The last one, well, two items I would point out. The next to the last item, illegal devices and there were local law enforcement concerns. Our investigators, who are deputy state sheriffs sanctioned by the State Patrol, work with local law enforcement pretty frequently on enforcement actions. And this one in particular was a multiagency activity. Those devices were seized and the case is pending with the local authorities. The North Platte item, that's one that's been in the news some. It started about a year and a half, almost two years ago. Our investigators seized a great deal of cash and local law enforcement had concerns on a variety of illicit activities throughout the business enterprise there. The main direction there for the department is violation, excuse me, a violation of income tax law so. Slide 8, page 8 is just a rundown of economics, if you will. You may recall that in our testimony in February and in previous testimony and observations, we had projected that devices handled \$1,000 a week per device per year. And that-- there is a-- there's a table later that shows that number, but it's \$275 million give or take. This information is actually based on observations from devices seized as well as information gathered from operators and distributors that have shared their information with the division. Our best estimate based on that investigative information indicates the devices produce about \$30 of net profit on \$200 in wagers per day or \$11,000 annually, totaling more than \$73,000 a year per device. That would amount to \$55 million of profit from \$365 million annually. \$55 million is what they would take in after prizes and such. That equates to about \$1,400 a week. And you'll see a table in a moment that speaks to that. And as we've noted before, cash devices are subject to sales tax on the lease like other leased equipment. The department has conducted some preliminary audit work that indicates right now several million dollars due in taxes from distributors. It's very much in the discovery phase right now, and at least one distributor has been voluntarily paying sales tax on their leases for a couple of years now. The device income is subject to tax for the distributors and operators as our players winnings. So, you know, any, any net, net income would be subject to income tax. I'll skip that last part because it kind of gets into recommendations that we'll talk about later. One other point of clarification, and I'm sure the committee knows this, the Racing and Gaming Commission licensees are exempt from sales and use taxes under

existing law. I think that change was made a few years ago. Item 9 relates to consumer protection, things that we've encountered or learned. Prizes are paid at the operator location, but uniform practices are not widespread. Some operators charge a fee for paying prizes above a certain amount. In one instance, 10 percent on any prize above \$100. Some locations characterize it as a gratuity. Others have [INAUDIBLE] sign posted saying we charge a fee to pay prizes. You know, that's not envisioned in the act. That's not something that we currently have responsibility over. But it's also not common practice for other forms of activity that pay cash gaming. Sometimes operators are unable to pay winners the full amount of the prize at the time of the win. It depends on how their cash handling takes place. Operators are going to have different arrangements with their distributor. For example, with keno, an operator may pay up to \$1,500; but then if it's an amount more than that, then they have to, to make arrangements with the keno operator to, to cut a check to the winner. So it's a little bit different, but there is no uniformity that we can discern at this point. The timing of prize payments will vary by distributor and operator. In some cases, you know, we've been told, you know, it can take a matter of days and it probably, again, depends on the cash handling requirements. Again, for example, with keno, the cash handle is required to be deposited at the bank within five business days so that operators are not sitting on large sums of cash and putting themselves at risk and the municipality and the operator, the parent operator putting themselves at risk for crime or just missed accounting. There have been instances of ticket counterfeiting that have been going on for a couple of years in various cities across the state. And we don't have the ability to investigate those per se, because there's, there's nothing in the Cash Device Act that addresses that right now. I mean, does it amount to fraud? Our investigators work with local law enforcement if this subject comes up. And what happens, the cash-in receipts from a-- from a cash device, it is printed on plain paper, much like a receipt from your supermarket or convenience store, although those sometimes have coupons in back, but this is just typically plain paper. And an individual will obtain one of those and it might be a winner and they're able to do a copy, copy and paste. And with the printer, increase the amount or change the status of the-- what the ticket says to a winner from, from not being a winner, depending on the operations, redemption practices that they can find themselves at risk for being defrauded of their cash. And it's-- there have been instances where it's an individual going town to town doing a number of those activities. Final item on here is sometimes dissatisfied customers contact the division and, you know,

they'll, they'll be concerned about what they-- what they believe they won or, you know, something may happen with the device or there were instances where-- and it really before, I think the regulatory framework we have now was instituted instances where maybe an unscrupulous location would just say, I'm sorry, the system's broke, I can't pay when in reality they had won. But what happens in those cases, again, because there's no-- nothing specific in the act at this point, one of our investigators will contact the location and try to help them work through it and get back in touch with the player to see if there's a resolution. Frequently there is once that separation has been breached and the situation is usually resolved. Slide 10 is just two observations on my part for, for what-- for what it's worth, the impact of the devices varies to some and they represent the new source of customers. I think we've heard that in the previous hearing in February, the value of devices for retail locations; to others, they represent competition and we've heard from different entities that they're concerned with that. To some they represent a new source of revenue and potential taxes, and to others they represent potential increased demand for public services. I think David is going to speak to that probably in a bit. In all cases, the devices represent a field of endeavor that has been evolving for several years in Nebraska, as you know, and it's growing in states nationwide. You may have seen studies or information from fellow legislators in other states. In-- nationwide they're referred to as gray devices, because they're still, you know, between the realm of, of a game of skill or a game of chance where here it's-- we've clarified it, but we have some information. And Laurie had asked at one point about some additional information from other states, and we've got a little bit of that that we can share with, with their systems at your convenience. Slide 11 is a comparison of the handle, if you will, of the different forms of gaming. And there's-- this is my own math. So if it's incorrect, I will say I'm not a mathematician. I just-- but I got this from public resources. So there's two-- there's two tables and two pie graphs. And the difference between the two is that the upper one reflects the, the calculation that I mentioned earlier on what we believe tax cash devices are handling based off of our investigatory information. So that's about \$1,400 a week. The, the lower table is based on their-- our projection that it was \$1,000 a week. So just going across left to right, you can see the lottery last fiscal and this is-- this past fiscal year, lottery handled 220,387,277. Keno was \$357,106,237; bingo, \$4,538,247; pickle cards, \$13,493,241; lottery/raffle \$9,641,787; racing, \$47,099,580. And I took that information from the Racing and Gaming Commission's website and theirs is set up by

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calendar year. So I pulled it from six months of the previous calendar year and six months of this calendar year. Casinos, \$40,930,361. Again, kind of the same process to gather that information. Cash devices, \$365 million. The total then is \$1,058,196,730. As I mentioned, the pie chart to the left depicts that table. The pie chart to the right depicts the lower table. And the only difference, as I mentioned, between the upper and lower is the thousand dollars a week per device calculation versus the more empirically based \$1,400 a week per device calculation. Slide 12 is a comparison of gross activity for the different-- gross sales, gross revenues for the different activities and then the respective net to the state, if you will, whatever the tax or mandated transfer rate is. And so I won't go through the dollar amounts, but you can see the last column or the last row in the table underneath the net to the state for the lottery last fiscal year. And that's what the lottery transferred to beneficiary funds was \$55,765,983. Keno in that-- this is the state's tax off of keno \$7,142,125. Keno operators are not required to specifically report the amount of community betterment funds that they raise. But from what we've got, it's-- I believe it's 13.5 or \$14 million in community betterment. That's the share that goes back to the communities for, for that activity. Bingo, and the state's tax on that was \$136,147. Pickle cards, the state's tax was \$330,215. Lottery/raffle, \$192,835. Racing, \$92,749. And casinos, \$10,992,909. And I know the casino numbers are split out differently, but that's based off of what I could pull off of that. The cash devices, that number is based on the \$250 per device decal fee, and that's at 4,975 devices, which was at the end of September. So \$1,243,750. The, the, the row above that bottom row is the effective rate of what the state's take is. And I know that's not necessarily what you're looking at, but it was-- I was trying to contextualize things a little bit. So 22 to 25 percent lottery; 2 percent of gross proceeds on keno; 3 percent of gross receipts on bingo; 10 percent of definite profit on pickle cards. 2 percent of gross proceeds on lottery/raffle; 2.5 percent above \$10 million for racing; 20 percent for casinos; and then, as I mentioned, the 250 per device for the cash devices. So the grand total for that would be \$75,896,713. And I used-- I calculated this on the \$1,000 a week per device, so not on the more empirical. So if anything, this is probably low, I would guess. The next pages are the existing statute. And we just highlighted some portions that, that kind of speak to considerations that might be useful during the discussion of enhanced regulatory framework. The first one on, on page 13, it says, "In addition to seizure, any person placing in service or operating a cash device constituting a game of chance within this

state shall be subject to a penalty of \$1,000 for each day of such operation." We have applied that, but we feel that it's probably a little too broad in some cases because there's no-- there's not a lot of latitude. And so an example is some of the instances from the time of first observation to the time of actually a seizure or something taking place as we try to work with the distributors and operators to get it resolved, months can go by, so there's \$30,000 a month. And we had one, it was \$130,000 or \$140,000 in potential fines. And that's-- I don't think that's necessarily what's envisioned. So that's a point that we would suggest, you know, some, some latitude in the regulatory framework or some clarification in the regulatory framework. Page 14, the highlighted item is requirements for an operator to receive a determination from the department that a cash device is in compliance and that they can actually have devices at a location. They have to submit an application to the Tax Commissioner containing information regarding the device's location, software, internet connectivity and configuration as they would be required by the Tax Commissioner. Again, the configuration requirements at retail are sometimes a little fuzzy. The basic access location can have up to four, four devices. That's up to 5,000 square feet. And then one additional device for every 1,000 square feet. Not every-- not every operation fits that, that type of scale. And in some cases, you know, we've had applicants that had a location that was larger than, you know, a standard. It might, might have been a warehouse, for example. And they want to create multiple businesses within that structure. While that's possible, there are requirements that each business have to have a sales tax permit. It has to demonstrate actual business activity. You can't all be selling packs of gum. They need to be separate and distinct businesses, separate and distinct locations. And we've had instances where we've found that that's not the case. So, you know, maybe a little more clarification in that type of language would be useful, some clarification or some contextualization, if you will. Jordan, our legal counsel, he oversees this operation, gave me this information just before we started. I think you'll find it very interesting. Among the 1,589 locations across the state that have cash devices, 77 percent of them or 1,224, are under-- are 4,000 square feet. So they will have no more than four locations. And then going up, 6.2 percent are 5,000 square feet and there's 99 locations, then 67 at 6,000; 48 at 7,000. There are 43 locations that have 15,000 square feet or more space or 15 devices. And we can provide that, you know, if you'd like that as further clarification. Page 15 is just a section from existing statute, not, not pertaining to cash device, but just the language addressing possession of a gambling device and

penalty and the affirmative defense. Just wanted to throw that in-- throw that in for comparative information kind of reference point. The second point there, the owner or operator of a retail establishment who is not a manufacturer, distributor or seller of mechanical amusement devices as defined under the act shall have an affirmative defense to possession of a gambling device described in subsection (1) of this section if the device bears an unexpired mechanical amusement device decal as required by such act. However, the affirmative defense may be overcome if the owner or operator had actual knowledge that operation of the device constituted unlawful gambling activity at any time such device was operated on the premises of the retail establishment. I know-- I believe a couple of years ago one of the senators on the committee, his name went right out of my head, had expressed concern about affirmative defense in some cases like this. So that's kind of why we put that in there, just as, as a reference point. But that would be helpful clarification I think in whether it's the classification of penalties or the structuring of penalties that are available, because right now all there is is just the thousand dollar fine. There's nothing, nothing further that can go-- that we can go with. 16, the two items there are highlighted. The ability of a player to succeed at the game played on the device requires the exercise of skill that no reasonable player could exercise. That is addressed, of course, in our testing. It's addressed in the existing act. Various games have different levels of I think what you could just consider reasonable skill. That's not for us to adjudicate, but it might be something that the committee wants to consider clarification on. "For purposes of this subsection, a reasonable player means a player with an average level of intelligence, physical and mental skills, reaction time, and dexterity." We, we hear anecdotal information of players, you know, they're just sitting there hitting the machine or not hitting it but pressing the button. They're really not engaged with it. We don't think that's probably the intent of the spirit of this act. But, you know, humans will behave as, as they do. Page 17, highlighted item there: A game task considering solely of moving a symbol up or down, replacing one symbol with another, or any similar action with or without a timer. That's something that-- there's more to that and more to a-- more to a game that needs to be than just that. So you can't just have a device like that. But I think there could be room for some additional clarification on what perhaps constitutes play action or the chance to win. 18, and this addresses what I mentioned earlier about square footage and the number of devices. An owner or operator of a retail establishment shall operate no more than four cash devices, except in

an establishment with over 4,000 square feet may have one cash device for each 1,000 square feet, up to a maximum of 15 cash devices. The owner or operator of a cash device shall pay an annual decal fee of \$250. So that's, that's language that obviously might be considered for an update, whether it's the fee or the square footage and the device allowances. 19 addresses the application process in the highlighted portion: At any point after a determination of skill by the department, the department may request from the manufacturer, distributor, or operator information about any device in operation in this state, including but not limited to information regarding currently operable source code, changes to software or hardware, and communications from and to the device over the Internet. The act and the regulations, excuse me, allow for devices to be connected by the Internet, but not for the sake-- not for, for the sake of games being changed. It's more reporting to, you know, a central system, if one exists, for the distributor. But there are-- there might be room for increased reporting or clarification on what and how updates can be made. We're, we're looking at some technological means of verifying in the field that the software on your device is the same as what is assigned. Right now it can be done with serial numbers, but there are electronic methods of doing that. And we use that sort of methodology now when we verify random number generation keno systems. So we're working on something like that for the skill games or cash devices. And then page 20 highlighted language: No operator or employee or an agent of any operator shall knowingly permit any individual under 19 years of age to play or participate in any way in the operation of cash device. Many of the devices have the age posted on there. Many of the operators police that. But we've heard instances where, you know, people under the age of 19 have been seen playing. There is no-- there's no penalty associated with this. There's really no-- so something like that could stand some clarification if there is to be a penalty or some other means of redress. The next slide is just tax language, occupation tax and other fees. Municipalities can, can level-- levy an occupation tax on the devices. The occupation tax-- some of the decal would be in addition to any other taxes and fees. So if the committee decides, as in the original draft of the bill, that there would be a base tax on that, that would obviously fall into that category. Do you have any questions? I would-- if not, I would just go on and list like four more slides, five more slides where we talk about some of the recommendations that we would suggest for clarification of the act.

LOWE: Just continue.

BRIAN ROCKEY: OK. Page 23 speaks to penalties. There really isn't any authorization in the act for the division to penalize for violations of the regulations in statute. Other than the thousand dollar per day fine, that's it. Flexibility with fines and perhaps, you know, language reading up to \$1,000 a day or some other form of graduated fines would be-- would be useful. Perhaps the ability to suspend or revoke licenses, that is common with charitable gaming licensees. I believe Liquor Control Commission has similar activity, similar authority as well. And the ability to de-- to de-- to deny licenses based on more defined restrictive qualifications. And those qualifications, you know, could pertain to the nature of the applicant, the nature of the business, the nature of the, the device, the type of game, any enhanced requirements that might be applied in the testing process. Page 24, under consumer protection, and I mentioned this earlier, a complaint process would be useful for a responsible entity, the, the division or whatever, a method for addressing complaints. We do have a cash device tip line that we created. I don't know that it's active right now and it's kind of a new thing, but that would be a method that we could make available to consumers to call and raise concerns. But what do we do when we have the concerns raised? A resolution process, you know, requirement of refunds or penalty options. I don't know that-- it really depends on what level of licensure and franchise, I guess, that the state wants to be in with, with this sort of operation. Payment requirements, perhaps any time limits for, for price payment and the method of payment and no prize fees. As I mentioned, there are instances we've seen and heard where locations have signage that say it's a fee, there's a fee to pay. Some describe it as a gratuity, but that really, you know, gratuity should-- implies a voluntary sort of thing. Slide 25 speaks to population management. One of the things that, that we had advocated for in the original configuration of the Cash Device Act was the restriction on mobility of the devices, because it's-- and we understand the rationale, the need for distributors to maybe want to move devices if they're-- if they're down for maintenance or whatever. But it does create a tracking challenge. Centralized reporting or more active reporting would be-- would be useful. And that might help with knowing on a more consistent basis how many devices are in the field and where they are and how long they're there. Clarity, clarification on space and placement limitations, again, speaking to whether or not the minimum size 4,000, 5,000 square feet is appropriate if going up in size and the number of devices is appropriate. Licensing fees, adequacy: from, you know, some examples we've seen in other states, a \$250 licensing fee is really quite low. But in the-- I guess in the--

in the discussion of any taxes that the committee sees fit or Legislature sees fit to apply, that would probably be a factor to consider. I think, again, when the original act was being discussed four years ago, I think our-- we had advocated for \$1,000 per device, but \$250 seemed, you know, a good starting point. And then finally, some standards perhaps for the actual locations where the devices are placed. Charitable gaming, a lot of those are in locations where alcohol is sold for consumption, more of a controlled environment. With, with cash devices, it's-- there's no such restriction, and that's neither here nor there from our perspective. But that is something that I think other jurisdictions have, have undertaken. And then there are discussions-- this, this would be useful in reporting for transparency sake, what, what the arrangement between the distributor and the operator is: are the devices on loan, are they leased, are they purchased, are they for rent, are they just occupying space on the floor and there's a revenue share? There are different configurations we've, we've seen. But again, because we don't have uniform reporting, we don't really know for sure. And that might be something that, that the committee would want to consider. Page 26, inducements. We've heard from different distributors and operators that sometimes there are inducements offered for placement of devices at a location. I-- you know, it's not necessarily our call, but inducements are probably not a good idea to have out-- because they really are outside the accountability process of, of a contractual arrangement and the reporting, obviously. Perhaps a duration limit on contracts between distributors and operators or at least visibility into the terms of the contracts, because again, we don't really know. We've had some instances, some, some reports recently, in fact, from operators who have said to a distributor, I don't want your devices in my location anymore. I want somebody else's devices. And then there's a-- there's a debate over whether or not they can contractually do that. You know, we don't want to be a, you know, adjudicator in this. But again, without, without visibility and some consistency, it's really hard to tell which side of the-- which side to come down on or monitor. And then finally, on this page, definition of profit distribution, such as with keno; the manufacturer/distributor, operator, beneficiary entity. There's no-- there was no, no requirement of a charitable component here. I'm not necessarily suggesting that there should be. But compared to the other, you know, activities, they all have some sort of defined beneficiary. And certainly, if the distributors or operators want to use their proceeds to support a favorite charity or an activity, that's up to them. But, you know, there's no uniformity there. And again, not advocating for

that, just pointing out as a-- as an item of comparison. And then finally, licensure reporting, taxation and just sort of a rehash and pointing out some items. Licensure, you know, based on backgrounds beyond the present registration, we you know, applicants do-- are backgrounded to a point. But it might be advantageous to have it be a little bit more rigorous structure if these want to be considered as a, you know, full-fledged regulatory environment. Licensure allowing for stages of sanctions such as suspension or cancellation, as I mentioned earlier. So when an application comes in, you know, there is some background work done, but we don't issue a license per se. It's just you are approved or you're not. And so there isn't really a carrot to hold out or a document to, to revoke if there is a problem down the road. Fees, there's a one-time testing fee per device, per type of device, not per device. So if a distributor has five devices that they want to have tested, they have to pay \$500 per device to get them tested. Once the testing is done, then those devices or similar devices of that construct can go into the field. You might want to consider a one-time fee for a manufacturer to license the manufacturer again, as a-- as a-- as a possible point of leverage in the regulatory framework. Perhaps an annual license or fee for distributors separate from the \$500 per device fee. The annual fee for device decals, as I mentioned, is \$250. It's paid by the distributors. In some cases, an operator may be a distributor if they have a location and they own their own devices and they would qualify as both and be considered both according to the act and the regulations. And then perhaps an operator or an annual license, rather, for annual fee for operators based on the number of devices they have. Whether this is in addition to, you know, a tax rate that was part of the original bill or part of the regulatory framework, it's just something to consider as mechanics of the process, if you will. Taxation, gross revenue with distributors, again, that's part of the original proposal of the bill that you're evaluating now. And then, as noted previously, the leases are subject to sales tax. Reporting, we would suggest, you know, quarterly reports for distributors of prizes and gross handle by location. And then operator income tax is an existing requirement, of course, but that's an annual thing. But it might be advantageous to have more visibility into that sooner rather than later, whether they file a quarterly return or not, not trying to create extra paperwork and whatnot for people. But by comparison, keno, bingo, pickle cards, lottery, raffle file quarterly reports with, with, with the division. And then finally prize reporting. Because these games aren't-- don't fit the definition of gaming, W-2G doesn't necessarily fit but a 1099 might be more appropriate. But there's no standard language, no, no

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executable framework for the distributor or the operator or whomever is paying prizes to provide the winner with a form that enables them or allows them to include it in their-- in their taxable income so. And with that, I'll stop. I appreciate your patience.

LOWE: Thank you, Director Rockey, for all this information that you provided us today. And with that, I'll ask, are there any questions? Senator Holdcroft.

HOLDCROFT: Thank you, Chairman. I just have some questions about how the machines work. So they're games of skill, but are there settings in the machine that can determine payout? Is that-- is that fair or is it?

BRIAN ROCKEY: Yes. But once they're set, they're set. They can't be adjusted.

HOLDCROFT: So the operator or the distributor can't go in and make changes.

BRIAN ROCKEY: No.

HOLDCROFT: They can't increase their profit any way.

BRIAN ROCKEY: No. Once they're set, they're-- they should be set. And that's tested by the lab. And I'm not involved in the testing part. There's somebody on our staff that is more attuned to that. So if you would like specifics, probably.

HOLDCROFT: How many-- do you know how many distributors there are in Nebraska with these machines?

BRIAN ROCKEY: 75, I believe.

HOLDCROFT: And--

BRIAN ROCKEY: There's three testing labs that are in use: Eclipse, GLI and BMM, although I'm not sure how, how many BMM has handled, but GLI is, is the primary lab that the division works with. But when, when, when the original act passed four years ago and we were trying to set kind of a level playing field, we chose GLO to do our benchmark testing. So all of the-- all of the initial devices that were seeking licensure went through that testing. And then since then, then it's been opened up to other laboratories that the manufacturers or distributors work with.

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HOLDCROFT: Are there new machines coming online like every month, year?

BRIAN ROCKEY: Every, every few months. I think we have 15 or 20 games or types of devices that are out there right now. Again, Jordan sees that stuff on a regular basis, but there are evolutions. And I think it's probably much like slot machines in general. They evolve over time. There are-- and depending on how a location is set up and what their arrangement might be with the distributor, you know, a location can work with more than one distributor and have more than one type of device there. So you'll see some that have two or three different types of device and then you'll see some where it's all one, one setup.

HOLDCROFT: Thank you.

LOWE: Thank you, Senator Holdcroft. Senator Hughes.

HUGHES: Thank you, Senator Lowe. Thanks for coming in, Rockey, and for all the information. So I have three questions, and they're not related at all. But the first one is I'm just curious about this. It's age 19 to play games of skill, but it's 21 to go into a casino--

BRIAN ROCKEY: Correct.

HUGHES: --or anything. Why is that? Is it?

BRIAN ROCKEY: I, well, I would gather because alcohol is present in the casino.

HUGHES: OK.

BRIAN ROCKEY: But I don't-- I don't know. That's-- I think that sort of thing varies across the country. Lottery is 19. I think pickle cards it's 18.

HUGHES: OK. Keno is 18 or 19.

BRIAN ROCKEY: 19.

HUGHES: OK, so that's probably why. OK.

BRIAN ROCKEY: And a lot-- sorry.

HUGHES: Go ahead.

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BRIAN ROCKEY: A lot of that is because, of course, these statutes have evolved over time. They've been-- they've been promulgated to address a phenomenon over decades, you know, when keno came and then bingo and pickle cards and etcetera, etcetera, and [INAUDIBLE] it's going to have a little bit different configuration.

HUGHES: OK. You'd said there's 43 places, I think, that have over 15,000 square feet or more.

BRIAN ROCKEY: Correct.

HUGHES: OK. So I-- the only-- I don't-- I don't play these. Apparently I need to go play them because I want to see what this is like, see if I'm any good at it, I'm sure I'm not. But I've only seen them like in gas stations and stuff which are smaller. So those 43 places, like what, what are those? What do they look like?

BRIAN ROCKEY: Probably truck plazas.

HUGHES: So it's still kind of a gas station.

BRIAN ROCKEY: Um-hum, um-hum.

HUGHES: It's just

BRIAN ROCKEY: One that comes to mind is in Grand Island and I won't name names, but you're probably familiar with the brand

HUGHES: Right.

BRIAN ROCKEY: It's, you know, very prominent. They have and have for, for many, many years had a very large arcade area. And it's been a couple of years since I was there. But they had a row of, you know, eight or ten probably cash devices within this arcade area. And then there are other types of games there. So that was-- that's probably--

HUGHES: OK.

BRIAN ROCKEY: --the type of thing that you'll see.

HUGHES: And then when you were-- you have the information of they're saying \$1,000 a week per game; you're kind of thinking it's more \$1,400 a week per game. I'm assuming that's average of all the games. So if you have a location that doesn't have as many people coming through, that game isn't going to be making a thousand a week? Right.

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BRIAN ROCKEY: Correct.

HUGHES: I mean, and maybe this one in the huge--

BRIAN ROCKEY: Some, yeah.

HUGHES: --truckstop is making--

BRIAN ROCKEY: Way more.

HUGHES: \$5,000 a week.

BRIAN ROCKEY: Absolutely.

HUGHES: OK.

BRIAN ROCKEY: Some of that is, is anecdotal information. And I know from talking to David some of the things that he's encountered, I can give you one example if, if it's OK.

HUGHES: No, fine.

BRIAN ROCKEY: One of the-- one of the seizure activities that I mentioned on that table, small town, four devices, we went there and it had gone on for a couple of months trying to get it resolved and it just didn't get resolved. So I went with two of our investigators and there were four devices there. We seized the devices. The distributor came, we opened them. Those four devices contained \$6,300. The distributor told us that that was two weeks' worth of, of handle. So \$1,500 a week for those-- \$750 a week for those devices in a very small community. And he knew that that's why it was two weeks, because it had been two weeks since he'd emptied the cash boxes on those. So you're exactly right. It's going to vary. Some are going to be less and some are going to be more.

HUGHES: I guess my point is like when we're thinking about like the \$250 a game to get the license and maybe bumping that up to \$1,000, that's going to hurt, whatever, the small one that doesn't make that much money. But it doesn't do anything for the guy that's making-- like, it's not equivalent. It'd be better to do some kind of percent because we're charging or we have the casinos that pay 20 percent--

BRIAN ROCKEY: Right.

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HUGHES: --or whatever. I don't know. I just don't know that a flat rate makes sense. But OK, that's me thinking. Thank you.

BRIAN ROCKEY: Well, and I'm sorry, Senator. I'm not-- I'm not-- we're not advocating one way or the other.

HUGHES: No, [INAUDIBLE]

BRIAN ROCKEY: But, but, but those are things to consider. You're exactly right. It's-- there's a lot there to weigh.

LOWE: OK. Thank you, Senator Hughes. Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right. Evidently, I have more questions than the others, but we'll dive in here. First off, if there are machines being sold in Nebraska, the manufacturer, distributor, do they send you some type of notification so you know there's more coming into the state or how do you know that that machine is where it's at and it is being monitored?

BRIAN ROCKEY: They apply to us to have those devices. If it's a-- if it's a device that's already been tested, the only way we know that there are more of them is when they buy decals for them. So a distributor, manufacturer could have a device tested this month, you know, and it takes two or three months at least to get the testing done. Well, once they get approval, they might buy 100 decals for 100 devices. And then six months down the road, they may come back and say, we want another 100 decals for this same-- another hundred devices of this same construct.

BREWER: So they could not distribute a machine in the state of Nebraska without you knowing about it, because for them to distribute, they have to have the decals. To get the decals, they got to go to you.

BRIAN ROCKEY: Correct.

BREWER: Got you. All right. Now, let's go back to some of the numbers you had. The one that caught me-- my attention was the, the million dollar one.

BRIAN ROCKEY: Yes, sir.

BREWER: That's total that you take in from all the machines. What the state of Nebraska sees in revenue is the, what, 340 something? Does

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that sound right? So your total in-- intake is 1,000,058,196, which comes out to about \$8,818,000 a month if you divide that by 12.

BRIAN ROCKEY: That would be for all of the gaming activity.

BREWER: OK. Now let's get down to the bare knuckles part of this. How many bridges and road-- roads are we going to build with this? That's the three-- I want to say 345. Does that sound right? 346.

BRIAN ROCKEY: On cash devices, \$365 million. That's, that's the-- that's on the calculated [INAUDIBLE].

BREWER: That's, that's your total. If you took the 4-- 4,753 times the \$1,400 that comes out to 346. But you, you have more than that because you have more-- you-- those-- the, the 4,753 was the number of devices actually being used right now.

BRIAN ROCKEY: Right. And that goes up and down--

BREWER: Right.

BRIAN ROCKEY: --daily.

BREWER: It changes.

BRIAN ROCKEY: Yeah.

BREWER: All right. We're on the same sheet of music there.

BRIAN ROCKEY: OK.

BREWER: Well, first off, you know, anybody listening that ought to cause eyes roll-- your eyes to roll back a little bit, because I don't think I realized there was that much income from the devices. So that's-- also this binder, whoever built this did a good job. It's easy to understand the numbers you need. I like when you have an issue that needs addressed, you got it highlighted so we can go directly to it. And then I would agree with Senator Hughes on the, the fine should be something that's flexible to the offense and the circumstances. To have a flat rate, you know, I think that's probably not conducive to being fair about things.

BRIAN ROCKEY: Right.

BREWER: Four devices, for square footage and all. I mean, most of the time the gas station, at least in my district I see it's usually two,

three, rarely four. But going through Grand Island and stopping to get fuel, I understand where you, you have some of these larger ones. When you're trying to monitor these, so take me through the process. So you're going to go to Norfolk, Nebraska, and you're going to look at those that have machines in Norfolk, when you do that, is that a mix of, of your staff or is that just the state deputies that go in there? Or how, how do you manage it?

BRIAN ROCKEY: Typically, it starts with the inspectors and they will be going to a location. If the location has tobacco, they'll be checking for tobacco tax compliance. If that location has pickle cards, which you don't see a lot of at convenience stores, but if they have pickle cards, they would be checking that. And then cash devices, they would check to make sure that the devices have their decals. The decals are numbered so they're supposed to match up to the device. I don't know necessarily that the inspectors would take the time in every visit to verify the number with the serial number, but we do have that. And then if, if there's something that involves a more in-depth review, an investigator would go to the location and work with the, the distributor or the operator to actually open the device and look at the-- look at the transaction records and assess what's going on and whether it's a-- those are-- that sort of activity is a little less frequent, obviously, than just a standard inspection. But the inspection is, is the first-- the first line in ensuring basic compliance. And if there's something of concern, then the investigators would take over.

BREWER: On the part about price reporting in the 1099 issue, so if you win, we'll just pick a lump sum, say so you win \$100. Right now you get the \$100 and, and there's no taxes taken out anywhere. That's on the individual to then report it.

BRIAN ROCKEY: Right.

BREWER: And most people do that, of course, I'm sure. Is there a break where you win so much money and then it has to come out?

BRIAN ROCKEY: Yes. \$600 is the 1099 reporting threshold.

BREWER: That's [INAUDIBLE]

BRIAN ROCKEY: So in the case of the lottery, for example, retailers can pay prizes up to \$500. Anything above that, the winner has to go to a lottery retailer, a lottery claim center and claim.

BREWER: Hmm. As far as your, your state deputies that you talk about, I assume they're kind of the same as what we have for our brand inspectors. They are the ones who actually can arrest someone if they need, they can-- they can write citations, and they go through Nebraska law enforcement academy just like the rest or?

BRIAN ROCKEY: Yes. And most of them have been deputy sheriffs or police officers. So they all have, you know, considerable numbers of years of experience.

BREWER: All right.

BRIAN ROCKEY: And [INAUDIBLE] experience as well.

BREWER: And your, your visits to do these inspections, those are all no notice.

BRIAN ROCKEY: Correct. The normal course of an inspector's activity is they'll-- they have a route and they'll go to a community and they'll have their sheet that says, you know, there's going to be five locations in town that have some sort of licensure that I have to look at, and they'll go and do that. I would note that if they're doing a, you know, if they're going to a bar or a restaurant that has keno, that process takes a little longer because they actually balance the drawer and do some administrative checks on the reconciliation of the system. A tobacco inspection is, you know, depending on how much tobacco they have, 10, 15 minutes cash to buy stuff is inspections are, are less time consuming at this point because right now it's just simply verification that, that, that the device is registered and supposed to be there.

BREWER: So on the tobacco tax, that's only on tobacco. So as they transition people, these little packets of nicotine, then you lose all your taxation.

BRIAN ROCKEY: Right.

BREWER: All right. We've got to quit doing that.

BRIAN ROCKEY: I think there's a difference. I think it's a sales tax on it.

BREWER: Yeah, we'd still get sales. All right. I guess that's something. All right. Thank you.

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BRIAN ROCKEY: Thank you.

LOWE: Thank you, Senator Brewer. The square footage of the establishment, say it's a truck stop, is the whole building in that square footage, the tire changing area and everything else? Or the parking lot is the-- where the area that the gas, fuel pumps are?

BRIAN ROCKEY: It's a physical structure.

LOWE: Physical structure.

BRIAN ROCKEY: So, you know, it doesn't make a lot of sense in some ways because if a location can have a very large shop and a very small retail space and have more than four locations or even a standard convenience store can do that, but that's the--

LOWE: Yeah, I can see where a tire shop or something like that that has 15 bays and a thousand square foot office or sales floor has multiple machines in it then.

BRIAN ROCKEY: Now conversely, there's, there are a couple of supermarkets in town. One, it's not far from our offices, and they have four; but based on their square footage, they could have considerably more. So there's a balancing act, I think, for the-- for the operator, how much space they want to apply, provide, just like with anything else that they operate with in their locations. How much space does it need to function?

LOWE: The-- as you go out and you investigate kind of a sting operation of sorts as the guy is going out and they're no notify. But if you're in a town, I know the bar industry, if a-- if an operator is the investigated one, everybody in town knows almost instantly.

BRIAN ROCKEY: Sure.

BREWER: If not, you're not answering your phone. So how effective is that, other than just knowing whether the machine has a sticker or not?

BRIAN ROCKEY: I mean, that's a valid point. One instance that I mentioned, the small community that had four devices, you know, in this location and all the cash. We received information from local law enforcement expressing concerns and asking questions about these devices because they had seen them. We knew about the location because it was on the list. It just wasn't, you know, fully, fully sanctioned

at that point. We have instances in some of these other actions where other operators that are concerned that they're trying to do the right thing. They will contact the division and express concern or ask questions about, I see so-and-so doing this, can I do that or why is so-and-so doing this and I'm not? And so that's, you know, any enforcement is good, you know, is as good as the information it gets I would say. The, the inspectors themselves are known to the entities because they're there periodically. I would say, too, there has been-- I don't-- I don't know if it's-- I don't think it's the case now. But there was a perception one time in the past that the department wouldn't check after hours and we check after hours. And that's-- and that's, you know, not just on cash devices. It's, you know, our, our folks go out and do work on bingo and keno and everything else at nights and weekends. That's part of the process. But you, you raise a good question.

LOWE: Along with that, the deputies, since this has kind of exploded, the cash devices has exploded the last couple of years, are you adequately staffed with the number of deputies you need?

BRIAN ROCKEY: When the act passed in 2019, the fiscal note included two, two staff members, an administrative person and a deputy. They're busy and they're busy on other activities, too, not just-- not just charitable gaming cash device stuff. You know, I don't want to make policy for the department saying, oh, you know, give us 50 people, but I'm sure additional staff would be kept busy.

LOWE: Thank you. Are there any other questions for the director? Seeing none, thank you very much.

BRIAN ROCKEY: Thank you for your time. I appreciate it.

DAVID GEIER: Good morning, Chairman Lowe, members of the committee. My name is David, D-a-v-i-d, Geier, G-e-i-e-r, director of the Nebraska Gambler Assistance Program, testifying today on behalf of the Nebraska Commission on Problem Gambling. So my presentation is behind the second tab in the binder that Brian Rockey handed out. I thought it'd be interesting to start off with a colorful map just to give you a visual of where the devices are found today. It's a little bit easier to spot it if you look at a map instead of looking at 4,700 lines on a spreadsheet. After that, then there's a couple of pages in here about the Nebraska Gamblers Assistance Program. Program has been in existence for 30 years, Commission on Problem Gambling for 10 years. So the Gamblers Assistance Program is the sole activity of the

Commission on Problem Gambling. So that's our focus: all gambling all the time. When a new client comes in to one of our counselor offices, the counselor asks them some questions, fills out a data form. We keep it anonymous, so we don't know who these people are. We have no individual identifying information about them, but we know some general background information. And I've used that then to compile what you see on the pages in this presentation here. I'll give you a summary, first of all, of the nature of the clientele who come seeking counseling help because of problems they are experiencing after play on these devices. I'll call it gaming, not gambling, because that's the structure we have under our statute today. The people that come to our client or counseling offices though constantly, uniformly think they've been gambling. They play on these devices in the same fashion that they would play on a slot machine in a casino, put money in, try to win money out. Some of what I've heard from Mr. Rockey about some of the things that go on, frankly, are typical of gaming industries throughout the history of organized gaming in the United States. There's a constant game of cat and mouse between the proprietor of the game and the people who are trying to cheat or steal. The casino industry spends enormous amounts of money perfecting security. A big part of that is to protect themselves from their own employees who will steal right and left if they can get away with it, not to mention the players who come in with sneaky ways to cheat on the games. That kind of thing is going on with these games in Nebraska to some extent. Part of the problem we face is the lack of good, detailed information. What I have for you today is the information we have so far. There's a line graph about four pages in jagged lines in color that show you the trends of the various gaming activities that people come to our program to talk about. And these lines are based upon the fiscal year total. So at the far left it starts off 2014. That's fiscal year end 2014. So that actually began June 30 of '13. So you see then as you move from left to right over to the present day. Today, fiscal year end last June 30, you see the convergence of the red line, which is the MACD players, and the blue line, which is the casino slot machine players. By June 30 of 2023, they were about equal in terms of the proportion of new clients seeking help in our program. Then down below, sports and then you have keno and scratch tickets. Now we showed you here the five most prevalent forms of gaming activity. There are about five or six others in smaller amounts. We have people that get in trouble playing bingo or playing scratch tickets, but they're much smaller proportion. These five account for the largest share of the people. I've given you some graphic material here that shows you some characteristics of these clients. Again, this is

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information we get from them when they first come in seeking help. When did you start gambling? How old are you today? That kind of information. So my number page 5 is a bar graph that shows you that people playing on these devices seem to be in enough trouble to want help at a younger age than the other gamblers. Page 6 shows you debt and, again, people playing on these devices are going into debt. Now, if you think about it, by the time somebody gets to the point of wanting counseling help, they're in debt because of the gaming they've been doing. That's money lost. They had nothing to show for that money. They put it into the device, got nothing back in exchange. Gambling debt of \$6,000 as the median. We call it gambling. We'll keep calling it gambling. That's the median. And again, think of that. If somebody has \$6,000 of debt and nothing to show for it except time spent sitting in front of a device in a gas station or even in a game room. There are some of these places. I was talking to one of our counselors yesterday. This is up in Norfolk. He said they're emptying out a space of whatever is in there now so they can fill it up with these devices. They're not just in gas stations or truck stops. There are game rooms. Win cash, game casino. That's the kind of signage you'll see all over the state. Now, the inducement to play is always the opportunity to win money. It's always about the money. Now I'm remembering when I was in college, I spent a lot of time playing pool, not for money, just to see if I could make the round ball go where I wanted it to go. It is a challenge, a physics lesson. But it was just a game. These games are different because it is for the goal of making money for playing a game. And that's what goes on with all organized gambling all over the world. Page 6 or page 7 I should say, shows you the frequency of play. Excuse me. I read an intake form two days ago from a client who plays three or four days per week, \$20,000 in debt. Frequency of play is one of the big markers of serious problems. Page 7, lawbreaking. These are all financial crimes. People find ways to do things that are illegal in order to raise the money to keep playing. We find that the people who play on these devices tend to have lower amounts of regular legal income, less formal education. As you go through this, I've tried to give you enough on here that's sort of self-explanatory. But they're all expressing personal problems, emotional, financial, family. These are the main problems that people have with all forms of organized gaming that gets them into trouble. Now, the very last couple of pages show you what our program budget is, how much comes in, what the expenditures are. One of the things that I think Senator Brewer is asking about the tax, the revenue coming in, keep in mind that State Lottery is owned and operated by state government. So the State Lottery doesn't call it a tax. It's

just how much we keep. Players get a certain amount and the government keeps the difference. Same with keno and all the charitable gaming activities. That is the game proprietor or operator keeps some of the money, but the rate at which it's kept is significant, substantial. If you can look at an annual report from the Charitable Gaming Division, it divides all this up into different categories and gives you the precise percentages that are retained in all the charitable gaming activities. And the State Lottery annual report shows you clearly how much State Lottery keeps from the lottery players is substantial. We're devoting about \$3,500 per client per year for the people who seek help in our program because of trouble playing these devices. It's about equivalent to everybody else. \$3,500, \$3,000, it varies a lot. There's a lot of up and down throughout a year, but it seems to be fairly persistent. The numbers of people who are coming into our program seeking help are increasing, as you would expect, as we have more and more gambling of all kinds. It's in your face. It's in the news. Sports betting is going to be picking up. We expect a lot more of that. For these devices, I'm going to tell you, I don't have a recommendation today. I think the Legislature needs more information. I don't think we know enough or you know enough to be really, let's say, clear and accurate about how you do it. We do not support or oppose any kinds of gaming activity. The Commission on Problem Gambling is neutral when it comes to allowing or not. The commission acknowledges that people will gamble. They have through all of history. We're not going to stop it. We're not going to waste our energy trying to fight against it. We deal only with the problems that result. Subject matter of these games first came up when Senator Schumacher introduced a bill in 2015 to try to do something. So it's a perennial, I guess. Here we are eight years later, not much farther along, except now instead of a few hundred, almost 5,000. And I think if you look at businesses in Nebraska, you wouldn't find very many businesses that have doubled or tripled in number in that time period. The number of these is increasing consistently, constantly. They may reach a saturation point. We don't know what that is yet, but these companies are in business to make a profit. They'll make a profit where they can. They'll put them where they can make a profit. That's fine. You have to decide if there's anything that the Legislature ought to do about it. I'll be happy to answer any questions.

LOWE: Thank you, Mr. Geier. Are there any questions? Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right, [INAUDIBLE] very revealing. I might have to agree that we're going to need to do a little research, but I think the bottom line, if you go back to the

previous presentation on page 16, the bottom line: "For purposes of this subsection, reasonable player means a player with an average level of intelligence, physical and mental skills, reaction time, and dexterity." How would you rewrite that?

DAVID GEIER: I don't know. I would say this. How long do you have?

BREWER: Well.

DAVID GEIER: Average is, is itself a pretty poorly defined concept in the field of brain science. People in psychology and neuroscience have studied the topic of perception reaction for over a hundred years, human studies published over and over again about it, trying to understand what the average perception response time is. And it-- they seem to have settled upon some basic parameters about it. But understand that that's an average. That means-- and it's not a median, it's an average-- it means that there's an awful lot of people that are below average and an awful lot of people who are above average. And frankly, I don't think we know who are the average people. When it comes to operating one of these devices, I would say this. To play on the device is a two-step process. The screen shows an image and the player has to-- what's called a nudge or a hot swap-- to touch that touch screen and make something happen. But then there's another step in the process that goes on internally in the device, which is the selection of the point on the pay table that tells that player whether they're going to win any money or not, whether the amount they win is going to be equal to or less than or more than the amount they put in. That-- and I'm not a computer engineer. I don't know how to do software, but figure it this way. There's a way that these devices assure the proprietor of a profit. The percent payout is set at the factory or it can be by the distributor. You can go online and look up a company called Banilla, B-a-n-i-l-l-a, vanilla with a B. Banilla is one of the game manufacturers. They have some devices in Nebraska. And if you go to their website, you find your way through it, you can find on their website some of their printed documents about how to, you know, with the device if you're about to do this. And you'll find in there then that you can set the payout percentage. Now, if you can set the payout percentage, that's got to be controlled by software, not by the player. And that means that on average, out of all the people playing these games, on average, a certain percentage of the money is going to be retained for the-- this is a profit-making business. Of course they're doing that. Now, we don't have a lot of detail and I don't, you know, I haven't-- I don't have an insider whistleblower telling me this stuff. But these games are played a lot. If you go to

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the American Amusements decision by the Nebraska Supreme Court, that was the first BankShot case, there were in two years BankShot had been played in Nebraska over 65 million times in two years. Let's figure that these game-- there's a lot of play on these games in a lot of places over and over and over again. And over time, again, the software tends to make sure that the proprietor makes some money. Of course they make money on it. They have to. If every player could win every time, they'd be out of business, wouldn't work. So sorry, I--

BREWER: No, no, that's, that's a great answer that, you know, explains things. I mean, I think when this was written and just from what Rocky explained, you know, the idea that you don't have-- well, and again, how do you-- how do you-- how do you keep from having this happen? But you don't have this mindless person who's just sitting there pushing the button, which, I mean, we'd love to figure that out for the Legislature, too, but we end up having--

LOWE: Double [INAUDIBLE]

BREWER: --end up having to figure out how do you-- how do you correct this? Because the reality of the situation is if I go in to the gas station in my hometown, usually the one sitting there working the machines were not our Rhodes scholars.

DAVID GEIER: Right.

BREWER: They, they make a conscious decision to do that. And most of the time they really probably shouldn't because they're not in a position to do that. I mean, someone's probably paying the price and likely it's, it's somebody in their family. And so, you know, unfortunately, you can't fix stupid sometimes. It just is the reality of life.

DAVID GEIER: There's a limit to how much--

BREWER: How much are you--

DAVID GEIER: No, I was going to say there's a limit to how far you should go trying to protect people from themselves. It's not government's job. Frankly, the one thing I would say, the, the bill a couple of years ago required the odds of winning to be published on all materials that the State Lottery produces. Now, you can't find anything on these devices that tell the player what are your odds of winning?

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BREWER: Is there anywhere that does it, other states I mean?

DAVID GEIER: I, you know, I don't know. I mean, this is-- this is the ruckus going on all over the country right now. And I mean, I know that in some casinos, for example, they do post in a way, the odds of winning. It's not that clear. But, but if it-- if the odds are-- again, I try to, in my imagination, figure this out looking at the American Amusements court decision by the Nebraska Supreme Court, because there they talked about the pay tables. There are three pay tables, a little over 10,000 variations on each. And on the first one, there was about 1,200 winners; the next one, about 200; and the next one, 10 or 12, you know. So if you-- if you look at the odds there of the winners based on the pay tables, it might have been 5 percent, but then it was 1 percent and then it was one in a thousand, you know. So if a player knows what the odds are, at least they're informed.

BREWER: OK. Thank you.

LOWE: Thank you, Senator Brewer. Since these are skill games and how do you put odds on skill?

DAVID GEIER: Well, you don't. But you could say if you-- if you succeed with the puzzle, if you succeed solving the puzzle, then these are the odds of possibly winning money. I honestly don't know how it could be done. I really don't. I mean, it's-- now you're talking about higher mathematics. It's above our pay grade.

LOWE: In your position, have you ever heard of anybody winning on these games--

DAVID GEIER: I talked to a fellow a couple of days ago.

LOWE: --making a living?

DAVID GEIER: Well, I don't know about making a living, but making money, yes, at least according to him. Now, I don't know if he was bragging or not, but he told me that he does frequently win four or five figures money playing these games. When he does so, if it's above a certain amount, then they don't have enough money in the cash box so then he has to-- they call in and somebody comes and they take a picture of him and make him sign a W-9 form, which is the IRS information form, and mail him a check for his winnings. Now, I also heard-- this is a couple of years ago-- of a fella up in the northeast part of the state who was winning routinely. And the proprietor of one of the shops said, you're not allowed in here anymore.

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LOWE: By enacting this skill game, have we legalized mini casinos?

DAVID GEIER: Well, you, again, now you get into the philosophical discussion of whether it's gambling or not, gaming or not, chance versus skill. You know, some of the places, they even call itself a skilled casino. They, they've come right out and said that. And I think again, to the public, we get the same questions that Brian Rockey gets. You know, how-- what is this? What's going on with these things? And I think a lot to the public, first viewing them, they sure think they look like a slot machine. They do. And that structure starts to look like a casino. But they're, they're small scale. You know, again, I'm going to say, you know, I'm going beyond but with, with the-- with the estimate that Charitable Gaming Division has come up with for the proceeds of these devices. You can look at the website of the Nebraska Racing and Gaming Commission and you can see that the slot machines in the three temporary casinos in Nebraska are generating about \$7,000 per month per slot machine of revenue. That's the amount kept after winnings are paid out. You can look at the Iowa Racing and Gaming Commission website. Again, they publish a great deal of detail. In the 19 casinos over there, 15,000 slot machines, they produce almost \$9,000 per month per slot machine of revenue. This is the last month's figures. So if these skill games are producing \$1,000 a month, there's a difference of magnitude between what they do in a gas station versus what a slot machine does in a licensed casino establishment. And again, I think there's something the Legislature needs to be thoughtful about when you decide what you may want to do.

LOWE: The-- according to Brian Rockey, there was \$365 million--

DAVID GEIER: Over year--

LOWE: --in '22-23. And your figures of the age limit for the income, excuse me, the income of these gamblers, it seems like 50 percent of that is paid by those earning less than \$25,000 a year.

DAVID GEIER: A good deal of it is, yeah. And keeping in mind, again, this is a-- this is just a snapshot, really. These are the people that got to the point of wanting to see a counselor. So I'm not claiming it's representative of the entire population who does this. But yes.

LOWE: It seems like a high voluntary tax on your income.

DAVID GEIER: It is, especially if you go into debt.

LOWE: Thank you. Any other questions? Mr. Geier, thank you very much.

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DAVID GEIER: Thank you.

LYNNE McNALLY: Good morning, Chairman Lowe, members of the committee. Lynne McNally, L-y-n-n-e M-c-N-a-l-l-y, CEO of the Nebraska Horsemen and I am a member of the Board of Directors for WarHorse Casino Lincoln and WarHorse Casino Omaha. I am also their registered lobbyist. I'm here today to kind of give you some flavor of the, the statutes, the rules and regs, and the various requirements that the casino industry lives under in the state of Nebraska. And I think you can pretty easily contrast that with the completely unregulated gray area market where it's no holds barred and you have no idea what's going on. First of all, I'm sure you know that for the privilege of opening these casinos, the entry fee is \$5 million. So WarHorse's current obligation to the state of Nebraska is \$15 million. They hold three of the licenses. That's, that's the first thing you do on the first day. From there, you get to build it, buy the machines, hire the people, so on and so forth. There, there are various levels of, of guidance, regulation, and enforcement. It starts with the statutes, well, constitution first, then the statutes. Then we have rules and regs. Then we have minimum internal control standards, which we are required to submit and have approved by the Gaming Commission. We have-- there's minimum internal control standards. Then you have to have your own internal control standards, which is a different set of documents. And then you also have something called standard operating procedures. All of those have to be submitted to the NRGC for approval, and they are under constant watch and scrutiny. Ultimately, I can't remember for sure what their final number was, but I think ultimately when all of the licenses are operating, the NRGC intends to have 24 investigators on staff, and that is separate from the compliance officers, the various people that are monitoring the accountants, that type of thing. Software engineers are a key part of that as well. We have-- among the many requirements we have is constant surveillance, both of our software system and our surveillance system. So the NRGC has real-time access to any camera on the gaming floor. They can-- they can turn on any camera they want and watch it right now in real time. In addition to that, they have full access to our software monitoring system that the machines are required to be hooked up to. So at any moment, at any time, they can pull the information from any machine on our gaming floor, they can get a reading on what the current hold is on that machine, what the current jackpots are on that machine, what the payouts have been, and if there are any anomalies in the system that have come up as a red flag on the software system. They can do that on any of our machines

at any time, 24 hours a day. That is also a requirement. In addition to that, we are required to Veridocs every person that walks through the door. So we've got a pretty sophisticated ID system that, again, gets reported directly back to the NRG. And we are required to card everybody, whether you appear to be 21 or if you appear to be 90, which is a little bone of contention for some people. But it's state law, we can't get around that. So a key part of that Veridocs system is that we also have a self-exclusion list again. State law, it's administered by the NRG. There are documents that were created in conjunction with David Geier's group to-- there are varying levels of exclusion. So if you say to any casino in Nebraska, I think I have a problem and I would prefer not to be able to come in. I think-- I believe it's six months, a year, I think five years, and then there's a lifetime ban that you can-- that you can impose on yourself. There-- the lifetime ban is not supposed to be the first thing out of the gate. We're supposed to give you the option of something lesser. The reason for that is if, for example, I went in today and said, I want to exclude myself for one year, I'd fill out the documents. I read them, I say that I read it completely. I fully understand. And in that document it says, once you sign this agreement, you are not going to be allowed in for one year to any casino even if you change your mind. It's right in the document. So in six months, if I say to myself, you know what, I don't-- I think I overreacted. I don't think I really had a problem. I'm going to go down today. We cannot let you in. That, that, that document is not revocable. So we've got varying levels of exclusion. This has also become, as this has evolved, it's become sort of interesting because we have already had someone who is objecting to signing his own self-exclusion document. He said that when he signed the self-exclusion document, he meant for it to be at WarHorse Lincoln only because he lives in Lincoln. He wanted the freedom to go to WarHorse Omaha if he chose to. That is not our policy. If you're on the self-exclusion list for WarHorse, you are on the self-exclusion list for every location. We are actually not as Draconian as other operators. For example, if you sign the self-exclusion list for a Caesars' property, you are banned at all Caesars' properties worldwide. You cannot get in. That has also come up. There was someone who signed a self-exclusion agreement at the Caesars' property in Council Bluffs and would now like to play in Columbus, and they told him that he is not allowed to play there. He's on their self-exclusion list everywhere. So just in contrast, there is absolutely no surveillance, no monitoring, nothing. They brag about how these machines can be put in for no additional employee time. So people are coming in. You don't know if they have a gambling problem. You don't

know if they're underage. You have no idea. As a matter of fact, we have several photos of children playing these machines regularly. I personally witnessed a child playing a machine, appeared to be about five or six years old. I went to the parent who was sitting next to her and said, you know, she can't play this machine. She's very clearly under age. And he said, oh, she does it all the time. We're here all the time. I give her 20 bucks. You know, she has a good time. If she wins any money, I let her keep it. I said, you've never had an employee tell you that she can't play this machine? No, never. I'm here all the time. You've got to wonder if, if this is in their business model.

LOWE: You are talking about a skill game and not a casino, correct?

LYNNE McNALLY: No, a skill game. Thank you for that correction. It was-- it was at a convenience store where I-- where I saw this. And I'm glad that you mentioned that. Just imagine for a moment if it came to light that we had a child playing a slot machine on our gaming floor, it'd be front page news. Every news outlet would be carrying it. And I promise you, we would have had our license immediately suspended and we would have had to close and they would have called an emergency hearing to cancel our license. I absolutely guarantee you there is no greater sin in the gaming world in the state of Nebraska than having an underage person play, absolutely no greater sin. Apparently, you can do it all the time with these gray area machines and no one cares. The problem I have with that is that I think David has seen an uptick in underage problem gaming. And if you develop some kind of an issue when you're that young, imagine carrying that for the rest of your life. I think that that's a burden that we should not be putting on our children. There's a reason why you have to be 21 to come into our facility. We in the horse racing industry, you used to be able to be 19 to place a wager. When the casinos were authorized by the initiatives, we made the decision as an industry that we would voluntarily ask the Legislature to raise our minimum age of betting to 21. We just felt that since we were in the same building, in the same environment, we would rather be safe than sorry. And so we asked Senator Lowe if he would please raise the age to 21, and the General Affairs Committee advanced that bill and it passed a couple of years ago. So we are now under the age of 21 rule for, for gaming on the parimutuel side as well. We have 425 machines on our gaming floor at the moment. You know, I heard Mr. Rockey talking about there are 15,000 square foot mini casinos out there. Our entire facility is 24,000 square feet, and a big chunk of that is parimutuel and, and the bar area, the restaurant area. So I would speculate our gaming floor

is probably about 15,000 square feet. So we're paying a 20 percent tax, a \$5 million entry fee for the exact same thing as these mini casinos out there who have to pay a \$250 sticker fee. That's, that's unconscionable to me. I think that we are privileged to have two gaming licenses. We take it seriously. We are very happy to follow the numerous rules and regulations that we have to follow. I've been reminded recently about how many there actually are. We actually have an NRCG hearing at 1:30 today, and we're hoping to get approval for sports betting in Omaha. The amount of, of regulations we're having to comply with is crazy. But, you know, we're getting used to it. We've got to have seven security guards on duty at all times in the trailers. I don't know if you've been up there, but it's pretty small space. We are not authorized to get in the kiosks for sports betting until we have proven that we have full-time, 24-hour security that's available to guard these machines. And that's before they're hooked up to the system. It's in the rules and regs that they have to be guarded at all times, even if they are not operational. And when we ship them in, they'll be dead. There's no way to play them. They're a brick. We have a five-day notice requirement to even get permission to bring a machine into the state of Nebraska. We have to get permission, written permission from the NRCG to ship in a machine. We have to tell them where it's coming from, what the serial number is, when it's expected to be here. And an investigator has to be on our property for us to be able to receive it. If an investigator is not there, we are not allowed to take it off the truck. That's just one small part of what we have to do. I have a-- I have a funny example. We had our one-year anniversary on September 24 and the marketing department decided to give away a car. So I was driving down the street one day and we have several billboards in Lincoln, and I saw that, you know, they had the ad to give away the car and it was a white Buick. And I thought, hmm, well, that's an interesting choice. I wonder if Lance Morgan knows we're giving away a Buick. So I called him and he said, hey, what's going on? I said, yeah, you know, we're giving away a car, right? Yeah. He said, by the way, no one ever told me what the car was. I said, it's a white Buick. And he said, seriously, what are we giving away? I said, it's a white Buick. And he said, so for the first time in the history of casinos, someone's going to say, nah, I'm good. And I said, it's not exciting enough? No, it's not exciting enough. So he, he called the marketing department and said, I want you to give away an electric Mustang. It's a horse. I want to give away a Mustang. We had to get NRCG permission. We had to apply to change the prize. We had to explain why we wanted to change it. And they had to give us written authorization to swap out what kind of car we gave away.

That's the level of detail that we have to comply with on a daily basis. My gaming application was over, I think by the time I was done it was nearly 140 pages to get my gaming license. My personal gaming license was \$10,000. I just paid the annual renewal fee of \$2,000. Every license has an annual renewal fee. Obviously, the slot tech licenses are less expensive, but there's always an annual renewal fee. And they, they run you through the system to make sure that you haven't had anything come up that's related to a crime of embezzlement or something like that. They, they run your, your information through. You know, I could go on and on about those regulations. I could literally talk to you all day about it. But I think you get a general idea of, of the things that we have to do to comply. And I don't disagree with any of these things. You know, I think it's extremely important. We have a very high responsibility to the citizens of the state of Nebraska to run a game fairly and to make sure that the people that should not be playing are not playing. We don't want people with a gaming problem in our facility. We don't want them. There are plenty of people that go and just have some fun and have a beer and, and hang out with their friends. We don't want anyone in there that, that has an issue with spending more than they can afford. Apparently, these operators at these C-stores and these other places don't have a problem with it. They don't care. They don't care if kids are playing. They don't care if people with a gambling problem are playing. I think that Mr. Rockey had a lot of good ideas. I think that the lottery is doing the best they can with the rules that they can operate under. But I think that, that the tools they have are woefully inadequate. You know, they're, they're resorting to things like, you know, filing cases for tax evasion because, you know, they don't have the tools to be able to enforce anything. For example, if they have someone who is clearly playing that's a child, what do they have at their disposal to be able to crack down on that-- on that bad operator? They have very little if you-- if you look at the rules they're operating under now. It's, it's really a shame. And I think they're also woefully understaffed, in part because these operators pay hardly anything to have these machines out there. And they're tested but, you know, they can change the software at any time. They can change the hold. There's no advertising about, about what their hold is or what their mandatory payout is. They don't have one. They, they could have a zero, you know, they could have a 0 percent hold if they wanted, you know. It, it could just be basically you put your money in and you never get anything out. There's no consequences for that. And if they don't pay out, there are very few consequences. There are a lot of these people that if you see they've got a

handwritten sign, mandatory 10 percent tip; mandatory 20 percent tip. So if you win, you've got to pay them to give you part of your money that you had won. That just seems absolutely beyond the pale to me. I believe, Senator Lowe, you have one of these mini casinos in your district. And some of the few people that have actually had consequences ended up having a tax evasion case filed against them. You know, I've sat in the presentation for these machines. They emphasize repeatedly that this is a great addition to your business because it's all cash. And did we mention it's all cash? If you think about it, the, the massive amount of money going through these machines has less oversight and accountability than the number of Twinkies they sell. They have more of an ability to, to figure out how many Twinkies they sold than how much money is going through these machines. They know. You don't know. You have no idea. You have to rely on what they tell you that they did. You know, I-- I'd be very interested at some of these, these bigger mini casinos if, you know, if I were in the Department of Revenue, I'd be pulling some tax returns and just seeing what they-- what they're self-reporting. Because I promise you, it's well under what they're actually making on these machines. And that's money that belongs to the taxpayers of the state of Nebraska. I am a former employee of the Department of Revenue, so I take that very seriously. Just to remind you, on that 20 percent tax, 70 percent of our tax revenue goes to the Property Tax Relief Fund, 12.5 percent goes to the county, 12.5 percent goes to the city in which the facility is located, 2.5 percent goes to the General Fund, and 2.5 percent goes to David Geier's group, the Problem Gambling Assistance Fund. You know, we're just really looking for some enforcement, some equity, and some compatibility in these machines. You know, I have played the BankShot machines. I do think that there's some skill involved. It took me a couple of times to even figure out how to play it. The, the other machines that I would not call BankShot machines, boy, that's, that's a tough sell for me. You know, the, the way it works is you have one spin, and the skill involved is that you have to press an additional button or press the reel that lights up for you. If you're three years old and you can meet the, the, the skill requirement to play that game, is it really skill? That, that makes me wonder. So, you know, I think if that-- if you-- if you had some more resources for the enforcers and had some more tools for them, I think that, you know, with adequate regulation you could get some of this stuff in control. But there's no surveillance. There's no monitoring. There's no requirement that Department of Revenue has any information in real time on these machines. They have to have it. How would they enforce if they don't have real-time information like they

do with us? There's no other way to do it. You know, they, they can tell you to the penny what our tax obligation is right day-- right now because they have real-time information as to exactly how much money is going through those machines. In addition, we have to have a trust account. That account is based on the amount you would have to pay if every machine in the facility hit at the exact same time. If the jackpot amount hit at the exact same time for all 425 machines, we have to have the equivalent of that payout in cash in a trust account that's controlled by the NRG. That's, that's a requirement for us to have our doors open. So, you know, these places, if they-- if they have a jackpot hit, do they have to pay? Do they have the money to pay? No idea. You know, I, I think if, you know, these are going to be out in the field, they've got to have some accountability, some compliance with-- you know, I mean, if if you've got more requirements to, to pay tax on pickle cards than you do on these machines that are proliferated throughout the state, that's ridiculous. The number of machines that are out in the field right now, when Lincoln is fully complete, we'll have approximately 1,400 gaming positions in Lincoln. Think about this. When that facility is fully complete with 1,400 gaming positions, we would have to build three more of those to have as many machines that are in the state of Nebraska right now with no accountability, no monitoring, no regulation. And again, I have great respect for Mr. Rockey. I-- he's a former coworker of mine and a friend of mine. I think he's, he's giving his best effort to do what he can with the few tools he's been given. But he needs more tools. He needs more personnel, he needs more monitoring, he needs more ability to be able to accurately tell you how much money is going through these machines. I would be very, very happy to take any questions if you have any.

LOWE: Thank you, Mrs. McNally. Are there any questions? Brewer is writing.

BREWER: I'm taking her notes.

LOWE: So if somebody signs one of your documents not to let them in to the casino--

LYNNE McNALLY: Yes.

LOWE: --and you ban them and they are adamant about gambling now or, or adamant about playing a machine, if they go play these skill machines, there's nothing stopping them.

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LYNNE McNALLY: Nothing stopping them.

LOWE: And so--

LYNNE McNALLY: They don't honor-- they don't honor an exclusion list of any kind.

LOWE: So if they have an addiction problem, they're right back at it again.

LYNNE McNALLY: Correct. And as you know, compulsive gambling is one of the only addictions that can decimate your entire family. You know, you can-- you can get your house taken away, you know, consequences. I mean, I've got, you know, unfortunately, I know a lot of people with an alcohol addiction and it's very sad and, and brings that person down. But it really is confined to that individual. You know, family money can be accessed with an addiction like this. That's why we take the exclusion list so seriously. If they even suspect that they have a problem, we want to honor that and not allow them into our facility.

LOWE: Thank you very much. Seeing no other questions, I appreciate you coming.

LYNNE McNALLY: Thank you very much.

LOWE: OK. That's it for our invited testimony. I appreciate everybody coming today, but I would like to have a chance for rebuttal. And if the other side would like to come up and say a little bit at this time. Yes. No. OK. All right. Thank you, everybody, for-- oh, oh.

ANSLEY FELLERS: Thank you, Senator Lowe. Thank you to the committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s. I'm here on behalf of the Nebraska Grocery Industry Association. We have some members-- thank you, Sally. I almost forgot to fill this out. Given that we have an opportunity, I will only say very briefly, just so the committee is aware to have it on record that the industry discussed today has been operating under the regulations outlined by the department since January 1 of this year. So I think some of the criticism of the industry and some of the concerns that we hear normally have been addressed in many ways since January. Folks are starting to use these and put them in their facilities in a way that we all understand and the Legislature can track and the Department of Revenue can track. I can also tell you from my experience and my discussion with the industry that there is some interest in working with the Legislature and the Department of Revenue-- and I know Mr.

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Rockey knows this-- to more accurately determine how much revenue is being generated from these. And we're happy to continue those discussions and just want to be at the table and part of the work of this committee and the rest of the Legislature. So thank you for giving us this opportunity, and I'm happy to answer any questions.

LOWE: Is there any questions for Ms. Fellers? Thank you for taking the time to come in to speak. With that, I conclude the interim hearing. Thank you all for attending.