

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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COMMITTEE ON GENERAL AFFAIRS
January 30, 2006
LB 978, 1004, 1160

The Committee on General Affairs met at 1:30 p.m. on Monday, January 30, 2006, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing regarding the confirmation of gubernatorial appointments and LB 978, LB 1004, and LB 1160. Senators present: Ray Janssen, Chairperson; Deb Fischer, Vice Chairperson; Matt Connealy; Philip Erdman; Mike Friend; David Landis; and Roger Wehrbein. Senators absent: Abbie Cornett.

SENATOR JANSSEN: Welcome, ladies and gentlemen, to the General Affairs Committee hearings for this afternoon. Today's agenda, we will have six members of the Arts Council; we will hear confirmation hearings on those six people. And then we will hear LB 978, Senator Heidemann's bill; next will be LB 1004, Senator Hudkins' bill; and LB 1160, Senator Kruse's bill. I'd like to go over the process we have at our hearings. Would you please fill out the testifier forms. They are placed in boxes back by the doors, so that your attendance will be properly recorded. Please spell your last name, for the record. State who, if anyone, you are representing. First, we will hear the proponents, and then we will hear the opponents, and then those in a neutral capacity on each one of the bills, which would limit your testimony and be brief. Don't repeat something that has already been said and please do not repeat that testimony too many times. I know you are here for a reason and these are public hearings and you will all be recorded in what you say and we'll give you our undivided attention. Please turn your cell phone off or put them on vibrate or something, and refrain from any conversations that interfere with the hearings. With that, we have four of us here this afternoon. To my far left, Senator Wehrbein; and next to him is Senator Connealy; and to my far right is Senator Phil Erdman; Laurie Lage is legal counsel for the committee; and Brittany Sill is the clerk; and our page today is, I believe we have Mimi today. With that, we will...and for the record, my name is Ray Janssen; I happen to chair this committee. So we're waiting for Senator Fischer. She is over attending the Education Committee. Senator Cornett will not be with this afternoon. Senator Friend, I'm sure, will be here, and so will Senator Landis as we proceed. We will start with the Arts Council, those

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who are up for a reappointment or new appointments. And I'll ask the first one to come up, Senator Bromm's wife Vicki. Vicki, would you come up the testifier's stand.

CONFIRMATION HEARING ON
VICKI BROMM TO THE
NEBRASKA ARTS COUNCIL

VICKI BROMM: It's Vicki Bromm, B-r-o-m-m, for the record.

SENATOR JANSSEN: Good. It's good to have you here, Vicki.

VICKI BROMM: Thank you. I have been appointed to fulfill the term of Louise Bereuter in the last term, and so then I've been reappointed for my term now for the next few years. I would just like to go on record to say that those were big shoes to fill from Louise Bereuter being a great advocate of the arts. But with the executive director and the staff of the Arts Council, I think I've sort of filled maybe part of one of those shoes. And with my background in the arts, my educational background, I think I am sort of an asset--hopefully, a great asset to the Arts Council--and I look forward to the appointment.

SENATOR JANSSEN: Good. Thank you, Vicki. Any questions?

VICKI BROMM: Make them easy if there are any.

SENATOR JANSSEN: Seeing none, I think you are getting off pretty easy today.

VICKI BROMM: That's good.

SENATOR JANSSEN: Have you enjoyed the last year or so?

VICKI BROMM: Oh, yes. Like I said, the executive director and the staff have been just great and the state would be proud of how they are taking care of the money.

SENATOR JANSSEN: Good. Thank you very much.

VICKI BROMM: You bet. Thank you.

SENATOR JANSSEN: Joan Gibson.

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CONFIRMATION HEARING ON
JOAN GIBSON TO THE
NEBRASKA ARTS COUNCIL

JOAN GIBSON: Good afternoon.

SENATOR JANSSEN: Joan, welcome.

JOAN GIBSON: My name is Joan L. Gibson and I serve as the vice chair of the Nebraska Arts Council. I don't have a prepared statement this afternoon. I am open to any questions you might have for me.

SENATOR JANSSEN: All right, Joan. I don't know; are there any questions? How long have you been on the...?

JOAN GIBSON: I've been on for four years.

SENATOR JANSSEN: Four years. Um-hum.

JOAN GIBSON: Three years.

SENATOR JANSSEN: All right. Went pretty fast, didn't it.

JOAN GIBSON: Yes, it did.

SENATOR JANSSEN: They usually do. The older you get, the faster they are going to go, too, kid. Okay, seeing no questions, thank you very much for being here today.

JOAN GIBSON: Thank you.

SENATOR JANSSEN: Julie Jacobson.

CONFIRMATION HEARING ON
JULIE JACOBSON TO THE
NEBRASKA ARTS COUNCIL

JULIE JACOBSON: My name is Julie Jacobson, J-a-c-o-b-s-o-n, from the 42nd Legislative district. I am very excited to be asked to be on the Nebraska Arts Council for the first term. So I have a lot to learn, but I know with Suzanne's help and

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with the other members, that I will really enjoy this opportunity being on the council. If you have any questions? You can ask about my background. I guess you have my resume so I won't go over that.

SENATOR JANSSEN: Any questions of Julie? Seeing none, thank you for being with us today.

JULIE JACOBSON: All right, thank you.

SENATOR JANSSEN: All right. Robin Koozer.

CONFIRMATION HEARING ON
ROBIN KOOZER TO THE
NEBRASKA ARTS COUNCIL

ROBIN KOOZER: Good afternoon. My name is Robin Koozer, K-o-o-z-e-r. I'm from Hastings, Nebraska, and I'm here because I have been reappointed to the Arts Council. This will be my second term.

SENATOR JANSSEN: Okay. All right. Any questions? Now, you've...this is going to be your second term then?

ROBIN KOOZER: Yes, yes.

SENATOR JANSSEN: And you are from Hastings, is that...?

ROBIN KOOZER: I am the chairman of the music department at Hastings College and reside in Hastings.

SENATOR JANSSEN: All right. Now, there was a fellow on that council for years and years. He was from Hastings.

ROBIN KOOZER: Fred Teller?

SENATOR JANSSEN: Fred Teller.

ROBIN KOOZER: I followed Fred from the 3rd Congressional district.

SENATOR JANSSEN: Right. You know, Fred was quite a barbershoppers also.

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ROBIN KOOZER: Indeed, indeed. And still is.

SENATOR JANSSEN: Oh, is he still?

ROBIN KOOZER: He and his wife Lorraine will be honored tomorrow at the Governor's arts luncheon...

SENATOR JANSSEN: Great.

ROBIN KOOZER: ...as friends of the arts.

SENATOR JANSSEN: Great base.

ROBIN KOOZER: Um-hum.

SENATOR JANSSEN: Did a good job. Seeing no further questions, thank you for being here.

ROBIN KOOZER: Thank you very much.

SENATOR JANSSEN: Kathleen Watson. Oh, excuse me. Well, I got... No, that's fine. Sit down; that's fine. I don't have to follow this dumb thing anyway.

KATHLEEN WATSON: That's your privilege and I'm glad to help.

SENATOR JANSSEN: All right, Kathleen.

CONFIRMATION HEARING ON
KATHLEEN WATSON TO THE
NEBRASKA ARTS COUNCIL

KATHLEEN WATSON: My name is Kathleen Watson, W-a-t-s-o-n. I go professionally, usually as Kit, so some people know me as Kit. But I am a new appointment to the Arts Council and I'm just thrilled with the opportunity to hopefully make some contribution to arts in our state. If you have any questions, I'd be glad to respond.

SENATOR JANSSEN: Questions? Kathleen, the arts are a vital part of our society, and I'm glad to see your interested.

KATHLEEN WATSON: Yes. Thank you very much.

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SENATOR JANSSEN: Oh, I see a question over there from Senator Friend.

SENATOR FRIEND: Well, thank you, Senator. Kathleen, I was going to say, I hope nobody thinks this is lack of interest or disrespect on our part. We just...it's not...I mean, I suppose if it was a Judge Alito-type of situation, we could grandstand. (Laughter) But you guys are all...these things look really good. I mean, there is not really much to say. So I don't want you to think we're not interested and I think Chairman Janssen can allude to that too. So thanks for coming.

KATHLEEN WATSON: Well, thank you very much. Anything else?

SENATOR JANSSEN: Thank you, Kathleen. Mr. Art Thompson.

CONFIRMATION HEARING ON
ART THOMPSON TO THE
NEBRASKA ARTS COUNCIL

ART THOMPSON: Senator, that's T-h-o-m-p-s-o-n. And I'm up for a second term. I'm currently treasurer of the Arts Council. I've enjoyed my service. I think the most important function of the Arts Council is to increase access to the arts for people in the state of Nebraska, and I'm happy to try to help do that.

SENATOR JANSSEN: All right. And how many years?

ART THOMPSON: I've been on one term, so I'll have three more to go.

SENATOR JANSSEN: All right. Okay. Fine.

ART THOMPSON: I think you get better, too, as you go along. You know, if we didn't have term limits, we would probably be better off. (Laughter)

SENATOR JANSSEN: Well, they haven't touched the Arts Council yet to my knowledge. Senator Erdman has a question.

SENATOR ERDMAN: Art, you are from District 1. Do you know

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who your state senator is?

ART THOMPSON: He is sitting right behind me there.

SENATOR ERDMAN: Okay, I just wanted to make sure that the record reflected that, because your application says that Floyd is still your state senator, and I just wanted to make sure you knew him, because if you didn't, I would be more than happy to introduce you to Senator Heidemann.

ART THOMPSON: (Laugh) He is coming to the Governor's arts award luncheon tomorrow too.

SENATOR ERDMAN: Well, maybe you could sit with him and (inaudible).

ART THOMPSON: We are going to sit together.

SENATOR HEIDEMANN: He's been in my office before.

SENATOR ERDMAN: That would be good. That would be good. Well, at least you know each other; that's helpful.

SENATOR JANSSEN: All right. Great. Any other questions? Seeing none, thank you very much for being with us today.

ART THOMPSON: Thank you very much.

SENATOR JANSSEN: Okay, we'll begin the hearing on the bills. The first one up is LB 978, Senator Heidemann will tell us all about how to provide for a bed and breakfast liquor license. How's that. Senator Heidemann.

LB 978

SENATOR HEIDEMANN: (Exhibits 1 and 2) Good afternoon, Chairman Janssen and members of the General Affairs Committee. I'm Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n, representing District 1. I'm here before you today to present LB 978, a bill that would establish the bed and breakfast license. This bill is being proposed as an economic development tool for the Nebraska Farm Wineries and the Nebraska Bed and Breakfast Association. I was approached last fall by somebody from my district that

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actually is the president of the Nebraska Bed and Breakfast Association, and it sounded like such a neat idea to me. They were going to work in conjunction with Nebraska Farm Wineries, and they came up with this themselves, that they would promote each other by allowing...and by doing this, they want to be able to allow to sell Nebraska farm wine, Nebraska wine produced in Nebraska by Nebraska farm wineries, at bed and breakfasts. They could do this now if they wanted to with probably a Class C license. Well, with a license that exists now. The problem with it is that these licenses would probably cost enough money that it would be prohibitive, that they wouldn't be able to sell enough wine to make up to pay for the license. So what LB 978 would do would allow them to get a license to sell Nebraska farm wine with a license that would cost a little bit less than a regular liquor license, what they would have to normally. I thought this was a neat idea. I think we, as a state, and we as a legislative body, have always been behind groups that work together and we actually almost encourage that. And when they approached me with the idea that they had this idea that you could get two groups together, working together and promoting each other, that I thought this was something that we couldn't pass up to bring before this committee, and hopefully up to the legislative body, and see what happens. After the bill was drafted, we realized and recognized that there was something that we had missed. There is an amendment that we have printed and you should have a copy of that, that we...it's an amendment that will add language to the bill clarifying the licensed bed and breakfast facility will be able to sell Nebraska wine in the original package only on the premises of the facility. There was a little confusion there. We hope this will clarify it a little bit. If you have questions about that, we'll try to answer that. Pretty much, this bill is going to help these two entities promote each other and I think it's just a win-win situation for both of them and for the state of Nebraska. If you have any questions, I would be happy to answer.

SENATOR JANSSEN: Any questions? Senator Heidemann, I have one. Now, your intention is to only sell or make available for sale that wine on premises, right?

SENATOR HEIDEMANN: That's correct.

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SENATOR JANSSEN: No off sale? They couldn't buy a bottle and take it along with them then?

SENATOR HEIDEMANN: That is for... No. It can be off sale. I mean, yes. They can't drink it on the premises. They could take it up to their room and drink it, which they can bring any kind of liquor to a bed and breakfast now the way I understand it. They just couldn't drink it in the general atmosphere, almost like a hotel/motel-type of deal.

SENATOR JANSSEN: All right. So you're proposing then that they can buy the wine there, and they can take it home with them.

SENATOR HEIDEMANN: With them, yes.

SENATOR JANSSEN: And they can drink it in their room, right?

SENATOR HEIDEMANN: That's correct. Pretty simple.

SENATOR JANSSEN: All right. Okay. Okay, any other questions? Seeing none, thank you.

SENATOR HEIDEMANN: Thank you very much.

SENATOR JANSSEN: All right. Are you going to stick around and close, Lavon?

SENATOR HEIDEMANN: You bet.

SENATOR JANSSEN: All right. Okay, we'll take proponents first; those in favor of the bill.

MARY COLEMAN: (Exhibit 3) I have some handouts. Good afternoon. My name is Mary Coleman and I am the president of the Nebraska Association of Bed and Breakfasts, also known as the NABB. We are a state association made up of 45 bed and breakfast owners that vary from one-guest room to an 18-guest-room inn. Our bed and breakfasts are located throughout the state of Nebraska. The NABB has set standards that prospective members must comply with and an inspection process that must be passed before they can become members of the NABB. We also have a guest comment card process that members must participate in that helps the

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NABB inspect each B & B during the year. Copies of these items have been distributed to you. The NABB asks that a change in the law be seriously considered, as this would directly impact and benefit two segments of business in Nebraska. The bed and breakfast industry in Nebraska is a part of the economy that is growing every day and becoming an important part of the tourism industry. Tourism is the third largest industry in the state of Nebraska, and owners of B & Bs host guests from all over the nation and the world. It would be wonderful to be able to have wines made right here in our state available for visitors to be able to purchase and take all over the world with them. This would indeed be a win-win situation for all involved. The wine industry and innkeeping go hand in hand in the hospitality industry, and it is only natural and fitting that we would work together to promote one another and our state for the benefit of all. Thank you.

SENATOR JANSSEN: Thank you, Mary. Any questions? Senator Wehrbein.

SENATOR WEHRBEIN: Yes, thank you. This is, just so I...it's really off-sale, isn't it. I mean, you want to have those...

MARY COLEMAN: We want to have...

SENATOR WEHRBEIN: ...available for sale if someone comes...

MARY COLEMAN: Right. Right, right.

SENATOR WEHRBEIN: ...instead of sending them down to the local...

MARY COLEMAN: Exactly.

SENATOR WEHRBEIN: ...store, is what it amounts to.

MARY COLEMAN: Nebraska wines only. Right.

SENATOR WEHRBEIN: I know this sounds callous when I ask the question, but is this looked at as a profit center or is it more of a service?

MARY COLEMAN: It's more of a service. Yeah. Yeah.

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SENATOR WEHRBEIN: And you will have local wineries?

MARY COLEMAN: Um-hum. We'll work with our local wineries. Each bed and breakfast in the state will have the option to do this, and if they have a local winery they can work with them or a couple of them to have their wines available at their B & B for sale.

SENATOR WEHRBEIN: So it's the intent really to have just local wines, right?

MARY COLEMAN: Right. Just Nebraska-made wines, and that's it. Yes.

SENATOR WEHRBEIN: And probably the local area more than state?

MARY COLEMAN: Um-hum. Right, right.

SENATOR WEHRBEIN: Thank you.

SENATOR JANSSEN: I'm sorry, but would you spell your name for the record?

MARY COLEMAN: C-o-l-e-m-a-n.

SENATOR JANSSEN: All right. Thank you.

MARY COLEMAN: Um-hum.

SENATOR JANSSEN: Now, you're just selling the bottles, right?

MARY COLEMAN: Right.

SENATOR JANSSEN: Okay. I want to make that clear for the record.

MARY COLEMAN: Right.

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Mary.

MARY COLEMAN: Um-hum. Thank you.

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SENATOR JANSSEN: Next proponent?

PAT COLDIRON: Good afternoon. I am Pat Coldiron, and my last name is C-o-l-d-i-r-o-n. I am the vice president of the Nebraska Bed and Breakfast Association and I have just a couple of things to add. I wanted to say how strongly I feel that it's so important that we all work together to succeed in Nebraska. We rank 48th in the nation in having funding and appropriation to promote ourselves and tourism. And Senator Wehrbein, someday I hope we might all make a little bit of a profit, but none of us have yet, so. (Laugh) But it is a wonderful, wonderful opportunity to promote a Nebraska product and to tout a value-added product for agriculture, and then give the bed and breakfasts another incentive. This is kind of a whole new world in my bed and breakfast. Last year I have had folks from just all over the world and Canada and Alaska, so it is quite an opportunity and it might be a sort of a type of an incentive for a small retail operation. So thank you.

SENATOR JANSSEN: Any questions?

SENATOR WEHRBEIN: I do. I'm sorry.

PAT COLDIRON: Oh, I forgot.

SENATOR JANSSEN: Would you please stay up here? Yeah. You're not going to get by quite that easy.

PAT COLDIRON: I got nervous.

SENATOR JANSSEN: Senator Wehrbein has a question.

SENATOR WEHRBEIN: This isn't a question, but I don't have any problem with the profits, although if this was to be expanded into a genuine retail center, I think I would at this time, with a discounted license, which is what it amounts to. And as long as it's a service, I'm all right. But I don't want to say that I'm against a profit. I understand you have to operate at a profit. If it was turned into a full-blown profit center, so to speak, I might have some trouble with a discounted license.

PAT COLDIRON: For instance, in my little bed and breakfast,

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I have a little antique store and a little retail area too, and so I would probably maybe have altogether maybe two to three dozen bottles of wine. And that's why if we...and maybe I would have four dozen, you know, but wouldn't that be nice to be able to send folks home with a Nebraska product.

SENATOR JANSSEN: Do you have a lot of people from out of state?

PAT COLDIRON: Yes, I do. This last week I had folks there from Oklahoma and Missouri and California, and I've had them from almost every state in the union.

SENATOR JANSSEN: Is that right?

PAT COLDIRON: Last year and at Christmastime I had families there from Korea and I've had folks there from China and Austria and Germany in a little tiny town in Nebraska.

SENATOR JANSSEN: What's the name of the town you're in?

PAT COLDIRON: Seward.

SENATOR JANSSEN: In...?

PAT COLDIRON: Seward, Nebraska.

SENATOR JANSSEN: In Seward. Okay. Well, that's not such a tiny little town. (Laughter)

PAT COLDIRON: Well, yeah. No, we don't think so.

SENATOR JANSSEN: Not according to where I come from.

SENATOR ERDMAN: Thriving metropolis.

SENATOR JANSSEN: That's right. Okay, I don't see any other questions. Thank you for being with us. Next proponent.

JIM BALLARD: Good afternoon, Senator Janssen, Senators. My name is Jim Ballard, B-a-l-l-a-r-d, and I'm with James Arthur Vineyards in Raymond, Nebraska, and also representing the Nebraska Winery and Grape Growers Association this afternoon. And I'd like to thank Senator Heidemann for

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introducing this bill and the support of our industry, as well as the bed and breakfast industry in the state. Our feeling as an association is any legislation that helps promote the Nebraska wine and grape industry, such as LB 978, is supported by our association. We feel that this is a wonderful partnership and something that we've been working on with the bed and breakfasts for quite some time now. It provides even more exposure for our wonderful award-winning wines that we make here in Nebraska, and in return, we would continue to promote local bed and breakfasts. And from personal experience being in Raymond, we have some local bed and breakfast in our area, and when people call and say where is a good place to stay, we always recommend them to the bed and breakfasts. So it's a partnership that we've developed, not only in Raymond, but something that is going to hopefully take place across the state. And having said that, I thank you, and any questions?

SENATOR JANSSEN: Any questions? Jim, do you...are these bed and breakfasts, are they customers of yours? Do you think you would be able to enhance your business by doing this?

JIM BALLARD: You bet. Many times there is cross-promotion that goes on. Not only do we send folks that come in from within Nebraska, out of state, and we've had somebody visit our winery from every state in the country, and I think we're up to like 45 foreign nations now that we've had visitors from. We send them to the bed and breakfast, and in return, if folks come to stay at the bed and breakfast in those local areas, they'll send them to the winery. So we help each other out.

SENATOR JANSSEN: Um-hum. Well, 100 years ago there was a lot of grapes grown in this state...

JIM BALLARD: Yes, sir.

SENATOR JANSSEN: ...and a lot of wine was made.

JIM BALLARD: Yes, sir. We're trying to revive that.

SENATOR JANSSEN: Well, you know, it doesn't take very many years for it to go south on you either. Anyway, any

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questions? Seeing none, thank you, Jim, for being here.

JIM BALLARD: Thank you.

SENATOR JANSSEN: Next proponent, please?

SHARON SCHILLING: Good afternoon, Senators. I'm Sharon Schilling, S-c-h-i-l-l-i-n-g. I say, like the spice; my sons say, like the baseball player. My husband and I...Mike is back there in the back...own Nebraska's newest winery, the Schilling Bridge Winery, and the nation's first farm winery/microbrewery combination in Pawnee City, Nebraska. As I said, we are the first farm winery and microbrewery combination in the state of Nebraska, as well as in the nation, and today we are here to ask for your support and continued support of the industry by supporting LB 978. As a member of the Nebraska Wine and Grape Growers Association, as well as their marketing committee, issues regarding marketing and promoting our industry are very important to me. Both the bed and breakfast industry and the winery industry draw customers from outside of our home communities. For an example, we've been in business seven weeks. November 26 was our ribbon cutting ceremony. We had 1,000...Pawnee City is a community of 1,008. We had 1,000 people at our ribbon cutting ceremony. We have had, to date, 1,500 more visitors. They are coming from...so far we've had 30 of our nation's states represented and three counties, so we are very proud of that. Wineries do bring agritourism. By participating in statewide and regional promotional efforts, we will be able to contribute to our ability to pull customers from further distances, thus creating a broader customer base for both of our industries and also creating economic advantages to other attractions in each of our communities. One of these efforts which has been proven effective in other states is the synergistic component of commingling our marketing efforts by allowing bed and breakfast destinations to sell farm wines. While our marketing committee is currently designing many promotional activities to highlight both of our industries, we are in need of your help to initiate this marketing campaign. So again, it is with great appreciation that Mike and I extend our sincere thanks to all of you for your support to date of our industry, and to please ask for your continued support by allowing the approval of LB 978, and again, to Senator Heidemann, for all of his support of the

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industry.

SENATOR JANSSEN: Any questions? Ms. Schilling, I have one. You say you have a microbrewery there also?

SHARON SCHILLING: Uh-huh.

SENATOR JANSSEN: Now, how do you market that? Do you have that off-sale only?

SHARON SCHILLING: We have that on...well, of course, on premise; we have our farm winery license, our Class C license, and then it took some extraordinary...I, again, appreciate all the (inaudible) the Nebraska Liquor Commission to work with the federal government, since there are no regulations for what we're doing--set regulations. So the federal government worked with us and then the Liquor Commission worked with us. So we sell our beers on site through our tasting room, and also off site through our growlers--64 ounce growlers.

SENATOR JANSSEN: Okay. All right, thank you. Any other questions? Seeing none,...

SHARON SCHILLING: We invite you all to come visit us.

SENATOR JANSSEN: Oh, all right. Thank you. Next proponent.

JOHN FISCHBACH: Good afternoon. My name is John Fischbach; and that's spelled F-i-s-c-h-b-a-c-h. I'm here representing myself as a future winery owner. I currently own Five Star Vineyard here in Lincoln. I am in here to support LB 978. Right now, I'm looking at possible different avenues of marketing my wine. Once I get my winery license, 45 bed and breakfasts around the state would definitely be a plus for my winery to sell it to them, as well as any other retail location. That's it.

SENATOR JANSSEN: Thank you, John. Any questions? Seeing none, thank you for being here today. Any other proponents? Any proponents? Any opponents? Opponents? Here comes one.

MARY CAMPELL: Mr. Chairman, members of the committee, Mary Campbell, C-a-m-p-b-e-l-l, representing the Nebraska

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Wholesale Liquor Distributors Association. I had not intended to testify and testifying as an opponent to something that we're trying to nurture and grow in this state, it is a difficult position. But as I'm listening to the testimony, I'm just very confused about what kind of animal we are creating here. What is it that this entity is? Is it a restaurant? Is it a bar? Is it a retailer? Is it a hotel? We're kind of... And we have laws and licenses and rules and regulations pertaining currently to all of those different categories, and it seems we're just sort of saying, well, we're none of the above, we're this, but let's not have any of the rules that pertain to somewhat similarly situated situations pertain to us. And I only raise this sort of meandering argument in light of the Granholm case. And before we venture off, doing good for fledgling industries and businesses that we want to promote, I think we need to take a half a step back, do some careful analysis of that Supreme Court case, and make sure that we're not jeopardizing our whole liquor control structure by trying to make what would appear to be small accommodations for small situations that might come back and bite us on the you-know-what. I'm not trying to be an alarmist. I'm just saying that I think that case and its ramifications are still needing to be digested. As I suggested the other day on another bill, a serious audit of our statutes and where we stand in relation to that new ground that the Supreme Court has sort of etched out for us, I think we need to see how we fit into that picture and how we go forward under that. So rather than piecemeal very well-intended accommodations, maybe we need to just take a little time and look at the whole situation and see how can we help local businesses without running afoul of out-of-state concerns that have similar products coming into our state. With that, I'll take questions.

SENATOR JANSSEN: Any questions? Seeing none, thank you, Mary.

MARY CAMPBELL: Thank you.

SENATOR JANSSEN: Any other opponents? Any opponents? Seeing none, Senator Heidemann, would you like to close?

SENATOR WEHRBEIN: Neutral? Is there a neutral?

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SENATOR JANSSEN: Neutral? Anybody in a neutral capacity? Oh, I'm sorry.

SENATOR WEHRBEIN: There is another one, too.

SENATOR JANSSEN: Okay. All right. Jumped the gun. You're going to have to wait awhile Lavon.

HOBERT RUPE: You guys are probably getting sick of seeing me anyway.

SENATOR JANSSEN: We're kind of used to seeing you, Hobie.

HOBERT RUPE: Good afternoon, Chairman and Senators. My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission. We're appearing neutral. The commission has historically shown a strong desire to help farm wineries expand their business. We're appearing neutral for a couple main reasons. I think the previous speaker, Mary, got it exactly right. We're still digesting Granholm, and as most people who are aware, the issue with Granholm was allowing your in-state people to do something that you can't allow your out-of-state people doing, which is normally a slam-dunk dormant Commerce Clause violation, but because the Twenty-First Amendment exists, states have more power. As I said last week when we testified, the commission not only in Nebraska but alcohol control boards across the nation are still digesting and just seeing what is going to happen with that. Currently, ... and the other question we have is, to answer some questions which came up during the earlier speaker, the bill seeks to give off sale only. The enforcement perspective from if somebody buys a bottle and then goes into a private room, it's a room that they have rented, it is considered sort of their home, law enforcement is not going to go up there unless there is need. However, what this bill would not allow, say, a bed and breakfast which is going to be doing a dinner, would not allow them to serve Nebraska wines with that meal because they would be selling for on-premise consumption. This bill would not allow that. Currently, we do have bed and breakfasts which do have the appropriate license. I do know of one in Malcolm which, I believe, has either an I- or an C-class license. C license, just as information, allows both on- and off-sale privileges, and Class I was what was traditionally called

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the restaurant license which allowed only on-premise consumption only. And I can't remember which one that has; it is either an I or a C. But they sell more than just Nebraska wines at it. One of the other concerns the commission has is actually in a drafting issue. Under Section 4, sub (c), it says, "An application fee of \$45 payable to the commission, which shall be returned to the applicant if the application is denied." That would be the only license fee which the fee would be sent back to the applicant. Generally, if applications are denied it is because the investigation report has shown something why this person is not eligible to hold a liquor license. And that \$45 is, at least in part, to reduce the costs of doing the background investigations from the state. Actually, those background checks and processing a new license are somewhere closer to \$100, so we're reducing that anyway. And traditionally and on all other license applications, we never send that application fee back. I guess I would answer any questions. One concern, just to throw out that came up in mind is, Lincoln and some other jurisdictions have zoning restrictions on how close a retail license can be into a residential district without getting any special waiver of their zoning. And since these would be retail places, at least in Lincoln, hypothetically, some of the bed and breakfasts right along Sheridan Boulevard would have to receive a special zoning waiver, as well. So I just wanted to make sure that the committee was aware there are going to be other hurdles that people will have to jump through at the local levels to get some of these licenses. And I guess I would answer any questions the committee may have.

SENATOR JANSSEN: Okay. Any questions? Senator Erdman.

SENATOR ERDMAN: Hobie, essentially the Granholm issue is focused on the restriction that would be Nebraska wine. If it was any wine, we generally wouldn't have the same concern or there wouldn't be the more likely argument that that is in violation of that ruling, is that correct?

HOBERT RUPE: You are absolutely right. Granholm exists that you can't treat in-state producers better than you are treating out-of-state producers and so you've got to treat them equally. This Class J liquor license is limited solely to Nebraska products so it is at least subject to a challenge under the rationale in Granholm.

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SENATOR ERDMAN: Thanks.

SENATOR JANSSEN: Senator Friend.

SENATOR FRIEND: Thank you, Senator Janssen. Hobie, wouldn't it have been...and I'm trying to put this all together...wouldn't it have just been easier to not create a new class and try to enhance the Class D, for example, where you could... And maybe does it seem, the intent is to...and bed and breakfast are, you know, I guess in an arena where they maybe needed a new class. But, I mean, the easier route would have been to maybe take one of the current classifications and enhance it or amend it, I mean, in your opinion?

HOBERT RUPE: Actually they don't have to amend it or change it. As you are well aware, a couple years ago when this committee put forth what became LB 45 where we restructured from 12 license types down to five, those existing license types would cover this. Now, the problem that people are having...at least the rationale is, that those license fees are too expensive. And the one thing that you need to remember is that any time you file a license fee, it's also subject to a two times occupational tax. So, say, if I wanted a...in this case here, what they are asking to do is already covered by a D license. A D license would do this. A D license is \$250, but then it is also subject then to a \$500 additional fee by the local governing body, either the county or the city.

SENATOR FRIEND: And that's my point. Why couldn't you go into D and...or are we getting into the same problem, and part of the reason that we had to scale back is because we're adding more and more to each of these other categories. I mean, six one way, half a dozen the other, it looks like to me. I mean, we're adding a new category here. I guess what I'm asking is, easier way to do it just by, if you actually had to, by enhancing D or changing D instead of adding all new language.

HOBERT RUPE: You wouldn't have to change D at all. If I were a bed and breakfast, you get Class D.

SENATOR FRIEND: Right. But I understood your

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point...Hobie, I understood your point. There is a problem bed and breakfast are, you know, maybe not in the same category of most of the people that use the Class D. I mean, you are talking about pure bottom-line economics, I guess.

HOBERT RUPE: Yeah. Well, you could look at the rate; that's something. But you've got to remember, your Class D licenses are primarily your traditional package stores. Supermarkets have D's, especially those with extensive wine sales. So that's what a D is. A D is all-inclusive off-sale only license. So, and as I said, it's one of those that's the...you know, what they want to do, there exists a license, actually two different licenses, which would allow them to do it. As you've heard earlier, the problem is more fiscal and financial. What they are trying to do, they're running into the license fee and the occupation tax issue is being cost-prohibitive.

SENATOR FRIEND: Okay. Thanks.

SENATOR JANSSEN: Senator Wehrbein, do you have a question?

SENATOR WEHRBEIN: Yes, I guess I've had some of it answered. You talked about serving liquor though. If they were to serve at a dinner and the restaurant or the bed and breakfast provide the wine for a dinner meal, that would be...that would not require a license, right?

HOBERT RUPE: That would require a license. They are selling alcohol without a license otherwise. They are in violation of the criminal code.

SENATOR WEHRBEIN: Okay. Because there is a distinction between that and a private home in this case.

HOBERT RUPE: Yes. The thing about these bed and breakfasts is, they are technically open to the public. I can go up to one, rent the room...well, they might not rent one to me, but someone else might be able to do that.

SENATOR FRIEND: Especially after your testimony.
(Laughter)

HOBERT RUPE: My name is not John Smith. But the problem

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that you have is more of the selling. So if I am selling you a dinner, and wine is included in that dinner, in the cost of that dinner, then I am selling alcohol and an appropriate license is necessary for that.

SENATOR WEHRBEIN: And they already have these...well, they are probably not doing it now, I assume.

HOBERT RUPE: There are some that do have an I license where they do sell...do that. An I is a traditional restaurant license where they are allowing on-sale consumption, they're selling it to their guests to have it. A lot of your hotels have I licenses, as well.

SENATOR WEHRBEIN: Okay. Thank you.

SENATOR JANSSEN: Hobie, what is an I license?

HOBERT RUPE: An I license...

SENATOR JANSSEN: What is the cost of it?

HOBERT RUPE: \$250.

SENATOR JANSSEN: That's \$250.

HOBERT RUPE: Yes.

SENATOR JANSSEN: And does that allow them...that allows them only on premise?

HOBERT RUPE: That allows them only on sale. If it was on and off, they would have to get a Class C license, which is \$300; only \$50.

SENATOR JANSSEN: \$300. And then the governmental entity that they are under the county or the town or whatever, would have the opportunity to, they can charge double that.

HOBERT RUPE: Yes. The occupation tax is discretionary upon the local governing body. As far as I know, most of the local governing bodies charge that, and the purpose of that is to defray part of the costs of law enforcement going into it. But all licenses aren't created equal and I would be the first one to say, I doubt you would have the same amount

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of law enforcement activity at a bed and breakfast as you would on, say, a convenience store which happened to have a C license which are selling both. There would be more contacts, more use there. Maybe that might be a solution is to maybe figure out a way to exclude bed and breakfasts from the occupation tax somehow, or reduce it. I'm just throwing out an idea which might satisfy the financial hurdle, yet not have to create a whole new license type.

SENATOR JANSSEN: Well, then again, you're getting into touchy territory there. You are making an exclusive class because the hotel, I'm sure, has to have a Class C license.

HOBERT RUPE: And I can pretty much guarantee you, given the amount of license violation reports, hotels have a lot more violations than a bed and breakfast would.

SENATOR JANSSEN: Well, yeah, naturally, but you couldn't treat them differently.

HOBERT RUPE: Yeah. I was just throwing that out there for an idea. When I speaking to most of the people who were supporting this, it's the cost is what seems to be the prohibitive... The existing license exists but the cost, it's not worthwhile to get that because they are not going to make their money back.

SENATOR JANSSEN: Okay. Roger.

SENATOR WEHRBEIN: I want to clarify...I was going to ask...I caught something in this amendment that I'm not...I think needs clarifying, and I would just like your comment on it. And I don't know whether you've seen it.

HOBERT RUPE: No, I haven't.

SENATOR WEHRBEIN: Any person holding a bed and breakfast license may sell Nebraska wine in original packages only on the premises of the bed and breakfast establishment. Now, I read that, Nebraska wine in original packages only, and I also read it Nebraska wine in original packages only on the premises. And I'm assuming that we want to both "only the premises" and "only in original packages."

HOBERT RUPE: Well, on the premises, any license takes place

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on the premises. That's where the sale takes place. In original packages is off sale. In other words, I'm not cracking it open and giving you a glass of wine; I'm selling you a bottle of wine that is sealed the same way it came from the manufacturer. Maybe I'm misunderstanding you.

SENATOR WEHRBEIN: Yeah, but can they take this...can they buy a bottle of wine downstairs and take this up there to their room then?

HOBERT RUPE: As I said, the enforcement perspective of that is, once you've let a room overnight, it becomes an extension of your home, therefore law enforcement would need a probable cause to go there, and so you have an expectation of privacy then which would be different than if you're sitting in the downstairs foyer or on the back deck eating dinner and drinking a bottle of wine.

SENATOR WEHRBEIN: So I'm thick-headed. I could walk in at the front room and buy a bottle of wine and carry it outside, and come back in and go upstairs and drink it.

HOBERT RUPE: Yes.

SENATOR WEHRBEIN: Under this scenario.

HOBERT RUPE: Under this bill, yes. So long as you are going up to the room that you let, because then you have the expectation of privacy.

SENATOR WEHRBEIN: Thank you.

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Hobie.

HOBERT RUPE: Thank you very much.

SENATOR JANSSEN: Anyone else in a neutral capacity?

CONNIE MAHANEY: My name is Connie Mahaney. I have the From Nebraska Gift Shop down in the Haymarket here in Lincoln. My last name is M-a-h-a-n-e-y. I guess it was suggested that I bring my case in front of you today and, at this point, it sounds like I will just confuse everything, but at least you'll know I'm out there and there are several

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other retailers that are trying to do the same thing I am. My store in the Haymarket is full of Nebraska products; that's what we do. I now have a Class C liquor license, which allows me to sell Nebraska wines. That is all the alcoholic beverages I sell are Nebraska wines. The Class C permit allows on-sale and off-sale. I would very much like to be able to sell wine by the glass on the new dock which is outside my building. However, I have been denied that by the city council. They said because I would not just limit it to Nebraska wines, I would be wide open to do anything--beer, hard liquor, anything out there. I only do Nebraska products so this would not be something that I would want to get into. I know there are Nebraska beers out there also, but I really just want to do Nebraska wines. It is possible to get a caterer's license and do a special designated permit. This all just keeps adding to the cost of what I'm trying to do. The permit for me was over \$1,000...right at \$1,000, I believe, or close to it when you figure up the state permits and the local permits. And then if I had to get a caterer's license on top of that and then get a special designated license every time I wanted to have anything out on the dock, this just keeps getting cost-prohibitive that it is impossible to do. As I said, there are several other people in the state that are trying to do Nebraska wine-only establishments also, and they are running into the same thing that they cannot have any outside...or serve any alcohol outside on a dock or a patio area because of the way the laws are set up. We very much promote tourism. We do big tourism business; that's what we're all about. Both people bringing guests in that are visiting them or just tourists themselves coming into our store, and we would like very much to be able to sell them the wine on the dock. Any questions?

SENATOR JANSSEN: Questions? Connie, you have a C license now?

CONNIE MAHANEY: Yes, I do.

SENATOR JANSSEN: And that C license costs you what?

CONNIE MAHANEY: I'm sorry?

SENATOR JANSSEN: How much is that C license, total?

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CONNIE MAHANEY: It's close to \$1,000, and I couldn't tell you exactly. I just had to pay it in November (inaudible).

SENATOR JANSSEN: Um-hum. So now you sell on and off sale right now.

CONNIE MAHANEY: Yes. Correct.

SENATOR JANSSEN: And that's on premises.

CONNIE MAHANEY: Correct.

SENATOR JANSSEN: So do you have a little deck now that people can go out and have...?

CONNIE MAHANEY: There is a nice dock out there but I cannot serve wine out there because you either need to have a full-service kitchen for a sidewalk cafe permit or you need to have a beer garden permit which requires a six-foot fence put around it.

SENATOR JANSSEN: How much...?

CONNIE MAHANEY: I'm already up on a four-foot dock with a railing around it, so it would just lose all the ambiance if you put a six-foot solid fence around it.

SENATOR JANSSEN: Does the city charge you extra if you want to go outside with...?

CONNIE MAHANEY: It's a private dock, but...and the landlord might want a cut of it if I was able to do that, but I cannot do that because of the way the law is.

SENATOR JANSSEN: Okay. All right. I'm just thinking about some other areas where you can go out into a little garden or something.

CONNIE MAHANEY: Yeah. Most of the ones that do that have a sidewalk cafe permit, which means they have a full-service kitchen. We do sell cheese from the university; we sell the sausages, crackers, all kinds of food in our store that they could take with them. We give them cutting boards and a knife that they could have their cheese and sausage. But they can't take it outside because I don't have a sidewalk

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cafe permit or a beer garden permit.

SENATOR JANSSEN: What kind of sausage do you sell?
(Laughter)

CONNIE MAHANEY: Good sausage. Good Nebraska sausage.

SENATOR JANSSEN: I might talk to you after while.
(Laughter)

CONNIE MAHANEY: Okay.

SENATOR JANSSEN: Just kidding. Any other questions?
Seeing none, thank you for being here.

CONNIE MAHANEY: Thank you.

SENATOR JANSSEN: I might add, Senator Landis has joined us.
I'm sorry, Senator Landis; I didn't see you sneak in.

SENATOR LANDIS: Hello.

SENATOR JANSSEN: Anyone else in a neutral capacity? Seeing
one, Senator Heidemann to close.

SENATOR HEIDEMANN: During everybody's testimony, I've seen
at least two areas of concern. One of them was that we're
only going to do this with Nebraska-only wines and are we
setting ourselves up for something here. I would like to
point out that the state of Iowa currently is doing
something just like what we are trying to set up right now,
so I don't believe this is something new and unusual. So
hopefully that addresses that a little bit. Senator
Wehrbein also said something about if this would get out of
hand as far as a little bit too profitable. I think the
figure, if I remember right, that Nebraska farm wineries
produce 2 percent of all the wine sold in Nebraska. If they
could get to 4 percent, they would be very tickled, and
that's wine produced. And you really think about the amount
of that, that would be sold by Nebraska bed and breakfasts
would be very minimal, I would think. So hopefully when you
think about that, that might put you at ease a little bit.
I come from an area of the state that really struggles. I
mean, economically, we've struggled for years. I think it
started in the 1980s almost and we were told, first in the

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'80s, that we needed to maybe do what we do better. And as farmers and other industry down there, we tried that and it didn't really seem to work. We still struggle. So they told us to think outside of the box. And I think two of the things that came from that was Nebraska farm wineries, and we have two of them in my district, and we also have some bed and breakfasts that are starting up. And I think we, as a state, need to encourage things like that to help areas of the state that really need an industry or a business like that to move in. So hopefully when you are considering LB 978, that you kind of think about this, what kind of message it's going to send to them, and hopefully consider it and will take it up to the floor. I appreciate it.

SENATOR JANSSEN: Seeing no questions, thank you. That ends the hearing on LB 978. And I see Senator Hudkins is here to introduce LB 1004. Senator Hudkins, welcome to the General Affairs Committee. Is this the committee that you sat on at one time?

SENATOR HUDKINS: Yes, I did. I was here for six years.

SENATOR JANSSEN: Yep.

LB 1004

SENATOR HUDKINS: Good afternoon, Senator Janssen and members of the General Affairs Committee. I am Senator Carol Hudkins, H-u-d-k-i-n-s, from the 21st Legislative District. For your consideration today, I have introduced LB 1004 on behalf of the grape and wine producers of Nebraska. As this industry continues to prosper, it continues to look for additional means to provide reasoned access to their products at the retail level. Two parts of this bill are the recognition that within the liquor license statutes there are certain licenses, catering and special designated licenses, which the farm wineries should be allowed to access if they meet the other standards set forth in law. Several years ago these statutes were amended to allow craft breweries to obtain these licenses. At that time, farm wineries should also have been recognized as in the same position as craft breweries and should have received the same privilege. However, the industry was not as sophisticated then and failed to recognize the

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opportunity when it presented itself, and I hope to correct that error today. The first part of the bill provides that it would provide the Department of Agriculture with the authority to sell or ship a limited quantity of Nebraska wines under certain circumstances for product promotional activities. Now, it's been brought to my attention that there was a question on some of the language in the bill on page 2, line 13, about a public auction. And that language came about after a meeting between one of my staff members and the Department of Agriculture and a few other people. And if that was a misunderstanding, then we would be all right to take that language out. It refers to a public auction. And the department says that they don't have public auctions. This may have been a silent auction at a promotional whatever, but if that language is confusing and needs to be removed, that's fine. There are representatives of the industry here that will be testifying. And, of course, they can answer technical questions much better than I, but I would try to answer any questions that you may have.

SENATOR JANSSEN: Any questions? I don't see any right now, Senator Hudkins. Maybe there will be some when you close.

SENATOR HUDKINS: Okay, thank you.

SENATOR JANSSEN: Take proponents first, those in favor of LB 1004.

JIM BALLARD: Senator Janssen, members of the committee, my name is Jim Ballard, B-a-l-l-a-r-d, the same as the first time I was up here, I guess. And I'm here representing, again, the Nebraska Wine and Grape Growers Association. A couple of things: first, to address the special designated license catering issue, and Senator Hudkins kind of gave you some of the background of that. Basically, we're allowed six SDLs, or special designated licenses, a year, as farm wineries. And we get requests sometimes on a daily basis, for sure a weekly basis, from organizations all over the state that would like us to do wine tastings and special events. And our SDLs could be used up rather quickly. In fact, we do a lot of different wine festivals, the State Fair, we're actually going to be doing Nebraskaland Days this year, and so we try to work those out so that we don't have to use those SDLs, but they go quickly with having only

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six of them a year. So that poses somewhat of a problem. As Senator Hudkins said, a couple years ago craft brewers got in, under the law they could do a catering license. The way the law is written right now, farm wineries cannot apply for catering licenses. So this just basically just adds farm wineries to that section. This would allow us to get a catering license, pay all the appropriate fees, and it gives us a chance to do more events, fund-raisers, festivals, under that particular law. So that's basically what we are trying to accomplish by adding farm wineries to the catering license. The first part of the bill that deals with the Department of Agriculture, this came out of a meeting that we had with the Department of Ag this summer. Some members of the industry, a member of Senator Hudkins' staff, we met with Greg Ibach and some of his staff members in the Department of Ag, and basically...and I'll be honest, I'm not sure if this is written in the way it should be written and the language is the way it should be. But basically, in working with them, they wanted easier ways to promote Nebraska wines in terms of how they give that wine out at trade shows or how they send it out as part of gift baskets, things of that nature, to help promote Nebraska agriculture and Nebraska wineries. Farm wineries and vineyards are becoming a very big part of their promotion of agriculture in the state of Nebraska, and this would allow them to do that easier. There is really no language specific to how the Department of Ag can handle that. So, again, I'm not sure if this is written exactly the way it should be, and we may need a little help, and maybe the Liquor Control department could help us clarify some of this, as well. But basically what they would like to do is have the opportunity to purchase wines from Nebraska wineries instead of always asking for donations to help support the grape and wine industry. And then, in return, they could then give those out as, like I said, in gift baskets, promotional items, and things of that nature. So the unintended drafting error, the public auction, as Senator Hudkins said, that was something that could be struck fairly easily. It's somewhere in the conversation, I think one of her staff members kind of got that...and I'm not sure exactly what that means, but maybe it was for the silent auction or something of that nature. But anyway, that was the intent of the first part of this bill. So having said that, any questions you have I would sure like to answer those.

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SENATOR JANSSEN: Senator Landis.

JIM BALLARD: Yes, sir.

SENATOR LANDIS: Jim, you've got two ideas in this bill, and I like one of them. But the idea of the state of Nebraska's Department of Agriculture selling to a mentally competent person who is not younger than 21 years, alcohol, seems to me a bizarre idea. I don't want the state of Nebraska buying liquor and I don't want it selling liquor, and I wonder why we want the state of Nebraska to be selling liquor. It defies my imagination. And if we are doing this as a promotion, I think a donation is the appropriate way to go and it says "sale." I don't...and if this stays in the bill, I can't support the bill because I think it is a lousy idea.

JIM BALLARD: And I...

SENATOR LANDIS: I get the idea. And by the way, your daily operation is far more (inaudible) in this special...this other license, is it not? The holder of the specially designated license?

JIM BALLARD: Yes. Yes.

SENATOR LANDIS: That's what is important to you, isn't it?

JIM BALLARD: And you hit...

SENATOR LANDIS: Are you asking the...

JIM BALLARD: You bet.

SENATOR LANDIS: ...state of Nebraska sell your wine for you?

JIM BALLARD: And hit on the head, the most important part of this bill, and that's why...

SENATOR LANDIS: About three times, as a matter of fact, Jim; that's right.

JIM BALLARD: Yes, you did. And that's why I brought up the SDLs first before I went into the Department of Ag and why I

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said I'm not sure why this is written the way it is. If it was taken from another model, from somewhere else? I agree, I probably...I don't know why the Department of Ag would want to sell?

SENATOR LANDIS: We don't need to sell your wine for you, do we?

JIM BALLARD: Correct.

SENATOR LANDIS: That's your business, isn't it?

JIM BALLARD: It is. And...

SENATOR LANDIS: The state of Nebraska in the business of selling wine? It doesn't rub you just a little the wrong way?

JIM BALLARD: No. I agree with you there.

SENATOR LANDIS: And, by the way, the argument you hear in this committee, is, oh, well, then us too, isn't it? I mean, now there is a Nebraska craft brewery; oh, we better sell their beer. And then if...isn't there an argument that we just heard that you can't do one for one, treat in state different out of state. Now, the state of Nebraska, by logical extension, is in the liquor business.

JIM BALLARD: And I agree with you 100 percent on that one. And that's why I said I'm not sure if this is the way it should be written in here. To go back though to the state buying the wine from the wineries. And that was not our idea. That was not the idea of the association. I think in terms of the Ag Department looked at that as supporting the industry by buying that at wholesale or reduced costs, that they could then give away at these trade shows to dignitaries that came in,...

SENATOR LANDIS: Let me cut to the chase, Jim.

JIM BALLARD: ...that would not put a burden on the wineries.

SENATOR LANDIS: Let me cut to the chase because, as opposed to fixing this first section which I think is a mess, if

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this committee chose to report out the language on specially designated licenses and annual catering licenses, your interest would be significantly advanced wouldn't they?

JIM BALLARD: You're correct.

SENATOR LANDIS: You would continue to be a supporter of this bill?

JIM BALLARD: You're correct.

SENATOR LANDIS: All right.

SENATOR JANSSEN: Any other questions? Seeing none, thank you, Jim.

JIM BALLARD: Thank you.

SENATOR JANSSEN: Next proponent.

JOHN FISCHBACH: Senator Janssen, members of the committee, good afternoon. Again, my name is John Fischbach, F-i-s-c-h-b-a-c-h. I am truly in support of, like Jim had mentioned, the part of the SDLs, because as a future winery owner, I have plans, if that goes through, to entertain or get with every county fair in the state of Nebraska and some way of setting up tastings. Jim had mentioned that some county fairs around the state have already asked the wineries to come and provide a tasting. I believe James Arthur has already done it for Seward. When you are limited to six SDLs a year, plus the two that's required...well, I guess maybe is it three that would be required for State Fair, maybe it's only two days so that would be two SDLs there...so that doesn't give you much leeway for the rest of the year. As far as the Department of Ag, we would be probably the first winery to donate the wine to the Department of Ag rather than have them buy it from us. If they want to promote Nebraska wines like they promote other products in their gift baskets to visiting dignitaries, we will be glad to donate the wine.

SENATOR JANSSEN: That's on the record.

JOHN FISCHBACH: Yep. That's in the record.

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SENATOR JANSSEN: Any other questions? Any questions?

JOHN FISCHBACH: (Laugh)

SENATOR JANSSEN: Seeing none, thank you, John, for being with us. Next proponent. Any other proponents? How about opponents?

HOBERT RUPE: Good afternoon, Chairman Janssen and members of the committee. My name is Hobert Rupe, R-u-p-e, executive director of the Nebraska Liquor Control Commission. And I was trying to wonder...decide how to testify because actually we're neutral on the second section about the SDLs. And I guess I should...if you want me to testify neutral there, or I could address that now, which is the Chairman's preference. Traditionally, the farm wineries have been allowed SDLs. It is sort of an extension because it says any retail license may get it and my predecessor made the determination that they could get that. The SDLs are limited to six. I did not reverse that because it was an existing practice, but to get the catering, they are specifically excluded from that statute. We have absolutely no objection to changing the second part of this bill. You're right, it does bring it back up into the same class as craft breweries. The commission has no objection. The commission has a huge objection to the first part. Nebraska is a licensing state; we're not a control state. We don't sell alcohol; we regulate alcohol. And the idea of allowing a certain entity to be outside of the Liquor Control Act is a dangerous slippery slope which we don't think this Legislature should go down. There are ways to take care of, to do exactly what they want. They can donate the wine; they can invoice this through a farm winery with a special designated license and going through that way. In the worst case, you would have a licensed entity who has already paid the tax, and therefore you maintain that the tax chain has remained unbroken and that a licensed individual is selling the alcohol. One of the biggest things that the commission tries to push is professionalism within the industry and trying to keep the amateur side of it as minimal as possible. And here now you are wanting somebody to, at an auction...and it's my understanding that this came from primarily the State Fair where they were trying to auction off...the Department of Ag wanted to auction off gift baskets which had Nebraska agricultural products, and then

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they realized, oh, my God, there is wine in there; we can't really sell alcohol without a license because that's what they would have been doing. I guess if there are any other questions, it seems like a dangerous road to...you know, the path to hell is paved with good intentions, and although this might be with good intentions, I don't think it is anything, any business of the state of Nebraska to get involved in the sale of alcohol.

SENATOR LANDIS: Well, I think it is unique to hear that according to the Liquor Control Commission, Senator Hudkins is going to hell. (Laughter) That's an amazing public policy statement. I'm surprised by that, Hobie.

HOBERT RUPE: I would withdraw that comment. But it is one of those... Every once in awhile Senator Landis has to remind me that I was once one of his students and that he is going to keep me honest.

SENATOR JANSSEN: Hobie, farm wineries get a break on their license now, right? Is that correct?

HOBERT RUPE: Farm wineries get a couple economic incentives. The best if, of course, the reduced excise tax. They currently pay 6 cents a gallon versus 95 cents a gallon from out-of-state production. The requirement is it has to be a 75 percent Nebraska agricultural product minimum.

SENATOR JANSSEN: That's not uncommon in other states, is it?

HOBERT RUPE: No, those ideas were began to try to promote, to try to give an economic incentive to start this. And that was one of the reasons why the Nebraska farm winery, to get the benefits, was also linked that you have to use 75 percent Nebraska agricultural product. That allows them to import certain grapes which, let's be honest, just won't grow in Nebraska to make certain blends or to finish certain wines. But the vast majority of the agricultural product must be from Nebraska to get the tax break.

SENATOR JANSSEN: Good. Any other questions of Mr. Rupe? Seeing none, thank you.

HOBERT RUPE: Thank you.

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SENATOR JANSSEN: Any other opponents? Anyone in a neutral capacity? Neutral? Senator Hudkins to close.

SENATOR HUDKINS: Senator Landis, I've always known I was going to hell, and especially after the comment made last week in the paper about my driving; now, I've convinced.

SENATOR LANDIS: (Laugh)

SENATOR HUDKINS: When you asked your question about should Nebraska be involved in the sale or whatever of alcohol, I thought, no, not really. But what the agriculture department is trying to do is to promote agricultural products. And why they went in this direction was that they felt it was a burden for the smaller wineries to donate their product for these promotional activities. Some wineries already do donate their products and then they are used in the promotional baskets or whatever. But if there is a better way to allow the Department of Agriculture to promote this type of product, I'm all for it. I am ready for whatever language changes you would like. Probably the most important part of this bill, though, is the second part. That's the part that you said you agreed with. That's the part that Mr. Rupe said he was in agreement with. So if that's what is necessary in the very end is to scratch the first part and keep the second part, so be it. But we're just trying to find a way to promote Nebraska products, and obviously this wasn't the best language to do it.

SENATOR JANSSEN: Okay. Any questions? Seeing none, thank you.

SENATOR HUDKINS: Thank you.

SENATOR JANSSEN: That ends the hearing on LB 1004 and we'll move on to LB 1160, Senator Kruse. Thank you all for coming.

SENATOR KRUSE: Mr. Chairman.

SENATOR JANSSEN: Welcome, Senator.

SENATOR KRUSE: I was assuming that a lot of those people

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floating in the hall wanted to come and hear my bill, but they don't seem to have shown up, so.

SENATOR JANSSEN: Well, they are just a little further west that we are here, Lowen. Okay, tell us all about your bill.

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SENATOR KRUSE: Senator Janssen and members, good afternoon. I am glad to present LB 1160. My name is Lowen Kruse, L-o-w-e-n, representing District 13. LB 1160 has a pretty straightforward purpose and I really won't be spending a lot of time with it. The purpose is to provide server training course that is ours in Nebraska and to be provided by the Liquor Control Commission. I state the purpose because I was a little started yesterday to pick up the paper and read one columnist who thought that server training was to help servers figure out how to set up the glasses and stuff like that. We have, informally, a number of server training courses, most of them available through the Web, some through recorded technology, but we don't have an official server training course, and that is what this is about. And by being official, it would be a course which could be certified so that the persons who have taken it, sellers and servers, would be trained. They would be trained to, in terms of obeying regulations. And I quote very briefly because I know you are well aware of that in this committee. But we're not introducing new regulations or anything like that. It is to obey the present regulations. Presently, it is prohibited to sell visibly intoxicated persons, mentally incapacitated persons, persons incapacitated by drugs, and minors. Now, that's the prohibition in place. The question is, especially for the wide variety of servers who may just take this as a temporary job, that they know what they are doing, not only how to identify these persons, and a couple of these categories are pretty hard to identify, frankly, but how to identify these persons, and then how to interact with them in an appropriate way. And as you know, I'm concerned about mayhem on the highway. I feel that the servers are in position number one to protect you and me out on the highway from death and injury. They are in a far better position than is a police officer or somebody else because they are there and they can quickly recognize the persons who ought not to be getting in their vehicles.

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We're wide open on this course. We've left...it's a very brief bill and we're intentionally so. It could be more than one course. It could take a present course that's available and baptize it, or take several of the courses and put them together. Again, it could be more than one course, and particular in visiting with persons from the Liquor Control Commission, they have said it would be good to have a manager training. Well, we think we kind of covered that in "sell" as well as "serve." But there is more to management than selling. There is the control, the management of personnel, and things like that. So we have prepared an amendment to include a management course as a separate course but under the same consideration that they would be certified. And then if the Liquor Control Commission wants to make that a part of renewing a license and so on, that's, of course, in their and your bailiwick as you talk about those kinds of things. We're trying to keep this as wide open as possible. Again, in summary, the point is to increase protection for the public, and I guess I haven't mentioned before, to increase protection for responsible retailers because if we can have a course that is recognized as authentically ours and with some legal backing to it, then the good actors and retailers, and that's most of them, would have some protection, and we want to plan for that too. Thank you.

SENATOR JANSSEN: Thank you, Senator Kruse. We have some questions. Senator Landis.

SENATOR LANDIS: Not a question so much, Lowen, it would be fair to say that this is a stand-alone good idea from your perspective, but it also is a necessary element to a larger agenda that you would like to achieve. That would be fair to say, wouldn't it?

SENATOR KRUSE: That would be quite fair to say. It's just one piece of the picture.

SENATOR LANDIS: One of the pieces. And it is one of the pieces to add, as you characterize it, the use of the server and the retailer in essentially assisting in keeping inappropriate usage down so that ultimately there aren't drunk drivers at the source of the alcohol. And one of the tools that you think is legitimate and that this would be a precursor to would be a dram shop liability, wouldn't that

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be...? I think that's a fair characterization, isn't it, Lowen?

SENATOR KRUSE: That is a fair characterization. At present, a dram shop...and we've studied it carefully, as you are obviously aware...doesn't really work unless you can provide an affirmative defense. And, again, we are not interested in hammering any retailer who is out there trying to do a good job.

SENATOR LANDIS: Um-hum.

SENATOR KRUSE: Our son, as you know, is in a wheelchair, and it is because of a seller who sold to a minor, off-hours, from under the counter, and did it every weekend. Now how long do you keep doing that before somebody gets hurt? So I have to kind of judge that this is one of those bad actors who really didn't care, but we've got to make him care. And I have a lot of confidence that the industry can join together to help persons like that think about their own self-interest if nothing else.

SENATOR LANDIS: I know Lowen's remarkable son Doug. I don't know, is the business still operating and selling liquor?

SENATOR KRUSE: There was never a sanction against it.

SENATOR LANDIS: Thank you.

SENATOR JANSSEN: Senator Erdman.

SENATOR ERDMAN: Lowen, as I read the bill and I think it's been explained to the committee that it would seem that your goal is to have a training and certification program, but I don't read the bill to say that it would be required.

SENATOR KRUSE: No.

SENATOR ERDMAN: So essentially then it would be the responsibility of the commission to create the program, to offer it, but there wouldn't be a process statewide, per se, that you would have to pass the course in order to be a server or a...?

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SENATOR KRUSE: No.

SENATOR ERDMAN: Okay, I just wanted to make sure that you...

SENATOR KRUSE: Not at this time. Again, the Liquor Control Commission could make it into this, but the gap here is that we don't have a course that we can refer to and that we could possibly enforce sometime. My intention is not to create an enforcement procedure, but to allow it to be an affirmative defense in civil suits.

SENATOR ERDMAN: I just wanted to make sure that it was clear what your intentions were.

SENATOR JANSSEN: Any other questions? I don't see any, Lowen. Thank you.

SENATOR KRUSE: Thank you.

SENATOR JANSSEN: We'll take testifiers, the proponents of the bill. Those in favor of the bill.

SIMERA REYNOLDS: (Exhibits 5, 6, and 7) Good afternoon. My name is Simera Reynolds and I'm the executive director of Mothers Against Drunk Driving. Thank you for letting me be here, and, thank you, Lowen, for introducing this piece of legislation. On behalf of MADD and our members, I would like to support LB 1160. MADD would like to see Nebraska join the 21 states that currently have a server training program in place. In particular, MADD would like to join the other 13 states that have a mandatory server training. Research has shown us that server training decreases the number of intoxicated patrons leaving a bar. Additionally, one study found...and they should be coming around, and they are cited...that serving training decreases the number of single-vehicle nighttime injury crashes by 11 percent and the single-vehicle nighttime crashes by 23 percent. With regards to server training, MADD would like to see the committee amend LB 1160 to include the word "mandatory." In states where server training is mandated, meaning virtually every establishment is required to train their wait staff, server training has saved the state money. Also, mandated server training would allow for equitable outcomes across the state. Every establishment, whether in the Panhandle or

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right up against South Sioux City, would be held to this same standard. MADD knows, all too well, drinkers are overserved. Nationwide, the median BAC for alcohol-related deaths is .17. In Nebraska, last year, there were over 4,000 DUI arrests and the average BAC for those arrests was .157. And that is well past the point of intoxication. LB 1160, by establishing a server training program, will increase the desired serving habits, such as avoiding the overservice of alcohol. More importantly, when a server training is utilized, it lasts over a year after training is completed. Managers of alcohol-serving establishments found that server training was a useful tool for their business. Wisconsin, a state not that different from ours...and the executive director and I, we have about the same numbers and the same breakout as for a budget example...has a mandatory server training program with recertification taking place every two-year period. In fact, in Wisconsin, they drink more beer per capita than any other state, and they still require servers to be trained, and it hasn't been a problem for them and it was an easy bill for them to pass. MADD would wholeheartedly support mandating server training and it would not diminish the objective of LB 1160. And thank you for your consideration and your support.

SENATOR JANSSEN: Any questions? Senator Fischer.

SENATOR FISCHER: Thank you, Senator Janssen. Ms. Reynolds, when you are suggesting making this mandatory, I guess my question, even when it is an option, is who is going to be responsible for developing the program? The Liquor Control Commission?

SIMERA REYNOLDS: Correct.

SENATOR FISCHER: And who is going to pay for it?

SIMERA REYNOLDS: Well, the pay for the fee to take the course or pay to create the course...

SENATOR FISCHER: Both, both.

SIMERA REYNOLDS: ...on the Internet?

SENATOR FISCHER: Who will pay for it? Does the Liquor Control Commission need more money in its budget, then, to

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develop a program?

SIMERA REYNOLDS: Well, some of those...

SENATOR FISCHER: And obviously have trainers that are going to give it, and then do you see having fees high enough to...

SIMERA REYNOLDS: I think...

SENATOR FISCHER: ...reimburse that, or what?

SIMERA REYNOLDS: There is a lot of Web service training over the Internet. And I think that that would probably go into page 2, line 18, where the commission has the authority to promulgate rules and regulations to carry out this section. And so what Web site, whether one that's developed here or one that's utilized nationwide, I think that would be probably under the authority of the Liquor Control Commission.

SENATOR FISCHER: Are there Web sites already in these 21 states that have server training? How do they do it?

SIMERA REYNOLDS: Correct.

SENATOR FISCHER: They use Web sites?

SIMERA REYNOLDS: A lot of them do. Like Wisconsin, I mean, because Wisconsin is, again, a lot like Nebraska. There are some rural areas and there are a lot of towns that are small in population and rural in nature and they don't have access to come in and go to a three-hour training that's held by law enforcement, nor the capacity, but they have the ability to go to the library, sit down, take your course, log off if you need to, go back and do your work, come in the next day, log on, finish your course.

SENATOR FISCHER: How long are the courses? Maybe...I don't mean to put you on the spot.

SIMERA REYNOLDS: I think there is someone behind me that can answer that better.

SENATOR FISCHER: Oh, okay. I'll wait on that then.

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SIMERA REYNOLDS: But I think they vary. I do know...I did check on the prices, and the prices nationwide run from \$25 to \$35, so the \$30 fee wasn't an unreasonable cost or an undue burden, I didn't believe, to businesses.

SENATOR FISCHER: On your handout here, one of the studies that you have in here for the management of establishments, that they like the server training?

SIMERA REYNOLDS: The managers did.

SENATOR FISCHER: Correct.

SIMERA REYNOLDS: The managers liked having that tool; correct.

SENATOR FISCHER: Correct. How...where was this...is this survey done in one state? Was it a national survey and how many people were surveyed?

SIMERA REYNOLDS: I don't know how many people were surveyed, but I know multiple states were utilized.

SENATOR FISCHER: Okay.

SIMERA REYNOLDS: Multiple states that already currently have server training.

SENATOR FISCHER: Okay, thank you very much.

SENATOR JANSSEN: David.

SENATOR LANDIS: I'll answer that. We would anticipate a fee-based class whether it was in person or Internet...

SIMERA REYNOLDS: Right.

SENATOR LANDIS: ...and we would anticipate that ultimately probably the merchant would be likely to pay for the servant trainer, for the folks that they hired.

SIMERA REYNOLDS: Or...I think it could go both ways,...

SENATOR LANDIS: In the normal course of events.

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SIMERA REYNOLDS: ...I mean, when you get a food handlers permit.

SENATOR LANDIS: I know it could. I am just saying...we would expect...that's the norm, isn't it? There is a fee and usually the retailer pays it on behalf of the new waiters and waitresses that they hire and then they take the class.

SIMERA REYNOLDS: Well, you mean grocery stores.

SENATOR JANSSEN: Roger.

SENATOR WEHRBEIN: Well, I was intrigued by...I was going to Senator Kruse more about the mandatory. Do you have any idea how many would take this? I mean, do you think there is widespread interest if it was not mandated? I know you have your figures, but you may not...

SIMERA REYNOLDS: Well,...

SENATOR WEHRBEIN: If it wasn't mandated, how many would really take it?

SIMERA REYNOLDS: I don't know. That might go to...Mr. Rupe would probably be able to answer that question better. But it's around 25,...

SENATOR JANSSEN: Make sure you talk into the microphone.

SIMERA REYNOLDS: Mr. Rupe could...the Liquor Control Commission could probably answer that question. But I imagine...you know, hopefully 20 to 25 percent would take, but if it was mandated you have a 100 percent. And, again, it goes to treating everybody equitably across the state. There is a patchwork that we have sometimes in place that really is hard to...it seems unfair and unjust, at times. I think it would behoove us to just start out with a mandated.

SENATOR WEHRBEIN: Thank you.

SENATOR JANSSEN: Sim, my recollection, I think that a lot of your larger retailers, and small ones, you know, they have something at stake there now.

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SIMERA REYNOLDS: They already... Right.

SENATOR JANSSEN: They do have orientation, some classes that they have their people go through now. And it is...everything you are asking in this bill to do is available...

SIMERA REYNOLDS: Right.

SENATOR JANSSEN: ...right now.

SIMERA REYNOLDS: Correct.

SENATOR JANSSEN: So as far as setting up something, I don't think that's going to be a big problem. It's making them do it, making sure they are certified.

SIMERA REYNOLDS: Right.

SENATOR JANSSEN: Am I correct in assuming that?

SIMERA REYNOLDS: Correct. No, it's correct. I mean, a lot of the grocery stores already have training. Applebee's has training. Everybody has their own different training concepts, but there are small shops that may not have training or may not have access to... Lincoln is lucky; we have a responsible Hospitality Commission that provides some training. Lieutenant Colonel Fisher wrote to me and said that we used to do a TAM training, but I can't remember what the acronym stands for. But I think the responsibility of the Liquor Control to provide oversight of observing how this training takes place and is utilized so it's consistent, so everyone is treated equitably, is the main key of the bill.

SENATOR JANSSEN: Well, there are the retailers here, I'm sure, that will be able to elaborate on that also. Any other questions? Seeing none, thank you, Sim. Next proponent?

DIANE RIIBE: (Exhibit 8) Hi. Good afternoon, Senator Janssen and members of the committee. My name is Diane Riibe and I'm with Project Extra Mile. At the outset, again, thank you, Senator Kruse, for introducing the

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important piece of legislation. It is desperately needed. There is...and you have some very good questions and I think that's good; it's healthy. There is no question that training for staff of liquor license outlets, including managers of those locations, is an important public health step for states to take. To avoid sales to minors, as well as sales to intoxicated persons, we would urge that any such training be mandatory for all businesses licensed to sell alcohol. It just, quite frankly, simply makes sense. We have worked with law enforcement agencies across the state to coordinate compliance checks, as you well know, of liquor license outlets. As you know, we've experienced a significant drop in the percentage of those businesses selling to kids, from 41 percent down to 9 percent in the most recent checks in the Omaha area. Enforcement works and will continue to be a relevant component of the community's effort to limit access to alcohol by youth. But the one piece of information that really stands out as we do those checks of more than 5,000 at this point in the Omaha area, those businesses that are not selling to kids are checking and verifying the age, virtually 100 percent of the time. The key piece really is the verification of that age. It's just critical. But what we also find is that most clerks, when asked...and we've not done the math, although we could; it's just an awful lot of businesses to go through...but most of the time those businesses, those clerks, when they are asked if they have received any training to avoid selling to minors, the vast majority of them respond that they've either not received any training or their response would clearly indicate that what they received was not valid or helpful as training from an instructional perspective. And those would be the clerks at the moment, at the point of sale, when we have them for a compliance check. And as an example of some of those responses, clerks at the last checks in December said, simply, they were told to card people. That was their training. Or that an assistant manager said to check for ID. A number of them, sadly, could not even tell the officers whether or not they had even received training--simply didn't know. Research bears out the need for mandatory standardized training in these settings. When states implemented mandatory training, they saw change in their single-vehicle nighttime crashes, which is the standard...kind of gold standard of measurement in the traffic safety world...of as much as 24 percent after the

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first year, and up to 29 percent by the end of the third year of reductions. These are significant changes, one that Nebraska certainly needs to attempt to replicate. In a multiple-year study, Dr. Dresser of the Oregon Research Institute found that mandatory programs were much more effective than incentive programs or voluntary programs. And from the Institute of Public Policy from the University of Missouri, they observe that the two key elements to successful mandatory legislation include: strong legislation with graduated administrative penalties, and active and well-funded enforcement. It's a fairly well-known fact that server/seller training without enforcement component is not nearly as effective. There are some very good resources we have in this state who know the issue well, and we would urge you to look, and the commission to look, to their expertise as the training is developed. Those who have been involved in the city of Lincoln's transition into that solid program, and I think Tom Workman will speak later, but certainly Linda Major of NU Directions and Captain Joyce Citta, and others, would be wise to gather information from as we proceed forward. Finally, senators, I would ask that you consider the serious potential for increasing the public health and safety through this type of legislation. We have lost, quite frankly, way too many lives in this state, from poor business practices that could be avoided with relative ease. Server, seller, and manager training has been needed for a very long time and is overdue. It should be opposed by absolutely no one who genuinely believe that Nebraska can and should do better for our children on this issue. And we would urge you to support LB 1160.

SENATOR JANSSEN: Any questions? Seeing none, thank you. Next proponent. Any more proponents? Any opponents? 'Anyone in a neutral capacity?

TOM WORKMAN: (Exhibit 9) Senator Janssen, Senators, my name is Tom Workman, and I represent the NU Directions Campus-Community Coalition. And as Diane Riibe just shared with you, hopefully I can answer some of those questions because we have done quite a bit of work in trying to look at ways to address high-risk drinking in a variety of contexts around the community, and responsible beverage service training has been a critical part of that. What I would like to do, I'm giving you some information briefing,

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as we always do, in a neutral capacity, of the research that's there, as well. The research that has been done on both the efficacy of responsible beverage service training, but also I think, to answer your question, Senator Fischer, the interest that exists for managers, and yours, as well, Senator Wehrbein, on whether or not people are interested in taking it. And there seems to be some very good evidence, nationally, and here in Nebraska, that people are, in fact, quite interested in it, but simply have a challenge with availability, and also have a challenge kind of working through the variety of choices that are available. And, of course, as we understand, those choices are really dependent upon who offers them and what their motives are in offering them. So, again, that research is there for you. What I would really like to do is share with you a story of what we know to be true here in Lincoln. As many of you know, in 1992, the Lincoln City Council actually put together the responsible beverage service...the Responsible Hospitality Council, and one of their main jobs was to address a new ordinance which was mandatory management training. You can see here, down under "Sales to Intoxicated Patrons," that one of the studies that was done prior to that time was that Cornhusker Place Detoxification Center, which asks people who have been placed in protective custody where they had their last drink...of course, this is not legally binding information, but it is helpful for tracking...had 34 percent of those individuals who would report that they received their drink at a licensed establishment. Since instituting this policy and having mandated management training in the city of Lincoln, that number has gone down to 17 at our last count. And so there has been a significant decrease in terms of the impact that that training...and that is just for managers; that does not include servers. Several years ago, the NU Directions Coalition was asked by the Lincoln City Council to explore a city ordinance for mandatory training. And, again, I want to be clear because we are standing neutral to the bill as it is written, regardless of mandate. However, it raised the issue about how we offer or make available server training. What we found when we pulled together quite a large group of people from all aspects of the hospitality industry--hotels, restaurants, bars, et cetera, liquor package stores, grocery stores--was that they were all very much in support of training their servers, but it was literally impossible for them to do so because there simply were too many factors that made it

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difficult. The cost was usually prohibitive, and, more importantly, it wasn't always accessible. Finally, they all shared with us that this is an industry with about a 200 percent turnover rate, and so obviously that becomes a challenge, as well. Right as soon as I finish getting someone to be trained with lots of money, they leave and perhaps go to a place up the street. As a result of that, what the coalition did was put together a group of people, a task force, that represented both hospitality owners, as well as hospitality trainers, law enforcement, et cetera. So we had the Nebraska Retail Association involved. We had Sergeant Costello; we had Liquor Control Commission. In fact, they and the Nebraska Office of Highway Safety worked together to fund this project, created a Web-based server training program. Senator Fischer, in answer to your question earlier, there are, right now, only three states, and they are us and two other states that have Web-based server/seller training, and that is because the other two states bought our program. We collected a coalition of people who could say what do we really need to have a server know and what's the best vehicle to do it, and it's very possible. Now, we don't believe this is the only training available. We know that there are many other trainings, and that perhaps this, in combination with in-person training, would also be very effective. But the idea of having, obviously, a state in control of that seems to make sense. I share this story with you, again, in a neutral capacity though, to let you know that such technology is available; such serving is available; and so far as you can see, at the very bottom of the case study on the back of this sheet, we've had 67 counties and 351 establishments and 2,600 employees enrolled in that Web-based training with literally no promotion other than saying, through the Liquor Control Commission, this is available to you. Because it was grant funded, it is completely free for all of the license holders throughout the state of Nebraska. And so hopefully this case study will give you a better indication about how the state feels about training if it is simply made available to them, and if some effort is put together to provide it in such a way that meets their needs.

SENATOR JANSSEN: Questions? Roger.

SENATOR WEHRBEIN: How long does it take to run this course? Now, I'm assuming were talking about the Internet-based one,

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right?

TOM WORKMAN: This is the Internet-based one. And, correct, there are multiple models available, right? You can certainly take a TIPS training or some others there all day. The management training in the city of Lincoln is in person. It's an eight-hour course. The Web-based training that we provide to servers is a three-hour course. And the beauty of that course is that both the manager has the ability to put in their individual establishment policies, which also guides the manager towards having some of those policies, and it also then records the results directly to the Liquor Control Commission so the Liquor Control Commission could look and see, has this establishment's employees been trained.

SENATOR WEHRBEIN: And the eight hours is all in one block?

TOM WORKMAN: In the management training right now it is all one day. That's correct. The Web-based is three hours total, but, again, it really depends upon how they want to do it--if they want to stop and start, if they want to do it in ten-minute chunks or three hours at once, they can come back to it at any time. In the Web-based program right now, an employee must pass 100 percent of the exam to get through. And if that employee needs to take that exam five, six, seven, 20 times, till they get 100 percent, then they are allowed to do that. A different test version comes up for them each time.

SENATOR WEHRBEIN: Thank you.

SENATOR JANSSEN: Seeing no more questions,...

SENATOR FISCHER: I'm sorry.

SENATOR JANSSEN: Oh, I'm sorry. Senator Fischer.

SENATOR FISCHER: Thank you, Senator Janssen. Thank you for coming, Tom. You've answered a lot of questions here. Did NU Directions develop the Web-based training?

TOM WORKMAN: NU Directions simply organized the group of people who developed it. So, in other words,...

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SENATOR FISCHER: Who did develop it?

TOM WORKMAN: It was a combination of several bar owners, a restaurant owner, several of the local, and then statewide police, people who do hospitality training now.

SENATOR FISCHER: Okay. And that program is for servers, the Web-based training.

TOM WORKMAN: That's correct.

SENATOR FISCHER: Where you say an employee must pass at 100 percent right now or have 100 percent passing, that's for the city of Lincoln?

TOM WORKMAN: That's statewide. That's statewide. That's available throughout the state. The Web-based server/seller training that we offer right now is throughout the state.

SENATOR FISCHER: But there is no mandated requirement for it.

TOM WORKMAN: There is absolutely none.

SENATOR FISCHER: So they really don't have to have 100 percent to pass this.

TOM WORKMAN: No, I'm sorry. It's 100 percent correct answers in the test.

SENATOR FISCHER: Right. But if it is not mandatory, why do they need 100 percent right now to pass?

TOM WORKMAN: If they want certified. If they want to prove that they've been trained.

SENATOR FISCHER: Okay.

TOM WORKMAN: If they want to say to the Liquor Control Commission, we've been trained, or to themselves or to each other; if they want a certificate that says, yes, I've gone through training.

SENATOR FISCHER: Okay, for a certificate they need that.

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TOM WORKMAN: Correct.

SENATOR FISCHER: Okay. And what does that program, the Web-based program, cost right now?

TOM WORKMAN: Nothing. For the...?

SENATOR FISCHER: For the servers?

TOM WORKMAN: For the servers? Nothing.

SENATOR FISCHER: Somebody is paying for it.

TOM WORKMAN: Yes. NU Directions, right now, is paying for it. Once the initial grant of \$75,000 was meant to develop it, NU Directions has been paying \$18,000 a year to maintain it.

SENATOR FISCHER: Well, that's very nice. Thank you. What do you think it will cost per person that has to take this?

TOM WORKMAN: We worked it out to be \$4.20 per establishment, no matter how many employees they have--one or a thousand.

SENATOR FISCHER: Statewide.

TOM WORKMAN: Statewide. \$4.20.

SENATOR JANSSEN: Senator Landis.

SENATOR LANDIS: Tom, you can take a crack at this although you're in a neutral capacity and Lowen can do the same thing. This NU Directions program, taken by a couple of the folks on the state Web-based, has had 2,600 enrollees...

TOM WORKMAN: Um-hum.

SENATOR LANDIS: ...in 67 counties.

TOM WORKMAN: Um-hum.

SENATOR LANDIS: You set it up for \$75,000 for the grant and it runs at \$18,000 per year.

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TOM WORKMAN: Um-hum.

SENATOR LANDIS: The bill has a cost of just under \$100,000--five times as much.

TOM WORKMAN: Um-hum.

SENATOR LANDIS: Had you charged the 2,600 people who have taken it, you would have made \$78,000 back. The program would have roughly paid for itself. It certainly would have paid for itself after development costs, I think it would be fair to say.

TOM WORKMAN: Um-hum.

SENATOR LANDIS: If we're already drawing 67 counties that are aware, what is the role of having the state do this and not have it be mandated, because any interested party can essentially get on-line and do this with you, and not at a cost of \$100,000, but at a current cost of \$18,000, which the state isn't bearing. I'm not averse to the idea, but why would we need to do this at the state level when, in fact, although this is a Lincoln program, you can get on-line anywhere in the state and take the class?

TOM WORKMAN: The answer to me, Senator Landis, is that, going back to the original wording of the bill, the bill allows the commission to certify, and that's critical. You know, regardless of whether the Web-based program that has been developed is the program certified or one of many that's certified, to be able to have it certified and, again, to be able to have it continually developed because fees are collected to do so, you are correct in saying that NU Directions...and, again, the funders of the original, the Liquor Control Commission and the Nebraska Office of Highway Safety jumped in to make this happen because we felt it needed to happen...that won't be sustained since ours is a grant-funded program, that won't be sustained beyond 2007, so there clearly is a need to continue to fund this kind of thing. But, most importantly, there is a great need to certify, to say this is the training that we've given the blessing upon. This is the training that we all agree is the correct training so that we're clear about this training and not that training; not putting you in the back room and showing you a ten-minute video. But this specific training

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that the people who are going to be enforcing the law have certified and said, we will...if we're going to hold you to a standard, we will help you get to that standard.

SENATOR LANDIS: Thank you, Tom.

SENATOR JANSSEN: Any other questions? How many... Roger, do you have any? Can you quote any statistics that show a distinct percentage of those who have taken the training and violations?

TOM WORKMAN: No, not yet. I think the training is a little...

SENATOR JANSSEN: It's too new?

TOM WORKMAN: Yeah, it's a little bit too new for us to be able to look at that yet. That's something that we want to continue to study to see if we can see some efficacy. I mean, I can tell you anecdotally, and I can also tell you the two other states that are currently using it, which are Georgia and Missouri, we just got a wonderful call from Georgia. In the city of Atlanta, one of their event centers has an awful time...has had an awful time with violations. They just had everyone on their staff at the event center take the on-line training. They had zero violations at their last event. So we hear all kinds of anecdotal things, but I couldn't quote you on it.

SENATOR JANSSEN: Um-hum. Senator Wehrbein.

SENATOR WEHRBEIN: I did have one more. This is probably getting philosophical, but what is the reaction to customers on this? I mean, if you do it right, I assume that it's more accepted.

TOM WORKMAN: You know, it's interesting you asked that because the other question about putting this together with people who are in the industry, and for us has been to really understand the experience on the part of the seller, and to say, beyond the law, there are some real jams you find yourself in, particularly cutting off an intoxicated patron. So in that segment of the training, we spend a lot of time talking about how do you confront that person? What are some of the issues that surround your working with that

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person, recognizing I'm making minimum wage, now I'm going to fight with a person who is drunk and it is going to be difficult. So, yes, I think a sensitivity to what this feels like for a server is critical for that training to be effective and why having hospitality support behind it is important, as well.

SENATOR JANSSEN: Any other questions? Thank you.

TOM WORKMAN: Thank you.

SENATOR JANSSEN: Proponent?

JIM OTTO: Senator Janssen, members of the committee, my name is Jim Otto, O-t-t-o. I am a registered lobbyist for both the Nebraska Retail Federation and the Nebraska Restaurant Association, and I am testifying in a neutral position on this bill on behalf of both organizations. First of all, we just wanted to make it very clear that we, being the Restaurant Association and the Retail Federation, wholeheartedly support the spirit of the bill, and that being that more and more people are trained, and was very close to testifying in a positive support situation, but there are just a... I guess the only real differences we have with the bill, if you want to call them differences, is that we would, as the previous testifier said, encourage a certification standard that the Liquor Control Commission comes up with so that it isn't just one course that's certified because there are several providers out there with different courses, but it would be important that the course achieve a certification by the Liquor Control Commission. The Nebraska Restaurant Association is in the process of trying to get the National Restaurant Association ServSafe Alcohol program approved by the Liquor Control Commission, and to reach that certification would be something that's important. So our difference was that it not just be one...

SENATOR LANDIS: Right. Jim, it's okay that the state offer this training, but you would like to have that curriculum. If other people need that same curriculum's standards, they could offer it, as well.

JIM OTTO: Correct; correct.

SENATOR LANDIS: And then both of them should be certified

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because the training program should be certified if it essentially matches the standards of the state-designed program.

JIM OTTO: Correct. I would compare it to when you have insurance license there are several approved providers of the training to get your insurance and to do you continuing education, the same is true of a real estate license. It isn't limited to one specific provider, but there are certain standards that have to be met. And that, in itself, addresses another concern, and that would be that this actually mandates the cost of the program. And if you have several providers, maybe competition itself dictates the cost of the program and you wouldn't have to actually have the cost as a part of the legislation. With that, we support the concept.

SENATOR JANSSEN: Okay. Any other questions? Seeing none, thank you, Jim.

JIM OTTO: Thank you.

SENATOR JANSSEN: Next testifier.

KATHY SIEFKEN: Chairman Janssen and members of the committee, my name is Kathy Siefken. I am the executive director of the Nebraska Grocery Industry Association testifying today in a neutral capacity. We do support training for our managers and our sellers. And, as a matter of fact, we take a We Card program across the state every year, and we do it in conjunction with the Petroleum Marketers Association and the Retail Federation and the Nebraska Grocery Industry Association. We promote it to all people that are selling age-sensitive products. We take it to anywhere from five to nine different locations across the state. We promote it. We bring in the speakers, and it is available free of charge to anyone that would like to attend. You don't have to be a member of any of the groups that sponsor it because we believe that training is that important. We took the materials before the Liquor Control Commission, and they approved it as one of the training courses that...they gave their blessing to it. And the reason I talk about that program, in particular, is because while the Web-based training is good, there are some people that pick up a little bit better, a little bit easier on

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those training programs where it's face-to-face role playing, that type of thing. That program takes about two hours from start to finish, and it addresses a lot of things, like if you get someone in that's intoxicated, if you're going to sell to them. It addresses minors that come in and how they try and intimidate the retailers, and especially the younger people, into selling in a situation where they are the only ones that are there. So it's a good training program. In addition to that, Tom Workman had talked about the program that NU Directions had put together, and we were actually at the table when that program came into fruition. My members took a look at it and had some input. The fear with that program is that they are going to run out of funding. It's a good, on-sale program. The off-sale section of it needs work. And, frankly, if the off-sale section had a little bit more work done to it and it was improved, more of my members would take advantage of that. As it is at this point in time, very few of the off-sale people are actually using that training because it costs money to get programmers to make the changes that need to be made. But it is a great program in that if those changes could be made, and both on-sale and off-sale could take advantage of it, anyone anywhere in the state has access to a computer, be it through their extension agents or their public libraries or anything like that. So, again, it's a great program. Regarding the funding, a couple years ago we started kicking around ideas on how we could make sure this program continued to be available to everyone. And one of the ideas that we came up with was adding a small charge to the license every year. And I think we ran into a problem there because that money, I believe, goes to the schools. But if we could find a way where we could earmark funds that would go to the Liquor Control Commission for training purposes, then...and if it were just \$5 a year per licensee, that's about \$25,000 a year. It only costs \$18,000 to keep that program up and running from year to year, so eventually you would build enough money to pay for additional programming. But if you charge maybe \$10...and, again, you would have to earmark that so that the funding goes specifically toward training, that solves a lot of the problems. If you take it up to \$10, you've got \$50,000 a year. If you make that available through grants through the Liquor Control Commission, then other programs might be able to grow from that so that you don't have just the Web-based server/seller training; you

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also have programs like ours that could maybe apply for those grants to take across the state and help with that training. So if you have any questions, I would be happy to try to answer them.

SENATOR JANSSEN: Any questions for the Grocery Association? Seeing none, thank you, Kathy.

KATHY SIEFKEN: Thank you.

SENATOR JANSSEN: Next testifier in a neutral capacity.

HOBERT RUPE: Good afternoon, Senator Janssen and members of the General Affairs Committee. My name is Hobert Rupe, R-u-p-e, executive director of the Nebraska Liquor Control Commission. The purpose we come forward in a neutral capacity really was I couldn't get clear direction from the three commissioners. We support the idea. And to let you know, I will sort of let you know what the commission does now. The commission basically has pushed it about as far as we can without a legislative mandate such as this. What we do is we have certain approved programs. What these approved programs do is they come...to seek approval they come to the commission. The commission staff, along with members of the Nebraska State Patrol, looks through it to make sure that the minimum requirements that we feel are being met are within the program, and then we'll approve it. Now the advantage of being an program is twofold primarily. The first is...the carrot part of it if you have an improved...if you take an approved program between your first and your second offense, it kicks back to a first offense on your second offense. The commission looks at that theory that if we're trying to do progressive discipline and we're trying to get people to get training, especially those who have had a documented history of violations of the act, we're trying to encourage that. And that's the one way we're able to do that. The second way we're being an approved sort of helps out a licensee is a lot of your chains, like your restaurant chains, have programs, which at the national level they need to take, and they wanted some, I guess, thought that the commission has looked at it. And that's one reason why, as Mr. Otto said, we're currently looking at the ServSafe. There were a couple problems with it, which is why we sent it back to them, because they didn't address some things we thought

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particular into Nebraska law. One of the reasons that we're appearing neutral on this one, and I'll reference the fiscal note, as Senator Landis had, when we drafted the fiscal note we were unclear of whether this was going to be mandatory or not, and to the actual nature of it, and, honestly, we hedged our bet. If the purpose was for us to design one and maintain one ourselves, we thought that the two full-time positions, one being a training instructor and one being a staff assistant I, would have been the minimum staffing required if we were going to have a certification of all individual servers, because just to maintain the data base, to make sure that the training is available. One of the biggest complaints we get currently from licensees are that there is not training, training is not available, it's not convenient, it doesn't work out well. The other reason why we have approved courses is the courts have upheld the commission placing specific conditions upon licenses on a case-by-case basis. The commission has taken that theory that, on a case-by-case basis, if there is a question regarding someone have training or having not enough training, usually after a hearing they will order taking one of our approved training courses within 90 days or sometimes 120 days to get the license. The commission doesn't feel like, since they are a statutory creature, they have the authority to mandate training all across the board. The commissioners don't believe we have that authority, so our current mechanism, we think, is the furthest the commission can go under the current statute structure. If the proposal of LB 1160 is to seek for us to come up with specific guidelines which would meet the minimum requirements and then to certify individual third-party programs I think we could do it with a lot less money than is currently reflected in our fiscal note because basically that is an extension of what we are doing already; that is giving us more of an official stamp the commission can place upon these programs and have a little more control over that. The funding issue generally always comes up. The NU Directions program, which you heard the Nebraska Liquor Control Commission originally funded part of that. Well, we funded part of that out of our cash fund, and I'll tell you, my predecessor got into trouble with the auditors for the way they did that. The cash fund, as it currently exists, \$5 off all applications goes into a cash fund which the commission can utilize for making the law books--printing the law books--which we print every two to three years.

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That usually costs about \$25,000, plus mailing and shipping them to all licensees. If also encompasses approximately he \$8,000 per year that we incur for creating...for when we have to print new keg books. Sometimes they (inaudible) have to print them all the way, the keg registration books. Since we stopped doing our newsletter and went to an on-line Web site-based e-service. We've got more cash there, right now currently. That came up on our audit last week. So what I would propose, if we were looking to do it where the commission would have the oversight and perhaps be able to develop that, one of the ways we could find the funds of that would be an amendment to 53-117.06, and allow the commission to utilize those funds to also spend on training materials or training courses. That might be a way, if people are looking at that, because that's where the original \$20,000 came from, and the commission got in trouble for utilizing it. Currently, there is about \$50,000 in the fund, and we're going to be spending \$20,000 at the end of the month when we print out the new 2006 law books. The commission definitely supports the theory behind it. One of the reasons why the commission has approved multiple programs is because not all programs fit in all business models. Some are geared more towards a restaurant model where they are dealing with issues and how in conjunction that works. Some are a traditional on-sale service. One of the approved ones is the Nebraska Bartenders Schools where he goes through what used to be the bar code, and now is a different program, as a big part of getting his diploma from them. We also approve the Nebraska State Patrol. Sergeant Costello is here if you have any questions regarding an actual face-to-face training program is utilized. He is the developer of that program for the State Patrol. The other issue why we're somewhat neutral on the pending bill is the bill, right now, looks at two of the major issues that face retailers: sales to minors and sales to visibly intoxicated. There are many other issues which our approved training programs cover which aren't in here. A big one would be how do you diffuse a violent situation in a retail establishment. What warning signs should you call law enforcement--is it escalating beyond your local bartender or maybe your bouncer's control about that; making people aware of other issues within Nebraska law, such as the time. You know, believe it not, every year when the time changes, we get some people saying, well, does that mean that I can stay open an hour later? Well, no, those are...something as

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mundane that to as important as the visibly intoxicated. Our approved programs deal with more than just these two issues, although these two issues are definitely of paramount importance to the commission.

SENATOR JANSSEN: Any questions? Seeing none, Hobie, thank you.

HOBERT RUPE: Thank you.

SENATOR JANSSEN: Next neutral testifier.

MARY CAMPBELL: Mr. Chairman, Mary Campbell, C-a-m-p-b-e-l-l, appearing on behalf of the Nebraska Beer Wholesalers Association and the Nebraska Wholesale Liquor Distributors Association. We strongly, vehemently, wholeheartedly endorse server training. We want the people who sell to the ultimate customer the products we distribute, to do so lawfully, responsibly, professionally. Our neutrality is based on the fact that we, today, offer no opinion and defer to our retail partners and to our regulator agency as to what the content should be, how it should be administered, how the costs will be taken care of. I would also just add that we try to help our retail customers in every way that we can by providing point-of-sale materials, table toppers, the stickers for the coolers, all the things which we hope reenforce that legal sales will be the only sales. Some of our members also hold legal seminars for their retail customers and bring in the State Patrol and others to walk retailers and their employees through the laws. So we see this as a partnership and hope that there will be more educating and more good servers out there as the first line of defense. Thank you.

SENATOR JANSSEN: Any questions? Mary, I just have a couple comments.

MARY CAMPBELL: Surely.

SENATOR JANSSEN: I believe that reliable retailers in this state do make an attempt to do the best they can because that is their business.

MARY CAMPBELL: Absolutely.

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SENATOR JANSSEN: Years ago, grocery stores never sold alcohol; now they do. I don't know what the percentage would be. There are not as many retailers as there was at one time. They are larger.

MARY CAMPBELL: Um-hum.

SENATOR JANSSEN: They have more at stake, so they don't want this to happen either; they really don't. And they do work hard; some people think they don't, but they do because their business is in jeopardy also.

MARY CAMPBELL: Absolutely. And that's why if there are ways in which we can assist that, we try.

SENATOR JANSSEN: Right. Any other questions of Mary? Seeing none, thank you.

MARY CAMPBELL: Thank you.

SENATOR JANSSEN: Any other testifiers? Seeing none, Senator Kruse, would you like to close?

SENATOR KRUSE: I will take that opportunity, Mr. Chairman. Thank you. Most of the references were to the Web base, and I have in my hand...some of you are old enough to remember a fellow that used to say that...(laugh)...don't associate with that...a course that's available in another format. This particular one is put out by the National Restaurant Association, and we think it's five sessions. But, again, we left this open, and I really appreciate all of the testimony and the witness and your exchanges of questions because that illustrates why we've left the bill in this form. We want the Liquor Control Commission to put that together. We are focusing on certification. They can provide the course; they can take this one. But we want to trust the certification, and it could be different courses, for a server, for a manager, and so on. It would hopefully...I would... Again, we're not trying to control them, but I would... Hum, control-control. Well, (laugh), we're not trying to direct but I would certainly hope that it related to how to interact with an intoxicated person because a lot of these are little more than kids themselves, and they don't have the finesse or maturity to do that. The establishment would want them to do that in an appropriate

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way, but in a clear way, give the message in a clear way that they need to do. It is difficult to intercept an intoxicated person. Probably most of us who have tried to do that, we hope to be effective within it. So I would hope that we could give them, not free range, but clearly open this in developing. And then the other point that I would speak to is the cost. I ignored the fiscal note before because there is a lot of question about that. The fiscal note really is trying to price a live, in-person type of a thing. Well, we really...do we really need to do that anymore? I, myself, doubt it, but they would know. It could be that for managers it should be; it could be for some of these young persons. There are several different levels. One of the problems we have with the present servers is that the full-time server will get training and then have college students come in and out or some young adult come in and out, and they are presumably covered by server training because this other person is supposed to be there all the time. Well, we want the certification to be to that individual. And, frankly, it would be transferable. And maybe the employee needs to bear a little of the cost because they would be certified, and if they go down the street, as someone said, they would already be certified if that were the case. Note that it is up to \$30. I assume this would go into a designated cash fund. And that if that fund began to build up, the cost of this whole thing would go down. The cost of management training will be quite a bit more than for server training because you have a smaller base. And so, finally, I really appreciate what NU Directions has done for us. I hope that this committee is aware of it. But this is Nebraska. We've got some real pride here. There is nothing like it. You know, there are a few that try to be, but NU Directions has distinguished itself, especially in terms of management training. So we've got a resource there. We're not turning our back on it at all. They have shown us that that can work and they've shown that the retailers want to make it work. Thank you.

SENATOR JANSSEN: Thank you, Senator Kruse. That ends the hearing on LB 1160.