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Transcriber's Office

Judiciary Committee
February 22, 2007

[LB218 LB260 LB407 LB424 LB553 LB573 LB624]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 22, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB407, LB218, LB573, LB260, LB553, LB424, and LB624. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: Good afternoon. I think we're going to get started if we can. We're just a little bit late. Senator Pedersen is first up and he's here. All right. Well, good afternoon everyone. We have seven bills today. And let me ask how many of you that are here today plan on testifying on any of the seven bills? Pretty good share of them. Most of you have been here before many times, but those who have not we have a light system that tells you when there is a minute to go in your...we ask that you give your testimony in the three minute increments and that when the yellow light comes in it means that you there's another minute left. And then the red light we would ask you to sum up when the red light comes on. And there's a sign-in sheet. Most of you are aware of that. And if you would fill that out now and put the bill number and all the information and we can have that ready to go. Let me introduce my colleagues. Senator McDonald is here. To my left, Senator Pirsch. Senator Pedersen is introducing the bill. And Senator McGill. So I'm Brad Ashford from Omaha, the Chairman of the committee. Jono Bradford is legal counsel and Jeff Beaty is our attorney. LB407, Senator Pedersen. [LB407]

SENATOR PEDERSEN: Thank you, Senator Ashford and members of the Judiciary Committee. For the record, I am Senator Dwite Pedersen representing the 39th Legislative District and I'm here today to introduce to you LB407. This bill changes ignition interlock requirements for any person who is submitted to a chemical alcohol test and has had his or her operator's license revoked for one year under the Administrative License Revocation procedure. Under the provisions of LB407, such a person would be eligible, after a 45 day revocation period, to apply for a permit to operate a motor vehicle equipped with an ignition interlock device. This provision would only apply to those revocations under ALR, Automatic License Revocation, not to the one year revocation required by law for those who refuse a chemical test for alcohol. The bill also amends current law in cases where a court orders that a motor vehicle owned by an individual convicted of a second or subsequent DUI offense be impounded. The current wording of the statutes required immobilization for not less than five days nor more than eight months. LB407 changes this to a period of impoundment not less than a minimum period of ineligibility to obtain an employment driving permit or ignition interlock device, whatever that time period may end up being. It is my understanding that current federal incentives require states to have a one year revocation for repeat offenders. When this bill was introduced it was thought that the law

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was being changed at the federal level to allow for the reduction to a 45 day hard revocation period. As of today, that has not occurred and passage of this particular bill, at this point in time, would endanger the federal incentive funds that Nebraska receives. Therefore, I'm asking the committee to consider this bill as sort of a placeholder that would be available for consideration if and when the United States Congress changes the federal law to require only a 45 day hard revocation period. If you have any questions I'd be glad to answer them. I have following me an executive from the National Transportation Safety Board, Mr. Kevin E. Quinlan, who's the chief safety advocacy division who is going to testify in support of this bill with some others. He's here on another bill, but read this and would like to testify on it so I'll have him follow me. Any questions I'd try and answer them for you. [LB407]

SENATOR ASHFORD: Thanks, Senator Pedersen. Senator McDonald. [LB407]

SENATOR McDONALD: Okay. What is an ignition interlock device? [LB407]

SENATOR PEDERSEN: Ignition interlock device is the device that's hooked into the mechanics of the automobile that you have to breathe into that is calibrated to your breath before the car will start. It also has a computer that tells you every time you started in, every time you drove it, and at certain times it will buzz and say you've got three, four, five minutes to stop and breathe into it again in case you're drinking while you're driving. And it's worked very successfully. [LB407]

SENATOR McDONALD: Thank you. [LB407]

SENATOR ASHFORD: Senator Chambers. [LB407]

SENATOR CHAMBERS: Sorry I'm late, Senator Pedersen. Did I hear you say you didn't want anything done with this bill? [LB407]

SENATOR PEDERSEN: That's right, Senator. [LB407]

SENATOR CHAMBERS: But there will be a lot of people testifying on it anyway? [LB407]

SENATOR PEDERSEN: There will be some testifying on it anyway, because it's a...we thought it was going to be in place but the feds don't have it in place yet. So we wanted just kind of a place card until we got it ready to go until the feds get it passed. [LB407]

SENATOR CHAMBERS: So if they heard you say that they don't want us to do anything with this bill what are they going to say, or haven't you talked that over with them? [LB407]

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SENATOR PEDERSEN: Just tell how they're in favor of it. [LB407]

SENATOR CHAMBERS: I'm going to see how intelligent they are. Thank you, Senator Pedersen. (Laughter) [LB407]

SENATOR ASHFORD: Thank you, Senator Pedersen, for your candor on this. So any other proponents? How many proponents do we have of this? One, two, three. [LB407]

KEVIN QUINLAN: (Exhibit 1) Good afternoon, Chairman Ashford and members of the committee. My name is Kevin Quinlan, that's Q-u-i-n-l-a-n. I'm chief of safety advocacy at the National Transportation Safety Board. Just to clarify who the board is, the board is an investigative agency. If you think of plane crashes, that's us. We also do investigations in all other modes of transportation. Also to clarify, we investigate, we do not regulate. We don't tell the states what to do, we ask you what to do to do certain things based on our investigations. Our recommendations are based on facts of the investigations, the best science available, the best data available. We are known for our objectivity. I have handouts for written testimony on a later issue. I do not have written testimony on this issue. But I would like to point out, the board has 13,000 recommendations that we've issued in 40 years, all of them to improve safety. There are measures in the center of this--each of you has a copy--that keep planes from running into each other on the ground and exploding in the air. On the back, you will see our recommendations to the states and that includes vehicle sanctions such as ignition interlock devices for DWI offenders. What we've found is that ignition interlock devices work very well while they're on the car. To our knowledge, there is no halo effect. And they are very supportive of alcohol treatment, because the offender can use the car to get to treatment and I think that's a very important measure. I'd like to point out, Senator, that we are not the agency that writes the incentive legislation or does the ministerial performance in terms of the regulations; however, Congress does look to our recommendations to the states, and we favor less punitive sanctions and more effective sanctions. One of those effective sanctions is ignition interlocks. I would also point you out to our handout on hard core drinking drivers. And you will note on the second page of that handout that we promote the use of ignition interlock devices because they are very effective. I apologize that I do not have written testimony for this measure. We think it's a good measure. I understand Senator Chambers' position on the intelligence of the approach. I cannot address the regulatory issues, because I am not authorized to. That's a different agency. So to sum up, these ignition interlocks are one of the effective measures proven in many other states. We find they should be administratively imposed to get wide as possible coverage. The problems with judicially-based ignition interlock requirements is that you get about 10-20 percent use. With motor vehicle agencies you get nearly 100 percent use of ignition interlocks. It protects the motoring public. Thank you, Senator and members of the committee. I'd be glad to take any questions you may have. [LB407]

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SENATOR ASHFORD: Thanks, Mr. Quinlan? Do we...yes, Senator McDonald. [LB407]

SENATOR McDONALD: Okay. So you have one of these on your car and it won't start unless you breathe into it? [LB407]

KEVIN QUINLAN: That's correct. If you have an offense. You have to be a DWI offender. [LB407]

SENATOR McDONALD: Okay, so... [LB407]

KEVIN QUINLAN: This is not for the general public. [LB407]

SENATOR McDONALD: So if I have one of those on my car and I've had over the limit and I breathe into it, will it still let me drive or just records my alcohol content? [LB407]

KEVIN QUINLAN: No, it won't let you drive. [LB407]

SENATOR McDONALD: Won't let me drive. [LB407]

KEVIN QUINLAN: That's correct. It will also record it. Now I would like to point out that that could be set at any level that the court requires if it's court-based. So if the court says you must maintain sobriety, what does that mean? Does it mean zero or does it mean .01 or .02, which is essentially one drink? That's up to the court. [LB407]

SENATOR McDONALD: Who pays for those? [LB407]

KEVIN QUINLAN: Typically it's paid for by the offender and the figure I've heard is about \$60 a month. I don't know if that's true in Nebraska, but I think it's about that. There are usually funds for indigents. On the other hand, one could argue that if you're drinking enough to reach that level you could probably afford the interlock. [LB407]

SENATOR McDONALD: Thank you. [LB407]

SENATOR ASHFORD: Thanks, Senator McDonald. Thank you, Mr. Quinlan. [LB407]

KEVIN QUINLAN: Thank you. [LB407]

SENATOR CHAMBERS: Maybe I have a question. [LB407]

SENATOR ASHFORD: Well, you didn't...maybe you did. Yes, please. [LB407]

SENATOR CHAMBERS: Okay. Since you weren't looking I didn't want to just waive like a semaphore. How far away from here did you come? You came from where? [LB407]

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KEVIN QUINLAN: I came from Washington D.C. I live in Maryland. [LB407]

SENATOR CHAMBERS: Then I understand you're testifying anyway and I have no problem with that, but let me ask you a question just for philosophical reasons. And you can tell how peculiar some of the people on the Legislature's Judiciary Committee are or at least one of them. If you were a procurement officer for the Pentagon and you were going to go to Boeing because they had represented that they have an aircraft that will take off vertically, land, go any direction you want it to, and they gave you a bushel basket full of money at the Pentagon and said go buy that airplane. And you came to our facility and we're honest people. We say well, we looked at it and the airplane won't fly at all. Would you give me the money for the airplane anyway, even if I told you it won't fly? [LB407]

KEVIN QUINLAN: That's an interesting hypothetical question for which I can't possibly answer that. [LB407]

SENATOR CHAMBERS: So you might give me the money? [LB407]

KEVIN QUINLAN: No, I'm saying I can't possibly answer that. [LB407]

SENATOR CHAMBERS: Why not? [LB407]

KEVIN QUINLAN: Because one, I'm not a contracting officer for the Pentagon. I am a retired army officer and I know the things that can go wrong. [LB407]

SENATOR CHAMBERS: I didn't say contracting. I said procurement officer. [LB407]

KEVIN QUINLAN: All right. Well, that's the same difference. [LB407]

SENATOR CHAMBERS: But I said procurement. I just want everybody in the audience to know what I'm talking about. [LB407]

KEVIN QUINLAN: Yes, it is the same. [LB407]

SENATOR CHAMBERS: Okay. [LB407]

KEVIN QUINLAN: It is the same thing. [LB407]

SENATOR CHAMBERS: Okay, but when I say this airplane won't fly that means different things to you. That can mean something other than the fact that it won't fly. Correct? That's why you can't answer? [LB407]

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KEVIN QUINLAN: Well, semantics being what they are, it might not fly and yet it still might fly. [LB407]

SENATOR CHAMBERS: So if I'm the one who made the plane and I told you it won't fly... [LB407]

KEVIN QUINLAN: We aren't talking about the Osprey are we, Senator? [LB407]

SENATOR CHAMBERS: I'm not talking about...this is purely speculative and theoretical and academic. If I'm the one who makes the plane and I tell you it won't fly--I tell you it won't fly--you're going to tell me that it will fly and give me the money anyway? [LB407]

KEVIN QUINLAN: No. [LB407]

SENATOR CHAMBERS: I'm glad to hear that because I was going to say you demonstrate what's wrong with the Pentagon's method of buying things, but you salvaged yourself. Thanks for coming. (Laughter) [LB407]

SENATOR ASHFORD: Thanks. Does that engender any other questions? [LB407]

SENATOR CHAMBERS: Not from me. [LB407]

SENATOR ASHFORD: Thanks, Mr. Quinlan. [LB407]

KEVIN QUINLAN: And, Senator, if I get fired for talking about the Osprey when I go back to Washington I'll be back to see you. [LB407]

SENATOR CHAMBERS: I didn't say Osprey. (Laughter) [LB407]

KEVIN QUINLAN: Thank you, sir. [LB407]

SENATOR ASHFORD: Thank you. [LB407]

SIMERA REYNOLDS: (Exhibit 2) Good afternoon, Chairman and members of the committee. My name is Simera Reynolds. I'm the executive director for Mothers Against Drunk Driving and I'm here on behalf of our membership to support LB407. MADD strongly supports the language in place on page 3, Section 3, the placement of the 45 day hard suspension prior to being eligible for an interlock ignition device. That is on target with our mission to eliminate drunk driving. MADD supports the three R's--restrict, repay, recover. Restrict the vehicle operation by suspending licenses, impounding or immobilizing vehicles, and requiring interlock ignition devices on offenders' vehicles. Repay. Repay the victim or community through fines, fulfilling probation requirements as provided by the courts and financial restitutions that are involved with crash victims.

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Recovery. MADD promotes recover programs through mandatory alcohol assessment and treatment, an intensive probation and attendance at victim impact panels. MADD would prefer to see an interlock ignition device mandated for all first time offenders with a 45 day hard suspension in place. And if a subsequent violation takes place MADD, as an organization, would prefer to see a 60 day hard license suspension prior to being eligible for an interlock ignition device. As one might expect, this stops offenders from re-offending while interlock ignition is on the vehicle. Interlocks have been shown to be effective in Maryland, Alberta, California, and there's really positive results coming out of New Mexico. Governor Richardson took a big leap on first time offenders and the interlock ignition device. The results in the study show between 50-90 percent reduction in subsequent offenses by those offenders who were assigned interlock devices versus those who were not. These devices allow offenders to continue their normal life and remain employed, they save jail space, and they have proven to reduce recidivism. Currently nationwide, there are about 100,000 interlocks in use compared to 1.4 million DUI arrests. With technology, MADD feels strongly that we can eliminate drunk driving. And to bring that matter home just a little more, in Nebraska last year there were 14,525 DUI arrests and there's approximately 1,000 interlocks being used--about 9 percent. MADD would support this bill contingent upon the passage of the federal legislation at the federal level. [LB407]

SENATOR ASHFORD: Thank you. Any questions? Yes, sir. [LB407]

SENATOR CHAMBERS: Where do you think this bill is going realistically, because you've been around here for awhile? [LB407]

SIMERA REYNOLDS: Well, you know, nothing dies this year. It can go into the 60 day session. And provided that Congress would, you know, have something pass... [LB407]

SENATOR CHAMBERS: But let me rephrase the question. [LB407]

SIMERA REYNOLDS: It's conceivable it could pass in the next two years in the Congress. [LB407]

SENATOR CHAMBERS: Where do you think this bill is going? [LB407]

SIMERA REYNOLDS: Well, I think it could be held in committee and... [LB407]

SENATOR CHAMBERS: Not could. Where do you think it's going? If you think it's going to pass just tell me. If you think it's not, tell me. If you don't know then tell me. [LB407]

SIMERA REYNOLDS: Okay, but by where is it going, where is it going in this committee? Where do I think this committee? Well, with brand new senators it's hard to determine, but I would imagine it would be held in committee as being a staffer. [LB407]

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SENATOR CHAMBERS: Well, with the oldest senator here who feels that the purpose of the committee is to cull unnecessary legislation, where do you think this bill is going? [LB407]

SIMERA REYNOLDS: Well... [LB407]

SENATOR CHAMBERS: Okay, you don't have to answer that. But that's just... [LB407]

SIMERA REYNOLDS: Well, if you were the chair...(Laughter) No, I hate to overstep... [LB407]

SENATOR ASHFORD: Let's not speculate on those things. [LB407]

SIMERA REYNOLDS: Yeah, yeah. I hate to overstep. [LB407]

SENATOR ASHFORD: Thank you. Thank you. Thanks. Good afternoon. [LB407]

JERRY STANTON: (Exhibit 3) I'm Jerry Stanton with Ignition Interlock Systems of Iowa, Nebraska from Des Moines. I didn't travel quite as far as from Washington D.C. and I hope I can pass the Senator's intelligence test. I'm really here just to be a resource on ignition interlocks. I've appeared before many of you before. This is an actual ignition interlock device. This is the most used one in the state of Nebraska. In fact, this is the most used one in the country. It's a very simple process. We cut the wire that goes from the key that starts the engine. People have to pass a breath test when they start their vehicle and periodically as they drive. The state requires that we set them at a fail level of .025, about a third of the convictable level for drunk driving of .08. They've been used in Nebraska at some levels really for over 20 years. Nebraska's usage is kind of online with the national average, but a fraction of what sister states, or nearby states of Colorado and Iowa, use. And I'm just here basically to be a resource if anybody has any questions about the technology. I've also been involved in the federal legislation that Senator Pedersen referred to and I can answer questions about that if anyone is interested. [LB407]

SENATOR ASHFORD: Any questions of Jerry? [LB407]

SENATOR CHAMBERS: Since you all insist on treating this bill as though it has a chance, I'm going to treat your presentation the same way. When you say that periodically while a person is driving the car they have to breathe into it, what happens if the person breathes into it while the car is in motion and the person doesn't pass the test? [LB407]

JERRY STANTON: If they're given several opportunities to pass the test, if they don't

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pass it or they ignore the test then the horn on the vehicle will start honking. The horn will honk until they actually pass a test or pull over and shut the vehicle off, at which point in order to restart the vehicle they'll have to pass a breath test. [LB407]

SENATOR CHAMBERS: So then if they're on a country road where nobody's going to hear the horn, then they can just drive as far as they want to, they can drink as much as they want to, and that will not cause the car to stop? [LB407]

JERRY STANTON: Absolutely. [LB407]

SENATOR CHAMBERS: Okay. [LB407]

SENATOR ASHFORD: Thanks, Jerry. Senator Pirsch, did you have any... [LB407]

SENATOR PIRSCH: I guess just in general, it's your position that having the interlocks on these vehicles with these individuals is the benefit here that it gets them in a life pattern where they are more successful then in leaving alcohol and keeping a jobs then if they had, say, a hard revocation of their license to do the DUI conviction? [LB407]

JERRY STANTON: As Mr. Quinlan said first, there doesn't appear to be a scientific halo effect that there is a learned behavior that happens after the ignition interlock is taken off. The studies have shown over time that the lines of people who had the interlocks and who didn't, the lines ultimately meet up with one another. The biggest benefit it twofold. The overriding one is that it makes the decision for someone, in most cases always proving they have problems making that decision responsibly makes the decision whether they should drive or not. The other benefit which protects, basically, all of Nebraska's families from those drivers...the other benefit is in this particular bill that Senator Pedersen introduced is with a one year suspension of all driving privileges, basically people are going to lose their jobs, they can't go to treatment legally, they can't drive legally to treatment, so therefore in many cases they will drive, they will get caught. And so it's really a combination of protecting basically us from them, and at the same time allowing them to work, go to treatment, maintain their families. Does that answer your question, Senator? [LB407]

SENATOR PIRSCH: So it's more the second reason and not so much the first reason. [LB407]

JERRY STANTON: Well, no. The real benefit, again, is for all the other people on the road who are sober to have their families protected from that person who may not be because they couldn't start the vehicle because the breath analyzer was on there. The secondary benefit is that person, rather than lose all driving privileges and either drive illegally or not drive, lose their job, and those kinds of things, that's the secondary benefit. But it's far below the benefit of highway safety. [LB407]

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SENATOR PIRSCH: Sure. I just meant the benefit is getting them in a good habit. [LB407]

JERRY STANTON: Oh yes. I'm sorry. I misunderstood your question. [LB407]

SENATOR PIRSCH: Yeah, no, I apologize. I should've... [LB407]

JERRY STANTON: Yes. Yeah, unfortunately there is no proven halo effect. [LB407]

SENATOR ASHFORD: Senator McDonald. [LB407]

SENATOR McDONALD: Once those are put on the car, who puts those on the car? [LB407]

JERRY STANTON: It's private suppliers. There's six different manufacturers of the devices and they employ different service provider companies in different states to install them on the vehicle. [LB407]

SENATOR McDONALD: And how easy are they to take off then? What if someone decides that they need to go somewhere and they knew they weren't going to pass the test, could they easily rip it off and drive anyway? [LB407]

JERRY STANTON: Yes, they could easily rip it off and drive anyway. The reality is that, at least in the 20 years that I've been doing it, that happens a lot less than one would think. The alternative really to the ignition interlock is just taking someone's license saying don't drive and really hope for the best. The interlock causes them like designating a drive, those pre-thinking kinds of things...if they know they're going to be drinking they won't take that vehicle perhaps, but the bypassing, tearing the thing off, that's extremely rare. And we also detect that both electronically on the device and when they come in for a monitoring session which is every 60 days. [LB407]

SENATOR McDONALD: Okay, thanks. [LB407]

SENATOR ASHFORD: Thank you, Senator. Thank you. [LB407]

JERRY STANTON: Thank you very much. [LB407]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Okay. LB218, Senator Burling. [LB407]

SENATOR PEDERSEN: I'll waive. [LB407]

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SENATOR ASHFORD: I thought...I always forget to ask that. (Laughter) It was so eloquent with the introduction. Senator Burling. [LB407]

SENATOR BURLING: (Exhibit 4) Thank you, Chairman Ashford, members of the Judiciary Committee. I'm Carroll Burling, B-u-r-l-i-n-g, representing District 33 of the Legislature and I'm here today to introduce for you LB218. You have the statement of intent before you to read so I think I'll just share with you how this bill came about. This has to do with the pseudoephedrine product used in the manufacture of methamphetamine. A couple years ago this body introduced and passed LB717 (sic-LB117), which is credited with decreasing the numbers of methamphetamine labs around the state as a very successful piece of legislation. Subsequently, a year ago the Congress passed a federal act similar to the one we passed, but they're not identical. And so I visited with the Governor and I visited with the Attorney General, and we all agreed that it would probably be good to bring our law and their law together so it would be easier for retailers and consumers to understand just exactly what the law in Nebraska was. So I'd like to have you think about the three major components of the federal law and the state law regarding purchase of pseudoephedrine and like products to make methamphetamine. Three major components are the 24-hour purchase limit, the identification/logbook provision, and the 30-day purchase limit. The law we passed here in Nebraska a couple years ago said that 24-hour purchase limit will be 1.44 grams each 24 hours. It was necessary to show an ID to purchase that product, but not necessary to sign a logbook. And you could legally buy, under Nebraska law passed that year, 43 grams of product in 30 days. Last year, the federal Congress passed a law that said you need to sign a logbook but you can purchase 3.6 grams in a 24-hour period, but only 9 grams in a 30-day period. So what we have here is a federal law that's much more stringent in the identification and logbook process of purchasing by adding the logbook signature requirement. You have a federal law that's much more stringent than the state law which allows 43 grams for 30 days, federal law allows only 9 grams per 30 days. So I'm proposing in LB218 to raise the 24-hour limit to 3.6 to comply with the federal law so that people understand just exactly what the law is. If we're required to purchase only 9 grams a month and sign a logbook each time we purchase then I think our consumers in the state ought to be allowed to purchase 3.6 grams in 24 hours like the federal law has stated. At the request of the Nebraska Pharmacists Association I have handed out a suggested amendment that I'd like to have the committee consider and I understand that Bob Hallstrom will be following me to explain this amendment, but it has to do with who's responsible for seeing to it that this is all the purchases that are made. That's what the amendment does and he will explain it more. Are there any questions that you might have? Yes? [LB218]

SENATOR ASHFORD: Senator Chambers. [LB218]

SENATOR CHAMBERS: Welcome to the committee, Senator Burling. [LB218]

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SENATOR BURLING: Thank you. [LB218]

SENATOR CHAMBERS: You said that you discussed this with the Attorney General and with the Governor? [LB218]

SENATOR BURLING: Yes. [LB218]

SENATOR CHAMBERS: If either had disagreed would you have offered the bill anyway? [LB218]

SENATOR BURLING: I didn't have to consider that. I didn't think about that and I just went to them and said do you think we need legislation to make this more clear and they agreed. And so we go together and the Attorney General wrote the bill. [LB218]

SENATOR CHAMBERS: The Attorney General wrote the bill. [LB218]

SENATOR BURLING: Well, his staff did. [LB218]

SENATOR CHAMBERS: The Attorney General's staff wrote the bill. Is this a person who knows how to translate milligrams into grams? [LB218]

SENATOR BURLING: Well, I hope so. [LB218]

SENATOR CHAMBERS: So do I. Is that person going to testify do you know? [LB218]

SENATOR BURLING: I don't know. [LB218]

SENATOR CHAMBERS: Okay. Do you know how to translate milligrams into grams? [LB218]

SENATOR BURLING: One thousand milligrams is a gram. [LB218]

SENATOR CHAMBERS: So if we have 1,440 milligrams that translates exactly into 3 and 6/10 grams? [LB218]

SENATOR BURLING: No, 3 and 6/10 grams would be 3,660 milligrams. [LB218]

SENATOR CHAMBERS: So we're replacing not necessarily just giving a clear way of expressing the same thing. We're actually changing the amount? [LB218]

SENATOR BURLING: Yes. [LB218]

SENATOR CHAMBERS: Okay. I want that clear in the record. And I agree with you. I

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think you're absolutely right. Now did you talk to anybody in the Legislature to determine whether or not you ought to introduce this bill, because the last time I checked...let me ask a question? Does the Attorney General have a vote in the Legislature? [LB218]

SENATOR BURLING: No. [LB218]

SENATOR CHAMBERS: Does the Governor? [LB218]

SENATOR BURLING: No. [LB218]

SENATOR CHAMBERS: Do all the senators? [LB218]

SENATOR BURLING: Yes. [LB218]

SENATOR CHAMBERS: Did you talk to any senators before you brought this? [LB218]

SENATOR BURLING: Yes. [LB218]

SENATOR CHAMBERS: Good. Which ones did you talk to? [LB218]

SENATOR BURLING: I don't remember. [LB218]

SENATOR CHAMBERS: How many did you talk to? [LB218]

SENATOR BURLING: Three or four. [LB218]

SENATOR CHAMBERS: Okay, Scooter Libby, that's all I have to ask you. Thank you. (Laughter) [LB218]

SENATOR BURLING: Thank you. [LB218]

SENATOR ASHFORD: Thanks, Senator. Anyone else got any questions? Thanks, Senator. I better ask you now because I'm not very good at this. Do you wish to close or... [LB218]

SENATOR BURLING: I'll stay around and I'll intend to close now. [LB218]

SENATOR ASHFORD: Okay. You better remind me, though, because I... [LB218]

SENATOR BURLING: Okay. Thank you. [LB218]

SENATOR ASHFORD: Any other proponents? Thanks. Any proponents? [LB218]

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BOB HALLSTROM: (Exhibits 5 and 6) Chairman Ashford, members of the committee, my name is Robert J. Hallstrom. I'm appearing before you today as a registered lobbyist for the Nebraska Pharmacists Association. I have handed out a letter to the committee from Joni Cover who is the executive vice president of the Pharmacists Association, and I've also, while I'm not representing them, been asked to submit a letter on behalf of the Nebraska Retail Federation. As Senator Burling indicated, we have come to him with an amendment to LB218. We do support the bill for purposes of conforming the sales and purchasing requirements of federal law under this state act. The amendment that we have proposed, under federal law the 30-day limit is on purchases. As the bill was originally introduced it restricted customers. I think it said customers shall not be allowed to purchase so much within a 30-day period. That would seem to put the onus on the seller of the product when the federal law, in fact, says that the customer shall not purchase the specified quantities or beyond the specified quantities within the 30-day period. So we have simply proposed a simply amendment to conform that provision of the bill to what we believe federal law provides. With that, I would be happy to address any questions of the committee. [LB218]

SENATOR ASHFORD: Any questions for Bob? Yes, Senator Chambers. [LB218]

SENATOR CHAMBERS: Mr. Hallstrom, would you look at--let me see if it's in your amendment--would you look at...do you have a copy of the bill? [LB218]

BOB HALLSTROM: I don't have one with me, Senator. I apologize. [LB218]

SENATOR CHAMBERS: Okay. Do you have an explanation of your amendment with you? The second page? [LB218]

BOB HALLSTROM: I don't think there's anything specific in there other than it's corresponding the purchase limits. The way we interpret the bill currently, Senator--thank you--the way we interpret the bill currently is it said the customer shall not be allowed to purchase. [LB218]

SENATOR CHAMBERS: Right. I meant do you have the second page of the amendment that you gave us? [LB218]

BOB HALLSTROM: Yes. [LB218]

SENATOR CHAMBERS: Okay. In the first paragraph, do you see in next to the last line of the first paragraph, two words each beginning with p? [LB218]

BOB HALLSTROM: Yes, I do. [LB218]

SENATOR CHAMBERS: How many syllables does the second one have? [LB218]

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BOB HALLSTROM: Let me count this, Senator. Seven. [LB218]

SENATOR CHAMBERS: Are you sure? [LB218]

BOB HALLSTROM: Phenylpropanolamine. [LB218]

SENATOR CHAMBERS: You get an A and that's all I have to ask you. Thank you, Mr. Hallstrom. I'm proud of you. [LB218]

BOB HALLSTROM: Thank you, Senator. I was going to ask you yesterday what about Bob when you were giving passes for palindromes. [LB218]

SENATOR CHAMBERS: Well, you didn't say that you had been adopted so...(Laughter) [LB218]

BOB HALLSTROM: Thank you, Senator. [LB218]

SENATOR ASHFORD: Thanks, Bob. Any other proponents? [LB218]

KATHY SIEFKEN: Senator Ashford and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n, here representing the Nebraska Grocery Industry Association. We are in support of this bill because it is very confusing when you've got federal regulations that are different than state regulations. And it's difficult for some of our smaller guys to understand what they really need to do when they've seen state regs then they see federal regs, and this just makes it clear. It's easier to comply with the law. If you have any questions I'd be happy to try to answer them. [LB218]

SENATOR ASHFORD: Any questions? Thank you. [LB218]

KATHY SIEFKEN: Thanks. [LB218]

SENATOR ASHFORD: Any opponents? Neutral? Neutral? Opponent? Opponent. [LB218]

LYNN LYON: Senator Ashford, members of the committee, I'm concerned about this LB218... [LB218]

SENATOR ASHFORD: Now you're going to have to give us your name. [LB218]

LYNN LYON: Oh, my name is Lynn Lyon. I'm a deputy sheriff with the Otoe County Sheriff's Office out of Nebraska City. [LB218]

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SENATOR ASHFORD: Can you spell your last name for us? [LB218]

LYNN LYON: L-y-o-n. I'm concerned about this bill in changing the amount legally purchased each day from essentially 1.44 grams of pseudoephedrine to 3.6 grams. We've seen it since 2005 when LB117 was passed. Otoe County has seen our meth labs decline from an average of about 30 labs a year to last year we had one. That shows to me that that law works. In the mind of somebody who's struggling with a methamphetamines addiction and with those who have the knowledge of how to manufacture methamphetamines, 3.6 grams on the street is called an eight ball. It's an eighth of an ounce of methamphetamines. Typically, our labs in Otoe County before LB117 was passed at an average yield of between a half an ounce to 2.5 ounces of finished product. If a person who's struggling with a meth addiction is able to buy 3.6 grams of pseudoephedrine a day and they get three of their buddies together, in one trip to the store they've got a half an ounce of meth as far as the raw product, the precursor pseudoephedrine. In two days they'll have an ounce. And I'm concerned that if this bill passes that we will no longer have just one meth lab a year. We'll have an increase in our meth labs. And that's basically my... [LB218]

SENATOR ASHFORD: Thank you. Thank you. Any questions? Senator Pirsch. [LB218]

SENATOR PIRSCH: Are you familiar with the limit in Iowa? What they allow for in that day purchase? [LB218]

LYNN LYON: No, specifically no I'm not. My understanding is the Iowa law is a little bit more restrictive than Nebraska, but specifically I'm not. [LB218]

SENATOR PIRSCH: Less than our current 1.44 grams per day? [LB218]

LYNN LYON: I don't know to what degree it's more restrictive than ours. [LB218]

SENATOR PIRSCH: Okay. And you said essentially that it takes just over 10 grams to produce a half ounce of meth. Is that correct? [LB218]

LYNN LYON: About 14 grams of pseudoephedrine is going to be converted into about a half an ounce of methamphetamines. [LB218]

SENATOR PIRSCH: Okay. That's all the questions I have. Thanks. [LB218]

SENATOR ASHFORD: Senator McDonald. [LB218]

SENATOR McDONALD: Now according to Senator Burling, that amount is exactly the same amount it's just said different. Is that correct? Is it not the same amount? [LB218]

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LYNN LYON: No, 1.44 grams of pseudoephedrine, the current law is 1,440 milligrams. [LB218]

SENATOR McDONALD: Right. [LB218]

LYNN LYON: 3.6 grams is what, almost 2.5 times the amount they can purchase now. [LB218]

SENATOR McDONALD: So they're not changing equal to equal. [LB218]

LYNN LYON: They're just moving a decimal point. [LB218]

SENATOR McDONALD: So they're actually going to be able to purchase more than they could before? [LB218]

LYNN LYON: Yes. Yes. [LB218]

SENATOR McDONALD: Three times as much? [LB218]

LYNN LYON: About two and a half. [LB218]

SENATOR McDONALD: Do they have to sign for any purchase at all or can they purchase less than this amount and get by without signing? [LB218]

LYNN LYON: I guess, you know, if there is a logbook to sign for most folks...you know, there's some folks that don't like to put their name on anything, you know, when they're purchasing something unless it's their signature on the check that they're using to purchase it. In working with people over the years who have had this addiction to methamphetamines, the risks that they're willing to take are a lot lower than the rest of us on, you know, if we decide we're going to do something wrong. The risks that they take are a lot lower. And if those scales are tipped they don't care what they have to write on the line. They'll write their name on the line. They'll show an ID or a driver's license and they'll go right down to the next store, and even though it's against the law they'll go down to the next store and purchase another, you know, another quantity of cold medicine product. And they'll write their name on that line knowing full well that they're violating the law and head to the next store and do the same thing. So that to me, in the mind of somebody who's struggling with methamphetamines, writing their name on the line is not an issue. It's how much they can get. And once they realize that they can legally purchase the raw product or the precursor pseudoephedrine which converts into just about the same amount of meth, once they figure out that they can buy an eight ball a day will start having meth labs again. And it's not going to be an instantaneous explosion of meth labs like what happened in the reverse when the law went into effect they just plummeted. It's going to take them awhile to figure that out,

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and once they do then we'll see a steady rise in the numbers of labs. [LB218]

SENATOR McDONALD: Thank you. [LB218]

SENATOR ASHFORD: Yes, Senator Chambers. [LB218]

SENATOR CHAMBERS: In fairness to Senator Burling, when I was questioning him he did say that this new amount actually replaces the old amount. That it's not merely translating the old amount into the same thing in terms of grams. And you didn't answer incorrectly what Senator McDonald asked, but I want to make it clear that Senator Burling, in our exchange, did say that the amount that we're putting in the bill now in terms of grams, is a greater amount than the other. But to ask you one question, based on your discussions and exchange with Senator McDonald, how big a problem did you say meth labs were in Otoe County before the law was put in place? [LB218]

LYNN LYON: Before 2005 we averaged, for the previous probably five years, we averaged about 30 meth labs a year. [LB218]

SENATOR CHAMBERS: And how did you come across these meth labs? [LB218]

LYNN LYON: The vast majority of these were discovered by a landowner who came upon the remnants or the toxic by-products that were left at the scene where the meth cook took place. [LB218]

SENATOR CHAMBERS: And unless there's an explosion that's probably the way--if this bill is enacted into law, which being practical I think it's going to be--you won't know how many meth labs in Otoe County unless some landowner or somebody else discovered it, because you don't make sweeps and searches to locate them do you? [LB218]

LYNN LYON: Not unless we, you know, develop the information and get a search warrant. [LB218]

SENATOR CHAMBERS: But then you'd have a specific location in mind. [LB218]

LYNN LYON: Correct. [LB218]

SENATOR CHAMBERS: Okay. [LB218]

LYNN LYON: Yes. [LB218]

SENATOR CHAMBERS: Thank you. That's all I have. [LB218]

SENATOR ASHFORD: Thank you. [LB218]

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LYNN LYON: Thank you. [LB218]

SENATOR ASHFORD: Any other opponents? Neutral testimony? Senator Burling, do you want to... [LB218]

SENATOR BURLING: Thank you, Senator Ashford. Just a little review after the discussion here. Keep in mind that the law that we enacted, LB117, which is credited with--and I agree--with reducing meth labs greatly in the state. Legally you could buy 1.44 grams every 24 hours without signing a logbook and you could buy 43 grams in 30 days. So the meth lab people had opportunity to legally buy, without signing a logbook, 43 grams in 30 days and we still cut the number of meth labs greatly. I submit to you that the main factor in cutting the number of meth labs in LB117 was not the quantity they could buy in 24 hours, but the fact that it was put behind the counter and they had to engage a clerk to get it for them and they had to show ID. Now if we have to sign a logbook and only be able to buy 9 grams in 30 days, that's much more restrictive than the law that we passed. I'm just saying if we're going to go more restrictive on those two areas then let's let the people buy 3.6 grams like the federal law says when they sign a logbook. If you have a single parent with a couple kids that use this product and you can only buy 140 milligrams at a time, you're going to be signing a logbook a lot of times, because you can't buy it unless you're 18. And I'm convinced that this won't be an increase in a number of meth labs, but it will make our law abiding citizens, you know, make it much simpler for them to obey the law and still meet their needs. So I encourage the committee to advance this to the floor. Any questions? [LB218]

SENATOR ASHFORD: Any questions? Thanks, Senator Burling. [LB218]

SENATOR BURLING: Thank you. [LB218]

SENATOR ASHFORD: Thank you very much. Okay, LB...Senator Kruse, LB573. [LB218 LB573]

SENATOR KRUSE: (Exhibits 7-9) Thank you, Mr. Chairman and Senators. The bill that's before us, LB573, has been around for us, and worked with this committee on this, I think this is three years that we've been working at it. First item that I'm sending around is the main reason for the bill. And it quotes the Nebraska Supreme Court. In general, we have a situation where prohibition came in 1917 and took off the dramshop. I call your attention to the last two lines there, that this includes the city council members: shall support all paupers, widows, orphans, and pay the expenses of all civil...and so on. That was removed at the time of prohibition and was not...and there was no dramshop put in place. Because of that, the Nebraska Supreme Court has said that there cannot be a liability for operators of bars in Nebraska. And you have the two declarations there. They're saying, until the Legislature says something, we cannot say

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it. So that's the main reason for my bringing it, is to close that gap. There are 42 states that have dramshop, but I think we're the only state that has a Supreme Court that says, you need a dramshop or else there's not going to be anything happening. The bill has been around for a while, and I appreciate the committee, past committees who have worked on it. Last year, we brought a dramshop law, and the committee and restaurants and so on said, you need to tighten affirmative defense; it just needs to be in there, and we need to have proof that we have trained our servers. So we shuffled the regular bill aside and ran in under it a course, which the Liquor Control Commission operates and which will become operational in about one week. This...it makes it, I think, certain that if you have trained your servers, the case against a dealer or an establishment is not winnable. And I'll come back to that. The bill contains no new prohibition. Everything in there is already in statute or regulation. Simply put, a server who provides a drink to a noticeably intoxicated person has already violated a regulation or law, and so creates a civil liability. Notice that a number of the provisions that we have in there are to protect the server. The server is protected from a suit by the person who's drinking, protected from a person who hands off a drink to another person, protected from someone that's bar hopping and the server doesn't know that. They're also protected from being second-guessed by a BAC test out on the street, where an officer says, well, they're over the limit. This person has to be noticeably intoxicated to other patrons in the bar, not just to the server. In other words, a reasonably prudent person--this is on page 5, line 11--a reasonably prudent person knows the service creates an unreasonable risk. We have lots of examples, and I won't take time for them, but these are current examples. Heard this last week about somebody coming in alongside of a person who was noticeably intoxicated, to them, and the server had put three drinks out ahead of them on the bar. We've also had in the news the last...within the last week, situations where persons are staggering and they still are being served. The server training program is the heart of the program. Turn to page 7, 18, and there you will see what...the main thing that we're talking about, and the importance of the language. Server training program. The licensee may establish that all--it has to be 100 percent--all of his/her employees have taken and passed a state-certified server training program, and that certification by our Liquor Control Committee, that--and so they're recorded there, and that can be brought to court as evidence--that the purpose and training tenets were being followed at the time of sale or service to the individual who caused harm or injury to a third party. Please note the next sentence: Any of the defenses described in this section...and this is...hear people say, well, Iowa has problems with insurance and stuff. This isn't Iowa. Any of the defenses described in this section, if established, bars the plaintiff's recovery. So this is a sure protection that we're trying to get in there. We are...I am not interested in having a bunch of lawsuits. I am not interested in hassling bars. I'm interested in servers being trained. It's my conviction that a set of trained servers is going to protect us out in the public from the mayhem more than additional police officers. Now turn also to page 3, the social host provisions. Please note that "social host" is only for minors, not for noticeably intoxicated persons. This is already illegal. It just adds civil liability to that. This is a critical part of the bill. To

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me, it's more important than the other. We have a tremendous problem in this state about people procuring for minors. This is one of the best ways to do it, is keg parties. We've talked about that before in another aspect. But it's devastating to lives, it's expensive to the state. The most recent study for Nebraska is \$447 million per year, the cost of alcohol by underage drinkers, \$447 million a year. I would add only one other aspect to that, in terms of a more personal thing. It causes...steady use of alcohol by a teenager causes permanent brain damage. Oh my. I just have no use, in my book, for those who procure for kids. And I hope we all join in that, because it's not an accidental offense; it's intentional. They can avoid it. It just doesn't happen inadvertently that you have your house full of teenagers and a keg in the middle of it. So I want to get really tough about that. Now, you'll note that the...there's a couple of amendments in here, and they're attached. The one is...removes references to drugs. We're talking about servers in bars, so the drug reference shouldn't have been in there. And then in terms of social hosts, we're excluding parents in a home and churches serving communion. I, frankly, cannot imagine the circumstance under which a church would be sued for social host as for serving communion. I've tried to imagine it. But, you know, if there's a possibility, why, here it is, and I invite your judgment upon it, submit it as an amendment. Possibly somebody could decide that the church was liable if this teenager found an unguarded bottle of communion wine someplace on the premises, drank it, and came out of there in an intoxicated state. Again, it's really remote, but we're here to cover remote responsibilities. I think, in summary, we have a duty to care for the public. That's just a part of our whole responsibility and criminal code. We, in various responsibilities, as counselors and various places, we have a duty to care for the public. Someone who knowingly helps someone else get drunk, and that person assaults someone, is responsible for injuring a third party. And they could...you and I could have a claim against us for being a third-party conspirator--that's not the legal term, but somebody who helped, aided--whereas a bar, under the present statutes, is exempt. And that's what we're trying to remove. I would also...since I've been working on it so many years, and not because it's the hugest thing on the horizon, but since I've been on it so many years, I would intend to make this a priority bill, unless you have some serious objections. There's another handout, but with that, I will close my comments. [LB573]

SENATOR LATHROP: Thank you, Senator Kruse. Are there any questions? Senator Chambers. [LB573]

SENATOR KRUSE: Yes, sir. [LB573]

SENATOR CHAMBERS: Senator Kruse, are the Knights of Columbus connected with religion, with a religious group? [LB573]

SENATOR KRUSE: I believe they are. [LB573]

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SENATOR CHAMBERS: So they could be a religious society. Do they conduct religious services, ceremonies, rites, or rituals, that you know of? [LB573]

SENATOR KRUSE: Not that would have...be related here. [LB573]

SENATOR CHAMBERS: So they couldn't come under here and do anything. So what does...? [LB573]

SENATOR KRUSE: No. And this relates only to minors. [LB573]

SENATOR CHAMBERS: Well, I'm looking at this exception... [LB573]

SENATOR KRUSE: It's the social host. Yes, right. [LB573]

SENATOR CHAMBERS: ...for the social host. [LB573]

SENATOR KRUSE: Right. [LB573]

SENATOR CHAMBERS: Okay. On page 3, line 12,... [LB573]

SENATOR KRUSE: Yes. [LB573]

SENATOR CHAMBERS: ...after "include." A licensee under the act...that ends that previous sentence. Then taking up in the middle of line 12, social host does not include a religious corporation, and all of these others. So you're saying that there are things a social host can do in his or her home, and this is to make it clear that these outfits don't qualify as a social host, but they can still dispense alcohol to minors if they're doing it as a part of a religious rite, ritual, or ceremony? Is...or am I misunderstanding what this is about? [LB573]

SENATOR KRUSE: The...a church or synagogue, and it has to be with...you know, it's a bona fide religious service and conducted by a person who's authorized to do that, and so on, and these suborganizations are not that. But a pastor, in general, is the one authorized to do that, and shall not be civilly liable for it. Again, it's such a remote thing, Senator, I...you're talking about an unmeasurable amount of alcohol. I don't...it's hard for me to imagine that this would be the basis for a civil suit. But we're...we do not want this to apply to parents or to pastors. [LB573]

SENATOR CHAMBERS: So a social host does not apply to parent liquoring up his or her own minor child... [LB573]

SENATOR KRUSE: That is correct. [LB573]

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SENATOR CHAMBERS: ...in his or her own home, or the minor's home? [LB573]

SENATOR KRUSE: That is correct. [LB573]

SENATOR CHAMBERS: So why is this about the religious corporation put in here, because they're not going to be serving...okay, it will come to me. [LB573]

SENATOR KRUSE: Yes. Well, you're raising the question I would have, Senator. But again,... [LB573]

SENATOR CHAMBERS: I won't linger on this. [LB573]

SENATOR KRUSE: ...the pastor is representing a congregation, and... [LB573]

SENATOR CHAMBERS: And I can talk to you about this later, to make sure I'm clear on what it's doing. [LB573]

SENATOR KRUSE: All right. All right. [LB573]

SENATOR CHAMBERS: That's all I would have, though. Thank you. [LB573]

SENATOR KRUSE: Thank you. [LB573]

SENATOR LATHROP: Are there any other questions? Senator Kruse, I might have just a few for you. [LB573]

SENATOR KRUSE: All right. [LB573]

SENATOR LATHROP: I just want to make sure that I understand it in its simplest terms. Your bill does two things. One is, it addresses where a minor gets alcohol, and the liability related to that; and the other is, when they...someone receives alcohol from a retailer. Is that the case? [LB573]

SENATOR KRUSE: That is correct. And establishes the affirmative defense for the retailer. [LB573]

SENATOR LATHROP: Okay. [LB573]

SENATOR KRUSE: But not for the social host. [LB573]

SENATOR LATHROP: That's right. The social host is the person who provides...essentially, allows the kids into the basement and they all drink. [LB573]

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SENATOR KRUSE: Yes. [LB573]

SENATOR LATHROP: And when that happens and the children, or the minors go out and they cause an injury to themselves or anyone else because of their intoxication, this would allow for a cause of action for anybody injured as a consequence? [LB573]

SENATOR KRUSE: Yes. [LB573]

SENATOR LATHROP: Okay. With respect to the retailer, you have a bit of a different situation, and that is, you have bars that might be handing out or serving drinks to folks, and your bill only creates the dramshop-style liability if they were noticeably intoxicated and the retailer continued to serve them. [LB573]

SENATOR KRUSE: That is correct. [LB573]

SENATOR LATHROP: And unlike the minor, in the case of the adult who has been served after they're noticeably intoxicated and they go out and get a wreck, your bill will not allow that person who drank himself to that place to make a recovery. [LB573]

SENATOR KRUSE: That is correct. [LB573]

SENATOR LATHROP: Or even the person that drank with him all night long and got in the car with him. [LB573]

SENATOR KRUSE: That is...yes, that would be correct. [LB573]

SENATOR LATHROP: Okay. So it's only when that guy crosses the center line and hits somebody else after he's been served by a retailer, when the retailer should have seen that he was noticeably intoxicated. [LB573]

SENATOR BURLING: All of the above, plus, that seller has not been trained by the course, through the course that we're providing. [LB573]

SENATOR LATHROP: Is that a defense...? [LB573]

SENATOR KRUSE: If they're trained, they are off the hook. [LB573]

SENATOR LATHROP: Okay. And that's something unique to your dramshop bill, I think. [LB573]

SENATOR KRUSE: Yes. [LB573]

SENATOR LATHROP: And that is, if the retailer trains their servers and the servers are

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observing their training,... [LB573]

SENATOR KRUSE: Yes. [LB573]

SENATOR LATHROP: ...in other words, they're not just disregarding what they learned in the state-certified class,... [LB573]

SENATOR KRUSE: Yes, that's in there. [LB573]

SENATOR LATHROP: ...then it's a defense to the bar owner. [LB573]

SENATOR KRUSE: That is in there, yes. [LB573]

SENATOR LATHROP: And that's the substance of the bill? [LB573]

SENATOR KRUSE: And it's more than the usual affirmative defense. It's not an argument that you can use in court. It says that bars recovering. [LB573]

SENATOR LATHROP: Okay. That's all I have. Any other questions? Okay. [LB573]

SENATOR ASHFORD: Thank you, Senator Kruse. [LB573]

SENATOR KRUSE: Thank you. [LB573]

SENATOR ASHFORD: Do you wish to stay around? [LB573]

SENATOR KRUSE: Oh, yes. [LB573]

SENATOR ASHFORD: Okay. Seems like it's... [LB573]

SENATOR KRUSE: Been at this so long, I just can't go away. [LB573]

SENATOR ASHFORD: Well, we'd like you to stay if you can. All right, any...the proponents. How many proponents do we have? Opponents? Okay. Neutral? No one. Good afternoon. Or, one, sorry. [LB573]

ROBERT MOODIE: Good afternoon, Chairman Ashford, members of the committee. My name is Robert R. Moodie, M-o-o-d-i-e. I'm testifying on behalf of the Nebraska Association of Trial Attorneys, in support of LB573. NATA has long been on record in support of this type of legislation. We believe this bill would extend and reenforce the concept that individuals and businesses in Nebraska should be held responsible for the consequences of their negligent and reckless actions. A recent initiative by the city of Lincoln police demonstrated several bars and retail establishments in town were guilty

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of overserving patrons who were already intoxicated. It's an unfortunate reality that drunk drivers cause damage, injury, and death. Some of those drivers are served alcohol under inappropriate circumstances, either because they're minors, or because the bar continues to serve them after their intoxication and incapacity are already obvious. It's appropriate to hold the drunk drivers responsible for the injuries and the damage that they cause. But it is also appropriate to hold the retailer responsible when they have negligently or recklessly contributed to this dangerous and irresponsible scenario. I did some brief research before coming today, and I think Senator Kruse indicated that he thought that 42 states had dram shop legislation. My research, which is a couple of years old, would indicate, out of the 50 states and the District of Columbia, 44 of those jurisdictions have established dramshop liability. [LB573]

SENATOR ASHFORD: Thanks, Mr. Moodie. Any questions? And that brings up a point that I wanted to...we've had this legislation before, as Senator Kruse said. We had it when I was here, as well. One of the issues was the issue of insurance and ability to obtain insurance at any reasonable cost. But apparently, if there are 44 states that are...have some sort of dramshop legislation, you have insurance companies writing dramshop insurance? [LB573]

ROBERT MOODIE: It would...I haven't personally gone out and attempted to secure that,... [LB573]

SENATOR ASHFORD: No, and I'm not asking that. [LB573]

ROBERT MOODIE: Yes. []

SENATOR ASHFORD: But I mean, obviously, there's...somebody is writing insurance... [LB573]

ROBERT MOODIE: It's obviously a problem that's been dealt with in other jurisdictions, certainly. [LB573]

SENATOR ASHFORD: And the risk is spread out...spread throughout those 44 states, obviously. They have various laws, but, I mean, this is not just two other states or five other states, but there are...it's a national trend. [LB573]

ROBERT MOODIE: That's correct. [LB573]

SENATOR ASHFORD: Okay. That's all I have. Any other questions? Thank you. [LB573]

ROBERT MOODIE: Thank you. [LB573]

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SENATOR ASHFORD: Proponents, further proponents, testimony? [LB573]

JAMES DUNCAN: (Exhibit 10) Good afternoon, Senator Ashford,... [LB573]

SENATOR ASHFORD: Good afternoon. [LB573]

JAMES DUNCAN: ...committee members. My name is James Duncan, D-u-n-c-a-n, and I am here in support of LB573, specifically the social host liability aspect. The handout that I've given, it's all photographs. They say pictures are worth a thousand words. The front page is my daughter. She just turned 17 on Saturday. One week before that, on February 10, she was involved in an accident. She was intoxicated, and rolled her car. She met a friend of hers in Scottsbluff. He took her to a home. The parents were home. She consumed between 12 and 16 ounces of Jose Cuervo in less than an hour. Never drank before in her life. When the teenagers at the home began to get out of control, the mother told everyone to leave. My daughter Jordyn told the lady, she said, I've never drank before, I don't feel well; I don't think I should drive. This woman then told my daughter, I don't care; get off of my property. My daughter got in her car, made it to within six miles of home, and rolled her car. She was thrown 30 feet from the car when it rolled, and she's alive. On the last page is a picture I took of my family on Sunday. I'm the luckiest dad in the state of Nebraska, because my daughter is still alive after that happened. I just hope that you'll look at the social host aspect of this. I mean, my daughter told them that she didn't feel well and didn't think she should drive, that she never drank before, and they told her, get off my property. Should these people be held liable for what happened to my daughter? I asked her, why didn't she call? She said she was so mad she just told me to get out, she didn't...she said, I didn't think about it. She said, I knew I should have. She said, kids go out and drink every weekend; why did it happen to me? There is a teenage drinking epidemic in the state of Nebraska. I've been doing a lot of research in the last week to ten days. We're number one in teenage drinking per capita. We need to do something about this. Whether it's more education, or social host liability for the people who provide the liquor and turn our kids loose on the streets, I don't know. But I'd ask you to consider this bill and think about our story. [LB573]

SENATOR ASHFORD: Thank you, Mr. Duncan. Any questions of Mr. Duncan? Thank you for coming. [LB573]

SENATOR LATHROP: Your daughter is fine now? [LB573]

JAMES DUNCAN: She had a severe concussion, a bruised lung, and a bruised pancreas, lots of scrapes, but she didn't have anything that required surgery or sutures. She's a very, very lucky young lady. [LB573]

SENATOR ASHFORD: Yeah, that's good. Thank you, Mr. Duncan. [LB573]

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JAMES DUNCAN: Thank you for your time. [LB573]

SENATOR ASHFORD: Next proponent. Good afternoon. [LB573]

TIM REGLER: (Exhibit 11) Thank you, Senators, for this opportunity. My name is Tim Regler, R-e-g-l-e-r. I'm from Nebraska City. I'm here in support of LB573, and I'm here on behalf of my daughters, Melissa (phonetic), Laura (phonetic), Alexis (phonetic), Angel (phonetic), Michaela (phonetic), and McKenzie (phonetic). And I'm here to give you a preview of what is to come. Pretty soon, you'll be hearing from alcohol industry lawyers who will be repeating the well-worn phrase "personal responsibility." I want to say to you today that I believe strongly in personal responsibility. It's a value I try each day to instill in my daughters. But I also believe strongly that the door of personal responsibility is a door that swings in two directions. The alcohol industry in this state also has a measure of personal responsibility. Quite simply, they need to stop trying to sell their product to minors who cannot legally purchase it. They would tell you that they don't. I'm here to tell you that they do. I know they do, because in my 26 years in the broadcasting industry, I helped them do it. So let's talk about personal responsibility. The extent of this industry's commitment to personal responsibility is contained in the advertising examples that I've passed out to you. According to a study conducted on behalf of the National Institute on Alcohol Abuse and Alcoholism, conservative estimates of sexual assault prevalence suggest that 25 percent of American women have experienced sexual assault, including rape. Approximately one-half of those cases involve alcohol consumption by the victim, the perpetrator, or both. Yet, knowing this, they refer to their product, in billboards, as "liquid panty remover." Let's talk about personal responsibility. In the Coors Light ad, as the man makes his sexual advance on the willing female in the picture, the man...or, the Coors Brewing Company, rather, says, "Here's to girls who drink beer." Not women, mind you; here's to girls who drink beer. As I mentioned before, I have six girls of my own, and I don't like these ads. This industry that speaks of personal responsibility is the same industry that's turned drinking into a game, where the personal responsibility in bars that organize beer die leagues and tournaments, where is that responsibility, where competitors have to bounce a dice off a table and into a beer; if unsuccessful, they have to drink. Or shots and ladders, which modifies the popular children's game into one in which each time you land on a chute you have to drink. And of course, shot glass checkers, a game in which contestants get so drunk, most can't finish. These games are all documented in a January 21 World-Herald article. Finally, this industry that speaks of personal responsibility and claims not to market their product to teens offers vanilla flavored vodka, alcopops, hard lemonades, and hard iced teas, prepackaged Jell-o shots, and plenty of other products that make the product taste just like soda pop, lemonade, and tea. The industry itself refers to these products as starter drinks. The industry is not about personal responsibility. They are about money. And I ask you to please exercise some personal responsibility today, and help us all do that, by passing this bill on to the floor. [LB573]

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SENATOR ASHFORD: Any questions of Tim? Thank you, Tim. [LB573]

TIM REGLER: Thank you. [LB573]

SENATOR ASHFORD: Next proponent. [LB573]

KATHY BURSON: (Exhibit 15) Good afternoon, Mr. Chairman and members of the committee. My name is Kathy Burson, B-u-r-s-o-n. I am the co-executive director of PRIDE Omaha, Incorporated, and that is an organization dedicated in the prevention of alcohol, tobacco, and other drug use among our youth. I'm here today to plead to you to support LB573, the dramshop and social host liability bill. PRIDE Omaha believes that this bill will serve as a strong deterrent to alcohol retailers and social hosts who provide alcohol to our minors. Alcohol is the number one preventable cause of death among our youth in Nebraska. All across our state we continue to lose high school students and college students due to alcohol-related car crashes, drownings, alcohol poisoning, other unintentional injuries. The Nebraska risk and behavioral survey, administered in 2005, did find that 79.1 percent of our seniors in our state reported the illicit use of alcohol in their lifetime. So unless there are strong deterrents in place, every child, including our own children and our own grandchildren, will be at risk to be our state's next fatality. Presently, as was stated earlier, we are one of the few states in the nation that does not have some type of dramshop or social host liability law on the books. Because our current laws provide minimal consequences to those who provide alcohol to minors, it has become the accepted social norm for people to sell or give alcohol to underage youth. If people really thought that they would be held liable for their actions, LB573 could be that strong deterrent in the prevention of underage drinking and the resulting devastation in Nebraska's children's lives. Committee members, this is a life and death issue, and I strongly urge that you pass LB573 out of committee and on to the floor for debate. Thank you. [LB573]

SENATOR ASHFORD: Thank you. Any questions? Seeing none, thank you. [LB573]

KATHY BURSON: Thank you. [LB573]

DIANE RIIBE: (Exhibits 16-18) Hi, Chairman Ashford and members of the committee. My name is Diane Riibe, and I'm the director of Project Extra Mile, and we are an underage drinking prevention effort, a network of coalitions across the state working to prevent underage drinking and its tragic consequences. And I'll forego my formal comments. You'll have a copy of those. I'm also providing for you a copy of testimony on the original bill from Jim Mosher, who is a foremost authority on alcohol policy control in the country, from the Pacific Institute for Research and Evaluation, and he does a pretty good job of providing an overview. He also is the primary author of what would be the model language for administrative license revocation, which is what the original bill

that Senator Kruse introduced was based on. I will also say that in its original form, the affirmative defense was not part of the legislation. However, in discussion with Senator Kruse, we understood that that would be coming. It is part of the model language for...excuse me, for dramshop, and it is something that certainly those of us who work in the field know is part of that defense. We have a couple of concerns about that, and I've shared this with Senator Kruse's office. One concern would be that if an affirmative defense is included in the language, that there be a couple of things required. Certainly, there's an understanding that there would be training required, and that's...or at least encouraged, and that would be a piece of it. But one would hope, we would hope, that the two things that would be included is that the clerk at that particular moment in that incident, when we're talking about a minor situation, would have done two things: checked and verified the age of the ID, and then used the minor ID book. And both of those are right now available to those businesses as a defense before the Liquor Control Commission. So again, not a new process, but it allows for kind of a heightened sense of responsibility on the part of the retailer, to make certain that they're doing their job, if in fact the training took, if you will. The other piece that we have, which is really more of a concern than anything, is hearing today for the first time that the Liquor Control Commission is a week off from having its parameters or regulations identified and solidified for the server/seller training. We provided testimony on that. We were not aware that there has been a second draft. We provided some suggestions and changes to their identified program, and we've not heard back from that. So we have some concerns that that process may be relied upon and yet in fact is not solid in place and has not gone through a sufficient public process that it could be relied upon. So that would be a concern we have. And I'll leave that. I will just clarify, we have on our fact sheet, I think, that 41 states have some form of dramshop, and the District of Columbia. That's kind of a loose number everywhere. We've heard, quite frankly, a number of numbers, and that was the best that we could find. So one can only know that that varies from state to state. Some states have just a minor dramshop; some include both. So it does vary, but that's, I think, everyone's best guess. Thank you. [LB573]

SENATOR ASHFORD: Any questions? Yeah, I just...and that, I'm glad you mentioned the training. Sometimes we throw this into legislation and I'm not sure it...what it means or what it does. There is a state-certified training program currently under consideration. [LB573]

DIANE RIIBE: The process for even...well, Senator, the process for even approving the rules and regs and the parameters of that server/seller training has not even been completed. That's our concern. We had some concerns with what was proposed initially by the commission, provided written comments about our concerns, have not heard anything back, if they have adjusted or responded to those. There were some valid and serious considerations. It seemed a fairly weak proposal, in our estimation. [LB573]

SENATOR ASHFORD: Is there anything else? And I don't have a lot of faith in the

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training part of it. [LB573]

DIANE RIIBE: It has to be accompanied with enforcement. [LB573]

SENATOR ASHFORD: Right. And then you're going to have...there would be, I suppose, if this were...something like this were to pass, there'd be a...I mean, how many liquor establishments are there in the state would have...? [LB573]

DIANE RIIBE: And again, that's fluid every day. [LB573]

SENATOR ASHFORD: Thousands. [LB573]

DIANE RIIBE: Usually somewhere around 5,000, 5,200. [LB573]

SENATOR ASHFORD: Yeah. So 5,200 times 3; 15,000-20,000 people would have to be trained, which would be a lot, in a short time. [LB573]

DIANE RIIBE: There is an on-line training program, through the NU Directions program, and that's available to those who, obviously,... [LB573]

SENATOR ASHFORD: Is that adequate? Is that a certified program? [LB573]

DIANE RIIBE: Yes. And I understand that's...I have not personally gone through it, but I understand it's a very good program, so certainly that's available. [LB573]

SENATOR ASHFORD: That is. Okay. So there is something that's certified. [LB573]

DIANE RIIBE: Yes. Yes. [LB573]

SENATOR ASHFORD: And individuals would have to somehow sign something that they've taken the course, and so forth? [LB573]

DIANE RIIBE: Yes. [LB573]

SENATOR ASHFORD: Or there would have to be some evidence that they had taken the course. The other...and maybe I'm misreading this. The alcohol-related crashes data, is that...there's a 5.8 percent increase in fatal crashes from dramshop liability in other...what does that mean? [LB573]

DIANE RIIBE: Where are you at? [LB573]

SENATOR ASHFORD: I'm sorry, under the effect of dramshop...effective...whether they're effective, and do they reduce alcohol-related crashes? It's the third... [LB573]

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DIANE RIIBE: Bulleted point? [LB573]

SENATOR ASHFORD: ...third large bold area there. [LB573]

DIANE RIIBE: Oh, okay. Okay. [LB573]

SENATOR ASHFORD: What are the...what's that data telling us? [LB573]

DIANE RIIBE: Is this the research, the first one? [LB573]

SENATOR ASHFORD: It's, research suggests that dramshop liability laws... [LB573]

DIANE RIIBE: Can significantly reduce single-vehicle nighttime crash deaths, alcohol-related. Single-vehicle nighttime crash deaths...and I'm not the expert, but I will tell you that that's a standard used that's often a reflection, if you will, of alcohol-related crashes that aren't identified as alcohol, because single-vehicle nighttime crashes often and frequently include alcohol, even if there's not testing done. Alcohol-related traffic crash deaths and total traffic crash deaths among minors. So it overall has an impact that deters and reduces those numbers, both the alcohol-related and generally. [LB573]

SENATOR ASHFORD: Is it a significant number? I'm trying to understand. [LB573]

DIANE RIIBE: I can find that for you. I don't have it off the top of my head. [LB573]

SENATOR ASHFORD: Okay. The...in 2001, researchers found a 5.8 percent decrease in fatal crashes from dramshop liability, and other studies...what does that mean? Does that mean if there's a dramshop law in effect? [LB573]

DIANE RIIBE: Yes. Yes. [LB573]

SENATOR ASHFORD: So then there's a 3 to 5 percent deterrent effect, or whatever? [LB573]

DIANE RIIBE: Right. [LB573]

SENATOR ASHFORD: Okay. I'm...I would be interested in getting some information. I mean, it seems a little general to me. [LB573]

DIANE RIIBE: Be happy to do that. [LB573]

SENATOR ASHFORD: But I think it would be helpful to have that information. So the difference between...from this legislation and prior years is the assumption of the risk

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issue, which was not in prior...? [LB573]

DIANE RIIBE: Primarily, the affirmative defense section is...there are some changes, and I think those were brought out a little earlier, but... [LB573]

SENATOR ASHFORD: Right. Okay. And the server training program, was that in prior? [LB573]

DIANE RIIBE: Well, that all comes together with the affirmative defense,... [LB573]

SENATOR ASHFORD: Okay. [LB573]

DIANE RIIBE: ...so that's actually just part of that piece, so... [LB573]

SENATOR ASHFORD: But that's new language? Okay. And the two-year statute, was...is that the way it always has been? I'm just trying to recollect back. [LB573]

DIANE RIIBE: The two-year statute? [LB573]

SENATOR ASHFORD: Statute of limitations. Is that a new...is that new...? [LB573]

DIANE RIIBE: That's my understanding, that's part of Nebraska statute generally. But again, I wouldn't be the one to ask. [LB573]

SENATOR ASHFORD: Okay. I'm just trying to center on what is new from prior years, and the affirmative defense portion of it is new. [LB573]

DIANE RIIBE: Is the primary piece. And again, we knew that. We supported that. We would support that. We have just serious concerns that the process and the system that should be in place is far longer off than one week, and certainly even one month. [LB573]

SENATOR ASHFORD: There's no presumption, though, that...anywhere, that if a minor gets in an accident and is served, that there's a presumption of negligence? That doesn't appear here anywhere, does it? [LB573]

DIANE RIIBE: No, not to my understanding. No. [LB573]

SENATOR ASHFORD: Thanks. [LB573]

DIANE RIIBE: Thanks very much. [LB573]

SENATOR ASHFORD: Any other questions? Thank you very much. Further

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proponents? Opponents? Oh, I'm sorry. You were at the camera, and I didn't know, maybe you were... [LB573]

MARK VASINA: Yeah, too many duties. [LB573]

SENATOR ASHFORD: Okay. [LB573]

MARK VASINA: (Exhibit 19) Senator Ashford and Judiciary Committee, my name is Mark Vasina, V-a-s-i-n-a. I'm the president of Nebraskans for Peace, and I'm here to testify in favor of this bill, for a very specific reason, as some of the other testifiers have. For at least five years, Nebraskans for Peace has been working with senators in the Legislature to attempt to find a legislative remedy for the terrible situation in Whiteclay, Nebraska, which is a border town in Sheridan County, between Chadron and Valentine, which sits on the edge of the Pine Ridge Indian Reservation. This town, with a population of 14, has, since the early 1970s, been the host to four off-sale beer stores, which, by all good anecdotal reports, supplies most of the beer on the Pine Ridge Reservation. The population center is Pine Ridge Village, which is within walking distance of these stores. This is really the vestige of the old border towns. These stores sell to minors, to intoxicated. If any of you have been up there, it looks like a senior frat party gone wild in the streets there. There are assaults nightly. Local law enforcement is not very responsive to the situation there, and the Legislature has not been very responsive to dealing with a head-on solution to the problem of Whiteclay. Arguments about unconstitutionality or targeting or all sorts of things are always leveled when we attempt to get a Whiteclay bill which would address this very specifically terrible situation in the state. Others following me will tell you more about Whiteclay. I just want to clarify for you that Nebraskans for Peace and others who are concerned about the situation in Whiteclay will be at every hearing for every bill which could in some way, marginally or in a major way, improve the ability for citizens, for law enforcement, for the Liquor Commission, to have an impact on correcting the problems in Whiteclay. Dramshop legislation is a bill that does that. It doesn't solve the problem, but where you have lax local enforcement and overextended state law enforcement in this situation, it gives an additional tool to citizens and families of injured parties to, at least in certain cases, address the great harm that's done by these liquor stores which routinely violate our liquor laws every day. There are points about this bill which certainly could be stronger, no question about that, from our point of view. But dramshop legislation like this is an important tool which can help us and our brothers and sisters at Pine Ridge to address the problem there. I won't read from this, but I passed around a letter from a young Oglala Lakota woman whose brother, 20-year-old brother was killed in an automobile accident three years ago, or in 2002. They hold memorial services. They get people together to raise the awareness about Whiteclay up there, and the responsibility that everyone has. This young man, a minor, purchased alcohol at the Arrow Head Inn, one of the four liquor stores in Whiteclay, and went off and had an accident and died. She's urging you to make this tool available to families like hers. Thank you very much.

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[LB573]

SENATOR ASHFORD: Thanks, Mark. Yes, Steve. Senator Lathrop. [LB573]

SENATOR LATHROP: Just briefly. I'm not...I'm one of the new senators, and I've not been exposed to the Whiteclay problem other than what I've read in the paper, so I want to ask you a couple of questions. You said there's four retailers in Whiteclay? [LB573]

MARK VASINA: Yes. [LB573]

SENATOR LATHROP: Do they run off-sale places, or are they...do they run bars where people can come in and drink? [LB573]

MARK VASINA: These are all off-sale. There were two bars through the sixties and into the early seventies. They were closed when there was a murder or a couple of murders that took place there. I don't know...I have various stories, don't really know officially how that switched. But what happened in the early seventies was the Liquor Commission converted licenses to off-sale, and somehow four became the magic number for this little village. And whenever someone closes or sells, there's always been four liquor stores. They're all off-sale, beer only. Essentially, they're convenience stores, is what these are. [LB573]

SENATOR LATHROP: Okay. Is the problem of selling alcohol to minors in Whiteclay...is there something unique about the Whiteclay circumstance where the sale to minors occurs more often? Or is that simply one establishment that represents a problem across the state? [LB573]

MARK VASINA: Well, I think that it's not unique. I think that it's probably, without doubt, the worst manifestation of these constellation of problems. The reason for that is because of its relative isolation. It's 25 miles away from the county seat, which is where the county sheriff's office is. There's...as I say, I was having a conversation with Senator Pedersen a couple of weeks ago. He grew up in Rosebud, a sister reservation, Sioux reservation in South Dakota. He recalls purchasing...you know, people from the reservation purchasing as minors just routinely in these stores. It still goes on in Whiteclay. I talk to teenagers all the time, or young adults, who say, I started buying there 15, 16. You just go into these stores and you buy it. There's...there is, obviously, a huge impact of a racist element in all of this. There's a common sense that if we keep it isolated to this northern town at the edge of Sheridan County, we keep Indians from coming down to Rushville or Gordon or Hay Springs and attempting to do what they're doing up there. But I think that's a mistaken idea. [LB573]

SENATOR LATHROP: Okay. And you came to us with a problem in Whiteclay, in the context of the dramshop bill. And the dramshop, outside of selling to minors, is aimed

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primarily at the fellow that's going to serve someone, presumably in a bar, that's already intoxicated. I'm not sure how much help this is going to be for Whiteclay. [LB573]

MARK VASINA: Well, it would also apply, I presume--and perhaps I'm misreading--but if someone goes into a package store intoxicated and is served, the dramshop legislation would apply to them. [LB573]

SENATOR LATHROP: Okay. Probably. [LB573]

MARK VASINA: There are sales to intoxicated people all the time there. They live on the streets. There are...there have been a number of citations for sales to intoxicated that have occurred, under unusual circumstances when law enforcement was present there. It goes on all the time there. [LB573]

SENATOR LATHROP: Okay. [LB573]

MARK VASINA: This no surefire solution, but it's another piece that gives another tool for people to address this problem. [LB573]

SENATOR LATHROP: Okay, thank you. [LB573]

MARK VASINA: You're welcome. Thank you for asking. [LB573]

SENATOR ASHFORD: Thanks, Senator Lathrop. Any other questions? Thank you. [LB573]

MARK VASINA: Thank you very much. [LB573]

FRANK LAMERE: Mr. Chairman, members of the committee, my name is Frank Lamere. I'm a member of the Winnebago Tribe of Nebraska. I come here speaking for myself today as a concerned Nebraskan and as a Native American. Mr. Chairman and members of the committee, it was a few short years ago when I came before a committee like this, and I was chastised because of efforts that I had talked about and my hopes of trying to make the people well, trying to sober our people up, and I was chastised, and someone came here and said, not one thing has been said about personal responsibility. And I thought about that, and I thought about that for a long period of time. And I even heard today that people talk about personal responsibility. I think we've talked a lot about personal responsibility, Mr. Chairman. We've not talked about responsibility within the liquor industry. We've not talked about personal responsibility among retailers, mainly in Whiteclay, Nebraska. And we've not talked much about personal responsibility among hosts and those in homes. And that's what LB573 does, and I'm here to speak in support of it. I want to point out to you that Mr. Vasina did pass out a letter that came to you from the Eagle Bull family, and that hits

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hard with me today, because I remember being asked to come over there when they had his memorial in Pine Ridge, which is a dry reservation. And the people at Whiteclay exist by selling alcohol to people who have no legal place to drink it. We export our misery from the state of Nebraska on to Pine Ridge, and we talk about good business and commerce. We don't talk about Toby Eagle Bull and the hurt that his family continues to feel. I remember having a talk with his father a few short years ago, and Mr. Eagle Bull told me, he said, Mr. Lamere, I hear about those things that you're trying to get done and that you've been trying to get done over at that Legislature, and I've always ignored them, I haven't paid much attention to them, I was just kind of aware of them, but to each his own, let him do what he wishes to do. He said, that has always been my attitude, until now. He said, I can't...nothing you can do or say could bring back my son, but Nebraskans and those on Pine Ridge should not have to be awakened in the middle of the night, being told of the fact that they have lost their children in alcohol-related accidents. Mr. Chairman, I want to point out to you that since I've been involved with issues to stop the illegal flow of alcohol from Nebraska onto the dry Pine Ridge Indian Reservation, there have been a lot of Toby Eagle Bulls. I have been there for the murder of Ronald Hard Heart, the murder of Wilson Black Elk, the alcohol-related death of Sarah Little Moon (phonetic), the alcohol-related death of Toby Eagle Bull, the murder of Little Jaw Means, the murder of Shelly Poor Bear (phonetic). And I'm only speaking of homicide. I'm not talking about accidents. I'm not talking about things attributed to the use of alcohol at Whiteclay, Nebraska. Mr. Chairman, when we talk about alcohol in the state of Nebraska, Whiteclay is the 800-pound gorilla that we fail to recognize because it dulls our senses. But this, indeed, to my mind, is an issue that should be addressed. And if we can address it and make some impact with regard to the issues of Whiteclay through LB573, I would hope that we do that, and I would hope that we pass it out of committee. Mr. Chairman, there's never enough time, but if there's any clarification, any questions I may answer, I would be happy to do it. I've been involved with this issue since 1997, and am tired of coming here. And...but I'll be here another ten years if we need to. But we need to educate ourselves, we need to educate our new legislators to talk about this egregious situation that continues, that we as Nebraskans let continue because we're afraid to deal with it. [LB573]

SENATOR ASHFORD: Thank you, Frank. Thank you, I appreciate it. Do we have any questions of Mr. Lamere? I remember working with you on the Indian bone legislation, years ago. [LB573]

FRANK LAMERE: Absolutely. And good to see you. [LB573]

SENATOR ASHFORD: And it's good to see you again. [LB573]

FRANK LAMERE: We were both young men at that time, I think. (Laughter) [LB573]

SENATOR ASHFORD: Yeah, well you still...Frank, you still are, man. (Laughter)

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[LB573]

FRANK LAMERE: Thank you very much. [LB573]

SENATOR ASHFORD: Thank you. Any other proponents? Good afternoon. [LB573]

JUDI GAIASHKIBOS: Senator Ashford and committee, thank you for this opportunity. My name is Judi gaiashkibos, and if you'd like me to spell that, I would. [LB573]

SENATOR ASHFORD: Well, you might. I mean... (Laugh) [LB573]

JUDI GAIASHKIBOS: g-a-i-a-s-h-k-i-b-o-s. And I am the executive director of the Nebraska Commission on Indian Affairs. And, like Frank Lamere, I, too, am a proud member of one of our four headquartered tribes in Nebraska. I am an enrolled member of the Ponca Tribe, and am also Santee Sioux. I rise here in support of LB573, pretty much for the same reasons that Mr. Lamere has, in that I think that we have too many of our Indian people that are dying because of lack of social responsibility, and I think the liquor industry needs to be...and all the establishments at Whiteclay specifically, that needs to be regulated so that Indian people aren't exploited as they currently are. And I think it goes back to a basic racism, disregard for the value of our people. And this is continuing in Nebraska. Currently, we have many Native youth that are dying because of suicide, and it's somewhat related to the liquor industry and the destruction of our families. And as the Indian Commission director, we have prioritized that as one of our main battles, and I think by supporting this bill and moving it to the floor, we will have an opportunity to continue the discussion and perhaps address some of the breakdown in the families for our Indian people. And I hope that you will give this good consideration. And I'd like to thank Senator Kruse for his steadfast...you know, sticking with this. And I wasn't there when you worked on that legislation with Frank Lamere, but I do work a lot with the human remains issue, and I thank you for that good work. And I'd be... [LB573]

SENATOR ASHFORD: Well, I think we did a lot. [LB573]

JUDI GAIASHKIBOS: You did. It was a great law that is stronger, actually, than the federal legislation. So if anyone has any questions, I'd be happy to respond. [LB573]

SENATOR ASHFORD: Any questions? [LB573]

SENATOR LATHROP: Maybe just a couple, if I can. I don't know a lot about this problem. I know that Whiteclay is a border town. What's the next town to the south of that? [LB573]

JUDI GAIASHKIBOS: Rushville. [LB573]

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SENATOR LATHROP: And how far is Rushville from the border? [LB573]

JUDI GAIASHKIBOS: From the border? [LB573]

SENATOR LATHROP: Or, from Whiteclay. [LB573]

JUDI GAIASHKIBOS: It's not very far. Miles. And some of the people from Pine Ridge actually walk to Whiteclay and take their wheelchairs to Whiteclay to purchase liquor. And at the package stores, people are being sold alcohol that are clearly intoxicated, and then they go home and cause a lot of destruction with families. And some of these people live in Nebraska, as well. They live... [LB573]

SENATOR LATHROP: If we pass this dramshop statute, will it...if we could...let me put that differently. If we could shut down the four liquor establishments in Whiteclay--and I don't know if we can or not; apparently, there's a constitutional problem with that--but if we could, is the problem just going to go down to Rushville? [LB573]

JUDI GAIASHKIBOS: I don't think so, because I think what we're seeing at Whiteclay is, out of sight, out of mind. In Rushville, there are more non-Indian people there, and I don't think the citizens are going to expose their...if you will, the white, non-Indian community to the ravages that you see at Whiteclay. You will not see people urinating in the street. They're not going to allow their mothers and sisters and brothers to see that. But at Whiteclay, we have to see that, and that seems to be okay. So I don't think that's a real justification or rationale for keeping it up there, because, you know, if we shut those down, I don't think everybody is going to go to Rushville or Chadron or Gordon, because I think law enforcement would do something about that. [LB573]

SENATOR LATHROP: Okay. [LB573]

JUDI GAIASHKIBOS: But at Whiteclay, that's not really a priority. [LB573]

SENATOR LATHROP: Okay. Thank you, I appreciate that. [LB573]

JUDI GAIASHKIBOS: You're welcome. [LB573]

SENATOR ASHFORD: Thank you, Senator Lathrop. Thank you. That's it. [LB573]

JUDI GAIASHKIBOS: Is that...thank you. [LB573]

SENATOR ASHFORD: Thank you very much for...any other proponents? Opponents? Any...Jim. How many other opponents do we have? [LB573]

JIM MOYLAN: I'll fill this out later. Mr. Chairman, members of the committee, I'm Jim

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Moylan, M-o-y-l-a-n, here representing the Nebraska Licensed Beverage Association, again, on the dramshop bill. And I appreciate the sincerity and the interest that Senator Kruse has in this and all the other liquor interests. I certainly do appreciate it. It so happens that my clients in this case are not able to support his bill, but we do support several other of them. I think you all know that there was never a common law dramshop act. Common law always came in a statutory form in this country, devised, and several states have it, and it just varies all over, commonly called third-party actions. Instead of two-party, one person suing another who caused the damage, this is, the person who was damaged doesn't sue the guy who caused it, but he sues the bartender who served him the liquor. That's where they get the third-party action out of it. And the old theory is that the consumption and not the furnishing of the liquor is the proximate cause of the accident and the damages, legally. A few things about the act, too. Drugs are not defined whether they're prescription or nonprescription drugs. I think that should be looked to. The way it is now, it's just drugs, and that could mean you could sue a pharmacist, too, who might have given you an oversupply of drugs and you were driving down the street, so you end up suing a pharmacist for the drug-type thing. I don't think it is intended to mean those, you know. Yes, you're going to hear it again, there's an element of personal responsibility. Do we shift the responsibility of an individual to a third party? We do not think so. Now, you're going to have other actions, and they're already popping up all over. You're going to sue the pop companies and the sugar companies for people getting diabetes, you're going to sue McDonald's for people getting obese, and Burger King. I mean, these are all going to be third-party actions. And you start it in one area, it can continue into others. That's just a philosophical thing and a legal thing that should be considered. Do we shift the responsibility of an individual to a third party? We don't think so, and I just don't think legally that it is correct to do that. Again, it's kind of anti-tort reform if we're on a tort reform kick of any kind, you know. And this is a step backwards in that direction. Tort reform, you know, is tort reform. The "noticeably intoxicated," I do like that term. It's a very broad term. And I think ten people looking at one person who has been drinking would have different opinions on whether that person was noticeably intoxicated. I think that would be a field day for insurance companies, and just opens up the system to a whole group of lawsuits under "noticeably intoxicated," hoping for some type of a settlement, you know, because of the terminology. And I think that would be a tough one. Insurance costs. A couple years ago, I talked to an insurance agent in Iowa, and the insurance costs over there vary--\$500 for a small restaurant with just a beer license, up to \$1,500 if you're a little bit larger restaurant. But you get into the spirits and the wine, he mentioned, the agent, that it would be \$1,200 to \$2,400 a year, just for dramshop insurance, and it could be more. If you're a large sports bar and doing a lot of business, he said it could go all the way to \$5,000 a year, just the insurance costs for dramshop alone. [LB573]

SENATOR PIRSCH: I couldn't hear. It could be up to how much? [LB573]

JIM MOYLAN: Well, for...on a regular bar, you know, depending on the size and their

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volume--it's based on their volume--\$1,200 to \$2,400 a year. This was about three years ago I got these figures. And it could be more, depending on your bar, you know, so. [LB573]

SENATOR ASHFORD: Jim, that's helpful information. I'd ask you to sum up, just because I think we've gone to the red light time here. [LB573]

JIM MOYLAN: Oh, excuse me. I'm sorry. [LB573]

SENATOR ASHFORD: Yeah. [LB573]

JIM MOYLAN: Well, I'll just wind it up here. Thank you. [LB573]

SENATOR ASHFORD: Okay. Wait, hold it. Any questions of Mr. Moylan? Jim, I do have a question on tort reform. And I...you know, obviously, it's not about me or my past history, but the comparative negligence bill was designed to address situations where you had multiple defendants in a case that were joined in a particular lawsuit. And the problem...one of the problems we faced when I was running for office in 1986, tort reform was the big issue. That's what everybody ran on. If you were for tort reform, you were for business, and if you were against tort reform, you were not for business. (Laugh) I guess that's what it boiled down to. But we did the comparative negligence bill, and it was kind of a compromise, to try to be able to solve these issues by making sure that people are made whole and that all of the potential defendants would be brought into the action and their fault could be apportioned between the defendants. And that was a fairly, you know, significant change in the law. My question, though, is this, is that...and I...you've made some points about being able to tell whether someone is intoxicated, and that's a good point, and I think it probably is difficult at times to do that. And it is possible that a bar owner could be brought into a case where there is an accident subsequent to an intoxicated situation. But in a courtroom environment, that issue would come up, that issue would be adjudicated. Was it reasonable to assume that this person was intoxicated? And you'd have potential witnesses there that would say, I...he seemed normal to me, or she seemed normal to me. What I...it seems to me that the comparative negligence law does protect...would protect bar owners like it protects anybody else from...to the degree of their fault. And that was the idea behind the comparative negligence law. I just throw that out to you. I don't know exactly how it works in all cases involving dramshop. But comparative negligence does...was designed to apportion fault based on the degree of negligence. And I think when it's 50-50, the plaintiff, in effect, loses, under comparative fault. And so if someone...so my point is, all those facts are adjudicated. And I...and the purpose was to get at that problem. [LB573]

JIM MOYLAN: Yeah. Now, Section 9 here, defenses applicable to tort actions in Nebraska based on negligence and recklessness may be asserted in defending an

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action brought under the Alcoholic Liquor Liability. [LB573]

SENATOR ASHFORD: Right. Right. And the jury would be able to...if it got to a jury, would be able to...they'd have instructions on these defenses. And if there is another party involved, is there...if it's not just a single-car accident, but if there's another...if it's a car accident, someone else is involved in an accident, some other party, the issue of proximate cause would go to the jury, and these defenses would be raised. What I'm getting at is that the risk, insurable risk to the bar owner is limited by other statutes, other parts of the law that would apply to anybody else, which is somewhat different from the...I mean, that law passed, and I think we passed that in '91, '92, so it hasn't been that long. But prior to that, I could understand some of the argument, but after comparative fault, it becomes less onerous, doesn't it? [LB573]

JIM MOYLAN: I don't know that it does. [LB573]

SENATOR ASHFORD: Okay. [LB573]

JIM MOYLAN: I think this is just plain old dramshop against the bar owner, and... [LB573]

SENATOR ASHFORD: Well, it is against the bar owner, but it isn't... [LB573]

JIM MOYLAN: ...and I think it takes you out of the negligence. [LB573]

SENATOR ASHFORD: Yeah, but even if you get into a...if it's an accident, two-car accident, and an action is brought against the other driver and the bar, what I'm saying...and that could happen, but what...under this legislation. But what I'm suggesting to you is, you then get into an argument about proximate cause, and it...I'm not saying in all cases, but in many cases, those other parts of the law would...could very easily mitigate damages against...and that goes into the cost of insurance. And \$200 a month, yes, that's a lot of money to a small operator, but it's not outlandish. [LB573]

JIM MOYLAN: Yeah. What you said is right if they sue the driver and the bar. But generally, there are cases where the driver of the other vehicle has no insurance and they just sue the bar. [LB573]

SENATOR ASHFORD: I know, but still comparative negligence applies, and the degree of fault is still assessed based on that... [LB573]

JIM MOYLAN: Yeah, probably would be. [LB573]

SENATOR ASHFORD: That's all I have. I'm not trying to quiz you on it, but there is a

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difference. Yes, Senator Lathrop. [LB573]

SENATOR LATHROP: I do want to ask you one question. I know, Mr. Moylan, you've represented this client for a long time. Is that true? [LB573]

JIM MOYLAN: Yeah, longer than I want to tell you about, but that's all right. [LB573]

SENATOR LATHROP: (Laugh) Okay, we'll agree that it's been a long time. You've seen a lot of different versions of the dramshop come through over the years? [LB573]

JIM MOYLAN: In Nebraska? [LB573]

SENATOR LATHROP: Yes. [LB573]

JIM MOYLAN: I have seen different suits filed, yeah, over the years. You bet. [LB573]

SENATOR LATHROP: But I'm talking about the bills. [LB573]

JIM MOYLAN: Oh, yes, the bills. [LB573]

SENATOR LATHROP: This particular bill that we're looking at today, have you ever...the fact that you have a defense if you go to class, and that makes this dramshop bill unique, almost, to any other dramshop bill in the country, doesn't it? [LB573]

JIM MOYLAN: I think it is, except for two aspects. You've got to throw social hosts in there, and not just when they serve minors. I think that's important. Social host... [LB573]

SENATOR LATHROP: You say that's not in here and should be? [LB573]

JIM MOYLAN: No, social hosts are excluded unless they sell to a minor. [LB573]

SENATOR LATHROP: Okay. [LB573]

JIM MOYLAN: I think they ought to be...I mean, they're no different than a bar owner, if they're having a big party and serving people liquor. [LB573]

SENATOR LATHROP: So you think we should amend this and include social hosts? [LB573]

JIM MOYLAN: Well, we hope that it doesn't come out of committee. We're asking you to not, you know, refer it to the floor. [LB573]

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SENATOR LATHROP: Okay. [LB573]

JIM MOYLAN: Social hosts should. [LB573]

SENATOR LATHROP: Well, maybe I have two points that I want to make with you. One is, is that the fact that it is a defense that you educate your bartenders and your wait staff, that makes this very unique and, some would argue, very watered down. [LB573]

JIM MOYLAN: Yes, it is. [LB573]

SENATOR LATHROP: Okay. [LB573]

JIM MOYLAN: It is unique. [LB573]

SENATOR LATHROP: And the other point I'd make, perhaps, is that when it comes to the liability of a social host for minors, that's probably something your industry supports. Is that true? [LB573]

JIM MOYLAN: Well,... [LB573]

SENATOR LATHROP: I mean, you've taken...I think you've encouraged the introduction of other bills to discourage alcohol use by minors. [LB573]

JIM MOYLAN: Yes. Give me another hour on minors and I'll get right to your point. [LB573]

SENATOR LATHROP: You're not going to get another hour probably, but... [LB573]

JIM MOYLAN: But...no. (Laugh) But I mean, yeah, minors, we got them coming up. But I agree. [LB573]

SENATOR LATHROP: Okay. [LB573]

JIM MOYLAN: The parents ought to be responsible for their own minors,... [LB573]

SENATOR LATHROP: Very good. [LB573]

JIM MOYLAN: ...and should never serve a minor, I say, so. [LB573]

SENATOR LATHROP: Okay. Thank you. [LB573]

SENATOR ASHFORD: Thanks, Jim. Any other questions? Thank you, sir. Next opponent. [LB573]

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JOE KOHOUT: Chairman Ashford, members of the Judiciary Committee, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of the Responsible Beverage Operators of Nebraska. Mr. Moylan went through some of the concerns our organization would have as well. But I guess in an effort to try to get at some of the issues, perhaps, that would make it a little bit easier, more palatable, than it is now, we would encourage the committee to look at, on page 5, line 3, it would be in Section 6, sub (5), where they talk about, recognize signs and those normally associated with intoxication. We would encourage the committee to look at some sort of a list, or some sort of a...some sort of guideline for our...for the licensees, and it's...and whether or not those...what kind of signs we're supposed to look for in order to determine whether or not to serve the individual. And then, as well, the other suggestion I guess we would have, on page 7 at line 19, that's where they talk about the defense, the server training program. And specifically there it says that the licensee may establish that all of its...of his or her or its employees have taken and passed a state-certified server training program. That's easy in some sort of...in some locations. Specifically, a mom and pop type of location, it might be easy, if you have four bartenders, to do that. We have some members of our organization who have up to seven locations, individual licensees, and they may be transferring employees or hiring employees at different locations at any given time. Thus, we would encourage that some sort of a percentage or an effort to have those individuals trained would be helpful. Just, when you're running a larger business, it...there would obviously be a question then whether or not they can avail themselves of the defense if not 100 percent of their employees at that given time were trained under that program. So with those couple of...obviously, our organization is still concerned about any sort of dram liability. But we would be happy to work with the committee if there's some version that we could all sort of agree to. [LB573]

SENATOR ASHFORD: Any questions? Senator Chambers. [LB573]

SENATOR CHAMBERS: You said you represent the Responsible Beverage Operators of Nebraska? [LB573]

JOE KOHOUT: Yes, sir. [LB573]

SENATOR CHAMBERS: What are they responsible for? (Laughter) [LB573]

JOE KOHOUT: We think it's a good name, Senator Chambers. (Laughter) [LB573]

SENATOR CHAMBERS: Are there irresponsible beverage operators, we are to assume? [LB573]

JOE KOHOUT: We are...we attempt to be responsible, Senator Chambers. [LB573]

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SENATOR CHAMBERS: Do you represent, then, all the beverage operators in Nebraska, or just a certain group who...? [LB573]

JOE KOHOUT: Just a certain group. [LB573]

SENATOR CHAMBERS: And they call themselves the Responsible Beverage... [LB573]

JOE KOHOUT: Correct. [LB573]

SENATOR CHAMBERS: Well, what are the ones who are not a part of the group? [LB573]

JOE KOHOUT: I think Mister...I'd have to defer to Mr. Moylan. (Laughter) [LB573]

SENATOR CHAMBERS: Okay. That's all I have. Thank you. [LB573]

SENATOR ASHFORD: Joe, would it be...Jim mentioned, or someone mentioned, the cost of insurance is in the neighborhood of \$200 to \$500 a month for a smaller bar. Is that about right? [LB573]

JOE KOHOUT: There...and there's some disagreement on that. I...one of our members, who, again, was the larger bar owner, or larger corporations, did price it some years ago. The total financial impact that they heard, or that their insurance agent came back with was around \$50,000. And this was in a case where they had multiple... [LB573]

SENATOR ASHFORD: \$50,000? [LB573]

JOE KOHOUT: Yeah, multiple locations. Obviously, a corporation that had several locations in the Omaha area. So... [LB573]

SENATOR ASHFORD: Okay. But one of the smaller...well, that's fine. [LB573]

JOE KOHOUT: And I think that gets to the question that you asked Mr. Moylan, about those kinds of differing sizes of the bar. I think that goes into that equation, frankly. But I don't have anything specific. I just know that that's what I was told. [LB573]

SENATOR ASHFORD: That's fair. But now, your first...just so I understand it, I...reading sub (5), subparagraph (5) of Section 6, I don't...I can't...that seems to me to be a good...I mean, that's a provision that is fairly balanced and probably would be helpful in some cases to your clients, rather than listing. [LB573]

JOE KOHOUT: And I guess that's maybe one of those give and take issues. We just get

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concerned about, well, you should have recognized this, and... [LB573]

SENATOR ASHFORD: But I mean, I think that's a "give me" there: normally associated with the consumption of alcohol. They're not...you don't have to be a psychiatrist or some psychologist to figure out. I mean, you're just...it would have...all I would suggest is, before you start laundry listing,... [LB573]

JOE KOHOUT: Sure. And I don't disagree with you. I just...it's one of those things where they say, well, tell us what we're supposed to recognize, I think is the issue. [LB573]

SENATOR ASHFORD: Okay. All right. Good. Thanks, Joe. Any other...thank you. Thank you, sir. Any other opponents? [LB573]

JIM OTTO: Senator Ashford, members of the committee, my name is Jim Otto, O-t-t-o. I am president and registered lobbyist for the Nebraska Retail Federation. I'm here to testify in opposition to LB573. First of all, I want to make it very clear what I'm not here to do. I'm not here in any way to defend what goes on at Whiteclay. Actually, Mr. Messina and I have talked about maybe what we could agree on, and tried to get together. I've known Mr. Lamere for years. And I don't think you could find two people that are more dedicated and sincere to a cause. And I don't think that it would be, I mean, any reasonable person, can defend what does happen at Whiteclay. I've actually been to Whiteclay, met with members of the...tribal leaders of Pine Ridge, and it is a significant, serious problem, and I'm certainly in no way here to defend that, or the people that sell to minors or intoxicated people. I do want to kind of say, I'm finding out that I've been doing this lobbying thing for about four years now, and I'm finding out, even though I'm 58 years old, that I'm fairly naive. I actually thought that maybe there was a way that we could agree on something on this issue. I actually talked to Mr. Moodie about it. I talked and we met with Senator Kruse. Senator Kruse was very gracious in trying to figure out how we might be able to come together. But when it all came down to it, I could not get approval, or it wasn't in our board's best interest, to approve anything close to...I mean, it just came down, we couldn't come to agreement. And I think what it really comes down to--and maybe, Senator Lathrop, you could help with that--is that every business...and everybody could help with that, is, they just feel like there are a certain number of businesses out there that are really not doing this correctly, and most of my members are fairly large stores that would sell beer as just one item over here, and always have to call a...somebody old enough to sell it, because it may have...and very seldom probably would even have an intoxicated person come in. But it seems to open up that liability for everyone. It opens up that...or, they feel that it opens up this deep pocket for the, quote, trial attorneys to come to, and increase the cost of insurance for everyone. And that's another thing we couldn't get pinned down, on how much it was. But anyway, with that, we're officially against this, so. [LB573]

SENATOR ASHFORD: Sort of, kind of, officially against it. But... [LB573]

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JIM OTTO: No, we're against it. (Laugh) [LB573]

SENATOR ASHFORD: You're still against it? Because we can send Senator Lathrop in again, as he usually does, to iron things out. I don't know if he's...he's pretty...we're kind of overworking him on ironing things out. But I just have...you have a number of large retailers, obviously, that do business across the country and are used to paying this kind of dramshop insurance. Would that be correct? [LB573]

JIM OTTO: We actually...yes, we actually checked into the point that you brought up, Senator Lathrop, that the training would be a defense, and wouldn't that be better? And I tried to find out from insurance companies, wouldn't that make dramshop more reasonable, the insurance for dramshop more reasonable in Nebraska? And basically, if it's dramshop, it's dramshop. They don't...that was the answer I got. [LB573]

SENATOR ASHFORD: Well, not that it's more...but I mean, your client, many of your clients would be...it would be part of their cost of doing business in 42, 43, 44 other states, arguably. [LB573]

JIM OTTO: Oh, I'm sure that's true. They wouldn't want it to be in another state. [LB573]

SENATOR ASHFORD: And then, again, we get to these arguments a lot, and it comes up a lot of, what is it about Nebraska people that they wouldn't...why would they not want to cover Nebraskans, I mean, who are injured? I...they...people from Wisconsin, arguably, can recover, but people in Nebraska can't. I mean, that seems...and I'm not critical, Jim, of your testimony. But I... [LB573]

JIM OTTO: I don't know if I can... [LB573]

SENATOR ASHFORD: And that's always hard for me to understand. When we start talking about tort reform, it often means that Nebraskans are the ones that don't...other states have these kinds of things, and Nebraskans don't have the protection. That's all. Any other questions of Jim? Thank you, Jim. [LB573]

JIM OTTO: Thank you. [LB573]

JIM PARTINGTON: Good afternoon, Senator Ashford, members of the committee. My name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association, and I appreciate the opportunity to appear before the committee and testify in opposition to the Liquor Liability Act. The state of Nebraska has 3,600 restaurants, employing about 67,000 people, and generates revenue of about \$1.9 billion, and our mission is to represent, educate, and promote the industry. Most of these restaurants are small businesses with 10 to 40 employees, and they face the

challenges common to all small businesses, as well as some that are unique to the industry. Passage of LB573 would pose an additional challenge to our industry, in that owners, managers, and employees of hospitality establishments would be expected to pass judgment on the sobriety and competence of patrons, based on a standard defined as noticeably intoxicated, which is rather unclear and undefined as a standard. It's clearly subjective and open to interpretation. The stated purpose of the Alcoholic Liquor Liability Act are to prevent intoxication-related traumatic injuries, deaths, and other damages; and to establish a legal basis for obtaining compensation for persons suffering damages. In order to accomplish these goals, the act establishes unlimited liability for a third party not directly involved in an incident that results in damages. The sole basis for assigning this liability appears to be the serving of alcoholic beverages to a noticeably intoxicated individual or a minor. It's relatively easy to define a minor, but as I mentioned earlier, the standard for "noticeably intoxicated" is unclear. And it's difficult for me to see how this will achieve the first purpose of the act, and it's an unfair and burdensome way to accomplish the second purpose of the act. Restaurants are not places where people gather for the primary purpose of consuming alcohol. This is generally incidental to enjoying a good meal, and loud and obnoxiously intoxicated behavior is offensive to other guests and bad for business, so it's discouraged in food service operations. The environment in which this interaction takes place is not conducive to close monitoring of a patron's alcohol intake. Requests for beverages are made through wait staff, taken to the bar, produced at the bar, and taken back to the table. And the wait staff are generally responsible for several tables, and constantly on the move, so their ability to monitor in detail is somewhat limited, especially to determine whether individuals are intoxicated in accordance with the standard that's established in the act. One aspect of this bill that is worthy of consideration--and as Jim Otto mentioned, we had previously discussed this with Senator Kruse--and that's the emphasis on training for alcohol servers and managers. The National Restaurant Association has an excellent course on this subject that can be delivered in the classroom by the Nebraska Restaurant Association, or by the University of Nebraska Extension Service, and it's also available on-line, so it's convenient to take, relatively low-cost, and of high quality to train people who are involved in serving alcohol. We recommend strongly that our members of our association get this course if they're involved in serving alcohol, and we are aggressively trying to promote this throughout the state. The industry I represent consists mostly of small businesses that are unable to bear the cost of expensive litigation, even if they win in court. And this is one of the issues that I think is a priority for us. We want to avoid getting into litigation. We support the goals of eliminating serving alcohol to people who are...shouldn't be served alcohol. But we are in an industry that really can't afford the cost of litigation and resolving these issues in court. So this bill, we believe, if enacted, is an open invitation to expensive litigation based on subjective standards involving establishments with, at most, an indirect connection to the issues being litigated. Whether dramshop liability actually succeeds in increasing responsible behavior among establishments serving alcohol is not clear. What is clear is that the message that people are not responsible for their own

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actions when alcohol is involved is a message that no law should be sending. This completes my formal testimony, and I look forward to any questions that committee members may have. [LB573]

SENATOR ASHFORD: Any questions of Jim? Senator Lathrop. [LB573]

SENATOR LATHROP: I have just a few. The group that you represent is...the name of it again, please? [LB573]

JIM PARTINGTON: Nebraska Restaurant Association. [LB573]

SENATOR LATHROP: The Nebraska Restaurant Association. If we take all the restaurants in the state, what percent do you represent? [LB573]

JIM PARTINGTON: About 20 percent. [LB573]

SENATOR LATHROP: And among that 20 percent, are they all restaurants that are also permitted to serve alcohol? [LB573]

JIM PARTINGTON: Not all of them. Some are fast-food establishments. There's quite a cross section of different kinds of establishments. [LB573]

SENATOR LATHROP: You mentioned earlier that there are courses that can be...that somebody can take on-line, somebody could take in a classroom. Have you actually taken one of these courses yourself? [LB573]

JIM PARTINGTON: No, I haven't. I have a lady that works for me who is the instructor for that, and I actually will be taking that course because I'm in the process of opening up a farm winery here pretty soon, so I'm going to be required to take it. (Laugh) But I haven't yet. [LB573]

SENATOR LATHROP: You said that you were going to be required because you're opening that. Is it actually a requirement now? [LB573]

JIM PARTINGTON: It's a requirement I've established for myself and the help. It's not a requirement that the state has levied on us. [LB573]

SENATOR LATHROP: Do you run a restaurant yourself? [LB573]

JIM PARTINGTON: No, I don't. [LB573]

SENATOR LATHROP: As a condition of being a member of your organization, do you require that the members have their staff attend one of these classes? [LB573]

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JIM PARTINGTON: No, we don't. All the... [LB573]

SENATOR LATHROP: So right now, they offer the class, but there is...no one has any incentive to take it? [LB573]

JIM PARTINGTON: That's correct. [LB573]

SENATOR LATHROP: That's all I got. [LB573]

JIM PARTINGTON: We encourage it, but we don't have any authority, and we don't establish that as a requirement for membership. [LB573]

SENATOR LATHROP: Thank you. [LB573]

SENATOR ASHFORD: Thank you, Senator Lathrop. Senator Chambers, did you have a question or two? [LB573]

JIM PARTINGTON: Yes, Senator Chambers? [LB573]

SENATOR ASHFORD: (Laugh) Or three or four. [LB573]

SENATOR CHAMBERS: Are you a hermit? [LB573]

JIM PARTINGTON: No, sir, I'm not. [LB573]

SENATOR CHAMBERS: I didn't think so. Are you over 40? [LB573]

JIM PARTINGTON: Yes, I am. [LB573]

SENATOR CHAMBERS: Are you a teetotaler? [LB573]

JIM PARTINGTON: No, I'm not. [LB573]

SENATOR CHAMBERS: Have you ever been in a bar? [LB573]

JIM PARTINGTON: Yes, I have. [LB573]

SENATOR CHAMBERS: Have you ever observed an intoxicated person? [LB573]

JIM PARTINGTON: Yes, I have. [LB573]

SENATOR CHAMBERS: What boggles my mind is how all these men of the world can

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say they don't know how to notice intoxication when they see it. So you don't recognize intoxication when you see it? Is that what you were testifying to? [LB573]

JIM PARTINGTON: No, that's not exactly what I was testifying to. But I could recognize, under some circumstances, intoxication. But I guess the point I was trying to make is that people express their intoxicated levels in different manners, and some... [LB573]

SENATOR CHAMBERS: Well, give me an example of intoxication expression which you would not recognize as connoting or denoting intoxication. [LB573]

JIM PARTINGTON: I would think that one of the most difficult types to be recognized would be the very experienced drinker with a high capacity for alcohol who sits in the corner of the bar and just quietly drinks away the evening, sort of unobserved and below the horizon that everybody has, and then finally gets up, and is still able to motivate himself to get to the door and out, but he's not capable of driving, but there's no obvious sign of that, because of it. [LB573]

SENATOR CHAMBERS: Is that the usual in a bar? You just have guys sitting over in a corner someplace, or in the shadow, hunched over, quietly drinking the evening away, looking like you and I look now? [LB573]

JIM PARTINGTON: No, the usual...no, Senator, the usual bar manifestation would probably be a little more noise and a little more activity. [LB573]

SENATOR CHAMBERS: Do you think when laws...and I'm asking for your opinion. Do you think when laws are enacted they're enacted for the general run rather than for what might be considered the exceptional case? [LB573]

JIM PARTINGTON: I believe that, yes. [LB573]

SENATOR CHAMBERS: Do you think in most instances people who own bars, people who work in bars as bartenders, people who serve alcoholic beverages, are experienced enough to recognize when somebody is intoxicated? In general, would they be able to do that? [LB573]

JIM PARTINGTON: In general, I think they could recognize that, except under certain circumstances where you have a very crowded environment, the help is overtaxed, and they're passing by and serving drinks. And in some cases, in some bars--and I don't know much about bars because I'm representing restaurants--but I would... [LB573]

SENATOR CHAMBERS: Well, if this bill becomes law, do you think we'll require people to become a bit more attentive and be mindful of discovering ways to recognize intoxication and notice it when it occurs? If this bill becomes law, if you had an

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establishment where alcohol was served and this bill was the law, would you make it a point to be sure that those who work for you and dispense beverages to people would be mindful of when somebody is noticeably intoxicated? [LB573]

JIM PARTINGTON: I think it would increase their awareness. [LB573]

SENATOR CHAMBERS: Okay. Now,... [LB573]

JIM PARTINGTON: I think there are better ways to do that, though. [LB573]

SENATOR CHAMBERS: If you come in my bar...I don't know anything about bars; I am a teetotaler. Alcohol has never entered my mouth, other than in mouthwash. Seriously. Just like cocaine has never gone up my nose and heroin has never gone in my veins. Now, if you come in my bar and I say, I think you're intoxicated, I can smell liquor, your eyes are red, but you're not making a lot of noise or anything, and I refuse to serve you alcohol, can you sue me and recover because I would not serve you alcohol? [LB573]

JIM PARTINGTON: No. [LB573]

SENATOR CHAMBERS: So then a bartender can err on the side of caution, and such a person could go down the street, toddle, or waddle, or stumble, or stagger down to Jim Moylan's bar, huh? (Laughter) Because Jim is very...much more accommodating, perhaps. But you wouldn't have to serve alcohol, would you? [LB573]

JIM PARTINGTON: No, you don't have to serve alcohol. You have the option. [LB573]

SENATOR CHAMBERS: And you seem very...and I'm not trying to be patronizing. You seem very intelligent to me, seriously, and I think if you had one of those establishments, you would err on the side of caution, and not run the risk of bringing yourself some liability, just to get along with somebody who is buying drinks, right? [LB573]

JIM PARTINGTON: I think that's correct. [LB573]

SENATOR CHAMBERS: Okay. [LB573]

JIM PARTINGTON: There is one point I'd like to make, if I could, though? [LB573]

SENATOR CHAMBERS: Sure. [LB573]

JIM PARTINGTON: And recognizing that this would have some impact, probably, on the patrons...or, the owners of establishments--they'd be more cautious--they still, even as cautious as they might be, could still possibly be exposed to litigation for a third-party

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cause to which they didn't necessarily have a direct bearing on it. And there are some dramshop laws around in various states that actually will allow a situation which is pretty much intolerable, and probably would be to all of us here,... [LB573]

SENATOR CHAMBERS: Are there defenses built into this bill? [LB573]

JIM PARTINGTON: There are. [LB573]

SENATOR CHAMBERS: We all know that you cannot stop anybody from suing you. I can actually file a lawsuit in Nebraska against God, if I choose to. Did you know that? [LB573]

JIM PARTINGTON: I did know that. I think I've heard you say that before. That's why I knew that. [LB573]

SENATOR CHAMBERS: And a court would probably say, with all due respect, the court lacks jurisdiction over the parties. (Laughter) But I can file a lawsuit. So to have it filed doesn't mean the person will recover. So I recognize the possibility that somebody might bring a frivolous lawsuit. But the aim is here, is to deal with a social problem, a societal problem. I don't think it's to get back at bartenders or restaurateurs or anybody else. And as policymakers, I think you can recognize that our purview has to be broader than the profit motive of a purveyor of alcoholic beverages. [LB573]

JIM PARTINGTON: I recognize that. And I'd like to propose a couple of alternative perspectives to that. [LB573]

SENATOR CHAMBERS: I thought you were going to say you'd like to propose a toast. I was going to say...(laughter) okay, go ahead. [LB573]

JIM PARTINGTON: (Laugh) I'd offer to sell you a bottle of wine, but you just told me you were a teetotaler. [LB573]

SENATOR CHAMBERS: Okay. [LB573]

JIM PARTINGTON: I think, in my view, a better way to deal with this--and I'm not an attorney and I'm just looking at this from sort of an amateur perspective--is through the licensing and regulatory process, which is already available to us. And it appears to be working in Lincoln, if you read the papers, because that's what's happening to some of the bars, and they could probably emphasize that more, where you actually monitor the performance of these establishments, and you can measure as an outcome how many people come out of there and actually get in trouble for being intoxicated, and those that have a bad record, you crack down on them, pull their license, or take some other action, fine them, and that sort of thing. And I think that is a more straightforward, more

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appropriate way to deal with these issues than establishing litigation. [LB573]

SENATOR CHAMBERS: Not to be rude, how does that help the injured party? [LB573]

JIM PARTINGTON: It doesn't solve the financial return to the injured party. [LB573]

SENATOR CHAMBERS: Okay. [LB573]

JIM PARTINGTON: But I don't know that the third-party connection is the appropriate way to do that, either. [LB573]

SENATOR CHAMBERS: That's all I would have. Thank you very much. [LB573]

SENATOR ASHFORD: Just to follow up, and I...you do a good job, and I've worked with you before, and I know you're conscientious. And I'm not worried about your members, because I think if something like this would pass, you would make certain that those members are aware of what the law is, and provide them with all the options that they need to have to comply with the law. I'm not worried about that. My guess is that 99 percent of them would take precautions, go through the training, if you made them aware of it. So I really...and it would...I just...I see something like this, in connection...and especially with people--you have to come up here and testify; it's your job--but people like you, who are responsible, who have members who are responsible. You're the ones that are going to comply. You're the ones that are going to do things to not...to avoid responsibility. So I...you're not the ones I'm worried about. (Laughter) I mean, so I'm glad you're here, but I think you're the best reason for passing a law like this that I can see, because you're going to make sure people are aware of it, and you're going to explain to them how to do things differently, and that sort of thing. I mean, basically, when someone walks into a bar or a restaurant and is...may have had a couple of drinks, or no drinks, is...and the bartender is there, it's sort of even-steven. You know, everybody is kind of okay. It's when that person has more than a couple of drinks, and the bartender knows they have more than a couple of drinks, and the bartender is the one in control, basically. The bartender is pouring the drinks, the bartender knows how...generally, knows how many drinks that person has had. And I understand the waitress issue. But, you know, at some point, the balance shifts to the entity, to the business that has control over the instrumentality, in this case, the liquor. [LB573]

JIM PARTINGTON: Could I make a comment that is a personal observation, not supporting or opposing anything, I guess. But we did talk with Senator Kruse and his staff about this, to try to find a way to make this work. And I think a workable way, down the road, to get more support for this would be to establish a stronger safe harbor based on the training component of the bill, that basically establishes certain criteria that, if you meet,...I spent most of my life in the military, and this is kind of how the way we do it.

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(Laugh) If you meet certain criteria that have been established for you, in the way of training and monitoring who you're serving and that sort of thing, then you're off the hook for...if an adverse result goes with that. [LB573]

SENATOR ASHFORD: That might be possible, and I understand that. The problem, of course, is if you have the training, you should be expected to be better at it. [LB573]

JIM PARTINGTON: You should. But there are always those occasions, which are not, as Senator Chambers mentioned, necessarily the mainstream, but always those exceptions that could get you hung up in a situation for liability that there should be some defense for. [LB573]

SENATOR ASHFORD: Well, and I appreciate that. We've had...I had...we had this bill in front of us many times when I was here before, and clearly, this bill is different, because it does reflect the training, and it reflects the assumption of the risk issues, and other things. And it...so it is a movement. And so...but anyway, I appreciate your testimony. I think it's been very helpful. Thank you. [LB573]

JIM PARTINGTON: Thank you. Are there any...? [LB573]

SENATOR ASHFORD: Thanks. Any other...yeah. You're all...no other questions. Thank you. [LB573]

TIM KEIGHER: Good afternoon, Chairman Ashford and members of the committee. My name is Tim Keigher. That is K-e-i-g-h-e-r. I'm here on behalf of the Nebraska Petroleum Marketers Association, and Convenience Stores. [LB573]

_____: Can you say that again? I couldn't hear. [LB573]

TIM KEIGHER: Nebraska Petroleum Marketers and Convenience Store Association. It's a long list. In opposition to LB573. My members support the training aspect. In fact, many of my members--I wouldn't want to say all--but many of them already do training for alcohol. The National Association of Convenience Stores came out with a program back in the early 1980s called the techniques of alcohol management. They also incorporated into that tobacco training. You know, my members don't want to sell to minors. There's enough adults out there to buy these beverages. We probably don't sell the majority of these beverages, anyway. It's...we sell them to compete with other retailers who are getting into our business, i.e., grocery stores, wholesale clubs, etcetera. I guess we don't have any problem with the social aspect of this, either. Our concern is, is that, you know, it's difficult, even though you do the training, to have employees make these judgment calls. And I guess that's our biggest fear. We support the training. We will continue to do training. And Mr. Chairman, in answer to your question to Mr. Partington, maybe we could exempt all the members of our

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organizations. Just kidding. But I'd be happy to answer any questions. [LB573]

SENATOR ASHFORD: Well, it's unlikely that you're going to have a problem, because you are trained, and that's my only point. [LB573]

TIM KEIGHER: I'm not doing the training; my members are training their own employees. [LB573]

SENATOR ASHFORD: No, I know that. I mean, that's a good thing, and I agree with you. Any questions? Thank you. [LB573]

KATHY SIEFKEN: Senator Ashford and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, and I'm here representing members...my members, who are the Nebraska Grocery Industry Association. And we are opposed to this bill for a number of reasons. One is that we don't try to sell to intoxicated people, we don't try to sell to minors, that's not what...we're trying to prevent those things from happening. Sometimes it does happen, and that's because...we train our people. Not 100 percent of our employees are trained; however, a good portion of them are. But we've got a couple of different kinds of employees. We've got those people that are trying to do a good job, they're good employees, they come to work on time, they take the training; and then all of a sudden you've got ten people in line, and you've got grouchy customers, and they do the math wrong, and it's just an honest mistake. It's not something that they're intentionally trying to do when they...when a minor comes up. We get caught in compliance checks, because we're human beings, and we make mistakes. We don't try to do that. As owners, we train those people to the best of our ability. We try to stop those transactions from taking place. But under this law, it seems that we're going to get caught and we're going to get punished. And those people that have invested their livelihoods in their small businesses, their small grocery stores, could very well lose the business that they have spent years building. And that's a real concern. We are trying to do the best that we can with an age-sensitive product, and we believe that this bill is dangerous to our livelihood. Now, we also understand that when alcohol is involved in accidents, it's a terrible, terrible thing. We would like to have that stop. We're doing what we can by training. And frankly, our members are in full support of any training that's out there. In addition to that, there are more costs to this than just the cost of the insurance. There's also the cost of those lawsuits. And in the society that we live in today, people bring lawsuits all the time, whenever possible. So those are the things that I'd like you to consider when you're thinking about this bill. And then the last thing I wanted to add is that we, our industry, and my members, have been working very closely with the University of Nebraska and NU Directions in putting together the web-based server/seller training program. It takes about an hour for someone that's knowledgeable to take that course. We've recently gone through and updated it, and it's still not where it needs to be, but we're still working on it. And that is free of charge to anyone that has Internet access. So if you have any questions, I'd be happy to try and answer them.

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[LB573]

SENATOR ASHFORD: No, I mean, it just seems like you're getting at it, you're doing what the bill is asking you to do here. I mean, you're...so if you... [LB573]

KATHY SIEFKEN: Yes, we are. We are doing what the bill is asking us to do,... [LB573]

SENATOR ASHFORD: And it's those that don't that we're worried about. That's why we built... [LB573]

KATHY SIEFKEN: But we're going to be punished right along with those that don't, and so you're throwing the baby out with the bathwater. [LB573]

SENATOR ASHFORD: In those rare instances...well, we're not doing anything yet, but, I mean,...but I think... [LB573]

KATHY SIEFKEN: Okay. Well, the bill seems to do that. And so... [LB573]

SENATOR ASHFORD: But I think what the bill...but it seems to me... [LB573]

KATHY SIEFKEN: ...that's our concern. [LB573]

SENATOR ASHFORD: ...and a couple of things, is...and I don't want to belabor this (inaudible), and I understand, and you represent all sorts of grocers, small, medium, and very, very large grocers, and...I assume, and they make a decision--and there are grocers all over the country that live in states that have these laws--and they...you make a decision, do I sell alcohol or don't I sell alcohol, as a grocer? And many do, and many don't; some do, some don't, whatever. But it seems to me, you have to look at the cost. And I don't know what the cost of insurance would be if this law were to pass, for a grocer. I'm guessing the risk is pretty slight, especially if you go through the training, and that...under this bill. I'm not saying it's nonexistent. There is a risk. But you would measure that against how much...what you do in alcohol sales. I mean, that's a decision that every businessperson makes. I'm not suggesting that they don't sell alcohol. I think what's trying to be done here with Senator Kruse's bill is to try to balance it out. [LB573]

KATHY SIEFKEN: And there's the personal responsibility that everybody is talking about. [LB573]

SENATOR ASHFORD: Absolutely. [LB573]

KATHY SIEFKEN: And frankly, those people that are... [LB573]

SENATOR ASHFORD: And the law takes that into consideration when it makes a

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determination as to whether or not that person who's injured should recover against the purveyor of alcohol. I mean, they take...the law does...I mean, I know a lot of people in the business community don't want to believe it, but there is a concept of contributory negligence which does preclude people from recovering. And I'm not suggesting... [LB573]

KATHY SIEFKEN: After the suits are filed. [LB573]

SENATOR ASHFORD: Well, suits get filed. People get injured. How else to people...? [LB573]

KATHY SIEFKEN: And this encourages that. [LB573]

SENATOR ASHFORD: What it does is it provides an avenue for people who have been injured to be taken care of. That's what it does. I mean, we're trying to protect injured parties. Not "we," but the bill, I think, is trying to address the issue of the injured party. And that's sort of one of the things we're supposed to be doing as policymakers, is, how do we protect people who are injured, in a balanced way? And I understand what you're saying. [LB573]

KATHY SIEFKEN: And "in a balanced way." And when our people are doing everything before the bill is even introduced, and then to be caught up in it, when we're already doing these things, it's going to cost us more money. [LB573]

SENATOR ASHFORD: Okay. [LB573]

KATHY SIEFKEN: And there is that... [LB573]

SENATOR ASHFORD: I understand. [LB573]

KATHY SIEFKEN: ...responsibility of the person that consumes. [LB573]

SENATOR ASHFORD: And I understand that, and that's taken into consideration when these things are tried. But I understand what you're saying about lawsuits being filed, and that's a...I understand your point. Thank you. Any other questions? Thanks very much. [LB573]

KATHY SIEFKEN: Thank you. [LB573]

SENATOR ASHFORD: Any other opponents? Neutral? [LB573]

DUANE MARTIN: Excuse me, you said neutral, didn't you? [LB573]

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SENATOR ASHFORD: Neutral. We're up to neutral here. [LB573]

DUANE MARTIN: Okay. My name is Duane Martin, Sr., and I represent the Strong Heart Civil Rights Movement out of South Dakota. I'm in favor of this bill, LB573. But before I wanted to exonerate some of the issues vested about what's going on with, you know, your decision making, you know, in the future of, you know, certain, you know, liquor establishments trying to obtain anything. I got this picture here. And I do believe you're all on the Judiciary Committee, correct? [LB573]

SENATOR ASHFORD: I think so. Everyone I can see. (Laughter) Unless somebody came in at the last moment that we didn't... [LB573]

DUANE MARTIN: Okay. Okay. And I don't know how long you're all going to be seated in that position, because, you know, through certain, you know, governors, when they come in, it changes. And I also want to show this, on behalf of my people, to the audience. What I'm going to do here is I'm going to present this to the Judiciary Committee. To whichever member fulfills his (inaudible) responsibility, you have to remember, he's going to be in your dreams. In our ancient culture, we have done this. [LB573]

SENATOR ASHFORD: What I'd ask you to do, though, sir--and I fully appreciate it--is, let's pass it around. I'd ask you to...and just go ahead, and then we'll give it back, I promise. But just...I think we just have a few basic... [LB573]

DUANE MARTIN: Right. [LB573]

SENATOR ASHFORD: So, do you want us to...do you want to go ahead, or should we just look at it? [LB573]

DUANE MARTIN: Yes, while that's being circulated there. I know you guys are going to be making a decision here. And I don't know, you know, what the outcome is. But you know, I'm looking at something that I know you all have a responsibility to do while you're seated. But do not then exclude Whiteclay from any of your precious modes, your precious, you know, ideas of what you want to bring about for your measures, because my people are being victimized up there. I've led numerous protests against the...you know, for closure of the illegal alcohol sales going on, on my reservation. And it saddens me that, you know, that it's not really getting a strong, you know, "favorment." And I'm not going to go away. I'm going to continue to keep coming. And prior to when a couple of my relatives passed away, Mr. Hard Heart and Black Elk, I was very excited when Mr. Ernie Chambers arrived. And my people, in their capacity of anger, they didn't recognize Ernie like I did. And Mr. Pedersen, didn't get a chance to see him again, I worked with issues about the Department of Corrections with him. Remarkable guy. And so for future, you know, references, please take this oath seriously. And wherever you

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decide to hang my warrior up, he'll be looking at you every time you look at him. When you come to work, make that exception, because my people are going to continue to come and educate you guys more and more about this, because I am tired of burying my people. And I thank you guys for giving me this opportunity. [LB573]

SENATOR ASHFORD: Thank you. Any questions? Thank you for sharing that with us. Jim. [LB573]

JIM CUNNINGHAM: (Exhibit 20) Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I appear in my capacity as the executive director of the Nebraska Catholic Conference. I won't take much of your time. I have a statement that I've submitted. I would just ask the committee to...first of all, I'd like to thank Senator Kruse for presenting to you an amendment, and would like to ask the committee to give that serious consideration, from the perspective...a couple of perspectives. First of all, the current law regarding dispensation of alcohol to minors does make an exception for churches that use wine in their religious rites, rituals, and ceremonies. That is part of current law. Senator Kruse's amendment recognizes that and would be consistent with that. And secondly, I'd like to just mention that the definition of "social host" is broad enough to include, I think, I think it would be a reasonable and fair conclusion, is broad enough to include a religious organization or entity or church that provides wine as part of communion. And that being the case, the other section then that you would look at would be the liability for a social host, which is lines 1 to 3 on page 4. And I hope you would give some attention to that, because it appears to be a strict liability, and our concern would be, is that we're having a hard time reconciling that particular liability for a social host when the ability exists under law to provide wine, or, in our particular religious tradition, the accidents of wine, as part of a eucharistic sacrament, or communion service, or rite or ritual. So I'd ask the committee to give serious consideration to that, and to Senator Kruse's amendment to make this consistent with what the law is in that regard, and again, to thank Senator Kruse for doing that. [LB573]

SENATOR ASHFORD: Thank you, Jim. [LB573]

JIM CUNNINGHAM: In no way am I opposing this bill or trying in any way to detract from the purposes and all of those issues that I know you have to deal with. Almost all of this bill deals with retailers. There's only a very narrow part that deals with social hosts, and that would appear to be lines 1 to 3 on page 4, and that's where our concern would be focused. Thank you. [LB573]

SENATOR ASHFORD: Thank you, Jim. Senator Lathrop, yes. [LB573]

SENATOR LATHROP: I just have one question. Jim, you'd recognize that even in a religious observance you wouldn't serve enough alcohol to someone to cause

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intoxication. [LB573]

JIM CUNNINGHAM: Understood. I agree with what Senator Kruse said, that the circumstances are probably quite remote that that would ever come into play. But part of our concern is, is that the standard of liability for a social host would seem to raise the possibility that if there was any connection whatsoever--and I don't know what that might be--that there would be potential liability for the church, because it fits under the definition of "social host." [LB573]

SENATOR LATHROP: I want to run something by you, to make sure that you'd be comfortable with this. As long as the bill, in whatever form it comes out, ultimately says that the alcohol has to contribute to whatever harm, there's got to be a causal relationship between the two, that really would take the amount of alcohol the Catholic church would serve at a service out of the equation, would it not? [LB573]

JIM CUNNINGHAM: I...my first reaction to that would be yes. [LB573]

SENATOR LATHROP: Okay. [LB573]

JIM CUNNINGHAM: I...you know, this says, for example, in whole or in part. I'm not real sure or confident I know what that means,... [LB573]

SENATOR ASHFORD: I understand. I understand the point. And I think we... [LB573]

JIM CUNNINGHAM: ...in a real sense. Thank you. [LB573]

SENATOR ASHFORD: ...we can address that, I think, and with Senator Lathrop, and get that ironed out. [LB573]

JIM CUNNINGHAM: Thank you, Senator. [LB573]

SENATOR ASHFORD: Okay. Thanks, Jim, very much. Yes, Senator. [LB573]

SENATOR CHAMBERS: Mr. Cunningham. [LB573]

JIM CUNNINGHAM: Senator. [LB573]

SENATOR CHAMBERS: As an expert in religion, you perhaps can answer this question for me. Where in the law does it give any indication as to the quantity of alcohol which can be served legally as a part of a religious service, rite, or ritual? [LB573]

JIM CUNNINGHAM: I don't believe it's in the law now. [LB573]

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SENATOR CHAMBERS: So it could be a sip, it could be a glass, it could be a bottle. Who would have the right to say that the only amount of alcohol which can legally be served in church would be that amount served in the Catholic church? [LB573]

JIM CUNNINGHAM: It wouldn't...they wouldn't. [LB573]

SENATOR CHAMBERS: And who would be the arbiter to say that the only alcoholic beverage to be served legally in church is wine? [LB573]

JIM CUNNINGHAM: There wouldn't. [LB573]

SENATOR CHAMBERS: So it could be whiskey. [LB573]

JIM CUNNINGHAM: You know, I suppose you could raise any kind of a situation like that as part of a religious rite. I can't discount or eliminate that possibility. I think that what the law seeks to do is to have a balanced approach, a balanced public policy, recognizing that there are...there is a right to exercise religious convictions, beliefs, and practices. [LB573]

SENATOR CHAMBERS: Sure. And I'm saying,... [LB573]

JIM CUNNINGHAM: And I think that's what it attempts to do. [LB573]

SENATOR CHAMBERS: ...if that is what the law is going to do, it cannot distinguish one religion from another. It cannot set up a standard and say, this is considered an acceptable religious practice; that is not. [LB573]

JIM CUNNINGHAM: I'm not asking for that. [LB573]

SENATOR CHAMBERS: No, you're not. That's why I'm talking to you in terms of your being an expert on religion, more or less, because I think you follow what I'm saying, that your church's standard could not be the one imposed on everybody. And you've never asked for that, have you? [LB573]

JIM CUNNINGHAM: No. [LB573]

SENATOR CHAMBERS: And here's why I do it. Every time I hear this issue discussed, the Catholic church is mentioned, and maybe that's the only church that people are familiar with who serve fermented beverages. [LB573]

JIM CUNNINGHAM: That's possible. There are others. [LB573]

SENATOR CHAMBERS: But in reality, it cannot be limited to the amount that is served

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by the Catholic church, correct? [LB573]

JIM CUNNINGHAM: I'm not...and I'm not asserting that. [LB573]

SENATOR CHAMBERS: No, you're not. No, you never have. [LB573]

JIM CUNNINGHAM: That's right. [LB573]

SENATOR CHAMBERS: But I'm discussing it with you because sometimes we have infidels and heathens up here who don't understand these things like you and I do. So that's why I'm mentioning it. I say, if you're going to let churches have alcoholic beverages, then the beverage cannot be limited to wine because a particular church uses wine. It could be whiskey, it could be tequila, it could be rum, any alcoholic beverage. And the amount cannot be determined by the state unless they're going to put a specific amount that would apply to all religions, and they couldn't do it in a way to favor one and disfavor another. In general, would you agree with what I've said? [LB573]

JIM CUNNINGHAM: In general, I would. Obviously, the right to the free exercise of religion is subject to some state control and action, within whatever parameters that that free exercise of religion can be subject to. But as a general purpose, yes. I mean, I guess I'm here because from our particular religious tradition, we recognize the possibility, or at least...maybe not the likelihood, but not all possibilities are eliminated under this bill, that something that is related to our religious practice could be affected. That's why I'm here. That's why I ask you to consider Senator Kruse's amendment. [LB573]

SENATOR CHAMBERS: And I will consider it. [LB573]

JIM CUNNINGHAM: I suspect that just as a reality and a practical consideration, that in most religious traditions, when you're talking about communion or the equivalent thereof, it would be wine. But I can't say that absolutely. [LB573]

SENATOR CHAMBERS: That's under the Christian tradition. [LB573]

JIM CUNNINGHAM: I can't say that absolutely. Well, Jewish tradition, as well. [LB573]

SENATOR CHAMBERS: But there could be other religions which do not recognize the Bible as the authority. There could be an indigenous religion that has nothing whatsoever to do with Judaism, Christianity, or Islam. Those might be the ones that people always mention, but there are many other religions. Even the "Bible" says, there are lords many, there are gods many. So there are religions many, and one should not be favored over the other. If the state is going to allow a religious exemption,

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it has to apply to anything that declares itself to be a religion, in my opinion. And if it does that, then I say, fine. And Mr. Cunningham, I'm going to let you go after this, unless somebody else has a question, which I have no control over. If I were a dictator, I would want and I would encourage and I would sponsor an authoritative religion, because it teaches people to recognize authority, to not question, and to do the will of those who are in charge. So were I a dictator, my dictatorship would be the most religious entity that had ever appeared on the face of the earth, and I'd have the most successful dictatorship. I would have no disorders. I would have no riots. I would certainly not have any coups or revolutions. But most dictators haven't thought that through well enough yet. But that's all I have. [LB573]

JIM CUNNINGHAM: My only response, Senator, would be, is that my expertise is fairly well extensively...it's really limited. (Laughter) Thank you. [LB573]

SENATOR ASHFORD: I can't imagine there are any other questions. Thanks, Jim. [LB573]

JIM CUNNINGHAM: Thank you. [LB573]

SENATOR ASHFORD: Senator Kruse. And then you have the next bill after that. [LB573]

SENATOR KRUSE: (Exhibit 21) I think so. [LB573]

SENATOR CHAMBERS: Don't push your luck. (Laughter) [LB573]

SENATOR KRUSE: (Laugh) Yes, that's right. Thank you, Mr. Chairman and members. Thank you for a much better discussion and those who have participated than I really anticipated. I assumed we'd talk about it, but your questions and your obvious perception...and I'm not laying on a nice line; there's obvious perception here of the issues, and I appreciate that. A few comments, just in response. I won't extend any of them. A comment about drugs. Drugs is not in there. That's out, at least if you accept the one amendment. Number two, insurance. We were told...you know, keep hearing about Iowa, so we were told that there are only two companies in Iowa that would insure a bar after this dramshop. So my staff checked it out. There are 50. There's obviously going to be some insurance cost here, because at present time, for the last 70 years, there is no liability, guaranteed no liability. But by putting in the affirmative defense, and you've noted that, it would really be a limited liability there. And we've had various quotes, and I'm not going to get into that, but they were all very low. Next, the question about shifting liability away from the offender, and those things. No. And you recognized that. There is no shift, and we want to keep the pressure on the offender much more so. Another question, what does intoxicated mean, what does it look like? It is defined, and we will...in regulations now, and we will provide you with a copy of that so you don't

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have to look it up. What's new in this from previous? The insurance requirement was in there last year, that there be insurance, and that has been dropped. Whiteclay, I never even thought about it, and never occurred to me until it starts to come up today. It...this would apply to the seller of package, and certainly there would be some application in Whiteclay that I can see that might be helpful. Third, in terms of restaurants, I'd just make my own personal witness: I cannot imagine any respectable restaurant that wants drunk people coming out the front door when other people are coming in. (Laugh) And I know they have ways of keeping that from happening. So let's do it, you know. I just...you know, bars don't have quite that same standard, but a nice restaurant is going to watch out for that. Two things that...trying to do within this. One, social hosts, that providers of alcohol to teens are just going to have another serious challenge to watch for and take in mind before they do such foolishness. And number two is the server training. I come back to that. You've come back to it several times, don't need to say more about it. While some were saying, and it's been implied several times, and they said to us ahead of time, why don't you make it mandatory, just mandatory server training? I think we are. (Laugh) I am not interested in increasing the staff of the Liquor Control Commission to go out and inspect 5,000 bars. I'm not interested in more police officers. I am interested in this clever little way of saying, you either get all your servers trained, or you could be in deep trouble. And great appreciation for the person representing small businesses. We have thought about that many times. This is within the range of any small business. It's on the web site. It...you know, there's...it's available. It's not expensive. Any small business can do this and protect themselves, so we're not about to put anybody out of business that way. I do welcome recommendations to...and amendments. I'm doing this next thing...last thing a little hesitantly. I'm passing out the working copy of the course. Do understand, this is not official for another week. But we got the copy yesterday afternoon. And there have been several questions about it. You will find on there that a book for minor ID is a part of the training, and you'll recognize in the bill, it says, if you've been trained in this, you better do this. So we think we've got those bases covered. But if you find a way we are not...but please do understand, this is not an official document. This is a work in progress that they're sharing with us in order to let us know that they are working to have a responsible course. These other courses are wonderful, but...and they have a right to authorize more than one course. But they are the ones to do it, and they are the ones to credit it. Thank you, sir. [LB573]

SENATOR ASHFORD: Thank you, Senator Kruse. Yes. [LB573]

SENATOR CHAMBERS: Not to extend the discussion, Senator Kruse, but to kind of sum up what I've gathered from what you and those who support this bill have said, your aim is not to encourage litigation, but to try to prevent the sale of these beverages to people who ought not to be served because of their condition, and you would rather that no litigation ever result,... [LB573]

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SENATOR KRUSE: Yes. [LB573]

SENATOR CHAMBERS: ...because the bill is being complied with. Is that right? [LB573]

SENATOR KRUSE: Absolutely. We want that server to be the frontline protector of the public good. [LB573]

SENATOR CHAMBERS: Okay, that answers me. Thank you. [LB573]

SENATOR ASHFORD: Well said, Senator Kruse. [LB573]

SENATOR KRUSE: Thank you. [LB573]

SENATOR ASHFORD: But don't go far. Oh, you have to get your other information. I'm sorry. [LB573 LB260]

SENATOR KRUSE: I'll get it...I'll change packets, if you're...are you ready to go on? [LB260]

SENATOR ASHFORD: We are ready. We're always...we never stop. We never take breaks. We just keep going. [LB260]

SENATOR KRUSE: Holy smoke. Oh, that's off the record. (Laugh) [LB260]

SENATOR ASHFORD: We're on to LB260. How many LB260 people do we have here? Marty is here. Okay. Two. Senator Kruse, proceed with LB260. [LB260]

SENATOR KRUSE: Thank you, Mr. Chairman. I get so excited about some of these things I forget who I am. My name is Lowen Kruse, representing... [LB260]

SENATOR ASHFORD: You sound like me, Senator Kruse, and I don't know... [LB260]

SENATOR KRUSE: ...District 13 and I'd like it to be on the record. All right. And this will be a relief to deal with after what we have been dealing with in terms of complexity and so on. This is the simplest of things. It is to deal with a loophole that you and we caused last spring. This is not my bill. It was Senator Friend's bill, but it was written by the Attorney General. And he carried it on behalf of the Attorney General about repeat offenders if you remember that. We have discovered this year that there is a loophole in there and this is to cover that since, you know, my urging would be that we don't proceed with it as a regular bill, but that you find a way to accommodate it within an amendment someplace or within your composite bill or something like that because it's just a way to correct what we did last year. I'm not even going to open the thing and look at it. I'll just tell you what it does. We said...we put special sanctions on people last, in

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this other bill, who were repeat offenders and at a high alcohol BAC, over .15. It got a strong response from the floor and everything went fine until we started to apply it and then we found that some attorneys were advising their clients to refuse the test. It annoys me a bit but I'll try to get over that. Attorneys are trying to teach somebody how to drive impaired and reduce the risk. These are people that are having trouble because they are going to be over .15. So if they refuse the test under present law, refusal brings a .08. So for those who are repeat offenders, we say the automatic thing is .15. If the person feels they are not at that, they can just go ahead and take the test and show that they're not and that's it. You're chairman. Thank you. []

SENATOR LATHROP: I'm the chairman. You're done. [LB260]

SENATOR KRUSE: Yeah, you are. [LB260]

SENATOR LATHROP: Okay. Any questions for Senator Kruse? Typically in the law the way the DWI statutes are set up, the refusal generally has, it corresponds penaltywise to a conviction for the offense. [LB260]

SENATOR KRUSE: Yes. [LB260]

SENATOR LATHROP: It kind of gives you an incentive to take the test. And what you did last year is we passed a bill that didn't have that corresponding requirement in it. [LB260]

SENATOR KRUSE: For that level of offense. For third or fourth offender, it's not really a second, it's third or fourth offender could, if they really know they've had too much, they could duck it out...duck out by taking our present thing so... [LB260]

SENATOR LATHROP: Not anymore with this. [LB260]

SENATOR KRUSE: That is correct I hope. [LB260]

SENATOR LATHROP: All right. We'll hear what Mr. Conboy has to say too. Thank you. [LB260]

SENATOR KRUSE: Thank you. [LB260]

MARTY CONBOY: Good evening, Senators, Mr. Chairman. My name is Marty Conboy, C-o-n-b-o-y, the city prosecutor in Omaha, and here I guess just to affirm the statement made by Senator Kruse. I'm grateful for his effort to shore up this current law. This really isn't a loophole. I guess it's just the natural give and take among people who are hell-bent on breaking the law and legislators who are attempting to try and discourage it. By passing that law last year, it did increase for those people who have especially

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multiple offenses and continue to drink extraordinarily high amounts or large amounts of alcohol. And now they just refuse the test. And it is, I guess, not a huge number of people, but they are among the most serious offenses, obviously, those repeat offenders who have very high BACs. And it is true attorneys will confess that they are I think reasonably telling people that that is one way to avoid those penalties. It's not improper for them to do that, to inform their clients of how the workings of the law are. But I think it's this body's duty to recognize that that's kind of the next step in the law. I'd be glad to answer any questions if I could. [LB260]

SENATOR LATHROP: Thank you, Mr. Conboy. Any questions? Seeing none, thanks. [LB260]

MARTY CONBOY: Thank you. [LB260]

KEVIN QUINLAN: (Exhibit 22) Good afternoon, Mr. Chairman. My name is Kevin Quinlan, that's Q-u-i-n-l-a-n. I'm the chief of safety advocacy at the National Transportation Safety Board. Earlier I mentioned two documents that are in your package for another bill. And if you look at the back of this document, implicit in there it says "Legislation to create stricter sanctions for those arrested the first time with a high blood alcohol concentration of .15." If you don't get the test, you don't get the BAC. It's really that simple. We strongly support obtaining the test. It's an important piece of evidence for prosecutors. In addition, it's a very important piece of evidence for treatment personnel. Why is this important to the Safety Board? We are currently investigating aviation crashes in which the pilots were impaired. And what we've found is system failures. I can't be very definitive about this because it hasn't been considered by our five-member board. But I can say we found system failures where a BAC is not taken or a BAC test is taken and it's not put into the system either in the state at the national driver register or at the Federal Aviation Administration. We are the appeals authority on airman certification denials for the...from the Federal Aviation Administration. What we've found is that the substance abuse treatment professionals who see pilots need this information. They need the BAC test because it tells them whether they're being conned or not. And in the cases that we've looked at so far, we've seen, as I said, system failures and professionals being conned because they didn't know how bad the individual's problem was. So we support this bill. We recommend that you...we ask that you pass it to the floor. Thank you very much. [LB260]

SENATOR LATHROP: Thank you very much, Mr. Quinlan. Any questions for Mr. Quinlan? [LB260]

KEVIN QUINLAN: I try to be mindful of your time. I've been on that side too. [LB260]

SENATOR LATHROP: Thank you very much. We appreciate that as well. Any other proponents? Any opponents? Any neutral testimony? Senator Kruse, would you like to

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close? [LB260]

SENATOR CHAMBERS: You don't have to. (Laughter) [LB260]

SENATOR KRUSE: (Exhibit 22A) I'm waiving closing, but my legal guru tells me that I should have pointed to an amendment so I pass it out. Thank you. [LB553]

SENATOR LATHROP: Thank you. I think Senator Flood is in the hall. Let me let him know he is up next. []

SENATOR CHAMBERS: Tell him the clock is running. []

SENATOR LATHROP: I'll tell him he's got five minutes to start. Welcome, Speaker Flood. Go ahead. [LB553]

SENATOR FLOOD: (Exhibit 25) Thank you, Vice Chair Lathrop, members of the Judiciary Committee. Good afternoon. My name is Mike Flood, F-I-o-o-d, and I represent Legislative District 19, including the city of Norfolk and all of Madison County. I'm here today to introduce LB553 which, for the record I would add, may be the only time in Senator Chambers' history here in the Legislature where I believe the Department of Motor Vehicles, Mothers Against Drunk Driving, and the defense bar will all be opposed and united on the same side, which is itself amazing. This bill proposes to repeal in part the administrative license revocation process. Let me start out by explaining what I set out to accomplish with this bill. I wanted to get rid of the administrative hearing required by the ALR statutes. And I wanted to replace it with a process whereby the court takes a defendant's driver's license away as a condition of bond in drunk driving cases. I'm sure that people after me will go into greater detail as to how the ALR process works. Here's how I see it. We have set up a separate quasi judicial system to take away the licenses of drunk drivers when we already have courts that are in the business and perfectly capable of performing that function. Law enforcement officers are forced to take time away from work for these ALR hearings, and during the hearings the officers are raked over the coals by defense attorneys who know they aren't going to win the ALR fight. These attorneys also know, however, that they can take advantage of the opportunity for discovery purposes. They often use this information disclosed during the ALR hearing to get their clients off during the criminal proceedings. And then you know what happens, of course--their clients get their licenses back. I'd ask the page to hand out this set of papers. This is what's happening, but if you're still a little skeptical, please look at what I'm having the page hand out at this time. This is something that I found on the Internet, although I note that it is geared towards Texas's ALR process. There is apparently a manual out there specifically designed to aid defense attorneys in exploiting the ALR process for discovery purposes. In the handout it says, "As you know, an ALR hearing is an important discovery tool. This book takes you from the initial stop, through the hearing, and beyond to the

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occupational license request." Now I certainly don't blame the defense bar for doing this. They have an obligation to represent their clients zealously, and they have figured out a way to use the ALR process to their advantage. They make a record by cross-examining the arresting officer, which then forces the county attorney to obtain a copy of the ALR hearing transcript before the criminal court proceedings. The defense bar has found a discovery loophole of sorts and I want to close that loophole. Now I acknowledge that LB553 needs significant work. I know that in Douglas County very few defendants in drunk driving cases are brought before a judge for booking and LB553 does not account for that. I know that we have some problems in the bill relating to the ignition interlock provisions and the provisions governing employment driving permits. I also know that there are due process concerns we need to address. I want to work with the committee to fix these things because they firmly believe that we need to modify this process to stop it from being used as a discovery tool in criminal cases. Now in addition to that, what I'm essentially proposing here is that the suspect is arrested on suspicion of drunk driving. The operator's driver's license is taken away by the officer as is currently done now under our procedures. And that as a condition of bond upon their release from the jail, in addition to the provision that says you shall not leave the state of Nebraska, that you also have the requirement that you shall not operate a motor vehicle in the state of Nebraska. I introduced a legislative interim study, LR348 that proposed to take a look at the ALR process. Although we didn't have a hearing, I did spend a considerable amount of time talking with these folks as well as the DMV in trying to come up with a solution. LB553 is the result of those efforts. I want to note a few things here before my testimony is over. First, I need to point out that the bill also allows judges to deny bail when releasing the defendant would cause an immediate threat to public safety. That's a significant public policy change, one of which I'm sure a few members of this committee would have significant concerns with. (Recorder malfunction--some testimony lost) ...in cases where the driver does not consent to the chemical test or when he or she is pulled over for drunk driving. Preliminary drafts of LB553 repeal this portion of the process. The DMV, however, pointed out that the ALR sanction for failure to consent can actually be greater than the criminal penalty. And so at their suggestion, LB553 retains this process in those failure to consent cases. And third, I want to acknowledge and thank the DMV for their cooperation. I met yesterday with the director of the department. She pledged her continued support as we work on this bill. This bill is not intended to be an attack on what the agency does nor anybody personally at the DMV and I appreciate their work. Finally and perhaps most importantly, I want to make clear that I am not against punishing drunk drivers. That is most definitely not what this bill is about. This bill is about just the opposite. I want to make sure that we keep drunk drivers off the road, but I believe we can do that without setting up a mini trial before the actual trial in the court of law. I think we can do it so that we have the court system handle our criminal cases and not have these administrative subhearings prior to the real hearing where we can address some of these issues. With that, I emphasize my willingness to work on this bill and would answer any questions that you have. [LB553]

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SENATOR LATHROP: Do any of the members have questions for Senator Flood?
Senator Chambers. [LB553]

SENATOR CHAMBERS: Senator Flood, because others may have questions, too, I'm not going to ask all of mine at the oustart. But on page 2 of your bill is where you allow the judge to refuse bail if the person would constitute a threat, an immediate threat to public safety. When a person is appearing for bail, that person ordinarily has not been tried yet. [LB553]

SENATOR FLOOD: No. [LB553]

SENATOR CHAMBERS: So the court cannot use bail to punish a person. [LB553]

SENATOR FLOOD: Not under the current statutes. [LB553]

SENATOR CHAMBERS: And the aim of bail is to ensure that the person will show up for a hearing, whether it's a trial, preliminary, or whatever. [LB553]

SENATOR FLOOD: Yes. [LB553]

SENATOR CHAMBERS: You are taking us a considerable distance from that with the provision you are inserting on page 2. [LB553]

SENATOR FLOOD: I am. [LB553]

SENATOR CHAMBERS: Would you be interested in your bill if that provision were stricken? [LB553]

SENATOR FLOOD: I don't know how to accomplish the revocation, the bail condition that I'm talking about, the bond condition of restricting somebody from driving a motor vehicle, if not to protect the public safety. My bill doesn't work, I don't believe, logically if the threat of public safety is not...the concerns to public safety are not addressed on page 2. I could be wrong on that analysis, but I don't know how you take somebody's license as a condition of their bond on the assumption that it's going to make sure they appear. [LB553]

SENATOR CHAMBERS: Now I see this as an issue of constitutional proportions. And sometimes in vindicating a person's constitutional rights others may say to do that is going to put a person who is a bad actor in a position to do and then they mention whatever may happen. So they're opposed to giving an accused Miranda warnings. They don't think that there should have to be a warrant to conduct a search if rumors in the community indicate that somebody is bad and just kick the door down and go in.

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Constitutional guarantees are to prevent such things as that from happening because they result in an injustice to a person no matter how society may regard that individual. So if this is key to your bill working, I don't see any way that I could support it. I will not support this provision. And I'm not going to be argumentative and I wanted to pose it as a question initially, and you did answer it. You see it as crucial to your bill functioning the way you intend it to work. Okay. At this point, that's all that I will ask. [LB553]

SENATOR FLOOD: All right, thank you. [LB553]

SENATOR LATHROP: Any other questions? I might have just a few for you. The way the system is set up presently, someone is picked up for DWI. Don't the officers take their license right then... [LB553]

SENATOR FLOOD: Yes. [LB553]

SENATOR LATHROP: ...and then give them back some, maybe a photocopy, some temporary version of a license that's good for 30 days? Is that right? [LB553]

SENATOR FLOOD: Yeah. It's like a carbonated form where you get the blue copy I believe. [LB553]

SENATOR LATHROP: And they presumably have their ALR hearing within 30 days and they can get ahead of the revocation with that hearing within 30 days. [LB553]

SENATOR FLOOD: I believe, not that I've ever had a DUI, but I believe you have ten days from the date of the stop to request an administrative hearing. [LB553]

SENATOR LATHROP: Okay. And then that hearing happens before the revocation takes effect, which is 30 days. [LB553]

SENATOR FLOOD: Yes. [LB553]

SENATOR LATHROP: And incidentally, you and I did have a short conversation about this today. The reason we have that ALR process in addition to the criminal proceedings is so that we can get some federal funding. Do we have some road funds... [LB553]

SENATOR FLOOD: Federal funds are tied to the immediate revocation of the operator's driver's license. [LB553]

SENATOR LATHROP: Okay. So it's important that we have some system in place and you're just proposing a change to it. [LB553]

SENATOR FLOOD: And the other thing that I was thinking about, if I may, Senator, and

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I guess I'm interested in ideas. I just don't like the idea of the separate executive branch court hearing that's really not a court hearing, but it is kind of a court hearing, to decide whether to take an operator's license. Maybe what we need to do is have both sides submit an affidavit, a sworn statement that outlines what occurred. And then the department can make a decision on that and base any other subsequent decision off the conviction in the court. I just don't like this business of testimony and cross-examination and all the other stuff that goes with ALR in the administrative executive branch. [LB553]

SENATOR LATHROP: Is it the fact that we hire people to do that or is it the fact that the defense lawyers have an opportunity to do discovery that's causing you the heartburn? [LB553]

SENATOR FLOOD: Well, both. We have seven or eight hearing officers that travel the state and have these little hearings everywhere. And I guess you can do them by telephone now. Officers by their very nature, the ones that make a lot of DUI arrests, are working at night. So they get off work at 6:00 or 7:00 or 8:00 in the morning and then they're up at 10:30 or 11:00 or 1:00 or 2:00 or 4:00 to do the ALR hearing and it's tough on them. They don't have any representation at the hearing. It's basically held so that if the officer doesn't show up you can get the ALR dismissed. County attorneys don't like it because the state is unrepresented at the hearing technically because the officer doesn't have any attorney watching his or her statements or prepping him or her for testimony. And then when they get to court, they've got a record that's been made outside of their presence that they have to review, understand, and be able to dissect to be prepared for any defense effort on behalf of their client. And then I guess on the other side of the coin the defense bar knows that you never win these things anyway because the scope of the department's work is limited to probable cause, and not even probable cause. Was the driver drunk at the time he was driving a car essentially is the real issue, and did the officer have enough reason to pull him over? And I've never...the probable cause part doesn't even really get heard. [LB553]

SENATOR LATHROP: It is not an issue that they take up in the ALR hearing. [LB553]

SENATOR FLOOD: It doesn't seem from my limited experience that the probable cause issue has been given, you know...if we aren't talking about the Fourth Amendment, then why are we there to start with in a lot of cases? So I don't know. I have concerns about it from both sides. I just think there's a better way to use state resources to ensure people don't drive drunk. [LB553]

SENATOR LATHROP: And you feel like, first of all, because they're intoxicated presumably that we then effectively label them as a danger to public safety so that they require bail and then use the bail process to take their license. That's how it works? [LB553]

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SENATOR FLOOD: Essentially. [LB553]

SENATOR LATHROP: Okay. [LB553]

SENATOR FLOOD: And I have a legal brief on this and how this works with the Eighth Amendment that prohibits excessive bail. But I will send each committee member, after I have it photocopied, that you can...I shared a copy with Senator Chambers this summer. But I will get that to each of you tomorrow so that you can review it. [LB553]

SENATOR LATHROP: That is all the questions I'd have. Thanks for the further explanation. Senator Chambers. [LB553]

SENATOR CHAMBERS: Mister many waters, I mean Senator Flood. [LB553]

SENATOR FLOOD: Yes. [LB553]

SENATOR CHAMBERS: The Nebraska...a state can provide greater constitutional protection than the federal constitution because the federal constitution is simply the minimum that every state must guarantee, but the states can build on that and give additional protections. Article I, Section 9 of Nebraska's Constitution says "All persons shall be bailable by sufficient sureties, except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great. Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishment inflicted." So these...regardless of what your brief might say with reference to the Eighth Amendment to the U.S. Constitution, I believe that the Nebraska Constitution and the statutory scheme that we have would prevent a judge from saying you're denied bail because you might be a threat to the public. The constitution mentions the offenses which may be unbailable, but it doesn't mandate that that be the case. So this is the sticking point with me in your bill. But for the record, I might have been the only one who was opposed to adopting the ALR in the first place. But my motivation was different from all those who like it. I didn't think that a person should be presumed guilty and have a punishment inflicted, which is the loss of a driving privilege, without having been convicted. I don't drink, never have as I've stated, and that's not by way of boast, but to indicate that I'm not sympathetic to people who drink and drive and do pose a threat to the public. But I think in an orderly, civilized society that order is going to be maintained through documents such as constitutions. And if the constitutions are not observed by the legally constituted authorities, there can be no order. There then becomes not just chaos, but selective enforcement, arbitrary, capricious applications of the law. So I didn't like ALR because it presumed that a person is guilty and a punishment in effect was imposed. And if your license is suspended and you're caught driving on a suspended license, you can be locked up for six months. So it was kind of a cumulative...an accumulative effect that I

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saw. I'm grasping what you're saying about your objections. I'm not sure that in the form of your bill I can support it. But I'm listening to you and I'm going to listen to the others. But they need to know that even if I'm on the same side of the fence it's not for the same reason that theirs are. Just like if you have a guard in a prison yard and an inmate in a prison yard, they're both there, but they're for a different purpose. [LB553]

SENATOR FLOOD: May I make one clarification on... [LB553]

SENATOR CHAMBERS: Sure. [LB553]

SENATOR FLOOD: You raised a good point. You talked about is this an excessive bail under Nebraska's Constitution which is different than our U.S. Constitution. The conditions of bail or bond right now, if you get out of jail on bond, you...one of them is you can't leave the state of Nebraska. I think you could argue that constitutionally a restriction on interstate travel is a greater restriction on one's liberty than for stopping somebody or prohibiting somebody from driving a motor vehicle, which is a privilege, not a right. And I guess I make that distinction knowing that how strongly you feel that restricting someone's driving privileges is a core right or punishment. [LB553]

SENATOR CHAMBERS: But in limiting the amount of travel and where a person can travel would go directly to whether or not that person will be available to appear. And that's what the purpose of bond or the bail is--to make sure that person shows up and not to be a substitute for a trial, a conviction, and the imposition of a sentence after a person has been given his or her rights. So I can see restricting where a person can go because there might be a facilitating of that person not showing up for the hearing. And I'm not trying to be argumentative. [LB553]

SENATOR FLOOD: And maybe not letting them drive would also be a good restriction on their travel. [LB553]

SENATOR CHAMBERS: Well, we see that differently because you want to carry it a step behind what I'm willing to do at this point. But that's all I would have right now. [LB553]

SENATOR FLOOD: Thank you very much. [LB553]

SENATOR ASHFORD: Thank you, Speaker Flood. Speaker Flood waives closing, too, I understood. [LB553]

SENATOR FLOOD: I would. [LB553]

SENATOR ASHFORD: I thought that's what you were saying. I didn't want to presume it. [LB553]

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SENATOR FLOOD: Thank you. [LB553]

SENATOR ASHFORD: Proponents. [LB553]

SHAWN EATHERTON: Good afternoon, good late afternoon. My name is Shawn Eatherton. I'm the Buffalo County Attorney, and I'm here on behalf of the County Attorneys Association. First if I may, if Senator Chambers would allow me, I'd like to address a couple of things he brought up that actually I think I agree with. I think they're good points with respect to our constitution and bail. And I think Senator Flood pointed out that there are some issues with the bill and certainly the dialogue should be open. I would note a couple things with respect to our case law. Bail is really the one time where the presumption of innocence does not apply. So it is somewhat different, not that we should throw the rights out. I'm not saying that at all, but it is a little different from a legal point of view. Additionally, we routinely put limits in bond. And like I said, it's my position that just because this particular bill would allow for the court to consider somebody is a danger to the public, that does not mean that they are being denied bond because there are only certain things pursuant to our constitution that a court could deny bond. But they could certainly use those factors to consider somebody's ability or safety to the communities. I mean routinely in our courts, judges will issue a no contact order as a condition of bond, for example, in a third degree assault or domestic assault case. And certainly that is a higher level of restriction I guess I would argue, whether it's First Amendment or restricting somebody's movement than dealing with their driver's license. So I do...I understand or at least I respect where Senator Chambers is coming from. I think at least from the County Attorneys Association's position, we look at it somewhat differently. With that being said, I guess initially LB553, in the County Attorneys Association's position, actually strengthens our DUI bill. Right now we have a situation where...I mean first it would give an immediate impoundment, if we can get by those issues, even faster than the current setup because of the temporary license provision that's currently involved. And the asking for a subsequent hearing, that can be extended out so that in essence you don't lose your license immediately. A bigger concern, discovery issues for the county attorney, for the prosecutor, which I'll deal with, if I may, in a second, and then the duplication of services which is extremely, I guess, painful from a public servant's point of view. Right now, as Senator Flood described, we have a dual system with respect to the ALR and our courts. Our courts currently, however, have a mandatory setup, either probation or for a straight sentence. And with those mandatory provisions, they are all, with respect to the driver's license, either excluding one, but for one, either the same or more restrictive, longer terms than the ALR. The dual system right now, we have law enforcement officers, and pulling from the Department of Motor Vehicles' annual report of 2005, that's the most recent that was available, I believe it said that there were approximately 6,500 hearings. Currently, most law enforcement agencies get overtime if you're not working and you have to do something, you either get two, three, or four hours depending on your setup so I'll be the

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most conservative possible. You do a hearing, whether it takes 15 minutes, you get a minimum of 2 hours. I'll use the most conservative number. That's 13,000 man-hours that right now that our local taxpayer generally, local taxpayer front in dollars for the ALR procedure. I am not anti-DMV. I think some of their programs are absolutely outstanding. It's this part of the ALR that just can no longer, I believe, serve us. And I guess finally it impacts prosecutors because we get two things. We get DMV subpoenas that take time for my office to review and prepare. And more importantly, we strengthen these DUI laws to make them felonies and now we're giving discovery, where in essence discovery is going around us, before we even get to the felony. So we're not getting reciprocal discovery in the district court because the defense attorney doesn't have to ask for anything. From a legal point of view, that's a serious problem because we no longer have any of the...we would have those same things in a homicide, and yet in a felony DUI we're not going to have any reciprocal discovery. So this gives me great concern as well as the County Attorneys Association. And I guess with that I would entertain any questions. [LB553]

SENATOR ASHFORD: Any questions? Thanks. Thanks for your comments. Yes, Senator. [LB553]

SENATOR CHAMBERS: There are cases where you might be dealing with U.S. Supreme Court judges and some will take a different view of what the constitution means from the position of the majority and constantly write dissenting opinions so they may differ. And I disagree with some of the conditions that are attached to the granting of bail or bond. So my view is stricter when it comes to dealing with people and treating them as if they had been convicted. Prosecutors like it easy. And I think because down through the years it became clear that they would cut corners, the code of professional responsibility places very stringent duties on public prosecutors and points out that they must meet a higher standard because they represent the sovereign. And the idea is not just to procure a conviction, but to see that justice is done. And courts have said in order to do that if there's exculpatory information in the hands of the state the state must make this available to the accused or the accused's attorney because the state is proceeding in a way to try to deprive a citizen of his or her life or freedom. And the state has all of the resources at its disposal. So if I'm going to err, I'm going to err on the side of protecting the citizen against overreaching by the state. So we may have a different view as to the purpose of bond. But I never want to see it used to treat a person as though he or she had been convicted when after all is said and done, the person may be totally exonerated and found not guilty. So it's probably a point we will never agree on, but just to clarify my position if it was unclear. [LB553]

SENATOR ASHFORD: Senator Lathrop. [LB553]

SENATOR LATHROP: I do have a question. Are you aware that the ALR process is in place so that we can receive federal funds? [LB553]

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SHAWN EATHERTON: Well, I was under the understanding the ALR process was in place to help, you know, to keep...to work against impaired drivers, not just so we would get funding. But I do understand that there historically have been funding ties. [LB553]

SENATOR LATHROP: I'm looking at this...the fiscal note indicates that we received a million dollars...approximately a million dollars a year call it. We got a million dollars in 2006; \$6.4 million since 1993. I'm wondering if the federal government talked us into a program and they dangle a million dollars a year in front of us, and it's costing us a lot more than that to administer because it looks like we're going to save more than that if we eliminate just a part of the ALR proceedings. [LB553]

SHAWN EATHERTON: Similar to that would be...I would agree with that statement. I'm not so sure we were talked into something. I think the law has caught up. I think the Legislature has caught up and made the license portions and such run with. Now I would also note those dollar figures are not just ALR. It's my understanding there are multiple factors, including our stricter DUI bill that passed last year so we hit other factors. So we're still getting funding. It's just a portion of that as I understand it, and that's certainly not my area, but that's my understanding. [LB553]

SENATOR LATHROP: Is there anything...under the present system, a person gets to keep their license for 30 days the way it's being used or applied by defense lawyers. Is that right? I mean they'll typically ask and they'll file the petition within ten days and their clients will keep their license for 30 from the date of arrest. [LB553]

SHAWN EATHERTON: They have a temporary, they get a temporary license, they do. [LB553]

SENATOR LATHROP: Okay. Is there anything stopping us from just having a trial within 30 days? (Laughter) No, that giggling, I've been in the county courts in Douglas County. I know typically they'll do an arraignment. That will be a month later instead of a week. And then there will be a trial six weeks later. [LB553]

SHAWN EATHERTON: There are certain things, but... [LB553]

SENATOR LATHROP: But isn't the ALR really a response to the fact that the county courts are taking too long to get to these cases? [LB553]

SHAWN EATHERTON: Well, maybe. But one thing that's somewhat different with the ALR is in the court you have the right to an attorney whereas in the ALR you do not. There's not going to be one appointed for you. And so there will be one appointed for you in the court system. And so I guess if a person has means and can go the ALR route and have the hearing, then they're going to. But a person without means is not

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likely going to. So I'm not sure it's just to make it go at a faster rate because there's ways to continue the ALR hearings as well. I certainly do not like extended dockets, but I understand it's different in every county and every community. [LB553]

SENATOR LATHROP: Okay, thank you. [LB553]

SENATOR ASHFORD: Thank you. Thank you very much. [LB553]

SHAWN EATHERTON: Thank you. [LB553]

SENATOR ASHFORD: Further proponents? Opponents? How many other opponents are there? [LB553]

BOB LAUSTEN: Good evening, Senators. My name is Bob Lausten. I'm with the La Vista Police Department. I'm representing the street officers in La Vista. In 2005, 43 people were murdered in Nebraska; 31 of those crimes actually occurred in Omaha. In 2005, 276 people were killed in 238 vehicular crashes; 78 out of those 238 crashes involved drivers that had BACs of .08 or above. When officers arrest a drunk driver, at least in La Vista and in Sarpy County, the driver is taken to the police station or to the sheriff's department. They're given the chemical test or they're taken to the hospital. And then in Sarpy County, they're actually going to be jailed and they have to post a \$2,000 bond. They get out on 10 percent so it's \$200 cash, they're out. It's about two hours process after they get there after the deputies get done doing the booking. In some cases around the state, the defendant will just be released on a signature on the ticket so they're not going before a judge, they're not getting bond set by the judge, it's already set. For second offense DUI, it's a \$3,000 bond. They get out on \$300. For third offense DUI, it's a \$5,000 bond. They get out on \$500 so they're good to go and they leave the jail. It's nothing about seeing a judge or having a bond hearing, for instance, what's proposed in this bill. Some police and county officials may say that the ALR process drains the overtime budgets. It does. It does have an impact. Our officers do have to get up in the morning after they've worked a night shift and go to court. If they don't go to court and don't show up, they're going to be disciplined because they have to go to court and they're ordered to go. It's part of our job. It's part of doing business. Having to go to an ALR hearing, having been at ALR hearings and testified at ALR hearings, some do take 15 minutes, some take 45 minutes, some have taken over an hour. They are, if you want to use the word kind of a pain to go to, but again it's part of doing business. It's part of the arrest process. It's part of the right to have a driver's license. Law enforcement has spent a large amount of time and training learning to investigate new techniques to investigate domestic violence cases. After many DV arrests, a no contact order is issued or protection order keeping the suspect away from the victim. In a DUI case, the ALR tool is much the same. It may be a no contact for them to drive to keep them away from society. A member of the Legislature recently stated, Why do you think the state has police powers? To protect people from being

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harmful. I do believe that this bill, if enacted, does not really protect society by getting rid of ALR process and leaving the decision making to a judge to set bond. Thank you. [LB553]

SENATOR ASHFORD: Thanks, Bob. Any questions of Bob? Thank you, sir. Next. Marty. [LB553]

MARTY CONBOY: Good afternoon again, Chairman, Senators. My name is Marty Conboy, C-o-n-b-o-y. I'm here on behalf of the city of Omaha city prosecutor's office, here in opposition to LB553. But I want to preface what I'm going to say by saying that I know Senator Flood has worked for over a year trying to come up with a solution to what is obviously a flawed process and has invited me and others to contribute suggestions and ways to try and improve our ALR process. You've heard problems with cost, discovery, delay, appeals, hearings and other concerns that have been expressed. Those things need to be addressed and there are others as well. I know they do a lot of blood tests in Buffalo County. It's very ponderous to use blood tests for any ALR process. In addition, however, I'd like to point out a couple of quick things. The ALR process, like any law enforcement, is going to have some cost to society and there are also some benefits to society. Those who follow me will talk in detail about those benefits, but they are demonstrable and they're very important, especially when you're talking about lives and the well-being of citizens that trust this Legislature to do its best to protect them and ALR has been a good tool for that. I would urge that you consider this as an important issue that needs to be addressed. But I would also propose that this is not the solution. This bonding process which does not go on in Douglas County, we do about 5,000 DUIs a year, almost all of them never see a judge prior to trial, prior to arraignment to have a bond set. And to start that process would be very costly and ponderous and punitive from people who at that stage don't necessarily deserve to be punished. As Senator Chambers has pointed out, it is prohibitive to punish people at that stage. There's also two other provisions of this bill that are extremely important. The first is on page 18 and the second on page 20. This bill, for reasons that have nothing to do with ALR, would restore immediately the opportunity to operate a motor vehicle upon conviction through either a work permit or an interlock device. Whether it's your fifth offense aggravated or your first offense, you would be able to walk out of the courtroom after conviction and get in your car and legally drive away if this bill is passed in its current form. And again, this bill was a result of an attempt to address a problem with our ALR process. There are ways that that can be done. I think you'll also hear some future testifiers that will testify to some of those. But this is not the answer. These go way beyond what I think is necessary to accomplish the solution to some of these problems and they're real problems. This is a system that's been around for 14 years and it is high time to look at the way we do this. But to throw it out completely I would suggest is not the answer. And to restore driving licenses immediately upon conviction is a departure from 30 years of public policy in this state and would be sort of a unique position nationwide. I'd be glad to answer any questions that you might have. [LB553]

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SENATOR ASHFORD: Thanks, Marty. Next proponent. You're up. [LB553]

KEVIN QUINLAN: (Exhibits 24, 26) I have two other things, please. Mr. Chairman, my name... [LB553]

SENATOR ASHFORD: Is this what you came here to testify for (inaudible)? [LB553]

KEVIN QUINLAN: Mr. Chairman and members of the committee, this is why I'm here. My name is Kevin Quinlan, Q-u-i-n-l-a-n. I represent the National Transportation Safety Board in Washington, D.C. Please don't hold that against me. This is extremely important. I'm adding a couple of things. You have the two things I mentioned before plus the written testimony. Heaven (inaudible) that I repeat the written testimony so I won't do that. But I also have a letter from the Century Council, which is a distillers' funded organization, that they and the Safety Board, AAA, and MADD are together in what we call the hard-core drinking driver coalition. The idea is to get at the worst of the worst offenders. That has some effect and I'd like to describe what ALR has done. And I have some answers to questions that have been posed. First of all, you know us in the highway from our Omaha bus crash investigation in 2001. The board, almost 25 years ago, first recommended that states adopt ALR. That preceded the incentive funds by about 15 years. We don't invent this out of whole cloth. We found through our investigations and through our studies that this works both to deter the individual who's arrested and those who might be arrested who might be at risk. It's called general deterrence and specific deterrence. It encourages the public to get behind the...to not get behind the wheel after they've been drinking. I have another document which I'd like to show you. This is from a national database to which Nebraska reports. And in summary, the alcohol-related fatalities have been pretty consistently going down. In the state line of Nebraska, you're subject to what I call the tyranny of small numbers because it goes up and down like that. But the trend is down. The hard-core fatalities, that is those .15 and above, are going up as a proportion of the total. That's exactly what you'd expect from a good ALR system because it's affecting the people that can modify their behavior. I have one minute left so I would like... [LB553]

SENATOR ASHFORD: We'll give you an extra 30 seconds. It's the over 300-mile rule or whatever we apply. [LB553]

KEVIN QUINLAN: Over 50 miles you're an expert and that means at home I'm not. Mackey v. Montrym is the U.S. Supreme Court case that says the driver's license is a significant interest, not a right, not a privilege, but a significant interest to which administrative due process attaches. So at least under the federal constitution it is permissible to have a separate process. And what we've found is that separate process works very well. This is the first highway safety measure related to alcohol that was tested by the states and proven to be effective. First we thought it was a 6 to 9 percent,

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depending upon how you slice the data, 6 to 9 percent reduction in alcohol-related fatalities. It's actually between 13 and 19 percent and that's on page 3 of the testimony. I also worked with Surgeon General Koop, one of the great privileges of my life, and in that workshop they identified administrative license revocation as the important measure that all states needed to have. I would point out that Nebraska's alcohol-related fatalities are far below the national average. And in this document, there are 11 measures that we recommend to the states we'd ask you to consider. Nebraska has seven of them. That means that you have a system that's working reasonably well. Sure, could it be better? Right, it could. But in the grand scheme of things, we've dropped alcohol-related fatalities from 28,000 per year in the 1980s to under 17,000. We need to do more, but I want you to know that this drop has coincided with the states adopting ALR. It's had an effect. The question I would ask is, here we have a measure that's a proven effectiveness, proven constitutionality, may have a few problems in your particular state. Why would we throw it out for something that doesn't work? And why do I say it doesn't work? In Massachusetts, they had what's known as the 24-D process. In other words, the judge takes the license at arraignment. Arraignment can be 24, 48, or 72 hours later. You know, it's a good thing I'm color-blind because I can't see these colors. [LB553]

SENATOR ASHFORD: No, but we don't want to but sum it up. [LB553]

KEVIN QUINLAN: I can wrap up quickly. [LB553]

SENATOR ASHFORD: And we can go through your information and contact you otherwise if we need. [LB553]

KEVIN QUINLAN: Sure. [LB553]

SENATOR ASHFORD: There are a lot...I'm not trying to cut you off. It's just we're trying to... [LB553]

KEVIN QUINLAN: That's okay. It's your job to cut me off. My point is that Massachusetts got rid of a process that's analogous to what's being proposed in LB553 because that process in fact does not work. I would counsel, I would advise that you continue with good public policy based on science and that you make whatever modifications you need to do for prosecutors or enforcement overtime purposes because this is a measure that really does work. And we strongly recommend it to you. If I could, Mr. Chairman, would the page please copy this. [LB553]

SENATOR ASHFORD: Yes. [LB553]

KEVIN QUINLAN: Thank you. [LB553]

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SENATOR ASHFORD: Kevin, thank you for coming all the way out here and... [LB553]

KEVIN QUINLAN: This is really important, Mr. Chairman. That's why I'm here. [LB553]

SENATOR ASHFORD: Well, I gather that and we consider it important so thank you very much. [LB553]

KEVIN QUINLAN: Thank you. [LB553]

SENATOR ASHFORD: Next proponent. Opponent, I'm sorry. [LB553]

CYNTHIA WANEK: (Exhibit 27) My name is Cynthia (Cindy) S. Wanek and I'm here representing the Mothers Against Drunk Driving. And I would just like to thank the chairman and committee members for the opportunity to testify on this very important piece of legislation. I'm here in place of Simera Reynolds who is the executive director of the MADD organization, and I need to explain that to you because you are receiving some copies now that indicate that these pieces of information were compiled by her and they were. And she was called out of town so I am adding my own personal spin to that and so I'm explaining to you why I'm interested in this issue. I'm a MADD volunteer and I am a mother of a daughter who five years ago at age 17 was crashed into at 60 miles per hour by a drunk driver. She miraculously survived this crash and I vowed at that time that I would do what I could to stop that from happening to other families. So since then my goal has been very simple. If it makes drunk driving go away, I'm for it. If it seems to allow drunk driving to continue, I'm against it. I think that the ALR system, from all the research that you find in this packet of material, is very, very clear that ALR has reduced drunk driving. The statistics range, as the gentleman just told us, at a minimum of about 9 percent in research that's contained in this packet from the American Journal of Preventive Medicine. In a two-year time period, that rate goes at a variance of 9 percent versus or excuse me, 13 percent versus 22 percent so that's a huge amount of difference of lives saved, and that's within a 24-month period. There's a lot of research in here. You can look at it on your own, and you can see in a table contained in this packet some of those rates. At any rate, in every case, whether it's first-time offense or second-time, repeat offenders, everybody seems to drink and drive less if the ALR system is utilized. These are some of Simera Reynolds comments I'd like to share that summarize MADD's point of view. As you may know, this bill basically calls for repeal of the administrative license revocation procedure and implements a bail to impoundment concept in lieu of the ALR procedure. Senator Flood indicated that this does not repeal the ALR system, but MADD believes that it does. ALR has proven hands down to be effective in addressing drunk drivers in our state. There currently are 40 states plus the District of Columbia that are using the ALR to take the driver's license at the time of arrest when that individual refuses to take or fails a blood alcohol test. This measure, administrative license revocation, has been proven to be the most effective law in reducing the number of drivers involved in fatal alcohol-related crashes.

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A really important point here--no state has ever repealed this ALR, and there are ten remaining states that don't have it now and they are working on having the measure instituted. After implementing ALR here in Nebraska, our state saw a 19 percent reduction in alcohol-related crashes. And there was a 15 percent decline in alcohol-related injury and fatal crashes. This bill as written also has numerous flaws by MADD's interpretation. Some of these flaws are that the terms of impoundment are not clear. It does not appear to provide equitable treatment of offenders, and I'm actually for equitable treatment of offenders. I don't want them to be saved from their punishments because of technicalities. Both victims and defendants will continue to see a patchwork of inconsistency from county to county under this bill. [LB553]

SENATOR ASHFORD: Cynthia, may I just ask, we have the testimony. So what I'd ask you to do, and this is not belittling your point, that if you would just sum up. And we have the testimony so we can read that. [LB553]

CYNTHIA WANEK: Sure. I was reading that out of respect for Simera who isn't here so. [LB553]

SENATOR ASHFORD: And we respect Simera too. I'm not trying to cut you off so just if you'd sum up. [LB553]

CYNTHIA WANEK: Well, let me say this. Me personally, here are the three important points. [LB553]

SENATOR ASHFORD: That's, let's do it that way. [LB553]

CYNTHIA WANEK: The research shows that this is effective. Other states do it, almost all the others. The ten that don't have it want to do it. So why in the world would we want to change this. The MADD point of view is that there are some problems with the ALR procedure. In my own personal situation, there were serious injuries so things didn't go quite like they might in a typical arrest where someone is stopped and asked to surrender their license. There were ambulances and hospitals and investigations with the possible event of a death from the crash. It took a year before my daughter's offender was in court and that was frustrating. If there was a way that things could have been done in a swifter fashion that would have been meaningful to our family. And so I'm for this because my belief is that ALR usually metes out a situation in a swift fashion. So I would just like to ask that you look carefully at this piece of legislation, participate in any measures that can be taken to improve the ALR system, but please don't support this bill. Thank you. [LB553]

SENATOR ASHFORD: Thank you, Cynthia. Any questions of Cynthia? Thanks very much, and we do have that other information so thank you. [LB553]

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CYNTHIA WANEK: Thank you. [LB553]

SENATOR ASHFORD: The next opponent. [LB553]

BEVERLY NETH: (Exhibits 28, 29) Chairman Ashford, members of the Judiciary Committee, I'm Beverly Neth, director of the Department of Motor Vehicles. LB553 in its current form contains an outright repeal of the administrative license revocation, ALR, program. Because the bill repeals ALR, it also eliminates hard suspension provisions associated with DUI and refusal, thereby granting immediate access to work permits for all offenders and ignition interlock for first offenders and candidates for probation. In its purest sense, an ALR is designed to impose an immediate sanction... [LB553]

SENATOR ASHFORD: Can I just make one... [LB553]

BEVERLY NETH: Certainly. [LB553]

SENATOR ASHFORD: I'm not, again, we have the testimony so if you want to summarize it for us and then we can... [LB553]

BEVERLY NETH: I'll make the points that I think are important to this discussion. [LB553]

SENATOR ASHFORD: Please don't consider that any reflection on your points. I just... [LB553]

BEVERLY NETH: Absolutely not. I know you can read. What I'd like to point out is that the conviction rate post ALR or prior to ALR in Nebraska with respect to DUIs was roughly 50 percent. The conviction rate of DUIs since ALR is nearly 80 percent. I do believe that ALR assists in obtaining criminal convictions at the county level. There are also the ALR hearing is designed to meet due process requirements that are required under the United States Constitution and Nebraska's Constitution. The ALR has been repeatedly challenged in Nebraska's Supreme Court, and it has continually been upheld as meeting the constitutional requirements that are currently in place. I would also like to state that ALR has not been a static program. There have been changes to ALR. Some of them have been statutory. In 2002, there was an interim study hearing that resulted in statutory changes, those being removing venue requirements so that individuals could appear by phone. We do not travel the state to conduct hearings. We do them by telephone. We also attempted to reduce the fiscal impact to the state's General Fund and to county budgets by removing the county attorney's representation of the DMV at the appeal level and centralizing that with the Attorney General's office. We've also worked very closely with Omaha public Police Department to lessen their overtime costs for attendance at hearings. Nebraska does use ALR as one component, has in the past used ALR as one component for qualifying for federal Section 410

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impaired driving incentive funds. Since 2005, Nebraska has qualified because our alcohol-related fatality rate is .5, excuse me, less than .5 per 100,000,000 miles traveled. There are two ways to qualify for those incentive funds--either you have a .5 or less fatality rate or you meet programmatic criteria. In order to qualify under the programmatic criteria construct, you have to meet at least four of the eight eligibility requirements. Currently Nebraska meets those as well. If this bill were to pass, we would not meet those requirements and it wouldn't take too many alcohol-related fatalities to push us back over the .5 rate. What we do with those funds: We received in 2006 just over a million dollars. Ninety percent of those funds were funneled in grant programs to local law enforcement agencies. They go to buy such things as in-car cameras, preliminary breath testing equipment. They support drug recognition officer training and continuous training, and they also support overtime, selective overtime enforcement grants at the local level. Ten percent of those funds are granted out to state agencies, primarily to the State Patrol. I think that there...really it's difficult to credit any one program for the reason that we've seen increased convictions and decreased alcohol fatality rates. I think it should be given in a number of areas. One, the comprehensive policy approach this Legislature has taken to combat drunk driving, including adopting ALR, the open container law, the .08 BAC laws, and recently as last year the repeat offender and high BAC laws. It's also due to the tireless efforts of advocacy groups and the dedication and commitment of law enforcement and county attorneys and prosecuting attorneys. Like any other program that's out there, I'm sure this one can stand a review from time to time and also could probably stand some modifications. We've demonstrated our willingness to modify the program in the past. I would like the opportunity to continue to attempt to modify ALR within its existing framework. [LB553]

SENATOR ASHFORD: Okay. Any questions? Good job. You got it all in. [LB553]

SENATOR LATHROP: One question. Yeah, that was like ten minutes' worth crammed into three. Are you satisfied with where this program is at right now? [LB553]

BEVERLY NETH: Certainly I cannot discount that there are times when law enforcement officers are put through their paces at ALRs and that an ALR is used by the defense bar as a discovery tool. In those instances when that's happening, that is not the general rule. But when that is happening, we're sensitive to that issue and we're trying as best we can to figure out how to limit those issues. So I think it has some room for improvement. [LB553]

SENATOR LATHROP: Outside of the fact that some defense lawyers might learn a little bit about the criminal case, that doesn't necessarily mean they're going to get an acquittal for their client, just learn a little bit about the case. [LB553]

BEVERLY NETH: (Inaudible) that's exactly right. [LB553]

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SENATOR LATHROP: Okay. So aside from that fact, you're okay with the way you have your...the way the ALR system is set up and the way it's working? [LB553]

BEVERLY NETH: Well, I think it is working very well within its... [LB553]

SENATOR LATHROP: It's okay if you are. [LB553]

BEVERLY NETH: Well, but I think there are room, and we are certainly discussing how we can improve the program using a number of tools. [LB553]

SENATOR LATHROP: Okay, thank you. [LB553]

SENATOR ASHFORD: No. It's a lot of answers, good answers. Thank you. [LB553]

BEVERLY NETH: Thank you. [LB553]

SENATOR ASHFORD: How many more opponents do we have? Mindful that we've had a lot of testimony on this and you do such a wonderful job, but if it has been said... [LB553]

DIANE RIIBE: (Exhibit 30) I have gotten the word. It's been clear, it's been clear. In fact we'll do it real succinct and brief. Diane Riibe, director of Project Extra Mile, network of coalitions working to prevent underage drinking. And just as someone who was here and worked diligently in the early nineties to help pass ALR, I can tell you one thing with complete certainty--yes, we did get some dollars from the federal government to pass ALR. There was an incentive. That isn't why it was passed. It was passed because, quite frankly, it saves lives, plain and simple. If there's no other issue that we remember when we discuss it, that's the piece that we ought to remember. In a nutshell, the research is solid, the literature is solid. ALR works. The courts have upheld it time and time again. The public supports it. We've seen a reduction in injuries and fatalities. The system overall works. Our position is that there is really no amount of amendments, quite frankly, that could fix this bill sufficiently to move it forward, it has so many flaws in it, and we would urge you to do the same. I can tell you that my concern comes again. We know that when you're dealing with drunk drivers, and those include young people, that the swiftness and certainty of the penalty is extremely important. And we use the administrative process to provide hearings for other areas where we look at the public health, safety, and welfare. And that works, at least we believe it works, somewhat sufficiently. So to believe that this system is apart and somehow terribly dysfunctional, apart from the administrative process that's already been set out for all of those proceedings is a little peculiar in our mind. I would just end by telling you that, yes, it's an onerous system to some. There are some issues that should be dealt with. And those of us who worked on it never liked the judicial bypass, still think it's an odd thing to

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be included. We're the only state to have it. But again, in short, it's a piece that saves lives. And there's nothing more onerous than caring for an injured child or dealing with the ongoing grief of the loss of a child. And I don't say that to be flippant. I don't say that to throw that out there. I tell you just a tiny bit of what the life is like for many of my friends. And I don't want that to be lost in this debate. It isn't about the dollars. Yes, we gain some, but that's not the issue. It's about lives saved, plain and simple, and we'll fight hard to make sure that point is made. [LB553]

SENATOR ASHFORD: I don't think, anybody believes you're flippant. And I do remember working with you on the ALR and (inaudible) and so I appreciate that. Any questions? Thank you, Diane. [LB553]

DIANE RIIBE: Thank you. [LB553]

SENATOR ASHFORD: Thanks for all your work in this area. Speaker Flood, are you interested in speaking? Okay, welcome. Senator Adams. [LB553]

SENATOR ADAMS: Thank you, Chairman Ashford, committee members. I'm Greg Adams representing the 24th Legislative District. Senators, what you have in front of you with LB424 is a simple change in language that can have a pretty significant impact in the prosecution of folks who have been inhaling or huffing. The reason that this bill comes before you today is because of a constituent call from Seward County, one of the counties within my district, and the issue at hand was this. They had some folks that needed to be prosecuted for inhaling or huffing. They had been inhaling or huffing substances that are not in the list of controlled substances and when it came time to prosecute it there's no city ordinance, hence they relied on state statute, and when they got to the state statute what they discovered is that the terms of the statute say very simply that no person shall induce or entice. That left them with their hands tied. So what LB424 would do is to simply change the language from induce or entice to no person shall breathe, inhale, drink, or otherwise use. I would also add that the language about induce and entice, though it be removed from this section, can be found in other sections of the statute. So that would still be there. There's no change in penalties or anything like that. And this would give jurisdictions that don't have a city ordinance or when a violation occurs outside of a municipal jurisdiction, the ability to deal with it. With that, I would entertain any questions that you have and I do have one testifier from Seward County here that may be able to shed some additional light on it. [LB424]

SENATOR ASHFORD: Thank you, Senator Adams. Do we have any questions of Senator Adams? Seemed pretty straightforward, thank you. Proponents... [LB424]

SENATOR ADAMS: Senator, I'll waive closing. [LB218]

SENATOR ASHFORD: Thank you, Senator. Proponents? Do we have opponents?

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Neutrals? Okay. Welcome. [LB218]

JENNIFER LADMAN: My name is Jennifer Stehlik Ladman, the spelling is S-t-e-h-l-i-k L-a-d-m-a-n. I'm chief deputy with the Seward County Attorney's Office and I thank you for a few minutes of your very long afternoon. As Senator Adams said, we've had a number of incidents. We've had specifically or the most egregious concerns we've had are three motor vehicle accidents since the end of November that involved individuals that have been under the influence of an inhalant. And what they're doing is they're taking, all of these incidents, they're taking Dust-Off, or the aerosol dusters, they just inhale that and it causes a state of intoxication. Basically, from my understanding, is it's a combination of both a deprivation of oxygen to the brain that causes them to pass out plus whatever sort of chemical high you get off of the substance. These motor vehicle accidents, the first one involved two 16 year olds and a 15 year old. They crossed from south of our courthouse square they went up through the courthouse lawn, across the street, north of the courthouse, and struck a building in the middle of the block. That happened just before Thanksgiving. Our next accident occurred with a 15 year old and an 18 year old that were huffing while driving on the interstate admittedly, and then they huffed more as they were coming into town, were on a railroad overpass. The driver passed out and they struck the guardrail. The guardrail held so they didn't go off the overpass, but it caused an accident. The third accident involved four people--a 14 year old, 15 year old, 16 year old, and 17 year old. They were huffing, crashed into a sign then sheared off utility pole. One of those passengers ended up being life flighted with a skull fracture and then another passenger had a punctured lung. We've had no fatalities, but understandably we feel like we're living on borrowed time. [LB424]

SENATOR ASHFORD: You almost wiped out a courthouse with it. [LB424]

JENNIFER LADMAN: Yeah, we almost wiped out a courthouse. Put my job in jeopardy there. These are the most egregious incidents. There's obviously reports from law enforcement of individuals just getting high off of this stuff. These are very concerning situations to us. This isn't a new fad. This is something I dealt with when I was a public defender in Platte County. I know my boss when she was in Madison dealt with this. This is a very dangerous thing to do. I think the kids are doing this because it doesn't have the stigma of some of the controlled substances and it's cheap. You can get it anywhere. And they don't think they can get in trouble for it. And none of the statutes we have available to us seem to apply. The juvenile code is there. That gives us limited resources and only applies to kids under 18. It's not a controlled substance so this doesn't fall within the controlled substance act. It's not a legend drug and not all of these things relate to driving. And so it limits what we can do under the existing language. And as Senator Adams said, it's a very minor change. It doesn't change inducing other people to do it but yet it would clean up the language to make it seem more illegal to actually consume it yourself. Are there any questions for me? [LB424]

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SENATOR ASHFORD: Thanks, Jennifer. Senator Lathrop. [LB424]

SENATOR LATHROP: I am looking at this statute 48-419. I don't see a penalty in there or a classification of the crime. [LB424]

JENNIFER LADMAN: It's in a subsequent statute, the statutes that follow. It's a Class III misdemeanor. [LB424]

SENATOR LATHROP: Okay. [LB424]

JENNIFER LADMAN: So it would be the same as an MIP and in those subsequent statutes is where it already says it's illegal to induce or entice another person to violate that. [LB424]

SENATOR LATHROP: But we don't need to say that with respect to this section you don't think? All we get is the green copy. We only get one section. I don't know what the rest of the statute said. [LB424]

JENNIFER LADMAN: Right. Yeah. [LB424]

SENATOR LATHROP: But we've covered the penalty or defined what the offense is. [LB424]

JENNIFER LADMAN: Correct. [LB424]

SENATOR ASHFORD: Yeah, it's poorly drafted. Okay, thank you. Yes, Senator Pirsch. [LB424]

SENATOR PIRSCH: Just a couple quick questions. The first is so that to cover the individual you propose striking the induce or entice, but apparently the original intent of 28-419 was to prevent those individuals from making other individuals breathe those substances. Would that protection still exist somewhere else in some other statute? [LB424]

JENNIFER LADMAN: It does. In 28-423 it already states no person shall induce or entice any person to violate the provisions of 28-419 which is the statute that would be amended or some of the subsequent ones. [LB424]

SENATOR PIRSCH: Okay. So it's duplicative then (inaudible). [LB424]

JENNIFER LADMAN: Right. [LB424]

SENATOR PIRSCH: And secondly, and you know obviously I think I'm familiar with the

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product Dust-Off, but what is the chemical composition of Dust-Off? Does it contain an ingredient that is listed here? [LB424]

JENNIFER LADMAN: The product that we actually pulled out of our storage room, that major component is not one of these listed chemicals. This statute is nice because it's broad enough that it's going to cover anything that causes a state of intoxication, not just these limited compounds. [LB424]

SENATOR PIRSCH: Okay. That's down on line 10... [LB424]

JENNIFER LADMAN: We tried to find a lab that could test for an inhalant and the state crime lab doesn't test for this. And the lab that we found that's out of state said they have six different panels depending on brand. So it's hard to limit--that's the other thing--it's hard to limit some major component. [LB424]

SENATOR PIRSCH: Yeah. Well, I appreciate that. You pointed out line 10, or any other substance for the purpose of inducing. So thanks. [LB424]

SENATOR ASHFORD: Thank you, Jennifer. Any other questions of Jennifer? [LB424]

JENNIFER LADMAN: Thank you very much. [LB424]

SENATOR ASHFORD: Thanks for coming down. Senator Adams, you waived? Okay, thank you. Thanks for coming. Last bill, LB624, Senator Pirsch. How many LB624 testifiers do we have? Joe's here...we'll get serious here, Senator Pirsch, excuse us. [LB424 LB624]

SENATOR PIRSCH: (Exhibits) That's quite okay. Good evening, Chairman Ashford, members of the Judiciary Committee. My name is Pete Pirsch for the record. The last name is spelled P-i-r-s-c-h. I'm here today the sponsor of LB624. LB624 adjusts the penalty provisions for the offense of operating a motor vehicle to avoid arrest, sometimes commonly referred to as flight to avoid arrest, so that the punishment better suits the crime. Currently, whether the crime of operating a motor vehicle to avoid arrest is a misdemeanor or whether it is a felony is determined by the initial basis of the attempted stop by law enforcement. If the initial reason an officer wants to pull over a vehicle is based upon a felony, then any operation of a motor vehicle to avoid arrest that follows is automatically a felony. If the initial reason an officer wants to pull over a vehicle is based on a misdemeanor then any operation of a motor vehicle to avoid arrest that follows would automatically be a misdemeanor. So the assigned penalties currently ignore the danger created to the public, to the offender, and to law enforcement by the offender's flight itself. This bill would assign a penalty that is appropriate in light of the danger that is presented to society by the offender's flight itself. LB624 would make the offense of flight to avoid arrest a misdemeanor unless one

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of the following three factors is present: 1) the flight results in the death or injury of any person, 2) if the flight includes the willful reckless operation of a motor vehicle, and 3) if it is the second or more violation of the statute. If any of the three factors are present then the penalty for the offense would be a Class IV felony. The bill also adjusts the attendant penalty of loss of operating privileges to better match the severity of the flight itself. Currently, a judge must impose a two year loss of license for every violation, whether it be misdemeanor or felony. Under LB624, judges would be allowed discretion to decide whether to impose a maximum one year loss of license for a misdemeanor offense. So essentially, in my mind, it's right sizing the sentencing to fit the problem. Obviously there's a scenario which I won't go into at length that you an individual who is observed by an officer run a stop sign. And so that's obviously an infraction or misdemeanor that the basis of the officer pulling behind the vehicle and attempting to pull it over. At that point in time, whatever flight that follows has already been determined. And so it may be the most dangerous chase in putting dozens and dozens of people at risk. Nonetheless, it will be classified as a misdemeanor flight to avoid arrest. And conversely, you may have a basis for a stop such that the person is revoked on a felony revocation, say a DUI revoked. When the officer turns on that individual, because the underlying basis would be a felony, it doesn't matter if that person drives just a few blocks during the flight and whether it's at low speeds and no lives were put at risk. The fact that it was a felony revocation dictates that the charge will be a felony flight to avoid arrest. So the current system that we classify these offenses don't adequately fit the crime. So thank you. Any questions? [LB624]

SENATOR ASHFORD: Are there any questions? Okay. [LB624]

SENATOR LATHROP: I don't have any questions. As you know, I was interested in the same thing. So it's a good idea. [LB624]

SENATOR ASHFORD: Thank you, Senator Pirsch. [LB624]

SENATOR PIRSCH: You bet. [LB624]

SENATOR ASHFORD: Proponents. [LB624]

AARON HANSON: Mr. Chairman, members of the committee, it's late. I'll keep it brief. I represent the Omaha Police Union. My name is Aaron Hanson. I'm an Omaha police officer, president of the Omaha Police Union. We ask you to support LB624. My members witness firsthand the carnage everyday that these high speed dangerous pursuits constitute to the citizens. And regardless of the reason why these individuals are fleeing, the carnage and the injury is the same. So we ask you to please support LB624. [LB624]

SENATOR ASHFORD: Thanks, Aaron. Have any questions of Aaron? Thank you. Joe.

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[LB624]

JOE KOHOUT: Mr. Chairman, members of the committee, Joe Kohout, K-o-h-o-u-t, representing the Nebraska Fraternal Order of Police. The hour is late. My testimony is brief. Us too. [LB624]

SENATOR ASHFORD: Okay. That is brief. [LB624]

SENATOR LATHROP: So Lynn Rex of you. (Laughter) [LB624]

SENATOR ASHFORD: That is a record. [LB624]

JOE KOHOUT: Senator, I don't know what to say. [LB624]

SENATOR LATHROP: That would be a compliment at this hour. [LB624]

SENATOR ASHFORD: That is very effective testimony, Joe. Thank you. Jack. [LB624]

JACK CHELOHA: Good afternoon, Senators. For the record, I'm Jack Cheloha, last name is spelled C-h-e-l-o-h-a, registered lobbyist for the city of Omaha. We'd like to say we, from the city's standpoint, support LB624. This bill has been introduced with different bill numbers through the years. Our city prosecutor had a hand in helping to draft a way back. I don't know. Maybe you said that, Senator Pirsch. I missed your introduction, but it makes sense to tie the flight to the actual danger to the community, not what the underlying crime was, because...I'll just leave it at that. I'll try to answer any questions. Thank you. [LB624]

SENATOR ASHFORD: Thanks, Jack. [LB624]

COREY O'BRIEN: I apologize for not having a suit coat, but DeMaris just grabbed me because I happened to be in the back of the room. My name is Corey O'Brien with the... [LB624]

SENATOR ASHFORD: At least you didn't lose it, which is something. [LB624]

COREY O'BRIEN: No--with the Nebraska Attorney General's Office, representing the Nebraska County Attorney's Association. It's C-o-r-e-y O'B-r-i-e-n, and we are testifying in support of this bill. As someone that is handling a current case in which a grand jury is being called involving a police pursuit, I can tell you that a bill like this is desperately needed. [LB624]

SENATOR ASHFORD: And we don't have this. That's right. Maybe you asked that before. This is not an existing...or it's an enhancement. [LB624]

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SENATOR LATHROP: Right now it's defined by the (inaudible)... [LB624]

SENATOR ASHFORD: By the underlying offense. So there's no separate...you're creating a separate offense here. [LB624]

COREY O'BRIEN: Correct. [LB624]

SENATOR ASHFORD: Okay. Any questions of Corey? Thanks, Corey. [LB624]

COREY O'BRIEN: Again, I apologize. [LB624]

SENATOR ASHFORD: No, I hope you find it though. (Laughter) [LB624]

COREY O'BRIEN: It's in my office. [LB624]

SENATOR ASHFORD: Well, good luck on it. [LB624]

COREY O'BRIEN: Thank you. [LB624]

SENATOR ASHFORD: Okay. Anyone else? Any opponents? Neutral? Thank you. Thank you all very much. I think we got the point in a very brief time. [LB624]

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Disposition of Bills:

LB218 - Advanced to General File.
LB260 - Advanced to General File.
LB407 - Held in committee.
LB424 - Advanced to General File.
LB553 - Held in committee.
LB573 - Advanced to General File, as amended.
LB624 - Held in committee.

Chairperson

Committee Clerk