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General Affairs Committee
February 13, 2012

[LB824 LB829 LB992 LB1078]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 13, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB824, LB829, LB992, and LB1078. Senators present: Russ Karpisek, Chairperson; Bob Krist, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Colby Coash; R. Paul Lambert; Tyson Larson; and Amanda McGill. Senators absent: None.

SENATOR KARPISEK: Okay, welcome to the General Affairs Committee. I am Senator Russ Karpisek of Wilber, Chair of the committee. Members of the committee to my far right are...is Senator Brasch of Bancroft. Next to her will be Senator Bloomfield of Hoskins; then we have Senator Coash of Lincoln; our Vice Chair, Senator Krist of Omaha; Josh Eickmeier, our committee legal counsel from Seward. To my far left, we have Christina Case, who is our committee clerk. Next to her will be Senator Larson of O'Neill, then Senator Lambert of Plattsmouth, and in between us will be Senator McGill of Lincoln. The page helping us out today is Lacey Schuler. After each bill introduction, we would like to hear testimony in support of the bill, then testimony in opposition, and finally, neutral testimony. If you are planning on testifying in any capacity, please pick up a sign-in sheet that is on the table in the back of the room at both entrances. Please fill out the sign-in sheet before you testify. When it is your turn to testify, give your sign-in sheet to the page so they can give it to the committee clerk. This will help us make a more accurate public record. If you have handouts, please make sure that you have ten copies for the page to hand out to the committee. If you need more, please get Lacey's attention and she will get them for you. When you come up to testify, please speak clearly into the microphone, please tell us your name, and please spell your name, first and last. Also, please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that beeps. Please keep your conversations to a minimum or take them out in the hallway. We do not allow...we do allow handouts, but we do not allow visual aids or other display items. I forgot my sheet in my office.

JOSHUA EICKMEIER: Where is it?

SENATOR KARPISEK: On my desk.

JOSHUA EICKMEIER: Okay.

SENATOR KARPISEK: We are not going to try to use the lights system today. I feel that when people come in that they deserve to be heard. Please keep your comments as short as possible. Please do not repeat other testimony. If we can't get along with that, we will put the lights into order and you'll have five minutes, so please cooperate with us on that so everyone can be heard. We will begin our hearings with my bill, LB824, and I will turn the Chair over to Senator Krist while Mr. Eickmeier ran to my office to get my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

opening that I forgot. (Laughter)

SENATOR KRIST: You can start the timing right now. (Laughter)

SENATOR MCGILL: You have five minutes.

SENATOR KARPSEK: We're not using the lights.

SENATOR BLOOMFIELD: Yet.

SENATOR KRIST: Who's...

SENATOR BLOOMFIELD: That's when you were in the chair.

SENATOR KRIST: Who's sitting...

SENATOR LAMBERT: Things have changed. There's a new sheriff in town.

_____ : He's pretty speedy for a big fellow, though.

BREAK

SENATOR KRIST: Anytime, Senator Karpisek, anytime.

SENATOR KARPSEK: Thank you, Senator Krist and members of the General Affairs Committee. LB824 adds to the Liquor Control Act a definition for the term "flavored malt beverage." LB824 defines flavored malt beverage to mean a beer that derives not more than 49 percent of its total alcohol content from flavors or flavorings containing alcohol obtained by distillation. This definition mirrors the federal definition for flavored malt beverage. The reason this definition matters is because beer and spirits are taxed at different rates, with spirits being taxed at \$3.75 a gallon and beer at \$0.31 per gallon. At the request of the Liquor Control Commission, I'm also offering an amendment which doesn't alter the new language in this bill, but merely adds language to further mirror the federal definition. The amendment reads, "except that in the case of malt beverage with an alcohol content of more than 6 percent by volume, not more than 1.5 percent of the volume of the malt beverage may consist of alcohol derived from flavors, flavorings, or other nonbeverage ingredients containing alcohol obtained by distillation." The amendment language also mirrors the Liquor Control Commission's rules and regulations which contain the same definition. The commission's definition is currently being challenged before the Nebraska Supreme Court on grounds that the commission lacked the authority to pass such a rule and regulation. This bill clarifies the policy of the state and would make clear the Legislature's intent as to how it defines flavored malt beverages. Hobie Rupe, executive director of the Liquor Control Commission, is here to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

testify and can answer any questions that I cannot. I would be glad to take any questions. [LB824]

SENATOR KRIST: Thank you. Senator Coash? [LB824]

SENATOR COASH: Thank you. Senator Karpisek, could you, if you know, give us an update on the status of that Supreme Court case? [LB824]

SENATOR KARPISEK: I do not know an update. I know that they have been taking... [LB824]

SENATOR KRIST: Deliberating. [LB824]

SENATOR KARPISEK: Thank you. They've been deliberating on it. [LB824]

SENATOR COASH: Okay. And then if you know, should LB824, with the amendment, be ultimately passed by the Legislature, does that kind of make their arguments on both sides moot because we've clarified it in the law or will there still be some sort of thing to hash out in the courts? [LB824]

SENATOR KARPISEK: I would assume that it would take care of it, because the lawsuit says that the Liquor Control Commission did not have the authority to make this rule, this should be legislative. This would be making it legislative. I don't know if there would be anything else to that. I'm sure someone behind me will speak to that. But this bill has been in front of the committee before. Senator Janssen brought it in, we think 2005, so this is not just a knee-jerk reaction to the lawsuit. Whatever happens in the lawsuit, I think that this needs to be put into statute so there's not a question again. [LB824]

SENATOR COASH: It seems like the crux of the lawsuit, from my memory, is the lack of clarity, which this bill would give. [LB824]

SENATOR KARPISEK: It would. [LB824]

SENATOR COASH: Okay, thank you. [LB824]

SENATOR KRIST: Thank you, Senator. I assume you'll be here for closing. Oh, I'm sorry. Senator Lambert. [LB824]

SENATOR LAMBERT: If I understand this, this mirrors what the federal terms are, their definitions, is that correct? [LB824]

SENATOR KARPISEK: That is correct. [LB824]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR LAMBERT: And that's what we have used in the past, right? [LB824]

SENATOR KARPISEK: That is correct. [LB824]

SENATOR LAMBERT: Just putting it in our own statute, then. [LB824]

SENATOR KARPISEK: Um-hum. [LB824]

SENATOR LAMBERT: Okay, thank you. [LB824]

SENATOR KARPISEK: Um-hum. [LB824]

SENATOR COASH: Let me ask... [LB824]

SENATOR KRIST: Any other questions? [LB824]

SENATOR COASH: ...one follow-up question, Senator Karpisek, if you know. We have to get the green copy and the proposed amendment, is the...with regard to mirroring the federal legislation, is it the green copy only that mirrors the federal legislation or also the amendment that... [LB824]

SENATOR KARPISEK: Also the amendment. [LB824]

SENATOR COASH: So both of them together mirror it? [LB824]

SENATOR KARPISEK: Yes. [LB824]

SENATOR COASH: Okay, thank you. [LB824]

SENATOR KRIST: Any other questions? Okay, thank you. [LB824]

SENATOR KARPISEK: I will stay to close. [LB824]

SENATOR KRIST: Thank you, sir. [LB824]

SENATOR KARPISEK: Thank you. [LB824]

SENATOR KRIST: Proponents for LB824? And I'll have to excuse myself, I'm going to go present. So, Senator Coash, if you'll pick up. [LB824]

SENATOR COASH: Glad to help. [LB824]

HOBERT RUPE: Good afternoon. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

executive director of the Nebraska Liquor Control Commission. And I guess first, I'll...I'm...you know, I was going to go first on this one, just to try to sort of give you the guidelines or sort of the map of how we've gotten to this location. The first is: What is an FMB? It's also called flavored malt beverage, depending upon...some people call them "alcopops," some people call them "malternatives." What they are is an alcoholic product which begins with a base of beer, basically through the brewing process, and then flavorings are added to it. Now, notice I said flavorings. This is not the direct adding of distillation; you're not throwing a shot of vodka into one of these things. You're adding flavorings, oftentimes things like vanilla, lemon extract, other things. Now, the issue that happens of course is, for instance, vanilla extract contains 35 percent alcohol, so when you're adding that flavoring to change the flavor profile of the drink, you're, in a sense, adding some alcohol to the overall alcohol product. Some of the ones you might be familiar with, some of the products we're talking about would be Mike's Hard Lemonade, Smirnoff Ice, Bacardi--I can't remember what the name of those...I don't drink them--you know, that's the product, the primary product what we're talking about. Now, to give you a little bit of history. The commission, for the most part, has always followed the federal definitions of alcohol for taxation/distribution purposes, and there's a couple of reasons why we've done that. We don't have chemists on staff, inspectors going around to these different manufacturings to see how they're operating. And the issue, of course, is that Nebraska, unlike some other states, we tax our alcohol based upon the alcohol source. Beer is made from the fermentation of grain and water with the addition of other things like hops; wine is based upon the...is the fermentation of fruit juices, and distilled spirits are made by distillation. Now, so in the early 2000s, when these products first came onto the marketplace--although they actually started in early...mid-1990s, I think--there was a product--I can't remember--oh, Zima was actually the first of the products. How did we follow these? Well, originally, the commission was going to sort of do what we've normally done and followed behind with the federal government. And at that point in time, the federal government was also looking at it and they had a proposed rule, in which case they were going to treat them that anything that had more than one-half of 1 percent was going to be considered a distilled spirit. If you're adding that mechanism through that, we're going to treat you, and so the commission was starting to, figuring okay, that's the way the TTB is going to go, we're going to follow along with them. Well, we were asked to hold off on that until the TTB finally made the decision. And thankfully we did, because the TTB came out with--actually, it was commonly called--the 49/51 rule, which you've already heard described a little bit, where 51 percent or more of your total alcohol has to come from the brewing process and up to 49 percent can come from these added flavorings, and then also there's--if you're over 6--that's for alcoholic beverages--6 percent or lower. If you're higher than that, the...it's limited to 1.5 percent. So they didn't want you being able to be a higher alcohol content just by throwing these flavorings in and adding it. So...and that time, at that point in time, there was a bill that was introduced. Senator Janssen--at that time, he was Chairman of this Committee--had introduced a bill to clarify it. He asked for an Attorney General's Opinion saying did he need the bill? The Attorney General's Opinion looked at our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

statute and said listen, there's an ambiguity here, you know. We have what's clearly a...you could put these categories either into a beer or possibly into a distilled spirit category. You know, you could make them work into either definition, you know, whole. So therefore, because there's an ambiguity, it's up to the commission to decide, determine which is the appropriate location, you know, for taxation distribution purposes. We referred to how the TTB--Trade and Tax Bureau--in the federal government does it, kept them as a beer for distribution purposes. There was a lawsuit as regard to that policy. The district court ruled that we couldn't just do that via edict, which we had done. They said, well, you need to go through the rule-making process, because what you're doing is more kind of making a rule, therefore go through the rule-making process. So we did; in fact, it was our biggest...we were so big of a hearing, we were out of our normal hearing room. We were actually in this hearing room, I believe, conducting the hearing. We went through the rule; the commissioners decided to just continue the policy and reiterate it and put into our rules and regulations the language which you see--which is contained in the green copy and the amendment--which is basically tracking right along how the federal government did it. The same parties then filed another lawsuit and the judge this time said, well, you followed...you made rules, but we don't think you have the power to make the rules. Well, we were somewhat confused and we thought we did, and so there is the appeal, and the appeal is pending in front of the Nebraska Supreme Court. As, you know, Senator Coash asked, if I knew what the status was, I believe--or he asked Senator Karpisek if he knew--you know, you can only guess and hope to define...to divine when they're going to come down with the decision. I checked every Friday for the last four or five months and nothing has come down. I will say one of the most interesting parts at that hearing was the attorney for the proponents--or for the players in the case--said clearly that this is outside the commission's jurisdiction and this should be a legislative matter, so saying that he might be right, thus this bill came out and got introduced. Just a little background on what it is. Forty-seven and one-half states would treat these products the way we look to do it. I know that sounds weird, 47.5. The half state is California. California Alcoholic Beverage Control Commission (sic), their ABC, distributes them like a beer. But they don't have the taxing authority, the Board of Equalization does, and their Board of Equalization taxes them as a distilled spirit. Well, they thought they were going to be...recoup a windfall. What happened, the manufacturers reformulated their product to take, you know, to take the alcohol by distillation out, which is apparently--and maybe they can answer more--is a far more expensive process for a manufacturer. So although they thought they were going to be receiving a windfall in taxation, they did not do it. The other two states, if I'm correct, are Maine and Utah, treat them as distilled spirits. As I said, I'm...it...the commission is still of the opinion that we had the authority to do the rule that we did and...but, you know, there's a chance that we might be wrong. I mean, the courts have held we were wrong so far, so we brought this legislatively, and I guess that's sort of the thumbnail why we've gotten here and how we've gotten here. As I said, there was a bill back in 2005, which is basically the same exact bill. I believe Josh resurrected most of that language

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

except for the amendment, and so the...we were basing our actions on the Attorney General's Opinion which said because there was a sort of murky area, it defaulted to the commission to make the appropriate investigation and classification. [LB824]

SENATOR COASH: All right. Thank you, Hobie. Let me just clarify how this affects the tax. [LB824]

HOBERT RUPE: Um-hum. [LB824]

SENATOR COASH: It's currently taxed as beer. [LB824]

HOBERT RUPE: Thirty-one cents a gallon. [LB824]

SENATOR COASH: Thirty-one cents a gallon. If it were...if this were not labeled as a beer, it would be labeled as a distilled spirit... [LB824]

HOBERT RUPE: Correct. [LB824]

SENATOR COASH: ...which would change the tax to what? [LB824]

HOBERT RUPE: Three dollars and seventy-five cents a gallon. [LB824]

SENATOR COASH: Okay. Three...so if we made a different decision, legislatively, to tax it as a distilled spirit or if the Supreme Court said well it is, then we would be taxing this at quite a bit higher rate. [LB824]

HOBERT RUPE: That's correct. [LB824]

SENATOR COASH: Okay, thank you. [LB824]

HOBERT RUPE: Yes. [LB824]

SENATOR COASH: Any other questions from the committee? Seeing none, thanks, Hobie. [LB824]

HOBERT RUPE: Thank you. [LB824]

SENATOR COASH: That was quick. [LB824]

SENATOR KRIST: Yeah, it's going to be 20 minutes before they're ready for me. [LB824]

SENATOR COASH: Uh-huh. We'll take the next proponent. [LB824]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

JUSTIN BRADY: Senator Coash and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers Association, in support of LB842 or LB824, excuse me. As per usual, Hobie did an excellent job of informing you of how we got to where we were at. From the industry standpoint, I would echo that we, too, followed the legislation that was introduced in 2005, looking for and needing clarification as to how these products were going to be regulated and taxed, and followed the Attorney General's Opinion and then the subsequent Liquor Control Commission's rules, and now are here asking you to clarify again--I would say again--what the policy of this state should be as far as how these should be taxed and regulated; and from the industry, like I've said, consistency with the feds and 47.5 other states. So with that, I'd try to answer any questions. [LB824]

SENATOR KRIST: Any questions from the senators? Thank you. Thanks for your testimony. [LB824]

JUSTIN BRADY: Thank you. [LB824]

SENATOR KRIST: Next proponent. Good afternoon. [LB824]

MICK MINES: (Exhibits 1-3) Good afternoon, Senator, members of the committee. For the record, my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm a registered lobbyist, today representing Diageo and Mark Anthony Brands. They're both internationally-recognized international distributors of flavored malt beverages, and we're here in support. And two names, by the way, you might notice are Smirnoff Ice and Mike's Hard Lemonade are products that my clients distribute. A little...go back a little bit in the past, you might remember that Champale and Malt Duck were flavor in the '70s. Some of you may remember and some of you may not. (Laughter) In the 1980s, Seagram coolers and Gallo's Bartles and Jaymes coolers were popular, and now those products come in flavored malt versions. Flavored malt beverages are distributed by beer distributors, they are sold by beer retailers, and they are enjoyed by consumers on occasions where they drink beer, and they drink this from the bottle. Flavored malt beverages are beer. The brewing process, for instance, for flavored malt beverages begins with a beer base, as you've heard, then a variety of ingredients are added, including fruit flavors, to differentiate the taste from hops to the taste that they end up with. These flavorings like vanilla extract, almond extract, lemon extract, as you heard Hobie say, they do contain alcohol. They contains a minute amount of alcohol and they use the alcohol--I wondered that--they use the alcohol as a preservative or a carrier or an extractive or a solvent to keep the flavor from spoiling and from becoming dispersed in the product. Let's be clear, there's a distinct difference between ethyl alcohol and liquor, and flavored malt beverage contains a small amount of alcohol, not liquors like gin and whiskey and rum. In fact, federal law prohibits liquors from even being present in the brewing process in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

the building, so there is no vodka poured into the process to enhance the alcohol content. Most flavored malt beverages have an alcohol content, as you heard, of about 5 percent. Just like regular beers--Coors and Budweiser--federal regulations actually limit the amount of alcohol contributions of flavor to the alcohol in the product. For instance, a 12-ounce bottle of 5 percent-by-volume flavored malt beverage contains about one-quarter ounce of alcohol, one-quarter ounce. Nebraska law currently recognizes that alcohol has many nonbeverage uses and exempts these uses from alcoholic beverage requirements; even that of flavored alcohol eventually ends up in an ingredient in food and beverages. LB824 specifically defines flavored malt beverage in the Nebraska Liquor Control Act and I think that's where both Justin and Hobie were going. It clarifies it, codifies that flavored malt beverages are beer based and classified as beer. Now, you're going to hear some opponents to this, I assume, and one of their arguments is going to be that flavored malt beverages are marketed to underage drinkers; they're fruity, they taste good. And before we get to that, let me just simply say that the Federal Trade Commission proved this old accusation false in 2003. Congress asked them for a report and in that report it stated, and I'm...let me quote from their alcohol marketing and advertising report. This is the Federal Trade Commission reporting to Congress; this is a big deal. The commission's investigation of flavored malt beverages "found no evidence of targeting underage consumers" in the marketing of flavored malt beverages. "Adults 21-29 appear to be the intended target of flavored malt beverage marketing and the products are popular among adults, including those over 27." Similarly again, the Federal Trade Commission report to Congress in 2008 reported in a paper entitled Self-Regulation in the Alcohol Industry. They concluded that alcohol beverage industry advertising efforts were not targeted at youth. My clients, as other clients, they're...they value responsible drinking; they enjoy part of celebrations in everyday life for people who choose to drink. Diageo and Mark Anthony Brands understand that creating a positive role for alcohol in society is fundamental to their company's purpose and their long-term viability. I'm going to hand out a letter. One letter is from the administrator of the Flavored Malt Beverage Industry (sic) in support. I'll hand out my testimony, and then I have a frequently asked questions PowerPoint that might be of interest to you as well. We urge you to pass LB824 to General File and I would be happy to answer any questions you might have. [LB824]

SENATOR KRIST: Any questions for Senator Mines? No? Thank you. [LB824]

MICK MINES: Thank you. [LB824]

SENATOR KRIST: (Exhibit 12) Thank you for your testimony. While Kathy is making her way up, I'd like to read into the record a letter from Lucky Bucket Brewing Company in support. Did I do that okay? All right. Welcome, Kathy. [LB824]

KATHY SIEFKEN: Senator Krist and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing the Nebraska Grocery Industry

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

Association in support of LB824. This bill basically clarifies what a flavored malt beverage is, and that's very important to our industry. It makes no difference how the court case turns out and the rulings. We need this bill so that we can define flavored malt beverages. The reason that's important to the grocery industry is because if you...if these are classified as a distilled spirit, it will increase the cost of, say a six-pack of any of these products by about \$2 a six-pack, and what that will do to our industry is chase those sales across our state lines. About 60 percent of the citizens in the state of Nebraska live a short distance from our state border and we believe that all they'll have to do is cross a bridge if these are the products that they want to purchase and for that reason, we would be in support of this bill. In addition to that, the Liquor Control Commission in its entire history has always followed the federal guidelines. It's very important that we don't become an island and that we are able to keep those sales within our state lines and within our own citizens of Nebraska. If you have any questions, I'd be happy to try to answer them. [LB824]

SENATOR KRIST: Any questions for Ms. Siefken? No? Thank you. Thanks for your testimony. [LB824]

KATHY SIEFKEN: Thanks. [LB824]

SENATOR KRIST: Next proponent. Good afternoon. [LB824]

JOE KOHOUT: Good afternoon. Vice Chairman Krist, members of the General Affairs Committee, my name is Joe Kohout, K-o-h-o-u-t, and I appear before you today as a registered lobbyist for and on behalf of the Associated Beverage Distributors of Nebraska. The Associated Beverage Distributors of Nebraska is made up of 21 locally-owned and operated companies that deliver choice and value through a regulated system to the nearly 4,000 retailers in Nebraska who are licensed to sell alcohol. Nebraska's beer distributors have a significant impact on our state's economy through the operation of warehouses, purchase of trucks, payment of vehicle license fee and fuel costs. We provide over 500 employees with wage and benefit programs and also pay Nebraska personal, property, and sales tax. I appear before you in support of LB824, a bill that would redefine the term flavored malt beverage so as to mirror the federal definition for the same. As those before me have ably testified, the goal of this legislation is pretty simple: to bring Nebraska's Liquor Control Act up to date, to provide for a definition of this popular product, and to treat flavored malt beverages the same as 47.5 other states and federal law. Federal law--and therefore this bill--classifies flavored malt beverages as malt beverages that could...that...rather than spirits so long as they do not exceed 6 percent of alcohol by volume and they do not obtain greater than 49 percent of their total alcohol content from the flavor. These products, the products we are discussing here, are at their very heart beer. They are fermented, and then flavoring is added later, and so long as they do not trip the requirements I mentioned--noted earlier, they are...those products are taxed as beer. Thank you, Mr. Vice Chairman and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

members. I will try to answer any questions that you might have. [LB824]

SENATOR KRIST: Any questions for Mr. Kohout? Thank you, seeing none. Next proponent. Welcome. [LB824]

MARK WHITEHEAD: Thank you. Chairman, members of the committee, my name is Mark Whitehead, that's M-a-r-k W-h-i-t-e-h-e-a-d. I am the president of the Nebraska Petroleum Marketers and Convenience Store Association, or president of the board. I also pump gas for a living right here in Lincoln and in western Iowa as well. We've got...I think my experiences are fairly consistent with most of our members of our state association as well, that being my experiences at Whitehead Oil Company. We've got 25 liquor licenses currently, 20 of those are here in the state of Nebraska. They are...there are several different classifications of liquor licenses and they range from: beer; beer and wine; beer, wine and spirits. Over half of our locations, currently, just have the beer and wine or just beer. That is our primary product that we sell within our stores. As was previously testified, what we're asking for with this legislation is simply mirroring exactly what's taking place in the marketplace already. We've heard about it on the State Liquor Commission level, we've heard about it on the wholesaler level, and I guess I'll reinforce that as well on the retail level. This would dramatically change the way U-Stop Convenience Stores markets their products and how we go about it. Currently, we're able to sell products that are described here out of our beer vaults, through our facilities that are licensed for beer. If, in fact, this becomes more restrictive and it goes into a classification of spirits, that changes the entire ball game. Can we get a spirit license for most of our locations? Yes, we probably can. But then isn't it a little bit ironic that the opponents of this are doing this to restrict access when, in fact, the exact opposite what might be...very well be true. If we're put into a position to go on out and get a spirit license or a full liquor license for every one of our stores, that, of course, opens the doors for many of the other spirits within our stores. Now, whether or not that's a good fit or not, I don't know. We'd maybe need to take a look at that from a marketing perspective. I indicated as well, and I'll touch on it briefly, restricting access is the main purpose for the opponents of this, principally to keep it out of the range--or out of the reach--of some who might not otherwise use it. I can tell you from experience, being a convenience store operator, as well as the research that I've done as well, restricting access does not work. We've seen that in the Lincoln market in the early '90s, where the Supreme Court gave us the ability for liquor stores--or for, excuse me, convenience stores--grocery stores, drug stores, to sell beer and wine through our facilities. Overnight the number of liquor licenses doubled. The competition was incredibly competitive with that many more, as you might imagine. Displays were larger, the price points went down, it was an incredibly competitive marketplace. Several years later, the city of Lincoln went for Sunday liquor sales, so I did an investigation of what happened during that three-year period. They increased availability by more than double, obviously extremely competitive pricing on the product. During that same three-year period, the consumption per capita went down in the city of Lincoln. Likewise,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

problems, as measured by DWIs, went down as well. So I only bring that out from the standpoint that if, in fact, increasing the tax on the malt liquor products on this thing is designed to restrict access, it's not going to accomplish that. And I can tell you that from firsthand experience based on many different scenarios where the same thing has happened, changing this federal guidelines from state-controlled drinking ages to a mandated 21 years old. Likewise, that did not have the desired effect, so...but that's going down a different tangent, but I did want to draw that conclusion. I'd be glad to answer any kind of questions you might have. [LB824]

SENATOR KRIST: Any questions for Mr. Whitehead? Thank you, sir. Thanks for coming in. [LB824]

MARK WHITEHEAD: Thank you. [LB824]

SENATOR KRIST: Next proponent. Senator Coash, will you take it again, please? [LB824]

SENATOR COASH: Yeah. Welcome. [LB824]

JIM MOYLAN: Mr. Chairman and members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n, general counsel to the Nebraska Licensed Beverage Association, which is a state association of liquor retailers. We're down the slope, we're at the bottom, and they pervade us. Now, I want to tell you if this doesn't pass and they tax it as alcohol, the poor retailer is going to get the blame. They'll...the customer will come in, want to buy a six-pack, and find out it's either \$1.50 to \$2.50 more than what they're paying now, so I don't think they need that. Other than that, we support this and have all along since the issue first came up. Any questions, I'd be happy to try to answer. [LB824]

SENATOR COASH: Thank you, Mr. Moylan. Any questions? Seeing none. [LB824]

JIM MOYLAN: Thank you. [LB824]

SENATOR COASH: We'll take the next proponent. Mr. Otto. [LB824]

JIM OTTO: Senator Coash, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation. I'm here on behalf of the Retail Federation to testify in favor of LB824. I'll be very brief. We have been supportive of this since the very beginning, we think it clarifies it, we simply wanted to go on record in support of it. And I would just mention very quickly that when you think about...you can't have any more than 1.5 percent of an additive in a 12-ounce beverage, that additive many times is vanilla. I was just going to say I put more vanilla than that in my french toast for my grandkids. So with that, I'd be glad to answer any questions. [LB824]

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Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR COASH: All right. Thank you, Mr. Otto. I don't see any questions. Thank you. Anyone else here in support of LB824? Seeing none, we'll go to the opponents. Welcome. [LB824]

DIANE RIIBE: Hi. Good afternoon, Senator Coash and members of the committee. [LB824]

SENATOR COASH: Good afternoon. [LB824]

DIANE RIIBE: (Exhibits 4 and 5) My name is Diane Riibe and I am the executive director of Project Extra Mile. We're a statewide network of communities working on underage drinking and youth access to alcohol issues. Before I begin, I'll just let you know the handout you have in front of you is a copy of a letter that I'll reference from the commission in October of 2003, really when the discussion began to the wholesalers and the retailers, identifying very clearly the definition of these products as distilled spirit under current statute, which is the same statute that we have at the moment. The other piece that you have is an article from the Lincoln Journal Star, which identifies the amount of lost tax revenue based on that inappropriate classification. We would encourage that this committee not advance LB824 for a number of reasons. In an effort to provide enough information to you on this issue while keeping it as clear and concise as possible, we would submit that there are three primary reasons to oppose LB824. At the start, we want to recognize the most basic premise that alcopops clearly fall within the statutory definition of distilled spirits under the Nebraska Liquor Control Act, which provides that, "Spirits means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution." Further, in its February 14, 2011, ruling on this matter, a Lancaster County district court stated, "Accordingly, the court concludes that the Commission's rule regarding FABs...exceeds the statutory authority granted to the Commission under the Act." The court continued, "While the Commission may have the authority to adopt the TTB standard for FABs for purposes of standards of manufacture and labeling, the Act does not allow the Commission to adopt a regulation that treats a product that clearly fits within the definition of spirits as beer for purposes of taxation." And as you know, Nebraska's Supreme Court is still deliberating this case and we would believe that it would be prudent to make no decision prior to their ruling. For further foundation, let me quote from the transcript from the LR370 hearing from December 7, 2004, on this matter. Mary Campbell, at the time representing the Nebraska Beer Wholesalers Association and the Nebraska Wholesale Liquor Distributors Association, at that time stated, "and from all the testimony today and from our own take on it, we would suggest a definition of flavored malt beverages with the less than 0.5 percent alcohol by volume derived from flavored standard...with that, we would be preserving the integrity of our definitions of beer and of spirits, but still allowing the makers to incorporate flavors into their products." At the same hearing, Mr. Terry Micek with Coors stated: "I'd like to talk to you about two things, as far as my major points, and that is Nebraska should not change the current law regarding the TTB

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

rule, your current law is good no matter what kind of rule comes out. The second one is Nebraska should study when are you going to start enforcing your current law." And finally, from the same hearing and transcript, Mr. Hobie Rupe of the commission states in his testimony before this committee, "so based upon our current definitions, if, in fact, a flavored malt beverage is a malt base with an infusion of alcoholic flavorings in that base, it would probably correctly be classified as a spirit, or at least that's the closest definition we would have within our statutes." And so we move to the primary reasons for not making this change. First, we would ask you to uphold the law, not change the law. Nebraska statute is currently being violated or we wouldn't have this proposal in front of us. It is universally recognized by the district court, by the chief staff member of the commission, by industry members themselves. This bill proposes to classify "alcopops" exactly as the Liquor Control Commission is doing as we speak, in complete conflict and reversal of its own determination of the proper classification in 2003, as well as the 2011 Lancaster County Court decision. You have heard that this is simply a step that will move Nebraska into harmony with the federal government's guideline for the products. However, the 21st Amendment to the Constitution gives authority to the states to regulate and tax alcohol, as evidenced again through the words of Mr. Rupe at the 2004 LR hearing: "each individual state under the 21st Amendment can categorize different products how they would do it." The January 2005 Federal Register noted with regard to comments they received from the Nebraska Liquor Control Commission during the TTB's rule-making process, "some states have already begun regulatory proceedings on this issue. The Nebraska Liquor Control Commission commented that it has already determined that FMBs containing more than 0.5 percent alcohol derived from distillation should be classified as distilled spirits, and has set a deadline for compliance." For your information, Senators, that deadline was eight years ago. Second, it's substantially unfair to taxpayers. Nebraska taxpayers are losing as much as \$2 million a year, as you see evidence in that article, and have been for nearly 10 years in lost revenue owed to the state by the alcohol industry in unpaid taxes. This is a figure based on 2001 dollars. The Liquor Control Commission may dismiss this amount today, but they are clearly quoted in the 2003 Lincoln Journal Star article using that figure, and they have never been required to make the calculation with current revenue figures and trends showing precise, substantiated numbers. On the other hand, we know that underage drinking cost Nebraska taxpayers approximately \$423 million in 2010. The Centers for Disease Control and Prevention recently released research documenting the cost of excessive drinking to Americans at \$2 per drink beyond what's paid at the bar or liquor store. Sadly, it's widely acknowledged that as much as 90 percent of all underage drinking--and as much as 60 percent of adult drinking--occurs in an excessive, binge-drinking fashion. These costs include lost work productivity, property damage from car crashes, expenditures for liver cirrhosis and other alcohol-related medical problems, as well as money spent on incarceration of drunk drivers and criminals using alcohol, \$0.80 of that \$2 per drink cost of which was spent by federal, state and local governments. As taxpayers, we don't get a break on the cost of alcohol to society. Why on earth would we be looking for not just a tax break for the alcohol

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

industry, but a way to allow them to skip the taxes they already owe? Third, Nebraska's young people are being harmed. Our youth are being targeted by an industry that counts on profits from underage drinkers and these products target our very youngest. They are referred to within the industry as starter drinks. They are targeting our most vulnerable, our young, barely-teenage girls. Young females are the largest consumers of these products, according to the data. "Alcopops" don't taste like alcohol; they taste like fruity, sweet drinks, similar to soda pop. Girls like them because they don't taste like alcohol. Boys like them because girls like them. Conservative estimates of sexual assault prevalence suggests that 25 percent of American women have experienced sexual assault, including rape; approximately one-half of those cases involved alcohol consumption by the perpetrator, victim, or both. Of all the alcohol sold in Nebraska in 2010...of all the alcohol sold in the state in 2010, more than 25 percent of it was consumed by persons under the legal drinking age resulting in profits to the alcohol industry of more than \$150 million. And we know that when a young person begins drinking alcohol before they're age 15, they're four times more likely to be alcohol dependent as an adult. This is an industry that needs to get its consumers early. They need to seal the deal in order to ensure future long-term profits. In no way could we really believe that this industry wouldn't fight hard and long to protect this segment of its profits. The interpretation and application of the distilled spirits and beer definitions in the Liquor Control Act, as they pertain to "alcopops," has profound implications for the health and safety of Nebraska citizens, most acutely our youth. "Alcopops" are popular with underage drinkers who are at high risk for alcohol problems. The Nebraska Liquor Control Act has as its intent the promotion of temperance and the promotion of the health and safety of Nebraska citizens. The act's provisions, including the definitions of distilled--excuse me--distilled spirits should be liberally construed to achieve this intent. Further, statutory language should be given its plain and ordinary meaning. There should be no support for the reversal of state law merely for the financial gain of the alcohol industry, particularly when such a decision would provide a health and safety threat to our youth, while at the same time costing Nebraska taxpayers state tax revenue owed to them in the millions of dollars. It's purely and inherently wrong. This years-long process has not been about waiting for a court to make a decision, nor has it been about an uncertainty about what is best for Nebraska's young people or taxpayers. It has been about public health and safety advocates, parents, and others struggling to be a part of a valid discussion in this state about appropriately protecting our youth and asking that the alcohol industry pay its fair share. Unfortunately, it's also been about having to fight a system, an agency, an attorney general and others who have been vigorously defending an industry's preferential regulatory and tax treatment while ignoring the devastating result of that decision on the health and safety of Nebraska's children. We ask you to uphold the law and not to change the law, Senators. We ask you to do the right thing for the public health and safety of our young people. We ask you to do the right thing for Nebraska taxpayers. We recognize that these are difficult decisions when facing a powerful industry, but sometimes, just sometimes, the smallest voice really is the voice that should be heard. I thank you for your time and would be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

happy to entertain questions if you have them. [LB824]

SENATOR COASH: Thank you, Ms. Riibe. I just want to clarify my understanding of where we were and where we are. These products are currently being taxed the same as beer, correct? [LB824]

DIANE RIIBE: Correct. [LB824]

SENATOR COASH: And was there a time when they were taxed as distilled spirits and then went to beer or have they always been taxed as beer? [LB824]

DIANE RIIBE: Well, they have always been taxed as beer because they were a new product on the landscape, so it wasn't as though there was an opportunity to have, really, that kind of a discussion. [LB824]

SENATOR COASH: So ever since the products have been available, they've always been taxed as beer. [LB824]

DIANE RIIBE: As they've been new. And as you can see back in 2003, when the commission first began to detail and understand that those products were new and needed to be addressed, they did make that determination that they were distilled spirits. And again, that's the determination that's been found by the court and certainly by the literature and the research. [LB824]

SENATOR COASH: Okay, because I was just trying to figure out if we went one way and went back the other way because you... [LB824]

DIANE RIIBE: Right. [LB824]

SENATOR COASH: ...you kept saying not go backwards, but we're...for purposes of taxing anyway, we've never done one thing and then changed our mind. We've always taxed as beer, so. [LB824]

DIANE RIIBE: Well actually, we have changed our mind and we haven't done the implication. I can tell you the time line fairly easily off the top of my head, but we have that documented if you need. Back in 2003, in October, when the commission made its decision and notified the wholesalers and retailers, that was in October of 2003. In November of 2003--and I was personally there--the hearing room to the Liquor Control Commission was as packed as it could get without the Fire Marshal intervening. There was a large crowd of industry representatives who urged the commission to hold back on that decision, which was required at that time to be implemented January of 2004. That decision was held off at that time, at the urging of the industry, and then in the spring of 2004, Senator Ray Janssen asked again in April of that year that the decision

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

be held off yet again for the TTB to make its rule, and so that was the beginning of what was a long process. [LB824]

SENATOR COASH: Oh, okay. [LB824]

DIANE RIIBE: What we do know is that those products, the tax does make a difference. Young people are very price sensitive. [LB824]

SENATOR COASH: I just wanted to make sure that...I mean, this is about the second time I've heard of it, some of my newer colleagues. [LB824]

DIANE RIIBE: Um-hum. [LB824]

SENATOR COASH: We've never decided to tax it as distilled spirits and then we're back to taxing it as beer; we've always... [LB824]

DIANE RIIBE: Well, no, that... [LB824]

SENATOR COASH: We've always taxed it as beer. [LB824]

DIANE RIIBE: We have made that decision, as has the court. The Attorney General, along with the industry at an international level, appealed that decision. So when the Attorney General rendered his opinion--back in 2005, I believe it was--indicating at that time that it could be either, apparently he did care because once it was determined that it was either by the court--which the either was at the higher tax rate, apparently--then the Attorney General had a different opinion and decided to appeal. So, yes, it has changed. Has it been implemented? No. It has changed. [LB824]

SENATOR COASH: Okay, okay. Thank you, Ms. Riibe. Any questions? Seeing none, thank you. [LB824]

DIANE RIIBE: Thank you. [LB824]

SENATOR COASH: Any more testifiers in opposition of LB824? Is there anyone here in a neutral capacity? Seeing none, Senator Karpisek, do you wish to close? [LB824]

SENATOR KARPISEK: Thank you, Senator Coash and members of the committee. In 2003, FMBs were about 4 percent of the beer market. Today, they are not. They're less than 2 percent of the beer market, so looking at the tax equation is not the same today as it was then. I do agree that there is a lot of confusion on this whole subject and that's why I brought this bill, to try to make it clear. The lawsuit is just about the commission making this judgment, and so I think as Mr. Rupe said, the lawyer even said it should be the legislative process. Here is the bill to do so. Talking about the taxes issue, Utah,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

when they changed this, they actually lost money because the sales went down so much. So to use that argument, I don't see that this is going to bring us a whole lot of money. It'll jack the prices up and then it might not be sold as much. I did...I was waiting for it and I thought that I would hear it: young people are very price sensitive. But this committee heard a bill about loss leaders for alcohol, but there was no talk about that or there was no proponent testimony from the same group. I find that a little bit odd. With that, I think that we need to do something irregardless of how the court case comes out because, again, this isn't trying to divert the case, it isn't trying to do anything with that case, it's just trying to get it to where we know where we are, end the confusion, and just stop some of the back and forth on that. I'd be glad to try to answer any questions. [LB824]

SENATOR COASH: Senator Brasch. [LB824]

SENATOR BRASCH: Okay. Is this just retail and bottled malt beverages? I mean, is it if somebody went to a bar and ordered a beer, say with tomato juice or orange juice or two tablespoons of vanilla or something, you know, or they...is this just the retail that we're talking about here? [LB824]

SENATOR KARPISEK: Yeah, it would be... [LB824]

SENATOR BRASCH: Okay. [LB824]

SENATOR KARPISEK: ...because we had something, probably what we would talk about would be the boilermaker bill where you would drop a shot of whiskey into the beer, is kind of where you're going and... [LB824]

SENATOR BRASCH: That if you're adding something that would dilute the alcohol content, say... [LB824]

SENATOR KARPISEK: Or increase it. [LB824]

SENATOR BRASCH: Or increase it, okay. [LB824]

SENATOR KARPISEK: Yeah. In the bar that...I'm not the attorney on this, but the boilermaker bill, I think, would allow that and it wouldn't be taxed as a hard liquor. [LB824]

SENATOR BRASCH: That's my only question. Thank you. [LB824]

SENATOR KARPISEK: Thank you. [LB824]

SENATOR COASH: Thank you. Any other questions? Seeing none, thank you,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

Chairman. Senator Louden? [LB824]

SENATOR KARPISEK: Welcome, Senator Louden, whenever you're ready. [LB829]

SENATOR LOUDEN: Okay. Well, good afternoon, Senator Karpisek and members of the General Affairs Committee. My name is LeRoy Louden and that's spelled L-o-u-d-e-n and I represent District 49. I've introduced LB829 to create alcohol impact zones. An alcohol impact zone means a geographic area that is located within a city, a village, or the unincorporated area of a county and that is adversely affected by chronic inebriation or illegal activity associated with sales or consumption of alcoholic liquor. U.S. researchers say violent crime would drop if local ordinances ban single-serve containers of alcohol. Sociology professors from California conducted studies in 91 of the largest U.S. cities. It was examined from 1984 to 2006. The study examined some crime rates and cooler space allocated to containers sold individually in San Bernardino, California, and found higher rates of violent crimes in neighborhoods around alcohol outlets that allot more than 10 percent of their cooler space for single-serve containers. Researchers stated that many who purchased the drinks tend to be underage and loiter outside liquor stores causing problems. They also found that most people who consume these drinks buy them because they're cold, they're cheap, and they're an immediate way to get a buzz. I've introduced LB829 to address the problems in the areas of chronic public inebriation and other activities that overconsumption of alcohol may bring. There are areas in Nebraska where such problems occur and they have made headlines in the press from time to time. LB829 can have an impact on the deterioration of these areas and could help lessen the cost to law enforcement that has to contend with these areas. Section 4 outlines who may apply to the Liquor Commission for the creation of an alcohol impact zone. The applicants are narrowed to a city council, a village board, or board of county commissioners. The reason for this list of applicants is so the Liquor Commission will not be inundated with applications. The section goes on to require a geographical description of the area to be the zone and the commissioners shall hold a public hearing before a decision is made. Section 5 allows the commission to place special conditions or restrictions on a licensee in the zone and may adopt and promulgate rules and regulations to carry out as stated in the section. LB829 is not intended to drive any established out of business, but it is intended not to allow a business to sell a product that is directed to those that have an addiction to alcohol. It is common knowledge that there is some forms of beer that are manufactured strictly to be sold for chronic alcoholics that have very little money to satisfy their need. This type of business has to be scrutinized much more than the sale of beer and alcohol at a local grocery store or a liquor store frequented by the general public. The intentions of LB829 is not to create a lot of impact zones across the state. It is a tool for counties to have, but in reality will probably not be used that often. I don't foresee many, if any, impact zones created. The problem areas that currently exist will most likely negotiate with county officials to control sales of particular items rather than create an impact zone. I can see LB829 as used as a last resort option when negotiations are exhausted or not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

possible and the problem is out of hand. In Whiteclay bottled beer is not sold because a bottle can become a weapon. That was negotiated several years ago between the retailers and the sheriff's department. Also I understand that retailers they close at 11:00 at night up there and start at 8:00 in the morning. These are agreements that had a benefit for all concerned. I've spoken to retailers in other towns and some of them do not sell a Hurricane type beer because they don't want the clientele that often purchase it. So I'm optimistic that if some guidelines were in place such as what would come from LB829, retailers would be more inclined to negotiate time-of-day sales, single-serve containers, or perhaps alcohol that is produced for the alcohol addiction market. Any one or all of the mentioned issues would be of help to an alcohol impact zone. LB829 won't stop chronic alcoholism, but I'm sure if some zones are created, it would help law enforcement reduce the manpower needed in these areas to check on the well being of many of these people that become inebriated. Law enforcement has to take it upon themselves to keep people from freezing to death in the winter, or even over heating in the summer if they pass out on the streets after becoming inebriated. Alcoholism to me, I think, is a chronic disease and LB829 is not designed to overcome that, but it can be a step to bringing alcoholism into areas where treatment is more available, in other words, bunch up those people someplace where they can be better monitored and perhaps receive some treatment. Areas where inebriation and panhandling are prevalent usually have trouble sustaining reputable businesses. And this is what we run across in many of those places, when you have people that are panhandling to get these single serves of liquor, your businesses have a terrible time trying to do business up there and if you don't have a police force or something to continually monitor the process, why it is hard to do business up there. If anybody ever went up to Whiteclay and tried to buy something, why you usually got to work through a crowd before you can get to the store. By creating an impact zone, some of these problems can be alleviated and a neighborhood could be more productive and is one of the important reason for LB829. They're in the process now of trying to do some work up there in Whiteclay. They're working on a 60-bed nursing home. So there is things that we need to do to help those people along and it isn't always just in the Whiteclay area, but I think the Omaha City Council also voted to support the bill, is my understanding. With that I'd be willing to answer any questions. [LB829]

SENATOR KARPISEK: Thank you, Senator Louden. Senator Coash. [LB829]

SENATOR COASH: Thank you, Chairman. Thank you, Senator Louden. I have a question and if you can't answer it, I'm sure Hobie can. It's my understanding that when a new licensee wants to get a liquor license, they've got to go in front of the city council and then they go to the Liquor Commission afterwards. So my question is, could the city council, since they have the first step, just deny that liquor license? Doesn't mean that the commission will or won't, but couldn't the city council just make their feelings known by denying the initial license and leaving it up to the commission? [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR LOUDEN: Well, yeah, they could either veto the license up or down. But they couldn't set that license that they could only sell certain things in that part of the city unless you have an impact zone, because then it affects the whole thing. This is a problem we run across up at Whiteclay. The county commissioners is the ones that give the liquor license up at Whiteclay. Now they could set a time-of-day sales and they could do that, but the problem is when they do that, then that affects the whole county. Then they turn around and had a golf course out there on Gordon that has a liquor license outside the city of Gordon, so whatever you do for Whiteclay affects that golf course there in Gordon. Whereas, if you come up with an alcohol impact zone, you can decide this geographic area and set that up and then restrict those licensees to what they can or can't do. [LB829]

SENATOR COASH: Okay. Thank you, Senator Louden. [LB829]

SENATOR KARPSEK: Thank you, Senator Coash. Senator Larson. [LB829]

SENATOR LARSON: So, Senator Louden, your bill, essentially, you're giving the commission, I mean the city council and village board and county may apply to the commission, but the commission has the essential responsibility of setting up the zone, correct? [LB829]

SENATOR LOUDEN: Right. [LB829]

SENATOR LARSON: Sort of making a reservation, as you will, of where you couldn't or could sell alcohol putting a certain area in an area and making sure that that's an area that can or can't sell alcohol? [LB829]

SENATOR LOUDEN: When they have their hearing and they decide to do that, then yes, they would... [LB829]

SENATOR LARSON: So you're creating a little reservation. [LB829]

SENATOR LOUDEN: And they have to designate, as it's in the bill, they have to designate that geographic area. So they would have to have a description of that area where that impact zone would be. [LB829]

SENATOR LARSON: Okay. So you're...I mean, you're essentially grouping people in a little reservation area saying that...and businesses in that area where they could and could not sell alcohol; or different types of alcohol. They could sell alcohol, but they...different... [LB829]

SENATOR LOUDEN: Yeah, depending...and it depends on whether they do...there is different issues they could have. Not all of them, but any one of them and that would be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

a... [LB829]

SENATOR LARSON: Yeah. [LB829]

SENATOR LOUDEN: ...and it's not exactly listed in there, you know, there's time-of-day sales and single serve, but when we drew the bill, we didn't decide what kind of alcohol they could sell. [LB829]

SENATOR LARSON: No, yeah, and I noticed it. [LB829]

SENATOR LOUDEN: And I didn't really want to go there, because as I've said, I think if this was in statute, you would find out that there would be more retailers would be willing to negotiate with those people rather than to go through this whole deal, because there is...as I say, they already do that if there is a need for it--bottle beer in Whiteclay and time-of-day sale, they've already negotiated that. [LB829]

SENATOR LARSON: And I understand. I guess I have a hard time grouping people based on...oh, based on anything, whether it's how much alcohol they buy or anything else on...you know, grouping them just because of what they do, putting them in a certain area and saying you can't do this or you can't do that. To me that is a little bit disconcerting. I think we've done that in the past and... [LB829]

SENATOR LOUDEN: Well, it depends on what you're talking about, because, I mean, what they're selling up there is a product that is primarily bought by chronic alcoholics. As I tell, there's nobody left around here, I found out, that was around when you couldn't sell liquor to the Indians. And so I've told them, I remember when Indians would move into some of these small towns and vanilla extract was gone in two days because they couldn't buy liquor, but they could buy vanilla extract. And so a lot of these stores, in some...in your Gordons, your Rushvilles, and the grocery stores stocked it, sold it by the pickup loads. Well they were selling it because of this...for this addiction purposes. That to me...to me it was morally wrong, but that was it. And that's where we're trying to come with this alcohol impact zone. If you're building a product and you're selling it for some type of chronic illness, I think it should be scrutinized more than just selling it down at the local bar or something like that. [LB829]

SENATOR KARPISEK: Thank you, Senator Larson. Senator Bloomfield. [LB829]

SENATOR BLOOMFIELD: I remember that. It's amazing what a loaf of bread will do to a little ethanol...or alcohol antifreeze. But I think too, that we've been years in the state of Nebraska here trying to solve a South Dakota problem. If we, as the state of Nebraska, say no you can't buy alcohol in Whiteclay, and the reservation maintains the position you can't buy any alcohol on our reservation, those folks are going to go to Gordon. At Whiteclay they're two miles from their home. In Gordon they're 20 miles.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

And I think we're better off to keep them in Whiteclay. So I'm going to have some issues with this. [LB829]

SENATOR LOUDEN: May I respond to that? [LB829]

SENATOR BLOOMFIELD: Certainly. [LB829]

SENATOR LOUDEN: Okay. [LB829]

SENATOR BLOOMFIELD: It was supposed to be a question in a round about way. [LB829]

SENATOR LOUDEN: I know it. Yeah, we're not going to be able to do anything because they're double dry up there. And the problem is if they go over to Whiteclay and buy a beer and drink it and have it on their breath and they walk back into the reservation, they get picked up for liquor violation. What I have found out over this is when...as those sales...when I said, well, who's buying beer at 8:00 in the morning, these single serves, you know, these are alcoholics that have to come over and have their first drink. And the sheriff told me that most of the people that they arrest drunk between 8:00 and 10:00 in the morning actually come clear down from Kyle. And I said, well, how did they get from there? And he said, well, Pine Ridge is a central area for the reservation. He said, they can get up in the morning and they can catch a ride into Pine Ridge from Kyle or someplace. Can't catch a ride to other places. But then once they get to Pine Ridge, then they can walk over to Whiteclay and this is how come we have those people coming over then. Now whether...as I said, the impact zone as it is, isn't anything to run anybody out of business. And as I talk to Terry Robins and the sheriffs up there, they think a time-of-day sales would help them more than anything. In other words, these people would have to wait till about noon or so and then at least it would bunch them up from noon until 11:00 at night rather than having them around there in the morning while they're trying to get some of the other businesses done. That's what it's all about. It isn't...you're not...and I agree with you, there's nothing going to be done to change that because that's a whole other different kind of problem. [LB829]

SENATOR BLOOMFIELD: Do you not think we would be running into some discrimination issues if we proceed to attempt to do something with it? [LB829]

SENATOR LOUDEN: No, I don't think so. [LB829]

SENATOR BLOOMFIELD: If we refuse to sell beer to the Native Americans that come down there to get it? [LB829]

SENATOR LOUDEN: No, it wouldn't matter to Native Americans or white, if they don't sell beer until noon, why nobody can buy beer until noon. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR BLOOMFIELD: If you're of age, you have your own money, you walk into a retailer, I don't know how he has the right to say, no I'm not going to sell to you. I know you're putting a time limit on it, and you put the time limit on it at Whiteclay until noon, they can't buy it before noon, those folks are going to be in Gordon at 8:00 in the morning or 9:00 in the morning. They will find a way to get there; and then when they're stumbling home drunk, they've got to stumble 20 miles instead of 2 on a highway that is well lit and paths have been built back to the reservation so they can find their way back. I delivered groceries to Whiteclay for 20 years. You do occasionally in the early morning need to go back and make sure that you don't back over somebody when you're backing up to unload. But I have never been bothered by a panhandler any time up there in 20 years...have I ever had anybody come up to me and ask for a dollar or a dime. [LB829]

SENATOR LOUDEN: I see. [LB829]

SENATOR BLOOMFIELD: Thank you. [LB829]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Louden, of course this is your Whiteclay, but can you tell us any other places where this would apply in your mind? [LB829]

SENATOR LOUDEN: Well, here a while back I visited with Councilman Gray, I think, from Omaha. And that was...that's the reason Senator Council signed onto it is because they were working with it in an area there in Omaha, and they were also doing some negotiating with the retailers there already on their own about what could be sold and not sold in some of the areas on their own. So there are other areas around the state. But as we've had...as you read the papers here in the last day, and we had the little press conference there in the Rotunda here the other day, why it kind of made the headlines a little more...a half billion dollar lawsuit will make a difference around there, get some attention anyway, because already I've gotten inquiries from reporters from places that I've never heard of in the world wanting to know what this bill does compared to what that lawsuit has to do with it. [LB829]

SENATOR KARPISEK: Okay, thank you. Any other questions? Thank you, Senator Louden. Proponents to the bill. Welcome. [LB829]

HOBERT RUPE: Good afternoon, Chairman Karpisek and members of the General Affairs Committee. Once again my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission. First of all I want to thank Senator Louden for introducing this bill. As you're aware, there was an interim study over the summer looking at the possibility of these bills. It was in our legislative letter to look at this. And I'm going to bring this up...you know, for the first thing, just sort

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

of a reminder, but this is not reinventing the wheel. I will be the first to say that we've looked at some other states, what they were doing, who had similar problems, and the key thing which you have to look at is are the areas unduly impacted by the negative consequences of alcohol? Do you have the large amounts of public intoxication, the vandalism, the violence which is intended with it, and is there some motivating...or is there some way to sort of quantify those into a specific area? We looked very closely at the state of Washington. It has four alcohol impact zones. Memphis has an alcohol impact zone, in parts of Memphis. And the purpose, and I think Senator Loudon was right, especially in Washington, once they introduced the first couple, then merely the possibility of looking at an alcohol impact zone seemed to take care of a lot of the problems through cooperation. Now one thing you have to look at this. This is a definitely...this is a city or local county government originated idea. They have to bring it forward and say, we have a specific area in our area which we can define and the hearing before the commission is going to see...have them bring forth the evidence. Is there a higher incidents of law enforcement complaints? Is there higher incidents of public detox taken from that location? Is there higher incidents of panhandling complaints? They're going to have to bring those evidence to the commission to sort of define what the area is. Now look at the licensing process, you're absolutely right. The process as it works is, when a license goes through, it goes to the city council, we'll use the city for example, it could county board if it's in the county, and they make a recommendation. If they recommend denial, it goes to a hearing in front of the commission. The commission looks at the application, compares to existing law, oftentimes we'll agree with the city; sometimes we will not. Sometimes we put conditions on it. But the problem is, that's only affecting new...the last entered into the pool here, in this area. So we might put a condition on Hobie's Hooch Hut, which is coming into this area, and say, okay, we're not going to let you sell single cans. That's not going to do anything to alleviate the problem of that geographic area because Josh's place across the street is still able to sell it because he had his license there first. So what this is going to do is going to try to...instead of just trying to pick and chose which individual licensee is going to be affected by conditions asked for by the city or by the commission, it's going to be looking at a broader swath into is there a specific geographical area that could be clearly defined by the city asking for it; giving up reasons why they believe that the...an alcohol impact zone should be introduced there. And at the next stage, which is one reason why it is somewhat ambiguous, I think you're going to hear a lot of attacks on it, of this bill as ambiguous is because the problem with drafting a bill like this, is how much are you going to micromanage and tell them what they can and can't do. You know the commission...you know, because what might work in parts of downtown Omaha might not be the same conditions would apply up in Whiteclay, or in parts of Lincoln, hypothetically. And so you've got to leave some latitude between the city which is asking for it, the retailers who are subject to it, and the commission who is making a final decision as to what conditions to place on it, sort of say, what conditions can we place on this area to get to the desired effect. Now notice the desired effect is not to stop people from being involved in the business. It actually

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

puts everybody in that area on an even playing field. Everybody in the area is going to have to be complying with these same...if there is hours of sale, no single cans, you know, that's what you've heard a lot of. The complaint oftentimes is that convenience stores, primarily, serve as nothing more but the refrigerators for the homeless and the transients. You know, they can afford one beer, they'll go into buy one of those, they'll go outside and they'll drink it, then they'll try to beg or panhandle for money to go then buy the next one. And so there is a...you know, that's where the...that's one of the hypothetical is one of the areas you look; no single cans. So you're not having that public intoxication outside on the highway streets or the trespasser onto the property. So I really think that the bill, as it's drafted, gives a lot of latitude between the local governing bodies who are saying here's a problem that we have in this area and here's how we think we can deal with it. And then they work with the commission to place those conditions on the license. See, that's the key thing why the commission is involved, because as these places are already licensed, if they're going to be putting conditions on the license after the fact, it's going to have to come from the commission because the commission is one who can place those conditions on the license. And instead of just picking out...picking and choosing one license or one license here, we're going to try to make it a blanket to cover everybody in that area so that everybody has a level playing field in that area. So that's the purpose of the act. And as I said of the bill, this has worked in other states. Washington has four of these, two in Seattle, one in Tacoma, and one in Spokane. There were motions made to have other ones, which then didn't go forward because they got into compliance with the cities. So I'd be happy to answer any questions. [LB829]

SENATOR COASH: All right, thanks Hobie. I got a question with regards to the current license process right now. Just because the city council...currently, just because the city council says no doesn't mean...makes a recommendation to deny doesn't mean the commission will? [LB829]

HOBERT RUPE: No. What that does is that automatically causes a hearing to be had. Most licenses which go through without objections, it's not a hearing. [LB829]

SENATOR COASH: Right. [LB829]

HOBERT RUPE: There will be an evidentiary hearing and the commission will apply the laws, you know, as to the reasons for denial oftentimes... [LB829]

SENATOR COASH: Right. And at the commission level, the commission is allowed to restrict a license in some way, correct? [LB829]

HOBERT RUPE: Yeah. There's some case law, the license may be placed reasonable...the commission may place reasonable restrictions on licensees. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR COASH: But has...but when the commission makes that decision to put some restrictions on a licensee, that has to do with that particular licensee's ability to be compliant with the act. Would that be right? [LB829]

HOBERT RUPE: Yeah. [LB829]

SENATOR COASH: It would have nothing to do with where their... [LB829]

HOBERT RUPE: No, generally it would be an issue that...for instance that the person had DUI in the past and so there would be the condition the person not have any DUIs for two years. [LB829]

SENATOR COASH: Okay. So, but it has to do with the person applying for the license, not where the license is? [LB829]

HOBERT RUPE: Sometimes they have...yeah...sometimes they have to do a little bit more. Recently there was a case in front of us where a lot of these concerns were brought to us by the city. And that application was asking for a Class D liquor license, the whole beer, wine, spirits, off-sale. The city objected. The commission said, okay, well you meet the criteria, but we're not sure a "D" is the appropriate license given the neighbor complaints. So we downgraded to a "B" and put a no-single-can sales on it. Because...that was because of citizen complaints, because that's the other way to have a hearing in front of the commission. If you get three or more citizen complaint... [LB829]

SENATOR COASH: Then they become party to the hearing. So you...because you're kind of going where I wanted to ask you, because it sounds like, in that instance, the commission, through the regular license process, restricted that license and said to that licensee, no single cans, right? [LB829]

HOBERT RUPE: Yes. [LB829]

SENATOR COASH: Okay. Based off of what the city told you. [LB829]

HOBERT RUPE: Based on the city. And really in that case, there was, primarily, based upon the next door neighbor. [LB829]

SENATOR COASH: Okay. [LB829]

HOBERT RUPE: Who complained, who was a party. [LB829]

SENATOR COASH: So do you ever get when you...does the commission ever get a recommendation from the city that says, you know, we've got a new license here and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

we're concerned, commission, that we're concerned about single-can sales at this new licensee's location. Do you ever get...? [LB829]

HOBERT RUPE: Yeah. [LB829]

SENATOR COASH: You do. [LB829]

HOBERT RUPE: What we'll do...what we'll do, is oftentimes, we'll get from the cities a...what we call a conditional approval. [LB829]

SENATOR COASH: Approval. So they'll say, we're fine with this person having a license, but just please restrict it, commission, to no single-can sales or... [LB829]

HOBERT RUPE: And internally, if the licensee agrees to that condition, we won't even have a hearing; we'll just place a condition on the license. If he does...if he disagrees, then a hearing will be had. Because, you know, at that point in time, we looked at a conditional approval as, hey, we're only approving with this condition being met. If this condition isn't being placed upon it, then we would actually be recommending denial. [LB829]

SENATOR COASH: Okay. Because what you're describing seems to be the same outcome Senator Louden's bill is trying to get to, which is allowing a city to say, you know, for this neighborhood, for this licensee holder, for whatever reason, we don't want to have this. And I guess the more I hear from you, the more it sounds like the commission and the local municipalities are already working together to restrict those licenses in the best interest of those communities. [LB829]

HOBERT RUPE: The problem is, is those are only the new guys. Those are only the last guys in the pool. [LB829]

SENATOR COASH: Okay. [LB829]

HOBERT RUPE: And generally there's a problem and what's happening is, we're putting those conditions on the new licensees which aren't really affecting the underlying problems because the guy next door doesn't have that restriction because his license was granted...or he has had the license for 10 or 15 years in some cases. [LB829]

SENATOR COASH: Right. [LB829]

HOBERT RUPE: And so, you know, there's no...unless we're...you know, what this would allow us to do by zones. The other alternative would be is every single area in that city, the city could then during the renewal process recommend denial... [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR COASH: Well, that was my... [LB829]

HOBERT RUPE: ...and go all through it. And then that's...then you're having to have each individual hearing on each individual license. [LB829]

SENATOR COASH: Well, I mean, I would understand a business owner would say, you know, I've been selling this; I'm not the problem, it's this new guy, or whatever. But these licenses come up for renewal annually, correct? [LB829]

HOBERT RUPE: That's correct. [LB829]

SENATOR COASH: So if nothing changed with the law, the cities could draw their own boundary and say, you know what, we've had it with the problems in this area, and everybody who comes up for a license in this area, we're going to recommend to the commission to restrict their license in some way. Could happen under existing law. [LB829]

HOBERT RUPE: It could happen. But the problem that you're going to have there is, you know, a liquor license in and of itself is not a property right, but it's gotten awful darn close on the case law. It's easier, actually, to deal with a licensee when they're first coming into the business and place those conditions on it rather than after they've already got it. Because the case law is that unless there's been a substantial change, you know, what kind of conditions the city or commission can put on it are relatively limited, the Grand Island Latin Club case, we dealt with actually...so based upon that theory, it would be harder to do that...if you were to...if the Legislature were to give us the authority...us and the cities, the authority to create these zones, with geographical areas, then it's going to be...you're going to be painting with a broader brush and you're, actually, going to be able, probably, to get your intended, desired outcome in a quicker and more efficient manner. [LB829]

SENATOR COASH: Because you don't want to turn a license into a commodity. [LB829]

HOBERT RUPE: Exactly. [LB829]

SENATOR COASH: All right. I get you. Thanks, Hobie. Senator Larson. Sorry, are you back, Chair? [LB829]

SENATOR KARPISEK: No, that's fine. Go ahead, Senator, you're doing fine. Senator Larson. [LB829]

SENATOR LARSON: Hobie. [LB829]

HOBERT RUPE: Senator Larson. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR LARSON: Who has the ultimate decision on whether or not to create these impact zones or reservations? [LB829]

HOBERT RUPE: It would be the Nebraska Liquor Control Commission. [LB829]

SENATOR LARSON: So the cities can make a recommendation, but really it's you guys that have the ultimate authority. [LB829]

HOBERT RUPE: Yeah. Yes. [LB829]

SENATOR LARSON: Okay. [LB829]

HOBERT RUPE: And I think that would probably be the most efficient way because these... [LB829]

SENATOR LARSON: And that's fine. And you think that the commission, in terms of drawing the zones or reservations of where they...a business can or...businesses can or can't sell certain types of liquor is in line with the foundations of what we built this country on, free market principles, being able to do business, you know, where does personal responsibility; and this is a twofold question, where does personal responsibility come into this whole factor of market economy, being able to buy what we want? I mean, why should the commission get to draw these reservations or zones of...just because your business is in this zone or reservation, you can't sell these types of liquor, why should the commission get to do that? [LB829]

HOBERT RUPE: Well, first off, you know, I'll answer the second question, or...I'm not sure which order, does this take personal responsibility out of the way, no. Do I think this is a silver bullet which is going to create all...fix every single social problem attached to these neighborhoods? No. It's a tool. And the tool comes from the United States Constitution. The Twenty-first Amendment gives the states the power to regulate and control the consumption of alcoholic product within its boundaries. The Nebraska Legislature has devolved a lot of those day-to-day operational considerations to its state agency, the Nebraska Liquor Control Commission. So if this Legislature decides to grant the commission this power, it is a 100 percent legal, just utilization of the Twenty-first Amendment. [LB829]

SENATOR LARSON: I will agree with you. It is a just on the Twenty-first Amendment. But, I mean, let's look at everything else this country was built on. And we'll move past that. And we talk about...you talk about how Seattle...or Washington State has four and Memphis has one, what is to say that...and we'll use...we can either use Gordon, as Senator Bloomfield quite frankly brings up, or Omaha is, actually, an easier issue. I mean, and I don't represent Omaha, but I guess as an outsider you could guess which

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

areas in Omaha might be affected by this new rule. What stops somebody from going from this...the south Omaha area, or north Omaha area, and going to west Omaha, or central Omaha and buying their liquor. And what stops the business if the cutoff zone is 17th, what...you know, how does that compare to the competition that has a liquor store on 19th Street. I mean, what are we doing to competition in this state when we're starting to create...you know, we're classifying people because you have a business in "x" you can't sell this. But the guy across the street, or two streets down, has a business and why they can't. [LB829]

HOBERT RUPE: Well, and I think that's one reason why the bill is structured as it is, I mean, the final decision is the commission's. It's not just a local politics. I mean, you know, not cut the... [LB829]

SENATOR LARSON: Politics reaches into everything, even the commission. [LB829]

HOBERT RUPE: It does reach into everything. But the purpose, actually, for the commission is trying to have an apolitical body as much as possible, making the final determination. In this case here, it's going to be working with the cities. They're going to have to come forward and say, here's why in this area and here's the specific areas, probably through crime statistics, will probably be one of their primary ways, neighborhood policing, and all the other statutes, and what they do, say, here's the areas where we're having, here's the clusters of these crimes which we're having in this area. And we directly attribute those back to certain utilization of alcohol. [LB829]

SENATOR LARSON: Are you...in this bill, or in this area, are you still creating winners and losers? [LB829]

HOBERT RUPE: I'm trying not to. [LB829]

SENATOR LARSON: You're trying not to. But do you create win...if a business is on 17th Street and that's the cutoff line, and you have one on 18th Street or whatever else, are you creating...can...is there a possibility of creating winners and losers in this bill? [LB829]

HOBERT RUPE: I think that if an area is not clearly defined and reasonable that you could have an unintended consequence, yes, Senator. Hopefully, the commission will work with the cities to alleviate as much of those concerns as possible during the process. That's why it's a public hearing. The public is going to be able to come in and say here's what we think and here's why not. It's not something we're going to cook up with just by throwing darts at a map. [LB829]

SENATOR LARSON: But they're big...in my argument against that is, they're big cities. I mean, there's a lot of area in these cities. There's convenience stores, liquor stores all

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

around the cities. I mean you're never...the only way that you don't create winners and losers in this situation is if you put an entire city, I mean, how many people have a car or can get on a bus or anything and if you're saying you're targeting the transients and the homeless people can only buy one and then have to go beg for more, or whatnot. I mean, shoot, even they can...but they can walk a mile or a half a mile. I'm just saying, in a scenario of this bill, you create winners or losers in the marketplace. The state decides whether it's the city, the Liquor Commission, or we...we decide eventually...or we're putting in place the framework to decide who wins and who loses in business. [LB829]

HOBERT RUPE: Is that a question? [LB829]

SENATOR LARSON: That's my... [LB829]

SENATOR KARPISEK: Thank you, Senator Larson. Senator Bloomfield. [LB829]

SENATOR BLOOMFIELD: Thank you, Mr. Chairman. And I again am working under the assumption that this is a Whiteclay bill. [LB829]

HOBERT RUPE: Actually, I think you're...I don't think...I think it would affect Whiteclay, yes. But I think it would affect a lot of other areas in the state as well as Whiteclay. So I think it's somewhat unfair to the bill to characterize it just as a Whiteclay bill. I think there's parts of Omaha which will be very much...just impacted, the fact, even more so in certain areas. [LB829]

SENATOR BLOOMFIELD: Okay. Given my familiarity with Whiteclay and with my lack of familiarity of Omaha problems, I'm going to call it a Whiteclay bill. [LB829]

HOBERT RUPE: Okay. [LB829]

SENATOR BLOOMFIELD: And I'm going to question it this way: it's my understanding that you don't want to do anything that's going to impact other businesses. You're just particularly wanting to regulate the liquor stores or where the alcohol stores so we can sell this, but can't sell this, and so on. In Whiteclay the largest grocery store doesn't sell a drop of beer. They...the two grocery stores in this town that we worry about all they sell is beer, probably sell in the vicinity of \$40,000 a week worth of groceries. One of them doesn't sell, again, a drop of beer. If we limit the alcohol sales in that town, I am under the impression, and I would ask you if you do not think that that would affect that retail grocery store also? [LB829]

HOBERT RUPE: The one that sells alcohol or the one that doesn't? [LB829]

SENATOR BLOOMFIELD: The one that does not. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

HOBERT RUPE: I don't think it's going to impact them one iota then in the negative. I think it would help. The purpose of the bill is to look at the areas regarding some of the criminal activities, taking all the transients, as I said, you know, unfortunately, often the complaint we get is that these stores are being utilized as the permanent refrigerator for people who are sitting outside drinking, actually illegally, sometimes on the street. If I can actually go in there and I'm not going to have someone asking me for \$1.25 to buy the next Hurricane, I'm more compelled to go into that store. I think...I don't see there being a negative, I see there only being positive repercussions from this. [LB829]

SENATOR BLOOMFIELD: I don't, because the vast majority...you talk about the people that are walking in there, the vast majority of the people drive in there and they don't buy the single can. There are those. I'm not going to deny those that come in and buy the can and go out and drink it on the back step. But the vast majority of them will come down and buy a 12-pack or a 24-pack and then they will pick up their groceries at the same time. But I think if you start limiting it, you can sell beer here, you cannot sell beer there, and that you sitting down here in Lincoln and Omaha make that final decision that you are going to make a decision on that grocery store's livelihood and thereby will impact his business. [LB829]

HOBERT RUPE: You know, Senator Bloomfield, it's not saying you can't sell alcohol. Nothing has been...most of the ideas...that have been...don't deal with 6-packs or 12-packs. [LB829]

SENATOR BLOOMFIELD: If you say you can't buy a single can, what's to stop you from next month saying you can't buy a 6-pack, because it's a small amount and anybody can buy that and go out and drink it. [LB829]

HOBERT RUPE: Well I think the...I think the local governing body is going to come forward and say, you know, here are the specific problems that they're having and here's how we believe certain restrictions on hours, size sales, quantity sales can take good care of it. The key thing is here, this bill is not designed to stop and drive out a bona fide good operator who is selling a 12-pack of Bud Light along with his groceries, somebody who is driving back home. That's not the problem because that person is not bringing in the problems with the crime in the area, around outside. And so, you know, I think, you know, I hope that the city, and I can tell you, at least for as long as I'm involved with the commission, we're not going to be using a shot gun to try to take care of these problems. That's one reason why they're designed to be targeted solutions to try to address specific problems. [LB829]

SENATOR BLOOMFIELD: You've got your work cut out to get the vote over here I'm afraid. Thank you. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KARPISEK: Thank you, Senator Bloomfield. Do you...right now, how would you go about limiting some of this? Because I was involved one time where we...the commission kind of limited what could or couldn't be sold. Can you do some of this now? [LB829]

HOBERT RUPE: We can do some of it now. I mean, I think you're talking about...are you talking about the... [LB829]

SENATOR KARPISEK: Milligan. [LB829]

HUBERT RUPE: The Milligan stuff. Yeah, there's more power in Milligan because Milligan was coming back every year for an SDL. And the thing there, if they didn't want to comply we would just say no. But that was not just because we felt like it. It was because we had lots of reports from law enforcement saying we've got a problem in Milligan, their single can of beer is a half-gallon jug. That's exactly what was going on. They were selling alcohol in half-gallon jugs. And people were going up and buying two of them. And so the problem there is that, you know, you might not be visibly intoxicated when you're coming up and getting those beers, but you will be by the time you're done with them and you continue to cycle through. [LB829]

SENATOR KARPISEK: And I understand that, but my point is, so you could already do some of these things, because it was an SDL. [LB829]

HOBERT RUPE: New license...new license coming out every...every SDL is a new license, is the way you look at it. [LB829]

SENATOR KARPISEK: So, just say, any other bar when they have their license renewed, you... [LB829]

HOBERT RUPE: We have to have a justifiable reason why. The court law has been very clear. They were going to go back in and after-the-fact put a condition on the license, we've got to have an articulable reason why and then have a hearing for it. Could we, perhaps, go through every single license in an area where a city would want to look at it, yes. But it's going to be a, you know, almost like a death of a thousand cuts, the process going through all those licensees, all those individual licensees having a separate hearing. In this case here, we're trying to give a broader tool to the cities. [LB829]

SENATOR KARPISEK: And I understand, I just wanted to make that distinction of where you can and can't do it. Thank you. Senator Larson, quick question. [LB829]

SENATOR LARSON: Real quick, yeah, from what I hear you say the...it's the one-offs...the single beer at a time, or the people that are buying those are the ones

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

causing the problems. [LB829]

HOBERT RUPE: It's not just those. It's the airplane sample bottles are also a common target of people who are inebriated, they're usually sold at very discounted price in order to...albiet the sample. But so it's very affordable and very concealable. [LB829]

SENATOR LARSON: And essentially to create these impact zones, from what I hear you saying, it's going to be...a lot of it will be based on crime statistics, is that like fights, or break ins, or...? [LB829]

HOBERT RUPE: Fights, vandalism, public intoxication, you know, calls for service. [LB829]

SENATOR LARSON: So what happens, you know, we heard Senator Coash's power...the bill like Kansas City, the alcohol...what is... [LB829]

HUBERT RUPE: Entertainment districts. [LB829]

SENATOR LARSON: Entertainment districts. They sell a lot of one-offs, you get a lot of college kids that are publicly intoxicated, you're going to get a lot of fights, you're going to get a lot of...I mean, what happens on O Street, or Dundee, or anything else, I mean, your police increases. I mean, I'm sure O Street...just because it's an entertainment district, that doesn't...we're expecting it out of that district? [LB829]

HOBERT RUPE: Well, exactly. If you look at the entertainment district, there's also a lot of powers in the entertainment district for the local governing body and the commission to pull those entertainment district licenses. So there's a lot of...on the back side is if they don't work, if they have these kinds of problems, there's a lot of powers for both the city and the commission to come in, to cut in on those district licenses. [LB829]

SENATOR LARSON: To pull that entertainment district. I get that. But I guess I'm trying to draw the similarity between what O Street might present now or what an entertainment might present in the future in terms of crime statistics. [LB829]

HOBERT RUPE: Well, primarily those are areas which are licensed for on-premise consumption. And if they have problems on there, there's certain ramifications that where we, the commission can come in and look at the license and hold them accountable, to suspend, cancel or revoke it, for allowing minors to possess or consume, for allowing self intoxicated. The problems with a lot of these other areas is they're not...the crime is not taking place on the licensed premise. There are people going into an off-sale location, buying it, going out into the surrounding neighborhood and causing the problems. So the hammer over that existing license isn't the same as it is on an on-premise consumption place. [LB829]

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Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR LARSON: Not necessarily the hammer, but I mean, I'm just making an argument that they might not be selling to minors or the last one they serve you can still appear...I mean, we've gone through server training, we've gone through all of that. I'm just saying that the same crime problems can exist without, you know, under the law...they can still be following the law, the same crime problems could exist on another street, or an entertainment district. And you guys came in and testified in support of the entertainment district, I think. [LB829]

HOBERT RUPE: Yes. Because a lot of those (inaudible) backside. [LB829]

SENATOR LARSON: But...but...I know you guys have a lot...yeah, you guys have...but I'm just trying to draw similar comparison in terms of the crime statistics that could appear or could happen. And you do have the...you could repeal that entertainment district's license and whatnot. [LB829]

HOBERT RUPE: Yeah. [LB829]

SENATOR LARSON: But I'm just saying that, you know, that if you repeal it, does that mean that you're going to put a reservation on it too because the crime has been higher? Are we going to see some consistency or things of that nature? [LB829]

HOBERT RUPE: I think you're going to see the consistency. I think the key thing about it, this is not the silver bullet as I said. This give the cities a tool to deal with problem areas where they're seeing these specific types of criminal activity. So, you know, it's not going to fix everything. But I think it's a step in the right direction. So that's one of the reasons the commission looked at it and brought it to the Legislature's attention. [LB829]

SENATOR KARPSEK: Thank you, Senator Larson. Any other questions? Seeing none, thank you, Mr. Rupe. [LB829]

HOBERT RUPE: Thank you. [LB829]

SENATOR KARPSEK: Next proponent. Welcome. [LB829]

TOM MUMGAARD: (Exhibit 6) Good afternoon. Mr. Chairman, members of the Committee, my name is Tom Mumgaard, that's T-o-m M-u-m-g-a-a-r-d. I'm a deputy city attorney for the city of Omaha and I'm appearing today on behalf of the city of Omaha. City of Omaha supports LB829. As you see, the city council has unanimously passed a resolution in support encouraging the Legislature to adopt LB829. This bill would give the city of Omaha and other cities great needed flexibility in how they address specific problems within specific areas of their city. The diversity of Omaha, in particular,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

requires that different approaches are needed to address different problems that come from alcohol sales. The impact of alcohol sales differs depending on the nature of the neighborhood, the type of activity that occurs in the neighborhood, the history of the neighborhood, those types of things. While we are currently addressing it on a case-by-case basis under current law, as Mr. Rupe has identified for you, there are limits on that. That makes it somewhat difficult; it's a case-by-case situation. It is, as Mr. Rupe indicated, only effective when you're talking about the new guy in town. This would allow the city to announce, through the state, announce ahead of time, these are the rules for a particular area because that area has particular problems. And everybody could make their decision whether they want to do business under those rules in that area or not. It would add a great deal of fairness to the business approach. And we would encourage you to pass this on to the general Legislature because it would be a useful tool for the city of Omaha. I'd be glad to answer any of your questions. [LB829]

SENATOR KARPISEK: Thank you, Mr. Mumgaard. Senator Larson. [LB829]

SENATOR LARSON: So you bring the argument that based on the history of a neighborhood, or the nature of a neighborhood, that the city of Omaha would like to pass this bill to imply sanctions based on their actions, correct, essentially? [LB829]

TOM MUMGAARD: Not sanctions. They would just be special rules... [LB829]

SENATOR LARSON: Special rules, all right, special rules. [LB829]

TOM MUMGAARD: ...in which everybody has to do...has to conduct business. [LB829]

SENATOR LARSON: So let's say a certain race commits more crimes or has a specific history, should we not allow them to carry guns since they commit more crimes or anything of that nature? [LB829]

TOM MUMGAARD: Well, I would leave that extreme... [LB829]

SENATOR LARSON: Well, they commit more crimes and I mean... [LB829]

TOM MUMGAARD: Well, let me just start with, this bill simply sets out a framework where a city and the state would have to come up with some rational basis for supporting the reasonable restrictions that are imposed. Now I stress those two words because the city and the state could not just simply decide arbitrarily that this block of town is going to have a specific rule and could not, for example, probably base that rule upon race because that rule would have...the special rules for that area would have to have some reasonable basis and Mr. Rupe has identified what those rules would be. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR LARSON: I think you're missing the point of question. I mean we can create base...essentially what I'm saying is, we could see that, you know, a certain race creates more crimes or has committed more murders in the state using certain hand guns or anything else, and we could use statistics to say, well you know, just because you're white and tendencies show that you commit more crimes, or a death penalty, or life sentences, we're going to restrict you. I mean, that's the point I'm making. You can make any statistical data read however you want and whether it's in the city of Omaha or anywhere else. I'm drawing a parallel and I think, you know, you're saying...essentially you're saying because you have a certain history, you said this in your opening, a certain history or a nature of an area, certain crime, it's okay for the city to restrict the type of business that you do. I draw the parallel that because you're a certain race and your race has certain parallels, we have the statistics, you know, based on the imprisonment and the Nebraska penal system and all this, your race is more incarcerated and we can draw statistics on both sides. And you brought that up yourself. [LB829]

TOM MUMGAARD: Yes, and, Senator, respectfully I will reject your parallel. It doesn't fit for several reasons. One, guns have been decided to be a Constitutional right to hold guns, to possess a weapon. So there would be problems in restricting that. Alcohol has been treated by the Constitution just the opposite. Alcohol is a product which is specifically mentioned in the Constitution, as Mr. Rupe indicated, which our historical basis of our country has said has to be treated differently than other products. So the state of Nebraska and the city of Omaha has that Constitutional underpinning to treat alcohol sales different than guns sales, for example. Secondly, whether it's alcohol sales or gun sales... [LB829]

SENATOR LARSON: We can still limit gun sales in terms of semiautomatics, automatics, things of that nature. We have the right to bear arms, but to correct you, I mean, we can still limit the type of gun sales that occur. So that argument...we can move on to your second one now. [LB829]

TOM MUMGAARD: Okay. The ability to restrict alcohol is much broader than the ability to restrict other products because of the Twenty-first Amendment. Secondly, race would not be a proper basis for restricting alcohol sales. What I would be talking about is, historically, let's say, for example, we have areas of Omaha that have... [LB829]

SENATOR LARSON: I didn't say race on alcohol sales. I'm just using race as an example on crime. [LB829]

TOM MUMGAARD: Well, I'm rejecting the parallel across the board. The types of crime we're talking about is in areas of Omaha where we have people who are essentially pedestrians. Vehicle traffic isn't as great as in other areas. Where we have...we see incidents of a great deal of public urination, a great deal of public intoxication, littering,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

those types of things. And we can even narrow it down that those types of crimes will be associated or in the area of, let's say for example, a convenience store which sells single sales. There seems to be a connection between the person who goes into that...who...who goes to that convenience store to purchase a can of beer and then goes out into the alley and drinks it and then uses the neighbors garage as their urinal. That activity occurs in certain areas of town. Now why it occurs there may have some different reasons. But we have seen that it is not a citywide problem. And so we don't have the tools to get...use the scalpel instead of the meat axe and this would give us that tool. [LB829]

SENATOR LARSON: You brought up race and alcohol sales. What areas of Omaha, roughly, right now, would Omaha look to bring this into...what...are there certain areas...what areas of town would that be in your estimation? [LB829]

TOM MUMGAARD: Well, we would look throughout the town. I can tell you that our experience is...well, actually many areas of town, but, yes,... [LB829]

SENATOR LARSON: The main areas. [LB829]

TOM MUMGAARD: ...the single sales seem to be the biggest problem in the eastern half of Omaha. [LB829]

SENATOR LARSON: Eastern half of Omaha. [LB829]

TOM MUMGAARD: Yes. [LB829]

SENATOR LARSON: Roughly streets? Can we...south Omaha, north Omaha...what is designated south...even legislative districts would be better, if you know the legislative districts. [LB829]

TOM MUMGAARD: You know, if we're going to use single sales as the example, actually the Omaha Council has sought to apply that in many areas of town, because we see single sales... [LB829]

SENATOR LARSON: But I'm asking for like specific areas...what...do you know, what...would it be like Senator Council's district, or Senator Mello or Senator Nordquist or rough...? [LB829]

TOM MUMGAARD: Well, I can tell you that Councilman Gray, which is also Senator Council's district, yes, he has been a supporter of this and he's indicated that he would like to have this tool for his area. [LB829]

SENATOR LARSON: And you brought race into this issue, what is the majority race in...

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

[LB829]

TOM MUMGAARD: Well, I didn't bring race into this. [LB829]

SENATOR MCGILL: You did. [LB829]

SENATOR LARSON: I brought race in with guns. [LB829]

SENATOR MCGILL: But you... [LB829]

SENATOR LARSON: But not with the alcohol. [LB829]

TOM MUMGAARD: Okay, race...I will tell you, race would not be a valid basis to apply... [LB829]

SENATOR LARSON: For this, I understand. [LB829]

TOM MUMGAARD: ...to alcohol impact zones. [LB829]

SENATOR LARSON: Oh, I completely agree. But I'm just saying, I was using as a parallel, nothing to do with, actually, this. But, I mean, I'm just using that as the argument. [LB829]

TOM MUMGAARD: We would not use race as a basis for alcohol impact zones. [LB829]

SENATOR LARSON: I understand. [LB829]

SENATOR KARPISEK: Thank you, Senator Larson. Senator Brasch. [LB829]

SENATOR BRASCH: Thank you, Chairman. And thank you, Mr. Mumgaard, for your time coming here to testify today. Just for clarity, this bill is to discourage chronic, public inebriation or illegal activity associated with sales or consumption of alcohol liquor. Would you say that in Omaha, and perhaps these other areas, that every measure conceivable has already been taken to discourage, whether it's medical, soup kitchens, psychological, clergy, that every measure has been taken to assist in whatever is causing the chronic...and this is kind of the last resort, okay, we've tried to address the problem at the root and now we're just going to shut you off here. Would that be a... [LB829]

TOM MUMGAARD: I guess I can't answer that. [LB829]

SENATOR BRASCH: You can't. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

TOM MUMGAARD: I don't have sufficient information. [LB829]

SENATOR BRASCH: But Omaha has taken... [LB829]

TOM MUMGAARD: I know that...you know, Omaha has limited ability to address a lot of the social problems that you've indicated, that's somewhat of a county and state issue more than a city issue. All I can tell you is that over the years some of this behavior that we find that is harmful to neighborhoods is clearly associated with certain types of sales of alcohol. And single sales being just the easiest one to pick. And we have tried, when licenses come up, to use the licensing process to try to address that. And Mr. Rupe has talked about that. We have found that there is some people who disagree as to whether the city and the state has the authority to do that. We have found that when we go to court, we don't, with the Liquor Control Act, we don't come out with the same outcome that we would hope for sometimes. And so what we're trying to do is to get a very clearly identified authority here to do what we've tried to do on a case-by-case basis, kind of crossing our fingers and hoping it works. We want to have an authority that is announced ahead of time so that people know what the rules are. And so that if there is a business problem, a businessman can decide, no, I'm not going to locate my business in that area because I'll have these extra rules. Right now that businessman invests money and then comes forward to the city council and the city council starts imposing these conditions. That's a bit unfair at times. So we just want to have a tool where we can announce ahead of time, this is our problem, we can document it, we can have it rationally based, and so everybody knows what the rules of the game are, and hope that those rules then solve some of those problems. [LB829]

SENATOR BRASCH: Very good. I have no other questions. Thank you. [LB829]

SENATOR KARPISEK: Thank you, Senator Brasch. Thank you, Mr. Mumgaard. More proponent testimony. Welcome. [LB829]

CASSIE GREISEN: Thank you. Good afternoon, Senator Karpisek and members of the committee. My name is Cassie Greisen representing Project Extra Mile. That's C-a-s-s-i-e G-r-e-i-s-e-n. We're here in support of LB829. The use of alcohol impact zones is a good concept that's been used in a handful of other states, as Mr. Rupe identified. As specifically in Tacoma, Washington, the use of the zones has resulted in significant reduction in EMS calls for service for those who have issues with chronic inebriation. We thank the committee for looking at this issue seriously. We are supportive of the use of the alcohol impact zones understanding that they can be beneficial if done to augment the work of local communities and not used to preempt that local effort or authority which is afforded to them under statute and the Liquor Control Act. With that I'll entertain any questions that you may have. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KARPISEK: Thank you. [LB829]

CASSIE GREISEN: Thank you. [LB829]

SENATOR KARPISEK: Any questions? Seeing none, thank you. Further proponents. Welcome. [LB829]

MARK VASINA: (Exhibit 7) Welcome. Thank you, Senator Karpisek, and members of the committee. My name is Mark Vasina, M-a-r-k V-a-s-i-n-a. I'm representing Nebraskans for Peace which has had a longstanding interest in the situation in Whiteclay. I'm passing around to you testimony that I gave a couple months ago to a hearing, the Judiciary Committee, regarding human trafficking. The points that I want to make here is that...I'm not going to read that testimony, but I want to summarize that. I have...I have, after a number of years, I have spoken to women who have been trafficked into Whiteclay to some of the liquor establishments to perform sex in exchange for alcohol. I've talked to men from the reservation who have transported women for sex into Whiteclay. And as I relayed in my memo, a few years ago I was going up to meet with one young woman to meet some other families of victims and she was raped the night before my meeting with her. Clearly something like an alcohol impact zone bill will not change and address the real serious problems we see in Whiteclay. What are those problems in Whiteclay? It's not just the sale of alcohol. It's the sale of alcohol in exchange for sex. The sale of alcohol in exchange for food stamps. It's the sale of alcohol to known bootleggers who take this onto the reservation and resell it. It's the rampant sale of alcohol to minors. Two months ago I was...I traveled up to Pine Ridge with some students from Creighton Prep High School and a couple of teachers. We went to talk to students at Red Cloud School which is a Jesuit-run institution, it's been on Pine Ridge for 125 years. We went to talk about Whiteclay and to dialogue with high school seniors. After a little bit of introduction, the first question that I took from a young high school senior, a girl probably 17 years old, her question was why do they allow the stores in Whiteclay to sell to us kids? And I want you to think about an answer to that question because we're not just talking about alcohol sales in Whiteclay and stopping sales in Whiteclay would just send people to another alcohol outlet. Obviously, many adults, many legitimate purchases of alcohol would go somewhere else. We're talking about a situation in Whiteclay where the retailers have very little regard for the law. The reason why we allow alcohol sales to minors in Whiteclay is because they're able to do it in Whiteclay and it's not a significant enough priority for the state of Nebraska to see to it that this doesn't happen. Bills like LB829, while nothing is a sure shot solution to the problems that Whiteclay presents, bills like LB829 provide incremental attempts to deal with these problems. And I think it shows that senators in the Capitol here have been listening to the issues that have been enumerated about Whiteclay over the years and they're trying to find legitimate ways to deal with this. I think this is one such legitimate way. And I urge you to support this. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KARPISEK: Thank you, Mr. Vasina. Any questions? I would just...and you hit on it a little bit, was the bootlegging. And, you know, when I was there with you, we saw so many whiskey bottles, or broken whiskey bottles, and those can't be sold there, so obviously they're coming in from somewhere else. So, I understand what this bill does, and I think it's a good idea, but how do we keep that stuff from coming in? [LB829]

MARK VASINA: Actually, Senator, I have talked to several individuals who live on Pine Ridge, have been to...and been to Whiteclay, have bought alcohol in Whiteclay; you're correct in saying that spirits are not licensed for sale at these establishments. But I know from my contacts, people who have actually purchased hard liquor at these establishments and who know people who do this, what they do at Pine Ridge...at Whiteclay, the retail beer store owners go down to Rushville, purchase the kinds of liquor and wine that they know some of the people from Pine Ridge would want. As Senator Louden said, many of them can't travel much beyond Whiteclay, so they jack the price up two times of the retail price in Rushville or Gordon and they keep it in the back and they sell it to the people they know that want that. So a lot of those bottles very well could have been purchased in Whiteclay. No question about that in my mind. [LB829]

SENATOR KARPISEK: Okay. Thank you. Senator Bloomfield. [LB829]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. If they're doing that in Whiteclay, they're buying the stuff illegally, they're already breaking the law, we should be able to control that. Setting up another law for them to break, if they're prone to breaking the law, to me that doesn't really solve the issue. Can you respond to that please? [LB829]

MARK VASINA: Yeah, sure. You could have all the laws on the books you wanted if nobody is going to enforce them. What I think advancing LB829 and passing LB829 does, in addition to giving communities that want to...want to control the behavior of their retailers, liquor retailers such as Omaha, it gives them a tool. But even for places like Whiteclay where we have some serious enforcement problems, where it's expensive for State Patrol to patrol the area. It's expensive even for the county sheriff's deputies to patrol the area and the kinds of investigations that need to be done, investigations into bootlegging, you know, retail or reselling...a retailer selling their product to someone who they know is going to resell it, those are Nebraska crimes. We need to have those kinds of investigations; investigations into human trafficking into Whiteclay; that takes money, and effort, and attention. And I'm not saying...I have spoken to very concerned members of the State Patrol out in the panhandle who recognize these problems exist in Whiteclay and want to do something about it. You folks, in your Appropriations Committee, need to give them the money, need to give them a direction. Moving LB829 forward is a statement that you want to see laws

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

enforced, liquor laws enforced, human trafficking laws enforced in Whiteclay. That's a statement you can make. Obviously, it can go on the shelf and nothing can happen just as any law you pass. But it's important that everyone in Nebraska from a citizen who doesn't have a special role to play to elected officials in Sheridan County, to our state senators, as well as the Governor, the State Patrol, it's important to recognize that we have a very serious issue there. And if we want to ignore the violations of law and just say it's not important, then we can go on with business as usual. I don't think that's what this committee wants to say. And I do think that the attempts that this committee has made in the past, you know, Senator Karpisek introduced some bills a couple of years ago. He recognized full well that those weren't going to solve the problems presented by Whiteclay, but it recognizes that there is an issue there, it moves it forward, and it sets the ground for new efforts by senators next year. [LB829]

SENATOR BLOOMFIELD: I don't think simply putting another law on the books keeps people that already are breaking the laws from continuing to do so. So I... [LB829]

MARK VASINA: Well, this law would give the Sheridan County board the tool, as Senator Loudon said, to create an alcohol impact zone in Whiteclay which could then have the Liquor Commission creating special restrictions. Restricting the sale of single cans. Now if what you're saying is if they restrict the sales of single cans of beer, but they sell them anyway, and the State Patrol, the county sheriffs go up and look in the stores and see the single cans and don't do anything about it, then, yeah, this won't do anything at all. I have a suspicion that if that were the case, something that is easily observable, like whether they're selling single cans of beer or not in their coolers, that that would be an enforceable situation for the State Patrol or the county sheriff. Changing hours of service, I know from talking to people in Pine Ridge, that for years owners or managers of these liquors stores in Whiteclay will stay for several hours after the official close of business...after they've turned the lights out in the front, because they'll sit there and wait for the bootleggers to come up and buy their 12 cases of beer and take it back to the reservation. So, of course, you can have hours of sale that get violated...you can have all these things be violated, but if we have...if, as legislators, you have as little regard for the laws that you're passing as to say we'll pass it and nothing will be done about it, then I think you need to examine what the process here that's working or not working in Whiteclay. I think clearly Omaha has indicated that this would be a valuable tool for them and they have a different kind of law enforcement environment than Whiteclay does. Whiteclay is terrible. And this is just a stab at it. But if you don't take stabs, you're not going to deal with it. [LB829]

SENATOR BLOOMFIELD: Thank you. [LB829]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any further...Senator Lambert, welcome to the party. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR LAMBERT: I'm hearing something here that...thank you. We've got people with liquor license that run a business; they're selling after hours illegally; they're bringing spirits in illegally and selling them illegally. [LB829]

MARK VASINA: That's correct. [LB829]

SENATOR LAMBERT: I would think that would be basis enough that we should be able to shut down a lot of the businesses up there right now. [LB829]

MARK VASINA: You would have to have a law enforcement agency that undertakes an examination. They can't take my word for it. I could introduce them to the people that told me, that might be the start of an investigation. But you need an investigation and you need to have some sort of push for this. I personally, and others before me, for years have been talking and talking and talking about this, and, you know, I don't tell the superintendent of State Patrol what to do. I mean, I can ask him, but I don't have that authority. The Governor does. [LB829]

SENATOR LAMBERT: It concerns me you've been saying it for years, but I have enough faith in our Liquor Commission and our State Patrol that something should be solved about it, and I'll...done with it, I'll bet if you talk to them and give them some credible evidence of that, I'll bet something would be done and that might solve the whole problem if everybody up there is doing that that's got a liquor license. [LB829]

MARK VASINA: Well, I continue to have conversations and other colleagues continue to have conversations with State Patrol, FBI and so on, it's just a slow move, it's very slow. And it used to surprise me, now I understand how things work. [LB829]

SENATOR LAMBERT: What do you think is taking so long for anything to be done on this? [LB829]

MARK VASINA: I think the simplest thing is money. And I've talked to an investigator from the State Patrol at one of the offices in the Panhandle, he explained a few years ago there were two and a half full-time equivalent investigators in his office, now there's just one. And he said he's heard the stories; he's talked to people; he's, in fact, you know, he'd like to take care of some business with Whiteclay. But if the budget isn't there, if you keep cutting investigators, if you keep...not you, but I mean if the state keeps cutting investigators, if they keep de-emphasizing alcohol enforcement issues and issues around, you know, human trafficking is more than an alcohol enforcement issue. But it's...money, I think, is the first thing. The second thing is the agencies that have an interest in this from an enforcement standpoint really should get together and quit doing this. You know, well, we can't do this until they do this; or we can't do this until they do this. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR LAMBERT: You're seeing a lot of that? [LB829]

MARK VASINA: A lot of that, I see it all the time with this. Now even some of those people who are saying this, may be sincerely wishing that they had the resources to tackle this. I'm sure that's true. I'm not saying that this is not happening because everybody involved is a bad guy, but this...there's money involved; there's lobbying efforts that are involved; there's confusion as to what is really going on; what the process is to solve it. [LB829]

SENATOR LAMBERT: Well, I guess I'm concerned and you know these problems and these violations, the trafficking, yes, I agree, that's a very serious problem, more serious than the alcohol laws, but you've known this for years and our Liquor Control Commission, our State Patrol has not done anything about it? That concerns me tremendously. [LB829]

MARK VASINA: I've had conversations with Hobie Rupe about this and I'd rather let him explain what his answer is than for me to paraphrase it. [LB829]

SENATOR LAMBERT: Okay. Thank you. [LB829]

SENATOR KARPISEK: Thank you, Senator Lambert. Any other questions? Seeing none, thank you Mr. Vasina. [LB829]

MARK VASINA: Thank you very much. [LB829]

SENATOR KARPISEK: Maybe if the Liquor Control Commission had investigators. (Laughter and inaudible conversation) I don't know, I think it's a good idea. Welcome. [LB829]

JUDI GAIASHKIBOS: Thank you. Thank you, Senator Karpisek, and members of the committee. I'm Judi gaiashkibos, J-u-d-i g-a-i-a-s-h-k-i-b-o-s. I'm the executive director of the Nebraska Commission on Indian Affairs and I'm a member of the Ponca Tribe of Nebraska. And this has been a very interesting hearing. I'm here to support LB829 and urge you to move it out so that we can have full legislative discussion on this. And I do appreciate and thank Senator Louden for taking this action. But I don't know, it's really...as an Indian person sitting here it's very painful to listen to this discussion today and talking about winners and losers at Whiteclay. And for my people, I think, they're all on the losing side with this matter and the state of Nebraska has been on the winning side. And what is the cause? Perhaps it is finger pointing, blaming other people, letting yourself off the hook. Perhaps it's money and power and influence. Perhaps it's lobbying. Perhaps it's the people that are affected. Perhaps it's the color of our skin that people don't care as much about what happens at Whiteclay. I am encouraged that the city of Omaha has also lent support because then I think that will help our chances at

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Transcriber's Office

General Affairs Committee
February 13, 2012

Whiteclay. Some of the things I've heard today, it really disturbs me. I don't like to hear words about grouping people or bunching up people and that kind of thing. That really makes me feel bad. But I think that this is some action and it would send a message out there to the state that you want to do something. It's time to do something and for the new senator, Senator Lambert, I can appreciate your...kind of shock, that well, we have the State Patrol and the Liquor Commission and why hasn't something been done? And it might be due to the lack of money. But I think now is the time that something could be done. And if you want to do something, you can do it. But you have to have the desire to want to. And there are many issues that we deal with in our state that sometimes it takes a long time to get to the wanting point whether that's with the foster care, whatever that might be. And it starts at the top and trickles down. So I do hope that you, the legislative body, this committee will take it out to your colleagues and that we can begin this little tiny step. This won't solve the problem. As far as Senator Bloomfield, you know, you said about this is just another bill that will make another law to break. And I think, really, what's the crux of all this is that the laws are not being enforced here at Whiteclay. People have looked the other way and the laws have not been enforced, therefore, recently the lawsuit to maybe make people enforce the laws. So, I think that, yes, we could have another law, another law that wouldn't be enforced, but that's not a reason not to have laws. Laws should be enforced for all people and to protect all of us. So on behalf of the Commission on Indian Affairs and our tribes in Nebraska and our Lakota brothers and sisters, I think it's the responsibility of Nebraska to enforce our laws in our state. We can't control what happens in South Dakota or on that reservation. But what happens at Whiteclay, we are responsible for. So I would be open to any questions at this time. Thank you. [LB829]

SENATOR KARPISEK: Thank you, Ms. gaiashkibos. It's not much different than Karpisek, I should get it. (Laughter) Senator Krist. [LB829]

SENATOR KRIST: Thank you, Chair. Thanks for coming. I'm sorry I missed the bulk of this. I was presenting in another committee...two committees. But this couldn't be a more fitting exit for Senator Louden who has done his "darndest" to bring us to reality and awareness about what happens in that part of Nebraska. In the past two years I have watched, and as I have often done, gone back historically and pulled up those bills, those attempts, those funding mechanisms that were supposed to put more law enforcement on the reservations, they were supposed to put more law enforcement in the state of Nebraska, they were supposed to do a number things that were not being done; I agree with you. This is not just another law that should be broken. This is steps towards awareness in owning up to our part of a really very bad situation and I appreciate your comments. But once again, I think that this is very fitting in Senator Louden's last legislative session that we should be considering taking some positive action towards solving a very tough, tough situation. Thank you. Thank you, Chair. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KARPISEK: Thank you, Senator Krist. Senator Lambert. [LB829]

SENATOR LAMBERT: I'm glad you said a tough situation, because nowhere have we really discussed the problem. We're talking about not letting these people get alcohol. Any person, whether it's in Omaha, whether it's Whiteclay, wherever it's at, alcoholism is a problem here and nobody has addressed that that's the real concern and treatment for alcoholism would solve all of these problems. I mean, these laws were...are we putting a Band-aid on something, on a broken arm. That's what I see here. I mean, we've got a problem whether it's Whiteclay, Omaha, Lincoln, wherever, there's problems and we're looking at legislating the...making it tougher for them to get alcohol or the person has got to drive further, but why are they doing that? [LB829]

JUDI GAIASHKIBOS: Um-hum. [LB829]

SENATOR KARPISEK: Thank you, Senator Lambert. Senator Krist. [LB829]

SENATOR KRIST: I think the discussion probably best to be had in Executive Session, but I can tell you that I was where you are three years ago and that there's...for us to allow trucks...truckloads of alcohol to exit a liquor store knowing full well they're going four miles that direction and taking alcohol illegally onto a reservation is unconscionable. So we have to solve the part of the problem that we can solve. [LB829]

SENATOR LAMBERT: And that's all we can do. I understand, I'm the new guy. But I can still see...I can identify problems when I see them. And I see a problem here. [LB829]

SENATOR KARPISEK: Thank you, Senator Krist. Senator...I'm sorry, Senator Brasch. [LB829]

SENATOR BRASCH: Okay, thank you. Thank you, Judi, for your testimony here. I'm just curious, in line with the zone here, to discourage the drunkenness, are there...is there any type of a public or private partnership or something? And why I'm asking is, I know in Winnebago there, they have Ho-Chunk and some great energy projects and...they give people a reason not to drink. That there's the college; there's this, there's that, there's a housing development. I was really impressed the day they had a showcase of all...does Whiteclay have anything like that to give people hope or purpose or a goal or...and I...I will tell you I have not been there, so I don't know. But what I'm hearing is there's chronic alcoholism there and... [LB829]

JUDI GAIASHKIBOS: Yes. I'll try to be brief. Did you...Senator Coash, oh, you were talking to someone else, okay. Well geographically Whiteclay is this little street, this small area in Nebraska. And the reservation itself, the Oglala, Lakota, Sioux Nation is one of the largest in the country, like 2.3 million acres. So to compare Whiteclay, which

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

is in Nebraska, and mostly non-Indian people live there. The licensees...and I don't even think they all live there, but those stores and the grocery stores to Ho-Chunk Inc. which is not near as large, 2.3 million acre, reservation and it's apples to oranges, I guess, of a comparison. The Winnebago have done amazing things. They have a hospital there. And they...with their gaming dollars, mind you, they took gaming dollars where they're allowed to have Class III gaming in the state of Iowa, their land extends into Iowa and they diversified their economy and now have, you know, they have a tribal college, and more than half of their people are employed. So they are doing good things. An example that not all Indian people are drunks; not all Indian people are hopeless, worthless people, as I've heard said on the legislative floor. We can achieve and we can be successful, so...however, on the Oglala, Sioux Reservation that government, that sovereign nation has determined for their people, exercising their sovereignty, that they are not allowing the sale of alcohol. So you have people that have a disease; that live in a very poor, one of the poorest counties in the country, that are trying to escape from their poverty because they don't have a job, a place to go to work and it's kind of a hopelessness. So they medicate themselves with food, with different types of things that we in America do. And in this case, some use alcohol. And they walk to Whiteclay and consume; purchase the alcohol, some are the chronic alcoholics that you saw on the front page of the Journal Star that drink those Hurricanes. And then there are people on the reservation that maybe are drinking, as some of you may drink, more responsibly and they're consuming the other alcohol that is sold. Because we know the chronic alcoholics aren't drinking all of the four million plus cans of beer. But they are using the alcohol to escape from the lack of opportunity. We can't solve that. I wish I had a magic wand and could make Pine Ridge be like Ho-Chunk. But what I do want to do is do what I'm responsible for doing and that is supporting the enforcement of the laws that we can control in our state. That's all I can do. I can pray for those people up there and wish that they could be...have the good life that Nebraskans do and that the Ho-Chunk do and that the Ponca do. But I don't know if that answers your question. [LB829]

SENATOR BRASCH: I heard you say the words "lack of opportunity." And the reason I mentioned Winnebago was it seems to be bringing a lot of opportunities and ideas and technology, I mean there was a whole showcase of opportunities and I believe he quoted several quotes of where they were chronologically over a period of time that there was progress made and seeing that this is maybe an area that is experiencing greater crime and greater alcoholism, my question to you is, back to...is it...you know, why? [LB829]

JUDI GAIASHKIBOS: Why? Well, I guess I would say why, the location part of it. It's very isolated. The reservation is huge, so travel is really a challenge for the tribal people. Many don't have cars. And so access, you know, in real estate it's location, location, location. The Winnebago are on a corridor that goes to Sioux City; easily accessible to Omaha. So you have economic access and that has helped...you have the leadership of a Harvard graduate, Lance Morgan, who is a Harvard-educated

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

attorney and a system that was set up that has proven to be successful and is a model for all of the country and even in Nebraska I would say that that is probably the exemplary model of rural development unlike any place that you've seen throughout our state. If all of our little rural communities could be keeping our people there, retaining them and have companies throughout the world, I think we would all be jumping for joy. So it's a long history of...these liquor store owners have made the profits for a long, long time. They don't want to stop making money. The tribe has had a sad long history. And with over 500 Indian nations everyone is different, everyone is unique. You can't paint us all with one brush. So it's...it's not easy, but I think with the support of LB829, moving that forward, you are making a statement. It's a little step, but sometimes it takes a lot of little steps to get to the end of the journey. [LB829]

SENATOR KARPISEK: Okay. Thank you, Senator Brasch. Any other questions? Seeing none, thank you, Judi. [LB829]

JUDI GAIASHKIBOS: Um-hum. Thank you. [LB829]

SENATOR KARPISEK: (Exhibit 13) Any further proponents? I'll read into the record a letter from the League of Nebraska Municipalities to go on record in support of LB829. Do we have any opponents to LB829? Welcome. [LB829]

JIM MOYLAN: Thank you. Mr. Chairman and members of the committee, I'm Jim Moylan again, J-i-m M-o-y-l-a-n, representing the Nebraska Licensed Beverage Association, the state association of liquor retailers. I appreciate what Senator Loudon is doing here and he's done a good job of representing his area up here because he has brought several bills in regarding the issue up there. Liquor Commission has looked at it. I don't know of anybody in the state that hasn't looked at it. You can't just summarily revoke licenses anymore, because Supreme Court has said you do have a certain amount of property rights in them. I think one thing, there's nothing in this bill to stop the commission from establishing an impact zone and revoking licenses within the zone. We would not want that. I mean, as long as they don't revoke licenses, you know, it probably wouldn't be that much of a problem to us. Pretty vague and indifferent, what is chronic public inebriation and an illegal activity? I can give you two...let's take two examples: little town outstate, has one bar and they have a group of guys, six or seven of them that come in every night, have a few drinks, maybe a little too much, and they all chew tobacco. So they go outside and they spit their tobacco on the sidewalk and the city has an ordinance against that. Well you have chronic public inebriation and you got an illegal activity. Now let's take it down to Omaha. We got an area down there where there's a plant, you know, that hires a lot of workers. And the guys in the small town, so they just leave and they go to the next town, so they don't even patronize the place anymore. In Omaha they got a factory down there and there's a lot of workers there so they come into an area every night, maybe two or three bars along the way, you know, they spend the evening, about every night, and they drink a little bit and maybe get a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

little bit inebriated. And there might be an occasional fight out in front, you know, one or two. So you have an illegal activity there. Well, what do the boys in Omaha do? You set up the zone, you find out some way to get rid of these establishments, they just move west or south. And they don't seem to, you know, they don't change their mode of operation at all. So I can't see that one of these impact zones is going to make any difference. Small town guys they say, well, we'll just go over to the next town. We don't have to patronize this if you want to set up an impact zone. Now...and we've had the same problems over and over. We've talked about, you know, Whiteclay, closing down all the way down to the other towns, you know, and then drive back, you know. Same issue that we've heard over and over and over. I sympathize with the problem. I think everybody has looked at it, 360 degrees around. But I don't think this is an issue here that would do it. Now if you think you want to create an impact zone, our Supreme Court has upheld the classifications of cities and counties. I think there are five classifications in cities: metropolitan, primary, first class, villages, I think. Counties, Douglas County can do a lot more things statutorily than what maybe Arthur County can do. If you want to have an impact zone and classify the county out there and, maybe, take a county, I don't know how large Chadron is, but I don't think, you know, if you want to classify an impact zone for a county, say, under 1,000 population for instance. Now that would be reasonable and those things have been upheld by the Supreme Court. So if you want to limit it to that, that would be my suggestion. Otherwise, I think, you know, I don't think we can hardly support this. [LB829]

SENATOR KARPISEK: Okay, thank you, Mr. Moylan. [LB829]

JIM MOYLAN: Thank you. [LB829]

SENATOR KARPISEK: Any questions? Seeing none, thank you. Further opponents of LB829. Welcome. [LB829]

JUSTIN BRADY: Senator Karpisek and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as a registered lobbyist for the Nebraska Liquor Wholesalers Association in opposition to LB829 as it is currently drafted. And I want to try to separate a little bit and focus more on Mr. Mumgaard's testimony of the city of Omaha as opposed to Whiteclay. And I say that only because of the members of my association that I represent, they do not sell or distribute any products into the Whiteclay area. So that's an issue I understand does need and continue, probably, needs addressing and maybe something like this is something that can work there. That I don't...and they don't have an opinion on. When it comes to like the city of Omaha, I guess what...as was discussed earlier, from some of the legal standpoints, they wondered, first of all, whether or not this would treat two people differently and create winners and losers as was discussed. I mean, if you draw certain...and say these 30 blocks are part of the "impact zone", but if you're at 30.5 blocks away, you can sell it or do these products or you do it without restrictions, you

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

are creating two different classes of people, but they're similarly situated. And so whether or not you've got a violation of the equal protection clause there, that I would say brings into question. The other part I wonder is the unlawful delegation of authority. The Supreme Court of Nebraska said that the Legislature gets to decide the policies and the rules of this state. Now yes, they can designate rules and regs to committees or agencies, but under your guidance. I would argue that the guidance that says any...that they can do special conditions or restrictions is not a clear enough to the Liquor Commission from a Supreme Court standpoint to just give them carte blanche authority to do whatever they see as restrictions, whether that's taking away licenses, increasing fees on licenses, changing tax structures, all that, theoretically, would fit under those of special conditions or restrictions. And I would argue that if there are certain things that need to be done, or that the cities or the Liquor Commission are asking for, they should come to this body and lay it out and say these are the things we want to be able to do if a city were to do an alcohol impact zone. Giving an example, they talked about the state of Washington. As I understand, they set up a policy...the Legislature did in Washington that said high alcohol level beers or fortified wines can be prohibited if they go through this process. So right now there are 29 or 30 beers and wines on that list. If a city requests it and the Washington Liquor Commission agrees with it, then they can prohibit those items. But again, it was their legislative body that set out that standard, not on a changing basis. I'd also say with respect to Washington, yes, they do have some. They've learned...I mean, as quoted in the Seattle Times that I found about it, they've tried similar...this was when they were instituting a new one, a new alcohol impact zone, they've tried similar ones and the city officials have admitted that the strategy has not been effective where they currently have it. But what...they're going back now and is drawing a bigger alcohol impact zone. Instead of just doing the 30 blocks, they're saying, well, let's try it on a 50 block circle and see if it works. And at what point do you just start saying, again, is it the policy of the state that should just come and have the discussion on whether it's single-sell beers or the 50 milliliter airplane cocktail liquors, but again that's a discussion for you all of this committee and this body, not just a...for the Liquor Commission to decide. The other thing I wanted to talk, again, specifically back to Mr. Mumgaard's testimony, I didn't hear from him or from Hobie when he was referring to the Omaha area, were the retailers selling these products were the bad actors. But yet this will place a restriction on those retailers. And I find that a little bit interesting to say we've got somebody coming in, buying illegal product, leaving with it, or drinking it and then leaving and doing an illegal activity, but we're going to come back and hold you, the person who didn't violate any of the laws, liable...not liable, but place restrictions on your ability to do business. So with those concerns I'd try to answer any questions. [LB829]

SENATOR KARPISEK: Thank you, Mr. Brady. Any questions? Seeing none, thank you. [LB829]

JUSTIN BRADY: Thank you. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KARPISEK: Any further opposition? Welcome back. [LB829]

KATHY SIEFKEN: It's good to be here. Senator Karpisek and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, I'm the executive director of the Nebraska Grocery Industry Association here in opposition to LB829. Justin covered a lot of the points that I thought to make. Basically, this doesn't solve a problem. This moves a problem. And it just keeps moving it further and further away. Hobie said that this provides targeted solutions and I contend that the Liquor Control Commission already has solutions. When people are in violation of the law, they are called before the Liquor Control Commission and they have conditions set on their liquor license. And really why should an existing license holder be punished for something when they haven't broken the law, they haven't done anything wrong? And according to what Mr. Mumgaard said, he made a comment that they wanted to, in Omaha, set up things for in the future and set the rules and let everyone know what the rules were going to be ahead of time. What about the current license holders? It would change their entire business. And for that reason we're opposed to this. And finally, the fact that the Liquor Control Commission would have the authority to go in, establish an impact zone in Lincoln or Omaha, or any other area, and have total and complete control over everything that happens within that impact zone. That's a lot of power for a three-member commission. Those are the things that this body, the Legislature should address. So with that, if you have any questions, I'd be happy to try to answer them. [LB829]

SENATOR KARPISEK: Thank you. Any questions? Senator Bloomfield. [LB829]

SENATOR BLOOMFIELD: It's not really a question. I have a request of you. I probably should ask you off the floor, but would you find out for me, because you are in a position to do so, I believe, what the dollar amount of groceries sold in Whiteclay amount to in a week, or a month's time? [LB829]

KATHY SIEFKEN: I might be...I'd have to go through the wholesaler. That's not public information. So I would have to, probably, go to the grocer to find out. [LB829]

SENATOR BLOOMFIELD: Okay. [LB829]

KATHY SIEFKEN: But I can make that call. [LB829]

SENATOR BLOOMFIELD: Okay, thank you. And there's a couple, three of them there, so. [LB829]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you. [LB829]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

KATHY SIEFKEN: Thank you. [LB829]

SENATOR KARPISEK: Further opponents? Good afternoon. [LB829]

JIM OTTO: Good afternoon. Senator Karpisek, members of the committee, my name is Jim Otto, that is J-i-m O-t-t-o, I'm president of the Nebraska Retail Federation. And I am here today to testify in opposition to LB829 as it is currently drafted. I do want to emphasize the "as it is currently drafted" because it is not anything that I look forward to, to testifying against this bill because I was very aware of the situation in Whiteclay. In fact, I have been to Pine Ridge and I have been to Whiteclay and I agree with Mr. Vasina that Whiteclay is terrible. And I applaud Senator Krist for the comments he made about Senator Louden and the things that Senator Louden has done to try to solve that problem. And I totally recognize that. Having said that, we still are...our members are concerned and, basically, the concerns are how vague the bill is. If...as Mr. Brady said, it could be more specific. For example, it has been mentioned several times that the high volume, the high alcoholic content beers, the Hurricanes, they're always talking about the little airplane bottles of booze, those kinds of things, those are a problem, I'm sure. They're never mentioned in the bill. So I guess I'm...I just was...we are very sympathetic to the problem; have no members in Whiteclay. But concerned about the impact of this as vague as it is. That...I'll answer... [LB829]

SENATOR KARPISEK: Thank you, Mr. Otto. Any questions? Seeing none, thank you. Further opposition to LB829? Seeing none, do we have any neutral? Seeing none, Senator Louden, would you like to close? [LB829]

SENATOR LOUDEN: Well, thank you, Senator Karpisek, and members of the committee, for your attention this afternoon. As we've stated before, this isn't the silver bullet that's going to solve the whole problems up there. This is something that we would try to use to set up areas where, perhaps, businesses could prosper and progress a little bit. And as the gentleman from Omaha mentioned what it could do for their area. And as Senator Bloomfield was wondering about the grocery stores up there, we went through this about two, three years ago, I was going through one of these bills, and everybody was talking about the five or eleven million cans, or whatever number you pick, of beer that is sold through there. As I was talking to one of the grocery store owners, said there wasn't a single person that ever asked him so that he could tell them that he sold 43,000 roasted chickens through his grocery store. I mean, it isn't just beer that's sold in grocery stores. The problem is, is the single serves and it's off-sale beer so they can drink it inside when they buy it. And what are you going to do with one beer, which is beer in Whiteclay, so they walk outside. Well it's against the law to drink it outside, so they get just off the premises of where they bought it so that that person won't be...lose their license or in jail. And that's how it is. They go over behind some of them other old buildings and this is where they drink it. As they talked about some of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

issues that go on in Whiteclay, ten years ago when I come down here, I worked with the Attorney General on this to try and find out why if there's that much beer going through there, I said people would have to be walking like ants back and forth across there carrying that beer. Is there something going out the back door? And they claimed they looked it over and most of the thinking has been that, no, it isn't, because those people, if they get caught doing any of that, they'll lose their liquor license. And lord only knows, there's only...there's only probably one chance that they do something like that then their liquor license is gone, because that license has been in place for several years. So I...some of those issues like that I am somewhat hesitant to back up on or to back up. The other thing is, now that the sheriff's department does have cameras, security cameras up there so that he can see Whiteclay and he was wanting to get another one up there so he can see all of Whiteclay and that's put right into his computer right down there in the sheriff's office in Rushville. And that went in here, oh, a year and a half or so ago and that's made quite a difference on the fights and stuff that go on up there. So that's done some of the work we've done. And then we had some money here a couple of years ago that we set up for him to do extra time to patrol up there and also some grant money that if he's working on it now to get another camera up there with a recording device so you can see what it is. He said if he had two cameras up there, he could see every inch of Whiteclay. So right there you can find out if somebody is loading out the other times and that sort of thing. So I'm kind of dubious when I hear that. But anyway, that's (inaudible). When we get down to some of the testimony against the bill, and as I say, they certainly were trying to throw the willows on the fire to make plenty of smoke on this I think. When I think the one testifier talked about, oh, the boys someplace, you know, come home, out of work, and maybe tune up a little bit and maybe they'll have some fights and stuff like that. That doesn't have a thing to do with this. If you have an establishment someplace and the sheriffs or those have to come in there about so often and settle those, the license is probably going to be gone. Doesn't have a thing to do with the impact zone. That's altogether different kind of an issue, so if the boys are whooping it up in one of those Yukon halls, why that's an altogether different issue than what you would see for having an impact zone where it's chronic inebriation, as we called it there. I think one of them...the testimony was in the bill was special conditions or restrictions. And the reason that is about all is put in there is because...the thinking was, if we started naming products, naming and going through the whole thing, that somewhere along the line there would be somebody would make something that would pass over this. I think you people hear this more than anybody else, about every so often there's a new kind of something or other that comes out there that's bottled up that somebody can buy and whatever, and now I see where they're selling inhalers with... [LB829]

SENATOR LAMBERT: Caffeine. [LB829]

SENATOR LOUDEN: Yeah, whatever...from...caffeine in them and that sort of thing, and that's the deal. So all they have to do is put something else in there. So I don't have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

a problem with that, and as far as the grocery stores people, and those federations, they said they don't have people up there. But usually, as I've said in my opening statements before, that the liquor stores and grocery stores and some of these retail outlets usually don't sell...if they're selling a product that attracts that kind of clientele, they probably won't be into that retail business, or whatever they are, very long, or into that retail area. So I think those are all issues, as I say, mostly smokescreens, but it was up to them to testify in that behalf. And I think as time goes on and we certainly know there's problems out there, because as I say, it made front page news in many of the big papers with some of the lawsuits that are coming about. And I do think this is a small step that can be done, helps a little bit and I'd appreciate if you folks could see to move this out of committee. With that I'd answer any questions if you have any. [LB829]

SENATOR KARPISEK: Thank you, Senator Louden. Any questions? Seeing none, that will end the hearing on LB829. Senator Fulton is here for LB992. Welcome to the General Affairs Committee, Senator Fulton. Whenever you're ready, sir. [LB829]

SENATOR FULTON: Thank you, Mr. Chairman. Members of the committee, for the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I serve...I represent District 29 at the Legislature. I bring to you LB992, which is intended to more comprehensively address underage drinking in our state and specifically, the occurrence of underage drinking on the premises of bars and similar establishments. Presently, many establishments which permit minors entry differentiate between those who are legally eligible to drink and those who are not by the use of wristbands. While this system may be effective in preventing direct sale to minors, it does not necessarily prevent the sharing or even resale of alcohol to minors who accompany those who are of age to these establishments. LB992 is intended to address this issue at its root by prohibiting the presence of minors at bars and similar establishments. The bill, as amended with AM1905--which I filed and you should have a copy of already--prohibits the presence of minors on the premises of establishments holding a Class A, Class C, or Class I license with the exception of restaurants, grocery stores, convenience stores, pharmacies, clubs and hotels, unless the minor is an employee of the licensee. I believe it is imperative that we do all that we can to prevent and curtail underage drinking in our state, and recognizing there may be problems with the bill as drafted, I suggest this is an important issue that perhaps could be the subject of further committee study. And I'll just close there. [LB992]

SENATOR KARPISEK: Thank you, Senator Fulton. Senator Bloomfield? [LB992]

SENATOR BLOOMFIELD: Thank you. Senator Fulton,--and admittedly, I haven't studied this a great deal--are we looking at keeping my 17-year-old boy from going in and having a Pepsi with me while I'm enjoying an adult beverage in the local pub in Jackson, Nebraska, which is the only watering hole in town where he can get his root beer? [LB992]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR FULTON: That...admittedly, that could occur under the bill; was not my intention, but that could be a problem, Senator. [LB992]

SENATOR BLOOMFIELD: Okay. [LB992]

SENATOR FULTON: Freely admitting that. [LB992]

SENATOR BLOOMFIELD: Thank you. [LB992]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator McGill? [LB992]

SENATOR MCGILL: And I just have to be honest that I can't support it because, you know, there are...most underage drinking happens in a person's house. And to me, if a 19-year-old wants to go dancing, they're actually in an establishment with an "M" on their hand, I've seen people get caught in these circumstances where they have an "M" on their hand, they tried to wash it off, and I've seen those people get kicked out before, you know. And to me, if they're not allowed to go--like myself, I love dancing--to me, there is...keeping some of them out having fun instead of in a house party where it's much more accessible and easy to drink, I just have a problem with limiting their opportunities to not drink as well. So that's just my two cents, you...there's no question there. [LB992]

SENATOR FULTON: Fair enough. I can...I'll just share with the committee--I'll be open in the interest of time--I understand the chances the bill has. The...this was brought to me by a constituent and it was one of these deals where I just...I meet with all the constituents that bring up ideas and this is one where he had personal experience of a minor who did indeed get served. It was here locally, it was here in Lincoln, and so this was an idea that we had come up with to solve that issue. But as all of our ideas, one of the reasons we have public hearings is to poke holes in the ideas and those which rise to...anyway, I'll just shut off there and recognize that it's going to be...it is difficult to make statutory the intention that I'm putting forward here and I don't know right now--I'll just be honest--how to do that. But it is an important issue and it's not that...I've known this to happen before, too, so I'd like to take steps to address it. And if that involves a study, then perhaps if there's the will, the volition on the part of the committee to do that, I'd pursue it. But I do understand that we have some problems with this bill. [LB992]

SENATOR KARPISEK: Thank you, Senator Fulton. I've introduced mine...a number of those bills, too. I understand. [LB992]

SENATOR FULTON: What do you do? [LB992]

SENATOR MCGILL: I can cite several. [LB992]

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Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KARPISEK: Any questions? Seeing none, do we... [LB992]

SENATOR FULTON: Mr. Chairman, I do plan to waive closing. [LB992]

SENATOR KARPISEK: Okay, thank you, Senator Fulton. Do we have any proponents? Welcome back. [LB992]

CASSIE GREISEN: Thank you. Cassie Greisen, representing Project Extra Mile, underage drinking prevention. It's spelled C-a-s-s-i-e G-r-e-i-s-e-n, and we're here to support LB992, I think for obvious reasons. Limiting minors in bars is a worthy strategy to reduce youth access to alcohol and we thank Senator Fulton for introducing this proposal. And in light of his recent comments, I'll just go ahead and just share that if there were going to be any revisions to the legislation, perhaps it would be a worthy addition to the penalty to prevent...or lost driving privileges for minors who are then caught in bar establishments. And with that, I'd entertain any questions you might have. [LB992]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thank you. [LB992]

CASSIE GREISEN: Thank you. [LB992]

SENATOR KARPISEK: Any further proponents? Any opponents? Welcome. [LB992]

KATHY SIEFKEN: Again, Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. We are opposed. Do you have any questions? [LB992]

SENATOR KARPISEK: Any questions for Ms. Siefken? Seeing none, thank you. [LB992]

KATHY SIEFKEN: Thank you. [LB992]

SENATOR KARPISEK: Next opponent. Welcome back. [LB992]

TOM MUMGAARD: (Exhibit 8) Welcome. Tom Mumgaard, deputy city attorney for the city of Omaha. That's T-o-m M-u-m-g-a-a-r-d. City of Omaha opposes LB992 as it's drawn and we recognize that even its introducer has indicated that there need to be some changes. We would propose some ideas to be explored. The city of Omaha has long accepted the idea that it is a good public policy to limit the opportunities for minors to come in contact with alcohol. We've had an ordinance that has attempted to do that for several decades. We...and you have that now and you can see that it gets kind of complicated, and it gets complicated because of the variety of different places where

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

minors do come into contact with alcohol, such as the bars that they go into with their parents. That's allowed by the Omaha ordinance if they're with their parent or guardian. We allow bars in Omaha to have nonalcoholic teen nights if they put the alcohol away. We allow...the big exception is we allow places where we call the sale of alcohol as incidental to some other activity. That ordinance lists several of them. The primary ones that we get concerned about with LB992, places such as the CenturyLink Center, all of our sports and concert facilities, they sell alcohol. They're a licensed premises. You'd essentially be telling Maverick UNO hockey fans if you're under 21, don't come to the game; Bluejay basketball fans, same thing. Several years ago, we tried to promote an emerging small-venue live music scene in Omaha. We put in an exception to the prohibition where you can get a, what's called the music venue permit, and under some restrictions, you can have live music and allow minors to come in. That's in our ordinance. We would propose that if the regulation is appropriate on a statewide basis, it be done on a more broad basis such as what we've tried to do in Omaha. I would just simply ask...answer any of your questions. [LB992]

SENATOR KARPISEK: Thank you, Mr. Mumgaard. Any questions? Seeing none, thank you. [LB992]

TOM MUMGAARD: Thank you. [LB992]

SENATOR KARPISEK: (Exhibit 14) Next opponent. I would like to read into the record, the owners of Slowdown have concerns with the bill; MECA, from Omaha, supports the concept but has concerns with the bill; and Levy Restaurants also supports the intent but has concerns with the bill. Thank you and welcome. [LB992]

STEVE SEGLIN: (Exhibit 9) Thank you, Mr. Chairman. Members of the committee, my name is Steven Seglin and I'm with the law firm of Crosby and Guenzel and I appear before you this afternoon on behalf of the Levy Restaurants. Your Chairman just circulated our letter and I don't want to take an extended period of time of the committee. Mr. Mumgaard said several of the things that concern us, but I think the unintended consequences of this bill is to severely limit the ability of Levy Restaurants as the food and beverage services provider in both CenturyLink and TD Ameritrade in Omaha, and also for the Haymarket Park here in Lincoln. To be able to continue what they've so well done in the past is to sponsor family events. I'm sure that many of you have been there and probably have taken your children along with you to a baseball game, to a basketball game. And if this bill goes forward and ultimately gets passed, it's going to very severely limit the opportunity for Levy and also for the owners of those facilities to continue to have the family events that they've had in the past. And I'd be happy to answer any questions that you might have. [LB992]

SENATOR KARPISEK: Thank you for your testimony. [LB992]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

STEVE SEGLIN: Thank you. [LB992]

SENATOR KARPISEK: Any questions? Seeing none, thank you. Further opponents. Welcome. [LB992]

JASON KULBEL: (Exhibit 10) Thank you, Senator and members of the committee. My name is Jason Kulbel. I'm the owner of Slowdown. Jason, J-a-s-o-n K-u-l-b-e-l. Just wanted to speak a little to how this can work in another light. As you were referring to the "Ms" on the hands, they're a thing that we do and it's a big laundry list of things that we're...we worked with the city of Omaha with in order to allow this to fit into our business model, which is essentially allowing anyone to come see a live musical act. We also happen to be a bar. We do things such as the wrist-banding, the stamping of the hands with "Ms." There's also more broad things like you have to have a permanent stage, you have to have a permanent concert facility sort of thing, and then once the person is actually inside of the establishment, then it's up to our staff to catch the people that are possibly doing something wrong. We have a minimum staffing level for every concert that we have and, you know, I just wanted to say that it can work and it doesn't need just a broad "you can't do this," you know. We'd certainly be glad to help in any regard, you know, share any experiences that we've had with actually making it work. But something just saying you can't...you can no longer have someone under 21 in your venue would essentially just shut us down. I'd be happy to answer any other questions that you have. [LB992]

SENATOR KARPISEK: Thank you. Senator Krist. [LB992]

JASON KULBEL: Yes, sir. [LB992]

SENATOR KRIST: Just a comment. You're doing a great job in coordination with the city, providing a great service. Keep it up. [LB992]

JASON KULBEL: Thank you, thank you very much. [LB992]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions/comments? Seeing none, thank you. [LB992]

JASON KULBEL: Thank you. [LB992]

SENATOR KARPISEK: Further opponents. Welcome. [LB992]

TAD FRAIZER: Good afternoon, Senator Karpisek, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I am a longtime volunteer and board member of Updowntowners, Inc. here in Lincoln, which currently goes by the name GOLincolnGO. We put on a number of the summer festivals in Lincoln under special

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

designated licenses. We put...over the years, we've put on the July Jam summer festival for 15 years, we currently have the Celebrate Lincoln summer festival, we put on a variety of events and festivals just to enhance the nature of Lincoln. We're a nonprofit organization. Some of our activities do not have alcohol. For 25 years, we did the Star City Holiday Parade. Some of our activities, we do serve alcohol both as a patrons' amenity and frankly, as a revenue source. Special events are very expensive to put on and as you well know far better than I, government is not in a position to underwrite a lot of special events on the locality, so it's up to private and nonprofits to put on these events. We put on...as I said, we obtain special designated liquor licenses under 53-124.11 of the statutes and under sub 5 of that, we are subject to all the rules that apply to a retailer. I sometimes say it makes you a retailer for a day. And I think under LB992 as written, we're at least arguably subject to the rule that there would be no minors on the premise where we have an SDL, which would basically mean no minors on the premise of some of our summer music festivals. I think that would apply to a lot of the events throughout the state where a volunteer fire department has a street dance, might apply to the Wilber Czech festival. [LB992]

SENATOR KARPISEK: Hmm. (Laugh) [LB992]

TAD FRAIZER: That's...I mean, that's something you don't realize because anything that happens under the general retail laws applies to SDLs as well. I will note that in the city of Lincoln, there is a well-defined ordinance, as far as minors on premise under Lincoln Municipal Code 5.04.120. There is no minor under 16 allowed on a licensed premise after 9:00 p.m. unless accompanied by someone 21 or over. And if the committee wants to look at something along those lines, that might be something that would be feasible, but an absolute blanket prohibition would obviously cause problems to families who come to our summer festivals to listen to music. We have family zones, but we generally license the entire event site because dad may want to get a beer while mom takes the kids over to the kids' activities or something like that, so on that basis we would oppose the bill, at least as initially written, and I'd be pleased to answer questions. [LB992]

SENATOR KARPISEK: Thank you, Mr. Fraizer. Seeing any questions? Thank you. [LB992]

TAD FRAIZER: Thank you. [LB992]

SENATOR KARPISEK: Further opponents. Welcome. [LB992]

HOBERT RUPE: Good afternoon, Chairman Karpisek and members of the committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm director of the Nebraska Liquor Control Commission. We support the intent. One of our main tenets is to try to stop underage access to alcohol, but we don't believe this bill is the proper mechanism. This

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

sort of winds the clock back. Just to give you a little history, back in 2003-2004...it was 2004 it was passed, a bill which created only five types of retail licenses. Up until that time, there were 13 different classifications which had grown over time, and to say it was somewhat confusing trying to put what classification someone met into what hole--I mean are you a bar or restaurant--was getting somewhat convoluted to say the least. For instance, I use the example, a Brewsky's. Are they a bar or restaurant? Sort of depends on what time of day you're in there, what day you're in there, doesn't it? You know, whether they're primarily serving food or are they primarily, you know, slinging drinks? And so based upon that realization, what the commission did was create the five current types of the licenses, the A, B, C, D, and I. I don't know why E couldn't be used. (Laughter) The bill passed shortly after I became director. It was already started; it had to do with bill drafting. And just so you know what type of licenses currently have these or types I was going to educate. The type A is a beer on premise only; it is almost exclusively currently the venue of pizza places. Pizza Huts primarily have As because all they want to do is they want to have draft beer on tap to serve with their pizza. An I is what was traditionally called the restaurant license. An I is a beer, wine and spirits on sale only. So you can get beer, you can get wine, you can get spirits there, but you can't take it outside unless of course now because of the wine doggy bag rule, you fall underneath that limited exception. And the C is sort of the super license. It's the beer, wine and spirits on- and off-sale. It's one that traditionally bars would have because they would want to be able to serve on the premise but also allow to have the off-package premise thing. Well, what's morphed over the years is almost every single supermarket has a Class C liquor license, which is one reason why I believe the amendment was put in after I made individuals aware that they were keeping people from going into Hy-Vees. The reason for that is the SDLs. They were going through thousands of SDLs a year every time they're doing a wine tasting, so it was more efficient and the cities asked us to give them some relief. We created the limited C with a condition, you know, when the commission can put reasonable conditions on licenses. So they have a C but they can only use the on premise for tastings and such as that. Well, the...one of the reasons they supported that was because that way they could still keep their lottery sales. So what the current license types do is reflect what type of alcohol service you can provide. We haven't gone down to decide are you a bar anymore, are you a restaurant, are you a grocery store because, for instance, Whole Foods in Omaha has a Class C liquor license. They have all three aspects. They have a large deli and sit-down restaurant, they have an off-premise/on-premise tastings, and they have off-sale. So we think that given, you know, the way we sort of try to backwards up and try to look at just licensing bars as to based upon what they're selling alcohol for, this be here sort of as a reversal of that. And the other thing I would say--as you already heard from two other testifiers--you know, as you know, the cities can regulate by ordinance not in conflict with the commission. Right now, you've got local ordinances. This is one of those probably times when the locals know best. If they feel they need an ordinance to address their own city or county, they can do it that way or resolutions by county. You know, I think this would be using a hammer to kill a fly by trying to put a statewide

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

prohibition, and I'd be happy to answer any questions. [LB992]

SENATOR KARPISEK: Thank you, Mr. Rupe. Any questions? Seeing none, thank you. Further opponents of the bill. Seeing none, anyone neutral? Seeing none. Senator Fulton has waived closing and that will end the hearing of LB992. We will now move to LB1078. Welcome. [LB992]

BRENT SMOYER: Hello, Mr. Chairman. Mr. Chairman, members of the General Affairs Committee...excuse me, I apologize. I apologize for two things, both for my throat and for the fact that Senator Lautenbaugh could not be here today. The judges in Douglas County have apparently found out that they can order him to be in court when they need him, so that's where he's at right now. So I am happy to be here to introduce LB1078 to the committee. It's a very simple bill, actually. It's one line, requiring 36 months of server education for managers of an establishment holding a liquor license. What I would propose to you and what Senator Lautenbaugh chooses to propose--which we are just currently hammering out language in understanding with Hobie Rupe of the Liquor Control Commission who will be testifying, and then of course we will bring your legal counsel in--but the senator would like to basically assert a different amendment--well, an amendment similar to that--requiring essentially that the Liquor Control Commission is responsible for any and all regulations as far as the number of hours for server training, set those as they see fit, whether they want the number to go up or down, and then of course have that number be standard across the state, have the Liquor Control Commission's understanding and requirements preempt all local ordinances so that we have a standard across the state. I know we've seen various entities open up across Lincoln and Omaha. They'll open chains, they'll open their own various versions across the state, and I think in the air...oh, in the need for convenience and understanding of the liquor laws uniformly, especially if we want to see businesses grow and expand, that having Liquor Control Commission have that preemptive power and have that regulation would be entirely appropriate. So we are currently, as I've said, hammering out an amendment to bring to you the committee. And of course, Hobie Rupe and company will follow after me, but I do believe we are coming up with some excellent language for you to put forward. And if you guys have any questions, concerns or insults, I'm happy to take them on behalf of Senator Lautenbaugh. [LB1078]

SENATOR KARPISEK: Thank you, Mr. Smoyer. Any insults for Mr. Smoyer or Senator Lautenbaugh? (Laughter) We'll save those for later, then. [LB1078]

BRENT SMOYER: Great, thank you very much. [LB1078]

SENATOR KARPISEK: Thank you, Mr. Smoyer. Any--oh, sorry--proponents? Proponents. Bob, take over. Welcome. [LB1078]

MIKE KELLEY: Mr. Chairman, members of the committee, Mike Kelley, 7134 Pacific,

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Transcriber's Office

General Affairs Committee
February 13, 2012

appearing here as a registered lobbyist for the Nebraska Tavern Association. And I guess a lot of people wondered why this bill got introduced and I guess Senator Lautenbaugh was kind enough to introduce it for us. And you might say, well, you're industry members, why would you want to do mandatory training? And I think Brent misspoke. He was talking about 36 months. The training is not 36 months, the training is...you have to have it within the last 36 months; he just misspoke. And the thinking, we have been talking about this for two or three years now. There's been talk about training every single person that comes into your place, which is expensive, which I'm not sure the commission wants to do. There's other issues, too, is who really should regulate this training? Should it be done by local cities, local municipalities, or should it be done centrally through the commission? And we're all in favor of the amendment that will follow that would run it through the commission. We think that's important. I guess a little bit of our philosophy here was better the devil you know than the one you don't know because something is going to happen along this line. So we thought just to have the manager, one person per store have the training might be a reasonable deal. This would be a way to start discussion on this issue because it's coming in one form or another and rather than have something that the industry can't live with, I think having one person done is probably reasonable. We want to professionalize our industry. There's a lot to the liquor law; it changes all the time. You need to be...you need to stay current with it. So we thought this was a modest proposal. I don't think the industry is completely united on it, but we thought that this would be a good place to have discussion. So with that, again we thank Senator Lautenbaugh for introducing the bill and his staff for all the work they've done on it. We would be open for any questions. [LB1078]

SENATOR KRIST: Any questions for Mr. Kelley? Senator Coash. [LB1078]

SENATOR COASH: Thank you, Senator Krist. Mr. Kelley, there's nothing in here about content of the server training. [LB1078]

MIKE KELLEY: And again, we would leave that up to the commission, be certified by the commission. [LB1078]

SENATOR COASH: Okay, then it...and I know Smoyer said he's going to bring an amendment, but it's the manager who has to get it, but it refers to server training and... [LB1078]

MIKE KELLEY: Right, with the... [LB1078]

SENATOR COASH: ...I don't know. It seems to me in some...a lot of establishments I suppose, depending on the type, the size, the manager is usually not the one serving or... [LB1078]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

MIKE KELLEY: Correct. So the theory here would be a manager would be responsible to make sure that they had training, at least the equivalent of what the state's going to give. A lot of establishments go ahead and require--or are starting to require--training that the commission gives. And, in fact, the commission now orders it for problem licenses and...but I think at least the equivalency, or you should...somebody ought to...every single person that's licensed ought to...every licensee ought to have some training and...because right now, that's really kind of left up to the industry, which is my preference. But I think eventually that's going to change, so rather than have it mandated, let's do something that's plausible. And by having a manager do it, then the manager can make sure that every...he...first of all, the manager is going to know what the training is. The manager is going to say okay, that was worthwhile, I want everybody to have what I had, or at least...or I'll teach it to them, so it depends on if you have somebody who's been in the business for 10-20 years and has taken it many times, maybe that person could do as good a training as the Patrol could and maybe it wouldn't be necessary. I mean, some of the big--Walgreens, some of those firms--they have unbelievable training, so maybe they don't need to go through all the state training, but maybe at least their manager ought to so that they have done that. And pretty much...I'd say most licensees are already doing this now. [LB1078]

SENATOR KRIST: Senator McGill. [LB1078]

SENATOR MCGILL: I was just going to say I really like this proposal because I have heard from some bar owners that the problem isn't always with their servers, it's with management not understanding how important server training is. And so I know if there's a problem at the top, then the people working for them aren't going to appreciate it as much, so I think this is really important, so thank you. [LB1078]

MIKE KELLEY: Well, thank you, Senator. And again, again with Senator Coash's point, I totally agree that the servers are the ones that need the training. But the point is, let's let...let's have uniform training and let's make sure that it gets filtered down to them. [LB1078]

SENATOR COASH: My guess is a manager is a more stable employee than the... [LB1078]

MIKE KELLEY: That's exactly right. [LB1078]

SENATOR COASH: ...than the servers. [LB1078]

MIKE KELLEY: Bingo. [LB1078]

SENATOR MCGILL: And they lead by example, you know, and priority, so. [LB1078]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KRIST: I've lost control. [LB1078]

SENATOR MCGILL: Sorry. (Laughter) [LB1078]

SENATOR KRIST: So it goes back to you. [LB1078]

SENATOR KARPISEK: Oh, well, I'm usually the one that's out of control. Senator Brasch. [LB1078]

SENATOR BRASCH: I see the fiscal note here of \$54,000-plus expenditures here. I know the...I believe food restaurant managers have a course required that they take that they charge the restaurant a fee of maybe \$100-plus or so. Is this something that the cost will go to the Liquor Commission or to the person... [LB1078]

MIKE KELLEY: Well, and I would defer to Mr. Rupe as far as exactly what...how the fiscal note was created as to what they have to do on their end. I know on the retail end, basically, we're going to pay for that as we go to our own individual associations or whatever training we'd go to. But I think one of the other problems with...if you mandated the state to do it, that creates a huge fiscal note, so just doing managers is a lot smaller issue than doing everybody, but I'd let Mr. Rupe...I'd have to defer that to Mr. Rupe. [LB1078]

SENATOR BRASCH: Okay, thank you. [LB1078]

SENATOR KARPISEK: Thank you, Senator Brasch. Any other questions? Seeing none, thank you. [LB1078]

MIKE KELLEY: Thank you, thank you. [LB1078]

SENATOR KARPISEK: Further proponents. Welcome, Mr. Otto. [LB1078]

JIM OTTO: Senator Karpisek, members of the committee, my name is Jim Otto, J-i-m O-t-t-o. I am president of the Nebraska Retail Federation, also a registered lobbyist for the Nebraska Restaurant Association, and I'm here today to testify in favor, on behalf of both associations, of LB1078, with the caveat that the amendment that was discussed is part of it. In other words, that it does preempt the local communities and it is manager training only, and I would add one other thing: we want to make sure it's affordable. But we think this is a good beginning step to start the discussion. With that, I'd... [LB1078]

SENATOR KARPISEK: Thank you, Mr. Otto. Any questions? Seeing none, thank you. Further proponents. Welcome. [LB1078]

TIM KEIGHER: Good afternoon, Chairman Karpisek and members of the committee.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

My name is Tim Keigher, it's K-e-i-g-h-e-r. I appear before you today in support of this bill on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. I guess we're not much for mandates, especially when it comes to alcohol--pun intended. And yeah, we would rather see a statewide training program than each community come up with their own training program, which makes it difficult for my members who have locations in multiple communities. So with that, I'd be happy to answer any questions. [LB1078]

SENATOR KARPISEK: Any questions for Mr. Keigher? Seeing none, thank you. [LB1078]

TIM KEIGHER: Thank you. [LB1078]

SENATOR KARPISEK: Welcome. [LB1078]

HOBERT RUPE: Thank you, Senator Karpisek, members of the committee. My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission, but by now you know that. (Laughter) You know, first off I want to say, you know, we support the bill. The commission has long been in support of training. Just to give you a little history as to where we're at on the certified training programs right now, there is a statutory requirement that certified training programs are created. They were created...years ago, there was a dram shop bill that was introduced by Senator Kruse and he had a companion bill which was going to have certified training, and then if you completed one of those, it was going to reduce the...your...you mean affirmative defense to the dram shop legislation. The dram shop legislation went nowhere. The requirement that the commission certify training programs, however, was...became law. And so what the commission has done since then is we've gone and we've set forth rules and regulations, you know, with the...based them very closely on this...on the statutory parameters, setting forth what's the minimum. You know, we've set the floor as to this is what we consider a minimum for an adequate training program, and so that's in our rules and regulations. And how we've done that since is we will oftentimes order that if somebody who is getting into it puts down...we have one of those questions on the Liquor Control Act application for a liquor license, you know, have you ever been involved in the industry before? When they say no, we generally order them to take one of those training courses. We also will order it oftentimes as part of the sanction process, especially early on, if somebody has failed a compliance check, sold to a minor, had an altercation on their premises where they should have been able to intervene sooner, and we will order them and all the employees to take one of the certified training programs, usually within 90 days of the date of the order. You know, that's part of the idea that we're trying to bring people back into compliance and we think that, you know, we're already hitting them with the stick, but we're trying to give them the education to not come back in front of us again, so that's how we've worked training so far. Now, because of that, when there was a training bill put in, there was no

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

fiscal note and we started assuming all of those job duties with our staff. And I can tell you right now, one of our licensing staff spends almost half her time doing just the training. Currently right now, I think there are 11 certified training programs. Most of those are like TIPS, ServSafe, you know the other ones which are...some are national and some are local, so long as they meet the criteria. So, you know, I'm generally not in, you know, one...I mean, although hey, compared to, you know, \$1.8 million, it's a small note for just one position, one staff position because our promise would be twofold on this one. One, we would ask for an amendment and we would work with Senator Lautenbaugh. We think not only managers, but the owner-operators of the single licensees, because a lot of times you'll have it where it's just an individual who is licensing and sometimes it will be a corporation or an LLC. If there's a corporation or LLC, then there's an identified manager, and so that's who this would be looking at. We believe we would probably need to tighten up our rules on who...define on who a manager is anyway. We've been looking to do that. As soon as this bill came out, we figured we'd hold off on that to just see, you know, how this goes because what we're trying to do, either by the person who's actually name is on the license if it's a single, or the defined manager is, we want the person who is responsible for alcohol-related decision making at that location to at least have the server training. Now, if it was a perfect world, we would be in support of global mandatory server training for everybody. That's 50,000 people. This is looking at about 5,000 if you bring in everybody who has a retail license, less than 5,000. So it's a step in the right direction, but it's not going to get all the servers. But the key part about it is--and I think Senator McGill hit it earlier--we found out that if you're getting the buy-in from the guys in charge making the decision that professional alcohol sales are important, it filters down to the rest of the staff. And also, they're generally there longer if they're a professional. You know, where the waitstaffs come and go depending on shifts, on colleges, or however they're doing it, generally the managers there are professionals, that's their job; or if they're the owner, that's their business and they're the person who is setting the tone, so we would look for that. On to the preemption, I would have to see the language. I can tell you right now the commission has not seen that language, I have not ran that idea by them, so I can't, you know, take a position on that at all because I have to run that by the three commissioners. Contrary to popular belief, I run every bill by the commissioners and I'm sort of sitting here representing them. But I'd be happy to answer any questions regarding this bill or about how we utilize training currently. [LB1078]

SENATOR KARPISEK: Thank you, Mr. Rupe. Senator Bloomfield? [LB1078]

SENATOR BLOOMFIELD: Thank you. Do you realize you could hire four-and-a-half senators to take care of that job instead of...? [LB1078]

SENATOR MCGILL: Yeah. [LB1078]

HOBERT RUPE: I would be the first to say that you are woefully underpaid. [LB1078]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KRIST: That's at the current rate. (Laughter) [LB1078]

SENATOR BLOOMFIELD: Yeah. [LB1078]

HOBERT RUPE: That's the current rate. Now you've got to remember, that rate there is, you know...whenever we do a fiscal note, it's pretty much based on: Okay, would this be a staff one position based on the job duties? It tells us yeah, with the...pretty inescapable under the union contract as to what it's going to be and based upon...that's the outside because you have to assume that they're going to have a family and they're all going to be under the insurance policy. [LB1078]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Krist? [LB1078]

SENATOR KRIST: This is all based upon you not getting 12 new people, too. So if you get the FTEs you were talking about before... [LB1078]

HOBERT RUPE: I probably would not need this other person. I could probably utilize that as well. [LB1078]

SENATOR KRIST: You probably would not need that other person, yeah, (inaudible). [LB1078]

HOBERT RUPE: I would have enough people in there, I could probably have some of that being done. [LB1078]

SENATOR KRIST: But this is where you're going to teach people about compliance checks, too, right? [LB1078]

HOBERT RUPE: Exactly. A lot...well, a big part of it would be, yeah, we would...you know, there's a big part of how to look for an ID and how to ask for an ID and, you know, when to ask is an integral part of a server training. [LB1078]

SENATOR KRIST: And always asking for an ID because that cuts to the quick of the whole thing. [LB1078]

HOBERT RUPE: That cuts to the quick of the whole thing, yeah. [LB1078]

SENATOR KRIST: I just had to editorialize that. [LB1078]

HOBERT RUPE: You know, no. But it really does, I mean. I actually...I had the opportunity...the way we certify programs is we have a committee within--myself; Mr. Van Ackeren, who is here with me; Mary Messman, our licensing division; and Sergeant

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

Costello, all sit through every single program that's submitted to the commission to be certified, so I've seen every one. Some--I can editorialize--some are better than others, but there's certain key parts that all of them must have. You know, how to do an intervention, how to check for ID, how to intervene with a visibly intoxicated person, how to de-escalate a confrontational situation is part and parcel to every good thing and it really ties back into what we've been trying to do, is trying to professionalize the industry as much as we can. We think this is a step in the right direction. [LB1078]

SENATOR KRIST: Thank you. [LB1078]

SENATOR KARPISEK: Thank you, Senator Krist. You talked about who the manager is. So the owner could do this and then be covered? [LB1078]

HOBERT RUPE: Yeah. You know, what there is is you generally will have two types. You'll have...you know, if I'm going to own Hobie's Hooch Hut, I could either get it as an individual license in which case Hobert B. Rupe, he has a liquor license. Or, more and more likely what we see currently is you'll do an LLC or a corporation, you know, for tax liability purposes and other things, in which case they'll be...Rupe Co. will have the license and I will be president and manager. And so in that case there, that...the person...they have to have a corporate manager. And the other reason that works is on...well, for instance--just because I know that at least at one point Senator McGill used to work for Target... [LB1078]

SENATOR MCGILL: I do. [LB1078]

HOBERT RUPE: Target has liquor licenses. Now, the president of Target, of their corporation is on it, but each of those individual stores has the local store manager or the local liquor managers on the licensee as the manager because then that person has to then meet the residency requirements and be a resident of Nebraska. You know, as we commonly say, the manager...we want the person whose name is the manager is who do we call when we get a horrible call, a horrible complaint? Who do we reach out to, to either answer the questions or come in before the commission for a hearing? That's what we're looking for, the manager, who is the person that makes those decisions and who is also responsible for something that goes wrong. [LB1078]

SENATOR KARPISEK: Okay, thank you. Any further questions? Seeing none, thank you, Mr. Rupe. [LB1078]

HOBERT RUPE: Thank you. [LB1078]

SENATOR KARPISEK: Further proponents. Welcome back. [LB1078]

CASSIE GREISEN: Thank you. Good afternoon. Cassie Greisen, representing Project

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

Extra Mile, C-a-s-s-i-e G-r-e-i-s-e-n, and we're here in support of LB1078. It's nice to be, you know, in cahoots with the industry for once. We have more common ground than I think some might think, however. But just to go on record in support of this proposed legislation and, you know, it has great hope to reduce youth access and illegal sales to minors. And Senator Krist, I would just echo the need for enforcement to complement this RBS, as it's commonly referred to. For it to be as effective as it can be, enforcement has to continue. So with that, thank you. [LB1078]

SENATOR KARPISEK: Very good, thank you. Any questions? Seeing none, thank you. Further proponents. Welcome. [LB1078]

SENATOR COASH: Beat your last one. [LB1078]

KATHY SIEFKEN: All four bills. (Laugh) Good afternoon, Senator Karpisek and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today representing the Nebraska Grocery Industry Association in support of LB1078 with the amendment. There are three very important aspects to that amendment. One is that it would be manager training. Two would be that it would be training that is already...or that is certified by the Liquor Control Commission. And most importantly, it would have to preempt local control, and that is the reason we even came forward with this type of training. We have a problem, and that problem started out in North Platte, where the city adopted a local ordinance that required everyone with a liquor license to take their own proprietary training. Then they went down...then the issue kind of moved down the road and Kearney adopted an ordinance that says anyone in their store that may brush up against the beer needs to be certified. And they, in their wisdom, decided to go ahead and approve any program that has been approved by the Liquor Control Commission. Out in North Platte, those folks out there have to take the local North Platte training, and then if they want the Liquor Control Commission to accept the fact that they've been certified and they've taken training, they actually have to go take another training program. Now we have the city of Lincoln that is talking to us and they have their own proprietary training program and every one of these proprietary training programs are expensive and when you start talking...and what Lincoln is doing is they are proposing that it be all servers and sellers of alcohol. And when you take the cost of individual training and you plug that into a Hy-Vee grocery store, it becomes very, very expensive very quickly. Now, we developed training that the Liquor Control Commission has already certified and our cost is \$10 per person to take the test, so it is very affordable. We are now at a point where we would like to move forward. We think that manager training is a good starting point. We believe that the managers will, once they become educated--and not all of them are and they should be--but once they take that training, the training will move down to the other servers and sellers. Some of them may opt to go ahead and take the certified training program that is out there right now. And for those reasons, we would approve the bill with the amendments because it would make it much easier for our industry to be in compliance with training programs. When

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

it's a patchwork across the state, it makes it very, very difficult for someone like B&R Stores, who has...they've got locations across the state, and Hy-Vee. Any time you jump from one city to another, we...even our two two-location operators would have a difficult time if there's a different ordinance in every community and it's different training that is being required. So if you have any questions, I'd be happy to try to answer them.
[LB1078]

SENATOR KARPISEK: Thank you, Ms. Siefken. Any questions? Seeing none, thank you. [LB1078]

KATHY SIEFKEN: Thank you. [LB1078]

SENATOR KARPISEK: Do we have any further proponents? Seeing none, do we have any opponents? No opponents. Do we have any neutral testimony? [LB1078]

TAD FRAIZER: Again, good afternoon, Chairman Karpisek, members of the committee. My name is Tad, T-a-d; Fraizer, F-r-a-i-z-e-r, representing Updowntowners, Inc., d/b/a GOLincolnGO here in Lincoln. As I previously testified under LB992, we put on a variety of special events in the city of Lincoln as a nonprofit organization under special designated licenses. Lincoln currently has a manager training proposal--or, I mean, a manager training ordinance--and we run a couple members of our steering committees through the training and we don't have a problem with that. We have not seen the proposed amendments so we've...weren't going to take up a clear position on that, but just wanted to let you know that obviously as a volunteer organization, we have a lot of people working at our events and we run them through informal training. But the prospect of having to run every possible volunteer at a festival through a formalized training program starts getting both practically and financially prohibitive and just wish to call that to the committee's attention, and I'd be pleased to ask...to answer any questions you might have. [LB1078]

SENATOR KARPISEK: Thank you, Mr. Fraizer. Any questions? Seeing none, thank you. [LB1078]

TAD FRAIZER: Thank you. [LB1078]

SENATOR KARPISEK: Further neutral testimony. [LB1078]

JIM MOYLAN: Here's some exhibits, thank you. Oh yes, you want to take that, too.
[LB1078]

CHRISTINA CASE: Thank you. [LB1078]

JIM MOYLAN: (Exhibit 11) Again, Jim Moylan, Omaha, Nebraska, general counsel to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

the Nebraska Licensed Beverage Association. I'm here in a neutral capacity today because I had several members of the organization that were opposed to mandatory training and there were several, you know, that were for it, so I just want to stick with my members. Number two, here's an employee policy that was put together, that they asked me to put together about four or five years ago. And I've updated it a couple-three times for them, but basically, it's an operational and employee policy. The main part starts with regarding minors, how to check IDs, and then the valid type licenses and IDs you can use, and then the rest of it pretty much pertains to the other duties around an establishment. Now on the back there is an acknowledgement, and the employees verify that they're going to be responsible for any penalties leveraged against them by the court for a citation for violation of the liquor laws, rules and regulations. Their employment may be suspended for a period of time or terminated for such violations at the discretion of management, and any violation of the laws, rules or regulations shall be considered outside the, you know, the scope of the employment. A lot of them use it and they've...pretty much lays out what the employee should know. Number two, I'm going to let you decide whether I'm a hard or a soft neutral. I heard those phrases the other day in here and I wasn't figured out what they meant. And I don't...never heard one of them do it on a neutral capacity but we'll try it. I have followed the continuing legal education that was instituted by the Bar Association and took effect in 2010. And in 2010, you had to complete 10 hours of continuing legal education of courses that were approved and it is under the jurisdiction of the Supreme Court. Now I noticed the other day they exempted all the lawyers over 70 years old. Now I noticed the other day that they are citing a few of the lawyers before the Supreme Court because they have not, you know, completed it. And there's over 7,000 lawyers in this state; I think that's kind of a monumental problem. I think the commission was...has the same problem here with 5,000...4,500 licensees, you know. It's going to be a tough thing to monitor if it's made mandatory. I'll just remind the commission of that and like I said, I'm testifying neutral on it, you know. So we're not against training. In the late '80s, the association purchased a course called "Techniques in Alcohol Management," instituted in Michigan, put out by the National Licensed Beverage Association. We traveled the state and in the course of three years...four years...and we had the State Patrol even teaching the course back then. They coordinated and after four years they decided that it would be a conflict for them to continue teaching the course, you know. We tried it a couple-three times and without. I think in that period of time of about four years, about 2,600 establishments, you know, took the course, so it was beneficial back then, you know. But I want to tell you it's easy to lead a horse to water, but, boy, sometimes it's hard to make him drink. So with that, I'll close my testimony. Any questions, I'd be happy to answer them. [LB1078]

SENATOR KARPISEK: Thank you, Mr. Moylan. [LB1078]

JIM MOYLAN: Thank you. [LB1078]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
February 13, 2012

SENATOR KARPISEK: Any questions? Seeing none, thank you. Any further neutral testimony? Seeing none, that will end the hearing on LB1078 and the hearings for today and for the year. Thank you. [LB1078]